

EXPLANATORY STATEMENT

Migration Regulations 1994

Migration (LIN 19/212: Specification of Exempt Occupations) Instrument 2019

(subregulations 2.72(13) and 2.72C(14))

1. The instrument, LIN 19/212, is made under subregulations 2.72(13) and 2.72C(14) of the *Migration Regulations 1994* (the Regulations).
2. The instrument repeals IMMI 18/035 (F2018L00287) made under subregulation 2.72(13) of the Regulations, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA). Subsection 33(3) of the AIA 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 instrument operates, for the purposes of subregulation 2.72(13) of the Regulations, to specify exempt occupations for the following:
 - a. a nomination of a proposed occupation made under regulations 2.72 and 2.73 of the Regulations, on or after 18 March 2018;
 - a. obligations arising in relation to a Subclass 457 (Temporary Work (Skilled)) visa or a Subclass 482 (Temporary Skill Shortage) visa under regulation 2.86 of the Regulations, on or after 18 March 2018;
 - b. an application for approval of a nomination of a position made under regulation 5.19 of the Regulations, on or after 18 March 2018;
 - c. an application for a Subclass 482 (Temporary Skill Shortage) visa, made on or after 18 March 2018;
 - d. a Subclass 482 (Temporary Skill Shortage) visa granted on or after 18 March 2018.

4. The instrument also operates, for the purposes of subregulation 2.72C(14) of the Regulations, to specify exempt occupations for the following:
 - a. a nomination of a proposed occupation made under regulations 2.72C and 2.73B of the Regulations, on or after 16 November 2019;
 - b. obligations arising in relation to a Subclass 494 (Skilled Employer Sponsored Regional (Provisional) visa under regulation 2.86 of the Regulations, on or after 16 November 2019;
 - c. an application for a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa, made on or after 16 November 2019;
 - d. a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa granted on or after 16 November 2019.

5. The purpose of the instrument is to implement changes as a result of amendments to the Regulations made by the *Migration Amendment (New Skilled Regional Visas) Regulations 2019* by specifying occupations for the purposes of new paragraph 2.72C(13)(b), subregulation 2.73B(11), paragraphs 2.73B(12)(c), 2.86(2B)(b) and 2.86(2BA)(b) of the Regulations and clause 494.222 of Schedule 2 to the Regulations, and paragraph 8608(3)(a) of Schedule 8 to the Regulations. References to these provisions are at subsection 6(2) of the instrument. The occupations specified in subsection 6(3) of the instrument remain unchanged from the occupations specified in Schedule 1 of the previous instrument, IMMI 18/035.

6. Section 4 of the instrument defines **ANZSCO** as having ‘the same meaning as in regulation 1.03 of the Regulations’. Regulation 1.03 of the regulations provides that ANZSCO has the meaning specified by the Minister in an instrument in writing. The current instrument made under regulation 1.03 of the Regulations for the definition of ANZSCO is LIN 19/051 which commenced on 11 March 2019. Section 5 of LIN 19/051 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 the day this instrument commences’.

7. ANZSCO may be accessed on the Australian Bureau of Statistics website.
8. The instrument is part of a package introducing new regional visas designed to deliver a migration program that can respond more effectively to the needs of regional Australia. These changes will also assist with governmental priorities to attract highly skilled migrants to regional areas and ease population pressure in major cities.
9. Pursuant to the frequency and volume of the legislative amendments that are required to maintain a dynamic and responsive immigration system, it has been a consistent practice to include certain criteria and conditions in delegated legislation. The criteria for the new Subclass 494 (Skilled Employer Sponsored Regional (Provisional) visa has been included in delegated legislation rather than primary legislation to give the Government oversight and the ability to respond in a timely and transparent manner to emerging situations which may include changes in the labour market and the economy. In addition, instruments made under delegated legislation are subject to the scrutiny framework out in the *Legislation Act 2003*, and oversight of the amendments is available to the Parliament under the same legislation.
10. Section 17 of the *Legislation Act 2003* requires consultations which are appropriate and reasonably practicable to be undertaken. The following Commonwealth government agencies were consulted in relation to the instrument: the Department of the Prime Minister and Cabinet; the Department of Foreign Affairs and Trade; the Attorney General's Department; the Department of the Treasury; the Department of Finance; the Department of Social Services; the Department of Education and Training; the Department of Employment, Skills, Small and Family Business (then Department of Jobs and Small Business); the Department of Industry, Innovation and Science; the Department of Infrastructure, Regional Development and Cities; the Department of Health; and the Department of Human Services.
11. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 25045).

12. 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 at **Attachment A**.
13. The instrument commences at the same time as the commencement of Schedule 2 to the *Migration Amendment (New Skilled Regional Visas) Regulations 2019*.

Attachment A

Statement of Compatibility with Human Rights

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

Migration (LIN 19/212: Specification of Exempt Occupations) Instrument 2019

This Disallowable 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 Disallowable Legislative Instrument

Under migration legislation, foreign workers entering Australia under employer-sponsored skilled visa arrangements are generally required to work for their sponsoring employer. Pursuant to the *Migration Regulations 1994* (the Regulations), this Legislative Instrument lists the occupations that are exempt from the requirement in the Regulations for certain skilled visa holders to work directly for their sponsoring employer. It replaces Legislative Instrument IMMI 18/035.

The purpose of this Instrument is to extend the exemption arrangements to the new Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa which is inserted into the Regulations by the *Migration Amendment (New Skilled Regional Visas) Regulations 2019* with effect from 16 November 2019. The exemption arrangements remain unchanged for the other subclasses of visa to which this Instrument applies.

The list of exempt occupations is primarily composed of very senior company executives and medical practitioners and specialists. The reason that persons in these occupations are not required to work directly for their sponsor is to accommodate the flexible employment arrangements typically associated with certain occupations such as medical specialists where the normal employer-employee relationships do not necessarily apply. The exemption arrangements in this Instrument permit the visa holder to work for more than one employer and work as an independent contractor. For example, a medical specialist may be engaged by more than one hospital and may have an associated private practice. The exemption arrangements also ensure that the sponsoring employer will not breach the obligation if the visa holder or former visa holder is engaged as an independent contractor rather than as an employee in one of the specified occupations.

Human rights implications

The exemption arrangements in this Instrument will continue to assist in promoting the right to work of foreign workers in Australia, including the holders of the new Subclass 494

(Skilled Employer Sponsored Regional (Provisional)) visa, in the listed occupations. This is consistent with Article 6 of the *International Covenant on Economic, Social and Cultural Rights*.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights.

The Hon David Coleman MP

Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs