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East Kimberley Designated Area Migration Agreement (EK DAMA)

Information Guide (effective 29 March 2022)

THIS DOCUMENT IS IN THREE PARTS:

PART 1 - THE EK DAMA AND HOW IT WORKS

PART 2 - INSTRUCTIONS FOR SUBMITTING AN EK DAMA ENDORSEMENT REQUEST

PART 3 - TECHNICAL AND RELEVANT MATTERS RELATING TO THE EK DAMA

YOU SHOULD REFER TO THIS DOCUMENT IN CONJUNCTION WITH (also available in the EKCCI website):

- A. THE EK DAMA OCCUPATION AND CONCESSIONS LIST**
- B. THE EK DAMA REQUEST FOR ENDORSEMENT FORM**

PART 1

THE EK DAMA AND HOW IT WORKS

The East Kimberley Chamber of Commerce and Industry (EKCCI) is the Designated Area Representative (DAR) for the East Kimberley Designated Area Migration Agreement (EK DAMA).

You should first read and ensure you understand the information in the [EKCCI website](http://www.ekcci.com.au) and in this document (Parts 1-3) regarding the EK DAMA, its purpose, how it works, and whether it meets your needs.

Note that engaging Overseas Workers under the EK DAMA is a four-stage process. Requesting endorsement from the EKCCI (the DAR) is only the first stage.

By making this request you are seeking the endorsement of the EKCCI to be able to:

- access the EK DAMA; and
- request to enter into an EK DAMA Labour Agreement with the Commonwealth of Australia (**the Commonwealth**).

You can only access a Labour Agreement under the EK DAMA if you have first been endorsed by the EKCCI, to do so. You understand and accept that the EKCCI is under no obligation to endorse you to access a Labour Agreement.

The EKCCI cannot require the Commonwealth to agree to enter into a Labour Agreement with you and will not be a party to any such Labour Agreement.

Purpose of a Labour Agreement under the EK DAMA

A Labour Agreement under the EK DAMA is a legally binding agreement made between you and the Commonwealth, usually valid for five (5) years, aimed at allowing you to sponsor overseas workers under the following visa programs:

- [Temporary Skill Shortage \(TSS\) Subclass 482 visa](#); ['TSS visa']
- [Skilled Employer Sponsored Regional \(Provisional\) \(SESR\) Subclass 494 visa](#); [SESR visa']
- [Employer Nomination Scheme \(ENS\) Subclass 186 visa](#) . ['ENS visa']

Note that accessing a Labour Agreement under the EK DAMA is for circumstances where:

- there is a genuine, significant demand for workers in particular occupation(s) that cannot be met from within the Australian labour market; and
- the Overseas Worker/s could not otherwise be sponsored under standard skilled visa arrangements or apply for another type of visa.

Further information regarding other visa options can be found in the [Department of Home Affairs website](#).

Important concepts unique to the EK DAMA

The EK DAMA operates in a different way to standard skilled migration programs, using a **labour agreement** framework. This means that:

- An employer can obtain their own labour agreement, valid for five years, that includes:
 - Pre-approval for one or more occupations and positions in a broad range of skilled and semi-skilled occupations;
 - Concessions that provide incentives to attract and retain overseas workers to those positions, such as age concessions, and a clearly defined permanent visa pathway, among others.
- An employer does **not** need to have identified the prospective worker/s to access an EK DAMA labour agreement:
 - The employer can nominate ('sponsor') overseas workers already in their employ; or
 - Attract suitably skilled and experienced overseas workers by having occupations and positions pre-approved, with concessions.
- The EK DAMA labour agreement can be varied to accommodate changing needs of a business over the lifetime of their EK DAMA labour agreement (up to five years), such as adding additional or new occupations and positions, or adding further concessions that are available if necessary.

Steps in accessing the EK DAMA

Accessing the EK DAMA is a two-step process. Nominating individual workers under a EK DAMA labour agreement involves a further two steps. The following diagram shows these four steps and who is responsible for each.



Step 1 – DAR endorsement.

The employer requests endorsement from the EKCCI (as the Designated Area Representative or DAR) to access the EK DAMA. Fully-documented and well-presented endorsement requests are generally finalised by the DAR within five working days. Poorly prepared or incomplete endorsement requests may take longer. Endorsement involves paying an endorsement fee, which is per position sought.

Further information is available in the EKCCI website EK DAMA page, and in Part 2 (instructions) and Part 3 (technical details) of this Information Guide.

Step 2 – EK DAMA Labour Agreement request.

The employer then applies online to the Department of Home Affairs for an EK DAMA Labour Agreement, using the endorsement letter from the EKCCI. Once the EK DAMA labour agreement request has been submitted, the employer is generally able to nominate overseas workers for endorsed occupations and positions **before** the EK DAMA labour agreement is finalised.**

As of writing, a Labour Agreement request does not attract a fee or charge. Requesting a Labour Agreement includes meeting mandatory legislative requirements as at the date you submit that request online. This includes evidence that you have genuinely tried to recruit from within the Australian labour market, through [prescribed Labour Market Testing \(LMT\)](#). Labour Agreement requests that do not meet the LMT requirements will not be successful.

A Labour Agreement, once signed, is usually valid for up to five years, and specifies how many occupation/s and position/s you can nominate in each year of the agreement.

***Overseas workers who are in Australia may be eligible for a bridging visa in the interim, depending on their individual circumstances. You should obtain professional advice or check with the Department of Home Affairs as an individual person's immigration status or circumstances may, in some cases, prevent a successful nomination or access to a bridging visa. The EKCCI is not involved in any considerations around the individuals.*

NOTE: Steps 1 and 2 above are about the business need for the occupation/s and position/s, and **not** about prospective individual overseas workers even if they are already in your employ.

