



Australian Government  
Department of Home Affairs

## Submission

For Information

PDMS Ref. Number MS21-000103

Date of Clearance: 01/02/2021

**To** Minister for Immigration, Citizenship, Migrant Services and  
Multicultural Affairs

**Subject** Labour Agreement Processing

**Timing** *At your convenience.*

### Recommendations

That you:

1. note recent trends in the Labour Agreement program, including the impacts of the COVID-19 pandemic; and
2. note the Department of Home Affairs' (the Department) advice regarding streamlining Labour Agreement assessments and the factors that will determine when further streamlining can be achieved.

noted / please discuss

noted / please discuss

Minister for Immigration, Citizenship, Migrant Services and  
Multicultural Affairs

*Noted in NO*

s. 22(1)(a)(ii)

Signature.....

Date: 5/3/2021

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Minister's Comments				
Rejected Yes/No	Timely Yes/No	<b>Relevance</b> <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	<b>Length</b> <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	<b>Quality</b> Poor 1.....2.....3.....4.....5 Excellent <b>Comments:</b>

**Key Issues**

1. You requested advice about Labour Agreement processing, including a breakdown of on-hand Labour Agreement requests, and advice about options to streamline Labour Agreement processing for businesses in regional Australia.
2. This submission provides an analysis of recent processing trends for the Labour Agreement program, and the impact of the COVID-19 pandemic upon processing outcomes. The submission also provides a summary of recent initiatives to streamline Labour Agreement assessment processes, and factors relevant to considering the implementation of additional streamlining into the assessment process.
3. Also provided for your reference:
  - the latest statistics for the Labour Agreement program (**Attachment A**); and
  - a summary of the terms and concessions currently available under each type of Labour Agreement (**Attachment B**).

Historical trends

4. Table 1 shows that the Labour Agreement program has grown significantly between 2014 and 2020.

Table 1

Labour Agreement requests lodged, finalised and in effect: As at 31 December 2014-2020

	2014	2015	2016	2017	2018	2019	2020
Lodged during year	96	89	196	222	210	442	435
Finalised during year	66	86	162	168	202	347	322
Agreements in effect at 31 December each year	213	277	314	328	352	470	538

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## 5. Of particular note:

- the number of in effect Labour Agreements has significantly grown, with more than two and a half times more agreements in effect at 31 December 2020, compared to the same point in 2014 (31 December 2014);
- the number of Labour Agreement requests lodged in 2019 and 2020 is:
  - approximately double what was lodged in 2017 and 2018; and
  - over four times more than what was lodged in 2014 and 2015.

## 6. To keep pace with increased lodgements, the number of Labour Agreement assessments finalised by the Department has increased each year between 2014 and 2019, with a slight decrease in 2020.

Impacts of the COVID-19 pandemic on the Labour Agreement program*COVID-19 priority processing arrangements*

## 7. Requests for Labour Agreements are currently being assessed in line with new section 499 Directions (Directions 87 and 88). Under these Directions, priority is given as follows:

- Labour Agreement requests relating to occupations on the Priority Migration Skilled Occupations List (PMSOL) and requests for GTES Labour Agreements.
- Requests relating to occupations within COVID-19 critical sectors.
- Requests relating to businesses in regional Australia, with requests under a DAMA and requests from Accredited Sponsors given priority.
- Requests not covered above and made by an Accredited Sponsor.
- All other requests.

## 8. The unprecedented nature of the COVID-19 pandemic, and the rapid and significant changes to Australia's labour market, has significantly complicated the Department's assessment of Labour Agreement requests. In the course of considering a Labour Agreement request, decision makers will consider labour market information and data, in order to verify that a business has demonstrated that the domestic labour market cannot meet its skilled workforce needs.

## 9. The introduction of Government programs such as JobKeeper and JobSeeker, and the generalised publishing lag of labour market data, has also made it more difficult for the decision makers to understand the existence and extent of skills shortages, and ultimately, an assessment of whether a business has no other option but to utilise skilled overseas workers via a Labour Agreement.

## 10. Administrative tasks associated with the implementation of additional assurance and integrity measures undertaken by Departmental decision makers (i.e. issuing Requests for Information to businesses) in response to the abovementioned impact on the accuracy and currency of labour market data, which has slowed the rate of labour agreement processing in 2020-21.

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11. These measures provide Departmental decision makers with more detailed information about the impact of the COVID-19 pandemic upon each business, and allows decision makers to more effectively scrutinise applications to ensure that business are making all possible attempts to fill skill shortages with Australian citizens and permanent residents, prior to employing overseas workers to fill vacancies.
12. In addition to COVID-19 factors, the following factors also impact the time it takes to process a labour agreement request:
- The quality of requests – The quality of requests can vary significantly depending on the agreement type and/or the involvement of a Migration Agent.
  - Requests for further information – The Department may issue a request for further information in where insufficient or incomplete information is provided with a request.
  - Quality control and assurance checks – Requests where integrity concerns are identified are referred to specialised assurance officers for investigation, which will generally delay finalisation of the request while concerns are investigated.
  - Referral to the Department of Education Skills and Employment (DESE) and the National Skills Commission (NSC) – A small but increasing proportion of Company-specific Labour Agreement requests are being referred to DESE/NSC to provide the Department with a contemporaneous understanding of labour market factors for an industry and/or region.

*Lodgements, processing times and outcomes*

13. Table 2 provides a summary of processing timeframes for all Labour Agreement requests between 2017-18 and 2020-21.

Table 2 – Labour Agreement request processing 2017-18 to 2020-21\*

	2017-18	2018-19	2019-20	2020-21 to 31 Dec 2020
3 months or less	35%	36%	47%	29%
3 to 6 months	26%	33%	34%	28%
Over 6 months	39%	31%	19%	43%

14. In 2019-20, processing times had improved significantly compared to the two years prior, with 47 per cent of all requests finalised in three months or less, and only 19 per cent taking over six months to finalise. This improvement was particularly noteworthy given that request lodgements in 2019-20 were significantly higher than prior years, and departmental resources to assess Labour Agreement requests had not increased to match increased demand.
15. Demand for Labour Agreements has decreased during the COVID-19 pandemic period. In 2020-21 to 31 December 2020, 211 Labour Agreement requests were lodged, which is 16 per cent lower than the same period in 2019-20 (251 requests lodged).

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16. In 2020-21 to 31 December, the number of Labour Agreement requests that were declined (107) increased by 148 per cent compared to the equivalent period in 2019-20 (43). This increase is primarily attributed to the following factors:

- Additional assurance and integrity checking being conducted by the Department, and requesting organisations being unable to sufficiently demonstrate a labour market need to utilise the Labour Agreement program during the COVID-19 pandemic.
- An increase in finalisation of Minister of Religion requests between July and December 2020, with Minister of Religion requests making up 42 per cent of all decline decisions. The focus on Minister of Religion requests in the last quarter of 2020 was necessitated by the inclusion of 'religious' and 'theology' fields in COVID-critical sector definitions from September 2020. 42%

*Impact of COVID-19 on the composition of on-hand caseload*

17. Table 3 shows the breakdown of the on-hand caseload in March 2020, immediately prior to the COVID-19 pandemic, and the on-hand caseload in December 2020.

Table 3 - Labour Agreements on-hand cases (March 2020 vs. December 2020)

Type of agreement	March 2020	December 2020	Difference
Meat	14	23	+9
Pork	1	3	+2
Dairy	4	5	+1
Fishing	6	5	-1
Horticulture	0	6	+6
Ministers of Religion	69	62	-7
Advertising	0	6	+6
On-hire	10	19	+9
Fine Dining	5	6	+1
DAMA	51	55	+4
GTES	12	12	0
Company-specific	53	52	-1
<b>Total</b>	<b>225</b>	<b>254</b>	<b>+29</b>

18. The largest increase in on-hand requests was for the Meat (+9), On-hire (+9), Advertising (+6) and Horticulture (+6) industry agreements. Increases in the number of on-hand Advertising and Horticulture requests is expected, as both industry agreements are relatively new and had zero on-hand requests in March 2020. The increase in Meat and On-hire industry on-hand requests can be attributed to integrity issues within these industries, which has slowed processing as issues are investigated.

Integrity issues for the Meat and On-hire industries

19. The Department continues to manage integrity issues within the Labour Agreements program with the Meat and On-hire industry agreements of particular concern.

20. With regard to the Meat industry, the high use of both onshore and offshore labour hire is an increasing concern. Labour hire companies seeking to exploit the program, have a financial interest in sourcing overseas workers over Australians, and are known to target low and unskilled workers from high-risk regions/countries in Asia.

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21. There is evidence that labour hire/intermediaries facilitate fraudulent English test results, work references and skills documents used to establish the genuineness of visa applicants. The Department is currently in the process of refusing visa applications for a number of Meat Industry Labour Agreement holders due to instances of fraud. A client summary for an existing Meat Industry Labour Agreement holder where visa refusal decisions have recently been made on the basis of fraudulent documents is provided at Attachment C.
22. Due to unresolved questions about the extent that these integrity issues are representative of the broader industry, the Department is taking a cautious and considered approach to processing Meat Industry Labour Agreement requests. To provide greater assurance that decisions to approve labour agreements are appropriate, the Department is seeking additional information from:
- requesting businesses, including information on how the COVID-19 pandemic has impacted each business and their need to access skilled overseas workers; and
  - internal information sources such as the ABF's Sponsor Monitoring Unit, and integrity referrals to overseas posts.
23. The integrity issues and additional checking measures summarised above have slowed the Department's processing of requests for the Meat industry. Moreover, the identification of fraudulent activity under an existing or previously held Labour Agreement will be a key consideration in the Department's assessment of future Labour Agreement requests from that business.
24. For businesses where use of fraudulent documentation is demonstrated, the Department will consider this adverse information when deciding whether the organisation is considered to be 'of good standing', which is a key consideration under policy as to whether a labour agreement should be approved and executed.
25. Processing timeframes for labour agreements, nomination and visa applications will also be extended depending on the nature and seriousness of the integrity issues identified by the Department. The ability of the Department to progress labour agreement requests will also depend upon each organisation's willingness to provide prompt and comprehensive responses to any requests for information issued by the Department.
26. Whilst the Department has identified a broad range of integrity issues that appear to be present within the Meat and On-hire industries, labour agreement requests for these organisations will be progressed on a case-by-case basis, with varying treatments and information-gathering activities underway according to the nature and seriousness of the integrity issues identified for each organisation.
27. The Department will provide further information to you in due course on the activities underway to address the integrity concerns raised above.
28. With regard to the on-hire industry, the Department is currently investigating possible fraud and worker exploitation, and the creation of non-genuine positions for the purpose of obtaining migration outcomes. The Department has also recently received Labour Agreement requests from On-hire businesses that have been, or still are, the subject of state or federal legal proceedings related to, for example, the underpayment of workers and discriminatory work practices.

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**OFFICIAL: Sensitive**Streamlining initiatives

29. The Department has implemented the following streamlining initiatives that, prior to the COVID-19 pandemic, had contributed to higher quality requests and improved processing times:
- The implementation of on-line Labour Agreement request form in November 2018. This form has simplified the process for businesses to request a Labour Agreement and reduced work effort for departmental assessing officers.
  - The development of the *Labour Agreements Procedural Instruction*, which was published in November 2018. This document provides comprehensive information about requesting a Labour Agreement and the factors that will be considered by the Department in its assessment of each request.
  - Improved Labour Agreements information on the Department's website. This includes information about each type of Labour Agreement and access to template agreements.
  - The use of a standardised declaration form for employers seeking a DAMA, which limits evidentiary documentation to be collected and assessed by the Designated Area Representatives. (refer: MS19-003023)
30. The Department is considering further options to streamline the assessment of Labour Agreement requests. These will inevitably involve a trade-off between the level of assurance around the labour market impact of labour agreement proposals and the speed of processing. You are able to give effect to streamlining through agreement to specific settings for how labour agreements are assessed.
31. We will provide further advice on these options, as well as changes to mainstream regional skilled visa requirements that could be considered that would help address concerns about labour agreement processing times. By their nature, Labour Agreements are bespoke arrangements and are more resource intensive than mainstream visa processing. Changes to mainstream visa requirements may provide a far more efficient means of addressing some of the industry concerns than a labour agreement mechanism.

**Background**

32. A Labour Agreement is a formal agreement between an Australian employer and the Australian Government. It allows employers to recruit overseas workers on a permanent or temporary basis outside of the standard skill program streams. Labour Agreements largely sit outside of Migration legislation, with most requirements, and available terms/concessions, set out under policy.
33. Labour Agreements are in effect for five years with annual nomination ceilings for each year of the agreement.
34. A Labour Agreement can only be executed when an employer's recruitment needs cannot be met through the Australian labour market or through existing sponsored skilled entry visa arrangements.

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35. The Department is currently working on the following submissions that impact the Labour Agreements program:

- A submission providing options to modify some existing Meat Industry Labour Agreement settings to address issues raised with the then Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs in October 2020, by the Australian Meat Industry Council (AMIC).
- A submission to include English language concessions into the Dairy Industry Labour Agreement, in response to a request from Dairy Australia.
- A submission with the option to establish a new industry Labour Agreement for the interactive games and entertainment industry—the Interactive Games and Entertainment Association made a submission to the Department in early 2020 to establish an industry Labour Agreement providing a permanent residency pathway for a range of skilled occupations that do not currently have a pathway under standard skilled visa programs.

**Consultation – internal/external**

36. The Migration Planning and Visa Policy Branch were consulted in the development of this submission.

**Consultation – Secretary**

37. The Secretary was not consulted on the approach in the submission.

**Client service implications**

38. N/A.

**Relationship to Prime Minister's Priorities**

39. N/A.

**Sensitivities**

40. The Labour Agreement program continues to attract public and media attention. There is a reputational risk for the Department, the Minister and the Government in instances where the Department has approved a Labour Agreement with an organisation that is the subject of adverse information. A list providing the name, type, and term of each Labour Agreement is published, updated quarterly on the Department's website.

41. In accordance with our long standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – [media@homeaffairs.gov.au](mailto:media@homeaffairs.gov.au).

