

EXPLANATORY STATEMENT

Migration Regulations 1994

CLASSES OF PERSONS (EXEMPT FROM THE AGE CRITERIA)

(Regulations 186.221(b), 186.231(b), 187.221(b), 187.231(b))

1. This Instrument is made under paragraphs 186.221(b), 186.231(b), 187.221(b), 187.231(b) of the *Migration Regulations 1994* ('the Regulations').
2. Paragraphs 186.221(b), 186.231(b), 187.221(b), 187.231(b) of the Regulations provide that the applicant must be in a class of persons specified by the Minister in an Instrument in writing.
3. The purpose of this Instrument is to specify classes of persons who are exempt from satisfying the primary criteria in relation to being less than 50 years of age at the time of application for:
 - (a) a Subclass 186 (Employer Nomination Scheme) visa in the Temporary Residence Transition stream or Direct Entry stream; or
 - (b) a Subclass 187 (Regional Sponsored Migration Scheme) visa in the Temporary Residence Transition stream or Direct Entry stream.

The Temporary Residence Transition stream offers a streamlined pathway for subclass 457 visa holders who have worked for an employer for the last two years, and who the employer wishes to sponsor for permanent residence through either the Employer Nomination Scheme (ENS) or the Regional Sponsored Migration Scheme (RSMS) in order to retain their skills and experience, and is subject to certain specified criteria.

4. The Instrument operates to specify that, for paragraphs 186.221(b), 186.231(b), 187.221(b), 187.231(b), the class of persons who are exempt from satisfying the primary criteria in relation to being less than 50 years of age at the time of application for a Subclass 186 (ENS) visa in the Temporary Residence Transition stream or Direct Entry stream; or a Subclass 187 (RSMS) visa in the Temporary Residence Transition stream or Direct Entry stream, are applicants who are employed in certain occupations and industries as follows:
 - Ministers of Religion (ANZSCO 272211) who have applied for a visa under the Regulations to occupy a position as nominated by a religious institution; or
 - Researchers, scientists and technical specialists at ANZSCO skill levels 1 or 2,

who have applied for a visa under the Regulations to occupy a position as nominated by Australian scientific government agencies; or

- Senior academics who have applied for a visa under the Regulations to occupy a position as nominated by a university in Australia. A senior academic is a person to be employed at an Academic level of B, C, D or E as a University Lecturer (ANZSCO 242111) or Faculty Head (ANZSCO 134411).

5. The Instrument also operates to specify that, for paragraphs 186.221(b) and 187.221(b) the class of persons who are exempt from satisfying the primary criteria in relation to being less than 50 years of age at the time of application for a Subclass 186 (ENS) visa in the Temporary Residence Transition stream; or a Subclass 187 (RSMS) visa in the Temporary Residence Transition stream are:

- applicants who have been working for their nominating employer as the holder of a subclass 457 visa for at least the four years immediately before applying and whose annual earnings for each year in the four year period was at least equivalent to the Fair Work High Income Threshold; or
- Medical practitioners (ANZSCO MINOR GROUP 253) who have been working for their nominating employer as the holder of a Subclass 457 visa for at least the four years immediately before applying and whose nominated position is located in regional Australia as prescribed by subregulation 5.19(7); or
- Medical practitioners (ANZSCO MINOR GROUP 253) who have been working for their nominating employer as the holder of a Subclass 422 visa before becoming a holder of a Subclass 457 visa for the prescribed period of 2 years in the four years immediately before applying and whose nominated position is located in regional Australia as prescribed by subregulation 5.19(7).

6. The Instrument also operates to specify that, for paragraphs 186.231(b) and 187.231(b) the class of persons who are exempt from satisfying the primary criteria in relation to being less than 50 years of age at the time of application for a Subclass 186 (ENS) visa in the Direct Entry stream; or a Subclass 187 (RSMS) visa in the Direct Entry stream, are applicants who are:

- holders of Subclass 444 or 461 visas who have been working for their nominating employer in their nominated occupation for at least two years (excluding any periods of unpaid leave) in the last three years immediately before making their

visa application; or

- Medical practitioners (ANZSCO MINOR CROUP 253) who have been working for their nominating employer as the holder of a Subclass 422 visa for at least the four years immediately before applying and whose nominated position is located in regional Australia as prescribed by subregulation 5.19(7); or
 - Medical practitioners (ANZSCO MINOR CROUP 253) who have been working for their nominating employer as the holder of a Subclass 422 visa before becoming a holder of a Subclass 457 visa in the four years immediately before applying and whose nominated position is located in regional Australia as prescribed by subregulation 5.19(7)
7. Consultation was undertaken with a wide range of Commonwealth Government Departments, State/Territory Government Departments and other relevant organisations.
 8. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR Ref 2013/15007).
 9. Under section 44 of the *Legislative Instruments Act 2003* the Instrument is exempt from disallowance and therefore a Human Rights Statement of Compatibility is not required.
 10. This Instrument, IMMI 13/059, commences on 25 June 2013.