

Committee Secretary
Select Committee on Temporary Migration
Department of the Senate
PO Box 6100
Canberra ACT 2600

5 March 2020

Submission to Senate Select Committee on Temporary Migration

We thank the Committee for the opportunity to provide this submission on the impact of temporary migration. This submission is concerned primarily with the Committee's terms of reference:

- (b) the impact of temporary skilled and unskilled migration on Australia's labour market;
- (c) policy responses to challenges posed by temporary migration; and
- (d) whether permanent migration offers better long-term benefits for Australia's economy

In recognition that education exports are Australia's third largest by Gross Domestic Product, with the Higher Education Sector ('the Sector') contributing \$24.3 billion (2018) thus making a significant contribution to the Australian economy, this submission examines the above terms of reference within the context of the Sector.

This response is prepared on behalf of the following universities:

- The Australian National University
- Bond University
- Curtin University
- Flinders University
- James Cook University
- Macquarie University
- Monash University
- Queensland University of Technology
- Swinburne University of Technology
- The University of Adelaide
- University of Canberra
- The University of Melbourne
- The University of New South Wales
- The University Queensland
- The University of South Australia
- The University of Sydney
- University of Technology Sydney
- Victoria University

I. The impact of temporary skilled and unskilled migration on Australia's labour market

The Higher Education Sector ('the Sector') looks to employ overseas workers as a way of filling labour shortages which cannot be filled by local workers due to a lack of necessary specialised skills and/or experience. Australian universities seek to employ and retain prominent figures and leaders in their field as a way of driving innovation and remaining competitive within their Sector both

nationally and internationally. Not only do Australian universities seek to secure world-class, high calibre researchers and academics, but they also seek to employ and retain prominent, experienced and skilled leaders in professional roles. These highly sought after appointees, of which a small percentage are foreign, in turn assist in attracting to Australian universities competitive research grants and funding; both local and international students; as well as local and international collaborators. Ultimately, this enables our universities to consolidate their educational and research stature in Australia as well as their standing as leading international universities, placing some Australian universities among the best in the world, with respect to their international ranking.

While the majority of roles, particularly professional roles, can be filled by Australian citizens or permanent residents, a small number (less than 5%¹) have been traditionally filled by foreign nationals with higher education specific skill sets and experience obtained internationally and which cannot be recruited locally. These professionals typically bring global expertise in running large-scale operations or cutting-edge processes that may not yet have been taken up or well developed in Australia. Hence, they assist to replicate and implement internationally successful, established, world-leading processes, programs, technology and/or strategies at Australian universities. These roles include, professionals from the Vice-Chancellor level down, ranging from university executives and those engaged in university advancement, to education management, head or senior librarians, life scientists, biostatisticians, marketing professionals and senior records managers.

Advancement (philanthropic fundraising) is a particular area where there is a critical skills gap in Australia and where universities have sought to recruit persons with international experience. Increasingly, universities have recognised the need to develop a robust philanthropic revenue stream to supplement other sources of funding, and government has encouraged this growing focus. Professional Advancement in Australian universities commenced in earnest only during the last decade. Many universities need further investment in their overall fundraising structure and in experienced staff if they are to increase philanthropic revenue. In particular, there is a skill shortage in Australia to fill the leadership roles in Advancement in Australia, given that this field is still in its early stages of development here, with relatively little local skills and experience, when compared with the US (which leads the field and has for decades) and the UK (which has a moderately developed advancement sector). Hence, high-level managerial and campaign leadership and development skills and expertise must be sourced internationally. Consequently, in sourcing highly skilled, specialist senior professional roles, internationally, we respectfully submit, that in the context of the higher education system the Australian labour market is not detrimentally affected by the Sector's utilisation of the temporary migration scheme.

II. Policy responses to challenges posed by temporary migration

Labour Market Testing

In introducing the current Temporary Skill Shortage (subclass 482; TSS/482) visa scheme, the Australian government also introduced a Labour Market Testing (LMT) requirement to ensure that suitably qualified and readily available Australian citizens or permanent residents were not overlooked for available roles. This LMT requirement also applies to the newly introduced Skilled Employer Sponsored Regional (provisional) visa (subclass 494).

Whereas in some other sectors, robust LMT policies and processes were lacking, this was not the case for the Sector. Conversely, the LMT policies and processes already in place at Australian universities extend well beyond a required minimum advertising period and the specified advertised

¹ A 2019 survey of nomination application data provided to the Department of Home Affairs by 23 Australian universities, showed that, on average, these universities listed 3% of their employees as foreign nationals holding a Temporary Skill Shortage (subclass 482) visa – amongst these universities, the lowest in the range was 1% and the highest was 7%.

content, with internal university policies also dictating the number of people on selection and approval panels as well as the roles and authorities within the university that panel-members must hold. Due to these long-established internal practices and protocols, the challenge that this prescribed LMT has introduced for universities is the maximum time-frame permitted for LMT (ie, the maximum period of time permitted from advertisement placement to lodging a visa nomination for a recruited foreign national). This is not to say that the Sector opposes LMT, but rather that current government requirements do not provide universities with the time that they require to complete LMT. The problem created for universities is illustrated in the diagram provided on the first page of the Appendix to this submission.