**Financial/systems/legislation/deregulation/media implications**

42. Nil.

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**OFFICIAL: Sensitive****Attachments****Attachment A** Key statistics for the Labour Agreements program**Attachment B** Labour Agreement comparison table**Attachment C** Client Brief**Authorising Officer**

Cleared by:

**s. 22(1)(a)(ii)**A/g Assistant Secretary  
Skilled and Family Visa Program

Date: 01/02/2021

Ph: **s. 22(1)(a)(ii)**Mob: **s. 22(1)(a)(ii)****Contact Officer** **s. 22(1)(a)(ii)** A/g Assistant Secretary, Skilled and Family Visa Program, ph: **s. 22(1)(a)**

**CC** Minister for Home Affairs  
 Secretary  
 Deputy Secretary Immigration and Settlement Services Group  
 FAS Immigration Programs Division  
 FAS Immigration and Community Protection Policy Division

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## Attachment A – Key statistics for the Labour Agreements program: 31 December 2020

Industry	Agreements in effect as at 31 December 2020			2019-20 YTD as at 31 December 2020						
	2019	2020	% change	Lodged	Approved	Declined	Returned	Withdrawn	Temp Visas Granted	Perm Visas Granted
Company Specific	88	85	-3.4%	31	6	22	<5	5	42	33
Advertising	0	<5	n/a	<5	0	0	0	0	<5	0
Industry – Dairy	8	6	-25.0%	<5	<5	0	0	0	5	<5
Industry – Fast Food	0	0	0.0%	0	0	0	0	0	0	0
Industry – Fine Dining	<5	<5	-25.0%	<5	0	<5	0	0	0	0
Industry - Fishing	32	36	12.5%	<5	<5	0	0	0	18	0
Industry - Horticulture	0	<5	n/a	7	<5	<5	0	<5	0	0
Industry - Meat	43	37	-14.0%	7	<5	<5	0	0	40	101
Industry – Minister of Religion	82	82	0.0%	61	13	45	26	6	7	<5
Industry – Onhire	54	49	-9.3%	11	<5	<5	0	<5	129	0
Industry – Pork	13	11	-15.4%	<5	0	<5	0	0	19	21
Industry – Other	0	0	na	<5	0	0	0	0	0	0
Designated Area Migration	105	164	56.2%	63	32	29	<5	5	60	<5
GTES – Established Business	30	47	56.7%	12	9	<5	0	0	29	0
GTS – Start up	11	16	45.5%	<5	<5	0	0	0	7	0
<b>Total</b>	<b>470</b>	<b>538</b>	<b>14.5%</b>	<b>211</b>	<b>72</b>	<b>107</b>	<b>29</b>	<b>19</b>	<b>359</b>	<b>161</b>



## Attachment A – Key statistics for the Labour Agreements program: 31 December 2020

DAMA AGREEMENT	LABOUR AGREEMENT			TEMPORARY SKILL SHORTAGE						EMPLOYER NOMINATION SCHEME					
				NOMINATIONS			PRIMARY VISA			NOMINATIONS			PRIMARY VISAS		
	Lodged	Executed	Declined /	Lodged	Approved	Refused/Withdra	Lodged	Granted	Refused/Withdra	Lodged	Approved	Refused/Withdra	Lodged	Granted	Refused/Withdra
Adelaide City	10	6	<5	6	<5	<5	6	<5	<5	0	0	0	0	0	0
Far North Queensland	32	13	7	26	12	<5	18	8	0	0	0	0	0	0	0
Great South Coast	15	11	<5	11	9	<5	9	<5	<5	0	0	0	0	0	0
Northern Territory II	146	96	20	176	137	12	156	116	6	12	6	<5	12	5	<5
Orana	10	<5	<5	<5	<5	0	<5	<5	0	0	0	0	0	0	0
Regional SA	24	12	11	14	9	<5	13	9	<5	0	0	0	0	0	0
Kalgoorlie-Boulder Goldfields	23	14	<5	22	18	0	15	11	0	<5	0	<5	<5	0	<5
<b>TOTAL</b>	<b>260</b>	<b>154</b>	<b>46</b>	<b>259</b>	<b>190</b>	<b>21</b>	<b>220</b>	<b>151</b>	<b>10</b>	<b>15</b>	<b>6</b>	<b>&lt;5</b>	<b>15</b>	<b>5</b>	<b>&lt;5</b>



Agreement	What is it for?	Occupations	PR pathway available?	Concessions in current templates	Year Industry Template was implemented
Minister of Religion	Only pathway for Ministers of Religion to migrate to Australia.	Minister of religion (272211)	Yes – after 3 years	Yes – English, salary	2015
Company Specific	Negotiated with individual companies which meet the base requirements of the labour agreement program	Various	Depends on individual agreement – needs MO approval		N/A
On hire Industry	Caters for recruitment agencies which cannot utilise the standard skilled visa programs due to not being the direct employer	Various	No	No – on hire nature of arrangements only	2007
Meat industry	Designed to assist abattoirs to meet labour needs (difficulties attracting/ retaining staff in remote locations)	Skilled meat worker	Yes – Skilled Employer Sponsored Regional (SESR) (subclass 494) visa, with a permanent pathway to a Permanent Residence (Skilled Regional) visa (subclass 191) available after three years; or Employer Nomination Scheme (ENS) (subclass 186) visa after a three year transitional period on a TSS visa.	Yes – English, occupation	2007
Fishing industry	Designed to assist industry to meet regional labour needs (Australian workers often unable to pass required drug and alcohol tests.)	Deck Hand - (899211) Fishing Hand - (899212) Master Fisher - (231211) Ship's Engineer (Fishing Industry) Ship's Master - (231213) Ship's Officer - (231214)	No	Yes – English, occupations	2011
Dairy industry	Designed to assist industry to meet regional labour needs (difficulties attracting and retaining staff in often remote regional locations.)	Senior dairy cattle farm worker	Yes - SESR visa, with a permanent pathway to a Permanent Residence (Skilled Regional) visa (subclass 191) available after three years; or ENS visa after a three year transitional period on a TSS visa.	Yes – occupation	2015
Pork industry	Designed to assist industry to meet regional labour needs (difficulties attracting and retaining staff in often remote regional locations.)	Senior stockperson (piggery)	Yes - SESR visa, with a permanent pathway to a Permanent Residence (Skilled Regional) visa (subclass 191) available after three years; or ENS visa after a three year transitional period on a TSS visa.	Yes –occupation	2014
Horticulture industry	Designed to assist industry to meet regional labour needs (difficulties attracting and retaining staff in often remote regional locations.)	Irrigation Designer/ Manager – (234111) Agronomist – (234112) Entomologist – (234518) Horticulture Grower – (070499) Protected Cropping Grower - (070499)	Yes - SESR visa, with a permanent pathway to a Permanent Residence (Skilled Regional) visa (subclass 191) available after three years; or ENS visa after a three or four year transitional period on a TSS visa.	Yes - TSMIT (10% concession), occupations, English and age	2020



Agreement	What is it for?	Occupations	PR pathway available?	Concessions in current templates	Year Industry Template was implemented
		Horticulture Research & Development Officer – (132511) Mechanical Engineer – (233512) Horticulture Farm Manager – (070499) Quality Assurance Manager – (139914) Biosecurity Officer – (311399) Facility Plant Manager – (149913) Facility Supervisor (070499) Maintenance Electrician – (341111) Fitter and Welder – (323213) Agriculture Technician – (321212) Mechanic – (321211) Senior Nurseryperson – (362411) Nurseryperson – (362411) Nursery Supervisor – (362411) Truck Driver – (733111) Mobile Plant Operator – (721111) Fork Lift Driver – (721311) Irrigationist – (841999) Irrigationist Assistant – (841999) Horticulture Section Manager – (070499) Section Supervisor – (070499) Production Horticulture Supervisor – (070499) Production Horticulturist – (070499) Machinery Manager - (149913 or 149999) Machinery Supervisor – (149999) Cold Storage Manager – (149999)			
<b>Fine Dining industry</b>	Designed to assist fine dining industry retaining staff for longer periods and skilled staff who see the industry as a career, (high turnover of local staff)	Chef - ( 351311) Cook - ( 351411) Trade waiter	Yes – ENS visa after a two year transitional period on a TSS visa.	Yes – TSMIT (10% concession), occupations	2014
<b>Snow sport industry</b>	Designed to assist snow sport industry cater for recruitment needs, with employment seasonal only and skilled staff generally travelling the world to follow the 'ski season'.	Ski/Snowboard Instructor - ( 452314) Ski Patroller (medic) ( 451899) Ski Technician - ( 149999) Snow Groomer - ( 721999)	No	Yes – English, salary concession, occupations	2010

## Attachment B – Labour Agreement Comparison Table

Agreement	What is it for?	Occupations	PR pathway available?	Concessions in current templates	Year Industry Template was implemented
		Lift Operator - ( 341113)			Template agreement ceased 30 June 2018
<b>Fast food industry</b>	Designed to assist fast food industry retaining staff for longer periods to be trained as retail managers and supervisors, with a high turnover of local staff.	Retail Manager - ( 142111) Retail Supervisor - ( 621511)	Yes	Yes - occupations	2012  Template agreement ceased 2 March 2017
<b>Designated Area Migration Agreement (DAMA)</b>	Designed to assist regional areas experiencing skill shortages. Seven DAMAs in place: Northern Territory; Goldfields; Great South Coast; Adelaide City, Regional South Australia; Orana; and Far North Queensland.	Various occupations including non-ANZSCO and Skill Level 5 occupations.	Yes – subject to the agreed terms of each approved DAMA region.	Yes – Skills & Experience, Salary (TSMIT), English language, Age.	2018 (NT DAMA II). 2019 (all other DAMAs)
<b>Global Talent Employer Sponsored (GTES)</b>	Designed to assist Start-up businesses operating in a STEM-related field and Established businesses fill highly skilled, specialised and niche roles.	Various	Yes	No	N/A
<b>Project agreements</b>	Project labour agreements are the primary mechanism for implementing the Investment Facilitation Arrangement under the China Australia Free Trade Agreement. Under this arrangement, a Chinese company which has been endorsed by the Department of Foreign Affairs and Trade will submit a request to the Department for a project agreement.	Various	No	No	N/A



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Australian Government  
Department of Home Affairs

**Submission**

For decision

PDMS Ref. Number MS21-000407

Date of Clearance: 16/04/2021

**To** Minister for Immigration, Citizenship, Migrant Services and  
Multicultural Affairs

**Subject** Options for streamlining Labour Agreements

**Timing** At your convenience.

**Recommendations**

That you:

1. provide your decision on the option to streamline the assessment of Labour Agreement requests at **Attachment B**; and
2. provide your decision on options to pursue broader policy considerations and options for the Labour Agreement program, as outlined at **Attachment C** which, if agreed, will be detailed in a further submission.

decision provided /  
please discuss

decision provided /  
please discuss

See attachment

Minister for Immigration, Citizenship, Migrant Services and  
Multicultural Affairs

Signature

Date: 26 / 4 / 2021

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Minister's Comments				
<p>As per Attached Table, incorporating the advice and decisions.</p>				
<b>Rejected</b> Yes/No	<b>Timely</b> Yes/No	<b>Relevance</b> <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	<b>Length</b> <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	<b>Quality</b> Poor 1.....2.....3.....4.....5 Excellent <b>Comments:</b>

**Key Issues**

1. The Department of Home Affairs (the Department) provided an initial briefing on Labour Agreement processing trends and integrity issues (MS21-000103 refers). In that submission, the Department advised you of a range of factors impacting processing times for labour agreements.

Labour Agreement Processing: Assessment Criteria

2. Processing times for labour agreements are impacted by the assessment criteria that a business is required to meet.
3. There are currently nine assessment criteria against which each labour agreement request is assessed. A comparison of existing labour agreement assessment criteria is detailed in **Attachment A**. These criteria have been developed over time, in response to the intent of different Ministers at different points in time. Only one criterion is based on a legal requirement under the *Migration Regulations 1994*. The remaining criteria are set through internal departmental policy and detailed in the Labour Agreements procedural instruction which is published on LEGEND.
4. As Minister, you have the power to enter into Labour Agreements, which is derived from the general executive power under section 61 of the Constitution. This power may be exercised by departmental officers on your behalf, subject to your authorisation and any conditions or parameters that you may wish to set.
5. There is the option available to you to agree to reduce the assessment criteria for labour agreement processing and, in particular, reduce overlap of assessment criteria that is undertaken at the labour agreement, nomination and visa application stages.

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6. Streamlining labour agreement processing will also improve processing times for labour agreements for Designated Area Migration Agreements (DAMAs). The Department noted in a recent submission (MS21-000252 refers) that it could provide further options to streamline the processes relating to DAMA agreements, and will come back with a separate submission to that effect.
7. Options for streamlining assessment criteria are provided at **Attachment B**. Option two is the Department's preferred option as it will:
  - maintain a high level of assessment in relation to the key criterion that a business must be of good standing, to maintain the integrity of the program;
  - for the 'Labour Market Need' criterion, streamline the requirements of this process based on a risk assessment and a strictly limited interpretation of the relevant regulation, noting a further labour market need test applies at nomination stage; and
  - streamline other assessment criteria that are also assessed at nomination and visa application stages. This will remove overlap in the assessment of requirements at labour agreement, nomination and visa application stages.

*Integrity Issues*

8. As noted in MS21-000103, the Department continues to see integrity issues within the Labour Agreement program, with the Meat Industry Labour Agreement (MILA) a particular concern.
9. The high use of both onshore and offshore labour hire, and the prevalence of fraudulent English test results, work references and skills documents used to establish the genuineness of visa applicants, are areas of focus for the Department.
10. Misuse of the skilled visa program by businesses is, and will continue to be, regarded as adverse information and will impact on whether a business meets the definition of a business of 'good standing'. The Department is not recommending that you agree to streamline the 'good standing' requirement at labour agreement assessment stage, in order to ensure that the integrity of Australia's immigration program is maintained.
11. Labour agreement requests where adverse information is identified are likely to experience extended processing timeframes while the Department conducts enquiries. However, the Department is revisiting how we can provide business and industry with earlier information to highlight concerns as early as possible.

*Additional Policy Changes*

12. In addition to streamlining the requirements for processing labour agreement requests, the Department has outlined options for your consideration for broader changes to the standards temporary and permanent visa programs at **Attachment C**.
13. Broadly, these options are:
  - revamping the Accredited Sponsorship Scheme to allow for preferential access and streamlining for labour agreement requests from 'trusted' employers; and
  - looking at opportunities in the other parts of the employer sponsored programs to reduce the reliance on labour agreements.

