

SMC Applications in Practice – A Guide for Practitioners

Dew James, Solicitor
Simon Laurent, Principal
Laurent Law

1. Introduction

The relatively recent changes to the Skilled Migrant Category (and the Essential Skills Category) has been a well-traversed topic over the past year or so.

Our aim today therefore is to discuss practical tips / guides that practitioners in this field can use when advising clients. Specifically, we will tackle the following three sub-topics:

- a. Terms of employment agreements – helping employers to get it right
- b. Claiming SMC points strategically – choose your battles
- c. The art of classification – finding the right skill level for the job

Included with the Paper are example Case Studies which will help to illustrate the discussion points of our presentation.

References to Instructions mean the Residence Instructions contained in the Immigration New Zealand (“INZ”) Operational Manual.¹ We also refer to decisions of the Immigration and Protection Tribunal (“IPT”) which, as we mention below, can be an important tool in achieving successful outcomes.²

2. Terms of employment agreements

One of the most striking changes to the Skilled Migrant Category (“SMC”) which came into effect in August 2017 was the introduction of remuneration thresholds as a means to define “skilled employment”. Previously, an applicant’s job description as it related to their chosen ANZSCO Unit Group(s) was the key yardstick by which “skilled employment” was measured.³

There will be annual reviews of the income thresholds for each skill band. The first review and adjustment announcement was made in December 2017 based on the income data released in September 2017. There was a short grace period between the income data first being released and the new income threshold taking effect to allow stakeholders to adjust to the new changes. On 15 January 2018, the new income thresholds came into effect. As can be seen in the table below, this resulted in an increase to the minimum hourly rate across the board:⁴

¹ Immigration New Zealand online Operational Manual <<https://www.immigration.govt.nz/opsmanual/>>.

² Immigration and Protection Tribunal website <<https://forms.justice.govt.nz/search/IPT/Residence/>>.

³ Note that an applicant’s employment also had to be on the (now defunct) List of Skilled Occupations at Appendix 6 of the Operational Manual.

⁴ Immigration New Zealand website, *News & Notifications*, <<https://www.immigration.govt.nz/about-us/media-centre/news-notifications/smc-essential-skills-changes-to-remuneration-thresholds>> (13 December 2017).

Threshold	Prior to 15 January 2018	From 15 January 2018 – present
Skilled employment in an occupation at ANZSCO 1 - 3	\$23.49 p/h or above (or the equivalent annual salary)	\$24.29 p/h or above (or the equivalent annual salary)
Skilled employment in an occupation at ANZSCO 4 – 5, or which is not included in ANZSCO	\$35.24 p/h or above (or the equivalent annual salary)	\$36.44 p/h or above (or the equivalent annual salary)
Threshold to earn bonus points	\$46.98 p/h or above (or the equivalent annual salary)	\$48.58 p/h or above (or the equivalent annual salary)

The goalposts may shift yet again depending on the updated income data expected to be released in around November 2018.⁵

SM6.20 on “Calculating Remuneration” was introduced as part of the new suite of Instructions under the Skilled Migrant Category. Some key sub-clauses of Instruction SM6.20 include:

- Calculation of remuneration – payment per hour (SM6.20(a))
- Formula for calculating payment by salary – (SM6.20(c))

$$\text{Annual Salary} \div 52 \text{ weeks} \div \text{Number of Actual Hours Worked per Week} = \text{Hourly Rate}$$

- Evidence can be requested where hours of work are variable to determine whether payment per hour would be below remuneration threshold – (SM6.20(d))
- Variable hours of work includes where an employment agreement stipulates that the employer can require the employee to work additional hours when necessary – (SM6.20(e))
- Where hours of work are variable, maximum hours worked to be used to calculate hourly rate to determine whether remuneration threshold is met– (SM6.20(f))

An applicant being paid an hourly rate for all hours worked is probably the least affected by Instruction SM6.20 because – theoretically – regardless of the number of hours worked, the rate of pay should not drop below the minimum hourly rate stipulated in the employment agreement. This makes it easier for practitioners to assess and advise clients on whether they are likely to meet the new remuneration thresholds in a Skilled Migrant Residence Visa application. The same cannot be said for an applicant being paid an annual salary.

