

20 October 2023

The Honourable Brendan O'Connor MP  
Minister for Skills and Training  
Department of Employment and Workplace Relations  
GPO Box 9828  
Canberra ACT 2601

### Via online lodgement

Dear Minister,

### Submissions on the Best Practice Principles and Standards for Skilled Migration Assessing Authorities

Thank you for the opportunity to provide our submissions on this imperative matter.

### Introduction

Founded by immigration lawyer Chris Johnston, Work Visa Lawyers is one of the largest migration firms in Australia providing quality immigration services to clients.

Chris became a Migration Lawyer in 2006 and worked for two of the largest migration advice businesses in South Australia between 2006 and 2011. During this time, he gained extensive experience in the areas of employer sponsored migration, business skills visas, partner visas and reviews before the MRT/AAT and judicial reviews. He started Work Visa Lawyers in July 2011. He has served as **SA State President** for the Migration Institute of Australia (MIA) from October 2017 to October 2019 and a **Director** on the National Board of the MIA. The MIA is the peak professional body for migration professionals. As an active member of the MIA, Chris presently serves on its South Australian Committee and its Regional Migration Subcommittee and is a passionate advocate for regional employers and businesses. Chris has recently been elected as a member of the South Australian Law Society Council. His prolific industry experience has given Chris unique insights into the issues that confront Australia's migration program.



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This firm participates in The Law Society of South Australia's limitation of liability scheme. Liability limited by a scheme approved under professional standards legislation.

Work Visa Lawyers advises a large number of individuals, families and corporate clients throughout Australia and overseas in a variety of migration matters. We have lent our immigration expertise to employers and workers in a wide array of industries including medical services, agricultural producers, hospitality, mining and manufacturing.

With a dedicated team of 12, Work Visa Lawyers has provided migration assistance in thousands of visa applications, merits review and judicial review matters. We have firsthand experience in relation to current migration policy settings and its real-world implementation.

## **Submissions**

### **Re-examine the skills assessment requirements for Australian graduates**

General Skilled Migration visas (subclasses 189/491/190) rely on skills assessment as a key starting point. Applicants must firstly obtain a positive skills assessment by the relevant skills assessing authority for their particular occupation. The purpose of the skills assessment is to assess qualifications/experience and verify that an applicant has the skills that are standard to work in a relevant occupation.

Skills assessments for certain occupations have been criticised for imposing unreasonably stringent requirements. This can result in the absurdity of a highly experienced individual who lacks a relevant qualification, being unable able to obtain a positive skills assessment.

Whilst skills assessments make sense in the context of migrants with qualifications obtained overseas, it should not be required in some occupations for those who have obtained a recognised Australian qualification. This would enable the skills assessing bodies to allocate resources more efficiently.

Removing skills assessment as a requirement for General Skilled Migration visas for applicants who obtained their qualifications in Australia will help clear the backlog currently being reported by the skilled assessing authorities.

Furthermore, the skills assessment process needs to be better funded and processed faster across the full range of occupations. Impediments should be removed to allow for an easier and accommodating skills assessment process. In comparison to the health and medical

occupations, skills assessments for other skilled occupations such as Accountants are obtained much quicker.

## Monopoly on Skills Assessment by large assessors contributes to problems and skills

The monopoly of large skills assessment bodies promotes lack of transparency, poor service and no incentives to improve.

When there was only one approved English testing provider, IELTS, the availability of the test was often not adequate, often being booked out for months as a result applicants would even have to fly overseas to take the test at short notice. Potential migrants often faced the problem that their temporary visas would expire prior to being able to complete an English test or they would lose their eligibility for a visa, such as by turning 45 years old. Many of the problems such as delays and visas expiring are now issues in skills assessment.

The situation remained in place for decades. When it was announced, there were five different acceptable English tests, then the availability of the tests and the functionality of the tests improved very quickly.