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**OFFICIAL: Sensitive****Background**

14. Whilst the labour agreement process sits largely outside of a legislative framework, there are provisions in the *Migration Act 1958* and *Migration Regulations 1994* that define the terms 'Work Agreement' (WA) and 'Labour Agreement'. Additionally, Regulation 2.76A requires that the Commonwealth must not enter into a Labour Agreement unless "...the Minister is satisfied that the other party has made recent and genuine efforts to recruit, employ or engage Australian citizens or Australian permanent residents to meet those requirements."
15. Labour Agreement requests are assessed in accordance with the Labour Agreement Procedural Instruction. Currently, additional integrity checks are being undertaken for all Labour Agreement requests to understand how the COVID-19 pandemic has impacted each business, and to ensure that all available options to fill skill shortages with Australian citizens and permanent residents are being exhausted. As part of its assessment of requests, the Department currently requires that each requesting businesses provide evidence of labour market testing commensurate with what applies under standard employer sponsored programs. This is set as part of the internal Departmental policy for labour agreement assessments, however, rather than an enforceable labour market testing requirement.
16. General background on Labour Agreements, including further information on DAMAs is at Attachment D.

**Consultation – internal/external**

17. Nil

**Consultation – Secretary**

18. The Secretary was not consulted on the approach in the submission.

**Client service implications**

19. Streamlining Labour Agreement requirements is expected to result in improved processing times and consequently greater certainty for businesses.

**Sensitivities**

20. The labour agreement program is a well-established program, however it may attract public criticism for enabling access to overseas workers outside the parameters of existing visa programs.
21. A number of industry stakeholders have given evidence at the Joint Standing Committee on Migration's inquiry into Australia's skilled migration program. The evidence submitted has argued that the Labour Agreement processes are slow, complex and administratively onerous. While the Committee's interim report does not include any recommendations relating specifically to Labour Agreements, the final report may do so.
22. The Department is obligated to safeguard the integrity of the skilled migration program, and to provide confidence to the Australian community that sponsored overseas workers have the skills and experience to work in their nominated occupation. Public trust in the immigration program is undermined if organisations are able to sponsor individuals who are not complying with the requirements or conditions of a visa once granted, or who submit fraudulent information or documents with applications.

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23. As previously advised in M521-000103, there are significant integrity issues with MILA labour agreement requests. Introduction of streamlined processing for labour agreement requests at a time when such a large number of integrity issues are being addressed may result in a perception that the integrity of Australia's immigration program will be undermined.
24. Streamlining the requirement for businesses to reduce their reliance on overseas workers, by removing an incentive to businesses to commit to the ongoing training and retention of Australian workers, will reduce the obligation of businesses to recruit, employ, or engage Australian citizens or permanent residents.
25. In accordance with our long-standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – [media@homeaffairs.gov.au](mailto:media@homeaffairs.gov.au).

**Financial/systems/legislation/deregulation/media implications**

26. There are not expected to be significant financial implications. Approximately 3.5 percent of TSS nominations lodged are in the Labour Agreement stream.
27. Talking Points regarding integrity issues in the MILA program have been developed and are available at **Attachment E**.

**Attachments**

- Attachment A** Labour Agreement Assessment Considerations
- Attachment B** Options for Streamlining Labour Agreements
- Attachment C** Policy considerations and options
- Attachment D** Labour Agreements background
- Attachment E** Meat Industry Labour Agreement Talking Points

<b>Authorising Officer</b>	
Cleared by:	
Michael Willard First Assistant Secretary Immigration Programs Division	
Date: 16 April 2021 Mob: s. 22(1)(a)(ii)	
<b>Contact Officer</b> s. 22(1)(a)(ii)	A/g Assistant Secretary, Skilled Visa Branch, Ph: s. 22(1)(a)(ii)

CC Minister for Home Affairs  
Secretary  
Deputy Secretary, Immigration and Settlement Services Group

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## Labour Agreement Assessment Considerations - Attachment A

Labour Agreement (LA) requirements	LA policy requirements	Basis for requirement (Labour Agreements PI reference number)	Stages where LA requirements, and equivalent Standard Business Sponsor (SBS) requirements, are assessed			
			LA Request	Nom	Visa	SBS
1. Australian registered business with good standing	Requesting business must demonstrate that: <ul style="list-style-type: none"> <li>it has lawfully operated in Australia for at least 12 months; and</li> <li>it has operated responsibly, not breached any Australian laws, and has utilised Australia's migration programs appropriately, and in accordance with migration legislation.</li> </ul>	Requirement established under policy (Section 3.1)  Note – aligns with SBS requirements [Lawfully operating (Reg 2.59 (c)), and Adverse information (Reg 2.59 (g))].	✓	X	X	✓
2. Labour Market Need	Requesting business must demonstrate a genuine labour market need by showing: <ul style="list-style-type: none"> <li>Australian workers are not available to fill skilled positions;</li> <li>recent and genuine efforts to recruit Australians (Regulation 2.76A)(however, under policy this is met by having conducted LMT recently and in accordance with standard visa program requirements);</li> <li>overseas workers are not available via standard skilled visa pathways; and</li> <li>that requested nomination ceilings are justified and proportionate in the context of claimed/demonstrated skills shortages.</li> </ul>	Regulation 2.76A requires that the Commonwealth must not enter into a Labour Agreement unless "...the Minister is satisfied that the other party has made recent and genuine efforts to recruit, employ or engage Australian citizens or Australian permanent residents to meet those requirements."  How the Department assesses of Reg 2.76A is set under policy (Section 3.2)	✓	✓	X	X
3. Reliance on overseas workers	Requesting business must demonstrate: <ul style="list-style-type: none"> <li>in any one year period, overseas workers do not comprise more than a third of their workforce; and</li> <li>their reliance on overseas workers decreases during the life of their LA; or</li> <li>that exceptional circumstances exist, if overseas workers do, or will in future, comprise more than one third of their workforce.</li> </ul>	Requirement established under policy (Section 3.4)	✓	X	X	X



## Labour Agreement Assessment Considerations - Attachment A

Labour Agreement (LA) requirements	LA policy requirements	Basis for requirement (Labour Agreements PI reference number)	Stages where LA requirements, and equivalent Standard Business Sponsor (SBS) requirements, are assessed			
			LA Request	Nom	Visa	SBS
4. Occupation requirements	Requesting businesses must demonstrate that the positions they are seeking to fill with a LA are genuine skilled positions, and that the duties performed by overseas workers align with ANZSCO, or where no equivalent occupation is listed in ANZSCO, the duties align with those specified under approved LA settings.	Requirement established under policy (Section 3.5).	✓	✓	X	X
5. Salary requirements and employment conditions	Requesting business must demonstrate they can meet standard skilled visa requirements so that workers are paid: <ul style="list-style-type: none"> <li>at least the market salary rate;</li> <li>at least what an equivalent Australian would be paid, and</li> <li>at least the TSMIT.</li> </ul>	Requirement established under policy (Section 3.6)	✓	✓	X	X
6. Skills, qualifications and experience	LAs generally require that overseas workers have a qualification of at least equivalent to an AQF Certificate III (or higher where required by ANZSCO) as assessed by an appropriate registered training organisation, and two (TSS) or three (ENS, SESR) years of recent relevant experience.	Requirement established under policy (Section 3.7)	✓	X	✓	X
7. English language	Nominees under a LA are generally required to meet standard temporary or permanent skilled visa English requirements.	Requirement established under policy (Section 3.8)	✓	X	✓	X
8. Permanent residency (PR) pathway	LAs can only be approved with a PR pathway where the Minister has agreed PR be available. The business must provide a strong business case demonstrating longer term skill shortages that necessitate sponsoring overseas workers for PR.	Requirement established under policy (Section 3.9)	✓	X	✓	X
9. Age	Nominees under a LA are generally required to meet standard skilled visa age requirements where applicable. Note: Age is only assessed where a PR pathway available.	Requirement established under policy (Section 3.10)	✓	X	✓	X



## Options for Streamlining Labour Agreement Assessments - Attachment B

Labour Agreement (LA) requirements	Option 1: Assess requirements 1 to 9 (existing)	Option 2: Assess requirements 1,2&4 (streamlined)	Department's comments
1. Australian registered business with good standing	Assessed – no change to existing process.	Assessed - no change to existing process.	s. 47C(1)
2. Labour Market Need	Assessed – no change to existing process	For requests deemed to be high risk, assess as per existing process For requests deemed not to be high risk, undertake a streamlined assessment of Labour Market Need	
3. Reliance on overseas workers	Assessed – no change to existing process	Not assessed As per attached table	
4. Occupation requirements	Assessed – no change to existing process	Assessed - no change to existing process.	
5. Salary requirements and employment conditions	Assessed – no change to existing process	Not assessed except for Minister of Religion and Company-Specific LAs if concession requested*	
6. Skills, qualifications and experience	Assessed – no change to existing process	Not assessed except for Minister of Religion and Company-Specific LAs if concession requested*	
7. English language	Assessed – no change to existing process	Not assessed except for Minister of Religion and Company-Specific LAs if concession requested*	
8. Permanent residency (PR) pathway	Assessed – no change to existing process	Not assessed except for Minister of Religion and Company-Specific LAs if concession requested*	
9. Age	Assessed – no change to existing process	Not assessed except for Minister of Religion and Company-Specific LAs if concession requested*	
Minister's decision	Agreed / Not agreed	Agreed / Not agreed	Other changes as per attached table

	High streamlining benefit
	Medium streamlining benefit
	No/low streamlining benefit

\*For **Company-specific** agreements, there are no pre-set/agreed concessional arrangements. For **Minister of Religion** agreements, there are a range of additional policy settings that necessitate information about each nominee being provided a LA request stage. It is recommended that all requirements continue to be assessed at LA request stage for both Minister of Religion and Company specific requests where concessions are requested.



Regional areas	Category 1 Major Cities' of Sydney, Melbourne and Brisbane	Category 2 Cities and Major Regional Centres' of Perth, Adelaide, the Gold Coast, the Sunshine Coast, Canberra, Newcastle/Lake Macquarie, Wollongong/Illawarra, Geelong and Hobart	Category 3 Regional Centres and Other Regional Areas
Existing concessions	-Access to short-term and medium term occupation lists -Temporary Graduate Visa (2 to 5 years for university graduates) -Temporary Graduate Visa (18 months for vocational graduates)	-Access to regional occupation list -Additional 1 year Temporary Graduate Visa (for university graduates) <b>s. 47C(1)</b>	-Access to regional occupation list -Additional 2 year Temporary Graduate Visa (for university graduates) -Priority negotiation of DAMAs <b>s. 47C(1)</b>
<b>LABOUR AGREEMENT REQUIREMENTS</b>			
ANZCO skill	ANZCO skill levels 1-4		ANZCO skill levels 1-4 ANZCO skill level 5 on Minister decision
Skill requirements	-A relevant recognised qualification at or above skill level 4 on ANZCO -Skill level 4 requires an <b>AQF Certificate II or above</b> . At least <b>one year of relevant Australian experience</b> may substitute for the formal qualification -In some instances relevant experience may be required in addition to the formal qualification		
Labour Market Need – Agreement Stage	Streamlined assessment of 'Labour market need' for <b>low risk</b> businesses at the Agreement stage		
Work experience	-TSS – <b>2 years</b> relevant work experience -ENS (Permanent) – <b>3 years</b> relevant work experience	-TSS – <b>2 years</b> relevant work experience -SESR (Provisional) – <b>2 years</b> relevant work experience -ENS (Permanent) – <b>3 years</b> relevant work experience	
English language (IELTS)	-TSS – <b>5.0 with at least 4.5</b> -ENS (Permanent) – <b>6.0</b>	-TSS – <b>5.0 with zero</b> band requirement -SESR (Provisional) – <b>5.0 with zero</b> band requirement -ENS (Permanent) – <b>6.0</b>	
Age	45 years	55 years	
Pathways to PR	PR pathway where the Minister has agreed PR be available based on a strong business case demonstrating longer term skill shortages	Guaranteed pathway to PR upon request with preference for <b>SESR</b> visa	
Reliance on overseas workers	In any one year period, overseas workers do not comprise more than <b>30%</b> of their workforce with <b>flexibility</b> according to circumstances of business such as small and medium businesses and industry	In any one year period, overseas workers do not comprise more than <b>50%</b> of their workforce with <b>flexibility</b> according to circumstances of business such as small and medium businesses and industry	Not assessed
Labour Market Testing – Nomination Stage	-Evidence of Labour market testing at the Nomination stage equivalent to that required under <b>Standard</b> skilled visa program requirements -Advertising must be done within the <b>4 months</b> immediately before lodging a nomination application	-Evidence of Labour market testing at the Nomination stage equivalent to that required under <b>Standard</b> skilled visa program requirements -Advertising must be done within the <b>12 months</b> immediately before lodging a nomination application	- <b>Less prescriptive</b> evidence of Labour market testing at the Nomination stage. For example, on the business website and industry website -Advertising must be done within the <b>12 months</b> immediately before lodging a nomination application
Salary	TSMIT AUD53,900	TSMIT AUD53,900 with industry concessions (meat etc) as relevant	- <b>10% concession</b> to the TSMIT -Industry concessions (meat etc) as relevant



## Labour Agreements

A Labour Agreement is a formal arrangement negotiated between an Australian employer and the Australian Government. It provides a flexible, tailored skilled migration arrangement for employers and sectors with specific occupation needs that sit outside the mainstream skilled migration program.

A Labour Agreement defines employer obligations such as the terms and conditions of employment for the skilled overseas workers and training requirements for Australian employees. It also defines the required skill, qualification and English language levels that overseas workers under the agreement must meet. No fee is charged to request a Labour Agreement.

## Labour Agreements Legislative Framework

### **Section 140GC of the *Migration Act 1958* 'Work agreements'**

- *For the purposes of the definition of work agreement, the regulations may prescribe requirements that an agreement must satisfy.*

**Note:** *A person (other than a Minister) who is a party to a work agreement is an approved work sponsor and must satisfy sponsorship obligations.*

The note to section 140GC of the Act states that a person, other than a Minister, who is a party to a work agreement, is an approved sponsor and must satisfy sponsorship obligations set out in Division 3A of the Act.

### **Section 140H – Sponsorship Obligations**

Subsections 140H(2) and (3) clarify the sponsorship obligations that must be satisfied by a person who is/was a party to a work agreement. Specifically, subsection 140H(3) has the effect that, if the terms of the work agreement impose sponsorship obligations that are in addition to those that are prescribed in the Regulations, the party to the work agreement must satisfy the sponsorship obligations imposed by the work agreement as well as the sponsorship obligations imposed by the Regulations.

