



Australian Government
Department of Home Affairs



Department of Home Affairs submission to the Inquiry into the Migration Amendment (Strengthening Sponsorship and Nomination Processes) Bill 2024 [Provisions]

Senate Legal and Constitutional Affairs Legislation
Committee

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Table of Contents

1.	Introduction	3
2.	Background	3
3.	Purpose of the Bill	3
4.	The Skills in Demand visa	4
	4.1.1. Specialist Skills	4
	4.1.2. Core Skills	4
	4.1.3. Essential Skills	4
5.	Consultation	5
6.	Overview of measures in the Bill	5
	6.1. Nomination criteria for the Skills in Demand visa	5
	6.2. Income thresholds	5
	6.3. Indexation of income thresholds	6
	6.4. Streamlining Labour Market Testing	6
	6.5. Public register of approved sponsors	7
7.	Case study	7
8.	Conclusion	8

1. Introduction

The Department of Home Affairs welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee's inquiry into the provisions of the Migration Amendment (Strengthening Sponsorship and Nomination Processes) Bill 2024 (the Bill).

The Bill was introduced to the House of Representatives on 4 July 2024. This submission explains the purpose of the Bill and provides information regarding each measure proposed in the Bill.

2. Background

On 11 December 2023, the Government released the Migration Strategy, which outlines the Government's commitment to building a migration system that matches the needs of the nation and delivers for Australia and for migrants. The Migration Strategy was informed by extensive consultation with business, unions and other stakeholders, as well as 483 submissions received as part of the Independent Review of the Migration System. The Government commissioned the Review of the Migration System which was undertaken by Dr Martin Parkinson AC PSM, Professor Joanna Howe and Mr John Azarias and was released in March 2023.

The Migration Strategy includes reforms targeting temporary skilled migration. This includes a new temporary skilled worker visa, the Skills in Demand visa.

The Bill will amend the *Migration Act 1958* (the Act) to provide the framework for the introduction of the new Skills in Demand visa which is a Government commitment in the Migration Strategy. This will be achieved by setting minimum income thresholds for temporary skilled migrants in the Act, and legislating annual indexation of these income thresholds for the Skills in Demand visa. The Bill will also introduce measures to streamline labour market testing and to create a public register of approved work sponsors.

These measures will ensure that persons nominated to work in Australia are less likely to be displacing an Australian worker and will be less vulnerable to exploitation by ensuring they receive fair remuneration. The amendments in this Bill will also help temporary skilled migrant workers find a new sponsor and provide a resource to check that a sponsoring employer is legitimate.

3. Purpose of the Bill

The purpose of the Bill is to strengthen and streamline arrangements around skilled entry to Australia.

The Bill implements commitments in the Government's Migration Strategy and helps secure the integrity of the skilled migration program by legislating income requirements for temporary skilled migrants in the Migration Act and amending labour market testing provisions in the Migration Act.

The provision of legislated minimum income thresholds will ensure that persons nominated to work in Australia are less likely to be displacing an Australian worker, and will be less vulnerable to exploitation by ensuring they receive fair remuneration. Legislating indexation of the income thresholds ensures parity between skilled migrant workers and Australian workers, and that over time, skilled migrants are not paid less than Australian workers where they are performing the same role.

The Bill also implements protection and oversight mechanisms through establishing a legislative basis to create a public register of approved work sponsors. It is intended that the public register will include the name of the approved sponsor, number of approved sponsored workers and their occupations, which will encourage transparency, monitoring and oversight. This will help temporary skilled migrant workers find a new sponsor and provide a resource to check that a sponsoring employer is legitimate.

4. The Skills in Demand visa

The amendments in the Bill are necessary to support the planned implementation of the Skills in Demand visa, which is proposed to commence in late 2024. The Skills in Demand visa is a temporary skilled worker visa valid for up to 4 years, which will replace the Temporary Skill Shortage visa.

4.1.1. Specialist Skills

The Specialist Skills stream is the first stream of the new Skills in Demand visa. This stream recognises highly skilled migrants who bring significant economic benefits to Australia.

This stream will be available for applicants who meet the general eligibility criteria and who are in any occupation (except trades workers, machinery operators and drivers, and labourers) earning at least \$135,000 (the Specialist Skills Income Threshold) and no less than Australian workers in the same occupation. This will be indexed annually.

A streamlined approach will ensure Australia can quickly and easily recruit top talent in areas of need. The Government has committed to a service standard of 7 days median visa processing time for workers in this stream.

4.1.2. Core Skills

The second stream of the new Skills in Demand visa is the Core Skills stream. This stream is designed to bring in the skilled employees Australia needs now and in the future to ensure that we are able to provide ourselves with the goods and services we need to support our way of life. Most temporary skilled migrants will come through this stream.

