

EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Migration Regulations 1994

Migration (Specification of Occupations and Assessing Authorities) Amendment Instrument (LIN 22/053) 2022

- 1 The instrument, Departmental reference LIN 22/053, is made under subregulation 2.26B(1) of the *Migration Regulations 1994* (the *Migration Regulations*).
- 2 The instrument amends *Migration (LIN 19/051: Specification of Occupations and Assessing Authorities) Instrument 2019* (F2019C00855) (LIN 19/051) that is made under various provisions of the *Migration Regulations* (see section 3 of LIN 19/051). Under subsection 33(3) of the *Acts Interpretation Act 1901*, the instrument-making powers in those provisions of the *Migration Regulations* include a power to amend or repeal such instruments.
- 3 The instrument commences on the day after it is registered on the Federal Register of Legislation, and is a legislative instrument for the *Legislation Act 2003* (the *Legislation Act*).

Purpose

- 4 When a person applies for certain types of visas that permit the visa holder to work in Australia, commonly known as skilled migration visas, one of the criteria they must meet in their application is that they have been assessed by a ‘relevant assessing authority’ as having suitable skills for a ‘skilled occupation’. A ‘relevant assessing authority’ is a person or body specified by the Minister in a legislative instrument under regulation 2.26B of the *Migration Regulations*, and a ‘skilled occupation’ is specified in the same manner under regulation 1.15I.
- 5 This requirement, amongst others, apply to the following types of visas:
 - Subclass 189 (Skilled—Independent) visas (Subclass 189 visas) (see paragraph 189.222(1)(a) of Schedule 2 to the *Migration Regulations*);
 - Subclass 190 (Skilled—Nominated) visas (Subclass 190 visas) (see paragraph 190.212(1)(a) of Schedule 2 to the *Migration Regulations*);
 - Subclass 485 (Temporary Graduate) visas (Subclass 485 visas) (see subclause 485.224(1) of Schedule 2 to the *Migration Regulations*);
 - Subclass 491 (Skilled Work Regional (Provisional)) visas (Subclass 491 visas) (see paragraph 491.214(1)(a) of Schedule 2 to the *Migration Regulations*).

- 6 LIN 19/051 operates to specify, for the purposes of various provisions of the Migration Regulations, the assessing authorities for occupations specified in the Medium and Long-term Strategic Skills List (the *MLTSSL*), the Short-term Skilled Occupation List (the *STSOL*) and the Regional Occupation List (the *ROL*).
- 7 The instrument amends LIN 19/051 to update the relevant assessing authorities for skilled occupations on the MLTSSL, the STSOL and the ROL relevant to applications for subclass 189, 190, 491 and 485 visas. The amendments are required to reflect name and business changes to assessing authorities, so that skills assessments being issued by the same companies under a different name are able to be accurately reflected in the instrument for the subclass 189, 190, 491 and 485 visas. The detailed changes are discussed below.
- 8 It has been consistent practice for the specific detail of visa criteria and conditions to be included in delegated legislation. This facilitates the operation of a dynamic and responsive immigration program. Amending the specification of assessing authorities for subclass 189, 190, 485 and 491 visas to reflect business name changes and other minor administrative matters would not be an appropriate use of the parliament's time. Amending primary legislation would also likely cause a time delay in which subclass 189, 190, 485 and 491 visas may not be available to certain occupations that have already been identified as suitable for skilled migration. For these reasons, it is appropriate that the matters contained in this instrument and LIN 19/051 are specified in delegated legislation.

Consultation

- 9 The Department of Education, Skills and Employment, the Skilled and Migration Program Management, Skills Innovation and Policy, Student and Graduate Visa, and Tourism and International Education Policy within the Department of Home Affairs were consulted on, and agree to, the amendments being made to LIN 19/051 by the instrument. No public consultation was undertaken as the instrument substantially replicates what is currently in force and the amendments are considered minor and machinery in nature.
- 10 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a minor nature and no regulatory impact statement was required. The OBPR reference number is 43403.

Details of the instrument

- 11 Section 1 sets out the name of the instrument.
- 12 Section 2 provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.
- 13 Section 3 sets out that the instrument is made under subregulation 2.26B(1) of the Migration Regulations.
- 14 Section 4 provides that LIN 19/051 is amended as set out in Schedule 1 to the instrument. Details on the amendments in Schedule 1 are set out in **Attachment A**.

Parliamentary scrutiny etc.

- 15 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under subregulation 2.26B(1) of the Migration Regulations, which is exempt from disallowance under paragraph (b) of item 20 in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 16 The instrument was made by Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, under subregulation 2.26B(1) of the Migration Regulations. Under subregulation 2.26B(1A), the Minister must not specify a person or body as a relevant assessing authority unless the person or body has been approved as the relevant assessing authority for the relevant country and skilled occupation under subregulation 2.26B(1B)—which provides that the ‘Skills Assessment Minister’ (or that Minister’s delegate) may approve a person or body as the relevant assessing authority for a skilled occupation and one or more countries.
- 17 Prior to making this instrument, the ‘Skills Assessment Minister’ (currently the Minister for Employment, Workforce, Skills, Small and Family Business) approved the Institute of Managers and Leaders Limited and the Australian Institute of Medical and Clinical Scientists, the new assessing authorities inserted by the instrument, under subregulation 2.26B(1B) for the occupations and countries for which those assessing authorities are specified.

Details of Schedule 1 to the *Migration (Specification of Occupations and Assessing Authorities) Amendment Instrument (LIN 22/053) 2022*

Subsection 7(7) of LIN 19/051 provides that, for the occupations listed in the MLTSSL (as outlined in the table in subsection 8(1)), the STSOL (section 9) and the ROL (subsection 10(1)), the assessing authority listed in column 3 of those Lists is the specified assessing authority for the purpose of the corresponding occupation listed in column 1.

