Over the 1990s and 2000s, private actors have played an increasing role in the selection and integration of new migrants. An individual applying as a skilled immigrant to Australia must have his or her skills accredited before lodgment of an application with the Department of Immigration and Border Protection (DIBP). This assessment forms a vital part of the immigration process for a wide range of visa categories. Historically, such assessments were undertaken by immigration officials. Since 1999, the preliminary step of skills assessment of immigrant applicants has been carried out by 35 different assessing authorities independent of the department. Some of these authorities are private sectors.


1 The name of the department has changed several times in recent decades. From 2007–2013, it was called the Department of Immigration and Citizenship; following the election of the Coalition government in 2013, the name was changed to Immigration and Border Protection (DIBP 2014a). In this chapter, department names at the time of writing are given, unless the responsible department at the time of a reported past event or inquiry was different, and in the case of institutional authorship.
professional bodies, others are commercial arms of government agencies. While this trend towards marketisation has been considered in light of privatised detention centres for asylum seekers (Crock & Berg 2011, pp. 132–33; Crock, Saul & Dastyari 2006), privatisation and marketisation of the bulk of immigration selection for skilled immigration in Australia have not been analysed extensively. Yet, given the centrality of immigration to Australia’s sovereign identity, and the importance of skilled immigration within immigration and labour market policy more broadly, such an assessment is warranted. This chapter outlines marketisation in the assessment of immigrant skills since 1999 and evaluates the realisation of key public policy goals in light of this development.

The effects of marketisation of skills assessment upon skilled immigration assessment are evaluated using five public policy indicators: i) the timeliness of skills assessments; ii) the accuracy of decision-making; iii) the cost shifting that has occurred; iv) the transparency of the skills assessment process and opportunities for review; and v) the fairness of the assessment system, across different assessing agencies, both public and private. These indicators have been selected based on their prevalent usage in public policy analysis of privatisation and marketisation processes. Marketisation is often justified on the basis that expertise in pricing and business can lead to better and faster delivery of goods and services (Aman 2009, p. 269; Leunig 2010, p. 160; Quiggin 2010, p. 186; Webster & Harding 2000, p. 10), although whether this is actually the case may depend upon whether there is real competition at play (Kelman 2009, p. 156). The specialisation that comes with marketisation can also be seen to increase the accuracy of decision-making (Aman 2009, p. 269). More critically, marketisation has been seen to reduce the transparency and fairness of policy processes, insofar that certain forms of public law review are reduced, or hidden from sight (Freeman 1999; Freeman & Minow 2009, pp. 4–5; Kelman 2009, p. 178; Ramia & Carney 2000; Sapotichne & Smith 2011, p. 89). Aside from the theoretical basis for the selection of these indicators, the empirical research undertaken for this chapter demonstrates their practical importance to stakeholders engaged in the skilled immigration field, including immigrant applicants and their representatives.

Given the dearth of current academic research on how these theoretical concerns play out in the area of immigrant skills assessment, a
range of original research was undertaken for this chapter, coupled with desk analysis of existing policy documents. First, I undertook a survey of migrant agents registered with the Migration Institute of Australia in 2012 to ascertain their perceptions of skilled migration assessment in the present day and across time. Second, I drew upon elite interviews conducted in 2009 with senior immigration officials engaged in the 1999 policy reforms (Boucher 2011). Third, I analysed the report of a Joint Standing Committee on Migration review of migrant skills accreditation and assessment – Negotiating the maze (JSC 2006) – and the government response to that inquiry (JSC 2011). Submissions to this review were also examined. Finally, I considered several legal cases and relevant rules pertinent to this area of regulation. This chapter states the law and application fees as stated in public documents in January 2012.

The public policy context of skills assessments for immigration purposes

Skilled immigration plays an important role in Australia’s immigration program and economy more broadly, as structural ageing and skill gaps in the domestic workforce, particularly in the mineral and resource sectors, create labour market pressures. Skilled immigration selection comprises 65 percent of Australia’s permanent immigration program and a significant component of Australia’s temporary immigration (DIAC 2011a, p. 3). The size of the immigration program is also significant. In the year 2010 to 2011, 113,725 immigrants entered Australia under the permanent skilled category and 90,120 under the temporary skilled category (DIAC 2012a, p. 6, 49). Over the 1990s and 2000s, Australia’s skilled immigration system has grown in scale and become more complex in its design through a proliferation of visa classes and associated rules and provisions (Crock & Berg 2011, Ch 9). Within this complex and increasingly vital area of labour market activity, analysis of skills assessments is of broad public policy salience.

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2 Together, permanent skilled and temporary skilled entrants comprise around 33 percent of net overseas migration and this is projected to rise to 40 percent by 2014–15 (DIAC 2011b, p. 10). Net overseas migration comprises all immigration flows minus all emigration flows.
A successful skills assessment is required prior to lodgment of an application for points-tested general skilled immigration. As such, skills assessment is a separate, independent but also necessarily preliminary step prior to the application for a skilled immigration visa. Skills assessments are required by many classes of skilled visa applicants. Skills assessments fulfill a number of important policy functions, predominately to ensure that ‘the overall objectives of the skilled program are met in terms of economic benefit to Australia’ (MIA 2005, p. 8). This is because, at least in principle, a skills assessment should guarantee that the applicant has the necessary skills upon arrival in Australia. Second, skills assessments provide consumer protection and a gatekeeping function, including in the ‘high risk’ medical, allied health and aviation occupations (MIA 2005, p. 8). Australia has undertaken some form of skills assessment since at least the late 1960s. These assessments have classically fallen into a white collar/blue collar demarcation. In 1969, the Committee on Overseas Professional Qualifications was established within the Department of Immigration (Iredale 1997, pp. 101–4). This committee originally took the form of an information body for prospective migrants but later adopted an assessment function. In 1989, the National Office of Overseas Skill Recognition (NOOSR) within the Department of Employment, Education and Training, as it was then known, replaced the committee. NOOSR staff, located in Canberra, undertook the paper assessments of professional occupations. NOOSR also published a variety of papers on occupational recognition, which were used as guidelines by assessors.

