

## EXPLANATORY STATEMENT

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

*Migration Regulations 1994*

### ***Migration (Removal of health workforce certificate requirements) Amendment Instrument (LIN 23/067) 2023 (No. 2)***

- 1 The instrument, departmental reference LIN 23/067, is made under the following provisions:
  - subregulation 2.72(9) of the *Migration Regulations 1994* (the Regulations); and
  - subregulation 2.72C(11) of the Regulations.
- 2 The instrument amends the following:
  - (a) *Migration (LIN 19/048: Specification of Occupations – Subclass 482 Visa) Instrument 2019* (LIN 19/048); and
  - (b) *Migration (LIN 19/219: Occupations for Subclass 494 Visas) Instrument 2019* (LIN 19/219).
- 3 The above instruments are amended in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). 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.
- 4 The instrument commences on 16 September 2023, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

- 5 Regulation 2.72 of the Regulations sets out the requirements that must be met for the approval of a nomination of a proposed occupation in relation to an applicant for or holder of a Subclass 482 (Temporary Skill Shortage) visa (Subclass 482 visa), and regulation 2.72C of the Regulations sets out requirements for a nomination in relation to an applicant for or holder of a Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa (Subclass 494 visa).
- 6 One of the requirements is that the applicant must be nominated for a proposed occupation specified in a legislative instrument (for an application for a Subclass 482 visa in the Short-term or Medium-term streams or a Subclass 494 visa in the Employer Sponsored stream) or a work agreement (for an application for a Subclass 482 or Subclass 494 visa in the Labour Agreement stream). The Minister may further specify any matters for the purposes of determining whether the occupation applies to an identified person under subregulation 2.72(9) of the Regulations for a Subclass 482 visa and subregulation 2.72C(11) of the Regulations for a Subclass 494 visa.
- 7 Such matters include the circumstances in which the occupation is undertaken and the circumstances in which the person is to be employed in the position (see subparagraphs 2.72(9)(d)(v) and (vi), and subparagraphs 2.72C(11)(c)(v) and (vi)).

- 8 Under the powers mentioned above, the Minister specified in LIN 19/048 and LIN 19/219 a requirement, amongst others, that a health workforce certificate (HWC) or a health workforce exemption certificate (HVEC) from a health workforce certifier be provided when an employer nominates a person for a position in one of the following occupations: general practitioner (ANZSCO code: 253111), resident medical officer (ANZSCO code: 253112), and medical practitioner (nec) (ANZSCO code: 253999) (medical occupations).
- 9 The HWC and HVEC requirement formed a measure introduced as part of a joint program between the Department of Health and the Department of Home Affairs. The purpose of the program was to manage the growth of overseas trained doctors entering primary care in well-serviced major capital cities and metropolitan areas. Given widespread shortages of doctors in Australia, the measure is no longer fit for purpose. The Minister for Health and Aged Care and Minister for Immigration, Citizenship and Multicultural Affairs have agreed to end the program, and as such the HWC and HVEC requirement is no longer required.
- 10 The purpose of this instrument is to amend LIN 19/048 and LIN 19/219 to remove the requirement for employers to provide a HWC or a HVEC for the abovementioned medical occupations. The amendments remove all definitions and references to HWCs, HVECs and health workforce certifiers.
- 11 The amendments made by this instrument enable employers to nominate a proposed occupation in relation to a person with one of the abovementioned medical occupations who is the holder of or who has applied for a Subclass 482 visa or Subclass 494 visa without being required to provide a HWC or HVEC.
- 12 These changes remove the administrative burden for health workforce certifiers to issue certificates, and benefit employers and intending migrants by streamlining the visa assessment process. As a result, it is expected to attract more overseas doctors to work in Australia and increase community access to doctors.

