



Migration Institute  
of Australia

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The Director  
Sponsored Skilled Migration Policy Section  
Department of Immigration and Citizenship

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Dear Director

Thank you for the opportunity to respond to the Discussion Paper on the Review of Employer Sponsored visa categories: ENS, RSMS Labour Agreement.

Please find attached a submission from the Migration Institute of Australia (MIA) in response. In preparing this submission, the Institute has strived to address the questions and topics contained in this review.

The MIA would appreciate the opportunity to contribute to future consultations regarding this Review and would be pleased to meet to discuss this submission.

Yours sincerely,

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## **MIA Submission on the DIAC Review of Employer Sponsored Visa Categories: ENS, RSMS and Labour Agreements**

### **Meeting the Needs of Australian Employers**

*Do these programs satisfactorily target different employer circumstances and skill needs?*

1. By and large, the Regional Sponsored Migration Scheme (RSMS) program does effectively cover the needs of regional Australia, but there are significant gaps in this coverage, as discussed later in this submission. The employer Nomination Scheme (ENS) program is more relevant to higher population density areas where there is a greater labour pool. The ENS program is not very useful for encouraging trade level applicants, because it requires a formal skills assessment or two years on a Subclass 457 visa. As the skills assessment pathway is costly, time consuming and can be unpredictable, many tradespersons will access the ENS through the 457 pathway.
2. The access Australian employers have to the employer sponsored programs is inconsistent, particularly for smaller regional businesses, and these programs do not always enable them to address skills shortages.
3. The subjective and seemingly arbitrary treatment of exceptional circumstances and requirements of regional certifying bodies means that genuine skill needs are often not met.
4. The main issues are overly stringent – and sometimes clearly erroneous – interpretations of the law. For example, tourism industry professions, such as Dive Instructors and Dive Masters, are treated as recreational professions when they are clearly providing a commercial activity. For contrast, Cooks or Chefs who prepare meals for tourist are not recreational cooks; dive instructors providing instruction for recreational divers are not themselves recreational divers.
5. Delays in processing render the schemes ineffective for many employers, as they cannot wait six to 12 months for an employee and often decide instead to scale back business. The lengthy delay in processing RSMS applications bears little relation to how business and employment operate in the commercial world.
6. The lack of connectivity with the categories and clear pathways is a problem. For example, the temporary Subclass 457 visa has higher requirements than the permanent RSMS visa.

7. The Subclass 457 requirements have been unreflective of regional needs since the removal of the Regional 457, featuring some language and qualifications exemptions, the elimination of which removed a previously sound pathway and connectivity.

*Do these programs ensure the skill needs of Australian employers in an effective and efficient manner?*

8. These programs do ensure the skills needs in a partial manner. When an employer has a skill vacancy that cannot be filled locally, however, six to 12 months is too long to wait. Delays in processing are unacceptably long and render the system ineffective for some employers. This in turn causes a great deal of frustration for many employers.
9. The reportedly arbitrary nature of exceptional circumstances assessments by DIAC and certifying bodies, and the fact that case officers are not always familiar with particular industries or regional circumstances, means applications can be unreasonably delayed or refused.
10. Practice demonstrates that case officers who may have lived and worked only in urban Australia have and cannot be expected to have knowledge of life in remote or regional Australia, which can cause inappropriate decisions.

*Do these programs ensure people migrating to Australia through these programs have the skills and experience that employers need?*

11. These programs do generally ensure migrants have necessary skills and experience, with studies demonstrating high employer satisfaction in these programs when they can gain access.

*Do these programs make the visa process easier to understand for employers and visa applicants?*

12. These programs do not make the process easier to understand, which remains hugely difficult and complex for employers and employees.
13. Apart from the unnecessarily complex set of Subclasses within the current system, the arbitrary nature of some application decisions means there is often uncertainty as to whether an employer will be able to address skills needs.
14. Registered Migration Agents (RMAs) face a lack of clarity and certainty when advising clients as the common cases can result in approval or refusal depending upon case officer.

