

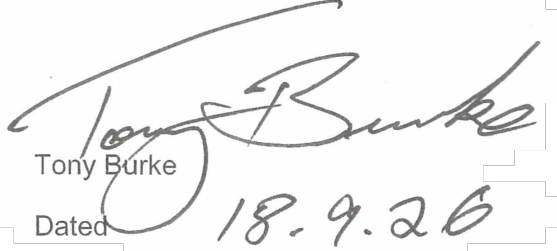
DIRECTION 122

MIGRATION ACT 1958

DIRECTION UNDER SECTION 499

Order for considering and disposing of visa applications for certain provisional and permanent Skilled Visas

I, Tony Burke, Minister for Home Affairs and Minister for Immigration and Citizenship, give this Direction under section [499](#) of the [Migration Act 1958](#).


Tony Burke
Dated 18.9.20

Minister for Home Affairs, Minister for Immigration and Citizenship

Part 1 - Preliminary

1. Name of Direction

This Direction is Direction 122 - Order for considering and disposing of visa applications for certain provisional and permanent Skilled Visas.

It may be cited as Direction 122.

2. Commencement

This Direction commences on the day after it is signed.

3. Application

(1) This Direction applies to delegates of the Minister who consider applications for one or more of the visa classes mentioned in the Schedule under section [47](#) of the Act, and consider and dispose of such visa applications for the purposes of sections [51](#) and [91](#) of the Act.

(2) This Direction does not apply to:

(a) visa applications that have been remitted by the AAT or ART for reconsideration;

(b) visa applications where the AAT or ART has set aside a decision and substituted a new decision;

(c) visa applications where it is readily apparent that the criteria for grant of the visa would not be satisfied;

(d) visa applications made by applicants who claim to be a member of the family unit of a primary visa holder, where:

- (i) the applicant did not make a combined application with the primary visa holder; and
- (ii) the primary visa holder was in Australia at the time they made their visa application; or

(e) the ART.

(3) To avoid doubt, this Direction applies to visa applications made, but not finally determined, before the commencement of this Direction, and to visa applications made on or after commencement.

4. Preamble

(1) Australia's provisional and permanent skilled migration visa programs enable employers to attract migrant workers with the skills to make a positive contribution to the Australian community and economy.

(2) Priority processing is given to occupations in relation to Construction, Healthcare, Teaching, Agriculture, Aquaculture, Fishing, and Resources sectors, and in Australia's law enforcement and defence interests, ensuring the skilled migration program is targeted to support key industries and strategically important occupations that are in the national interest. Priority in remaining sectors is afforded to skilled migrants already contributing to Australia before all other applicants.

(3) The order of priority for considering and disposing of applications is specified in this Direction to ensure appropriate allocation of resources and so that certain cohorts of applications are given priority.

(4) This Direction does not change the composition of the skilled migration occupation lists. Applicants must meet the requirements set out in the Act and the Regulations in order to be granted a visa.

5. Interpretation

(1) Unless otherwise specified, terms used in this Direction have the same meaning as in the Act and the Regulations. This includes the following terms: ANZSCO, in Australia, member of the family unit, outside Australia.

(2) In this Direction:

AAT means the former Administrative Appeals Tribunal.

Act means the [Migration Act 1958](#).

Agriculture, Aquaculture or Fishing occupation means an occupation where the nominated position is directly involved in primary produce production or supporting productivity, including:

- (a) the cultivation, production or harvesting of crops;

- (b) the capture (fishing), breeding, raising, management or production of livestock, poultry, seafood or other primary agricultural products;
- (c) agricultural production support activities, including animal health, irrigation, quality assurance, inspection or farm supervision; or
- (d) the slaughter, dressing, boning, slicing, processing, preparation or inspection of livestock, poultry, seafood or other primary agricultural products for sale, distribution or consumption.

ART means the Administrative Review Tribunal.

Construction occupation means an occupation in any of the following (where each occupation is of equal priority):

- ANZSCO Sub-Major Group 33 - Construction Trades Workers
- ANZSCO Sub-Major Group 82 - Construction and Mining Labourers
- ANZSCO Unit Group 1331 - Construction Manager
- ANZSCO Unit Group 1332 - Engineering Managers
- ANZSCO Unit Group 2321 - Architects and Landscape Architects
- ANZSCO Unit Group 2332 - Civil Engineering Professionals
- ANZSCO Unit Group 3121 - Architectural, Building and Surveying Technicians
- ANZSCO Unit Group 3122 - Civil Engineering Draftspersons and Technicians
- ANZSCO Unit Group 3126 - Safety Inspectors
- ANZSCO Unit Group 3129 - Other Building and Engineering Technicians
- ANZSCO Unit Group 3222 - Sheetmetal Workers
- ANZSCO Unit Group 3223 - Structural Steel and Welding Trades Workers
- ANZSCO Unit Group 7111 - Clay, Concrete, Glass and Stone Processing Machine Operators
- ANZSCO Unit Group 7121 - Crane, Hoist and Lift Operators
- ANZSCO Unit Group 7212 - Earthmoving Plant Operators
- ANZSCO occupations:
 - (i) 341111 - Electrician (General)
 - (ii) 341112 - Electrician (Special Class).

Healthcare occupation means an occupation in any of the following (where each occupation is of equal priority):

- ANZSCO Sub-major Group 25 - Health Professionals

ANZSCO Minor Group 411 - Health and Welfare Support Workers

ANZSCO Unit Group 2346 - Medical Scientists

ANZSCO Unit Group 2721 - Counsellors

ANZSCO Unit Group 2723 - Psychologists

ANZSCO Unit Group 2725 - Social Workers

ANZSCO Unit Group 3112 - Medical Technicians

ANZSCO occupations:

(i) 423111 - Aged or Disabled Carer

(ii) 423312 - Nursing Support Worker

(iii) 423313 - Personal Care Assistant.

