

## **EXPLANATORY STATEMENT**

Issued by the Assistant Minister for Citizenship and Multicultural Affairs

*Migration Regulations 1994*

*Migration (Specification of Occupations—Subclass 482 Visa) Instrument 2024*

Subregulation 2.72(9) of the *Migration Regulations 1994* (the Migration Regulations), as amended by the *Migration Amendment (2024 Measures No. 1) Regulations 2024* on 7 December 2024, provides that the Minister may, by legislative instrument, specify occupations for the purposes of the Subclass 482 (Skills in Demand) visa in the Core Skills stream.

The Government is introducing a new skilled visa, the Subclass 482 (Skills in Demand) visa, as part of its reform of Australia's skilled visa programs. This reform includes the creation of a new Core Skills Occupation List (the CSOL). The *Migration (Specification of Occupations—Subclass 482 Visa) Instrument 2024* (departmental reference LIN 24/089) specifies the CSOL for the purposes of the Core Skills stream of the Subclass 482 (Skills in Demand) visa, under the Migration Regulations as amended on 7 December 2024 by the *Migration Amendment (2024 Measures No. 1) Regulations 2024 (Amendment Regulations)*.

This instrument also repeals *Migration (LIN 19/048: Specification of Occupations—Subclass 482 Visa) Instrument 2019* (LIN 19/048), made under subregulation 2.72(9) of the Regulations. The repeal of LIN 19/048 is done in accordance with subsection 33(3) of the Acts Interpretation Act 1901 (Acts Interpretation Act). Subsection 33(3) of that Act provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

A Statement of Compatibility with Human Rights has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the instrument is compatible with human rights. A copy of the Statement is at [Attachment A](#).

The Office of Impact Analysis (OIA) has been consulted in relation to the Amendment Regulations generally, advising that no Impact Analysis is required. The OIA consultation reference number is OIA24-08631.

The Department of Home Affairs has consulted on the Migration Strategy with business, unions and other stakeholders throughout the Migration Review. Whole of Government consultation occurred, along with consultation involving peak body, state and territory, and industry representatives via the Ministerial Advisory Council on Skilled Migration (MACSM) and Senior Migration Officers Group (SMOG) groups.

LIN 24/089 commences on 7 December 2024.

Further details of the instrument are set out in [Attachment B](#).

LIN 24/089 is a legislative instrument for the purposes of the *Legislation Act 2003*.

**Statement of Compatibility with Human Rights**

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

***Migration (Specification of Occupations—Subclass 482 Visa) Instrument 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 Disallowable Legislative Instrument**

The *Migration Regulations 1994* (‘Migration Regulations’) are being amended to set out requirements for the grant of a Skills in Demand (subclass 482) visa (SID visa), which will replace the Temporary Skill Shortage (subclass 482) visa (TSS visa) on 7 December 2024.

The SID visa will have three streams comprising:

- Specialist Skills stream:
  - the occupation and its corresponding 6-digit code correspond to an occupation and its corresponding 6-digit code specified in Major Group 1, 2, 4, 5 or 6 in Australian and New Zealand Standard Classification of Occupations (ANZSCO); and
  - the occupation can be, but is not limited to occupations appearing on the Core Skills Occupation Lists (CSOL); and
  - where the occupation appears on the CSOL, it will be subject to applicable circumstances (caveats) that are detailed in this instrument as identified against the occupation appearing on the CSOL and its corresponding applicable circumstance; and
  - the occupation is paid at least the amount known as the ***specialist skills income threshold*** or higher (from 7 December 2024 to 30 June 2025 this means \$135,000). This income threshold will be indexed annually on 1 July 2025 and each year thereafter, under regulation 5.42A.
- Core Skills stream:
  - the occupation, and its ANZSCO code, is specified in the CSOL; and
  - the occupation will be subject to applicable circumstances (caveats) that are detailed in this instrument as identified against occupations appearing on the CSOL and their corresponding applicable circumstance; and
  - The occupation is paid at least the amount known as the ***core skills income threshold*** or higher (from 7 December 2024 to 30 June 2025 this means \$73,150).

This income threshold will be indexed annually on 1 July 2025 and each year thereafter, under regulation 5.42A.

