



Australian Government
Department of Home Affairs

**DESIGNATED AREA MIGRATION
AGREEMENT**

Between

**Commonwealth of Australia as represented by the
Minister for Immigration, Citizenship and Multicultural Affairs
(the Commonwealth)**

and

**The Cairns Chamber of Commerce Incorporated
(the Designated Area Representative)
in relation to Far North Queensland**

Table of Contents

| | | |
|------------|---------------------------------------------------------------------------|----|
| 1. | Definitions | 4 |
| 2. | Interpretation..... | 6 |
| 3. | Period..... | 8 |
| 4. | Purpose | 8 |
| 5. | Acknowledgements..... | 8 |
| 6. | Responsibilities of the Designated Area Representative | 9 |
| 7. | Responsibilities of the Commonwealth | 12 |
| 8. | Indemnity | 13 |
| 9. | Dispute Resolution..... | 13 |
| 10. | Access | 14 |
| 11. | Retention of Documents | 14 |
| 12. | Notices | 15 |
| 13. | Relationship Between Parties | 15 |
| 13. | Time For Doing Acts | 15 |
| 14. | Further Assurances, Variation | 16 |
| 15. | No Assignment, Subcontracting | 16 |
| 16. | Legal Expenses | 16 |
| 17. | Entire Agreement | 16 |
| 18. | Severability, Waiver | 17 |
| 19. | Conflict Of Interest | 17 |
| 20. | Termination..... | 17 |
| 21. | Pre-contractual warranty..... | 17 |
| 22. | Confidential Information | 17 |
| 23. | Governing Law and Jurisdiction..... | 18 |
| 24. | Counterparts..... | 18 |
| Schedule 1 | Particulars | 19 |
| Schedule 2 | Objectives of the Designated Area Migration Agreement..... | 20 |
| Schedule 3 | Occupations and Maximum Numbers | 21 |
| Schedule 4 | Occupations not in ANZSCO | 24 |
| Schedule 5 | Qualifications and Experience | 27 |
| Schedule 6 | Concession to the Temporary Skilled Migration Income Threshold (TSMIT) .. | 31 |
| Schedule 7 | Concession to English language requirement | 36 |
| Schedule 8 | Permanent Residence Pathway | 38 |
| Schedule 9 | Letter of Endorsement..... | 41 |

| | |
|------------------------------------------------------------|----|
| Schedule 9a Attachment A | 43 |
| Schedule 10 Support Services | 44 |
| Signing Page for Designated Area Migration Agreement | 45 |

Parties

The Commonwealth of Australia as represented by the Minister for Immigration, Citizenship and Multicultural Affairs (the "Commonwealth"). The Commonwealth's particulars are set out in **Item 1 of Schedule 1**.

AND

The Cairns Chamber of Commerce Incorporated ABN 25 045 708 264 (the Designated Area Representative). The Designated Area Representative's particulars are set out in **Item 2 of Schedule 1**.

Background

- A. This Agreement reflects the Commonwealth's intention to work with the Designated Area Representative to assist Australian businesses operating in the Designated Area to access workers from overseas to supplement the local labour force where acute skills and labour shortages exist.
- B. This Agreement sets out the process by which the Designated Area Representative and the Commonwealth will co-operate to facilitate Third Parties to enter into Labour Agreements for the purposes of accessing skilled and semi-skilled overseas workers in the Designated Area.
- C. Nothing in this Agreement affects each party's obligations under Law.

1. Definitions

In this Agreement:

Address means a party's address set out in **Item 1 and Item 2 of Schedule 1**.

Adverse Information has the same meaning as in the Migration Regulations.

Agreement or Designated Area Migration Agreement means this Agreement, its schedules and attachments and any documents incorporated by reference in this Agreement.

Annual Turnover means all ordinary gross income earned in the ordinary course of business for the income year.

ANZSCO has the same meaning as in the Migration Regulations.

Australian where the context so admits, means an Australian citizen (whether born in Australia or elsewhere) or a non-citizen who, being usually resident in Australia, is the holder of a permanent visa granted under the Migration Act.

Business Address means the physical or postal address for a party, as set out in **Item 1** and **Item 2** of **Schedule 1**.

Business Day means a day that is not a Saturday, Sunday, or public holiday in the Australian Capital Territory or Queensland.

Cease Date means the cease date specified in **Item 4** of **Schedule 1**.

Concessions means any variations to the requirements prescribed in the Migration Legislation including in relation to the occupation, skills, qualifications, employment background, level of English language proficiency and the Temporary Skilled Migration Income Threshold (TSMIT) required for the nomination and grant of a visa in relation to Overseas Workers in the Designated Area, as specified in **Schedules 4, 5, 6, 7 and 8** of this Agreement (or as otherwise specified by the Commonwealth). These Concessions may be included in a Labour Agreement associated with this Agreement.

Confidential Information means any information, documents and data that is:
(a) reasonably designated in any way as confidential; or
(b) which the recipient knows or ought to know is confidential,
that is provided by the Commonwealth or a Third Party to the Designated Area Representative.

Contact Officer means the officers referred to in **Item 1** and **Item 2** of **Schedule 1**.

Department means the Department of Home Affairs.

Departmental Representative means an officer of the Department appointed by the Department to manage the Department's interests under this Agreement.

Designated Area means the area defined in **Item 3** of **Schedule 1**.

Designated Area Representative or DAR means the party identified in **Item 2** of **Schedule 1**, and includes a reference to any replacement body.

Effective Date means the effective date specified in **Item 4** of **Schedule 1**.

Email Address means a party's email address set out in **Item 1** or **Item 2** of **Schedule 1** of this Agreement.

ENS visa means the Employer Nomination Scheme (subclass 186) visa.

Labour Agreement means a labour agreement entered into by the Minister and a Third Party under the Migration Legislation in relation to one or more Occupations and relevant Concessions in the Designated Area and may include requirements specified in **Schedules 4, 5, 6, 7 and 8** of this Agreement.

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law as applicable from time to time, including the Migration Legislation.

Maximum Numbers mean the maximum numbers of approved nominations for an Occupation in the Designated Area as specified in **Schedule 3**. This is also referred to as a 'nomination ceiling'.

Migration Act means the *Migration Act 1958*.

Migration Legislation means the Migration Act and/or the Migration Regulations and / or any instruments made under the Act or Regulations.

Migration Regulations means the *Migration Regulations 1994*.

Minister means a reference to a "Minister" appointed to administer the Department and includes where relevant, delegates performing relevant functions as the Minister under the Migration Legislation.

National Employment Standards has the same meaning as in the *Fair Work Act 2009*.

Objectives means the objectives of this Agreement as outlined in **Schedule 2**.

Occupations means those occupations prescribed in **Schedule 3**.

Overseas Worker means a person nominated by, or proposed to be nominated by, a Third Party under a Labour Agreement.

Support Services means the services stipulated in **Schedule 10**.

Third Party means a person, company, partnership or an unincorporated association which has:

- (a) applied to be endorsed and may be, or will be, or has been, endorsed by the Designated Area Representative under this Agreement; or
- (b) who is a party to a Labour Agreement (other than the Minister).

TSMIT means the Temporary Skilled Migration Income Threshold specified in an instrument made under the Migration Regulations.

TSS visa means the Temporary Skill Shortage (subclass 482) visa.

2. Interpretation

In this Agreement, unless the context indicates a contrary intention:

(documents) a reference to this Agreement or another document includes any document which varies, supplements, replaces, assigns or novates this Agreement or that other document.

(references) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Agreement.

(headings) clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this Agreement.

(person) a reference to a person includes a natural person, corporation, statutory corporation, body politic, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns.

(party) a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns.

(requirements) a requirement to do anything includes a requirement to cause that thing to be done, and a requirement not to do anything includes a requirement to prevent that thing being done.

(including) including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind.

(corresponding meanings) a word that is derived from a defined word has a corresponding meaning.

(singular) the singular includes the plural and vice-versa.

(gender) words importing one gender include all other genders.

(parts) a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation.

(rules of construction) neither this Agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

(legislation) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.

(time and date) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Australian Capital Territory, Australia, even if the obligation is performed elsewhere.

(writing) a reference to a notice, consent, request, approval or other communication under this Agreement or an agreement between the parties means a written notice, request, consent, approval or agreement.

(replacement bodies) a reference to a body (including an institute, association or any government, local government, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public authority or other person who exercises a relevant authority) which ceases to exist or whose powers or functions are

transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.

(day) a reference to a day is a reference to a calendar day.

(month) a reference to a month is a reference to a calendar month.