Item 1 Amendments to section 8

Item 1 amends the MLTSSL in subsection 8(1) of LIN 19/051 to reflect that the Australian Institute of Management (AIM) has changed its name to be the Institute of Managers and Leaders Limited (IML), and that IML is one of the assessing authorities for the occupation of engineering manager (see item 2 of the table).

Items 2–5 Amendments to section 9

Item 3 amends the STSOL in section 9(1) of LIN 19/051 to reflect that the Australian Institute of Management (AIM) has changed its name to be the Institute of Managers and Leaders Limited (IML), and that IML continues to be the assessing authority for the occupations of sales and marketing manager (item 6), advertising manager (item 7), human resource manager (item 10), and supply and distribution manager (item 16).

Item 5 sets out the assessing authority for the occupation of information and organisation professionals (nec) (item 66) other than a data scientist is Vocational Education and Training Assessment Services (VETASSESS), and the assessing authority for the occupation of information and organisation professionals (nec) (item 66) that is a data scientist is ACS. In effect, item 5 newly provides that the relevant assessing authority for a data scientist is ACS (previously it was VETASSESS). This change has been precipitated as the occupation of data scientist is more computer based and focussed on ‘data’, which requires an assessing authority with computer and data specialities to assess the occupation to the highest of skill levels (skill level 1 for this ANZSCO). VETASSESS provides assessments for the other occupations, which are not computer or data focussed but rather are more ‘administrative’, under the same ANZSCO code 224999 information and organisation professionals (nec).

Items 2 and 4 are technical amendments that are consequential to the insertion of new subsection 9(2) of LIN 19/051 by item 5.

Item 6 Amendments to section 10

Item 6 amends the ROL in subsection 10(1) of LIN 19/051 to reflect that the Australian Institute of Management (AIM) has changed its name to be the Institute of Managers and Leaders Limited (IML), and that IML continues to be the assessing authority for the occupations of public relations manager (item 18) and procurement manager (item 21).

Items 7–9 Amendments to section 11

Section 11 of LIN 19/051 contains abbreviated names of the assessing authorities listed in sections 8, 9, 10 and 10A. Items 7–9 amend this table to accompany the amendments to sections 8, 9 and 10 of LIN 19/051 made by items 1–6.

Item 7 repeals table item 7, as AIM (previously mentioned in table item 7) has changed name to be IML. IML is inserted at table item 27A by item 9.

Item 8 omits the Australian Institute of Medical Scientists from table item 8, and replaces it with that authority's new name, the Australian Institute of Medical and Clinical Scientists. This authority continues to have the abbreviation, AIMS, and remains the assessing authority for the occupations of medical laboratory scientist (item 68 of the MLTSS list in subsection 8(1) of LIN 19/051), medical laboratory technician (item 133 of the STSO list in section 9 of LIN 19/051) and pathology collector (item 54 of the RO list in subsection 10(1) of LIN 19/051).

Item 9 inserts reference to IML at new table item 27. IML stands for Institute of Managers and Leaders Limited.

Item 10 New section 15

The amendments add a new section 15 at the end of LIN 19/051 to explain how the amendments made by the instrument would apply to assessments made by the assessing authorities.

New section 15 provides that the amendments made by this instrument will apply to an application for a subclass 189, 190, 485 or 491 visa if the application is made on or after the day the amendment instrument commences, whether the assessment for the purpose of subregulation 2.26B(1) of the Migration Regulations commences before, on or after that day. This will include assessments made but not finalised when this amendment instrument commenced. Assessments conducted by a former assessing authority will only be accepted as an assessment from a specified assessing authority for a period of up to 3 years after it is made, or until the assessment expires, whichever comes first.

This means that a skills assessment from IML can be used, even if that assessment commenced (whether or not it was completed) before the commencement of the instrument, to make a valid application for a subclass 189, 190, 485 or 491 visa in the following occupations:

- engineering manager;
- sales and marketing manager;
- advertising manager;
- human resource manager;
- supply and distribution manager;
- public relations manager;
- procurement manager.

Similarly, a skills assessment from ACS that commenced before the commencement of the instrument can be used to make a valid subclass 189, 190, 485 or 491 visa application for the occupation of information and organisation professionals (nec) that is a data scientist.

The table does not refer to data scientists as the instrument does not currently deal with subsets of the specified occupation of information and organisation professionals (nec).

New section 15 also allows for skills assessments that were commenced (whether or not they were finalised) by the Vocational Education and Training Assessment Services, the Australian Institute of Management and the Australian Institute of Medical Scientists before the commencement of the instrument to be used to make a valid visa application for certain occupations.

For the purposes of subregulation 2.26B(1) of the Migration Regulations, an assessing authority listed in column 2 of an item of the following table is also specified as an assessing authority for the occupation listed in column 1 of the item in relation to an application covered by subsection (1) if the assessment for the purposes of that paragraph occurred before the day the amending instrument commences.

Assessing authorities		
Item	Column 1	Column 2
	Occupation	Assessing authority
1	engineering manager	Australian Institute of Management
2	medical laboratory scientist	Australian Institute of Medical Scientists
3	sales and marketing manager	Australian Institute of Management
4	advertising manager	Australian Institute of Management
5	human resource manager	Australian Institute of Management
6	supply and distribution manager	Australian Institute of Management
7	information and organisation professionals (nec)	Vocational Education and Training Assessment Services
8	medical laboratory technician	Australian Institute of Medical Scientists
9	public relations manager	Australian Institute of Management
10	procurement manager	Australian Institute of Management
11	pathology collector	Australian Institute of Medical Scientists

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