



Australian Dairy Farmers

Submission

Dairy Industry Labour Agreement English language requirements

Contacts

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THE AUSTRALIAN DAIRY INDUSTRY



35%
of milk production is exported



MAJOR EXPORT MARKETS tonnes

244,828 t	70,119 t
Greater China	Singapore
98,816 t	61,184 t
Japan	Malaysia
	56,647 t
	Indonesia

ANNUAL PRODUCTION OF MAIN COMMODITIES

381,111 t
Cheese

224,107 t
Milk powders

73,322 t
Butter



AVERAGE ANNUAL MILK PRODUCTION PER COW

6,169
litres

8,795
million litres



VALUE OF FARMGATE PRODUCTION

\$4.4
billion



AUSTRALIAN MILK UTILISATION

38% Cheese

4% Whole milk powder

28% Drinking milk

9% Other

21% Skim milk powder or butter



ANNUAL PER CAPITA CONSUMPTION

98.6 litres
milk

13.5 kg
cheese



4th

Dairy is Australia's fourth largest rural industry

AUSTRALIAN DAIRY FARMS

5,213

AVERAGE HERD SIZE

276
COWS



AUSTRALIAN DAIRY HERD

1.44 million
COWS

Executive Summary

Since 2014, the dairy industry has been utilising the Labour Agreement pathway to source overseas workers to fill skilled positions unable to be filled by Australian workers.

Over that time it has become clear to those utilising this pathway that the requirement that nominated workers meet the English language proficiency in place for the Short-term stream of the TSS visa and for ENS visas, meet standard ENS English language requirements, is problematic and is acting as a barrier to obtaining these necessary workers.

The purpose of this submission is to highlight the results of a survey of current Dairy Industry Labour Agreement holders and to seek certain concessions for the Dairy Industry Labour Agreement. It is noted at the outset that the **requirements for English language proficiency may not be consistent with the governing legislation.**

The higher IELTS Band Score for overseas workers seeking permanent residency is a barrier to these workers achieving permanent residency. If it is accepted that the IELTS level required for the subclass 482 TSS visa under the Labour Agreement (IELTS Band 5) is sufficient to enable the overseas worker to perform the required work for the period of the TSS visa (4 to 8 years) then this should be sufficient to enable that same employee to continue in this role as a permanent resident. It is submitted that the **English language level for both the TSS visa and the subclass 186 (and the subclass 187 visa) be an IELTS score of be IELTS Band 5 with at least IELTS Band 4.**

Suggested options to reduce further the impact upon dairy farm business owners are that the **English language proficiency for the Dairy Industry Labour Agreement be reduced to IELTS Band 5 with at least IELTS Band 4 in each component and IELTS Band 5 with at least IELTS Band 4.5 in each component for the subclass 186 and the subclass 187 visas.** This is consistent with the concession granted to the Horticulture Industry in its Labour Agreement.

Dairy farm business owners have found that IELTS test takers are often able to achieve the required proficiency in multiple tests but not in the one test at the one time. This issue could be alleviated by **a concession providing that the requisite Band Score be able to be obtained via cumulative tests rather than in a single test.**

The survey of current Dairy Industry Labour Agreement holders indicated that dairy industry business owners are supporting their overseas workers to obtain further qualifications. The overseas workers are quite able to obtain these higher qualifications whilst falling short on the Band score required by IELTS. In fact, they often possess higher English language skills than their fellow Australian students. It is respectfully suggested that this may be discriminatory. This situation could be rectified by providing that **overseas workers who achieve a Certificate IV or higher qualification in the Australian VET system be relieved of the obligation to achieve IELTS qualifications.**

There is an unintended consequence of the fact that the pathway to permanent residency via the Dairy Industry Labour Agreement is only via the subclass 187 visa and not the 186 visa. The effect of this is that overseas workers are unable to take advantage of section 7 of LIN19/216 which provides a concession for overseas workers who have spent 5 years of full-time study in a secondary or higher education institution where all tuition was delivered in English. This could be rectified by a **concession in the DILA which provides the essence of section 7 of LIN19/216 for the permanent residency pathway via the 186 visa or by providing that the permanent residency pathway be via both the subclass 186 and 187 visas.**

The Australian Dairy Industry

Dairy is the fourth largest Australian rural industry and a key sector of the agricultural economy, operating in eight rural regions (**Figure 1**). Nearly 8.8 billion litres of milk produced from 1.44 million cows on 5213 farms resulted in farmgate production valued at \$4.4 billion in 2018/19. Australia is a significant exporter of dairy products with 35% of milk production exported in 2018/19. Australia ranks fourth in world dairy trade. Total export value was \$3.2 billion in 2018/19.

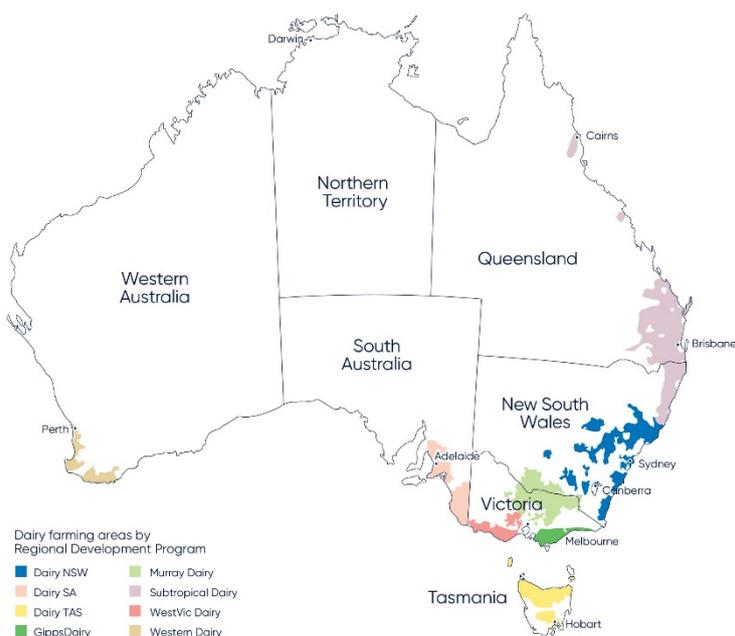


Figure 1. Dairying regions.¹

The dairy industry acts as a major source of employment across these regional areas. It is estimated that approximately 46,200 people were directly employed on dairy farms and by dairy companies in 2018/19. Associated transport, distribution, farm services and research and development activities represent further employment associated with the industry (around 100,000 people).

