

# Iscah Migration Newsletter

Edition Number 188 | 17th February 2014

*Hiya folks,*

Bet you getting excited with that smell of leather in the air ! The expectations, the journey of highs and lows, the good breaks and bad umpires ! Bring on the 2014 AFL footy season, it's just around the corner. Hopefully losing narrowly to Hawthorn in last years Grand Final will drive my footy team, the Fremantle Dockers just that one small step further, and give me an excuse to take my son to Melbourne again, what a sporting city.

Anyhow on to more mundane issues such as this months newsletter ha

This newsletter brings together all the major changes we are aware of plus a little bit of commentary to help you understand some of the visa processes for coming to Australia. Back copies are available at our website of [www.iscah.com](http://www.iscah.com) and if you have any suggestions please drop us a line to [newsletter@iscah.com](mailto:newsletter@iscah.com)

On we go...



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## 1) Update to the WA State Migration Plan

Two items from the WA State Government in the last few weeks :

- The following occupations on the Western Australian skilled migration occupation list are now closed: ANZSCO 233111 Chemical engineer; and ANZSCO 233912 Agricultural engineer. If your occupation is closed you will not receive an invitation to apply for State nomination. If you have already received an invitation, your application will not be affected. See the occupations in demand page for all available occupations
- The new criteria for State nomination will be released at 12.00pm on 1 March 2014. Until its release, the 2012-13 State nomination criteria will remain in place. If you receive an invitation to apply for State nomination before the release of the new criteria, your application will not be affected.

(Source: WA State Government)

## 2) DIBP change on policy for students changing from SVP courses

8516 Cancellation Warning Letters - Students Changing from SVP to Non-SVP eligible Subclass 573 courses

The Director of Student Policy Projects this morning provided clarification regarding students who received letters from the Department... after changing courses from Streamline Visa Processing (SVP) eligible subclass 573 courses to non-SVP eligible course. The text of the notification appears below:

I am writing to provide a further update regarding the department's education campaign to raise awareness amongst the international student community about visa conditions and the possible impacts of changing course. Further detail regarding this education campaign is also available at the following link:

[www.minister.immi.gov.au/media/mc/2014/mc210831.htm](http://www.minister.immi.gov.au/media/mc/2014/mc210831.htm)

Advice letters and next steps

As you will recall the department has been directly engaging with students who have arrived under streamlined visa processing (SVP) and then changed to a non-SVP eligible course. These students received an advice letter and have been provided with an opportunity to explain their circumstances.

Over the last few weeks we have received a large number of responses to these advice letters. The department has also received a significant amount of feedback from education providers. From the information provided it is clear that a number of students were unaware of the possible impacts of changing courses, particularly those students who have transferred to another provider or course within the higher education sector (including those students who have transferred to non-SVP eligible courses at a university).

The primary objective of the department's education campaign is to raise awareness. As such, we consider that it would not be reasonable to penalise students who may have unintentionally breached the conditions of their visa prior to the launch of the campaign. As you will be aware, the department no longer has a mandatory cancellation regime. This provides greater discretion to ensure that we can better target integrity risk but also, deliver fairer outcomes for students.

We are keen to provide as much certainty to affected students as possible. With this in mind and following consideration of the information provided by students and other stakeholders, we have decided that we will not take any further action against students who meet the following characteristics:

Transferred from a SVP eligible subclass 573 course to a non-SVP eligible 573 course prior to

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the launch of the 14 January 2014 education campaign (e.g. from a bachelor degree course at a university to a bachelor degree course at a non-university provider); and  
Continue to meet all other requirements and conditions of their visa  
We will write to students who meet these characteristics on an individual basis to advise that they will not be subject to cancellation as a result of their course transfer.

We continue to consider whether further action is appropriate for other students who have received an advice letter on an individual basis, this includes students who have transferred from a SVP course to a course in another education sector. We note in this regard that irrespective of SVP such students would likely be in breach of condition 8516. We will provide a further update regarding this cohort at a later stage.

