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Kimberley Designated Area Migration Agreement (Kimberley DAMA)

Information Guide (effective from 22 December 2023) (v3.0 updated 1 January 2024)

THIS DOCUMENT IS IN THREE PARTS:

[PART 1 - THE KIMBERLEY DAMA AND HOW IT WORKS](#)

[PART 2 - INSTRUCTIONS FOR SUBMITTING A KIMBERLEY DAMA ENDORSEMENT
REQUEST](#)

[PART 3 - TECHNICAL AND RELEVANT MATTERS RELATING TO THE KIMBERLEY DAMA](#)

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

- A. THE KIMBERLEY DAMA OCCUPATION AND CONCESSIONS LIST
- B. THE KIMBERLEY DAMA REQUEST FOR ENDORSEMENT FORM
- C. THE KIMBERLEY DAMA ENDORSEMENT SUBMISSION GUIDE

PART 1

THE KIMBERLEY DAMA AND HOW IT WORKS

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

You should first read and ensure you understand the information in the [EKCCI website](#) and in this document (Parts 1-3) regarding the Kimberley DAMA, its purpose, how it works, and whether it meets your needs.

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

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

You can only access a Labour Agreement under the Kimberley DAMA if you have first been endorsed to do so by the EKCCI. 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 Kimberley DAMA

A Labour Agreement under the Kimberley 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 Kimberley DAMA is for circumstances where:

- there is a genuine, significant demand for worker/s 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 Kimberley DAMA

The Kimberley 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 multiple occupations and positions in a broad range of skilled and semi-skilled occupations, beyond the occupations available in standard programs;
- Concessions not available in standard programs, that provide incentives to attract and retain overseas workers to those positions, such as age concessions, and well-defined permanent visa pathways, among others.
- An employer does **not** need to have already identified prospective Overseas Worker/s to access a Kimberley 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.
- A Kimberley DAMA labour agreement can be varied to accommodate the changing needs of a business in its lifetime (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 Kimberley DAMA

Accessing the Kimberley DAMA is a two-step process. Nominating individual worker/s against pre-approved occupation and position numbers in the Kimberley DAMA labour agreement and obtaining their visas/ 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 Kimberley DAMA. Fully-documented and well-presented endorsement requests are generally finalised by the DAR within five working days. Poorly prepared or incomplete endorsement requests will take longer. Endorsement involves paying an endorsement fee, which is per position sought.

Further information is available in the EKCCI website Kimberley DAMA page, and in Part 2 (instructions) and Part 3 (technical details) of this Information Guide. The website also includes a Kimberley DAMA Endorsement Guide with step-by-step instructions on how to prepare a submission.

Step 2 – Kimberley DAMA Labour Agreement request.

The employer then requests a Kimberley DAMA Labour Agreement online through the Department of Home Affairs' *ImmiAccount* system, using the endorsement letter from the EKCCI.

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 the employer submits

that request online. This includes evidence that the employer has 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 the employer can nominate in each year of the agreement.

IMPORTANT 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 employed on another visa type.

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 the employer seeking EKCCI endorsement for those additions or changes. Refer to the section on varying a Labour Agreement in Part 2 of this Information Guide.

Step 3 – Nominating the Overseas Worker/s.

The employer can then nominate** specific individual Overseas Workers against the occupation/s and position/s stated in the Labour Agreement, up to the cap/s 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 individual/s apply for their visa**, undergo police checks, medical checks, and assessment against other criteria specific to them.

***Once an initial Kimberley DAMA labour agreement request has been submitted in ImmiAccount, the employer is generally able to nominate overseas workers for endorsed occupations and positions, and then submit their visa applications, **before** the Kimberley DAMA labour agreement is finalised (noting that they cannot be approved until the labour agreement is executed). Overseas workers who are already lawfully in Australia may then be eligible for a bridging visa in the interim, depending on their individual circumstances. Employers 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 in these circumstances. The EKCCI is not involved in any considerations around the individuals, their nominations and/or visa applications.*

Objectives of the Kimberley DAMA

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

- Providing the Kimberley DAMA Designated Area with a flexible mechanism to address workforce shortages and support workforce planning.

