

EXPLANATORY STATEMENT

Migration Regulations 1994

Migration (IMMI 17/081: Specification of Occupations, a Person or Body, a Country or Countries) Repeal Instrument 2017

(regulation 1.03; subregulations 1.15I(1) and 2.26B(1); paragraphs 2.72(10)(aa) and 2.72B(3)(b); sub-subparagraph 5.19(4)(h)(i)(A); subitem 1137(4C) of Schedule 1; item 4 of the table in subitem 1138(4) of Schedule 1; paragraph 1229(3)(k) of Schedule 1; item 4 of the table in subitem 1230(4) of Schedule 1; and paragraph 186.234(2)(a) of Schedule .)

1. Instrument IMMI 17/081 is made under regulation 1.03; subregulations 1.15I(1) and 2.26B(1); paragraphs 2.72(10)(aa) 2.72B(3)(b); sub subparagraph 5.19(4)(h)(i)(A); subitem 1137(4C) of Schedule 1; item 4 of the table in subitem 1138(4) of Schedule 1; paragraph 1229(3)(k) of Schedule 1; item 4 of the table in subitem 1230(4) of Schedule 1; and paragraph 186.234(2)(a) of Schedule 2 of the *Migration Regulations 1994* (the Regulations).
2. The instrument IMMI 17/081 repeals instrument Specification of Occupations, a Person or Body, a Country or Countries 2016/059 (IMMI 16/059) (F2016C01004) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA). Subsection 33(3) of the AIA states 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 matters previously addressed in instrument IMMI 16/059 will now be addressed in instruments: Migration (IMMI 17/060: Specification of Occupations—Subclass 457 Visa) Instrument 2017; Migration (IMMI 17/071: Specification of Occupations—Subclass 407 Visa) Instrument 2017; Migration (IMMI 17/072: Specification of Occupations and Assessing Authorities) Instrument 2017 and Migration (IMMI 17/080: Specification of Occupations and Assessing Authorities—Subclass 186 Visa) Instrument 2017.

4. These instruments will specify occupations in regard to the occupations on the Medium and Long-term Strategic Skills List (MLTSSL) and the Short-term Skilled Occupation List (STSOL), in particular:
 - a. instrument IMMI 17/060 will specify occupations for the purposes of Subclass 457 – Temporary Work (Skilled) visas;
 - b. instrument IMMI 17/071 will specify occupations for the purposes of Subclass 407 (Training) visas;
 - c. instrument IMMI 17/072 will: specify occupations for the purposes of Subclass 189 (Skilled-Independent) visa, Subclass 489 (Skilled-Regional (Provisional)) visa, Subclass 485 (Temporary Graduate) visa, Subclass 190 (Skilled-Nominated) visa and Subclass 489 (Skilled-Regional (Provisional)) visa. This instrument will also specify the meaning of ANZSCO for the purposes of regulation 1.03, specify persons and bodies as relevant assessing authorities for the purposes of subregulation 2.26B(1), and specify skilled occupations applicable for the class for the purposes of subregulation 1.15I(1); and
 - d. instrument IMMI 17/080 will specify occupations and assessing authorities for the purposes of Subclass 186 (Employer Nomination Scheme) visa.
5. 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.
6. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 22495).
7. Under section 10 of the *Legislation (Exemptions and other Matters) Regulation 2015*, the instrument making powers in regulation 1.03; subregulations 1.15I(1) and 2.26B(1); sub subparagraph 5.19(4)(h)(i)(A); subitem 1137(4C) of Schedule 1; item 4

of the table in subitem 1138(4) of Schedule 1; paragraph 1229(3)(k) of Schedule 1; item 4 of the table in subitem 1230(4) of Schedule 1; and paragraph 186.234(2)(a) of Schedule 2 to the Regulations are exempt from disallowance. The powers under paragraphs 2.72(10)(aa) and 2.72B(3)(b) are subject to disallowance under section 42 of the *Legislation Act 2003* and a Statement of Compatibility with Human Rights has been provided at Attachment A.

8. The 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 17/081: Specification of Occupations, a Person or Body, a Country or Countries) Repeal Instrument 2017

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 Repeal Instrument

This Instrument (IMMI 17/081) repeals the Instrument ‘Specification of Occupations, a Person or Body, a Country or Countries 2016/059’ (IMMI 16/059) (F2016C01004) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

Instrument IMMI 16/059 specifies skilled occupations in regard to the occupations on the Medium and Long-term Strategic Skills List (MLTSSL) and the Short-term Skilled Occupations List (STSOL) for:

- the Skilled Independent (subclass 189) visa;
- the Skilled Regional (Provisional) (subclass 489) visa
- the Temporary Graduate (subclass 485) visa
- the Employer Nominated Scheme (subclass 186) visa
- the Skilled Nominated (subclass 190) visa
- the Temporary Work (Skilled) (subclass 457) visa; and
- the Training (subclass 407) visa.

It also specifies Australian and New Zealand Standard Classification of Occupations (ANZSCO) codes relevant to assessment of nominations for skilled entry under the Migration Regulations.

These matters previously addressed in instrument IMMI 16/059 will now be addressed in instruments: Migration (IMMI 17/060: Specification of Occupations—Subclass 457 Visa) Instrument 2017; Migration (IMMI 17/071: Specification of Occupations—Subclass 407 Visa) Instrument 2017; Migration (IMMI 17/072: Specification of Occupations and Assessing Authorities) Instrument 2017 and Migration (IMMI 17/080: Specification of Occupations and Assessing Authorities—Subclass 186 Visa) Instrument 2017.

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 the effect of repealing Instrument IMMI 16/059 in conjunction with replacing it with Instruments IMMI 17/060, IMMI 17/071, IMMI 17/072 and IMMI 17/080 is that there is a net increase in the number of skilled occupations available to prospective visa applicants, 12 occupations have been removed. For those persons who are in Australia holding a visa and working in one of those occupations, or who wish to apply for a subsequent 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 the impacted visas 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 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