### ***Consultation***

- 13 Consultation was undertaken with the Department of Health and Aged Care and the Department of the Prime Minister and Cabinet, each of which agreed to support the removal of requirements for the HWC and HVEC.
- 14 The Office of Impact Analysis (OIA) was also consulted and considered that the measures in the instrument are unlikely to have more than a minor or machinery regulatory impact and therefore an Impact Analysis is not required.

- The OIA reference number is OIA23-05086.

### ***Details of the instrument***

- 15 Section 1 sets out the name of the instrument.
- 16 Section 2 provides that the instrument commences on 16 September 2023.
- 17 Section 3 provides that Schedule 1 to the instrument amends LIN 19/048 and LIN 19/219.

- 18 Item 1 of Schedule 1 to the instrument omits the definition of *health workforce certificate* from section 4 of LIN 19/048.
- 19 Item 2 of Schedule 1 to the instrument omits the definition of *health workforce certifier* from section 4 of LIN 19/048.
- 20 Item 3 of Schedule 1 to the instrument omits the definition of *health workforce exemption certificate* from section 4 of LIN 19/048.
- 21 Item 4 of Schedule 1 to the instrument omits ‘24’ in column 3 of item 105 of subsection 6(3) of LIN 19/048. This removes the applicable circumstances where the occupation of a resident medical officer must have a HWC or HWEC issued for the position by an assessing authority.
- 22 Item 5 of Schedule 1 to the instrument omits ‘24’ in column 3 of items 99 and 130 of subsection 7(3) of LIN 19/048. This removes the applicable circumstances where the occupation of a general practitioner and medical practitioners (nec) must have a workforce certificate issued for the position by an assessing authority.
- 23 Item 6 of Schedule 1 to the instrument omits item 24 of subsection 9(1) of LIN 19/048. This removes the applicable circumstance for the occupations of resident medical officer, general practitioner and medical practitioners (nec) to provide a HWC.
- 24 Item 7 of Schedule 1 to the instrument omits subsections 9(2) and (3) of LIN 19/048. This removes the specified requirements for a HWEC and a HWC.
- 25 Item 8 of Schedule 1 to the instrument inserts new section 13 after section 12 of LIN 19/048, which provides for the nomination to which the Schedule applies. Section 12 of LIN 19/048 provides for how the amendment instrument introducing the HWC measures was to apply to nomination applications. The effect of section 13 is that when the instrument commences, despite section 12, any nomination applications that have been made, but are not yet finally determined, will not be required to provide a HWC or a HWEC.
- 26 Item 9 of Schedule 1 to the instrument omits the definition of *health workforce certificate* from section 4 of LIN 19/219.
- 27 Item 10 of Schedule 1 to the instrument omits the definition of *health workforce certifier* from section 4 of LIN 19/219.
- 28 Item 11 of Schedule 1 to the instrument omits the definition of *health workforce exemption certificate* from section 4 of LIN 19/219.
- 29 Item 12 of Schedule 1 to the instrument omits the subheading *Exception – requirement for health workforce certificate etc.* from subsection 5(2) of LIN 19/219.
- 30 Item 13 of Schedule 1 to the instrument omits subsections 5(2), (3) and (4) of LIN 19/219. This removes the applicable circumstance for the occupations of general practitioner, resident medical officer, and medical practitioners (nec), and removes the specified requirements for a HWEC and a HWC.

- 31 Item 14 of Schedule 1 to the instrument inserts new section 9 after section 8 of LIN 19/219, which provides for the nomination to which the Schedule applies. Section 8 of LIN 19/219 provides for how the amendment instrument introducing the HWC measures was to apply to nomination applications. The effect of section 9 is that when the instrument commences, despite section 8, any nomination applications that have been made, but are not yet finally determined, will not be required to provide a HWC or a HVEC.

*Parliamentary scrutiny etc.*

- 32 The instrument is subject to disallowance under section 42 of the Legislation Act. A Statement of Compatibility with Human Rights has been prepared in relation to the instrument, and provides that the instrument does not engage any of the applicable human rights or freedoms. The Statement is included at **Attachment A** to this explanatory statement.
- 33 The instrument was made by the Minister, in accordance with subregulations 2.72(9) and 2.72C(11) of the Regulations.

