

EXPLANATORY STATEMENT

Issued by authority of the Assistant Minister for Citizenship and Multicultural Affairs

Migration Regulations 1994

Migration Legislation Amendment (Graduate Visas No. 2) Instrument (LIN 24/086) 2024

The instrument *Migration Legislation Amendment (Graduate Visas No. 2) Instrument (LIN 24/086) 2024* (departmental reference LIN 24/086) is made under subclauses 485.231(1) and (2) of Schedule 2 of the *Migration Regulations 1994* (the Migration Regulations).

The instrument amends:

- the *Migration (Specification under clause 485.231 – Educational Institutions) Instrument (LIN 23/021) 2023* (LIN 23/021); and
- the *Migration (Specification of Degrees) Instrument (LIN 24/048) 2024* (LIN 24/048).

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.

The instrument commences immediately after the *Migration Amendment (Graduate Visas No. 2) Regulations 2024* commence. It is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

Purpose

The *Migration Amendment (Graduate Visas No. 2) Regulations 2024* (the Amending Regulations) commence the day after they are registered on the Federal Register of Legislation (FRL).

The Amending Regulations amend clauses 485.111 and 485.231 of Schedule 2 to the Migration Regulations by repealing the previous definition of ‘degree’ and substitute a new definition of ‘degree’. The Amending Regulations also introduce a new subclause 485.231(1B) of Schedule 2 to the Migration Regulations. Additionally, the Amending Regulations make consequential amendments of clauses 485.111 and 485.231 of Schedule 2 to the Migration Regulations to give effect to the above mentioned amendments.

The Amending Regulations repeal the existing definition of ‘degree’ and substitutes it with a new definition, which is intended to clarify the academic requirements that an applicant who is seeking to satisfy the requirements in new subclause 485.231(1B) and amended subclauses 485.231(1) and (2) of Schedule 2 to the Migration Regulations (respectively) needs to hold in order to satisfy the primary criteria for the grant of a Subclass 485 (Temporary Graduate) (TGV) visa in the Post-Higher Education Work (PHEW) stream (TGV in the PHEW stream).

New subclause 485.231(1B) of Schedule 2 to the Migration Regulations

The Amending Regulations introduce new subclause 485.231(1B) of Schedule 2 to the Migration Regulations. That new provision requires an applicant for an initial TGV in the PHEW stream, in the period six (6) months immediately before the application for that visa was made, to have completed one or more degrees for award by an Australian educational institution as a result of a course or courses:

- that are registered courses (see paragraph 485.231(1B)(a) of Schedule 2); and
- that were completed in a total of at least 16 calendar months (see paragraph 485.231(1B)(b) of Schedule 2); and
- that were completed as a result of a total of at least two (2) academic years study (see paragraph 485.231(1B)(c) of Schedule 2); and
- for which all instruction was conducted in English (see paragraph 485.231(1B)(d) of Schedule 2); and
- that the applicant undertook while in Australia as the holder of a visa authorising the applicant to study (see paragraph 485.231(1B)(e) of Schedule 2).

Additionally, the Amending Regulations insert a note under the abovementioned new provision of that Schedule to the Migration Regulations. That new note provides for ‘For the definition of ‘degree’, see clause 485.111’.

Amended subclauses 485.231(1) and (2) of Schedule 2 to the Migration Regulations

The Amending Regulations also make consequential amendments of subclauses 485.231(1) and (2) of Schedule 2 to the Migration Regulations to give effect to the insertion of new subclause 485.231(1B) of that Schedule and the amendments to clause 485.231 of that Schedule to facilitate the new definition of ‘degree’ in clause 485.111.

The effect of the amendment of subclause 485.231(1) of Schedule 2 to the Migration Regulations is to clarify that where each degree (as defined in the new definition for that term in clause 485.111 of that Schedule), mentioned in new subclause 485.231(1B) of Schedule 2 is held by an initial TGV in the PHEW stream applicant, that degree is of a kind specified by the Minister in an instrument in writing for that provision of that Schedule.

