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Regional Certifying Bodies User Guide and Instruction Manual – February 2019

Assessing employer nominations for the Direct Entry stream
of the Regional Sponsored Migration Scheme (RSMS)
subclass 187 visa

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Version Control

November 2017

- Glossary – ANZSCO – added URL to ANZSCO ABS web site.
- Glossary – Nominee must be identified in the employer nomination application.
- Update to 1.2 'Regional and low population growth areas' – definition of regional Australia for RSMS purposes: Perth.
- Update to Appendix A – definition of regional Australia for RSMS purposes: Perth.
- Update to Appendix A – list of WA post codes.
- 'Common law contracts' – Example – Albany instead of Perth.

May 2018

- New Home Affairs branding.
- Updates reflecting legislative requirements effective 18 March 2018.
- Textual revision with amendments ensuring greater clarity and better flow.

s. 47E(d)

- Guidance on determining the new Annual Market Salary Rate (AMSR) and replacing previous text on 'terms and conditions'.
- Guidance on credible advertising.
- Removal of text boxes with specific occupational examples, as occupations can be subject to caveats and/or removal following periodic but regular reviews of the occupation lists. Note: Where reference to certain occupations have been retained, these only serve as a point of reference for the broader argument being made. Example mentioning 'Albany' updated in November 2017 now removed.
- Removal of references to 'paid employee', and updates in relation to the employer-employee relationship and 'Direct Control'

s. 47E(d)

August 2018

- Section 4.1 updated in relation to supplementary advice that contains sensitivities
- Section 5.3 updated with guidance to verify the regional location where the nominated position is claimed to exist
- Section 5.4.1 updated with further guidance on 'recruitment'
- Section 6 updates to 'Submitting advice to the Department' in relation to Form 1404 and supplementary advice.
- New section 5.3.3.1 'Employment contracts'
- New section 5.5 'Program integrity issues'
- New section 5.6 'Requests for RCB assessment specifying incorrect RSMS stream'

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October 2018

- New sub-section 3.2.1 'Certified documents'
- Section 4.2 updated with request to include copy of the lodged or draft nomination
- Section 4.2 updated with request to include copy of the employment contract or letter of offer
- New section 6.4 'Records management'
- New section 6.5 'Freedom of Information'
- New section 6.6 'Merits review'
- New section 6.7 'Stakeholder relations'
- New sub-section 6.7.1 'Requests for the RCB Manual'

October 2018 – Amended version

- Correction to eligible postcodes on page 34: included WA 6200 to 6799

February 2019

- Expanded text under 5.4.1 'Recruitment', emphasising nationwide recruitment
- Revised text for item 5.4.2 'Evidence'
- New item 5.7 'Natural Justice'
- Additional guidance under item 6.1 'Form 1404 and supplementary advice' about what should be included in the supplementary advice
- Update to item 6.2 'Reasons for negative advice': supplementary advice to be shared

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Glossary

The following terms are used throughout this information manual.

AMSR	Annual Market Salary Rate
ANZSCO	Australian and New Zealand Standard Classification of Occupations, 1st edition revision 1. See: http://www.abs.gov.au/ANZSCO
Alternate form	A form, other than Form 1404, used by RCBs to document the assessment and advice.
DE stream	Direct Entry stream of the RSMS subclass 187 visa. The stream for which RCB advice must be requested.
Department	Department of Home Affairs. See: www.homeaffairs.gov.au
Home Affairs	Alternative abbreviation for the Department of Home Affairs and may be used interchangeably with 'Department'.
Nominator	The employer who has lodged the request for assessment.
Nominee	The foreign skilled worker who the nominator wishes to employ in the nominated position. From 1 July 2017, the nominee must be identified in the employer nomination lodged with the Department, however the identity of the nominee may not yet be known at the time the request for RCB assessment is submitted.
Request for assessment	A request, or application, lodged with an RCB seeking assessment in regard to an employer nomination.
RMA	Registered Migration Agent
RSMS	Regional Sponsored Migration Scheme (Subclass 187 visa)
Supplementary advice	Separate information provided to the Department with detailed reasoning for the advice contained in Form 1404 or the alternate form (where used)
TRT	Temporary Residence Transition stream
TSS	Temporary Skill Shortage subclass 482 visa

1. Introduction

1.1 About the program

The Regional Sponsored Migration Scheme (RSMS) allows Australian employers in regional and low population growth areas of Australia to sponsor (nominate) skilled overseas workers for permanent residence. This is to assist employers in instances where they have been unable to fill vacant positions with Australian citizens or permanent residents living in or wishing to move to the regional area where the nominated position is located.

Where an employer decides to nominate a skilled overseas worker for an RSMS visa under the Direct Entry stream, the nomination must be accompanied by advice in relation to local labour market conditions following an assessment completed by a Regional Certifying Body (RCB). The relevant RCB must be the RCB that has responsibility for the area where the nominated position is located. These requirements are legislated in the *Migration Regulations 1994* under Regulation 5.19(12)(f) and (g). If the nominating employer has not requested the RCB to provide the advice, and the advice has not been received by the Department of Home Affairs, then the lodged employer nomination application cannot be approved.

1.2 Regional and low population growth areas

Any Australian employer who is actively and lawfully operating a business in a regional or low population growth area of Australia can sponsor skilled overseas workers through the RSMS.

RSMS covers all of Australia except Brisbane, the Gold Coast, Newcastle, Sydney, Wollongong, Melbourne and Perth. Regional Australia is further defined by reference to a legislative instrument that specifies regional areas by post code. See Appendix A for a list of postcodes under the RSMS.

2. Role of a Regional Certifying Body

The role of the RCB is to provide advice to the Department on RSMS Direct Entry stream employer nomination applications, using local area knowledge to advise on remuneration attached to the nominated position; the genuine need for the position to be filled; and the availability of local labour to fill the position. The specified requirements are detailed in [Section 5—Assessment](#).

RSMS Direct Entry stream nominations must be accompanied by advice from an RCB; however, this advice can be provided before or after lodgement of the employer nomination application with Home Affairs. The Department cannot approve a nomination where advice from an RCB has not been provided.

Departmental decision makers will assess employer nominations against a range of criteria, including but not limited to those that RCBs provide advice on. Local knowledge about businesses operating in the specific RCB's jurisdiction adds value to the assessment process.

2.1 Scope of activity

Employer nominations must be considered by an RCB located in the same State or Territory where the nominated position exists, and the relevant RCB must have responsibility for the local area in which the position is located. As these are legislated requirements, it is the responsibility of each RCB to ensure that

requests for assessment relate to a position within its jurisdiction and that the position is within the nominating business.

2.2 Timeframe for assessment

RCBs must provide their assessment advice within three months of receipt of the request.

2.3 Fees and charges

Any fee charged by an RCB in relation to the provision of an assessment must be calculated on a cost recovery basis only. It should not include any margin for profit.

2.4 Conflicts of interest

It is the responsibility of each RCB to assess and ensure that there are no conflicts of interest in relation to requests for assessment. In the context of local communities in regional areas, such conflicts of interest can arise as a result of family or personal relationships between employees of nominating businesses and RCB officers.

Some common examples of a conflict of interest include, but are not limited to:

- the nominated position is within the RCB and its officers are involved in the recruitment process
- RCB personnel or their friends or family members have a financial/controlling interest in the nominating business
- a friend or family member is the nominee
- RCB personnel or their friends or family members are the migration agent to the employer and/or the nominee
- a friend or family member is the nominating employer.

Where a potential conflict of interest at the personal level is identified, the assessment should be assigned to a different officer within the same RCB, where practicable. If this is not possible, or if the relationship is between the nominating business and the RCB agency, then the employer should be advised to seek assessment from another RCB located in the same State or Territory in which the business operates, and to the extent possible in close proximity to the location of the nominated position. If required, the RSMS Program Management team in the Department's Employer Sponsored Network Support Section can be contacted via email to provide advice about another RCB that could consider the nomination.