Occupation related to Australia's defence interests means an occupation:

- (a) in relation to, or supporting the delivery of, AUKUS Pillar I (conventionally armed, nuclear-powered submarines) or II (advanced capability development); or
- (b) in relation to which:
 - (i) the applicant is nominated or sponsored by the Australian Defence Force (ADF) or the Department of Defence; or
 - (ii) the applicant has a letter of support from the ADF or Department of Defence, and one of the following applies:
 - (A) the applicant will ordinarily be undertaking the occupation at a defence facility; or
 - (B) the occupation supports the production or supply of defence-related materiel or technology.

Occupation related to Australia's law enforcement interests means an occupation in the ANZSCO Unit Group 4413 - Police, in relation to which the applicant is nominated or sponsored by the Australian Federal Police, New South Wales Police Force, Northern Territory Police Force, Queensland Police Service, South Australia Police, Tasmania Police, Victoria Police, or Western Australia Police Force.

Primary applicant means an applicant who seeks to satisfy the primary criteria for the grant of a visa.

Primary visa holder means a person who holds a visa granted on the basis of satisfying the primary criteria for the grant of the visa.

Regulations means the [Migration Regulations 1994](#).

Resources sector occupation means an occupation where the nominated position directly supports the exploration, extraction and production of minerals, oil and gas, or coal resources, including mine closure, decommissioning and rehabilitation activities. This includes occupations in any of the following (where each occupation is of equal priority):

ANZSCO Unit Group 2336 - Mining Engineers

ANZSCO Unit Group 2344 - Geologists, Geophysicists and Hydrogeologists

ANZSCO Unit Group 7122 - Drillers, Miners and Shot Firers

ANZSCO occupations:

- (i) 133513 - Production Manager (Mining)
- (ii) 232212 - Surveyor
- (iii) 232214 - Other Spatial Scientist
- (iv) 234912 - Metallurgist
- (v) 323211 - Fitter (General)
- (vi) 323212 - Fitter and Turner
- (vii) 323213 - Fitter-Welder
- (viii) 323214 - Metal Machinist (First Class)
- (ix) 323299 - Metal Fitters and Machinists nec

Section 85 cap means the maximum number of visas of a specified class or classes that may be granted in a specified financial year, as determined by the Minister in a legislative instrument made under section 85 of the Act.

Teaching occupation means an occupation in any of the following (where each occupation is of equal priority):

ANZSCO Minor Group 241 - School Teachers

ANZSCO Unit Group 1341 - Child Care Centre Managers

ANZSCO occupations:

- (i) 134311 - School Principal
- (ii) 134411 - Faculty Head
- (iii) 242111 - University Lecturer
- (iv) 242211 - Vocational Education Teacher (AUS) / Polytechnic Teacher (NZ)
- (v) 421111 - Child Care Worker.

Part 2 - Directions

6. Order for considering and disposing of applications for visa classes mentioned in the Schedule

(1) Subject to section 7, in determining the order for considering and disposing of applications for the visa classes mentioned in the Schedule, delegates are to follow the

order set out in this section, having due regard to the Government's policy intentions concerning the size and composition of the Migration Program.

(2) Subsections (3) and (4) set out the order of priority for considering and disposing of visa applications, with paragraph (3)(a) being the highest priority and paragraph (3)(d) being the lowest priority.

(3) The order of priority is as follows:

(a) visa applications made by a primary applicant in relation to an occupation in construction, healthcare, teaching, agriculture, aquaculture, fishing, and resources sectors, or an occupation related to Australia's law enforcement or defence interests;

(b) all other visa applications where the applicant is a primary applicant who is in Australia at the time the application is made;

(c) visa applications where the applicant is a primary applicant who is outside Australia at the time the application is made and whose application is not combined with another person's application at any time;

(d) all other visa applications, except for those covered by subsection (4).

(4) Visa applications that are combined with a primary applicant's application in a way permitted by the Regulations are given the same priority as the primary applicant's application under this section.

7. Exceptions

Notwithstanding section 6, when deciding the order for considering and disposing of visa applications, a delegate is to depart from the order of priority set out in section 6 in relation to a particular application if the delegate is satisfied that the application involves compelling circumstances affecting community safety, or the continuity of essential religious, cultural or community services in Australia.

8. If a section 85 cap applies

In deciding the order for considering and disposing of visa applications affected by a section 85 cap, each application that this Direction applies to is to be given priority in the order as provided for in section 6, unless section 7 applies.

Schedule

This Direction applies to the following visa classes:

- (a) [Employer Nomination \(Permanent\) \(Class EN\) \(Subclass 186\)](#);
- (b) [Regional Employer Nomination \(Permanent\) \(Class RN\) \(Subclass 187\)](#);
- (c) [Skilled Independent \(Permanent\) \(Class SI\) \(Subclass 189\)](#);
- (d) [Skilled Nominated \(Permanent\) \(Class SN\) \(Subclass 190\)](#);
- (e) [Permanent Residence \(Skilled Regional\) \(Class PR\) \(Subclass 191\)](#);
- (f) [Skilled-Regional Sponsored \(Provisional\) \(Class SP\) \(Subclass 489\)](#);
- (g) [Skilled Work Regional \(Provisional\) \(Class PS\) \(Subclass 491\)](#);
- (h) [Skilled Employer Sponsored Regional \(Provisional\) \(Class PE\) \(Subclass 494\)](#);
- (i) [Skilled \(Residence\) \(Class VB\) \(Subclass 887\)](#); and
- (j) [Business Skills \(Permanent\) \(Class EC\) \(Subclass 888\)](#).