



Australian Government  
Department of Immigration  
and Citizenship



# DISCUSSION PAPER

Review of the permanent Employer Sponsored visa categories:

- Employer Nomination Scheme
- Regional Sponsored Migration Scheme
- Labour Agreement

**August 2011**

## CONTENTS

<b>Glossary of Terms</b>	<b>2</b>
<b>1 Introduction</b>	<b>3</b>
1.1 Purpose of this discussion paper.....	3
1.2 How to make a submission.....	4
<b>2 The review</b>	<b>5</b>
2.1 Employer sponsored visas .....	5
2.2 Strategic objectives of the review .....	5
<b>3 Key issues to consider</b>	<b>7</b>
3.1 Access to semi-skilled workers.....	9
3.2 A 'fast-tracked' pathway for temporary skilled visa holders .....	10
3.3 English language .....	11
3.4 Age requirement .....	13
3.5 The regional certifying network for RSMS .....	13
3.6 Exceptional circumstances and appointments.....	15
3.7 Electronic lodgement .....	16
3.8 Further comment .....	16
<b>Attachment A</b>	<b>17</b>
<b>Attachment B</b>	<b>22</b>
<b>Attachment C</b>	<b>26</b>
<b>Table of Figures</b>	
Figure 1: Skill Stream program structure and targeting.....	8
Figure 2: Previous visa heal at lodgement .....	18
Figure 3: Summary of RSMS visas by state of intended residence .....	19
Figure 4: Skilled migration program distribution.....	23
Figure 5: Skilled migration program outcomes 2010-11.....	24
Figure 6: Nominated Occupation Skill Level .....	27
Figure 7: Composition of occupations nominated .....	28

## Glossary of Terms

ANZSCO	Australian and New Zealand Standard Classification of Occupations First Edition.
AQF	Australian Qualifications Framework.
EMA	Enterprise Migration Agreement.
ENS	Employer Nomination Scheme.
ENSOL	Employer Nomination Scheme Occupation List.
Functional English	This is equivalent to an average score of 4.5 over the four IELTS test components (reading, writing, speaking and listening).
GSM	General Skilled Migration
IELTS	International English Language Testing System.
Nomination	This is the application by an Australian employer outlining the occupation and position they want to nominate through an Employer Sponsored visa.
Program outcome	Migration program numbers do not include New Zealand citizens or holders of some temporary visas (such as temporary protection visas).
RCB	Regional Certifying Body. This is an organisation which has been authorised to certify that RSMS nominations meet certain criteria before the employer can lodge the nomination with the department.
RMA	Regional Migration Agreement.
RSMS	Regional Sponsored Migration Scheme.
SkillSelect	This is the name of the Skilled Migration Selection Register.
Subclass 457	Subclass 457 Temporary Business Long Stay visa (temporary visa).
Vocational English	This is equivalent to a minimum score of 5 on each of the four IELTS test components (reading, writing, speaking and listening).

# 1 Introduction

## 1.1 *Purpose of this discussion paper*

The Department of Immigration and Citizenship (the department) has been tasked by the Australian Government to review and improve the operation of the Employer Sponsored permanent residence visa categories.

This discussion paper is seeking feedback on the operation and effectiveness of the employer sponsored visas. This feedback will inform the government's decisions to improve these programs so that they remain relevant to the needs of the Australian labour market while maintaining the overall integrity of Australia's migration program.

To assist stakeholders, this discussion paper will:

- examine at the role of the employer sponsored programs
- highlight some key issues for possible change.

Stakeholder consultations, including feedback and comments from the Australian public, will play an important role in determining the recommendations that will be provided to the government.

### **Structure of the discussion paper**

The discussion paper has the following structure:

- Chapter 1 provides information about the review stages and how to provide a written submission.
- Chapter 2 provides a short background about the review and its objectives, as well as a broad overview on the role of the employer sponsored visas.
- Chapter 3 provides an outline of issues the review will consider.

### **The review stages**

The review is expected to occur in three stages.

#### **Stage One: Consultation**

The department is already consulting with a range of stakeholders on various aspects of the review. This discussion paper is one component of the consultation process.

#### **Stage Two: Recommendations**

Based on the outcome of the consultations, the department will develop recommendations for any changes to the employer sponsored visas for the government to consider.

## Stage Three: Implementation

The department will seek to implement any changes to the employer sponsored visas from 1 July 2012, in conjunction with the introduction of *SkillSelect*.

### 1.2 How to make a submission

The department invites you to provide written submissions in response to this discussion paper by Friday, 16 September 2011. Written submissions can be sent to the department in either of the following ways:

- by email to the Director at: [Sponsored.Skilled@immi.gov.au](mailto:Sponsored.Skilled@immi.gov.au)

or

- by post to:  
Director, Sponsored Skilled Migration Policy Section  
Department of Immigration and Citizenship  
PO Box 25  
BELCONNEN ACT 2616

You are welcome to put forward any views and ideas that are relevant to the employer sponsored visas, but which are not specifically mentioned in this discussion paper.

The department will not publicly discuss any written submission received in response to this discussion paper. Nonetheless, any submissions may be made available on request.

Submissions will not be treated as confidential unless they are clearly marked confidential. Requests for access to confidential submissions will, however, be determined in accordance with the privacy and confidential information provisions within the *Freedom of Information Act 1982 (Cth)*.

## 2 The review

### 2.1 *Employer sponsored visas*

Australia is currently experiencing robust economic growth, which is creating new opportunities for skilled workers to work in a range of professional, managerial, technical and trade occupations. While overall workforce participation rates remain high, at times there are insufficient Australian workers to fill all available vacancies.

The government is committed to providing Australian employers with access to overseas skills, ideas, contacts and technology that improves productivity and assist Australian businesses to compete in the global market.

Employer sponsored migration is part of the government's response to addressing shortages in the Australian labour market. Employers who cannot find Australian workers are able to recruit the skilled workers they need from outside Australia or from temporary visa holders who are currently living and working in Australia.

These demand-driven programs provide a flexible way to balance the skill needs of Australian employers with the government's commitment to a sustainable migration program that provides the maximum benefit for Australian communities. It is therefore important that the underpinning policy settings continue to be responsive to fluctuations in the labour market and the changing needs of employers.

While the employer sponsored programs share a common purpose in meeting the skill needs of Australian employers through the sponsorship of skilled foreign workers, each program is targeted at different employer circumstances and skill needs. These programs can be categorised into the following visa categories:

- Employer Nomination Scheme (ENS)
- Regional Sponsored Migration Scheme (RSMS)
- Labour Agreement (LA).

Further information about all of these programs is included at **Attachment A**.

