

REVIEWING THE SKILLED MIGRATION AND 400 SERIES VISA PROGRAMMES

Engineers Australia's Comments on the Discussion Paper

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Contact: Andre Kaspura
Policy Analyst, Public Affairs and Marketing
akaspura@engineersaustralia.org.au



Public Affairs and Marketing
Engineers Australia
11 National Circuit, Barton ACT 2600
Tel: 02 6270 6555
Email: policy@engineersaustralia.org.au

www.engineersaustralia.org.au



OVERARCHING ISSUES

Engineers Australia believes that the fundamental policy objectives of Australia's skilled migration policy remain appropriate; permanent migration is intended to develop Australia's medium to long term **human capital base** by supplementing the output of Australia's educational institutions and temporary migration is intended to meet short term labour market pressures. These objectives are relevant today and at least for another decade. However, these objectives warrant clear and transparent restatement **to ensure that their intents are clearly understood in the Australian community generally, and by employers in particular.**

Engineers Australia also believes that the relationship between operational aspects of skilled migration policy and labour market issues could be improved and strengthened. For many in the community, the link between Australia's medium to long term skills needs and the mix of graduates produced by universities and TAFE colleges is obscure at best and the production of an annual statement about this relationship would assist setting the annual permanent migration target. In the case of engineers, aspects of the points test do not align with the education and professional formation process that are the hallmark of fully competent engineers capable of independent practice. The structural objective of skilled migration policy means that the annual number of permanent visas approved should follow a more-or-less steady course and that the number of temporary visa will fluctuate in a way that reflects the prevailing state of the skilled labour market. **The efficiency of the latter mechanism is questionable.** Further comments on these matters are provided below.

Engineers Australia believes periodic assessment of Australia's migration visa structure is entirely appropriate and welcomes the current review. Immigration, particularly skilled migration, has been an important aspect of the development of the Australian labour force and all indicators suggest that this will continue in the foreseeable future. There are numerous permanent and temporary visa classes which have developed over the years and numbers have proliferated and now are a source of confusion. Engineers Australia supports a simplification of the present visa structure along the lines proposed in the discussion paper.

VISA COMPONENTS

Age Threshold

Engineers Australia believes that the age threshold for skilled migration warrants greater flexibility. Historically career establishment in Australia by young adults has been the predominant consideration of skilled migration policy. However, two developments have undermined the relevance of the present threshold of fifty years; people are living and working longer and the ease of international travel has meant that careers can be successfully developed across countries and not simply within a single country.

Engineers Australia is aware from its labour market research that consistently the highest demand is for **the most skilled engineers; engineers level three and level four, typically engineers with an average fifteen to twenty five years experience.** The fifty year threshold excludes many of these engineers from considering permanent migration, biasing the annual intake towards less experienced engineers. Similarly, the age profile of labour force participation of engineers, like that of similarly **qualified skills remains high well above the present age threshold** and can be expected to increase over time in line with social norms.

English Language Proficiency

Engineers Australia believes that English language skills of skilled migrants are highly variable and continue to be a barrier to successful integration in the **engineering** labour market in some cases. Engineers Australia requires a minimum score of 6.0 in each of the four modules of the International English Language Testing System. Prospective skilled migrants who have completed Australian engineering degrees are accorded flexibility on a case by case basis. However, there are frequent reports from members that some skilled migrants lack basic language skills and others experience difficulties with colloquial workplace language. Engineers Australia has long believed these difficulties could be overcome through the provision of post-arrival language assistance **in cases where it is necessary and/or beneficial**. This form of assistance is sadly lacking at present and is a key factor underscoring high unemployment rates among recently arrived migrants.

Skills and Industry Standards

Engineers Australia believes that skilled migration should take greater account of standards required by Australian professionals. In engineering, like many other professions, specific educational requirements are the minimum requirement to join the profession. In engineering, educational requirements are specified in Stage 1 competencies which underpin Engineers Australia's accreditation of university engineering degrees.

Again like the other professions, meeting Stage 1 competencies does not equip an individual for recognition as a fully competent engineer capable of independent engineering practice and capable of independently signing off engineering decisions. To achieve this recognition, an individual satisfying Stage 1 competencies **in engineering must satisfactorily complete a period of professional formation, typically three to four years in duration**. In other professions, professional formation is achieved through off-the-job processes or a combination of off-the-job and on-the-job processes. In engineering, professional formation is an off-the-job process that leads to recognition against **sixteen criteria** that are international standards; these are Stage 2 engineering competencies.

The present migration skills assessment comprises examination of whether a prospective skilled migrant meets Stage 1 engineering competencies. Since 2010, the points test has provided additional points for prospective skilled migrants with higher degrees and/or work experience. **Most higher degrees reinforce learning of Stage 1 competencies and do not contribute to Stage 2 competencies**. There are exceptions but in no case does completion of a higher degree meet all sixteen Stage 2 competencies. In any case, unless there is a specific requirement to demonstrate satisfaction of Stage 2 competencies, and there is not, **the present assessment process does not identify it**. This extends to the recognition of work experience which is assessed in terms of duration of experience and the area in which it occurred. Such recognition is useful but it does not align to recognition of Stage 2 criteria which is in terms of factors relating to engineering practice and decision making.

A balanced engineering labour force is comprised of a blend of comparatively new graduates and inexperienced engineers who meet Stage 1 competencies and engineers who have completed professional formation and meet Stage 2 competencies and have engineering careers with a range of durations. The present skilled migration process is geared to the Stage 1 group and accounted for over 70% of the increase in Australia's supply of engineers between the 2006 and 2011 censuses. **Some of these skilled migrants may well have also satisfied Stage 2 but without an assessment this is an unknown**. The relevance of this argument is that employers require both engineers who meet Stage 1 and engineers who meet Stage 2 and much of the outcry about engineering skill shortages during the resources sector boom was about the lack of balance between the two.

