

EXPLANATORY STATEMENT

Migration Regulations 1994

Migration (Specification of Occupations and Assessing Authorities) Amendment (LIN 19/243: Subclass 491 Visas) Instrument 2019

(subregulation 1.15I(1); subregulation 2.26B(1); item 4 of the table in subitem 1230(4) of Schedule 1; subitem 1241(5) of Schedule 1)

1. The instrument, LIN 19/243, is made under subregulation 1.15I(1), subregulation 2.26B(1), item 4 of the table in subitem 1230(4) and subitem 1241(5) of Schedule 1 to the *Migration Regulations 1994* (the Regulations).
2. The instrument amends *Migration (LIN 19/051: Specification of Occupations and Assessing Authorities) Instrument 2019* (LIN 19/051) 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. LIN 19/051 operates to specify the applicable occupations and assessing authorities for a person who:
 - a. is issued an invitation to apply for a Subclass 189 (Skilled—Independent) visa (Subclass 189), Subclass 190 (Skilled—Nominated) visa (Subclass 190) or Subclass 489 (Skilled—Regional (Provisional)) visa (Subclass 489), on or after 11 March 2019; or
 - b. applies for a Subclass 485 (Temporary Graduate) visa (Subclass 485), on or after 11 March 2019; or
 - c. is the spouse or de facto partner of a person to whom paragraph a. or b. above applies.
4. The purpose of the instrument is to implement changes as a result of the amendments to the Regulations by the *Migration Amendment (New Skilled Regional Visas) Regulations 2019* (the amending Regulations), which, among other things, will introduce the

Subclass 491 (Skilled Work Regional (Provisional)) visa (Subclass 491) and close the Subclass 489 visa to applicants in the First Provisional Visa stream.

5. Paragraph 1230(2)(aa) of Schedule 1 to the Regulations (as inserted by item 18 of Schedule 1 to the amending Regulations) states that an application by a person seeking to satisfy the primary criteria in the First Provisional Visa stream for a Subclass 489 visa must be made before 16 November 2019. As such, no new applications in that stream for the Subclass 489 visa will be accepted on or after 16 November 2019. The instrument seeks to remove from LIN 19/051 all reference to the Subclass 489 visa that are no longer applicable.
6. Applicants who wish to satisfy the primary criteria for the grant of a Subclass 491 visa must nominate a skilled occupation that is specified under subitem 1241(5) of Schedule 1 to the Regulations (as inserted by item 19 of Schedule 1 to the amending Regulations). Items 1 to 5 of Part 1 of Schedule 1 to the instrument seek to ensure that LIN 19/051 specifies those skilled occupations and, for the purposes of subregulation 2.26B(1) of the Regulations, the relevant assessing authorities.
7. The Minister's power to make an instrument under subregulation 2.26B(1) of the Regulations to specify assessing authorities is subject to subregulation 2.26B(1A), which states that the Minister must not make an instrument under subregulation 2.26B(1) unless the person or body has been approved in writing as the relevant assessing authority for the occupation by the Employment Minister. The Employment Minister has approved the changes to the assessing authorities in writing.
8. The amendments made by Part 1 of Schedule 1 to the instrument will only apply to persons who have made an application for the Subclass 491 visa on or after 16 November 2019. The amendments made by Part 1 of Schedule 1 of the instrument will not apply in relation to applications for a Subclass 489 visa made before 16 November 2019.
9. The instrument also makes changes to the assessing authority for occupations of child care centre manager (ANZSCO code 134111) and podiatrist (ANZSCO code 252611) in the Medium and Long-term Strategic Skills List. The amendment made by item 3 in Schedule 2 to the instrument changes the assessing authority for child care centre manager from Trades Recognition Australia (TRA) to Australian Children's Education

and Care Quality Authority (ACECQA). The amendment made by item 5 in Schedule 2 to the instrument changes the assessing authority for podiatrist from the Australian and New Zealand Podiatry Accreditation Council Limited (ANZPAC) to the Podiatry Board of Australia (PodBA). These changes will apply in relation to applications made after 16 November 2019, for either a Subclass 491 visa, a Subclass 189 visa, a Subclass 190 visa or a Subclass 485 visa.

10. The amendment made by item 7 in Schedule 2 to the instrument ensures that skills assessments which occurred before 16 November 2019 and are specified in the table in section 10A under the item are valid for the purposes of subregulation 2.26B(1) of the Regulations. The table provides that the assessing authorities for the occupations of child care centre manager (ANZSCO code 134111) and podiatrist (ANZSCO code 252611) are specified as Trades Recognition Australia and the Australian and New Zealand Podiatry Accreditation Council Limited respectively. These assessing authorities are only specified for the purpose of subregulation 2.26B(1) of the Regulations for assessments that occur prior to 16 November 2019.
11. In addition, the amendments made by items 1, 2, 4 and 6 in Schedule 2 of the instrument clarifies the assessing authority for the occupation of physicist (ANZSCO code 234914) as Vocational Education and Training Assessment Services (VETASSESS), except for in the case of medical physicists. The assessing authority for a medical physicist is the Australasian College of Physical Scientists and Engineers in Medicine (ACPSEM). These changes have been made to clarify the language in section 8 of LIN 19/051 and do not alter the prior intention of that instrument. Under section 15AC of the AIA, where an Act or instrument has expressed an idea in a particular form of words and a later Act or instrument appears to have expressed the same idea in a different form of words for the purpose of using a clearer style, the ideas shall not be taken to be different merely because different forms of words were used.
12. 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.

13. 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 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.
14. 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 (then 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, Transport, Cities and Regional Development (then Department of Infrastructure, Regional Development and Cities); the Department of Health; and Services Australia (then Department of Human Services).
15. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 25045).
16. 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.
17. Schedule 1 of the instrument commences at the same time as the commencement of Schedule 1 to the amending Regulations. Schedule 2 of the instrument commences on 16 November 2019.