There is provision to vary and update/add to a Labour Agreement throughout its life. If this involves adding or changing occupation/ and/or/position/s then that will entail you seeking EKCCI endorsement for those additions or changes.

Step 3 – Nominating the Overseas Worker/s.

Once you have an EK DAMA Labour Agreement in place with the government, you can then nominate specific individual Overseas Workers against the occupation/s and position/s stated in the Labour Agreement, up to the cap and within the year specified in that agreement.

Nominations are lodged with the Department of Home Affairs and attract fees/charges. See the individual visa links on page 1 of this document for details.

Note that the [prescribed Labour Market Testing \(LMT\)](#) undertaken for the Labour Agreement Stage also needs to be current when you lodge an associated nomination application.

Step 4 – Nominee/s apply for their visa.

This is the final stage when the nominated individuals apply for their visa, undergo police checks, medical checks, and assessment against other criteria specific to them.

Objectives of the EK DAMA

The objectives of the EK DAMA are to complement existing Australian Government initiatives to address skills and labour shortages by:

- Providing the EK Designated Area with a flexible mechanism to address workforce shortages and support workforce planning.
- Enabling employers in the EK Designated Area, who are unable to recruit appropriately qualified Australians, to supplement their workforce with access to Overseas Workers.
- Enhancing the economic performance of EK Designated Area employers who enter into associated EK DAMA Labour Agreements.
- Ensuring that Overseas Workers sponsored through EK DAMA Labour Agreements receive terms and conditions that meet applicable Australian workplace Law and are no less favourable than those provided to Australian workers.
- Promoting the training of Australians by employers entering into an EK DAMA Labour Agreement.

PART 2

INSTRUCTIONS FOR SUBMITTING AN EK DAMA REQUEST FOR ENDORSEMENT TO THE EKCCI

Under the agreement with government, the EKCCI, in its role as the Designated Area Representative, is required to consider a range of relevant matters in deciding whether to endorse your business to access a Labour Agreement under the EK DAMA. Those relevant matters are outlined at [Part 3](#) of this document.

To assist the EKCCI in deciding whether to endorse you, you must provide the following with your request. All documents referred to below are accessible in the [EKCCI website](#).

The information outlined below should be submitted as PDF attachments (or a single attachment - other than the Credit Card Authority form) by email to the EKCCI at dama@ekcci.com.au. The Credit Card Authority form **must** be a separate attachment on its own.

There is no need to provide any information with a Request for Endorsement other than that listed below, unless requested to do so by the EKCCI.

Endorsement Request instructions

1. A **Credit Card Authorisation Form** for payment of the EK DAMA DAR endorsement fee (see below for fee schedule). Note that this fee is payable per position being sought. The Credit Card Authorisation Form must be submitted as its own separate PDF attachment – not combined with other information;
2. A completed and signed **Request for Endorsement** form (ensure you only use the **latest version** listed in the EK DAMA webpage);
3. A **covering letter/submission** (maximum four pages) that clearly addresses the following points:
 - i. Why you are seeking endorsement to access the EK DAMA rather than standard visa programs/streams;
 - b. Why your business has a need for the occupation/s and position/s you are seeking, including reasons for the occupation type and number of positions;
 - c. For each occupation sought, why you have not been able to fill the positions from within the Australian labour market;
 - d. The proposed salary for the position/s and how you determined that salary;
 - i. Your determination may depend on whether there is an equivalent Australian worker in your Business for comparison, an internal enterprise agreement, or if not, determination by comparison with market salary rates. Reference to any relevant award that reflects minimum salaries can also be relevant, noting that not all occupations are subject to an award;
 - ii. For guidance, refer to the guidelines at [Department of Home Affairs website relating to Average Market Salary Rate \(AMSR\)](#) determination, relevant to Labour Agreement and nomination stages, as well as Items 1.9 and 1.10 in Part 3 of this document.
 - e. If you are seeking any concessions under the EK DAMA (TSMIT-salary concession, English language concession, age concession), the reasons why you need to access those concessions (refer Items 1.11, 1.12 and 1.15 in Part 3 of this document):
 - i. If seeking a **TSMIT concession**, complete and provide the **TSMIT concession summary**;

- ii. If seeking an **English language concession**, evidence that you have considered workplace health and safety matters impacted by a lower level of English and how you plan to address them, information about the impact a lower English level may have on the Overseas Worker/s' ability to conduct skills transfer with Australian employees, and the Overseas Worker/s' ability to settle in the community;
 - iii. If seeking an **age concession**, reasons why the concession is sought.
- f. (Optional) if you have an outstanding immigration matter before the Administrative Appeals Tribunal (AAT) or the courts, any information about this in the context of the request for endorsement being made (this will help the DAR to comment in the context of your endorsement request).
4. A **position/job description** for each occupation sought;
 5. Copies of the **most recent advertisements** placed for each occupation;
 6. A summary of the **recruitment attempts and outcomes**, including time period and places advertised, a description of whether and how many Australian citizens or permanent residents applied and if not suitable, why not suitable (refer Item 1.8 in Part 3 of this document);
 7. An **organisation chart** for your business showing where the position/s sought are located and who they report to:
 - a. You should indicate in the chart which or how many positions are occupied by Australian citizens/permanent residents and how many are occupied by Overseas Workers (i.e. temporary visa holders), and indicate whether the positions are full-time, part-time, or casual;
 - b. If you employ any trainees, interns, or apprentices, these should be included.
 8. If not in your website, 2-4 **images** of your business can be a useful addition. Examples:
 - a. For a restaurant, images can show the size and seating capacity;
 - b. For a farm, an aerial photo (or Google Maps image) with your property outlined can show the scale of your operations.

