Submission to the review of the points test discussion paper

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1 Introduction

1.1 The Migrant Workers Centre Inc. (MWC) welcomes the opportunity to make a submission to the Review of the points test discussion paper (hereafter 'the Review').

1.2 The Migrant Workers Centre Inc. (MWC) is a not-for-profit organisation that connects migrant workers with one another and empowers them to understand and enforce their workplace rights. The MWC collaborates with unions and community partners to organise grassroots campaigns, deliver education sessions on workplace safety and rights, and advocate for long-term solutions to the exploitation of migrant workers in Australia. The MWC advocates for all workers who were born overseas and work in Australia, irrespective of their migration status.

1.3 Points-tested skilled migration generally provides a flexible and transparent way for applicants to assess their eligibility based on criteria such as English language proficiency, education, and age. It offers the ability to qualify for skilled visas in several different ways and is complemented by supply- and demand-driven visa streams through employer and state or territory sponsorship. Theoretically, points-tested visas allow the government to control skilled migration into areas necessary for long-term economic growth.

1.4 The success of the points system, however, has been undermined by its reliance on factors that do not accurately predict a migrant's success in the labour market. As the **Migration Review 2023** has highlighted, this has led to a system that rewards persistence.[1] As a result, migrants aspiring to permanent residency enrol in costly, potentially unnecessary education or accept employment far below their skill level, pushing them into precarious and exploitative work conditions.

1.5 Supported by testimonials from migrant workers themselves, this submission highlights the need for a more granular, evidence-based approach to assess applicants and provide them with realistic expectations about their chances of success. Critically, the points system must be re-calibrated to not only fill current and emerging skills shortages, but also enable migrants to participate fully in social and economic life and enjoy fair, decent, and secure work.

2 Social and economic integration

2.1 Research indicates a significant skills mismatch in the skilled migration system, influenced by factors such as limited job opportunities, discrimination, and a lack of local experience and

[1] Martin Parkinson, Joanna Howe & John Azarias, *Review of the Migration System* (Final Report, DHA, March 2023).

professional networks.[2] As the discussion paper notes, the points system alone cannot address these issues.

2.2 While outside the purview of this review, we strongly emphasise the need for a multipartite approach to addressing skills mismatch, involving governments, employers, unions, and the community sector.[3] To better integrate and utilise migrant skills, occupational licensing arrangements must be improved, the recognition of skills and qualifications streamlined, and the allowable scope of practice within licensed occupations reviewed in consultation with relevant unions. Regulating the costs of skills recognition, and offering subsidies for it, is also important due to the significant costs that migrant workers incur throughout their time in Australia (see **Box 1**).

> **Box 1. Matias' story**
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> *"I am working as a researcher in the field, and I have worked for as a physiotherapist under supervision, but I am not yet recognised as a qualified practitioner. First of all, the cost of tests, plus the cost of assessment of documents regarding my working experience in Chile, plus the costs of migration agent, visa application, private health insurance, public school fees for my daughter's school: all these costs left me with not enough money to pay for the tests."*

2.3 Points-based systems are effective at assessing skills and credentials that are clear-cut and quantifiable. They fall short at gauging 'soft' attributes that are essential for successful integration but are difficult to quantify. Removing "bloated" criteria and amending the various weightings given to the eligibility criteria will help address some of the inherent shortcomings of the points test and bring skills targeting into the balance.[4]

2.4 **The following criteria should be removed** but grandfathered so that migrants who have spent time and resources accumulating points are not disadvantaged. Some of these were earmarked for removal because they contribute to a pattern of 'permanent temporariness'.[5] The costs associated with earning points from these criteria, coupled with the expenses of settling and living in Australia, can also be prohibitive for migrants (see **Box 1**).

2.4.1 **The 'professional year':** migrants have reported spending thousands of dollars to private providers on 'professional year' training and placements, often lasting up to a year, in order to gain 5 points. These programs are frequently unpaid, fail to provide proper training, and are a financial burden on migrants who are desperate to gain a competitive advantage under the points system. It also favours those who can afford to spend large sums of money.

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[2] Migrant Workers Centre & Unions NSW, *Unlocking Talent: Empowering Migrant Workers with Equal Work Opportunities* (Report, June 2023).
[3] Settlement Services International (SSI), *Billion Dollar Benefit: A roadmap for unleashing the economic potential of refugees and migrants* (Report, June 2023).
[4] Grattan Institute, *Australia's migration opportunity: how rethinking skilled migration can solve some of our biggest problems* (Report, December 2022) 68.
[5] Parkinson, Howe & Azarias (n 1).