3. Period

3.1 This Agreement commences on the Effective Date.

3.2 Unless terminated earlier in accordance with clause 20, the period of this Agreement ends on the Cease Date.

4. Purpose

4.1 The purpose of this Agreement is to:

- (a) achieve the Objectives;
- (b) outline the roles and responsibilities of the Designated Area Representative and the Commonwealth in achieving the Objectives; and
- (c) set out the arrangements for the Designated Area Representative to assist the Commonwealth in administrative arrangements for processing applications for Labour Agreements and visas in the Designated Area, and monitoring of, and reporting on labour market conditions in the Designated Area.

5. Acknowledgements

5.1 The parties acknowledge that:

- (a) the Commonwealth may, by notice in writing, at any time:
 - (i) amend or update the Objectives, Occupations, Maximum Numbers, Concessions and Support Services for the purposes of this Agreement; or
 - (ii) amend, update or replace any other content in Schedules 2 to 10 of this Agreement;
- (b) this Agreement is not a Labour Agreement;
- (c) this Agreement does not have the effect of making the Designated Area Representative an approved sponsor (within the meaning of the Migration Legislation); and

(d) nothing in this Agreement fetters or detracts from the discretions, functions or powers of the Minister and the Commonwealth under Law, including in determining:

- (i) whether to enter into, suspend or terminate a Labour Agreement with a Third Party;
- (ii) the content of a Labour Agreement; or
- (iii) whether to grant or cancel any visa.

6. Responsibilities of the Designated Area Representative

Collaboration

6.1 The Designated Area Representative will work collaboratively with the Commonwealth to achieve the Objectives.

Managing the endorsement process

6.2 The Designated Area Representative is responsible for endorsing a Third Party seeking access to a Labour Agreement associated with this Agreement.

6.3 In endorsing Third Parties, the Designated Area Representative will ensure that risks are appropriately managed, including ensuring:

- (a) it treats all Third Parties impartially;
- (b) it only endorses Third Parties seeking to enter into a Labour Agreement for the Occupations and Concessions;
- (c) that Third Parties are aware of relevant requirements and obligations under the Migration Legislation;
- (d) it only endorses Third Parties that meet Australian workplace and migration Laws;
- (e) the Third Parties it endorses are aware of and capable of meeting migration requirements, including providing reports as necessary to meet auditing and Departmental requirements; and
- (f) Third Parties seeking to sponsor Overseas Workers for visas with Concessions will only be endorsed by the Designated Area Representative where the Designated Area Representative is satisfied that the Concessions will not undermine the ability of the Overseas Worker to support themselves financially, or lead to exploitation of the Overseas Worker.

6.4 The Designated Area Representative may only endorse Third Parties for a Labour Agreement:

- (a) for the Occupations and with the Concessions; and

- (b) up to the Maximum Number.
- 6.5 If the Designated Area Representative endorses a Third Party to enter into a Labour Agreement then the Designated Area Representative must submit to the Commonwealth a letter of endorsement, in the form specified in Schedule 9, or such other form as is specified by the Commonwealth.
- 6.6 The endorsement provided by the Designated Area Representative must:
- (a) specify that the letter of endorsement is submitted under this Agreement;
 - (b) detail the Third Party's name, including any business name, business and postal address or email, and Australian Business Number;
 - (c) attest that the Third Party has genuinely sought to recruit, within the period specified by the Commonwealth, Australians to the requested Occupations in the Designated Area;
 - (d) attest that the Designated Area Representative has monitored the labour market;
 - (e) attest that the number of prospective Overseas Workers being requested by the Third Party to be engaged in the Designated Area in the Occupations and with the proposed Concessions (if any), are reasonable with regard to the current labour market conditions in those locations;
 - (f) attest that endorsement supports the Objectives;
 - (g) attach the application and any supporting information provided to the Designated Area Representative by the Third Party in seeking endorsement; and
 - (h) be signed on behalf of the Designated Area Representative by a person who is authorised to represent and bind the Designated Area Representative.
- 6.7 The Designated Area Representative must not endorse a Third Party if:
- (a) it reasonably believes the number of prospective Overseas Workers being requested by the Third Party to be engaged in certain locations and Occupations is not appropriate with regard to the current labour market conditions in those locations; or
 - (b) the Third Party has not genuinely sought to recruit, within the period specified by the Commonwealth, Australians to the requested Occupations in the Designated Area; or
 - (c) any Adverse Information is known, or should reasonably be known about the Third Party.
- 6.8 The Designated Area Representative is responsible for putting in place any measures it considers necessary to enable compliance by the Designated Area Representative with its obligations under clauses 6.2 to 6.7, and the monitoring, support, reporting and

evaluation activities referred to in clauses 6.10 to 6.16, including, if necessary, entering into any binding undertakings or agreements with Third Parties.

- 6.9 The Designated Area Representative will provide reasonable assistance to the Commonwealth to support its assessment of applications for nominations or visa applications connected with a Labour Agreement as specified in Schedule 10 of this Agreement or as otherwise agreed between the parties.

Monitoring

- 6.10 The Designated Area Representative must take all reasonable steps to:

- (a) monitor the labour market and the impact of government initiatives designed to assist unemployed, retrenched or disadvantaged Australians;
- (b) ensure that Third Parties give first preference to Australians for a requested Occupation within the Designated Area before seeking to recruit, employ or engage Overseas Workers under a Labour Agreement associated with this Agreement; and
- (c) identify any facts or circumstances that may be a breach of Law by a Third Party and report these to the relevant Commonwealth, State or Territory regulatory or enforcement bodies.

Supporting employers and visa holders

- 6.11 The Designated Area Representative will provide the Support Services in the Designated Area as specified in Schedules 5 and 10 of this Agreement.

Reporting

- 6.12 The Designated Area Representative agrees to attend management meetings as requested by the Commonwealth.
- 6.13 The management meeting may be attended in-person, via teleconference or via videoconference.
- 6.14 The Designated Area Representative agrees to report in writing on the progress of this Agreement and the current labour market in the Designated Area (including the use of Overseas Workers to supplement the local labour force):
- (a) annually on the anniversary of the Effective Date; and
 - (b) within 14 days when requested in writing by the Commonwealth.
- 6.15 Reporting should cover the matters requested by the Commonwealth.

Evaluation

- 6.16 The Designated Area Representative must provide a written evaluation to the Commonwealth within three (3) months following the first anniversary of this Agreement, and within three (3) months of each subsequent anniversary of the Agreement. The evaluation must include:
- (a) progress of the Agreement in meeting the Objectives, including the Designated Area Representative's assessment of whether there remains an ongoing labour market need for Overseas Workers in the Designated Area;
 - (b) details of any significant economic or social changes to the Designated Area that has impacted on the need for Overseas Workers to supplement the local labour force in the Designated Area;
 - (c) an assessment of changes in the employment of Australians and non-Australians in the Designated Area;
 - (d) evidence that the Designated Area Representative has been providing the Support Services during the relevant period; and
 - (e) other information as requested by the Commonwealth.

Use of reports and evaluations

- 6.17 The Designated Area Representative agrees that the Commonwealth may use, copy, reproduce, adapt, modify and communicate any reports and evaluation material provided by the Designated Area Representative under this Agreement for any purpose, and warrants that the exercise of these rights by the Commonwealth as contemplated in this clause will not infringe the intellectual property or moral rights of any person.

7. Responsibilities of the Commonwealth

Consideration of Third Party Request for a Labour Agreement

- 7.1 The Commonwealth will consider a Third Party's request to enter into a Labour Agreement on receipt of a letter of endorsement provided by the Designated Area Representative and may refer the request to the Minister for consideration.
- 7.2 If the Minister approves the Third Party's request for a Labour Agreement, the Minister may enter into a Labour Agreement with the Third Party in accordance with the Migration Legislation.
- 7.3 The Commonwealth will, subject to any confidentiality obligations in a Labour Agreement, provide the Designated Area Representative with a copy of any Labour Agreement entered into by the Minister and the Third Party.

- 7.4 If the Minister does not approve the Third Party's request to enter into a Labour Agreement, the Commonwealth will notify the Third Party and the Designated Area Representative of this decision.

Management and monitoring

- 7.5 The Commonwealth will manage the Designated Area Migration Deed of Agreement with regard to the Objectives.
- 7.6 The Commonwealth will monitor the Designated Area Representative's compliance with the terms of this Agreement.

8. Indemnity

- 8.1 The Designated Area Representative indemnifies the Commonwealth from and against any cost or liability incurred by the Commonwealth, or loss or expense incurred by the Commonwealth in dealing with any claim against it, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Commonwealth, arising from a breach by the Designated Area Representative of this Agreement.
- 8.2 The right of the Commonwealth to be indemnified under this clause 8 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.
- 8.3 The provisions of this clause 8 survive termination or expiration of this Agreement.

