

## **EXPLANATORY STATEMENT**

### *Migration Regulations 1994*

#### **SPECIFICATION OF OCCUPATIONS, A PERSON OR BODY AND A COUNTRY OR COUNTRIES**

(Subregulations 1.15I(1) and 2.26B(1), item 4(a) of the table in subitem 1137(4), item 4(a) of the table in subitem 1138(4) and item 4(a) of the table in subitem 1230(4), paragraphs 2.72(10)(aa), 2.72I(5)(ba) and 186.234(2)(a), subparagraphs 1136(4)(b)(ii), 1136(5)(b)(ii), 1136(6)(b)(iii), 1229(4)(b)(ii), 1229(5)(b)(ii), 1229(6)(b)(iii), 1229(7)(b)(ii), and sub-subparagraph 5.19(4)(h)(i)(A))

1. This Instrument is made under Subregulations 1.15I(1) and 2.26B(1), item 4(a) of the table in subitem 1137(4), item 4(a) of the table in subitem 1138(4) and item 4(a) of the table in subitem 1230(4), paragraphs 2.72(10)(aa), 2.72I(5)(ba) and 186.234(2)(a), subparagraphs 1136(4)(b)(ii), 1136(5)(b)(ii), 1136(6)(b)(iii), 1229(4)(b)(ii), 1229(5)(b)(ii), 1229(6)(b)(iii), 1229(7)(b)(ii), and sub-subparagraphs 5.19(4)(h)(i)(A).
2. This Instrument operates to specify skilled occupations, the relevant ANZSCO code for an occupation, country (for application of skills assessment where applicable made by the resident of that country) and the relevant assessing authority for that occupation.
3. Schedule 1 to this instrument, the Skilled Occupation List (SOL), is used to determine eligible occupations for non sponsored or nominated skilled migration purposes.
4. Schedule 2 to this instrument, the Consolidated Sponsored Occupation List (CSOL), is the implementation of the government's decision to establish a single list of occupations for employer sponsored and state/territory nominated skilled visa subclasses. The CSOL replaces the Employer Nominated Scheme (ENS), Temporary Business (Long Stay-457) and General Skilled Migration (GSM) state/territory nominated skilled occupations list. The CSOL, together with the Schedule 1 Skilled Occupation List (SOL), applies to all state/territory nominated GSM, ENS direct entry and standard business sponsors who make nominations in relation to a subclass 457 visa and occupational trainee sponsors who make nominations in relation to a subclass 442 visa.
5. Subregulation 1.15I(1) provides that a *skilled occupation*, in relation to a person, means an occupation of a kind that is specified by the Minister in an instrument in writing to be a skilled occupation.
6. Subregulation 2.26B(1) provides that the Minister may, by an instrument in writing, specify a person or body as the relevant assessing authority for a skilled occupation (if the person or body is approved in writing by the Education Minister or the Employment Minister as the

relevant assessing authority for the occupation) and one or more countries, for the purposes of an application for a skills assessment made by a resident of one of those countries.

7. Paragraph 2.72(10)(aa) provides that for standard business sponsors who make nominations in relation to Subclass 457 (Business (Long Stay)) visas on or after 1 July 2010, the Minister must be satisfied that the nominated occupation and its corresponding 6-digit code correspond to an occupation and its corresponding 6-digit code specified by the Minister in an instrument in writing for the paragraph.
8. Paragraph 2.72I(5)(ba) provides that for occupational trainee sponsors who make nominations in relation to Subclass 442 (Occupational Trainee) visas on or after 1 July 2010, the Minister must be satisfied that the nominated occupational training is in relation to an occupation specified, with its corresponding 6-digit code, by the Minister in an instrument in writing for the paragraph.
9. Subparagraphs 1136(4)(b)(ii), 1136(5)(b)(ii) and 1136(6)(b)(iii) provide that the applicant must nominate a skilled occupation for the applicant that is specified by the Minister in an instrument in writing.
10. Item 4(a) of the table in subitem 1137(4) provides that an applicant who seeks to satisfy the primary criteria for the grant of a Skilled – Independent (Permanent) (Class SI) visa must nominate a skilled occupation that is specified by the Minister in an instrument in writing as a skilled occupation at the time that the Minister invites the applicant to apply.
11. Item 4(a) of the table in subitem 1138(4) provides that an applicant who seeks to satisfy the primary criteria for the grant of a Skilled – Nominated (Permanent) (Class SN) visa must nominate a skilled occupation that is specified by the Minister in an instrument in writing as a skilled occupation at the time that the Minister invites the applicant to apply.
12. Subparagraphs 1229(4)(b)(ii), 1229(5)(b)(ii), 1229(6)(b)(iii) and 1229(7)(b)(ii) provide that the applicant must nominate a skilled occupation for the applicant that is specified by the Minister in an instrument in writing.
13. Sub-sub paragraph 5.19(4)(h)(i)(A) requires that an employer nomination lodged under the provisions of paragraph 5.19(4) will be met if the tasks to be performed in the nominated position correspond to the tasks of an occupation specified by the Minister in an Instrument in writing for the sub-sub paragraph.
14. Sub-sub paragraph 186.234(2)(a) provides that for Employer Nomination Scheme Direct Entry applicants the Minister must be satisfied that an assessing authority specified by the Minister in writing for the sub-sub paragraph as the assessing authority for the occupation to which the application for approval relates has assessed the applicant's skills as suitable.