Complications can arise if the employment agreement states that the base annual salary “covers all time worked” but where it also stipulates that an applicant can be asked to work additional hours as and when necessary. If compelled to by INZ (or a Labour Inspector), an employer must be able to provide a full record of all hours worked by an applicant so that the payment per hour can be calculated to determine if it meets the relevant remuneration threshold. Employers are required by law to keep a record of all hours worked by their employees, including those on an annual salary.⁶ This

⁵ As above at n 4, and see also Immigration New Zealand Operational Manual, at Instruction SM6.20(j).

⁶ Ministry of Business, Innovation and Employment <<https://www.business.govt.nz/hiring-and-managing/managing-people-day-to-day/personnel-files-and-record-keeping/>> (Accessed on 14 October 2018). See also Employment Relations Act 2000, at sections 130(1)(g), (1B), (1C), (1D), and 4B(1).

is to be distinguished from the need to issue payslips to workers, which is optional for employers.⁷ Employers should therefore resist the temptation of undercutting the remuneration threshold by reducing an employee's hours of work on paper because they will not be able to escape the requirement to provide evidence of every hour actually worked by a salaried employee / visa applicant.

Failure to either produce complete employee records and / or to meet the relevant remuneration threshold could result in a declined Residence Visa application for the applicant, and there could also be other ramifications for the employer themselves.⁸ Any deliberate attempt to mislead will have very serious consequences for all those involved.

As a matter of due diligence, it sometimes pays to advise clients to seek independent legal advice from an employment law expert on the legality of the terms within an employment agreement. This includes getting advice on the best way to compensate employees for all hours worked, for example, by adding an Overtime clause to the employment agreement. Taking this precautionary step could reduce the risk of employer compliance issues arising during the processing of a residence visa application.

3. Claiming SMC points strategically

Other critical changes to the Skilled Migrant Category include the increase in total minimum points from 100 to 160, the allocation of points in some sub-categories, and the requirements that must now be met to successfully claim points for skilled employment and work experience.

These changes have dramatically altered the Skilled Migrant Category landscape, because it has lifted the bar on minimum points whilst at the same time tightened points allocation and introduced restrictions into the way in which points can be claimed. This has made Expression of Interest ("EOI") and Residence Visa applications more challenging than ever. With this in mind, it will be important for practitioners to be able to guide applicants to claim points strategically as far as possible so as to avoid unnecessary issues arising during the course of the application. This includes assessing the way in which applicants will now be required to prove the points claimed, at the very outset of an EOI application.

Instruction SM1.10 sets out the sub-categories under which points can be claimed in an EOI application. These include points for:

- Age
- Skilled employment
- Bonus points for skilled employment (Area of Absolute Skills Shortage, Outside Auckland, High Remuneration)
- Skilled work experience
- Additional bonus points if skilled work experience is in New Zealand
- Qualifications
- Bonus points for qualifications gained in New Zealand

⁷ Ministry of Business, Innovation and Employment, *Employment New Zealand*, <<https://www.employment.govt.nz/hours-and-wages/pay/payslip/>> (Accessed on 14 October 2018).

⁸ Either under the Immigration Act 2009 or employment-specific legislation including the Minimum Wage Act 1983, the Employment Relations Act 2000, and the Health and Safety at Work Act 2015.

- Bonus points for partner’s skilled employment
- Bonus points for partner’s qualification

At the risk of oversimplifying the point, it can be said that some sub-categories are much easier to claim points under than others. Therefore, when assessing an applicant’s eligibility for residence under the Skilled Migrant Category, it is useful to determine as first step the sub-categories under which she has a high chance of successfully claiming points.

