

**EXPLANATORY STATEMENT**

*Migration Regulations 1994*

**CRITERIA FOR APPROVAL OF NOMINATION AND OCCUPATIONAL  
TRAINING FOR THE PURPOSES OF SUBCLASS 407 (TRAINING) VISA****2016/108**

*(Subregulation 2.72A(12))*

1. Instrument IMMI 16/108 is made under paragraphs 2.72A(12)(c), and 2.72A(12)(d) of the *Migration Regulations 1994* (the Regulations).
2. The purpose of the Instrument is to specify sponsor and occupational training for Subclass 407 (Training) visa, which is a new visa subclass prescribed by the *Migration Amendment (Temporary Activity Visas) Regulation 2016*.
3. The operation of the Instrument is to specify sponsors and occupational training that will be provided in circumstances outlined in the Instrument for the purposes of paragraphs 2.72A(12)(c) and 2.72A(12)(d) of the Regulations and Subclass 407 (Training) visa.
4. Extensive consultation was undertaken for the development of the new visa framework for temporary activity visas that is given effect by the *Migration Amendment (Temporary Activity Visas) Regulation 2016*.
5. The Department of Immigration and Border Protection (the Department) consulted extensively in developing the new visa framework. In September 2014, the Department issued a discussion paper and received 68 submissions. The submissions were considered in the formulation of a proposed framework that was released for consultation in December 2014. Responses were received from 71 industry stakeholders. In April 2015, the Department again sought stakeholder views by conducting a survey and received 1177 responses. The responses were considered by the Department in formulating the final framework.

6. Adjacent to this review, the Department and the Ministry for the Arts undertook a joint review of the Entertainment (subclass 420) visa and released a discussion paper on 12 January 2015, which provided an overview of a range of deregulation opportunities and proposed changes to longstanding VAC concessions. Sixty-three key stakeholders, including unions, entertainment bodies, current sponsors, relevant government agencies and migration agents were advised of the review. The department met with a number of stakeholders to discuss their comments about the range of deregulation opportunities raised in the paper. Most recently, public information sessions on the temporary activity visas were conducted in Perth, Melbourne, Brisbane and Sydney from 23 to 30 September 2016.
7. The Office of Best Practice Regulation (OBPR) has been consulted (OBPR Reference: 19898). OBPR advised that a Regulatory Impact Statement is not required for this instrument.
8. Under section 42 of the *Legislation Act 2003*, the Instrument is subject to disallowance and therefore a Statement of Compatibility with Human Rights has been provided at **Attachment A** to this Explanatory Statement.
9. The Instrument commences immediately after the commencement of the *Migration Amendment (Temporary Activity Visas) Regulation 2016*.

## Statement of Compatibility with Human Rights

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

### Criteria for Approval of Nomination and Occupational Training for the Purposes of Subclass 407 (Training) Visa IMMI 2016/108

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 Legislative Instrument

The Australian Government recently simplified and streamlined temporary work visas. The new Subclass 407 (Training) visa replaced the Subclass 402 (Training and Research) visa. This new visa subclass is for applicants who enter Australia to undertake occupational training for up to two years. The new visa and related sponsor requirements are similar to the repealed Subclass 402 (Training and Research) visa.

Applicants for the Subclass 407 (Training) visa must be sponsored by an organisation that is either an approved sponsor, or has applied to be a sponsor for the purposes on this visa. The Legislative Instrument specifies the types of acceptable sponsors. The Legislative Instrument establishes a new class of ‘temporary activities sponsor’ for the Subclass 407 (Training) visa. The Legislative Instrument also specifies circumstances where the occupational training or professional development can be provided by an entity other than the trainee’s sponsor. In general, for the Subclass 407 (Training) visa, training and professional development must be carried out directly by the sponsor unless exempted in the Instrument.

The application fee for a Subclass 407 (Training) visa has been reduced (from \$380 to \$275) compared to the visa that it replaced.

#### Human rights implications

This Legislative Instrument has been considered against each of the seven core international human rights treaties. To the extent that the Legislative Instrument applies to persons within Australia’s territory and jurisdiction, the Legislative Instrument positively engages the rights in Articles 6 and 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). It does this by allowing visa holders to access occupational training programmes that support their professional development in their chosen occupation as well providing educational opportunities.

The improved sponsorship requirements set out in the Legislative Instrument also positively engage Article 7 of ICESCR by protecting trainees against exploitation by unscrupulous providers and therefore seeking to safeguard visa holders' by ensuring they have access to fair conditions of work.

### **Conclusion**

This Legislative Instrument is compatible with human rights because it positively engages and supports the rights set out in Articles 6, 7 and 13 of the ICESCR. .

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