

EXPLANATORY STATEMENT

Issued by the Minister for Immigration and Multicultural Affairs

Migration Regulations 1994

Migration (Public Interest Criterion 4022—Code of Behaviour) Instrument 2025

The instrument (departmental reference LIN 25/017) is made under clause 4.1 of Schedule 4 to the *Migration Regulations 1994* (the Migration Regulations).

The instrument commences on the day after it is registered on the Federal Register of Legislation. It is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

The instrument repeals and replaces the *Migration (Code of Behaviour for Public Interest Criterion 4022) Instrument (LIN 24/031) 2024*. Subsection 33(3) of the *Acts Interpretation Act 1901* relevantly 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.

Background

In circumstances where public interest criterion (PIC) 4022 applies in relation to a visa applicant under a clause in Schedule 2 to the Migration Regulations, either the applicant must sign a code of behaviour that has been approved by the Minister in accordance with Part 4 of Schedule 4 to the Migration Regulations and is in effect for the subclass of visa, or the Minister does not require the visa applicant to sign a code of behaviour that is in effect for the subclass of visa.

Clause 4.1 of Schedule 4 to the Migration Regulations provides that for PIC 4022, the Minister must, by instrument in writing, approve one or more written codes of behaviour for the subclasses of visas specified in the instrument.

Currently, the only visa applicants who are required to satisfy PIC 4022 as a criterion for the grant of a visa are certain applicants for the Subclass 050 (Bridging (General)) visa, which is a subclass of the Bridging E (Class WE) visa (subitem 1305(4) of Schedule 1 to the Migration Regulations refers). Within that cohort, only those visa applicants who are at least 18 years old at time of application, and who hold or have previously held a Bridging E (Class WE) visa granted under section 195A of the *Migration Act 1958* (the Migration Act) are required to satisfy PIC 4022, in accordance with the requirements under clause 050.225 of Schedule 2 to the Migration Regulations.

Section 195A of the Migration Act provides the Minister with a personal and non-compellable power to grant a visa of a particular class to an unlawful non-citizen who is in detention under section 189 of the Migration Act, if the Minister thinks it is in the public interest to do so (and whether or not the person has applied for that visa).

The purpose of LIN 25/017 is to specify, for the Subclass 050 (Bridging (General)) visa, the Code of Behaviour for the purposes of PIC 4022. This instrument replicates and maintains the current Code of Behaviour as previously approved for the Subclass 050 (Bridging (General)) visa in *Migration (Code of Behaviour for Public Interest Criterion 4022) Instrument (LIN 24/031) 2024* (LIN 24/031) (F2024L00381). Section 6 of LIN 24/031 provides that that instrument would self-repeal on 31 March 2025; LIN 25/017 therefore repeals and replaces LIN 24/031, maintaining the existing Code of Behaviour and ensuring it continues to apply beyond 31 March 2025.

Consultation

No external consultation was undertaken in relation to LIN 25/017 as it replicates and maintains the Code of Behaviour in the same form as previously approved under LIN 24/031. As LIN24/031 would otherwise self-repeal on 31 March 2025; LIN 25/017 ensures the existing Code of Behaviour is maintained in relation to the Subclass 050 (Bridging (General)) visa. The Code of Behaviour applies specifically in relation to visa applicants who hold, or previously held, a Bridging E (Class WE) visa granted under the Minister's personal power under section 195A of the Migration Act. The existing Code of Behaviour appropriately reflects the expectations of the Australian Government and the community in relation to the behaviour of non-citizens released from immigration detention on a Bridging E visa. As such, no additional consultation was considered necessary in relation to this instrument for the purposes of section 17 of the Legislation Act.

The Office of Impact Analysis (OIA) was consulted and considered that a detailed impact analysis was not required in relation to this instrument. The OIA reference is OIA25-09231.

Details of the instrument

Section 1 sets out the name of the instrument.

Section 2 provides for the commencement of the instrument on the day after it is registered on the Federal Register of Legislation.

Section 3 provides that the instrument is made under clause 4.1 of Schedule 4 to the Migration Regulations.

Section 4 provides that the Code of Behaviour specified in Schedule 1 of the instrument is approved for the Subclass 050 (Bridging (General)) visa, for the purposes of clause 4.1 of Schedule 4 to the Migration Regulations.

Section 5 provides that an instrument specified in a Schedule to the instrument is either amended or repealed as set out in that Schedule, and that other matters covered by a Schedule operate according to their terms.

Schedule 1 to the instrument sets out the approved Code of Behaviour for the purposes of section 4 of this instrument.

Schedule 2 to the instrument repeals the *Migration (Code of Behaviour for Public Interest Criterion 4022) Instrument (LIN 24/031) 2024*. LIN 24/031 would otherwise self-repeal on 31 March 2025 by operation of section 6 of that instrument. The repeal of LIN 24/031 on the day that LIN 25/017 commences (the day after registration) ensures that there is continuity in relation to the Code of Behaviour approved for the Subclass 050 (Bridging (General)) visa, and clarity in relation to the effect and application of the new instrument LIN 25/017 when it commences.

Parliamentary scrutiny etc.

The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because the instrument is made under Schedule 4 to the Migration Regulations, which is prescribed in sub-item 20(b) of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

The instrument was made by the Minister for Immigration and Multicultural Affairs in accordance with clause 4.1 of Schedule 4 to the Migration Regulations.