

## EXPLANATORY STATEMENT

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

*Migration Regulations 1994*

### ***Migration (Assessing Authorities for Subclass 494 Visas) Amendment Instrument (LIN 22/054) 2022***

- 1 The instrument, Departmental reference LIN 22/054, is made under subclause 494.224(6) of Schedule 2 to the *Migration Regulations 1994* (the *Migration Regulations*).
- 2 The instrument amends the *Migration (LIN 19/260: Assessing Authorities for Subclass 494 Visas) Instrument 2019* (LIN 19/260). Subsection 33(3) of the *Acts Interpretation Act 1901* provides that the power to make an instrument under subclause 494.224(6) includes a power to amend or repeal such an instrument.
- 3 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 2003* (the *Legislation Act*).

#### ***Purpose***

- 4 When a person applies for a Subclass 494—Skilled Employer Sponsored Regional (Provisional) visa (a subclass 494 visa) in the Employee Sponsored stream one of the eligibility criteria the primary applicant for the visa must meet is that the applicant’s skills had been assessed as suitable for their occupation by an assessing authority specified in an instrument under subclause 494.224(6) of Schedule 2 to the *Migration Regulations* (see paragraphs 494.224(2)(a) and (4)(b)).
- 5 Subclause 494.224(6) provides that for the purposes of paragraph 1242(5)(a) of Schedule 1 and paragraphs 494.224(2)(a) and 494.224(4)(b) of the *Regulations*, the Minister may, by legislative instrument, specify a person or body as the assessing authority for an occupation. LIN 19/260 is currently made for this purpose.
- 6 LIN 19/260 operates to specify, for the purposes of paragraph 1242(5)(a) of Schedule 1, and paragraphs 494.224(2)(a) and (4)(b) of Schedule 2 to the *Regulations*, the assessing authorities for an occupation specified in either the Medium and Long-term Strategic Skills List (the *MLTSSL*) or the Regional Occupation List (the *ROL*).
- 7 The instrument amends LIN 19/260 to update the assessing authorities for certain occupations on the *MLTSSL* and the *ROL*. The amendments are required to reflect name and business changes to assessing authorities, so that skills assessments being issued by the same companies under a different name are able to be accurately reflected in the instrument for the subclass 494 visa. The detailed changes are discussed below.
- 8 It has been consistent practice for the specific detail of visa criteria and conditions to be included in delegated legislation. This facilitates the operation of a dynamic and responsive immigration program. Amending the specification of assessing authorities for subclass 494 visas to reflect business name changes and other minor administrative matters would not be an appropriate use of the parliament’s time. Amending primary legislation would also likely cause a time delay in which subclass 494 visas may not be available to certain occupations that have already been identified as suitable for skilled

migration. For these reasons, it is appropriate that the matters contained in this instrument and LIN 19/260 are specified in delegated legislation.

### ***Consultation***

- 9 The Department of Education, Skills and Employment, the Skilled and Migration Program Management, Skills Innovation and Policy, Student and Graduate Visa, and Tourism and International Education Policy within the Department of Home Affairs were consulted on, and agree to, the amendments being made to LIN 19/260 by this instrument. No public consultation was undertaken as the instrument substantially replicates what is currently in force and the amendments are considered minor and machinery in nature.
- 10 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***

- 11 Section 1 sets out the name of the instrument.
- 12 Section 2 provides for the commencement of the instrument on the day after it is registered on the Federal Register of Legislation.
- 13 Section 3 sets out that the instrument is made under subclause 494.224(6) of Schedule 2 to the Migration Regulations.
- 14 Section 4 provides that LIN 19/260 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.***

- 15 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under subclause 494.224(6) of Schedule 2 to the Migration Regulations, which is exempt from disallowance under paragraph (b) of item 20 in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 16 The instrument was made by Minister for Immigration, Citizenship, Migrant Services and Multicultural Services, under subclause 494.224(6) of Schedule 2 to the Migration Regulations.

**Details of Schedule 1 to the *Migration (Assessing Authorities for Subclass 494 Visas) Amendment Instrument (LIN 22/054) 2022***

Section 5 of LIN 19/260 provides that, for the purposes of subclause 494.224(6) of Schedule 2 to the Migration Regulations, a person or body listed in column 2 of an item of the MLTSSL in section 6 or the ROL in section 7 is specified as the assessing authority for the occupation listed in column 1 of the item.

**Items 1–3 Amendments to section 6**

Items 1-3 amend the MLTSSL in section 6 of LIN 19/260.

Items 1-2 removes AIM and replaces it with IML (items 1 and 2 of the table in section 6). This change reflects the name change of Australian Institute of Management (AIM) to the Institute of Managers and Leaders Limited (IML). IML continues to be the assessing authority for the occupations of chief executive or managing director and corporate general manager.

