

EXPLANATORY STATEMENT

Migration Regulations 1994

Migration (LIN 20/101: Arrangements for certain visa applications) Amendment Instrument 2020

(Subregulation 2.07(5))

1. The instrument, which may be cited as LIN 20/101, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Regulations).
2. The instrument amends *Migration (LIN 19/209: Arrangements for Certain Skilled and Temporary Graduate Visa Applications) Instrument 2019* (F2019L01401) and *Migration (LIN 19/211: Arrangements for Skilled Employer Sponsored Regional (Provisional) Visa Applications) Instrument 2019* (F2019L01449) made under subregulation 2.07(5) of the Regulations, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA).
3. Subsection 33(3) of the AIA states 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.
4. LIN 19/209 operates to specify the approved form and the place and manner in which applications must be lodged for certain skilled and temporary graduate visas. The skilled and temporary graduate visas the instrument includes are:
 - a. Subclass 887 (Skilled – Regional) visa;
 - b. Subclass 189 (Skilled – Independent) visa;
 - c. Subclass 190 (Skilled – Nominated) visa;
 - d. Subclass 476 (Skilled – Recognised Graduate) visa;
 - e. Subclass 485 (Temporary Graduate) visa;
 - f. Subclass 489 (Skilled – Regional (Provisional)) visa;
 - g. Subclass 491 (Skilled Work Regional (Provisional)) visa.

5. LIN 19/211 operates to specify the requirements for making an application for a Subclass 494 visa. For the purposes of subitem 1242(1) of Schedule 1 to the Regulations, the instrument specifies the approved form for making a valid application. For the purposes of paragraph 1242(3)(a) of Schedule 1 to the Regulations, LIN 19/211 also specifies the manner in which an application must be made.
6. LIN 19/211 also operates to specify, for the purposes of subitem 1242(6) of Schedule 1 to the Regulations, the circumstances for when subitem 1242(5) of Schedule 1 to the Regulations does not apply to an application.
7. The purpose of LIN 20/101 is:
 - a. for LIN 19/209 to update the place and manner of lodgement for applications for the Subclass 491 (Skilled Work Regional (Provisional)) visa in the Skilled Work Regional (Provisional) (Class PS) class of visa. This change ensures that all applicants can lodge a visa application in the same place and manner with no differentiation between primary and secondary applicants. It also provides a technical amendment to the item name of the class of visa due to a drafting error; and
 - b. for LIN 19/211:
 - i. update the definition of *departmental email* and repeal the definition of *official departmental email address* to provide clarity regarding an official departmental email address; and
 - ii. omit subsection 5(5) of the instrument and repeal the definition of *subsequent applicant* to ensure that all applicants for the Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa in the Skilled Employer Sponsored Regional (Provisional) (Class PE) class of visa, can lodge a visa application in the same place and manner with no differentiation between primary and secondary applicants.
8. The changes to both instruments are administrative in nature and of a minor, machinery nature. Therefore consultation was not required.

9. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 25045).
10. The officer who made the instrument was delegated the powers required to make the instrument in the *Instrument Making Powers (Minister) Instrument 2019/228*, signed on 12 September 2019.
11. The instrument is made under subregulation 2.07(5), in Part 2, of the Regulations. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
12. The whole of this instrument commences 14 March 2020.