Moving forwards, from a general perspective, students who were granted a visa to study an SVP eligible course will be expected to apply for a new student visa before commencing and transferring to a non-SVP eligible course. We are currently reviewing information provided to students to ensure they are aware of this requirement in future.

(Source: DIBP/MIA)

### 3) Comment on last years skilled migration program

AUSTRALIA'S skilled migration program has been called into question with the revelation that cooks received more visas than any other group last year. Hairdressers also made the top five in a system that is supposed to target the most needed skills for the nation.

More than 8000 cooks got permanent visas in 2012-13, followed by 5700 accountants, 2160 software engineers, 1550 IT business analysts and 1500 hairdressers.

Skilled migration is dominated by Indians and Chinese, who comprised about half of the 129,000 places approved last year.

Monash University migration expert Bob Birrell said the spike in visas for cooks and hairdressers was caused by allowing former foreign students who were living here to apply for permanent residency.

Dr Birrell said that these people were caught out by changes to the skilled migration rules but the Immigration Department had unwisely told them they could continue to apply for residency.

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"Now that demand for migration is tapering off a bit they are obliged to deal with these applicants," he said.

"They are filling up their quota with these warehoused applicants, that's why we're getting so many cooks."

Dr Birrell said it was ridiculous to say that Australia had a highly skilled migration program. "The program has a life of its own and it's continuing at very high levels notwithstanding the sharp downturn in the need for skilled migrants," he said.

According to the department's 2012-13 Migration Program Report, the skilled migration system focused on migrants to help fill critical skill needs, particularly in regional areas.

This included almost 50,000 places nominated by employers and state or territory governments, and 44,000 in the skilled independent category.

There were more than 114,000 applicants waiting to be processed for skilled migration as of June 30 last year.

(Source Herald Sun)

## 4) Skilled Migration for Tasmanian Migration

From 28 January 2014, the Tasmanian Government will be changing the eligibility requirements for 'Tasmanian graduates' under the Subclass 190 visa. All applicants who studied at the University of Tasmania and/or TAFE Tasmania for at least two years can apply for 190 sponsorship provided that they meet the 190 visa requirements set by the Department of Immigration and Border Protection (DIBP).

The previous requirements such as three month post qualification work experience and six months of business ownership have been revoked. If the nominated occupation is not on the Tasmanian State Migration Plan – Occupation List (Tasmanian SMP List), the applicant will be awarded an off-list nomination. Again, this change applies only to those who studied at the University of Tasmania and/or TAFE Tasmania only. Sponsorship requirements for those who have not studied in Tasmania have not changed.

(Source: Tasmanian State Migration)

## 5) Stopping study to work in Australia

### A fictional example:

José arrived in Australia on a Vocational Education and Training Sector (subclass 572) student visa.

He was from Peru and came to study in Australia as he had heard it was a great country to receive an education.

José enrolled in a Diploma of Information Technology. He was not sure what career path he would eventually take and felt that information technology was a good starting place.

He commenced his Diploma at Boomerang College and made a lot of friends in Australia while studying. One of his friends told him about casual work available at the local Greek Taverna and José started to work there on weekends. He was aware of his visas work conditions and only worked 10 hours per day on the weekends to ensure he didn't work more than the maximum of 40 hours per fortnight allowed.

José enjoyed working at the Greek Taverna and wanted to increase his hours for a short while. He stopped attending classes and thought he would return to Boomerang College the following semester.

As his intention was to only work full-time for one semester, José did not think there would be a problem with not attending class.

A short while later, José received a notice from Boomerang College advising they were going to report him for unsatisfactory attendance. The notice said he could access the College's complaints and appeals. José was surprised to receive the notice and the following day attended Boomerang College to speak with the student advisor.

José explained he intended to work full-time this semester and return to his diploma the following semester. The student advisor told José he was breaching his visa conditions by working full-time and not attending classes. The advisor explained students are able to defer or temporarily suspend their studies; however this would only be approved on the grounds of compassionate and compelling circumstances. He was also told that suspending or cancelling his enrolment may affect his student visa.

José did not take the advice he received from the student advisor seriously and continued to work full-time.