When a university wishes to recruit a foreign national into an available role, currently legislation only permits 16 weeks from date of first advertisement to date of nomination for a temporary work visa. This means, the university must advertise, recruit, select and appoint a candidate, as well as have an employment agreement signed, within 16 weeks of the date of first advertising the role. If the 16 week timeframe is exceeded before the contract is signed and the prospective employee is to be nominated for a temporary work visa, then the university is forced to re-advertise the role for a further 28 days, so that the 16 week timeframe begins again.

Given the critical importance of securing world-class, high calibre researchers, academics and professionals to the Sector, universities have developed internally prescribed, rigorous and protracted recruitment processes which cannot be undertaken within the currently prescribed 4-month maximum period prescribed by government. Indeed, a recent survey of 19 Australian universities, demonstrated that their average length for a recruitment and selection process is at least 25 weeks before the university is at a point where a multi-member selection panel's recommendation is approved by a university committee and an offer can be made to the successful candidate. Please see attached Appendix which details the reported recruitment timelines for academic level appointments at the 19 universities surveyed. Following the offer stage, there is typically a period of further contract negotiation (amongst other things). This invariably results in the 16-week requirement (from date of first advertising to the last date on which a visa nomination application can be lodged) being exceeded, thus forcing the university to re-advertise the role. This re-advertising is often very problematic for universities, both with respect to candidates already short-listed or at the offer stage and with respect to employment law and being forced to re-advertise a role. A sample of qualitative responses from university HR Directors on the difficulties posed by government prescribed 16-week LMT is included on the final page of the Appendix to this submission.

Hence, to facilitate their recruitment practices, which address critical skill, research, and expertise shortages, to enable world-class research and performance, universities would benefit from the following recommended changes to LMT requirements for the Sector:

Recommendation 1a: *Changes be made to the law so that Labour Market Testing (LMT) requirements (pursuant to section 140GBA Migration Act 1958 (Cth)) are not required to be met in circumstances where:*

- i) the nominator is an Australian university; and*
- ii) the position is an Academic Level A – E appointment; and*
- iii) the nominated occupation is University Lecturer ANZSCO 242111.*

Recommendation 1b: *In the alternative to Recommendation 1a, the Minister (in accordance with section 140GBA Migration Act 1958 (Cth)) determine by legislative instrument that:*

- i) where the nominator is an Australian university; and*
- ii) the position is an Academic Level A – E appointment; and*
- iii) the nominated occupation is University Lecturer ANZSCO 242111;*

then these will be 'select positions' and a 'select occupation' for which standard LMT requirements regarding manner, period and timing do not apply. Furthermore, that the only LMT evidence required for the purposes of a subclass 482 or 494 nomination application, is the signed employment agreement and position description, indicating that the position is Academic Level A – E.

A significant revenue stream for the purpose of funding world-class research at Australian universities is the competitive research grant funding and research fellowships awarded by government bodies such as the Australian Research Council (ARC) and the National Health & Medical Research Council (NHMRC). This funding is awarded to individuals, who apply for this funding to conduct their research at a nominated administering Australian university. Hence, universities are funded via research or fellowship grants to employ specific individuals to conduct research projects or to further their research which has been competitively selected via the funding body. Consequently, if they are successful in receiving funding, the grant/fellowship recipient will enter into an employment agreement (or continue employment) at the administering university. While the majority of this competitive grant funding is awarded to Australian citizens or permanent residents, a small percentage (less than 2%) of Australian government funded research grants are awarded to foreign nationals. Hence, it is the case that when this competitively awarded government research funding is granted to a foreign national, that they have undergone a competitive selection via rigorous review processes and have been recognised as capable of undertaking important, grant-worthy research of excellent calibre. This is a deliberate Commonwealth Government strategy to activate a 'brain gain' and allure internationally recognised and globally talented researchers to the Australian research setting.

Indeed, ARC data shows that in 2019, its Future Fellowship Scheme (awarded to outstanding midcareer researchers) received 589 research proposals for consideration. In total, nationally, only 17% of all applicants were successful in securing an ARC Future Fellowships. Foreign nationals comprised 12.1% of all applicants and had only an 11.3% success rate compared with Australian residents (18.3%). Hence, only 1.4% of all fellowship applications received and assessed by the ARC, were awarded to foreign nationals. It follows then that the foreign nationals selected by the ARC, are highly and competitively selected on the basis that they have the experience and skill as well as recognised potential to bring a research capability to the Australian context which is seen as beneficial to the Australian community, thus filling a research skills gap which is deemed worthy of funding. In order to take up their grant at their administering university, the Fellow must then be employed by the administering university, typically to an academic Level B - E position. However, Australian immigration requirements are such that a university cannot simply appoint a foreign fellowship holder to an Academic Level position without first nominating them for an appropriate work visa. If a university were to utilise the temporary migration scheme to fill these positions, LMT requirements dictate that the role must be an advertised role. This results in the contrived situation whereby the university must advertise the fellowship funded position that can only be filled by the successful fellowship grant holder; hence successful and promising mid-career researchers who have specific research expertise and grant-worthy (and funded) proposed projects are required to apply for the very roles which have been created as a function of them applying for and being competitively awarded their funded Fellowships.

Similarly, a number of universities run university-funded strategic fellowship programs aimed at attracting and/or retaining internationally competitive, highly skilled, published and cited research/academic fellows, in particular fields of need, to that university.

