# EXPLANATORY STATEMENT

Issued by the Assistant Minister for Citizenship and Multicultural Affairs

*Migration Act 1958*

*Migration Amendment (Skills Assessing Authorities) Regulations 2024*

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

Subsection 504(1) of the Migration Act provides that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

Skills assessments are critical to ensuring skilled migrant workers have the necessary technical skills, qualifications and experience to meet Australian work standards. Skills assessments are delivered by skilled migration assessing authorities (Assessing Authorities).

The *Migration Amendment (Skills Assessing Authorities) Regulations 2024* (the Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to clarify the Skills Assessment Minister's powers regarding Assessing Authorities that deliver skills assessments.

The Government's Migration Strategy, released on 11 December 2023, made a commitment to improve skills assessment processes for migrants through enhanced assurance, standards and reporting. The Regulations implement this commitment by providing the Skills Assessment Minister with powers to help ensure the integrity, quality and timeliness of the skills assessments that Assessing Authorities deliver.

The Regulations provide the Skills Assessment Minister with an express power to approve a person or body as an Assessing Authority, and one or more countries, if they are satisfied that the person or body is suitable. Following approval, the Skills Assessment Minister would be required to provide both the approved Assessing Authority and the Immigration Minister with a written notice that sets out the decision, the reasons for the decision and any conditions imposed on the approval.

The Regulations also provide the Skills Assessment Minister with the power to impose, vary or remove a condition imposed on an approved Assessing Authority. The power to impose or vary a condition is only available to the Skills Assessment Minister in circumstances relating to an action taken or not taken by the approved Assessing Authority on or after the day the decision to impose or vary the condition takes effect.

The Regulations also provide the Skills Assessment Minister with the express power to revoke the approval of an approved Assessing Authority for a skilled occupation and one or more countries if the Skills Assessment Minister:

- is no longer satisfied that the Assessing Authority is suitable to be approved; or
- the Assessing Authority has breached a condition imposed on the approval; or
- is satisfied that another person or body is more suitable to be approved as the Assessing Authority for the skilled occupation and one or more of those countries.

In circumstances where the Skills Assessment Minister has exercised their discretion to revoke the approval of an Assessing Authority, the Skills Assessment Minister is required to provide the person or body with a written notice that includes reasons for the revocation decision.

There is be a statutory right to seek merits review in relation to a decision made by the Skills Assessment Minister to revoke the approval of an Assessing Authority.

The Regulations do not operate retrospectively. Any approval of an Assessing Authority that is in force at the time immediately before the commencement of the Regulations continues to be in force. Provision for the Skills Assessment Minister to revoke the approval of an Assessing Authority, or to impose a condition following approval, is only available for any action, or non-action by the Assessing Authority that occurs after the commencement of the Regulations.

*Consultation*

Section 17 of the *Legislation Act 2003* (the Legislation Act) provides that the rule maker must be satisfied that consultation has been undertaken that is appropriate and reasonably practicable before making a legislative instrument. The Department has consulted other Commonwealth agencies in the course of developing the Regulations, including the Department of Employment and Workplace Relations (DEWR) and the Attorney-General's Department. The outcome of consultation informed the drafting of the Regulations.

The Department and DEWR follow standard practices to notify Assessing Authorities about the changes, including updating the departmental websites.

The Office of Impact Analysis (OIA) was also consulted and considered that the measures in this instrument were unlikely to have more than a minor impact and advised that an Impact Analysis was not required. The OIA reference number is OIA24-07984.

*Statement of Compatibility*

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny Act) 2011*. The overall assessment and conclusion is that the Regulations are compatible with human rights as it promotes the right to a fair hearing in Article 14(1) of the ICCPR. The Statement is at Attachment A.

*General matters concerning the Regulations*

The Migration Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the Legislation Act.

The Regulations commence on the day after they are registered on the Federal Register of Legislation.

Further details of the Regulations are set out in Attachment B.

The matters dealt with in the Regulations are appropriate for implementation in regulations rather than Parliamentary enactment. It has been the consistent practice of the Government of the day to provide for detailed visa criteria and conditions in the Migration Regulations rather than the Migration Act itself. The Migration Act expressly provides for these matters to be prescribed in regulations, as can be seen in the authorising provisions in Attachment C. These include, for example, subsection 31(3), which provides that the Migration Regulations may prescribe criteria for a visa or visas of a specified class.