15. This uncertainty, as well as the sometimes long processing times, can make it very difficult for an employer to make business plans.

### **Ongoing Employment and Training Opportunities for Australians**

*Do these programs continue to support ongoing employment and training opportunities for Australians?*

16. These programs do support employment and training of Australians, as it remains far more advantageous for an employer to recruit locally if possible.
17. Introducing skilled labour to the marketplace, regardless of a worker's country of origin, allows for the up-skilling of the entire labour pool through access to superior training, resulting in a net gain of skills for all local workers.
18. The principal intention of these programs is to enable Australian employers to employ skilled workers from overseas. In enabling Australian employers to obtain skilled workers, the programs should not reduce employment and training opportunities for Australians – and there is no evidence that they do – but they are not intended to be job or training programs for Australians.
19. Sometimes case officers ask of employers why they don't simply train someone locally, which demonstrates a misunderstanding of the lead time required for that path.
20. Many skills shortages can be attributed to rapid growth in certain industries or geographic areas within which lack of training is endemic. It is unreasonable to penalise employers for factors outside of their control, such as lack of government foresight.
21. If Australia does not train enough skilled workers locally, employers cannot be held entirely to blame. Training requirements of employer sponsored visas are relatively inflexible and should be reassessed.

### **Exploitation of Workers**

*How can the government ensure that employer sponsored migrants perform well in the labour market and are not exploited?*

22. Exploitation of sponsored migrants occurs in a small proportion of cases. Because of this, it is not sensible to penalise all sponsors by making the process, requirements and compliance impracticable.
23. English language requirements, skills assessments, salary thresholds and age restrictions go a long way toward reducing worker exploitation, particularly with regard to the Subclass 457 program.
24. English language exemptions are rare, meaning there is little likelihood that they are in themselves a significant factor in the exploitation of workers
25. Poor English language ability is not necessarily a root cause of exploitation. Instead, exploitation seems to occur in situations where employees, in order to obtain a visa, agree to work under what are less than the acceptable Australian working conditions.
26. Whilst worker exploitation is real and relevant, sponsored work schemes cannot be held hostage by a small minority of unscrupulous employers – in effect, treating symptoms rather than the disease.
27. Efficient, non-draconian monitoring of workers and their sponsoring employer post-visa grant could further reduce the chance of exploitation.
28. Monitoring could begin with simple Australian Taxation Office (ATO) records audits and discussions with relevant parties.
29. These discussions already happen on an informal basis, but in a manner that is too dependent upon the helpfulness or lack thereof of individual DIAC staff.
30. This change would necessarily involve also a change in DIAC's culture where, too frequently, clients are viewed with suspicion. This could be a real opportunity for all stakeholders to work together for the common good.

## **Transition from Temporary to Permanent Employer Sponsored Visas**

*Do these programs make it easier for certain skilled temporary visa holders to be sponsored for permanent residence after they have worked for the employer for several years and will continue to do so after the permanent residence visa is granted?*

31. This was true for RSMS until the Regionally Certified 457 visa system was scrapped, precipitating a significant drop off in applications. The Temporary Skilled Migration Income Threshold (TSMIT) applied to Subclass 457 visas is substantively out of balance for regional areas, particularly those remote regions where there exists a significant difference in the relevant wage levels compared with capital cities, as well as significant difference in living costs. The Regional 457 visa provided for this to some degree, and its elimination means that the pathway from Regional 457 to RSMS is lost to regional employers, which in turn removes any incentive that had existed for migrants to move to regional areas. The Regional 457's concessions need to be reinstated to provide equity between regional and city employers.
32. The pathway to permanent residency should be streamlined and made easier as this is one of the most sensible ways for an Australian business to meet its skills needs.
33. Many applicants for permanent employer sponsored visas are already in Australia, often working for their sponsoring employer. If an employer has invested time and money in sponsoring a temporary worker, and wants to keep that worker, the transition should be seamless.
34. The Subclass 457 visa is a sensible way to meet immediate skills needs. In situation where Australian employers wish to keep those workers, a transition to a permanent visa can be an act of good faith by employers, and an exploitation minimisation measure for workers.
35. There exist unreasonable and impracticable delays in the employer sponsored process at present, at least partially due to the repeated requirements for workers on the 457 to ENS/RSMS track.
36. The possibility of a temporary worker gaining permanent residence and then leaving a sponsoring employer is not sufficient reason to impede this transition.

