

## EXPLANATORY STATEMENT

Issued by authority of the Minister for Home Affairs

*Migration Act 1958*

### ***Migration (Granting of Skilled—Recognised Graduate (Subclass 476) Visas in Financial Year 2023–2024) (LIN 23/089) Determination 2023***

- 1 The instrument, Departmental reference LIN 23/089, is made under paragraph 85(1)(a) of the *Migration Act 1958* (the Migration Act) for the purposes of section 39 of the Migration Act and paragraph 476.226(a) of Schedule 2 to the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument commences on the day after the instrument is registered, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

- 3 Section 85 of the Migration Act provides that the Minister may, by legislative instrument, determine the maximum number of the visas of a specified class or specified classes that may be granted in a specified financial year.
- 4 Subsection 39(1) of the Migration Act provides that a prescribed criterion for visas of a class, other than protection visas, may be the criterion that the grant of the visa would not cause the number of visas of that class granted in a particular financial year to exceed whatever number is fixed by the Minister, by legislative instrument, as the maximum number of such visas that may be granted in that year (however the criterion is expressed). Subsection 39(2) provides that when a criterion allowed by subsection (1) prevents the grant in a financial year of any more visas of a particular class, any outstanding applications for the grant in that year of visas of that class are taken not to have been made.
- 5 Subclass 476 (Skilled – Recognised Graduate) of Schedule 2 to the Migration Regulations sets out the criteria to be satisfied by an applicant for a Subclass 476 visa. Paragraph 476.226(a) requires that the grant of the visa would not result in either the number of Subclass 476 visas granted in a financial year exceeding the maximum number of Subclass 476 visas, as determined by the Minister in an instrument in writing for the paragraph that may be granted in the financial year.
- 6 The purpose of this instrument is to determine that the maximum number of Subclass 476 visas that may be granted in the 2023/2024 financial year is 3,735. The effect of the instrument is that when 3,735 Subclass 476 visas have been granted in this financial year, by operation of section 39 of the Migration Act, all remaining applications that are still awaiting decision will be taken not to have been made. As the application is taken not to have been made, any visa application charge that was paid in respect of the application will be returned to the applicant.
- 7 The Subclass 476 (Skilled – Recognised Graduate) visa is granted to certain primary applicants who have completed a course at a specified educational institution within the previous 24 months at an institution specified by the Minister in a legislative instrument, for the award of a degree or higher qualification in a discipline specified in an instrument. The visa was intended to specifically support the mining and minerals sector in attracting highly sought after engineering graduates, however

internationally trained engineers have alternative and preferred pathways to work in Australia. The program is now under review as part of the broader Migration Reform and capping grants of the visa in this financial year is a preliminary measure to winding down and future repealing of the visa.

### ***Consultation***

- 8 The Department of Home Affairs (the Department) has undertaken consultation with industry through the Department's Business, Industry and Regional Outreach and Engagement (BIRO) network. This accords with section 17 of the Legislation Act.
- 9 The Office of Impact Analysis (OIA) was also consulted and considered that the instrument dealt with matters of a minor or machinery nature and no regulatory impact statement was required. The OIA reference number is OIA23-06151.

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

- 10 Section 1 sets out the name of the instrument.
- 11 Section 2 provides for the commencement of the instrument on the day after the instrument is registered.
- 12 Section 3 sets out the authority under which the instrument is made
- 13 Section 4 sets out the definitions of terms used in this instrument.
  - *Act* means the *Migration Act 1958*.
  - *Regulations* means the *Migration Regulations 1994*.
- 14 Section 5 sets out the maximum number of Subclass 476 (Skilled - Recognised Graduate) visas that may be granted in the 2023-2024 financial year for the purposes of section 39 of the Migration Act and paragraph 476.226(a) of the Regulations. Section 5 determines that the maximum number of Subclass 476 visas that may be granted is 3,735.
- 15 Section 6 provides for the self-repeal of this instrument on 1 July 2024, which is the start of the 2024-2025 financial year. As the purpose of this instrument is to determine the maximum number of Subclass 476 visas that may be granted in the 2023-2024 financial year, this instrument will no longer be applicable on 1 July 2024.

### ***Parliamentary scrutiny etc.***

- 16 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because an instrument made under Part 2 of the Migration Act is prescribed as exempt under paragraph 20(a) in the table under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 17 As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
- 18 The instrument was made by the Minister for Home Affairs, in accordance with paragraph 85(1)(a) of the Migration Act.

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