



Australian Government

Australian Government response to the Legal and Constitutional
Affairs Legislation Committee report:

Migration Amendment (Strengthening Sponsorship and Nomination
Processes) Bill 2024

JULY 2025

Introduction

The Australian Government welcomes the opportunity to respond to the Senate Legal and Constitutional Affairs Legislation Committee's report, *Migration Amendment (Strengthening Sponsorship and Nomination Processes) Bill 2024* (Committee report).

The *Migration Amendment (Strengthening Sponsorship and Nomination Processes) Bill 2024* (the Bill) implements a commitment made by the Government in the Migration Strategy, released on 11 December 2023, by legislating the income thresholds and indexation of the thresholds for the Core Skills and Specialist Skills streams of the new Skills in Demand visa.

The Bill also delivers on another commitment in the Migration Strategy, including the streamlining of labour market testing requirements by increasing the validity period from four to six months, and provides enhanced protections and oversight mechanisms through the establishment of a public register of approved sponsors.

The Government welcomes the Committee's report and its recommendation that the Senate pass the Bill.

The Government thanks Senators Paul Scarr and David Shoebridge for their additional comments and recommendations. The Government's responses to these recommendations are provided in this report.

Recommendations

Recommendation 1: The committee recommends that the Senate pass the Bill.

The Government **agrees** to this recommendation and welcomes the passage of the Bill through the Parliament.

Additional Comments from Senator Paul Scarr

Recommendation 1: It is recommended that the government amends the bill to ensure the new minimum income thresholds for the SSIT, CSIT and ESIT are set in a way which ensures that wage payment disparities do not occur between foreign migrant workers and Australian workers being paid an award wage rate.

The Government **notes** this recommendation.

This Bill amends the Act to provide for income thresholds for the Specialist Skills, Core Skills and Essential Skills streams for the proposed Skills in Demand (SID) visa. Consistent with the Migration Strategy, the proposed Core Skills Income Threshold (CSIT) will be set in alignment and replace the Temporary Skilled Migration Income Threshold (TSMIT). The TSMIT was set at \$53,900 on 1 July 2013 and remained at that level for 10 years. By 2023, around 90% of all full-time jobs in Australia were being paid more than the TSMIT; a threshold that was intended to ensure that the temporary migration system focused on well-paid skilled jobs. Instead, it increasingly included lower paid workers. This trend undermined the basis of Australia's skilled migration system and eroded public confidence.

On 1 July 2023, the Government increased the TSMIT to \$70,000, which is approximately where the TSMIT would have been if it had been indexed to average weekly ordinary time earnings growth over the previous 10 years. The TSMIT was increased again on 1 July 2024 to \$73,150.

The CSIT is set at a level to ensure that the skilled visa program retains its original intent as being limited to skilled occupations and ensures migrants have sufficient income to support themselves and their families. The purpose of indexing the CSIT is to ensure that migrant wages keep pace with wage increases of Australians and to ensure that migrant wages do not undercut wages of Australian workers. Legislating income thresholds and indexation in the Act, rather than by legislative instrument, provides greater clarity and predictability for migrants and employers, as recommended in the Review of the Migration System Final Report 2023.

The CSIT works in conjunction with the requirement that the nominated salary is equivalent to the Annual Market Salary Rate (AMSR) for the nominated occupation and is not less than the CSIT. This ensures that migrant workers are paid the same as Australian workers and there is no disparity between migrants and Australians. Where nominated salaries are below the CSIT, employers may be able to utilise the Essential Skills Pathway which is being developed to regulate migration for lower paid workers with essential skills.

The Bill inserts a provision for the proposed Essential Skills stream to provide that the income threshold for occupations that are essential to Australia's workforce will be worked out in

accordance with the Migration Regulations made for this purpose, or be agreed to by the Minister in writing. This provides flexibility to recognise the unique wages and conditions of various sectors, where the relevant industry award may be less than the CSIT. The Government will further evaluate how to develop a more regulated pathway for lower paid workers with essential skills in consultation with state and territory governments, unions, businesses and other relevant stakeholders.

