

EXPLANATORY STATEMENT

Migration Regulations 1994

Migration (LIN 19/216: Exemptions from Skill, Age and English Language Requirements for Subclass 186, 187 and 494 Visas) Instrument 2019

(paragraphs 186.221(b), 186.231(b), 186.234(3), 187.221(b) and 187.222(b), subclauses 494.223(2), 494.224(7) and 494.225(2) of Schedule 2)

1. The instrument, LIN 19/216, is made under paragraphs 186.221(b), 186.231(b), 186.234(3), 187.221(b) and 187.222(b) and subclauses 494.223(2), 494.224(7) and 494.225(2) of Schedule 2 to the *Migration Regulations 1994* (the Regulations).
2. In accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA), the instrument repeals *Migration (IMMI 18/045: Exemptions in Relation to Skill, Age and English Language Requirements for Subclass 186 and Subclass 187 Visas) Instrument 2018* (IMMI 18/045) (F2018L00301) which was 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 Regulations. 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 to specify exemptions in relation to age, skills, employment history or English language requirements for the Subclass 186 (Employer Nomination Scheme) visa (Subclass 186), Subclass 187 (Regional Sponsored Migration Scheme) visa (Subclass 187) and Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa (Subclass 494).
4. In particular, the instrument operates to specify the following:
 - a. for applicants of the Subclass 186 visa in the Temporary Residence Transition stream and for the purposes of paragraph 186.221(b) of Schedule 2 to the Regulations—the classes of persons who are exempt from having to satisfy the age requirements at the time of application;

- b. for applicants of the Subclass 186 visa in the Direct Entry stream and for the purposes of paragraph 186.231(b) of Schedule 2 to the Regulations—the classes of persons who are exempt from having to satisfy the age requirements at the time of application;
 - c. for applicants of the Subclass 186 visa in the Direct Entry stream and for the purposes of subclause 186.234(3) of Schedule 2 to the Regulations—the classes of persons who are exempt from having to satisfy the requirements in subclause 186.234(2) of Schedule 2 to the Regulations;
 - d. for applicants of the Subclass 187 visa and for the purposes of paragraph 187.221(b) of Schedule 2 to the Regulations—the classes of persons who are exempt from having to satisfy the age requirement at the time of application;
 - e. for applicants of the Subclass 187 visa and for the purposes of paragraph 187.222(b) of Schedule 2 to the Regulations—the classes of persons who are exempt from having to satisfy the competent English requirement at the time of application;
 - f. for applicants of the Subclass 494 visa and for the purposes of subclause 494.223(2) of Schedule 2 to the Regulations—the circumstances in which applicants are not required to have been under 45;
 - g. for applicants of the Subclass 494 visa and for the purposes of subclause 494.224(7) of Schedule 2 to the Regulations—the circumstances in which applicants are not required to have met the requirements of subclauses 494.224(2) to (5) of Schedule 2 to the Regulations;
 - h. for applicants of the Subclass 494 visa and for the purposes of subclause 494.225(2) of Schedule 2 to the Regulations—the circumstances in which applicants are not required to have met the requirements of paragraph 494.225(1)(a) of Schedule 2 to the Regulations.
5. The application provision in section 9 of the instrument provides that the instrument will apply in relation to applications for a visa made on or after 16 November 2019. It also provides that an area that was located in regional Australia (within the meaning of subregulation 5.19(16) of the Regulations) listed in a legislative instrument that was current at the time a relevant application was made, is taken to be located in a

designated regional area at that time, if the relevant application was made before 16 November 2019.

6. Regulation 1.03 of the Regulations provides that the definition of designated regional area means ‘a part of Australia specified in an instrument under regulation 1.15M’. The current instrument made under regulation 1.15M for the definition of designated regional area is LIN 19/217.
7. The note in section 5 of the instrument also states that **ANZSCO** is defined in 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’.
8. ANZSCO may be accessed on the Australian Bureau of Statistics website.
9. 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 494 visa and, except for certain transitional cohorts, close the Subclass 187 visa.
10. The subject of this 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.
11. 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 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.

12. 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).
13. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 25045).
14. 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.
15. The instrument commences at the same time as the commencement of Schedule 2 to the *Migration Amendment (New Skilled Regional Visas) Regulations 2019*.