Key questions to ask when undertaking this exercise, include:

a. Does my client have a job offer that meets the requirement for “skilled employment”?

- It will be critical to the success of an application for the basic requirements at Instruction SM6.10 to be met, including:
 - a job / job offer that is ideally at Skill Levels 1 – 3 within ANZSCO;⁹
 - a job / job offer which is a “substantial match” to ANZSCO Unit Group(s);¹⁰
 - qualification and / or work experience requirements within ANZSCO; and
 - relevant remuneration threshold at Instruction SM6.10.5.
- Given the way in which points have been allocated under each sub-category and the strict new rules around the evidence required to support points claimed, it is highly unlikely that an application can get off the ground without any points for skilled employment.
- This is therefore a critical starting point in any EOI assessment.

b. How old is my client?

- This sub-category is relatively straightforward: the minimum age requirement is 20 years and this is capped at 55 years.
- Points are allocated depending the age of an applicant and is based on a regressive system (Instruction SM5.1).

c. What region does my client work in?

- Jobs based outside the Auckland region are awarded a hefty 30 bonus points (Instruction SM6.50) and represents a golden opportunity for applicants hoping to submit their EOI application but who are just shy of the requisite minimum 160 points.
- The option of working outside of Auckland or even securing an internal transfer from an existing employer from their Auckland-based office to one outside of Auckland should be carefully discussed.
- In some instances, an Auckland-based employer may already be considering expanding their business to a region outside Auckland and this could present a unique opportunity for an applicant seeking residence under the Skilled Migrant Category. That said, careful planning will be required for this type of intra-corporate transfer arrangement to safeguard the best outcome for the applicant. Issues such as business viability, start up costs (including the applicant’s salary), plus timing will all need to be factored into any decision to transfer. As Practitioners, we will also need to turn our minds to issues such as an applicant’s temporary visa conditions and the need to vary those conditions as the business’s needs change.

⁹ For jobs at Levels 4 – 5, it may still be possible to succeed in a Skilled Migrant Category application provided the applicant can meet the high remuneration rate of \$36.44 per hour (or equivalent annual salary) at Instruction SM6.10.5(a)(ii). See also Part 4 of this Paper, *The Art of Classification*, at pages 8 – 10.

¹⁰ As above.

d. Does she have a qualification?

- In most cases, the ability to claim points for a qualification will be critical to an applicant's EOI (and Residence Visa) application. This is because at minimum, an applicant can claim 40 points for a recognised qualification and this will likely make up a bulk of the 160 points which will be required in a SMC application.
- Practitioners should also be aware of the transitional provisions within the Skilled Migrant Category. For example, Instruction SM8.5.5 states that a principal applicant may be able to claim 50 points – as opposed to only 40 points under the current policy – for a New Zealand qualification at Levels 3 – 6 if the qualification would have met the requirements for the award of points under the Skilled Migrant Category that was in effect on 24 July 2011, and, the qualification was completed before 25 July 2011 or the course commenced on or before 24 July 2011. In this instance, there are potentially 10 “hidden” points to be claimed and this could be the difference required to achieve sufficient points in an EOI application.

e. Did my client gain her qualification in New Zealand or another country?

- Where a qualification has been gained in New Zealand, it will be prudent to check if it will meet the English language requirements for principal applicants at Instruction SM4.5(c)(ii) and (iii). This will determine whether she will need to undertake an English language test.
- For overseas qualifications, it will be important to consider the following two questions:
 - is the qualification listed under Appendix 3 “List of Qualifications Exempt from Assessment”; and
 - if it isn't, will it be worthwhile pursuing a formal assessment with NZQA?Here, judgement will need to be exercised on the question of utility of securing a NZQA assessment depending on the level and type of overseas qualification.

f. Does her partner have a qualification?