The current Migration Regulations have been in place since 1994, when they replaced regulations made in 1989 and 1993. Providing for these details to be in delegated legislation rather than primary legislation gives the Government the ability to effectively manage the operation of Australia's visa program and respond quickly to emerging needs.

The Regulations amend the Migration Regulations, which are exempt from sunsetting under table item 38A of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. The Migration Regulations are exempt from sunsetting on the basis that the repeal and remaking of the Migration Regulations:

- is unnecessary as the Migration Regulations are regularly amended numerous times each year to update policy settings for immigration programs;
- would require complex and difficult to administer transitional provisions to ensure, amongst other things, the position of the many people who hold Australian visas, and similarly, there would likely be a significant impact on undecided visa and sponsorship applications; and
- would demand complicated and costly systems, training and operational changes that would impose significant strain on Government resources and the Australian public for insignificant gain, while not advancing the aims of the Legislation Act.

The Regulations will be repealed by operation of Division 1 of Part 3 of Chapter 3 of the Legislation Act. Specifically, that Division (under section 48A) operates to automatically repeal a legislative instrument that has the sole purpose of amending or repealing another instrument. As the Amendment Regulations will automatically repeal, they do not engage the sunsetting framework under Part 4 of the Legislation Act.

**ATTACHMENT A**

# Statement of Compatibility with Human Rights

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

**Migration Amendment (Skills Assessing Authorities) Regulations 2024**

This Disallowable 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 Amendment (Skills Assessing Authorities) Regulations 2024* (the Amendment Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to support and clarify Ministerial powers regarding Assessing Authority approvals.

The Government's Migration Strategy recognises that skills assessments are critical to ensuring prospective migrants have the necessary technical skills, qualifications and experience to meet Australian occupation standards. These skills assessments are delivered by skilled migration assessing authorities (Assessing Authorities), and so it is critical that the Government has the means to ensure the integrity and quality of the Assessing Authorities that conduct skill assessments.

Historically, quality assurance of the Assessing Authority sector was managed on the basis of goodwill between Assessing Authorities and Government. However, public consultations have indicated quality outcomes in relation to the performance of Assessing Authorities cannot be sufficiently ensured through voluntary compliance alone.

The Amendment Regulations amend the Migration Regulations to facilitate the effective administration of the assurance framework by clarifying the Skills Assessment Minister's (Minister for Skills and Training) powers by enshrining legally enforceable Ministerial authority to:

- approve an Assessing Authority subject to conditions;
- prospectively impose or vary conditions to existing approvals of Assessing Authorities;
- remove a condition imposed on an Assessing Authority; and
- revoke the approval of an Assessing Authority in certain circumstances.

In circumstances where the Skills Assessment Minister has revoked the approval of a person or body as an Assessing Authority for an occupation and one or more countries, the Assessing Authority would have a right to internal reconsideration of the decision by the Minister and - subsequently - merits review of the decision by the ART.

## Human rights implications

This Disallowable Legislative Instrument engages the right to a fair hearing in Article 14(1) of the *International Covenant on Civil and Political Rights* (ICCPR)

Article 14(1) of the ICCPR guarantees everyone the right to a fair hearing by a competent, independent and impartial tribunal, established by law. To the extent that subregulation 2.26B(1B) will enable the Minister to appoint a person as an Assessing Authority, the right to a fair hearing will be engaged by the provisions that enable merits review of certain decisions, following an internal review process.

Regulation 4.43 of Division 4.4 allows for applications to be made to the Administrative Review Tribunal (ART) for a review of a revocation decision made by the Skills Assessment Minister under subregulation 2.26B(1BG), following the Minister's internal reconsideration of that revocation decision under regulation 4.42. Those applications may be made by a person or body whose interests are affected by the revocation decision.

This ensures that a person for whom the Skills Assessment Minister has made a decision under subregulation 2.26B(1BG) to revoke an approval as an Assessing Authority for an occupation for one or more countries can seek merits review of that decision at the ART.

To the extent that the measures apply to a person, the ability to seek merits review promotes the right to a fair hearing.

## Conclusion

The Disallowable Legislative Instrument is compatible with human rights as it promotes the right to a fair hearing in Article 14(1) of the ICCPR.

