

EXPLANATORY STATEMENT

Migration Act 1958

Migration (LIN 19/210: Pool and Pass Marks for General Skilled Migration Visas) Instrument 2019

(Subsections 96(1) and (2))

1. The instrument, LIN 19/210, is made under subsection 96(1) and (2) of the *Migration Act 1958* (the Act).
2. The instrument repeals IMMI 18/067 (F2018L00920) made under subsections 96(1) and (2) of the Act and 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 purpose of the instrument is to specify the pool and pass marks for the Subclass 491 (Skilled Work Regional (Provisional)) visa (Subclass 491 visa) at 65 points. This inclusion follows the introduction of the new Subclass 491 visa in the *Migration Regulations 1994* (the Regulations), which will apply to Subclass 491 visa applications made on or after 16 November 2019. The Subclass 489 (Skilled—Regional (Provisional)) visa will close to new applications on 16 November 2019.
4. The instrument operates to set the pool and pass marks at 65 for the “points” system under Subdivision B of Division 3 of Part 2 of the Act, for the following visas where an application is made on or after 16 November 2019:
 - Subclass 189 (Skilled—Independent) visa;
 - Subclass 190 (Skilled—Nominated) visa.
5. The 65 points pass mark reflects the highest level of interest by an applicant in skilled migration to Australia and the highest calibre of prospective applicants who express their interest in the visa subclasses mentioned above. The level of the pass mark is

consistent with the level set for the points test under repealed regulation 2.26AB, in effect until 1 July 2013.

6. The instrument maintains the pool and pass marks from the previous instrument for visa applications made before, on or after 16 November 2019 in response to an invitation by the Minister made before 16 November 2019:
 - Subclass 189 (Skilled—Independent) visa;
 - Subclass 190 (Skilled—Nominated) visa;
 - Subclass 489 (Skilled—Regional (Provisional)) visa.

7. The instrument also maintains the former pool and pass marks for outstanding applications made before 16 November 2019 for the following visas:
 - Subclass 175 (Skilled—Independent) visa;
 - Subclass 176 (Skilled—Sponsored) visa;
 - Subclass 475 (Skilled—Regional Sponsored) visa;
 - Subclass 487 (Skilled—Regional Sponsored) visa;
 - Subclass 885 (Skilled—Independent) visa;
 - Subclass 886 (Skilled—Sponsored) visa.

8. The Subclasses listed in section 7 were repealed on 1 July 2013 by item [26] of Schedule 2 to the *Migration Amendment Regulation 2012 (No. 2)*. Clause 102 of Schedule 13 to the Regulations provides that those amendments applied only in relation to an application for a visa made on or after 1 July 2013. The intention is that the same pool and pass mark that applied at the time of application for the visa, should continue to apply to outstanding visa applications.

9. 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 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.

10. 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 491 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 that may include changes in the labour market and the economy. In addition, Instruments made under delegated legislation are subject to the scrutiny framework in the *Legislation Act 2003*, and oversight of the amendments is available to the Parliament under the same legislation
11. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 25639).
12. 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.
13. This instrument commences at the same time as Schedule 1 to the *Migration Amendment (New Skilled Regional Visas) Regulations 2019* commences.