9. Dispute Resolution

- 9.1 The parties will deal with any dispute arising during the course of this Agreement as follows:
- (a) the party claiming that there is a dispute must notify the other party of the dispute;
 - (b) the parties will use reasonable endeavours to resolve the dispute by direct negotiation between the Contact Officers;
 - (c) if negotiations between the Contact Officers fail to resolve the dispute, the matter can be escalated to an appropriate level to ensure prompt resolution of the matter in a manner consistent with good administration.
- 9.2 Both parties will continue to meet their obligations under this Agreement until the dispute or issue is resolved or as otherwise notified by the Commonwealth.
- 9.3 If the dispute or issue is not resolved after the dispute resolution process in this clause 9 has been implemented, then either one of the parties may terminate this Agreement.

10. Access

10.1 The Designated Area Representative acknowledges that:

- (a) The rights of the Commonwealth under this Agreement are in addition to any relevant power, right or entitlement of the Auditor-General or the Australian Information Commissioner; and
- (b) Nothing in this Agreement reduces, limits, restricts or derogates from in any way any relevant function, power, right or entitlement of the Auditor-General or the Australian Information Commissioner.

10.2 The Designated Area Representative must allow the Commonwealth or its nominee access to the Designated Area Representative's premises, personnel, documents and other records, and all assistance reasonably requested, at all reasonable times to inspect and copy all relevant documentation and records, however stored, in the Designated Area Representative's possession or control, with respect to the Designated Area Representative's performance of its obligations under this Agreement.

10.3 The Commonwealth's rights in clause 10.2 are subject to:

- (a) the provision of reasonable prior notice to the Designated Area Representative;
- (b) compliance with the Designated Area Representative's reasonable security procedures;
- (c) each party bearing its own cost arising out of or in connection with any access, audit or inspection; and
- (d) if requested by the Designated Area Representative, entering into a deed of confidentiality relating to non-disclosure of the Designated Area Representative's confidential information in a form reasonably acceptable to the Designated Area Representative.

10.4 The Designated Area Representative must provide any relevant information as requested by the Commonwealth from time to time, within 14 days of the Commonwealth's request, with respect to the Designated Area Representative's performance of its obligations under this Agreement.

10.5 This clause 10 will survive for seven (7) years from the date of expiration or termination of this Agreement.

11. Retention of Documents

11.1 The Designated Area Representative must retain all documents relating to this Agreement for a minimum of 7 years from the expiration or termination of this Agreement.

12. Notices

12.1 Any notice, demand, consent or other communication given or made under this Agreement must be signed by the party giving or making it (or signed on behalf of that party by its authorised representative) except in the case of an email; and

- (a) left at, or sent by ordinary or pre-paid post to, the Business Address of the recipient; or
- (b) sent to the Email Address of the recipient.

12.2 A party may change its Business Address or Email Address for the purpose of service by giving notice of that change to the other party in accordance with this clause 12.

12.3 Any communication will be taken to be received by the recipient:

- (a) in the case of a letter, on the third Business Day after the date of posting;
- (b) in the case of an email, at the end of the day in which it is transmitted, providing the sender does not receive an email delivery failure notification in respect of the email.

13. Relationship Between Parties

13.1 Nothing in this Agreement:

- (a) constitutes a partnership between the parties; or
- (b) except as expressly provided, makes a party an agent of another party for any purpose.

13.2 A party cannot in any way or for any purpose:

- (a) bind another party; or
- (b) contract in the name of another party.

13.3 If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

13. Time For Doing Acts

13.1 If the time for doing any act or thing required to be done or a notice period specified in this Agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

13.2 If any act or thing required to be done is done after 5.00pm on the specified day, it is taken to have been done on the following Business Day.

14. Further Assurances, Variation

- 14.1 Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Agreement.
- 14.2 Unless otherwise specified in this Agreement, a provision of this Agreement can only be varied by a later written document executed by or on behalf of all parties.

15. No Assignment, Subcontracting

- 15.1 The Designated Area Representative cannot assign its rights under this Agreement without the prior written consent of the Commonwealth. The Commonwealth may impose conditions on any consent provided under this clause 15.1.
- 15.2 The Designated Area Representative must not, except with the Commonwealth's prior written approval, subcontract the whole or part of the Designated Area Representative obligations under this Agreement.
- 15.3 The Designated Area Representative must notify the Commonwealth if functions and powers relevant to this Agreement are transferred (or are to be transferred) to another government agency body (a replacement body) as a result of any administrative rearrangement or machinery of government change.

16. Legal Expenses

- 16.1 Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Agreement.

17. Entire Agreement

- 17.1 The contents of this Agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this Agreement, whether orally or in writing.
- 17.2 If there is any inconsistency between the terms of this Agreement, a descending order of precedence will be accorded to:
 - (a) the terms of this Agreement excluding schedules and attachments annexed to the Agreement;
 - (b) the schedules to the Agreement;
 - (c) any attachments annexed to the Agreement; and
 - (d) any documents incorporated by reference into this Agreement,

so that the terms of the higher ranked document, to the extent of the inconsistency, will prevail.

18. Severability, Waiver

- 18.1 If any provision of this Agreement is held to be unlawful, invalid, unenforceable or in conflict with any Law, it is to be severed so that the validity and enforceability of the remaining provisions are not affected.
- 18.2 A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delays by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

19. Conflict Of Interest

- 19.1 Each party warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement no conflict of interest exists or is likely to arise under this Agreement.
- 19.2 If, during the period of this Agreement, a party becomes aware of a conflict of interest or a risk of conflict of interest arising, each party undertakes to notify the other party immediately in writing of that conflict or risk.

20. Termination

- 20.1 Either party may, in its discretion, terminate this Agreement at any time for any reason by giving 28 days' written notice to the other party.
- 20.2 The Designated Area Representative is not entitled to any compensation or payments as a result of the Commonwealth terminating this Agreement under this clause 20.

21. Pre-contractual warranty

- 21.1 The Designated Area Representative warrants that information supplied to the Commonwealth with respect to the Designated Area Representative being a fit and proper person to enter into this Agreement, and upon which the Department relied, is true and correct.

22. Confidential Information

- 22.1 The Designated Area Representative agrees to use the Confidential Information only as is legitimate and necessary for the purpose of this Agreement.
- 22.2 The Designated Area Representative agrees to secure all Confidential Information against loss and unauthorised access, use, modification or disclosure.
- 22.3 The Designated Area Representative agrees to implement security procedures to ensure that it meets its obligations under this Agreement.

- 22.4 The Designated Area Representative will not, without the prior written authorisation of the Commonwealth, disclose any Confidential Information to any person, other than its officers, employees and contractors who require access for the purpose of this Agreement, unless the disclosure is required by law.
- 22.5 An authorisation provided by the Commonwealth under clause 22.4 may include conditions on the disclosure and the Designated Area Representative must comply with any such conditions.
- 22.6 Where the Designated Area Representative is required to disclose the Confidential Information, it must:
- (a) use its best endeavours to notify the Commonwealth prior to disclosing the Confidential Information;
 - (b) provide the Commonwealth full details of the relevant legal requirement and information to be disclosed; and
 - (c) take any reasonable action requested by, and reasonably cooperate with any action taken by, the Commonwealth to challenge, prevent or limit such disclosure.
- 22.7 The Designated Area Representative agrees to notify the Commonwealth immediately if it becomes aware of a breach or possible breach of any of its obligations under applicable privacy laws.
- 22.8 The Designated Area Representative agrees to notify the Commonwealth immediately, and provide full details, if it becomes aware or reasonably suspect that:
- (a) Confidential Information has, or might have been, accessed, used, modified or disclosed in any way other than as permitted under this Agreement; or
 - (b) there has been any other breach of this Agreement.
- 22.9 The provisions of this clause 22 survive termination or expiration of this Agreement.

23. Governing Law and Jurisdiction

- 23.1 ~~The laws applicable in the Australian Capital Territory govern this Agreement.~~
- 23.2 The parties submit to the non-exclusive jurisdiction of the courts of Australian Capital Territory and any courts competent to hear appeals from those courts.