3 Applications by recent international student graduates for ongoing residency require a skills assessment, as do applications under some temporary migration visas and for some categories of the Employer Nomination Scheme, by which an employer nominate a migrant for entry to work permanently in Australia (Policy Advice Manual 3; Migration Regulations 1994, Schedule 1, Item 1136(3)(ba)(ii); Item 1229(3)(aa-ab); Schedule 2, 487. 214; 487.223; 856.213(b). There are several important exceptions to the requirement to undertake a skills assessment. Applicants who apply under a Temporary Business (Long Stay) (Subclass 457) visa sponsored by an employer (457 visa) and who do not work in a trade are not required to undertake such an assessment. Further, no skills assessment is required for migrants sponsored under a Regional Sponsored Migration Scheme.

4 Cully and Skladzien (2001, p. 24) note that, prior to 1969, those in white collar jobs were required to ‘fend for themselves in the market, or rely on … bilateral arrangements’.
to identify the ‘usual occupation’ of skilled immigrant applicants. The assessment of trades was dealt with through the *Tradesmen's Rights Regulation Act 1946* (Cwlth), which was administered through various Central Trade Committees and Local Trade Committees. By convention, these committees were comprised of members from relevant employer and trade union associations who were responsible for creating ‘standards, policies and recognition criteria’ for trades as well as considering ‘applications for migration assessments’ (DEWRSB 1998, pp. 5–6) with immigration officials located overseas (Crock 1998, pp. 103–4; Cully & Skladzien 2001, p. 86; Iredale 1997, p. 104). Following a legislative inquiry in 1998, the *Tradesmen's Rights Regulation Act 1946* (Cwlth) was repealed through the Tradesman's Rights Regulation Repeal Bill 1999. By the late 1990s, about 60 percent of assessments were undertaken by immigration officers and the remainder by NOOSR, Trades Recognition Australia (TRA) and a very small number of external bodies (DIMA 1999a, p. 78).

Throughout the 1980s and 1990s, government officials raised concerns over the difficulties for immigration officers in undertaking skills assessments (CAAIP 1988, pp. 53–54; cited in House of Representatives Standing Committee on Community Affairs 1996, p. 55). However, it was not until the election of the Howard Coalition government in 1996 that decisive policy reform was initiated in this area. Marketisation and privatisation of previously governmental functions occurred across a number of policy areas at the time (ARC 1998; Aulich 2011; Ramia & Carney 2001) and within a number of aspects of the immigration portfolio (DIMA 1999b, p. 31, cited in Crock & Berg 2011, p. 129). This marketisation was justified on the basis that it would ‘improve service delivery by government’ and ‘ensure that resources [were] used efficiently’. The marketisation of skills assessment in particular was undertaken as part of the review of general skilled immigration, which overhauled not only the process of skills assessment, but also the points test for skilled immigration more broadly (DIMA 1999a, p. 76).

A number of arguments were provided by government in favour of marketisation of skills assessment. First, external skills assessment was expected to improve the timeliness of skills assessment by separating out skills assessment from visa processing (DIMA 1999c). Second, outsourced skills assessments may be more accurate in their appraisal of skill than those undertaken by immigration officials. This spoke to the
difficulty for immigration officials in identifying the ‘usual occupation’ of the applicant, as well as the lack of expertise on the part of immigration officials in particular skill areas (DIMA 1999a, p. 76, 78). As Mark Cully and Tom Skladzien (2001, p. 32) argued of the pre-1999 system: ‘This system was regarded as costly (to government) and prone to error as assessments for many occupations were done by those without any knowledge of, or training in, the relevant field.’ The claim, as put by Cully and Skladzien (2001, p. 32), is that the new system improved the accuracy of skill assessments undertaken by departmental officers: ‘The new system reduces the risk of error by accrediting a competent assessing authority for each occupation on the Skills Occupation List’.

A senior immigration official questioned the accuracy of skill assessments undertaken by his department in more colourful terms:

I saw a case years ago of a gentleman … and this is creative, called himself a ‘forecourt engineer’. Would you hazard a guess as to what a ‘forecourt engineer’ does? Petrol pump attendant. You know what I mean, how do you describe yourself? And immigration officers, that’s not our game. We are there to process, we are there to apply the law and the regulations on lots of things, and this is part of our business, but not really the core part of our business, because we are not a skills assessing body. (Interview with official of the Department of Immigration and Citizenship, Canberra, 24 September 2009)

