

1st March 2021

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

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Dear Sir/Madam,

Submission re: Australia's Skilled Migration Program

Prepared by Registered Migration Agents – Susan Cayago and Simone Everett

This submission has been prepared by registered migration agents Susan Cayago – Principal Migration Agent for Milestone Migration and Simone Everett – Principal Migration Agent for HQ Migration Solutions. We have more than 35 years of recruitment and migration experience between us and we bring extensive experience across many visa programs, specialising in the employer sponsored programs. Accordingly, we communicate directly with several Australian employers and this submission is formed based on feedback obtained from employers during the course of our case work.

It is acknowledged that economic recovery of Australia represents a key focus for the Federal Government. The ability for businesses across Australia to have adequate resources and skilled labour is an essential component of that recovery. Without access to skilled workers, business cannot grow.

Many of our sponsor clients are regionally based small businesses who are facing continuing difficulties in attracting skilled workers to their vacancies. Over the last 6+ months, as the Australian economy attempts to recover from the financial impacts of the global pandemic, we have observed the following through direct interaction with our sponsors and clients:

What employers are telling us:

- Many employers have long term vacancies which they cannot fill – both skilled and semi-skilled positions. They cannot attract locals or onshore visa holders to the vacancies. These skill shortages have worsened as a result of COVID due to a lack of temporary visa holders being available in the onshore labour market.

- Employers have mentioned that the shortage of skilled workers has never been this dire. Others cite the “mining vacuum effect” which sees the mining industry luring skilled workers to the mining industry which leaves shortages across the local industries – this is particularly evident for mechanics (general and diesel), metal fabricators, welders as well as other trade positions.
- Inability to obtain approved Travel Ban Exemptions to permit entry for skilled workers in critical positions across essential services businesses. These businesses cannot fill their vacancies from the onshore labour market and have to secure entry for these workers to bring the skills to Australia.
- For the MTSSL occupations we have observed there is no incentive for visa holders to relocate to regional vacancies. The 494 Skilled Employer Sponsored Regional visa is not providing an incentive for employees to take up regional based positions.
- Request to access student graduates to fill regional vacancies – beyond the graduate visa period
- Due to COVID-19 changing the way we live, many hospitality venues have changed the way they operate. They must provide take-away services and have moved to more ‘contact-safe’ methods of payment. This means these venues will have difficulty meeting the rigid limited services caveat that applies to hospitality-based positions in the 482 visa program policy. Employers need the government to be responsive and reflect this shift in their policy.
- Hospitality roles – the subclass 494 program is starting to see a shift of visa holders currently holding subclass 482 STSOL visas with no future pathways in the metro area, moving out to the regional vacancies. However there remains more vacancies than applicants. It is also acknowledged that this shift will result in further shortages across the metro venues.
- Poaching of skilled workers from existing sponsors has increased. As there is no new talent entering the onshore labour force, businesses are poaching visa holders from other sponsors and SAF refund provisions are ineffective to protect genuine business sponsors.
- The Skilling Australia Fund is prohibitive in securing skilled workers for Australia. It presents a high risk financially for the employer when the refund provisions are non-existent. Employers are vulnerable at this time and those with a genuine need for labour are paying an exorbitant rate to secure skilled labour with no certainty as to when they can enter Australia.

1. Skilled Workforce Shortage

Our employers are begging for relief and they are telling us every day about the desperation they are facing relating to the skill shortage. This is more pronounced in the regional area.

Employer are asking for an urgent review of the Priority Skilled Migration Occupation List (PMSOL). This occupation currently consists of some 18 occupations and sadly it is not meeting the needs of many employers across Australia. This list was introduced more than 6 months ago and has only had one update since. It is not responsive to the needs of Australian businesses.

As Australia navigates its way through the COVID recovery, the demand for many occupations have increased sharply to a desperate situation. By way of example, there are some 7,652 mechanic vacancies currently advertising on seek.com.au as at 1st March 2021.

Our clients have been actively seeking Travel Exemptions for their sponsored skilled workers with visa approvals or applications to enter Australia. These individuals hold critical skills, but the subjective process of the Travel Ban Exemptions has seen sponsors unable to obtain approval for their workers to enter Australia to commence work in these critical roles.