On the basis that these competitive fellowship programs result in a:

- Small, highly select pool of applicants receiving competitive fellowship funding;
- Very low percentage of government-funded competitive research grants being awarded to foreign nationals; and

- Low percentage of university-funded competitive fellowships being awarded to foreign nationals;

and noting that these competitive research fellowship funding programs employ rigorous review and selection processes when selecting from applications to competitively award these fellowship grants, we make the following recommendations:

Recommendation: 2a: *Changes be made to the law so that Labour Market Testing (LMT) requirements (pursuant to section 140GBA Migration Act 1958 (Cth)) are not required to be met in circumstances where:*

- i) the nominator is an Australian university; and*
- ii) the nominated occupation is any occupation on the Short-term Skilled Occupation List (STSOL), the Medium and Long Term Strategic Skills List (MLTSSL), or the Regional Occupation List (ROL); and*
- iii) the position is a fellowship funded through Australian Research Council (ARC) grants, National Health and Medical Research Council (NHMRC) grants, and/or similar competitive government or industry funded grants and fellowships.*

Recommendation: 2b: *In the alternative to Recommendation 2a, the Minister (in accordance with section 140GBA Migration Act 1958 (Cth)) determine by legislative instrument that:*

- i) where the nominator is an Australian university; and*
- ii) the nominated occupation is any occupation on the STSOL, MLTSSL, or ROL; and*
- iii) the position is a fellowship funded through Australian Research Council (ARC) grants, National Health and Medical Research Council (NHMRC) grants, and/or similar competitive government or industry funded grants and fellowships; then these will be 'select positions' and 'select occupations' for which standard LMT requirements regarding manner, period and timing do not apply. Furthermore, that the only LMT evidence required for the purposes of a subclass 482 or 494 nomination application, is the signed employment agreement and position description, indicating that the position is funded through Australian Research Council (ARC) grants, National Health and Medical Research Council (NHMRC) grants, and/or similar competitive government or industry funded grants and fellowships.*

Recommendation: 2c: *Changes be made to the law so that Labour Market Testing (LMT) requirements (pursuant to section 140GBA Migration Act 1958 (Cth)) are not required to be met in circumstances where:*

- i) the nominator is an Australian university; and*
- ii) the nominated occupation is any occupation on the STSOL, MLTSSL or ROL; and*
- iii) the position has been created from strategic university-funded fellowships aimed at attracting and retaining researchers of exceptionally high-calibre who are either:*
 - a) Of international high-standing in their research fields with exceptional publication track records; or*
 - b) Early career researchers with significant promise and who have been identified as future leaders in their fields of research.*

Recommendation: 2d: *In the alternative to Recommendation 2c, the Minister (in accordance with section 140GBA Migration Act 1958 (Cth)) determine by legislative instrument that:*

- i) where the nominator is an Australian university; and*
- ii) the nominated occupation is any occupation on the STSOL, MLTSSL, or ROL; and*
- iii) the position has been created from strategic university-funded fellowships aimed at attracting and retaining researchers of exceptionally high-calibre who are either:*
 - a) Of international high-standing in their research fields with exceptional publication track records; or*

b) Early career researchers with significant promise and who have been identified as future leaders in their fields of research;

then these will be 'select positions' and 'select occupations' for which standard LMT requirements regarding manner, period and timing do not apply. Furthermore, that the only LMT evidence required for the purposes of a subclass 482 or 494 nomination application, is the signed employment agreement and position description, indicating that the position is funded through a university-funded fellowship.

Specific case examples from Australian universities which highlight the need to implement Recommendations 2a, 2b, 2c and 2d are detailed below:

Case Example 1:

- An Australian university sought to recruit academics to fill 5 positions within the School of Computer Science, including at the Lecturer (Academic Level B), Senior Lecturer (Academic Level C) and Associate Professor (Academic Level D) levels.
- Prescribed LMT was undertaken over the course of more than 28 days, from June to July.
- The University made offers to successful candidates to fill the available roles, including an offer to 1 foreign national. The LMT exemptions (relating to the country of citizenship or permanent residence of a successful applicant) and alternative arrangements (on the basis that the position did not require the holder to demonstrate that they had an internationally recognised record of exceptional and outstanding achievement in their field) did not apply to this foreign national.
- Due to the rigorous and protracted recruitment process involved, the interviewing, selection and contract negotiations to fill these positions had taken several months. In the case of the foreign national, the parties were not in a position to sign the final contract until December. This was almost 6 months after the completion of the relevant LMT period and 2 months after the expiry the relevant LMT period.
- Hence, due to the expiry of the LMT, it was necessary for the University to re-advertise the position offered to the foreign national.
- This resulted in delays to the recruitment process and the commencement of the position, which in turn gave rise to the risk that the selected candidate would withdraw their acceptance. Indeed, the candidate expressed concern regarding the delays and the impact that this had had on her family's plans to relocate, including the timing of her partner's required notice period and resignation with his current employer.
- The situation also raises potential employment law issues, as the candidate had to sign a new employment agreement dated after the completion of the second round of LMT, once it could be demonstrated that no suitable Australian could be found to fill the role.
- It should be noted that this scenario has occurred frequently within the Higher Education Sector.

