

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Age exemption for subclass 186 (Employer Nomination Scheme) visa) Amendment Instrument (LIN 22/047) 2022

- 1 The instrument, Departmental reference LIN 22/047, is made under paragraph 186.221(b) of Schedule 2 to the *Migration Regulations 1994* (the Regulations).
- 2 The instrument amends *Migration (LIN 19/216: Exemptions from Skill, Age and English Language Requirements for Subclass 186, 187 and 494 Visas) Instrument 2019* (LIN 19/216) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). That subsection provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 3 The instrument commences 1 July 2022, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 Certain temporary skilled visa holders may be eligible to become a permanent resident in Australia by applying for a Subclass 186 (Employer Nomination Scheme) visa (subclass 186 visa) or a Subclass 187 (Regional Sponsored Migration Scheme) visa (subclass 187 visa). In response to the strong labour demand and the declining number of temporary visa holders in 2021 due to the COVID-19 pandemic, the Australian Government announced on 25 November 2021 that measures will be introduced to improve access to permanent residence for certain temporary skilled visa holders. These include some ‘legacy’ Subclass 457 (Temporary Work (Skilled)) visa (subclass 457 visa) holders, who are ineligible to meet the age requirement under the subclass 186 visa in the Temporary Residence Transition stream (TRT stream). The instrument forms part of these measures to be implemented on 1 July 2022.
- 5 Subclause 186.221 of Schedule 2 to the Regulations is one of the primary criterion that must be met by an applicant for a subclass 186 visa in the TRT stream. Paragraph 186.221(a) of Schedule 2 to the Regulations provides for an age requirement, where an applicant must be under 45 years of age at the time of application. Paragraph 186.221(b) of Schedule 2 to the Regulations allows an exemption from the age requirement, if the applicant is a person who is in a class of persons the Minister specifies in a legislative instrument.
- 6 As the Government announced on 18 April 2017 that the subclass 457 visa would close to new applications on 18 March 2018 and be replaced by the Subclass 482 (Temporary Skill Shortage) visas (subclass 482 visa), transitional arrangements were put in place at the time for existing subclass 457 visa holders and applicants to continue to access permanent residence through a subclass 186 visa or subclass 187 visa. The cohort of ‘transitional 457 workers under 50’, specified as a class of persons in LIN 19/216, formed part of these transitional arrangements. However, subclass 457 visa holders who were 50 years old or older at time of application for their subclass 186 visa or subclass 187 visa, or

applied for their subclass 457 visa on or after 18 April 2017 (legacy 457 workers), were not able to access those transitional arrangements.

- 7 The purpose of the instrument is to amend LIN 19/216 to specify certain legacy 457 workers as an additional class of persons for paragraph 186.221(b) of Schedule 2 to the Regulations. This will exempt them from the age requirement for the subclass 186 visa in the TRT stream. More subclass 457 visa holders will be eligible for permanent residence in Australia from 1 July 2022. Further detail on this class of persons is below.

Consultation

- 8 Consultation was undertaken with industry leaders, such as Australian Chamber of Commerce and Industry and Australian Industry Group, and the Ministerial Advisory Council on Skilled Migration who supported the proposed measures to improving skilled visa holders access to permanent residency pathways. The measure implements the recommendation by the Joint Standing Committee on Migration through their inquiry into Australia's skilled migration system. The Prime Minister, through an exchange of letters, has provided authority for this measure.
- 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 21-01223.

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 1 July 2022.
- 12 Section 3 provides that Schedule 1 to the instrument amends LIN 19/216.
- 13 Item 1 of Schedule 1 to the instrument inserts the new definition of 'legacy 457 worker'. Legacy 457 worker means a person who, for a subclass 186 visa application:
 - held a subclass 457 visa on or after 18 April 2017; and
 - was in Australia for at least 12 months between 1 February 2020 and 14 December 2021.
- 14 The cohort of persons intended to be captured here are the subclass 457 visa holders who were not able to take advantage of the 2018 transitional arrangements, including those who subsequently applied for and were granted a subclass 482 visa. No age limit is specified for this class of person, unlike the cohort of transitional 457 workers under 50.
- 15 Item 2 of Schedule 1 inserts new paragraph 6(1)(aa). This specifies 'legacy 457 worker' as a class of persons for paragraph 186.221(b) of Schedule 2 to the Regulations. Therefore, a person who is legacy 457 worker is exempt from the age requirement in paragraph 186.221(a) of Schedule 2 to the Regulations. This means this cohort is not required to be less than 45 years old at time of application for a subclass 186 visa in the TRT stream.

Parliamentary scrutiny etc.

- 16 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because instruments created under Schedule 2 to the Regulations are exempt under paragraph b of item 20 in the table of section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 17 The instrument was made by the Minister of Immigration, Citizenship, Migrant Services and Multicultural Affairs, in accordance with paragraph 186.221(b) of Schedule 2 to the Regulations.