As an example, a Diesel Mechanic with an approved 482 nomination to work with one of Australia's largest logistics suppliers with over 6,500 workers across 130 sites was not able to secure entry to Australia to support repairing of haulage vehicles in the Prominent Hill mine site in South Australia. In another example, a Diesel Fitter with an approved visa was unable to return to work in Kalgoorlie in Western Australia at a Gold mine after leaving Australia in February 2020 on annual leave and being stuck offshore. These applications were supported by the employers and the individuals were in critical roles to keep essential goods flowing.

Sponsorship is not a first option or a preferred option for Australian employers. **Sponsorship is a last resort and our employer clients are telling us they need urgent relief.**

Recommendations on Department Processing:

Request an immediate review to the PMSOL list with a view to adding the following occupations:

- 1.1. Metal Fabricators / Welders
- 1.2. Diesel Motor Mechanics and Mechanical Fitters
- 1.3. Mechanics – General Motor
- 1.4. Construction trades – for example Carpenter, Electrician, Tilers to support the housing boom
- 1.5. Chefs to support regional hospitality venues
- 1.6. Complimentary Health Services, with particular focus on behavioural practitioners and ABA therapists who with Early Intervention for Autism with Complimentary Health Services (NEC)

2. 494 Skilled Employer Sponsor Regional Visa – Need for Concessions

The 494 Skilled Employer Sponsored Regional Visa came about with the underlying intent to drive people to the regions and retain them in these areas rather than the over-populated metropolitan areas. This would help the regions to boost population and drive growth.

Beyond some additional occupations available, the 494 visa is one of the least attractive visa options to potential applicants. With the need for a mandatory skill assessment and higher English requirements than the 482 visa program, it does not satisfy the needs of the regions.

| | 482 - TSS Short Term | 482 - TSS Medium Term | 494-SESR |
|---------------------|---|---|---|
| Length | Up to 2 years | Up to 4 years | 5 years |
| Skill Assessment | Only mandatory for occupations and nationalities listed in the instrument | | Mandatory |
| English | IELTS 5.0 (no less than 4.5 in each category) | IELTS 5.0 (no less than 5.0 in each category) | IELTS 6.0 (no less than 6.0 in each category) |
| Age | No age limit | No age limit | Less than 45 years |
| Experience Required | 2 years | 2 years | 3 years |
| Process | SBS + Nom + Visa | SBS + Nom + Visa | SBS + RBC + Nom + Visa |

Further, the inclusion of the Regional Certifying Bodies (Step 2) in having to complete a review of the Australian Market Salary Rate has added more red-tape and cost to a regional employer versus using the other visa programs.



By way of example, In Port Macquarie, the Mid North Coast Regional Development program charge \$660 (inc GST) to certify the market salary rate of an employer. This process is also verified in Step 3 by the Department of Home Affairs. This is double handling, undue red-tape and additional cost.

Recommendations Subclass 494 Regional Program:

We recommend an urgent review of the 494 program to allow:

- 2.1. Increase the age cut off from 45 years old up to 50 years old
- 2.2. Introduction of more favourable English requirements for the 494 to align with those of the 482 Short Term visa program.
- 2.3. Consider reduction of full-time work experience required (currently 3 years) and not achievable for graduates or recent graduates before the expiry of the graduate visa.
- 2.4. Removing the mandatory skill requirement for the 494 visa and using the same instrument referenced in the 482 visa program for mandatory assessments on certain occupations only.
- 2.5. Removal of the RCB requirements to reduce costs and red-tape for employers.

3. Hospitality Roles - Limited Service Caveat and the lacking 494 solution

Within the 482 visa program, a caveat applies to all applications, both regional and non-regional that excludes nomination of positions in a *'limited service restaurant'*.

A caveat is in place for this occupation which excludes positions involved in mass production in a factory setting and positions in a limited service restaurant. A limited service restaurant includes, but is not limited to, the following:

- fast food or takeaway food services;
- fast casual restaurants;
- drinking establishments that offer only a limited food service;
- limited service cafes including, but not limited to, coffee shops or mall cafes;
- limited service pizza restaurants.

