

**EXPLANATORY STATEMENT**

*Migration Regulations 1994*

**MIGRATION (IMMI 18/050: SPECIFICATION OF OCCUPATIONS—SUBCLASS  
407 VISA) INSTRUMENT 2018**

*(Paragraph 2.72B(3)(b))*

1. Instrument IMMI 18/050 is made under paragraph 2.72B(3)(b) of the *Migration Regulations 1994* (the Regulations).
2. The instrument IMMI 18/050 operates to specify occupations on the Medium and Long-term Strategic Skills List (MLTSSL), the Short-term Skilled Occupation List (STSOL) and the Regional Occupation List that relate to a Subclass 407 (Training) visa (407 visa) for the purposes of paragraph 2.72B(3)(b). These occupations were previously specified in instrument IMMI 18/006.
3. The instrument notes in section 4 that ‘[a] number of expressions used in this instrument are defined in the Regulations, including ANZSCO.’ Regulation 1.03 of the Regulations provides the following definition of ANZSCO: ‘**ANZSCO** has the meaning specified by the Minister in an instrument in writing for this definition.’ The instrument made under regulation 1.03 for the definition of ANZSCO is IMMI 18/051. Section 5 of IMMI 18/051 provides:

‘For the purposes of regulation 1.03 of the Regulations, ANZSCO means the Australian and New Zealand Standard Classification of Occupations published by the Australia Bureau of Statistics, as in force on 18 March 2018.’

ANZSCO may be accessed on the Australian Bureau of Statistics website (<http://www.abs.gov.au/>).

4. The main change in this Instrument is the introduction of the Regional Occupation List and consequential changes to occupations previously listed on IMMI 18/006, based on labour market advice from the Department of Jobs and Small Business. The amended occupation lists ensure that the entry of skilled foreign workers to Australia remains

carefully calibrated to Australia's needs. While occupations on the Regional Occupation List are not restricted to particular geographic areas for the 407 visa program, instrument IMMI 18/050 ensures the 407 visa program continues to be aligned with other visa programs.

5. This instrument is different from the instrument it replaces, IMMI 18/006, in the following respects:

- The occupations “horse breeder” (ANZSCO code 11111), “medical administrator” (ANZSCO code 134211), “project builder” (ANZSCO code 133112) and “electrical linesworker” (ANZSCO code 342211) have been removed from the MLTSSL in the table in section 7 to the Regional Occupation List in the table in section 8.
- The reference to “medical physicist only” in the MLTSSL in the table in section 7 has been updated to “physicist.”
- 11 occupations have been removed from the STSOL to the Regional Occupation List in the table in section 8:

<b>ANZSCO code</b>	<b>Occupation</b>
142115	Post Office Manager
149112	Fitness Centre Manager
149113	Sports Centre Manager
231111	Aeroplane Pilot
231113	Flying Instructor
231114	Helicopter Pilot
234213	Wine Maker
311111	Agricultural Technician
612112	Property Manager
612115	Real Estate Representative
452413	Jockey

- Section 8 creates a new list, the Regional Occupation List, which contains the following occupations:

<b>ANZSCO code</b>	<b>Occupation</b>
121316	horse breeder
131114	public relations manager
132411	policy and planning manager
133112	project builder
133612	procurement manager
134211	medical administrator

<b>ANZSCO code</b>	<b>Occupation</b>
134412	regional education manager
139915	sports administrator
141211	caravan park and camping ground manager
142115	post office manager
149111	amusement centre manager
149112	fitness centre manager
149113	sports centre manager
149912	cinema or theatre manager
149914	financial institution branch manager
223111	human resource adviser
223113	workplace relations adviser
224412	policy analyst
224912	liaison officer
225112	market research analyst
231111	aeroplane pilot
231113	flying instructor
231114	helicopter pilot
231213	ship's master
232413	multimedia designer
234213	wine maker
234311	conservation officer
234915	exercise physiologist
242211	vocational education teacher
251311	environmental health officer
271214	intellectual property lawyer
272413	translator
272611	community arts worker
311111	agricultural technician
311214	operating theatre technician
311216	pathology collector
312114	construction estimator
312116	surveying or spatial science technician
312511	mechanical engineering draftsman
312611	safety inspector
312911	maintenance planner
312999	building and engineering technicians (nec)
324311	vehicle painter
332111	floor finisher
342211	electrical linesworker

<b>ANZSCO code</b>	<b>Occupation</b>
361114	zookeeper
362411	nurseryperson
399212	gas or petroleum operator
411211	dental hygienist
411214	dental therapist
441211	emergency service worker
451211	driving instructor
451399	funeral workers (nec)
451711	flight attendant
451815	first aid trainer
452413	jockey
599915	clinical coder
612112	property manager
612115	real estate representative

6. The instrument repeals the *Migration (IMMI 18/006: 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 18/006 continues to apply in relation to nominations made before 18 March 2018 and related visa applications.
8. 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.
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. The consultation occurred well before the instrument was made. This accords with subsection 17(1) of the *Legislation Act 2003* which envisages consultations where appropriate and reasonably practicable.