Boomerang College cancelled José's certificate of enrolment and José soon received a Notice of Intention to Consider Cancellation of his student visa from the Department of Immigration and Border Protection. He did not respond to the notice and the department cancelled his student visa.

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As a result of the cancellation, José is barred from applying for various types of visas while in Australia and is subject to a three-year exclusion period (re-entry ban) that may affect his ability to be granted a further temporary visa. José lost his job and no longer had a visa—he had to return to his home country.

(Source: DIBP)

## 6) New Zealanders living in Australia before 1994

Many New Zealanders who arrived in Australia before September 1994 and lost their permanent status by not being in Australia in February 2001 may have an avenue to re-acquire their Australian Permanent status :

The main purpose of Resident Return Visa (RRV) arrangements is to allow people who are permanent residents of Australia to travel internationally and return to Australia as permanent residents. In addition, these arrangements allow certain people who have previously been permanent residents or citizens of Australia to regain their status as permanent residents.

The Department's policy position is that a former Australian permanent resident can include any person who was considered a permanent resident under migration arrangements in place at that time. This means that people who entered Australia as New Zealand citizens before 1 September 1994 may be considered a former permanent resident.

To be eligible for an RRV, a former Australian permanent resident must meet two additional requirements:

### 1. Substantial ties of benefit to Australia.

You must provide evidence that proves you have substantial business, cultural, employment or personal ties of benefit to Australia. While not exhaustive, following are some examples of what may be needed to demonstrate you have such ties.

**Business ties:** If you are claiming business ties with Australia, you will need to provide proof of the ties and explain how they are of benefit to Australia. You will need to show that you have substantial ownership interests in the business and are personally involved at a senior level in the day-to-day operations and management of the business. The business activity needs to be ongoing, regular activity that is commercial in nature, has an intention to make a profit and has a system of record keeping and management that substantiates the business activity claimed.

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**Cultural ties:** There are a range of intellectual, artistic, sporting or religious pursuits which are not strictly of a business or employment nature but may be considered to be a cultural tie to Australia.

If you are claiming cultural ties, you will need to provide proof your role is adding to Australia's cultural life. This can include publications you have written, your membership of cultural associations, any media articles about you or proof of your performances.

**Employment ties:** To prove you have employment ties to Australia, you must show that you are currently employed, or have a formal offer of employment in Australia.

**Personal ties:** Substantial personal ties may be of benefit to Australia if you are, or have been, a participating member of the Australian community and economy. Living in Australia for a substantial period of time or living with an Australian citizen partner is taken into account. Proof of personal assets held in Australia or family who live in Australia could also help to demonstrate personal ties if you are able to show they are both substantial and of benefit to Australia.

## **2. Compelling Reasons for absence greater than 5 years**

If you have been physically absent from Australia for more than five continuous years since the date you were last granted permanent residence (i.e. for a New Zealand citizen, your last arrival in Australia before 1 September 1994) you must provide evidence that there was a compelling reason for your absence.

You do not need to demonstrate compelling reasons for your entire absence from Australia. There must however be compelling reasons for any absence(s) from Australia greater than 5 years duration. While this may involve demonstrating why you were unable to return to Australia at the end of an absence, equally it may be that you are able to demonstrate that an event or reason that occurred at the beginning, in the middle, or on several separate occasions throughout the period of absence resulted in a total period overseas that exceeded 5 years.

The term 'compelling' is not defined in migration law, so its ordinary (dictionary) meaning applies. The term compelling implies that the reasons for the absence should be forceful to the person concerned.

Key elements in this also include the amount of time you previously lived in Australia, intentions of returning to Australia to live and the amount of time you have subsequently lived in Australia. Ultimately the issue is whether a reasonable person, faced with the same set of circumstances, would have made the same decision.