24. Counterparts

- 24.1 This Agreement may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

Schedule 1 Particulars

Item 1 Commonwealth Particulars

Name: Department of Home Affairs
Address: 6 Chan St, Belconnen ACT 2617
Telephone Number: s. 22(1)(a)(ii)
Email address: s. 47E(d)
Contact Officer: Director, Employer Sponsored Program Management Section

Item 2 Designated Area Representative Particulars

Name: The Cairns Chamber of Commerce Incorporated
ABN: 25045708264

Business Address: Suite M2a, Mezzanine Level
The Pier, Pierpont Road
CAIRNS QLD 4870

Postal Address: PO BOX 2336
CAIRNS QLD 4870

Telephone Number: (07) 4031 1838

Email Address: ceo@cairnschamber.com.au

Contact Officer: Debbie-Anne Bender, Chief Executive Officer

Item 3 Designated Area

The Designated Area covered by this Agreement: Far North QLD (FNQ) Region comprising the QLD Local Government Areas of Cairns, Cassowary Coast, Douglas, Mareeba and Tablelands. Specifically this includes the following postcode ranges;

| | |
|-----------|-----------|
| 4852 | 4868-4873 |
| 4854-4856 | 4878-4883 |
| 4858-4861 | 4885-4886 |
| 4865 | |

Item 4 Commencement and period

Effective Date: The date on which this Agreement is signed by the parties, or if signed on separate days, the date of the last signing.

Cease Date: Five years from the Effective Date.

Schedule 2 Objectives of the Designated Area Migration Agreement

The objectives of the Agreement are to complement existing Australian Government initiatives to address skills and labour shortages by:

- 1) Providing the Designated Area with a flexible mechanism to address workforce shortages and support workforce planning.
- 2) Enabling employers in the Designated Area, who are unable to recruit appropriately qualified Australians, to supplement their workforce with overseas workers.
- 3) To support the expansion of the Designated Area economy through jobs growth.
- 4) Ensuring that Overseas Workers sponsored through Labour Agreements receive terms and conditions that meet applicable Australian workplace law and are no less favourable than those provided to Australian workers.
- 5) Promoting the training of Australians by employers entering into a Labour Agreement.

Schedule 3 Occupations and Maximum Numbers

Item 3.1 Maximum number of approved nominations

| | |
|--------|--------------------------------------------|
| Year 1 | 200 approved nominations for TSS/ENS visas |
| Year 2 | to be advised following annual review |
| Year 3 | to be advised following annual review |
| Year 4 | to be advised following annual review |
| Year 5 | to be advised following annual review |

The following occupations are approved under this Agreement.

Table 1: Occupation List

| ANZSCO or 6 digit Code | Occupation | ANZSCO Skill Level |
|------------------------|------------------------------------------------------|--------------------|
| 141999 | Accommodation and Hospitality Managers (nec) | 2 |
| 551111 | Accounts clerk | 4 |
| 231111 | Aeroplane Pilot | 1 |
| 423111 | Aged or disabled carer | 4 |
| 721111 | Agricultural and horticultural mobile plant operator | 4 |
| 311111 | Agricultural Technician | 2 |
| 231199 | Air Transport Professionals (nec) | 1 |
| 323111 | Aircraft Maintenance Engineer (Avionics) | 3 |
| 323112 | Aircraft Maintenance Engineer (Mechanical) | 3 |
| 323113 | Aircraft Maintenance Engineer (Structures) | 3 |
| 362212 | Arborist | 3 |
| 399111 | Boat Builder and Repairer | 3 |
| 312112 | Building Associate | 2 |
| 351211 | Butcher or smallgoods maker | 3 |
| 342411 | Cabler (Data and Telecommunications) | 3 |
| 141111 | Cafe or Restaurant Manager | 2 |
| 399512 | Camera Operator (Film, Television or Video) | 3 |
| 731212 | Charter and Tour Bus Driver | 4 |
| 351311 | Chef | 2 |
| 134111 | Child Care Centre Manager | 1 |
| 421111 | Child Care Worker | 4 |
| 411711 | Community Worker | 2 |
| 149311 | Conference and Event Organiser | 2 |
| 234311 | Conservation Officer | 1 |
| 351411 | Cook | 3 |
| 272199 | Counsellors (nec) | 1 |
| 121299 | Crop Farmers (nec) | 1 |
| 149212 | Customer Service Manager | 2 |

| ANZSCO or 6 digit Code | Occupation | ANZSCO Skill Level |
|------------------------|---------------------------------------------------|--------------------|
| 121313 | Dairy Cattle Farmer | 1 |
| 899211 | Deck hand | 4 |
| 423211 | Dental assistant | 4 |
| 411211 | Dental Hygienist | 2 |
| 321212 | Diesel Motor Mechanic | 3 |
| 411712 | Disabilities Services Officer | 2 |
| 399911 | Diver | 3 |
| 452311 | Diving Instructor (Open Water) | 3 |
| 272112 | Drug and Alcohol Counsellor | 1 |
| 342314 | Electronic Instrument Trades Worker (General) | 3 |
| 411411 | Enrolled Nurse | 2 |
| 411713 | Family Support Worker | 2 |
| 070499 | Farm Inspector | 3 |
| 070499 | Farm Supervisor | 3 |
| 212314 | Film and Video Editor | 1 |
| 323213 | Fitter-Welder | 3 |
| 231113 | Flying Instructor | 1 |
| 121213 | Fruit or Nut Grower | 1 |
| 134299 | Health and Welfare Services Managers (nec) | 1 |
| 231114 | Helicopter Pilot | 1 |
| 141311 | Hotel or Motel Manager | 2 |
| 431411 | Hotel service manager | 3 |
| 313199 | ICT Support Technicians (nec) | 2 |
| 234516 | Marine Biologist | 1 |
| 323299 | Metal Fitters and Machinists (nec) | 3 |
| 321211 | Motor Mechanic (General) | 3 |
| 321213 | Motorcycle Mechanic | 3 |
| 423312 | Nursing support worker | 4 |
| 251312 | Occupational Health and Safety Adviser | 1 |
| 311399 | Primary Products Inspectors (nec) | 2 |
| 612112 | Property Manager | 3 |
| 070499 | Restaurant Supervisor | 3 |
| 231212 | Ship's Engineer | 1 |
| 321214 | Small Engine Mechanic | 3 |
| 249311 | Teacher of English to Speakers of Other Languages | 1 |
| 342412 | Telecommunications Cable Jointer | 3 |
| 451412 | Tour guide | 4 |
| 451799 | Travel Attendants (nec) | 3 |
| 451612 | Travel Consultant | 4 |
| 361311 | Veterinary Nurse | 3 |

| ANZSCO or 6 digit Code | Occupation | ANZSCO Skill Level |
|------------------------|------------------------------|--------------------|
| 242211 | Vocational Education Teacher | 1 |
| 411716 | Youth Worker | 2 |

Item 3.2 Caveats not to apply

None of the matters specified in an instrument made under sub regulation 2.72(9) of the Migration Regulations, for the purpose of determining whether an occupation applies to a nominee, (called 'caveats' in Departmental policy instructions) applies to any occupation specified in this Agreement.

Schedule 4 Occupations not in ANZSCO

The parties agree to the inclusion of the following occupations, not listed in ANZSCO, in this Agreement. For the purposes of nomination application and assessment, the tasks and relevant 6-digit codes for these occupations are outlined below:

Occupation: Farm Inspector (Equivalent to ANZSCO Skill Level 3)

6-digit Code: 070499

Reports to: Farmer/Farm Manager

Position Description: The role of Farm Inspector is to inspect livestock, plants and agricultural produce to ensure healthy production compliance with industry and government standards with respect to quarantine, quality, food safety and licensing.

Tasks:

- Inspection of livestock, plantation, fruit and machinery with compliance to quarantine and food safety regulations
- Monitoring and checking effectiveness of farming operations to maintain crop/livestock health and growth
- Maintaining knowledge of pests and diseases relevant to crops and livestock
- Inspect produce for quality, size and purity - identifying produce that is of substandard quality
- Identify faults in produce quality to determine causes of defects and make recommendations implementing procedures to rectify.
- Checking final produce to ensure meets the required industry standards.
- Inspects equipment in packaging facility to ensure proper functioning and is clean and operational.
- Training and supervising farm hands in grading produce to ensure industry and government standards
- Ensuring that required standards of hygiene are observed at storage, processing and packing facilities
- Ensure and enforce compliance with government regulations and health and safety standards.

Skills, qualifications and experience: The skills, qualifications and experience for the occupation of Farm Inspector are as per Schedule 5 of this Agreement.

Occupation: Farm Supervisor (Equivalent to ANZSCO Skill Level 3)

6-digit Code: 070499

Reports to: Farmer/Farm Manager

Position Description: The role of Farm Supervisor is to oversee and supervise farm operations such as; livestock management, crop cultivation, fruit and vegetable production and other agricultural enterprises. The Farm Supervisor is responsible for supervising farm hands; therefore leadership skills are highly beneficial.