Engineers Australia believes that the Department of Immigration and Border Protection should hold further discussions with peak professional organisations, including Engineers Australia with a view to

identifying the requirements necessary for full professional recognition. The discussions should consider how the points test and annual migration plans could be modified to ensure that annual intakes of engineers (and other professions) are more balanced in line with employer demand.

Finally, registration of practising engineers is mandatory only in Queensland. The structure outlined above is the basis of the Queensland registration system and Engineers Australia undertakes Stage 2 assessments for the Queensland registration authorities.

Skills Assessments

In line with the remarks in the previous section, Engineers Australia is firmly of the view that skills assessments are essential for engineers in all permanent and temporary visa categories. The objective underlying the Skilled Occupation List (SOL) is more specific than contributing to the development of Australia's human capital resources. The objective is to contribute to Australia's development of its engineering labour force and in this respect the points made earlier about the attributes of fully competent engineers apply.

Engineers Australia is aware that skills assessments do not apply to temporary 457 visa entrants and regards this as a major weakness in Australia's skilled migration system. Some employers, notably large engineering enterprises may be in positions to assess the competence of temporary visa engineers, but many, particularly smaller to medium enterprises simply do not. In any case, professional assessments should be conducted independently of employers who often are motivated by other factors. The issue at stake here is whether Australia's skilled migration policy is genuinely concerned with development of human capital in specific areas or simply based on a "cannon fodder" approach.

In making the above remarks Engineers Australia notes that in engineering skills assessment is structured around whether education qualifications were completed in Australia or in one of the Washington or Sydney Accord countries. Engineers Australia accredits Australian university degree courses in engineering and recognises the equivalence of these arrangements in the two Accords. Australia is also a provisional member of the Dublin Accord that recognises equivalence of associate degrees and advanced diplomas in engineering. Over time Accord membership has grown resulting in a large pool of engineering qualifications where assessment arrangements are uncomplicated and can be achieved relatively quickly. Full Stage 1 assessments are necessary only in cases where prospective migrants offer educational qualifications outside this range.

Occupation Lists

Engineers Australia believes that a formal basis for selecting skilled migrants is essential and that the present SOL and Consolidated SOL serve this purpose reasonably well. Engineers Australia believes that there really is no alternative to the ANZSCO system which offers a relatively consistent and stable connection between migration statistics and other labour market statistics offered by the ABS. There are numerous issues that need to be resolved to be in a position to undertake an idealised investigation of this connection, however, moving away from ANZSCO would remove the capacity to examine the relationship in any meaningful way.

A perennial difficulty inherent in an occupation based system is that common job nomenclature does not always accord with the nomenclature used in the ANZSCO system. For example, an individual who regards themselves as a Civil Engineer could seek employment as a Civil Engineer, a Structural Engineer, an Engineering Manager or a Project Manager.

An additional complication is that engineering specialisation largely takes place during professional formation. Although in broad terms, the specialisation followed by engineers is related to the base educational qualifications completed by the individual, this is not always the case and in some instances the specialisation bears little, if any, relationship to ANZSCO nomenclature. An example is mechatronics

which optimises the integration of mechanical engineering, electrical engineering, computer and electronics engineering and control theory in product design and manufacturing. Mechatronics engineers can begin their careers from any of the engineering streams named but having specialised, their field of practice is distinct and is relegated to the ANZSCO occupation “Professional engineers nec” which is not on the SOL. This omission is important because mechatronics is critical to raising the future productivity of Australian manufacturing, a stated government objective.

Similar issues arise when universities develop new engineering education pathways that do not align with any SOL occupations. An example of this is the emergence of courses with an emphasis on renewable energy that do not neatly fit into the conventional engineering occupations.

Despite these issues, Engineers Australia sees little point in abandoning the present arrangements for temporary visas. By their nature these visas are for limited periods and should employers see fit to sponsor temporary migrants for permanent visas, the present policy of requiring a skills assessment applies.

However, for permanent visas which are intended as human capital supplementation over the medium to long term, migration selection should more adequately take into account future as well as current needs. This is where the mechatronics example is important. Engineers Australia suggests that the Department of Immigration and Border Protection hold regular discussions with peak professional bodies, including Engineers Australia, with a view to identifying occupations relevant to future labour market developments to supplement the SOL and CSOL. Given the nature of these occupations it is unlikely that initial numbers would be large and careful monitoring over time can provide guidance as to further development of formal classification arrangements.

Points Test

The points test is an aspect of skilled migration that is easy to criticise, but in reality some mechanism of this nature is essential. The points test sets a minimum acceptable standard for skilled migration and while there are arguments that it should be modified and broadened from time to time, it should be retained.

Engineers Australia has already offered comment on the age, English proficiency and work experience criteria. We have also suggested the incorporation of professional formation into the test. Engineers Australia does not believe that additional points for doctoral level qualifications in engineering make a positive contribution to selecting engineering professionals. As explained, the key issue for engineering is professional formation. However, the suggestion made in the discussion paper that individuals with higher educational qualifications could substantially add to Australia’s general human capital base is acknowledged. But this is quite distinct from developing Australia’s engineering resources.

Engineers Australia acknowledges that qualified engineers are attractive human capital resources to employers in a wide range of activities throughout the Australian economy. Research undertaken by Engineers Australia shows that individuals with recognised engineering qualifications are employed in practically every industry in Australia and only about 62.1% of them are employed in engineering occupations. The precise reasons for this need further investigation but there is a large difference between the experience of Australian and overseas born individuals. For Australian born engineers, 70.6% of men and 62.2% of women and 69.9% overall were employed in engineering occupations in the 2011 census. For overseas born engineers these proportions were 57.2% and 45.4%, and 55.5% overall, respectively. Although unemployment rates were higher for overseas born engineers, this is unlikely to explain these differences. The most likely explanation is that overseas born engineers already contribute more to generalised human capital than do Australian born engineers.