#### Skilled occupation lists

37. A more streamlined transition from temporary to permanent residence could be achieved through a common skilled occupation list for both visa types, and by allowing employers to sponsor existing employees by a measure as simple as a declaration that the employee met their skills needs and that it is in the best interest of the business that the employer continue to be employed. Subject to the

employer having fulfilled Subclass 457 requirements, approval of permanent sponsorship should be virtually automatic.

38. Current occupation lists leave very important pockets of need, and do not provide for specific skills needs of particular regions or areas. The skill levels, rather than specific occupations, should be defined and there should be additional room for other occupations with regional certification for occupations not listed.
39. Visa classes do not necessarily require consolidation, but pathways need to be developed that are logical and linked. The number of job lists or skill level lists should be reduced and, ideally, there should be only one list for Subclass 457 and ENS. For Regional 457 visas and RSMS, specific skill levels, rather than job roles, should be linked as a pathway.
40. The current number of differing occupation lists makes no sense, merely adding complexity, confusion and frustration to the programs.

#### Medical occupations

41. Further streamlining for medical practitioners would be obtained if Subclass 457 visa holders' current ability to work for organisations other than their sponsoring employers was extended to permanent visa categories.

#### Trades licensing

42. A consistent approach to licensing requirements for trade occupations for temporary and permanent visas would facilitate the transition from temporary to permanent residence for those occupations.
43. The aforementioned situation is particularly ridiculous for electricians, who have to be in the country to become licensed, but cannot obtain a visa because they are unlicensed. DIAC's policy of not granting permanent visas to electricians who are not licensed but will be working under supervision is absurd.

#### English language, skills assessment and training requirements

44. English language qualifications, skills assessments and training requirements are inconsistent across the range of temporary and permanent visas.

45. English language requirements should be lesser for temporary visas to enable temporary visa holders to live and work in an English speaking environment to develop skills to use in pursuing permanent residence.
46. Skill assessment should have an input from employers, as only they can make a valid assessment of suitability for the role.

### **Dependents of Subclass 457 visa holders**

47. Some Subclass 457 visa holders arrive in Australia with children around the age of 18. These children often work and earn money, which results in a situation where they are no longer classified as dependent at the time of their parents' ENS or RSMS applications, and are thus excluded from any residency decision. These young people are then in a type of limbo, unable to qualify for any other permanent residence visa and lacking access to the higher education necessary to gain permanent residence due to higher international education fees. This situation causes significant hardship and is contrary to the intent of the permanent residency visa programs, particularly as it deprives the local workforce of a potentially willing worker and socially engaged future citizen.
48. It is noted that, in the case of the Subclass 163 Business visa, a dependent at the time of initial application is taken to be a dependent at the time of residence visa application.
49. The above is an established two stage process to permanent residence. Perhaps a similar provision could be made in the case of 457 visa holders with previously dependent children. For example, the previously dependent children of those proceeding to permanent residence within a two year period would be still considered dependents at the time of application for permanent residence visas. A specific time limit would be set on these applications to preserve system fidelity.
50. The above change would effectively place 18 and 19 year olds into local employment, removing their inefficient incentive to remain out of work or in unsuitable study arrangements in order to remain dependent.

### **Regional, Remote and Low-population Growth Areas**

*Do these programs help businesses in regional, remote and low population growth areas in Australia to recruit the skilled workers they need to manage and grow their operations?*

51. The varied and arbitrary nature of regional requirements can impede the ability of employers in regional, remote and low growth areas to meet their skills needs. The RSMS program is good, but a concessional or Regional 457 needs to be introduced to complement this pathway.