A final and related argument was that marketisation would reduce cost to the state, in the sense that an activity once included within visa assessment is now outsourced and paid for by the migrant applicant separately as part of the visa application process. As outlined in more detail below, this may, however, depend upon whether the skills assessment is undertaken by a government body, or a private authority. Government bodies must operate on a cost recovery basis, requiring a fee-for-service (DIIRSTE 2013, p. 6), which does not appear to be the case for private assessing authorities. An official from the Department of Immigration summarised the benefits of marketisation as follows: ‘It was beneficial to the migrant, beneficial for the labour market. And it removed a decision-making role for immigration officers, which really they weren't in a position to do’ (Boucher 2011).
Following marketisation in 1999, NOOSR was delegated a narrower, oversight function in the skills assessment process. Its role was redefined as a clearinghouse for information and advice on overseas qualifications including determining the equivalent Australian standard of overseas qualifications (Cully & Skladzien 2001, p. 27). In 2014, NOOSR's name was changed to the Qualifications Recognition Policy Unit, within the Department of Education and Training (DET n.d.). TRA retained oversight over most (but not all) of the trade occupations and has been overseen since 2011 by the Department of Industry and Science. The Vocational Education Training and Assessment (VETASSESS) provider established in 1997 is the commercial arm of the Melbourne-based Kangan Batman TAFE (VETASSESS 2013). VETASSESS is responsible for the assessment of the bulk of professional occupations and some trades (JSC 2006, p. 50), and is a government business enterprise. While government documentation reveals that VETASSESS is ‘contracted by DIMA [the Department of Immigration and Multicultural Affairs]’ (JSC 2006, p. 50), the exact nature of the contractual relationship is not clear from this documentation, and an attempt by the author to interview the head of VETASSESS to clarify the relationship was refused. A range of private professional associations undertake the remainder of skill assessments. These assessing bodies are the same organisations responsible for domestic accreditation of skills of Australian graduates, such as the various Legal Practitioner Admissions Boards, the Architects Accreditation Council of Australia, or Engineers Australia (DIBP 2014). As such, in many cases, the bodies responsible for assessing the skills of potential immigrants, are also those who regulate professions. The power to declare a body as an assessing authority lies with the Minister for Education or Employment (Migration Regulations 1994, r2.26B [1–1A]).

 Skills assessment had been marketised to assessing agencies for six years when in 2005, the Joint Standing Committee on Migration of the Federal Parliament held a parliamentary inquiry into, among other things, migrant skills recognition. Entitled Negotiating the maze: Review of arrangements for overseas skills recognition, upgrading and licensing (JSC 2006), henceforth Negotiating the maze, the inquiry in-

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5 Interview with senior official of the Department of Immigration and Citizenship, Canberra, 30 October 2009.
vestigated the complex systems of skills assessment and the structural barriers to skills recognition for new Australians upon settlement (JSC 2006, pp. ix–x). The inquiry followed a series of federal, state and academic inquiries into skills assessment and migrant skill recognition held over the preceding two decades, which had highlighted the need for ongoing attention to these issues (JSC 2006, p. xxx). Specifically, following To make a contribution: Review of skilled labour migration programs, a separate inquiry into general skilled immigration in 2005, the then Minister for Immigration and Multicultural Affairs, Senator Amanda Vanstone, sought the agreement of the Joint Standing Committee on Migration to review skills recognition (JSC 2006, p. xxxi). Five years later the Gillard Labor government responded to the Negotiating the maze inquiry and accepted some but not all of the recommendations (JSC 2011). Details of the inquiry and subsequent government responses are canvassed below. First, I set out the details of the survey I undertook with members of the Migration Institute of Australia.

Empirical approach: A survey of members of the Migration Institute of Australia

One important source for the analysis in this section of this chapter is an original survey administered electronically via SurveyMonkey in January 2012 to all Migration Institute of Australia (MIA) members working in the field of skilled immigration. The MIA assisted in administering the survey to ensure the anonymity of its members. There were 249 responses to the survey, which represents an estimated 15 percent response rate of eligible MIA members. Respondents to the survey work with both public and private assessing bodies and some of the respondents have been employed in the field prior to 1999. Migration agents were selected as a source of expertise on the issue of skills assessment for a number of reasons. First, migration agents are responsible for submitting the majority of skilled migration applications. On most recent estimates, migration agents lodge between 24 and 100 percent of relevant skilled immigration visas, depending on the particular visa subclass (DIAC 2012b). As a group, migration agents therefore possess considerable knowledge in the area of skills assessment. Second, given this expertise, migrant agents are more likely to understand the
complexities of the skilled immigration system than their clients, who have only undergone their own, singular immigration application experience. Third, recruitment of migrant agents was assisted through the MIA, the peak representative body for migration agents.

Respondents were asked both closed and open questions about their involvement and experience of skill assessments, across a number of assessing bodies (public and private) and about their views on the efficiency, cost, accuracy, review rights and fairness of skill assessment. Depending upon their length of engagement in the field, agents were also asked to compare skill assessments before and after 1999. Although there are limitations in surveying agents about their views on assessment that occurred over 10 years ago, this was the best available method to compare policy indicators across time.

Table 9.1 shows the assessing agencies identified by respondents as the most used and the second most used. As the table makes clear, the majority of respondents identified TRA and VETASSESS as the most used assessing bodies, while the private Australian Computer Society (ACS) and Engineers Australia (EA) were the third and fourth most used assessing authorities. Nonetheless, given that respondents identified over 32 of the 35 organisations responsible for skill assessment across the survey, a variety of public and private authorities were represented in the responses and accordingly, in the analysis in this chapter. Unfortunately, these response details from the survey cannot
be compared against agency details of the number of assessments undertaken each year, as assessing agencies do not all make this information publicly available on their websites.