Why is this important? In the five years to 2011, over 70% of the increase in the supply of engineers in Australia was from overseas sources. This was an unprecedented period of high demand for qualified engineers in engineering occupations and the statistics showed that skilled migration achieved results rather inefficiently. Engineers Australia believes that skilled migration that targets engineering should be conscious of **the differentiation between engineering occupations and generalised human capital**. Qualified engineers have much to contribute to the Australian economy in occupations outside of engineering but when the objective is on developing Australia's engineering resources a sharper focus is essential.

SkillSelect

Engineers Australia believes that SkillSelect has been a strong step forward in skilled migration selection and **strongly supports this arrangement** and its continued development over time. Engineers Australia regards the information that is held in **SkillSelect as an invaluable resource** and recommends that the Department of immigration and Border Protection consider the use of a system like the **ABS TableBuilder** facility to enable wider access to migration statistics.

Sponsorship and Nominations

Engineers Australia acknowledges that **employer sponsorship** is a vital pathway for skilled engineering migration because there **is a direct connection** between the demand for and supply of engineering competence. Engineers Australia believes that **employer sponsorship** would be enhanced by the remarks made above about the inclusion of Stage 2 in the points test **to supplement "work Experience"**.

Engineers Australia is less convinced about **State and Territory nomination** because there **is not the connection between a job and nomination**. The involvement of States and Territories is more in the nature of an intermediary between employers and migration policy. This role could be more useful were the States and Territories more active within their jurisdictions and if the skilled occupations identified in their State Migration plans be more reflective of current labour market conditions and future development pathways. Such a role would be particularly constructive in **regional centres which prospective migrants can hardly be alert to**.

Family reunion is a legitimate objective for Australia's migration policy, however, the conjunction between where reunions are to occur and where engineering resources should be deployed is less certain. Engineers Australia believes that in so far as family reunion involves skilled migration the main consideration should be human capital development and that **should this turn out** to resolve an engineering requirement it be treated as a bonus.

VISA CATEGORIES

Engineers Australia supports the new structure proposed in the discussion paper for skilled migration policies. There are a number of areas where Engineers Australia believes the proposed arrangements need to be strengthened and comments on these follow.

Short Term Migration Category

Engineers Australia has already argued that skills assessments should be required for temporary skilled migration visas. **Engineers Australia cannot agree that employers at large are the best judge of whether prospective candidates for engineering positions are suitably qualified**. **"Good enough for the business" simply does not equate to "good enough for the nation"**.

Engineers Australia strongly believes that **labour market testing is essential** before short term visas are issued by migration authorities. Statistics for the year ending 30 June 2014 show that the automatic stabiliser effect of temporary migration has worked to some extent. However, the number of new

temporary visa granted to engineers is very high relative to conditions in the engineering labour market where demand has collapsed and vacancies for engineers have fallen for over 30 consecutive months. Engineers Australia acknowledges that the parameters of the demand for engineers are specialisation, extent of skill and experience and geography. These combine in such a way that it is not unreasonable for an employer in some part of Australia experiencing difficulties in recruiting a specific engineering specialisation with a minimum level of experience. This, however, is not a generalised skill shortage of the type experienced in Australia during the resources boom.

Skilled Work Category

In the discussion paper (p21) there is reference to Australian businesses seeking to overcome medium to long term labour shortages from local labour. Engineers Australia believes that **the term “labour shortages” should be avoided in discussions about permanent migration.** Present policy describes the objective of permanent migration as medium to long term supplementation of the output of Australia’s educational institutions. **Skill shortages are treated as short term matters that are targeted directly by employers using temporary visas.** Confusing these objectives regresses discussion back to before the 2010 reforms and contributes little to policy development.

Finally, Engineers Australia reiterates points made above about recognition for Stage 2 competencies.

The position that Engineers Australia takes on skilled migration is specific to the interests of developing the capacity of the engineering profession in Australia. Engineering is practiced in engineering occupations, but although migration selection occurs through an occupation specific framework, **the proportion employed in engineering occupations is very low.** Engineers Australia does not object to the idea that qualified engineers should be part of generalised human capital development in Australia. However, the two are quite distinct and migration policy should reflect it.

RECOMMENDATIONS

Engineers Australia recommends that the Review:

- That some flexibility is introduced in respect to **the upper age threshold for skilled migration,** particularly in cases where the prospective migrant has **extensive professional experience.**
- That **english language testing be retained** for all permanent skilled migrants and the Review consider providing supplementary assistance to bridge the gap between textbook and colloquial workplace english.
- That **the work experience components** of skilled migration assessment be upgraded **to include professional formation as** it applies to professions which in engineering requires meeting 16 well defined criteria on-the-job. This recommendation includes **corresponding modifications** to the points test.
- That **skills assessments be retained** for all prospective permanent skilled migrants **and also become a requirement for temporary migration.**
- That the Skilled Occupations List be **retained to define temporary** migration priorities. However, Engineers Australia also recommends that the Department of Immigration and Border Protection hold regular discussions with peak professional bodies, including Engineers Australia, with a view **to identifying occupations that are not adequately represented by present statistical classification systems,** but are important to future labour market developments with a view to devising ad hoc supplementation of the SOL and CSOL.

Review of Skilled Migration and 400 Series Visa Programmes

- That **priority for employer nominations** of skilled migration continue, and be upgraded in cases where the sponsorship involve prospective migrants that have successfully demonstrated completion of professional formation.
- That the connection of skilled migration policy to **labour market** development in **the short, medium and long term be carefully restated** to clarify the objectives of the policy.