If you have any concerns, please contact the Employer Sponsored Network Support Section via email at:

s. 47E(d)

2.5 Providing immigration advice

The RCB's role is to provide advice to the Department as to whether a nomination meets relevant migration criteria. RCB's should only answer queries that relate directly to their assessment role, such as:

- telling an employer what supporting documents they can provide to assist RCB officers with their assessment
- telling an employer how requests are assessed and what sort of information could be considered when determining whether legislative requirements are satisfied
- telling the employer how to lodge a request for assessment and supporting documents with the RCB.

RCBs should not provide any migration advice to the employer or a visa applicant.

Migration advice may include:

- telling a person about their possible visa options or which visa they should apply for
- providing advice about how to complete an employer nomination or visa application
- telling a person how to apply for a visa.

3. Submission of request for assessment

3.1 Submission

This section describes how a nominator (employer) may submit an application to an RCB requesting their assessment of a nomination.

RCBs must be provided with basic information relating to the nomination to enable them to make their assessment.

The process of submitting an application with an RCB for assessment is referred to in this document as a 'request for assessment' to avoid confusion with the nomination application e-lodged by the employer directly with the Department. The request for assessment may be submitted as a paper-based or electronic form. Individual businesses will have their own process. Employers (or their agents) wishing to request an assessment should identify and obtain from the appropriate RCB for their region information about the documentation required by that RCB for it to make an informed assessment. In many cases this information will be available from the RCB's own web pages.

Some RCBs have established processes for managing requests for assessment. Nominators who intend to lodge or have lodged with Home Affairs RSMS nominations under the Direct Entry stream will need to comply with the specific requirements (if any) imposed by the relevant RCB when making requests for assessment.

The employer may submit a request for RCB assessment before or after lodging the nomination application with the Department.

3.2 Documentation

RCBs may request employers to provide a range of documentation to assist them in making their assessment against the relevant requirements. Relevant documents have been identified in the context of the specific assessment requirements, as detailed in [Section 5—Assessment](#).

The nature of the information required for the RCB to make an informed assessment is likely to be broad in its nature. RCBs should note there is no requirement for documentation that does not directly relate to the nominated position to contain any details that might breach the privacy rights of other individuals involved. For example, payslips for Australian workers in equivalent positions do not need to contain the names of these workers.

Documentation that RCBs may request the nominator to provide to assist in the assessment process may include, but are not limited to:

- a copy of the nomination application lodged with Home Affairs. Nominators can download this from departmental systems as a pdf document.

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- a copy of the draft application, where the nomination application is yet to be lodged. Nominators can download this from departmental systems as a pdf document.
- any specific information that may be required to reach an informed decision, if a draft application has not been created.

The documentation that may be requested by an RCB is not limited to a prescriptive list; however, the information or documentation requested must be relevant to the provision of an accurate and informed assessment.

RCBs should be aware that employers are not compelled to provide the documents requested, though it is in their interest to do so. Where requested documents are not provided, RCBs may proceed to make the assessment based on the information available to them.

3.2.1 Certified documents

Subject to the internal working protocols of individual RCBs, there is no strict requirement that documents submitted with a request for RCB assessment must be 'certified'. As a guide, all application documentation lodged online with the Department of Home Affairs requires high-quality, colour copies of original documents, and the Department does not require these to be 'certified'. Given that this is the expectation within the Permanent Employer Sponsored Entry program (which includes RSMS), it is reasonable to accept the same of documentation submitted to RCBs.

4. Content of advice

This section provides guidance on the information that must be contained in a document providing advice to the Department in regard to requests for assessment.

4.1 Form 1404 and separate Supplementary Advice

Form 1404 (Regional Sponsored Migration Scheme – Regional Certifying Body Advice, latest edition dated July 2018) is the departmentally endorsed form that must be used when providing advice to the Department regarding a business' suitability under this program. RCBs that have their own established processes and/or alternate forms may continue to use these if these have been approved by Home Affairs.

Independent documentation used to assess the business' viability may also be submitted with Form 1404 to provide the Department with a holistic perspective of the certification process undertaken by the RCB.

The revised July 2018 version of Form 1404 now includes space to provide reasoning for both the 'satisfies' and 'does not satisfy' outcome of the assessment. Where the space provided is insufficient, the advice provided on Form 1404 can be expanded by separate supplementary advice that further documents the reasoning behind the RCB findings.

In cases where the request for assessment satisfies the requirements, this supplementary information will provide the departmental decision makers with useful context around local labour market conditions. It is open to the RCB to provide the nominator with a copy of this supplementary advice.

In cases where the assessment criteria are not satisfied, RCB officers should use the space provided on Form 1404 and, if required, use the supplementary advice option to indicate their concerns in relation to the nomination. It is open to the RCB to provide the nominator with a copy of this supplementary advice [s. 47E\(d\)](#)

[s. 47E\(d\)](#)

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s. 47E(d)

4.2 Details of the nomination

Where a business is seeking RCB advice to support their nomination under the RSMS visa program, the following information must be submitted to the RCB:

- registered name of the nominating business/organisation
- ABN and ACN of the nominator
- contact address of nominating business/organisation
- full name and contact details of representative of nominating business/organisation
- ANZSCO code relating to the occupation of the nominated position
- position title for proposed nominee
- nominated salary
- full name of nominee (if known).

If the nomination application has been lodged or a draft application is available, nominating employers are requested to provide a copy of that application.

In addition, and if available, a copy of the employment contract or letter of offer between the employer and nominee should also be made available.

4.3 Declaration regarding the assessment

The Declaration testifies that the nomination has been assessed against the following legislative requirements:

- the identified person would be paid at least the annual market salary rate for the occupation
- there is a genuine need for the identified person to be employed in the position, under the direct control of the nominator
- the position can be filled by an Australian citizen or an Australian permanent resident who is living in, or would move to, the local area concerned.

4.4 The assessment advice

The assessment advice should establish whether the Minister could be satisfied that the nomination meets the criteria outlined in the declaration. The date of the assessment advice should be clearly indicated in the document.

4.5 Information regarding the RCB

Form 1404, any supporting documentation, and the supplementary advice submitted to the Department should include the following information:

- name and contact address of the Regional Certifying Body
- full name and contact details of the representative providing the assessment advice
- in addition to the above, for any supporting documentation and supplementary advice: full name of nominating business/organisation and ABN.

5. Assessment

This section provides background and guidance concerning the criteria against which each request for assessment must be considered.

For each request for assessment lodged, the RCB must provide the Department with advice as to whether:

- the identified person would be paid at least the annual market salary rate for the occupation
- there is a genuine need for the identified person to be employed in the position, under the direct control of the nominator
- the position can be filled by an Australian citizen or an Australian permanent resident who is living in, or would move to, the local area concerned.

The policy guidance provided in this manual in relation to the annual market salary rate and the genuine need for the nominated position reflects corresponding policy advice in the Procedural Instructions used by departmental decision makers.

Note: RSMS eligible occupations are those as specified by legislative instrument and consist of ANZSCO skill level 1, 2 and 3 occupations. Periodic reviews of the RSMS occupation list will be conducted by the Department of Jobs and Small Business. These reviews can result in occupations being added or removed from the list over time. Departmental decision makers will assess if the occupation is an eligible occupation for RSMS when deciding the employer nomination application.

Therefore, RCBs are not required to verify or assess whether:

- the nominator has correctly classified the occupation for the nominated position
- the nominated position has been up-skilled.

Due to the nature of their role, RCBs can accept that a valid occupation and position have been nominated and provide advice in the context of that position within the nominating business.

As part of their assessment of the nomination, the departmental decision makers will make a detailed assessment as to whether the occupation and the nominated position is approvable.

5.1 Annual Market Salary Rate (AMSR)

A new market salary rate framework is in place for the RSMS program, which mirrors that introduced for the new Temporary Skill Shortage (TSS) visa program. As a result, where the overseas worker will be paid less than AUD250,000, nominators need to demonstrate that:

- they have determined the Annual Market Salary Rate (AMSR)

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- the overseas worker will not be paid less than this amount (i.e. less than what an Australian worker would be paid)
- both the AMSR and what the overseas worker will be paid, excluding any non-monetary benefits in both cases, must be no less than the Temporary Skilled Migration Income Threshold (TSMIT) – i.e. currently AUD53,900. Further information on salary and employment condition requirements for sponsored skilled visas, including determining the AMSR, is available at <https://www.homeaffairs.gov.au/WorkinginAustralia/Pages/Salary-employment-condition-requirements.aspx>.

