

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Priority consideration for certain Visitor (Class FA) visa applications) Instrument (LIN 21/074) 2021

- 1 The instrument, Departmental reference LIN 21/074, is made under subregulation 2.12M(7) of the *Migration Regulations 1994* (the Regulations).
- 2 The instrument repeals *Migration (IMMI 17/052: Priority Consideration of Certain Visa Applications) Instrument 2017* (F2017L00836) (IMMI 17/052) 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 2.12M(7) of the Regulations also includes a power to amend or repeal an instrument made under that provision.
- 3 The instrument commences on the day after registration, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The instrument specifies requirements to make a request for the Minister to prioritise the consideration of a valid application for a visa. On a request made in accordance with regulation 2.12M of the Regulations, in relation to a valid application for a visa, the Minister may prioritise the consideration of the application.
- 5 Under subregulation 2.12M(2) of the Regulations, an applicant for a visa may make a request for priority consideration only if they meet all the requirements that are specified, under subregulation 2.12M(7), in a legislative instrument. These requirements are that:
 - the visa is of a kind specified (paragraph 2.12M(2)(a));
 - the applicant holds a valid passport specified (subparagraph 2.12M(2)(b)(i));
 - the applicant meets any other requirements specified (subparagraph 2.12M(2)(b)(ii));
 - the application is made using the approved form specified (subparagraph 2.12M(2)(c)(i)); and
 - the application is made in the manner specified (subparagraph 2.12M(2)(c)(ii)).
- 6 The instrument specifies these circumstances for Visitor (Class FA) visa applications that are for Subclass 600 (Visitor) visas in the Tourist stream or in the Business Visitor stream.
- 7 The instrument also updates the arrangements for providing an application to the Department that were in place in IMMI 17/052. IMMI 17/052 provided that non-internet forms could be used to make a request for priority consideration. The instrument does not include non-internet forms and the

associated way of making an application using those forms. This is in line with the Department's and whole-of-government shift to electronic processes.

Consultation

- 8 The Office of Best Practice Regulation (OBPR) was consulted and considered that the instrument dealt with matters of a minor nature and a regulatory impact statement is not required. The OBPR reference number is 44183.
- 9 No further external consultation was undertaken for this instrument. This is because the changes made by the instrument follow changes made to the specified form, place and manner for lodging a Visitor (Class FA) visa application and mirrors and supports those changes (see *Migration (arrangements for Visitor (Class FA) visa applications) Instrument (LIN 21/056) 2021*).

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 registration.
- 12 Section 3 specifies, in a table, for subregulation 2.12M(2) of the Regulations, the circumstances that an applicant for a Visitor (Class FA) visa must meet before requesting priority consideration of their application. These are that the applicant must:
 - have applied for a Subclass 600 (Visitor) visa in the Tourist stream or in the Business Visitor stream (item 1 of the table, for paragraph 2.12M(2)(a));
 - hold one of the valid passports (item 2 of the table, for subparagraph 2.12M(2)(b)(ii));
 - be located in the country that issued the passport when the visa application and request for priority consideration are made (item 3 of the table, for subparagraph 2.12M(2)(b)(ii));
 - make the request using form 1419 (Internet) as an internet application through ImmiAccount (items 4 and 5 of the table for subparagraphs 2.12M(2)(c)(i) and (ii)).
- 13 Section 4 provides that *Migration (IMMI 17/052: Priority Consideration of Certain Visa Applications) Instrument 2017* (F2017L00836) is repealed.

Parliamentary scrutiny etc.

- 14 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because instruments made under Part 2 of Regulations are exempt in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 15 The instrument was made by a delegate of the Minister, Senior Executive Service Band One, Immigration Programs Division, acting under subregulation 2.12M(7) of the Regulations. The Senior Executive Service Band One was, at the time of making the instrument, delegated the power to make the instrument by the Minister under subregulation 1.16(1) of the Regulations.