### 2.2 *Strategic objectives of the review*

This review aims to ensure the employer sponsored programs are responsive and relevant to changing economic and social conditions.

The primary objectives of the review are to:

- ensure these programs continue to support ongoing employment and training opportunities for Australians and ensure migrants are not exploited

- consider whether these programs are meeting the skill needs of Australian employers in an effective and efficient manner
- ensure people migrating to Australia through these programs have the skills and experience that employers need
- make it easier for certain skilled temporary visa holders, such as people living and working in Australia on a Temporary Business (Long Stay) subclass 457 visa, to be sponsored for permanent residence after they have worked for the employer for several years and will continue to do so after the permanent residence visa is granted
- help businesses in regional, remote and low population growth areas in Australia to recruit the skilled workers they need to manage and grow their operations
- ensure these programs meet the government's commitment to simplify the visa structure and create a robust visa program that will reduce bureaucratic red-tape for employers, as well as make the visa process easier to understand for employers and visa applicants
- ensure any changes to these programs align with the department's long-term planning framework, particularly in relation to *SkillSelect*.

Information about the overall migration program, the visa simplification process and *SkillSelect* is included at **Attachment B**.

### 3 Key issues to consider

This chapter provides a short summary of key issues for consideration upon which the department is seeking your comments.

In framing your comments, you should note that, as shown in Figure 1 below, each element of the skilled migration program is designed to specifically target particular skill levels and occupational profiles. The focus is almost exclusively on workers who are classified as 'skilled'. Skilled workers are those who work in a range of managerial, professional, technical and trade occupations. These occupations involve work which typically requires a person to hold an appropriate trade, diploma or higher level qualification. Skilled occupations are targeted by the program because they require a long lead time for a person to develop the technical expertise and gain the necessary experience to enable them to work in their chosen occupation.

The ENS is the largest of the three employer sponsored programs in terms of the number of visas available. Occupations that are eligible for the ENS are specified through an occupations list called the Employer Nomination Scheme Occupation List (ENSOL).

The RSMS is a broader based program which gives effect to the government's priority of supporting regional employers. While based on the principles and design of the ENS and targeting skilled workers, the RSMS offers greater flexibility in recognition of the complex labour market conditions and limited labour supply available in many regional and remote areas. The RSMS has no specified list of eligible occupations. Concessions can include allowing some semi-skilled occupations that require highly specialised skills; lower salary requirements reflecting the lower living costs of many regional and remote areas; an exemption from a work experience requirement; and lower English language requirements.

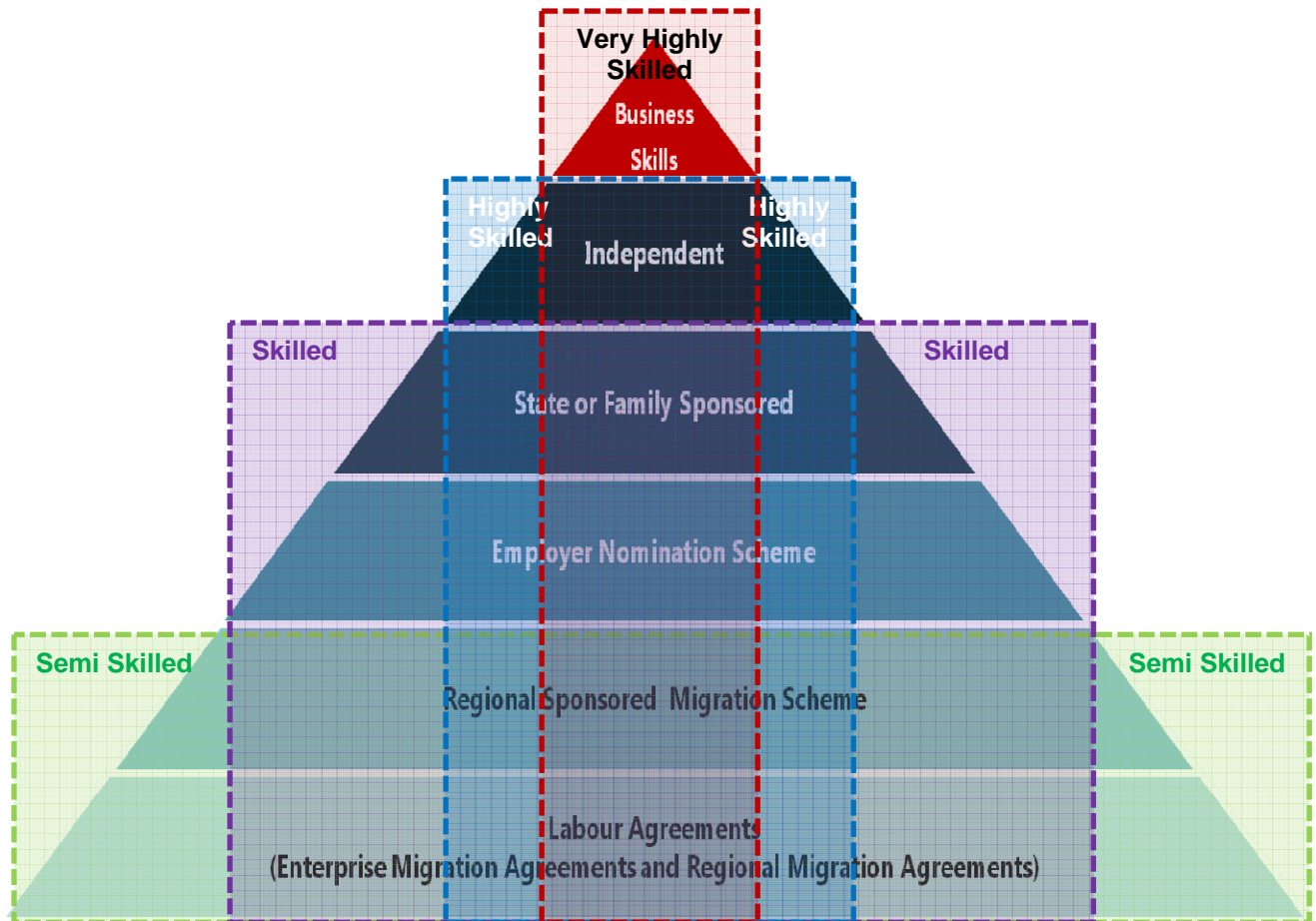
A LA is a formal agreement between an employer and the Commonwealth designed to provide access to a broad range of foreign workers, including those who are semi-skilled. LAs specify, through an individually negotiated contract, the numbers and occupations of overseas workers who may be sponsored by an employer over a given period of time. This approach allows the department to tailor visa access to the direct needs of the business: providing the greatest flexibility to access semi-skilled workers (where necessary), while ensuring training and employment opportunities continue to be provided for Australian workers. LAs build on the flexibility offered by the RSMS program and potentially offer the broadest range of eligible occupations.

