

EXPLANATORY STATEMENT

Migration Act 1958

**MIGRATION (IMMI 18/042: DESIGNATED MIGRATION LAW - SUBDIVISION B
OF DIVISION 3A OF PART 2) INSTRUMENT 2018**

(Paragraph 495A(3)(b))

1. The instrument, IMMI 18/042 is made for the purposes of paragraph 495A(3)(b) of the *Migration Act 1958* (the Act).
2. The instrument specifies that Subdivision B of Division 3A of Part 2 of the Act is determined to be part of the designated migration law. Subdivision B of Division 3A of Part 2 is titled ‘Approving sponsors and nominations’. Sections in this part only relate to approval sponsors and nominations.
3. The purpose of the instrument is to allow automated approval of certain applications as a standard business sponsor. Subdivision B of Division 3A of Part 2 of the Act contains a number of sections that operate together in order for a decision to be made. For example, for the Minister to approve a nomination under 140GB, the Minister must also be satisfied that the labour market testing condition under 140GBA was also met. In order to ensure the approval of certain applications is truly automated, the entirety Subdivision B of Division 3A of Part 2 has been determined to be part of the designated migration law.
4. Automated decision-making is authorised by section 495A of the Act. In particular, subsection 495A(1) provides that the Minister may arrange for the use, under the Minister’s control, of computer programs for any purposes for which the Minister may, or must, under the designated migration law:
 - a. make a decision; or
 - b. exercise any power, or comply with any obligation; or
 - c. do anything else related to making a decision, exercising a power, or complying with an obligation.

5. The instrument is part of a broad package of reforms for the employer sponsored skilled visa programmes, announced by the Government on 18 April 2017. The Department of Home Affairs has engaged extensively with external stakeholders in developing the policy settings and considered feedback received. In particular, this instrument implements recommendation 10.2 of the 2014 Independent Review into the Integrity of the Subclass 457 programme to simplify the process for sponsorship renewals.
6. A Regulation Impact Statement has been prepared in accordance with advice from the Office of Best Practice Regulation (OBPR). The OBPR reference is 21946. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, this instrument is not subject to disallowance and therefore a Statement of Compatibility with Human Rights is not required.
7. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulations 2015* this instrument is not subject to disallowance and therefore a Statement of Compatibility with Human Rights is not required.
8. The instrument commences on 18 March 2018.