Additionally, the effect of the amendment of subclause 485.231(2) of Schedule 2 to the Migration Regulations is to clarify that each degree (as defined in the new definition for that term in clause 485.111 of that Schedule) must satisfy the requirements in new subclause 485.231(1B) of Schedule 2. The combined effect of the new subclause 485.231(1B) and amended

subclause 485.231(2) is that the applicant must be awarded or conferred the specified degree by a specified educational institution in order to be granted that visa in that stream.

Additionally, the Amending Regulations repeal the previous subclause 485.231(3) of Schedule 2 to the Migration Regulations, as it is redundant in light of the new definition of ‘degree’ in subclause 485.111 of that Schedule.

Migration (Specification under clause 485.231 – Educational Institutions) Instrument (LIN 23/021) 2023 (LIN 23/021)

The *Migration (Specification under clause 485.231 – Educational Institutions) Instrument (LIN 23/021) 2023 (LIN 23/021)* was made under the previous version of subclause 485.231(2) of Schedule 2 to the Migration Regulations.

The previous version of subclause 485.231(2) of Schedule 2 to the Migration Regulations provided that applicants seeking to satisfy the primary criteria for the successful grant of a TGV in the PHEW stream must hold a degree that was conferred or awarded by an educational institution specified by the Minister in an instrument in writing for that provision of the Migration Regulations.

LIN 23 021 previously provided the type of educational institutions from which the above applicant’s specified degree (see the previous version of subclause 485.231(1) of Schedule 2 to the Migration Regulations) must be conferred or awarded by. That educational institution must be an Australian university or non-university educational provider that is registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) *and* offer courses at bachelor degree level and above. The CRICOS is established by section 14A of the *Education Services for Overseas Students Act 2000*.

Migration (Specification of Degrees) Instrument (LIN 24/048) 2024 (LIN 24/048)

The *Migration (Specification of Degrees) Instrument (LIN 24/048) 2024 (LIN 24/048)* was made under the previous version of subclause 485.231(1) of Schedule 2 to the Migration Regulations. The previous version of subclause 485.231(1) of Schedule 2 to the Migration Regulations provided that applicants seeking to satisfy the primary criteria for the successful grant of a TGV in the PHEW stream must hold a degree or degrees of a kind specified by the Minister in an instrument in writing for that provision of the Migration Regulations.

LIN 24/048 previously specified the types of degree or degrees that the applicant must hold, listed in section 5 of that instrument, that are a result of study undertaken at the Australian Qualification Framework level 7 or higher (for the purposes of the previous version of subclause 485.231(1) of Schedule 2 to the Migration Regulations).

Consultation

The Amending Regulations give effect to the policy intent which is to ensure the Subclass 485 (Temporary Graduate) visa criteria operate as intended following the 1 July 2024 changes to the Migration Regulations, specifically in relation to applications for an initial TGV in the PHEW stream. Consultation has previously been undertaken with relevant internal stakeholders and also

with relevant external government agencies and peak body representatives as part of the 1 July 2024 changes to the Migration Regulations. This accords with the consultation requirements of the Legislation Act. No additional consultation was undertaken for the Amending Regulations as those amendments operate to support and clarify the intent and effect of the 1 July 2024 amendments. The changes made by this instrument are consequential to those changes made by the Amending Regulations to the Migration Regulations.

The Office of Impact Analysis (OIA) was consulted and considered that no regulatory impact was required due to OIA's understanding that the amendments to the Migration Regulations introduced by the Amending Regulations, corrects a legislative drafting error in order to ensure intended operation of a previous decision of Government. The OIA reference number is OIA24-08458.