RCBs would only provide advice on the AMSR, not terms & conditions such as hours of work, leave entitlements etc. While therefore the subject of the RCB advice is changing, the evidence to be used is the same.

Under the *Migration Regulations 1994*, the Department will determine whether or not AMSR is less than the TSMIT as part of the assessment of the nomination application. RCBs are not currently required to provide advice on whether a salary level is below TSMIT, and are not required to provide this advice under the new nomination regulations.

5.2 Determining AMSR

AMSR is defined in legislation as the earnings an Australian worker earns, or would earn, for performing equivalent work on a full-time basis for a year in the same workplace at the same location.

'Earnings' is defined as including the person's (a) wages and (b) the agreed money value of non-monetary benefits. It is limited to amounts that are guaranteed (referred to as Guaranteed Annual Earnings (GAE)).

There are broadly two legislated scenarios:

Scenario 1 – An Australian worker is performing equivalent work to the nominee, in the same workplace and at the same location as the nominee. If there is an enterprise agreement or industrial award in the form of a fair work instrument, state industrial instrument or transitional instrument or similar and/or registered with the Fair Work Commission, then the annual market salary rate will be specified in those awards and apply to an equivalent occupation in relation to the nominated position.

Where there is no enterprise agreement or industrial award in the form of a fair work instrument, state industrial instrument or transitional instrument or similar and/or registered with the Fair Work Commission that is applicable to an Australian worker, then the annual market salary rate for an equivalent occupation in relation to a nominated position must be determined by reference to relevant employment documents.

Equivalent Australian worker

Scenario	Relevant Information	Supporting Evidence
Salary is determined in accordance with an enterprise agreement or industrial award or similar	The name of the enterprise agreement or industrial award in the form of a fair work instrument, state industrial instrument or transitional instrument or similar and/or registered with the Fair Work Commission, where applicable.	N/A

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	Note: the salary level/occupation group that applies to the nomination occupation must be specified.	
An enterprise agreement or industrial award does not apply	Explanation of salary arrangements	Copies of relevant employment contracts and pay slips for other Australian workers performing equivalent work in that workplace.

Important:

- If a nominator has a more or less experienced worker than the nominee, doing similar work at a higher or lower pay grade, then they are not considered an equivalent Australian worker.
- Nominators who only provide generic market salary data/salary surveys will **not** satisfy the information required to determine the AMSR if there is an equivalent Australian worker, as this is not relevant information as specified in legislation for which also see the legislative instrument.

Scenario 2 – There is no Australian worker performing equivalent work to the nominee, in the same workplace and at the same location as the nominee. However, if there is an enterprise agreement or industrial award in the form of a fair work instrument, state industrial instrument or transitional instrument or similar and/or registered with the Fair Work Commission that would apply to Australian citizens or permanent residents in the same workplace at the same location, then the AMSR of an equivalent Australian worker will be specified in those awards and apply to an equivalent occupation in relation to the nominated position.

Where there is no enterprise agreement or industrial award in the form of a fair work instrument, state industrial instrument or transitional instrument or similar and/or registered with the Fair Work Commission that would apply to Australian citizens or permanent residents in the same workplace at the same location, then the AMSR would be what applies to an equivalent Australian worker, which must be determined by reference to relevant market information.

Relevant market information may include:

- information in relation to statutory minimum entitlements, fair work instruments, state industrial instruments and transitional instruments that apply to Australian citizens or Australian permanent residents in similar workplaces
- local knowledge and evidence of appropriate terms and conditions of employment including information from:
 - unions or employer associations
 - broader labour market data, including Australian Bureau of Statistics Employee Earnings and Hours Survey (see: www.abs.gov.au) and Australian Government's Job Outlook (see: www.joboutlook.gov.au)
 - remuneration surveys
 - job vacancy advertisements from the last six months for equivalent positions in the same location (e.g. state, urban versus regional area).

In practice, this means that the nominator must have:

- determined what the equivalent Australian worker does earn, or would earn, and provide this information in the request for assessment, including where relevant a break-down of monetary and non-monetary benefits that would be included in their salary package; and
- explained which method they used to make this determination, as outlined under the above scenarios.

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The table below summarise the evidence that can be utilised to make such a determination and should be referenced in the request for assessment, with supporting evidence provided where appropriate.

Note: Relevant information will depend on whether or not there is an equivalent Australian worker performing equivalent work on a full-time basis in the same workplace at the same location.

No Equivalent Australian worker

Scenario	Relevant Information	Supporting Evidence
Salary is determined in accordance with an enterprise agreement or industrial award or similar	<p>The name of the enterprise agreement or industrial award in the form of a fair work instrument, state industrial instrument or transitional instrument or similar and/or registered with the Fair Work Commission, where applicable.</p> <p>Note: the salary level/occupation group that applies to the nomination occupation must be specified.</p>	N/A
An enterprise agreement or industrial award does not apply	Explanation of how the nominator has used relevant information to determine what an equivalent Australian worker would be paid.	<p>At least two of the following:</p> <ul style="list-style-type: none"> • Job Outlook information (see: www.joboutlook.gov.au); • advertisements from the last six months for equivalent positions in the same location (e.g. state, urban versus regional area); • remuneration surveys completed by a reputable organisation; or • written advice from registered unions or employer associations.

Important:

- The onus is on the nominator to provide sufficient information to satisfy the Department that they have determined the AMSR using the method specified above.
- If the nominator provides vague, unlabelled salary surveys and does not explain how they have determined the AMSR, they may **not** have provided sufficient relevant information to demonstrate:
 - what the AMSR is (consequently it would not have been demonstrated that the nominee will not be paid less than the AMSR); and/or
 - that the AMSR has been determined using the specified method.
- If the market salary rate determined is a 'range', the nominator must explain and provide specific details regarding why the particular AMSR has been selected.

Information on salary and employment condition requirements for sponsored skilled visas, including determining the AMSR, is also available at www.homeaffairs.gov.au/WorkinginAustralia/Pages/Salary-employment-condition-requirements.aspx.

5.3 Genuine need for the position

5.3.1 Verification of the regional location

RSMS legislation requires the business operated by the nominator to be located in regional Australia. A further requirement is that the business operated by the nominator be located in the place where the nominated position exists. In combination, this means that the nominated position must be within the business activities of the nominator located in regional Australia, and the person identified in the nomination will be physically present in that location to perform the tasks of the nominated position.

The regional location of the nominated position can be determined from the information provided in the nomination form or request for RCB assessment, keeping in mind however, that the address of the nominator as given may not necessarily correspond to the regional location of the nominated position. This could be the case, for example, if the nominator's business is carried out at a head office in a non-regional area and at one or more regional branch offices or factories. A nomination made by head office for a position in a regional branch or factory can therefore well be for a genuine position.

To check the genuineness of the nominated position, it is therefore important that RCBs do check if there is indeed a physical presence for the business in the regional location where the nominated position is claimed to exist. If this is not evident from the information provided by the nominator in their request for RCB assessment, then such strategies as follow-up contact with the nominator or the migration agent; a Google-Earth search; checks of company websites; a phone call to businesses neighbouring the location of the claimed position (if visible in Google-Earth) to confirm the presence of the nominating business in that location; where practicable, a 'drive-by' to confirm the presence of the nominating business in that location (as already practised by some RCBs); etc. could resolve this issue.

If, following use of these various strategies the RCB is unable to independently verify that the regional business does in fact exist, a negative assessment would be appropriate, with the supplementary information indicating that this is an application of concern.

5.3.2 Elements of genuineness

The relevant legislated assessment requirement is whether there is a genuine need for the nominator to employ an identified person to work in the nominated position and under the direct control of the nominator.

This criterion consists of three assessment elements, whether:

- there is a genuine need for the nominated position within the business activity of the nominator
- the nominated position relates to an identified person (this is at time the nomination is lodged with Home Affairs. The nominee may or may not be known at the time the request for assessment is submitted to the RCB)
- the nominee works under the direct control of the nominator (as distinct from alternative work arrangements such as independent contracting and labour-hire).