29 October 2014

Skilled Visa Review and Deregulation Taskforce (4N275)
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2616

Email: smdt@immi.gov.au

Dear Taskforce

SKILLED MIGRATION AND 400 SERIES VISA PROGRAMMES DISCUSSION PAPER

The Law Council of Australia is pleased to provide comments on the Skilled Migration and 400 Series Visa Programmes Discussion Paper. This submission was prepared for the Law Council by the Migration Law Committee of the International Law Section of the Law Council.

Please contact the International Law Section administrator Ms Jacintha Victor John, at ils@lawcouncil.asn.au if the Law Council can provide any further information.

Yours sincerely

A handwritten signature in black ink, appearing to read "M Hagan".

MARTYN HAGAN
SECRETARY-GENERAL

Skilled Migration and 400 Series Visa
Programmes Discussion Paper

Department of Immigration and Border Protection

29 October 2014

Skilled Migration and 400 Series Visa Programmes Discussion Paper

1. The Law Council welcomes the opportunity to make a submission on the Review of the Skilled Migration and 400 Series Visa Programmes (the Review).
2. While the legal community welcome the Government's intention to reduce unnecessary administrative burdens that inhibit economic growth, the Law Council considers such initiatives should be introduced on a practical basis through flexible and innovative visa offerings which reflect the evolution of the concepts of "worker" and "work".
3. The Law Council acknowledges that the Review recognises the interconnected nature and range of the Australian visa program, which includes over 140 individual visa subclasses. Indeed, the discussion paper, notes that "This review will result in the most far reaching transformation of the skilled migration and 400 series visa programmes in the last 20 years and will establish a visa framework that will support Australia's skilled migration needs for the next 20 years."
4. It is noted that over the past 5 years there have been significant regulatory changes to the following areas of the visa program:
 - (a) The subclass 400 series of visas;
 - (b) The subclass 600 series of visitor/tourist visas;
 - (c) The business skills categories (provision and permanent);
 - (d) The "points test" visa subclasses (subclass 189/190 visa subclasses);
 - (e) The employment sponsored subclass 457 and subclass 186/187 visa subclasses
5. The range of issues raised in the discussion paper is extensive and consideration should be given to undertaking more than one review to ensure all issues are comprehensively considered.
6. For example, the discussion paper identifies three broad categories of short-term migration: business, and investment migration, and skilled work. It is suggested that each of these broad categories would be deserving of a separate discussion paper, with the work from each of those reviews being considered by an overarching process.
7. While this submission will focus only on aspects of the skilled migration and 400 series visa programmes, the Law Council would welcome the opportunity to make further submissions on specific aspects of the skilled migration programme, if the opportunity arises.

Age Threshold

8. The Law Council supports the concept of recognising that people are living and consequently working longer and that there is a need to consider the age threshold both in particular occupations and/or visa applications. For example, a person over 50 years may not be eligible to apply under the direct entry ENS 186 scheme. This category of applicant may include, for example, talented CEOs or engineers who are able to continue to make a sustained economic contribution to Australia or even choose to settle in Australia for the rest of their working career, or retirement. However, they would need to have been sponsored on a 457 visa for at least 4 years

before applying for permanent residence, thereby making other countries a far more attractive option for relocation. A further example of age threshold is the General Skilled Migration programme, which has an age limit of 50 for all occupations on the Skilled Occupation List (SOL) with no exception.

9. It is suggested a more nuanced response is needed on the age factor for employment based visas, with the current discretion for age waiver being too limited.
10. Changes would also seem to be necessary to the Points Test used for Skilled Migration (namely Subclass 189, 190 and 489), for it to remain globally competitive and attract candidates who are highly skilled. There is no reason why equal points should not be awarded for someone between the ages of 25-39 rather than the current system which awards less point from 33-39, despite the fact that this age group has many years to contribute to the work force and are likely to have a number of years of experience.

Occupation Lists

11. The Law Council notes that the SOL was significantly reduced following a review of the Skilled Migration Programme. However, it has failed to be sufficiently responsive to employer's needs and very few changes have occurred. Occupations which are in demand should be included in both the SOL and Consolidated Sponsored Occupations List (CSOL) to allow visa applicants to apply for migration or employers to sponsor applicants through a more simplified process than the Labour Agreement process. An example is the aged care industry which is currently suffering an acute shortage of qualified Australian workers. Aged care workers are not included on either the SOL or the CSOL and as such aged care facilities are required to use the Labour Agreement process to obtain such staff.¹ An alternate suggestion of having a list of occupations excluded from, rather than included in, the Skilled Migration Programme may also be viable, however more thought may be needed into how this would work in practice.

The Law Council does not believe the process of State or Territory nominations for the subclass 190 visa has been effective. Anecdotally, it is understood such visa holders do not routinely remain in the nominating State or Territory for reasonable periods, thereby undermining the policy intent of that provision.

Business and Investment Categories

12. The Law Council is concerned that the current provisional business and investment visa categories (subclasses 132, 188, 888, 890-893) are too complicated or the Department does not have the resources to properly manage this program in its current form.
13. While the need to balance competing factors in this programme is accepted, the complicated nature of the provisional visa process, in particular leads to excessive processing times and unrealistic demands that:
 - (a) significantly reduces the practical utility of this programme; and
 - (b) inhibits the policy objectives which underpin the programme.
14. It is the view of the Law Council that the provisional visa should be simpler and quicker to obtain than a permanent visa. If the primary regulatory oversight fell on the permanent visa, the current processing burden would be reversed..