The Core Skills stream will be available to applicants who meet the general eligibility criteria and whose occupation is on a new Core Skills Occupation List, which relates to occupations identified by Jobs and Skills Australia as being in national shortage; who will be paid a salary at or above the proposed Core Skills Income Threshold, or the relevant average market salary where it is above this threshold.

Consistent with the Migration Strategy, the proposed Core Skills Income Threshold will be set in alignment and replace the Temporary Skilled Migration Income Threshold (TSMIT).

Unlike the Specialist Skills stream, trades workers, machinery operators and drivers, and laborers will be eligible under this stream, subject to their occupation being listed on the Core Skills Occupation List and meeting other eligibility criteria.

4.1.3. Essential Skills

Development of an Essential Skills stream, the third stream of the Skills in Demand visa, is an area of future reform and consultation is ongoing. The Government will further evaluate how to develop a more regulated stream for lower paid workers with essential skills – in consultation with state and territory governments, unions, businesses and other relevant stakeholders.

It is intended that the income threshold for the Essential Skills pathway will be determined in accordance with the Migration Regulations or specified, in writing, by the Minister in an agreement between the Minister and the employer.

5. Consultation

The key actions in the Government's Migration Strategy roadmap have been developed through extensive consultation with business, unions, international education, civil society and many Australians. This also draws on the key findings of the Migration Review, and the 483 public submissions it received.

The Skills in Demand visa has been subject to broad consultation, including across government and with unions and business.

In the course of developing the Bill in order to ensure its provisions align with the reform outlined in the Migration Strategy, the Department has undertaken consultation with the Department of Prime Minister and Cabinet, the Australian Bureau of Statistics and the Attorney-General's Department.

6. Overview of measures in the Bill

6.1. Nomination criteria for the Skills in Demand visa

Section 140GB of the Act provides for the Minister's power to approve nominations. Section 140GB of the Act also provides that a nomination may be made by a person who is or who has applied to be an approved work sponsor; or a party to negotiations for a work agreement. Subsection 140GB(2) provides that the Minister must approve an approved sponsor's nomination if amongst other things, the prescribed criteria are satisfied. Proposed paragraphs 140GB(2)(c), (d) and (e) would establish new criteria in relation to income threshold requirements that must be satisfied when seeking to nominate an occupation in the Specialist Skills, Core Skills or Essential Skills streams of the Skills in Demand visa. The income thresholds are provided for in proposed subsections 140GB(2A) and (2B).

6.2. Income thresholds

This Bill amends the Act to provide for income thresholds for the Specialist Skills, Core Skills and Essential Skills streams for the proposed Skills in Demand visa.

The provision of legislated minimum income thresholds in the Migration Act will ensure that persons nominated to work in Australia are less likely to be displacing an Australian worker, and will also be less vulnerable to exploitation by ensuring they receive fair remuneration.

Specifically, subsections 140GB(2A) and (2B) of the Bill will make amendments to the Migration Act to legislate:

- a Specialist Skills Income Threshold of \$135,000 for highly skilled specialists, to ensure Australia can quickly recruit top talent; and
- a Core Skills Income Threshold of \$73,150 for persons that are nominated for occupations that are in national shortage or where Australia has committed to providing access to our labour market in relation to that occupation through international trade agreements.

Consistent with the Migration Strategy, the proposed Core Skills Income Threshold will be set in alignment with and replace the TSMIT. The TSMIT increased from \$70,000 to \$73,150 on 1 July 2024.¹

¹ See section 6 of *Migration (IMMI 18/033: Specification of Income Threshold and Annual Earnings and Methodology of Annual Market Salary Rate) Instrument 2018* as amended on 1 July 2024.

The Bill also inserts a provision for the proposed Essential Skills stream to provide that the income threshold for occupations that are essential to Australia's workforce will be worked out in accordance with the Migration Regulations made for this purpose, or be agreed to by the Minister in writing.

This provides flexibility to recognise the unique wages and conditions of various sectors, where the relevant industry award may be less than the TSMIT.

6.3. Indexation of income thresholds

Proposed section 140GD will provide for the annual indexation of the income thresholds for the Specialist Skills and Core Skills streams, reflecting changes in the Average Weekly Ordinary Time Earnings (AWOTE), as reported by the Australian Bureau of Statistics. This ensures that persons nominated for these streams will have adequate wages to support themselves and their families in Australia. Indexation of these wages ensures parity between migrants and Australian workers, so that migrants will not be paid less than Australian workers where they are performing the same role.

Legislating annual indexation of income thresholds in the Act will ensure that the skilled visa program retains its original intent as being limited to skilled occupations. Raising income thresholds annually through indexation is considered necessary to provide sufficient income for skilled migrant workers to better support themselves financially in Australia due to higher costs of living and to reduce vulnerability to exploitation. Legislating the annual indexation of income thresholds in the Act, rather than by legislative instrument, provides greater clarity and predictability for migrants and employers, as recommended in the Review of the Migration System Final Report 2023.