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Some examples of compelling reasons include, but are not limited to:

- severe illness or death of an overseas family member.
- work or study commitments by you or your partner that are of a professional nature, in circumstances where the acquired experience results in a benefit to Australia.
- You were living overseas in an ongoing relationship with an Australian citizen partner.
- You or a family member were receiving complex or lengthy medical treatment preventing travel.
- You or a family member were involved in legal proceedings such as sale of property, custody, or contractual obligations
- You were caught up in a natural disaster, political uprising or other similar event preventing travel
- You can demonstrate you were waiting for a significant personal event to occur that prevented you from relocating to or returning to Australia. The period of time for any such event would have to be reasonable in its context, for example:  
a 12 month delay while waiting for a dependent child to complete their schooling or a tertiary qualification is likely to be a decision that a reasonable person, facing the same set of circumstances would make
- waiting to relocate to Australia for several years until a dependent child completes their schooling or course of study would not of itself be considered a decision a reasonable person would make.

The form needed to apply for an RRV is Form 1085 - Application for a Resident Return visa (RRV). The fee for this visa application is currently \$300.

(Source: DIBP)

## 7) Push for Aged Care to be in Skilled Occupation List

Australia's Age Discrimination Commissioner Susan Ryan has requested that the Minister for Immigration consider including 'aged care worker' on the skilled occupation list.

Ms Ryan said that many valuable aged care workers came from recent immigrant populations and through "more targeted immigration initiatives" Australia could increase the number of skilled aged care workers.

She also singled out career changers as another important source of potential workers for the sector. "Increasingly, aged care workers also come from other parts of the labour market, from second or third career moves, or people coming from declining sectors – and aged care can be a good option for older workers who are having difficulty finding jobs," she said.

Speaking at the National Aged Care Alliance meeting in Canberra on Friday, Ms Ryan said a "looming human rights disaster" in the provision of aged care could be diverted, but only if society placed a higher value on careers in aged care. Central to this would be better opportunities for immigrants and career changers, she said.

Ms Ryan highlighted the fact that the number of people in Australia aged 85 and older was projected to quadruple to more than 1.8 million over the next 40 years.

"We need to recognise and plan for this increased need for health service provision. This is an urgent and critical challenge for Australia: if we don't provide properly for aged care, we will have a human rights disaster on our hands."

While the aged care reforms improve on previous policies and programs by including a consumer choice approach, Ms Ryan said the real test lied in the implementation – providing aged care that was fully respectful to the rights of older people.

"The provision of aged care must align with the principles and obligations to which Australia has committed under international human rights instruments – principles such as non-discrimination and equality, participation, monitoring and accountability mechanisms and remedies. Our carer workforce will be key to success.

She said the biggest implementation issue came down to carers – who they were, how they were trained, how they were rewarded, whether there was enough of them. "We do not have enough now and unless we introduce new approaches, we won't have anywhere near enough in 40 years."

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Ms Ryan emphasised that if more people were to choose to become aged care workers then incentives, support, promotion and encouragement was needed. "We must place more value and prestige on careers in aged care, and improve the training and rewards for these crucial jobs."

(Source: [www.australianageingagenda.com.au](http://www.australianageingagenda.com.au) )

**Iscah Note :** Further to this story we contacted the Assistant Minister's Office in December 2013 and were advised that the Minister is VERY aware of this issue and working towards a workable solution.

## 8) Clarification on when 4020 starts if you lodge an MRT appeal

A significant number of visa applications are being refused through the character provision of 4020. Which basically means you have provided false, fraudulent or misleading information to DIBP in a visa application. It results in a 3 year exclusion on many further visa applications. We asked DIBP the affect of a person lodging an unsuccessful MRT appeal against a 4020 refusal and got the reply underneath ...

To DIBP : My question relates to 4020 exclusion periods.

Fictional scenario

1st July 2012 - 485 refused on 4020 fraudulent documents 20th July 2012 - MRT lodged to appeal this decision 1st July 2014 - MRT affirm the decision to refuse on 4020 grounds

Applicant later wants to apply for a 309/100 Partner visa

Is the 3 year exclusion calculated from the initial 485 refusal on 1st July 2012 OR from the MRT decision to affirm this refusal on 1st July 2014 ?