While LAs are predominately used to access temporary workers under the Temporary Business (457) visa, they are also used to sponsor people for permanent residence.

The recently announced Enterprise Migration Agreements (EMAs) and Regional Migration Agreements (RMAs) are highly customised LAs designed

to cater to the semi-skilled labour needs of the resource industry and local communities respectively. Further information about EMAs and RMAs is included at **Attachment A**.

**Figure 1: Skill Stream program structure and targeting**



Against this background your views are sought on the following broad themes:

1. How can the government best facilitate access to skilled and semi-skilled migrants in the areas they are most needed while maintaining employment and training opportunities for Australian workers? For example:
  - a. Should there be multiple pathways to sponsor semi-skilled workers?
  - b. What additional protections are needed when sponsoring semi-skilled workers?
2. How can the government ensure that employer sponsored migrants perform well in the labour market and are not exploited? For example, what is the role for English language requirements, skills assessments, salary thresholds and age restrictions?

3. What concessions or flexibilities are needed to support positive economic and social outcomes in regional and low-growth areas, and how could these be implemented? For example:
  - a. Are lower salary thresholds or English requirements appropriate?
  - b. Is there a role for provisional visas that require migrants to stay in the region for a set period of time?
  - c. Would the continued use of local certifying bodies and/or exceptional circumstances provisions provide more integrity when assessing individual applications?
4. How could visa processing be streamlined, particularly for suitably qualified workers transitioning from temporary to permanent residence?

Some specifics around these themes are discussed in further detail below.

### **3.1 Access to semi-skilled workers**

#### **Review consideration**

The review will consider which program, or combination of programs, provides the most appropriate avenue for employers with access to semi-skilled workers consistent with the objectives of the review.

In particular, the review will consider whether the permanent residence labour agreement visa should be omitted from the legislation. Permanent residence options for a labour agreement could instead be provided through the ENS or RSMS visas.

#### **Skilled and semi-skilled workers**

The ENS and RSMS are focused on encouraging skilled workers to migrate to Australia as it is generally harder for employers to fill these vacancies from the local labour force. Skilled occupations require skills, qualifications and experience that can take years to develop. While employers are expected to invest in the training of Australians to perform this work, these programs allow employers to quickly obtain skilled workers to fill immediate or short-term needs. Skilled workers are also less susceptible to the peaks and troughs of the international business cycle, and provide optimal economic and social benefits for the limited places available in the migration program.

Employers currently have a limited capacity to sponsor semi-skilled workers through the RSMS so the most common avenue for sponsorship is through a labour agreement. Workers employed in semi-skilled occupations are generally able to develop these skills within a short period of time or through on-the-job training, and therefore it is reasonable to expect that employers will obtain these workers from the local labour market.

Further information about how the department considers occupational skill levels is included at **Attachment C**.

Certain sectors of the economy are affected by emerging shortages in some parts of Australia. In these cases, current visa options — such as the Pacific Seasonal Worker Pilot Scheme, the Working Holiday program and EMAs — may be adequate to target and address these needs.

To summarise:

- EMAs provide employers in the resource sector with the ability to recruit agreed numbers of semi-skilled workers to work on resource projects.
- The Pacific Seasonal Worker Pilot Scheme is administered in conjunction with the Department of Education, Employment and Workplace Relations. This pilot program was developed to provide Australian growers in the horticultural industry with the opportunity to source seasonal workers from Pacific countries, while assisting with the economic development in those countries through the seasonal workers' experience, remittances and training.
- Working Holiday, as well as the Work and Holiday, programs encourage cultural exchange and closer ties with other countries by allowing young people to have an extended holiday supplemented by short-term employment.

### **Current arrangements for labour agreements**

A labour agreement which has been negotiated between the department and an employer can currently include a permanent residence option, which would be normally provided through the labour agreement permanent residence visas. The visa requirements for the labour agreement visa are typically the same requirements for ENS visa applicants. If the permanent labour agreement visa were to be omitted, sufficient flexibility through separate 'agreement' pathways could be built into the ENS or RSMS to provide labour agreements with permanent residence options.

### ***3.2 A 'fast-tracked' pathway for temporary skilled visa holders***

#### **Review consideration**

The review will consider ways to facilitate the transition of temporary skilled visa holders to permanent residence through the ENS and RSMS programs, including through a consolidated subclass 457 and ENS occupation list.

#### **Transitioning to permanent residence**

The government announced in Budget 2011-12 that it would introduce 'fast-tracked' processing arrangements for certain temporary skilled visa holders, such as subclass 457 visa holders, whom their employers wanted to

sponsor for permanent residence. This measure was introduced to formalise the nexus that already exists between these temporary skilled visas and the permanent residence employer sponsored visas.

The introduction of 'fast-tracked' visa processing for people such as subclass 457 visa holders also recognises the important economic and social contributions made by temporary skilled visa holders who have already been living and working in full-time employment in Australia for several years.

People who are already living and working in Australia for a period of time have established themselves within the local community and are more likely to settle permanently in Australia. The department's visa lodgement data for 2010-11 clearly shows that the greatest demand for the employer sponsored visas is generated from people who hold temporary skilled visas (see **Attachment A**).

The subclass 457 visa is the most commonly held temporary skilled visa and, in 2010-11, accounted for 75 per cent of all onshore employer sponsored visa applicants. The dominance of the subclass 457 visa as a 'feeder' visa for the employer sponsored visas is additionally supported by program trends in the years prior to 2010-11, as well as the nature of client queries and feedback through the department's outreach network.

This trend is not surprising, as many employers utilise the subclass 457 program as a way of testing the visa applicant's work skills before sponsoring them for permanent residence. Similarly, subclass 457 visa holders have an opportunity to assess their employers and Australia before applying for permanent residence, a significant step in a migrant's life.

Recent reforms to the subclass 457 program have created a robust temporary visa framework which provides an effective vehicle for an expedited transition to permanent residence.

### **The various occupation lists**

The skilled migration program currently refers to a number of occupation lists for its various visa programs. Of relevance the ENS program has a different occupation list, the Employer Nomination Scheme Occupation List (ENSOL), to the 457 visa.

Over time, variations between the temporary and permanent employer sponsored occupation lists have occurred and are now problematic for the smooth transition of subclass 457 visa holders to permanent residence through the ENS.

## **3.3 English language**

### **Review consideration**

The review will consider whether the current English language standards for the ENS and RSMS support the overall aims of building self-reliance,

developing English language skills and fostering connections with mainstream services as soon as possible after settling in Australia.