5.3.3 Genuine need for the nominated position within the business activity

The starting point for the assessment should be the responses in the nomination application to those questions relating to the nature of the business, the nominated position, and the tasks to be performed. The nominator may have provided a copy of the nomination application (lodged or to be lodged with Home

Affairs) as part of their submission. If this has not been provided, the RCB may request this or seek other specific information that may assist in their assessment.

RCBs must be satisfied that the position nominated is relevant to the nature and scope of the business activities of the nominator. The RCB must be satisfied that (1) the role of the nominated position fits into, and is required within the business activities of the nominator; and (2) those activities come within the nature and scope of the business. This assessment will need to be made on a case-by-case basis. Element (1) requires that there is a close fit between the occupation and the tasks to be performed in the nominated position. Element (2) may require the RCB to request additional information from the nominator in order to assess whether the nominated position is:

- in the regular ongoing business activity of the employer
- to be involved in the diversification of the activities of the business
- within a start-up business.

5.3.3.1 Employment contracts

When on the face of it there appears a thoroughness in the application and the documentation provided, this may not always be determinative. Even if there are local skill shortages in the relevant industry and the need of the nominator appears genuine, close scrutiny of the documentation provided is warranted, as comprehensive documentation can still be fabricated.

Employment contracts provide a case in point and may state that employment will commence the date the visa is granted. s. 47E(d)

This is not to say that every employment contract with the phrase *“employment will commence the date the visa is granted”* should result in a negative RCB assessment. The phrase could simply mean that the nominee as holder of a Bridging Visa with work rights is already working in the nominated position, or there is currently a temporary worker filling the position who will be replaced by the nominee if and when the visa is granted. The person could also be a 457/482 temporary visa holder who is being nominated under the Direct Entry stream. The nature of the business may indicate whether the nomination is credible and not fraudulent. Indeed, it appears very credible businesses and organisations have used the phrase, and there should be no concerns there.

Where RCB officers have concerns or doubts, we recommend you check with the business if (a) the position is currently being filled temporarily and (b) are they aware of the long waiting times. If the answer to (a) is ‘no’ and to (b) ‘yes’, then you could have concerns as to whether the need is genuine. If you are in doubt, you could support the nomination on the basis of your overall view, but in the additional information express whatever concerns you may nevertheless still have. The departmental decision maker will then make the final determination.

5.3.4 Vacancy in the regular ongoing business activity of the nominating employer

This criterion requires an employer to nominate a position that is necessary to support or expand their ongoing business activity. The position could have arisen through attrition or expansion. The position nominated should generally fit the nature and scope of the business’ day-to-day activity.

The following are examples of nominations that meet this criterion:

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- an architectural enterprise nominating an architect
- a manufacturing entity nominating an engineer
- a restaurant nominating a chef
- a business involved in ship building nominating a welder.

Additional information that RCBs may seek to assess this criterion could include:

- a breakdown of the organisational structure (organisation chart) to indicate how the nominated position fits into the business activity
- an outline of the goods or services produced by the business and how the nominated position contributes to maintaining or enhancing the volume and/or quality of these outputs (this may include detailed and quantifiable plans for future expansion)
- evidence that the nominated position has existed and been previously occupied but has become vacant through attrition
- evidence that the nominated position is currently occupied by a temporary resident.

Where, based on the information provided, an RCB is not satisfied that the nominated position is genuinely required, additional information should be sought. Such requests may include, but are not limited to:

- evidence of an increase in business activity (for example, new contracts won) requiring workers in the nominated position/s
- evidence of additional work being undertaken through overtime (or an increase in overtime) for employees in the nominated position.

Where information exists indicating the industry in which the nominating employer operates is in decline, the case may require further inquiry.

The following actions by the nominating employer concerning employees in the nominated occupation or similar occupations may be indicative of the nominated position not being genuine:

- retrenchment in the previous 12 months
- reduction of hours worked during the previous 12 months
- reduction in pay and conditions within the previous 12 months
- employment of a temporary visa holder/s on conditions less favourable than those for Australian employees.

The following are examples of circumstances that may warrant further inquiry:

- a company involved in trading activity (imports/exports) with two directors and no other employees nominates the position of General Manager with one of the directors as the nominee
- a business whose main source of revenue is rental income from its own domestic properties (e.g. renting rooms to overseas students) seeks to nominate a General Manager.

5.3.5 Diversifying business activity

The usual circumstances are where the nomination relates to a position that is required to either:

1. perform activities to lead or assist with business expansion, or
2. work within a diversified (new) environment.

An example of scenario one would be a business that is currently involved in running a restaurant nominating the position of business development manager on the premise that they wish to start up or purchase a number of restaurants.

RCBs would need to be satisfied that the business has the intention and the financial capacity to support such business expansion. The type of additional information that may be sought in this particular example could include:

- evidence of appropriate market research
- business plans detailing proposed expansion and timelines
- financial budgets covering expenditure and anticipated revenue
- evidence of availability of funding (own funds or bank loans).

Even if satisfied that the business may have the capacity to put its expansion plans into action, the nominator may need to provide appropriate additional information to support the 'long term' need for the position.

An example of scenario two would be a company that is currently involved in running a grocery business but is nominating a hairdresser on the basis that they intend to diversify their business operation. In such a circumstance, it is for the business to satisfy the RCB that it has the capacity and intention to diversify its business activity.

The type of additional information that may be sought concerning this particular example could include:

- business plans including financial budgets covering expenses and anticipated revenue
- evidence of availability of business premises (evidence of lease or purchase of proposed location)
- evidence of lease or purchase of equipment (such as barber's chairs)
- evidence of availability of funding (own funds or bank loans).

The RCB must also be satisfied that the nominated position is one that is relevant to the new business activity. Cases involving claims of diversification would generally warrant close scrutiny.

5.3.6 Start-up businesses

Departmental policy defines a start-up business as one that has been in active operation for less than 12 months.

The departmental decision makers will make an assessment as to whether the business is lawfully and actively operating. Where the decision maker assesses that the business is not lawfully and actively operating, the nomination will be refused as the relevant legislative criteria would not be met.

For the purposes of an assessment of whether there is a genuine need for the nominated position, RCBs may accept that the business is lawfully and actively operating.

RCBs must be satisfied that the nominated position is relevant to the proposed business activity of the nominator.

An example of a circumstance that would require scrutiny would be a start-up IT consultancy firm operating from the residence of the sole proprietor with no other employees, nominating the position of Analyst Programmer.

5.3.7 Employer-employee relationship and Direct Control

In order to satisfy the requirement that there is a need for the identified person to be employed in the nominated position under the direct control of the nominator, there must be a genuine employer-employee relationship between the nominator (employer) and the nominee (employee). An assertion by the employer that the nominee will be an employee is not sufficient evidence to satisfy the relevant regulations.

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The term 'employee' in Australian legislation and case law refers to a person who performs work under the control of another person or entity called an 'employer' in exchange for payment for services they provide. An employee works under a contract of employment with an employer.

In order to facilitate assessment of this requirement, RCBs may request the nominator to provide a copy of the corresponding employment contract.

The intent of this requirement is to prevent employers from nominating positions that are to be occupied by persons who are not employees but are independent contractors, or contracted persons who work in a labour hire context.

In an employer/employee relationship, the employer:

- has the right to legally appoint a person to a position
- pays the employee's salary and any statutory benefits, such as annual and sick leave, as required for ongoing employment under workplace relations legislation and awards
- pays payroll tax, compulsory superannuation, fringe benefits tax and deductions for PAYG tax
- must have a workers compensation policy which covers the employee
- has the right to legally dismiss or suspend the employee
- determines who does the work, as well as when, how and where the work is done (this is commonly referred to as the control test)
- provides the employee with any tools and training they need to perform the position duties
- is generally liable for the actions and behaviour of employees in relation to their employment
- has responsibility for work health and safety issues. State/territory work, health and safety legislation generally requires employers to meet all of the following:
 - provide and maintain a safe workplace and working environment
 - provide and maintain safe plant/machinery
 - provide safe work systems (this relates to procedures and policies relating to work practices)
 - ensure the safe use, handling, storage and transport of substances
 - provide information, instruction, training and supervision necessary for the employee to perform their duties safely.