2.4.2 **Regional study:** applicants can gain 5 points for studying and residing in a regional area. Without robust employment opportunities, the incentive of extra points alone is insufficient to attract and retain migrants in regional areas.[6] Other levers, such the extension of post-study work rights, can encourage internal migration. More broadly, greater investment to develop regional Australia is needed.

2.4.3 **Specialist education:** applicants can gain 10 points for completing an Australian 'specialist educational qualification' in a field specified by the government (currently STEM). It incentivises applicants to pursue resource-intensive, high-level degrees primarily to gain points, rather than meet actual market needs. The restrictive criteria also exclude skilled workers from diverse fields.

2.4.4 **NAATI Credentialed Community Language (CCL) test:** The CCL test is used to capitalise on community language skills for migration, allowing applicants to gain 5 points. Costing upwards of $800, the test has little transactional value elsewhere and imposes an undue financial burden for applicants who are desperate to gain points amid decreasing visa quotas (see **Box 2**).

2.5 **The following criteria should be revised** to emphasise the continuous contributions that applicants have made to the Australian community, and the value they can bring beyond economic or wage-based factors.

2.5.1 **Community language**: competency in a community language is a crucial asset and should be rewarded based on practical work experience in using language skills in community settings, rather than exclusively through a costly formal test.

2.5.2 **Work experience:** currently, applicants can only receive points for both local and international work experience once they have met the skill level required by the relevant skills assessor for their nominated profession on the Skilled Occupation List. In practice, this means that most applicants can only receive points after completing their studies. To incentivise continuing professional development, points should instead be rewarded gradually as applicants progress through their qualifications and gain relevant experience. Moreover, many highly skilled and experienced migrants find it difficult to find work in Australia due to a 'lack of local work experience'. To help address this, international work experience should be given greater weighting in the points test, with consideration given to the completion of bridging programs that better align skills with local standards and requirements.[7]

2.5.3 **Age:** as the discussion paper suggests, smoothing out age-related points 'cliffs' where small age differences lead to large variations in points will better reflect the ongoing contributions and potential of applicants as they age. Adding alternative pathways for those who might not meet age criteria but have significant professional achievements or in-demand skills will also help reduce age discrimination, better recognise diverse contributions, and align more closely with labour market needs.

[6] Ibid.
[7] Migrant Workers Centre (n 2) 26.

2.5.4 **English language requirements**: high levels of English language proficiency are a useful predictor of labour market success generally, but they are not the sole driver of such outcomes.[8] The standards imposed must therefore be fit-for-purpose. Overly stringent requirements can unfairly exclude skilled migrants from professions with critical labour shortages. The requirements should be reformed to match the minimum level necessary to competently perform a given or identified occupation (see **Box 2**). Concerns have also been raised about potential conflicts of interest stemming from financial investments in the administration of the testing process, particularly for the International English Language Testing System (IELTS).[9] Although the English proficiency test results are valid for three years for skilled migration purposes, migrants may need to undertake these tests multiple times for various educational or licensing needs, leading to additional costs. The validity of the test should be standardised, only requiring migrants, many of whom are actively using English to live and work in Australia, to retake it if higher proficiency levels are required for specific purposes.

Box 2. Aurora's story

"My English is proficient and I always had a good IELTS, but I had to pass a PTE [Pearson Test of English] test as well to get extra points. I do believe that the point system needs to be reviewed; for example the community language test does not make sense for my career and it is really expensive. Also, the validity of English test is very questionable: not just for students studying in Australia, but also people here on a working visa or sponsored, leading an English-speaking workplace, and still they need to pass an English test. The way the test is designed does not reflect of the actual use of the English in your professional and everyday life. The point system is clearly designed to milk cash from migrants."

3 Points allocation for secondary applicants

3.1 The current points system for skilled migration visas underrepresents the skills of secondary applicants. Despite making up half of the permanent skilled intake, secondary applicants only contribute a small fraction of the total points available for the primary applicant. In 2021, 65% of primary applicants in the permanent skilled migration stream were male, compared to 35% female.[10] The effects of skilled migration are therefore gendered, contributing to a segmented labour market whereby secondary applicants face underemployment in low-paid, 'feminised' occupations, particularly in the informal sector.[11] These factors may also push migrant women into exploitative or unsafe work conditions.

[8] Islam, Asad and Jaai Parasnis, 'Native-Migrant Wage Differential across Occupations: Evidence from Australia' (2016) 54(3) *International migration* 89.
[9] Caitlin Cassidy, 'Australia: International University Students Made to Pass $400 English Test Several Times' *The Guardian* (online, 25 June 2023).
[10] Australian Bureau of Statistics, *Australian Census and Migrants 2021*, ABS TableBuilder (Accessed 23 May 2024).
[11] Cahit Guven, Lan Anh Tong and Mutlu Yuksel, 'Australia's Immigration Selection System and Labour Market Outcomes in a Family Context: Evidence from Administrative Data' (2020) 96(S1) *The Economic record* 50.

