

EXPLANATORY STATEMENT*Migration Regulations 1994***SPECIFICATION OF OCCUPATIONS, A PERSON OR BODY, A COUNTRY OR COUNTRIES AMENDMENT INSTRUMENT 2017/040**

(Subregulations 1.15I(1) and 2.26B(1), paragraphs 2.72(10)(aa) and 2.72B(3)(b), sub-subparagraphs 5.19(4)(h)(i)(A), item 4(a) of the table in subitem 1137(4), item 4(a) of the table in subitem 1138(4) and item 4(a) of the table in subitem 1230(4), paragraph 1229(3)(k) and paragraph 186.234(2)(a))

1. Instrument IMMI 17/040 is made under subregulations 1.15I(1) and 2.26B(1), paragraphs 2.72(10)(aa) and 2.72B(3)(b), sub-subparagraphs 5.19(4)(h)(i)(A), item 4(a) of the table in subitem 1137(4), item 4(a) of the table in subitem 1138(4) and item 4(a) of the table in subitem 1230(4) and paragraph 1229(3)(k) of Schedule 1 and paragraph 186.234(2)(a) of Schedule 2 to the *Migration Regulations 1994* (the Regulations).
2. The Instrument amends IMMI 16/059 (F2016C01004). Subsection 33(3) of the *Acts Interpretation Act 1901*, which provides that 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. The Instrument operates to make amendments to Schedule 1, Schedule 2 and the Notes contained in the instrument IMMI 16/059. In Schedule 1, the Medium and Long-term Strategic Skills List (MLTSSL) replaces the former Skilled Occupation List (SOL). In Schedule 2, the Short-term Skilled Occupation List (STSOL) replaces the former Consolidated Sponsored Occupation List (CSOL).
4. These changes reduce the number of occupations available for subclass 457 visa applicants from 650 to 434. Compared with the previous Schedule 1, the MLTSSL now has 16 occupations restricted to only apply to the Skilled Independent (subclass 189) visa, the Temporary Graduate (subclass 485) visa, and the Skilled Regional (Provisional) subclass 489 visa where the applicant is nominated by a state or territory.

Additionally, compared with the previous Schedule 2 of the Instrument, the new Schedule 2 has 200 fewer occupations. These occupations have been restricted and removed on the basis of their historically low visa grant rates, Australian citizenship requirements and advice from the Department of Employment concerning their appropriateness for this list..

5. In addition, caveats in relation to specifications of occupations for a Subclass 457 – Temporary Work (Skilled) visa have been reviewed, updated and/or included for occupations in the MLTSSL and STSOL, limiting the breadth of the occupation specified for the purposes of satisfying the criteria for the relevant visa or nomination. The position caveats are contained in the Notes to Schedule 1 and Schedule 2. The 59 occupations which are subject to changed caveats are listed at Attachment A. Three existing caveats for the Subclass 186 – Employer Nomination Scheme visa remain the same and are located in Note 24.
6. In addition to the position caveats, Note 25 has the effect of ensuring that the identified occupations listed in the MLTSSL only apply in relation to certain visa subclasses. Note 26 also ensures that identified occupations listed in the STSOL also only apply in relation to certain visa subclasses. Further, Note 26 ensures that the identified occupations only apply in relation to the subclass 457 programme for positions located in Regional Australia (as defined in subregulation 5.19(7) of the *Migration Regulations 1994*).
7. Schedule 3 is inserted in the instrument after the Notes. This schedule contains provisions as to how the amendments in IMMI 17/040 will apply in relation to paragraphs 3, 4, 5, 6, 7 and 8 of IMMI 16/059.
8. The effect of the application provisions for paragraph 3 is that the SOL will continue to apply in relation to an invitation issued on or after 1 July 2016 and before the commencement of IMMI 17/040 and in relation to the person who was issued the invitation and if applicable the spouse or de facto partner of that person.
9. The effect of the application provisions for paragraph 4 is that the SOL will continue to apply in relation to a person who applies for a Subclass 485 Temporary Graduate visa on or after 1 July 2016 but before the commencement of IMMI 17/040 including

applications made but not finally determined before the commencement of IMMI 17/044.

10. The effect of the application provisions for paragraph 5 is that the SOL and CSOL will continue to apply in relation to an invitation issued on or after 1 July 2016 and before the commencement of IMMI 17/040 and in relation to the person who was issued the invitation and if applicable the spouse or de facto partner of that person.
11. The effect of the application provisions for paragraph 6 is that the SOL and CSOL will continue to apply in relation to an application for approval of a nomination for a Subclass 186 Employer Nomination Scheme visa on or after 1 July 2016 but before the commencement of IMMI 17/040 including nominations made but not finally determined before the commencement of IMMI 17/040.
12. The effect of the application provisions for paragraph 7 is that the SOL and CSOL will continue to apply in relation to a person who applies for a Subclass 186 Employer Nomination Scheme visa on or after 1 July 2016 but before the commencement of IMMI 17/040 including applications made but not finally determined before the commencement of IMMI 17/040.
13. The effect of the application provisions for paragraph 8 is that the SOL and CSOL will continue to apply in relation to an application for a Subclass 407 (Training) visa made on or after 19 November 2016 but before the commencement of IMMI 17/040 including applications made but not finally determined before the commencement of IMMI 17/040.
14. Consultation was undertaken with the Commonwealth Department of Education and Training and the Commonwealth Department of Employment before the instrument was made.
15. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference: 21946).