10. A Regulation Impact Statement has been prepared in accordance with advice from the Office of Best Practice Regulation (OBPR). The OBPR Reference numbers are 21946 and 22132.
11. Under section 42 of the *Legislation Act 2003*, this Instrument is subject to disallowance and therefore a Statement of Compatibility with Human Rights is included at Attachment A.
12. This instrument commences on 18 March 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 18/050: 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 18/050: 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 an approved sponsor of a program of occupational training. This instrument (IMMI 18/050) repeals and replaces the previous instrument (IMMI 18/006) 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, for applicants who wish to come to Australia for occupational training purposes, that the training is related to an eligible occupation, and the training is necessary for the nominee to obtain registration, membership or licensing in Australia or in the home country of the nominee in relation to that occupation.

The occupation lists are comprised of the Medium and Long-term Strategic Skills List (MLTSSL), the Regional Occupation List and the Short-term Skilled Occupation List (STSOL). These lists are designed to be dynamic and respond to changing Australian labour market conditions. The Department of Jobs and Small Business (DJSB) regularly reviews eligible occupations for skilled migration, including occupations for the subclass 407 visa, based on data analysis and stakeholder consultation. 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. Occupations on the Regional Occupation List are those identified by the Australian Government as being in shortage in the Australian regional labour markets. 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 specifies the MLTSSL, STSOL and Regional Occupation List, which together provide eligible occupations and ANZSCO codes, for the subclass 407 visa. This instrument has added introduced the Regional Occupation List, which adds 44 new occupations, moves 4 occupations from the MLTSSL and 11 occupations from the STSOL to the Regional Occupation List, to reflect the outcomes of a review by DJSB of occupations needed to support Australia's regional economies. The Regional Occupation List includes the following occupations:

<b>Occupations</b>	<b>ANZSCO code</b>
horse breeder	121316
public relations manager	131114
policy and planning manager	132411
project builder	133112
procurement manager	133612
medical administrator	134211
regional education manager	134412
sports administrator	139915
caravan park and camping ground manager	141211
post office manager	142115
amusement centre manager	149111
fitness centre manager	149112
sports centre manager	149113
cinema or theatre manager	149912
financial institution branch manager	149914
human resource adviser	223111
workplace relations adviser	223113
policy analyst	224412
liaison officer	224912
market research analyst	225112
aeroplane pilot	231111
flying instructor	231113
helicopter pilot	231114
ship's master	231213
multimedia designer	232413
wine maker	234213
conservation officer	234311
exercise physiologist	234915
vocational education teacher	242211
environmental health officer	251311
intellectual property lawyer	271214

translator	272413
community arts worker	272611
agricultural technician	311111
operating theatre technician	311214
pathology collector	311216
construction estimator	312114
surveying or spatial science technician	312116
mechanical engineering draftsman	312511
safety inspector	312611
maintenance planner	312911
building and engineering technicians (nec)	312999
vehicle painter	324311
floor finisher	332111
electrical linesworker	342211
zookeeper	361114
nurseryperson	362411
gas or petroleum operator	399212
dental hygienist	411211
dental therapist	411214
emergency service worker	441211
driving instructor	451211
funeral workers (nec)	451399
flight attendant	451711
first aid trainer	451815
jockey	452413
clinical coder	599915
property manager	612112
real estate representative	612115

### 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. This includes requirements such as occupations being specified on a list.

The effect of repealing the previous instrument and replacing it with this one is that no occupations have been removed from the occupation list and there is no practical difference for the subclass 407 visa whether the occupation is listed on the MLTSSL or STSOL, which are also used for other visa subclasses. This instrument makes more occupations available to potential nominees and as such may promote the right to work under Article 6 of the ICESCR, including through technical and vocational guidance and training programs (Article 6.2), especially for persons already in Australia.

## **Conclusion**

This Legislative Instrument is compatible with human rights.

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