The average size of a dairy farm business workforce is 4.0 FTE, of which at least 2.0 FTE are family and the remaining are in the vast majority employed locally. Traditionally owner-managers, partners and family members have provided most of the labour on family farms.² However by 2017, survey data showed that 86% of dairy farms now employ staff—a 33% increase since 2007.³ 12% of dairy farms have more than 7 employees and this is projected to increase to 20% by 2025.⁴

A 2018 ABARES survey reported 48% of dairy farmers had problems recruiting.⁵ The predominant reason given was that applicants did not meet the job requirements, lacking experience and specialised skills for the job. Dairy farms seek employees with higher skill levels than the horticulture industry, reflecting the complex capabilities required in dairy farming systems. Projections indicate that in the next 2-3 years, there is a substantial increase in the need for senior dairy farm hands and for production and business managers (i.e. with qualifications and experience).⁶

¹ Dairy Australia 2019. *Australian Dairy Industry in Focus 2019*. Melbourne, 52pp. See Appendix 1 p. 33.

² ABARES 2019. *Demand for farm workers: ABARES farm survey results 2018*. Research Report 19.10, Canberra, 46pp.

³ Dairy Australia 2007. *National Dairy Farmer Survey 2007*.

⁴ Dairy Australia surveys and workforce modelling.

⁵ ABARES 2019. *Demand for farm workers: ABARES farm survey results 2018*. Research Report 19.10, Canberra, 46pp.

⁶ Report on the key themes from stakeholder engagements (Australian Dairy Plan 24 July 2019).

ABARES (2019) reported that farms further from large population centres had more difficulty recruiting.⁷ None of Australia's key dairying regions are near large population centres. The Regional Australia Institute May 2018 policy paper 'The Missing Workers' indicates that in Australia's eight dairying regions there are not enough local workers to fulfil employment needs. Local labour pools are small and continue to shrink as rural population loss continues (unemployment approaches zero).⁸

The challenges in workforce attraction and retention observed over the last two decades do not appear to be easing. Indeed, the complexity of the workforce needs only appears to be growing with the evolution of dairy farming systems and uptake of technology. Considering the long-standing nature of the workforce shortages and ever-increasing dynamics of the dairy industry, novel solutions that go beyond offering recruitment incentives are needed. While the industry is investing heavily in the next era-solution for attracting and retaining a capable pipeline of Australian employees for dairy farms, this submission discusses the importance of ongoing migration to fill the immediate to medium term shortages.

In particular, it seeks consideration of a key barrier in the Dairy Industry Labour Agreement to obtaining necessary skilled overseas workers: concessions on the English language requirement.

⁷ ABARES 2019. *Demand for farm workers: ABARES farm survey results 2018*. Research Report 19.10, Canberra, 46pp.

⁸ The Regional Australia Institute 2018. *The missing workers: Locally-led migration strategies to better meet rural labour needs*. Canberra, The Regional Australia Institute, Figure 1, p. 5.

1. There is no legal basis for the requirement contained in the ‘Note’ to Schedule 4 Item 2 of the Dairy Industry Labour Agreement (the DILA) that the English language proficiency of the applicant be as provided for in Regulation 482.223 for the TSS visa and 186.222 and 186.223 for the ENS visa.

The Migration Act 1958 and the Migration Regulations

Section 140GC of the Migration Act 1958 (the Act) provides for work agreements as follows:

For the purposes of the definition of work agreement the regulations may prescribe requirements that an agreement must satisfy.

Note: A person (other than the Minister) who is a party to a work agreement is an approved work sponsor and must satisfy sponsorship obligations.

Section 5 of the Act defines work agreement as follows:

*“**work agreement**” means an agreement that satisfies the requirements prescribed by the regulations for the purposes of this definition.*

Migration Regulation 482.243 provides as follows with respect to the required English language skills for the subclass 482 visa in the Labour Agreement stream:

482.243

The applicant has English language skills that are suitable to perform the nominated occupation.

Clause 7 of the template Dairy Industry Labour Agreement provides as follows:

7. Visa requirements

7.1 *The Sponsor acknowledges that as part of the visa application process, the Nominee will need to meet the criteria for grant of a visa as outlined in the Migration Regulations.*

7.2 *This may include:*

(a) *requirements that the Nominee has the sufficient skills, experience and English proficiency to perform the nominated occupation, and has demonstrated this where requested by the Department; (emphasis added)*

Schedule 4 of the template Dairy Industry Labour Agreement provides as follows with respect to English language skills:

Item 2 English Language

Nil concessions (emphasis added)

Note: Overseas skilled workers nominated for:

- a TSS or SESR visa must meet English language proficiency in place for the Short-term stream of the TSS visa
- an ENS visa meet standard ENS English language requirements

Clause 1.3 of the template Dairy Industry Labour Agreement provides a definition of ‘concessions’ as follows:

Concessions means any variations to the requirements prescribed in the Migration Legislation in relation to the age, skills, qualifications, employment background, level of English Language proficiency and the TSMIT required for the nomination and grant of a TSS, SESR or ENS visa. (emphasis added)

The legislation governing Labour Agreements does not appear to anticipate that there will be any further requirement in addition to the requirement in regulation 482.243 that the English language skills of the applicant be *suitable to perform the nominated occupation*.

The Dairy Industry Labour Agreement reflects the legislation in clause 7.2(a) and specifically provides that there are no concessions (as defined) to this requirement which can give force to the requirement contained in the ‘Note’ in Schedule 4 Item 2.

Thus, there is no legal basis for the requirement contained in the ‘Note’ that the English language proficiency of the applicant be as provided for in Regulation 482.223 for TSS visa and 186.222 and 186.223 for the ENS visa.

The requirement for English language proficiency in excess of requirements provided for in the Migration Act and Regulations has caused and continues to cause significant disadvantage to Labour Agreement farmers and their workers.

The dairy industry has in the past accepted that the Department of Home Affairs has imposed the requirement that applicants have an IELTS overall band score of at least 5 (IELTS Band 5) with a score of at least 4.5 in each test component for the TSS visa and its antecedent visa the subclass 457 visa.

This has caused significant disadvantage to many dairy farm businesses who have overseas workers who possess “English proficiency to perform the nominated occupation” but are unable for various reasons to achieve the required IELTS score.