- Labour Agreement stream:
  - the occupation will be for a SID visa; and
  - the occupation may or may not be on the CSOL;
  - the occupation may be an emerging occupation that does not have a corresponding ANZSCO; and
  - the occupation will be subject to applicable circumstances (caveats) that are detailed in this instrument as identified against occupations appearing on the CSOL and their corresponding applicable circumstance, unless negotiated otherwise under the labour agreement.

In the assessment of nominations under the Migration Regulations, a requirement of the SID visa, (under both the Specialist Skills and Core Skills streams) is that the applicant be nominated by their employer, in an occupation that appears on the ANZSCO code as relevant to the criteria for the stream applied for.

The ANZSCO code is used by the Department of Home Affairs to ensure that Specialist Skills and Core Skills stream SID visa applicants who wish to come to Australia as temporary skilled entrants are nominated in a skilled occupation for that purpose.

The CSOL is designed to be dynamic and respond to changing Australian labour market and economic conditions. Jobs and Skills Australia (JSA) was established following recommendations made in the Review of the Migration System in March 2023, chaired by Dr Martin Parkinson AC PSM. JSA is responsible for undertaking labour market analysis and conducting stakeholder engagement to provide advice on eligible occupations for skilled migration, including occupations for the subclass 482 visa.

The *Migration Amendment (2024 Measures No. 1) Regulations 2024* amended subregulation 2.72(9) of the Migration Regulations to provide that the Minister may, by legislative instrument, specify occupations for the purposes of the SID visa in the Core Skills stream, and repealed paragraph 2.72(9)(a) of the Migration Regulations. This removed the references to specifying whether an occupation is a short-term skilled occupation (STSO) on the STSO list (STSOL); or a medium and long-term strategic skills (MLTSS) occupation on the MLTSS list (MLTSSL); or a regional occupation (RO) on the RO list (ROL).

The *Migration (Specification of Occupations—Subclass 482 Visa) (LIN 24/089) Instrument 2024* (LIN 24/089) repeals the *Migration (LIN 19/048: Specification of Occupations—Subclass 482 Visa) Instrument 2019* (LIN 19/048) and specifies the CSOL, which provides eligible occupations and ANZSCO codes, for the SID visa Core Skills stream. The single list replaces the previous three occupations lists that applied under the TSS visa. This now delivers greater mobility by not limiting certain occupations to regional areas only, as listed on the ROL for example. It also provides for a pathway to permanent residence for all occupations, replacing the previous framework which only provided for a pathway for occupations on two out of three relevant occupation lists. This instrument will not apply in

relation to a nomination of a proposed occupation for a TSS visa made before its commencement.

### **Summary of key features of the CSOL and the instrument**

The CSOL comprises 456 occupations open to applicants under the Core Skills stream. While this is a net decrease of available occupations from a total of 509 occupations under the previous TSS visa, it is an increase of 189 occupations which now provide a direct pathway to permanent residence, and which are available regardless of the workplace location.

The 456 occupations on the CSOL with direct pathways to permanent residence has increased by 189 from a total of 267 occupations available under both the MLTSSL and ROL under the TSS visa. Prior to this update there were 242 occupations in the short term stream on the STSOL with no direct pathway to permanent skilled migration.

The CSOL provides access to 16 new or amended ANZSCO occupations resulting in a better match of skills and skill levels to current workplace occupations than previously available under the TSS visa occupation lists, which relied on an outdated ANZSCO list of occupations from 2013.

There are 234 occupations, which based on labour market analysis and comprehensive stakeholder engagement, JSA recommended should not be included on the CSOL. Of these, 125 were previously included on the TSS occupation lists. The removed occupations have a combination of poor migrant outcomes, salaries below the Core Skills income threshold, and poor future demand prospects.

The instrument also includes 14 inapplicability conditions ('caveats'), which is almost half the number of caveats previously applied (26) under the TSS visa for certain occupations. A range of caveats are specified in this instrument to provide clarification for applications and ensure the integrity of the SID visa program. These include, but are not limited to, caveats that limit the breadth of the occupations to certain industries, skills or tasks, or specify a minimum salary. Caveats are specified for the purposes of the application satisfying the criteria for the nomination and therefore ensuring that applicants are nominated for genuinely skilled positions.

