

EXPLANATORY STATEMENT

Migration Regulations 1994

SPECIFICATION OF OCCUPATIONS, A PERSON OR BODY, A COUNTRY OR COUNTRIES AMENDMENT INSTRUMENT 2016/118

(paragraph 2.72B(3)(b))

1. Amendment Instrument IMMI 16/118 is made under paragraph 2.72B(3)(b) of the *Migration Regulations 1994* (the Regulations).
2. Under subsection 33(3) of the *Acts Interpretation Act 1901*, which states where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
3. Specification of Occupations, a Person or Body, a Country or Countries Amendment Instrument 2016/118 makes amendments to IMMI 16/059 – Specification of Occupations, a Person or Body, a Country or Countries 2016/059.
4. The purpose of the Instrument is to specify the occupations and their corresponding 6-digit code in relation to the nominated occupational training in applications made on or after 19 November 2016 for a Subclass 407 Training visa. The Subclass 407 (Training) visa forms part of the Department of Immigration and Border Protection's project to streamline temporary activity visas. This project is given effect by the *Migration Amendment (Temporary Activity Visas) Regulation 2016*.
5. Extensive consultation was undertaken for the development of the new visa framework for temporary activity visas that is given effect by the *Migration Amendment (Temporary Activity Visas) Regulation 2016*.
6. The Department of Immigration and Border Protection (the Department) consulted extensively in developing the new visa framework. In September 2014, the Department issued a discussion paper and received 68 submissions. The submissions were

considered in the formulation of a proposed framework that was released for consultation in December 2014. Responses were received from 71 industry stakeholders. In April 2015, the Department again sought stakeholder views by conducting a survey and received 1177 responses. The responses were considered by the Department in formulating the final framework.

7. Adjacent to this review, the Department and the Ministry for the Arts undertook a joint review of the Entertainment (subclass 420) visa and released a discussion paper on 12 January 2015, which provided an overview of a range of deregulation opportunities and proposed changes to longstanding VAC concessions. Sixty-three key stakeholders, including unions, entertainment bodies, current sponsors, relevant government agencies and migration agents were advised of the review. The department met with a number of stakeholders to discuss their comments about the range of deregulation opportunities raised in the paper. Most recently, public information sessions on the temporary activity visas were conducted in Perth, Melbourne, Brisbane and Sydney from 23 to 30 September 2016.
8. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 19898)
9. Under section 42 of the *Legislation Act 2003*, the Instrument is subject to disallowance and therefore a Statement of Compatibility with Human Rights has been provided at **Attachment A** to this Explanatory Statement.
10. The Instrument commences immediately after the commencement of the *Migration Amendment (Temporary Activity Visas) Regulation 2016*.

ATTACHMENT A**Statement of Compatibility with Human Rights**

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

Migration Amendment (Temporary Activity Visas) Regulation 2016

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*.

Schedule 1 – General Amendments**Overview of Schedule 1**

The Australian Government is seeking to simplify and streamline temporary work visas. This legislative instrument furthers that agenda. The number of visa subclasses will be reduced, in net terms, by three. In addition, the legislative instrument simplifies arrangements for sponsorship of visa applicants. Six classes of sponsor are replaced by one new class of sponsor.

The legislative instrument repeals five temporary work visa subclasses, and amends the *Migration Regulations 1994* (the Migration Regulations) to create two new temporary work visa subclasses as indicated below.

The amendments are primarily to:

- Part 2A of the Migration Regulations in regards to sponsorship and nomination requirements; and
- Schedules 1 and 2 of the Migration Regulations in regards to visa application and assessment requirements.

There are further minor and consequential changes to other parts of the Migration Regulations to support the introduction of the Subclass 407 (Training) visa and the Subclass 408 (Temporary Activity) visa. There are also minor changes to the existing Subclass 403 (Temporary Work (International Relations)) visa and the Subclass 400 (Temporary Work (Short Stay Activity) visa.

These amendments are achieved with only minor changes to existing policy settings. The service to clients is enhanced by the availability of online visa application lodgement for the new visas and related sponsorship and nomination applications. Changes have also been made to the visa pricing structure.

Calculation of Visa Application Charge

The rationalisation of the visa structure, including the creation of two new visas and the relocation of streams in existing visas, such as the relocation of the Invited Participant stream from Subclass 400 into the new Subclass 408 (Temporary Activity) visa, and the differing Visa Application Charges (VACs) that previously existed in relation to these streams, has required a reassessment of the temporary activity visa framework pricing structure.

The policy objective in relation to this reassessment was to increase fairness and equity across different cohorts while supporting Australia to be competitive in the international market. A uniform and flat VAC structure at a

price point of \$275 for primary applicants meets these objectives and is a desirable policy outcome as it removes price from being a determining factor for visa applicants and ensures an equitable price point for all applicants in this visa framework. In calculating the price point for the VAC, the Government also considered the potential effects that changes to longstanding VAC concessions might have on users of this visa framework. Family members over the age of 18 also pay \$275. Family members who are under 18 pay \$70. These charges represent the lowest possible uniform and flat VAC structure that would not have an adverse effect on the Budget.

