

**EXPLANATORY STATEMENT***Migration Regulations 1994***MIGRATION (IMMI 18/006: SPECIFICATION OF OCCUPATIONS—SUBCLASS  
407 VISA) INSTRUMENT 2018***(Paragraph 2.72B(3)(b))*

1. Instrument IMMI 18/006 is made under paragraph 2.72B(3)(b) of the *Migration Regulations 1994* (the Regulations).
2. The instrument IMMI 18/006 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 17/071.
3. The occupations that have been added to and removed from the MLTSSL and STSOL compared to the previous instrument IMMI 17/071 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. Instrument IMMI 18/006 ensures the 407 visa program continues to be aligned with other visa programs.
4. This instrument is different from the instrument it replaces, IMMI 17/071, in the following respects:

- The following occupations have been added to the table in section 7:

<b>Occupation</b>	<b>ANZSCO</b>
Chief Executive or Managing Director	111111
Corporate General Manager	111211
Horse Breeder	121316
Project Builder	133112

Medical Administrator	134211
Faculty Head	134411
Chief Information Officer	135111
Environmental Manager	139912
Musician (Instrumental)	211213
Statistician	224113
Economist	224311
Management Consultant	224711
Mining Engineer (excluding Petroleum)	233611
Petroleum Engineer	233612
Engineering Professionals ( <i>nec</i> )	233999
Chemist	234211
Food Technologist	234212
Environmental Consultant	234312
Environmental Research Scientist	234313
Environmental Scientists ( <i>nec</i> )	234399
Geophysicist	234412
Hydrogeologist	234413
Life Scientist (General)	234511
Biochemist	234513
Biotechnologist	234514
Botanist	234515
Marine Biologist	234516
Microbiologist	234517
Zoologist	234518
Life Scientists ( <i>nec</i> )	234599
Conservator	234911
Metallurgist	234912
Meteorologist	234913
Natural and Physical Science Professionals ( <i>nec</i> )	234999
University Lecturer (Suitable for the position of Research Associate or Research Fellow in a University)	242111
Multimedia Specialist	261211
Software and Applications Programmers ( <i>nec</i> )	261399
Telecommunications Network Planner	313213
Pressure Welder	322312
Electrical Linesworker	342211
Horse trainer	361112

- The following occupations have been added to the table in section 8:

Occupation	ANZSCO
Aquaculture Farmer	121111

Cotton Grower	121211
Flower Grower	121212
Fruit or Nut Grower	121213
Grain, Oilseed or Pasture Grower (Aus) / Field Crop Grower (NZ)	121214
Grape Grower	121215
Mixed Crop Farmer	121216
Sugar Cane Farmer	121217
Vegetable Grower (Aus) / Market Gardener (NZ)	121221
Crop Farmers (nec)	121299
Apiarist	121311
Beef Cattle Farmer	121312
Dairy Cattle Farmer	121313
Mixed Livestock Farmer	121317
Pig Farmer	121318
Poultry Farmer	121321
Sheep Farmer	121322
Livestock Farmers (nec)	121399
Mixed Crop and Livestock Farmer	121411
Production Manager (Forestry)	133511
Wine Maker	234213
Psychotherapist	272314
Agricultural Technician	311111
Primary Products Inspectors (nec)	311399
Property Manager	612112
Real Estate Representative	612115

- The occupation of “management consultant” (ANZSCO 224711) has been removed from the STSOL and added to the MLTSSL.
  - The occupations of “hair or beauty salon manager” (ANZSCO 142114) and “building associate” (ANZSCO 312112) have been removed from the STSOL.
5. The effect of the application provision in section 9 of Part 3 of the instrument IMMI 18/006 is that it will apply in relation to a nomination made on or after 17 January 2018 for a Subclass 407 (Training) visa.
6. The instrument repeals the *Migration (IMMI 17/071: Specification of Occupations – Subclass 407 Visa) Instrument 2017* made under paragraph 2.72B(3)(b) 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 Part 2 of Schedule 1 to the instrument provides that the repealed instrument IMMI 17/071 continues to apply in relation to nominations made before 17 January 2018 and related visa applications.
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 42 of the *Legislation Act 2003*, the instrument IMMI 18/006 is subject to disallowance and therefore a Statement of Compatibility with Human Rights is included at Attachment A.
11. This instrument commences on 17 January 2018.

## Attachment A

## Statement of Compatibility with Human Rights

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

### Migration (IMMI 18/006: Specification of Occupations–Subclass 407 Visa) Instrument 2018

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 18/006: Specification of Occupations–Subclass 407 Visa) Instrument 2018

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 18/006) repeals and replaces the previous instrument (IMMI 17/071) and specifies skilled occupations and Australian and New Zealand Standard Classification of Occupations (ANZSCO) codes for the assessment of applications under the relevant Migration Regulations.

The ANZSCO is used by the Department of Home Affairs to ensure that applicants who wish to come to Australia as temporary skilled migrants nominate a skilled occupation for migration purposes.

The Short-term Skilled Occupation List (STSOL) and Medium and Long-term Strategic Skills List (MLTSSL) are designed to be dynamic and respond to changing labour market conditions. These lists are reviewed every six months by the Department of Jobs and Small Business (DJSB), based on labour market analysis and stakeholder consultation.

This instrument specifies the MLTSSL and STSOL which together provide eligible occupations and ANZSCOs 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 has added forty-one occupations to the table in section 7 to reflect the outcomes of the DJSB review, and to bring this table into alignment with the broader range of skilled visas. The occupations added to this table are as follows:

Occupation	ANZSCO
Chief Executive or Managing Director	111111
Corporate General Manager	111211
Horse Breeder	121316
Project Builder	133112

Medical Administrator	134211
Faculty Head	134411
Chief Information Officer	135111
Environmental Manager	139912
Musician (Instrumental)	211213
Statistician	224113
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Environmental Research Scientist	234313
Environmental Scientists ( <i>nec</i> )	234399
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Marine Biologist	234516
Microbiologist	234517
Zoologist	234518
Life Scientists ( <i>nec</i> )	234599
Conservator	234911
Metallurgist	234912
Meteorologist	234913
Natural and Physical Science Professionals ( <i>nec</i> )	234999
University Lecturer (Suitable for the position of Research Associate or Research Fellow in a University)	242111
Multimedia Specialist	261211
Software and Applications Programmers ( <i>nec</i> )	261399
Telecommunications Network Planner	313213
Pressure Welder	322312
Electrical Linesworker	342211
Horse trainer	361112

This instrument also specifies the STSOL which also provides eligible occupations and ANZSCOs for applicants who apply for the subclass 407 visa. Occupations on the STSOL are those identified by the Australian Government as being in shortage in the Australian labour market in the immediate to short-term. This instrument has added three occupations to the table in

section 8: psychotherapist (ANZSCO 272314), property manager (ANZSCO 612112) and real estate representative (ANZSCO 612115), and removed two occupations: hair or beauty salon manager (ANZSCO 142114) and building associate (ANZSCO 312112). The occupation of management consultant (ANZSCO 224711) was removed and added to the table in section 7. This brings the specification of occupations into line with broader skilled visas.

### **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, two occupations have been removed. For those persons who are in Australia holding a subclass 407 visa related to one of those occupations, 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 two 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 upon the expiry of their visa may instead apply for any 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 Home Affairs and  
Minister for Immigration and Border Protection**