### **English language standards**

The English language standards vary for each of the employer sponsored visas. The existing standards are:

- ENS visa applicants must demonstrate they have vocational English, which is comparable to a minimum score of 5 for each of the four test components of speaking, reading, writing and listening in the International English Language Testing System (IELTS) exam.
- RSMS visa applicants must demonstrate they have functional English, which is comparable to an average score of 4.5 across the four test components of speaking, reading, writing and listening in the IELTS exam.
- Labour agreement visa applicants must demonstrate they have the appropriate level of English specified in the relevant agreement. The default level is typically equivalent to vocational English (IELTS 5) for trade or semi-skilled occupations allowed under the agreement.

A lower English language standard has historically been applied to the RSMS in order to attract skilled migrants who could not meet the requirements for independent skilled migration or the ENS, but who would be willing to settle within communities in regional, remote and low population growth areas of Australia.

### **Waiving the English language requirement**

In the case of the ENS and RSMS programs, the English language standards do not have to be met by visa applicants if they can demonstrate that exceptional circumstances apply to their case.

Migrants with poor English language skills are supported by the government with access to English language tuition services as well as a range of other settlement services. However, it can be difficult for migrants in regional or remote areas to access these programs or obtain further training through a private training provider.

### **Workplace outcomes**

Poor English language skills are not necessarily an impediment to a person's ability to do the specific job for which they were selected to enter Australia. These workers have, however, been found to be more vulnerable to workplace exploitation and have limited future employment opportunities.

There has been significant research undertaken on this issue in the past which indicates poor English language skills can be detrimental to future workplace and employment outcomes, as well as the level of interaction with the local community.

ENS and RSMS visa holders are Australian permanent residents and have the same employment and workplace rights as any other Australian permanent resident or citizen. If their relationship with the employer deteriorates, they can seek redress through the Australian industrial relations system or find alternate employment. Poor English language skills can, however, restrict their options for the following reasons:

- they do not fully understand their employment rights
- they are reluctant to make any complaint to the proper authorities out of fear or a lack of understanding about the process
- communication difficulties would limit their career progression and future employment opportunities.

### **Settlement outcomes**

Migrants with poor English language skills who reside outside a major metropolitan or regional centre can also be disadvantaged by limited access to settlement services that potentially lead to:

- increased social isolation due to communication difficulties
- frustration at the lack of culturally appropriate services
- the lack of adequate social networks
- discrimination either in the workplace or the general community.

## **3.4 Age requirement**

### **Review consideration**

The review will consider the impact of the current age threshold against the background of the subclass 457 program which has no age requirement and the recent decision to increase the upper age threshold for the points tested skilled visas. It will also consider whether any discretionary power should be provided to consider visa applicants who do not meet the age requirement.

### **Current age requirement**

Employer sponsored visa applicants must currently be less than 45 years old when they apply for the visa, unless they can demonstrate exceptional circumstances apply to their case. From 1 July 2011, the government increased the age threshold for points tested skilled migrants from less than 45 years, to less than 50 years.

An age requirement is considered necessary because the more years a migrant spends in the workforce after they arrive, the greater their economic contribution to Australia which increases the overall wealth and standard of living of Australians.

### **3.5 The regional certifying network for RSMS**

#### **Review consideration**

The review will consider the role of certifying bodies for RSMS, including whether there should be a better structured framework and certification process to provide more focus on local labour market and economic conditions.

Possible considerations in this regard could include whether it is possible or desirable to reduce the size of the certifying network to a single state or territory government organisation within each state and territory, and providing a better targeted assessment criteria for certifying bodies to consider (for example, they could advise the department whether a nominated position's salary reflects local labour market conditions).

#### **The certifying network**

A diverse network of state and territory government agencies, local chambers of commerce, local government councils and regional development bodies currently operate as certifying bodies for RSMS.

Employers who want to nominate positions through the RSMS must first obtain certification from a certifying body before they can lodge the nomination with the department. Certifying bodies assess RSMS nominations against the following criteria:

- the employer is actively and lawfully operating in regional Australia
- the employer has a genuine need for a paid employee
- the appointment will provide full-time employment for at least two years
- the appointment will be located in regional Australia
- the appointment requires a person with at least an Australian diploma in order to perform the work, unless the appointment is exceptional.

The certification process is intended to ensure all RSMS nominations have been scrutinised by people outside the department who are familiar with local labour market conditions and who may be able to provide information on regional matters which the department may not be aware of.

Moreover, while there are lower visa requirements to access the program, the regional certifying body provides the community and the government with assurance that there is a genuine labour need and opportunities for Australians will not be diminished.

Issues affecting the current regional certifying framework primarily relate to the size and disparate nature of the RCB network, the duplication of work as the certification criteria is also the same criteria considered by nomination decision-makers, and the relative lack of uniform standards and controls in the assessment and reporting process.

There is some scope to standardise the fees through agreements with each certifying body, as well as the implementation of a certification training framework to ensure consistent decisions. However, the effectiveness of these measures is constrained by the very nature of the certifying network.

The imposition of standard fees may disadvantage smaller organisations without the economies of scale to reduce certification costs, while the subjective nature of some of the certification criteria, such as 'genuine need' and 'exceptional', is subject to individual interpretation of the policies and guidelines provided by the department.

### **3.6 *Exceptional circumstances and appointments***

#### **Review consideration**

The review will consider whether any discretionary powers should be retained for the ENS and RSMS and, if so, how these powers should be exercised.

Given the complex nature of the Australian labour market, it may be preferable to retain some flexibility to consider approving nominations and/or visa applications even if some criteria cannot be met. Any discretionary provisions would, however, need to address the particular aims of each program and be clearly defined in legislation.

#### **The current waiver provisions**

The employer sponsored visa programs provide immigration decision-makers with discretionary powers to consider some requirements to be met under certain conditions through the 'exceptional appointment' and 'exceptional circumstances' provisions.

The instances where these discretionary powers could apply are:

- employers who want to fill a vacancy in their business through the RSMS for an occupation with a skill level below a diploma-level qualification
- ENS and RSMS visa applicants who are 45 years or older when they first apply for the visa
- ENS visa applicants who do not have vocational English
- ENS visa applicants who have a satisfactory skills assessment which is relevant to the vacancy they are being nominated to fill, but they do not have at least three years of prior work experience
- RSMS visa applicants who do not have functional English
- RSMS visa applicants who do not hold an Australian diploma or higher qualification which is relevant to the vacancy they are being nominated to fill.

These discretionary powers provide decision-makers with the flexibility to consider an employer's or visa applicant's circumstances when they cannot meet the applicable nomination or visa criteria. On the other hand,

administration of these discretionary powers is problematic as the migration legislation does not provide any definitions, or specify any conditions, which can be considered to be 'exceptional'.