¹ <http://www.minister.immi.gov.au/media/mc/2014/mc216835.htm>

15. It is the view of the Law Council that a significant review of this programme is warranted.

Subclass 457/ENS visas

16. The employer-sponsored subclass 186/187 visa subclasses were completely rewritten on 1 July 2012.
17. While some of the changes were welcomed (such as increasing the maximum age from 45 to 50), poor legislative drafting of these visa subclasses and Reg 5.19 of the *Migration Regulations 1994* has resulted in a range of confusion and (presumably) unintended consequences.
18. These problems have included, *inter alia*:
- (a) inflexibility to accommodate growth and development in a position over the 2-year period in which the subclass 457 visa holder commonly progresses to the permanent subclass 186/187 visa; as well as,
 - (b) the ability of a parent company to move sponsored staff members around a corporate group without jeopardising the visa holder's ability to successfully apply for the permanent visa in the future.

Skills assessing authorities

19. The requirement of a favourable skills assessment is relevant for a range of visa subclasses including subclasses 457, 485, 186, 187, 189 and 190.
20. However, the Law Council has significant concerns with inconsistencies and differing standards applied by a number of skills assessing authorities. For example, the current practice of many skills assessing authorities, requiring different skill levels for the same occupation depending upon the visa subclass being applied for, is without any legal or practical justification. An applicant should be held to either meet the Australian standard for the occupation or that they do not. To suggest that a different, higher standard is needed in a permanent visa category as opposed to a temporary visa category when the same person is doing the same job, is without foundation.

Subclass 400 visa

21. On 23 March 2013, the Government introduced the temporary work (short stay activity) visa (subclass 400).
22. The highly skilled work stream of this subclass was created in recognition that short term or intermittent work assignments were becoming increasingly common and necessary, particularly for multinational companies.
23. This stream, which specifically permits short term highly skilled work, was initially welcomed in that it removed the uncertainty businesses faced when using the previous subclass 456 visa (and its electronic counterparts).
24. However, the subclass 400 visa does not necessarily provide a solution for types of work that do not easily fit into the legal requirements for the visa. The 21st century has seen the growth of the knowledge worker and associated non-traditional roles, which are not necessarily consistent with the key requirement that the Subclass 400 visa be used only for "non-ongoing work". Non-ongoing is defined, in part, as work likely to be completed within a continuous period of 3 months or less.

25. Applying for more than one Subclass 400 visa is not permitted unless the non-completion of duties during the first visa grant period was due to unforeseen and compelling circumstances, and there is an urgent need for the applicant to return.²
26. The example given in the relevant policy is the "installation of factory equipment which has not been completed on time due to unforeseen and uncontrollable delays in the delivery of key equipment components".³
27. This use of such a traditional work project as the example may indicate that the Department of Immigration and Border Protection (DIBP) might not have contemplated unusual or complex work projects requiring numerous trips to Australia. This could mean specialised work on an ongoing project, a group of inter-related projects or the one project at different stages. An example would be an IT or Engineering consultancy which requires a mobile workforce for projects spanning multiple locations.
28. The relevant policy specifically instructs case officers to scrutinise "applicants that have entered Australia on numerous occasions, particularly where stays have been over longer durations"⁴ to ensure the work is not ongoing.
29. Intermittent work meets the "non-ongoing" definition in very limited circumstances (to be determined on a case by case basis) and visa holders cannot exceed a total stay in Australia of more than 3 months in any 12 month period.⁵
30. The 457 visa is offered as the only alternative to the Subclass 400. However, this is not suitable for those workers who may form a company's ever moving "mobile workforce", moving from one country to another to apply specialised skills and knowledge to meet short term business needs.
31. There is also a policy expectation that persons sponsored for a subclass 457 visa will work in Australia for the duration of their visa and substantial periods of time spent outside Australia are not usually permitted (unless, for example, absences from Australia are a requirement of the role). If the absence is permitted (for example, in the case of a fly in/fly out role), it is still expected that the visa holder remains employed by the sponsor and continues to work in the nominated position.
32. One solution to this issue would be to extend the visa validity period of the Subclass 400 visa in certain circumstances to allow multiple trips of a limited duration over a period of time (for example, a one year visa validity period with a stay of 6 weeks only on each entry). The DIBP could require applications to be thoroughly documented for such situations in order to ensure the visa is not being improperly used as a substitute for the 457 visa. Supporting documentation could include a "Private Ruling" obtained by the business from the DIBP (similar to those provided by the Australian Tax Office) on the basis that such workers are at the core of their business offering.
33. Attachment A provides a profile of the Law Council of Australia. Attachment B provides a profile of the International Law Section.

² PAM3: Sch2Visa400 - Temporary Work (Short Stay Activity) GA-400 - MAIN APPLICANT.

³ PAM3: Sch2Visa400 - Temporary Work (Short Stay Activity)

⁴ PAM3: Sch2Visa400 - Temporary Work (Short Stay Activity)

⁵ PAM3: Sch2Visa400 - Temporary Work (Short Stay Activity)

Attachment A: Profile of the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Large Law Firm Group, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- The Large Law Firm Group (LLFG)
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of approximately 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2014 Executive are:

- Mr Michael Colbran QC, President
- Mr Duncan McConnel President-Elect
- Ms Leanne Topfer, Treasurer
- Ms Fiona McLeod SC, Executive Member
- Mr Justin Dowd, Executive Member
- Dr Christopher Kendall, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.

Attachment B: Profile of the International Law Section

The International Law Section (ILS) provides a focal point for judges, barristers, solicitors, government lawyers, academic lawyers, corporate lawyers and law students working in Australia and overseas, who are involved in transnational and international law matters, migration and human rights issues.

The ILS runs conferences and seminars, establishes and maintains close links with overseas legal bodies such as the International Bar Association, the Commonwealth Lawyers' Association and LAWASIA, and provides expert advice to the Law Council and its constituent bodies and also to government through its Committees.

Members of the 2013-14 ILS Executive are:

- Dr Gordon Hughes, Section Chair
- Dr Wolfgang Babeck, Deputy Chair
- Ms Anne O'Donoghue, Treasurer
- Mr Fred Chilton, Executive Member
- Mr John Corcoran, Executive Member
- Mr Glenn Ferguson, Executive Member
- Ms Maria Jockel, Executive Member
- Mr Andrew Percival, Executive Member
- Dr Brett Williams, Executive Member.