In our experience, this caveat is assessed in a very rigid way and to the detriment of many employers right across Australia. To put it simply, any lawfully operating business with a commercial kitchen has a genuine need for a Chef and Cook just as much as a fine dining restaurant in the heart of Sydney. This caveat clearly discriminates the less formal venues and restaurant establishments.

Our experience indicates that it is difficult and almost impossible for many venues to meet the strict requirements of the limited-service caveat. Even if a venue specialises in 'fast casual' dining does not negate the need for a skilled chef or cook to run their kitchen. It is not practical that your local café who serves you breakfast every Sunday morning can be deemed as not a business that requires a trade qualified chef and cooks in their kitchen.

This results in many regional venues not able to sponsor overseas workers with the TSS program and the need to rely on the 494 visa program instead.

It is acknowledged that the subclass 494 program is available for regional employers to nominate a cook or chef without the restriction of a caveat. However, as covered in point 2 above, the 494 program; this is often not the case due to a lack of applicants who meet the rigorous schedule 2 requirements of a minimum of 3-years experience and the need for competent English and skill assessments.

It is important to note that it is very difficult for the regional venues to compete for chefs, due to the occupation of chef being on the MTSSL and there being no incentive or concession available for potential chef applicants to move away from the cities to the regions.

In our experience and based on feedback from the employers, there are very little Australians choosing a hospitality career. We often see that it is the small businesses who are excluded from sponsoring a cook or chef because the Department deems their venue to be a limited-service establishment. The employers simply do not understand the limited-service caveat and believe they are being excluded from accessing skilled overseas workers.

To put it simply, a commercial kitchen requires skilled workers. It takes four (4) years for a Chef to complete an apprenticeship and despite unemployment levels – our hospitality venues are in need of skilled workers now – not in 4 years. Coupled with the shortage of locals choosing a hospitality career, we ask for urgent action.

Recommendations Limited Service Caveat:

We recommend an urgent review of the limited service caveat on the 482 program to allow:

- 3.1. Immediate waiving of the limited-service caveat for regional employers with the exception of fast-food franchise outlets.
- 3.2. Immediate review of the policy on the caveat and how it applies for non-regional employers to reflect new ways of trading with COVID-19.
- 3.3. Putting Chefs on the PMSOL for regional based employers if not for all employers.

4. Skilling Australia Fund – Lack of Sufficient Refund Provisions

The Skilling Australia Fund was introduced as a levy payable by employers accessing the employer sponsored visa program to contribute to training Australians. However, the refund provisions of this levy result in employers paying to skill Australians, but not actually employing a foreign worker as a trade-off.

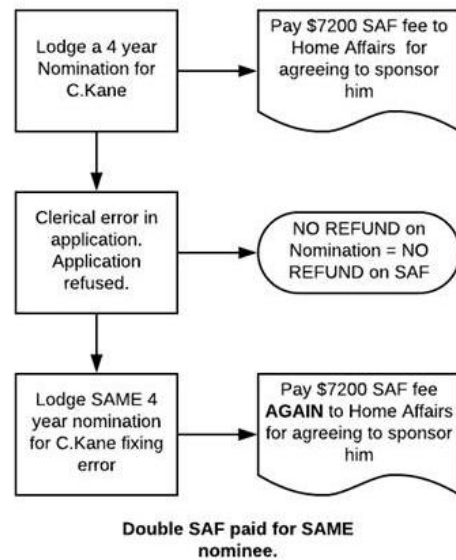
When the Skilling Australia Fund was introduced in 2018, whilst the senate committee recommended passing the bill, it was recommended that the Minister provide clarity on the various circumstances raised in evidence that may warrant a refund of the Skilling Australia Fund Levy.

The end result was a Skilling Australia Fund with refund provisions that did not address the intent of the Levy.