Individual perceptions of what can and cannot be considered 'exceptional' will always differ amongst decision-makers, employers and visa applicants. While these differences cannot be entirely mitigated, policy guidelines provide some guidance on how immigration decision-makers can consider 'exceptional' claims. Nevertheless, the subjective nature of these decisions can result in inconsistent decision-making.

Any discretionary powers do need to be limited. In some instances it may be counterproductive to the objectives of the program to waive certain requirements, such as English language skills, particularly in regional and remote communities. For example, migrants with low English language skills may be less likely to remain in communities with limited English language training resources.

### **3.7 *Electronic lodgement***

#### **Review consideration**

The review will consider replacing the current paper-based lodgement process with full electronic lodgement. The employer sponsored programs will intersect with the fully electronic *SkillSelect*, from 1 July 2012.

#### **Current Arrangements**

ENS and RSMS nominations and visa applications are currently paper-based applications that are lodged and processed at the department's centres of excellence. The introduction of *SkillSelect* provides an opportunity to move away from the current paper-based system towards an online lodgement facility. The move to an electronic process is expected to improve processing times, improve the accuracy of information received, and enable the streamlining of departmental administrative procedures.

### **3.8 *Further comment***

The above specific list of topics for consideration should not be considered exhaustive. The department would welcome further comment and suggestions around the broad themes outlined on page 8 of this discussion paper.

### Employer sponsored programs

#### 2011-12 migration program

The employer sponsored visas are now integral elements of the government's focus on 'demand-driven' skilled migration policies that ensure skilled migration outcomes actually meet the current needs of Australian employers.

A total of 46 000 places have been allocated to the employer sponsored visa categories for the 2011-12 migration program, representing a 4 per cent increase over the last program year. The government has also recognised the importance of regional skilled migration and has set aside 16 000 of these places for the RSMS.

The department's skilled visa processing arrangements have also been changed to reflect the government's regional priorities. RSMS and other permanent regional migration visa applications have the highest processing priority, followed by ENS visa applications.

#### Common characteristics

The employer sponsored visas share the following common characteristics:

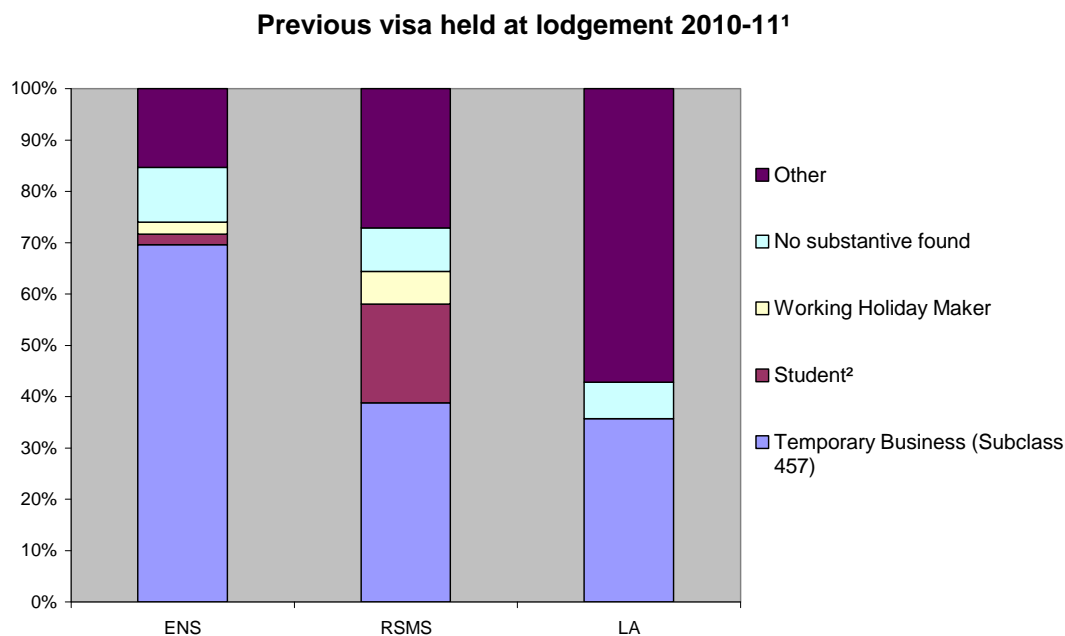
- The visa applicant must be nominated by an employer for an acceptable occupation. The ENS specifies eligible occupations on the ENSOL.
- The visa applicant must be employed on a full-time basis with an appropriate salary and working conditions.
- The visa applicant must have the appropriate qualifications and/or experience to perform the work.
- The visa applicant must be able to meet the English standard appropriate to the visa. This is typically either functional English or vocational English.
- The visa applicant must be less than 45 years old unless they can demonstrate that exceptional circumstances apply.
- Visa holders can access free English language tuition through the AMEP if they do not have Functional English.
- The visa applicant and family members must meet health and character requirements.

#### Temporary visa holders applying for permanent residence

In 2010-11, 85 per cent of the total employer sponsored visa applications related to the onshore visa subclasses, which requires the visa applicant to be in Australia as the holder (or recent holder) of an eligible temporary visa.

The graph below provides a break down of the types of temporary visa that were held by people who applied for an employer sponsored visa in 2010-11.

**Figure 2:**



<sup>1</sup> Data for 2010-11 program year is to 30 June 2011

<sup>2</sup> Student visa subclasses included in this figure: 570, 571, 572, 573, 574, 575 & 576

## Employer Nomination Scheme

The ENS allows employers anywhere in Australia to sponsor skilled foreign workers for permanent residence. Some key elements of the ENS include:

- There is a broad list of skilled occupations which can be accepted.
- Nominated positions must provide an annual salary of at least \$49 330, or \$67 556 for certain information technology positions.
- The assessment of a visa applicant's work skills depends on a satisfactory skills assessment from an appropriate assessing authority, previous Australian employment while holding an appropriate temporary visa, or employment at an 'executive-level' position with a commensurate salary.

## Regional Sponsored Migration Scheme

The RSMS allows employers in regional, remote and low population growth areas of Australia to sponsor skilled foreign workers for permanent residence.

Some of the key elements of the RSMS include:

- The nominating business must be located anywhere in Australia other than Perth, Sydney, Wollongong, Newcastle, Melbourne, Brisbane and the Gold Coast. The Minister recently announced the inclusion of

Perth as an eligible area for the RSMS; this change will be implemented by October 2011.