**The Hon Julian Hill MP**
**Assistant Minister for Citizenship and Multicultural Affairs**

**ATTACHMENT B**

## Details of the *Migration Amendment (Skills Assessing Authorities) Regulations 2024*

Section 1 – Name

This section provides that the name of the instrument is the *Migration Amendment (Skills Assessing Authorities) Regulations 2024* (Regulations).

Section 2 – Commencement

This section provides that the Regulations commence on the day after they are registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the instrument is made under the *Migration Act 1958*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1 – Amendments

Part 1 – Amendments

***Migration Regulations 1994***

**Item [1] – Paragraph 1.13A(2)(e)**

This item makes a technical amendment to paragraph 1.13A(2)(e) of the Migration Regulations to provide that adverse information about a person includes information that the person has given, or caused to be given, to a relevant assessing authority in the form of a bogus document, or information that is false or misleading in a material particular.

**Item [2] – Subregulation 2.26B(1)**

This item amends subregulation 2.26B(1) of the Migration Regulations to clarify that the Immigration Minister may, by legislative instrument, specify a person or body as the relevant assessing authority. Previously, subregulation 2.26B(1) included the expression "by an instrument in writing for this subregulation"; however, the instrument made under this provision is a legislative instrument, registered on the Federal Register of Legislation (currently *Migration (LIN 19/051: Specification of Occupations and Assessing Authorities)*

*Instrument 2019*). The amendment of subregulation 2.26B(1) simply makes clear that this instrument is a legislative instrument, consistent with current drafting practice.

**Item [3] – Division 2.6 of Part 2 (heading)**

This item repeals and substitutes the heading of Division 2.6 of Part 2 of the Migration Regulations to more accurately reflect that the Division deals with relevant assessing authorities and matters relating to the application of the points system.

**Item [4] – Paragraph 2.26B(1)(a)**

This item amends paragraph 2.26B(1)(a) of the Migration Regulations to provide that the Immigration Minister may, by written instrument, specify a person or a body as the relevant assessing authority for an 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. Before this amendment, paragraph 2.26B(1)(a) referred to a "skilled occupation". This amendment is a consequential amendment to support the other amendments made by items in Part 1 of the Schedule to the Regulations.

**Item [5] – Subregulation 2.26B(1A)**

This item amends subregulation 2.26B(1A) of the Migration Regulations to clarify that the Immigration Minister must not specify a person or body as the relevant assessing authority for an occupation and one or more countries unless the person or body has been approved as the Assessing Authority for the occupation and countries under subregulation 2.26B(1B).

The intention is that this amendment clarifies that the Immigration Minister can only specify an Assessing Authority as a relevant assessing authority where the Skills Assessment Minister has approved the person or body.

**Item [6] – Subregulation 2.26B(1A)**

This item amends subregulation 2.26B(1A) of the Migration Regulations to remove reference to 'skilled' from the provision. The purpose of this amendment is to clarify that the Minister can specify a relevant assessing authority for any occupation, rather than a skilled occupation as defined in regulation 1.15I of the Migration Regulations and one or more countries.

**Item [7] – Subregulation 2.26B(1A)**

This item amends subregulation 2.26B(1A) of the Migration Regulations to remove the second occurring 'relevant' from the provision. The purpose of this amendment is to clarify that the Immigration Minister can only specify an Assessing Authority as a relevant assessing authority where the Skills Assessment Minister has approved the person or body.

**Item [8] – Subregulation 2.26B(1B)**

This item repeals regulation 2.26B(1B) and substitutes it with new subregulations 2.26B(1B), (1BA), (1BB), (1BC), (1BD), (1BE), (1BF), (1BG), (1BH), (1BI) and (1BJ).

*Approving assessing authorities*

Subregulation 2.26B(1B) provides the Skills Assessment Minister with a discretionary power to approve a person or body as an Assessing Authority for an occupation and one or more countries. This subregulation also provides the Skills Assessment Minister with the express power to impose one or more conditions on the approval of the Assessing Authority.

Subregulation 2.26B(1BA) provides that the Skills Assessment Minister must only approve an Assessing Authority under subregulation 2.26B(1B) if the Minister is satisfied that the Assessing Authority is suitable.

