

EXPLANATORY STATEMENT*Migration Regulations 1994***Migration (IMMI 17/074: Specification of Training Requirements) Instrument 2017***(Sub-sub-subparagraph 5.19(4)(h)(i)(B)(I))*

1. Instrument IMMI 17/074 is made under sub-sub-subparagraph 5.19(4)(h)(i)(B)(I) of the *Migration Regulations 1994* (the Regulations).
2. The instrument operates to specify Training Benchmarks A and B which set out the training benchmarks and training requirements for the purposes of the provisions listed above. The instrument specifically provides:
 - a. for the purposes of Training Benchmark A, the requirements a training fund must meet, in particular excluding funds that offer commissions or refunds for failed visa applications;
 - b. the types of expenditure on training that are acceptable for the purposes of Training Benchmark B; and
 - c. the types of expenditure that are to be included when calculating payroll, including where contractors are used and where salaries are not paid to business owners.
3. The purpose of the instrument is to clarify policy settings for the training benchmarks and training requirements so that a nominator or sponsor has a clear understanding of those training requirements. The purpose is also to address integrity concerns with the training benchmarks and training requirements by amending the types of applicable expenditure. Those integrity changes include:
 - a. specifying in the instrument the types of expenditure that are to be included when calculating payroll;
 - b. for the purposes of Training Benchmark A:

- i. incorporating the types of training funds that may be used to meet the training benchmark requirement; and
 - ii. specifying that funds that offer commissions or refunds for failed immigration applications do not meet the requirements; and
 - c. for the purposes of Training Benchmark B:
 - i. clarifying that the payments for scholarships for non-employees is not acceptable expenditure; and
 - ii. providing that a trainer's salary is acceptable expenditure only when the person is engaged solely as a trainer and clarifying what type of on-the-job training is acceptable expenditure.
- 4. This instrument is prospective so it will only apply to nominations or standard business approvals lodged on or after commencement.
- 5. The instrument specifies matters previously addressed in Migration (Specification of Training Benchmarks and Training Requirements) Instrument 2013 (IMMI 13/030) (F2013L01236). IMMI 13/030 is repealed by Migration (IMMI 17/075: Repeal of Training Benchmarks and Training Requirements) Instrument 2017 which commences on 1 July 2017. The matters in regard to paragraphs 2.59(d), 2.68(e), and subregulations 2.87B(2) and 2.87B(3) that were previously included in IMMI 13/030 are now provided for in Migration (IMMI 17/045: Specification of Training Benchmarks and Training Requirements) Instrument 2017.
- 6. No consultation was undertaken as the instrument incorporates existing policy guidance related to the previous instrument and addresses integrity concerns with the types of allowable expenditure. It is anticipated that this reform will be addressed in the future as part of stakeholder engagement about strengthening the integrity and quality of Australia's temporary and permanent employer sponsored skilled migration programmes.

7. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 21946).
8. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
9. The instrument commences on 1 July 2017.