

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Temporary visa subclass for the purpose of health requirement) Specification (LIN 22/007) 2022

- 1 The instrument, Departmental reference LIN 22/007, is made under subparagraphs 4005(2)(b)(ii) and 4007(1A)(b)(ii) of Schedule 4 to the *Migration Regulations 1994* (the Regulations).
- 2 The instrument repeals *Visa Subclasses for the Purposes of the Health Requirement 2016/067* (F2016L01126) (IMMI 16/067) 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 subparagraphs 4005(2)(b)(ii) and 4007(1A)(b)(ii) of Schedule 4 to the Regulations also include a power to amend or repeal an instrument made under that provision.
- 3 The instrument commences on the day after registration on the Federal Register of Legislation, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The instrument operates to specify temporary visa subclasses which may lead to permanent visas for subparagraphs 4005(2)(b)(ii) and 4007(1A)(b)(ii) of Schedule 4 to the Regulations.
- 5 Public interest criteria (PIC) 4005 and 4007, set out in Schedule 4 to the Regulations, apply to visa subclasses where it is specified as a criterion for the grant of a visa in Schedule 2 of the Regulations for that subclass. PICs 4005 and 4007 provide that visa applicants must be free from a disease or condition in relation to which a person who has it would be likely to require health care or community services or meet the medical criteria for the provision of a community service, and the provision of which would be likely to result in a significant cost to the Australian community in the areas of, or prejudice the access of an Australian citizen or permanent resident to, health care or community services. If an application is for a temporary visa of a subclass specified for subparagraph 4005(2)(b)(ii) or 4007(1A)(b)(ii) of Schedule 4 to the Regulations, then the applicant's health and associated costs will be assessed for the same period for which a permanent visa is assessed, that is, a period commencing when the application is made.
- 6 The purpose of the instrument is to update the specified temporary visa subclasses by adding two new subclasses, namely Skilled Work Regional (Provisional) (subclass 491) and Subclass 494 Skilled Employer Sponsored Regional (Provisional) (subclass 494).
- 7 The instrument does not specify certain temporary visa subclasses which were previously specified in IMMI 16/067, as those visa subclasses have been repealed and closed to new applications before the commencement of the instrument.

Continued effect of IMMI 16/067

- 8 Whilst IMMI 16/067 was also made under subparagraph 4006A(1A)(b)(ii) of Schedule 4 to the Regulations, clause 4006A was repealed on 18 March 2018 by the *Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018*. As such, the instrument removes reference to subparagraph 4006A(1A)(b)(ii) of Schedule 4 to the Regulations.
- 9 Subclause 6702(2) in Part 67 of Schedule 13 to the Regulations provides that clause 4006A of Schedule 4 to the Regulations and any instruments made under that clause continues to apply as in force immediately before 18 March 2018 in relation to an application for a visa made before that date. The effect of this is that IMMI 16/067, as in force immediately before 18 March 2018, continues to apply in relation to clause 4006A of Schedule 4 to the Regulations and relevant visa applications made before 18 March 2018.
- 10 If an application is for a temporary visa of a subclass specified for subparagraph 4006A(1A)(b)(ii) of Schedule 4 to the Regulations, then the applicant's health and associated costs will be assessed for the period commencing when the visa application is made.

Consultation

- 11 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 21-01163.
- 12 No further external consultation was undertaken for the instrument as the amendments do not substantially alter existing arrangements. This accords with subsection 17(1) of the Legislation Act.

Details of the instrument

- 13 Paragraph (a) specifies temporary visa subclasses for subparagraph 4005(2)(b)(ii) and subparagraph 4007(1A)(b)(ii) of Schedule 4 to the Regulations.
- 14 Paragraph (b) provides that *Visa Subclasses for the Purposes of the Health Requirement 2016/067* (F2016L01126) is repealed by the instrument.
- 15 The instrument commences on the day after registration on the Federal Register of Legislation.

Parliamentary scrutiny etc.

- 16 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under subparagraphs 4005(2)(b)(ii) and 4007(1A)(b)(ii) of 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*.
- 17 The instrument is made by a delegate of the Minister, in accordance with subparagraphs 4005(2)(b)(ii) and 4007(1A)(b)(ii) of Schedule 4 to the Regulations.