*Is there a role for provisional visas that require migrants to stay in the region for a set period of time?*

52. The RSMS provides for this and is effective to the extent to which it can be accessed.
53. The Regional 457 visa needs to be reinstated to provide a pathway for regional temporary to regional permanent visas. At present, it is substantially easier in regional areas to obtain permanent residence through the RSMS than it is to obtain a Subclass 457 visa. Additionally, the English threshold for a Regional 457 should be substantially lessened to enable migrants to immerse themselves in an English speaking environment to improve their skills. A Regional 457 could require an average 4 IELTS, with exemptions where health and safety would not be impacted.

*What concessions or flexibilities are needed to support positive economic and social outcomes in regional and low-growth areas, and how could these be implemented?*

54. There is a need for some concessions for regional areas to be able to address skills shortages.
55. Lower salary thresholds, starting with a lower threshold for Subclass 457, would be appropriate for specific areas identified by statistical research.
56. Concessions for English requirements may be necessary and may be best identified on a case by case basis, as discussed later in this submission.
57. Permanent residence in Australia is a powerful incentive, and permanent residence in regional Australia with some conditions could be made an attractive proposition if there were safeguards for both employers and employees. Conditions should not be arbitrarily dismissed for permanent residents.

58. If it is not possible to set conditions on permanent residence visas to protect both employers and employees, there may be a role for provisional visas that require migrants to stay in the region for a set period of time, with adequate safeguards.
59. It is sensible to provide a pathway for migrants with lower thresholds for temporary or provisional visa before a permanent visa is granted. This not only better enables employers to assess employees, but is more likely to ensure a mutually satisfying relationship is established.
60. Direct permanent residence visas should always be available.
61. The ability of overseas students in Australia who might wish to have access to employer sponsored programs is quite limited. A more flexible approach would open up the RSMS program to more of these students, simultaneously addressing regional skills shortages and restoring Australia's credibility following the closure of the legal, legitimate General Skilled Migration (GSM) pathway, to which tens of thousands of students devoted countless years and dollars.

## **Regional Certifying Bodies**

*Is the current diverse network of state and territory government agencies, local chambers of commerce, local government councils and regional development bodies operating as certifying bodies for RSMS satisfactory?*

*Would the continued use of local certifying bodies and/or exceptional circumstances provisions provide more integrity when assessing individual applications?*

62. The local input provided by Regional Certifying Bodies (RCBs) is vital in assessing regional needs and assisting regional development. RCBs were initially created without any real guidelines or structure, however, and while they now of generally high standards of diligence, there are many varied requirements, some of which are stricter than DIAC's, and sometimes arbitrary decision making without any review mechanism.
63. Different requirements by different RCBs are to be expected if they are addressing varied regional requirements, but inconsistencies within one RCB's decisions is inexcusable.
64. RCB fees should be standardised if all regional employers are to have equal access to the programs.