**2) However, if:**

- (a) a person (other than a Minister) is or was a party to a work agreement; and*
- (b) a sponsorship obligation, that would otherwise be imposed on the person by the regulations, is varied by a term of the agreement;*

*then, the person must satisfy the sponsorship obligation as so varied.*

**(3) If:**

- (a) a person (other than a Minister) is or was a party to a work agreement; and*
- (b) an obligation, identified in the agreement as a sponsorship obligation, is imposed on the person by a term of the agreement;*

*then, the person must also satisfy the sponsorship obligation imposed by the term of the agreement.*



**Regulation 1.03 'labour agreement'**

The term 'labour agreement' is defined in regulation 1.03 of the Regulations to mean:

- *a formal agreement entered into between*
  - (a) *the Minister or the Employment Minister, and*
  - (b) *a person or organisation in Australia,**under which an employer is authorised to recruit persons to be employed by that employer in Australia.*

**Section 5(1) 'work agreement'**

'Work agreement' is defined in section 5(1) of the Act to mean:

- *an agreement that satisfies the requirements prescribed by the regulations for the purposes of this definition.*

**Regulation 2.76 Requirements for 'work agreements'**

A labour agreement also comes within the definition of 'work agreement' set out in subregulation 2.76(2), which states:

- (2) A work agreement:**
- (a) *must be between:*
    - (i) *the Commonwealth, as represented by the Minister, or by the Minister and 1 or more other Ministers; and*
    - (ii) *a person, an unincorporated association or a partnership ; and*
  - (b) *must be a labour agreement that authorises the recruitment, employment, or engagement of services of a person who is intended to be employed or engaged as a holder of a Subclass 482 (Temporary Skill Shortage) visa or Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa; and*
  - (c) *must be in effect.*

Subregulation 2.76(2) prescribes the requirements that a work agreement must satisfy for the purposes of section 140GC, and subsection 5(1) of the Act.

**Regulation 2.76A Labour market testing and other work agreement requirements**

Subregulation 2.76A(1) states:

- *The Commonwealth must not enter into a work agreement in relation to the recruitment, employment or engagement of persons in occupations and locations required by the other party to the agreement unless the Minister is satisfied that the other party has made recent and genuine efforts to recruit, employ or engage Australian citizens or Australian permanent residents to meet those requirements.*

Subregulation 2.76A(2) exempts the occupations 'Minister of Religion' and 'Religious Assistant' from the requirements at 2.76A(1).

Subregulations 2.76A(3) and (4) set out the requirements for policy guidelines.

### Labour Agreement Assessment

For a Labour Agreement request to be approved, the requesting organisation must provide a compelling business case supported by strong, relevant and current evidence for employing an overseas worker based on:

- the exceptional or niche skills of the nominee/visa applicant; or
- evidence of a genuine labour market need for a skilled overseas worker to fill a position in Australia (noting that Regulation 2.76 includes specific labour market testing requirements for Labour Agreements).

### Types of Labour Agreements

A **Company-Specific** Labour Agreement is developed directly with an employer and will be considered only where a genuine skills or labour shortage for an occupation exists which is not already provided for in an Industry Labour Agreement, or relevant Project or DAMA. The terms and conditions of the agreement are considered on a case-by-case basis.

An **Industry** Labour Agreement provides fixed terms and conditions agreed to by you in consultation with key industry stakeholders, specific to an industry sector. An industry agreement may be considered if the Department has received a number of similar submissions from an industry and there is evidence of ongoing labour shortages within that industry. Industry agreements ensure that the same set of terms, conditions, and concessions for certain occupations apply to all future Labour Agreements in that industry sector.

When an Industry Labour Agreement is in place, the agreed set of terms and conditions of the industry agreement are non-negotiable. No further concessions (other than the concessions written into the industry agreement) can be considered. There are nine industry agreements in place:

- Advertising
- Dairy
- Fishing
- Horticulture
- Meat
- Minister of Religion
- On-Hire
- Pork
- Restaurant (Fine Dining).



A **DAMA** is a formal agreement between a designated area and the Commonwealth designed to address regional workforce shortages where these cannot be met by Australian workers or existing visa programs. A DAMA allows employers access to a broader range of overseas workers than is available through the standard visa program.

The DAMA has a two-tiered structure. The first tier consists of an overarching three year Deed of Agreement with a DAR setting out the available occupations, ceilings and concessions. The second tier comprises individual Labour Agreements with endorsed employers. DAMAs establish collaborative arrangements, with shared roles and responsibilities, between the Government and regional or state and territory authorities.

The **GTES** program provides businesses with a streamlined process to sponsor overseas workers with cutting-edge skills, where there are no suitable Australians available. The GTES was designed to assist Start-up businesses operating in a STEM-related field and Established businesses fill highly skilled, specialised and niche roles.

The GTES has two streams:

- **Startup** stream: Open to startups endorsed by Startup Advisory Panel and allows for 5 positions per year, with a minimum salary threshold of \$80,000.
- **Established Business** stream: Open to Accredited Sponsors, allows for 20 positions per year with a minimum salary threshold equal to or above the Fair Work High Income Threshold (currently \$153,600).

Both streams have permanent residence available after 3 years, and include age and occupation concessions.

A **project** agreement allows project companies experiencing genuine skills or labour shortages access to temporary skilled and semi-skilled temporary overseas workers through the subclass 457 visa to meet peak workforce demands during the construction phase of resource or infrastructure projects.

Similar to DAMAs, project agreements also have a two-tiered structure. The first tier consists of an overarching deed-of-agreement negotiated with a project company; with the second tier comprising individual labour agreements with direct employers. Project agreements are available to project companies that own or manage the construction phase of large resources or infrastructure projects. Once an overarching deed of agreement is in place, employers may seek to be endorsed by the project company for a labour agreement.

To date there are no project agreements in operation.

#### Further detail on Designated Area Migration Agreements

Once executed by the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, a DAMA remains in effect for five years.

Each year, the DAR is required to submit a ceiling request to the Department and may also seek to vary other aspects of the DAMA at this point.

There are seven DAMAs currently in effect:

- Adelaide City Technology and Innovation Advancement Agreement (Executed April 2019; Expires April 2024).
- South Australia DAMA (Executed April 2019; Expires April 2024).
- Northern Territory DAMA II (Executed December 2018; Expires December 2023)
- Goldfields region DAMA, Western Australia (Executed March 2019; Expires March 2024)
- Great South Coast region DAMA, Victoria (Executed March 2019; Expires March 2024).
- Far North Queensland (Executed: April 2019; Expires April 2024).
- Orana region DAMA, New South Wales (Executed April 2019; Expires April 2024).

A number of other regional areas in Victoria, New South Wales and Western Australia have expressed interest in a DAMA. The Department is actively engaging with the Greater Shepparton Council, Victoria in relation to a Goulburn Valley DAMA. In January 2021, the Council submitted a draft business case to the Department of Home Affairs for feedback. The Department provided written feedback in February 2021.

DAMA is a two tier framework:

- The first tier consists of an overarching five year Deed of Agreement between the Commonwealth and the Designated Area Representative (DAR) – “the DAMA”.
- The second tier consists of an individual Labour Agreement with employers (“the DAMA Labour Agreement”).

The DAR is responsible for endorsing local employers seeking to enter into a DAMA Labour Agreement. A business must be endorsed by the DAR before submitting a DAMA Labour Agreement request with the Department.

#### Streamlining of a DAMA Deed of Agreement/Deed of Variation

To establish a DAMA, interested regions must present a strong business case. The business case provides information about the regional authority who will be the DAR for the region, the reasons why a DAMA is being sought and the anticipated outcomes, current Labour Market information, and details of local support services for migrants.

The process for establishing a DAMA may take several months to complete. The DAR must:

- work closely with employers and stakeholders in their region to understand their unique labour needs and issues and broad community views;
- represent the region’s collective requirements in a business case submitted to the Department of Home Affairs; and



- work with the Department to finalise the business case before it is submitted to the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs for consideration.

The terms, concessions, approved occupations and nomination ceilings available under each DAMA are authorised by you personally. Once signed and executed by both parties, the DAMA head agreement remains in effect for five years, with an annual review process in place to review and potentially vary the terms, concessions, occupations and ceilings for the subsequent year.

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**Australian Government**  
**Department of Home Affairs**

**Submission**

For decision  
 PDMS Ref. Number MS20-002891  
 Date of Clearance: 30/03/2021

**To** Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

**Subject** Request to include English language concessions in the Dairy Industry Labour Agreement

**Timing** At your convenience.

**Recommendations**

That you:

1. note the request from Dairy Australia to introduce English language concessions under the Dairy Industry Labour Agreement (**Attachment A**).
2. provide your decision at **Attachment B** for the concessions requested by Dairy Australia.

noted / please discuss

decision provided / please discuss

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Signature.....

Date 27/4/2021

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Minister's Comments				
<b>Rejected</b> Yes/No	<b>Timely</b> Yes/No	<b>Relevance</b> <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	<b>Length</b> <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	<b>Quality</b> Poor 1 2 3 4 5 Excellent <b>Comments:</b>

**Key Issues**

- On 6 November 2020, Dairy Australia, on behalf of Australian Dairy Farmers (ADF) and the Australian dairy industry, submitted a request to the Department of Home Affairs to modify Dairy Industry Labour Agreement (DILA) settings for the English language requirement (see **Attachment A**).
- The request was made in response to concerns expressed by Dairy Australia, ADF and dairy producers, that existing English language requirements for the DILA are proving prohibitive to dairy providers seeking to sponsor skilled overseas workers to fill critical skill shortages. In preparing this request, ADF surveyed existing DILA holders seeking feedback on their experience with the DILA program and the challenges associated with existing DILA settings.
- ADF also claim that access to the DILA has been further limited by a legislation change in November 2019, which removed an exemption allowing Employer Nomination Scheme (ENS) visa applicants to meet the English requirement where they could demonstrate completion of at least five years of full-time study in a secondary education institution or higher education institution, where the instruction was delivered in English. Under existing DILA settings, ENS visa applicants are required to have an English proficiency at least equivalent to the standard ENS visa program. Applicants must score, therefore, at least IELTS 6.0 overall, and at least IELTS 6.0 in each test component.
- The November 2019 regulation change was also recently raised in relation to the Pork and Minsters of Religion industry Labour Agreements. In response, the then Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs agreed to changes to English language settings for both industry agreements (refer: MS20-000085 and MS20-001324).

**Proposed changes to English requirements for the DILA**

- Dairy Australia's request proposes the inclusion of four new concessions for the DILA.

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6. The proposed concessions, reasons put forward by Dairy Australia for each concession, and the Department's view on each concession, are summarised in the table below.

Proposed concession	Reasons for requesting concession	Supported/Not supported by the Department
<p>Concession allowing TSS visa applicants to score equivalent to at least IELTS 5.0 overall, and at least IELTS 4.0 in each test component.</p> <p><i>Current DILA setting</i> TSS visa applicants must score at least IELTS 5.0 overall, and at least IELTS 4.5 in each test component.</p>	<ul style="list-style-type: none"> <li>Feedback collected by ADF as part of its survey of DILA holders, cites instances of prospective overseas workers achieving the minimum overall score of IELTS 5.0, but failing to achieve the minimum score of IELTS 4.5 in one or more of the test components. This has resulted in the loss of overseas workers that have otherwise proven to have sufficient English skills to be effective and productive employees.</li> <li>Settings for the Horticulture Industry Labour Agreement (HILA) allow TSS visa applicants to score at least IELTS 4.0 for each component, and Australia's dairy industry is experiencing similar skills shortages as the horticultural industry, with insufficient numbers of Australians being attracted to the industry and/or to work in regional Australia.</li> </ul>	<p>s. 47C(1)</p>
<p>Concession allowing ENS visa applicants to score equivalent to at least IELTS 5.0 overall, and at least IELTS 4.5 in each test component.</p> <p><i>Current DILA setting</i> ENS visa applicants are required to score at least IELTS 6.0 overall, and at least IELTS 6.0 in each test component.</p>	<ul style="list-style-type: none"> <li>Producers have reported English proficiency levels for the ENS visa as a concern as a result of the November 2019 legislative changes (refer: paragraph 3).</li> <li>The English proficiency required to undertake the duties of a 'Senior Dairy Cattle Farm Worker' does not rise to the level of existing DILA requirements, with producers responding to the ADF's survey citing examples of existing workers that had demonstrated they were highly effective in performing their roles, however, fell short of having the English proficiency required to obtain permanent residency.</li> <li>English language concessions are already available under Horticulture, Pork and Meat industry labour agreements, allowing ENS visa applicants to score at least IELTS 5.0 overall, and at least IELTS 4.5 in each test component.</li> </ul>	<p>s. 47C(1)</p>

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Proposed concession	Reasons for requesting concession	Supported/Not supported by the Department
<p>Concession allowing ENS visa applicants to meet English proficiency requirements where they can demonstrate completion of at least five years of full-time study in a secondary education institution or higher education institution, where the instruction was delivered in English.</p> <p><i>Current DILA setting</i> <i>No equivalent existing setting.</i></p>	<ul style="list-style-type: none"> <li>Legislation change in November 2019 has unfairly impacted existing temporary overseas workers employed under a DILA who, prior to the legislation change, had anticipated that they would be able to meet English requirements for the ENS visa on the basis of the exemption being available.</li> </ul>	s. 47C(1)
<p>A concession allowing ENS visa applicants to meet English proficiency requirements where they can demonstrate completion of Vocational Education and Training (VET) in Australia at least equivalent to a Certificate IV, in a field relevant to the dairy industry.</p> <p><i>Current DILA setting</i> <i>No equivalent existing setting.</i></p>	<ul style="list-style-type: none"> <li>Skilled overseas workers working in Australia's dairy industry are often supported by their employers to obtain further qualifications, such as a Certificate IV or higher qualification, in the Australian VET system.</li> <li>Dairy Australia have suggested that the English proficiency required to obtain this level of qualification demonstrates that these workers have English proficiency at least equivalent to the English proficiency that an Australian would demonstrate in obtaining a Certificate III qualification, which is the minimum qualification required to work as a 'Senior Cattle Dairy Farm Worker'.</li> </ul>	

7. For your reference, a summary of current English language requirements and concessions for all types of industry Labour Agreements is provided at **Attachment C**.

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**OFFICIAL: Sensitive****Background**

8. The DILA was implemented in 2015 to assist the industry to address the difficulties employers have in attracting and retaining skilled workers in often remote regional locations. It allows employers in the industry to sponsor overseas workers in the occupation of 'Senior Dairy Cattle Farm Worker' and provides a permanent residence pathway through the ENS visa, after a three year transitional period on a TSS visa, or via the SESR visa program.
9. As at 31 January 2021, there were:
  - six Dairy Industry Labour Agreements in effect; and
  - 13 primary Subclass 457/TSS visa holders in Australia sponsored under a DILA.
10. In 2020-21 to 31 January 2021:
  - there have been five primary TSS visas granted; and
  - less than five primary ENS visa granted.