Tasks:

- Recruit, train and supervise farm workers – coordinate and direct their activities
- Supervise a wide range of farm operations including cultivation, sowing, spraying and harvesting
- Ensures deadlines are met for activities such as seeding and harvesting
- Confers with managers to coordinate activities with other farm units
- Monitoring staff rosters, hours, performance and resolving and grievances
- Organises transportation for livestock and crops
- Oversees the work of farming units and suggests improvements and changes
- Inspect farm buildings and equipment, ensuring routine maintenance is carried out and repairs are made when necessary
- Installation, maintenance and regular monitoring of irrigation system.
- Ensure and enforce compliance with government regulations and health and safety standards

Skills, qualifications and experience: The skills, qualifications and experience for the occupation of Farm Supervisor are as per **Schedule 5** of this Agreement.

Occupation: Restaurant Supervisor (Equivalent to ANZSCO Skill Level 3)

6-digit Code: 070499

Reports to: Restaurant Manager

Position Description: The role of Restaurant Supervisor is to supervise, coordinate and train food and beverage staff and ensure a high level of customer service is delivered to guests.

Tasks:

- Supervision, training and coordination of food and beverage employees
- Holding keys for the security of gaming, bar and bottle shop areas
- Entry/supervision of entries in accounting records required to be kept and maintained under the relevant industry standards
- Responsibility for gaming conduct and internal parts of machines
- Attendance/operation of a gaming machine terminal
- Arranging of remedial repairs to gaming equipment
- Confers with managers to coordinate activities with other establishment sections
- Preparing displays and presenting stock, including specials
- Organizing the cleaning bar areas, glasses and equipment
- Preparing and mixing a range of sophisticated drinks
- Taking reservations, greeting and seating guests
- Maintain stock control
- Practicing proper workplace health and safety procedures
- Communicate effectively with customers and fellow staff
- Monitoring staff rosters, performance and resolving and grievances
- Respond to customer requests in a professional and timely manner
- Promote the employer's services and facilities to customers when appropriate
- Assist in maintaining customer service standards set by the employer
- Ensure the work area complies with the highest standards of cleanliness
- Ensure that customers are served in a professional and diligent manner

- Other incidental and peripheral duties as requested by the employer

Skills, qualifications and experience: The skills, qualifications and experience for the occupation of Restaurant Supervisor are as per **Schedule 5** of this Agreement

Schedule 5 Qualifications and Experience

The following skills, qualifications, experience and employment background requirements apply to the occupations listed in the tables below in relation to TSS visas and, where eligible under the permanent residence pathway, ENS visas.

Item 5.1 Occupations with no skills, qualifications or post-qualification work experience concessions (ANZSCO Skill Level 1-3)

For the occupations specified in Tables 2 to 5, the following skills, qualifications, experience and employment background criteria will apply to any nomination for these occupations or any application for a TSS or ENS visa made under the Migration Legislation.

Skills Assessment

Qualifications are to be assessed by the relevant Skills Assessing Authority (as specified in the Labour Agreement) as being at least equivalent to the relevant Australian Qualifications Framework (AQF) qualification detailed for the relevant tables below, in order to assist the Minister's decision as to whether the visa applicant has the necessary qualifications for the position.

The Minister may require a person to demonstrate that he or she has the skills that are necessary to perform the tasks of the nominated occupation by undertaking a skills assessment conducted by an independent Skills Assessing Authority (as specified in the Labour Agreement). Any skills assessment must be certified as being in accordance with the arrangements agreed to in writing with the Commonwealth prior to the first Labour Agreement being entered into. A skills assessment is required for applications lodged for the occupations listed in Tables 2 to 5.

Work experience must be certified by the DAR as being genuine and relevant to the nominated occupation/position, in order to assist the Minister's decision as to whether the visa applicant has the necessary employment background for the position.

ANZSCO Skill Level 1 - 3 Occupations

The occupations outlined in Table 2 must meet the following requirements:

1. A visa applicant must undergo a skills assessment by the relevant Skills Assessing Authority (as specified in the Labour Agreement), and
2. Meet the skill level requirements as defined in ANZSCO, and
3. Have at least two years post qualification experience (38 plus hours per week)

Table 2: Occupations with no skills, qualifications or post-qualification work experience concessions (ANZSCO Skill Level 1-3 Occupations)

| ANZSCO or 6 digit Code | Occupation | ANZSCO Skill Level |
|------------------------|----------------------------------------------|--------------------|
| 141999 | Accommodation and Hospitality Managers (nec) | 2 |
| 231111 | Aeroplane Pilot | 1 |
| 311111 | Agricultural Technician | 2 |
| 231199 | Air Transport Professionals (nec) | 1 |

| ANZSCO or 6 digit Code | Occupation | ANZSCO Skill Level |
|------------------------|-----------------------------------------------|--------------------|
| 323111 | Aircraft Maintenance Engineer (Avionics) | 3 |
| 323112 | Aircraft Maintenance Engineer (Mechanical) | 3 |
| 323113 | Aircraft Maintenance Engineer (Structures) | 3 |
| 362212 | Arborist | 3 |
| 399111 | Boat Builder and Repairer | 3 |
| 312112 | Building Associate | 2 |
| 351211 | Butcher or smallgoods maker | 3 |
| 342411 | Cabler (Data and Telecommunications) | 3 |
| 141111 | Cafe or Restaurant Manager | 2 |
| 399512 | Camera Operator (Film, Television or Video) | 3 |
| 351311 | Chef | 2 |
| 134111 | Child Care Centre Manager | 1 |
| 411711 | Community Worker | 2 |
| 149311 | Conference and Event Organiser | 2 |
| 234311 | Conservation Officer | 1 |
| 351411 | Cook | 3 |
| 272199 | Counsellors (nec) | 1 |
| 121299 | Crop Farmers (nec) | 1 |
| 149212 | Customer Service Manager | 2 |
| 121313 | Dairy Cattle Farmer | 1 |
| 411211 | Dental Hygienist | 2 |
| 321212 | Diesel Motor Mechanic | 3 |
| 411712 | Disabilities Services Officer | 2 |
| 399911 | Diver | 3 |
| 452311 | Diving Instructor (Open Water) | 3 |
| 272112 | Drug and Alcohol Counsellor | 1 |
| 342314 | Electronic Instrument Trades Worker (General) | 3 |
| 411411 | Enrolled Nurse | 2 |
| 411713 | Family Support Worker | 2 |
| 212314 | Film and Video Editor | 1 |
| 323213 | Fitter-Welder | 3 |
| 231113 | Flying Instructor | 1 |
| 121213 | Fruit or Nut Grower | 1 |
| 134299 | Health and Welfare Services Managers (nec) | 1 |
| 231114 | Helicopter Pilot | 1 |
| 141311 | Hotel or Motel Manager | 2 |
| 431411 | Hotel service manager | 3 |
| 313199 | ICT Support Technicians (nec) | 2 |
| 234516 | Marine Biologist | 1 |
| 323299 | Metal Fitters and Machinists (nec) | 3 |
| 321211 | Motor Mechanic (General) | 3 |

| ANZSCO or 6 digit Code | Occupation | ANZSCO Skill Level |
|------------------------|---------------------------------------------------|--------------------|
| 321213 | Motorcycle Mechanic | 3 |
| 251312 | Occupational Health and Safety Adviser | 1 |
| 311399 | Primary Products Inspectors (nec) | 2 |
| 612112 | Property Manager | 3 |
| 231212 | Ship's Engineer | 1 |
| 321214 | Small Engine Mechanic | 3 |
| 249311 | Teacher of English to Speakers of Other Languages | 1 |
| 342412 | Telecommunications Cable Jointer | 3 |
| 451799 | Travel Attendants (nec) | 3 |
| 361311 | Veterinary Nurse | 3 |
| 242211 | Vocational Education Teacher | 1 |
| 411716 | Youth Worker | 2 |

Non-ANZSCO Occupations

For occupations listed in Schedule 4 (not in ANZSCO) and in Table 3 below the following skill and experience requirements apply. The visa applicant must;

- undergo a skills assessment conducted by the relevant Skills Assessing Authority (as specified in the Labour Agreement)

AND

- Have at least a relevant AQF or equivalent Certificate IV with at least one year (20 hrs+ per week) relevant post qualification experience

Table 3: Specified Non-ANZSCO (equivalent Skill Level 3) Occupation

| ANZSCO or 6 digit Code | Occupation | Equivalent ANZSCO Skill Level |
|------------------------|-----------------------|-------------------------------|
| 070499 | Farm Inspector | 3 |
| 070499 | Farm Supervisor | 3 |
| 070499 | Restaurant Supervisor | 3 |

Item 5.2 ANZSCO Skill Level 4 Occupations

General ANZSCO Skill Level 4 Occupations

The following skills requirements are to be met for the following ANZSCO skill level 4 occupations, as outlined in Table 4. The visa applicant must:

- undergo skills assessment conducted by the relevant Skills Assessing Authority (as specified in the Labour Agreement)

AND MEET ONE OF THE FOLLOWING GROUPS OF REQUIREMENTS

- Have at least a relevant AQF or equivalent Cert II with at least one and a half years (20 plus hours per week) relevant post qualification experience

OR

- Have at least a relevant AQF or equivalent Cert III with at least one year (20 plus hours per week) relevant post qualification experience

OR

- Have at least two years (no less than 38 hours per week) relevant experience.