Case Example 2:

- An Australian university sought to recruit academics to fill the positions of Lecturer (Academic Level B) and Senior Lecturer (Academic Level C) from disciplines including Mechatronics, Robotics and/or Automation Engineering.
- Prescribed LMT was undertaken over the course of 28 days during July.
- Due to the interviewing and selection processes, as well as negotiating the terms of the employment, more than 4 months passed after the commencement of the advertising.
- Negotiations were not finalised until 11 December, almost five months after the completion of the LMT and almost 2 months after the expiry of the LMT.

- International candidates were selected for both roles. As in Case Example 1, the University had no choice but to re-do LMT, as both of the selected candidates who required nomination for a Temporary Skills Shortage (subclass 482) visa were not eligible for any LMT exemptions and the University was not able to demonstrate that alternative arrangements to LMT were applicable.
- Hence, the University re-advertised for the positions. This resulted in delays to the recruitment process and the commencement of the positions, which in turn gave rise to the risk that the selected candidates may withdraw their acceptance. It also created potential employment law issues, as the candidates were required to sign new employment agreements dated after the completion of the second round of Labour Market Testing.
- As in Case Example 1, this scenario has not been uncommon in the context of university recruitment since the introduction of LMT requirements for nomination under the Temporary Skills Shortage Visa scheme.

Case Example 3:

- This was a high level Academic Level D position. LMT was conducted in relation to this role. The University ran an advertising campaign which started in November and closed in December. Advertisements were placed on the University's website, Seek, Unijobs and a variety of specialist job boards such as Academic Keys, Akadeus, Academy of Management, Global Academy Jobs, ANZMAC and ANZAM.
- A candidate was selected and offered a contract, in August of the following year. This was more than 4 months since the advertising began. Hence, the university was outside of the prescribed 4 month period immediately prior to the nomination application in which the position must be advertised on two national platforms for 28 days each. So, in order to proceed with the selected foreign national, the University would need to re-run their advertising of the role for which they wanted to appoint the selected candidate.
- Fortunately for the applicant and the University, in this instance, the University was able to rely on the contention that the role was one which required the appointee to have an internationally recognised record of achievement in academia/research. However, many academic positions will not fall within this category of exemption. Again, this case demonstrates the difficulties experienced by Universities in seeking to have the entire recruitment process completed, and nomination applications lodged, within a period of four months. It is simply not possible for these kinds of appointments.
- It is noted that even if the University had to re-run their internally required recruitment campaign, rather than simply re-advertise for and screen applications to meet LMT, it would have been incredibly challenging for the University to meet the maximum 4-month LMT timeframe required ahead of nomination for the Temporary Skills Shortage visa.

Case Example 4:

- An Australian university sought to recruit high-performing mid-career researchers at Academic Levels B and C through their University-funded fellowship grant program.
- The LMT exemptions and alternative arrangements did not apply to these individuals as the roles were for mid-career researchers and not sufficiently senior, with international standing, to meet the requirements of alternative arrangements.
- Some of these researchers were directly approached, given their specific field of highly skilled research, and offered roles.
- The Australian university had no choice but to undertake prescribed LMT over the course of 28 days.
- The LMT caused significant difficulties to the University which had to review and respond to applications from new as well as previous candidates who were ultimately not as skilled or

suitable for the role as the already selected applicants that had previously undergone competitive selection. In addition, the University had to ensure ongoing liaison with the already selected researchers, who had to be convinced and reassured that their positions were still available to them.

Additionally, as outlined above, another area where Australian universities face obstacles is in the hiring of professional staff with international skills and experience not readily accessible through the local labour market. In light of this, we make the following comments with respect to LMT:

Recommendation 3a: *Changes be made to the law so that Labour Market Testing (LMT) requirements (pursuant to section 140GBA Migration Act 1958 (Cth)) are not required to be met in circumstances where:*

- i) the nominator is an Australian university; and*
- ii) the position is not an academic appointment, but is nevertheless a highly skilled position and requires the occupant to have at least 2 years of relevant work experience; and*
- iii) the nominated occupation is an occupation on the STSOL, MLTSSL or ROL.*

Recommendation 3b: *In the alternative to Recommendation 3a, the Minister (in accordance with section 140GBA Migration Act 1958 (Cth)) determine by legislative instrument that:*

- i) where the nominator is an Australian university; and*
- ii) the position is not an academic appointment, but is nevertheless a highly skilled position and requires the occupant to have at least 2 years of relevant work experience; and*
- iii) the nominated occupation is an occupation on the STSOL, MLTSSL or ROL;*

then these will be 'select positions' and 'select occupations' for which standard LMT requirements regarding manner, period and timing do not apply. Furthermore, that the only LMT evidence required for the purposes of a subclass 482 or 494 nomination application, is the signed employment agreement and position description, indicating that the position requires the occupant to have at least 2 years of relevant work experience.

Case examples from Australian universities that demonstrate the importance and relevance of Recommendations 3a and 3b include:

Case Example 5:

- The Global Engagement Unit of an Australian University advertised the position of Regional Manager for 8 days in August.
- The position attracted 84 candidates and 4 offers of employment were made.
- One of the candidates who received an offer was a foreign national. Hence, the University was required to lodge a nomination application to take over the sponsorship of the candidate's existing temporary work visa.
- However, the original advertising for the position had not been run on 2 separate channels with national reach for a minimum of 28 days each. Hence, despite having already advertised, interviewed, short-listed candidates and having made offers to 4 out of 84 candidates, the University was required to re-advertise the position for a further period in October to comply with LMT requirements.
- Although new candidates were considered on merit following the re-advertising that was required to comply with immigration requirements, this exercise became a seemingly token activity in order to meet LMT requirements.
- The outcome was that the nomination was approved for the initial foreign candidate identified and they were appointed to the role.
- Despite the fact that the Australian university was ultimately able to appoint the candidate originally selected, being forced to re-advertise and undertake a duplicate recruiting process

simply to meet immigration requirements raises industrial / employment issue concerns and risks reputational damage to the University.