As it stands, there are a select few assessing authorities with the power to assess applications and issue skills assessments. As one of the largest skills assessing authority, VETASSESS has a monopoly over this market. **If the Australian Government authorised more skills assessment providers, healthy competition could not only provide relief in the backlog of applications but also promote better service and efficiency overall.**

Further, large skill assessment authorities, including Australian Health Practitioner Regulation Agency (AHPRA) and VETASSESS should be externally audited by the Australian government frequently.

## Skills Assessment criteria are often out of touch from industry and potential migrants needs

The policy of some skills assessment authorities does not reflect the realities on the ground and what is needed by the industry or by the potential migrants and their sponsoring employers.

## Case study

Take the case for example of an agricultural worker, say a Mixed Crop Farmer (ANZSCO 121216). This occupation is in Skill Level 1 which requires a bachelor degree or higher qualification which can be relevant or not relevant, however, a candidate without a bachelor degree is not eligible. To get a positive skills assessment, the candidate/potential visa applicant must have at least one year of post-qualification employment at an appropriate skill level, working at least 20 hours per week in a relevant occupation. The employment experience requirement is increased to 3 years post-qualification experience if the educational qualification is not relevant.

VETASSESS' requirement for both qualification and employment are not in line with the ANZSCO substitution, i.e., at least five years of relevant experience may substitute for the formal qualification.

Between an individual who grew up on a farm and who worked for years, say a decade or more, learning on the job and working from dawn to dusk and an individual who studied a Bachelor's Degree in Agriculture who worked for 20 hours a week for a year, the latter will be the one to get the positive skills assessment. Employers, however, may prefer to have an employee they do not have to train and someone who can hit the ground running. Most Australians who work on a farm and if they apply for a skills assessment will not get a positive result as formal qualification, though useful to work as a Mixed Crop farmer, are not essential and most of those who work as such do not have these qualifications required from potential skilled migrants.

The Regional Migration Committee and the South Australian Committee of the Migration Institute of Australia drafted a Regional Migration Policy Issues Paper in May 2021 (authored by Con Paxinos with contributions from the Regional Migration Committee) cites the examples below wherein they state that "*highlight the absurdity of their [VETASSESS and Trades Recognition Australia] their requirements to pass a skills*

*assessment, resulting in excellent candidates for skilled migration being rejected unnecessarily.”*

<b>Skills Assessment Body</b>	<b>Occupation</b>	<b>Qualifications required by Employers</b>	<b>Qualifications required by Skills Assessor</b>	<b>Comments</b>
VETASSESS	Farmer	On the job training	Bachelor Degree plus 12 months work experience	Nearly all farmers do not hold relevant bachelor degrees. The knowledge required for farm management is learnt on the farm.
VETASSESS	UX researcher / Digital product management	On the job experience	Bachelor Degree plus 12 months work experience	There simply is no relevant degree that exists in relation to this occupation.
VETASSESS	Web Designer	On the job experience + diploma	Bachelor Degree plus 12 months work experience	Web designers achieve their skills through experience rather than a formal bachelor degree.

The above examples show the arbitrariness and unreasonableness of the requirements of the skills assessing authority which does not necessarily align with the requirements of the employers and what is required in the “real world”. This badly reflect on the Australian Migration system when excellent candidates for skilled migration being unable to come to Australia because of not being able to get the positive skills assessment required.

It cannot be denied that skills assessment has a place and a role in the skilled migration program in order to maintain the system’s integrity, however the requirements and policy should be changed to enable candidates that are otherwise suitable and eligible if not for the requirements of the skilled assessment authorities of having a Bachelor degree when relevant work experience and/or a lesser qualification such as a Diploma is sufficient to perform the duties and tasks required for the job.

## Skills assessment denying access to health professionals is a problem in terms of sovereign capabilities.

We need a system which is resilient and is capable of dealing with a pandemic. Stopping health professionals from doing skills assessments during a pandemic is a big problem and adversely affects the sovereign capacity of Australia.

The COVID-19 pandemic exposed Australia's reliance on overseas workers and highlighted the nation's problems in getting health professionals. Registrations for overseas qualified health professionals were effectively shut down and if the lockdowns and travel restrictions went longer, Australia's health system would have suffered more and would have been put in even greater strain, making this not just a migration issue but a problem for all Australians.