Item 3 replaces ACWA with ACS in column 2 of item 10. This change reflects the replacement of the Australian Community Workers Association Inc (ACWA) with the Australian Computer Society Incorporated (ACS) as the assessing authority for the chief information officer occupation.

**Items 4-6 Amendments to section 7**

Items 4-6 amend the ROL in section 7 of LIN 19/260.

Item 4 replaces AIM with IML in column 2 of table items 24, 25, 26, 29, 39 and 40 in section 7. This change reflects that the Australian Institute of Management (AIM) has changed its name to be the Institute of Managers and Leaders Limited (IML) and that IML continues to be the assessing authorities for the occupations of sales and marketing manager, advertising manager, public relations manager, human resource manager, supply and distribution manager, and procurement manager.

Item 5 is a technical amendment that is consequential to the insertion of new subsection 7(3) of LIN 19/260 by item 6.

Item 6 sets out the assessing authority for the occupation of information and organisation professional (nec) (item 141) other than a data scientist is Vocational Education and Training Assessment Services (VETASSESS), and the assessing authority for the occupation of information and organisation professionals (nec) (item 141) that is a data scientist is ACS.

In effect, item 6 newly provides that the relevant assessing authority for a data scientist is ACS (previously it was VETASSESS). This change has been precipitated as the occupation of data scientist is more computer based and focussed on ‘data’, which requires an assessing authority with a computer and data specialities to assess the occupation to the highest of skill levels (skill level 1 for this ANZSCO). VETASSESS provides assessments for the other occupations, which are not computer or data focussed but rather are more ‘administrative’, under the same ANZSCO code 224999 information and organisation professionals (nec).

**Items 7-9 Amendments to section 9**

Section 9 of LIN/260 contains a table with short-form references to assessing authorities for the purpose of the MLTSSL and ROL lists in sections 6 and 7.

Item 7 repeals the definition of AIM (Australian Institute of Management) in table item 8.

Item 8 replaces the ‘Australian Institute of Medical Scientists’ with the ‘Australian Institute of Medical and Clinical Scientists’ in column of table item 9.

Item 9 inserts the definition for IML, which is the Institute of Managers and Leaders Limited after table item 28.

#### **Item 10            New section 10**

The amendments add a new section 10 at the end of LIN 19/260 to explain how the amendments made by the instrument would apply to assessments made by the assessing authorities.

New section 10 provides that the amendments made by the instrument to LIN 19/260 will apply to an application for a subclass 494 visa if the application for that visa is made on or after the day the instrument commences, including where the skills assessment or application for a skills assessment was made before, on or after that day (see subsection (1)). This means that the applicant’s declaration that their skills have been assessed as suitable for their occupation, as required under paragraph 1242(5)(a) of Schedule 1 to the Migration Regulations, can be made even if the new assessing authority provided the assessment before the commencement of the instrument.

This means that a skills assessment from IML can be used, even if that assessment was completed before the commencement of the instrument, to make a valid application for a subclass 494 visa in the following occupations:

- chief executive or managing director;
- corporate general manager;
- engineering manager;
- sales and marketing manager;
- advertising manager;
- public relations manager;
- human resource manager;
- supply and distribution manager;
- procurement manager.

The chief information officer occupation is not included on the table, as the change to the assessing authority is to correct a typographical error. This change will apply to applications made after commencement. Similarly the table does not refer to data scientists as the instrument does not currently deal with subsets of the specified occupation of information and organisation professionals (nec).

New section 10 also allows for skills assessments that were commenced (whether or not they were finalised) by the Vocational Education and Training Assessment Services, the Australian Institute of Management and the Australian Institute of Medical Scientists before the commencement of the instrument to be used to make a valid visa application for certain occupations (see subsection (2)).

For the purposes of paragraph 494.224(6) of Schedule 2 to the Regulations, an assessing authority listed in column 2 of an item of the following table is also specified as an assessing authority for the occupation listed in column 1 of the item in relation to an application covered by subsection (1) if the assessment for the purposes of that paragraph commences before the day the amendment instrument commences.

<b>Assessing authorities</b>		
<b>Item</b>	<b>Column 1 Occupation</b>	<b>Column 2 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	medical laboratory scientist	Australian Institute of Medical Scientists
5	sales and marketing manager	Australian Institute of Management
6	advertising manager	Australian Institute of Management
7	public relations manager	Australian Institute of Management
8	human resource manager	Australian Institute of Management
9	supply and distribution manager	Australian Institute of Management
10	procurement manager	Australian Institute of Management
11	information and organisation professionals (nec)	Vocational Education and Training Assessment Services
12	medical laboratory technician	Australian Institute of Medical Scientists
13	pathology collector (Aus) / phlebotomist (NZ)	Australian Institute of Medical Scientists