**Consultation – internal/external**

11. N/A.

**Consultation – Secretary**

12. The Secretary was not consulted on the approach in the submission.

**Client service implications**

13. N/A.

**Sensitivities**

14. In accordance with our long-standing practices, should you wish for unclassified media lines to be prepared in relation to this issue please contact the Home Affairs Media Coordination team – [media@homeaffairs.gov.au](mailto:media@homeaffairs.gov.au).

**Financial/systems/legislation/deregulation/media implications**

15. Changes to Labour Agreement policy settings do not require systems changes.

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**OFFICIAL: Sensitive****Attachments**

- Attachment A** Submission – Dairy Industry Labour Agreement English language requirements
- Attachment B** Options to vary existing DILA settings
- Attachment C** English language requirements for industry Labour Agreements

<p><b>Authorising Officer</b></p> <p>Cleared by:</p> <p>Anna Lutz Assistant Secretary Skilled and Family Visa Program</p> <p>Date: 30 March 2021 Ph: 02 s. 22(1)(a)(ii) Mob: s. 22(1)(a)(ii)</p>
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**Contact Officer** Anna Lutz, Assistant Secretary, Skilled and Family Visa Program, ph: 02 s. 22(1)(a)(ii)

**CC** Minister for Home Affairs  
Secretary  
Deputy Secretary Immigration and Settlement Services Group  
FAS Immigration Programs Division  
FAS Immigration and Community Protection Policy Division

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## Australian Dairy Farmers

### Submission

### Dairy Industry Labour Agreement English language requirements

#### Contacts

November 2020

**ADF:** s. 47F(1) Director Policy Strategy, Australian Dairy Farmers  
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# THE AUSTRALIAN DAIRY INDUSTRY



## MAJOR EXPORT MARKETS tonnes

244,828 t	70,119 t
Greater China	Singapore
98,816 t	61,184 t
Japan	Malaysia
	56,647 t
	Indonesia

## ANNUAL PRODUCTION OF MAIN COMMODITIES

381,111 t  
Cheese

224,107 t  
Milk powders

73,322 t  
Butter



## AVERAGE ANNUAL MILK PRODUCTION PER COW

**6,169**  
litres

## TOTAL ANNUAL MILK PRODUCTION

**8,795**  
million litres



## VALUE OF FARMGATE PRODUCTION

**\$4.4**  
billion



## AUSTRALIAN MILK UTILISATION

38% Cheese

4% Whole milk powder

28% Drinking milk

9% Other

21% Skim milk powder or butter



**4<sup>th</sup>**

Dairy is Australia's  
fourth largest  
rural industry



## AVERAGE HERD SIZE

**276**  
COWS



## AUSTRALIAN DAIRY HERD

**1.44** million  
COWS

## ANNUAL PER CAPITA CONSUMPTION

**98.6** litres  
milk

**13.5** kg  
cheese



## AUSTRALIAN DAIRY FARMS

**5,213**

## Executive Summary

Since 2014, the dairy industry has been utilising the Labour Agreement pathway to source overseas workers to fill skilled positions unable to be filled by Australian workers.

Over that time it has become clear to those utilising this pathway that the requirement that nominated workers meet the English language proficiency in place for the Short-term stream of the TSS visa and for ENS visas, meet standard ENS English language requirements, is problematic and is acting as a barrier to obtaining these necessary workers.

The purpose of this submission is to highlight the results of a survey of current Dairy Industry Labour Agreement holders and to seek certain concessions for the Dairy Industry Labour Agreement. It is noted at the outset that the **requirements for English language proficiency may not be consistent with the governing legislation.**

**The higher IELTS Band Score for overseas workers seeking permanent residency is a barrier to these workers achieving permanent residency.** If it is accepted that the IELTS level required for the subclass 482 TSS visa under the Labour Agreement (IELTS Band 5) is sufficient to enable the overseas worker to perform the required work for the period of the TSS visa (4 to 8 years) then this should be sufficient to enable that same employee to continue in this role as a permanent resident. It is submitted that the **English language level for both the TSS visa and the subclass 186 (and the subclass 187 visa) be an IELTS score of be IELTS Band 5 with at least IELTS Band 4.**

Suggested options to reduce further the impact upon dairy farm business owners are that the **English language proficiency for the Dairy Industry Labour Agreement be reduced to IELTS Band 5 with at least IELTS Band 4 in each component and IELTS Band 5 with at least IELTS Band 4.5 in each component for the subclass 186 and the subclass 187 visas.** This is consistent with the concession granted to the Horticulture Industry in its Labour Agreement.

Dairy farm business owners have found that IELTS test takers are often able to achieve the required proficiency in multiple tests but not in the one test at the one time. This issue could be alleviated by **a concession providing that the requisite Band Score be able to be obtained via cumulative tests rather than in a single test.**

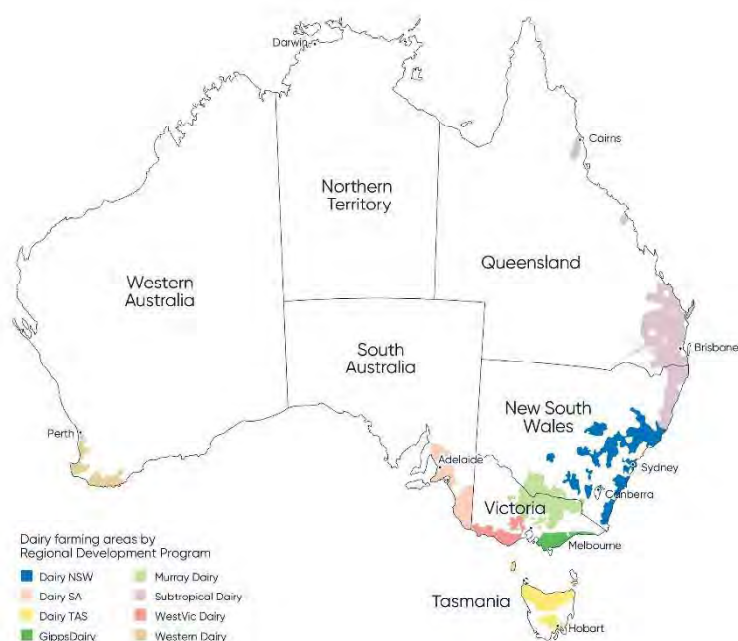
The survey of current Dairy Industry Labour Agreement holders indicated that dairy industry business owners are supporting their overseas workers to obtain further qualifications. The overseas workers are quite able to obtain these higher qualifications whilst falling short on the Band score required by IELTS. In fact, they often possess higher English language skills than their fellow Australian students. It is respectfully suggested that this may be discriminatory. This situation could be rectified by providing that **overseas workers who achieve a Certificate IV or higher qualification in the Australian VET system be relieved of the obligation to achieve IELTS qualifications.**

There is an unintended consequence of the fact that the pathway to permanent residency via the Dairy Industry Labour Agreement is only via the subclass 187 visa and not the 186 visa. The effect of this is that overseas workers are unable to take advantage of section 7 of LIN19/216 which provides a concession for overseas workers who have spent 5 years of full-time study in a secondary or higher education institution where all tuition was delivered in English. This could be rectified by a **concession in the DILA which provides the essence of section 7 of LIN19/216 for the permanent residency pathway via the 186 visa or by providing that the permanent residency pathway be via both the subclass 186 and 187 visas.**



## The Australian Dairy Industry

Dairy is the fourth largest Australian rural industry and a key sector of the agricultural economy, operating in eight rural regions (**Figure 1**). Nearly 8.8 billion litres of milk produced from 1.44 million cows on 5213 farms resulted in farmgate production valued at \$4.4 billion in 2018/19. Australia is a significant exporter of dairy products with 35% of milk production exported in 2018/19. Australia ranks fourth in world dairy trade. Total export value was \$3.2 billion in 2018/19.



**Figure 1. Dairying regions.<sup>1</sup>**

The dairy industry acts as a major source of employment across these regional areas. It is estimated that approximately 46,200 people were directly employed on dairy farms and by dairy companies in 2018/19. Associated transport, distribution, farm services and research and development activities represent further employment associated with the industry (around 100,000 people).

The average size of a dairy farm business workforce is 4.0 FTE, of which at least 2.0 FTE are family and the remaining are in the vast majority employed locally. Traditionally owner-managers, partners and family members have provided most of the labour on family farms.<sup>2</sup> However by 2017, survey data showed that 86% of dairy farms now employ staff—a 33% increase since 2007.<sup>3</sup> 12% of dairy farms have more than 7 employees and this is projected to increase to 20% by 2025.<sup>4</sup>

A 2018 ABARES survey reported 48% of dairy farmers had problems recruiting.<sup>5</sup> The predominant reason given was that applicants did not meet the job requirements, lacking experience and specialised skills for the job. Dairy farms seek employees with higher skill levels than the horticulture industry, reflecting the complex capabilities required in dairy farming systems. Projections indicate that in the next 2-3 years, there is a substantial increase in the need for senior dairy farm hands and for production and business managers (i.e. with qualifications and experience).<sup>6</sup>

<sup>1</sup> Dairy Australia 2019. *Australian Dairy Industry in Focus 2019*. Melbourne, 52pp. See Appendix 1 p. 33.

<sup>2</sup> ABARES 2019. *Demand for farm workers: ABARES farm survey results 2018*. Research Report 19.10, Canberra, 46pp.

<sup>3</sup> Dairy Australia 2007. *National Dairy Farmer Survey 2007*.

<sup>4</sup> Dairy Australia surveys and workforce modelling.

<sup>5</sup> ABARES 2019. *Demand for farm workers: ABARES farm survey results 2018*. Research Report 19.10, Canberra, 46pp.

<sup>6</sup> Report on the key themes from stakeholder engagements (Australian Dairy Plan 24 July 2019).

ABARES (2019) reported that farms further from large population centres had more difficulty recruiting.<sup>7</sup> None of Australia's key dairying regions are near large population centres. The Regional Australia Institute May 2018 policy paper 'The Missing Workers' indicates that in Australia's eight dairying regions there are not enough local workers to fulfil employment needs. Local labour pools are small and continue to shrink as rural population loss continues (unemployment approaches zero).<sup>8</sup>

The challenges in workforce attraction and retention observed over the last two decades do not appear to be easing. Indeed, the complexity of the workforce needs only appears to be growing with the evolution of dairy farming systems and uptake of technology. Considering the long-standing nature of the workforce shortages and ever-increasing dynamics of the dairy industry, novel solutions that go beyond offering recruitment incentives are needed. While the industry is investing heavily in the next era-solution for attracting and retaining a capable pipeline of Australian employees for dairy farms, this submission discusses the importance of ongoing migration to fill the immediate to medium term shortages.

In particular, it seeks consideration of a key barrier in the Dairy Industry Labour Agreement to obtaining necessary skilled overseas workers: concessions on the English language requirement.

<sup>7</sup> ABARES 2019. *Demand for farm workers: ABARES farm survey results 2018*. Research Report 19.10, Canberra, 46pp.

<sup>8</sup> The Regional Australia Institute 2018. *The missing workers: Locally-led migration strategies to better meet rural labour needs*. Canberra, The Regional Australia Institute, Figure 1, p. 5.



1. There is no legal basis for the requirement contained in the 'Note' to Schedule 4 Item 2 of the Dairy Industry Labour Agreement (the DILA) that the English language proficiency of the applicant be as provided for in Regulation 482.223 for the TSS visa and 186.222 and 186.223 for the ENS visa.

### ***The Migration Act 1958 and the Migration Regulations***

**Section 140GC** of the Migration Act 1958 (the Act) provides for work agreements as follows:

*For the purposes of the definition of work agreement the regulations may prescribe requirements that an agreement must satisfy.*

*Note: A person (other than the Minister) who is a party to a work agreement is an approved work sponsor and must satisfy sponsorship obligations.*

**Section 5** of the Act defines work agreement as follows:

*"work agreement" means an agreement that satisfies the requirements prescribed by the regulations for the purposes of this definition.*

**Migration Regulation 482.243** provides as follows with respect to the required English language skills for the subclass 482 visa in the Labour Agreement stream:

#### **482.243**

*The applicant has English language skills that are suitable to perform the nominated occupation.*

Clause 7 of the template Dairy Industry Labour Agreement provides as follows:

### **7. Visa requirements**

7.1 *The Sponsor acknowledges that as part of the visa application process, the Nominee will need to meet the criteria for grant of a visa as outlined in the Migration Regulations.*

7.2 *This may include:*

- (a) *requirements that the Nominee has the sufficient skills, experience and English proficiency to perform the nominated occupation, and has demonstrated this where requested by the Department; (emphasis added)*

**Schedule 4** of the template Dairy Industry Labour Agreement provides as follows with respect to English language skills:

#### **Item 2 English Language**

Nil concessions (emphasis added)

**Note:** Overseas skilled workers nominated for:

- a TSS or SESR visa must meet English language proficiency in place for the Short-term stream of the TSS visa
- an ENS visa meet standard ENS English language requirements

Clause 1.3 of the template Dairy Industry Labour Agreement provides a definition of 'concessions' as follows:

*Concessions means any variations to the requirements prescribed in the Migration Legislation in relation to the age, skills, qualifications, employment background, level of English Language proficiency and the TSMIT required for the nomination and grant of a TSS, SESR or ENS visa. (emphasis added)*

The legislation governing Labour Agreements does not appear to anticipate that there will be any further requirement in addition to the requirement in regulation 482.243 that the English language skills of the applicant be *suitable to perform the nominated occupation*.

The Dairy Industry Labour Agreement reflects the legislation in clause 7.2(a) and specifically provides that there are no concessions (as defined) to this requirement which can give force to the requirement contained in the 'Note' in Schedule 4 Item 2.

Thus, there is no legal basis for the requirement contained in the 'Note' that the English language proficiency of the applicant be as provided for in Regulation 482.223 for TSS visa and 186.222 and 186.223 for the ENS visa.

***The requirement for English language proficiency in excess of requirements provided for in the Migration Act and Regulations has caused and continues to cause significant disadvantage to Labour Agreement farmers and their workers.***

The dairy industry has in the past accepted that the Department of Home Affairs has imposed the requirement that applicants have an IELTS overall band score of at least 5 (IELTS Band 5) with a score of at least 4.5 in each test component for the TSS visa and its antecedent visa the subclass 457 visa.

