

EXPLANATORY STATEMENT

Migration Regulations 1994

Migration (LIN 19/215: Sponsorship Applications and Nominations for Subclass 407, 457, 482 and 494 Visas) Instrument 2019

(subparagraph 2.61(3A)(b)(i); subparagraph 2.61(3A)(b)(ii); paragraph 2.61(3A)(ba); paragraph 2.61(3A)(c); subregulation 2.61(3B); subregulation 2.66(3); subregulation 2.66(4); subregulation 2.66(5); subregulation 2.73(4); subregulation 2.73(5); paragraph 2.73(7); subregulation 2.73A(2); and subregulation 2.73B(14))

1. This instrument, LIN 19/215, is made under: subparagraph 2.61(3A)(b)(i), subparagraph 2.61(3A)(b)(ii), paragraph 2.61(3A)(ba), paragraph 2.61(3A)(c), subregulation 2.61(3B), subregulation 2.66(3), subregulation 2.66(4), subregulation 2.66(5), subregulation 2.73(4), subregulation 2.73(5), paragraph 2.73(7), subregulation 2.73A(2) and subregulation 2.73B(14) of the *Migration Regulations 1994* (the Regulations).
2. This instrument repeals the *Migration (IMMI 18/038: Sponsorship Applications and Nominations for Subclasses 407, 457 and 482 Visas) Instrument 2018* (IMMI 18/038) (F2018L00287) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA). IMMI 18/038 was made on 15 March 2018 under subparagraphs 2.61(3A)(b)(i) and (ii), paragraphs 2.61(3A)(ba) and (c), paragraph 2.61(3B)(a), subregulations 2.66(3) and (4), paragraph 2.66(5)(a), subregulations 2.73(4) and (5), paragraph 2.73(7)(a), and subregulation 2.73A(2) of 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. This instrument operates to specify:
 - (a) the forms and fees for the purposes of any of the following:
 - (i) an application for approval as a standard business sponsor or a temporary activities sponsor, or to vary a term of approval as a temporary activities sponsor (sponsorship application);
 - (ii) a nomination of an occupation in relation to a Subclass 457 (Temporary Work (Skilled)) visa or a Subclass 482 (Temporary Skill Shortage) visa or a

Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa
(Subclass 494 visa);

- (b) the circumstances in which a sponsorship application or nomination can be made in a different way, the different way, and the approved form; and
 - (c) the process for nomination of a program of occupational training for a Subclass 407 (Training) visa.
4. The purpose of this instrument is to address the changes to the Regulations by the *Migration Amendment (New Skilled Regional Visas) Regulations 2019* with effect from 16 November 2019. In particular, the instrument gives effect to the new subregulations 2.73B(4), 2.73B(5), 2.73B(7) and 2.73B(14) by specifying the forms and fees for sponsorship applications and nominations under the new Subclass 494 visa. It also specifies the circumstances in which a sponsorship application or nomination in relation to a Subclass 494 visa may be made in a different way, and the approved form for that purpose.
 5. The fees specified for sponsorship applications and nominations under the Subclass 494 visa remain consistent with the fees specified for other Subclasses in the revoked instrument IMMI 18/038. IMMI 18/038 was implemented as part of the broad package of reforms for the employer sponsored skilled visa programs, announced by the Government on 18 April 2017.
 6. The fee amounts were calculated on the basis of cost recovery using departmental data for direct and indirect costs incurred in undertaking the activity or function. This includes staffing and relevant ongoing costs of suppliers, IT, property, contractors, consultants and corporate overhead where appropriate.
 7. 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: Attorney-General's Department; Department of Education; Department of Finance; Department of Foreign Affairs and Trade; Department of Health; Department of Human Services; Department of Industry, Innovation and Science; Department of Infrastructure, Transport, Cities and Regional Development; Department of Employment, Skills, Small and Family Business;

Department of the Prime Minister and Cabinet; Department of Social Services; and the Treasury.

8. 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 rather than primary legislation. Specifying arrangements for the new Subclass 494 visas in the instrument enables the Government to respond to emerging situations, such as changes in the labour market and the economy, in a timely and transparent manner. As the instrument is disallowable, it is subject to Parliament's scrutiny and oversight under the *Legislation Act 2003*.
9. 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**.
10. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 25045).
11. The whole of this instrument commences at the same time as Schedule 2 to the *Migration Amendment (New Skilled Regional Visas) Regulations 2019* commences.

Attachment A

Statement of Compatibility with Human Rights

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

Migration (LIN 19/215: Sponsorship Applications and Nominations for Subclass 407, 457, 482 and 494 Visas) 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 Legislative Instrument

The *Migration (LIN 19/215: Sponsorship Applications and Nominations for Subclass 407, 457, 482 and 494 Visas) Instrument 2019* will repeal and replace the *Migration (IMMI 18/038: Sponsorship Applications and Nominations for Subclasses 407, 457 and 482 visas) Instrument 2018*, with effect from 16 November 2019.

Purpose of the Legislative Instrument

As part of the 2019-20 Budget, the Government announced its commitment to addressing critical skill shortages currently experienced in regional communities of Australia, introducing a new regional provisional visa in the *Migration Regulations 1994* (the Regulations), the Skilled Employer Regional Sponsored (Provisional)(Class PE)(Subclass 494) visa.

The new regional provisional visa has been established as part of the *Migration Amendment (New Skilled Regional Visas) Regulations 2019*, currently subject to commencement from 16 November 2019.

The Subclass 494 visa will require persons seeking to make a valid application for this visa from 16 November 2019, to be sponsored by an approved work sponsor, and nominated for a position in a nomination made by the approved work sponsor.

This legislative instrument seeks to set out the requirements in which sponsorship applications and nominations must be made in relation to the Subclass 494 visa, extending current arrangements for the Subclass 407, 457 and 482 visas, to the Subclass 494 visa in relation to:

- (a) the approval of a person as an approved work sponsor, in relation to one or more classes prescribed for the purposes subsection 140E(2) of the *Migration Act 1958* (the Act), and regulation 2.58 of the Regulations; and
- (b) the approval of a nomination made under paragraph 140GB(1)(b) of the Act, by a class of approved work sponsors, that nominates a proposed occupation in relation to a person as the holder of, or applicant for a visa of a kind prescribed in regulation 2.72 of the Regulations.

This legislative instrument also sets out the different way sponsorship applications and nominations can be made, expanding the circumstances currently applied to the Subclasses 407, 457 and 482 visas, to the Subclass 494 visa, in cases where the Department has identified a problem with its Internet application system, and as a result of the problem identified, certain applicants are unable to make an Internet application.

Human rights implications

The *Migration (LIN 19/215: Sponsorship Applications and Nominations for Subclass 407, 457, 482 and 494 Visas) Instrument 2019* does not engage any of the applicable rights or freedoms.

This legislative instrument will repeal, and replace the *Migration (IMMI 18/038: Sponsorship Applications and Nominations for Subclasses 407, 457 and 482 visas) Instrument 2018*, however, does not amend existing sponsorship application, and nomination requirements currently deposited in relation to the subclass 407, 457 and 482 visas.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

David Coleman

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