- Enabling employers in the Kimberley DAMA Designated Area, who are unable to recruit appropriately qualified Australians, to supplement their workforce with access to Overseas Workers.
- Enhancing the economic performance of Kimberley DAMA Designated Area employers who enter into associated Kimberley DAMA Labour Agreements.
- Ensuring that Overseas Workers sponsored through Kimberley 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 a Kimberley DAMA Labour Agreement.

PART 2

SUBMITTING A REQUEST FOR ENDORSEMENT TO THE EKCCI, TO ENTER INTO OR VARY A KIMBERLEY DAMA LABOUR AGREEMENT

Under the head 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 Kimberley 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 a complete and coherent endorsement request. All necessary documents are accessible in the [EKCCI website](#).

All information 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.

NOTE: Employers or agents should refer to the comprehensive step-by-step Kimberley DAMA Endorsement Submission Guide accessible in the Kimberley DAMA [Resources Section](#) in the EKCCI website. All forms are available in the same webpage.

Requests for endorsement to enter into an initial Kimberley DAMA Labour Agreement

1. A completed submission following the **Kimberley DAMA Endorsement Submission Guide**;
2. A **Credit Card Authorisation Form** for payment of the Kimberley 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.

Requests for endorsement to vary and existing Kimberley DAMA Labour Agreement

Employers with an existing Kimberley DAMA Labour Agreement can submit a request for endorsement to vary their agreement. Variations are usually for:

- Additional occupations and/or positions;
- ‘Rolling over’ unused positions from one year of their labour agreement to the next;
- Addition of concessions not previously requested, or new concessions not previously available;
- Changes of visa category.

Requesting variations is a similar process to that for an initial Kimberley DAMA Labour Agreement, with the exception of:

- A submission would focus more on what has changed (if anything) since the previous endorsement submission, rather than repeating it;
- The endorsement letter issued by the EKCCI triggers the variation process with the Department of Home Affairs (there is no need to submit a further request in *ImmiAccount* to vary the existing agreement);

- Note that with variations, nominations and associated visa applications for the additional occupations/positions cannot be submitted until the varied labour agreement has been executed (signed).

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 (and/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 Kimberley DAMA Frequently Asked Questions (FAQs), see the EKCCI website Kimberley DAMA page.

EKCCI Request for Endorsement fee

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

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

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

Requests to vary a concession/s or to 'roll over' an existing unused position/s from one year to the next:

- \$275 (GST incl) – variation or 'roll over' fee (flat fee)

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

PART 3

TECHNICAL AND RELEVANT MATTERS RELATING TO THE KIMBERLEY DAMA

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

Throughout this Part 3:

- “EKCCI” means the East Kimberley Chamber of Commerce and Industry;
- “Kimberley DAMA” means the 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 Kimberley DAMA.

1.1 KIMBERLEY DAMA - VISA AND PATHWAY OPTIONS

When seeking endorsement to access a labour agreement under the Kimberley DAMA, and when requesting the labour agreement, the visa subclass must be specified (TSS or SESR or ENS) for each occupation/position being requested. For multiple occupation/position requests, a combination of options may be requested. The options are:

- The [TSS \(temporary\) visa](#) (482):
 - Valid for up to four years;
 - May lead to accessing an [ENS \(permanent\) visa](#) (186) under a Kimberley DAMA labour agreement after two years (see Item 1.13 in this Kimberley DAMA Information Guide); **or**
- The [SESR \(provisional visa\)](#) (494):
 - Valid for up to five years;
 - May lead to accessing a [Permanent Residence \(Skilled Regional\) \(permanent\) visa](#) (191) after three years;
- An [ENS \(permanent\) visa](#)
 - Allows permanent stay;
 - Is accessible when a TSS visa holder has worked in the Kimberley DAMA Designated Area on a DAMA TSS visa (or in some cases other non-DAMA visas allowing work rights) in the same occupation for at least two years (see Item 1.13 in this Kimberley DAMA Information Guide).

