

EXPLANATORY STATEMENT

Migration Regulations 1994

Occupations for Subclass 187 visas; Skill, Age and English language requirements for Subclass 186 and Subclass 187 visas

(sub-subparagraph 5.19(4)(h)(ii)(D), subclause 186.234(3), paragraphs 186.221(b), 186.222(b), 186.231(b), 186.232(b), 187.221(b), 187.222(b), 187.231(b), 187.232(b), and 187.234(a))

1. This Instrument, *Migration (IMMI 17/058: Occupations for Subclass 187 visas; Skill, Age and English language requirements for Subclass 186 and Subclass 187 visas) Instrument 2017*, is made under sub-subparagraph 5.19(4)(h)(ii)(D) of the *Migration Regulations 1994* (the Regulations), and under subclause 186.234(3) and paragraphs 186.221(b), 186.222(b), 186.231(b), 186.232(b), 187.221(b), 187.222(b), 187.231(b), 187.232(b), and 187.234(a) of Schedule 2 to the Regulations.
2. The Instrument repeals *Specification of Class of Persons 2015 (IMMI 15/083)*. Subsection 33(3) of the *Acts Interpretation Act 1901*, 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. This instrument specifies occupations which may be nominated by employers in relation to applicants for Subclass 187 (Regional Sponsored Migration Scheme) visas. The instrument also specifies classes of persons who are exempt from certain criteria relating to skills, age and English language, for the purposes of Subclass 186 (Employer Nomination Scheme) and Subclass 187 visas. The instrument replaces instrument IMMI 15/083. The substantive difference between the instruments is that this instrument does not include income exemptions from criteria relating to skills and English language, which were specified in item 2 of IMMI 15/083. That item exempted applicants for Subclass 186 and Subclass 187 visas from various skill and English language criteria if the visa applicant's earnings were to be at least equivalent to the Australian Tax Office's top individual income tax rate.
4. The removal of the salary based exemption is intended to strengthen the integrity of the Subclass 186 and Subclass 187 visas by ensuring that applicants have the required skills and English language requirements.
5. Apart from the omission of the income exemption, the instrument is substantively the same as IMMI 15/083 which commenced on 1 July 2015. The instrument also omits redundant references to the Subclass 422 Medical Practitioner visa, which was repealed on 24 November 2012.

6. The new instrument applies to all nominations and visa applications made from 1 July 2017, and also to nominations and visa applications made before that date and not finally determined by that date. This change does not disadvantage any applicants except applicants who were seeking to rely on the income exemption mentioned in paragraph 3 above. To ensure the integrity of the Subclass 186 and Subclass 187 visas, it is considered appropriate to apply the new instrument to those applicants.
7. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 21681).
8. No consultation was considered necessary or appropriate because the amendments do not substantially alter existing arrangements. This accords with subsection 17(1) of the *Legislation Act 2003* which envisages consultations where appropriate and reasonably practicable.
9. Under section 10 of the *Legislation (Exemptions and Other Matter) Regulations 2015* and pursuant to item 20 of the table in section 10 of the *Legislations (Exemption and Other Matters) Regulation 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
10. The Instrument commences on 1 July 2017.