Subregulation 2.26B(1BB) provides that the Skills Assessment Minister must provide a written notice to the Assessing Authority that sets out the decision, the reasons for decision and the conditions (if any) that are imposed on the approval as soon as practicable after approval. Paragraph 2.26B(1BB)(b) provides that a copy of the written notice must also be provided to the Immigration Minister.

*Imposition etc, of conditions after approval*

Subregulation 2.26B(1BC) operates to provide that following the approval of an Assessing Authority under subregulation 2.26B(1B), the Skills Assessment Minister may impose one or more conditions on the approval, vary a condition that has been imposed or remove a condition that has been imposed on the approval.

Subregulation 2.26B(1BD) operates to clarify that a condition varied or imposed under subregulation 2.26B(1BC), only applies to a thing done, or not done by the Assessing Authority on or after the date of the decision to impose or vary the condition takes effect.

Subregulation 2.26B(1BE) provides that if the Skills Assessment Minister were to make a decision under new subregulation 2.26B(1BC), the Minister must, as soon as practicable after making the decision, provide the Assessing Authority with a written notice setting out the decision, the reasons for that decision, the day the decision comes into effect and the details of any conditions that are varied, imposed or removed (including the effect of subregulation 2.26B(1BD), if relevant). The Skills Assessment Minister must also provide a copy of the written notice to the Immigration Minister.

*Agreement of Immigration Minister to the imposition etc. of conditions*

Subregulation 2.26B(1BF) operates to ensure that before the Skills Assessment Minister exercises their power to impose, vary or remove a condition that has been imposed on an Assessing Authority under new subregulation 2.26B(1B) or (1BC), the Skills Assessment

Minister has sought the agreement of the Immigration Minister to the imposition, variation or removal of that condition.

*Revocation of approval*

Subregulation 2.26B(1BG) provides the Skills Assessment Minister with the express power to revoke the approval of an Assessing Authority for a skilled occupation and one or more countries, if the Minister:

- is no longer satisfied that the Assessing Authority is suitable to be approved; or
- is satisfied that the Assessing Authority has breached a condition imposed on the approval; or
- is satisfied that another person or body is more suitable to be approved as the Assessing Authority for the skilled occupation and one or more of those countries.

This provides the Skills Assessment Minister with the power to revoke the approval of an Assessing Authority for non-compliance and in circumstances where the Minister is satisfied that an occupation should be moved from one assessing authority to another.

Subregulation 2.26B(1BH) provides that the Skills Assessment Minister must consult the Immigration Minister before revoking the approval of an Assessing Authority.

Subregulation 2.26B(1BI) provides that the Skills Assessment Minister must, as soon as practicable after revoking the approval of an Assessing Authority, provide the person or body with a written notice that provides the decision, the reasons for the decision and the date the revocation takes effect. The Skills Assessment Minister must also provide the Immigration Minister with a copy of that notice. The note under subregulation 2.26B(1BI) clarifies that review of a decision revoking the approval of an Assessing Authority is dealt with in Division 4A.2 of Part 4 to the Migration Regulations (see item [14] below).

Subregulation 2.26B(1BJ) operates to clarify that if the approval of an Assessing Authority is revoked by the Skills Assessment Minister under subregulation 2.26B(1BG), the revocation does not affect an assessment of the skills of an individual that was completed by the Assessing Authority before the day the revocation takes effect.

It is the intention that the revocation of an approval by the Skills Assessment Minister would not affect skills assessments completed by the authority prior to the date the revocation would take effect. Specific instances of fraud and misconduct would be monitored by the Department of Home Affairs in accordance with standard practice for visa processing.

**Item [9] – Subregulation 2.26B(1C)**

This item makes a technical amendment to subregulation 2.26B(1C) to clarify the operation of the provision in accordance with the Regulations.

**Items [10] - [11] – Subregulation 2.26B(2)**

These items makes a technical amendment to subregulation 2.26B(2) to clarify that the standards against which the skills of a person are assessed by a relevant assessing authority for a particular occupation must be the standards set by the relevant assessing authority for that occupation.

**Item [12] – Subregulation 2.26B(3)**

This item makes a technical amendment to subregulation 2.26B(3) to clarify that a relevant assessing authority may set different standards for assessing an occupation for different visa classes or subclasses.