The instrument makes the following amendments to caveat specifications:

- a new caveat has been introduced (caveat 14) which applies to occupations that are provided for only under an International Trade Obligation;
- a number of caveats that applied under LIN 19/048 have been removed, including where the raising of and indexation of income thresholds has overtaken their function and caveat 10 which restricted certain occupations to regional Australia – to enable free movement of visa holders. A total of 12 caveats have been removed or combined with similar caveats.

The caveats continue to apply to all streams under the SID visa as they applied to all streams of the TSS visa, and are not just limited to the Core Skills stream where they are specified.

## Human rights implications

This Disallowable Legislative Instrument engages the following rights:

- the right to work under Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), including as read with Article 2(2) of the ICESCR;
- the rights of equality and non-discrimination under Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR) and Article 2(2) ICESCR; and
- the right to liberty of movement and freedom to choose residence under Article 12(1) of the ICCPR.

### Non-discrimination and the right to work

Article 6(1) of the ICESCR provides:

*The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*

Article 26 of the ICCPR provides:

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee, to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

Article 2(2) of the ICESCR states:

*The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

The main effect of this Disallowable Legislative Instrument is:

- it provides for 456 occupations to be eligible for the Core Skills stream of the SID visa, all with a pathway to permanent residence, which is 189 more than were eligible under the TSS visa, and which are available regardless of the workplace location;
- an increase of 16 occupations for new or changed ANZSCO occupations;
- a reductions of 125 occupations that were previously included on the TSS occupation lists;
- the introduction of caveat 14;
- the removal/combination of 12 caveats;

- the application of caveats to all streams under the SID visa.

Specification of lists of occupations (and relevant caveats) for which foreign workers may be nominated for entry and stay in Australia in this Disallowable Legislative Instrument engage the above rights to non-discrimination, including, for those persons who are already in Australia, as they relate to the right to work.

In its General Comment 18, the UN Human Rights Committee (UNHRC) stated that:

*The Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the [ICCPR].*

Similarly, in its General Comment on Article 2 of the ICESCR, the UN Committee on Economic, Social and Cultural Rights (UNCESCR) has stated (at 13) that:

*Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.*

Neither the ICCPR nor the ICESCR give a right for non-citizens to enter Australia for the purposes of seeking residence or employment. The UNHRC, in its General Comment 15 on the position of aliens under the ICCPR, stated that:

*The [ICCPR] does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the [ICCPR] even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.*

*Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment. A State may also impose general conditions upon an alien who is in transit. However, once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the [ICCPR].*

As such, Australia is able to set requirements for the entry of non-citizens into Australia and conditions for their stay, and does so on the basis of reasonable and objective criteria. It is open to the Government to change visa settings for new applicants to meet its policy priorities for a well-managed migration program, consistently with its international obligations, that are intended to benefit the Australian community as a whole.

The aim of the SID program is to maximise the benefits of skilled entrants to the Australian economy. This includes channelling skilled migrants into the occupations that have been identified to be in the long-term strategic interest of the Australian economy, and restricting skilled migrants to occupations that are currently in shortage but for which there may not be a

long-term requirement. Australia sets the requirements for the entry and conditions of stay for skilled migrants on the basis of reasonable and objective criteria, formulated by JSA through labour market analysis and public consultation.

Further, Article 4 of ICESCR provides that the State may subject the rights enunciated in the ICESCR:

*...only to such limitations as are determined by law only insofar as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in democratic society.*

The authority of the Australian Government to grant visas of a particular duration, and the authority to place conditions and limitations on non-citizens in respect of those visas, including their work rights, is lawful as a matter of domestic law and has as its objectives ensuring the continued access of Australian citizens and permanent residents to paid employment and the continued integrity of Australia's migration program.

The CSOL is informed by JSA who undertake data analysis and stakeholder consultation. The CSOL in this Disallowable Legislative Instrument is intended to ensure that persons who are already in Australia permanently are given the opportunity to seek work before those seeking to enter Australia to work and live in Australia. Providing Australians citizens and permanent residents with the first priority for jobs ensures that Australians are provided the opportunity to improve their standard of living and promotes their right to work. Broadly speaking, access to such opportunities promotes social stability. As such, they are for the "purpose of promoting the general welfare in a democratic society" and are justified in accordance with Article 4 of ICESCR.