- This is another sub-category under which “easy” points can be claimed in a SMC application. That said, there are a number of criteria to be met before a principal applicant will be able to successfully claim points in this area.
- Relevant factors to keep in mind include:
 - Whether the partner is being included in the application (Instruction SM9.10(b)(i));
 - The duration of the partnership between the principle applicant and their partner – the couple will have to have lived together for a minimum of 12 months at the outset of the EOI application (Instruction SM9.10(b)(iii)); and
 - The partner's ability to meet INZ's English language requirements for *principle applicants* (Instruction SM9.10(b)(ii) and SM4.15).
- There are also transitional provisions for partners with qualifications who may be able to claim 10 points – as opposed to *no points* – for qualifications at Levels 3 to 6 (Instruction SM9.10(c)).

g. Did her partner gain the qualification in New Zealand or another country?

- See above at paragraph (e) – the same principles apply.

The answers to these questions will determine the minimum baseline of points which are guaranteed to be awarded at the Residence Visa application stage. Depending on the points tally, the next set of questions to consider include:

h. Does my client have any work experience? If yes, will her work experience meet the new definition of “skilled” work experience?

- “Skilled work experience” is arguably the most complex sub-category to claim points under in a SMC application.
- If at all possible, applicants should therefore avoid claiming *any* points for work experience unless absolutely necessary to achieve the minimum 160 points required.
- Claim points for “skilled work experience” conservatively and thoughtfully. Serious consideration will need to be given to the evidence the applicant will be able to produce to support the claimed points for work experience. Gone are the days when simply providing a reference letter from ex-employers was sufficient evidence of work experience. Applicants must now be able to provide detailed and well documented evidence of past work experience, including for example old copies of signed employment agreements and job descriptions, pay slips, income tax information, as well as reference letters from ex-employers.
- Another important point to keep in mind is that the work experience will need to also “substantially match” an ANZSCO Unit Group. This adds another layer of uncertainty to the application because points for skilled work experience will only be awarded if all of these complex and convoluted requirements can be met. Practitioners will need to be robust in the advice we give to applicants who need to claim points under this sub-category: if an applicant will not be able to provide sufficient evidence to support the claimed points and meet the substantial match requirements, then they may need to reconsider filing the EOI application and postpone the application until they are able to claim sufficient points in a different way (for example, by finding a job outside of Auckland and / or gaining more for work experience in New Zealand).
- Interestingly, points for “skilled employment” and points for “skilled work experience” are not connected. Nowhere within Instructions SM6.10 (for skilled employment) and SM7.10 (for skilled work experience) does it state that the points an applicant claims for “skilled work experience” must be related to the New Zealand job offer tendered for “skilled employment”. This opens up the possibility for an applicant who has had a change in career to capitalise on past skilled work experience to claim points in a SMC application even if it is not related to their current job / job offer.
- It may be the case that claiming points for recent work experience gained in New Zealand will be an easier hurdle to overcome than claiming points for work experience gained a long time ago and / or overseas. For example, employment outside New Zealand may not have involved the sort of formal records which are now standard in this country, including employment agreements, job descriptions and the equivalent of the IRD Summary of Earnings to prove the period of employment.

i. Does my client’s partner have a job that will meet the requirements for “skilled employment” (Instruction SM6.10)?

- The same principles apply as above at paragraph (a).

Below are example Case Studies to illustrate the strategies outlined above.

Case Study 1

Applicant A is a fully qualified Architect with 6 years of work experience in the UK as well as a degree in Architecture at Level 7 which is listed on Appendix 3. He is currently on a New Zealand work visa and has been employed with a Wellington-based Architecture company for the past 12 months in the capacity of Senior Architect. He is 35 years old, and living in a genuine and stable relationship with his wife of 4 years. She is a qualified Teacher and her German teaching degree has been NZQA assessed as comparable to a New Zealand Level 7 qualification. She works as a Primary School Teacher at a local school and holds a valid New Zealand Teacher’s registration. Applicant A would like to submit an EOI Application – including his wife as a secondary applicant – under the Skilled Migrant Category based on his current employment.