**Item [13] – Part 4 (heading)**

This item repeals and substitutes the heading of Part 4 of the Migration Regulations to more accurately reflect that the Part deals with reviewable migration and protection decisions.

**Item [14] – In appropriate position in Part 4**

This item inserts new Part 4A (Review of decisions—assessing authority approvals). Division 4.A.1 (Preliminary) provides the definition of ***revocation decision*** in new regulation 4.40, which means a decision of the Skills Assessment Minister under new subregulation 2.26B(1BG) to revoke the approval of a person or body as an Assessing Authority for an occupation and one or more countries.

'Reconsideration and review of decisions revoking assessing authority approval' in Division 4A.2 of the Migration Regulations contains new regulations 4.41, 4.42 and 4.43.

New regulation 4.41 provides for the reconsideration of a revocation decision.

New subregulation 4.41(1) provides that a person or body (the aggrieved entity) whose interests are affected by a revocation decision may request the Skills Assessment Minister to reconsider the decision. New subregulation 4.41(2) provides that the form and timing requirements for reconsideration. The request must be made in writing, set out the reasons for the request and be made within 30 days after the aggrieved entity is notified of the revocation decision, or if applicable, the longer period allowed by the Skills Assessment Minister. The Skills Assessment Minister may allow a longer period before or after the expiry of the relevant 30-day period.

*Reconsideration of decision*

New subregulation 4.41(3) provides that on receiving a request to reconsider the revocation decision under new subregulation 4.41(2), the Skills Assessment Minister must reconsider the revocation decision and affirm, vary or set aside the revocation decision. If the Minister sets aside the revocation decision, the Skills Assessment Minister may make another decision as they think appropriate.

New subregulation 4.41(4) provides that the Skills Assessment Minister must reconsider the revocation decision before the end of 30 days beginning on the day they receive the request or, if the aggrieved entity and the Minister agrees on a longer period, that longer period.

*Notice of decision on reconsideration*

Subregulation 4.41(5) provides that the Skills Assessment Minister must give the aggrieved entity written notice of the decision on reconsideration and the reasons for that decision.

Subregulation 4.41(6) provides that the Skills Assessment Minister must give the Immigration Minister a copy of the notice.

*When decision on reconsideration takes effect*

Subregulation 4.41(7) provides that the Skills Assessment Minister's decision on reconsideration takes effect on the day specified in the written notice given under subregulation 4.41(5) or if a date is not specified, the day on which the decision is made.

*Skills Assessment Minister may be taken to have affirmed decision*

New subregulation 4.41(8) provides that the revocation decision is taken to be affirmed if the Skills Assessment Minister has not notified the aggrieved entity of the Minister's decision on reconsideration by the end of the period applicable under subregulation 4.41(4).

New regulation 4.42 provides the circumstances in which the Skills Assessment Minister may reconsider a revocation decision on their own initiative.

New subregulation 4.42(1) provides that the Skills Assessment Minister may reconsider a revocation decision if they are satisfied that there is sufficient reason to do so.

New subregulation 4.42(2) provides that if the Skills Assessment Minister decides to reconsider a revocation decision on their own initiative, they must within 14 days after commencing that reconsideration, give the person or body whose interests are affected by the decision written notice that states that the decision is being reconsidered and specifies the day the reconsideration commenced.

New subregulation 4.42(3) provides that after reconsidering the revocation decision, the Skills Assessment Minister must affirm, vary or set aside that decision and if it is set aside, the Minister may make a decision that they think appropriate.

Subregulation 4.42(4) provides that the Skills Assessment Minister must, as soon as practicable after making the decision on reconsideration (or the 'reconsideration decision'), give the interested entity a written notice of the reconsideration decision and give the Immigration Minister a copy of that notice.

New regulation 4.43 provides for applications to be made to the Administrative Review Tribunal (ART) for review of a decision that is made by the Skills Assessment Minister under subregulations 4.41(3), 4.41(8) or 4.42(3).

**Item [15] – Subclause 1137(4B) of Schedule 1 (table item 4, column headed "Further requirements- Visas in the Points-tested stream", paragraph (c))**

This item amends paragraph 1137(4B)(c) to clarify that a primary Points-tested applicant for a Subclass 189 (Skilled – Independent) visa must, amongst other things, nominate a skilled occupation and declare in the application for the visa, that their skills have been assessed as suitable by the relevant assessing authority for that occupation and that the assessment is not for a Subclass 485 (Temporary Graduate) visa.