Removing 125 occupations that were previously available under the TSS visa does not prevent any current TSS visa holder from accessing work or impede their right to work for the duration of that visa because they will retain the current permission to work provided by the existing visa. A TSS visa holder who wishes to continue working in Australia in one of the 125 occupations upon the expiry of their visa may instead apply for any other visa with work rights for which they meet the requirements under the Migration Regulations. In addition, current visa applicants will not be impacted as the new CSOL will apply only to new nomination applications received after this instrument comes into effect.

It is reasonable and necessary that the Minister may amend the list of skilled occupations for the purposes of nominations and visa applications because it allows the Minister the flexibility and precision required to carefully tailor it to reflect Australia's labour market needs. The ability to tailor occupations lists to Australia's labour market needs helps to meet the legitimate objective of strengthening Australia's economy through ensuring the integrity of Australia's migration programme.

This Disallowable Legislative Instrument also provides an increase of 189 occupations that provide a direct pathway to permanent residence and which are available regardless of the workplace location. The amendments expand access to permanent residence for a cohort of temporary skilled workers already working in Australia, who otherwise would not have a pathway to permanent residence. The grant of a permanent visa will enable these individuals

to continue living and working in Australia and access the broader benefits of permanent residence. These measures promote the right to work under Article 6(1) of the ICESCR.

The Disallowable Legislative Instrument also specifies position caveats for certain occupations for applicants who apply for the SID visa. The application of caveats across all streams continues arrangements under the TSS visa and ensures applicants fill genuine positions. The introduction of caveat 14 ensures Australia meets its commitments under free trade agreements by ensuring applicants for that occupation are passport holders of countries where Australia has agreed to provide access through that bilateral agreement. By restricting this occupation to certain passport holders, and removing and combining other caveats, Australia is acting within its right to set requirements for the entry of non-citizens into Australia and conditions for their stay, and does so on the basis of reasonable and objective criteria.

### Liberty of movement and freedom to choose residence

This measure engages Article 12 (1) of the ICCPR, which states:

*Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*

The creation of a single CSOL to replace the previous three occupation lists under the TSS visa, which included the ROL, and the removal of caveat 10, removes any restriction on the basis of location of work for foreign workers in Australia. The creation of the single CSOL and removal of caveat 10 promotes liberty of movement and freedom to choose residence for foreign workers in Australia.

Any TSS visa holder who was granted a TSS visa to work in an occupation that is being removed by the commencement of this instrument, or is having a different caveat applied, is entitled to continue working in their present location for the duration of their TSS visa. Their freedom to remain in their current location, and their right to work, for the duration of that visa is not impacted. Changes to the occupation list will only affect the person if they choose to apply for a subsequent SID visa, or if the person wishes to change their occupation or employer. In addition, current visa applicants will not be impacted as the new list will apply only to new nomination applications received after it comes into effect on 7 December 2024.

### **Conclusion**

The Legislative Instrument is compatible with human rights because it promotes human rights and to the extent it may limit human rights, those limitations are reasonable, necessary and proportionate.

**The Hon Julian Hill MP**

**Assistant Minister for Citizenship and Multicultural Affairs**

**Details of the Migration (Specification of Occupations—Subclass 482 Visa) (LIN 24/089) Instrument 2024**

**Part 1 – Preliminary**

**Section 1 – Name of Instrument**

This section provides that the name of the instrument is *Migration (Specification of Occupations—Subclass 482 Visa) (LIN 24/089) Instrument 2024* (LIN 24/089).

**Section 2 – Commencement**

This section provides that the instrument commences on 7 December 2024.

**Section 3 – Authority**

This section provides that the instrument is made under subsection 2.72(9) of the *Migration Regulations 1994* (the Migration Regulations).

**Section 4 – Definitions**

This section provides definitions for certain expressions used in the instrument.

Of note, section 4 provides that, for the purposes of the definition of **ANZSCO** in regulation 1.03 of the Regulations, the term is specified to mean the Australian and New Zealand Standard Classification of Occupations published by the Australian Bureau of Statistics (ABS), as in force on 23 November 2022.

Regulation 1.03 of the Regulations provides that **ANZSCO** has the meaning specified by the Minister in an instrument in writing for this definition. In this instrument, the 2022 version of the ANZSCO is specified, where 23 November was the first full day on which this version was in force. The ABS released this version of the ANZSCO on 22 November 2022.