The Subclass 407 (Training) visa

The amendments to the Migration Regulations:

- repeal the existing Training and Research (Subclass 402) visa;
- establish a new class of ‘temporary activities sponsor’ which replaces the training and research sponsor class and the professional development sponsor class (as well as the sponsor classes noted below in relation to Subclass 408); and
- establish a new visa subclass, Subclass 407 (Training), for visa applicants who enter Australia to undertake occupational training for up to two years. The new visa and related nomination requirements include strengthened integrity measures to ensure that the visa is used only for genuine occupational training which does not adversely impact the Australian labour market. The new visa is less expensive than the Subclass 402 visa. The visa application charge for primary applicants has been reduced from \$380 to \$275.

The Subclass 408 (Temporary Activity) visa

The amendments to the Migration Regulations:

- repeal four existing visas: Subclass 401 Temporary Work (Long Stay Activity), Subclass 416 (Special Program), Subclass 420 ((Temporary Work) (Entertainment)), and Subclass 488 (Superyacht Crew);
- establish a new class of ‘temporary activities sponsor’ which replaces four sponsorship classes: long stay activity sponsor, special program sponsor, entertainment sponsor, and superyacht crew sponsor;
- establish a single visa subclass, Subclass 408 (Temporary Activity), that consolidates the current Schedule 1 and 2 criteria for temporary stay in Australia by: invited participants in events; sports trainees and elite sportspeople; religious workers; domestic workers employed by senior overseas-based executives; superyacht crew; academic researchers; participants in youth exchange programs, student exchange programs and other cultural programs; persons working on Australian Government endorsed events; and persons working in the entertainment industry. The visa permits stay in Australia for up to two years, except for persons entering in connection with Australian Government endorsed events (such as the Commonwealth Games) where the maximum permitted stay is four years;
- reduce visa related charges. The visa application charge for primary applicants has been reduced from \$380 to \$275. In addition, there is no longer a requirement to nominate each visa applicant, which incurred a fee of \$170 per nomination. The change in visa related costs includes the removal of bulk discount provisions which resulted in lower visa charges for large commercial entertainment ventures. The changes will create a fairer and more equitable pricing structure. Exemptions from visa application charges will continue to be available for persons specified in an instrument made by the Minister. In addition, a reduced visa application charge will be available for persons specified in an instrument made by the Minister;

- remove the requirement for nominations (nominations are additional to the requirements for sponsorship) which applied to Subclass 401 and Subclass 420 visas. This will reduce the regulatory burden and cost on sponsors; and
- remove the requirement for sponsorship for visa applicants who are outside Australia and who seek a stay of up to three months. In those cases, sponsorship is replaced by a simple requirement for a letter of support. This will reduce the regulatory burden and cost on those supporters, as they will no longer be required to become sponsors.

The amended Subclass 403 (Temporary Work (International Relations)) visa

This existing subclass is amended to:

- include a Seasonal Worker Program stream. The programme was previously catered for in the repealed Subclass 416 (Special Program) visa. The location of this cohort within Subclass 403 is consistent with the government to government arrangements which underpin the programme; and
- make other minor changes, including adjustment of the VACs to conform to the new VAC structure

The amended Subclass 400 (Temporary Work (Short Stay Activity) visa

The existing subclass is amended to:

- remove the Invited Participant stream, which is superseded by the inclusion of this cohort in the new Subclass 408 (Temporary Activity) visa;
- rename the subclass as the *Subclass 400 (Temporary Work (Short Stay Specialist) visa*. This name better reflects the purpose of the visa following the removal of the Invited Participant stream; and
- make other minor changes, including adjustment of the VACs to conform to the new VAC structure

Human rights implications

This legislative Instrument has been considered against each of the seven core international human rights treaties. The legislative instrument positively engages the right to work as provided for in Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) by making these temporary work visas more accessible for applicants and sponsors. This is achieved by the availability of online visa application lodgement, simplified arrangements for sponsorship of visa applicants and a reduction in the level of visa application charges for many applicants.

Conclusion

This legislative instrument is compatible with human rights as it supports the attainment of human rights.

Schedule 2 – Visa application charge for entrepreneur stream

Overview of Schedule 2

Schedule 2 corrects a technical error in the *Migration Regulations 1994* regarding the Visa Application Charge (VAC) for a Subclass 888 visa in the Entrepreneur stream. The instrument amends subitem 1104BA(2) of Schedule 1 to the *Migration Regulations 1994* to remove the specified amounts of the first instalment of the VAC amounts for applications for a Subclass 888 visa in the Entrepreneur stream. It provides that the same amounts of the first instalment of the VAC apply for applications for a Subclass 888 visa in the Entrepreneur stream as for all other applications for a Subclass 888 visa. This change reflects the approved and intended charges for the Subclass 888 visa in the Entrepreneur stream and represents a reduction in the VAC.

Human rights implications

The amendment does not engage any of the applicable rights or freedoms. Rather, lowering the VAC is beneficial to applicants for a Subclass 888 visa in the Entrepreneur stream.

Conclusion

This amendment is compatible with human rights as it does not raise any human rights issues.

The Hon. Peter Dutton MP, Minister for Immigration and Border Protection