Skilling Australia Fund Scenarios Where A Refund Is Not Payable

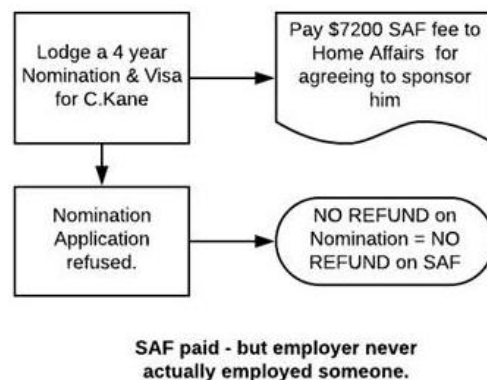
CLERICAL ERROR BY SPONSOR

- Simple error in application (such as no signature on an employment contract)
- Appeal Tribunal – 2-3 year process
- Impractical for a business needing a worker to wait – so they need to relodge their application
- Pay 8 years of SAF – for only 4 years approval
- No refund payable



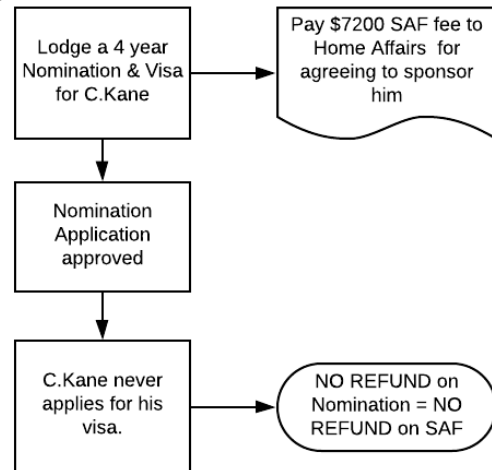
DEPARTMENT NOT CONVINCED POSITION IS GENUINE

- Department of Home Affairs decide the business does not demonstrate a 'genuine need' for the position
- Application refused
- Pay 4 years of SAF – don't get approved to sponsor someone
- No refund payable



NOMINEE NEVER LODGES VISA APPLICATION

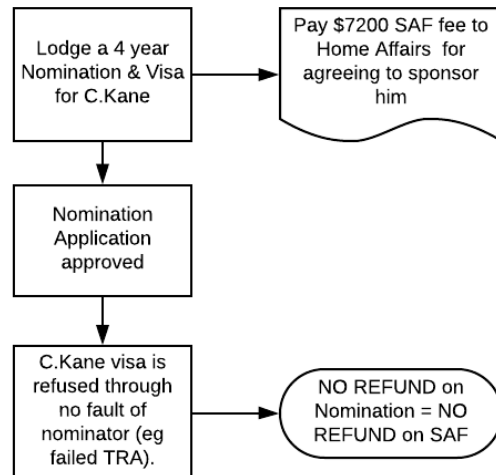
- Visa applicant changes his mind and takes a job in another country.
- Pay 4 years of SAF – applicant never goes through with visa application
- No refund payable



SAF paid - but employer never actually employed someone.

NOMINEE VISA NOT APPROVED

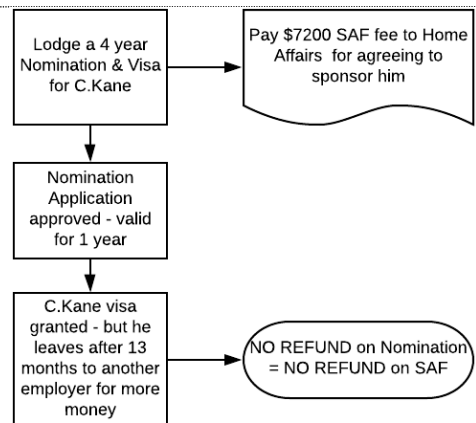
- Visa applicant fails to meet the skill requirement to obtain a visa for entry to Australia.
- Pay 4 years of SAF – applicant never goes through with visa application
- No refund payable



SAF paid - but employer never actually employed someone.

