



THE LAW SOCIETY
OF NEW SOUTH WALES

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13 May 2024

Dr James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
Braddon ACT 2612

By email: Adam.Fletcher@lawcouncil.asn.au

Dear Dr Popple,

Review of skilled migration points system

The Law Society appreciates the opportunity to contribute to the Law Council's submission to the Department of Home Affairs in respect of its Discussion Paper on the Review of the Points Test. The Law Society's Human Rights Committee has contributed to this submission.

We support a recalibrated points system which aims to identify those applicants with the best potential to contribute to Australia, while ensuring the integrity, responsiveness and fairness of the skilled migration program. In particular, we express our support for the Law Council's submission of 21 December 2022 as regards the principles that should underpin the migration program.

If Australia is to attract talented skilled workers, pathways to permanent residence need to be accessible and communicated in a clear, uncomplicated manner. The fact that the skilled migration programs, including at State and Territory level, change frequently and often with little notice, serves as a disincentive for talented applicants. In the experience of our members, this often leads registered migration agents and legal practitioners to advise clients to pursue employer-sponsored pathways as opposed to General Skilled Migration programs because of their structure and greater certainty.

The comments below are made with reference to several of the discussion paper questions:

Question 1: Design of points test to target migrant success

The current points test process often fails to take account of valuable experience gained by potential candidates. There is sometimes a disjuncture between those skill areas that should be prioritised to respond to identified national need (e.g., skills related to the digital economy and expanding the number of care roles, such as nursing and aged care) and the way in which the points system assesses candidates with certain characteristics.

In our view, it would be preferable that occupations in higher demand were awarded higher points, particularly in the case of onshore (as opposed to offshore) international graduates trained in those occupations. This would assist in promoting better pathways for international

students who have chosen Australia as their destination of study and are already investing significantly in the Australian economy. If particular categories of the points test (e.g., work experience; education levels) are to be prioritised for certain applications, these should be communicated transparently to eliminate ambiguity and provide prospective migrants with a clear pathway.

Skilled work experience

We consider that all work experience undertaken in Australia, whether or not it is skilled work experience, should be taken into account to some degree. It is often the case that international students who have worked in Australian workplaces have a keener understanding of workplace culture and expectations in this country, as well as community standards.

Despite this, some of our members have expressed concerns that the current distinction applied to skilled work experience (namely that experience in Australia is weighted more heavily than overseas experience) often works to the detriment of some applicants who, despite considerable experience overseas, are receiving skills assessments that do not fairly reflect their level of expertise.

English proficiency

In terms of English language requirements, the criteria currently provides for between 0 and 20 points according to the applicant's level of language proficiency. In the view of some of our members, a more nuanced approach would align English language requirements with the level of English necessary for particular occupations or trades, rather than a blanket approach which may stymie the entry of qualified professionals to identified priority areas (e.g., aged care).

Other members have observed that, rather than lowering the English language requirements for certain in-demand occupations, the Government could simply lower the points requirements for those occupations (requiring, as an example, that certain carer roles only need Competent English, x-years of Australian work experience and y-level qualifications).

Credentialed community language

In the experience of some of our members, allocating points for credentialed community language skills serves little practical purpose. Most applicants are unavailable to act as translators and interpreters due to the demands of the job they otherwise take on after arriving in Australia. While we recognise that the Government has identified the need for professional interpreters and/or translators, this should be addressed through a channel other than the points system.

Professional year in Australia

In the view of some of our members, the points allocated for a 'professional year in Australia' should be eliminated. They have received negative feedback on the quality of these courses and their value for money, and regularly advise clients to seek paid skilled employment or improve their English language test scores rather than enrol in these expensive courses.

Regional study

Consideration should be given to awarding further points for regional study. This is useful in encouraging regional enrolment and stimulating economic activity in these areas. It may also encourage greater appreciation by regional communities of migrants and the value they bring to the economy and cultural life of the local area.

Nomination for skilled nominated visas and regional skilled work provisional visas

As regards the criteria related to 'nomination for skilled nominated visas and regional skilled work provisional visas', we consider it appropriate for the Commonwealth Government to establish nation-wide standards for how these should be administered. It is a matter of concern

that different states and territories have their own, uniquely complex, steps to make an application for these visas. A consistent approach could provide greater clarity to applicants.

Question 2: Meeting Australia's skill needs

While we agree that occupation lists have historically been slow to change and respond to shifts in the labour market, it is unclear how abolishing them entirely would work, particularly if Skills Assessments continue to be required from relevant skills assessing authorities.

In our view, the focus should be on updating the requirements under skills assessments on a regular basis, with input from the various industry bodies and higher education/vocational education providers, to ensure there is a relevant assessment which speaks to the demands and skills required for particular occupations. In the experience of our members, the current system means that there are certain occupations on the skilled list for all GSM visas (e.g., Accountant (General)) for which there are a surplus of graduates and low prospects for permanent migration. This has the unfortunate consequence of misleading international students about the courses for which they should apply.

The Government should work with industry to identify trends and anticipated future demand for occupations. As noted in the Issues Paper, it is important to focus on transferable skills in different disciplines which will capture those migrants who can respond in an agile manner to a changing employment landscape.

It may also be useful in meeting Australia's skill needs to draw on some of the programs that exist in other jurisdictions. We note, for example, the recent launch of the Digital Nomad Visa in Canada (see [here](#)) as well as the Care Workforce Work to Residence Visa available in New Zealand (see [here](#)).

Question 3: Age

We maintain some concerns about the Migration Review's strong focus on the age of applicants as a determinative factor for the allocation of points. While we acknowledge the conclusion of the Migration Review that the age of the migrant and their income level is linked to their economic and fiscal contribution, a narrow focus on age may fail to recognise the full contribution that older migrants (e.g., those aged 40-50) and their families can make to Australia.

We support the view of the Law Council that the age cap for GSM should be 50 years and, despite the changes to the Graduate Visa, that this should be raised to 50 years (as opposed to reduced to 35 years). This will assist in encouraging persons who have undertaken higher level degrees (e.g. PhDs at the tertiary level).

Question 6: Transition Arrangements

We appreciate that transition arrangements will need to provide, to the greatest extent possible, fairness and certainty. In order to achieve this, we suggest that arrangements should be finalised and announced as soon as practicable. The announcement should include a clear implementation date (whether 12-24 months from the date of announcement, or the commencement of the relevant financial year). It would also be helpful to set a deadline by which EOIs under the current framework will expire in light of the commencement of the new system. We consider this approach would allow prospective migrants, including international students, time to plan and consider pathways and make appropriate arrangements.

Question 7: Review of the Points Test

The Law Society agrees that a regular review of the points test will help to ensure that it continues to meet its objectives while taking into account the latest research and data and responding to Australia's changing needs.

While we do not have a firm view of how often a wholesale review should take place, we note that the Government should act responsively when obvious oversights or programmatic shortfalls become apparent. Any review should consider employment rates following the grant of the relevant visa, and retention rates in the designated skills area (e.g., the number of electrical engineers that remain electrical engineers 12 months after the grant of their permanent visa).

Thank you for the opportunity to contribute. Questions at first instance may be directed to Sophie Bathurst, Policy Lawyer, at (02) 9926 0285 or sophie.bathurst@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Brett McGrath', with a long horizontal stroke extending to the right.

Brett McGrath
President