Table 4: General ANZSCO Skill Level 4 Occupations

| ANZSCO or 6 digit Code | Occupation | ANZSCO Skill Level |
|------------------------|------------------------------------------------------|--------------------|
| 551111 | Accounts clerk | 4 |
| 721111 | Agricultural and horticultural mobile plant operator | 4 |
| 731212 | Charter and Tour Bus Driver | 4 |
| 899211 | Deck hand | 4 |
| 451412 | Tour guide | 4 |
| 451612 | Travel Consultant | 4 |

Specified ANZSCO Skill Level 4 Occupations

The following skills requirements are to be met for the following ANZSCO skill level 4 occupations in the aged, disabled, health and child care sector as outlined in Table 5. The visa applicant must:

- Undergo skills assessment conducted by the relevant Skills Assessing Authority (as specified in the Labour Agreement), and
- Have at least a relevant AQF Cert III or higher qualification, and
- Have at least two years (38 plus hours per week) relevant post qualification experience

Table 5: Specified ANZSCO Skill Level 4 Occupations

| ANZSCO or 6 digit Code | Occupation | ANZSCO Skill Level |
|------------------------|------------------------|--------------------|
| 423111 | Aged or disabled carer | 4 |
| 421111 | Child Care Worker | 4 |
| 423211 | Dental assistant | 4 |
| 423312 | Nursing support worker | 4 |

Schedule 6 Concession to the Temporary Skilled Migration Income Threshold (TSMIT)

In relation to the nomination of occupations for TSS visas and ENS visas, the Designated Area Representative acknowledges that the following additional requirements must be met by a Third Party. These requirements will be included in the Labour Agreements associated with this Agreement. Individual Labour Agreements will specify which Occupations are concessional occupations (if any) and which TSMIT concessions (if any) will apply for a Third Party who enters into a Labour Agreement.

- 'Non-concessional occupation' means an occupation that may be nominated under this Agreement but is not specified in Table 6.
- 'Concessional occupation' means an occupation specified in Table 6.

For both concessional and non-concessional occupations:

- 'Annual Market Salary Rate' has the same meaning as in the Migration Regulations, and is determined in accordance with the instrument which specifies the method for determining the Annual Market Salary Rate for an occupation nominated under section 140GB of the Migration Act or an occupation in relation to which a position is nominated under regulation 5.19 of the Migration Regulations.
- 'Annual Earnings' means an Overseas Worker's Earnings calculated on an annual basis.

Non-concessional occupations

'Earnings' has the same meaning as in the Migration Regulations.

In relation to an Overseas Worker who is nominated for a non-concessional occupation in relation to a TSS visa, the nominating Third Party must meet the legislative requirements relating to TSMIT, Annual Market Salary Rate and Annual Earnings which would apply if the Overseas Worker were nominated in relation to the Short-term stream or Medium-term stream in the standard TSS visa program.

In relation to an Overseas Worker who is identified for a non-concessional occupation in relation to an ENS visa, the nominating Third Party must meet the legislative requirements relating to TSMIT, Annual Market Salary Rate and Annual Earnings which would apply if the Overseas Worker were identified in relation to the Temporary Residence Transition stream or the Direct Entry stream in the standard ENS visa program.

Concessional occupations

In relation to an Overseas Worker who is nominated/identified for a concessional occupation in relation to a TSS visa or an ENS visa, in accordance with the applicable concession type set out below, the nominating Third Party must provide the Overseas Worker with an amount of Annual Earnings which is equal to or greater than:

- the Annual Market Salary Rate, and

- Reduced TSMIT (for TSMIT concession type 1) or TSMIT (for TSMIT concession types 2 - 4).

'Reduced TSMIT' means 90% of TSMIT.

The Designated Area Representative will specify in the attachment to their endorsement letter, the TSMIT Concession type applicable to each endorsed concessional Occupation, as supported by a Third Party's evidence-based case for the concession to apply.

TSMIT Concession types

Employers may seek endorsement from the Designated Area Representative for one of the following concession types to apply to an Occupation.

TSMIT Concession types

| | Type 1 | Type 2 | Type 3 | Type 4 |
|-------------------------------------------------|---------------|------------------------------------------------|----------------------------------------------------------------------|----------------------------------------------------------------------|
| Monetary Earnings | Reduced TSMIT | TSMIT less Non-monetary earnings (other) | TSMIT less Non-monetary earnings (food & board) | TSMIT less Non-monetary earnings (all) |
| Non-monetary earnings (food & board) | Nil | Nil | Annual board not exceeding published Cairns home stay rates | Annual board not exceeding published Cairns home stay rates |
| Non-monetary earnings (other) | Nil | Capped at 10% of TSMIT | Nil | Capped at 10% of TSMIT |
| Total Annual Earnings | Reduced TSMIT | TSMIT | TSMIT | TSMIT |

Type 1: Reduced TSMIT, and Earnings to include Guaranteed Overtime

*Reduced TSMIT applies.

'Earnings' has the same meaning as in the Migration Regulations except that it also includes guaranteed overtime where:

- The guaranteed overtime is consistent with standard industry practice within the sector;
- There are equivalent Australians performing equivalent work in the Third Party's workplace at the same location and whose arrangements have been guaranteed in an industrial arrangement for those workers; and

- At the time of nomination the Third Party provides evidence that the hours are guaranteed within the employment contract for the Overseas Worker, and confirms the hours are consistent with the National Employment Standards; and
- Application of the concession is subject to the Earnings being in line with applicable Industrial Awards or Enterprise Agreements and not below levels for Australian employees in comparable roles.

Types 2, 3 and 4: TSMIT, and Earnings to include Guaranteed Overtime and Non-Monetary and Monetary Benefits

The Annual Earnings must be equal to or greater than TSMIT, and the Annual Earnings may include monetary and non-monetary benefits.

'Earnings' has the same meaning as in the Migration Regulations except that it also includes:

1. Guaranteed overtime where:
 - The guaranteed overtime is consistent with standard industry practice within the sector;
 - There are equivalent Australians performing equivalent work in the Third Party's workplace at the same location and whose arrangements have been guaranteed in an industrial arrangement for those workers; and
 - At the time of nomination the Third Party provides evidence that the hours are guaranteed within the employment contract for the Overseas Worker, and confirms the hours are consistent with the National Employment Standards; and
 - Application of the concession is subject to the Earnings being in line with applicable Industrial Awards or Enterprise Agreements and not below levels for Australian employees in comparable roles; and
2. Monetary and non-monetary benefits, where:
 - The benefits support the living costs of the Overseas Worker;
 - The Overseas Worker would have incurred that cost had it not been provided by the Third Party;
 - The benefits are quantifiable;
 - The benefits are consistent with the terms and conditions provided to existing Australians employed in a similar position;
 - The benefits are guaranteed in the employment contract; and
 - The benefits exclude contingent payments such as overtime (other than guaranteed overtime) bonuses and commissions.

For concession types 3 and 4, when calculating an Overseas Worker's Earnings, the value of board (comprising accommodation and meals) should not exceed published home-stay rates for the Cairns Region (based on the standard EQI Rate at time of application)
<https://eqi.com.au/study-options/fees> .

For concession types 2 and 4, when calculating an Overseas Worker's Earnings, the value of other non-monetary earnings (such as phone, vehicle) cannot exceed 10% of TSMIT).