We need to have skill assessment regime that will not require the applicant to travel to Australia.

## Improve professional registration processes particularly for the health professions

A vital component of skills assessments for certain occupations (such as medical practitioners, pharmacists) is professional registration, a process that can take years for those in health and medical-related occupations. Oftentimes registration is open a few times a year and missing a cut-off date means waiting months. This is not only frustrating but incredibly ineffective and prevents doctors from being on the ground, working on the frontlines providing medical care. Registration for General Practitioners can be stalled for years in some cases, all the while rural and regional areas continue to suffer from lack of access to basic healthcare services.

There is a pressing need to cut the red tape and remove unreasonable barriers to entry. Qualified health professionals can face significant difficulty in obtaining formal registration considering there are only a few exam days scheduled throughout the year. Medical boards need to be brought into the modern era and dispense with archaic processes. Online exams surely can be conducted anywhere and delivered all year round. Given the remarkably adaptive technology in this day and age, access and frequency should pose no barrier.

The structures we have in place are not conducive to enabling skilled workers to fill critical roles. Bureaucracy should not stand in the way, because Australians will only suffer for it. The devastating impact of the COVID-19 pandemic, causing Australia's healthcare system to buckle under heavy strain, clearly demonstrates that Australia does not have years to wait.

The difficulty faced by internationally trained medical/health professionals is recognised in *Working Future, the Australian Government's White Paper on Job and Opportunities* (Commonwealth of Australia, 2023) and states on page 110:

*There is scope to improve how we bring migrants into the care sector. Currently, there are significant regulatory barriers to recruiting skilled migrants. Common feedback from internationally qualified health practitioners is that the process is lengthy, burdensome, complex and expensive. For example, the Medical Board of Australia only recognises six competent authorities in five countries, while New Zealand recognises 23, the United Kingdom over 30 and Canada eight.*

*Processes are repetitive and information is difficult to find. Those who wish to work in the Australian healthcare industry must be registered with the relevant health practitioner board. These boards oversee the registration processes for physicians, pharmacists, nurses, midwives, physiotherapists, and other health professionals – independent of the skilled visa assessment process. It can take an international health graduate looking to come to Australia over a year, often longer, to register.*

## Issues with superfluous requirements

Another unnecessary obstacle is the requirements that are superfluous in particular for those Australian qualified graduates in the health sector.

For example, applicants who obtained their Bachelor of Nursing in Australia must apply for registration with the Nursing and Midwifery Board of Australia (NMBA) through the Australian Health Practitioner Regulation Agency (AHPRA) and then for visa application purposes apply for skills assessment with the Australian Nursing & Midwifery Accreditation Council (ANMAC) who does not require any extra documentation from what is required to register

with AHPRA. Their Australian citizen/permanent resident cohorts will not be required this extra step in order to practice the profession.

While this is understandable to require this from overseas trained health professional to protect the Australian public, training providers and universities in Australia should have the standards required to ensure the quality of their graduates, it is superfluous and unreasonable to require the visa applicants educated and trained in Australia to take this extra unnecessary step.

### Overlapping problem of requiring tests in Australia and visa refusals based on the genuine temporary entrant (GTE) requirement

Despite the fact that there is a shortage of health professionals in Australia, the Department of Home Affairs (DoHA) is contributing to the shortage. There are instances where DoHA refused a visitor visa to overseas nurses planning to attend nursing exams in Australia. To be able to become a nurse in Australia, the future health professionals need to complete their exams, the Objective Structural Clinical Examination- RN (OSCE-RN) Preparation Program. Without completing this exam, nurses cannot become Registered Nurses in Australia.

#### *Case example*

We have recently met with one such nurse who, who we will call “Jasmeen” for this purpose. Jasmeen has been working in health care for over 8 years in India and decided to come to Australia and complete her Upper Registration exam. She has been invited by AHPRA & National Boards for the Objective Structural Clinical Examination- RN (OSCE-RN).