No external consultation was undertaken in relation to this instrument. This is because the instrument implements a previous decision (or decisions) of the Government in relation to the Amending Regulations, which commence on the day after those Regulations are registered on the FRL, and amend the Migration Regulations. Additionally, LIN 24/086 clarifies the academic requirements that an applicant who is seeking to satisfy the requirements in new subclause 485.231(1B) and amended subclauses 485.231(1) and (2) of Schedule 2 to the Migration Regulations (respectively) needs to hold in order to satisfy the primary criteria for a grant of a TGV in the PHEW stream as it relates to the new definition of 'degree' found in new clause 485.111 of that Schedule. The new definition of 'degree' and clarification of the academic requirements are positive outcomes for stakeholders, by clearing up previously confusing visa criteria.

Details of the instrument

Section 1 sets out the name of the instrument.

Section 2 provides that the instrument commences immediately after the *Migration Amendment (Graduate Visas No. 2) Regulations 2024* (the Amending Regulations) commence. Those Amending Regulations commence the day after they are registered on the Federal Register of Legislation.

Section 3 provides that the instrument is made under amended subclauses 485.231(1) and (2) of Schedule 2 to the *Migration Regulations 1994* (Migration Regulations).

Section 4 provides that the instruments listed in a Schedule to the instrument are amended or repealed as set out in the applicable items in the Schedule concerned.

Schedule 1—Amendments to LIN 24/048

Item 1 of Schedule 1 to this instrument omits 'degrees' and substitutes that word with 'degree' in the heading in section 5 of LIN 24/048. The amended heading in section 5 of LIN 24/048 is 'Specified degree'.

Item 2 of Schedule 1 to this instrument omits 'each of the following degrees that are awarded as a qualification at level 7 or higher of the Australian Qualifications Framework is specified' from section 5 of LIN 24/048 and substitutes the words 'each degree is specified as follows, where that

degree is awarded as a qualification at level 7 or higher of the Australian Qualifications Framework:’ in its place.

The amended section 5 of LIN 24/048 now reads as ‘For the purposes of subclause 485.231(1) of Schedule 2 to the Regulations, each degree is specified as follows, where that degree is awarded as a qualification at level 7 or higher of the Australian Qualifications Framework’.

The effect of items 1 and 2 of Schedule 1 of this instrument is to give effect to the Amending Regulations amendments to subclause 485.231(1) of Schedule 2 to the Migration Regulations. Those Amending Regulations introduced a new definition of ‘degree’ in clause 485.111 of that Schedule.

Item 3 of Schedule 1 to this instrument repeals paragraph 5(c) from the *Migration (Specification of Degrees) Instrument (LIN 24/048) 2024* (LIN 24/048). The effect of this amendment is that a graduate certificate will no longer be accepted as a specified degree for the purpose of subclause 485.231(1) of Schedule 2 to the Migration Regulations.

Application of amendments made by LIN 24/086

Item 4 of Schedule 1 to this instrument inserts a new provision after section 6 in LIN 24/048. The new provision will be section 7: ‘Application of amendments made by LIN 24/048’. This new provision provides that the amendments made by this instrument applies to an application for a TGV in the PHEW stream made on or after the day this instrument commences.

Schedule 2—Amendments to LIN 23/021

Item 1 of Schedule 2 to this instrument omits ‘and’ and substitutes ‘or’ in paragraph (a)(ii) of the *Migration (Specification under clause 485.231 – Educational Institutions) Instrument (LIN 23/021) 2023* (LIN 23/021). That amended provision of LIN 23/021 now reads as ‘offers courses at the bachelor degree level or above’.

The effect of Item 1 of Schedule 2 to this instrument’s amendment to LIN 23/021 is that the type of educational institutions specified in paragraph (a)(ii) in LIN 23/021 must offer courses at the bachelor degree level or above, for the purposes of an applicant who is seeking to satisfy the requirements of amended subclause 485.231(2) of Schedule 2 to the Migration Regulations for a grant of a TGV in the PHEW stream.

Parliamentary scrutiny etc.

The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under Schedule 2 of the Migration Regulations and is prescribed in section 10, item 20(b) of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

The instrument was made by the Assistant Minister of Citizenship and Multicultural Affairs in accordance with amended subclauses 485.231(1) and (2) of the Migration Regulations.