The ILS Committees are:

- The Alternative Dispute Resolution Committee (Ms Mary Walker, Chair)
- The Comparative Law Committee (Dr Wolfgang Babeck and Mr Thomas John, Co-Chairs).
- The Human Rights Committee (Dr Wolfgang Babeck and Mr Glenn Ferguson, Co-Chairs)
- The Migration Law Committee (Mr Erskine Rodan, Chair and Ms Katie Malyon Vice-Chair)
- The Trade & Business Law Committee (Mr Andrew Percival, Chair).

The Immigration Lawyers Association of Australasia (ILAA) was established in 2003. The ILAA joined the Law Council as part of the International Law Section (ILS) in 2005. In 2012, the ILAA changed its name to the Migration Law Committee.

The Migration Law Committee:

- provides specialist advice to government through the Law Council on substantive migration law issues;
- attends stakeholder meetings with the Department of Immigration and Citizenship;
- provides Continuing Professional Development (CPD) accreditation under the Office of the Migration Agents Registration Authority (OMARA) scheme for lawyer Migration Agents
- provides network opportunities for Australian lawyers in the field of migration law.

VETASSESS Response to Discussion Paper – Reviewing the Skilled Migration and 400 Series Visa Programmes

VETASSESS is a designated skills assessing authority for migration purposes for over 300 General Professional Occupations approved by the Department of Immigration and Border Protection (DIBP).

VETASSESS is also an assessment only Registered Training Organisation (RTO) which conducts trade skills assessments in 16 countries and in more than 30 different trade occupations on behalf of Trades Recognition Australia (TRA).

VETASSESS' skills assessments for the general professional and trade occupations play a key role in the skilled migration programme. The assessments support the migration policy by ensuring that prospective migrants are job-ready and have the necessary skills to meet both short and long-term labour market needs.

We appreciate the opportunity to respond to DIBP's request for input regarding the *Discussion Paper – Reviewing the Skilled Migration and 400 Series Visa Programmes* and to participate in your consultation process. In particular, we provide the following comments relevant to Questions 1 and 3, followed by comments on the proposed visa frameworks:

1. Are there any specific aspects of the programmes or the processes that could be simplified?; and

3. To what extent should the current key visa components be incorporated into a new skilled migration visa programme?

As VETASSESS provides skills assessments for a broad range of nominated trades and general occupations, our submission includes separate comments for these two occupational categories. Likewise, our comments about visa issues are more pertinent to the visa sub-classes which our pre-migration skills assessments support.

Key Visa Components

Age Threshold

As outlined above, VETASSESS conducts visa assessments for both trade and general occupations for the 457 and permanent migration categories. Currently the Skilled Migration Program has an age threshold for most permanent visa categories but there is no age threshold for 457 visas.

Trade occupations

VETASSESS provides skills assessments in over thirty trade occupations for both 457 and permanent migration categories. In the 457 stream, the number of applicants assessed aged over 50 years is small (usually about 1% of applications (about 20 or fewer) each year since 2007. However, this group of highly skilled applicants may be disadvantaged from applying for permanent migration if the upper age threshold of 50 years applies to their intended visa category.

General Professional occupations

VETASSESS also provides skills assessments for over 300 general occupations for which the upper age threshold of 50 years applies for most permanent migration categories. In our view, for some occupations on the skilled occupation lists, applicants with considerable career histories are highly valued by employers. For example, VETASSESS conducts pre-migration skills assessments for Specialist Managers (ANZSCO Sub-major Group 13). Increasing the age threshold for permanent migration for this cohort would attract highly skilled managers with extensive management experience, who are able to contribute their high level management skills to the Australian workforce and economy.

Summary

VETASSESS suggests considering an upper age threshold of under 60 years that applies across trade and managerial occupations for all visa types. Increasing the upper age threshold takes into account demographic shifts such as increased life expectancy and will provide additional highly skilled trade workers and managers for the Australian workforce. It will also facilitate the transition from 457 visas to permanent migration through a consistent approach for both temporary and permanent visas.

English Language Proficiency

Trade occupations

Applicants need a satisfactory level of English in order to successfully undertake the practical/technical interview component of the trades skills assessment. However, VETASSESS does not explicitly specify an English language level as part of the skills assessment process.

As recommended in the independent review into the integrity in the 457 visa programme report¹, VETASSESS supports the average band score of 5 in IELTS or an equivalent proficiency in English to be conducted by an independent English language assessing authority to support the rigor of the trade skills assessment process.

A minimum requisite level of English ensures that:

- trade applicants have a sufficient level of English to articulate underpinning knowledge of their trades and be assessed fairly
- employers are employing work-ready workers who are able to demonstrate employability skills such as teamwork and communication skills
- overseas trade workers can assimilate and contribute to Australian workplaces and communities more effectively
- industry standards for Occupational Health and Safety (OH&S) can be met as applicants are able to understand Worksafe practices and guidelines
- overseas trade workers are able to understand their rights and obligations in the workplace.

VETASSESS has concerns about the current English language exemption for high salaried 457 workers, and in particular, trade workers who are employed on annual base salaries in excess of \$96,400², as this may compromise the integrity and rigor of the skills assessment process and increase the risk of unsafe work practices on-site.

General Professional occupations

Currently, our skills assessment criteria for general occupations does not include an English language competency component as this is assessed by DIBP as part of its visa processing for these nominated occupations. DIBP requires IELTS 6 in all four bands for general skilled migration. VETASSESS supports the requirement for visa applicants in the skilled stream to have a competent level of English.

From our experience it is noted that there are challenges for some applicants if the English language proficiency level required for their pre-migration skills assessment is below the level required by industry to work in that occupation. It is desirable for skills assessment/visa criteria to align with industry standards.