The ANZSCO is available for download, free of charge, from the ABS website at:

<https://www.abs.gov.au/statistics/classifications/anzsco-australian-and-new-zealand-standard-classification-occupations>

**Section 5 – Schedules**

Section 5 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.

## **Part 2 – Specification of occupations**

### **Section 6 – Core Skills Occupation List**

Section 6 specifies the Core Skills Occupation List (CSOL) for the purposes of subparagraph 2.72(8)(b)(i), subregulation 2.72(9) and paragraph 2.72(9)(d) of the Migration Regulations. Section 6 applies in relation to the Subclass 482 (Skills in Demand) visa in the Core Skills stream (not the Specialist Skills stream).

On 7 December 2024, the *Migration Amendment (2024 Measures No. 1) Regulations 2024* (the Amendment Regulations) amended subregulation 2.72(9) of the Migration Regulations to provide that the Minister may, by legislative instrument, specify occupations for the purposes of the Subclass 482 (Skills in Demand) visa in the Core Skills stream. The Amendment Regulations also repealed paragraph 2.72(9)(a) of the Migration Regulations, which removed the references to specifying whether an occupation is a short term skilled occupation or a medium and long term strategic skills occupation.

Subsection 6(1) specifies for subregulation 2.72(9) of the Migration Regulations that:

- an occupation listed in column 1 of an item of the Core Skills Occupation List (ie. the table under subsection 6(3)) is specified as an occupation; and
- the 6-digit ANZSCO code for the occupation is specified; and
- the occupation applies to a nominee if the tasks to be performed by the nominee correspond to the tasks set out in the ANZSCO code for that occupation.

Subsection 6(2) provides for the ‘applicable circumstances’ (caveats), which limit the circumstances in which an occupation applies to a nominee. In summary, if a circumstance referenced by number for an occupation in column 3 of the Core Skills Occupation List applies to a nominee, the occupation does not apply to the nominee.

Subsection 6(3) provides that the occupations and corresponding ANZSCO codes set out in the table under the subsection are the Core Skills Occupation List.

### **Section 7 – Applicable circumstances**

Section 7 specifies matters for the purpose of determining whether an occupation applies to a nominee for paragraph 2.72(9)(d) of the Migration Regulations.

Subsection 7(1) provides that the table under subsection 7(2) sets out the applicable circumstances for the Core Skills Occupation List in section 6. Where a circumstance referenced by a number in an item of the table under subsection 7(2) corresponds to a number of an item in column 3 of the Core Skills Occupation List, the occupation does not apply to the nominee.

### **Section 8 – When an occupation does not apply to Specialist Skills stream nominee**

Section 8 provides for circumstances in which an occupation does not apply in relation to a Specialist Skills stream nominee. Specifically, if a circumstance in an item in the Applicable

Circumstances List (the table under subsection 7(2)) applies to the position in which a nominee in the Specialist Skills stream is intended to work, then an occupation covered by subparagraph 2.72(8)(a)(i) of the Regulations does not apply to the nominee. That subparagraph of the Regulations covers occupations (and their corresponding 6-digit codes) that correspond to an occupation and its 6-digit code that is specified in Major Group 1, 2, 4, 5 or 6 in the ANZSCO.

### **Part 3 – Application and savings provisions**

#### **Section 9 – Application of this instrument**

Section 9 provides that this instrument applies in relation to a nomination of a proposed occupation where the nomination is made on or after the day the instrument commences.

#### **Section 10 – Continued application of LIN 19/048**

Section 10 provides that despite the repeal of *Migration (LIN 19/048: Specification of Occupations—Subclass 482 Visa) Instrument 2019 (LIN 19/048)* by this instrument, LIN 19/048, as in force immediately before the day this instrument commences, continues to apply in relation to a nomination of a proposed occupation made before that day.

In particular, LIN 19/048 continues to apply in relation to a nomination of a proposed occupation for a Subclass 482 (Temporary Skills Shortage) visa made before the commencement of this instrument.

### **Schedule 1 – Repeals**

#### **Item [1] – The whole of the instrument**

This item repeals *Migration (LIN 19/048: Specification of Occupations—Subclass 482 Visa) Instrument 2019*. Section 10 of the instrument provides for the continuing application of the instrument, despite its repeal, in certain circumstances.

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