Analysis

Drawing upon this survey data and the desk analysis of major government inquiries into skills assessment, the remainder of this chapter assesses marketisation of skills assessment against a number of key public policy indicators: timeliness, accuracy, cost-shifting, accountability and transparency, and, finally, the fairness of skill assessments. The rationale for each of these indicators is set out in each section below.

Timeliness

Perhaps one of the most prominent arguments in favour of marketisation and privatisation of government services is that it improves timeliness. Such improvements may arise from the specialisation that can occur within the private sector, as a result of particular expertise in pricing and business (Aman 2009, p. 269) and in terms of better, faster work practices (Webster & Harding 2000, p. 10, cited in Chalmers & Davis 2001, p. 75) and service delivery (Leunig 2010). As noted above, arguments around improved service delivery were presented in favour of the marketisation of skills assessment in 1999 (DIMA 1999c). In fact, marketisation became the status quo in the migration setting more broadly ‘unless there were clear reasons for not doing so’ (DIMA 2000, p. 22, cited in Crock & Berg 2011, p. 131).

Insofar that the skills assessment process in Australia is perceived as more streamlined than in other immigrant selecting countries, the marketisation of skills assessment may also have made Australia a more attractive destination country for skilled immigrants (Cully & Skladzien 2001, p. 11). Given that a successful skills assessment is the necessary first step for a successful application for skilled migration, it is clear that any delay in skills assessments will also delay final processing times. This can be particularly problematic when an applicant is relying upon points under the skilled immigration points test for age. These points diminish if the processing times are extended, as the appli-
cant ages. This may appear to be a minor issue, yet given the high pass mark for the points test for Skilled-Independent visas, processing times can actually be decisive in whether an application for skilled immigration is successful or not. A delay in processing can also see an applicant lose their temporary provisional visa status in some instances.

It is clear that the processing period for skill assessments is a key measure of timeliness that holds ramifications not only for the administration of the immigration program at large, but also for individual applicants. Reduction in processing times was seen as one key advantage of marketisation by departmental officials (Interview by author with senior official of the Department of Immigration and Citizenship, Canberra, 30 October 2009). Yet, concern over processing times have persisted since and had already been raised in submissions to a Joint Standing Committee Inquiry into skills accreditation for new migrants, the Negotiating the maze inquiry in 2005–6 (see ILAA 2005, p. 6, pp. 113–14). The survey of migration agents undertaken for this chapter reveals large differences in perceived processing times across assessing bodies, and concerns around timeliness with some assessing agencies. Given sensitivity around this issue, it is unsurprising that assessment bodies do not advertise this information on their websites.

As such, we must rely upon survey results, which provide an initial indication of processing times. Respondents were asked about the time taken on average for application processing, by the authority with which the respondent had the most dealings. The survey offered the time periods show in Table 9.2. As this table makes clear, the reported average processing times for skills assessment as reported in the survey are between three and six months.

Concerns over processing times were raised by 40 percent of respondents in a general open field question. Further, concerns were raised over processing times for both private and public assessing bodies. Qualitative responses to this open question indicated that processing times change quite dramatically depending upon the current pressures on the immigration system as a whole and due to changes in

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6 This open field question asked ‘Are there any further comments you would like to make about the skills assessment process that have not been covered in the survey?’ and gave respondents the opportunity to provide qualitative feedback on their experience with skills assessment.
Table 9.2: Average time for skills assessments by assessing bodies

<table>
<thead>
<tr>
<th>Length of time</th>
<th>Response (percent)</th>
<th>Response (count)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than one month</td>
<td>8.5%</td>
<td>21</td>
</tr>
<tr>
<td>One to two months</td>
<td>38.9%</td>
<td>96</td>
</tr>
<tr>
<td>Three to six months</td>
<td>48.6%</td>
<td>120</td>
</tr>
<tr>
<td>In excess of six months</td>
<td>4.0%</td>
<td>10</td>
</tr>
<tr>
<td>100%</td>
<td></td>
<td>247</td>
</tr>
</tbody>
</table>

N = 247

selection rules, such as a new requirement introduced in 2011 that skill authorities assess work experience as well as professional qualifications for general skilled immigration. Those migration agents who had been active since before 1999 were asked to reflect on differences in skills assessment since marketisation. Those respondents were more likely to find that there had been a slowing of assessment times since 1999 (25 percent) than a speeding up of times over the same period (nine percent). However, over the last decade, the entire system of skilled immigration has become much more complex, meaning that changes in processing times before and after 1999 should not simply be attributed to the marketisation process. More subtly, marketisation may have affected the speed at various stages of the application process, as one respondent to the survey pointed out:

In our opinion, the outsourcing process has led to improved post-lodgment processing times for skilled immigration applicants, but has caused significant delays and difficulties in skilled immigration applicants’ pre-lodgment procedures. For instance, applicants cannot lodge a subclass 885 [Skilled-Independent] visa application until they have obtained a positive skills assessment result from skills assessment authority prior to application. This very often causes significant delays in pre-lodgment as some skills assessment authorities take up to three to four months to process an application. However, once the positive skills assessment result is available, it could be
submitted to DIBP to speed up the post-lodgment processing time-frame.