3.2 Assigning greater weight to the language skills, experience, and education of secondary applicants within the points system can shift the balance towards selecting primary applicants who have skilled partners. By valuing the full capabilities and characteristics of secondary applicants, their labour market prospectives will be enhanced independently of the primary applicant. This will have substantial, direct benefits for secondary applicants, improving their long-term job prospects and financial security.

3.3 However, further research is needed to inform the right balance in points allocation for secondary applicants. Existing studies have focused on primary applicants as male 'providers', resulting in a significant research gap.[12] There is a dearth of evidence on the impact of assigning greater weight to the characteristics of secondary applicants in the points system, especially in terms of the distinct skills needed to promote greater gender equality in the labour market. Addressing this gap will enhance transparency and help achieve a more equitable selection process for secondary applicants.

3.4 More broadly, skilled migration should be considered as a family enterprise that includes both spouses and independents, as opposed to an individual one. Settlement is an ongoing process, and involving the family in the migration process will improve overall settlement outcomes and support social inclusion. As above, improving post-settlement English training, recognising international qualifications, and reducing labour market discrimination are essential to improving labour market outcomes for secondary applicants as well.

4 Long-term skills needs

4.1 Points-tested visas are restricted to those whose qualifications and experience align with specific listed occupations. There is broad consensus that the skilled occupation lists, which are broadly based on ANZSCO occupation codes, are overly restrictive, complex, and fail to keep pace with rapidly evolving skills demands in the economy. They inadequately capture valuable skills and are further hampered by sluggish visa processing, often resulting in a years-long delay between the identification of a skill need and the arrival of a skilled migrant (see **Box 3**). The lists create an artificial barrier for migrants who are already contributing to the economy, leading to under- and over-employment. There is also evidence that occupational lists are distorted by industry lobbying.[13]

4.2 The system is further is complicated by the existence of multiple occupation lists, including the Medium and Long-term Strategic Skills List (MLTSSL), the Short-term Skilled Occupation List (STSOL), the Regional Occupation List (ROL), and the Regional Sponsored Migration Scheme (RSMS) List, along with the more recent Priority Migration Skilled Occupation List (PMSOL). Not all of these are used for points-tested visas.

4.3 While multiple lists allow for more nuanced management of different regional and sectoral needs, they can lead to perceived inconsistency and unfairness, as some professions gain easier access to more beneficial visa pathways simply due to list categorisation. Many

[12] Sue Webb, 'The Feminisation of Migration and the Migrants VET Policy Neglects: The Case of Skilled Women Secondary Migrants in Australia' (2015) 67(1) *Journal of vocational education & training* 26.
[13] Grattan Institute (n 4) 68-69.

applicants pursue avenues that are perceived to be easier and provide the best chances of permanent residency, and then switch to their preferred careers once they have secured PR.

4.4 Frequent changes to the lists also mean that migrants miss out on applying for an occupation that is subsequently removed, after working towards qualifying for it, or navigating various hurdles to have their skills recognised. One worker described the lists as akin to a "human lottery", due to their unpredictability and unclear expectations they set for migrants – even if their chances of success seemed assured when they first arrived in Australia.

Box 3. Angelo's story

Angelo arrived in Australia in 2016 on a student visa, pursing an aged care qualification at TAFE. Originally a pharmacist, at the time of arrival, pharmacy was not listed on the skills list. When it was added, he faced issues having his Indonesian degree recognised. Studying pharmacy in Australia was also unaffordable.

After completing his course, Angelo found a part-time position in aged care and worked there for 6 years. However, his job did not align with the skilled occupations lists, prompting Angelo to undertake further studies through additional student visas. He completed a Certificate IV in Ageing Support and a Diploma in Community Services, followed by a bachelor's in accounting.

> *"More points do not mean better workers. People with higher points are just people who have had more and better chances in their lives. I like working in aged care and have a job, but the job is not on a skill list. The Government does not think aged care is a skilled industry. Accounting is still on the skill list, but one has to get at least 110 points to be invited for PR. Only people in their 20s can get that many points, and I am too old."*

To improve his PR prospects, Angelo moved to regional South Australia, hoping for employer sponsorship through the Designated Area Migration Agreement (DAMA) stream.

