



Law Council
OF AUSTRALIA

*Federal Litigation and
Dispute Resolution Section*

13 February 2020

Ms Kerri Hartland
Secretary
Department of Education, Skills and Employment
GPO Box 9880
CANBERRA ACT 2601

By email: skilledmigrationlist@employment.gov.au

Dear Secretary

Consultation on Skilled Migration Occupation Lists

1. The Migration Law Committee of the Law Council of Australia's Federal Litigation and Dispute Resolution Section (**the Committee**) appreciates the opportunity to make submissions in relation to the Consultation on Skilled Migration Occupation Lists (**the Consultation**), and in response to the Traffic Light Bulletin¹ published by the Department of Education, Skills and Employment (**the Department**).²
2. The Committee notes that there is a lack of transparency in the methodology, analysis and data that underpins the selection of occupations to determine a 'skill shortage' in the short term, and a strategic need for an occupation in the medium and long term.
3. The Committee notes the recommendations made by the Committee for Economic Development of Australia (**CEDA**) in its report *Effects of temporary migration: Shaping Australia's society and economy*³ and specifically endorses Recommendation 1, that the Federal Government should strengthen identification of skill shortages and eligible occupations for skilled visas in the skilled occupation list to increase confidence in the process by:
 - being more transparent about the data and methods used in assessing whether occupations are included on skilled occupation lists;
 - immediately reviewing the Australian and New Zealand Standard Classification of Occupations (**ANZSCO**) codes to ensure they align with current and emerging labour trends, particularly the impact of technology; and

¹ Department of Employment, Skills, Small and Family Business, 'Skilled Migration Occupation Lists Review: Traffic Light Bulletin – March 2020 Update' (Discussion paper, December 2019),

https://docs.employment.gov.au/system/files/doc/other/smol_traffic_light_bulletin_december_2019_0.pdf.

² The Traffic Light Bulletin was published prior to the amalgamation of the Department and name change which came into effect on 1 February 2020.

³ CEDA, *Effects of temporary migration: Shaping Australia's society and economy*, (Report, July 2019), https://www.ceda.com.au/CEDA/media/General/Publication/PDFs/190709_CEDATemporaryMigration_FullReport_FINAL_1.pdf.

- establishing an independent committee, like the Migration Advisory Committee in the United Kingdom, to undertake analysis, consultation and advice on the formulation of skilled occupation lists.⁴

Proposed occupation additions

4. The Committee strongly supports the addition of select ANZSCO skill level 4 occupations to the Short-Term Skilled Occupation List (**STSOL**) and supports the further addition of occupations at this skill level where shortages are identified or for emerging technologies such as Unmanned Aerial Vehicle Pilot (currently under Machine Operators NEC).
5. However, the Committee does not support mandatory skills assessments for these occupations (or any non-trades occupations). The proposed skills assessments would presumably consist of a document review of qualifications and work experience. Delegates are already equipped to assess the qualifications and experience of applicants, so there is no added benefit to requiring applicants to have their skills assessed by a third party. This is distinct from trade occupations, where skills assessments generally include a technical interview or practical assessment and go beyond the assessment a delegate would make in the course of assessing a visa application.
6. The Committee recommends that the Department consider that any skill level 4 occupations which are added to occupations lists for the Temporary Skills Shortage (**TSS**) or General Skilled Migration (**GSM**) programme should be added also to the subclass 494 Regional Occupation List (**subclass 494 ROL**).
7. The Committee recommends that the Department consider adding select skill level 4 occupations to the subclass 494 ROL which are commonly included as part of Designated Area Migration Agreement (**DAMA**) arrangements. Examples may include Bar Attendant (Supervisor), Truck Driver (General) and Waiter (Supervisor). The popularity of these occupations in DAMA agreements is an indication that there are wider shortages across regional areas in Australia which may not yet have negotiated a DAMA – or which have not yet renegotiated a DAMA to include the subclass 494 visa.