15. Item 4(a) of the table in subitem 1230(4) provides that an applicant must nominate a skilled occupation that is specified by the Minister in an instrument in writing as a skilled occupation at the time that the Minister invites the applicant to apply.
16. Paragraph 1 of the Instrument relates to standard business sponsors who make nominations in relation to Subclass 457 (Business (Long Stay)) and occupational trainee sponsors who make nominations in relation to a subclass 442 (Occupational Trainee) visa. In accordance with the Regulations, the nomination must be made in relation to an occupation and its corresponding 6-digit code specified by the Minister in an instrument in writing. For the purposes of these nominations, columns A and B in schedule 1 and columns A and B in schedule 2 of the instrument are specified, where applicable to the applicant.
17. Paragraph 2 of the instrument relates to applicants who apply on or after 1 July 2012 for a subclass 189, 485 or 885 visa. Paragraph 2 of the instrument also relates to applicants who are not nominated by a State or Territory government agency, and who apply on or after 1 July 2012 for a subclass 487, 489 or 886 visa. In accordance with the Regulations, these applicants will be required to nominate a specified skilled occupation and have their skills assessed by a specified relevant assessing authority. For these applicants, the occupations, assessing authorities and countries listed in columns A, C and D of schedule 1 of this instrument are specified,.
18. Paragraph 3 of the instrument relates to applicants who are nominated by a State or Territory government agency and who apply or, who are the spouse or de facto partner of a person who is nominated by a State or Territory Government, who applies on or after 1 July 2012 for a subclass 487, 886, 190 or 489 visa. In accordance with the Regulations, these applicants will be required to nominate a specified skilled occupation and have their skills assessed by a specified relevant assessing authority. For these applicants, the occupations, assessing authorities and countries listed in columns A, C and D of schedule 1, and columns A, C and D of schedule 2 of this instrument are specified,
19. Paragraph 4 of the instrument relates to nominations for the direct entry stream in subclass 186. In accordance with the Regulations, the Minister must approve a nomination if the tasks to be performed in the position correspond to the tasks of a specified occupation, in addition to other requirements. For the purposes of these nominations, the skilled occupations listed in column A of schedule 1 and column A of schedule 2 of this instrument are specified.
20. Paragraph 5 of the instrument relates to applicants who apply for the direct entry stream in the subclass 186 visa. In accordance with the Regulations, these applicants will be required to have their skills assessed as suitable by a specified assessing authority for the occupation.

For these applicants, the assessing authorities listed in Column D of schedule 1 and Column D of schedule 2 to this instrument are specified.

21. Subsection 56(1) of the Legislative Instruments Act 2003 provides that if the enabling legislation in relation to a legislative instrument as in force at any time before the commencing day required the text of the instrument, or particulars of its making, to be published in the Gazette, the requirement for publication in the Gazette is taken, in relation to any such instrument made on or after that day, to be satisfied if the instrument is registered.
22. The following document is incorporated in the Instrument by reference:
  - ANZSCO means, under regulation 1.03 of the Regulations, the Australian and New Zealand Standard Classification of Occupations published by the Australian Bureau of Statistics as current on 1 July 2010. This is the ANZSCO - First Edition, Revision 1 (ABS Catalogue No. 1220.0) and is available online at: <http://www.abs.gov.au>.
23. All relevant assessing authorities, Treasury, the Department of Education, Employment and Workplace Relations and Skills Australia have been consulted. The CSOL was also raised at the interdepartmental committee meetings concerning the ENS/RSMS review.
24. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR Reference 13758)
25. Under section 42 of the Legislative Instruments Act 2003 the Instrument is subject to disallowance and therefore a Human Rights Statement of Compatibility has been provided.
26. The instrument, number IMMI 12/039 commences on 1 July 2012 immediately after the commencement of *Migration Amendment Regulation 2012 (No. 2)*.

**STATEMENT OF COMPATIBILITY FOR A LEGISLATIVE INSTRUMENT THAT DOES NOT RAISE ANY HUMAN RIGHTS ISSUES**

**Statement of Compatibility with Human Rights**

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

**Skilled Occupation List Legislative Instrument**

This 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 Skilled Occupation List Legislative Instrument**

A new instrument is required to legislate the annual revised Skilled Occupation List (SOL) and to introduce the Consolidated Sponsored Occupation List, which will replace three sponsored occupation lists currently in effect.

This instrument will come into effect on 1 July 2012 and will apply to people who make an application for skilled migration on or after this date. Applicants for most General Skilled Migration (GSM) visa subclasses must nominate a skilled occupation from the Skilled Occupation List and have a relevant assessing authority assesses their skills in the nominated occupation.

For GSM, the instrument will provide for applicants for current onshore visa subclasses, 885, 886 and 487, which are available until 31 December 2012 and for the new GSM visa subclasses, 189, 190 and 489. It will also provide for subclass 485.

The new instrument also helps give effect to the reforms to the Employer Nominated Scheme and the Government's commitment to the visa simplification and deregulation agenda. From 1 July 2012, one consolidated sponsored occupation list will replace the three occupation lists currently in operation, which are the Employer Nomination Skilled Occupation List, the State and Territory Sponsored Occupation List and the 457 and 442 list. It will provide for subclass 186 applicants who apply for this visa via the Direct Entry stream, which relates to applicants who do not satisfy the prerequisite for making an application under the Temporary Residence Transition Stream and are not nominated under a permanent labour agreement.

**Human rights implications**

This Skilled Occupation List Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

The proposed Legislative Instrument is compatible with human rights and does not introduce any new or unacceptable limits on human rights.