

## EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration, Citizenship, Migrant Services and  
Multicultural Affairs

*Migration Act 1958*

*Migration Regulations 1994*

### ***Migration (Specification of Occupations and Assessing Authorities—Subclass 186 Visa) Amendment Instrument (LIN 21/009) 2021***

- 1 The instrument, Departmental reference LIN 21/009, is made under paragraph 186.234(2)(a) of Schedule 2 to *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument amends *Migration (LIN 19/049: Specification of Occupations and Assessing Authorities—Subclass 186 Visa) Instrument 2019* (F2019L00275) (LIN 19/049) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). That subsection provides that where an Act confers a power to make a legislative instrument, the power includes a power to amend or repeal that instrument, subject to any conditions that apply to the initial instrument-making power.
- 3 Paragraph 13(1)(a) of the *Legislation Act 2003* (the Legislation Act) provides that subsection 33(3) of the Acts Interpretation Act applies to an instrument-making power in the Migration Regulations as if the Migration Regulations were an Act. This means that paragraph 186.234(2)(a) of Schedule 2 to the Migration Regulations also includes a power to amend or repeal an instrument made under that provision.
- 4 The instrument commences on the day after it is registered on the Federal Register of Legislation, and is a legislative instrument for the Legislation Act.

#### ***Purpose***

- 5 The purpose of the instrument is to update the specified assessing authorities in relation to the following occupations: chief executive or managing director, corporate general manager, engineering manager, childcare centre manager and podiatrist.
- 6 The instrument specifies matters relating to applications for a Subclass 186 (Employer Nomination Scheme) visa in the Direct Entry Stream (a Subclass 186 visa). Under subclause 186.234(1) of Schedule 2 to the Migration Regulations, at the time of application for a Subclass 186 visa, an applicant must:
  - have been assessed by a specified assessing authority, that assessment must not be for a Subclass 485 (Temporary Graduate) visa and must not be more than 3 years old at the time of application, and the applicant has been employed in the occupation for at least 3 years (see subclause 186.234(2) of Schedule 2 to the Migration Regulations), or
  - have been assessed by an assessing authority as having skills suitable for their occupation, with the assessing authority for each occupation specified by legislative instrument (with additional

requirements also listed in subclause 186.234(2) of Schedule 2 to the Migration Regulations), or

- be in a class of persons specified by the Minister in a legislative instrument (see subclause 186.234(3)).

7 The purpose of the instrument is to update the specified assessing authorities for the occupations included in LIN 19/049, for paragraph 186.234(2)(a) of Schedule 2 to the Migration Regulations. The instrument updates the names of assessing authorities that have changed, and implements changes to assessing authorities for particular occupations.

### ***Consultation***

8 The Department of Education, Skills and Employment was consulted on, and agrees to, the amendments being made to LIN 19/049 by the instrument. No public consultation was undertaken, as the instrument is minor and machinery in nature.

9 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a minor nature and no regulatory impact statement was required. The OBPR reference number is 43403.

### ***Details of the instrument***

10 Section 1 sets out the name of the instrument.

11 Section 2 provides for the commencement of the instrument on the day after it is registered on the Federal Register of Legislation.

12 Section 3 sets out that the instrument is made under paragraph 186.234(2)(a) of Schedule 2 to the Migration Regulations.

13 Section 4 provides that LIN 19/049 is amended as set out in Schedule 1 to the instrument. Details on the amendments in Schedule 1 are set out in **Attachment A**.

### ***Parliamentary scrutiny etc.***

14 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because instruments made under Schedule 2 to the Migration Regulations are exempt under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

15 The instrument was made by Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, under paragraph 186.234(2)(a) of Schedule 2 to the Migration Regulations.

**Details of Schedule 1 to the *Migration (Specification of Occupations and Accessing Authorities—Subclass 186 Visa) Amendment Instrument (LIN 21/009) 2021***

**Items 1–5 Amendments to section 7**

Subsection 6(4) of LIN 19/049 provides that the assessing authority listed in column 3 of the ‘Medium and Long-term Strategic Skills List’ (the MLTSS list) is specified for the purpose of the occupation listed in column 1 of the list for paragraph 186.234(2)(a) of the Migration Regulations. Subsection 7(1) of LIN 19/049 sets out the MLTSS list.