The MRT often state that they are making a fresh decision, then their decision records use the word "affirm". So we would appreciate clarification here.

Many thanks  
Steven O'Neil

DIBP Reply :

The exclusion period commenced from the initial 485 refusal date on 1 July 2012.

**In short an unsuccessful MRT appeal does not prolong the pain of the 4020 exclusion period.**

## 9) SkillSelect Invitations to apply to migrate - 10 February Round Results

The table below shows the number of invitations issued in the SkillSelect invitation round on 10 February 2014.

10 February 2014

| Visa Subclass                                 | Number |
|---|--------|
| Skilled - Independent (subclass 189)          | 950    |
| Skilled - Regional Provisional (subclass 489) | 35     |

During 2013-14 the following number of invitations have been issued:

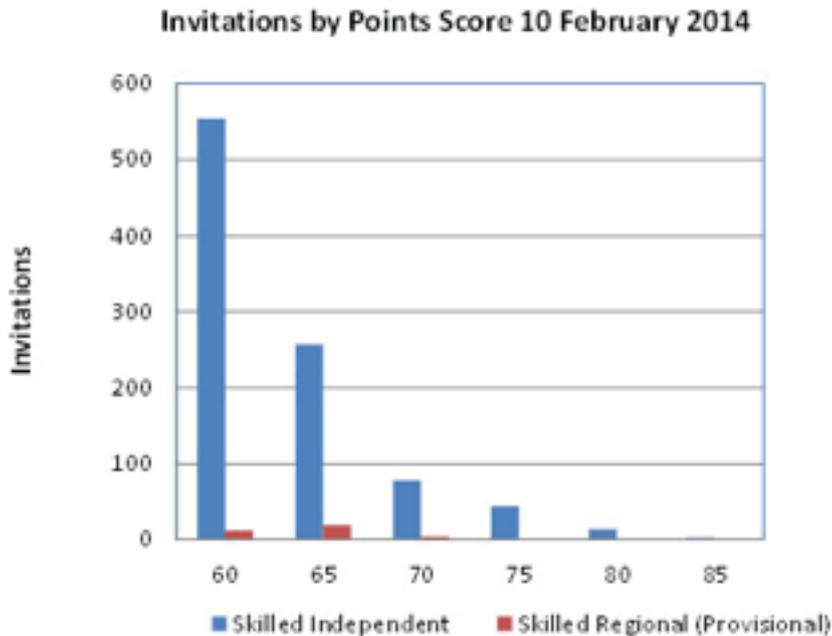
| Visa Subclass                        | July        | Aug         | Sep         | Oct         | Nov         | Dec         | Jan         | Feb        | Total         |
|--------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|------------|---------------|
| Skilled - Independent (subclass 189) | 2300        | 2300        | 1842        | 1900        | 1866        | 1774        | 1900        | 950        | 14,832        |
| Skilled - Independent (subclass 189) | 200         | 144         | 80          | 100         | 66          | 72          | 70          | 35         | 767           |
| <b>Total</b>                         | <b>2500</b> | <b>2444</b> | <b>1922</b> | <b>2000</b> | <b>1932</b> | <b>1846</b> | <b>1970</b> | <b>985</b> | <b>15,599</b> |

The above figures do not include invitations issued for State and Territory Government nominated visa subclasses. State and Territory Governments nominate throughout the month for specific points tested skilled migration and business innovation and investment visas. Separate results for these visa subclasses are provided monthly.

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## 10 February 2014 Results

The following graph shows the points for clients who were invited to apply in the 10 February 2014 round:



### Invitation process and cut offs

The highest ranked clients by points score are invited to apply for the relevant visa. For clients who have equal points scores, the time at which they reached their points score for that subclass (referred to as the visa date of effect) determines their order of invitation. Expressions Of Interest with earlier dates of effect are invited before later dates.

