

EXPLANATORY STATEMENT

Issued by the Assistant Minister for Citizenship and Multicultural Affairs

Migration (Specification of Occupations and Assessing Authorities—Subclass 186 Visa) Instrument 2024

The instrument *Migration (Specification of Occupations and Assessing Authorities—Subclass 186 Visa) Instrument 2024* (departmental reference LIN 24/093) is made under subregulation 5.19(11) in Part 5 and paragraph 186.234(2)(a) of Schedule 2 to the Migration Regulation 1994 (Migration Regulations).

The purpose of the instrument is specify:

- the occupations in relation to applications for, and nominations of occupations relating to applications for, the Subclass 186 (Employer Nomination Scheme) visa (Subclass 186 visa)—the specified occupations are allocated to the new Core Skills Occupation List (CSOL);
- circumstances in which a nomination for an occupation does not apply to a nominee; and
- the assessing authorities in relation to the occupations.

The instrument is exempt from disallowance under section 42 of the *Legislation Act 2003* (Legislation Act). This is because instruments made under Part 5 and Schedule 2 of the Migration Regulations are prescribed as being exempt from disallowance under paragraph (b) of item 20 of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. A statement of compatibility with human rights is therefore not required.

In accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (Acts Interpretation Act), the instrument also repeals (and, in effect, replaces) *Migration (LIN 19/049: Specification of Occupations and Assessing Authorities—Subclass 186 Visa) Instrument 2019* (LIN 19/049). Subsection 33(3) of the Acts Interpretation Act states that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The Office of Impact Analysis (OIA) has been consulted in relation to the amendments, advising that no Impact Analysis is required. The OIA consultation reference number is OIA24-08631.

The Department of Home Affairs has consulted on the Migration Strategy with business, unions and other stakeholders throughout the Migration Review. Whole of Government consultation occurred, along with peak body, state and territory, and industry representatives via the Ministerial Advisory Council on Skilled Migration (MACSM) and Skilled Migration Officials Group (SMOG) groups.

In addition, the department consulted with Jobs and Skills Australia (JSA) who consulted widely on the composition of the Core Skills Occupation List (CSOL), advertising a draft version for public comment; with the Department of Employment and Workplace Relations (DEWR) on the assessing authorities for the new Skills in Demand visa; and with the Australian Bureau of statistics (ABS) on the definition of ANZSCO applicable to the Skills in Demand visa.

The instrument commences on 7 December 2024.

Further details of the instrument are set out in Attachment A.

The Migration Regulations specify no conditions that need to be satisfied before the power to make the instrument may be exercised.

The instrument is a legislative instrument for the purposes of the Legislation Act.

Details of the Migration (Specification of Occupations and Assessing Authorities—Subclass 186 Visa) Instrument 2024

Part 1—Preliminary

Section 1 – Name of instrument

This section provides that the title of the instrument is the *Migration (Specification of Occupations and Assessing Authorities—Subclass 186 Visa) Instrument 2024* (LIN 24/093).

Section 2 – Commencement

This section provides the instrument commences on 7 December 2024.

Section 3 – Authority

This section provides that the instrument is made under subregulation 5.19(11) and paragraph 186.234(2)(a) of Schedule 2 to the *Migration Regulation 1994* (Migration Regulations).

Section 4 – Definitions

This section sets out definitions for certain expressions used in the instrument.

Of note, section 4 provides that, for the purposes of the definition of *ANZSCO* in regulation 1.03 of the Regulations, the term is specified to mean the Australian and New Zealand Standard Classification of Occupations published by the Australian Bureau of Statistics (ABS), as in force on 23 November 2022.

Regulation 1.03 of the Regulations provides that *ANZSCO* has the meaning specified by the Minister in an instrument in writing for this definition. In this instrument, the 2022 version of the ANZSCO is specified, where 23 November was the first full day on which this version was in force. The ABS released this version of the ANZSCO on 22 November 2022.

The ANZSCO is available for download, free of charge, from the ABS website at:

<https://www.abs.gov.au/statistics/classifications/anzsco-australian-and-new-zealand-standard-classification-occupations>

Section 5 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Part 2—Specification of occupations and assessing authorities

Section 6 – Specification of occupations and assessing authorities

Subsection 6(1) specifies occupations and assessing authorities for the purposes of purposes of subregulation 5.19(11) of the Migration Regulations. This specifies the occupations in relation to nominations for the Subclass 186 (Employer Nomination Scheme) visa (Subclass 186 visa). The specified occupations are allocated to the new Core Skills Occupation List (CSOL) in section 7.

Subsection 6(2) provides that if a circumstance in relation the position in which the nominee is to work applies to a nominee, the occupation does not apply to the nominee. This is done by reference where a number in column 4 of the CSOL table in section 7 corresponds to a numbered circumstance of the table in section 8.

Subsection 6(3) specifies matters assessing authorities for occupations for the purposes of paragraph 186.234(2)(a) of Schedule 2 to the Regulations. The subsection specifies that the assessing authority listed in column 3 of an item of the Core Skills Occupation List in the table in section 7 is the assessing authority for the corresponding occupation in column 1 for the item.

Section 7 – Core Skills Occupation List

This section sets out the new Core Skills Occupation List (CSOL). This sets out a table listing the relevant occupations and assessing authorities for this instrument.

Section 8 – Determining whether certain occupations apply to an identified person

This section sets out a table with the circumstances in which an occupation does not apply to a nominee. This operates by way of subsection 6(2) of the instrument as it applies to the applicable circumstances table in section 8.

Section 9 – Assessing authorities

This section sets the meaning of the acronyms used to identify assessing authorities in the instrument.

Part 3—Applications and savings provisions

Section 10 – Application of this instrument

This section provides for the application of the instrument.

Section 11 – Continued application of LIN 19/049

This section provides for the continued application in certain circumstances of *Migration (LIN 19/049: Specification of Occupations and Assessing Authorities—Subclass 186 Visa)*

Instrument 2019 (LIN 19/049), despite the repeal of LIN 19/049 by this instrument (LIN 24/093).

Schedule 1—Repeals

Item [1] – The whole of the instrument

The effect of this item, together with section 5 of the instrument, is to repeal *Migration (LIN 19/049: Specification of Occupations and Assessing Authorities—Subclass 186 Visa) Instrument 2019* (LIN 19/049). Subject to the operation of section 11, which preserves the application of LIN 19/049 in certain circumstances, new principal instrument LIN 24/093 now supersedes that instrument, operating to specify the CSOL and related matters for the Subclass 186 visa.