The disadvantage is exacerbated when workers have sought to apply for permanent residency and the higher IELTS requirement of at least 6 for each component of the test for English language proficiency has been enforced.

Dairy Australia surveyed eight current labour agreement holders who also have overseas workers with DILA 482 visas in June and July 2020 (the 2020 DA Survey) and found that 100% of the farmers surveyed had encountered significant issues meeting the English language requirements both at subclass 482 TSS level and at the time of permanency residency application.

The 2020 DA survey established that 100% of the dairy farm businesses surveyed have lost or risk losing skilled and proficient workers.

Six Case Studies (CS) were prepared as part of the 2020 DA survey.

The following comments are notable:

“He did the test for IELTS 5 three times and failed one aspect each time – he got 5.5 and 4.5 and some he got 6 but never the overall score of 5.

We lost a really good worker as a result of this as he had to go back to Malaysia ... Now with COVID restrictions we are doubtful if we will get him back.” (CS5)

“The worker easily got the IELTS 5 when he initially came in on the Labour Agreement.

The worker has spent a long time training and trying to get to the required level of IELTS 6 so that he can become a permanent resident.

His wife is better at English than him and is helping to train him.

He failed in the written section of the test by .5 of a mark only - the rest was OK each time.

We are so worried that we will lose this worker.” (CS2)

“The Korean worker has tried for the IELTS 6 a number of times.

Last year he went home to Korea and studied hard to get his levels up.

He would get the 6 score in 3 out of the 4 categories and then fail one and each time he would fail a different one.” (CS4)

The dairy industry seeks a review of the legality of the requirements contained in the “Note” to Item 2 of Schedule 4 and amendment of the Dairy Industry Template Labour Agreement to reflect the legislation accurately.

2. The English language proficiency requirement for a 482 visa for the purposes of the Labour Agreement should remain the requirement for permanent residency of the same overseas worker.

In the alternative, the dairy industry submits that if it is accepted that the IELTS level required for the subclass 482 TSS visa under the Labour Agreement (IELTS Band 5) is sufficient to enable the overseas worker to perform the required work for the period of the TSS visa (4 to 8 years) then this should be sufficient to enable that same employee to continue in this role as a permanent resident.

It is reasonable to conclude that over the period of the subclass 482 visa the overseas worker will increase competency in the English language. However, they may not reach the high level required to achieve IELTS Band 6.

“He came to our farm and we noticed he had an affinity with animals and he was a very competent worker with the right attitude.

He began working with general farm work with horses and cows.

He then progressed to dairy duties and in his 4th year as manager of young stock and irrigation.

We are able to give him more and more responsibility and as we are getting older and my husband has a bad knee and I have a bad hip and knee this is a great relief for us.

We have recently moved into probiotics and organic soil conditioners and for the past 4 years have used no antibiotics for mastitis and lung disease and we use 50% to 60% less Urea.

This worker is a very important team member with respect to this development on the farm. He knows how to analyse all of the results and liaises with the university teams overseeing the development.

He is an excellent communicator and can do everything we need at a high level.

I am worried that in the end we will lose him if he cannot get permanent residency and this would be a massive loss to our business.” (CS1)

“This worker is managing very well at a very high level on the farm. He does not have any problems with communication, understanding or written communication on farm with management or staff.

We are desperate to keep this employee and it will be a huge loss to our business if he has to go home.” (CS2)

In the alternative it is submitted that if the requirement is to remain the English language level for the TSS visa within the DILA be IELTS Band 5 with at least IELTS Band 4 in each component and IELTS Band 5 with at least IELTS Band 4.5 in each component for the subclass 186 and the subclass 187 visas.

Dairy farm businesses and their overseas workers have spent significant resources seeking to achieve high IELTS levels.

All of the farmers surveyed by Dairy Australia in the 2020 DA Survey reported that they and/or their workers had spent significant time and money pursuing the required IELTS qualifications.

Some farmers found that they had to teach themselves the IELTS framework and then tutor their employees as there were no trainers in the local rural area. One paid a trainer to travel from the city and live in at the farm for a week and provide intensive daily training.

The following are some responses:

“As to language training I have done a lot of this myself as it is difficult to find people in the local area who have this speciality.

I have spent many many many hours with him training him up to be able to pass the test at the IELTS 5 level for the Labour Agreement

I also engaged and paid a trainer from Geelong who came over and stayed with us and tutored him 3 hours in the morning and 2 hours in the afternoon for a week.” (CS1)

“The worker has spent a long time training and trying to get to the required level of IELTS 6 so that he can become a permanent resident.

His wife is better at English than him and is helping to train him.

He has also taken lessons in Shepparton at \$60 per lesson every week since March which is up to \$1,200 now.

He failed in the written section of the test by .5 of a mark only - the rest was OK each time

He has sat the test 4 times at a cost of \$355 per test making \$1,420 so far but testing was stopped due to COVID.” (CS2)

“The worker eventually got a 6 but it was a huge struggle to get there.

She would get a score of 6 in some categories but not all at once.

The training and testing cost a lot – She had to sit the test 6 times - @\$1,000.00 per test made up as follows:

- *\$355 IELTS test*
- *\$207 lost wages*
- *\$100 lost wages husband – to care for kids (they’d all go down)*
- *\$150 accommodation*
- *\$100 travel, food etc*

Each time she would have to go to Wagga or Melbourne and lose a day’s pay plus the cost of travel we estimate it at about \$1,000 per test.” (CS3)

“I have also given him English language training.

He estimates that he has spent \$10,000 trying to get his English language levels up to an IELTS 6.” (CS4)

“I did the coaching and I taught myself about the test as there is no one in the local community who does this work.

I worked out how the test works myself and coached him and did trial tests with him and really worked hard to get him ready for the tests.

He did the test 3 times and failed – he got 5.5 and 4.5 and some he got 6 but never the overall score of 5.

It costs \$330 each time to do the test.” (CS5)

3. An unintended consequence of the required high level of English language proficiency is that overseas workers are discriminated against when compared to fellow workers with the same qualifications.

Definition of IELTS, ANZSCO and mapping to ACSF for VET requirements

Definition of IELTS

“The International English Language Testing System (IELTS) measures the language proficiency of people who want to study or work where English is used as a language of communication. It uses a nine-band scale to clearly identify levels of proficiency, from non-user (band score 1) through to expert (band score 9).