- That the University undertook a demonstrably rigorous, structured and well-advertised (and well-responded to) selection process, should be evidence enough for nomination.

Case Example 6:

- An Australian university sought to appoint a person to the position of University Librarian – a very high level, non-academic position.
- The University conducted recruitment activity for this role, but was unable to locate a suitable local labour market candidate. The University considered offshore applicants and conducted interviews, before eventually settling on an overseas hire, who was directly approached and interviewed, before being offered the role.
- In this case, the position was advertised and recruitment activity undertaken. However, the recruitment activity undertaken did not meet the prescribed LMT criteria (two advertisements, necessary advertisement content, 28 days, 4 months, etc). This example demonstrates the futility of the LMT prescribed criteria for certain strategic hires within the Higher Education Sector, where local labour market candidates cannot be located to fill very high-level business critical positions.
- Fortunately in this case, the University was able to rely on the ‘select position’ contention for LMT purposes, on the basis that the position commanded guaranteed annual earnings of over \$250,000. However, this exemption will not be available in the majority of cases where the appointment does not attract a similar salary – indeed it is extremely rare for roles at universities to attract such high salaries.

III. Whether permanent migration offers better long-term benefits for Australia’s economy

Accessing permanent residency works to entice highly skilled overseas workers, who currently hold tenured and/or prominent positions overseas, to relocate to Australia; an option they may not otherwise consider if the security of Australian permanent residency is not available to them. Indeed, many world class, highly skilled researchers, academics, advancement and other professionals, university executives and university/faculty leaders are extremely reluctant to resign from prestigious international appointments to take up a role at an Australian university if they are not able to see a clear transition to permanent residency when considering an offer. Hence, the potential for competitively recruited foreign nationals to access a path to permanent residency is a critical means for the Sector to attract and retain the highly skilled, globally talented employees it seeks to recruit.

We respectfully submit that there are numerous long term benefits to attracting highly skilled leaders, specialists, managers and professionals to Australian universities. Given that Australian universities:

- make a substantial contribution to the national economy annually;
- are leaders in driving economic growth for Australia;
- are at the forefront of skilling Australians; and
- play a critical role in skilling graduates to adapt to the changing labour markets.

Hence, there are strong benefits to facilitating permanent migration for the foreign nationals that the Sector seeks to attract.

To this end, Australia becomes a more competitive destination if it aligns itself with immigration programs currently implemented overseas which provide well laid out paths to permanent residency. This is business critical to the progression of world-class research and the associated high standing of all Australian universities. In addition exemptions which facilitate this are important. For

example, some of these individuals might be older than 45 years, while others may have medical conditions (either themselves or their family members) which do not permit them to meet the strict health requirement under our current direct-entry permanent residency pathways. Allowing exemptions for the Sector's targeted foreign recruits provides additional flexibility for the Sector to address the research, technical, academic and professional skills shortages across all disciplines and to retain the individuals who bring these skills to our universities. In summary, the ability of all universities to address these shortages in an unhindered fashion is crucial to the performance, competitiveness and reputation of Australian universities globally.

Hence, we recommend that the following measures are addressed to secure those who bring with them skills that are in high demand for Australian universities and for the benefit of Australia more broadly.

Recommendation 4a: *That the following exemptions apply:*

- i) Visa applicants be exempt from having to undertake and provide a skills assessment and evidence of work experience where they have been nominated for any occupation by an Australian University under the subclass 186 Direct Entry Stream or subclass 494 Skilled Employer Sponsored Regional (provisional) visa; and*
- ii) Visa applicants be exempt from the age requirement if they have been nominated for any occupation by an Australian University under the subclass 186 Direct Entry Stream, 186 Temporary Residency Transition Stream, or subclass 494 Skilled Employer Sponsored Regional (provisional) visa.*

Recommendation 4b: *That where an Australian University nominates a person for the subclass 186 Direct Entry Stream or subclass 186 Temporary Residency Transition Stream, then:*

- i) The occupation it selects shall be deemed to be an occupation within MLTSSL; and*
- ii) The nominated person shall be exempt from having to undertake and provide a skills assessment for the purposes of their visa application; and*
- iii) The nominated person shall be exempt from the age requirement for the purposes of their visa application.*

Recommendation 4c: *That Public Interest Criterion 4007 (the health waiver provision) apply to any application for which an Australian University is a nominator, including subclass:*

- i) 186 Direct Entry Stream*
- ii) 124 Distinguished Talent*
- iii) 858 Distinguished Talent*