Note that the TSS 482, ENS 186, and SESR 494 visa options each require endorsement for inclusion in an employer’s Kimberley DAMA labour agreement, and nomination by the employer, while a Permanent Residence (Skilled Regional) (permanent) (191) visa requires neither endorsement, nor inclusion in a Kimberley DAMA labour agreement, nor employer nomination.

Permanent visa pathways may be available through the Kimberley DAMA for all occupations on the Kimberley DAMA Occupation & Concessions List. As with most standard skilled migration pathways, under the Kimberley DAMA an Overseas Worker would first have held a temporary visa or provisional visa for a specified period of time before they may have access to a permanent visa option. When deciding which visa option to specify for each occupation, the information and **'Important Notes'** in Item 1.13 of this guide should be taken into consideration.

The EKCCI cannot advise which visa option or pathway may suit an employer's circumstances or those of any prospective Overseas Worker/s. Information about each visa option can be accessed in the Department of Home Affairs website at the links above (be sure to view the 'Labour Agreement Stream' in each case). Employers should seek professional advice from a migration agent if unsure about which option is most appropriate.

1.2 'DESIGNATED AREA'

The Kimberley DAMA Designated Area aligns with the Western Australian Local Government Areas of:

- The Shire of Wyndham-East Kimberley;
- The Shire of Broome;
- The Shire of Derby-West Kimberley; and
- The Shire of Halls Creek.

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. It is expected that the Overseas Worker/s would live in the Designated Area once employed/sponsored.

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

To access a Kimberley DAMA labour agreement, your business must have been actively operating within the Kimberley DAMA Designated Area for at least 12 months, be viable, and have a genuine need for the occupation/s sought.

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 the subject of 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 your 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 a Kimberley DAMA Labour Agreement request from you. However, this does not preclude you from requesting access to the Kimberley DAMA. If these circumstances apply to you, you may ask the EKCCI for more information about how this may affect your access to the Kimberley 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 KIMBERLEY DAMA OCCUPATIONS

Occupations currently accessible under the Kimberley DAMA under the agreement in place as of 22 December 2023 are those in the Kimberley DAMA Occupation and Concessions List accessible in the [EKCCI website](#). Note that some occupations have specialisations and alternative titles.

Some occupations in standard skilled visa programs are subject to caveats. The Kimberley DAMA includes the following provision that removes all caveats from occupations in the Kimberley 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, typical tasks, as well as specialisations and alternative occupation titles, using the ANZSCO search function [here](#). Searching by the ANZSCO six-digit code is the most direct.

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

1.7 ‘GENUINE VACANCY’

The EKCCI will consider:

Whether the position/s you are seeking to fill are genuinely needed, 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)

Labour Market Testing (LMT) requirements under the Kimberley DAMA are more flexible and have a longer validity than LMT requirements for standard skilled migration.

Evidence of LMT must accompany a Kimberley DAMA request for endorsement, an Kimberley DAMA Labour Agreement request, and also any TSS or SESR nominations lodged in accordance with that Kimberley DAMA Labour Agreement. These attempts must have been undertaken for each occupation being sought and must have been conducted in the previous twelve (12) months.

For full Kimberley DAMA LMT requirements, refer to the Kimberley DAMA Labour Market Testing Factsheet in the [Kimberley DAMA Resources Section in the EKCCI website](#). When reading this Fact Sheet, note that the Kimberley is a **Category 3 Region**.

More general LMT information is also available in the [Department of Home Affairs website](#).

Note also 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.

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.*

The outcomes should indicate how many Australians applied for the position/s, whether any were found suitable and/or recruited, and if not why not.

1.9 PROPOSED SALARY AND EMPLOYEE TERMS 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 (if any).*

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 1.10 in this Kimberley DAMA Information Guide). 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).*

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

1.10 TEMPORARY SKILLED MIGRATION INCOME THRESHOLD (TSMIT) AND KIMBERLEY 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 Kimberley 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 Kimberley DAMA Occupations & Concessions List, called Concessional Occupations. Concessional Occupations are 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 visas, 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>

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 Kimberley 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 request for 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.