IELTS is available in **Academic**- for people applying for higher education or professional registration, and **General Training** for those migrating to Australia, Canada and the UK, or applying for secondary education, training programmes and work experience in an English-speaking environment. Both versions provide a valid and accurate assessment of the four language skills: listening, reading, writing and speaking.⁹”

The relevant bands for the purposes of this submission are IELTS Band 5 and IELTS Band 6.

IELTS 5 Modest User

The test taker has a partial command of the language and copes with overall meaning in most situations, although they are likely to make many mistakes. They should be able to handle basic communication in their own field.

IELTS 6 Competent User

The test taker has an effective command of the language despite some inaccuracies, inappropriate usage and misunderstandings. They can use and understand fairly complex language, particularly in familiar situations.

ANZSCO

ANZSCO is a skill-based classification used to classify all occupations and jobs in the Australian and New Zealand labour markets.

To do this, ANZSCO identifies a set of occupations covering all jobs in the Australian and New Zealand labour markets, defines these occupations according to their attributes and groups them on the basis of their similarity into successively broader categories for statistical and other types of analysis. The individual objects classified in ANZSCO are jobs.

⁹ IELTS <https://www.ielts.org/what-is-ielts/ielts-introduction>

ANZSCO assigns occupations to one of five skill levels with Level 1 being Degree or Advanced Diploma and level 5 being Certificate 1 or compulsory secondary school education

The occupational skill level required for the applicant for a Dairy Industry Labour Agreement is in excess of ANZSCO skill level 3 as follows:

- a. At least an AQF Certificate III (or equivalent) and at least 3 years (ANZSCO requires only 2 years) recent and relevant work experience; or
- b. at least five (5) years (ANZSCO requires only 3 years) of recent and relevant work experience.

The Australian Core Skills Framework

The Australian Core Skills Framework (ACSF¹⁰) provides a detailed picture of performance in the five core skills of learning, reading, writing, oral communication and numeracy. The ACSF has 5 levels of performance in each core skill which enable identification and specification of the language literacy and numeracy of students.

Within the Vocational Education and Training (VET) sector, the ACSF may be used to assess English language proficiency for entry level to qualifications from the agriculture, horticulture and conservation (AHC) training packages.

Mapping of IELTS to the ACSF and VET qualifications

The following table maps the required ACSF entry levels with the relevant AHC qualifications for TAFE Gippsland which teaches these courses for dairy industry qualifications.¹¹

Code	Qualification	Literacy	Numeracy
AHC20116	Certificate II in Agriculture	2	2
AHC30116	Certificate III in Agriculture	2	2
AHC30216	Certificate III in Agriculture (Dairy Production)	2	2
AHC40116	Certificate IV in Agriculture	3	3

Note: Diploma level in Agriculture requires a score of 3 across all categories.

The following diagram maps the ACSF 5 level scale with the IELTS 9 band scale.¹²

¹⁰ Australian Core Skills Framework ISBN 978-1-921916-47-2 <https://www.employment.gov.au/applying-acsf>

¹¹ Source TAFE Gippsland <http://www.tafegippsland.edu.au>

¹² The Learning Resources Group <https://tlrg.com.au/blogs/news/acsf-v-ielts>

ACSF
5-Level Scale

5	9	Expert
	8	Very Good
4	7	Good
	6	Competent
3	5	Modest
	4	Limited
2	3	Extremely Limited
	2	Intermittent
1	1	Non-user

IELTS
9-Band Scale

When this is put together with the entry level requirements for Australians training for the relevant Agriculture qualifications in the VET system it can be seen that Australian workers are required to meet a lower level of English language proficiency as compared to comparable overseas workers.

While Australian workers are only required to achieve an equivalent IELTS score of 4 in order to study for the Certificate III in Agriculture overseas workers are required to achieve an IELTS score of 5 to work at a similar level in Australia under the Dairy Industry labour Agreement. This is potentially discriminatory.

In practice this means that Australian workers working alongside overseas workers with the same qualifications may well have lesser proficiency in English than the overseas workers.

This conclusion is borne out in practice by the farmers who have found themselves encountering the IELTS testing regime for their workers on Labour Agreements.

"I am certain that our current Australian staff would struggle with the test (IELTS 5 and 6).

We use an app called Slack to communicate on farm. The Malaysian employees (who failed IELTS 5) used the App to a standard similar to Australian employees." (CS5)

"I am absolutely certain that my Australian farm workers would also not have the high level of English required for this test." (CS1)

“Most Australians who work for us would fail the test - it is just too high and unnecessary for the work to be completed.” (CS2)

Overseas workers easily obtain VET qualifications whilst in Australia despite not achieving the required IELTS band level.

Case studies obtained by Dairy Australia in the 2020 DA Survey confirm that overseas workers are encouraged and supported financially by dairy farm Businesses to obtain further qualifications whilst on the subclass 482 visa under the Dairy Industry Labour Agreement.

These overseas workers have been able to study in their field of work in the Australian TAFE system, whose tuition is solely in English, and were able to achieve qualifications yet they were unable to achieve the required IELTS band score for visa purposes.

“While he was here we paid for him to do the Cert III in Agriculture. He was easily able to complete this course with his English proficiency.” (CS5)

“Since he has been with us we have put him through the Cert III in Agriculture, Cert IV in Agriculture and also a Diploma in Agriculture. He did some of these courses while on a training visa.

He managed to complete these qualifications easily with his English level.” (CS1)

“We supported him to study a Cert IV in Agriculture and a Diploma in Agriculture since he has been with us and he has passed these without any trouble.” (CS4)

The following is an extract from a reference provided by the Agriculture/Agribusiness Trainer of one of the overseas workers who achieved Certificate III and IV and a Diploma in Agriculture. (CS1)

“H completed Cert III, Cert IV and a Diploma in Agriculture at the NCDE. Based on H’s grades, attendance and class participation, I rate his performance in my courses as superior.

His standards were frequently higher than those of his English speaking class mates. H is well and truly able to communicate in the classroom and got along well with everybody.

It is disappointing that the required English language tests are so onerous for foreign workers such as H as, whilst they are perfectly able to study and achieve qualifications, communicate and perform the required roles on a dairy farm they often have to leave the country and thus the industry because they cannot meet standards which are in fact often higher than other co-workers”.

For the larger farms this additional training may facilitate movement to higher skilled positions on the farm. For family farms they may remain in the position albeit with higher qualifications and greater value to the employer and job satisfaction for the worker personally.

