

**T** 03 9607 9311  
**F** 03 9602 5270  
president@liv.asn.au  
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**Committee Secretary**

Joint Standing Committee on Migration  
PO Box 6021  
Parliament House  
Canberra ACT 2600

By email only: [migration@aph.gov.au](mailto:migration@aph.gov.au)

**RE: Inquiry into Australia's Skilled Migration Program**

Dear Committee Secretary,

The Law Institute of Victoria ('LIV') welcomes the opportunity to provide further insights into the LIV's submission to the Inquiry into Australia's skilled migration program (the inquiry). The LIV appeared at the Inquiry on 21 April 2021 in Melbourne. We wish to provide some further information to the Joint Standing Committee on Migration ('the Committee') on the questions taken on notice during the LIV's appearance.

**Q1. What is the evidence for the shortage in those occupations and can you tell us anything about the nature of the shortage? Nothing illustrates the problems on the ground better than someone telling us about their own business. Are clients willing to come forward and tell us some of these stories directly?**

LIV members surveyed their clients however, no business that we surveyed was prepared to go on public record in relation to the issues they are dealing because of international border closures and the skills shortages. Our members have provided a short summary of what was articulated by their clients:

Health:

Hospitals are experiencing shortages with emergency trained doctors and nurses. Recruitment teams are now looking internationally to source talent.

Engineering:

- It is of the LIV's understanding that railway engineering has infrastructure projects requiring expertise not locally available (e.g. specialist expertise needed on specific European Train Control System).
- Businesses are actively recruiting for mechanical engineering technicians in the local labour market. They are struggling to identify sufficient talent and also it is particularly problematic because the occupation is on the short-term list of occupations and the visa can only be renewed once with no pathway to permanent residence.
- In the infrastructure space, both the Federal and State Governments are allocating significant funding to infrastructure programs (\$110 Billion towards transport infrastructure) to stimulate the economy and create jobs. This is welcomed, but to execute some of these programs, coupled with the challenge in finding specialist resources to deliver them, is making this very difficult for organisations in this sector.
- A Senior Manager commented that:

- *"We are certainly not alone and I would say other industries are also impacted. It is potentially seeing us needing to offshore work because we can't find the local talent. It is not as simple as just sending people to University. We do not have the timeline for that, nor does it even give those people the expertise of being able to deliver complex programs (even though we hire some 160 graduates each year). The main issue is that we need to deliver programs now. It takes many years of experience and working on actual projects to become proficient and competent, let alone an "expert". For example, the design of underground train stations is relatively new and we don't necessarily have local experts. But those experts are however located overseas as they've worked on such programs. These are the people with critical skills that we need to come to Australia. These are specialised and unique roles. Even with Labour Market Testing we can demonstrate that there is inadequate local talent available. But surely, we should not be selecting people who are not up to standard". The following are open roles we are recruiting for locally and internationally and should be included on the Priority Migration Skilled Occupation List ('PMSOL'):*

<i>Principal Overhead Wiring Engineer</i>	<i>Sydney</i>
<i>Director Infrastructure Advisory</i>	<i>Canberra</i>
<i>Technical Director - Design Manager / Highways</i>	<i>Sydney</i>
<i>Principal Design Manager - Highways</i>	<i>Sydney</i>
<i>Program and Project management Team Lead</i>	<i>Sydney</i>
<i>Structures Engineer</i>	<i>Sydney</i>
<i>Director Bridges</i>	<i>Sydney</i>
<i>Technical Director - Geotechnical</i>	<i>Brisbane</i>
<i>Rail Engineers (all levels)</i>	<i>Brisbane</i>
<i>Civil Engineer - Water Infrastructure</i>	<i>Brisbane</i>
<i>Revit Bridge Modeler</i>	<i>Brisbane</i>
<i>Structural Engineer (Tunnels and Bridges)</i>	<i>Melbourne</i>
<i>Geotechnical Engineer</i>	<i>Melbourne</i>
<i>Drainage Engineers/Hydrologists</i>	<i>Melbourne</i>
<i>Water Engineer</i>	<i>Melbourne</i>
<i>Civil Designer (OpenRoads &amp; Revit)</i>	<i>Melbourne</i>
<i>Aviation Engineer</i>	<i>Melbourne</i>
<i>Pavements Engineer</i>	<i>Melbourne</i>
<i>Highways Engineer</i>	<i>Melbourne</i>
<i>Civil Engineer (Infrastructure Services)</i>	<i>Melbourne</i>
<i>Infrastructure Advisor (AD)</i>	<i>Melbourne</i>
<i>Transport Planner</i>	<i>Melbourne</i>
<i>Dams Engineer</i>	<i>Melbourne</i>
<i>Overhead Wiring Engineer (Rail)</i>	<i>Melbourne</i>
<i>Overhead Wiring Designer</i>	<i>Melbourne</i>
<i>Principal Façade Designer</i>	<i>Melbourne</i>
<i>Principal Façade Engineer</i>	<i>Melbourne</i>