Professional Appointments

Australian universities rely on a small number of foreign nationals to fill select positions which cannot be filled by the local labour market. As discussed, above, these positions include but are not limited to Senior Librarians, Education Managers, Specialist Managers, Records Managers, Research and Development Managers, Public Relations Professionals, Sales and Marketing Managers, Marketing Specialists (who are essential in terms of international student recruitment), Social Professionals, Biostatisticians, Science Technicians, Project Administrators and Advancement Professionals. Many of these positions align with occupations that sit within the Short-term Skilled Occupation List (STSOL), which would lead to a maximum 2 year Temporary Skill Shortage/subclass 482 (TSS/482) visa. While a further 2 year TSS/482 is possible, this gives rise to a number of complicating factors when universities are trying to recruit for these positions, including that:

- It will be either impossible or extremely difficult to secure TSS/482 visas for an overseas worker beyond a sum total of 4 years, given that the law requires applicants nominated for STSOL occupations to show that they are "genuine temporary entrants". If it is possible to secure a TSS/482 visa for the overseas worker beyond a sum total of 4 years, this will require

the overseas worker to submit their future visa application when they are physically outside Australia. This would in turn involve significant travel costs and disruption to their work;

- The uncertainty and expense (for both universities and applicants) in securing further temporary TSS/482 visas makes it very difficult to attract overseas workers, who would be reluctant to give up their secure overseas employment and relocate to Australia. This is especially difficult for overseas workers with young families;
- The STSOL occupations do not allow for a pathway to permanent residency. This increases the chances that skilled and experienced overseas workers are unlikely to accept the positions offered by universities. Hence Australian universities are disadvantaged in being able to recruit the most skilled and experienced candidate.

It is noted that these complicating factors would not arise, if non-academic professional and managerial occupations were deemed to be on the MLTSSL in circumstances where an Australian university was the nominator under the TSS/482 visa scheme. This is because the MLTSSL occupations allow for:

- The grant of 4 year TSS/482 visas; and
- A transition to permanent residency.

This in turn would create an incentive for skilled and experienced overseas workers to consider resigning from their overseas positions and accepting positions at Australian universities, who can offer them permanent or long term roles.

As a separate issue, some occupations require visa applicants to secure a skills assessment for TSS/482 purposes. This requirement is onerous, expensive and unnecessary, as universities are ideally placed to determine whether a person has the necessary skills and work experience for the purposes of a nominated occupation.

Given the internationally competitive environment in which Australian universities operate, and the consequent need for them to be able to recruit and hire skilled and experienced Managers and Professionals from overseas, we make the following recommendations:

Recommendation 5a: That any occupation nominated by an Australian university for TSS/482 purposes, be deemed to be an occupation on the MLTSSL; and

Recommendation 5b: That any nominee applying under TSS/482 or subclass 494 visa program and nominated by an Australian university, be exempt from being required to undertake a skills assessment, regardless of their nominated occupation.

Specific case examples from Australian universities which highlight the need to implement Recommendations 5a and 5b, are detailed below:

Case Example 7:

- An Australian university sought to attract a highly skilled advancement professional from overseas. The permanent position fell within the occupation of Public Relations Professional, which was on the STSOL and would lead to a maximum 2 year TSS/482 visa.
- The overseas candidate rejected the offer as they would have had to apply for at least 2 consecutive TSS/482 visas. In addition, there was no clear or certain pathway to permanent residency. Based on the need for multiple temporary visas and no guaranteed long-term prospects of remaining in Australia, the candidate was not prepared to resign from their lucrative and prestigious overseas position, or to relocate their family, on that basis.

Case Example 8:

- An Australian university sought to appoint an experienced Senior Librarian, which is an occupation on the STSOL and could lead to a maximum 2 year visa.
- For this particular senior role, the technical skills and experience sought were such that no Australian citizen or permanent resident could be found for the role.
- Although extremely interested in the role, the only candidate who presented with the skills and necessary experience sought by the University was a foreign national.
- Ultimately, this overseas candidate rejected the offer as they were not willing to apply for a temporary visa that would not permit them to fulfil the long-term role. In addition, there was no pathway to permanent residency.

Case Example 9:

- An Australian university appointed an experienced research project officer, where the position came within the STSOL occupation of 'Program or Project Administrator 511112'. The occupation required the applicant to obtain a skills assessment.
- At a cost of \$1,800, the visa applicant secured a successful skills assessment.
- This was an unnecessary expense and delayed the lodgement and processing of the visa application (and hence the commencement of the position). The University was suitably qualified to assess the person's skills for the position. Indeed, the skills assessment merely confirmed the determination made by the University that the person had the skills and work experience to fill the position.