Important points to note

Note that the EKCCI is required to send **all** supporting information that is submitted with an endorsement request, to the Department of Home Affairs along with the endorsement letter.

Note that the EKCCI, in its absolute discretion:

- May request further evidence and information from you that it considers necessary and relevant to assess your request for endorsement; and
- May call or email you (or your registered migration agent if you have authorised one) to discuss aspects of your request for endorsement.

For more detailed information about what the EKCCI considers when assessing an endorsement request, and the types of additional information it may request, refer to [Part 3](#) of this document.

For EK DAMA Frequently Asked Questions (FAQs), see the EKCCI website EK DAMA page.

EKCCI Request for Endorsement fee

The endorsement request fee (per position sought) is payable in full at time of requesting endorsement.

The EK DAMA standard endorsement request fee (per position sought) is:

- \$885 (GST incl) – EKCCI members*
- \$985 (GST incl) – non-members

**Membership must be current and be annual membership or held for at least 12 months as at date of seeking endorsement. Membership is based on the employer/business membership and not their agent's membership.*

The EKCCI has zero tolerance for false or misleading information, statements, or documents submitted with EK DAMA endorsement requests, whether from the sponsoring business or their agent.

PART 3

TECHNICAL AND RELEVANT MATTERS RELATING TO THE EK DAMA

This part includes technical and relevant matters under the EK DAMA, the matters that the EKCCI takes into account, and what you may be asked to demonstrate as part of a request for.

Please do not provide any of the following additional information with your endorsement request unless asked to do so.

Throughout this Part 3:

- “EKCCI” means the East Kimberley Chamber of Commerce and Industry;
- “EK DAMA” means the East Kimberley Designated Area Migration Agreement;
- “TSS visa” means the Subclass 482 (Temporary Skill Shortage) visa;
- “SESR visa” means the Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa; and
- “ENS visa” means the Subclass 186 (Employer Nomination Scheme) visa;
- “You” and “your” refer to the employing entity making a request for endorsement to the EKCCI to access the EK DAMA.

1.1 EK DAMA VISA PATHWAYS

As with most standard skilled migration pathways, an Overseas Worker must first have held a temporary visa for a specified period of time before they may have access to a permanent visa option.

In the EK DAMA, there are two options available:

- An initial [TSS \(temporary\) visa](#) valid for up to four years, that may lead to accessing an [ENS \(permanent\) visa](#) after three years; or
- An initial [SESR \(temporary visa\)](#) valid for up to five years, that may lead to accessing a [Permanent Residence \(Skilled Regional\) \(permanent\) visa](#) after three years if they have complied with the conditions of their SESR visa.

Note that the TSS, ENS, and SESR visa pathways require endorsement for inclusion in your EK DAMA labour agreement, and nomination by you, while a Permanent Residence (Skilled Regional) (subclass 191) (permanent) visa (‘PRSR visa’) requires neither an endorsement nor nomination. The PRSR visa commences from November 2022 and more information will be available on the department of Home Affairs website closer to the date.

When requesting endorsement to access occupations and positions under the EK DAMA you must specify the visa option you intend to use (TSS, ENS, or SESR) for each occupation/position. The EKCCI cannot advise you which visa pathway best suits your circumstances or those of any prospective Overseas Worker. You can access information in the Department of Home Affairs website on each option at the links above (be sure to view the ‘Labour Agreement Stream’ in each case).

If you are unsure, you should seek professional advice from a registered migration agent.

1.2 'DESIGNATED AREA'

The EK DAMA Designated Area aligns with the Local Government Area of the Shire of Wyndham East Kimberley. Employers requesting endorsement must have operations in the Designated Area, and the position/s being sought must be located within the operations of the employer within the Designated Area.

The EKCCI will consider:

Whether the employer is operating within the Designated Area, and has been doing so for at least 12 months unless exceptional circumstances exist. You may be asked to provide:

- *Evidence that the business is operating within the Designated Area for a period of at least twelve months (unless exceptional circumstances exist).*

The EKCCI will consider:

Whether the position/s to be filled (as opposed to the business) will be located in the Designated Area.

The Overseas Worker may be able to travel outside the area for work-related reasons for short periods of time where this is consistent with the declared duties of the position. Note that you must seek the agreement of the Department of Home Affairs if the Overseas Worker will be outside of area for more than three out of twelve months.

1.3 EMPLOYER PROFILE

The EKCCI will consider:

Whether you have been actively operating for at least twelve months and are financially viable. You may be asked to provide business documents, including for associated entities (if applicable) such as:

- *your Business Registration Certificate;*
- *Australian Business Number (ABN);*
- *Australian Company Number (ACN) (if applicable);*
- *Trust Deed (if applicable); and*
- *recent financial accounts or BAS statements; and*
- *a letter of support from a registered Chartered Accountant or a Certified Practising Accountant confirming that you have been actively operating for at least twelve months and have the financial capacity to meet the migration obligations for the workers you wish to sponsor, for the proposed period that they will be employed by you. The letter must include the key financial data i.e. your turnover, net assets and profit/loss for the most recent financial year; and*
- *evidence that you have been operating in the Designated Area for at least 12 months (unless exceptional circumstances apply).*

1.4 ADVERSE INFORMATION (IF APPLICABLE)

If you have been subject to any relevant investigations or audits, resulting in an adverse finding to the business or any associated entities (including previously associated entities) in the last five years by bodies such as:

- the Office of the Fair Work Ombudsman, or former authority with this function, or relevant State or Territory government authority in relation to compliance with workplace relations provisions;
- the relevant State or Territory government authority in relation to compliance with occupational health and safety provisions; and
- The Department of Home Affairs (Home Affairs) in relation to compliance with migration provisions;

then you will need to provide information about any such investigations or audits with this endorsement request. Any other relevant adverse information should also be declared.