- Any skilled occupation can be considered. Semi-skilled occupations might be considered if the employer can demonstrate exceptional and compelling reasons to justify their need for these workers.
- Nominated positions must provide an annual salary that meets any applicable Australia award or relevant legislation.
- The visa applicant must hold an appropriate Australian diploma-level or higher qualification or be able to show there are exceptional and compelling reasons as to why their case should be considered on the grounds of 'exceptional circumstances'.

### Distribution of RSMS visa grants

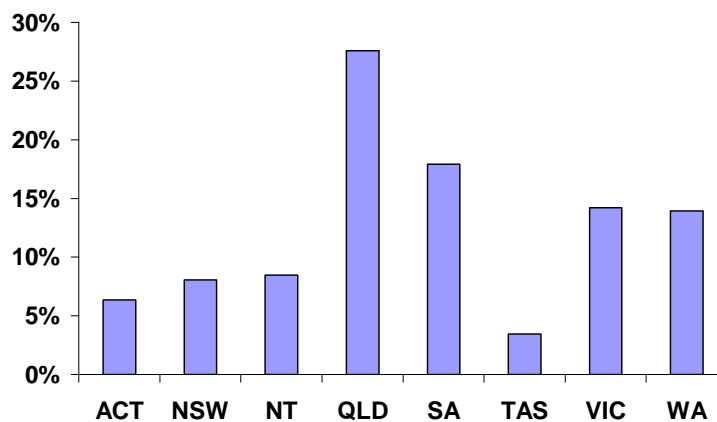
Not surprisingly, employers in the resource boom states of Queensland and Western Australia are amongst the biggest users of the RSMS. These two states alone represented more than a third of the RSMS visas granted in 2010-11. South Australian and Victorian employers are also major users of the program.

The RSMS is also an important source of skilled workers for other regions where the population growth and the national proportion of general migration activity is low. Many employers in these regions rely on the flexibility of the RSMS to accommodate specific labour needs and market conditions that cannot be provided through other skilled visa programs like the ENS and the subclass 457 visa.

The graph below provides a breakdown of the distribution of RSMS visa grants for 2010-11.

**Figure 3:**

**Summary of RSMS visas by state of intended residence 2010-11\***



*\*Data for 2010-11 program year is to 30 June 2011*

## **Labour agreement**

A labour agreement is a formal arrangement negotiated between the government and an employer which allows the recruitment of a specified number of overseas workers across a broad range of occupations in response to specific skill shortages.

These agreements provide a flexible visa framework that can accommodate the specific skill needs of Australian employers which may be beyond the scope of other skilled visa programs.

Some key elements of the labour agreement include:

- An agreement is usually active for two to three years.
- Any skilled or semi-skilled occupation can be considered within an agreement. This can include occupations that are not described in the Australian New Zealand Standard Classification of Occupations (ANZSCO).
- The requirements that an employer and any visa applicants must satisfy are outlined in the agreement. This would include provisions in relation to minimum salaries and English language requirements.
- An agreement can be negotiated to provide both temporary and permanent visa options through the subclass 457 and labour agreement visas respectively.

With the emergence of acute skill shortages in some sectors of the economy that go beyond the traditional scope of the skilled migration programs, the department is in the process of developing targeted migration agreements to facilitate access to semi-skilled workers for employers in these sectors.

## **Enterprise Migration Agreement**

Enterprise Migration Agreements (EMAs) are a new temporary migration initiative developed to address the specific labour needs of the resource sector. Further information about the EMA process is available on the department's website.

**See:** [www.immi.gov.au/media/fact-sheets/48a-enterprise.htm](http://www.immi.gov.au/media/fact-sheets/48a-enterprise.htm)

## **Regional Migration Agreement**

As part of Budget 2011-12, the government announced the introduction of Regional Migration Agreements (RMAs) to bring together employers, local and state government and unions to cooperate on addressing regional workforce shortages.

RMAs will be a coordinated response to help specific regions with their local labour needs while ensuring Australian workers remain the first choice for employers and industry.

Each RMA will be custom-designed for a geographically defined region in Australia and provide arrangements that set out the occupations and numbers of overseas workers needed for the region. Conditional access to semi-skilled workers can be negotiated if there is a demonstrable need.

An RMA will be negotiated between the government and regional representatives. Individual employers will then directly sponsor workers under the broader coverage of the RMA.

The RMA stakeholder consultations should begin in early 2011-12.

Further information about the RMA consultation process is available on the department's website.

**See:** [www.immi.gov.au/skilled/regional-migration-agreements.htm](http://www.immi.gov.au/skilled/regional-migration-agreements.htm)

### Australia's migration program

The employer sponsored programs comprise only part of Australia's overall migration intake and cannot be viewed in isolation. This Attachment provides an outline of the broader migration program.

#### Overview of the migration program

Australia's migration program is the mechanism that the government uses to select and control the entry of people who want to live in Australia on a permanent basis. The migration program has two components:

- Migration, for skilled, family and special eligibility migrants
- Humanitarian, for refugees and others in humanitarian need.

The level of the overall migration component of the migration program in 2011-12 has been set at 185 000 places, of which 46 000 places have been allocated to the employer sponsored visa categories.

Further information on the Migration Program is available on the department's website.

See: [www.immi.gov.au/media/fact-sheets/](http://www.immi.gov.au/media/fact-sheets/)

#### The skill stream

The skill stream falls within the migration component of the migration program and is specifically designed to target migrants who have skills or outstanding abilities that will greatly benefit the Australian economy.

The government continues to emphasise skilled migration as a key component of policies that seek to address the critical skills shortages emerging in the Australian economy, as well as to address medium to long term skills needs. The continued migration of highly skilled workers helps Australian employers with maintaining or expanding their business operations, while also increasing domestic demand for Australian goods and services.

There are four categories of skilled migrants:

- The employer sponsored category allows Australian employers to nominate the skilled workers they want to recruit. Since 2009-10 the employer sponsored category has been the largest component of the skill stream.
- The points tested visa category provides options for skilled workers who want to live in Australia but who do not have an employer who can nominate them. These migrants are selected on the basis of their nominated occupation, age, skills, qualifications, English language ability and work experience to ensure they can quickly enter the Australian labour market. Up until 2009-10, the points tested