The potentially discriminatory aspects of a requirement for English language proficiency in excess of that required for VET training may be alleviated by providing an amendment to the Dairy Industry Labour Agreement Template to the effect that overseas workers who achieve a Certificate IV or higher qualification in the Australian VET system be relieved of the obligation to achieve IELTS qualifications.

4. The IELTS score required for the DILA and subsequent permanent residency should be cumulative.

The case studies obtained as part of the 2020 DA Survey indicate clearly that the test takers are often able to achieve the required proficiency in multiple tests but not in the one test at the one time.

“The Korean worker has tried for the IELTS 6 a number of times.

He would get the 6 score in 3 out of the 4 categories and then fail one and each time he would fail a different one.

It would be so good if the test could be cumulative” (CS4)

“It would be better if the test could be cumulative as they sometimes get higher in one area than in the other in different tests.

He gets so nervous when he has to do the test and then he does not achieve as good a result as he could. It is hard to speak a different language if you are nervous.” (CS5)

“It would be better if the test did not have to be cumulative as a lot of people get nervous and do not perform at their best in each test at the same time” (CS3)

It is submitted that if the English language proficiency requirement for the DILA, which is in excess of the legislative requirements, is to remain, that this be reduced to enable a cumulative test result rather than a test result on the one occasion.

5. There is an unintended consequence as a result of the permanent residence pathway for the Dairy Industry labour Agreement being via the subclass 186 ENS visa rather than either the subclass 187 or the subclass 186 visa.

Standard TSS visa holders have the opportunity to apply for permanent residency via the ENS (subclass 186) visa or via the RSMS (subclass 187) visa.

The Labour Agreement pathway is via the ENS (subclass 186) visa alone which provides a permanent residency option in both metropolitan and rural and regional areas

Until 15th November 2019, all transition stream applicants for both subclass 186 and subclass 187 visa had access to the same English exemption for applicants who on the day the visa application was made, had completed at least 5 years of full-time study in a secondary or higher education institution where all tuition was delivered in English.

On the 16th November 2019, Ministerial Instrument LIN 19/216, removed this English exemption from the subclass 186 applicants on the basis that it indicated a reflection of the government’s intention to boost the regional migration in recognition of the difficulty and challenges of recruiting and retaining employees in rural and regional Australia.

LIN19/216 provides as follows:

7 Subclass 187 visas—Temporary Residence Transition stream

Exemption from English language requirement

- (2) *For the purposes of paragraph 187.222(b) of Schedule 2 to the Regulations, a class of persons is specified in relation to an application for a Subclass 187 (Regional Sponsored Migration Scheme) visa if, on the day the visa application was made, the persons had completed at least 5 years of full-time study in a secondary or higher education institution where all tuition was delivered in English.*

The removal of the exemption for Subclass 186 visa when coupled with the fact that the only permanent residency pathway via the Dairy Industry Labour Agreement is via the subclass 186 visa means that the intention of the minister to encourage migration to rural and regional Australia is not being met for the dairy industry.

A further unintended consequence is that employees who cannot access the subclass 186 visa through the Labour Agreement pathway will potentially take advantage of the exemption and move to other employers where they can access the subclass 187 visa with the result that the Labour Agreement employer will lose the skilled and experienced worker they have invested in and upskilled over the 4 year period and desperately need.

The dairy industry submits that the pathway to permanent residency via the Dairy Industry Labour Agreement be via both subclass 186 and subclass 187 visas or in the alternative that a concession be included in the DILA which provides the essence of section 7 of LIN19/216 for the permanent residency pathway.

6. The Horticulture Industry Labour Agreement provides significant English language concessions

The Horticulture Industry Labour Agreement provides significant English language concessions in recognition of the severe difficulties that the horticulture industry is facing in recruiting and retaining skilled and semi-skilled workers.

At the time the Dairy Industry Labour Agreement was negotiated the Department of Immigration and Border Protection, as it then was, made it abundantly clear that the required English language proficiency would be IELTS 5 and that this was not negotiable. This was despite the fact that this is contrary to the Migration Act and Regulations.¹³

The dairy industry is facing the same skill shortage as the horticulture industry and the dairy industry refers to the materials provided at the time of negotiating the Labour Agreement.¹⁴

The dairy industry is working hard to address the widespread skills shortage across the industry and has been doing so for some time. However, the skills shortage is expected to continue for the foreseeable future. Temporary skilled visas go some way to addressing the issue but longer term solutions are also required.

The dairy industry seeks a concession similar to the concession granted to the horticulture industry as follows: the English language level for the TSS visa be IELTS Band 5 with at least IELTS Band 4 in

¹³ See paragraph 1 above

¹⁴ See Appendix 1 below

each component and IELTS Band 5 with at least IELTS Band 4.5 in each component for the subclass 186 and the subclass 187 visas and that this apply retrospectively to all current Dairy Industry Labour Agreements.

7. A pathway to permanent residency is essential to attracting overseas workers to Australia.

The high IELTS level is a disincentive and has resulted in dairy farm businesses losing employees they have upskilled and nurtured over years.

“We lost a really good worker as a result of this as he had to go back to Malaysia “. (CS5)

“If he does not get to IELTS 6 they will have to go back to South Africa.

This would be a huge loss for us.” (CS2)

“He is an excellent communicator and can do everything we need at a high level.

I am worried that in the end we will lose him if he cannot get permanent residency and this would be a massive loss to our business.” (CS1)

The pathway to permanent residency for Labour Agreement holders was a welcome initiative but in practice the required high level of English language proficiency (IELTS 6) is proving to be a barrier to dairy farm businesses accessing this pathway.

The effect of this is that the permanent residency pathway does not in reality address documented long term labour shortage problems. It also impacts on the certainty and workforce planning capabilities of those dairy farm businesses.