1.5 PENDING ADMINISTRATIVE APPEALS TRIBUNAL (AAT) OR COURT MATTERS (IF APPLICABLE)

If you or your business or any employees sponsored by you have any matters still pending with the Administrative Appeals Tribunal (AAT) or the Courts, the Department of Home Affairs may decline to assess an EK DAMA Labour Agreement request from you. However, this does not preclude you from requesting access to the EK DAMA. If these circumstances apply to you, you may ask the EKCCI for more information about how this may affect your access to the EK DAMA.

It is not mandatory that you disclose these matters to the EKCCI, but if so, the EKCCI will have the ability to consider this aspect in its assessment of your request and where relevant, to comment on it in the endorsement letter.

1.6 EK DAMA OCCUPATIONS

Occupations accessible under the EK DAMA under the agreement in place as of April 2022 are those in the EK DAMA Occupation and Concessions List accessible in the [EKCCI website](#).

Some occupations in standard skilled visa programs are subject to caveats. The EK DAMA includes the following provision that removes all caveats from occupations in the EK DAMA Occupation List.

‘Caveats not to apply’

None of the matters specified in an instrument made under sub regulation 2.72(9) of the Migration Regulations, applies to any Occupation specified in this Agreement.

For **ANZSCO occupations**, you can search for the position description as well as alternative occupation titles and sub-occupations using the ANZSCO search function [here](#). Searching by ANZSCO code is the most direct.

For **non-ANZSCO occupations**, which have been written specifically for the EK DAMA, the position descriptions are available in the [EKCCI website here](#).

1.7 'GENUINE VACANCY'

The EKCCI will consider:

Whether the position/s you are seeking to fill are genuine, are necessary, and there are genuine vacancies. You may be asked to provide:

- *Evidence of trading hours, business expansion and business structure;*
- *Position description/s;*
- *Sample of employment contracts;*
- *Additional information about why the occupation/s and number of position/s are needed.*

1.8 LABOUR MARKET TESTING (LMT)

Evidence of labour market testing must accompany an EK DAMA Labour Agreement request as well as any TSS or SESR nominations lodged in accordance with that EK DAMA Labour Agreement. These attempts must have been conducted in the twelve (12) months prior to lodging the nomination application.

The Sponsor must be able to demonstrate at least two separate attempts to test the Australian labour market for the nominated occupation.

- one advertisement must have national reach.
- the other may be advertised locally (within the designated area only).

The evidence provided should be equivalent to that required under standard skilled visa programs but may include advertising conducted on either the sponsor's and/or industry website.

Note that while there is no legislative requirement to provide the same information to the EKCCI when making a request for endorsement, the EKCCI must still be satisfied that you have tested the labour market to these standards.

More detailed information about DAMA Labour Market Testing requirements is available in the [Department of Home Affairs website](#).

The EKCCI will consider:

Whether genuine attempts have been made to fill the position/s from the Australian labour market.

You may be asked to provide:

- *Evidence of advertising the position/s within Australia, and the outcome of those attempts;*
- *A description of the history of attempts to recruit to the position/s.*

1.9 SALARY AND CONDITIONS

The EKCCI will consider:

Whether the proposed salary for the position/s is reasonable and justified for the regional location, taking into account the market salary rate for the occupation, and that the terms of conditions of employment must be no less than would be provided to an Australian citizen or permanent resident in an equivalent position. You may be asked to provide:

- *How the proposed salary for the position/s was determined;*
- *Copy of or information about relevant awards or Enterprise Agreements;*
- *Evidence of the salary paid to Australian citizens or permanent residents in equivalent position/s in the business.*

Further information about determining the Australian Market Salary Rate (AMSR) is available in the [Department of Home Affairs website](#), relevant to Labour Agreement and nomination stages.

1.10 EQUAL PAY AND CONDITIONS

The EKCCI will consider:

Whether the proposed terms and conditions of employment of the Overseas Worker(s) will be no less favourable than what would be provided to an Australian performing equivalent work in the same workplace. If you do not already employ someone in the same position you may be asked to provide evidence of the market salary based on:

- *pay rates from applicable enterprise agreements in the local region;*
- *applicable industry awards;*
- *data from reputable industry remuneration surveys (usually conducted by peak industry bodies or professional associations);*
- *Australian Bureau of Statistics earnings data; and*
- *Job vacancy advertisements.*

Whether the salary, as well as being equivalent to or higher than the base rate of pay (usually based on a 38 hour week unless varied by an award), is also equal to or higher than the Temporary Skilled Migration Income Threshold (TSMIT), unless a concession has been negotiated (see Item 1.7 above). The TSMIT is regularly adjusted according to the market. The current rate of TSMIT [can be checked here](#).

Whether overseas workers will be engaged in accordance with applicable Australian workplace laws.

Whether the overseas worker(s) will be employed on a full-time basis as a direct employee and must be paid at least fortnightly. You may be asked to provide:

- *Copy of proposed business employment contract;*
- *Copy of Enterprise or Workplace Agreement/s (if applicable).*

1.11 TEMPORARY SKILLED MIGRATION INCOME THRESHOLD (TSMIT) AND EK DAMA TSMIT ('SALARY') CONCESSIONS

Standard skilled visa programs have a minimum salary payable to Overseas Workers, called the Temporary Skilled Migration Income Threshold (TSMIT). The current rate of TSMIT [can be checked here](#).

