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13 October 2023

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

By email: Matthew.Wood@lawcouncil.asn.au

Dear Dr Popple,

**Consultation on the Draft Best Practice Principles and Standards for Skilled Migration
Assessing Authorities**

The Law Society appreciates the opportunity to contribute to the Law Council's submission to the Department of Employment and Workplace Relations in response to its consultation on the Draft Best Practice Principles and Standards for Skilled Migration Assessing Authorities (**Consultation Paper**). The Law Society's Human Rights Committee has contributed to this submission.

Questions about the draft principles and standards

We concur with the established position of the Law Council that skills assessments for migration purposes require significant reform. That said, the Principles set out in the Consultation Paper appear sound, and address in a high-level manner some of the issues experienced by General Skilled Migration applicants, particularly in relation to the lack of transparency around the decision-making processes and financial accountability of skills assessment bodies.

We offer the following brief comments on Principles 2 and 4:

Principle 2 – Reasonable and Justified Fee Structures

We note the importance of Principle 2, which seeks to ensure that fees are commensurate with the cost of conducting high-quality skills assessments, do not impose an unreasonable barrier for prospective migrants, and represent value for money for applicants.

Aside from requiring transparency in the setting of fees and inclusions and undertaking regular and strategic reviews of fees, we suggest that consideration could be given to prescribing a maximum fee that an applicant undergoing an assessment (including internal review) would be required to pay. This would give applicants an up-front understanding of the financial implications of undertaking an assessment of their skills and avoid the current situation, where seeking an internal review of an assessment can often be more expensive than starting the process from the beginning. There may be some risk of creating a market where private providers set their fees as close to the maximum as possible, but provided the fees were set at considered levels, this may still be preferable to the potential for abuse under the current system.

Principle 4 – Fair and Equitable Assessments

In the experience of our members, it is very difficult to advise clients for some occupations (e.g., management consultant) with any degree of certainty whether they will meet the standards to work in their chosen occupation. Outcomes not only vary between different skills assessment bodies, but also within the individual assessment bodies themselves. A further factor that undermines trust and confidence in the system is the way in which applicants with qualifications from English-speaking countries appear to be dealt with in a far more efficient manner than those from non-English-speaking countries. In the experience of our members working with applicants in the Global Talent Program, for example, it is unclear why skills assessment bodies often demand far more evidence from clients from non-English speaking countries.

The Law Society supports the suggestions that the principles of administrative law could be applied to assessments, including procedural fairness. There is a need for clear and fair complaints, review, and appeals processes. At the current time, for example, internal review is very difficult, as, aside from the cost, there is no basis to apply to the assessing body in order to access information that would enable individuals to understand the reasons of a particular decision.

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'CBanks', written in a cursive style.

Cassandra Banks
President