## **Semi-skilled Workers**

65. While the need for semi-skilled workers is partially addressed through the RSMS, Labour Market Agreements, Working Holiday programs, and the Pacific Seasonal Worker Pilot Scheme (PSWPS), there is still an unmet need for semi-skilled workers in regional Australia especially, particularly in the small business and agricultural sector.
66. The PSWPS is currently too restrictive as to providers and areas. It could help in all fruit growing areas but is currently not available to many.
67. The Subclass 457 visa should be a way of obtaining semi-skilled labour, but the occupation list is currently too restrictive and the TSMIT too high for regional and remote areas. The RSMS also helps in this regard, but needs the Regional 457 pathway to be reintroduced. Regional agreements by RCBs could also be of benefit.
68. Labour Agreements remain too complex, too slow or simply inappropriate for many small businesses. To describe them as a “flexible framework” is flattering; “time consuming and expensive” is perhaps a more appropriate description.
69. There will probably be a need for many semi-skilled and even unskilled workers to meet the needs of the resources boom. The extent to which the need for such workers as mobile plant operators, excavator operators, truck drivers and drillers can be met by Enterprise Migration Agreements (EMAs), Regional Migration Agreements (RMAs) and other programs has yet to be tested, and the ability of the more mainstream programs to meet these needs to be strengthened.
70. There appears to be a “middle ground” in regional areas where some semi-skilled employees who are in genuinely short supply cannot access an obvious pathway for sponsored employment. An example would be a concreting industry employer that cannot qualify for 457 sponsorship due to a lack of availability of trainees but has a genuine need for semi-skilled employees falling within skill level 4 or 5 and ANZSCO.
71. This Review’s Discussion Paper’s claim that “it is reasonable to expect that employers will obtain these workers from the local labour market” is conjecture, reflecting a reliance on long held but flawed assumptions rather than consultation and analysis.

72. The protection of semi-skilled workers from exploitation could be improved if sponsors were required to provide some up-skilling and general training. Additionally, a General English training and Australian Workplace Induction program, perhaps facilitated by RCBs, would help reduce exploitation.

### **Simplifying visa structures and reducing red-tape**

*Do these programs ensure these programs meet the government's commitment to simplify the visa structure and create a robust visa program that will reduce bureaucratic red-tape for employers?*

73. These programs do not ensure simplification. The offshore/onshore and ENS/RSMS variations are in most respects needless, as those differentiations are also in many other visa types. People working in Australia on temporary visas often have to travel offshore for the grant of the permanent visa, which is manifestly ludicrous, adversely impacting employers and employees alike.
74. Targeting can be achieved by specifications within visa Subclasses requirements, thereby reducing the number of visa Subclasses, but this will not in itself reduce red tape or complexity. A cultural change towards cooperation will also reduce reliance on red tape and be of mutual benefit to all parties.

### **SkillSelect Model**

*Do these programs ensure any changes to these programs align with the department's long-term planning framework, particularly in relation to SkillSelect.*

75. The meaning of the above question is unclear. The intent of this kind of program should be predicated upon labour market needs rather than "the Department's long-term planning framework".
76. While the SkillSelect model will have the advantage of reducing backlogs of visa applications in the GSM Program, this is not relevant to the employer sponsored programs, within which visa applications are made only to meet the genuine skills needs of employers.

77. The SkillSelect model may enable employers to access potential employees, although the lack of interest by employers in the GSM skills matching program does not provide confidence that the SkillSelect model would be any more successful.

## **English language**

*Do the current English language standards for the ENS and RSMS support the overall aims of building self-reliance, developing English language skills and fostering connections with mainstream services as soon as possible after settling in Australia?*

78. There should be more flexibility and easier exemptions for employers providing formal English tuition.
79. English language standards can be a satisfactory base for building self reliance, developing English language skills and fostering social connections. These attributes, however, are affected by a combination of factors, workplace support, social participation and community assistance.
80. Combined English language aptitude scores from a set number of tests within a set length of time should be allowed for permanent residence visas, as with international education visas.
81. The use of IELTS for occupation skills testing is arguable, as the test is designed to assesses English language abilities for higher education, not to assess occupational English.