The Specialist Skills Income Threshold (SSIT) was decided following tripartite consultation with business and unions and strikes an appropriate balance between streamlining entry for highly skilled specialists whilst retaining integrity of the visa system. Migrants entering Australia on the Specialist Skills stream will bring significant economic benefits to Australia, including by generating significant fiscal returns through taxation given the salary threshold. This stream recognises highly skilled migrants are hugely beneficial to Australia's national productivity, including through their support of critical sovereign capabilities and potential to grow the skills and expertise of the Australian workforce. AMSR requirements will apply to this stream to ensure salaries are not inflated in order to meet the SSIT.

Recommendation 2: It is recommended the government amends the bill to ensure the proposed automatic indexations of the minimum income thresholds established in the bill are calculated using a method which does not result in any disparity between the payment of foreign migrant workers and Australian workers earning an award wage rate. To this end, consideration should be given by the government to the mechanisms in place through the Fair Work Commission providing the rate at which minimum wages are increased.

The Government **notes** this recommendation.

Indexation of the CSIT and the SSIT in the Bill is based on the changes in the Average Weekly Ordinary Time Earnings (AWOTE), as reported by the Australian Bureau of Statistics. AWOTE measures the average earnings of employees for ordinary hours worked, making it directly relevant to wage levels in the economy. This method of indexation reflects changes in the actual earnings of workers.

Alternatively, the Fair Work Commission's Annual Wage Review (AWR) focuses on setting minimum wages. Basing indexation on changes in the AWR would reflect changes to the minimum wage rather than reflecting changes to average wage growth across the economy.

AMSR requirements ensures there will not be disparity between the wages of migrant workers and Australian workers in the same roles. The purpose of setting income thresholds is to ensure the skilled visa program retains its original intent of being limited to skilled occupations. Raising income thresholds annually through indexation is considered necessary to provide sufficient income for skilled migrant workers to better support themselves financially in Australia due to higher costs of living and to reduce vulnerability to exploitation. Setting the income thresholds and annual indexation in the Act, rather than by legislative instrument, provides greater certainty and ensures automatic annual indexation without the need for a legislative instrument.

Additional Comments from Senator David Shoebridge

Recommendation 1: Specify that the Specialist Skills Pathway only covers occupations that are not otherwise listed on the Core Skills Occupation list.

The Government **notes** this recommendation.

The Specialist Skills stream will be available to highly skilled migrants who bring significant economic benefits to Australia, such as meeting labour needs that exist at an individual firm level and assist companies in acquiring specialist knowledge, niche technologies or research expertise unavailable in Australia. Migrants entering Australia on the Specialist Skills stream will also generate significant fiscal returns through taxation, given the high salary threshold.

The Specialist Skills stream will be available to applicants who meet the general eligibility criteria and who are in any occupation (except trades workers, machinery operators and drivers, and labourers) earning at least \$135,000. Some applicants will be eligible for both the Specialist Skills stream and the Core Skills Stream if their occupation is on the Core Skills Occupation List, their salary is over \$135,000, and they meet other eligibility criteria. For these applicants, the Specialist Skills stream will be most beneficial because the Government has committed to a service standard of 7 days median visa processing time for applications in this stream. This also provides a streamlined approach for Australian businesses to quickly and easily recruit top talent in areas of need.

Recommendation 2: Allow workers on the Essential Skills Pathway to apply for secondary employment.

The Government does **not agree** to this recommendation.

All temporary skilled workers must work only in their nominated occupation. This ensures migration is not used to undercut Australian workers and is targeted at roles in which there is a genuine shortage. Allowing workers in the Essential Skills stream to work multiple jobs may reduce employment opportunities for Australian workers and increase the risk of worker exploitation.