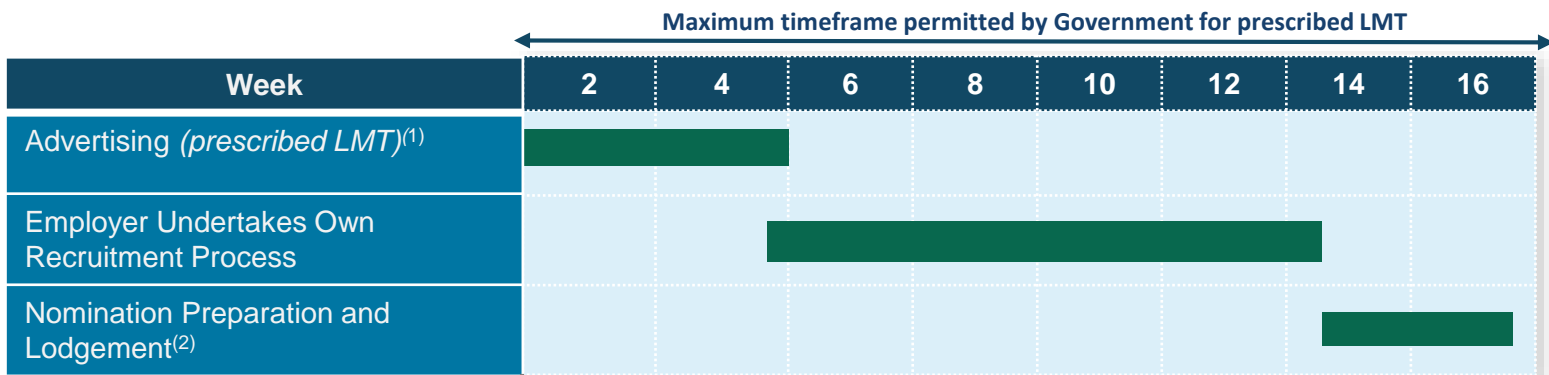
For any questions in relation to this submission, please contact our representative:

Aristotle Paipetis
Principal Solicitor & Registered Migration Agent (MARN: 0006846)
Visa Lawyers Australia Pty Ltd

Appendix

Currently, universities face difficulties in nominating foreign nationals for temporary work visas without first re-advertising roles as they often exceed the maximum period permitted for Labour Market Testing (LMT)

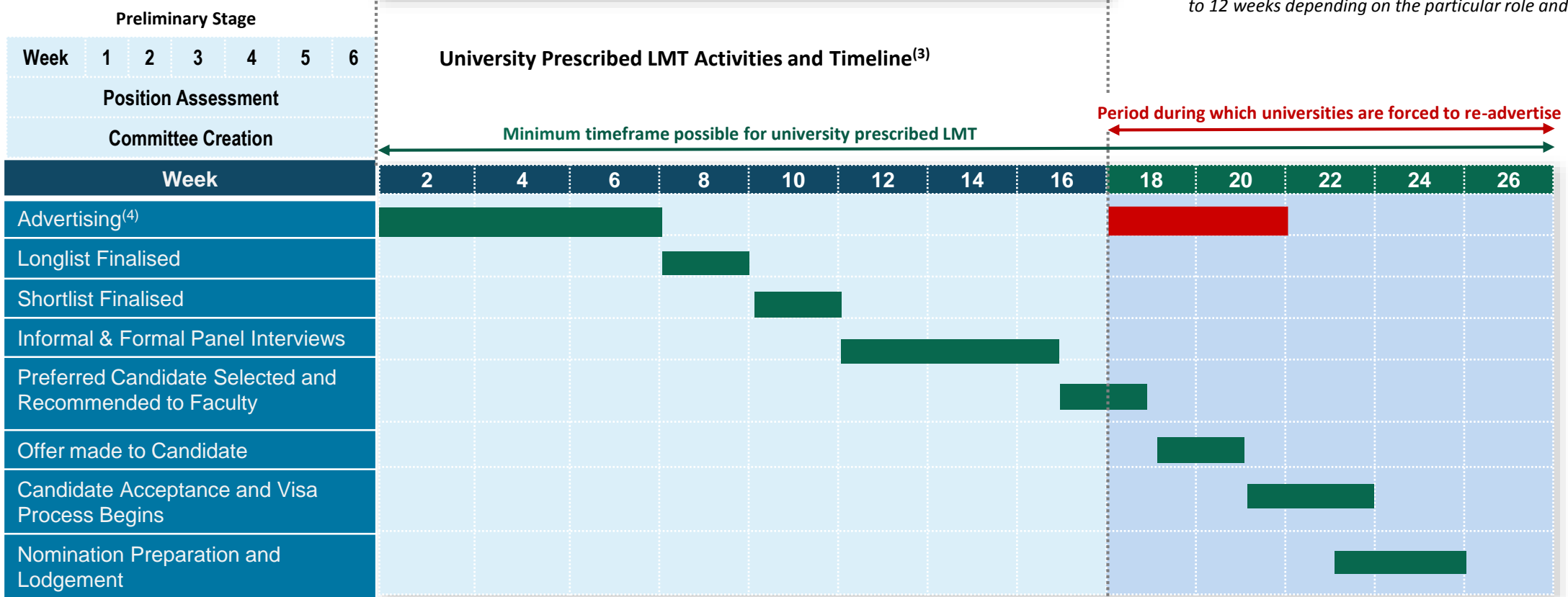
Department of Home Affairs Prescribed LMT Activities and Timeline



Notes:

- (1) Advertising is required to be national in reach and on two platforms for a minimum of 28 days
- (2) Significant employer discretion as to nature of interviewing, selection and assessment processes for preferred candidates
- (3) Data is for Academic Level A-D appointments. Timeframes for Academic Level E may extend further
- (4) University advertising is typically between 4-6 weeks and can range up to 12 weeks depending on the particular role and applicant pool

