

EXPLANATORY STATEMENT*Migration Regulations 1994***Migration (IMMI 17/075: Repeal of Training Benchmarks and Training Requirements)****Instrument 2017**

(Paragraphs 2.59(d), 2.68(e), subregulations 2.87B(2), 2.87B(3) and sub-sub-subparagraph 5.19(4)(h)(i)(B)(I))

1. Instrument IMMI 17/075 is made under paragraphs 2.59(d), 2.68(e), subregulations 2.87B(2) and 2.87B(3), and sub-sub-subparagraph 5.19(4)(h)(i)(B)(I) of the *Migration Regulations 1994* (the Regulations).
2. The instrument repeals Migration (Specification of Training Benchmarks and Training Requirements) Instrument 2013 (IMMI 13/030) (F2013L01236) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA). Subsection 33(3) of the AIA 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.
3. The matters previously addressed in instrument IMMI 13/030 will now be addressed in instrument Migration (IMMI 17/045: Specification of Training Benchmarks and Training Requirements) Instrument 2017 and instrument Migration (IMMI 17/074: Specification of Training Requirements) Instrument 2017.
4. Instrument IMMI 17/045 and instrument IMMI 17/074 will specify Training Benchmarks A and B. Instrument IMMI 17/045 will specify the training benchmarks and training requirements for the purposes of paragraphs 2.59(d), 2.68(e) and subregulations 2.87B(2) and 2.87B(3) and Instrument IMMI 17/074 will specify for the purposes of 5.19(4)(h)(i)(B)(I) of the Regulations.
5. The purpose of instrument IMMI 17/045 and instrument IMMI 17/074 is to clarify policy settings for the training benchmarks and training requirements so that a nominator or sponsor has a clear understanding of those training requirements. The

purpose is also to address integrity concerns with the training benchmarks and training requirements by amending the types of applicable expenditure.

6. No consultation was undertaken. As provided in instrument IMMI 17/045 and instrument IMMI 17/074, the new instruments incorporate existing policy guidance related to the previous instrument that addressed matters specified under paragraphs 2.59(d), 2.68(e), and subregulations 2.87B(2) and 2.87B(3), and *sub-sub-subparagraph 5.19(4)(h)(i)(B)(I)* of the Regulations.
7. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 21946).
8. Under section 10 of the *Legislation (Exemptions and other Matters) Regulation 2015*, the instrument making power sub-sub-subparagraph 5.19(4)(h)(i)(B)(I) is exempt from disallowance. The powers under paragraphs 2.59(d), 2.68(e) and subregulations 2.87B(2) and 2.87B(3) are subject to disallowance under section 42 of the *Legislation Act 2003* and a Statement of Compatibility with Human Rights has been provided.
9. The instrument commences on 1 July 2017.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Repeal of Training Benchmarks and Training Requirements

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Regulation 2.59 and 2.68 of the *Migration Regulations 1994* (the Regulations) require the standard business sponsor for a Subclass 457 (Temporary Work (Skilled)) visa (457 visa) to meet Training Benchmark A or Training Benchmark B. Clause 186.233 of Schedule 2 to the Regulations requires that an applicant for a visa under the direct entry stream of the Subclass 186 (Employer Nomination Scheme) visa was nominated in an application for approval that seeks to meet the requirements of subparagraph 5.19(4)(h)(i) of the Regulations. Subparagraph 5.19(4)(h)(i) includes the requirement to meet training benchmarks specified in a legislative instrument.

Legislative Instrument IMMI 13/030 ‘Specification of Training Benchmarks and Training Requirements’ specifies the training that must be provided to Australian citizens and permanent residents by employers seeking to sponsor a foreign worker for a 457 visa or nominate a foreign worker for a 186 visa.

The purpose of this new Disallowable Legislative Instrument IMMI 17/075 ‘Repeal of Training Benchmarks and Training Requirements’ is to repeal IMMI 13/030 so that it may be replaced by the new Migration (IMMI 17/045: ‘Specification of Training Benchmarks and Training Requirements’) Instrument 2017’ and the new Migration (IMMI 17/074: ‘Specification of Training Requirements’) Instrument 2017’.

Human rights implications

Article 6.1 of International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes:

The right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

Article 6.2 of ICESCR states that:

The steps to be taken by a State Party of the present Covenant to achieve the full realization of [the right to work] shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.

Australia recognises the ‘right to work’ under Article 6.1 in relation to Australian citizens and permanent residents. Making the training obligations to Australians and permanent residents a part of the sponsorship obligations under IMMI13/030 was a mechanism for Australia to

comply with Article 6.1 and 6.2 of the ICESCR. Despite IMMI 17/075 repealing IMMI 13/030, Australia will still comply with Articles 6.1 and 6.2 of the ICESCR in a similar mechanism. This is because the new IMMI 17/045 and IMMI 17/074 that will replace IMMI 13/030, will also specify the training that must be provided to Australian citizens and permanent residents by employers seeking to sponsor a foreign worker for a 457 visa or nominate a foreign worker for a 186 visa.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights, to the extent that IMMI13/030 will be replaced by the new IMMI 17/045 and IMMI 17/074, which also promote the training of Australian citizens and permanent residents in support of Article 6 of the ICESCR.

The Hon. Peter Dutton MP, Minister for Immigration and Border Protection