## **English waivers**

*Are waivers through exceptional circumstances satisfactory?*

82. Waivers through exceptional circumstances are not satisfactory and have been effectively eliminated through policy.

*Do they encourage poor workplace outcomes?*

83. Poor English is often said to be the cause of worker exploitation, but outside of isolated cases, that does not seem to be the case.
84. Employers should provide tuition for sponsored employees with less than 4 average IELTS.
85. In the cases of those with poor English going from a Subclass 457 to a permanent visa, a waiver of English language requirements should be possible if it is shown that an applicant has made some improvement in English language ability following attendance in a suitable courses, and if DIAC monitoring of the Subclass 457 sponsorship arrangements indicates no exploitation.
86. A reasonable English language policy would be:
- English should start at average 4 with concessions for Regional 457 and/or 457
  - English should be 4.5 average for RSMS; 5 average for ENS
  - For suitable applicants not meeting the English criteria, there should be a concession if the employer provides an English Tuition course, and advancement to permanent residence should be contingent on a 4.5 average IELTS score.
87. The matter of poor workplace outcomes arising from employees being provided English language waivers could be addressed by an assessment of the language requirements of the workplace, and of the employee, prior to nomination, a requirement for employers to provide English language tuition, and post-visa grant monitoring.

#### IELTS validity period

88. It is questionable whether the two year validity of an IELTS certificate should be insisted upon for an ENS visa, especially when an applicant has continued over that time to work in an English-speaking environment.

#### **Age requirement**

*Are current exceptional circumstances requirements satisfactory?*

89. An increase to 50 years of age across the range of employer sponsored visas, in line with recent GSM changes, would increase the ability of employers to access the programs.

## Exceptional Circumstances

90. The fact that exceptional circumstances provision exist, and are being successfully used to gain nomination and visa approval, would seem to indicate that Australia's skills shortages require them.
91. Post-visa grant research into outcomes for both employers and sponsored employees would be useful to establish the efficacy of the current waiver arrangements.

*Are there any problems with the current exceptional circumstances provisions?*

*Employers who want to fill a vacancy in their business through the RSMS for an occupation with a skill level below a diploma-level Qualification*

92. There should be greater flexibility with RCBs to approve this.

*ENS and RSMS visa applicants who are 45 years or older when they first apply for the visa*

93. This is generally satisfactory, as exemptions are permitted for appropriate cases. The benchmark should be set at 50, in line with GSM and because of the ageing population, with exemptions.

*ENS visa applicants who do not have vocational English*

94. Current policy has virtually eliminated this exemption, which needs to be revised allowing for employers to provide tuition in such cases.

*ENS visa applicants who have a satisfactory skills assessment which is relevant to the vacancy they are being nominated to fill, but they do not have at least three years of prior work experience*

95. Waivers should be available where justified.

*RSMS visa applicants who do not have functional English*

96. This previously worked well and should be allowed, with the employer to provide English tuition

*RSMS visa applicants who do not hold an Australian diploma or higher qualification which is relevant to the vacancy they are being nominated to fill*

97. Any qualification at least equivalent or better than Australian level diploma should apply.

*Should any discretionary powers be retained for the ENS and RSMS?*

98. Discretion is necessary to meet regional and remote area special needs

*If so, how should these powers be exercised?*

99. Discretionary waivers for the position through the RCB, and waivers for English by DIAC if the employer provides tuition would be appropriate in this situation.

*Would it be preferable to retain some flexibility to consider approving nominations and/or visa applications even if some criteria cannot be met*

100. It is important that such flexibility be retained to allow specific skills needs to be met as strict requirements can never foresee all circumstances.

## **Electronic lodgement**

*Should the current paper-based lodgement process be replaced with full electronic lodgement?*

101. The current paper based lodgement process should be replaced by the clearly more efficient electronic system, with exceptions where electronic lodgement is not possible.

102. Processing times have been poor for RSMS for the last two years, which is a major problem for employers and employees; such extra costs, red tape, administration and frustrations are not necessary.
103. There is anecdotal evidence to suggest employers have sponsored offshore applicants on RSMS/ENS who were then unwilling to wait for six months or longer, deciding instead to move on with their lives. This costs the employer and Australia and creates enormous frustration.
104. An efficient employer sponsored visa process is essential for employers to be able to quickly meet their skills needs and provide the programs, and indeed Australia, credibility.
105. It is to be hoped that whatever changes are to be made to the employer sponsored programs will be announced with sufficient notice, clarity and certainty so that employers, prospective applicants, RMAs, regional certifying bodies and other stakeholders will be able to sensibly plan for the future.