

EXPLANATORY STATEMENT

Migration Regulations 1994

**MIGRATION (IMMI 17/071: SPECIFICATION OF OCCUPATIONS—SUBCLASS
407 VISA) INSTRUMENT 2017**

(Paragraph 2.72B(3)(b))

1. Instrument IMMI 17/071 is made under paragraph 2.72B(3)(b) of the *Migration Regulations 1994* (the Regulations).
2. The instrument IMMI 17/071 operates to specify occupations for the purposes of paragraph 2.72B(3)(b) in regard to the specification of occupations on the Medium and Long-term Strategic Skills List (MLTSSL) and the Short-term Skilled Occupation List (STSOL) that relate to a Subclass 407 (Training) visa (407 visa). Those occupations were previously specified in instrument IMMI 16/059.
3. The occupations that have been added to and removed from the MLTSSL and STSOL from the previous instrument IMMI 16/059 are based on the first regular review of occupations eligible for skilled visas. The changes made are a result of advice from government departments and extensive consultation with industry. The amended occupation lists ensure that the entry of skilled foreign workers to Australia remains carefully calibrated to Australia's needs. Instrument IMMI 17/071 ensures the 407 visa programme continues to be aligned with other visa programmes.
4. The effect of the application provision in section 8 of Part 3 of the instrument IMMI 17/071 is that it will apply in relation to a nomination made on or after 1 July 2017 for a Subclass 407 (Training) visa.
5. The instrument IMMI 16/059 (F2016C01004) is repealed by instrument IMMI 17/081. As mentioned above, instrument IMMI 16/059 previously specified matters for the purposes of 2.72B(3)(b).
6. Consultation was undertaken with the Department of Education and Training, the Department of Employment, the Department of Foreign Affairs and Trade, the

Department of Industry, Innovation and Science, the Department of Health, the Department of Communications and the Arts, the Department of Infrastructure and Regional Development, the Department of Agriculture and Water Resources, the Australian Research Council and Austrade.

7. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference: 22495).
8. Under section 42 of the *Legislation Act 2003*, the instrument IMMI 17/071 is subject to disallowance and therefore a Statement of Compatibility with Human Rights is included at Attachment A.
9. This instrument commences on 1 July 2017.

Attachment A – 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

Migration (IMMI 17/071: Specification of Occupations – Subclass 407 Visa) Instrument

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 Migration (IMMI 17/071: Specification of Occupations – Subclass 407 Visa) Instrument

The *Migration Regulations 1994* (‘the Migration Regulations’) set out requirements for the grant of a Training (subclass 407) visa (‘subclass 407 visa’). One requirement is that the applicant be nominated by their employer. This Instrument (IMMI 17/071) specifies skilled occupations and Australian and New Zealand Standard Classification of Occupations (ANZSCO) codes relevant to assessment of nominations for skilled entry under the Migration Regulations.

The ANZSCO code is used by the Department of Immigration and Border Protection to ensure that applicants who wish to come to Australia as temporary skilled migrants nominate a skilled occupation for migration purposes.

This Instrument specifies the Medium and Long-term Strategic Skills List (MLTSSL) which provides eligible occupations and ANZSCO codes for the subclass 407 visa. 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.

This Instrument also specifies the Short-term Skilled Occupation List (STSOL) which provides eligible occupations and ANZSCO codes for applicants who apply for the subclass 407 visa. Occupations on the STSOL are those identified by the Australian Government as being in critical demand in the Australian labour market, where suitably skilled Australian workers are in short supply.

Human rights implications

The Instrument has been assessed against the seven core international human rights treaties.

Neither the *International Covenant on Civil and Political Rights* (ICCPR) nor the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) give a right for non-citizens to enter Australia for the purposes of seeking residence or employment. The UN Human Rights Committee, in its General Comment 15 on the position of aliens under the ICCPR, stated that:

The [ICCPR] does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the [ICCPR] even in relation to entry or residence, for example, when considerations

of non-discrimination, prohibition of inhuman treatment and respect for family life arise.

Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment. A State may also impose general conditions upon an alien who is in transit. However, once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the [ICCPR].

As such, Australia is able to set requirements for the entry of non-citizens into Australia and conditions for their stay, and does so on the basis of reasonable and objective criteria.

Although there is a net increase in the number of skilled occupations available to subclass 407 visa applicants in this Instrument, 12 occupations have been removed. For those persons who are in Australia holding a subclass 407 visa working in one of those occupations, and who wish to apply for a subsequent subclass 407 visa while in Australia, the right to work may be engaged. Article 6(1) of the ICESCR states:

The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

The removal of 12 occupations does not prevent any current holder of a subclass 407 visa from accessing work or impede their right to work for the duration of that visa because they will retain the current permission to work provided by the existing visa. A subclass 407 visa holder who wishes to continue working in Australia in one of the 12 occupations upon the expiry of their visa may instead apply for any other visa with work rights for which they meet the requirements under the Migration Regulations.

It is reasonable and necessary that the Minister may amend the list of skilled occupations for the purposes of nominations and visa applications because it allows the Minister the flexibility and precision required to carefully tailor it to reflect Australia's labour market needs. The ability to tailor the occupations lists to Australia's labour market needs helps to meet the legitimate objective of strengthening Australia's economy through ensuring the integrity of Australia's migration programme.

Conclusion

The Legislative Instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

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