

## EXPLANATORY STATEMENT

Issued by authority of the Minister for Home Affairs

*Migration Regulations 1994*

### ***Migration (Arrangements for Special Category Visa applications) Instrument (LIN 22/020) 2022***

- 1 The instrument, Departmental reference LIN 22/020, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Regulations).
- 2 The instrument repeals *Migration (LIN 19/058: Arrangements for special category visa applications) Instrument 2019* (LIN 19/058) (F2019L00339) 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. This means that subregulation 2.07(5) and item 1219 of Schedule 1 to the Regulations also include a power to amend or repeal an instrument made under that provision.
- 3 The instrument commences the day after registration on 27 February 2022, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

- 4 The purpose of the instrument is to update the approved form, place and manner (the arrangements) for making an application for a Special Category (Temporary) (Subclass 444) (Class TY) visa (SCV).
- 5 Item 1219 of Schedule 1 to the Regulations prescribes the requirements that an applicant for an SCV must meet to make a valid visa application. These requirements include that the application must be made in the approved form, place and manner for an SCV specified in a legislative instrument made under subregulation 2.07(5) of the Regulations (see also subitem 1219(1) and paragraph 1219(3)(a)).
- 6 The instrument removes references to ‘Electronic Form 15’ (the eIPC) and replaces it with an updated approved form, ‘Form 444 (Web)’. The eIPC included questions relating to customs functions, which have been omitted from Form 444 (Web). Form 444 (Web) contains, in substance, the same migration questions as the eIPC.
- 7 The instrument removes arrangements for making an application ‘in immigration clearance outside Australia travelling to Australia on a pre-cleared flight’. In practice applications are not made in this circumstance.
- 8 The instrument also updates the drafting of LIN 19/058 to align with current standards and remove redundant provisions.

#### ***Consultation***

- 9 The Office of Best Practice Regulation (OBPR) was consulted and considered that the instrument dealt with matters of a minor nature and no regulatory impact statement was required. The OBPR reference number is 44640.

10 No further specific consultation was undertaken for the instrument. This is because the changes are minor and machinery in nature and do not substantially alter the existing arrangements.

***Details of the instrument***

11 Section 1 sets out the name of the instrument.

12 Section 2 provides for the commencement of the instrument on 27 February 2022.

13 Section 3 provides that *Migration (LIN 19/058: Arrangements for special category visa applications) Instrument 2019* is repealed by the instrument.

14 Section 4 specifies the arrangements for making an application for an SCV for subitem 1219(1) and paragraph 1219(3)(a) of Schedule 1 to the Regulations (subsection (1)).

15 Subsection 4(2) specifies how an application must be made if an applicant is in Australia in immigration clearance. An application may be made in accordance with the arrangement mentioned in paragraph (a) or (b).

- Paragraph 4(2)(a) provides an application may be made by presenting Form 15 to a clearance officer. This involves the applicant presenting their valid New Zealand passport and a completed Form 15 to a Primary Line Officer.
- Paragraph 4(2)(b) provides an application may be made by using an authorised system. At the time of making the instrument, the authorised system for this purpose is SmartGate. This involves the applicant presenting their valid New Zealand passport to the SmartGate kiosk and answering questions on the kiosk screen.

16 Subsection 4(3) provides the requirements for making an application if an applicant is in Australia after having been immigration cleared; or is in Australia but not in immigration clearance are specified in subsection 4(4).

17 Paragraph 4(4)(a) provides an application must be made by submitting Form 444 (Web) via the online portal available at: <https://immi.homeaffairs.gov.au/help-support/departmental-forms/online-forms/special-category-visa>.

18 Paragraph 4(4)(b) provides if an application cannot be made in the manner specified in paragraph (a), an application may be made by posting Form 15 with sufficient prepaid postage to:

Special Category Visa Processing Unit  
Department of Home Affairs  
GPO Box 9984  
SYDNEY NSW 2001.

Paragraph 4(4)(a) does not prevent a person from making an application by posting Form 15. That paragraph aims to encourage making an application using Form 444 (Web), which allows for faster processing.

***Parliamentary scrutiny etc.***

- 19 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under subregulation 2.07(5) and item 1219 of Schedule 1 to the Regulations, which is exempt from disallowance under paragraph (b) of item 20 in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 20 The instrument is appropriate to be exempt from disallowance as it concerns matters of an administrative nature. Updating legislative instruments that specify administrative matters allows for consistent internal management of the migration policy framework.
- 21 The instrument is made by a delegate of the Minister in accordance with subregulation 2.07(5) of, and item 1219 of Schedule 1 to, the Regulations.