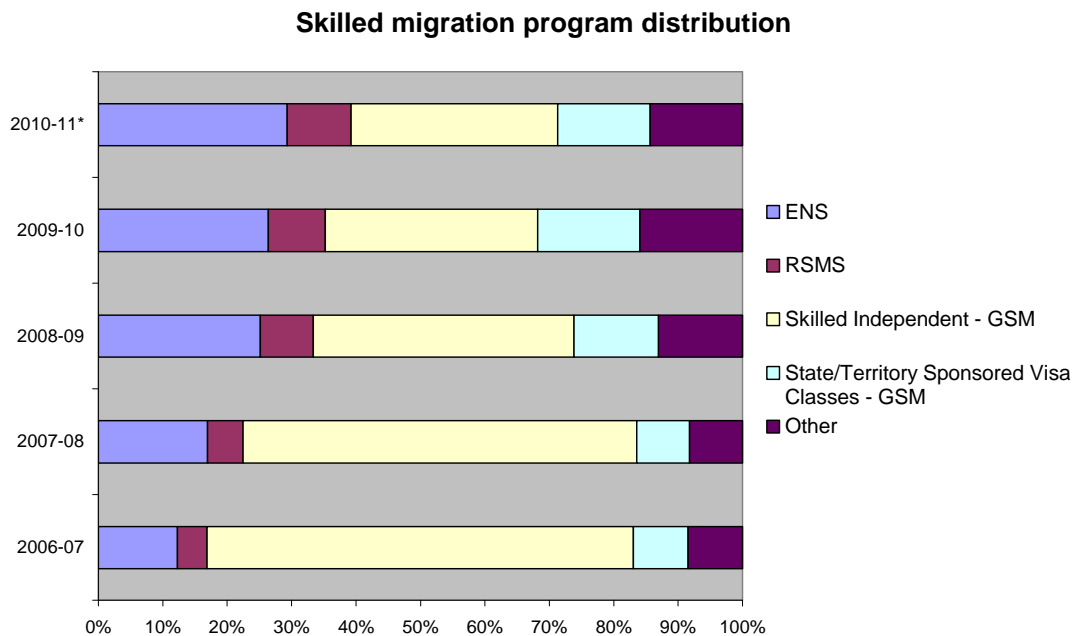
Independent visa sub-category was the primary driver of skilled migration to Australia.

- The business skills category encourages successful business people or entrepreneurs to settle in Australia in order to operate or establish a business.
- The distinguished talent category encourages people who are internationally recognised for their work in a profession, sport, the arts, academia or research to settle in Australia.

The planned level for the skill stream in 2011-12 has been set at 125 850 places. This represents 68 per cent of the overall migration program.

The graph below shows the distribution of the skill stream by visa type since 2006-07.

**Figure 4:**



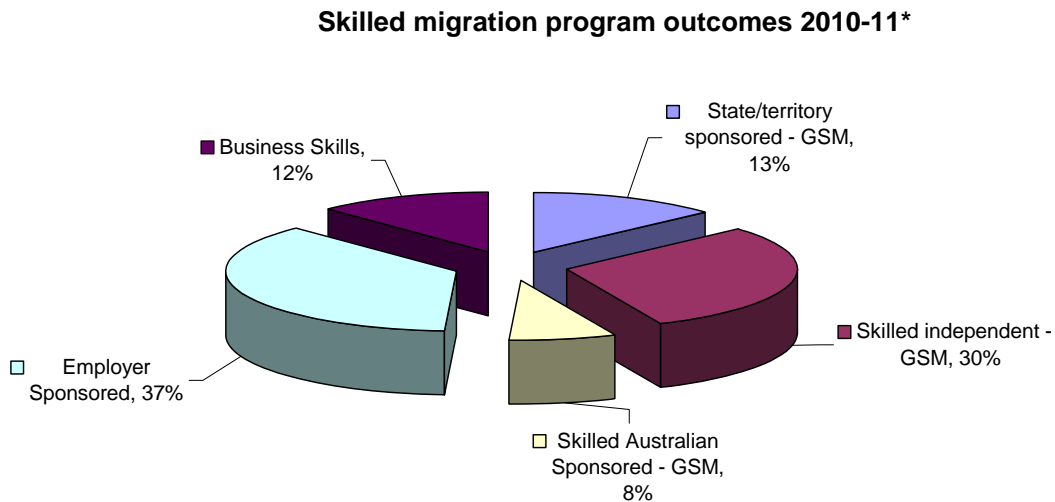
*\*Data for 2010-11 program year is to 30 June 2011*

As shown in Figure 4, the employer sponsored programs have become one of the major drivers of skilled migration in recent years.

The upward trend for the ENS in particular generally corresponds with the strong growth of the subclass 457 program; one of the reasons that can be attributed to this alignment are employers who sponsor their subclass 457 visa holders for permanent residence do so in order to retain their skills within the business.

The graph below shows the aggregate employer sponsored program outcomes compared to other visa programs in the Skill Stream for 2010-11.

Figure 5:



*\*Data for 2010-11 program year is to 30 June 2011*

## Broad changes to the migration process

### Visa simplification

The government has committed to rationalising the visa framework to make it simpler and more efficient. One of the aims of the visa simplification agenda is to reduce the total number of visa subclasses by 50 per cent by 2015.

A simplification of the visa framework will:

- reduce confusion for clients when choosing a visa
- reduce the level of complexity for clients during the application process
- standardise legal requirements where appropriate
- reduce compliance costs to business
- enhance program integrity and program design in such a way to allow for better analysis and management of risk, fraud and intent
- maintain Australia's competitiveness in attracting quality migrants.

Further information about the visa simplification process is available on the department's website.

See: [www.immi.gov.au/media/publications/discussion-papers/simpler-visas.htm](http://www.immi.gov.au/media/publications/discussion-papers/simpler-visas.htm)

## ***SkillSelect***

From 1 July 2012, *SkillSelect* will build upon and draw together the suite of reforms which have been implemented for the Skilled Migration Program over the past three years to deliver the skills that Australian employers need by selecting the best and brightest migrants.

*SkillSelect* will be an electronic system based upon a two-stage process where prospective applicants first submit claims for skilled migration through an online Expression of Interest facility, and subsequently may be invited to make a visa application, ensuring a match between the number of applicants and the number of available program places.

Further information about *SkillSelect* can be found on the department's website.

**See:** [www.immi.gov.au/skilled/general-skilled-migration/skillselect.htm](http://www.immi.gov.au/skilled/general-skilled-migration/skillselect.htm)

### **Skilled and semi-skilled migration**

The employer sponsored visas are intended for migrants who have been nominated to work in skilled occupations. These occupations generally require formal post-secondary education qualifications at the vocational or tertiary level, as well as some prior period of work experience.

#### **Determining an occupation's skill level**

The department uses the Australian New Zealand Standard Classification of Occupations (ANZSCO), developed by the Australian Bureau of Statistics, as the basis for identifying which occupations are considered to be 'skilled' occupations and could therefore be accepted for these visas.

The ANZSCO is a skill-based classification which identifies the specific attributes of each occupation to determine an appropriate skill level based on the level of formal Australian education or training, any previous relevant work experience and the amount of on-the-job training required.