Table 6: Occupations to which TSMIT Concessions may apply

| ANZSCO Code | Occupation | ANZSCO Skill Level |
|-------------|------------------------------------------------------|--------------------|
| 141999 | Accommodation and Hospitality Managers (nec) | 2 |
| 551111 | Accounts clerk | 4 |
| 423111 | Aged or disabled carer | 4 |
| 721111 | Agricultural and horticultural mobile plant operator | 4 |
| 311111 | Agricultural Technician | 2 |
| 362212 | Arborist | 3 |
| 399111 | Boat Builder and Repairer | 3 |
| 312112 | Building Associate | 2 |
| 351211 | Butcher or smallgoods maker | 3 |
| 342411 | Cabler (Data and Telecommunications) | 3 |
| 141111 | Cafe or Restaurant Manager | 2 |
| 399512 | Camera Operator (Film, Television or Video) | 3 |
| 731212 | Charter and Tour Bus Driver | 4 |
| 351311 | Chef | 2 |
| 134111 | Child Care Centre Manager | 1 |
| 421111 | Child Care Worker | 4 |
| 411711 | Community Worker | 2 |
| 149311 | Conference and Event Organiser | 2 |
| 234311 | Conservation Officer | 1 |
| 351411 | Cook | 3 |
| 272199 | Counsellors (nec) | 1 |
| 121299 | Crop Farmers (nec) | 1 |
| 149212 | Customer Service Manager | 2 |
| 121313 | Dairy Cattle Farmer | 1 |
| 899211 | Deck hand | 4 |
| 423211 | Dental assistant | 4 |
| 411211 | Dental Hygienist | 2 |
| 321212 | Diesel Motor Mechanic | 3 |
| 411712 | Disabilities Services Officer | 2 |
| 399911 | Diver | 3 |
| 452311 | Diving Instructor (Open Water) | 3 |
| 272112 | Drug and Alcohol Counsellor | 1 |
| 342314 | Electronic Instrument Trades Worker (General) | 3 |
| 411411 | Enrolled Nurse | 2 |
| 411713 | Family Support Worker | 2 |
| 070499 | Farm Inspector | 3 |
| 070499 | Farm Supervisor | 3 |
| 212314 | Film and Video Editor | 1 |
| 323213 | Fitter-Welder | 3 |

| ANZSCO Code | Occupation | ANZSCO Skill Level |
|-------------|---------------------------------------------------|--------------------|
| 121213 | Fruit or Nut Grower | 1 |
| 134299 | Health and Welfare Services Managers (nec) | 1 |
| 141311 | Hotel or Motel Manager | 2 |
| 431411 | Hotel service manager | 3 |
| 313199 | ICT Support Technicians (nec) | 2 |
| 234516 | Marine Biologist | 1 |
| 323299 | Metal Fitters and Machinists (nec) | 3 |
| 321211 | Motor Mechanic (General) | 3 |
| 321213 | Motorcycle Mechanic | 3 |
| 423312 | Nursing support worker | 4 |
| 251312 | Occupational Health and Safety Adviser | 1 |
| 311399 | Primary Products Inspectors (nec) | 2 |
| 612112 | Property Manager | 3 |
| 070499 | Restaurant Supervisor | 3 |
| 321214 | Small Engine Mechanic | 3 |
| 249311 | Teacher of English to Speakers of Other Languages | 1 |
| 342412 | Telecommunications Cable Jointer | 3 |
| 451412 | Tour guide | 4 |
| 451799 | Travel Attendants (nec) | 3 |
| 451612 | Travel Consultant | 4 |
| 361311 | Veterinary Nurse | 3 |
| 242211 | Vocational Education Teacher | 1 |
| 411716 | Youth Worker | 2 |

Schedule 7 Concession to English language requirement

In this Schedule, IELTS means the International English Language Testing System or the equivalent in another accepted English language test.

Other accepted English language tests are:

- Occupational English Test (OET);
- Test of English as a Foreign Language internet-based test (TOEFL iBT);
- Pearson Test of English (PTE) Academic test; or
- Cambridge English: Advanced (CAE) test.

The English language requirements may be met if a visa applicant would be regarded as an 'exempt applicant' for the purpose of the legislative instruments applicable to TSS and ENS visas.

For any Occupations that are not listed in Table 7 below, the Overseas Worker is required to meet the minimum standard English language requirements applicable to the TSS and ENS non-labour agreement visa streams under the Migration Regulations.

For the Occupations listed in Table 7 below, the following English language concessions apply:

- TSS concession: average score of IELTS 5.0 with no component being less than IELTS 4.0 or equivalent (unless registration or licensing requires a higher level of English).
- ENS concession: no concession. The minimum standard English language requirements applicable to the ENS non-labour agreement visa streams under the Migration Regulations apply.

Table 7: Occupations seeking concessions for English language

| ANZSCO or 6 digit Code | Occupation | ANZSCO Skill Level |
|------------------------|------------------------------------------------------|--------------------|
| 721111 | Agricultural and horticultural mobile plant operator | 4 |
| 362212 | Arborist | 3 |
| 351211 | Butcher or smallgoods maker | 3 |
| 342411 | Cabler (Data and Telecommunications) | 3 |
| 399512 | Camera Operator (Film, Television or Video) | 3 |
| 731212 | Charter and Tour Bus Driver | 4 |
| 234311 | Conservation Officer | 1 |
| 351411 | Cook | 3 |
| 899211 | Deck hand | 4 |
| 321212 | Diesel Motor Mechanic | 3 |
| 399911 | Diver | 3 |
| 342314 | Electronic Instrument Trades Worker (General) | 3 |
| 070499 | Farm Inspector | 3 |
| 070499 | Farm Supervisor | 3 |
| 212314 | Film and Video Editor | 1 |
| 323213 | Fitter-Welder | 3 |

| ANZSCO or 6 digit Code | Occupation | ANZSCO Skill Level |
|------------------------|------------------------------------|--------------------|
| 431411 | Hotel service manager | 3 |
| 323299 | Metal Fitters and Machinists (nec) | 3 |
| 321211 | Motor Mechanic (General) | 3 |
| 321213 | Motorcycle Mechanic | 3 |
| 612112 | Property Manager | 3 |
| 321214 | Small Engine Mechanic | 3 |
| 342412 | Telecommunications Cable Joiner | 3 |
| 451612 | Travel Consultant | 4 |

Schedule 8 Permanent Residence Pathway

A permanent residence pathway for Overseas Workers may be available through the Employer Nomination Scheme (ENS) Subclass 186 visa program for all occupations in Table 8 below.

The following conditions will ordinarily be included in a Labour Agreement and will apply to any nomination for an ENS visa (in addition to the ENS requirements outlined in the Migration Legislation).

- (a) The Overseas Worker, at the time of an application for approval of the nomination in relation to an ENS visa ('the ENS nomination'), holds a TSS visa granted in connection with this Agreement; and
- (b) The Third Party's ENS nomination identifies an Occupation in Table 8 that was the subject of the most recently approved TSS visa for the Overseas Worker; and
- (c) The Overseas Worker has been employed on a full-time basis for a period of at least 3 years before the ENS nomination is made, by one or more Third Parties who were all endorsed under this Agreement, in the ENS nominated occupation or an Occupation in Table 8 that is in the same ANZSCO 4 digit level, being an occupation specified in this Agreement; and
- (d) For the whole time that the Overseas Worker was employed in accordance with paragraph (c):
 - 1. he or she must have held a TSS visa granted in connection with this Agreement; and
 - 2. he or she must have worked in the Designated Area outlined in Item 3 of Schedule 1 of this Agreement; and
- (e) The Overseas Worker identified in the ENS nomination will be employed on a full-time basis in the position for at least 2 years, and
- (f) The terms and conditions of employment of the Overseas Worker will not include an express exclusion of the possibility of extending the period of employment.