1.11 KIMBERLEY DAMA ENGLISH LANGUAGE CONCESSIONS

Some occupations in Kimberley 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 Kimberley DAMA Occupation & Concessions List with a 'Yes' in the English concession column.

The English language concession available in the Kimberley 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 Kimberley 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.*

1.12 KIMBERLEY DAMA SKILLS, QUALIFICATIONS, AND EXPERIENCE REQUIREMENTS AND CONCESSIONS

The EKCCI will consider:

Whether you acknowledge that Overseas Workers nominated under the Kimberley 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 Kimberley DAMA Occupation List, and where applicable, that a skills assessment is required.

The requirements are listed in this Item with the **Category number** corresponding with the **Category number** against each occupation in the Kimberley DAMA Occupation & Concessions List. These requirements for each occupation will be included in an employer Kimberley DAMA labour agreement.

The following Categories 1-7 are the skills, qualifications, experience and employment background requirements in relation to TSS and SESR visas and, where eligible under the permanent residence pathway, ENS visas.

Concessions outlined in this Kimberley DAMA Information Guide, and in a Kimberley DAMA labour 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 in the Categories below;
- Full-time work should be in accordance with the National Employment Standards; and
- undertaken in the last five (5) years.

Skills Assessments

Qualifications are to be assessed by the relevant skills assessing authority as being at least equivalent to the relevant Australian Qualifications Framework (AQF) qualification detailed for the Categories below, in order to assist the Minister's decision as to whether the visa applicant has the necessary qualifications for the position.

For occupations in the Kimberley DAMA Occupation & Concessions List that also appear on an eligible list of skilled occupations (Categories 1 and 2 below), a skills assessment is required if it is required in accordance with the relevant standard visa programs set out under Migration law, unless an exception is stated in Category 1 or 2 below.

For all other occupations in Categories 3-7, applicants must undergo a skills assessment by the relevant skills assessing authority.

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

In summary, there are some circumstances whereby a skills assessment **may not** be required under Migration Law for occupations in **Categories 1 and 2**. However, a skills assessment **is** required for occupations in **Categories 3 to 7**.

Skills Assessing Authorities

To ascertain the skills assessing authority for each occupation, refer to the Kimberley DAMA Occupation & Concessions List.

For occupations in the Kimberley DAMA Occupation & Concessions List for which VETASSESS is the skills assessing authority, [click here](#) for the VETASSESS brochure.

For occupations in the Kimberley DAMA Occupation & Concessions List that also appear on an eligible list of skilled occupations (eg. on 'the SOL'), information about the relevant skills assessing authority can be found in the Department of Home Affairs website at [this link](#).

CATEGORY 1 OCCUPATIONS

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 Employer Sponsored Stream of the (non-DAMA) SESR program, or the Short-term Stream of the (non-DAMA) TSS program, or the Direct Entry Stream of the (non-DAMA) ENS program (**unless an exception is outlined below**):

Skills Assessment

Hold a relevant skills assessment if required under the Employer Sponsored Stream of the SESR program, or the Short-term Stream of the TSS program, or Direct Entry Stream of the ENS program applicable to the visa being applied for.

Skills and Qualifications

Meet the skill level as defined in ANZSCO.

Work Experience

- 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 OCCUPATIONS**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 (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 Employer Sponsored Stream of the (non-DAMA) SESR program, or the Short-term Stream of the (non-DAMA) TSS program, or the Direct Entry Stream of the (non-DAMA) ENS program (**unless an exception is outlined below**):

Skills Assessment

Hold a relevant skills assessment if required under the Employer Sponsored Stream of the SESR program, or the Short-term Stream of the TSS program, or Direct Entry Stream of the ENS program applicable to the visa being applied for.

Skills and Qualifications

Meet the skill level as defined in ANZSCO.

Work Experience

- 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.

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

For the Skill Level 1-3 Occupations in **Category 3**, which are in the Kimberley 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.