Payment of the employee's salary and entitlements is not, in itself, sufficient evidence of an employer-employee relationship. The employer would also need to demonstrate that they have some degree of responsibility over the employee's work environment. The 'control test' is generally a good indicator of an employer/employee relationship.

When assessing whether the nominee will be an employee, the following may also be considered:

- the employer should not be able to recover losses from the employee if the employee fails to provide the appropriate amount of notice before leaving the employer. Breaches in this regard and any associated financial penalties are dealt with by a court of law
- the employee should not be charged a service fee, or any other fees, by the employer in order to use the employer's business premise or equipment to conduct work related to their employment. These employment arrangements typically apply to independent contractors as these workers are essentially 'leasing' the employer's business premise, for example, medical practitioners who pay a service fee to work out of a clinic.

5.3.8 Position is directly within the business activity of the nominator

The legislative requirement is that the nominated position must be under the direct control of the nominator and the nominator must directly operate the business in which the nominated position exists.

5.3.8.1 Onhire entities

An on-hire entity is one engaged in supplying workers to clients ('end users') on a fee for service or contract basis. Assignments are mainly short term and tasks are performed under the supervision of staff of the end-user.

If the business activities of the nominator include on-hire, the nominated position must be within their business activities and not for on-hire purposes. For example, an on-hire entity may nominate the position of a recruitment consultant who is to be engaged within its own business activities to manage the recruitment of personnel for on-hire.

5.3.8.2 Entities providing business services

An entity would be providing a business service where it performs specific work for another entity under a specific contract for service. In these circumstances, employees of the entity providing the business service will be performing work for and on behalf of their employer to fulfil their employer's obligations under a contract.

A contract for business services is not an on-hire arrangement as the person(s) providing the services would be performing work on behalf of their employer (the service provider) under the employer's direction and control.

In this scenario, the employer will satisfy all criteria that generally establish an employer/employee relationship. This arrangement may sometimes be misunderstood as an on-hire arrangement simply because work may be performed on the premises of the third party to whom the service is provided.

The following are examples of circumstances involving the provision of business services:

- an IT company (the employer) wins a tender for a project and bases a team at the client's office to work on the project
- an accounting firm (the employer) is contracted to perform an external audit of a client's financial accounts. As part of this service, employees of the accounting firm may work within the client's business for a period of time.

The following are basic features of an arrangement for providing business services:

- a formal contract exists between the service provider and the other entity
- the contract may cover a specific project (such as delivery of a software solution) or a specific service for a specific period of time (such as maintaining hardware)
- the service provider will control resource utilisation (for example how many people will work on the project, how tasks are allocated and which employees are selected to perform the tasks)
- the service provider will have flexibility in managing the project within certain parameters
- payment arrangements will be specified in the contract and may relate to:
 - progress payments towards work completed
 - periodic payments for work completed as per a project plan (such as a software development project)
 - periodic payments made for service provided (such as monthly payments under a hardware maintenance contract).

Every circumstance where a nominator claims that the position nominated is to be engaged in providing business services must be carefully assessed to ensure that the underlying arrangement involves provision of a business service, rather than on-hire. This will be critical where the nominator's business includes on-hire.

5.3.8.3 Key differences between on-hire and business service arrangements

Key differences between on-hire and business service arrangements include the following:

	On-hire	Business Services
Type of contract	End-user contract covering providing personnel	Service contract covering the delivery of a specific project or service
Control of staff	Split control: Employer (on-hire entity) is responsible for all aspects of employer-employee relationship except provision of work/supervision	Employer has full control of staff
Payments	Payments made by end-user periodically based on time-sheets and related invoices	Payments made for delivery of the service, based on established arrangements (periodic payments/progress payments)
Positions	Could involve a range of occupations from trades through to technical and managerial positions.	Generally involve highly skilled positions in ICT and consultant roles.

5.4 Position can be filled locally

5.4.1 Recruitment

RCBs will be able to use their specialist knowledge of their local areas in providing advice as to whether a nominated position can be filled by an Australian citizen or permanent resident who is already living locally, or who would move to the area where the nominated position is located.

A range of information may be available, including:

- local or regional employment data
- state/territory skills lists
- evidence of the nominator's efforts to recruit—advertisements, etc. Note that advertising should have a wider coverage than just locally, in order to attract potential candidates who would be willing to move to the local area.
- Elements of credible advertising would include:
 - English language
 - wide circulation
 - use of different media/platforms
 - at least two published advertisements
- Examples of credible advertising could include:
 - a prominent or professional recruitment website that has 'national reach' and that publishes advertisements for positions throughout Australia (e.g. jobactive.gov.au). A general classifieds website, such as Gumtree, or an advertisement solely through a social media notification, such as Twitter or Instagram, are not acceptable methods.

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- o print media with 'national reach', including national newspapers or magazines that are published at least monthly and marketed throughout Australia.
- o radio programs broadcast or syndicated nationally.

Please note that the above is to be understood as guidance only. There are no legislated provisions for Labour Market Testing (LMT) under RSMS, other than the requirement for RCBs to provide advice on the third criterion: *"whether the position can be filled by an Australian citizen or an Australian permanent resident who is living in, or would move to, the local area concerned"* (Migration Regulation 5.19(12)(f)(iii)). There is no legislative instrument that further specifies how this is to be assessed. Therefore, and in the absence of strict LMT, it is open to RCBs to decide what information they need to make an assessment on this criterion.

However, and further to the above criterion, it is important to note that since 18 March 2018 the Migration Regulations now indeed require that the recruitment focus must also target Australian citizens and permanent residents. That is, recruitment efforts must explicitly seek to attract people who would be prepared to move from elsewhere in Australia to the local area where the position is located. It is no longer acceptable that recruitment efforts should only be targeted at prospective applicants from amongst those who are already residing in the local area and its immediate surroundings. The first objective for filling positions in regional Australia must be to offer employment to Australian citizens and permanent residents. Overseas migration should only be considered as a last resort and when all other options to attract Australian workers have been exhausted. Whilst strict LMT cannot be imposed, recruitment and advertising practices must nevertheless demonstrate this national approach for it to be credible, and for the need for the nominated position indeed to be demonstrably genuine.

5.4.2 Evidence

Where the RCB advice concludes that the nominated position can be filled by an Australian citizen or permanent resident, the departmental decision maker is likely to rely on this assessment in making their decision in regard to this criterion. It is important that the RCB advice provided is evidence-based and that the rationale for the advice is explained in the context of the evidence.