Turnover costs are significant. Each time there is a turnover of employees in an organisation, there are the direct costs of hiring, and other costs of decreased productivity for other employees as they take on extra work, the cost of orientation and development, workforce morale and business reputation.¹⁵

Dairy farm businesses invest a large amount of time and money training workers on their farms, even if the worker comes with a high level of skills. If the worker has to leave after 4 years, this investment is lost.¹⁶

A pathway to Permanent Residency is a key reason why skilled migrant employees choose Australian dairy farms as their work place over other countries.¹⁷ It is equally not surprising that a number of dairy farmers have indicated that overseas workers are very important and a long term strategy for the business, reflecting recent analysis by The Regional Australia Institute.^{18,19}

A recent PhD study into the role of skilled migration in the dairy farm workforce, supported by a Dairy Australia scholarship, has found skilled migrants fulfil an important role in farm management

¹⁵ National Rural Advisory Council 2013. *Report on the workforce planning capabilities of agricultural employers.*

¹⁶ Dairy Australia 2017. *The Power of People on Australian Dairy Farms 2017*

¹⁷ Skilled migrant workers in the Australian dairy industry: farm owners and migrant worker perspectives on constraints, opportunities and future workforce dynamics (unpublished – K Salgado, University of Melbourne).

¹⁸ Collins, J., Krivokapic-Skoko, B. and Monani, D., 2017. *New Immigrants Critical to Australian Agriculture*, Australian Farm Institute, *Farm Policy Journal Vol. 14 No.1*, Autumn Quarter.

¹⁹ The Regional Australia Institute 2017. *The missing workers: Locally-led migration strategies to better meet rural labour needs.* Canberra, The Regional Australia Institute.

for farms in different business stages (growing; consolidation; winding down) and in geographically remote locations. Further, the PhD study found that the length of tenure and experience gained, benefits both the farm and the aspirations of the skilled migrant for permanent residency and increased farming experience.²⁰

Further research from the same PhD study details migrant employees' intentions relating to working on dairy farms, permanent residency or return home.

Twenty dairy farms employing skilled migrants were studied as case studies of the processes involved in the attraction and retention of skilled migrants in dairying.²¹

Most of the skilled migrants interviewed as part of the study were attracted by the potential to achieve permanent residency, higher salary and standard of living in dairying in Australia (compared to their own country or other countries like New Zealand) and were keen to develop skills and remain in dairying (6/9 employees). Other respondents were interested in gaining experience and skills in dairying to apply when returning to their home country (3/9).²²

- *looking for an opportunity of staying here and become a resident”, (Employee 1)*
- *“The reasons we are working on this dairy farm are a lot more opportunities in Australia compared to the UK or Europe. So yes, just opportunities for us”, (Employee 5 - Seeking permanent residency. Manage and own a dairy farm in Australia.)*
- *“I wanted to learn things like the Australian dairy farming standards. [...] start my own business in future”. (Employee 6 - Skill development and continue in dairy farming)*

In August 2018, Dairy Australia commissioned in-depth interviews with 13 Dairy Industry Labour Agreement holders ('The August 2018 Dairy Australia Interviews') to investigate skilled migrant recruitment and views on permanent residency.

One hundred percent of respondents answered “Yes” to the August 2018 Dairy Australia interview question “Is permanent residency something you would like to support for your overseas workers at the end of their current term? Please provide comment on the reason.”

The following are some of the comments:

“Definitely. The situation will not change in our lifetime. We just cannot get the staff with skills in rural communities. There is competition with other industries and also with other farms. Potential employees have lots of choice for jobs as there are so many available.” (Respondent LH4)

“Our Labour Agreement worker desperately wants permanency. He is committed to farming and hates city life so we do not think that we would lose him to the city if he got permanent residency. It is a huge upheaval for people to travel to another country for work and we

²⁰ Skilled migrant workers in the Australian dairy industry: farm owners and migrant worker perspectives on constraints, opportunities and future workforce dynamics (unpublished – K Salgado, University of Melbourne).

²¹ Nine skilled migrants were interviewed. *ibid*

²²Salgado, K I (2018) Summary of the skilled migrant experience on Australian dairy farms – report to Dairy Australia, University of Melbourne, Melbourne, Australia. Attachment 'B'

would struggle to get people if there was no hope for permanent residency.” (Respondent MH6)

“Absolutely. Our best example of this is a worker who has worked and saved and now wants to put down roots and buy land and build a home but without permanent residency he cannot do this. If they have no hope of permanent residency they will go elsewhere.” (Respondent LH3)

“Absolutely. Permanence is vital. It is the main reason they come here. I believe that I can guarantee that every employee I get from overseas will want to stay. I have a person who came on a 457 visa years ago and they are still with us today. We offer a stable work environment with opportunity to increase skills and become a part of a team with a pathway to management who is valued. The cost of living in a rural area is cheaper than the city and they can bring their family and become a part of the community”. (Respondent MH1)

“Definitely. Our current Labour Agreement worker is really worried about his future. He loves it here and his wife loves it and has a job locally and they do not want to have to leave. If there was permanent residency it would definitely encourage people to come and to stay and be a part of the local community.” (Respondent MH7)

“Absolutely. All 3 of the overseas workers we had had permanent residency as their ultimate goal. We had 2 vet trained workers from the Philippines who were committed to farming as their qualifications were not recognised here. They wanted to stay on the farm.” (Respondent MH8)

“I cannot stress how important this is - it is vital that the worker be able to have potential for long term work so that they can bring their family here and settle in the area and support the local community. We spend a lot of time training and to then lose them is a huge burden on us resource wise.” (Respondent LH1)

8. Permanent overseas workers settle in regional and rural communities and reinvigorate these communities.

Growing the rural labour work force through migration is one way the dairy industry considers it can address the current skills shortage. Skilled migrant settlement in rural areas provides an important pool of labour for dairying and this requires clear strategic policy development by government. Immigrant farmers not only fill labour shortages, but they also bring with them new technological

insights gained overseas to apply to Australian farming and are an asset to the rural community in a multitude of areas beyond the farming business.^{23,24}

As described in the recent Regional Australia Institute analysis, the visa system needs to better reflect local labour needs. That report calls for a clear and consistent policy for migrant settlement in Australia 'to recognise and meet local labour needs in rural areas'. (p.10)²⁵

A result where the ambitions of skilled migrants are well matched to dairy farm skills requirements will yield the most productive outcome for all parties.

Comments spontaneously provided by respondents to the August 2018 Dairy Australia interviews are detailed below:

"They want to integrate into the community and make their home here." (Respondent MH6)

"They want to participate in the local community and they use the schools and the sporting clubs and help to revitalise the community- supermarkets banks shops etc. It is a win-win situation for the whole community." (Respondent MH4)

"People want to know that they can settle into the community and bring their family. This has good flow on effects in the local community. The type of people who will want to work on dairy farms would not want to live in the city so we do not believe that there is any risk that we will lose them to the city once they get permanent residency." (Respondent MH2)

In response to the prompt "The government has expressed concern that if people get permanent residency they will leave the rural area and move to the major cities. What is your response to this?" the following response was typical:

"There is no logic to the assertion that they will commit 4 years to dairy farming and an area and then up and leave for the city - if anything they would go to another farm. If you look around the Finley community, there are a lot of overseas workers and it has reinvigorated the community providing support for local businesses and the community." (Respondent MH3).