Work experience undertaken in one of these occupations 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.

Skills Assessment

Hold a relevant skills assessment for the nominated occupation.

Skills and Qualifications

Meet the skill level as defined in ANZSCO. Where ANZSCO allows, work experience may substitute the formal qualification.

Work Experience

Meet the work experience requirements under the Employer Sponsored Stream of the (non-DAMA) SESR program, or the Short-term Stream of the (non-DAMA) TSS program, or the Direct Entry Stream of the (non-DAMA) ENS program (**unless an exception is outlined below**):

TSS/SESR:

- 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.

CATEGORY 4 OCCUPATIONS

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

For the Skill Level 4-5 Occupations in **Category 4**, which are in the Kimberley 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.

Work experience undertaken in one of these occupations 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.

Skills Assessment

Hold a relevant skills assessment for the nominated occupation.

Skills and Qualifications

Meet the skill level as defined in ANZSCO. Where ANZSCO allows, work experience may substitute the formal qualification.

Work Experience

Meet the work experience requirements under the Employer Sponsored Stream of the (non-DAMA) SESR program, or the Short-term Stream of the (non-DAMA) TSS program, or the Direct Entry Stream of the (non-DAMA) ENS program (**unless an exception is outlined below**):

- 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 for the TSS and SESR visa program.

CATEGORY 5 OCCUPATIONS

Non-ANZSCO Skill Level 2 Occupations

For the Skill Level 2 occupations in Category 5, which are in the Kimberley DAMA Occupation & Concessions List but are not in ANZSCO and 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. Note that position descriptions are available in the [EKCCI website](#).

Work experience undertaken in one of these occupations 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.

Skills Assessment

Hold a relevant skills assessment for the nominated occupation.

Skills and Qualifications

- Hold at least a relevant AQF Diploma (or equivalent); or
- Have at least three (3) years of relevant work experience which may substitute the formal qualification.

Work Experience

Meet the work experience requirements under the Employer Sponsored Stream of the (non-DAMA) SESR program, or the Short-term Stream of the (non-DAMA) TSS program, or the Direct Entry Stream of the (non-DAMA) ENS program (**unless an exception is outlined below**):

TSS/SESR:

- Have at least one (1) year (specified at 20 hours per week) of relevant work experience, where the relevant AQF qualification was obtained in Australia; or
- Have at least one (1) year of relevant full-time work experience.

CATEGORY 6 OCCUPATIONS

Non-ANZSCO Skill Level 3 Occupations

For the Skill Level 3 occupations in Category 6, which are in the Kimberley DAMA Occupation & Concessions List but are not in ANZSCO and 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. Note that position descriptions are available in the [EKCCI website](#).

Work experience undertaken in one of these occupations 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.

Skills Assessment

Hold a relevant skills assessment for the nominated occupation.

Skills and Qualifications

- 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; or
- Have at least three (3) years of relevant work experience which may substitute the formal qualification.

Work Experience

Meet the work experience requirements under the Employer Sponsored Stream of the (non-DAMA) SESR program, or the Short-term Stream of the (non-DAMA) TSS program, or the Direct Entry Stream of the (non-DAMA) ENS program (**unless an exception is outlined below**):

TSS/SESR:

- Have at least one (1) year (specified at 20 hours per week) of relevant work experience, where the relevant AQF qualification was obtained in Australia; or
- Have at least one (1) year of relevant full-time work experience.

CATEGORY 7 OCCUPATIONS

Non-ANZSCO Skill Level 4 Occupations

For the Skill Level 4 occupations in Category 7, which are in the Kimberley DAMA Occupation & Concessions List but are not in ANZSCO and 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. Note that position descriptions are available in the [EKCCI website](#).

Work experience undertaken in one of these occupations 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**.

Skills Assessment

Hold a relevant skills assessment for the nominated occupation.

Skills and Qualifications

- 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.