¹ Robust New Foundations - A Streamlined, Transparent and Responsive System for the 457 Programme September 2014

² Migration Regulations 1994 - Tests, Scores, Period, Level of Salary and Exemptions to the English Language Requirement for Subclass 457 (Temporary Work (Skilled)) Visas - IMMI 14/009

Summary

For trade occupations, VETASSESS recommends an average band score of 5 in IELTS or an equivalent proficiency in English to be conducted by an independent English language assessing authority to support the rigor of the trade skills assessment process.

For general occupations, VETASSESS supports aligning the English language **competency requirement for visas with industry standards**, particularly for occupations assessed by recognition authorities that mandate an English language level for their skills assessments.

Skills and Industry Standards

Trade occupations

Our trades skills assessment process has been developed in close consultation with industry bodies, to ensure that it is strongly aligned to the requirements of employers, and migrants are able to work safely and effectively in their nominated occupation. Our assessment tools for trades are aligned with the qualification or unit of competency in the latest version of the relevant National Training Package which is developed by industry. Employer feedback confirms that they value candidates assessed by VETASSESS.

General Professional occupations

VETASSESS skills assessments for general occupations consider individuals' qualifications and employment evidence against criteria which are derived from ANZSCO **and a range of reputable sources on Australian occupational requirements**. In our view, skills assessing bodies should continue to assess occupations for migration purposes **in line with industry standards** and labour market needs to ensure that prospective migrants are highly skilled and job-ready. VETASSESS supports further alignment of requirements between industry and assessing authorities to ensure that candidates are work-ready and meet Australian industry requirements.

With regards to the proposition of legislating the skill requirement for a nominated occupation, VETASSESS provides the following comments:

A minimum English Language proficiency- Please see our comments under English Language Proficiency (page 2).

A minimum number of years of work experience

Trade occupations

There is no agreed industry standard covering the minimum number of years of employment required for entry to a trade. In our experience, five years of employment as the benchmark provides sufficient time for workers to gain the required underpinning knowledge and then apply their skills and knowledge in a workplace. This may include time spent in training. **Our requirement for applicants to demonstrate five years of employment ensures that potential migrants have consolidated their training and skills and are able to readily integrate into the workforce.** Prior to this benchmark being set, VETASSESS assessors often found candidates lacked the depth and breadth of underpinning knowledge and skills.

General professional occupations

For our general occupations, post-qualification employment increases an applicant's job readiness by consolidating learning and skills. The assessment criteria for VETASSESS general occupations require applicants to have a highly relevant qualification and at least one year of post-qualification employment which is highly relevant to their nominated occupation. For some occupations, additional years of highly relevant employment may substitute for the lack of relevance in the qualification. **The number of additional years depends on the ANZSCO skill level for the nominated occupation.** In some circumstances, pre-qualification employment will also be considered as part of the employment mix.

These criteria ensure that the skilled migration program meets labour market needs because highly skilled migrants have better employment outcomes.³

Summary

With regards to mandating a minimum years of employment required for entry to a trade, VETASSESS believes that setting **five years of employment as the benchmark for assessing trades workers** ensures that they are readily able to secure employment in their profession.¹

For general professional occupations, it would be possible to mandate the length of employment for a standard pathway, e.g. **at least one year of post-qualification employment which is highly relevant to the nominated occupation** where industry standards might require a minimum number of years of employment experience.

Where required, a baseline educational qualification

Trade occupations

Most of the countries from which tradespeople are sought also allow acquisition of skills and knowledge on-the-job in place of formal trade qualifications. For this reason, VETASSESS would not support mandating overseas tradespeople to have a baseline qualification in their trade. Our robust Recognition of Prior Learning (RPL) system and skills assessment process aligning skills and knowledge to an Australian qualification ensure that individuals are not penalised for lack of formal qualifications and that they have the level of skills that industry requires.

General professional occupations

The VETASSESS assessment criteria for our general professional occupations require applicants to hold a qualification at least at the minimum AQF educational level for their nominated occupation as specified by ANZSCO, and with a major which is highly relevant to their nominated occupation. This ensures that applicants have obtained at least the entry level skills for their profession. For some of our general professional occupations, such as **Actuaries, Urban and Regional Planners, and Environmental Health Officers, a highly relevant qualification is required to practise in these occupations in Australia.**

Summary

VETASSESS does **not support** mandating offshore candidates to have a baseline qualification as applicants' countries of origin often allow **on-the-job acquisition of skills**, and our trade skills assessments are based on an RPL process.

For some general professional occupations, a **highly relevant baseline qualification at the required skill level is the occupational standard and could be legislated** if that is the preferred policy direction of government. Other general occupations do not require a highly relevant baseline qualification. In those cases, a baseline qualification at the required AQF level (irrespective of the field of study) could **be mandated** (provided that **the candidate had sufficient relevant employment** in lieu of a highly relevant qualification).

Skills assessments

As a designated skills assessing authority for the past 14 years, and a specialist assessment-only RTO, VETASSESS has recognised expertise in assessment methodology and assessment practice.

³ Continuous Survey of Australia's Migrants: Cohort Report – August 2014 (Australian Government: Department of Immigration and Citizenship, Commonwealth of Australia; Belconnen

Integrity checks are an integral part of the VETASSESS skills assessment process and facilitate successful integration of genuinely skilled migrants into the Australian labour market by mitigating the possibility of fraud and corruption.

The Independent Review into the Integrity in the 457 Visa Programme Report⁴ acknowledges the skills assessment component of the visa process as highly effective in addressing concerns around the generic occupations of Specialist Managers and Program and Project Administrators.

Independent assessing authorities do not have a vested interest in the outcomes of the assessments. This independence is critical to upholding the integrity of the skilled migration process.