For all occupations in the EK DAMA Occupations & Concessions List:

- 'Annual Market Salary Rate' has the same meaning as in regulation 1.03 of the Migration Regulations: the earnings an Australian citizen or an Australian permanent resident earns or would earn for performing equivalent work on a full-time basis for a year in the same workplace at the same location, and is determined in accordance with the instrument which specifies the method for determining the Annual Market Salary Rate for an occupation nominated under section 140GB of the Migration Act or an occupation in relation to which a position is nominated under regulation 5.19 of the Migration Regulations.
- 'Annual Earnings' means an Overseas Worker's Earnings calculated on an annual basis.

You may seek endorsement from the EKCCI for access to a TSMIT concession to be applied to some occupations in the EK DAMA Occupations & Concessions List, called Concessional Occupations. Concessional Occupations indicated in the list with a 'Yes' in the TSMIT Concession column. If the occupation is not eligible for a TSMIT concession, this column will have a 'No'.

The TSMIT concession can be requested in relation to the nomination of occupations for TSS, SESR visas and ENS visas. Where you are requesting a TSMIT concession, the request should be evidence-based and reasonable. There are two types of TSMIT concessions that may apply, Type 1 and Type 2.

Concessional occupations (those that may have access to the TSMIT concession)

In relation to an Overseas Worker who is nominated/identified for a Concessional Occupation in relation to a TSS visa or an ENS visa, in accordance with the applicable concession type set out below, you must provide the Overseas Worker with an amount of Annual Earnings which is equal to or greater than:

- the Annual Market Salary Rate, and
- Reduced TSMIT (for TSMIT concession type 1) or TSMIT (for TSMIT concession type 2).

'Reduced TSMIT' means 90% of [TSMIT](#).

TSMIT Concession types

You may seek endorsement from the EKCCI for one of the following two concession types to apply to a Concessional Occupation:

	Type 1	Type 2
Monetary Earnings	<i>At least Reduced TSMIT</i>	<i>At least Reduced TSMIT</i>
Non-monetary earnings (food & board)		<i>No more than 10% of TSMIT</i>

Total Annual Earnings	<i>At least Reduced TSMIT</i>	<i>At least TSMIT</i>
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Type 1: Reduced TSMIT, and Earnings to include Guaranteed Overtime

‘Reduced TSMIT’ applies.

‘Earnings’ has the same meaning as in the regulation 1.03 of the Migration Regulations, which provides that earnings has a meaning affected by regulation 2.57A of the Migration Regulations, except that it also includes guaranteed overtime where:

- The guaranteed overtime is consistent with standard industry practice within the sector;
- There are equivalent Australians performing equivalent work in your workplace at the same location and whose arrangements have been guaranteed in an industrial arrangement for those workers; and
- At the time of nomination you provide evidence that the hours are guaranteed within the employment contract for the Overseas Worker, and confirm the hours are consistent with the National Employment Standards; and
- Application of the concession is subject to the Earnings being in line with applicable Industrial Awards or Enterprise Agreements and not below levels for Australian employees in comparable roles.

Type 2: TSMIT, and Earnings to include Guaranteed Overtime and Non-Monetary and Monetary Benefits

The Annual Earnings must be equal to or greater than TSMIT, and the Annual Earnings may include monetary and non-monetary benefits.

‘Earnings’ has the same meaning as in the regulation 1.03 of the Migration Regulations, which provides that earnings has a meaning affected by regulation 2.57A of the Migration Regulations, except that it also includes:

1. Guaranteed overtime where:

- The guaranteed overtime is consistent with standard industry practice within the sector;
- There are equivalent Australians performing equivalent work in your workplace at the same location and whose arrangements have been guaranteed in an industrial arrangement for those workers; and
- At the time of nomination you provide evidence that the hours are guaranteed within the employment contract for the Overseas Worker, and confirm the hours are consistent with the National Employment Standards; and
- Application of the concession is subject to the Earnings being in line with applicable Industrial Awards or Enterprise Agreements and not below levels for Australian employees in comparable roles; and

2. Monetary and non-monetary benefits, where:

- The benefits support the living costs of the Overseas Worker;
- The Overseas Worker would have incurred that cost had it not been provided by you;
- The benefits are quantifiable;
- The benefits are consistent with the terms and conditions provided to existing Australians employed in a similar position;
- The benefits are guaranteed in the employment contract; and

- The benefits exclude contingent payments such as overtime (other than guaranteed overtime) bonuses and commissions.

For concession Type 2, when calculating an Overseas Worker's Earnings, the value of other non-monetary earnings (such as phone, vehicle) cannot exceed 10% of TSMIT).

Non-concessional occupations (those that do not have access to the TSMIT concession)

For all occupations in the EK DAMA Occupations & Concessions List that do not have access to a TSMIT concession (non-Concessional Occupations), the following information applies.

'Earnings' has the same meaning as in the regulation 1.03 of the Migration Regulations, which provides that earnings has a meaning affected by regulation 2.57A of the Migration Regulations.

In relation to an Overseas Worker who is nominated for a non-concessional occupation in relation to a TSS visa, you must meet the legislative requirements relating to TSMIT, Annual Market Salary Rate and Annual Earnings which would apply if the Overseas Worker were nominated in relation to the Short-term stream or Medium-term stream in the standard TSS visa program.

In relation to an Overseas Worker who is identified for a non-concessional occupation in relation to a SESR visa, you must meet the same legislative requirements relating to TSMIT, Annual Market Salary Rate and Annual Earnings which would apply if the Overseas Worker were identified in relation to the employer sponsored stream of the standard SESR visa program.

In relation to an Overseas Worker who is identified for a non-concessional occupation in relation to an ENS visa, you must meet the legislative requirements relating to TSMIT, Annual Market Salary Rate and Annual Earnings which would apply if the Overseas Worker were identified in relation to the Temporary Residence Transition stream or the Direct Entry stream in the standard ENS visa program.