Work Experience

Meet the work experience requirements under the Employer Sponsored Stream of the (non-DAMA) SESR program, or the Short-term Stream of the (non-DAMA) TSS program, or the Direct Entry Stream of the (non-DAMA) ENS program (**unless an exception is outlined below**):

- Have at least one (1) year (specified at 20 hours per week) of relevant work experience, where the relevant AQF qualification was obtained in Australia; or
- Have at least one (1) year of relevant full-time work experience. This work experience can be served concurrently with work experience used to substitute the formal qualification.

1.13 KIMBERLEY DAMA PERMANENT RESIDENCE PATHWAY

A permanent residency pathway for Overseas Workers may be available through the ENS or SESR visa program, where endorsed in writing by the Designated Area Representative (EKCCI), for all Occupations in the Kimberley DAMA Occupation & Concessions List.

The following conditions will ordinarily be included in a 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 Third Party's ENS nomination identifies an Occupation in the Kimberley DAMA Occupation and Concessions List; and
- (b) The Overseas Worker has been employed on a full-time basis, in the ENS nominated occupation, being an occupation in the Kimberley DAMA Occupation and Concessions List, or a closely related occupation (also specified in the Kimberley DAMA Occupation and Concessions List); for a period of:
 - (i) at least two (2) years before the ENS nomination is made; or
 - (ii) part-time work equivalent to at least two (2) years full-time before the ENS nomination is made.
- (c) For the whole time that the Overseas Worker was employed in accordance with paragraph (b) they must have:
 - (i) lived and worked in the Kimberley DAMA Designated Area; and
 - (ii) complied with the conditions of the visa held.
- (d) For Skill Level 1-4 occupations in the Kimberley DAMA Occupation and Concessions List, an Overseas Worker may be nominated for a SESR or ENS visa only if they have not turned 55 years of age at the time of the Third Party's ENS nomination, and
- (e) For Skill Level 5 occupations in the Kimberley DAMA Occupation and Concessions List, an Overseas Worker may be nominated for a SESR or ENS visa only if they have not turned 50 years of age at the time of the Third Party's ENS nomination, and
- (f) The Overseas Worker identified in the ENS nomination will be employed on a full-time basis in the position for at least two (2) years, and
- (g) 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.

Important Note 1:

Note that, in some circumstances, an employer may seek endorsement for a position/s directly for an ENS visa, depending on whether a proposed nominee/s already has work experience in the Kimberley Designated Area in the same occupation on another visa with work rights, for the required period. You should seek professional advice regarding individual prospective nominees' circumstances in this regard, as the EKCCI does not assess individuals' circumstances.

Important Note 2:

For approved occupations/positions in an employer's individual Kimberley DAMA labour agreement for which the **SESR 494** visa was specified, the agreement will ordinarily include that the occupation/s is/are eligible for a permanent visa pathway, being the [Permanent Residence \(Skilled Regional\) \(permanent\) visa](#) (191), that does not require further endorsement nor nomination.

For approved occupations/positions in an employer's individual Kimberley DAMA labour agreement for which the **TSS 482** visa was specified, the above reference to the permanent pathway may not be reflected in the labour agreement until such time as the **ENS 186** option is also endorsed by the DAR and approved in the labour agreement for the occupation/s and position/s. Note that the TSS 482 endorsement/approval and the ENS 186 endorsement/approval may be requested at the same time, or the ENS 186 endorsement/approval may be requested in the relevant year that prospective nominee/s fall eligible.

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

1.14 KIMBERLEY 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 (the TSS visa does not have an age concession as the visa has no age requirement). When requesting endorsement to access the Kimberley DAMA, you may request access to the age concession described 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 Kimberley DAMA for the ENS and SESR visa programs is:

- for Overseas Workers in skill level 1- 4 occupations, must not have turned 55 years of age at time of nomination; and
- for Overseas Workers in skill level 5 occupations, must not have turned 50 years of age at time of nomination.

The occupations with access to the age concession for SESR and ENS are indicated in the Kimberley 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.

1.15 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.

1.16 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 [Kimberley DAMA FAQ page](#) or contact the EKCCI at dama@ekcci.com.au

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