

EXPLANATORY STATEMENT*Migration Regulations 1994***MIGRATION (IMMI 18/017: SPECIFICATION OF TRAINING REQUIREMENTS
FOR REGULATION 2.87B) INSTRUMENT 2018***(Subregulation 2.87B(2) and subregulation 2.87B(3))*

1. The instrument, IMMI 18/017, is made under subregulation 2.87B(2) and subregulation 2.87B(3) of the *Migration Regulations 1994* (the Regulations).
2. The instrument repeals IMMI 17/045 (F2017L00796) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (Interpretation Act). Subsection 33(3) of the 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.
3. The operation of the instrument is to specify training requirements that must be satisfied by all standard business sponsors for the purposes of subregulation 2.87B(2) and subregulation 2.87B(3) of the Regulations.
4. The schedule to the instrument outlines the training requirements through two training benchmarks.
5. The two training benchmarks are Training Benchmark A and Training Benchmark B. The instrument outlines the following:
 - a. Training Benchmark A:
 - i. the business must have recent expenditure of at least 2% of its total payroll dedicated to a training fund that operates in a related industry; and
 - ii. the acceptable expenditure to satisfy Training Benchmark A; and
 - iii. the types of funds that the expenditure may be made into.
 - b. Training Benchmark B:

- i. the business must have recent expenditure of at least 1% of its total payroll dedicated to relevant employee training; and
 - ii. the applicable and inapplicable expenditure to satisfy Training Benchmark B.
6. The training requirements outlined in this instrument only apply to a standard business sponsor on and after 18 March 2018.
7. The purpose of the instrument is to address changes to the Regulations by the *Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018*.
8. The subject of the instrument is part of a broad package of reforms for the employer sponsored skilled visa programs, announced by the Government on 18 April 2017. The reforms include replacing the Subclass 457 (Temporary Work (Skilled)) visa with the Subclass 482 (Temporary Skill Shortage) visa. The Department of Home Affairs has engaged with external stakeholders since the announcement in developing the policy settings and considered feedback received. Some settings of the existing framework have been carried over to the Subclass 482 visa without amendment, and have not been the subject of consultation.
9. These reforms were also informed by earlier reviews including: the 2014 Independent Review into the Integrity of the Subclass 457 programme; the 2016 Productivity Commission Inquiry Report: Migrant Intake into Australia; the 2016 Review of the Temporary Skilled Migration Income Threshold; and the 2016 Senate Inquiry A National Disgrace: The Exploitation of Temporary Work Visa Holders. These reviews were subject to extensive consultation processes, including: individuals; academics; bodies and businesses who use the employer sponsored skilled visa programs; migration agents; representatives of foreign governments; the Ministerial Advisory Council on Skilled Migration; and government departments and agencies.
10. A Regulation Impact Statement has been prepared in accordance with advice from the Office of Best Practice Regulation (OBPR). The OBPR Reference number is 21946.

11. This instrument is made under Part 2A of the Regulations. Under section 42 of the *Legislation Act 2003*, the instrument is subject to disallowance and therefore a Statement of Compatibility with Human Rights has been provided.
12. The instrument commences on 18 March 2018.

Statement of Compatibility with Human Rights

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

Migration (IMMI 18/017: Specification of Training Requirements for Regulation 2.87B)

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 Legislative Instrument

This Legislative Instrument specifies the manner in which a sponsor must meet the training benchmarks under regulation 2.87B of the *Migration Regulations 1994* (the Regulations). Training benchmarks were introduced to ensure that the employment of workers from outside Australia is not seen as an alternative to training Australian workers.

This Legislative Instrument repeals IMMI 17/045. The new instrument will continue to apply to a standard business sponsor who lawfully operates a business in Australia at the time they were approved as a standard business sponsor, or at the time their application to vary their standard business sponsorship was approved. It will apply to a sponsor who sponsor workers under the Temporary Skill Shortage (Subclass 482) visa, and the Temporary (Work (Skilled)) (Subclass 457) visa.

The effect of this Legislative Instrument is to:

- Remove the references to paragraphs 2.59(d) and 2.68(e) of the Regulations, such that training benchmarks will not apply to standard business sponsor applications (including variation applications);
- Carry over requirements in subregulations 2.87B(2) and 2.87B(3) of the Regulations, such that the training benchmark obligations will continue to apply to standard business sponsors, and work agreement sponsors where these provisions are specified;
- Acceptable expenditure that can count towards meeting the benchmarks has not changed.

The removal of the training benchmark requirements at the sponsorship stage reduce the documentation required, whilst still ensuring relevant visas are not used as an alternative to training Australians. Sponsors will continue to be required to meet the training benchmark requirements, however, will only need to demonstrate this if asked during the sponsor monitoring process if the obligation in regulation 2.87B is assessed.

The requirements for expenditure have not changed, therefore are not considered further in this document.

Human rights implications

The legislative instrument is compatible with human rights. It does not limit any of Australia's human rights obligations and it promotes the training of Australian citizens and permanent residents in support of the right to work in Article 6 of the *International Covenant on Economic Social and Cultural Rights*.

Conclusion

This legislative instrument is compatible with human rights.

The Hon Alan Tudge MP, Minister for Citizenship and Multicultural Affairs