VISA HOLDER LEAVES AFTER FIRST YEAR

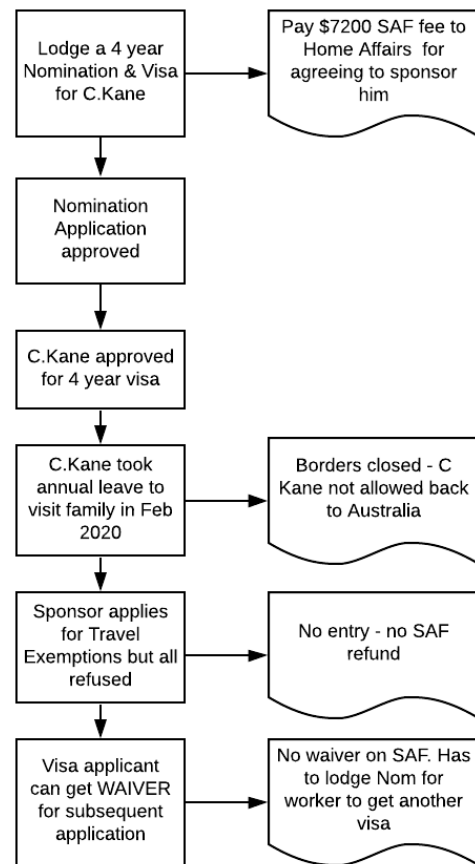
- Refund for subsequent years is ONLY available if the visa holder leaves their sponsor during the first 12 months of employment
- Applicant leaves after 13 months
- 4 years SAF paid but retained the worker for just over 1 year
- No refund payable
- New employer only had to pay 1 year SAF to poach them



SAF paid for 4 years - but employee leaves after 13 months.

VISA HOLDER STUCK OFFSHORE

- Applicant took valid Annual Leave
- Could not return before borders closed
- Cannot get a Travel Exemption approved to return to work
- Visa applicant can get a visa application fee waiver
- Employer gets no waiver or refund on SAF
- Can only get worker again in future by paying SAF again



**SAF paid - but worker cannot re-enter Australia.
Must pay full SAF again to get another visa**

Recommendations for SAF Levy:

We recommend an urgent review of the Refund provisions that apply for the Skilling Australia Fund Levy including:

- 4.1. Refund of the levy in the event of a nomination refusal or withdrawal.
- 4.2. A waiver of the levy on a subsequent nomination where the visa holder was offshore during the Covid19 pandemic period and unable to re-enter before their visa expiry.
- 4.3. Refund of the subsequent years of the levy if they cease employment in year 2 or 3 of employment.
- 4.4. Refund of the levy where the nominee fails to lodge a 482 visa within 12 months of the nomination approval.
- 4.5. Refund of the levy where the nominee is refused for a 482 visa that is linked to the approved nomination.

5. DOHA Case officer culture – Request for Information

As mentioned above, it is acknowledged that Australia is relying on the 6 million + small businesses across Australia to assist with the heavy lifting to see Australia through to the other side of this economic recession.

Business owners are often involved with all aspects of running a small business and the last 12 months and the next few years serve challenge after challenge. This extends to include the many migration representatives who assist the employer sponsors.

We ask for understanding and compassion from the Department case officer's during these times and we request that case officers clarify any concerns and refrain from proceeding to refusal decisions without further enquiry with the sponsor or the migration representative.

Given the significant costs involved with the Skilling Australian Fund (SAF) levy, we request an immediate directive be given to the Department of Home Affairs to put forward any queries to the sponsor/authorised representative and put a cease to any immediate refusals from the case officer without an initial request.

To confirm, employer sponsorship is not a preferred option but rather an expensive and time consuming process. Accordingly, we request urgent relief from the Department of Home Affairs for the many employers across Australia.

Recommendations on Department Processing:

We recommend an immediate directive be given to the Department of Home Affairs to-

- 5.1. Cease making refusals on employer sponsored nomination and visa applications without first seeking a request for further information to give the employer an opportunity to respond to any concerns of the case officer.

Closing

Australia's small businesses are doing much of the heavy lifting with respect to Australia's economic recovery. A business does not sponsor an overseas worker as a first choice. Sponsorship involves a fully considered business decision which involves significant expenditure. Australia's small businesses need the support of the Australian government and on this basis we ask for an immediate review of this caveat.

Thank you for reading this submission. We would welcome any questions you may have or a short discussion if you feel appropriate.

Yours faithfully



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