Summary

VETASSESS welcomes any opportunities to increase collaboration and further strengthen partnerships with other skills assessing authorities, industry bodies and stakeholders.

VETASSESS recommends panel discussions between DIBP and skills assessing authorities **to map the immigration and skills assessment processes in order to identify areas of overlap that could easily be streamlined.** For example, the integrity checking measures undertaken by skills assessing bodies can be integrated to assist DIBP in the processing of the visa applications.

Occupation Lists

VETASSESS uses ANZSCO supplemented by a range of other reputable sources to develop occupational criteria for our skills assessments. VETASSESS supports the continued use of ANZSCO for the Skilled Occupation Lists as it is a distinct framework for Australian classification of occupations linked to AQF. However, VETASSESS acknowledges the limitations of using ANZSCO in its current form to inform the Skilled Occupation Lists.

The ANZSCO skill levels may not always reflect the baseline educational level required to work in a particular industry in Australia. For example, the occupation of Operating Theatre Technician (ANZSCO Code 311214) falls under Unit Group 3112 Medical Technicians. ANZSCO indicates that this occupation requires a level of skill commensurate with an AQF Diploma or higher. However, only qualifications up to the level of an AQF Certificate IV in the relevant field are being offered in Australia in order to become qualified to practise in this occupation.

Furthermore, ANZSCO codes and occupations do not always align to qualification titles, thereby confusing both employers and candidates. For example, the ANZSCO occupation title of ANZSCO 321212 Diesel Motor Mechanic does not align with the titles used in the current qualifications of either a Mobile Plant Mechanic or a Heavy Commercial Vehicle Mechanic. Both trades are listed under the same ANZSCO code but are distinct occupations with different skills required in the workplace.

ANZSCO also does not cover emerging occupations in growth industries, such as finance, banking, business, technology and science. This means that highly skilled applicants in occupations which are not included in ANZSCO have limited options for migration. Overseas qualified Clinical Research Associates working in Australia on a temporary visa are approaching VETASSESS for assessment under ANZSCO 132511 Research and Development Manager or ANZSCO 234599 Life Scientists nec for permanent migration purposes because there is no suitable occupation in ANZSCO to cover this cohort.

⁴ Robust New Foundations - A Streamlined, Transparent and Responsive System for the 457 Programme September 2014

Summary

VETASSESS recommends the ANZSCO continues to be used to generate the Skilled Occupation List, with the proviso that it is reviewed regularly to allow for the addition of emerging occupations. These measures will ensure that skilled individuals are nominating the most suitable occupation and are not precluded from applying to migrate.

The Discussion Paper also canvasses an option to list occupations which may not be nominated for migration, rather than those which can. VETASSESS does not support an approach that aims at excluding occupations as this would not resolve the issue of classifying emerging occupations and mapping required skills against the Australian labour market needs.

Points Test

VETASSESS currently provides Points Test advice on qualifications and employment for general professional occupations.

In our view, the points test should give highest value to the factors which would most likely have a positive impact on the employment outcomes for migrants. For example, highly relevant employment and qualifications may be given an increased weighting.

Consideration should be given to identifying gaps between the skills assessments and Points Test advice. Having a streamlined skills assessment and Points Test process assists in making timely decisions on applications, without duplicating administrative processes.

Additionally, options to outsource Points Test allocation to skills assessing authorities providing points test advice could be given consideration.

SkillSelect

VETASSESS' assessments provide pre-screening of prospective migrants for the skilled migrant selection model, SkillSelect, ensuring that only suitably qualified and job-ready individuals register an Expression of Interest on SkillSelect.

The latest report on the Continuous Survey of Australia's Migrants indicates that only six months into their settlement in Australia, primary applicants in the skill stream had employment outcomes which were in strong alignment with their existing skills, and that the majority of these individuals were working in their nominated occupation in a field with a similar or higher skill level.⁵ In particular, in the Independent Stream, 82.4% of primary applicants who had come to Australia on a visa granted offshore were employed, and 90.2% of primary applicants who were granted an on-shore visa were employed, mainly in highly skilled occupations. This suggests that the SkillSelect model is effective in delivering successful labour market outcomes for skilled migrants.

⁵ Continuous Survey of Australia's Migrants: Cohort Report – August 2014 (Australian Government: Department of Immigration and Citizenship, Commonwealth of Australia; Belconnen

Sponsorship and nomination

VETASSESS conducts skills assessments which may be used to support an application for sponsorship or nomination. This first step in the migration process provides reliable information for employers and state nomination departments about the relevance of candidates' qualifications and employment to their nominated occupation.

With respect to State/Territory nomination, the criteria applied by skills assessing authorities may differ to those applied by the State and Territory Departments. For example, VETASSESS criteria for its general professional occupations require at least one year of post-qualification employment.

Summary

VETASSESS suggests aligning requirements of State/Territory sponsorship departments and DIBP migration to eliminate discrepancies, such as in occupations which can be nominated and in educational/employment requirements.

Visa Framework

Given the large number of current skilled and 400 series visa sub-classes, VETASSESS sees merit in streamlining the visa categories into the three broad categories of Short-Term Migration, Business and Investment Migration, and Skilled Work as canvassed in the Discussion Paper.

VETASSESS supports measures to streamline the transition from temporary to permanent residency, including removal of any duplication of requirements.

To summarise VETASSESS' response to the discussion paper, VETASSESS welcomes the review of the Skilled Migration and 400 visa series and discussion with DIBP around some of the key issues raised in our response.

As outlined above, VETASSESS supports a well-planned and structured visa framework model that relies on broader visa categories, allows for increased upper age thresholds across visa categories and strengthened by skills assessments aligned to industry requirements and competent English language levels of migrants. VETASSESS supports streamlining skills assessments, the Points Test and immigration processes that will result in better outcomes for Australia's skilled migration programs and for future intending migrants.