Table 8: Occupations eligible for permanent residence pathway

| ANZSCO or 6 digit Code | Occupation | ANZSCO Skill Level |
|------------------------|----------------------------------------------|--------------------|
| 141999 | Accommodation and Hospitality Managers (nec) | 2 |
| 231111 | Aeroplane Pilot | 1 |
| 423111 | Aged or disabled carer | 4 |
| 311111 | Agricultural Technician | 2 |
| 231199 | Air Transport Professionals (nec) | 1 |
| 323111 | Aircraft Maintenance Engineer (Avionics) | 3 |
| 323112 | Aircraft Maintenance Engineer (Mechanical) | 3 |
| 323113 | Aircraft Maintenance Engineer (Structures) | 3 |
| 362212 | Arborist | 3 |
| 399111 | Boat Builder and Repairer | 3 |
| 312112 | Building Associate | 2 |

| ANZSCO or 6 digit Code | Occupation | ANZSCO Skill Level |
|------------------------|-----------------------------------------------|--------------------|
| 351211 | Butcher or smallgoods maker | 3 |
| 342411 | Cabler (Data and Telecommunications) | 3 |
| 141111 | Cafe or Restaurant Manager | 2 |
| 399512 | Camera Operator (Film, Television or Video) | 3 |
| 351311 | Chef | 2 |
| 134111 | Child Care Centre Manager | 1 |
| 421111 | Child Care Worker | 4 |
| 411711 | Community Worker | 2 |
| 149311 | Conference and Event Organiser | 2 |
| 234311 | Conservation Officer | 1 |
| 351411 | Cook | 3 |
| 272199 | Counsellors (nec) | 1 |
| 121299 | Crop Farmers (nec) | 1 |
| 149212 | Customer Service Manager | 2 |
| 121313 | Dairy Cattle Farmer | 1 |
| 411211 | Dental Hygienist | 2 |
| 321212 | Diesel Motor Mechanic | 3 |
| 411712 | Disabilities Services Officer | 2 |
| 399911 | Diver | 3 |
| 452311 | Diving Instructor (Open Water) | 3 |
| 272112 | Drug and Alcohol Counsellor | 1 |
| 342314 | Electronic Instrument Trades Worker (General) | 3 |
| 411411 | Enrolled Nurse | 2 |
| 411713 | Family Support Worker | 2 |
| 070499 | Farm Inspector | 3 |
| 070499 | Farm Supervisor | 3 |
| 212314 | Film and Video Editor | 1 |
| 323213 | Fitter-Welder | 3 |
| 231113 | Flying Instructor | 1 |
| 121213 | Fruit or Nut Grower | 1 |
| 134299 | Health and Welfare Services Managers (nec) | 1 |
| 231114 | Helicopter Pilot | 1 |
| 141311 | Hotel or Motel Manager | 2 |
| 431411 | Hotel service manager | 3 |
| 313199 | ICT Support Technicians (nec) | 2 |
| 234516 | Marine Biologist | 1 |
| 323299 | Metal Fitters and Machinists (nec) | 3 |
| 321211 | Motor Mechanic (General) | 3 |
| 321213 | Motorcycle Mechanic | 3 |
| 251312 | Occupational Health and Safety Adviser | 1 |

| ANZSCO or 6 digit Code | Occupation | ANZSCO Skill Level |
|------------------------|---------------------------------------------------|--------------------|
| 311399 | Primary Products Inspectors (nec) | 2 |
| 612112 | Property Manager | 3 |
| 070499 | Restaurant Supervisor | 3 |
| 231212 | Ship's Engineer | 1 |
| 321214 | Small Engine Mechanic | 3 |
| 249311 | Teacher of English to Speakers of Other Languages | 1 |
| 342412 | Telecommunications Cable Jointer | 3 |
| 451412 | Tour guide | 4 |
| 451799 | Travel Attendants (nec) | 3 |
| 361311 | Veterinary Nurse | 3 |
| 242211 | Vocational Education Teacher | 1 |
| 411716 | Youth Worker | 2 |

Schedule 9 Letter of Endorsement

[Insert letterhead]

[Insert date]

The Director
Employer Sponsored Program Management Section
Department of Home Affairs

Via email to: s. 47E(d)

Dear Director,

Letter of Endorsement for [insert Third Party's name]

The Cairns Chamber of Commerce Incorporated is the Designated Area Representative under the Designated Area Migration Agreement (the "Agreement") with the Commonwealth of Australia as represented by the Department of Home Affairs ("Commonwealth"). The Agreement is in relation to the recruitment of overseas workers in the FNQ region.

This letter of endorsement is provided pursuant to clause 6.6 of the Agreement. Under clause 6.6 of the Agreement, the Cairns Chamber of Commerce Incorporated endorses [insert name of Third Party employer] to enter into a Labour Agreement for the purpose of accessing Overseas Workers under the Agreement.

I attest that:

1. I have taken all reasonable steps to monitor the Designated Area labour market; and
2. this endorsement:
 - a. complies with the requirements of clause 6 of the Agreement; and
 - b. supports the objectives of this Agreement.

I also attest that [insert name of Third Party employer]:

3. has genuinely sought to recruit Australian citizens and permanent residents to the requested occupations in the Designated Area; and
4. has, with regard to the current labour market conditions, made a reasonable request with regards to both numbers and occupations to be filled by Overseas Workers in the Designated Area; and

The details of the *[insert name of Third Party employer]* are provided for reference:

| Business Information | Details |
|----------------------------------|---------|
| Registered Name of Business | |
| State/Territory where Registered | |
| Registered Trading Name (if any) | |
| Australian Business Number (ABN) | |
| Business Address | |
| Postal Address | |
| Email Address | |
| Contact Person | |
| Contact Phone Number | |

I endorse and wish to convey a request for *[insert name of Third Party employer]* to enter into a Labour Agreement under the Agreement for the following occupations, numbers and concessions detailed at Attachment A.

Enclosed are all documents submitted to the DAR for endorsement at Attachment B.

Where I have endorsed *[insert name of Third Party employer]* to have access to a concession to the Temporary Skilled Migration Income Threshold, I confirm that:

- the terms and conditions of employment of the overseas worker will be no less favourable than those provided to an Australian worker performing the same duties within the employer's workplace or within the designated area; and
- any associated risks to the Overseas Worker and their family will be adequately managed.

I will inform *[insert name of Third Party employer]* of their sponsorship obligations and that all nomination and visa applications lodged with the Commonwealth will be assessed in accordance with the Migration Legislation.

Yours sincerely,

[Insert details]

To be signed by an officer specified in Clause 6.6(h) in the Agreement.

Schedule 9a Attachment A

Endorsed occupations, numbers and concessions for [insert name of Third Party]

Temporary Skill Shortage (TSS)

| ANZSCO or 6 digit code | Occupation | Maximum number of approved nominations in Year 1 | Concession to TSMIT applicable as per Schedule 6 | Concession to English requirement applicable per Schedule 7 |
|------------------------|------------|--------------------------------------------------|--------------------------------------------------|-------------------------------------------------------------|
| | | | <i>Yes/No Concession Type 1,2,3,4</i> | <i>Yes/No</i> |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Employer Nomination Scheme (ENS)

| ANZSCO or 6 digit code | Occupation | Maximum number of approved nominations in Year 1 | Concession to TSMIT applicable as per Schedule 6 |
|------------------------|------------|--------------------------------------------------|--------------------------------------------------|
| | | | <i>Yes/No Concession Type 1,2,3,4</i> |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Schedule 10 Support Services

The Designated Area Representative will be responsible for ensuring that all Overseas Workers engaged under a Labour Agreement are supplied with information to assist their arrival in Australia and to develop links with the broader community. Information should include:

- (a) workplace rights and entitlements;
- (b) local area services such as health, emergency and educational services;
- (c) community activities and religious services;
- (d) living costs in the Designated Area; and
- (e) English language services (education and translating and interpreting services (TIS National)).

The information referred to above should be provided to the Overseas Worker prior to being engaged by the Third Party. Where the Overseas Worker is already employed by the Third Party, the information should be provided to the Overseas Worker prior to their initial application for a visa, unless the Overseas Worker has been living and working in the Designated Area for at least twelve months prior to the visa application.

The Designated Area Representative will:

1. provide cost effective and streamlined arrangements for skills assessment, including verification of claimed work experience by overseas workers based on risk factors;
2. provide a 'one-stop shop' for Third Parties seeking endorsement under the Agreement – this includes independent verification of business activity and ensuring requests from Third Parties are decision ready prior to endorsement;
3. put in place appropriate arrangements with the relevant work safety authorities to mitigate potential workplace risks;
4. assess requests by Designated Area employers for variation to TSMIT and/or other concessions, and managing the associated risks; and
5. provide ongoing monitoring and assistance to Third Parties who have signed a Labour Agreement.

Signing Page for Designated Area Migration Agreement

Executed as a Deed

Signed, sealed and delivered for and on behalf of the
Commonwealth of Australia
by the Hon David Coleman MP
Minister for Immigration, Citizenship
and Multicultural Affairs:

David Coleman
[Print name]

[Signature]
[Signature]

Date of signing: 4, 4, 19
dd/mm/yyyy



Date of signing: 4, 4, 19
dd/mm/yyyy

The Common Seal of the
Calrus Chamber of Commerce
Incorporated was affixed in accordance
with its constitution
in the presence of:



NICHOLAS LOUKAS
[Print name of authorised person]

[Signature]
[Signature of authorised person]

Date of signing: 4, 4, 19
dd/mm/yyyy

PRESIDENT
[Member of Management Committee]

Jodie Duignan-George
[Print name of Vice President]

[Signature]
[Signature of Vice President]

Date of signing: 4, 4, 19
dd/mm/yyyy

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