This has caused significant disadvantage to many dairy farm businesses who have overseas workers who possess "English proficiency to perform the nominated occupation" but are unable for various reasons to achieve the required IELTS score.

The disadvantage is exacerbated when workers have sought to apply for permanent residency and the higher IELTS requirement of at least 6 for each component of the test for English language proficiency has been enforced.

Dairy Australia surveyed eight current labour agreement holders who also have overseas workers with DILA 482 visas in June and July 2020 (the 2020 DA Survey) and found that 100% of the farmers surveyed had encountered significant issues meeting the English language requirements both at subclass 482 TSS level and at the time of permanency residency application.

The 2020 DA survey established that 100% of the dairy farm businesses surveyed have lost or risk losing skilled and proficient workers.

Six Case Studies (CS) were prepared as part of the 2020 DA survey.

The following comments are notable:



*"He did the test for IELTS 5 three times and failed one aspect each time – he got 5.5 and 4.5 and some he got 6 but never the overall score of 5.*

*We lost a really good worker as a result of this as he had to go back to Malaysia ... Now with COVID restrictions we are doubtful if we will get him back."* (CS5)

*"The worker easily got the IELTS 5 when he initially came in on the Labour Agreement.*

*The worker has spent a long time training and trying to get to the required level of IELTS 6 so that he can become a permanent resident.*

*His wife is better at English than him and is helping to train him.*

*He failed in the written section of the test by .5 of a mark only - the rest was OK each time.*

*We are so worried that we will lose this worker."* (CS2)

*"The Korean worker has tried for the IELTS 6 a number of times.*

*Last year he went home to Korea and studied hard to get his levels up.*

*He would get the 6 score in 3 out of the 4 categories and then fail one and each time he would fail a different one."* (CS4)

The dairy industry seeks a review of the legality of the requirements contained in the "Note" to Item 2 of Schedule 4 and amendment of the Dairy Industry Template Labour Agreement to reflect the legislation accurately.

## 2. The English language proficiency requirement for a 482 visa for the purposes of the Labour Agreement should remain the requirement for permanent residency of the same overseas worker.

In the alternative, the dairy industry submits that if it is accepted that the IELTS level required for the subclass 482 TSS visa under the Labour Agreement (IELTS Band 5) is sufficient to enable the overseas worker to perform the required work for the period of the TSS visa (4 to 8 years) then this should be sufficient to enable that same employee to continue in this role as a permanent resident.

It is reasonable to conclude that over the period of the subclass 482 visa the overseas worker will increase competency in the English language. However, they may not reach the high level required to achieve IELTS Band 6.

*"He came to our farm and we noticed he had an affinity with animals and he was a very competent worker with the right attitude.*

*He began working with general farm work with horses and cows.*

*He then progressed to dairy duties and in his 4<sup>th</sup> year as manager of young stock and irrigation.*

*We are able to give him more and more responsibility and as we are getting older and my husband has a bad knee and I have a bad hip and knee this is a great relief for us.*

*We have recently moved into probiotics and organic soil conditioners and for the past 4 years have used no antibiotics for mastitis and lung disease and we use 50% to 60% less Urea.*

*This worker is a very important team member with respect to this development on the farm. He knows how to analyse all of the results and liaises with the university teams overseeing the development.*

*He is an excellent communicator and can do everything we need at a high level.*

*I am worried that in the end we will lose him if he cannot get permanent residency and this would be a massive loss to our business.” (CS1)*

*“This worker is managing very well at a very high level on the farm. He does not have any problems with communication, understanding or written communication on farm with management or staff.*

*We are desperate to keep this employee and it will be a huge loss to our business if he has to go home.” (CS2)*

In the alternative it is submitted that if the requirement is to remain the English language level for the TSS visa within the DILA be IELTS Band 5 with at least IELTS Band 4 in each component and IELTS Band 5 with at least IELTS Band 4.5 in each component for the subclass 186 and the subclass 187 visas.

***Dairy farm businesses and their overseas workers have spent significant resources seeking to achieve high IELTS levels.***

All of the farmers surveyed by Dairy Australia in the 2020 DA Survey reported that they and/or their workers had spent significant time and money pursuing the required IELTS qualifications.

Some farmers found that they had to teach themselves the IELTS framework and then tutor their employees as there were no trainers in the local rural area. One paid a trainer to travel from the city and live in at the farm for a week and provide intensive daily training.

The following are some responses:

*“As to language training I have done a lot of this myself as it is difficult to find people in the local area who have this speciality.*

*I have spent many many many hours with him training him up to be able to pass the test at the IELTS 5 level for the Labour Agreement*



*I also engaged and paid a trainer from Geelong who came over and stayed with us and tutored him 3 hours in the morning and 2 hours in the afternoon for a week.” (CS1)*

*“The worker has spent a long time training and trying to get to the required level of IELTS 6 so that he can become a permanent resident.*

*His wife is better at English than him and is helping to train him.*

*He has also taken lessons in Shepparton at \$60 per lesson every week since March which is up to \$1,200 now.*

*He failed in the written section of the test by .5 of a mark only - the rest was OK each time*

*He has sat the test 4 times at a cost of \$355 per test making \$1,420 so far but testing was stopped due to COVID.” (CS2)*

*“The worker eventually got a 6 but it was a huge struggle to get there.*

*She would get a score of 6 in some categories but not all at once.*

*The training and testing cost a lot – She had to sit the test 6 times - @\$1,000.00 per test made up as follows:*

- *\$355 IELTS test*
- *\$207 lost wages*
- *\$100 lost wages husband – to care for kids (they’d all go down)*
- *\$150 accommodation*
- *\$100 travel, food etc*

*Each time she would have to go to Wagga or Melbourne and lose a day’s pay plus the cost of travel we estimate it at about \$1,000 per test.” (CS3)*

*“I have also given him English language training.*

*He estimates that he has spent \$10,000 trying to get his English language levels up to an IELTS 6.” (CS4)*

*“I did the coaching and I taught myself about the test as there is no one in the local community who does this work.*

*I worked out how the test works myself and coached him and did trial tests with him and really worked hard to get him ready for the tests.*

*He did the test 3 times and failed – he got 5.5 and 4.5 and some he got 6 but never the overall score of 5.*

*It costs \$330 each time to do the test.” (CS5)*

### 3. An unintended consequence of the required high level of English language proficiency is that overseas workers are discriminated against when compared to fellow workers with the same qualifications.

#### **Definition of IELTS, ANZSCO and mapping to ACSF for VET requirements**

##### *Definition of IELTS*

“The International English Language Testing System (IELTS) measures the language proficiency of people who want to study or work where English is used as a language of communication. It uses a nine-band scale to clearly identify levels of proficiency, from non-user (band score 1) through to expert (band score 9).

IELTS is available in **Academic**- for people applying for higher education or professional registration, and **General Training** for those migrating to Australia, Canada and the UK, or applying for secondary education, training programmes and work experience in an English-speaking environment. Both versions provide a valid and accurate assessment of the four language skills: listening, reading, writing and speaking.<sup>9</sup>”

The relevant bands for the purposes of this submission are IELTS Band 5 and IELTS Band 6.

##### IELTS 5 Modest User

The test taker has a partial command of the language and copes with overall meaning in most situations, although they are likely to make many mistakes. They should be able to handle basic communication in their own field.

##### IELTS 6 Competent User

The test taker has an effective command of the language despite some inaccuracies, inappropriate usage and misunderstandings. They can use and understand fairly complex language, particularly in familiar situations.

##### **ANZSCO**

ANZSCO is a skill-based classification used to classify all occupations and jobs in the Australian and New Zealand labour markets.

To do this, ANZSCO identifies a set of occupations covering all jobs in the Australian and New Zealand labour markets, defines these occupations according to their attributes and groups them on the basis of their similarity into successively broader categories for statistical and other types of analysis. The individual objects classified in ANZSCO are jobs.

<sup>9</sup> IELTS <https://www.ielts.org/what-is-ielts/ielts-introduction>



ANZSCO assigns occupations to one of five skill levels with Level 1 being Degree or Advanced Diploma and level 5 being Certificate 1 or compulsory secondary school education

The occupational skill level required for the applicant for a Dairy Industry Labour Agreement is in excess of ANZSCO skill level 3 as follows:

- a. At least an AQF Certificate III (or equivalent) and at least 3 years (ANZSCO requires only 2 years) recent and relevant work experience; or
- b. at least five (5) years (ANZSCO requires only 3 years) of recent and relevant work experience.

#### *The Australian Core Skills Framework*

The Australian Core Skills Framework (ACSF<sup>10</sup>) provides a detailed picture of performance in the five core skills of learning, reading, writing, oral communication and numeracy. The ACSF has 5 levels of performance in each core skill which enable identification and specification of the language literacy and numeracy of students.

Within the Vocational Education and Training (VET) sector, the ACSF may be used to assess English language proficiency for entry level to qualifications from the agriculture, horticulture and conservation (AHC) training packages.

#### *Mapping of IELTS to the ACSF and VET qualifications*

The following table maps the required ACSF entry levels with the relevant AHC qualifications for TAFE Gippsland which teaches these courses for dairy industry qualifications.<sup>11</sup>

Code	Qualification	Literacy	Numeracy
AHC20116	Certificate II in Agriculture	2	2
AHC30116	Certificate III in Agriculture	2	2
AHC30216	Certificate III in Agriculture (Dairy Production)	2	2
AHC40116	Certificate IV in Agriculture	3	3

**Note:** Diploma level in Agriculture requires a score of 3 across all categories.

The following diagram maps the ACSF 5 level scale with the IELTS 9 band scale.<sup>12</sup>

<sup>10</sup> Australian Core Skills Framework ISBN 978-1-921916-47-2 <https://www.employment.gov.au/applying-acsf>

<sup>11</sup> Source TAFE Gippsland <http://www.tafegippsland.edu.au>

<sup>12</sup> The Learning Resources Group <https://tlrg.com.au/blogs/news/acsf-v-ielts>

## ACSF

5-Level Scale

5	9	Expert
	8	Very Good
4	7	Good
	6	Competent
3	5	Modest
	4	Limited
2	3	Extremely Limited
	2	Intermittent
1	1	Non-user

## IELTS

9-Band Scale

When this is put together with the entry level requirements for Australians training for the relevant Agriculture qualifications in the VET system it can be seen that Australian workers are required to meet a lower level of English language proficiency as compared to comparable overseas workers.

While Australian workers are only required to achieve an equivalent IELTS score of 4 in order to study for the Certificate III in Agriculture overseas workers are required to achieve an IELTS score of 5 to work at a similar level in Australia under the Dairy Industry labour Agreement. This is potentially discriminatory.

In practice this means that Australian workers working alongside overseas workers with the same qualifications may well have lesser proficiency in English than the overseas workers.

This conclusion is borne out in practice by the farmers who have found themselves encountering the IELTS testing regime for their workers on Labour Agreements.

*"I am certain that our current Australian staff would struggle with the test (IELTS 5 and 6).*

*We use an app called Slack to communicate on farm. The Malaysian employees (who failed IELTS 5) used the App to a standard similar to Australian employees."* (CS5)

*"I am absolutely certain that my Australian farm workers would also not have the high level of English required for this test."* (CS1)



*"Most Australians who work for us would fail the test - it is just too high and unnecessary for the work to be completed." (CS2)*

***Overseas workers easily obtain VET qualifications whilst in Australia despite not achieving the required IELTS band level.***

Case studies obtained by Dairy Australia in the 2020 DA Survey confirm that overseas workers are encouraged and supported financially by dairy farm Businesses to obtain further qualifications whilst on the subclass 482 visa under the Dairy Industry Labour Agreement.

These overseas workers have been able to study in their field of work in the Australian TAFE system, whose tuition is solely in English, and were able to achieve qualifications yet they were unable to achieve the required IELTS band score for visa purposes.

*"While he was here we paid for him to do the Cert III in Agriculture. He was easily able to complete this course with his English proficiency." (CS5)*

*"Since he has been with us we have put him through the Cert III in Agriculture, Cert IV in Agriculture and also a Diploma in Agriculture. He did some of these courses while on a training visa.*

*He managed to complete these qualifications easily with his English level." (CS1)*

*"We supported him to study a Cert IV in Agriculture and a Diploma in Agriculture since he has been with us and he has passed these without any trouble." (CS4)*

The following is an extract from a reference provided by the Agriculture/Agribusiness Trainer of one of the overseas workers who achieved Certificate III and IV and a Diploma in Agriculture. (CS1)

*"H completed Cert III, Cert IV and a Diploma in Agriculture at the NCDE. Based on H's grades, attendance and class participation, I rate his performance in my courses as superior.*

*His standards were frequently higher than those of his English speaking class mates. H is well and truly able to communicate in the classroom and got along well with everybody.*

*It is disappointing that the required English language tests are so onerous for foreign workers such as H as, whilst they are perfectly able to study and achieve qualifications, communicate and perform the required roles on a dairy farm they often have to leave the country and thus the industry because they cannot meet standards which are in fact often higher than other co-workers".*

For the larger farms this additional training may facilitate movement to higher skilled positions on the farm. For family farms they may remain in the position albeit with higher qualifications and greater value to the employer and job satisfaction for the worker personally.

The potentially discriminatory aspects of a requirement for English language proficiency in excess of that required for VET training may be alleviated by providing an amendment to the Dairy Industry Labour Agreement Template to the effect that overseas workers who achieve a Certificate IV or higher qualification in the Australian VET system be relieved of the obligation to achieve IELTS qualifications.

#### 4. The IELTS score required for the DILA and subsequent permanent residency should be cumulative.

The case studies obtained as part of the 2020 DA Survey indicate clearly that the test takers are often able to achieve the required proficiency in multiple tests but not in the one test at the one time.

*"The Korean worker has tried for the IELTS 6 a number of times.*

*He would get the 6 score in 3 out of the 4 categories and then fail one and each time he would fail a different one.*

*It would be so good if the test could be cumulative" (CS4)*

*"It would be better if the test could be cumulative as they sometimes get higher in one area than in the other in different tests.*

*He gets so nervous when he has to do the test and then he does not achieve as good a result as he could. It is hard to speak a different language if you are nervous." (CS5)*

*"It would be better if the test did not have to be cumulative as a lot of people get nervous and do not perform at their best in each test at the same time" (CS3)*

It is submitted that if the English language proficiency requirement for the DILA, which is in excess of the legislative requirements, is to remain, that this be reduced to enable a cumulative test result rather than a test result on the one occasion.

#### 5. There is an unintended consequence as a result of the permanent residence pathway for the Dairy Industry labour Agreement being via the subclass 186 ENS visa rather than either the subclass 187 or the subclass 186 visa.