<i>Digital Engineering Lead</i>	<i>Perth</i>
<i>OpenRoads Designer (team lead)</i>	<i>Perth</i>
<i>Civil Structures Revit Modeller</i>	<i>Perth</i>
<i>BIM Manager</i>	<i>Perth</i>

#### C-Suite:

- The LIV has heard that businesses are struggling to source C-Suite talent locally. LIV members have heard that organisations require strong leadership to navigate through these particularly uncertain times and the breadth of expertise required for these leadership roles does not exist in the local labour market. For example, a business articulated that there seems to be too much focus by the Department of Home Affairs (**'the Department'**) when assessing a travel exemption application on the visa holder needing to be "on the tools", without considering the commercial reality of needing strong leaders to assist an organisation.

#### Management Consultant:

- Management consultant is a role of increasing importance due to the need to ensure that businesses are running as efficiently as possible. This is also an occupation that is likely to lean heavily on proprietary knowledge, which makes it more challenging from a local labour perspective.

#### Finance Sector:

- The finance sector primarily relies on the Subclass 482 *Temporary Skills Shortage ('TSS')* and Subclass 186 *Employer Nomination Scheme* visa subclasses to employ temporary and permanent skilled workers and fill critical skills needed within the business. The largest area of critical talent required has been the Data/ Engineering / Technology divisions. The introduction of the PMSOL has been essential for the sectors to transfer critical skilled workers from their businesses overseas into Australia. Many of the roles in the sector experiencing skills shortages align to the already existing PMSOL occupations, 261313 *Software Engineer* and 261312 *Developer Programmer*. The sector has been successfully using both the TSS and ENS visas to meet shortages in these occupations, demonstrating the effectiveness of the PMSOL. They would be further assisted by expanding the PMSOL to include similar occupations such as: 261111 *ICT Business Analyst*, 261311 *Analyst Programmer*, 261112 *Systems Analyst*, and 261314 *Software Tester*. The latter occupation stands out from the other Australian and New Zealand Standard Classification Occupations (**'ANZSCO'**) as it currently sits on the Short-Term Skilled Occupation List (discussed below).
- It is worth noting that the sector's approach for hiring overseas workers is predominantly to facilitate intra-company transfers from their businesses overseas. These are highly skilled workers who have been tested and trained, and who demonstrably hold crucial internal proprietary knowledge that is not available at market. However, not all critical talent requiring visa sponsorship are located overseas. Given the challenges of border restrictions, where local Australian workers cannot be sourced at market, a recent trend has been to recruit skilled workers already onshore in Australia holding temporary visas such as the Subclass 500 Student

visa, Subclass 485 Temporary Graduate visa, or a TSS visa. There is strong competition for this small, onshore talent pool. It is not uncommon for these temporary visa candidates to be fielding offers from multiple Australian businesses offering employer sponsorship for visas. An increasing issue for the sector is the impact of critical roles being aligned to occupations on the Short-Term Skilled Occupation List ('**STSOL**'). Unless an International Trade Obligation applies, employees nominating an occupation under the STSOL are eligible for a TSS visa of up to 2 years, with an option to renew once for a further 2 years. There is no pathway to employer-sponsored permanent residency. Given the closed borders restricting businesses to recruit locally, when a candidate is identified who is in Australia on a TSS STSOL visa, the business is limited to sponsoring them to a two year visa only due to the renewal limitations of the STSOL. This is severely limiting as roles require the development of key internal and external relationships – by the time this is done to a level of effectiveness, a TSS STSOL visa will be coming up to expiry with no option for extension.

- In these circumstances, it is recommended that there be a review of these occupations so as to provide concessions during the border closures, or to consider movement of these key occupations from the STSOL to the Medium and Long-term Strategic Skills List ('**MLTSSL**') providing longer term visa pathways. The COVID-19 pandemic saw the anticipated March 2020 update to the skilled migration occupation lists be put on hold, but it would be very timely to resume this update particularly as it relates to the Data Scientist role which is in critical shortage across all sectors of business.