**Accuracy**

One of the strongest arguments in favour of marketisation of skills assessment was that it would increase the reliability and accuracy of this activity. When asked about their views on the effects of marketisation upon the accuracy of assessments, 43 percent of respondents who have worked in the field since before 1999 said that they believed that the process had increased accuracy. Eighteen percent said it led to less accurate skills assessments. Thirty-nine percent believed that it had no effect on the accuracy of skills assessments. The qualitative comments suggested that concerns over accuracy arise for both public and private assessing bodies, but particularly for VETASSESS, a government business enterprise that, as noted, is responsible for a large percentage of skill assessments. The survey revealed fewer concerns over accuracy with the smaller, professional assessing bodies. This suggests that at least with regard to the accuracy of assessments, the specialisation that occurs through marketisation may have led to better outcomes in skills assessment for some occupational groupings.

**Cost shifting**

The marketisation of skills assessment has led to a deflection of the cost of assessment from the Department of Immigration to the individual applicant. Prior to 1999, the cost of assessment was built into the overall cost of visa applications, as the Department of Immigration had oversight over this entire process. Since 1999, the two-step system means that the applicant must pay both for the skills assessment and separately for the visa application. Marketisation amounts to a form of cost deflection and is consistent with federal government cost recovery policy in place in 2002. As a recent policy document summarises, the ‘underpinning principle’ of cost recovery ‘is that entities should set charges to recover all the costs of products or services where it is efficient and effective to do so, where the beneficiaries are a narrow and identifiable group’ (DIIRSTE 2013, p. 6). In light of this policy, a recent draft review
of TRA’s pricing for skills assessment recommends increased fees across most visa classes (DIIRSTE 2013, p. 12).

Visa charges have also increased significantly across the immigration field since the late 1990s (Crock & Berg 2011, p. 155). One respondent in the survey commented of these changes: ‘It seems to me that the assessment of migrants has become big business. Considering the costs involved in migrating and settling, I believe the assessments charges are at the most extreme’. The suggestion here is that assessing authorities are charging large and perhaps incommensurate fees for skills assessment, relative to the time it takes to undertake such assessment. Particular concerns were raised by respondents to the survey about the implications of these high costs for applicants from developing countries, with the suggestion from one respondent that individuals from these countries ‘simply cannot afford to pay for a formal skills assessment’. This resonates with findings in the Negotiating the maze inquiry that there is significant variation across assessing bodies in fee charges and that ‘a number of participants to the inquiry commented on the costs of overseas skills recognition’ (JSC 2006, p. 114).

Analysis of top assessing agencies indicates skills assessment fees vary dramatically across the top 10 assessing bodies, from as low as $200 for some forms of skills assessment with the ACS to up to $737 with VETASSESS. The ‘Job Ready Program’, which allows recent international student graduates to gain domestic employment experience and a skills assessment as a combined package, can be as high as $2000 (TRA 2011a, p. 8). The range in initial fees for the top 10 assessing bodies identified in the survey are set out in Table 9.3.

Table 9.3 shows that there is considerable variation in fees, even within VETASSESS, where initial fees range from $330 to $737, depending upon the occupations. The table only presents initial fees to allow for comparability, although in fact, when the full range of fees is included, costs increase significantly. Some of the smaller associations, which are not represented in the top 10 skills assessing bodies reported in Table 9.3, have even higher fees. For instance, the Australian Dental Council requires all applicants who have not completed dentistry qualifications in Australia, Ireland, the United Kingdom or Canada, to undertake two clinical examinations prior to skills assessment. The first preliminary examination costs $1,100 and the second $6,615 (ADC 2012). As the Immigration Lawyers’ Association of Australasia (ILAA
Table 9.3: Cost of initial assessment of top 10 assessing bodies. For sources and notes, see appendix at the end of the chapter

<table>
<thead>
<tr>
<th>Assessing body</th>
<th>Cost of initial assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. VETASSESS</td>
<td>$330–$737</td>
</tr>
<tr>
<td>2. TRA</td>
<td>$300</td>
</tr>
<tr>
<td>3. ACS</td>
<td>$200–$550</td>
</tr>
<tr>
<td>4. Engineers Australia</td>
<td>$605</td>
</tr>
<tr>
<td>5. Certified Practising Accountants of Australia</td>
<td>$475</td>
</tr>
<tr>
<td>6. Institute of Charted Accountants in Australia</td>
<td>$400–$550</td>
</tr>
<tr>
<td>7. Australian Nursing and Midwifery Council</td>
<td>$346–$450</td>
</tr>
<tr>
<td>8. Institute of Public Accountants</td>
<td>$400–$600</td>
</tr>
<tr>
<td>9. Australian Institute of Management</td>
<td>$475</td>
</tr>
<tr>
<td>10. Australian Institute of Welfare and Community Workers</td>
<td>$500</td>
</tr>
</tbody>
</table>

2005, p. 6) pointed out in its submission to the *Negotiating the maze* inquiry, high fees charged by some assessing authorities may constitute protectionist obstacles to the inflow of skilled immigrant labour into Australia, rather than representing a genuine fee for services. One respondent to the survey suggested that if the system was truly competitive (with several assessing agencies competing for skill assessments in the same area) that fees would not be so high. Yet, as private assessment agencies are often also professional peak bodies, there is frequently only one assessing agency for a relevant skill assessment, rendering any competition non-existent.\(^7\) This raises some concerns over professional closure by some professional bodies. Yet, without further research, this possibility cannot be comprehensively assessed.