Standard TSS visa holders have the opportunity to apply for permanent residency via the ENS (subclass 186) visa or via the RSMS (subclass 187) visa.

The Labour Agreement pathway is via the ENS (subclass 186) visa alone which provides a permanent residency option in both metropolitan and rural and regional areas

Until 15<sup>th</sup> November 2019, all transition stream applicants for both subclass 186 and subclass 187 visa had access to the same English exemption for applicants who on the day the visa application was made, had completed at least 5 years of full-time study in a secondary or higher education institution where all tuition was delivered in English.

On the 16<sup>th</sup> November 2019, Ministerial Instrument LIN 19/216, removed this English exemption from the subclass 186 applicants on the basis that it indicated a reflection of the government's intention to boost the regional migration in recognition of the difficulty and challenges of recruiting and retaining employees in rural and regional Australia.

**LIN19/216** provides as follows:



## 7 Subclass 187 visas—Temporary Residence Transition stream

### *Exemption from English language requirement*

- (2) *For the purposes of paragraph 187.222(b) of Schedule 2 to the Regulations, a class of persons is specified in relation to an application for a Subclass 187 (Regional Sponsored Migration Scheme) visa if, on the day the visa application was made, the persons had completed at least 5 years of full-time study in a secondary or higher education institution where all tuition was delivered in English.*

The removal of the exemption for Subclass 186 visa when coupled with the fact that the only permanent residency pathway via the Dairy Industry Labour Agreement is via the subclass 186 visa means that the intention of the minister to encourage migration to rural and regional Australia is not being met for the dairy industry.

A further unintended consequence is that employees who cannot access the subclass 186 visa through the Labour Agreement pathway will potentially take advantage of the exemption and move to other employers where they can access the subclass 187 visa with the result that the Labour Agreement employer will lose the skilled and experienced worker they have invested in and upskilled over the 4 year period and desperately need.

The dairy industry submits that the pathway to permanent residency via the Dairy Industry Labour Agreement be via both subclass 186 and subclass 187 visas or in the alternative that a concession be included in the DILA which provides the essence of section 7 of LIN19/216 for the permanent residency pathway.

## 6. The Horticulture Industry Labour Agreement provides significant English language concessions

The Horticulture Industry Labour Agreement provides significant English language concessions in recognition of the severe difficulties that the horticulture industry is facing in recruiting and retaining skilled and semi-skilled workers.

At the time the Dairy Industry Labour Agreement was negotiated the Department of Immigration and Border Protection, as it then was, made it abundantly clear that the required English language proficiency would be IELTS 5 and that this was not negotiable. This was despite the fact that this is contrary to the Migration Act and Regulations.<sup>13</sup>

The dairy industry is facing the same skill shortage as the horticulture industry and the dairy industry refers to the materials provided at the time of negotiating the Labour Agreement.<sup>14</sup>

The dairy industry is working hard to address the widespread skills shortage across the industry and has been doing so for some time. However, the skills shortage is expected to continue for the foreseeable future. Temporary skilled visas go some way to addressing the issue but longer term solutions are also required.

The dairy industry seeks a concession similar to the concession granted to the horticulture industry as follows: the English language level for the TSS visa be IELTS Band 5 with at least IELTS Band 4 in

<sup>13</sup> See paragraph 1 above

<sup>14</sup> See Appendix 1 below

each component and IELTS Band 5 with at least IELTS Band 4.5 in each component for the subclass 186 and the subclass 187 visas and that this apply retrospectively to all current Dairy Industry Labour Agreements.

## 7. A pathway to permanent residency is essential to attracting overseas workers to Australia.

The high IELTS level is a disincentive and has resulted in dairy farm businesses losing employees they have upskilled and nurtured over years.

*"We lost a really good worker as a result of this as he had to go back to Malaysia ".(CS5)*

*"If he does not get to IELTS 6 they will have to go back to South Africa.*

*This would be a huge loss for us."* (CS2)

*"He is an excellent communicator and can do everything we need at a high level.*

*I am worried that in the end we will lose him if he cannot get permanent residency and this would be a massive loss to our business."* (CS1)

The pathway to permanent residency for Labour Agreement holders was a welcome initiative but in practice the required high level of English language proficiency (IELTS 6) is proving to be a barrier to dairy farm businesses accessing this pathway.

The effect of this is that the permanent residency pathway does not in reality address documented long term labour shortage problems. It also impacts on the certainty and workforce planning capabilities of those dairy farm businesses.

Turnover costs are significant. Each time there is a turnover of employees in an organisation, there are the direct costs of hiring, and other costs of decreased productivity for other employees as they take on extra work, the cost of orientation and development, workforce morale and business reputation.<sup>15</sup>

Dairy farm businesses invest a large amount of time and money training workers on their farms, even if the worker comes with a high level of skills. If the worker has to leave after 4 years, this investment is lost.<sup>16</sup>

A pathway to Permanent Residency is a key reason why skilled migrant employees choose Australian dairy farms as their work place over other countries.<sup>17</sup> It is equally not surprising that a number of dairy farmers have indicated that overseas workers are very important and a long term strategy for the business, reflecting recent analysis by The Regional Australia Institute.<sup>18,19</sup>

A recent PhD study into the role of skilled migration in the dairy farm workforce, supported by a Dairy Australia scholarship, has found skilled migrants fulfil an important role in farm management

<sup>15</sup> National Rural Advisory Council 2013. *Report on the workforce planning capabilities of agricultural employers.*

<sup>16</sup> Dairy Australia 2017. *The Power of People on Australian Dairy Farms 2017*

<sup>17</sup> Skilled migrant workers in the Australian dairy industry: farm owners and migrant worker perspectives on constraints, opportunities and future workforce dynamics (unpublished – K Salgado, University of Melbourne).

<sup>18</sup> Collins, J., Krivokapic-Skoko, B. and Monani, D., 2017. New Immigrants Critical to Australian Agriculture, Australian Farm Institute, *Farm Policy Journal Vol. 14 No.1*, Autumn Quarter.

<sup>19</sup> The Regional Australia Institute 2017. *The missing workers: Locally-led migration strategies to better meet rural labour needs.* Canberra, The Regional Australia Institute.



for farms in different business stages (growing; consolidation; winding down) and in geographically remote locations. Further, the PhD study found that the length of tenure and experience gained, benefits both the farm and the aspirations of the skilled migrant for permanent residency and increased farming experience.<sup>20</sup>

Further research from the same PhD study details migrant employees' intentions relating to working on dairy farms, permanent residency or return home.

Twenty dairy farms employing skilled migrants were studied as case studies of the processes involved in the attraction and retention of skilled migrants in dairying.<sup>21</sup>

Most of the skilled migrants interviewed as part of the study were attracted by the potential to achieve permanent residency, higher salary and standard of living in dairying in Australia (compared to their own country or other countries like New Zealand) and were keen to develop skills and remain in dairying (6/9 employees). Other respondents were interested in gaining experience and skills in dairying to apply when returning to their home country (3/9).<sup>22</sup>

- *looking for an opportunity of staying here and become a resident", (Employee 1)*
- *"The reasons we are working on this dairy farm are a lot more opportunities in Australia compared to the UK or Europe. So yes, just opportunities for us", (Employee 5 - Seeking permanent residency. Manage and own a dairy farm in Australia.)*
- *"I wanted to learn things like the Australian dairy farming standards. [...] start my own business in future". (Employee 6 - Skill development and continue in dairy farming)*

In August 2018, Dairy Australia commissioned in-depth interviews with 13 Dairy Industry Labour Agreement holders ('The August 2018 Dairy Australia Interviews') to investigate skilled migrant recruitment and views on permanent residency.

One hundred percent of respondents answered "Yes" to the August 2018 Dairy Australia interview question "Is permanent residency something you would like to support for your overseas workers at the end of their current term? Please provide comment on the reason."

The following are some of the comments:

*"Definitely. The situation will not change in our lifetime. We just cannot get the staff with skills in rural communities. There is competition with other industries and also with other farms. Potential employees have lots of choice for jobs as there are so many available."*  
(Respondent LH4)

*"Our Labour Agreement worker desperately wants permanency. He is committed to farming and hates city life so we do not think that we would lose him to the city if he got permanent residency. It is a huge upheaval for people to travel to another country for work and we*

<sup>20</sup> Skilled migrant workers in the Australian dairy industry: farm owners and migrant worker perspectives on constraints, opportunities and future workforce dynamics (unpublished – K Salgado, University of Melbourne).

<sup>21</sup> Nine skilled migrants were interviewed. *ibid*

<sup>22</sup>Salgado, K I (2018) Summary of the skilled migrant experience on Australian dairy farms – report to Dairy Australia, University of Melbourne, Melbourne, Australia. Attachment 'B'

would struggle to get people if there was no hope for permanent residency.” (Respondent MH6)

“Absolutely. Our best example of this is a worker who has worked and saved and now wants to put down roots and buy land and build a home but without permanent residency he cannot do this. If they have no hope of permanent residency they will go elsewhere.” (Respondent LH3)

“Absolutely. Permanence is vital. It is the main reason they come here. I believe that I can guarantee that every employee I get from overseas will want to stay. I have a person who came on a 457 visa years ago and they are still with us today. We offer a stable work environment with opportunity to increase skills and become a part of a team with a pathway to management who is valued. The cost of living in a rural area is cheaper than the city and they can bring their family and become a part of the community”. (Respondent MH1)

“Definitely. Our current Labour Agreement worker is really worried about his future. He loves it here and his wife loves it and has a job locally and they do not want to have to leave. If there was permanent residency it would definitely encourage people to come and to stay and be a part of the local community.” (Respondent MH7)

“Absolutely. All 3 of the overseas workers we had had permanent residency as their ultimate goal. We had 2 vet trained workers from the Philippines who were committed to farming as their qualifications were not recognised here. They wanted to stay on the farm.” (Respondent MH8)

“I cannot stress how important this is - it is vital that the worker be able to have potential for long term work so that they can bring their family here and settle in the area and support the local community. We spend a lot of time training and to then lose them is a huge burden on us resource wise.” (Respondent LH1)

## 8. Permanent overseas workers settle in regional and rural communities and reinvigorate these communities.

Growing the rural labour work force through migration is one way the dairy industry considers it can address the current skills shortage. Skilled migrant settlement in rural areas provides an important pool of labour for dairying and this requires clear strategic policy development by government. Immigrant farmers not only fill labour shortages, but they also bring with them new technological



insights gained overseas to apply to Australian farming and are an asset to the rural community in a multitude of areas beyond the farming business.<sup>23,24</sup>

As described in the recent Regional Australia Institute analysis, the visa system needs to better reflect local labour needs. That report calls for a clear and consistent policy for migrant settlement in Australia 'to recognise and meet local labour needs in rural areas'. (p.10)<sup>25</sup>

A result where the ambitions of skilled migrants are well matched to dairy farm skills requirements will yield the most productive outcome for all parties.

Comments spontaneously provided by respondents to the August 2018 Dairy Australia interviews are detailed below:

*"They want to integrate into the community and make their home here." (Respondent MH6)*

*"They want to participate in the local community and they use the schools and the sporting clubs and help to revitalise the community- supermarkets banks shops etc. It is a win-win situation for the whole community." (Respondent MH4)*

*"People want to know that they can settle into the community and bring their family. This has good flow on effects in the local community. The type of people who will want to work on dairy farms would not want to live in the city so we do not believe that there is any risk that we will lose them to the city once they get permanent residency." (Respondent MH2)*

In response to the prompt *"The government has expressed concern that if people get permanent residency they will leave the rural area and move to the major cities. What is your response to this?"* the following response was typical:

*"There is no logic to the assertion that they will commit 4 years to dairy farming and an area and then up and leave for the city - if anything they would go to another farm. If you look around the Finley community, there are a lot of overseas workers and it has reinvigorated the community providing support for local businesses and the community." (Respondent MH3).*

The 2020 DA Survey of current Labour Agreement holders elicited the following comments regarding integration into local regional communities:

*"Our overseas worker is from Spain Her husband also works for us and they have 2 children.*

*The children aged 4 and 7 go to the local school.*

<sup>23</sup> Collins, J., Krivokapic-Skoko, B. and Monani, D., 2017. New Immigrants Critical to Australian Agriculture, Australian Farm Institute, Farm Policy Journal Vol. 14 No.1, Autumn Quarter.

<sup>24</sup> The Regional Australia Institute 2017. *The missing workers: Locally-led migration strategies to better meet rural labour needs*. Canberra, The Regional Australia Institute.

<sup>25</sup> Ibid.

*The family go to the local church and play soccer.*

*The husband coaches the soccer team and they have all really integrated into the community". (CS3)*

*"Our overseas worker is from South Africa*

*His family are here. He has a wife who also works for us and a little son who was born here.*

*I think they would like to have another child but they are waiting to see what their future holds as if he does not get to IELTS 6 they will have to go back to South Africa.*

*This would be a huge loss for us.*

*The little boy goes to play group and will go to Kindy next year.*

*His brother also works for us on one of the other farms and his wife works in one of the milk plants.*

*The family go to the local church and have become involved with this community.*

*They shop locally and will use the local school in time as we are only 7 km from town and there are school busses." (CS2)*

## 9. Cost to the dairy industry due to the lack of an Australian skilled labour force

The dairy industry requires skilled people to work with animals and manage complex machinery.

There are very few jobs on the dairy farm which can be successfully undertaken by unskilled workers.

The lack of skilled labour forces dairy farm businesses to employ people who do not have the animal husbandry skills required to perform tasks which are outside their qualifications and which may be inconsistent with animal welfare obligations.

Unskilled workers impose unnecessary additional cost pressures in an industry where margins are already very tight.

For instance, an inability to detect sick and injured animals early and administer appropriate care, costs dairy businesses tens of thousands of dollars a year in vet bills and lost milk production.

An example of this is the care and treatment of mastitis cows:

Mastitis is an udder infection which is treated with antibiotics. The milk cannot go into the system while the cow is affected and when undergoing treatment.

If picked up early enough and treated early, the length of time that the cow is out of production is reduced. Only skilled competent workers will be able to detect early mastitis.



If a mastitis cow is not picked up early it will become severely affected and may have to be euthanised meaning total loss of that cow to production and loss of the rearing costs which have gone into getting that cow to production.

Proper hygiene at milking and milking all of the milk from the cow (milking out) will help prevent mastitis occurring in the first place. Having skilled competent reliable workers will enable us to achieve this. Dairy farm businesses cannot rely on unskilled workers to make these assessments or to know when a cow has been milked out properly.