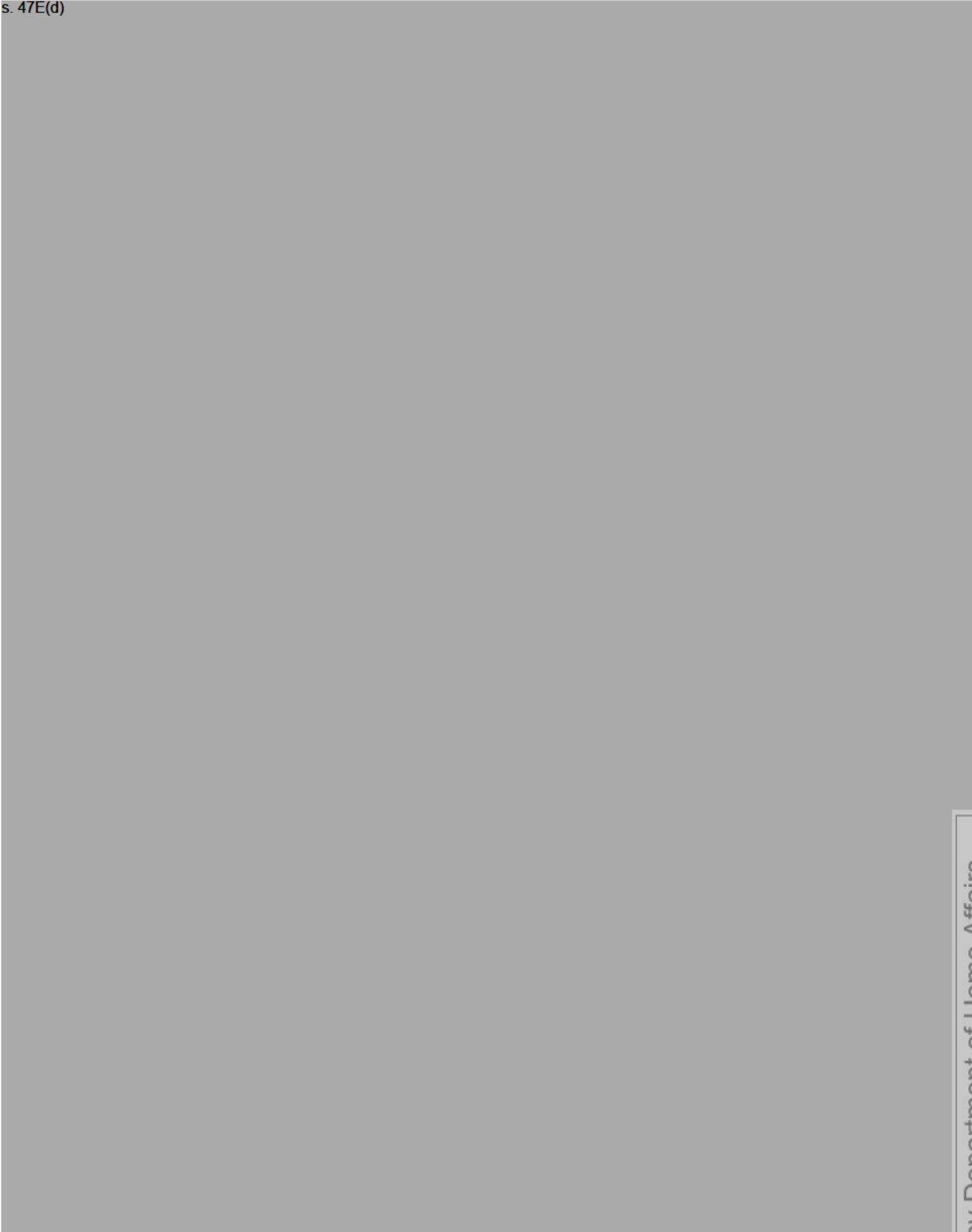
For example, where the nominated position is a hairdresser and the assessment is that the position can be filled following a wide ranging recruitment campaign, a simple statement to this effect will not be sufficient for departmental decision makers to substantiate a refusal. The assessment must provide specific evidence upon which the advice is based.

Also see below under 5.7 'Natural Justice'.

s. 47E(d)

Released by Department of Home Affairs
under the Freedom of Information Act 1982

s. 47E(d)



Released by Department of Home Affairs
under the *Freedom of Information Act 1982*

5.6 Requests for RCB assessment specifying incorrect RSMS stream

RCB officers should be alert to the fact that employers may submit a request for RCB assessment that specifies the RSMS Temporary Residence Transition (TRT) stream. This RSMS stream is for eligible workers who hold a Temporary Work (Skilled) subclass 457 visa or a Temporary Skill Shortage subclass 482 visa and who have worked for their nominating employer for a minimum of two years or three years. The TRT stream does not require RCB assessment and employers should not seek RCB advice where the nomination concerns the TRT stream. As you are aware, RCB assessment is only required for nomination applications made under the RSMS Direct Entry stream.

Situations may arise where a nominating business mistakenly submits a request for RCB assessment in cases where the employer nomination was in fact made under the TRT stream. Should RCBs notice that an employer's request for RCB assessment concerns a nomination made under the RSMS TRT stream, then they should contact the business and advise them that the RCB has no jurisdiction to assess and provide advice on TRT stream nominations.

However, if 457 or TSS temporary visa holders cannot meet the eligibility requirements for the TRT stream, then they can still apply for the RSMS visa, but they must apply under the Direct Entry stream. This means that in these cases, the employer nomination is to be assessed by the RCB as per the usual requirements.

Where a temporary 457 or TSS visa holder is nominated under the RSMS Direct Entry stream, RCBs must still require evidence of recruitment in order to assess that *"the position can be filled by an Australian citizen or an Australian permanent resident who is living in, or would move to, the local area concerned."* In order to comply with this assessment criterion, RCBs cannot waive the requirement to provide evidence of recruitment in these cases.

5.7 Natural Justice

When making their decision, the departmental decision maker will take into account the advice provided by the RCB. If the RCB advice is negative, and the RCB's reasons inform the departmental decision maker to refuse the application, then the departmental decision maker is legally required to extend 'Common Law Procedural Fairness' by requesting a response from the nominator on the reasons for the negative RCB advice. It is also for this reason that the evidence used by the RCB and the reasoning behind the conclusions it reached should be specified in the supplementary information to be provided with the RCB advice. If there are no integrity concerns, then this supplementary information should be shared with the nominator, so they have a clear sense of why the request for assessment did not obtain RCB support. Instead of only being told in Form 1404 that the RCB would not support the nomination, nominators must know the reasons for the negative advice so they can respond appropriately when requested to do so by the Department. Also see under item 6.2 'Reasons for negative advice'.

6. Submitting advice to the Department

6.1 Form 1404 and supplementary advice

Form 1404 is to be used to provide the RCB advice. Where RCBs prefer to use their own form, this must still include the details contained in Form 1404 and be approved for use by Home Affairs.

Form 1404 only has limited space to provide the reasons for the advice or further details in regard to the assessment. Where advice is provided using Form 1404 and further space is required, then these further details and reasons should be included in a separate document, here referred to as the 'supplementary advice'.

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From February 2019, RCBs are requested to include in the supplementary advice for both supported and unsupported nominations a list of the evidence RCB officers considered for each of the assessment criteria. That is, RCBs should reference the information that was considered when making the assessment, including the information submitted with the request for assessment and/or subsequently requested by the RCB officer to assist them in making their assessment. There is no requirement for the actual documents to be sent to the Department, as the intent is not to make a re-assessment of the RCB advice. However, knowledge of the type of information that was considered by the RCB will give decision makers insight in the credibility of the business case made by the nominator when seeking RCB advice and allow comparison with what the Department received with the lodged nomination.

RCBs must provide a hard copy or scanned version (in PDF) of Form 1404 (or the alternative approved RCB form) and any supporting documentation directly to the nominator or their agent for submission to the Department. They may also choose to provide a copy of the reasons for their advice to the nominator/agent in cases where the nomination is supported by the RCB (see below under item 6.2 for guidance where the nomination is not supported by the RCB).

RCBs must also provide a copy of Form 1404 and any supporting documentation to the Department. This information should be provided via email to s. 47E(d)

The assessment advice is to be emailed to the Department within three days of the copy of the assessment advice being provided to the nominator. Each advice must be sent in a separate email with the nominator's business name, name of the nominee and Transaction Reference Number (if known) in the email subject line. This will assist the Department to easily identify the nomination.

6.2 Reasons for negative advice

s. 47E(d)

6.3 Validity of the advice

Under policy, the RCB assessment must have been obtained no more than 3 months before the date the nomination is lodged. If the assessment is dated more than 3 months before the date the nomination is lodged, the departmental decision makers may require a fresh RCB assessment to be obtained. This is because labour market conditions may have changed sufficiently for new advice to be warranted.

Beyond this, one advice should be sufficient. If additional information comes to light that needs to be considered by the Department, then nominating employers can send the information to the relevant RCB for the RCB to forward it to the RCB Advice mailbox. The subject line of the covering email should again identify the nominator's business name, name of the nominee and Transaction Reference Number (if known) to ensure it can be matched with the earlier advice and passed to the relevant decision maker. It may be helpful to include a copy of the original advice, requesting that the additional information be read alongside it. If this information substantially changes the earlier advice, then the decision maker will take all matters into account when making their determination.

6.4 Records management

RCB work is undertaken by a number of distinct agencies: State and Territory government departments; local City Councils; Chambers of Commerce and Industry; and Regional Development Australia offices. As independent agencies, each will have their own protocols, practices and procedures for the storage and retrieval of corporate records. The legislated provisions under which RCBs fulfil their role for the Department (Migration Regulation 5.19(12)(f)) do not specify particular records management practices and the Department therefore does not impose a particular standard or requirement. However, RCBs are encouraged to preserve all Forms 1404 and associated documents used in the assessment of individual nomination requests for a minimum of three years, and keep them available for review.