10 February 2014 invitation process and cut -off date by point score

| Visa Subclass                                 | Points score | Visa date of effect |
|---|--------------|---------------------|
| Skilled - Independent (subclass 189)          | 60           | 1/2/2014 11.33 pm   |
| Skilled - Regional Provisional (subclass 489) | 60           | 13/12/2013 12.48 pm |

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Due to the continuing high numbers of EOIs received for the following six occupations, invitations for these occupations will be issued on a pro rata basis in each twice monthly invitation round over the remainder of the 2013-14 programme year. Please also note that SkillSelect first allocates available places to Skilled – Independent (Subclass 189) visas and then remaining to Skilled – Regional (Subclass 489) (Provisional – Family Sponsored) visas. If all places are taken up by Subclass 189 visas then there will be no invitations issued for Subclass 489 visas:

- Chemical and Materials Engineers
- ICT Business and Systems Analysts
- Electronics Engineers
- Telecommunications Engineering Professionals
- Other Engineering Professional
- Software and Applications Programmers

The points scores and the visa dates of effect cut-offs for these occupations in the 10 February 2014 invitation round were as follows:

**Note:** Below points score and visa date of effect is for Skilled Independent (Subclass 189) and no invitations were issued to Skilled – Regional (Subclass 489 (Provisional) – Family Sponsored.

| Occupation ID | Description                                  | Points | Visa date of effect |
|---------------|--|--------|---------------------|
| 2331          | Telecommunications Engineering Professionals | 75     | 1/2/2014 11.33 pm   |
| 2334          | Electronics Engineers                        | 65     | 13/1/2014 2.27 pm   |
| 2339          | Other Engineering Professionals              | 80     | 31/1/2014 2.58 pm   |
| 2611          | ICT Business and Systems Analysts            | 70     | 30/1/2014 5.14 pm   |
| 2613          | Software and Applications Programmers        | 65     | 31/1/2013 2.02 am   |
| 2633          | Telecommunications Engineering Professionals | 70     | 8/2/2014 9.31 am    |

## 10) Processing time for Family type visas

| Visa Application   | Lodged in Australia |                   | Lodged outside Australia |                   |
|--|---------------------|-------------------|--------------------------|-------------------|
|  | Low Risk            | High Risk         | Low Risk                 | High Risk         |
| Prospective Marriage<br>(subclass 300)                           | n/a                 | n/a               | 5 months                 | 12 months         |
| Partner (temporary)<br>(subclass 309, 820)                       | 6 months            | 6 months          | 5 months                 | 12 months         |
| Partner (permanent)<br>(subclass 100, 801)                       | 6 months            | 6 months          | 6 months                 | 8 months          |
| Child<br>(subclass 101, 102, 117, 445, 802, 837)                 | 7 months            | 7 months          | 3 months                 | 14 months         |
| New Zealand Citizen Family Relationship (Temp)<br>(subclass 461) | 2 months            | 2 months          | 2 months                 | 3 months          |
| Parent<br>(subclass 103, 804)                                    | capped and queued   | capped and queued | capped and queued        | capped and queued |
| Contributory Parent<br>(subclass 143, 173, 864, 884)             | capped              | capped            | capped                   | capped            |
| Other Family<br>(subclass 114, 115, 116, 835, 836, 838)          | capped and queued   | capped and queued | capped and queued        | capped and queued |

The terms 'Low risk' and 'High risk' show whether passport holders are eligible to apply for an Electronic Travel Authority (ETA). Low risk applies to nationals from countries which issue ETA eligible passports. A list of these can be found on the department's website. High risk countries are those which are not ETA eligible.

See: ETA Eligible Passports

Partner (permanent) visas: The service standard applies from the time the application for the permanent Partner visa becomes eligible for decision. In the majority of cases, this is two years after the lodgement of the combined temporary/permanent Partner visa application.

Parent and Contributory Parent queue: There are a limited number of places available each year for Parent and Contributory Parent category visas. If you are a new applicant for a Parent (non-contributory) visa, you will be queued and can expect an approximate 13 year wait after your queue date has been allocated. If you are a new applicant for a Contributory Parent visa, you can expect to wait 12 to 24 months before visa grant consideration.

Thanks everyone. Have a super few weeks and see you all on Monday 17th March.

 Kind regards, Steven O'Neill

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