Milk is tested at the milk company for traces of mastitis. If this is detected the milk will be downgraded.

If an employee is not able to pick up and address a mastitis cow at milking the milk will be downgraded costing significant amounts of money in penalties from the milk company. These penalties are imposed because the cell count in the milk is above a certain level.

If farmers can keep the cell count below the level set by the milk company level they receive bonuses and if it goes above that level they receive penalties.

It only takes one or two cows per day to cause the limit to be exceeded and result in loss of the bonus and the imposition of penalties. Over a year for an average farm this can amount to a significant amount in the vicinity of \$30,000.00.

While the cow is being treated with antibiotics, extreme care must be taken to ensure that the antibiotic does not get into the milk.

When the antibiotic cow is being milked, the skilled operator needs to identify the cow and then manually divert the milk from the main vat. If this is not done and the antibiotic milk gets into the main vat then the whole tanker load will be rejected at a cost of \$15,000.00 to \$20,000.00.

Failure to detect and treat other animal health issues such as failure to detect lameness can cost \$200.00 per cow plus a 5% loss of production. One case of clinical milk fever can cost \$1,000 per cow.

Employing unskilled workers is also a work health and safety risk because the work on a dairy farm involves working with large animals and complex and dangerous machinery which they may not have appropriate training to operate. Misuse of machinery can be very costly to the farm business.

Unskilled employees are by their nature transient and do not stay long enough for the dairy farm business to train them to take up permanent skilled positions.

In addition, family members often have to perform these roles which means that they are working excessive hours. The consequence of this is additional stress and burnout for the family members.

Many dairy farm businesses are forced to employ backpackers but their visa status does not permit them to become permanent workers.

High staff turnover impacts significantly upon the ability to manage the farm business.

Sourcing new labour and managing unskilled workers is time consuming when farmers already work long hours.

This extract from one of the Case Studies is typical:

*"In three years we have had 38 employees from locally as well as backpackers.*

*There is a significant cost both financially and in time to our business recruiting and training new employees just to have them leave after a few months.*

*Ironically the backpackers do not have to meet any English language requirements to work on our farm and often they have less good English than the worker who cannot stay because he cannot pass the IELTS test."*(CS5)

## 10. Conclusion

The dairy industry seeks the following:

1. Retrospective removal of the English language requirements contained in the Note to Item 2 of Schedule 4 of the Dairy Industry Labour Agreement and that this apply retrospectively to all current Dairy Industry Labour Agreements.
2. In the alternative that the English language level for both the TSS visa and the subclass 186 (and the subclass 187 visa) be an IELTS score of be IELTS Band 5 with at least IELTS Band 4 in each component and that this apply retrospectively to all current Dairy Industry Labour Agreements.
3. In the alternative the English language level for the TSS visa be IELTS Band 5 with at least IELTS Band 4 in each component and IELTS Band 5 with at least IELTS Band 4.5 in each component for the subclass 186 and the subclass 187 visas and that this apply retrospectively to all current Dairy Industry Labour Agreements.
4. In the alternative that if an overseas worker obtains a Certificate IV or greater qualification in Australia that the requirement for the English test not apply and that this apply retrospectively to all current Dairy Industry Labour Agreements.
5. That the IELTS score of Band 5 with at least IELTS Band 4 in each component be able to be obtained via cumulative tests rather than in a single test and that this apply retrospectively to all current Dairy Industry Labour Agreements
6. That the pathway to permanent residency via the Dairy Industry Labour Agreement be via both subclass 186 and subclass 187 visas or in the alternative that a concession be included in the DILA which provides the essence of section 7 of LIN19/216 for the permanent residency pathway via the 186 visa and that this apply retrospectively to all current Dairy Industry Labour Agreements.

## APPENDIX 1-

EXTRACT FROM ADF/DAIRY AUSTRALIA SUBMISSION TO SKILLED MIGRATION LIST STAKEHOLDER  
ENGAGEMENT

## MIGRATION POLICY BRANCH

## AUSTRALIAN GOVERNMENT DEPARTMENT OF JOBS AND SMALL BUSINESS

**There is a widespread skills shortage in the dairy industry which cannot be met from the pool of Australian job seekers in rural areas and migrants can meet this need.**

There is a misconception that the dairy industry should be able to source labour from the pool of unemployed in regional areas. With the unemployment rate in regional areas sitting at around 5 to 5.3%, there is effectively full employment. The Regional Australia Institute May 2018 policy paper *'The Missing Workers'* indicates that in Australia's eight dairying regions, there are not enough local workers to fulfil employment needs.<sup>26</sup>

Attracting and retaining skilled staff capable of managing a dairy farm is challenging, with much of the limited regional labour pool not experienced and/or qualified in dairy. It takes time to build the required capability to manage the many elements involved with a dairy farm, set against a backdrop of an ageing workforce, technological advancement and farms looking to grow, consolidate or wind down their business activities.

Traditionally, the family farm model trained largely family members on the job to perform at all skill levels and in particular, at the higher levels. As a result, the sector is currently skewed heavily towards a workforce aged over 55 years including a high proportion of owner operators and as these older workers who are more highly skilled retire, the sector needs to replace these workers with other highly skilled workers.<sup>27</sup> The loss of this age group from the sector requires a significant and targeted resupply of high level skilled persons.

In addition, over the last 20 years the family dairy farm model has changed to larger farms with expanding herd sizes and increased workloads with increased non-family labour and the need for higher skill levels at the skilled Dairy Operator (FLH5 to FLH7 level) and Senior Dairy Operator/managerial level (FLH8) and Award free managerial level.

As farm scale continues to increase, there are increased needs to attract and retain suitably skilled labour and to improve on-farm employment practices.

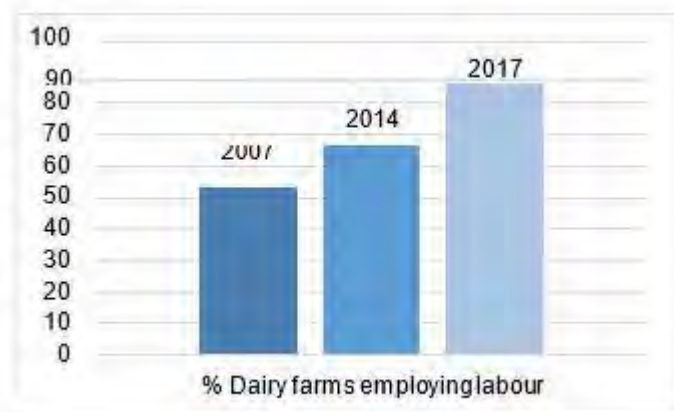
<sup>26</sup> The Regional Australia Institute 2017. *The missing workers: Locally-led migration strategies to better meet rural labour needs*. Canberra, The Regional Australia Institute, Figure 1, p. 5.

<sup>27</sup> Australian Farm Institute 2010. *Towards a better understanding of current and future human resource needs of Australian agriculture*. Research Report Australian Farm Institute June 2010.



The proportion of dairy farms which employ people has been gradually rising.<sup>28</sup> The dairy industry directly employed 42,000 people in 2016/17.<sup>29</sup> 86% of dairy farmers employ labour, which equates to a 20% increase since 2014 (66%)<sup>30</sup> and a 33% increase since 2007<sup>31</sup> (Table 1).

**Table 1: Percentage of dairy farms employing labour**



The number of farms with six or more employees across the industry is projected to increase (Table 2) from 4% to 20% by 2025.<sup>32</sup>

**Table 2: Number of employees required on dairy farms**

	2014	2017	2025 (est)
No employees	35%	14%	10%
1-2 employees	44%	41%	35%
3-5 employees	18%	19%	35%
6+ employees	4%	12%	20%

Research undertaken in 2011 indicated that in a workforce sense, the industry faced a looming crisis in several sectors due to ageing of its people, skilled workers exiting to the resource sectors, and poor attraction and retention rates over an extended period which have left an insufficient pool of young workers.<sup>33</sup>

Projections at the time indicated that by 2018 over 102,000 of the current labour force (equating to 33.4%) would be aged 65 years and over. A staggering 56.2% of the current workforce was then aged over 55 years.

<sup>28</sup> Dairy Australia 2017. *In Focus 2017*: <https://www.dairyaustralia.com.au/publications/australian-dairy-industry-in-focus-2017?id=0B6288F1D65C4155998FCC67356182AF>

<sup>29</sup> Ibid.

<sup>30</sup> Dairy Australia 2017. *The Power of People on Australian Dairy Farms*.

<sup>31</sup> Dairy Australia 2007. *National Dairy Farmer Survey 2007*.

<sup>32</sup> Dairy Australia surveys and workforce modelling

<sup>33</sup> Agrifood Skills Australia 2011. *Australia's Region: Australia's Futures*. Agrifood Skills Australia Ltd, Canberra.

Agrifood Skills Australia warned that shortages within the sector would be experienced between 2013 and 2018 as the resource industry's demand intersected with the looming age crisis in Agriculture and as the mining industry construction phase transitioned into actual mining operations. The report stated that much would depend on Australia's strategic response to skilled and semi-skilled labour demand.<sup>34</sup>

Dairy farmers are struggling to source the skilled labour they require in regional areas, viewing skilled labour availability and quality, as well as succession planning as one of the key factors limiting system change.<sup>35</sup>

Dairy Australia surveyed 13 Dairy Industry Labour Agreement holders in August 2018.

The following are some of the responses to the question *"Would you say difficulty recruiting managerial level employees affected the performance and culture of the farm business? Comment on the impact."*

- *"Sometimes we just have to use people who are not ideal as there is no-one else. If you have people who are not ideally suited to the industry you do not encourage a positive work environment and there are often mistakes which can be costly in time and money."* (Respondent LH5)
- *"It definitely affects our financial performance if there is not the staff to do the work then we cannot increase the number of cows we milk and expand as we want to and do pasture renovation and other jobs that require labour."* (Respondent MH7)
- *My husband and I pick up the extra work and keep the working routine going. We try hard to make sure that our staff do not suffer or have to pick up the extra work so we have a good culture on the farm and we protect them so they do not leave or have WHS and wellbeing issues."* (Respondent MH2)
- *"There is a serious skills shortage in the dairy industry."* (Respondent LH4)
- *It seriously affects our lifestyle and in particular our ability to get off farm. We pick up the slack and work long hours and this has a significant impact on our family life.* (Respondent MH5)
- *"There is a definite skills shortage at the senior level. We can get FLH1 (Pastoral Award entry level) but the higher skill set is near impossible to get from the local community. They are highly sought after and get positions immediately they seek them."* (Respondent LH5)

One hundred percent of respondents replied that difficulty recruiting managerial level employees affected the performance of the farm business "a great deal."

<sup>34</sup> Ibid.

<sup>35</sup> University of Southern Queensland 2018. Feedbase Project (interim findings)

**OFFICIAL: Sensitive**Attachment B – Proposed concessions for DILA.

	Details	Dept's comment	Minister's decision	Comments
English proficiency requirements	A concession allowing TSS visa applicants to score equivalent to at least IELTS 5.0 overall, and at least IELTS 4.0 in each test component.	Supported	Agreed / not agreed	
	A concession allowing ENS visa applicants to score equivalent to at least IELTS 5.0 overall, and at least IELTS 4.5 in each test component.	Supported	Agreed / not agreed	
	A concession allowing ENS visa applicants to meet English proficiency requirements where they can demonstrate completion of at least five years of full-time study in a secondary education institution or higher education institution, where the instruction was delivered in English.	Not supported	Agreed / not agreed	
	A concession allowing ENS visa applicants to meet English proficiency requirements where they can demonstrate completion of a Vocational Education and Training (VET) Certificate IV, or higher qualification, in Australia and in a field relevant to the dairy industry.	Not supported	Agreed / not agreed	



## Attachment C – Comparison of English requirements for industry Labour Agreements

Agreement	English
<b>Dairy</b>	Nil concessions
<b>Fishing</b>	<p>Nil concessions for:</p> <ul style="list-style-type: none"> <li>• Master Fisher (ANZSCO 231211);</li> <li>• Ship's Engineer (Fishing Industry) (Code 070499)*;</li> <li>• Ship's Master (ANZSCO 231213);</li> <li>• Ship's Officer (ANZSCO 231214).</li> </ul> <p>For Deck or Fishing Hands the following is sufficient English:</p> <ul style="list-style-type: none"> <li>• an average test score of at least 4.5 in an International English Language Testing System (IELTS);</li> </ul> <p>As long as the employer also:</p> <ul style="list-style-type: none"> <li>• provides overseas workers with initial access to an interpreter during induction training, and flexible English language instruction options such as DVDs and phrasebooks;</li> <li>• installs signage and providing training booklets for the overseas workers in both English and their native language;</li> <li>• ensures that every overseas worker has sufficient English language proficiency to both: <ul style="list-style-type: none"> <li>○ enable them to take reasonable care of his or her own health and safety in the workplace and that of the people they work with;</li> <li>○ understand his or her workplace and employment conditions.</li> </ul> </li> </ul>
<b>Meat</b>	<p>Overseas workers can be considered to have sufficient English to perform the nominated occupation if they:</p> <ul style="list-style-type: none"> <li>• demonstrate an IELTS overall test score of at least 5.0 with no minimum test score; or</li> <li>• are a current subclass 457 visa holder who was not required to provide evidence of English language proficiency at the time of grant of their subclass 457 visa and provides evidence as prescribed in the Migration Regulations for meeting functional English.</li> </ul>
<b>Minister of Religion</b>	<p>Overseas skilled workers nominated for:</p> <ul style="list-style-type: none"> <li>• a TSS visa <b>must</b> meet English language requirements in place for the Short-term stream of the TSS visa <b>unless</b> they are awarded a concession on the basis that they are working in a cloistered or monastic environment;</li> <li>• an ENS visa can be considered to have sufficient English to perform the nominated occupation if they demonstrate an IELTS overall test score of at least 5.0 with a score of at least 4.5 in each of the four test components, or equivalent.</li> </ul>
<b>On-hire</b>	Nil concessions
<b>Pork</b>	For the ENS and SESR visas—overseas workers must score at least IELTS 5.0 overall, and at least IELTS 4.5 in each individual component score.
<b>Restaurant</b>	Nil concessions
<b>Advertising</b>	Nil concessions
<b>Horticulture</b>	<p>For the TSS visa—overseas workers must score at least IELTS 5.0 overall, and at least IELTS 4.0 in each individual component score.</p> <p>For the ENS and SESR visas—overseas workers must score at least IELTS 5.0 overall, and at least IELTS 4.5 in each individual component score.</p>

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