

## EXPLANATORY STATEMENT

### *Migration Regulations 1994*

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

(Subregulations 1.15I(1) and 2.26B(1), paragraphs 2.72I(5)(ba), sub-subparagraph 5.19(4)(h)(i)(A), 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), 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) and 1229(7)(b)(ii) and paragraph 186.234(2)(a))

1. This instrument is made under subregulations 1.15I(1) and 2.26B(1), paragraph 2.72I(5)(ba), sub-subparagraph 5.19(4)(h)(i)(A), 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), 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) and 1229(7)(b)(ii) and paragraph 186.234(2)(a) of the *Migration Regulations 1994* ('the Regulations').
2. This instrument operates to specify skilled occupations, the relevant ANZSCO code for an occupation, the relevant assessing authority for that occupation and country (where an application for a skills assessment is made by a resident of that country).
3. Schedule 1 to this instrument, the Skilled Occupation List (SOL), is used to determine eligible occupations for independent or relative sponsored skilled migration purposes.
4. Schedule 1 and Schedule 2 to this instrument form the Consolidated Sponsored Occupation List (CSOL). It applies to all State/Territory nominated Points Tested visas, the Direct Entry stream of the Employer Nomination Scheme, the Occupational Trainee stream of the Training and Research visa and the Occupational Trainee visa
5. This instrument replaces the previous Instrument IMMI 13/041 to maintain access to the SOL and CSOL for invitations issued or applications made on or after 1 July 2012 but before 23 March 2013. It also removes the reference to paragraph 2.72(10)(aa) related to a nomination for a the Subclass 457 Temporary Work (Skilled) visa as another Instrument IMMI 13/066 contains the SOL and CSOL applicable to the Subclass 457 Temporary Work (Skilled) visa. The instrument also clarifies that it applies to applicants who apply for the Direct Entry stream of the Subclass 186 Employer Nomination Scheme on or after 1 July 2012 but before 23 March 2013.

6. This instrument does not alter the skilled occupations, persons or bodies who are assessing authorities or the countries specified in the previous instrument (IMMI 13/041).
7. 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.
8. 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.
9. Paragraph 2.72I(5)(ba) provides that for occupational trainee sponsors or training and research sponsors who make nominations in relation to the Occupational Trainee stream of a Subclass 402 Training and Research visa or a Subclass 442 Occupational Trainee visa that 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.
10. Sub-subparagraph 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.
11. 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.
12. 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.
13. 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.

14. 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) 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.
15. Paragraph 186.234(2)(a) provides that for Employer Nomination Scheme Direct Entry stream applicants, the Minister must be satisfied that an assessing authority specified by the Minister in an instrument in writing for the subclause as the assessing authority for the occupation to which the application for approval relates has assessed the applicant's skills as suitable.
16. Paragraph 2 of the instrument relates to applicants who are issued an invitation on or after 1 July 2012 but before 23 March 2013 to make an application for a Subclass 189 visa. It also relates to applicants who are not nominated by a State or Territory government agency, and who are issued an invitation on or after 1 July 2012 but before 23 March 2013 to make an application for a Subclass 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 of this instrument are specified.
17. Paragraph 3 of the instrument relates to applicants who apply on or after 1 July 2012 but before 23 March 2013 for a Subclass 485 or 885 visa. It also relates to applicants who are not nominated by a State or Territory government agency, and who apply on or after 1 July 2012 but before 23 March 2013 for a Subclass 487 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 4 of the instrument relates to applicants who are nominated by a State or Territory government agency or the spouse or de facto partner of a person who is nominated by a State or Territory government agency, who is issued an invitation on or after 1 July 2012 but before 23 March 2013 to make an application for a Subclass 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 schedule 2 of this instrument are specified.

19. Paragraph 5 of the instrument relates to applicants who are nominated by a State or Territory government agency or the spouse or de facto partner of a person who is nominated by a State or Territory government agency, who applied on or after 1 July 2012 but before 23 March 2013 for a Subclass 487 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 and schedule 2 of this instrument are specified.
20. Paragraph 6 of the instrument relates to nominations for the Direct Entry stream in the Subclass 186 Employer Nomination Scheme made on or after 1 July 2012 but before 23 March 2013. 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 schedule 2 of this instrument are specified.
21. Paragraph 7 of the instrument relates to applicants who apply for the Direct Entry stream in the Subclass 186 Employer Nomination Scheme on or after 1 July 2012 but before 23 March 2013. 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 schedule 2 to this instrument are specified.
22. Paragraph 8 of the instrument relates to occupational trainee sponsors or training and research sponsors who make nominations on or after 1 July 2012 but before 23 March 2013 in relation to the Occupational Trainee stream of the Subclass 402 Training and Research visa or the 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 purpose of these nominations, Columns A and B in Schedule 1 and Columns A and B in schedule 2 of this instrument are specified, where applicable to the applicant.
23. 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>.

24. Pursuant to subsection 18(1) of the *Legislative Instruments Act 2003* consultation was not necessary. The instrument is of a minor or machinery nature and does not substantially alter existing arrangements.
25. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR Reference 2013/14946).
26. 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.
27. The instrument, number IMMI 13/065 commences on 1 July 2013.

## **Statement of Compatibility with Human Rights**

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

### **Specification of Occupations, a Person or Body, a Country or Countries Legislative Instrument (IMMI 13/065)**

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 Specification of Occupations, a Person or Body, a Country or Countries Legislative Instrument**

This instrument (IMMI 13/065) operates to specify skilled occupations, the relevant Australian and New Zealand Standard Classification of Occupations (ANZSCO) code for an occupation and the relevant assessing authority for that occupation and country (where an application for a skills assessment is made by a resident of that country). The ANZSCO code is used by the Department to ensure applicants who wish to migrate as skilled migrants nominate a skilled occupation for migration purposes. Assessing authorities are independent expert bodies who certify that the applicant's educational qualifications and, in some cases, skilled work experience in their nominated occupation, is comparable to that necessary to undertake the same position in Australia.

This instrument specifies the Skilled Occupation List (SOL) which provides eligible occupations for independent or family sponsored visas. Occupations on the SOL are those identified by the Australian Workforce and Productivity Agency as being in shortage in the Australian labour market in the medium to long term.

This instrument also specifies the Consolidated Sponsored Occupation List (CSOL) which applies to all:

- State/Territory nominated visas;
- the Direct Entry stream of the Employer Nomination Scheme;
- the Occupational Trainee stream of the Training and Research visa; and
- the Occupational Trainee visa.

The CSOL differs significantly from that of the SOL as it enables employers and State/Territory governments to access the full range of skilled workers, provided the occupation is not associated with significant integrity concerns.

This instrument revokes and reissues the substance of Instrument IMMI 13/041 to remove references to the Temporary Work (Skilled) visa as another Instrument IMMI 13/066 contains the SOL and CSOL applicable to the Temporary Work (Skilled) visa.

This instrument also clarifies the relevant dates for applications to which this instrument is relevant, that is on or after 1 July 2012 but before 23 March 2013, for approval of a nomination in relation to the Direct Entry stream of the Employer Nomination Scheme.

This instrument does not alter the skilled occupations, persons or bodies who are relevant assessing authorities or the countries specified in the previous Instrument IMMI 13/041.

This instrument will come into effect on 1 July 2013.

### **Human rights implications**

The proposed Legislative Instrument has been assessed against the seven core international human rights treaties and does not engage any of the applicable rights or freedoms.

### **Conclusion**

The proposed Legislative Instrument is compatible with human.

**The Hon. Brendon O'Connor MP, Minister for Immigration and Citizenship**