

## **EXPLANATORY STATEMENT**

### *Migration Regulations 1994*

#### **SPECIFICATION OF OCCUPATIONS, A PERSON OR BODY, A COUNTRY OR COUNTRIES 2015**

(Regulation 1.03, subregulations 1.15I(1) and 2.26B(1), paragraphs 2.72(10)(aa) and 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), paragraph 1229(3)(k) and paragraph 186.234(2)(a))

1. The Instrument is made under regulation 1.03, subregulations 1.15I(1) and 2.26B(1), paragraphs 2.72(10)(aa) and 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), paragraph 1229(3)(k) and paragraph 186.234(2)(a) of the *Migration Regulations 1994* (the Regulations).
2. The Instrument operates to specify the :
  - a. skilled occupations;
  - b. relevant ANZSCO code for an occupation;
  - c. relevant assessing authority for that occupation; and
  - d. country (where an application for a skills assessment is made by a resident of that country).
3. Schedule 1 to the Instrument contains the Skilled Occupation List (SOL), which is used to determine eligible occupations for independent, or relative sponsored skilled migration purposes.
4. Schedule 1 and Schedule 2 to the Instrument form the Consolidated Sponsored Occupation List (CSOL). The CSOL applies to both State and Territory nominated points tested visas, the Direct Entry stream of the Employer Nomination Scheme, the Temporary Work (Skilled) visa, the Occupational Trainee stream of the Training and Research visa and the Occupational Trainee visa.
5. The purpose of the Instrument is to:
  - a. include applications, to which the Instruments provisions apply, submitted on or after 1 July 2015;

- b. specify occupations for a specified visa applicant's spouse or de facto partner, to enable points to be awarded to a visa applicant where an applicant's partner has an occupation on the SOL; and
  - c. clarify that all specifications contained in the Instrument are to be read with, and are subject to, any qualifications in the Notes that follow Schedule 1 and Schedule 2, which also form part of the Instrument.
- 2. Paragraph 1 of the instrument revokes the previous instrument IMMI 14/048 (F2014L00749), signed on 14 June 2014.
- 3. Paragraph 2 of the Instrument relates to standard business sponsors who nominate an occupation in relation to a holder of, or an applicant or a proposed applicant of, a Subclass 457 Temporary Work (Skilled) visa on or after 1 July 2010. 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.
- 4. Paragraph 3 of the Instrument relates to applicants who are issued an invitation to make an application for a Subclass 189 (Skilled – Independent) visa. It also relates to an applicant who is not nominated by a State or Territory government agency and who is issued an invitation on or after 1 July 2015 to make an application for a Subclass 489 visa. An applicant will be required to nominate a specified skilled occupation and have their skills assessed by a specified relevant assessing authority.
- 5. Paragraph 4 of the Instrument relates to an applicant who applies on or after 1 July 2015 for a Subclass 485 (Temporary Graduate) visa. An applicant will be required to nominate a specified skilled occupation and have their skills assessed by a specified relevant assessing authority.
- 6. Paragraph 5 of the Instrument relates to an applicant who is 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 2015 to make an application for a Subclass 190 (Skilled – Nominated) visa or a 489 (Skilled – Regional (Provisional)) visa. An applicant will be required to nominate a specified skilled occupation and have their skills assessed by a specified relevant assessing authority.

7. Paragraph 6 of the Instrument relates to a nomination for the Direct Entry stream in Subclass 186 (Employee Nomination Scheme) visa made on or after 1 July 2015. 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.
8. Paragraph 7 of the Instrument relates to an applicant who applies for the Direct Entry stream in the Subclass 186 (Employer Nomination Scheme) visa on or after 1 July 2015. An applicant will be required to have their skills assessed as suitable by a specified assessing authority for the occupation.
9. Paragraph 8 of the Instrument relates to an occupational trainee sponsor or training and research sponsor who makes a nomination on or after 1 July 2015 in relation to the Occupational Trainee stream of the Subclass 402 (Training and Research) visa. 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.
10. Paragraph 9 of the Instrument provides that the definition of ANZSCO is the Australian and New Zealand Standard Classification of Occupations published by the Australian Bureau of Statistics and current as at 1 July 2015.
11. Paragraph 10 of the instrument states that all specifications contained in the instrument are to be read with, and are subject to, any qualifications in the notes following Schedule 1 and Schedule 2, which also form part of the instrument.
12. Through standard departmental mechanisms, consultation has occurred with Finance Division, Legal Division, ICT Division, Immigration and Citizenship Policy Division, Visa and Citizenship Management Division, and Community Protection Division.
13. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 18986).
14. 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 (attached).
15. The instrument, number IMMI 15/092 commences on 1 July 2015.

## **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 2015**

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

This instrument (IMMI 15/092) specifies skilled occupations, Australian and New Zealand Standard Classification of Occupations (ANZSCO) codes and relevant assessing authorities relevant to assessment of applications for skilled migration under the Migration Regulations 1994 (Migration Regulations).

The ANZSCO code is used by the Department of Immigration and Border Protection to ensure that 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 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, ANZSCO codes and assessing authorities for independent or family sponsored skilled visas. Occupations on the SOL are those identified as being in shortage in the Australian labour market in the medium to long term.

The instrument also specifies the Consolidated Sponsored Occupation List (CSOL) which similarly provides eligible occupations, ANZSCO codes and assessing authorities for applicants who apply for:

- State/Territory nominated visas;
- the Temporary Work (Skilled) visa;
- 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 Legislative Instrument giving effect to the 2015-16 SOL will be amended to support a separate legislative change to amend the *Migration Regulations 1994* to implement measures to achieve increased integrity within the Minister of Religion Cohort in Australia's Permanent Employer Sponsored Visa programme. This will be done by adding a caveat restricting visa eligibility to applicants for the subclass 402 visa, or for those sponsored by employers that have finalised a Labour Agreement with the department.

The Instrument will also include an amendment to make explicit the relationship between applicants and their spouses for the purpose of claiming points under Schedule 6D, part 6D.11, for applications for subclass 189, 190 and 489 visas.

#### **Human rights implications**

As the instrument specifies the skilled occupations, ANZSCO codes and assessing authorities described above, and specification of those occupations, codes and authorities is enabled under the Migration Regulations, it does not engage any of the applicable rights and freedoms contained in the seven core international human rights treaties and does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Michaelia Cash, Assistant Minister for Immigration and Border  
Protection**