Where a TSMIT concession is requested, the EKCCI will consider:

Whether the concession is evidence-based and reasonable taking into account all the above factors. You may be asked to provide evidence to support your request for the concession, as well as information regarding local living costs in the context of the Overseas Worker/s' ability to settle in the community.

1.12 EK DAMA ENGLISH LANGUAGE CONCESSIONS

Some occupations in EK DAMA Occupations & Concessions List may have access to a concession to the English language requirement that normally applies to standard skilled visa programs. Occupations for which this English language concession may be requested are indicated in the EK DAMA Occupation & Concessions List with a 'Yes' in the English concession column.

The English language concession available in the EK DAMA for those occupations is as follows:

- **TSS and SESR:** average score of IELTS 5.0 with no minimum component (unless registration or licensing requires a higher level of English).
- **ENS:** average score of IELTS 5.0 with no component being less than IELTS 4.0 or equivalent (unless registration or licensing requires a higher level of English).

“IELTS” means the International English Language Testing System or the equivalent in another accepted English language test.

Other accepted English language tests are:

- Occupational English Test (OET);
- Test of English as a Foreign Language internet-based test (TOEFL iBT);
- Pearson Test of English (PTE) Academic test; or
- Cambridge English: Advanced (CAE) test.

The English language requirements may be met if a visa applicant would be regarded as an ‘exempt applicant’ for the purpose of the legislative instruments applicable to TSS, SESR and ENS visas.

For any occupations in the EK DAMA Occupation & Concessions List with a ‘No’ in the English concession column, the Overseas Worker is required to meet the minimum Standard English language requirements applicable to the TSS, SESR and ENS non-labour agreement visa streams under the Migration Regulations.

Where an English language concession is requested, the EKCCI will consider:

Where you are requesting an English language concession to the standard non-Labour Agreement visa requirements, whether the concession is evidence-based and reasonable. You may be asked to provide:

- *evidence that you have considered workplace health and safety matters impacted by a lower level of English and how you plan to address them;*
- *information about the impact a lower English level may have on:*
 - *the Overseas Worker/s’ ability to conduct skills transfer with Australian employees;*
 - *the Overseas Worker/s’ ability to settle in the community.*

1.13 EK DAMA SKILLS, QUALIFICATIONS, AND EXPERIENCE CONCESSIONS

The EKCCI will consider:

Whether you acknowledge that Overseas Workers nominated under the EK DAMA in the occupation/s sought must satisfy the minimum skills, qualifications, experience, and employment background requirements as outlined below in respect of the relevant occupations in the EK DAMA Occupation List, and where applicable, that a skills assessment is required.

General information relating to EK DAMA skills, qualifications and experience requirements

The following skills, qualifications, experience and employment background requirements apply to the occupations in the EK DAMA Occupation & Concessions List in relation to TSS and SESR visas and, where eligible under the permanent residence pathway, ENS visas.

The skills, qualifications and experience requirements are divided into **Categories** as listed below. The Category that will apply to Overseas Workers nominated under the EK DAMA for each occupation is indicated in the column headed Skills Qualifications & Experience in the EK DAMA Occupation & Concessions List.

The concessions outlined in this agreement do not circumvent or override registration or licencing requirements that may be required for certain occupations.

Work Experience

Work experience to fulfil visa requirements must be:

- relevant to the nominated occupation and at the required skill level
- full-time or part time pro rata equivalent unless otherwise specified below. Full-time work should be in accordance with the National Employment Standards; and
- undertaken in the last five (5) years

Skills Assessment

Qualifications are to be assessed by the relevant Skills Assessing Authority (as indicated in the EK DAMA Occupation & Concessions List and specified in the Labour Agreement) as being at least equivalent to the relevant Australian Qualifications Framework (**AQF**) qualification detailed in the Categories below, in order to assist the Department of Home Affairs to decide whether the visa applicant has the necessary qualifications for the position.

The Department of Home Affairs may require a person to demonstrate that he or she has the skills that are necessary to perform the tasks of the nominated occupation by undertaking a skills assessment conducted by an independent Skills Assessing Authority (as specified in the Labour Agreement). Any skills assessment must be certified as being in accordance with the arrangements agreed to in writing with the Commonwealth prior to the first Labour Agreement being entered into.

A mandatory skills assessment **may** be required under migration law for occupations in **Categories 1 and 2** (refer to Item 1.14 for more information).

A skills assessment **is** required for applications lodged for the occupations in **Categories 3 to 7**.

Work experience must be certified as being genuine and relevant to the nominated occupation/position, in order to assist the Department of Home Affairs' decision as to whether the visa applicant has the necessary employment background for the position.

Category 1

Occupations also on the combined lists of eligible skilled occupations (ANZSCO Skill Level 1-3)

For the Occupations in Category 1, which are those also on the eligible lists of skilled occupations (the Short-term Skilled Occupation List, (STSOL), Medium and Long-term Strategic Skills List, (MLTSSL) or Regional Occupation List (ROL)), any nomination for these Occupations or any application for a TSS, SESR or ENS visa connected with these Occupations must satisfy the skills, qualifications, experience and employment background required under the standard TSS, SESR or ENS visa programs **except**:

- Where the relevant AQF qualification was obtained in Australia, only (1) year of relevant full-time work experience is required for the TSS and SESR visa programs;

- Only two (2) years of relevant full-time work experience is required for the SESR visa program.

Category 2

Specified Skill Level 1-3 Occupations on the eligible lists of skilled occupations.