\(^7\) An important exception is accounting, where the Certified Practising Accountants of Australia (CPA Australia), the Institute of Charted Accountants in Australia (ICAA) and the Institute of Public Accountants (IPA) all may assess applications.
Accountability and transparency

Accountability and transparency, central goals of public regulation, are often seen as being under threat following privatisation and marketisation of previously public functions. In essence, this critique relates to the restricted capacity for public accountability mechanisms, secured through the democratic logic of public power, to translate into the private sphere of regulation (Freeman 1999, p. 6). The central question is whether similar – or equivalent – accountability mechanisms can be established between private actors and citizens as between public bodies and citizens. In a related but separate fashion, critics of privatisation and marketisation ask whether the opportunity for public engagement in decision-making is reduced or narrowed through these processes (Aman 2009, p. 277). The central issue here is the extent of transparency in decisions when private rather than public bodies undertake these processes. The concern is that by taking decision-making outside of the realm of public power, and therefore legislative and executive politics, there may be a depoliticisation of the relevant policy issues, in turn contributing to a lack of transparency in assessment of that process (Aman 2009).

Prior to 1999, the Immigration Review Tribunal could review the facts considered in making skill assessments (Mak v IRT [1994] 48 FCR 314; see also Crock 1998, pp. 104–5). Since 1999, cases of this nature cannot be brought before public law tribunals, for reasons outlined below. Any legal concerns can only be pursued on the basis of contractual breaches. Before assessing the details of the legal decision that limited public law review of skills assessments, it is important to outline the implications for applicants of this change for the cost of review, the scope of grounds for review and for available remedies. The capacity to seek review on the basis of particular public law grounds (such as error of law, improper exercise of power or taking into account irrelevant considerations) is denied under a contractual case, which focuses on breach of the contractual agreement and monetary remedies. Further, it is more expensive to bring a private contractual case than to bring a public tribunal matter to the Migration Review Tribunal (as it is now known).

The restriction upon public law review of skills assessments is a product of a court case conducted shortly after the 1999 changes. In
Silveira v Australian Institute of Management [2001] FCA 803, Justice Emmett of the Federal Court of Australia held that a decision by an assessing authority was not a ‘decision under an enactment’, thereby rendering it ineligible for administrative law review (Administrative Decisions [Judicial Review] Act 1977 [Cwlth], s3[a]). Justice Emmett did not distinguish between public and private assessing bodies (paragraphs 40–41). Instead his decision turned on the fact that the skills assessment was viewed as a mere ‘step along the way in a course of reasoning’, rather than either the final determination or a ‘condition precedent to a reviewable decision’. If Ms Silveira were to have recourse against the decision of the institute, this lay in contract rather than administrative law (paragraph 47). The case was unsuccessful on appeal (Silveira v Australian Institute of Management [2001] FCA 1358).

The notion that a skills assessment is not a necessary first step for a decision regarding skilled immigration is highly artificial. Without a skills assessment, an immigration applicant is unable to lodge an application for many immigration visas. Despite these shortcomings with the Silveira reasoning, the case stands. Since the Silveira decision, no cases have tested the proposition that given their different legal structures to private assessing bodies, decisions by TRA or VETASSESS could be a ‘decision under an enactment’ and therefore subject to public law review. Yet, there are reasons to believe that the Silveira decision might now be challenged both on this and several other bases. A recent High Court of Australia case, M61/201E v Commonwealth; Plaintiff M69 of 2010 v Commonwealth (2010) 85 ALJR 133 (Wizard hereafter), found that the decision by an external refugee review body, which employs case assessors from the private company, Wizard People Pty Ltd, was reviewable. This decision did not adjudge directly on the issue of the general reviewability under administrative law of decisions made by private companies contracted by the Department of Immigration. Yet, it would appear to leave the door open in this regard (see Crock & Ghezelbash 2011, pp. 106–7). This decision challenges the Silveira decision in two respects. First, it suggests that the immigration decisions of private assessing bodies contracted by the Minister for Immigration might be reviewable. Second, Wizard indicates that, although the exact review process of the independent reviewers is not provided for in the Migration Act or regulations, it is still a form of delegated governmental power and therefore might be considered a ‘decision under an
enactment’ for the purposes of the Administrative Decisions (Judicial Review) Act 1977 (Cwlth), s3.