Such a review can be prompted by nominators submitting multiple requests for assessment over a period of time for the same or similar positions. Previous requests from nominators can then be taken into account when assessing a recent request. s. 47E(d)

6.5 Freedom of Information

Nominators or their registered migration agents (RMAs) who are not satisfied with the RCB assessment may request RCBs to release their assessment process records (research methodology, notes, etc.) in order to review the reasoning behind the RCB advice. RMAs claim they can make such requests under Freedom of Information legislation (FOI), which is incorrect. The FOI Act applies when there is a Commonwealth Contract between a government department and an external service provider. This is not the case for RCBs who are not service providers in a contracted sense: there is no Commonwealth Contract between individual RCBs and the Department of Home Affairs which would (a) enliven a responsibility on the part of the RCB to hand over documents, or (b) enliven the Department's responsibilities under the FOI Act.

RCBs are agencies operating independently from the Department of Home Affairs and the Department has no jurisdiction over the internal working processes or documentary records of individual RCBs. Under legislation specified in Migration Regulation 5.19(12)(f), the requirement is that they only provide the Minister for Home Affairs with advice in relation to employer nominations. This is the advice detailed on Form 1404 and any supplementary pages, should there be a need to provide further reasoning for the advice. Since RCBs are not subject to FOI, you are therefore guided by your agency's internal protocols around the release of work-process records to external parties. It would be entirely on a voluntary basis that RCBs might decide to make any requested information available, whether to RMAs or to the Department. Equally, RCBs may choose to do nothing ("no correspondence will be entered into").

6.6 Merits review

Given the independent nature of the RCBs, nominators or RMAs cannot request or threaten to have the RCB advice appealed before the Administrative Appeals Tribunal (AAT). Only decisions on employer nominations made by a departmental decision maker can be appealed before the Administrative Appeals Tribunal (AAT). The AAT will review the merits of a case, taking all available information into account and either affirm the Department's decision, or remit the case back to the department with directions for reconsideration. It is in the context of such a broader 'merits review' that the AAT may also take local labour market conditions into account and take note of the advice provided by the RCB.

Nominators or RMAs who request RCB documentation for the purpose of an appeal with the AAT should be advised that the RCBs have neither jurisdiction nor obligations in this respect and nominators and RMAs should direct all their inquiries to the Department.

6.7 Stakeholder relations

Registered migration agents are not to make undue representations to RCBs in instances where the nominated position was considered 'not satisfied' by the RCB in their advice. While it is understandable that RMAs seek to represent their clients, there is a fine line between vigorously mediating on behalf of the nominating employer and pressuring RCB officers to form a view different from the assessment outcome they have reflected in their advice. The Department takes a dim view of RMAs pressuring RCB officers who are exercising their responsibilities under the Migration Regulations. The Department can counsel, or in serious cases sanction, RMAs for behaviour that in the view of the Department would overstep the mark. This would include RMAs persisting in making undue representations with RCB officers, and/or using language that can be interpreted as unduly criticising or pressuring, intimidating, harassing, threatening, or containing implied or overt attacks on the personal integrity of RCB officers, or seeking to undermine their authority to act on behalf of the Department when performing their mandated duties. This is only a list indicating the spectrum of possible forms of behaviours the Department would have serious concerns with.

Should you as RCB officers be subjected to RMAs making representations that concern you, please contact the [s. 47E\(d\)](#) mailbox with relevant details. The Department will remind RMAs of their Code of Conduct obligations and escalate the issue if necessary to the Office of the Migration Agents Registration Authority.

6.7.1 Requests for the RCB Manual

From time to time RCB officers may receive requests from RMAs asking for a copy of the RCB manual. Please note that the RCB manual is not a public document. Should you receive such requests, you can either advise the agent to send a request to the department's 'Agents Gateway' accessible via the departmental website (if the request is by telephone) or forward the email to us (if the request comes to you in writing).

7. Guide to specific occupations

7.1 Chefs, cooks and fast food cooks

This section is included because the occupations of cook and chef typically form a significant portion of the requests for assessment being received. The more detailed guidance provided in this section is also likely to be of value in assessing requests relating to other occupations.

This section provides guidance in assessing the need for the position nominated in the context of the activities of the nominating business.

The differentiation between the occupations of chefs and cooks is made based on two elements:

- the specific tasks of the nominated position
- the work environment.

7.1.1 Differentiation based on tasks

The role of a chef would generally relate to a restaurant environment and would include managerial tasks such as:

- planning menus
- estimating costs
- managing and monitoring stocks
- supervising preparation and presentation of food
- preparing a number of signature dishes
- demonstrating cooking techniques
- recruiting and training staff.

Fundamentally, the primary role of a cook is one of cooking, while that of a chef is managing the kitchen with some limited, specialised cooking tasks.

The basic premise is that the role of chef will only be required within an organisational structure where there is at least a cook who will be supervised by that chef. Where an organisation has only a single person performing the 'cooking' function, the relevant occupation is likely to be that of a cook.

In these circumstances, it is likely that the person will spend the majority of their time on cooking, rather than managerial tasks. Where the nominator submits that a stand-alone 'cooking' role within an establishment is that of a chef, the onus is on them to provide justification.

While the ANZSCO framework identifies some of the above tasks in relation to the occupation of cook, such tasks are likely to be performed at a lower level of skill. For example, where a chef may demonstrate how a particular dish is prepared for the benefit of cooks, a cook is likely to instruct a kitchen hand on hygiene and preparing ingredients.

7.1.2 Differentiation based on work environment

The environment in which the tasks are performed may be an indicator as to whether the occupation is actually that of a chef, cook or fast food cook.

The occupation of chef will generally relate to a restaurant environment. It is unlikely that the tasks relating to this occupation will need to be performed in an environment such as a take-away establishment or an

establishment operating in a food court. Establishments providing catering services may employ chefs, depending on the nature and size of their operations.

The occupation of cook may be relevant in the case of smaller restaurants and establishments providing take-away facilities or operating in food courts (casual dining outlets / limited service restaurants). Assessments will need to be made on a case-by-case basis in determining whether the tasks performed in the particular environment would require the skills of a cook or a fast food cook.

7.1.3 Work environments compared

Restaurant

A restaurant is defined as a food services establishment:

- that serves customers with food typically prepared by chefs
- that has table service and seating
- where service is generally for eating on premises
- that covers a diversity of styles of cuisine.

Categories of restaurants include:

- Family-style restaurants serve moderately priced food with fixed or a-la-carte menus. Table service is usually provided and customers sit at bench-style communal tables or share dishes amongst themselves.
- Casual dining restaurants / limited service restaurant serve moderately priced food in a casual atmosphere. These establishments typically offer table service or buffet-style dining.
- Fine dining restaurants are full service establishments with menus that generally feature high quality ingredients with elaborate preparation. Orders are individually prepared with attention to detail and artistically presented on the plate.

Casual dining outlet

Casual dining outlets / limited service restaurant serve are food outlets that are located in shopping strips and within food courts in shopping centres. Table service is not generally provided, though some outlets may have limited seating or shared seating with other outlets (in food courts).

Some such outlets offer food items from a pre-cooked display at their counters. The food served may be cooked on the premises or brought in from a different location where the food is cooked. The range of food offered is a factor that needs to be considered in assessing whether the preparation would involve the services of a cook, as well as who cooks the food offered and where it is cooked. Where the food sold at the outlet is purchased from a supplier, the business would not be able to substantiate the need for a cook.

Some casual dining outlets restaurants / limited service restaurant serve may have a menu offering food items that are cooked on the premises.

The range of food offered on the menu and the relative complexity of preparation of the food should be taken into account in assessing whether the services of a cook would be warranted.

Fast food outlets

Fast food outlets typically offer items that are simple and quick to prepare.

Typically, these outlets:

- operate in chains or as franchises
- are heavily advertised

- offer limited menus
- offer speed, convenience, and familiarity to diners who may eat in the outlet or take their food home
- prepare food according to a standardised format for distribution from a central location
- serve food in a packaged form (although some outlets may provide cutlery and crockery for customers dining in the establishment), and
- do not offer table service.