**Q2. You have made submissions of lowering the financial threshold for the GTI. It is very high because its designed to get particular elite group of skills into the economy and an elite group of people who can come here and start a business or turbocharge existing businesses. What sort of threshold would you like to see it lowered to, and who are we missing out on by not lowering it?**

The LIV submits that Australia is missing out on internationally recognised academics and researchers by not lowering the financial threshold for the Global Talent Independent Program ('**GTI Program**'). The LIV has been provided a number of examples of academics/researchers who would benefit from lowering the financial threshold for the GTI Program:

- LIV members report that one organisation has many cancer researchers who could apply under the GTI Program based on the innovative work they are doing, but their chosen career pathway means salary is not high (between \$75,000 and \$95,000 per annum). They are highly qualified with PhDs.
- Another example is a social worker / art therapy candidate who has a PhD and commitment to innovation in aged care and palliative care therapy. She could meet the Fair Work High Income Threshold if she pursued a career in private practice or management, but she prefers public practice and research which does not attract a high salary (\$70,000 to \$90,000 per annum).

- An example in the education priority sector is demonstrated by an academic who is paid under an Enterprise Agreement which makes it difficult to refer to external evidence to demonstrate his earning capacity. By way of background, his employer, an Australian University, is happy to nominate him. He is an Assistant Professor in Strategy and International Entrepreneurship. He is also a visiting Academic at a UK University and a Fellow at a Korean University. His research focuses on firm investment from social, economic, and security perspectives that contributes directly to critical research infrastructure of Australia. The academic has received numerous accolades and honours from various Australian and international organizations. He regularly presents his world-leading research in the top international conferences, where his work has been nominated for awards and received accolades from leading scholars. He needs to rely on external funding to meet the FWHIT.

**Q3. How big of an issue is it that the Entrepreneur stream of the Business Innovation and Investment (subclass 188) visa does not cater effectively to entrepreneurs?**

The LIV submits that only 34 visas were granted in the 2020-2021 year to 31/12/2020 in this stream, and only 10 were granted in 2019-20 and 18 in 2018-19.<sup>1</sup> However, the LIV notes that the \$200,000 funding requirement is due to be abolished from 1 July 2021 with a series of changes to the Business Innovation and Investment Program, and applicants in that stream will then need to be nominated by a State or Territory Government. This seeks to emulate the Supporting Innovation in South Australia pilot program. The LIV supports this change and anticipates it may open up the Entrepreneur stream to additional applicants.

The LIV further suggests that to facilitate an additional mechanism for applicants keen to start and work in their own business, it is worth considering amendments to Departmental policy regarding self-sponsorship within the Temporary Skills Shortage (TSS) (subclass 482) visa program. Departmental policy (PAM3) relating to subclass 482 nominations suggests that while individuals are not precluded from sponsoring themselves, in assessing the 'genuine position' requirement, the delegate needs to be satisfied that there is 'another reason' for the position being created other than creating a pathway to permanent migration or to facilitate a pathway to permanent migration. This policy is confusing and is likely to dissuade ambitious and entrepreneurial applicants from seeking to access that program if wanting to a) start a business and b) be granted a visa in association with the running of that business. As previously discussed, removing the salary threshold on the GTI visa stream will also increase flexibility within that program and attract younger, more dynamic entrepreneurs.

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<sup>1</sup> Freedom of Information Request FA 20/05/00111, 2-3, accessed at <https://www.homeaffairs.gov.au/foi/files/2020/fa-200500111-document-released.PDF>.

#### **Q.4 What are some examples of the sorts of applicants unable to access the Skilled (Independent) (subclass 189) visa program?**

By way of background, the general rule in the invitation process via SkillSelect is that the highest ranked clients by points score are invited to apply for the relevant visa (being the Skilled Independent (subclass 189) visa or the Skilled Work Regional (Provisional)(subclass 491) (Family Sponsored) visa. Some occupation groups are subject to pro rata arrangements to ensure availability of invitations across the program year and the minimum points scores for those pro rata occupations are published regularly. One reason that applicants cannot access the program is that they do not have sufficient points to receive an invitation, even if their occupation is receiving invitations that particular round. As an example of the sort of applicant currently unable to access the program, we note that the minimum points score for the occupations under the umbrella of 'Other Engineering Professionals' (Occupation ID 2339) was 95 points for the January 2021 invitation round.

Occupations falling under the umbrella of 'Other Engineering Professional' include, for example, a biomedical engineer or agricultural engineer. Such an applicant with 90 points (ineligible as at the most recent invitation round), could have, for example, the following attributes:

- 30 years of age (30 points)
- Proficient level English (10 points)
- 60 months work experience in the 10 years immediately before time of invitation to apply for the visa in the skilled occupation or a closely related one in Australia (15 points)
- Bachelor degree in Engineering from an Australian educational institution (15 points)
- Australian study requirement (5 points)
- No spouse or de facto partner (10 points)
- NAATI accreditation at the paraprofessional level in a community language (5 points)
- **Total: 90 points**

Such highly skilled applicants in clear skill shortages<sup>2</sup> become disillusioned and look elsewhere to migrate. They have no bridging visa entitlement as a result of the pending Expression of Interest and so their bridging visa status is likely to be linked to another visa, tribunal or court process and may not permit them full-time work in their nominated occupation while waiting for an invitation. Australia is failing to capitalise on the benefits of their considerable skills.