**Item [16] – Subclause 1138(4) of Schedule 1 (table item 4, column headed "Requirements", paragraph (c))**

This item amends paragraph 1138(4)(c) to clarify that an applicant seeking to satisfy the primary criteria for a Subclass 190 (Skilled - Nominated) visa must, among other things, nominate a skilled occupation and declare in the application for the visa that their skills have been assessed as suitable by the relevant assessing authority for that occupation and that the assessment is not for a Subclass 485 (Temporary Graduate) visa.

**Item [17] – Subclause 1230(4) of Schedule 1 (table item 4, column headed "Requirements", paragraph (c))**

This item amends paragraph 1230(4)(c) to clarify that an applicant for a Subclass 489 (Skilled – Regional (Provisional)) visa must, among other things, nominate a skilled occupation and declare in the application for the visa, that their skills have been assessed as suitable by the relevant assessing authority for that occupation and that the assessment is not for a Subclass 485 (Temporary Graduate) visa.

**Item [18] – Subparagraphs 1240(3)(g)(iv) and (v) of Schedule 1**

This item amends subparagraphs 1240(3)(g)(iv) and 1240(3)(g)(b) to clarify that an applicant seeking to satisfy the primary criteria for a Subclass 482 (Temporary Skill Shortage) visa must, among other things, nominate a skilled occupation and either:

- the applicant has had their skills assessed as suitable for the occupation by the relevant assessing authority for the occupation within the period specified in the relevant legislative instrument; or

- both of the circumstances in subparagraph 1240(3)(g)(v) apply.

**Item [19] – Subclause 1241(4) of Schedule 1 (table item 4, column headed "Requirements", paragraph (c))**

This item amends paragraph 1241(4)(c) to clarify that an applicant for a Subclass 491 (Skilled Work Regional (Provisional)) visa must, among other things, nominate a skilled occupation and declare in the application for the visa, that their skills have been assessed as suitable by the relevant assessing authority for that occupation and that the assessment is not for a Subclass 485 (Temporary Graduate) visa.

**Item [20] – Paragraph 1242(5)(a) of Schedule 1**

This item repeals and substitutes current paragraph 1242(5)(a) of Schedule 1 to the Migration Regulations.

New paragraph 1242(5)(a) provides that an applicant seeking to satisfy the primary criteria for the grant of a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa in the Employer Sponsored stream must declare in the application for the visa, that the relevant assessing authority for the nominated occupation has assessed their skills as suitable for that occupation.

**Item [21] – Paragraph 1242(5)(b) of Schedule 1**

This item amends paragraph 1242(5)(b) of Schedule 1 to the Migration Regulations to clarify that the applicant's assessment referred to in new paragraph 1242(5)(a) was not for a Subclass 485 (Temporary Graduate) visa.

**Item [22] – Clause 186.111 of Schedule 2 (Note 1)**

This item inserts the term 'relevant assessing authority' in Note 1 of clause 186.111. The note provides that the definition of ***relevant assessing authority*** is in regulation 1.03 of the Migration Regulations.

**Item [23] – Paragraph 186.234(2)(a) of Schedule 2**

Clause 186.234 provides that at the time of application an applicant for a Subclass 186 (Employer Nomination Scheme) visa must satisfy subclause 186.234(2) or 186.234(3).

In order to satisfy subclause 186.234(2), the applicant is required to satisfy the criteria in paragraphs 186.234(2)(a) to (b), which relate to a skills assessment for the nominated occupation.

This item repeals and substitutes current paragraph 186.234(2)(a) to clarify that the relevant assessing authority for the nominated occupation must have assessed the applicant's skills as suitable for the occupation.

**Item [24] – Paragraph 186.234(2)(aa) of Schedule 2**

This item amends paragraph 186.234(2)(aa) to provide that the assessment referred to in paragraph 186.234(2)(a) was not for a Subclass 485 (Temporary Graduate) visa. The purpose of this amendment is to clarify that skills assessments that are issued specifically for a Subclass 485 (Temporary Graduate) visa application by an Assessing Authority cannot be relied upon to satisfy subclause 186.234(2) for the grant of a Subclass 186 (Employer Nomination Scheme) visa.