The Objective Structural Clinical Examination- RN (OSCE-RN) Preparation Program is an essential step toward becoming a registered nurse in Australia. The OSCE-RN examination is exclusively available within Australia, with no testing centres located outside the country. Individuals from overseas are left with no alternative but to apply solely for visitor visas in order to participate.

Jasmeen applied for a visitor visa, and she got refused. She actually has been refused twice.

One of the core requirements for the visitor visa subclass 600 are that the applicant needs to meet the General Temporary Entrant (GTE) requirement by staying only temporarily in Australia; and complying with visa conditions. The GTE criteria requires the applicant to demonstrate the ties to their home country (including financial, family, and social ties) as well as the significant incentives to return home.

The main reason for the refusal of Jasmeen's visitor visa application is DoHA's strict application of the GTE criteria, even when a nurse is attending a registration exam. The Genuine Temporary Entrant criteria require the demonstration of strong reasons to return to the home country after the visit. Even though the Jasmeen has provided a significant amount of supporting documents showing a job, family and social ties in India, in both her applications, that was not enough for the Department.

Maybe the criteria of GTE which is causing the issue needs to be waived for qualified nurses intending to come to Australia to take the necessary examinations. The nurses need to book and pass their exams in Australia and concessions for this may be required.

We note that the South Australian and Victorian state governments are giving \$10,000-\$15,000 cash incentives to nurses who relocate to their states; yet it is very difficult for nurses to come to their state because of the Federal Government's strict implementation of the GTE criteria.

There is an irony that the Federal Government denies nurses visitor visas to do their examinations and get their skills assessments; however, the State Government offer such incentives, for example, the South Australian government is offering financial reimbursements of up to \$15,000 help cover relocation costs such as travel, short-term accommodation, and other reasonable expenses<sup>1</sup>.

The refusal of visas to qualified nurses like Jasmeen, especially at a time when healthcare-related occupations are in high demand in Australia, is not only perplexing but also detrimental to the country's healthcare system. The Australian government has emphasized

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<sup>1</sup> The Government of South Australia 2023, *Campaign to attract health workers to SA adding to Labor's big boost of 550 clinical staff*, Premier of South Australia website, accessed 11 October 2023 <<https://www.premier.sa.gov.au/media-releases/news-items/campaign-to-attract-health-workers-to-sa-adding-to-labors-big-boost-of-550-clinical-staff>>

the importance of skilled visa programs that benefit the economy and labour market while assisting Australian businesses in accessing skilled workers when local labour market needs cannot be met.

Jasmeen's situation is a clear example of the unintended consequences that such visa refusals can have, hindering the progress of a highly skilled health professional who genuinely aims to contribute to Australia's healthcare sector.

## **Summary**

It is undeniable that migrants have a critical role not only in filling in the skills shortages but also in contributing to Australia's global competitiveness and its growth as a nation. It has been shown that migrants are willing to work hard even move to regional areas where their skills are badly needed. There must be a collective action to improve the system which includes removing unnecessary obstacles and making the process fairer and smoother. We think that this collective action should include having a more resilient and a more transparent skills assessment process.

In summary, the issues we think that can be improved are or the measures that may be considered are:

- Introducing concessions where appropriate and not require skill assessment for Australian graduates
- Address the issue of monopoly by large assessment authorities
- Having a better connection between requirements of the skill assessment authorities and the needs of the industries and other stakeholders
- Removal of superfluous and unnecessary requirements for certain professions in particular for health professionals who are required to be registered with the relevant national boards
- Reconsider the GTE requirement for applicants coming to Australia to fulfill their skills assessment requirements

We thank you again for this opportunity to provide our submissions. We would be happy to discuss the issues raised herein and we are open to the opportunity to have a meeting or attend hearings or consultations on this matter.

Should you have any enquiries regarding this submission, please contact Chris at [chris@workvisalawyers.com.au](mailto:chris@workvisalawyers.com.au)

Yours sincerely,

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