On this basis, it appears that Applicant A is eligible to claim the following points in an EOI application:

Age:	30 points
Skilled employment:	50 points
Bonus points for employment outside Auckland:	30 points
Skilled work experience	30 points
Bonus points for NZ work experience:	10 points
Partner’s skilled employment:	20 points
Qualification:	50 points
Partner’s recognised qualification:	10 points
Total:	230 points

Based on all of the sub-categories under which Applicant A can claim points, he has a total of 230 points. However, given that he only requires 160 points to be eligible to submit an EOI, it may be prudent to consider if there are any “extra” points claimed that may be difficult to prove and should be disposed of. In Applicant A’s case, the 230 points claimed includes points for skilled work experience, bonus points for New Zealand work experience and points for his wife’s skilled employment. If he refrained from claiming any points under those sub-categories, his total points’ score would drop to 170 points. Whilst this may on the face of it appear to be counter-intuitive, by refraining from claiming these additional points, Applicant A will have better control of the application and will arguably reduce the risk of his application incurring issues at the residence stage.

Case Study 2

Applicant B is 40 years old and she has worked as a Human Resource Adviser for an Auckland-based company for the past 2 years. She is currently being paid a salary of NZD60,000 per annum based on 40 hours of work per week. In total, she has approximately 4.5 years of relevant work experience in this field, in New Zealand and South Africa. She has a South African qualification which, based on a full NZQA Assessment report, is equivalent to a New Zealand Level 7 qualification in Human Resource and Health and Safety Management. Her husband stays at home to look after the couple’s two young children aged 3 and 6 years old and he does not have a formal tertiary qualification.

On this basis, it appears that Applicant A is eligible to claim the following points in an EOI application:

Age:	20 points
Skilled employment:	50 points
Skilled work experience:	20 points
Bonus points for NZ work experience:	10 points

Qualification:	50 points
Total:	150 points

Applicant B is 10 points short of being able to submit an EOI application. However, there are a few ways in which she could try to achieve 160 points. One option is to continue working until she gains 6 years of work experience at which point she will be able to claim 30 (instead of just 20) points for work experience, but of course she will have to provide sufficient evidence to INZ to demonstrate that this work experience meets the requirements for “skilled work experience”. This strategy does not therefore provide a lot of certainty to Applicant B. Another option would be for Applicant B to try to negotiate a higher salary that would enable her to claim bonus points for high remuneration. However, this option is probably unrealistic given that she would require a salary increase of over NZD40,000 before she would meet the minimum hourly rate to claim points for high remuneration.

A further option would be for Applicant B to consider looking for a similarly skilled job located outside the Auckland region. If she can achieve this, then she would be automatically entitled to claim 30 bonus points. That would bring her total points’ score to 180, and at that point, she might even consider reducing the total points she claims for “skilled work experience” by limiting this to her New Zealand work experience only. That would still give her the minimum 160 points she would require to submit an EOI application.

These are just a couple of examples of the strategies that can be used to guide clients to think more strategically when claiming points in an EOI application to limit as far as possible complexities arising during the Residence Visa application stage. Of course, it will not always be possible to avoid claiming points for “skilled work experience” (as above with Applicant B) in which case clients will need to be counselled on the possible risks and complexities that may arise during the processing of an application.

4. The art of classification

Unfortunately, the changes that came into effect in August 2017 did not dispose of the requirement to “substantially match” an applicant’s job to a relevant ANZSCO Unit Group. The only potential exception to this general rule is for those applicants who are paid an hourly rate of at least NZD36.44 and who are employed in occupations which either do not have a classification or which is difficult to classify (Instruction SM6.10.15). Those select few applicants may be able to avoid ANZSCO entirely. However, in most cases it will still be necessary for practitioners to assist clients with selecting a suitable ANZSCO Unit Group.

With this in mind, below is another case study which will help illustrate the challenges of substantially matching a client’s occupation to an ANZSCO Unit Group.

