

EXPLANATORY STATEMENT

Migration Regulations 1994

Migration (IMMI 18/045: Exemptions in Relation to Skill, Age and English Language Requirements for Subclass 186 and Subclass 187 Visas) Instrument 2018

(Subclause 186.234(3), paragraphs 186.221(b), 186.222(b), 186.231(b), 186.232(b), 187.221(b), 187.222(b), 187.231(b), 187.232(b), 187.234(a) of Schedule 2)

1. The instrument, *Migration (IMMI 18/045: Exemptions in Relation to Skill, Age and English Language Requirements for Subclass 186 and Subclass 187 Visas) Instrument 2018*, is made under subclause 186.234(3), paragraphs 186.221(b), 186.222(b), 186.231(b), 186.232(b), 187.221(b), 187.222(b), 187.231(b), 187.232(b), and 187.234(a) of Schedule 2 to the *Migration Regulations 1994* (the Regulations).
2. Instrument *Specification of Class of Persons 2015 (IMMI 15/109)* (F2015L01148) is repealed:
 - a. under regulation 1.03 of the Regulations in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, which states 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; and
 - b. subsequent to the repeal of sub-subparagraph 5.19(4)(h)(ii)(D) of the Regulations by the *Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018*.
3. The application provision in section 1 of Part 2 in Schedule 1 to the instrument provides that Schedule A to IMMI 15/109 and Schedule A to IMMI 17/058 will continue to apply in relation to a nomination of an occupation if the nomination is made before 18 March 2018.
4. Instrument *Migration (IMMI 17/058: Occupations for Subclass 187 visas; Skill, Age and English language requirements for Subclass 186 and Subclass 187 visas) Instrument 2017* (F2017L00847) is repealed in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, which states that where an Act confers a power to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.

5. 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*.
6. The instrument specifies exemptions in relation to Skill, Age and English Language Requirements for Subclass 186 (Employer Nomination Scheme (ENS)) visa and Subclass 187 (Regional Sponsored Migration Scheme) visa.
7. In particular, this instrument operates to:
 - a. specify a class of persons who are exempt from having to satisfy the primary criteria in relation to skills and employment history for the relevant occupation at the time of application for a Subclass 186 visa and Subclass 187 visa;
 - b. specify a class of persons who are exempt from having to satisfy the age requirement at the time of application for a Subclass 186 or a Subclass 187 visa.
 - c. specify a class of persons who are exempt from having to satisfy the vocational English or competent English requirements at the time of application for a Subclass 186 or a Subclass 187 visa.
 - d. reduce, from the previous instrument, the time the class of persons specified in Part 2, subsection 9(c) and 9(d) of this instrument, must work in a nominated occupation for the nominated employer immediately prior to the date of application from four years to three years; and
 - e. specify a class of persons who are exempt from having to be below the age of 45 at the time of application for a Subclass 186 or a Subclass 187 visa.
8. The instrument only applies to applications for nominated occupations made on or after 18 March 2018.

9. The instrument notes in section 4 that ‘ANZSCO is defined in regulation 1.03 of the Regulations.’ 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 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 Australian Bureau of Statistics, as in force on 18 March 2018.’
10. ANZSCO may be accessed on the Australian Bureau of Statistics website.
11. The subject of 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 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.
12. 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.
13. 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.

14. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulations 2015* the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
15. The instrument commences on 18 March 2018.