More generally, migration program planning levels projected that 6,500 Skilled Independent visas will be granted in 2020-2021.<sup>3</sup> 2,822 Skilled Independent (subclass 189) visas were granted in the 2020-21 year to 31 December 2020. With such low numbers, the subclass 189 visa program appears to need tweaking to meet significant skills shortages across multiple sectors, particularly as whether the program is accessible depends largely on an applicant's skilled occupation. Further, not all applicants with an occupation on the

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<sup>2</sup> See, eg. Australian Government: Department of Employment, Skills, Small and Family Business, 'Engineering Professions Australia, 2019' accessed at <https://www.dese.gov.au/skill-shortages/resources/engineering-professions-australia>.

<sup>3</sup> Migration program planning levels, published by the Department of Home Affairs, at <https://immi.homeaffairs.gov.au/what-we-do/migration-program-planning-levels>.



MLTSOL are benefiting from the program equally. Of those Skilled (Independent) (subclass 189) primary visas granted by occupation in the 2020-21 year to 31/12/20, of which the total was only 1,312, 427 visa holders in that group were various medical professionals.<sup>4</sup>

More recent data published by the Department as to invitations issued in the 2020-21 year to 21 January 2021 confirms that medical and health professionals, engineers and scientists have largely been the beneficiaries of the program thus far this year, with no invitations having been issued to applicants working in trade occupations such as plasterers, cabinetmakers, chefs, glaziers, tilers, electricians, panel beaters and electronic trades workers.<sup>5</sup> Likewise, early childhood teachers, secondary school teachers and university lecturers have not been issued any invitations in the 2020-21 year. While this no doubt reflects the government's intention to target immediate demands in the job market created by the COVID-19 pandemic in the medical and health industries, it is not clear why this needs to be achieved to the detriment of applicants seeking to fill other skills shortages. It is important that existing talent onshore should be retained. The LIV believes that an effective migration program targets those individuals that are onshore with desired skills that Australia needs.

**Q.5 In relation to your recommendations, can you give the committee a sense of the urgency with which you believe the Government should be acting on these matters? Based on the feedback you're receiving from your readers, what are the consequences of not acting quickly? Will that have an impact on Australian jobs?**

LIV members believe that there is a real sense of urgency to act on these matters. The current state is impacting businesses' ability to pursue growth opportunities. Refusals of travel exemption applications for business development professionals was raised by a number of businesses as a serious issue. The LIV has heard of one business commenting that a travel exemption was refused for a business development professional from its head office in Germany who was helping them to bid for a \$100M contract which would have created Australian jobs. Similarly, in the health sector, there has been significant impact on front line workers and their well-being. They have been working substantial overtime to bridge the gap.

There is also a lot of uncertainty during the pandemic and people are wanting security. LIV members report that one business commented that some of its employees have not selected Australia as their destination country. They decided to not proceed with arranging a visa to Australia but instead transferred to Belgium due to the certainty it provided on visa pathways.

Finally, businesses also articulated that they are struggling to deliver current projects on time and budget. One C-Suit leader commented:

*Our resources are stretched because multiple programs are being delivered in a close timeframe.  
Our competitors are facing that same challenge so the sourcing of local talent is becoming even*

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<sup>4</sup> Table published by the Department of Home Affairs, in submission 16.1 provided to this Committee, Attachment 4.3, p 9 of 18.

<sup>5</sup> See [Occupation ceilings \(homeaffairs.gov.au\)](https://www.homeaffairs.gov.au/occupation-ceilings).

*more difficult. It is making our local labour market very competitive and talent retention is becoming a concern as employees “shop around” or are “head-hunted” by competitors. We are seeing an increasing employee turnover rate which is concerning.*

*It is for this reason we need to source talent whom are based overseas. These are highly experienced individuals with tertiary degrees and numerous years of experience on programs. This is the talent we require.*

*When we can secure the specialist talent, that in turn allows the program to proceed. There is then a flow-on effect because it will see local labour being engaged to help deliver the program. For example, if we are able to design the Tunnel for an infrastructure project, that in turn allows the local contractors to go and build it.*

Should you wish to discuss the matters raised above, please contact the LIV Policy Officer for the Administrative Law and Human Rights Section, [REDACTED]

Sincerely yours,



Tania Wollf

**President**

**Law Institute of Victoria**