For the Occupations included in **Category 2**, which are also on the eligible lists of skilled occupations, any nomination for these Occupations or any application for a TSS, SESR or ENS visa connected with these Occupations, must satisfy the skills, qualifications, experience and employment background required under the standard TSS, SESR or ENS visa programs **except**:

- Where the relevant AQF qualification was obtained in Australia, only one (1) year of relevant work experience (20 hours per week) is required for the TSS and SESR visa programs;
- Only one (1) year of relevant full-time work experience is required for the TSS and SESR visa programs.

General information relating to Categories 3 to 7 (Skill Level 1-5 Occupations not on the combined lists of eligible skilled Occupations list)

For the Occupations included in **Categories 3 to 7**, which are in the EK DAMA Occupation & Concessions List but are not on the combined eligible list of skilled occupations, the following skills, qualifications, experience and employment background criteria will apply to any nomination for these occupations or any application for a TSS, SESR or ENS visa made under the Migration Legislation.

Qualifications

Qualifications are to be assessed by the relevant Skills Assessing Authority (as specified in the Labour Agreement) as being at least equivalent to the relevant Australian Qualifications Framework (AQF) qualification, in order to assist the Department of Home Affairs' decision as to whether the visa applicant has the necessary qualifications for the position.

Work Experience

Work experience to fulfil visa requirements must be:

- relevant to the nominated occupation and at the required skill level*
- full-time or part time pro rata equivalent unless otherwise specified below. Full-time work should be in accordance with the National Employment Standards; and
- undertaken in the last five (5) years

Work experience undertaken in an occupation whilst becoming qualified for that occupation can be counted towards work experience used to fulfil visa requirements. Work experience to fulfil visa requirements, cannot be undertaken concurrently with work experience used to substitute qualifications unless specified below.

*For Skill Level 5 occupations accessing a permanent residence pathway under Schedule 8 subclause c) ii) of this agreement, work experience undertaken in the skill level 5 occupation can be counted towards the higher skill level occupation under the TSS program provided it is assessed as genuine and relevant experience.

Category 3

ANZSCO Skill Level 1-3 Occupations not on the combined lists of eligible skilled Occupations

For occupations listed in Category 3, the following skill and experience requirements apply. The visa applicant must:

- Have undergone a skills assessment conducted by the relevant Skills Assessing Authority (as specified in the Labour Agreement);

AND

- Meet the skill level as defined in ANZSCO excluding where work experience may substitute the formal qualification;

AND

- Where the relevant AQF qualification was obtained in Australia, only one (1) year of relevant work experience (20 hours per week) is required for the TSS and SESR visa programs; **or**
- Have at least one (1) year of relevant full-time work experience for the TSS or SESR visa programs; **or**
- Meet the additional work experience required under the standard TSS, SESR and ENS programs.

Category 4**ANZSCO Skill Level 4-5 Occupations not on the combined lists of eligible skilled Occupations**

For occupations in Category 4, the following skill and experience requirements apply. The visa applicant must:

- Undergo a skills assessment conducted by the relevant Skills Assessing Authority (as specified in the Labour Agreement);

AND

- Meet the skill level as defined in ANZSCO including where work experience may substitute the formal qualification;

AND

- Where the relevant AQF qualification was obtained in Australia, only (1) year of relevant work experience (20 hours per week) is required for the TSS and SESR visa programs; **or**
- Have at least one (1) year of relevant full-time work experience undertaken in Australia for the TSS and SESR visa program; **or**
- Meet the additional work experience required under the standard TSS, SESR or ENS programs.

Category 5**Non-ANZSCO Skill Level 2 Occupations**

For Occupations in Category 5, which are not in ANZSCO, the following skill and experience requirements apply (note that position descriptions are available in the [EKCCI website](#)). The visa applicant must:

- Have undergone a skills assessment

AND

Indicative Skill level 2

- Hold at least a relevant AQF Diploma (or equivalent);

AND

- Where the relevant AQF qualification was obtained in Australia, only one (1) year of relevant work experience (20 hours per week) is required for the TSS and SESR visa programs; **or**
- Have at least one (1) year of relevant full-time work experience for the TSS or SESR visa programs; **or**
- Meet the additional work experience required under the standard TSS, SESR and ENS programs.

Category 6

Non-ANZSCO Skill Level 3 Occupations

For Occupations in Category 6, which are not in ANZSCO, the following skill and experience requirements apply (note that position descriptions are available in the [EKCCI website](#)). The visa applicant must:

- Have undergone a skills assessment

AND

Indicative Skill level 3

- Hold at least a relevant AQF Certificate IV (or equivalent); or
- Hold at least a relevant AQF Cert III including two (2) years of work experience;

AND

- Where the relevant AQF qualification was obtained in Australia, only one (1) year of relevant work experience (20 hours per week) is required for the TSS and SESR visa programs; **or**
- Have at least one (1) year of relevant full-time work experience for the TSS or SESR visa programs; **or**
- Meet the additional work experience required under the standard TSS, SESR and ENS programs.

Category 7

Non-ANZSCO Skill Level 4 Occupations

For Occupations in Category 7, which are not in ANZSCO, the following skill and experience requirements apply (note that position descriptions are available in the [EKCCI website](#)). The visa applicant must:

- Have undergone a skills assessment

AND

Indicative Skill level 4

- Hold at least a relevant AQF Certificate II qualification (or equivalent); **or**
- Have at least one (1) year of relevant work experience which may substitute the formal qualification;

AND

- Where the relevant AQF qualification was obtained in Australia, only one (1) year of relevant work experience (20 hours per week) is required for the TSS and SESR visa programs; **or**
- Have at least one (1) year of relevant full-time work experience undertaken in Australia for the TSS or SESR visa programs (this work experience can be served concurrently with work experience used to substitute the formal qualification); **or**
- Meet the additional work experience required under the standard TSS, SESR and ENS programs.