Case Study 3

Applicant C works for a large Hamilton-based tech company which produces and sells electronic mobile devices including cell phones, computers, tablets and other related electronic accessories. As part of the business, the company also provides technical support to its customers for the goods and services it supplies. Applicant C’s role within the business is to provide technical support services remotely over the phone to customers for the company’s goods and services. She therefore works within a “call-centre” setting alongside 10 other staff who also work in the same capacity. Applicant C

has a New Zealand Level 7 Diploma in Computing (Support and Operation) and approximately 2.5 years of relevant work experience. Given the nature of the company's business and her associated duties, she selected ANZSCO Unit Group (313112) ICT Customer Support Officer – a Skill Level 2 occupation – as being a “substantial match” to her occupation in her SMC Residence Visa application. However, upon verification INZ raised concerns that her job may be more closely aligned to ANZSCO (541112) Call or Contact Centre Operator which is a Skill Level 4 occupation. Unfortunately for Applicant C, her salary is not high enough for the exception at Instruction SM6.10.15(a) to apply. Therefore, her challenge will be convincing INZ that her job is in fact a substantial match to the ICT Customer Support Officer (313112) occupation classification.

There has been a lot of jurisprudence from the IPT over the years on how the “substantial match” assessment should be undertaken. It is often emphasised that the assessment should not focus on “ticking off” each core task within an ANZSCO Unit Group perfunctorily. Rather, the assessment should be a holistic one which takes into consideration the context of an employer's business and the nature and purpose of an applicant's employment within that business. With that in mind, we sometimes find it useful to nevertheless compare and contrast the individual duties within an applicant's job description and analyse how these correspond to the core tasks of her chosen ANZSCO Unit Group. By doing so, a picture emerges of how difficult or easy it will be to “fit” an applicant's employment within a particular ANZSCO Unit Group. As practitioners, it can be useful to undertake this exercise collaboratively with clients at the outset of an application so that we can get a better understanding of how they perform their duties and then advise them on whether it will match the corresponding ANZSCO core tasks. This process will also help to crystallise potential issues in terms of occupation classification, including for example the need to choose a different occupation classification within ANZSCO, or to combine two occupation classifications, so as to meet the “substantial match” requirement.

Coming back to Applicant C's dilemma then, the tension between two occupation classifications with different skill levels but with apparently similar descriptions and core tasks represents an all too common issue in SMC (and Essential Skills work visa) applications. This can make it challenging for us as practitioners to assist clients with finding the right classification for their job and for INZ to determine if that is in fact the case. With the specific examples of ANZSCO Unit Groups ICT Customer Support Officer (313112) and Call or Contact Centre Operator (541112), the point of difference between the two occupation classifications is arguably the technical focus of ICT Customer Support Officer (313112) which is clearly absent from the Call or Contact Centre Operator (541112) occupation. Therefore, even though both occupations are based in call centres, clear distinctions can be drawn between the two in terms of the specific duties that are expected to be performed by someone working in these roles. As such an important part of the process of advising clients involves having a frank discussion about the tasks they are performing as part of their job, the context of their employment within their employer's business, and on that basis the likelihood they will be able to successfully demonstrate that their job is a “substantial match” to their chosen ANZSCO Unit Group.

When it comes to advising and guiding clients on choosing a suitable ANZSCO Unit Group, it can sometimes be worthwhile to research IPT jurisprudence associated with the selected occupation classification. Utilising the ICT Customer Support Officer (313112) example once more, *IQ (Skilled Migrant)* [2017] NZIPT 204102 is an example of a series of similar cases providing useful analysis on how this particular ANZSCO Unit Group should be treated when undertaking the “substantial match” assessment. The IPT's findings have a general application beyond the specific factual matrix of each case [emphasis added]:¹¹

¹¹ *IQ (Skilled Migrant)* [2017] NZIPT 204102.

