

EXPLANATORY STATEMENT

Issued by authority of the Minister for Home Affairs

Migration Regulations 1994

Migration (Specification of Degrees) Instrument (LIN 24/048) 2024

1. The instrument, departmental reference LIN 24/048 is made under subclause 485.231(1) of Schedule 2 to the *Migration Regulations 1994* (the Migration Regulations).
2. The instrument repeals the *Migration (Specification under clause 485.231—Qualifications) Instrument (LIN 23/023) 2023* (LIN 23/023) 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.
3. The instrument commences at the same time as the *Migration Amendment (Graduate Visas) Regulations 2024*. It is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

4. The *Migration Amendment (Graduate Visas) Regulations 2024* (the amending Regulations) commence on 1 July 2024, and amend the Migration Regulations.
5. The amended 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-Higher Education Work stream must hold a degree or degrees of a kind specified by the Minister in an instrument in writing for that provision of the Migration Regulations.

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

6. Prior to the amendment to subclause 485.231(1) of Schedule 2 to the Migration Regulations, applicants seeking to satisfy the primary criteria for the grant of a Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream were required to hold a qualification or qualifications of a kind specified by the Minister in an instrument in writing for that provision of the Migration Regulations.
7. The amending Regulations renames the Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream to the Post-Higher Education Work stream to give effect to the policy intent to provide a visa pathway for eligible early career professionals, subject to those individuals meeting the criterion for the Subclass 485 (Temporary Graduate) visa in the Post-Higher Education Work stream.
8. LIN 23/023 specified that applicants must hold one or more of the qualifications listed in subsection 4(a) to (f) of that instrument, that are a result of study undertaken at the Australian Qualification Framework level 7 or higher (for the purposes of the former version of subclause 485.231(1) of Schedule 2 to the Migration Regulations).
9. LIN 24/048 repeals and replaces LIN 23/023. In doing so, LIN 24/048 substantially replicates LIN 23/023, but replaces the word ‘qualifications’ with ‘degrees’, and updates the list of specified degrees for the purposes of the amended subclause 485.231(1) of Schedule 2 to the Migration Regulations to the following in section 5 of the instrument:

- (a) bachelor degree;
- (b) bachelor honours degree;
- (c) graduate certificate;
- (d) graduate diploma;
- (e) masters degree (research);
- (f) masters degree (coursework);
- (g) masters degree (extended);
- (h) doctoral degree (research)
- (i) doctoral degree (professional); or
- (j) higher doctoral degree.

10. The instrument continues to enhance the quality, integrity and competitiveness of Australia's international education sector by providing for post higher education work arrangements for Subclass 485 (Temporary Graduate) visa applicants in the Post-Higher Education Work stream who have been conferred or awarded a specified degree (as defined in clause 485.111 of Schedule 2 and regulation 2.26AC(6) of the Migration Regulations).

11. Subparagraph 485.231(3) of Schedule 2 to the Migration Regulations requires all eligible visa applicants' study for the degree or degrees to satisfy the 'Australian study requirement' (as defined in regulation 1.03 to the Migration Regulations), in the period of six months immediately before the day the application for a Subclass 485 (Temporary Graduate) visa in the Post-Higher Education Work stream is made. The relevant degree or degrees must have been conferred or awarded by an educational institution specified by the Minister in an instrument in writing for subclause 485.231(2) of Schedule 2 to the Migration Regulations.

Consultation

12. The Office of Impact Analysis (OIA) was consulted and considered that the instrument dealt with matters of a machinery nature and no regulatory impact statement was required. The OIA reference number is OIA23-05963.

13. No external consultation was undertaken for this instrument. This is because the instrument implements a previous decision (or decisions) of the Government in relation to the *Migration Amendment (Graduate Visas) Regulations 2024*, which commence on 1 July 2024, and amend the Migration Regulations. Additionally, LIN 24/048 expands the list through the addition of graduate certificate and graduate diploma to the list of specified degrees for the purposes of the amended subclause 485.231(1) of Schedule 2 to the Migration Regulations and clarifies the types of doctoral degrees, both of which are positive outcomes for stakeholders.

Details of the instrument

14. Section 1 sets out the name of the instrument.

15. Section 2 provides the instrument commences at the same time as the *Migration Amendment (Graduate Visas) Regulations 2024*. The amending Regulations commence on 1 July 2024.

16. Section 3 provides that the instrument is made under subclause 485.231(1) of Schedule 2 to the Migration Regulations.

17. Section 4 provides for definitions used in the instrument, including that *Australian Qualifications Framework* has the meaning provided in the *Higher Education Support Act 2003*.
18. Section 5 provides that for the purposes of subclause 485.231(1) of Schedule 2 to the Migration Regulations, each of the following degrees that are awarded as a result of study undertaken in a qualification at the Australian Qualifications Framework level 7 or higher, are specified:
 - bachelor degree;
 - bachelor honours degree;
 - graduate certificate;
 - graduate diploma;
 - masters degree (research);
 - masters degree (coursework);
 - masters degree (extended);
 - doctoral degree (research);
 - doctoral degree (professional); or
 - higher doctoral degree.
19. Section 6 provides that the *Migration (Specification under clause 485.231 – Qualifications) Instrument (LIN 23/023) 2023* (F2023L00335) is repealed.

Parliamentary scrutiny etc.

20. The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under Schedule 2 to the Migration Regulations as prescribed in item 20(b) of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulations 2015*. As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
21. The instrument was made by the Minister for Home Affairs in accordance with the Migration Regulations.

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