16. Under section 42 of the *Legislation Act 2003*, the Instrument is subject to disallowance and therefore a Statement of Compatibility with Human Rights is included at Attachment B.
17. The Instrument commences on the day after registration.

Attachment A – Occupations subject to caveats

	Occupation	ANZSCO Code
1.	Chief Executive or Managing Director	111111
2.	Corporate General Manager	111211
3.	Aquaculture Farmer	121111
4.	Cotton Grower	121211
5.	Flower Grower	121212
6.	Fruit or Nut Grower	121213
7.	Grain, Oilseed or Pasture Grower (Aus) / Field Crop Grower (NZ)	121214
8.	Grape Grower	121215
9.	Mixed Crop Farmer	121216
10.	Sugar Cane Grower	121217
11.	Vegetable Grower (Aus) / Market Gardener (NZ)	121221
12.	Crop Farmers nec	121299
13.	Apiarist	121311
14.	Beef Cattle Farmer	121312
15.	Dairy Cattle Farmer	121313
16.	Horse Breeder	121316
17.	Mixed Livestock Farmer	121317
18.	Pig Farmer	121318
19.	Poultry Farmer	121321
20.	Sheep Farmer	121322
21.	Livestock Farmers nec	121399
22.	Mixed Crop and Livestock Farmer	121411
23.	Sales and Marketing Manager	131112
24.	Corporate Services Manager	132111
25.	Finance Manager	132211
26.	Production Manager (Forestry)	133511
27.	Supply and Distribution Manager	133611
28.	ICT Project Manager	135112
29.	Cafe or Restaurant Manager	141111
30.	Hotel or Motel Manager	141311
31.	Hair or Beauty Salon Manager	142114
32.	Customer Service Manager	149212
33.	Conference and Event Organiser	149311
34.	Transport Company Manager	149413
35.	Facilities Manager	149913

36.	Accountant	221111
37.	Recruitment Consultant	223112
38.	Management Consultant	224711
39.	Information and Organisation Professionals	224999
40.	Advertising Specialist	225111
41.	Marketing Specialist	225113
42.	Technical Sales Representatives	225499
43.	Graphic Designer	232411
44.	Wine Maker	234213
45.	University Lecturer	242111
46.	Software Tester	261314
47.	ICT Support Engineer	263212
48.	ICT Systems Test Engineer	263213
49.	Agricultural Technician	311111
50.	Primary Products Inspectors nec	311399
51.	Mechanical Engineering Technician	312512
52.	Baker	351111
53.	Pastry cook	351112
54.	Chefs	351311
55.	Cook	351411
56.	Animal Attendants and Trainers	361199
57.	Hairdresser	391111
58.	Massage Therapist	411611
59.	Contract Administrator	511111

Attachment B – Statement of Compatibility with Human Rights

Statement of Compatibility with Human Rights

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

Specification of Occupations, a Person or Body, a Country or Countries Legislative Instrument (IMMI 17/040)

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 Specification of Occupations, a Person or Body, a Country or Countries Legislative Instrument

This instrument (IMMI 17/040) specifies skilled occupations, Australian and New Zealand Standard Classification of Occupations (ANZSCO) codes and relevant assessing authorities relevant to assessment of applications for skilled migration under the *Migration Regulations 1994* (Migration Regulations).

The ANZSCO code is used by the Department of Immigration and Border Protection to ensure that applicants who wish to migrate as skilled migrants nominate a skilled occupation for migration purposes. Assessing authorities are independent expert bodies who certify that the applicant's educational qualifications and, in some cases, skilled work experience in their occupation, is comparable to that necessary to undertake the same position in Australia.

This instrument specifies the Medium and Long-term Strategic Skills List (MLTSSL) which provides eligible occupations, ANZSCO codes and assessing authorities for independent or family sponsored skilled visas. Occupations on the MLTSSL are those identified by the Australian Government as being in shortage in the Australian labour market in the medium to long term.

The instrument also specifies the Short-term Skilled Occupation List (STSOL) which similarly provides additional eligible occupations, ANZSCO codes and assessing authorities for applicants who apply for:

- State/Territory nominated visas;
- the Temporary Work (Skilled) visa;
- the Direct Entry stream of the Employer Nomination Scheme; and
- the Training visa.

The MLTSSL replaces the former Skilled Occupation List (SOL) and the STSOL replaces the former Consolidated Sponsored Occupation List (CSOL). The new MLTSSL now has 16 occupations restricted to only apply to the Skilled Independent (subclass 189) visa, the Temporary Graduate (subclass 485) visa, and the Skilled Regional (Provisional) subclass 489 visa where the applicant is nominated by a state or territory. The new STSOL contains 200 fewer occupations than the former CSOL. The occupations have been restricted and removed on the basis of their historically low visa grant rates, Australian citizenship requirements and advice from the Department of Employment concerning their appropriateness for this list.

The instrument also updates and/or includes position caveats for certain occupations for applicants who apply for the Temporary Work (Skilled) visa. The caveats are intended to improve the integrity of this visa programme by limiting the breadth of the occupation specified for the purposes of satisfying the criteria for the visa or nomination and therefore ensuring that applicants are nominated for genuinely skilled positions.

Human rights implications

The proposed Legislative Instrument has been assessed against the seven core international human rights treaties and does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights.

The Hon Peter Dutton, Minister for Immigration and Border Protection