

EXPLANATORY STATEMENT*Migration Regulations 1994***MIGRATION (IMMI 18/052: TRANSITIONAL OPERATION OF REGULATION 5.19 FOR CERTAIN 457 VISA HOLDERS) INSTRUMENT 2018**

(subparagraph 5.19(5)(a)(iii), subregulation 5.19(6) and subregulation 5.19(8))

1. Instrument IMMI 18/052 is made under subparagraph 5.19(5)(a)(iii), subregulation 5.19(6) and subregulation 5.19(8) of the *Migration Regulations 1994* (the Regulations).
2. The purpose of the instrument is to specify a class of persons eligible to access certain existing requirements of the Temporary Residence Transition streams of the Subclass 186 (Employer Nomination Scheme) visa and Subclass 187 (Regional Sponsored Migration Scheme) visa. The instrument will exempt these individuals from certain new requirements which come into effect on commencement of the *Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018* on 18 March 2018.
3. The instrument operates to:
 - provide that ‘specified person’ means a person who, on 18 April 2017, held a Subclass 457 (Temporary Work (Skilled)) visa (Subclass 457 visa), or was an applicant for a Subclass 457 visa that was subsequently granted;
 - provide that specified persons are specified for the purposes of subparagraph 5.19(5)(a)(iii) of the Regulations;
 - determine different periods of time for the purposes of paragraphs 5.19(5)(e), (f) and (g) of the Regulations for specified persons; and
 - exempt specified persons from the operation of paragraph 5.19(5)(c) of the Regulations.

Persons specified for subparagraph 5.19(5)(a)(iii) of the Regulations

4. Paragraph 5.19(5)(a) provides that, if a nomination relates to a visa in a Temporary Residence Transition stream, the person identified in the nomination application must hold:

- a Subclass 457 visa granted on the basis that the person satisfied the criterion in subclause 457.223(4) of Schedule 2 as in force before 18 March 2018; or
 - a Subclass 482 (Temporary Skill Shortage) visa (Subclass 482 visa) in the Medium-term stream; or
 - for a person specified in a legislative instrument made by the Minister for the purposes of subparagraph 5.19(5)(a)(iii), a Subclass 482 visa in the Short-term stream.
5. The instrument provides that a person is specified for the purposes of subparagraph 5.19(5)(a)(iii) if, on 18 April 2017, the person held a Subclass 457 visa, or was an applicant for a Subclass 457 visa that was subsequently granted.

Different periods of time for paragraphs 5.19(5)(e), (f) and (g) of the Regulations

6. Paragraphs 5.19(5)(e), (f) and (g) set out the requirements for approval which must be met if the nomination relates to a visa in a Temporary Residence Transition stream as follows:
- during the period of 4 years immediately before the application is made, the person identified in the nomination application (the ‘identified person’) must have held a Subclass 457 visa or a Subclass 482 visa for at least 3 years (see paragraph 5.19(5)(e)); and
 - if paragraph 5.19(5)(f) applies to identified person, the person must have been employed in the position in relation to which the relevant Subclass 457 or Subclass 482 visa was granted for at least 3 years (not including any periods of unpaid leave) during the period of 4 years immediately before the application is made; or
 - if paragraph 5.19(5)(g) applies to the identified person, the person must have been employed in the occupation in relation to which the relevant Subclass 457 or Subclass 482 visa was granted for at least 3 years (not including any periods of unpaid leave) during the period of 4 years immediately before the application is made.
7. Subregulation 5.19(6) provides that the Minister may, by legislative instrument, determine different periods of time for the purposes of paragraphs 5.19(5)(e), (f) and (g) for persons specified in the instrument.

8. The instrument provides that paragraphs 5.19(5)(e), (f) and (g) of the Regulations apply in relation to a specified person as if references in those paragraphs to periods of 4 years were references to periods of 3 years and references in those paragraphs to total periods of at least 3 years were references to total periods of at least 2 years.

Exemption from operation of paragraph 5.19(5)(c) of the Regulations

9. Paragraph 5.19(5)(c) requires that the occupation must be specified in a legislative instrument unless the identified person is exempted, by legislative instrument, from the operation of the paragraph.
10. Paragraph 5.19(8)(b) provides the Minister may, by legislative instrument, specify persons who are exempt from the operation of paragraph 5.19(5)(c).
11. The instrument exempts specified persons from the operation of that paragraph.
12. This 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 Department of Home Affairs has engaged with external stakeholders since the announcement in developing the policy settings and considered feedback received.
13. 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*; 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.
14. 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.

15. 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.

16. The instrument commences on 18 March 2018, and will be repealed at the start of 18 March 2022.