The 2020 DA Survey of current Labour Agreement holders elicited the following comments regarding integration into local regional communities:

"Our overseas worker is from Spain Her husband also works for us and they have 2 children.

The children aged 4 and 7 go to the local school.

²³ Collins, J., Krivokapic-Skoko, B. and Monani, D., 2017. New Immigrants Critical to Australian Agriculture, Australian Farm Institute, Farm Policy Journal Vol. 14 No.1, Autumn Quarter.

²⁴ The Regional Australia Institute 2017. *The missing workers: Locally-led migration strategies to better meet rural labour needs*. Canberra, The Regional Australia Institute.

²⁵ Ibid.

The family go to the local church and play soccer.

The husband coaches the soccer team and they have all really integrated into the community". (CS3)

"Our overseas worker is from South Africa

His family are here. He has a wife who also works for us and a little son who was born here.

I think they would like to have another child but they are waiting to see what their future holds as if he does not get to IELTS 6 they will have to go back to South Africa.

This would be a huge loss for us.

The little boy goes to play group and will go to Kindy next year.

His brother also works for us on one of the other farms and his wife works in one of the milk plants.

The family go to the local church and have become involved with this community.

They shop locally and will use the local school in time as we are only 7 km from town and there are school busses." (CS2)

9. Cost to the dairy industry due to the lack of an Australian skilled labour force

The dairy industry requires skilled people to work with animals and manage complex machinery.

There are very few jobs on the dairy farm which can be successfully undertaken by unskilled workers.

The lack of skilled labour forces dairy farm businesses to employ people who do not have the animal husbandry skills required to perform tasks which are outside their qualifications and which may be inconsistent with animal welfare obligations.

Unskilled workers impose unnecessary additional cost pressures in an industry where margins are already very tight.

For instance, an inability to detect sick and injured animals early and administer appropriate care, costs dairy businesses tens of thousands of dollars a year in vet bills and lost milk production.

An example of this is the care and treatment of mastitis cows:

Mastitis is an udder infection which is treated with antibiotics. The milk cannot go into the system while the cow is affected and when undergoing treatment.

If picked up early enough and treated early, the length of time that the cow is out of production is reduced. Only skilled competent workers will be able to detect early mastitis.

If a mastitis cow is not picked up early it will become severely affected and may have to be euthanised meaning total loss of that cow to production and loss of the rearing costs which have gone into getting that cow to production.

Proper hygiene at milking and milking all of the milk from the cow (milking out) will help prevent mastitis occurring in the first place. Having skilled competent reliable workers will enable us to achieve this. Dairy farm businesses cannot rely on unskilled workers to make these assessments or to know when a cow has been milked out properly.

Milk is tested at the milk company for traces of mastitis. If this is detected the milk will be downgraded.

If an employee is not able to pick up and address a mastitis cow at milking the milk will be downgraded costing significant amounts of money in penalties from the milk company. These penalties are imposed because the cell count in the milk is above a certain level.

If farmers can keep the cell count below the level set by the milk company level they receive bonuses and if it goes above that level they receive penalties.

It only takes one or two cows per day to cause the limit to be exceeded and result in loss of the bonus and the imposition of penalties. Over a year for an average farm this can amount to a significant amount in the vicinity of \$30,000.00.

While the cow is being treated with antibiotics, extreme care must be taken to ensure that the antibiotic does not get into the milk.

When the antibiotic cow is being milked, the skilled operator needs to identify the cow and then manually divert the milk from the main vat. If this is not done and the antibiotic milk gets into the main vat then the whole tanker load will be rejected at a cost of \$15,000.00 to \$20,000.00.

Failure to detect and treat other animal health issues such as failure to detect lameness can cost \$200.00 per cow plus a 5% loss of production. One case of clinical milk fever can cost \$1,000 per cow.

Employing unskilled workers is also a work health and safety risk because the work on a dairy farm involves working with large animals and complex and dangerous machinery which they may not have appropriate training to operate. Misuse of machinery can be very costly to the farm business.

Unskilled employees are by their nature transient and do not stay long enough for the dairy farm business to train them to take up permanent skilled positions.

In addition, family members often have to perform these roles which means that they are working excessive hours. The consequence of this is additional stress and burnout for the family members.

Many dairy farm businesses are forced to employ backpackers but their visa status does not permit them to become permanent workers.

High staff turnover impacts significantly upon the ability to manage the farm business.

Sourcing new labour and managing unskilled workers is time consuming when farmers already work long hours.

This extract from one of the Case Studies is typical:

“In three years we have had 38 employees from locally as well as backpackers.

There is a significant cost both financially and in time to our business recruiting and training new employees just to have them leave after a few months.

Ironically the backpackers do not have to meet any English language requirements to work on our farm and often they have less good English than the worker who cannot stay because he cannot pass the IELTS test.”(CS5)

10. Conclusion

The dairy industry seeks the following:

1. Retrospective removal of the English language requirements contained in the Note to Item 2 of Schedule 4 of the Dairy Industry Labour Agreement and that this apply retrospectively to all current Dairy Industry Labour Agreements.
2. In the alternative that the English language level for both the TSS visa and the subclass 186 (and the subclass 187 visa) be an IELTS score of be IELTS Band 5 with at least IELTS Band 4 in each component and that this apply retrospectively to all current Dairy Industry Labour Agreements.
3. In the alternative the English language level for the TSS visa be IELTS Band 5 with at least IELTS Band 4 in each component and IELTS Band 5 with at least IELTS Band 4.5 in each component for the subclass 186 and the subclass 187 visas and that this apply retrospectively to all current Dairy Industry Labour Agreements.
4. In the alternative that if an overseas worker obtains a Certificate IV or greater qualification in Australia that the requirement for the English test not apply and that this apply retrospectively to all current Dairy Industry Labour Agreements.
5. That the IELTS score of Band 5 with at least IELTS Band 4 in each component be able to be obtained via cumulative tests rather than in a single test and that this apply retrospectively to all current Dairy Industry Labour Agreements
6. That the pathway to permanent residency via the Dairy Industry Labour Agreement be via both subclass 186 and subclass 187 visas or in the alternative that a concession be included in the DILA which provides the essence of section 7 of LIN19/216 for the permanent residency pathway via the 186 visa and that this apply retrospectively to all current Dairy Industry Labour Agreements.