Items 1-3 amend the MLTSS list in subsection 7(1) of LIN 19/049 to reflect that the Australian Institute of Management (AIM) has changed its name to be the Institute of Managers and Leaders Limited (IML) (see also item 10), and that IML is the assessing authority for the occupations of chief executive or managing director (item 1), corporate general manager (item 2) and engineering manager (item 3).

Item 4 amends the MLTSS list to reflect that the Australian Children’s Education and Care Quality Authority (ACECQA), and not Trades Recognition Australia (TRA), is the assessing authority for the occupation of childcare centre manager. (Note that ACECQA is added as an additional assessing authority by item 6.)

Item 5 amends the MLTSS list to reflect that the Podiatry Board of Australia (PodBA), and not the Australia and New Zealand Podiatry Accreditation Council Limited (ANZPAC), is the assessing authority for the occupation of podiatrist. (Note that PodBA is added as an additional assessing authority by item 11.)

**Items 6–11 Amendments to section 9**

The assessing authorities in the MLTSS list in subsection 7(1) of LIN 19/049 are referred to in abbreviated form. The table in section 9 of LIN 19/049 provides the long form of each expression. Items 6-11 amend this table to accompany the amendments to the MLTSS list made by items 1-5.

Item 6 inserts reference to ACECQA at new table item 2A, which is now the assessing authority for the occupation of childcare centre manager under item 4. Item 7 repeals table item 7, as AIM (previously mentioned in table item 7) has changed name to be IML. IML is inserted at table item 27A by item 10.

Item 8 omits Australian Institute of Medical Scientists from table item 8, and replaces it with that authority’s new name, the Australian Institute of Medical and Clinical Scientists. This authority continues to have the abbreviation, AIMS, and remains the assessing authority for the occupation of medical laboratory scientist.

Item 9 repeals table item 13, as ANZPAC (previously mentioned in table item 13) is no longer an assessing authority specified in subsection 7(1) of LIN 19/049. Item 11 inserts PodBA at new table item 31A, which is the assessing authority for the occupation of podiatrists under item 5 (and not ANZPAC).

**Item 12 New section 13**

Item 12 inserts new section 13 in LIN 19/049, to clarify how the amendments made by the instrument apply to LIN 19/049.

New subsection 13(1) of LIN 19/049 provides that the amendments made by the instrument apply to an application for a Subclass 186 visa if the application is made on or after the day the instrument commences,

whether the assessment by an assessing authority for paragraph 186.234(2)(a) of Schedule 2 to the Migration Regulations occurred before, on or after the instrument commences.

For clarity, an assessment conducted by an assessing authority that was not specified in LIN 19/049 before the instrument commences, ACECQA and PodBA, are not captured by this section. This section does however, capture assessing authorities whose names have changed, as reflected in the instrument, and assessing authorities that continue to operate with the same name as before the instrument commenced.

New subsection 13(2) provides that assessments conducted before the instrument commenced by a former assessing authority, for paragraph 186.234(2)(a) of Schedule 2 to the Migration Regulations, continue to be specified as an assessment by an assessing authority for an application made on or after the instrument commences. Assessments conducted by a former assessing authority will only be accepted as an assessment from a specified assessing authority for a period of up to 3 years after it is made, or until the assessment expires, whichever comes first. An assessment by an assessing authority mentioned in an item in column 2 of the following table is specified for the occupation mentioned in column 1 for that item if the assessment occurred before the instrument commenced.

| <b>Assessing authorities</b> |                                      |   |
|------------------------------|--------------------------------------|---|
| <b>Item</b>                  | <b>Column 1<br/>Occupation</b>       | <b>Column 2<br/>Assessing authority</b>                           |
| 1                            | chief executive or managing director | Australian Institute of Management                                |
| 2                            | corporate general manager            | Australian Institute of Management                                |
| 3                            | engineering manager                  | Australian Institute of Management                                |
| 4                            | childcare centre manager             | Trades Recognition Australia                                      |
| 5                            | medical laboratory scientist         | Australian Institute of Medical Scientists                        |
| 6                            | podiatrist                           | Australian and New Zealand Podiatry Accreditation Council Limited |