Nonetheless, in light of the current restriction against administrative review, the capacity for internal review within assessing bodies must also be considered. Review of original decisions is available, although at least in the current survey, was not reported as utilised by the majority of migrant applicants. Fifty-two percent of respondents to the survey indicated that they do not seek review either because the outcome for the client was positive, or because clients did not instruct review. Qualitative responses to the survey indicate that migration agents have a number of reasons for not seeking internal review on behalf of their clients. These include the cost and timing of reviews; a perceived lack of transparency in the review process; the inability to lodge new evidence as part of a review; a belief that it is easier to lodge a new application rather than to seek review of the original decision; delays in reimbursement for the cost of a successful review; and the general concern that a review process was not fully independent of the original decision-maker. For instance, many respondents to the survey complained that internal review failed to take relevant factors into consideration. Yet, taking relevant considerations into account is a well-established basis for review under administrative review (Administrative Decisions [Judicial Review] Act 1977 [Cwlth], s5[2][b]). The majority of agents reported that their clients paid between $200 and $400 for a review, although in all cases where the review was successful, the full cost of the review was eventually recouped. Only a very small number of respondents (eight out of 247) reported using political means of review, by appealing either to the Department of Employment and Workplace Relations, the Department of Immigration, or the Minister for Immigration and none used the Commonwealth Ombudsman. Interestingly, as TRA is a public body, applicants may bring complaints from TRA to the Commonwealth Ombudsman. No respondent in the survey had used the Ombudsman for review process. Nor is skills assessment for immigration purposes mentioned in the latest Commonwealth Ombudsman annual report (2012), although it has been referred to in previous reports (2009) and several high-profile matters in this area have been referred to the Ombudsman previously (Skelton 2012).
Migration agents who appealed decisions on behalf of their clients expressed different levels of satisfaction with different assessing bodies and their internal review procedures. Respondents were asked in open-ended questions to reflect on their views of the review process. Of the 46 open responses to this question, only two expressed satisfaction. Many saw the review process as too lengthy and costly, lacking in transparency, failing to provide clear reasons for rejection, inconsistent across applicants or inefficient. There have been complaints about a lack of an open review procedure at TRA (ILAA 2005; MIA 2005, pp. 21–22). The Immigration Lawyers’ Association of Australasia argued that TRA and the ACS were not always clear about the reasons for their decisions. VETASSESS, on the other hand, was viewed by the Immigration Lawyers’ Association of Australasia as quite good in this regard (ILAA 2005, p. 23). It is clear that there is considerable variation across assessing bodies in terms of the cost, speed and reasons given for the determination of internal reviews. On this basis, some respondents to the survey argued that all assessing bodies should be subject to administrative review. One respondent argued:

There must be more administrative law accountability of the process performed by the skills assessing authorities. They are performing a segment of the government’s administrative process, and therefore should be accountable to the same standards of procedural fairness, and natural justice. There should be an independent appeal tribunal for skills assessment outcomes.

Accountability also plays out at a larger level with regard to the central issue of oversight of assessing bodies. The lack of clear monitoring of the field of assessment bodies was raised as a key concern within the Negotiating the maze inquiry. According to the inquiry, there was an absence of statutory clarity over whether the Department of Immigration or the Department of Education, Science and Training (now the Department of Industry and Science) was responsible for oversight of assessing agencies and that ‘the general “washing of hands” of the problem [was] a concern’ (JSC 2006, p. 94). While DIS is clearly responsible for approving a body as an assessing authority under the Migration Regulations 1994, regulation 2.26B, the responsibility for ongoing monitoring of these authorities is unclear (JSC 2006, pp. 97–99). Some but
not all of the inquiry’s other recommendations regarding monitoring and oversight appear to have been implemented. For instance, the inquiry recommended that the immigration department ensure that its Australian Skills Recognition Information website ‘provide an overview of the various organisations involved in administering, monitoring and delivering overseas skill recognition services’ (JSC 2006, p. xix). This has been undertaken (JSC 2011, p. 8). In contrast, the review also recommended that the DEST undertake a review of fees charged by assessing bodies to ‘ensure these fees are reasonable and have been determined on a not-for-profit basis’ (JSC 2006, p. xxii). However, it is unclear whether such monitoring is being pursued and the basis upon which private assessing authorities determine fee structures remains opaque.

**Fairness**

This chapter has identified some concerns over consistency in treatment of migrant applicants, within and across assessing bodies. This goes to the central issue of fairness, which can be viewed as a key public policy goal (Freeman 1999, p. 13). It could be argued that fairness is a difficult policy goal to achieve in the immigration field, which by nature is concerned with discriminating between applicants (Dauvergne 2009). However, while immigration is clearly about selection, it is important that there is consistency in the way that applicants are treated in the process of such selection. In 1996, the House of Representatives Standing Committee on Community Affairs (1996, p. 58, cited in Iredale 1997, p. 107) identified concerns over migrant applicants having to deal with two agencies (NOOSR and TRA) in the process of skilled immigration applications. This ‘silos’ effect is now even greater. The diversification of assessing bodies post-1999, and the proliferation of visa categories that has accompanied an increasingly complex immigration program, raises concerns over a related diversification in the quality of service provided to applicants.

In its submission to the *Negotiating the maze* inquiry, the Immigration Lawyers’ Association of Australasia (ILAA 2005, p. 6) raised concerns about the diversity of approaches and the resultant inequality across assessing bodies. Although not directly questioned about their perceptions of fairness in the skills assessment process, respondents to
the open-ended question in the survey also expressed concern about inconsistent decisions, sometimes even within the same assessing bodies. Issues with inconsistency can also play out in more subtle ways, for instance in different interpretations of English language qualifications and requirements by different assessing bodies. Such concerns arise both with regards to public and privately run assessing bodies. Given that TRA is responsible for a large proportion of assessments, it is unsurprising that more complaints are raised about TRA than other agencies in this regard.

Fairness can also be considered in terms of whether migrant applicants are treated equally by assessing authorities, depending upon their existing qualifications. MIA agents were asked whether they experienced differences in processing times for different occupations processed by the same agency. Twenty-one percent of respondents said that they had and 60 percent said that there was no major difference across occupations, while for another 19 percent, the question was irrelevant as they only dealt with one occupational group. Looking at the qualitative responses, some migrant agents reported that certain occupations, such as accountancy, were being processed faster than others, while others noted that it had less to do with the particular occupation and more to do with the vagaries of the individual assessing officer.