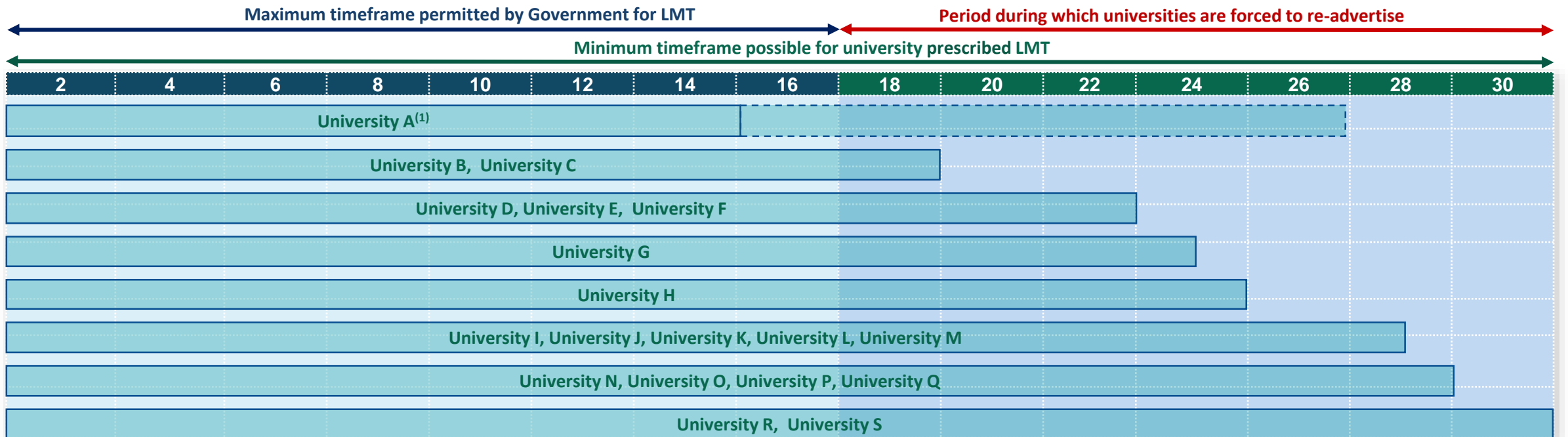
University Prescribed LMT Activities and Timeline⁽³⁾



Period during which universities are forced to re-advertise

Survey results from 19 Australian universities on recruitment practices and the impacts of prescribed LMT

Reported Recruitment Timeframes from First Advertising to Contract Acceptance for Academic Level A to D Appointments



Note: (1) Generally within 16 weeks but were forced to re-advertise during recent Talent Campaign where some top international applicants took up to 6 months to negotiate and accept offers

Typical Recruitment Activities Undertaken by a University Across Recruitment Period

Pre-recruiting & Advertising

- It is standard for the appointment process to commence by the Head of School seeking approval to create a new position or fill a vacant position from the head of budget or delegate
- Once approved, Head of School arranges advertising of the position, a candidate pack/Position Description is created, and a selection committee to be established

Short-listing, Interviewing & Selecting Applicants

- Undertaken by a University Selection Committee
- The Committee is typically composed of the following, at minimum:
 - Faculty Executive Dean; Head of School; Academic Board Standing Committee Representative; Academic Staff Member from School; and Student Representative
- The Committee meets to review the candidates for interview, to conduct the interviews and hold seminars and to determine their preferred candidate.
- The typical timeline for assembling the Committee and arranging interviews spans across the first 14 weeks

Offer to and Acceptance By Successful Applicant

- Approval of the applicant must go through delegations of authority:
 - External stakeholders, have their opinion considered in the selection of the applicant
 - The Head of School, extends the offer and engages in contractual negotiation
 - Finance, approves the position
 - The Recruitment Team finalises the contract
- The process of approval of the applicant takes approximately two weeks.

University HR Directors have indicated significant difficulties posed by the maximum 16-week LMT timeframe

- *The 16 week time period does not provide sufficient time and flexibility to complete comprehensive, rigorous search, recruitment and selection process*
– **Metro University**
- *The current LMT timeframes are restricting the University's academic recruitment particularly for niche or hard to fill roles which are difficult to fill without the added level of restriction applied by the LMT timeframes and more so given the added difficulty of filling within 4 months*
– **Regional University**
- *The University's consistent experience is that the timeframes imposed by LMT requirements (as opposed to the principles behind LMT) to be incompatible with the nuances of academic recruitment and can lead to less than ideal processes*
– **Metro University**
- *The University has repeatedly found that the timeframe imposed by LMT requirements to be overly restrictive. This is owing to the need for its recruitment to be more comprehensive, and therefore takes a longer period than the legal position will allow*
– **Group of Eight University**
- *Recruitment processes relating to Academic appointments can be sometimes protracted due to the level and speciality of the role, applicants are generally not immediately available to attend multiple interviews, undertake specific assessments and/or commence in positions due to employment commitments and particularly work/academic commitments for example it can take up to 6 months from acceptance until commencement*
– **Metro University**
- *The current LMT requirements are overly restrictive in order for the University to undertake a thorough recruitment process*
– **Group of Eight University**
- *The University has frequently found that the timeframe imposed by LMT requirements does not enable the University's comprehensive recruitment process to be accommodated, which requires a longer period, than the legal position currently allows. Academic appointments are dependent on the involvement and input of eminent individuals from both within the University and from external partners, to ensure high quality appointments that will support the furtherance of the objectives of the University. This inevitably creates significant logistical challenges that cannot always be accommodated within the timeframe imposed by LMT restrictions. In some cases, these challenges have meant that the recruitment process has taken over a year.*
– **Group of Eight University**