[58] Where a Unit Group contains a number of occupations, only the core tasks (or parts of a core task) that are relevant to a specific occupation will be considered when assessing whether there is a substantial match. In this case, only those core tasks, or parts thereof, in the ICT Support Technicians Unit Group which relate to the occupation of ICT Customer Support Officer are relevant.

[59] Unit Group 3131 — ICT Support Technicians includes three occupations (in addition to a “not elsewhere classified/NEC” alternative): Hardware Technician, ICT Customer Support Officer, and Web Administrator. The core tasks reflect the differences between these three occupations. *The work of an ICT Customer Support Officer primarily relates to the provision of support, education and guidance and the diagnosis and resolution of technical problems and is therefore most closely linked to core task two.* Core tasks seven and eight clearly relate only, or primarily, to the occupations of Web Administrator (core task seven) and Hardware Technician (core task eight).

...

[61] While core tasks one, three, four, five and six are also relevant to the occupation of ICT Customer Support Officer, they must be interpreted in the context of the occupation’s description and an applicant’s employment. Core task six, for example, which refers to implementing computer networks, does not necessarily require that an ICT Customer Support Officer be responsible for personally implementing computer networks but rather that he or she may provide support, education and guidance to people that are setting up a computer network (such as setting up an Internet router) or provide support, education and guidance to diagnose and resolve technical problems with an existing computer network (such as where an Internet router has stopped working).

As can be seen from the excerpts above, the IPT’s analysis is really useful because it provides authoritative guidance on how to apply oftentimes abstract ANZSCO Unit Group descriptions and core tasks to real-world jobs. Applicant C now has at her disposal a group of cases she can rely on to make her case to INZ that her job is a “substantial match” to ICT Customer Support Officer (313112) and must be distinguished from the Call or Contact Centre Operator (541112) occupation.

It goes without saying that it will not be enough to rely solely on IPT decisions to answer the “substantial match” question. It will also be prudent for practitioners to apply that analysis to an applicant’s specific job and, where possible, provide supporting evidence to demonstrate how each (relevant) core tasks is being performed by the applicant.

Final comments on ANZSCO classification

Inherent within the issue of occupation classification is the struggle to find a balance between pitching a job at a Skill Level that will meet INZ’s definition of “skilled employment” while at the same time being careful not to overshoot the mark by pitching a job against an ANZSCO Unit Group which is too high. The risk here being INZ raising concerns at the residence application stage that an applicant’s job is not a substantial match their chosen ANZSCO Unit Group but rather a substantial match to a lower and “unskilled” (i.e. Skill Level 4 to 5) ANZSCO Unit Group.

The Retail Manager (142111) and Retail Supervisor (621511) occupation classifications are a classic iteration of this issue. Those working regularly in the Immigration field will be all too familiar with these two particular occupation classifications, and the challenge of not only proving that an applicant’s job is a substantial match to the skilled Retail Manager (142111) occupation (versus the unskilled Retail Supervisor (621511) occupation) but also in finding a suitable alternative ANZSCO Unit Group which is equally “skilled” (i.e. also at Skill Levels 1 to 3).

The reality for some of our clients is that there is simply no suitable ANZSCO occupation classification, and so the exception at Instruction SM6.10.15 is a welcome new addition.

5. Conclusion

To recap some of the main points discussed above:

1. Be mindful of how the recent changes to the Skilled Migrant Category impact on the terms of employment agreements. When in doubt, seek expert advice to avoid issues arising in the future;
2. Be strategic in the way points are claimed in a Skilled Migrant Category application. Claim points conservatively and only where necessary to meet the minimum points' threshold;
3. Be proactive and pragmatic when it comes to assisting clients to find the right ANZSCO classification for their job. Actively research IPT decisions for guidance on the application of specific ANZSCO Unit Groups and provide robust advice to clients who are unlikely to meet the "substantial match" requirement.

As the immigration policy continues to change, so too must we adapt the ways in which we approach advising clients to ensure they can achieve the best immigration outcome.