On 1 July 2024, the Australian Government introduced changes to enhance labour market mobility for temporary employer sponsored visa holders. Visa holders who cease work with their sponsoring employer now have up to 180 days at a time and a maximum of 365 days in total across the entire visa grant period to find a new sponsor, apply for a different visa, or depart Australia. Visa holders have work rights during this time, ensuring they can support themselves while they look for a new sponsor. They do not have to work in the same occupation nominated by their previous sponsor. As outlined in the Migration Strategy, these changes will also become a feature of the SID visa when it is introduced as a replacement to the Temporary Skills Shortage visa.

Recommendation 3: Jobs and Skills Australia to develop an Essential Skills Occupation List or clearly state the relationship between the Essential Skills Pathway and Core Skills Pathway.

The Government does **not agree** to this recommendation.

The Explanatory Memorandum accompanying the Bill outlines the difference between the Essential Skills and Core Skills streams of the SID visa. The Essential Skills stream will be a more regulated pathway for lower paid workers with essential skills. This stream will provide flexibility for the Government to address unique circumstances that are not covered by the

Specialist or Core Skills streams or that occur only in specific areas of Australia, in a similar manner to how this is currently provided for through labour agreements.

The Government will further evaluate how to develop the Essential Skills stream in consultation with state and territory governments, unions, businesses and migrant workers. In defining essential skills, the Government may give consideration to sectors and occupations that are vital to supporting the living standards of Australians and where persistent shortages exist. These arrangements would be sector specific, embedded with stronger regulation and minimum standards and subject to further labour market advice from Jobs and Skills Australia and its tripartite mechanisms.

Recommendation 4: Expand the public register to include businesses that employ other temporary migrants on working visas to promote transparency and accountability, with the appropriate exclusions to ensure worker safety and privacy.

The Government does **not agree** to this recommendation.

The Bill will enable the publication of a register of approved standard business sponsors and accredited sponsors who have nominated skilled workers for entry to Australia, including the kind of work sponsor, the sponsor's business name, Australian Business Number and postcode, the number of individuals nominated under the sponsorship approval process and the occupations of the nominated workers.

The register will be published and maintained on the Department's website. It will help temporary skilled migrant workers find a new sponsor and provide a resource to check that a sponsoring employer is legitimate. This fulfils a commitment in the Migration Strategy, as an action to enhance worker mobility and tackle worker exploitation. The release of information on register will adhere to requirements of the *Privacy Act 1988* and the Australian Privacy Principles.

The public register is limited to temporary visas where full sponsor obligations apply. There are no provisions for Government to include other visa subclasses where work may be casual, part-time or on an ad-hoc basis. In the future, the Government will consider if this register can extend to businesses that employ other temporary migrants where workers are particularly susceptible to exploitation.

Recommendation 5: Remove proposed amendments extending the validity of LMT from 4 to 6 months.

The Government does **not agree** to this recommendation.

The Bill proposes amendments to the Migration Act to provide that Labour Market Testing (LMT) be completed within 6 months (increased from 4 months) prior to the sponsor of a skilled migrant worker lodging a nomination. This change provides employers with more flexibility in recognition of current recruitment practices and complements the removal of the requirement for employers to advertise positions through Workforce Australia, which occurred on 11 December 2023.

LMT is important to determine whether there is a suitably qualified Australian worker who can fill the position. The only change for LMT under this Bill is the requirement that it be

completed within six months, as opposed to four months, prior to the sponsor lodging a nomination. This streamlines the process for Australian businesses who are unable to find a suitably qualified Australian worker.

As Jobs and Skills Australia's role further matures, the Government will consider moving away from employer conducted LMT towards mechanisms for robust and genuine independent verification of labour market need.

Response to the Senate Standing Committee for the Scrutiny of Bills

An addendum to the Explanatory Memorandum for the Bill was approved by Minister Burke on 16 October 2024. The addendum addresses a request by the Senate Standing Committee for the Scrutiny of Bills as to why it is considered necessary and appropriate that instruments made under subsection 140BG(2B) of the Bill are not legislative instruments. In paragraph 2.90 of Scrutiny Digest 11, the Committee considered that its scrutiny concerns had been addressed and concluded its examination of the matter.