The department considers skilled occupations to be comparable to any ANZSCO occupation with a skill level of 1-2, and a skill level of 3 for trade occupations. This is equivalent to occupations with a requirement for a relevant Australian trade, diploma, degree or higher qualification.

Additionally, an appropriate trade qualification can be either an Australian trade certificate or a minimum certificate III awarded under the Australian Qualifications Framework (AQF).

#### **Semi-skilled workers**

Semi-skilled occupations are considered to be comparable to any ANZSCO occupation with a skill level of 3 (for non-trade occupations) or 4, which is equivalent to an AQF certificate qualification.

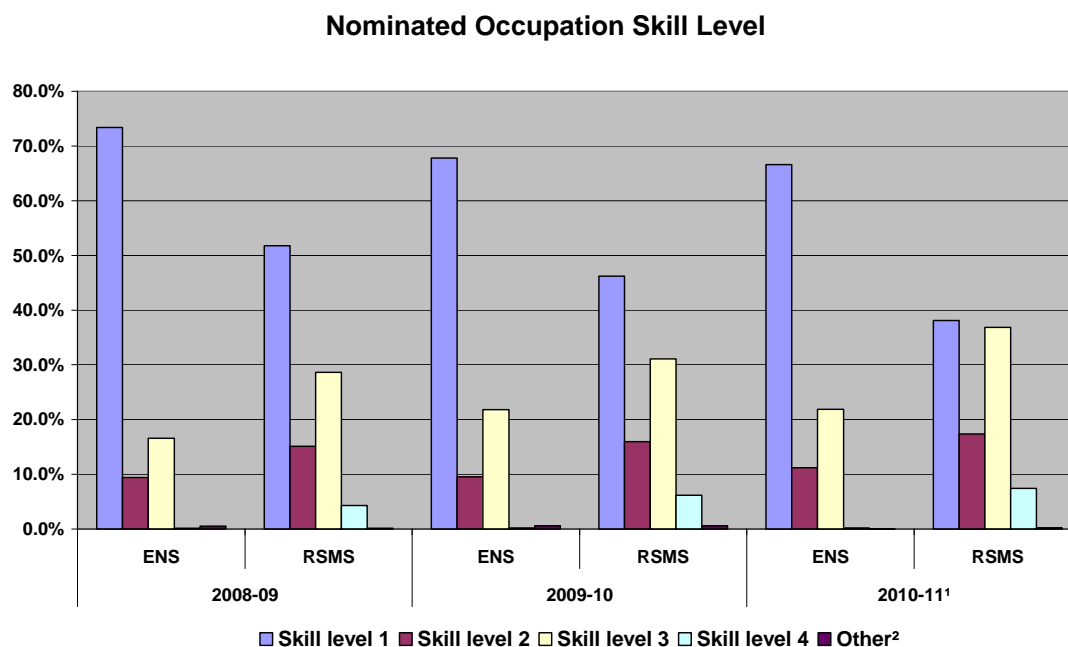
While some of the employer sponsored visas have some capacity to allow employers to sponsor semi-skilled foreign workers, this is only possible either through a labour agreement or, under specific circumstances, through the RSMS.

Some semi-skilled occupations can be sponsored through the EMAs and RMAs where the labour market cannot supply sufficient workers. These semi-skilled occupations would normally require a higher level of training or experience to perform the work.

## Analysis of nominated occupations

The graph below outlines the distribution of occupations nominated for the ENS and RSMS, sorted by the ANZSCO skill level.

Figure 6:



<sup>1</sup> Data for 2010-11 program year is to 30 June 2011

<sup>2</sup> Other category includes skill level 5 occupations and unknown

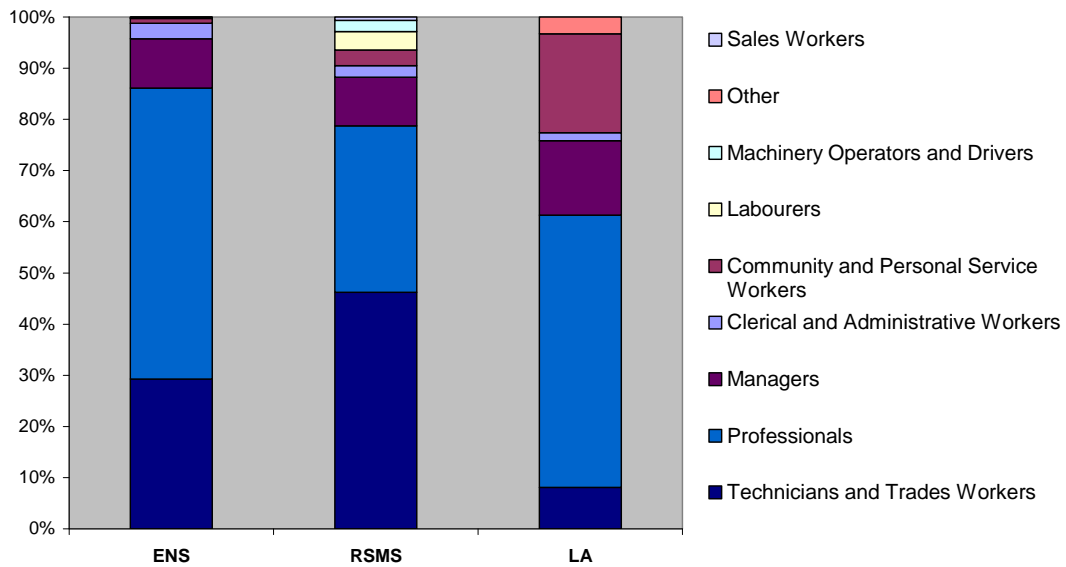
Some trends can clearly be identified from Figure 6:

- The majority of occupations nominated through the ENS have been predominantly managerial and professional occupations which require people to hold a degree-level or higher qualification (skill level 1).
- The proportion of occupations nominated through the ENS and RSMS which require people to hold a diploma-level qualification (skill level 2) has been fairly consistent within each program since 2008-09.
- While there have been some variation between program years, roughly a third of occupations nominated through the RSMS are trade occupations which require people to hold an AQF certificate III or IV (skill level 3).

The significant increase in the proportion of skill level 3 occupations nominated through the RSMS in 2010-11 is best explained in the graph below, which shows the types of occupations nominated for each employer sponsored program.

**Figure 7:**

**Composition of occupations nominated in 2010-11\***



*\*Data for 2010-11 program year is to 30 June 2011*

Technical and trade occupations comprise almost half of occupations nominated through the RSMS in 2010-11. This can be largely attributed to the influx of overseas-trained tradespersons to regional, remote and low population growth areas who were recruited to work on resource projects, or to fill vacancies caused by the departure of Australian tradespersons to work on resource projects.