**Item [25] – Paragraph 189.222(1)(a) of Schedule 2**

Clause 189.222 provides that, at the time of invitation, an applicant seeking to satisfy the primary criteria for a Subclass 189 (Skilled – Independent) visa in the Points-tested stream, must satisfy subclauses 189.222(1) and (2). In order to satisfy subclause 189.222(1), the applicant is required to satisfy the criteria in paragraphs 189.222(1)(a) to (d).

This item repeals and substitutes current paragraph 189.222(1)(a) to clarify that the relevant assessing authority for the applicant's nominated skilled occupation must have assessed the applicant's skills as suitable for that occupation.

**Item [26] – Paragraph 190.212(1)(a) of Schedule 2**

Clause 190.212 provides that, at the time of invitation, an applicant seeking to satisfy the primary criteria for a Subclass 190 (Skilled – Nominated) visa must satisfy subclauses 190.212(1) and (2). In order to satisfy subclause 190.212(1), the applicant is required to satisfy the criteria in paragraphs 190.212(1)(a) to (d).

This item repeals and substitutes current paragraph 190.212(1)(a) to clarify that the relevant assessing authority for the applicant's nominated skilled occupation must have assessed the applicant's skills as suitable for that occupation.

**Item [27] – Paragraphs 192.112(2)(e) and 408.112(2)(e) of Schedule 2**

This amendment is machinery in nature and amends paragraphs 192.211(2)(e) and 408.2112(2)(e) to update the references to "assessing authority" to "relevant assessing authority", consistent with the amendments in item [4] to regulation 2.26B of the Migration Regulations.

Clause 192.111 provides the details of defined terms in Part 192 of Schedule 2 to the Migration Regulations. Clause 192.111 provides that the meaning of ***adverse employer information*** is in clause 192.112.

Subclause 192.112(2) provides that, without limiting subclause 192.112(1), ***adverse employer information*** about an employer includes the types of information in paragraphs 192.112(2)(a) to (e). This item amends paragraph 192.112(2)(e) to provide that adverse employer information about an employer includes a bogus document or information that is

false or misleading in a material particular that the employer has given, or caused to be given, to the Minister, an officer, the Administrative Review Tribunal (ART) or a relevant assessing authority.

Clause 408.111 provides the details of defined terms in Part 408 of Schedule 2 to the Migration Regulations. Clause 408.111 provides that the meaning of ***adverse supporter information*** is in clause 408.112.

Subclause 408.112(2) provides that, without limiting subclause 408.211(1), ***adverse supporter information*** about a person or organisation includes the types of information in paragraphs 408.211(2)(a) to (e). This item amends paragraph 408.211(2)(e) to provide that adverse employer information about an employer includes a bogus document or information that is false or misleading in a material particular that the employer has given, or caused to be given to the Minister, an officer, the ART or a relevant assessing authority.

**Item [28] – Clause 485.223 of Schedule 2**

Clause 485.223 is a criterion for applicants seeking to satisfy the primary criteria for a Subclass 485 (Temporary Graduate) visa in the Post-Vocational Education Work stream.

This item amends clause 485.223 to provide that the application for the visa be accompanied by evidence that, at the time the application was made, the applicant had applied for an assessment of the applicant's skills for the nominated skilled occupation by a relevant assessing authority for that occupation.

**Item [29] – Subclause 485.224(1) of Schedule 2**

Clause 485.224 is a criterion for applicants seeking to satisfy the primary criteria for a Subclass 485 (Temporary Graduate) visa in the Post-Vocational Education Work stream.

The item amends subclause 485.224(1) to provide that the skills of the applicant for the applicant's nominated skilled occupation have been assessed, during the last 3 years, by a relevant assessing authority for that occupation as suitable for that occupation.

**Item [30] – At the end of clause 494.111 of Schedule 2**

Clause 494.111 provides the details of defined terms in Part 494 of Schedule 2 to the Migration Regulations. This item inserts a note in clause 494.111 that provides that the meaning of ***relevant assessing authority*** is in regulation 1.03.