The increase to these thresholds through indexation will be known in February of each year (when the figures are published by the Australian Bureau of Statistics), more than three months before the increase occurs on 1 July of each year. This provides advance notice for employers to consider their options. The Department will provide information on the increase on its website to ensure it is easily accessible for employers, visa holders and prospective migrants.

The income threshold applies at the time of nomination. The 2024-indexed TSMIT amount of \$73,150 came into effect on 1 July 2024 for all new nominations lodged on and after that date. The Core Skills Income Threshold for the proposed Skills in Demand visa is set at the same amount as the TSMIT.

Applications for nominations that are not finally determined when the amendments commence will continue to be assessed against the TSMIT in effect at time of application;

- \$53,900 between 1 July 2013 and 30 June 2023
- \$70,000 from 1 July 2023 to 30 June 2024.

Given the development of the Essential Skills stream is an area of future reform and consultation is ongoing, arrangements for the proposed annual indexation of the income threshold for the Essential Skills stream will be determined as part of amendments to the Migration Regulations, or specified in writing in each agreement between the Minister and the employer.

6.4. Streamlining Labour Market Testing

The Bill proposes amendments to subparagraph 140GBA(3)(b)(i) and subsection 140GBA(4) of the Migration Act to provide that labour market testing be completed within 6 months (increased from 4 months) prior to the sponsor of a skilled migrant worker lodging a nomination.

The amendments will increase the validity period for labour market testing from four (4) to six (6) months. This change provides employers with more flexibility in recognition of current recruitment practices and

complements the removal of the requirement for employers to advertise positions through Workforce Australia, which occurred on 8 December 2023.²

6.5. Public register of approved sponsors

Proposed section 140GE of the Act will enable the publication of a register of approved standard business sponsors and accredited sponsors who have nominated skilled workers for entry to Australia, including the sponsor's business name, Australian Business Number and postcode, the number of individuals nominated under the sponsorship approval process and the occupations of the nominated workers. Proposed section 140GE of the Act provides for the circumstances in which information about approved sponsors may be published. Section 140GE includes a discretionary power permitting the Department to disclose certain information on the public register. The Department will update its Privacy Notice to expressly note these disclosures.

To the extent that certain personal information may be disclosed on the register, the use and disclosure of personal information under section 140GE engages the 'authorised by law' exception for the purpose of the Australian Privacy Principle (APP) 6.2(b). The use and disclosure of the information is reasonable and proportionate having regard to the purpose and intention of the provision and the register.

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

7. Case study

Sponsor A is a construction company and is seeking to employ an experienced carpenter to assist with building new apartments in Australia. It has been five months since Sponsor A advertised the position and they have been unable to find a suitably qualified Australian worker. Therefore, Sponsor A considers recruiting a skilled migrant from overseas.

Person X is a carpenter from the United Kingdom with four years' work experience. Sponsor A is eager to sponsor Person X on a Skills in Demand visa as soon as possible. Given the validity of labour market testing has been increased to six months, Sponsor A is not required to readvertise the position in order to lodge the nomination application.

Person X is employed by Sponsor A and is paid a salary of \$73,150 to undertake the role in Australia. This is a fair wage that is commensurate with Australian workers.

After 14 months, Sponsor A completes the project and terminates the employment of Person X. Person X wants to continue to work in Australia for a different sponsor. Using the public register of approved sponsors on the Department of Home Affairs website, Person X is able to focus their job search on approved sponsors with a history of nominating workers in their occupation. Sponsor B is recorded on the register and also has a vacancy listed on their website and have been undertaking labour market testing.

Person X is offered a position by Sponsor B with a starting salary which is higher than their position with Sponsor A because the minimum income threshold was indexed on 1 July of that year. This assists Person X to better support themselves financially in Australia and continue to contribute to areas with skills shortages.

² see Migration (LIN 18/036: Period, manner and evidence of labour market testing) Amendment (LIN 23/072) Determination 2023 which amended Migration (LIN 18/036: Period, manner and evidence of labour market testing) Instrument 2018.

8. Conclusion

The measures included in the Bill implement commitments from the Migration Strategy to streamline and enhance the sponsorship and nomination processes relating to the entry of skilled migrants to Australia. This Bill will introduce the new Skills in Demand visa by legislating the income thresholds and indexation for the proposed streams of the new visa. The Bill will also introduce measures to streamline labour market testing and establish a public register of approved sponsors.

These measures directly align with the Government's priorities and commitments to increase Australia's place as a country and employer of choice for highly skilled migrants when competing on the world stage, by ensuring skilled migrant workers are able to support themselves in Australia, are less vulnerable to exploitation and do not find themselves in difficult financial circumstances.