

EXPLANATORY STATEMENT*Migration Regulations 1994***MIGRATION (IMMI 18/005: SPECIFICATION OF OCCUPATIONS AND ASSESSING AUTHORITIES—SUBCLASS 186 VISA) INSTRUMENT 2018**

(sub-subparagraph 5.19(4)(h)(i)(A) and paragraph 186.234(2)(a) of Schedule 2)

1. Instrument IMMI 18/005 is made under sub-subparagraph 5.19(4)(h)(i)(A) and paragraph 186.234(2)(a) of Schedule 2 to the *Migration Regulations 1994* (the Regulations).
2. Instrument IMMI 18/005 operates to specify occupations for the purposes of sub-subparagraph 5.19(4)(h)(i)(A), and specify assessing authorities for the purposes of 186.234(2)(a) of Schedule 2 to the Regulations, 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). Those occupations were previously specified in instrument IMMI 17/080.
3. The occupations that have been added and removed from the MLTSSL and STSOL from the previous instrument IMMI 17/080, and the changes to the inapplicability conditions or ‘caveats’ on these occupations, are based on a regular six-monthly review by the Department of Jobs and Small Business of occupations eligible for skilled visas. The changes made are a result of advice from Government departments, labour market analysis and consultation with industry. The amended occupation lists ensure that the entry of skilled foreign workers to Australia remains carefully calibrated to Australia’s needs.
4. This instrument is different from the instrument it replaces, IMMI 17/080, in the following respects:
 - The occupations of “horse breeder” (ANZSCO 121316) and “management consultant” (ANZSCO 224711) have been removed from the STSOL and added to the MLTSSL. A new inapplicability condition has been added to the occupation of “management consultant”. New condition 23 has been inserted in

the table in section 9 of Part 2 of the instrument and provides that the position cannot have a nominated base salary of less than AUD90,000.

- The following inapplicability conditions have been added to the occupation of “management accountant” (ANZSCO 221112): condition 6 (the position cannot be a clerical, bookkeeper or accounting clerk position); condition 19 (the position cannot be in a business that has an annual turnover of less than AUD1,000,000); and condition 21 (the position cannot be in a business that has fewer than 5 employees).
- The following inapplicability conditions have been added to the occupation of “taxation accountant” (ANZSCO 221113): conditions 19 and 21.
- For the occupation of “supply and distribution manager” (ANZSCO 133611), the inapplicability condition has changed from 19 to condition 20 (the position cannot be in a business that has an annual turnover of less than AUD1,000,000, and if the person is to be transferred to fill the position – the transfer is an intra-corporate transfer to which an international trade obligation applies).
- The following inapplicability condition has been added to the occupation of “accommodation and hospitality managers (nec)” (ANZSCO 141999): condition 10 (the position must be located in regional Australia (within the meaning of subregulation 5.19(7) of the Regulations)).
- The occupations of “hair or beauty salon manager” (ANZSCO 142114) and “building associate” (ANZSCO 312112) have been removed from the STSOL. As a consequence, inapplicability condition 13 has been removed from the table in section 9 of Part 2 of the instrument as the only occupation to which it applied was the occupation of “hair or beauty salon manager”.
- The inapplicability condition 2 (the position cannot have a nominated base salary of less than AUD65,000) has been removed from the occupation of “recruitment consultant” (ANZSCO 223112) and new condition 23 has been added, providing that the position cannot have a nominated base salary of less than AUD90,000.

- The occupations of “psychotherapist” (ANZSCO 272314), “property manager” (ANZSCO 612112) and “real estate representative” (ANZSCO 612115) have been added to the STSOL. The occupations of “property manager” and “real estate representative” are subject to inapplicability conditions 2, 10, 19 and 21.
 - A typographical error has been corrected in item 12 of the table in section 8 of Part 2 of the instrument, providing at paragraph (d) that the occupation is inapplicable if the position is in a retail setting.
5. The effect of the application provision in paragraph 11(a) of Part 3 of the instrument is that the instrument applies only in relation to an application for approval of a nomination of a position if the application is made on or after 17 January 2018. The effect of the application provision in paragraph 11(b) of Part 3 of the instrument is that the instrument applies to an application made on or after 17 January 2018 for a Subclass 186 (Employer Nomination Scheme) visa, but only in those circumstances where the related application for approval of a nomination was made on or after 17 January 2018
 6. The instrument repeals the *Migration (IMMI 17/080: Specification of Occupations and Assessing Authorities –Subclass 186 Visa) Instrument 2017* made under sub-subparagraph 5.19(4)(h)(i)(A) and paragraph 186.234(2)(a) of the Regulations and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). Subsection 33(3) of the Acts Interpretation Act 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.
 7. The application provision in Section 1 of Part 2 of Schedule 1 to the instrument provides that the repealed instrument continues to apply in relation to:
 - an application of the kind mentioned in subsection 10(1) of the repealed instrument if the application is made before 17 January 2018 (subsection 10(1) deals with the application of the repealed instrument to applications for approval of a nomination); and

- an application of a kind mentioned in subsection 10(2) of the repealed instrument, if the application is made before, on or after 17 January 2018, but only in those circumstances where the related application for approval of a nomination was made before 17 January 2018 (subsection 10(2) deals with the application of the repealed instrument to applications for a Subclass 186 (Employer Nomination Scheme) visa).
8. The Department of Jobs and Small Business led this review, and consulted with the Department of Home Affairs, as well as a number of other Government agencies, stakeholders and industry representatives.
 9. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference: 23086).
 10. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
 11. The instrument commences on 17 January 2018.