

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Arrangements for certain business skills visas) Instrument (LIN 21/026) 2021

- 1 The instrument, Departmental reference LIN 21/026, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument repeals *Migration (LIN 20/051: Arrangements for certain Business Skills visas) Instrument 2020* (LIN 20/051) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). That subsection provides that where an Act confers a power to make a legislative instrument, the power includes a power to amend or repeal that instrument, subject to any conditions that apply to the initial instrument-making power.
- 3 Paragraph 13(1)(a) of the *Legislation Act 2003* (the Legislation Act) provides that subsection 33(3) of the Acts Interpretation Act applies to an instrument-making power in the Migration Regulations as if the Migration Regulations were an Act. This means that subregulation 2.07(5) of the Migration Regulations also includes a power to amend or repeal an instrument made under that provision.
- 4 The instrument commences on the day after registration on the Federal Register of Legislation and is a legislative instrument for the Legislation Act.

Purpose

- 5 An application for a visa under sections 45 and 46 of the *Migration Act 1958* is valid where the requirements of regulation 2.07 of the Migration Regulations (amongst others) are met. Regulation 2.07 relevantly provides that an item in Schedule 1 of the Migration Regulations sets out the approved form for, and other matters relating to, making an application (paragraphs (1)(a) and (c)). For certain classes of visa, these matters are set out in a legislative instrument (as provided for by subregulation 2.07(5) of the Migration Regulations).
- 6 The main purpose of the instrument is to specify the approved form (see the third column of the table in Schedule 1) for making a valid application for the following visa classes:
 - Business Skills Business Talent (Permanent) (Class EA) visa (item 1104AA of Schedule 1 to the Migration Regulations);
 - Business Skills (Permanent) (Class EC) visa (item 1104BA);
 - Business Skills (Provisional) (Class EB) visa (item 1202B);
 - Business Skills (Residence) (Class DF) visa (item 1104B);
 - Global Talent (Class BX) visa (item 1113); and
 - Business Skills (Provisional) (Class UR) visa (item 1202A).
- 7 The instrument also specifies the place for lodgement and the manner in which an application must be made to ensure a valid application is made for the relevant visa class (see the fourth column of the table in Schedule 1).

- 8 Unlike LIN 20/051, this instrument does not specify matters for the purpose of item 1112 of Schedule 1 to the Migration Regulations. This is because the Distinguished Talent (Migrant) (Class AL) subclass 124 visa is no longer open to new applications.
- 9 Some of the changes implemented in the instrument have been made necessary by amendments to the Migration Regulations made by the *Migration Amendment (2021 Measures No.1) Regulations 2021* (the Amendment Regulations). Schedule 4 of the Amendment Regulations changes the name of the Distinguished Talent (Class BX) visa to the Global Talent (Class BX) visa. The requirements for applying for that visa are still contained in item 1113 of Schedule 1 to the Migration Regulations.
- 10 The instrument updates the reference to the Distinguished Talent (Residence) (Class BX) visa to the Global Talent (Class BX) visa in accordance with the amendments being made under the Amendment Regulations. The instrument also newly provides that applicants can use the form 47GT (internet) form to apply for this visa, replacing the previous form 47DT (internet). The instrument also removes reference to the form 47SV. There will remain a backup option to use form 47GT by email in the event that form 47GT (internet) is temporarily unavailable. This process will only be available if an officer of the Department has authorised such usage in an ‘authorising email’ (see the definition in section 3). If this has been authorised, the applicant (or their representative) must respond by the end of the next business day in Australia after the authorising email was sent.

Consultation

- 11 External consultation in the development of this instrument was not necessary as the change was of a minor or machinery nature and does not substantially alter existing arrangements prescribed by the repealed instrument, LIN 20/051.
- 12 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument deals with matters of a minor or machinery nature and no regulatory impact statement is required. The OBPR reference number is 43324.

Details of the instrument

- 13 Section 1 sets out the name of the instrument.
- 14 Section 2 provides for the commencement of the instrument on the day after registration on the Federal Register of Legislation.
- 15 Section 3 defines terms used in the instrument.
- 16 Section 4 provides that the table in Schedule 1 specifies the approved form, manner and place of applications to be made for the visa types set out in the Schedule.
- 17 Section 5 repeals *Migration (LIN 20/051: Arrangements for certain Business Skills visas) Instrument 2020*.
- 18 Schedule 1 specifies the approved form, manner and place of applications to be made for the visa types set out in the Schedule.

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 Part 2 of the Migration Regulations, which is prescribed in paragraph (b) of item 20 of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 20 The instrument was made by Anna Lutz, Senior Executive Service Band 1, delegate of the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, in accordance with subregulation 2.07(5) of the Migration Regulations.