1.14 SKILL ASSESSMENTS

As indicated in Item 1.11, for the TSS visa, the SESR visa, and the ENS visa, a skills assessment is mandatory at nomination stage for Categories 3-7 but for Groups 1-2 for the TSS program a skills assessment is only required in certain circumstances (see [legislative instrument](#)) or if asked for by the Department of Home Affairs.

Details of the skill assessments required for occupations approved in your Labour Agreement will be specified in that agreement in line with the above.

For an indication of the likely skills assessing authority for each occupation, refer to the column headed Skill Assessments in the EK DAMA Occupation List (note that skill assessing authorities may change). For Categories 1-2 you may also use the search function and links in [this page of the Department of Home Affairs website](#). For occupations for which VETASSESS is the skills assessing authority, [click here](#) for the VETASSESS information.

1.15 EK DAMA AGE CONCESSION

In standard skilled visa programs, the maximum age for an Overseas Worker is generally 45 years of age for SESR and for ENS. When requesting endorsement to access the EK DAMA, you may request access to the age concession below in respect of some or all of the occupation/s and position/s being requested.

Where you are requesting access to an age concession, the request should be evidence-based and reasonable.

The age concession accessible in the EK DAMA for the ENS and SESR visa programs is:

- 55 years for Overseas Workers in skill level 1- 4 occupations; and
- 50 years for Overseas Workers in skill level 5 occupations.

The occupations with access to the age concessions are indicated in the EK DAMA Occupations & Concessions List with the age (50 or 55) in the column headed 'Age Concession'. Note: If you do not request an age concession in your endorsement, you will not be able to nominate an applicant for ENS or SESR who has turned 45 years of age.

When considering a request to access the age concession, the EKCCI will consider:

The reasons why the age concession is being sought. Where you are requesting access to an age concession, the request should be evidence-based and reasonable.

1.16 EK DAMA PERMANENT VISA PATHWAY

A permanent residence pathway for Overseas Workers may be available through the Skilled Employer Sponsored Regional (SESR) Subclass 494 and Employer Nomination Scheme (ENS) Subclass 186 visa programs for all occupations in the EK DAMA Occupations & Concessions List with 'Yes' in the column headed 'Age Concession'.

Note in the following that a permanent residence pathway for Overseas Workers first accessing the EK DAMA in a Skill Level 5 occupation via the TSS to ENS pathway is conditional on certain additional matters that differ in some aspects from those that apply to Overseas Workers in Skill Level 1-4 occupations. If in doubt regarding the permanent visa pathway for Skill Level 5, discuss with the EKCCI.

The following conditions will ordinarily be included in an EK DAMA Labour Agreement and will apply to any nomination for an ENS visa (in addition to the ENS requirements outlined in the Migration Legislation).

- (a) The Overseas Worker, at the time of an application for approval of the nomination in relation to an ENS visa ('the ENS nomination'), must hold a TSS visa granted in connection with this Agreement; and
- (b) Your ENS nomination identifies a Skill Level 1-4 occupation in the EK DAMA Occupation & Concessions List that was the subject of the most recently approved TSS visa for the Overseas Worker; and
- (c) The Overseas Worker has been employed on a full-time basis, in the ENS nominated occupation, being a Skill Level 1-4 occupation in the EK DAMA Occupations & Concessions List, or a closely related occupation that is within the same ANZSCO 4 digit unit group and also in the EK DAMA Occupations & Concessions List; for a period of:
 - i. at least three (3) years before the ENS nomination is made, for all skill level 1-4 occupations listed in the EK DAMA Occupations & Concessions List; or
 - ii. at least four (4) years before the ENS nomination is made for all Skill Level 5 occupations listed in the EK DAMA Occupations & Concessions List whereby the overseas worker must be promoted to, or gain employment in a higher skill level occupation, for a period of no less than two (2) years before the ENS nomination is made.

The time spent in the earlier Skill Level 5 occupation will count towards the overall four (4) year qualifying period for the permanent visa nomination which must be in a Skill Level 1-4 occupation listed in the EK DAMA Occupations & Concessions List.

Note: Overseas Workers unable to upgrade to a Skill Level 4 or higher occupation in the EK DAMA Occupations & Concessions List will not have a pathway to permanent residence.

- (d) For the whole time that the Overseas Worker was employed in accordance with paragraph (c):
 - 1. he or she must have held a TSS visa granted in connection with the EK DAMA; and
 - 2. he or she must have worked in the EK DAMA Designated Area; and
- (e) The Overseas Worker identified in the ENS nomination will be employed on a full-time basis in the position for at least 2 years, and

- (f) The terms and conditions of employment of the Overseas Worker will not include an express exclusion of the possibility of extending the period of employment.

In assessing any request for endorsement to access a Labour Agreement under the EK DAMA for an ENS visa, the EKCCI will consider all of the above matters.

1.17 SETTLEMENT INFORMATION

The EKCCI will consider:

Whether you agree to undertake to provide the overseas worker with settlement information:

- *prior to you engaging them, or*
- *if they are already working for you, prior to them lodging their TSS visa or SESR visa application, unless they have been living and working in the area for at least 12 months prior to them lodging their visa application.*

You can obtain a settlement information kit from the EKCCI.

1.18 SPONSORSHIP OBLIGATIONS

The EKCCI will consider:

Whether you acknowledge that you have read and understood your sponsorship obligations should the Department of Home Affairs enter into a Labour Agreement with you.

The Department of Home Affairs website has detailed information about [sponsorship obligations](#).

For further information, see the [EK DAMA FAQ page](#) or contact the EKCCI at dama@ekcci.com.au

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