

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Removal of health workforce certificate requirements) Amendment Instrument (LIN 23/065) 2023

- 1 The instrument, departmental reference LIN 23/065, is made under the following provisions:
 - subregulations 5.19(8), (11) and (13) of the *Migration Regulations 1994* (the Regulations); and
 - paragraph 186.234(2)(a) of Schedule 2 to the Regulations.
- 2 The instrument amends the following legislative instruments:
 - *Migration (LIN 19/047: Specification of Occupations – Subclass 187 Visa) Instrument 2019* (LIN 19/047); and
 - *Migration (LIN 19/049: Specification of Occupations and Assessing Authorities – Subclass 186 Visa) Instrument 2019* (LIN 19/049).
- 3 The above instruments are amended 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.
- 4 The instrument commences on 16 September 2023, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 5 Regulation 5.19 of the Regulations sets out requirements that must be met for the approval of a nomination of a position in connection with an application for a Subclass 186 (Employer Nomination Scheme) visa (subclass 186 visa) or a Subclass 187 (Regional Sponsored Migration Scheme) visa (subclass 187 visa). These include general requirements for approval, and further requirements for nomination applications in the Temporary Residence Transition stream (TRT stream) and Direct Entry stream (DE stream).
- 6 One of the requirements is that the application must identify an occupation in relation to the nominated position. Under various provisions in regulation 5.19, the Minister has powers to specify, by legislative instrument, occupations in relation to the nominated position. The Minister may further specify any matters for the purposes of determining whether the occupation applies to an identified person under:
 - paragraph 5.19(8)(c) of the Regulations for either a subclass 186 visa or subclass 187 visa application in the TRT stream;
 - subregulation 5.19(11) of the Regulations for a subclass 186 visa in the DE stream; and

- subregulation 5.19(13) of the Regulations for a subclass 187 visa in the DE stream.
- 7 Such matters include circumstances in which the occupation is undertaken and circumstances in which the person is to be employed in the position (see subparagraphs 5.19(8)(c)(v) and (vi), paragraphs 5.19(11)(e) and (f) and paragraphs 5.19(13)(e) and (f)).
 - 8 Subclause 186.234(2) of Schedule 2 to the Regulations sets out some of the criteria that must be satisfied by applicants for a subclass 186 visa in the DE stream at time of decision. Under paragraph 186.234(2)(a), an applicant's skills must be assessed as suitable for the applicant's nominated occupation by an assessing authority specified by the Minister in a legislative instrument as the assessing authority for that occupation.
 - 9 Under the powers mentioned above, the Minister specified in LIN 19/047 and LIN 19/049 a requirement that a health workforce certificate (HWC) from a health workforce certifier be provided when an employer nominates a position in certain medical occupations. In LIN 19/047, these medical occupations were general practitioner (ANZSCO code: 253111); resident medical officer (ANZSCO code: 253112); and medical practitioners (nec) (ANZSCO code: 253999). In LIN 19/049, these were general practitioner and medical practitioners (nec).
 - 10 The HWC requirement formed a measure introduced as part of a joint program between the Department of Health and the Department of Home Affairs. The purpose of the program was to manage the growth of overseas trained doctors entering primary care in well-serviced major capital cities and metropolitan areas. Given widespread shortages of doctors in Australia, the measure is no longer fit for purpose. The Minister for Health and Aged Care and Minister for Immigration, Citizenship and Multicultural Affairs have agreed to end the program, and as such the HWC is no longer required.
 - 11 The purpose of this instrument is to amend LIN 19/047 and LIN 19/049 to remove the requirement for employers to provide a HWC for the abovementioned medical occupations. The amendments remove all definitions and references to HWCs and health workforce certifiers.
 - 12 The amendments made by this instrument enable employers to nominate a position in Australia which identifies a medical occupation, in relation to a person seeking to apply for a subclass 186 or a subclass 187 visa in the TRT stream or DE stream, without being required to provide a HWC.
 - 13 These changes remove the administrative burden for health workforce certifiers to issue certificates, and benefit employers and intending migrants by streamlining the visa assessment process. As a result, it is expected to attract more overseas doctors to work in Australia and increase community access to doctors.

Consultation

- 14 Consultation was undertaken with the Department of Health and Aged Care and the Department of the Prime Minister and Cabinet, each of which agreed to support the removal of requirements for the HWC and Health Workforce Exemption Certificate.
- 15 The Office of Impact Analysis (OIA) was also consulted and considered that the measures in the instrument are unlikely to have more than a minor or machinery regulatory impact and therefore an Impact Analysis is not required.
 - The OIA reference number is OIA23-05086.

Details of the instrument

- 16 Section 1 sets out the name of the instrument.
- 17 Section 2 provides that the instrument commences on 16 September 2023.
- 18 Section 3 provides that Schedule 1 to the instrument amends LIN 19/047 and LIN 19/049.
- 19 Item 1 of Schedule 1 to the instrument omits the definition of *health workforce certificate* from section 4 of LIN 19/047.
- 20 Item 2 of Schedule 1 to the instrument omits the definition of *health workforce certifier* from section 4 of LIN 19/047.
- 21 Item 3 of Schedule 1 to the instrument omits subsections 6(3) and 6(4) of LIN 19/047. This removes the specified requirement for nominators identifying an occupation of general practitioner, resident medical officer or medical practitioner (nec) to provide a HWC, and specified requirements for a HWC.
- 22 Item 4 of Schedule 1 to the instrument inserts new section 12 after section 11 of LIN 19/047, which provides for the nominations to which the Schedule applies. Section 11 of LIN 19/047 provides for how the amendment instrument introducing the HWC measures was to apply to nomination applications. The effect of section 12 is that when the instrument commences, despite section 11, any nomination applications that have been made, but are not yet finally determined, will not be required to provide a HWC.
- 23 Item 5 of Schedule 1 to the instrument omits the definition of *health workforce certificate* from section 4 of LIN 19/049.
- 24 Item 6 of Schedule 1 to the instrument omits the definition of *health workforce certifier* from section 4 of LIN 19/049.
- 25 Item 7 of Schedule 1 to the instrument omits ‘24’ in column 4 of items 99 and 130 of subsection 7(1) of LIN 19/049. This removes the applicable circumstances for nominators identifying an occupation of general practitioner or medical practitioner (nec) to provide a HWC issued for the position by an assessing authority.
- 26 Item 8 of Schedule 1 to the instrument omits item 24 of subsection 8(1) of LIN 19/049. This removes the applicable circumstance for nominators identifying an occupation of general practitioner or medical practitioner (nec) to provide a HWC.
- 27 Item 9 of Schedule 1 to the instrument omits subsection 8(2) of LIN 19/049. This removes the specified requirements for a HWC.
- 28 Item 10 of Schedule 1 to the instrument inserts new section 14 after section 13 of LIN 19/049, which provides for the nominations to which the Schedule applies. Section 12 of LIN 19/049 provides for how the amendment instrument introducing the HWC measures was to apply to nomination applications. The effect of section 14 is that when the instrument commences, despite section 12, any nomination applications that have been made, but are not yet finally determined, will not be required to provide a HWC.

Parliamentary scrutiny etc.

- 29 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under subregulations 5.19(8), (11) and (13) of the Regulations, and paragraph 186.234(2)(a) of Schedule 2 to the Regulations. A legislative instrument made under Part 5 of or Schedule 2 to the Regulations is exempt from disallowance under subitem 20(b) of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 30 As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
- 31 The instrument was made by the Minister, in accordance with subregulations 5.19(8), (11) and (13) of the Regulations and paragraph 186.234(2)(a) of Schedule 2 to the Regulations.