The food preparation work carried out in a fast food outlet would generally require the skills of a fast food cook, rather than a cook.

7.2 Child Care Group Leaders

The occupation of Child Care Group Leader is an eligible specialisation under the ANZSCO occupation of Child Care Worker (skill level 2).

A Child Care Group Leader normally manages a team of Child Care Workers and should also have first aid training. Many employers also require anaphylaxis (severe allergic reaction) training.

Usually there will be a small number of Child Care Group Leaders employed in each facility as they would be responsible for a 'room', usually based on age groups. A Child Care Group Leader would report to the Director/Manager (Child Care Coordinator) of the Centre.

Key responsibilities of a Child Care Group Leader would be to:

- plan programs based on children in care, including children with special needs
- plan and deliver programs based on physical, social, emotional and cognitive needs of children by implementing daily routines and duties that underpin planning, implementation and evaluation of quality play and learning experiences, including for children with special needs where relevant
- act as a role model and care giver involving children in a broad range of developmental programs
- observe and record children's behaviour and communicate their progress to management of the Centre and parents
- interact effectively with young children, displaying age appropriate expectations of their behaviour
- have overall responsibility for the children in the group, but delegate responsibility and tasks to assistants when appropriate or necessary
- facilitate every available learning opportunity for each child throughout the day
- supervise and support untrained staff, volunteers and students in the Centre
- ensure active, adequate and efficient supervision of children at all times.

7.3 Residential Care Officers

This section provides guidance in assessing the need for a position of Residential Care Officer.

Whilst RCBs are not required to assess the skill level of the position and relevant qualification requirements, RCBs should provide advice to the Department on whether the need for the position is genuine and necessary.

The following information is intended to assist in determining whether the nominating business requires a Residential Care Officer as opposed to that of an Aged or Disabled Carer. Particular scrutiny may be required where the nominator is an aged care facility not specifically accredited to provide disability services.

Residential Care Officers provide care and supervision for children or disabled persons in group housing or institutional care. The role of a Residential Care Officer is distinct from that of Aged Care workers, as they provide higher level services and care for individuals with a disability.

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Key responsibilities for a Residential Care Officer would be:

- assessing clients' needs and planning, developing and implementing educational, training and support programs
- interviewing clients and assessing the nature and extent of difficulties
- monitoring and reporting on the progress of clients
- referring clients to agencies that can provide additional help
- assessing community need and resources for health, welfare, housing, employment, training and other facilities and services
- liaising with community groups, welfare agencies, government bodies and private businesses about community issues and promoting awareness of community resources and services
- supporting families and providing education and care for children and disabled persons in adult service units, group housing and government institutions
- supervising offenders on probation and parole
- assisting young people to solve social, emotional and financial problems
- preparing submissions for funding and resources, and reports to government bodies.

It is evident that the above responsibilities are distinct from that of Aged or Disabled Carer, which are listed below:

- accompanying aged and disabled persons during daily activities
- assisting clients with their mobility
- preparing food for clients
- arranging social activities
- performing housekeeping tasks such as vacuuming and cleaning
- assisting in personal hygiene and dressing
- providing companionship, friendship and emotional support
- may do shopping and run errands
- may live in with the person.

RCBs may wish to request the following documentation from nominators to satisfy themselves that there is a genuine need for the position of Residential Care Officer:

- a structure chart of the organisation outlining where the applicant will be placed
- a job description/evidence of job advertising—where the job description/advertisement states that the position requires only an AQF Certificate II or III, this may not be an appropriate position to be classified under the occupation of Residential Care Officer
- evidence that the facility provides high level care services as opposed to only providing low level care

Note: Where a facility provides only low level care (low level care homes provide accommodation and some personal care, residents tend to live in their own flats and are generally independent) with no high level care provision (high level care facilities provide care for residents who have greater frailty and who often require continuous nursing care), there will not be a need for Residential Care Officer, therefore this occupation is not appropriate.

- a breakdown of tasks and the percentage of time the applicant will be spending on each task. It is accepted that in some remote regional areas some tasks in the position may be commensurate with those of Aged or Disabled Care, however these tasks should be considered infrequent and undertaken only where necessary. A majority of tasks in the position should be commensurate with the occupation of Residential Care Officer
- evidence that there are a number of individuals residing in the facility (full-time) who are under the age of 65 and have a disability. In remote rural areas it may be difficult for people under the age of 65 who have a disability to access appropriate institutional care and as such they may enter an aged care facility to

receive the care and supervision they need. It is expected that where a Residential Care Officer is required in a facility they will be primarily dealing with residents who are affected by a disability

Residential Care Officers are generally independent positions that do not require the person in the position to supervise staff (such as supervising aged care workers). These positions are also not generally considered to be positions requiring supervision by a registered nurse.

This, however, will depend on the structure of the organisation in which the position is being nominated (i.e. the type of facility), the number of staff within the facility and whether the duties in the position (such as supervising lower level staff) are commensurate with the role of Residential Care Officer in that place.

For example, where the facility provides evidence that the position, when previously occupied, included supervisory duties of lower-level staff alongside the appropriate tasks for Residential Care Officer, this position may still meet necessary requirements.

8 Contacting the Department

8.1 The RCB helpdesk

The Employer Sponsored Network Support section in the Department of Home Affairs can provide RCBs with assistance on policy and legislation-related enquiries.

If you have a policy or legislation-related question, you can seek help by sending an email to:

s. 47E(d)

8.2 General Enquiries

Employers and visa applicants can contact the Department in the following ways:

- contacting the General Enquiries Helpline on 13 18 81 (Monday to Friday 8:30am to 4:30pm)
- visit: <http://www.homeaffairs.gov.au/about/contact>.

8.3 Migration Agents

Migration agents must be registered with the Office of the Migration Agents Registration Authority (Office of the MARA) and are bound by a Code of Conduct to act in a professional and ethical manner. Migration agents who breach the Code of Conduct can be sanctioned by the Office of the MARA, which can include:

- cautions
- suspension of registration
- cancellation of registration.

The Code of Conduct covers a broad range of issues that include the requirement for migration agents to ensure their knowledge of migration legislation and processes are up-to-date.

If you believe that a migration agent is placing undue pressure on you to provide positive advice on a nomination, or if the migration agent does not appear capable or willing to understand the advisory process or role of a Regional Certifying Body, then you can report the migration agent to the Office of the MARA at <https://www.mara.gov.au>.

Further information about the complaints process for the Office of the MARA is available at:

<https://www.mara.gov.au/using-an-agent/resolving-disputes-with-your-agent/make-a-complaint-about-an->

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agent/. The full Code of Conduct document is available on the Office of the MARA website at:
https://www.mara.gov.au/media/553229/Code_of_Conduct_April_2017.pdf.

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Appendix A

The RSMS covers all of Australia except Brisbane, the Gold Coast, Newcastle, Sydney, Wollongong, Melbourne and Perth.

Eligible postcodes under RSMS

Australian Capital Territory	South Australia
Entire territory	Entire state
Norfolk Island	
Entire territory	
New South Wales (except Sydney, Newcastle and Wollongong)	Tasmania
2250 to 2251 – (Central Coast)	Entire state
2256 to 2263 – (Central Coast)	Victoria
2311 to 2312	(except Melbourne metropolitan area)
2328 to 2411	3211 to 3334
2420 to 2490	3340 to 3424
2536 to 2551	3430 to 4649
2575 to 2594	3658 to 3749
2618 to 2739	3753
2787 to 2898	3756
	3758
Northern Territory	3762
Entire territory	3764
	3778 to 3781
Queensland (except the greater Brisbane area and the Gold Coast)	3783
4124 to 4125	3797
4133	3799
4211	3816 to 3909
4270 to 4272	3921 to 3925
4275	3945 to 3974
4280	3979
4285	3981 to 3996
4287	
4307 to 4499	Western Australia
4515	(except Perth metropolitan area)
4517 to 4519	6041 to 6044
4522 to 4899	6083 to 6084
	6121 to 6126
	6200 to 6799

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