Proposed caveats

8. The Committee strongly recommends against the proposed salary caveat for the occupation of Sportspeople NEC. While the Committee understands that the Department wishes to restrict this occupation such that only elite sportspeople are nominated, the proposed caveat would disproportionately affect women in sports due to the well-documented gender pay gap in professional sports.
9. The Committee further notes that the other proposed salary caveats do not take into account the varied costs of living and market salary rates across Australia. Salaries that may be appropriate in major population centres are simply not viable in many regional areas, especially for occupations such as Baker and Pastrycook.
10. With regard to the use of caveats in general, the Committee maintains the Law Council's previous recommendation that consideration of whether to restrict access to occupations should include, *inter alia*, consideration of whether this is better

⁴ Ibid 26.

managed through the imposition of a caveat rather than placement on STSOL or removal.⁵

Proposed occupation removals

11. The Committee recommends against the removal and downgrading of trade occupations from the skilled occupation lists, including:
 - (a) Automotive Electrician;
 - (b) Motorcycle Mechanic;
 - (c) Locksmith;
 - (d) Painting Trades Worker;
 - (e) Glazier;
 - (f) Wall and Floor Tiler;
 - (g) Cabinetmaker;
 - (h) Hairdresser; and
 - (i) Wood Machinist.
12. Although there are significant numbers of Australian students in courses and apprenticeships, leading to the surface appearance of a large pipeline of workers, statistics show that very significant proportions of students either do not finish or drop out of their industries within the first few years. The Department has issued publications showing ongoing shortages in almost all of these occupations across Australia, even in major population centres.⁶ Removal or downgrading of any of these occupations could worsen these shortages.
13. Further, the Committee recommends against the removal of the following occupations from STSOL on the basis that they are listed on State and/or Territory government GSM occupation lists:
 - (a) Careers Counsellor;
 - (b) Vehicle Trimmer;
 - (c) Business Machine Mechanic;
 - (d) Gardener (General);
 - (e) Hairdresser;
 - (f) Wood Machinist;
 - (g) Massage Therapist;
 - (h) Community Worker;

⁵ Law Council of Australia, *Inquiry into the effectiveness of the current temporary skilled visa system in targeting genuine skills shortages* (Submission to the Senate Legal and Constitutional Affairs References Committee, 21 December 2018), [20], <https://www.lawcouncil.asn.au/docs/aa1597f3-ab1e-e911-93fc-005056be13b5/3562%20-%20Skilled%20visa%20system%20inquiry.pdf>.

⁶ See: <https://www.employment.gov.au/national-state-and-territory-skill-shortage-information>.

- (i) Diving Instructor (Open Water); and
 - (j) Gymnastics Coach or Instructor.
14. The State Nomination programme provides an opportunity for each state or territory government to determine for itself which occupations are in demand, and to promote migration by inviting applications from non-citizens with the required skills. Removal of an occupation from the STSOL would prevent any state or territory government from nominating applicants in that occupation, even if it determined that occupation was in demand.
 15. As is clear from the above, the vast majority of occupations which are flagged for removal from STSOL are still in demand in at least one state or territory of Australia. These governments should be permitted to continue nominating applicants who hold these occupations.
 16. In particular, Community Worker is found on the occupation list of every Australian state or territory except for Victoria and the Australian Capital Territory. This occupation is in clear demand throughout Australia and should not be removed from STSOL.
 17. The Committee recommends that Animal Attendants and Trainers NEC be moved to the Regional Occupation List rather than be taken off the lists entirely. This would preserve the ability of cattle stations and other remote farming operations to sponsor workers through the TSS visa programme. It is extremely difficult for employers in remote locations to recruit workers from the local labour market and the removal of this occupation would greatly increase the difficulty of recruiting skilled workers for these roles.

Conclusion

18. The Committee would be happy to provide further input on any of the matters raised in this submission, should that be of assistance.
19. Please contact Mr Mike Clayton, Senior Policy Lawyer, on (02) 6246 3755 or at mike.clayton@lawcouncil.asn.au in the first instance if you require further information or clarification.

Yours sincerely

Margery Nicoll

Margery Nicoll
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