> *"Australia is suffering from aged care labour shortage. I was able to get a full-time job even with a Bridging visa. Labour shortage is more serious in big cities. I am not the only one leaving Sydney to go to regional areas. Everyone knows there is no hope for PR in big cities and are leaving for regions."*

4.5 Evidence suggests that demand-driven models, such as employer-sponsorship, yield better labour market outcomes for migrant workers compared to those who are assessed by the points system.[14] This suggests that continuous employer input may be necessary for identifying both short- and long-term labour market needs. Nonetheless, we have previously advocated for the replacement of employer-sponsorship models with industry sponsorship, as the former unevenly binds migrants to employers.[15] To reduce labour market distortions, while also maintaining worker mobility in the labour market, any such employer-based inputs must be complemented by evidence-based insights and projections from Jobs and

[14] Grattan Institute (n 4).
[15] Migrant Workers Centre, *Submission to the Joint Standing Committee on Migration on the Inquiry into Australia's Skilled Migration Program* (March 2021).

Skills Australia. We propose the following solutions to better identify skills needs through the occupation lists.

4.5.1 **Jobs-matching register**: mechanisms that better align migrant skills with verified employer needs are needed to better reflect current labour market dynamics. A jobs-matching register, similar to the Skilled Migrant Employment Register currently used in Western Australia, could be adopted nationally, with input from all state and territory governments. This register would connect employers directly with skilled migrants, providing the government with real-time data on current and emerging skills needs. It can also be used to inform the development of occupation lists, so that they genuinely reflect skills shortages across different sectors and regions.

4.5.2 **Consolidate the occupation lists**: To streamline the process of identifying genuine skills needs, the skilled occupation lists should be consolidated. This unified list should offer clear and consistent pathways to permanent residency, so that all identified skills/occupation provide equal chances of securing PR and are aligned with the actual demands of the Australian economy.

5 Review period and transition arrangements

5.1 A hallmark of the points system is its adaptability. In the first two years of reform, frequent adjustments will be necessary to ensure the system responds effectively to labour market needs. Over time, every four years, systematic refinements should be made based on empirical evidence of how policy settings impact settlement and employment outcomes. This will require an increased investment in data analytics capabilities to support evidence-based decision-making.

5.2 For example, the points weighting given to different educational qualifications may be re-assessed over time, to better reflect their value in the labour market. If doctorate degrees do not lead to improved labour market outcomes compared to bachelor's or master's degrees, their additional point value should be adjusted accordingly. This adjustment should also take into account the specific field of study, ensuring that the points system aligns more closely with actual job market demands and skills needs.

5.3 As aforementioned, any reforms to the points system must carefully consider the potential adverse impacts on migrant workers, many of whom have devoted significant time and resources to meet the existing criteria. Clear communication and advance notice of changes are crucial, ideally disseminated through community-based channels to ensure accessibility. Implementing a phase-in period would allow existing applicants to continue under the older system temporarily before the new rules take effect. Certain components, such as criteria slated for removal, should be grandfathered so that any points already rewarded, or those that could be rewarded under the old system, are retained. A feedback or complaints process should also be implemented to help address any unintended consequences for applicants.

6 Recommendations

Recommendation 1. That the Federal Government remove and grandfather the professional year, regional study, specialist education and credential community language (CCL) criteria for points-tested visas.

Recommendation 2. That the Federal Government revise community language, work experience, age, and English language criteria so that they are fit-for-purpose and are better able to assess ongoing and future contributions to the Australian community.

Recommendation 3. That the Federal Government urgently review the administration of the tests used to assess English language proficiency for points-tested visas.

Recommendation 4. That the Federal Government standardise the validity of English proficiency tests across skilled migration, educational, and professional licensing contexts, with provisions to only require migrants to retake the test if higher proficiency levels are required for certain purposes.

Recommendation 5. That the Federal Government fund research to assess the real-world impacts of assigning greater weight to the skills and characteristics of secondary applicants, to help determine which attributes contribute most effectively to promoting gender equality.

Recommendation 6. That the Federal Government establish a national jobs-matching register to provide real-time data on current and emerging skills needs across different regions and sectors.

Recommendation 7. That the Federal Government consolidate the skilled occupation lists into a single, evidence-based list that provides clear and consistent pathways to permanent residency.

Recommendation 8. That the Federal Government review and monitor the points system during its first two years of reform, followed by robust reviews every four years, to systematically refine the factors that contribute to favourable settlement and labour market outcomes.

Recommendation 9. That the Federal Government implement transitional arrangements to mitigate potential adverse impacts on migrant workers. These arrangements should include clear and targeted communication of changes, a phase-in period for existing applicants, grandfathering of criteria slated for removal, and the establishment of a feedback mechanism to address any unintended consequences for migrants.