

## EXPLANATORY STATEMENT

Issued by authority of the Minister for Home Affairs

*Migration Regulations 1994*

### ***Migration (Specified Qualifications Applicable for Extension of Subclass 485 Visa) Instrument (LIN 23/048) 2023***

- 1 The instrument, departmental reference LIN 23/048, is made under paragraph 1229(2A)(b) of Schedule 1 to the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument commences on 1 July 2023. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

- 3 The purpose of the instrument is to specify the qualifications that entitle certain graduates from Australian educational institutions to apply for an additional Subclass 485 Temporary Graduate visa in the Post-Study Work stream at no cost – i.e. without paying a visa application charge (VAC).
- 4 The Migration Regulations, as amended from 1 July 2023 by the *Migration Amendment (Extension of Subclass 485 (Temporary Graduate) Visa and Increase in Subclass 500 (Student) Visa Work Hours) Regulations 2023*, provide the Minister with flexibility to extend post-study stay in Australia with unrestricted work rights for certain international students who have graduated from an Australian higher education provider. The policy is to provide the extended stay to graduates with specified qualifications that are in high demand.
- 5 The extended stay will be implemented, under policy, from 1 July 2023. Current settings, detailed in published policy, will be increased by two years. This will extend post-study stay in Australia from:
  - two years to four years for select Bachelor degrees
  - three years to five years for select Masters degrees
  - four years to six years for all Doctoral degrees.

- 6 For applicants who have not received the additional two years' stay under the policy outlined above, there will be the option of applying for another Temporary Graduate visa in the Post-Study Work stream at no cost. If the relevant visa criteria are satisfied, the policy is to grant that visa for a period that will provide the applicant with an additional two year stay in Australia. A Temporary Graduate visa in the Post-Study Work stream, based on a 'nil VAC' application, will be granted for two years. The two year period will be calculated from the date that the visa held at time of application was originally scheduled to cease. The purpose of the nil VAC visa is to provide a two year extension to the visa held by the applicant at that time, because they hold a specified degree. To make an application for that additional visa at no cost, an applicant must hold a qualification specified by the Minister in a legislative instrument made for the purposes of paragraph 1229(2A)(b) of Schedule 1 to the Migration Regulations. This list of qualifications specified in the instrument is the same list that informs the policy to grant extended visas as set out in paragraph 5 above.
- 7 Government accepted the working group recommendation to use the Skills Priority List (SPL) as a basis for identifying occupations in verified skills shortage. The SPL is a methodologically robust, tested and nationally comprehensive model that identifies Australian skills needs both current and over a five-year forecasting horizon. Only occupations listed as currently in shortage and with strong to moderate future demand were considered for inclusion. To derive the list of eligible qualifications, in-scope occupations were identified by reference to the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

### ***Consultation***

- 8 Consultation has been undertaken with other government agencies and peak body representatives. The Post Study Work Rights Working Group was established to advise the Ministers for Home Affairs and Education on the extension of post study work rights for international graduates and on the appropriate number of hours for student work hour restrictions. The working group included representatives from the Council of International Education, the National Tertiary Education Union, Universities Australia, and the Departments of Home Affairs and Education. Information regarding the changes was also shared through the Education Visa Consultative Committee (EVCC). EVCC is a forum for the Department to discuss visa/border issues as they emerge in regard to the International Education sector with both industry and other government stakeholders. Public consultation was not considered necessary or appropriate as the amendments are entirely beneficial to visa applicants, there is no disadvantageous impact on visa applicant's rights, and no liabilities are imposed. This accords with the consultation requirements in section 17 of the Legislation Act.
- 9 The Office of Impact Analysis (OIA) was also consulted and considered that the instrument dealt with matters of a minor or machinery nature and no regulatory impact statement was required. The OBPR reference number is OBPR22-03858.

### ***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 2023.
- 12 Section 3 provides that the instrument is made under paragraph 1229(2A)(b) of Schedule 1 to the Regulations.

- 13 Section 4 defines several expressions relied on in the instrument, including *Australian Qualifications Framework, course, CRICOS, CRICOS code* and *provider*.
- 14 Section 5 provides that a qualification under the Australian Qualifications Framework that is awarded as a result of completing a course specified by reference to a CRICOS code in column 2 of the table in the Schedule to this instrument is a specified qualification for the purposes of paragraph 1229(2A)(b) of Schedule 1 to the Regulations.
- 15 The Schedule to this instrument lists the specified qualifications by reference to their CRICOS code which is a unique identifier for every course provided by each registered education provider. The table in the Schedule to this instrument also includes the name of the relevant course and the name of the education provider.

***Parliamentary scrutiny etc.***

- 16 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because an instrument made under Schedule 1 to the Migration Regulations is prescribed by subitem 20(b) of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* as exempt from disallowance. As a result, a Statement of Compatibility with Human Rights is not required.