## **Statement of Compatibility with Human Rights**

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

### ***Migration (Removal of health workforce certificate requirements) Amendment Instrument (LIN 23/067) 2023 (No. 2)***

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 Disallowable Legislative Instrument**

The *Migration Regulations 1994* set out requirements for the grant of a Subclass 482 (Temporary Skill Shortage) visa and the Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa. For the Short-term or Medium-term streams of the Subclass 482 visa, and for the Employer Sponsored stream of the Subclass 494 visa, the applicant must be employed to work in the occupation nominated by the nomination identified in the application. In deciding whether to approve the nomination, the Minister must be satisfied that the occupation is specified in a legislative instrument. The occupation lists are specified in the instruments *Migration (LIN 19/048: Specification of Occupations—Subclass 482 Visa) Instrument 2019* and *Migration (LIN 19/219: Occupations for Subclass 494 Visas) Instrument 2019*.

These instruments also include inapplicability conditions (‘caveats’) for certain occupations for the purpose of nominations. These caveats provide clarification of the requirements to be met for applications, and ensure the integrity of this visa program. Relevantly, these instruments specified a caveat requiring that a health workforce certificate (HWC) from a health workforce certifier be provided when an employer nominates a person for a position in one of the following medical occupations: general practitioner, resident medical officer, and medical practitioner not elsewhere classified.

This instrument, the *Migration (Removal of health workforce certificate requirements) Amendment Instrument (LIN 23/067) 2023 (No. 2)*, amends LIN 19/048 and LIN 19/219 by removing the requirement for a HWC. This includes removing all references to the HWC requirement.

The HWC requirement was introduced as part of a joint program between the Department of Health and the Department of Home Affairs. The purpose of the joint program was to manage the growth of overseas-trained doctors entering primary care in well-serviced major capital cities and metropolitan areas and instead was aimed at directing overseas-trained doctors to areas of workforce shortage, especially rural and remote areas. Given widespread shortages of doctors in Australia, the measure is no longer fit for purpose and, therefore, the Minister for Health and Aged Care and the Minister for Immigration, Citizenship and Multicultural Affairs have agreed to end the joint program. As such, the HWC requirement is no longer needed.

As well as removing the administrative burden for health workforce certifiers to issue certificates going forward, the proposed amendments will also benefit employers and foreign medical professionals intending to work in Australia by streamlining the visa assessment process. As a result

it is expected to attract more overseas doctors to work in Australia and increase community access to doctors.

### **Human rights implications**

In removing the requirement for foreign medical professionals who wish to work in Australia on a Subclass 482 or Subclass 494 visa to provide a HWC, this measure may broadly promote the right to work in Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) of those medical professionals, and the right to health in Article 12 of the ICESCR of the Australian community, by having such professionals commence work in Australia as quickly as possible.

This measure may also positively engage Article 12(1) of the *International Covenant on Civil and Political Rights*, as it will allow medical professionals wishing to work in Australia on the relevant visas greater freedom to choose where they work and reside because their positions will no longer need to be in places of the greatest workforce shortages.

### **Conclusion**

This Disallowable Legislative Instrument is compatible with human rights.

**The Hon Andrew Giles MP**

**Minister for Immigration, Citizenship and Multicultural Affairs**

Unless otherwise indicated in this document, it is Copyright of the Commonwealth of Australia and the following applies:

Copyright Commonwealth of Australia.

This material does not purport to be the official or authorised version. Reproduction and use of this material is subject to a [Creative Commons Attribution-NonCommercial-ShareAlike 3.0 Australia License](#).

You should make independent inquiries and obtain appropriate advice before relying on the information in any important matter.

This document has been distributed by LexisNexis Australia. All queries regarding the content should be directed to the author of this document.