

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Specification under clause 485.231 - Qualifications) Instrument (LIN 23/023) 2023

- 1 The instrument, Departmental reference LIN 23/023, is made under subclause 485.231(1) of Schedule 2 to the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument repeals *Migration Regulations 1994 – Qualifications – IMMI 13/013* (F2013L00528) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*. That subsection provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 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* (Legislation Act).

Purpose

- 4 Subclause 485.231(1) of Schedule 2 to the Migration Regulations provides that applicants seeking to satisfy the primary criteria for the grant of a Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream must hold a qualification or qualifications of a kind specified by the Minister in an instrument in writing.
- 5 The purpose of the instrument is to specify that applicants must hold one or more of the following qualifications that are a result of study undertaken at the Australian Qualification Framework level 7 or higher:
 - bachelor degree;
 - bachelor (honours) degree;
 - masters by coursework degree;
 - masters by research degree;
 - masters (extended) degree;
 - doctoral degree.
- 6 The instrument enhances the quality, integrity and competitiveness of Australia's international education sector by providing for post-study work arrangements for applicants conferred or awarded a specified degree.

- 7 All applicants must meet the Australian study requirement in the six months immediately prior to making their visa application (see paragraph 485.231(3)(a) of Schedule 2 to the Migration Regulations) and have obtained their qualification at an eligible educational institution (see subclause 485.231(2) of Schedule 2 to the Migration Regulations).
- 8 The instrument maintains the arrangements previously in place under IMMI 13/013, which is due to be repealed by sunseting on 1 April 2023.

Consultation

- 9 Consultation is unnecessary as the instrument is of a machinery nature and does not alter existing arrangements.
- 10 The Office of Impact Analysis (OIA) was consulted and considered that the instrument dealt with matters of a minor nature and no regulatory impact statement was required.
 - The OIA reference number is OBPR23-04317

Details of the instrument

- 11 Section 1 of the instrument sets out its name.
- 12 Section 2 of the instrument provides that the instrument will commence the day after it is registered on the Federal Register of Legislation.
- 13 Section 3 of the instrument sets out definitions, and links the definition of ‘Australian Qualification Framework’ to the definition in the *Higher Education Support Act 2003*.
- 14 Section 4 of the instrument provides that the previously mentioned qualifications (see paragraph 5 above) are specified for the purpose of subclause 485.231(1) of Schedule 2 to the Migration Regulations.
- 15 Section 5 repeals the previous instrument, IMMI 13/013.
- 16 Section 6 is a savings provision which provides that anything done under IMMI 13/013 continues to be in effect as if it had been done under this instrument.

Parliamentary scrutiny etc.

- 17 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because a legislative instrument made under Schedule 2 of the Migration Regulations is prescribed by section 10, item 20(b) of the *Legislation (Exemptions and Other Matters) Regulation 2015* as an instrument that is not subject to disallowance.
- 18 As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
- 19 The instrument was made by the Minister for Immigration, Citizenship and Multicultural Affairs, in accordance with subclause 485.231(1) of Schedule 2 to the Migration Regulations.

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