For other respondents, the country of origin of existing applicant qualifications were central, with those from non-English-speaking and non-Western countries at a distinct disadvantage in terms of processing, given a perceived mismatch among assessors between applicant qualifications and Australian qualifications. As such, the nature of the client, as well as the assessing authority, may affect processing times. The extent of this problem could be further examined by surveying individual immigrants about their experience of skills assessment. Such an assessment of the role of country of origin may be necessary in order to reduce any discriminatory bias in immigration policy – a central tenet of immigration selection since the end to race-based selection in 1973 (DIAC 2009). Marketisation of the skills assessment field has led, as noted, to an array of public and private assessment bodies. It is im-

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8 This concern was raised by a number of migration agents at an event on skills assessment attended by the author: Skills Assessment Forum, Migration Institute of Australia, 11 October 2011.
important to ensure that these bodies provide equal adherence to these central principles of the immigration program, despite not being under the direct remit of the Department of Immigration.

Conclusion

The immigration regulation field in Australia has changed dramatically since 1999. The immigration system has become more complex, there are far higher rates of skilled and temporary migration and there is a greater emphasis on skill of new entrants within the immigration program as a whole than 10 years ago. In light of these developments and the marketisation of skills assessment in 1999, examination of the skills assessment process is essential. It is clear that the marketisation documented in this chapter differs in important ways from other policy areas considered in this book. For while responsibility for skills assessment has moved away from the DIBP, and while there has been a diversification of public and private providers, much of the assessment function is still undertaken by public, or semi-public entities. Nonetheless, as documented in this chapter, the diversification in assessing authorities raises some important policy issues.

This chapter has not considered the relationship between pre-migration assessment and skills accreditation after arrival in Australia. In fact, the marketisation of skills assessment was partially justified on the basis that the organisations undertaking skills assessment for migratory purposes are also often the registration bodies for professional accreditation. Accordingly, one argument in favour of the 1999 changes was that it would improve new migrant labour market outcomes by ensuring that skills assessments and professional accreditation would be coupled in the one stage (see Cully & Skladzien 2001, p. 7). Although not the focus of this chapter, it is important to acknowledge that evidence to the contrary has also emerged. The Negotiating the maze report (2006, pp. 109–13, pp. 160–65) and recent research by Lesleyanne Hawthorne (2011) identify ongoing obstacles to accreditation faced by newly arrived migrants in Australia, even for those who had undertaken skills assessments as part of the migration process. A comprehensive analysis of the enduring disjuncture between pre- and post-migration skills assessment and recognition is a separate topic, which touches only in part
upon marketisation issues, and is also related to the federal system of trade recognition, and a raft of other governance concerns.

The survey of migration agents presented in this chapter, coupled with secondary desk analysis, suggests that marketisation has been mixed in its achievement of key policy goals. Marketisation appears to have deflected the cost of skills assessment from the Department of Immigration onto individual migrant applicants and their sponsors. Review rights have also been truncated, in that administrative review opportunities have been removed and internal reviews offer fewer remedies. The multitude of agencies now responsible for assessment, with differing costs, procedures and processing times, raises concerns about consistency across immigration applicants as well as concerns over oversight and monitoring of the entire industry. Despite these apparently negative outcomes, there is also evidence, particularly with regard to specialised assessing agencies, that the accuracy of skills assessments has increased and in some cases, that assessment times have been reduced.

Acknowledgments

Thanks to the Migration Institute of Australia, particularly Dr Pamela O’Neill, for assistance in administering the survey to MIA members. Thanks to all migration agents and other members of the MIA, as well as several government officers, who responded to the survey and in some cases, provided detailed email comments about their experience in skills assessments (Mick Keegan, Helen Duncan, Mark Glazbrook, Kevin Lane, Vanesse Loo, Angela De Marco and Mark Cully). Thanks to Ariadne Vromen, Peter Chen, Mary Crock, the Public Policy Research Cluster at the University of Sydney and the editors for feedback on earlier versions of this chapter and assistance with survey design. This chapter refers to several interviews conducted with senior officials of the Department of Immigration and Citizenship in 2009 as part of doctoral research undertaken at the London School of Economics and Political Science (LSE) in 2006–10. Ethics approval to conduct the survey was granted by the Human Ethics Committee of the University of Sydney. Ethics approval to conduct the interviews was granted by the Research Office of the LSE.
Appendix

Sources and notes to Table 9.3.

- ACS (2012); ANMC (2012); ACWA (2012, 3); AIM (2012); CPA (2012); EA (2012); ICCA (2012); IPA (2012) VETASSESS (2012); TRA (2011b, 5).
- Fees vary within associations depending upon the particular skills assessment sought, whether a standard or fast-tracked application processing period is requested, and sometimes, the relevant visa category. This table reflects the general range of fees. These fees are based on those reported at the time of publication, but are subject to indexed increases.

Legislation and case law

*Administrative Decisions (Judicial Review) Act 1977 (Cwlth)*
*M61/201E v Commonwealth; Plaintiff M69 of 2010 v Commonwealth (2010) 85 ALJR 133*
*Mak v IRT (1994) 48 FCR 314*
*Migration Act 1958 (Cwlth)*
*Migration Regulations 1994 (Cwlth)*
*Silveira v Australian Institute of Management [2001] FCA 803*
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