

EXPLANATORY STATEMENT

Migration Regulations 1994

MIGRATION (IMMI 18/038: SPONSORSHIP APPLICATIONS AND NOMINATIONS FOR SUBCLASSES 407, 457 AND 482 VISAS) INSTRUMENT 2018

(subparagraph 2.61(3A)(b)(i); subparagraph 2.61(3A)(b)(ii); paragraph 2.61(3A)(c); paragraph 2.61(3A)(ba); paragraph 2.61(3B)(a); subregulation 2.66(3); subregulation 2.66(4); paragraph 2.66(5)(a); subregulation 2.73(4); subregulation 2.73(5); paragraph 2.73(7)(a); and subregulation 2.73A(2).)

1. The instrument, IMMI 18/038 is made under: subregulations 2.66(3), 2.66(4), 2.73(4), 2.73(5) and 2.73A(2); paragraphs 2.61(3A)(c), 2.61(3A)(ba), 2.61(3B)(a), 2.66(5)(a) and 2.73(7)(a); and subparagraphs 2.61(3A)(b)(i) and 2.61(3A)(b)(ii) of the *Migration Regulations 1994* (the Regulations).
2. The instrument repeals Forms, Fees, Circumstances and Different Way of Making an Application – IMMI 13/063. IMMI 13/063 is repealed:
 - a. under subregulations 2.61(3B), 2.66(3), 2.66(4) and 2.66(5) and paragraph 2.61(3A)(c), of the Regulations and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, which states where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument; and
 - b. subsequent to the repeal of subregulations 2.61(3A)(b), 2.73(3), 2.73(9) and paragraphs 1223A(1)(b), 1223A(1)(b), 1223A(1)(ba) and 1223A(1)(bc) of the Regulations by the *Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018*.
3. This instrument applies to applications and nominations made on or after 18 March 2018.
4. This instrument specifies the forms, fees, and different ways of:
 - a. making an application for approval as a standard business sponsor;

- b. making an application for approval as a temporary activities sponsor;
 - c. making an application for variation of approval for a temporary activities sponsor;
and
 - d. making a nomination of an occupation for a Subclass 457 and a Subclass 482 visa.
5. This instrument also specifies the process for nomination of a program of occupational training for a Subclass 407 visa.
 6. The purpose of the instrument is to address changes to the Regulations by the *Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018*.
 7. In particular, this instrument specifies that applications using approved Form 482S (for making an application for approval as a standard business sponsor) or approved Form 482N (for nomination of an occupation for a subclass 457 and a subclass 482 visa) must be lodged by the end of the day on which authorisation was given. This is to ensure the form is lodged before the affected visa applicant becomes unlawful, as applicants for a Subclass 482 visa who are in Australia must hold a substantive visa or a specified bridging visa.
 8. Further, an application using approved Form 1478 (for making an application for sponsorship, or for variation of approval, as a temporary activities sponsor) may be made in Australia or outside Australia, but must be made in the manner specified in the authorising email.
 9. The subject of the instrument is part of a broad package of reforms for the employer sponsored skilled visa programs, announced by the Government on 18 April 2017. The reforms include replacing the Subclass 457 (Temporary Work (Skilled)) visa with the Subclass 482 (Temporary Skill Shortage) visa. The Department of Home Affairs has engaged with external stakeholders since the announcement in developing the policy settings and considered feedback received. Some settings of the existing framework have been carried over to the Subclass 482 visa without amendment, and have not been the subject of consultation.
 10. These reforms were also informed by earlier reviews including: the 2014 Independent Review into the Integrity of the Subclass 457 programme; the 2016 Productivity

Commission Inquiry Report: Migrant Intake into Australia; the 2016 Review of the Temporary Skilled Migration Income Threshold; and the 2016 Senate Inquiry A National Disgrace: The Exploitation of Temporary Work Visa Holders. These reviews were subject to extensive consultation processes, including: individuals; academics; bodies and businesses who use the employer sponsored skilled visa programs; migration agents; representatives of foreign governments; the Ministerial Advisory Council on Skilled Migration; and government departments and agencies. The consultation occurred well before this instrument was made. This accords with subsection 17(1) of the *Legislation Act 2003* which envisages consultations where appropriate and reasonably practicable.