APPENDIX 1-

EXTRACT FROM ADF/DAIRY AUSTRALIA SUBMISSION TO SKILLED MIGRATION LIST STAKEHOLDER ENGAGEMENT

MIGRATION POLICY BRANCH

AUSTRALIAN GOVERNMENT DEPARTMENT OF JOBS AND SMALL BUSINESS

There is a widespread skills shortage in the dairy industry which cannot be met from the pool of Australian job seekers in rural areas and migrants can meet this need.

There is a misconception that the dairy industry should be able to source labour from the pool of unemployed in regional areas. With the unemployment rate in regional areas sitting at around 5 to 5.3%, there is effectively full employment. The Regional Australia Institute May 2018 policy paper *'The Missing Workers'* indicates that in Australia's eight dairying regions, there are not enough local workers to fulfil employment needs.²⁶

Attracting and retaining skilled staff capable of managing a dairy farm is challenging, with much of the limited regional labour pool not experienced and/or qualified in dairy. It takes time to build the required capability to manage the many elements involved with a dairy farm, set against a backdrop of an ageing workforce, technological advancement and farms looking to grow, consolidate or wind down their business activities.

Traditionally, the family farm model trained largely family members on the job to perform at all skill levels and in particular, at the higher levels. As a result, the sector is currently skewed heavily towards a workforce aged over 55 years including a high proportion of owner operators and as these older workers who are more highly skilled retire, the sector needs to replace these workers with other highly skilled workers.²⁷ The loss of this age group from the sector requires a significant and targeted resupply of high level skilled persons.

In addition, over the last 20 years the family dairy farm model has changed to larger farms with expanding herd sizes and increased workloads with increased non-family labour and the need for higher skill levels at the skilled Dairy Operator (FLH5 to FLH7 level) and Senior Dairy Operator/managerial level (FLH8) and Award free managerial level.

As farm scale continues to increase, there are increased needs to attract and retain suitably skilled labour and to improve on-farm employment practices.

²⁶ The Regional Australia Institute 2017. *The missing workers: Locally-led migration strategies to better meet rural labour needs*. Canberra, The Regional Australia Institute, Figure 1, p. 5.

²⁷ Australian Farm Institute 2010. *Towards a better understanding of current and future human resource needs of Australian agriculture*. Research Report Australian Farm Institute June 2010.

The proportion of dairy farms which employ people has been gradually rising.²⁸ The dairy industry directly employed 42,000 people in 2016/17.²⁹ 86% of dairy farmers employ labour, which equates to a 20% increase since 2014 (66%)³⁰ and a 33% increase since 2007³¹ (Table 1).

Table 1: Percentage of dairy farms employing labour



The number of farms with six or more employees across the industry is projected to increase (Table 2) from 4% to 20% by 2025.³²

Table 2: Number of employees required on dairy farms

	2014	2017	2025 (est)
No employees	35%	14%	10%
1-2 employees	44%	41%	35%
3-5 employees	18%	19%	35%
6+ employees	4%	12%	20%

Research undertaken in 2011 indicated that in a workforce sense, the industry faced a looming crisis in several sectors due to ageing of its people, skilled workers exiting to the resource sectors, and poor attraction and retention rates over an extended period which have left an insufficient pool of young workers.³³

Projections at the time indicated that by 2018 over 102,000 of the current labour force (equating to 33.4%) would be aged 65 years and over. A staggering 56.2% of the current workforce was then aged over 55 years.

²⁸ Dairy Australia 2017. *In Focus 2017*: <https://www.dairyaustralia.com.au/publications/australian-dairy-industry-in-focus-2017?id=0B6288F1D65C4155998FCC67356182AF>

²⁹ Ibid.

³⁰ Dairy Australia 2017. *The Power of People on Australian Dairy Farms*.

³¹ Dairy Australia 2007. *National Dairy Farmer Survey 2007*.

³² Dairy Australia surveys and workforce modelling

³³ Agrifood Skills Australia 2011. *Australia's Region: Australia's Futures*. Agrifood Skills Australia Ltd, Canberra.

Agrifood Skills Australia warned that shortages within the sector would be experienced between 2013 and 2018 as the resource industry's demand intersected with the looming age crisis in Agriculture and as the mining industry construction phase transitioned into actual mining operations. The report stated that much would depend on Australia's strategic response to skilled and semi-skilled labour demand.³⁴

Dairy farmers are struggling to source the skilled labour they require in regional areas, viewing skilled labour availability and quality, as well as succession planning as one of the key factors limiting system change.³⁵

Dairy Australia surveyed 13 Dairy Industry Labour Agreement holders in August 2018.

The following are some of the responses to the question *"Would you say difficulty recruiting managerial level employees affected the performance and culture of the farm business? Comment on the impact."*

- *"Sometimes we just have to use people who are not ideal as there is no-one else. If you have people who are not ideally suited to the industry you do not encourage a positive work environment and there are often mistakes which can be costly in time and money."* (Respondent LH5)
- *"It definitely affects our financial performance if there is not the staff to do the work then we cannot increase the number of cows we milk and expand as we want to and do pasture renovation and other jobs that require labour."* (Respondent MH7)
- *"My husband and I pick up the extra work and keep the working routine going. We try hard to make sure that our staff do not suffer or have to pick up the extra work so we have a good culture on the farm and we protect them so they do not leave or have WHS and wellbeing issues."* (Respondent MH2)
- *"There is a serious skills shortage in the dairy industry."* (Respondent LH4)
- *"It seriously affects our lifestyle and in particular our ability to get off farm. We pick up the slack and work long hours and this has a significant impact on our family life."* (Respondent MH5)
- *"There is a definite skills shortage at the senior level. We can get FLH1 (Pastoral Award entry level) but the higher skill set is near impossible to get from the local community. They are highly sought after and get positions immediately they seek them."* (Respondent LH5)

One hundred percent of respondents replied that difficulty recruiting managerial level employees affected the performance of the farm business "a great deal."

³⁴ Ibid.

³⁵ University of Southern Queensland 2018. Feedback Project (interim findings)