

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Arrangements for Certain Skilled and Temporary Graduate Visa Applications) Amendment Instrument (LIN 22/035) 2022

- 1 The instrument, Departmental reference LIN 22/035, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Regulations).
- 2 The instrument amends *Migration (Arrangements for Certain Skilled and Temporary Graduate Visa Applications) Instrument (LIN 20/162) 2020* (LIN 20/162) (F2021C00079) 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 2.07(5) of the Regulations also includes a power to amend or repeal an instrument made under that provision.
- 3 The instrument commences on 5 March 2022, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The purpose of the instrument is to specify the approved form, place and manner (the arrangements) for making an application for a Permanent Residence (Skilled Regional) (Class PR) visa (Class PR visa), which commences on 5 March 2021 (see section 2 of, and Schedule 3 to, the *Migration Legislation Amendment (Hong Kong) Regulations 2021* and the *Migration Amendment (New Skilled Regional Visas) Regulations 2019*). The Class PR visa has one subclass—Subclass 191 (subclass 191 visa).
- 5 The Hong Kong (Regional) stream of the subclass 191 visa opens to applicants on 5 March 2022 in line with departmental systems release, and the instrument specifies the arrangements to enable applications to be made.¹
- 6 Item 1139 of Schedule 1 to the Regulations will, from 5 March, prescribe the requirements that an applicant for a Class PR visa must meet to make a valid visa application. These requirements will include that the application must be made in the approved form, place and manner for a Class PR visa specified in a legislative instrument made under subregulation 2.07(5) of the Regulations (see also subitem 1139(1) and paragraph 1139(4L)(a) of Schedule 1).

Consultation

- 7 The decision to introduce the new subclass 191 and concessions for certain visa holders from Hong Kong was made by Cabinet. Standard whole-of-Government consultation was undertaken for the Cabinet submission.

¹ See *Migration Legislation Amendment (Hong Kong) Regulations 2021* (F2021L01479) for further detail on the Hong Kong (Regional) stream.

- 8 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 44117.
- 9 No further specific consultation was undertaken for the instrument. This is because the changes are minor and machinery in nature.

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 5 March 2022, to align with the commencement of the Class PR visa.
- 12 Section 3 provides that *Migration (Arrangements for Certain Skilled and Temporary Graduate Visa Applications) Instrument (LIN 20/162) 2020* is amended as set out in Schedule 1 to the instrument.
- 13 Section 4 provides that the instrument applies to visa applications made before the instrument is registered. Any retrospective application of the instrument is not detrimental to visa applicants, and is not contrary to the requirements under the Legislation Act.
- 14 Item 1 of Schedule 1 to the instrument amends section 3 of LIN 20/162 to clarify the authority provision. The effect of this is to provide that the amended LIN 20/162 is made under subregulation 2.07(5) for the purposes of items 1136, 1137, 1138, 1139, 1228, 1229, 1230 and 1241 of Schedule 1 to the Regulations.
- 15 Item 2 of Schedule 1 amends the table in section 9 of LIN 20/162 by inserting new item 3A. The effect of this amendment is to provide that the approved form and manner of making an application for a Class PR visa is by using Form 1393 (internet) as an Internet application.

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 subregulation 2.07(5) 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 appropriate to be exempt from disallowance as it concerns matters of an administrative nature. Updating legislative instruments that specify administrative matters allows for consistent internal management of the migration policy framework.
- 18 The instrument is made by a delegate of the Minister in accordance with subregulation 2.07(5) of, and item 1139 of Schedule 1 to, the Regulations.