

EXPLANATORY STATEMENT

Migration Regulations 1994

CLASSES OF PERSONS (EXEMPT FROM THE SKILL CRITERIA)

(Subclause 186.234(3) and paragraph 187.234(a))

1. This Instrument is made under subclause 186.234(3) and paragraph 187.234(a) of the *Migration Regulations 1994* ('the Regulations').
2. Subclause 186.234(3) and paragraph 187.234(a) of the Regulations provide that the applicant must be in a class of persons specified by the Minister in an Instrument in writing for that respective paragraph.
3. The purpose of this Instrument is to specify three classes of persons who are exempt from satisfying the primary criteria in relation to skills for the relevant occupation at the time of application for a Subclass 186 (Employer Nomination Scheme) visa in the Direct Entry stream; or qualifications for the relevant occupation at the time of application for a Subclass 187 (Regional Sponsored Migration Scheme) visa in the Direct Entry stream.
4. The Instrument operates to specify, for subclause 186.234(3), a class of persons who are exempt from satisfying the primary criteria in relation to skills for the relevant occupation at the time of application for a Subclass 186 (Employer Nomination Scheme) visa in the Direct Entry stream, as applicants who are employed in the following occupations:
 - Persons who are Ministers of Religion and who are being nominated for a position by a religious institution;
 - Researchers, scientists and technical specialists at ANZSCO skill levels 1 or 2, who are nominated for a position by Australian government agencies, (including, but not limited to, the Australian Nuclear Science and Technology Organisation (ANSTO) and the Commonwealth Scientific and Industrial Research Organisation (CSIRO));

- Persons who are nominated for a position as academics by a university in Australia. An academic is considered to be a University Tutor (ANZSCO: 242112), University Lecturer (ANZSCO: 242111) or Faculty Head (ANZSCO: 134411) who is being employed at an Academic Level of A, B, C, D or E.

Academics, scientists, researchers and technical specialists who are considered exempt in the first class are provided an exemption in recognition of the technical and highly specialised nature of both the nominated occupations and operations of the nominating employers. It is also a reflection of the fact that these organisations advertise widely to attract the highest calibre candidates so as to maintain academic and research excellence.

5. The Instrument also operates to specify, for subclause 186.234(3) and paragraph 187.234(a), classes of persons who are exempt from satisfying the primary criteria in relation to skills for the relevant occupation at the time of application for a Subclass 186 (Employer Nomination Scheme) visa in the Direct Entry stream; or qualifications for the relevant occupation at the time of application for a Subclass 187 (Regional Sponsored Migration Scheme) visa in the Direct Entry stream as:
 - Persons who are nominated for a position where their nominated *earnings* will be at least equivalent to the current Australian Tax Office top individual income tax rate.
 - Persons who are currently in Australia as the holder of a Subclass 444 or 461 visa and have been working with their nominating employer in their nominated occupation for at least two years (excluding any periods of unpaid leave) in the last three years immediately before making their visa application.
6. Consultation has been undertaken with a wide range of Commonwealth Government Departments, State/Territory Government Departments, representative peak bodies for Migration Agents and the legal profession, industry organisations, unions and other relevant organisations.

7. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR Ref 2012/13021).
8. Under section 44 of the *Legislative Instruments Act 2003* the Instrument is exempt from disallowance and therefore a Human Rights Statement of Compatibility is not required.
9. This Instrument, IMMI 12/060, commences on 1 July 2012, immediately after the commencement of *Migration Amendment Regulation 2012 (No. 2)*.