

**EXPLANATORY STATEMENT**

*Migration Regulations 1994*

**SPECIFICATION OF TRAINING BENCHMARKS  
AND TRAINING REQUIREMENTS**

(Paragraphs 2.59(d) and 2.68(e), subregulations 2.87B(2) and 2.87B(3) and sub-sub-subparagraph 5.19(4)(h)(i)(B)(I))

1. This Instrument is made under paragraphs 2.59(d) and 2.68(e), subregulations 2.87B(2) and 2.87B(3) and sub-sub-subparagraph 5.19(4)(h)(i)(B)(I) to the *Migration Regulations 1994* ('the Regulations').
2. Paragraphs 2.59(d) and 2.68(e) of Part 2A of the Regulations provides that an applicant who is applying for approval as a standard business sponsor, or who is applying to vary their terms of approval as a standard business sponsor, and who is lawfully operating a business in Australia and has traded in Australia for 12 months or more, needs to demonstrate that they meet the benchmarks for the training of Australian citizens and Australian permanent residents specified in an instrument in writing.
3. Subregulation 2.87B(2) of the Regulations provides that for each period of 12 months commencing on the day the person is approved as a standard business sponsor, or on an anniversary of that day, if the person has had at least one primary sponsored person for all or part of that 12 month period, the standard business sponsor must comply with requirements relating to training specified by the Minister in an instrument in writing for that 12 month period.
4. Subregulation 2.87B(3) of the Regulations provides that if during all or part of the period of 12 months commencing on the day the terms of the person's approval as a standard business sponsor are varied, or a period of 12 months commencing on an anniversary of that day, the person is a standard business sponsor of at least one primary sponsored person, the standard business sponsor must comply with requirements relating to training, specified by the Minister in an instrument in writing for that 12 month period.

5. Sub-sub-subparagraph 5.19(4)(h)(i)(B) of the Regulations provides that either, if the nominator's business has operated for at least 12 months, the nominator meets the requirements for the training of Australian citizens and Australian permanent residents, or if the nominator's business has operated for less than 12 months, the nominator has an auditable plan for meeting the requirements specified in an instrument in writing.
6. The purpose of this Instrument is to provide training benchmarks for a person to meet, or have an auditable plan to meet, when they apply for an approval of nominated positions (employer nomination and standard business sponsorship).
7. The Instrument operates to describe the training requirements that standard business sponsors who lawfully operate a business in Australia are obligated to comply with.
8. Consultation was undertaken with the Ministerial Advisory Council on Skilled Migration, Commonwealth agencies and internal stakeholders.
9. The Office of Best Practice Regulation (OBPR) in the Department of Finance was consulted through the process of preparing a Regulatory Impact Statement (RIS) as was required for some of the changes. The RIS was not certified prior to the changes being announced. The Department of Immigration and Citizenship was therefore found non-compliant with the Australian Government's best practice regulation requirements, and is required to commence the preparation of a post-implementation review within 1-2 years of these measures being implemented.
10. Under section 42 of the *Legislative Instruments Act 2003* the Instrument is subject to disallowance and therefore a Human Rights Statement of Compatibility has been provided (attached).
11. The Instrument, IMMI 13/030 commences on 1 July 2013, immediately after commencement of the *Migration Legislation Amendment Regulation 2013 (No. 3)*.

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### SPECIFICATION OF TRAINING BENCHMARKS AND TRAINING REQUIREMENTS

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### Overview of the Legislative Instrument

Regulation 2.59 of the *Migration Regulations 1994* (the Regulations) is a criterion for approval as a standard business sponsor under the Temporary Work (Skilled) (Subclass 457) visa program. It includes a requirement to meet a benchmark for the training of Australian citizens and permanent residents (if trading for 12 months or more) or have an auditable plan to meet those benchmarks (if trading for less than 12 months).

The training benchmarks are specified in legislative instrument F2012L01311.

The training benchmarks for an established business are:

*A) Recent expenditure, by the business, to the equivalent of at least 2% of the payroll of the business, in payments allocated to an industry training fund that operates in the same industry as the business, and a commitment, by the business, to maintain expenditure in each fiscal year, to that level, for the term of approval as a sponsor.*

OR

*B) Recent expenditure, by the business, to the equivalent of at least 1% of the payroll of the business, in the provision of training to employees of the business, and a commitment, by the business, to maintain expenditure in each fiscal year, to that level, for the term of approval as a sponsor.*

The words “and a commitment, by the business, to maintain expenditure in each fiscal year, to that level, for the term of approval as a sponsor” will be removed from each of the benchmarks (A & B). This will allow sponsors to have more flexibility in changing between the training benchmarks.

The remainder of the instrument will remain unchanged.

#### Human rights implications

The approval of standard business sponsorship is currently conditioned on meeting a specific benchmark for the provision of training of Australian citizens and permanent residents. The changes to this instrument make it easier for sponsors to meet the training benchmarks by allowing flexibility to move between the two benchmarks.

As the change relates to training requirements it engages Article 6.2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Article 6.2 of the ICESCR states that:

*The steps to be taken by a State Party of the present Covenant to achieve the full realization of [the right to work] shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural*

*development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.*

Australia owes a 'right to work' under Article 6.1 to Australians and permanent residents. Making the training obligation to Australians and permanent residents part of the sponsorship obligation is an effective mechanism to comply with this obligation. The measure correspondingly positively engages Article 6.1 and 6.2 of the ICESCR.

**Conclusion**

The legislative instrument is compatible with human rights because it promotes the training of Australian citizens and permanent residents in support of Article 6 of the ICESCR.

**The Hon. Brendan O'Connor MP, Minister for Immigration and Citizenship**