**Item [31] – Paragraph 494.224(2)(a) of Schedule 2**

Clause 494.224 is a criterion for applicants seeking to satisfy the primary criteria for a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa in the Employer Sponsored stream. In order to satisfy clause 494.224, the applicant must satisfy paragraphs 494.224(2)(a) to (c)

This item amends paragraph 494.224(2)(a) to provide that the relevant assessing authority for the applicant's nominated occupation has assessed the applicant's skills as suitable for that occupation.

**Item [32] – Subclause 494.224(6) of Schedule 2**

This item makes a technical amendment to subclause 494.224(6) to remove the reference to item 1242(5)(a) of Schedule 1 and paragraph 2(a) from that provision.

**Part 2 – Application of amendments**

***Migration Regulations 1994***

**Item [33] – In the appropriate position in Schedule 13**

This item inserts new Part 146 in the appropriate position in Schedule 13 to the Migration Regulations.

Subclause 14601(1) operates to provide that despite the repeal of subregulation 2.26B(1B) by Part 1 of Schedule 1 to the Regulations, an approval of an Assessing Authority that was given under that subregulation that is still in force immediately before the commencement of the regulations continues to be in force. This clarifies that if the regulations are made, an approved authority continues to be approved after the commencement regulations as if the repeal had not happened.

Subclause 14601(2) provides that subregulation 2.26B(1BC) applies in relation to an approval given under subregulation 2.26(1B) before, on or after the commencement of the Regulations.

Subclause 14601(3) provides that an approval of an Assessing Authority that is in force immediately before the commencement of the Regulations will continue to be in effect following the commencement.

This subclause also provides that the Skills Assessment Minister can only exercise the revocation power in relation to an Assessing Authority that was approved before the Regulations commence, for an action taken or not taken by the Assessing Authority after the commencement of the Regulations.

The Skills Assessment Minister is only empowered to revoke the approval of an Assessing Authority for breach of a condition that occurred after date the decision to impose or vary the condition takes effect.

Subclause 14601(4) provides that the amendments made by items [18], [20], [23], [31] and [32] of Part 1 of the Schedule apply in relation to an application for a visa made on or after the commencement of that Part.

Subclause 14601(5) provides that amendments made by items [25] and [26] of Part 1 of the Schedule apply in relation to an application made in response to an invitation given by the Minister on or after the commencement of that Part.

**ATTACHMENT C**

## AUTHORISING PROVISIONS

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provides that the Governor General may make regulations prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

In addition, the following provisions of the Migration Act may also be relevant:

- subsection 31(1), which provides that the Migration Regulations may prescribe classes of visas;
- subsection 31(3), which provides that the Migration Regulations may prescribe criteria for a visa or visas of a specified class;
- subsection 31(4), which provides that the Migration Regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia, or both;
- subsection 31(5), which provides that the Migration Regulations may specify that a visa is a visa of a particular class;
- section 40, which provides that the Migration Regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- subsection 41(1) which provides that the Migration Regulations may provide that visas, or visas of a specified class, are subject to specified conditions;
- subsection 45(1), which provides that subject to the Migration Act and the Migration Regulations, a non-citizen who wants a visa must apply for a visa of a particular class;
- section 45A, which provides that a non-citizen who makes an application for a visa is liable to pay a visa application charge if, assuming the charge were paid, the application would be a valid visa application;
- subsection 45B(1), which provides that the amount of visa application charge is the amount, not exceeding the visa application charge limit, prescribed in relation to the application (the visa application charge limit is determined under the Migration (Visa Application) Charge Act 1997);
- subsection 45B(2), which provides that the amount prescribed in relation to an application may be nil;
- paragraph 46(1)(b), which provides that the Migration Regulations may prescribe the criteria and requirements for making a valid application for a visa;
- subsection 46(3), which provides that the Migration Regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application;

- subsection 46(4), which provides that, without limiting subsection 46(3), the Migration Regulations may prescribe:
    - the circumstances that must exist for an application for a visa of a specified class to be a valid application; and
    - how an application for a visa of a specified class must be made; and
    - where an application for a visa of a specified class must be made; and
    - where an applicant must be when an application for a visa of a specified class is made;
- subsection 504(2) of the Migration Act, which provides that section 14 of the Legislation Act does not prevent regulations whose operation depends on a country or other matter being specified or certified by the Minister in an instrument in writing made under the regulations after the commencement of the regulations.