11. A Regulation Impact Statement has been prepared in accordance with advice from the Office of Best Practice Regulation (OBPR). The OBPR Reference number is 21946.
12. Under section 42 of the *Legislation Act 2003*, the instrument is subject to disallowance and a Statement of Compatibility with Human Rights has been provided.
13. The instrument commences on 18 March 2018.

Statement of Compatibility with Human Rights

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

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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 *Migration Act 1958* provides for the requirement for foreign nationals to hold a visa to enter and remain in Australia. Detailed requirements for applying for visas, sponsorship, nomination and provisions for grant are set out in the *Migration Regulations 1994* (Migration Regulations). The Migration Regulations allow further requirements to be specified by instrument.

This Legislative Instrument repeals existing IMMI 13/063 which specifies forms, fees and the way of making an application, in relation to temporary skilled entry and temporary activity visas. IMMI 13/063 deals with both disallowable and non-disallowable matters. Two new instruments will replace and update the matters in IMMI 13/063, including to cater for a new visa subclass. The new instruments separate the provisions so that non-disallowable and disallowable matters are no longer included in the same instrument, consistent with current drafting practice. This instrument 18/038 contains disallowable provisions. Non-disallowable provisions are contained in a separate Legislative Instrument IMMI 18/018 for which a Statement of Compatibility with Human Rights is not required.

On 18 April 2017, the Government announced changes to the employer sponsored temporary and permanent skilled work visa arrangements, including replacing the Subclass 457 visa with the Subclass 482 visa. Under the Migration Regulations, a basic requirement of these visas is that applicants be nominated by their approved sponsor (employer).

Other visas to which this instrument is relevant are the Temporary Activity (subclass 408) visa and the Training (subclass 407) visa. These visas also have nomination and/or sponsorship requirements.

This Legislative Instrument will apply to persons who, on or after 18 March 2018, apply to become a temporary activity sponsor or a standard business sponsor, or who nominate a person for a Subclass 407 visa, a Subclass 457, or a Subclass 482 visa.

This new Legislative Instrument 18/038 specifies the following items:

- The form for: standard business sponsorship, temporary skill shortage nominations for the new Subclass 482 visa (including where an existing 457 visa is held)*, temporary activities sponsorship;
- The fee for: standard business sponsorship, temporary activities sponsorship, temporary activities sponsorship variation, temporary skill shortage nominations for the new Subclass 482 visa (including where an existing 457 visa is held)*, occupational training program nomination;

- Circumstances, form and alternate lodgement channel for making an application for: standard business sponsorship, temporary activities sponsorship, temporary activities sponsorship variation, temporary skill shortage nomination for the new Subclass 482 visa (including where an existing 457 visa is held)*, Subclass 407 nomination; and
- Lodgement method for: occupational training program nomination.

New items (indicated by an asterisk) are being put in place for the new subclass 482 visa, but do not represent a material change from the requirements for the subclass 457 visa which it is replacing. The remaining items reflect current arrangements.

This Legislative Instrument does not include the, forms, alternate lodgement channel and fees for making a subclass 457 nomination or an application for a Subclass 457 visa, or an application for a Subclass 482 visa. This is because from 18 March 2018, Subclass 457 visa or nomination applications can no longer be made due to it being replaced by the Subclass 482 visa. The form and alternate lodgement channel for a Subclass 482 visa application are set out in the non-disallowable instrument IMMI 18/018 and the fees for a subclass 482 visa application are prescribed in the Migration Regulations.

Human rights implications

As this Legislative Instrument specifies technical details for certain visa application-related requirements which are set out in the Migration Regulations and does not substantially change the requirements for the temporary work visa arrangements, it does not engage any of the human rights enunciated in the seven core international human rights treaties.

Conclusion

This Legislative Instrument is compatible with human rights.

The Hon Alan Tudge MP, Minister for Citizenship and Multicultural Affairs