

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Required Medical Assessment) Amendment Instrument (LIN 23/042) 2023

- 1 The instrument, Departmental reference LIN 23/042, is made under paragraphs 4005(1)(aa) and 4007(1)(aa) of Schedule 4 to the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument amends *Required Medical Assessment* (IMMI 15/144) (F2022C00721) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). 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.
- 3 The instrument commences on 1 July 2023, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 Paragraphs 4005(1)(aa) and 4007(1)(aa) of Schedule 4 to the Migration Regulations provides that unless a Medical Officer of the Commonwealth decides otherwise, if an applicant is in a class of persons specified by the Minister in an instrument in writing, they must undertake any medical assessment specified in an instrument in writing and must be assessed by the person specified in the instrument.
- 5 Current IMMI 15/144 provides that the applicants mentioned in that instrument must undertake medical assessments by reference to their country of citizenship or residence, intended activities and their intended stay period in Australia.
- 6 The purpose of LIN 23/042 is to amend IMMI 15/144 by:
 - updating the country list under Column A of Schedule 1 and Column A of Schedule 2 based on low and high Tuberculosis risk countries; and
 - introducing an express requirement for a Serum Creatinine/eGFR test for the classes of person specified in IMMI 15/144 pursuant to paragraphs 4005(1)(aa) and 4007(1)(aa) of the Migration Regulations.

Amendments to country list

- 7 Column A of Schedule 1 in IMMI 15/144 classifies countries that are considered as lower Tuberculosis risk countries, where applicants do not require an Immigration Medical Examination (IME) to be undertaken depending on their visa type, proposed length of stay or association with any high risk cohorts (for example, the applicant is intending to work as a nurse). Column A of Schedule 2 in IMMI 15/144 relates to countries which are considered to be higher Tuberculosis risk countries and requires

visa applicants to undertake an IME for stays of 6 months or more, or if associated with a high risk cohort.

- 8 Based on updated World Health Organisation (WHO) data available to the Department, 18 countries have been added to Column A of Schedule 1 as they were not previously classified as low Tuberculosis risk countries but have become low risk countries; and two countries have been removed from Column A of Schedule 1 because they were previously classified as low risk countries but have become high risk countries.
- 9 The 18 countries which have been assessed as low Tuberculosis risk countries and which have been added to Schedule 1 are:
 - Anguilla;
 - Armenia;
 - Belarus;
 - Bosnia and Herzegovina;
 - Cabo Verde;
 - Comoros;
 - Guam;
 - Guatemala;
 - Honduras;
 - Iraq;
 - Latvia;
 - Lithuania;
 - Maldives;
 - Saint Vincent and the Grenadines;
 - Suriname;
 - Syrian Arab Republic;
 - Togo; and
 - Vanuatu.
- 10 Two countries have been assessed as high Tuberculosis risk countries and have been removed from Schedule 1 and will now be considered higher Tuberculosis risk countries per Schedule 2:
 - Kosovo; and
 - Niue.

Amendments to required medical assessments

- 11 The Department's Clinical Advisory Team and Chief Medical Officer recommended a serum creatinine/eGFR test to screen for chronic kidney disease rather than a urinalysis test. An applicant who is a member of a class of persons mentioned in IMMI 15/144 must undertake the medical assessments specified for that class, including a 'medical examination'. The medical examination required by IMMI 15/144 is a physical examination undertaken by a physician and is comprised of a range of clinical screening tools and examinations.
- 12 IMMI 15/144 is amended by LIN 23/042 to expressly specify a serum creatinine/eGFR test for the class of persons pursuant to paragraphs 4005(1)(a) and 4007(1)(aa) of Schedule 4 to the Migration Regulations.

Continuation of effect of paragraph 4006A(1)(aa)

- 13 IMMI 15/144 was also made under paragraph 4006A(1)(aa) of Schedule 4 to the Migration Regulations. Clause 4006A was repealed on 18 March 2018 by the *Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018*.
- 14 Subclause 6702(2) of Schedule 13 to the Migration Regulations provides that clause 4006A of Schedule 4 to the Migration Regulations and any instruments made under that clause continue 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 15/144, as in force immediately before 18 March 2018, continues to apply in relation to clause 4006A of Schedule 4 to the Migration Regulations and relevant visa applications made before 18 March 2018.
 - The instrument does not make changes to the class of persons mentioned in IMMI 15/144 for paragraph 4006A(1)(aa) of Schedule 4 to the Regulations.

Consultation

- 15 Consultation was undertaken with:
 - Kidney Health Australia;
 - Specialist Nephrologists;
 - Australian Overseas Health Panel Network; and
 - Bupa Australia.
- 16 The Office of Impact Analysis (OIA) was also consulted and considered that the instrument dealt with matters of a minor nature and no regulatory impact statement was required. The OIA reference number is OBPR22-03813.

Details of the instrument

- 17 Section 1 sets out the name of the instrument.

- 18 Section 2 provides for the commencement of the instrument on 1 July 2023.
- 19 Section 3 provides that Schedule 1 amends *Required Medical Assessment* (IMMI 15/144) (F2015L01826).
- 20 Section 4 is an application and transitional provision to provide that the amendments made by LIN 23/042 will not apply in relation to an application for a Subclass 457 (Temporary Work (Skilled)) visa.
- The note under section 4 has been included to make clear to the reader that applications for the Subclass 457 visa closed on 18 March 2018, when Part 457 of Schedule 2 to the Migration Regulations and clause 4006A of Schedule 4 to the Migration Regulations were repealed by the *Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018*.
 - This means that LIN 23/042 does not alter any requirements with respect to Public Interest Criterion 4006A, the effect of which in relation to undecided applications for a Subclass 457 visa has been preserved as in force immediately before the repeal of clause 4006A by subclause 6702(2) of Schedule 13 to the Migration Regulations. Accordingly, the class of persons for the purposes of paragraph 4006A(1)(aa) of Schedule 4 to the Migration Regulations remains the class specified in IMMI 15/144 prior to its amendment by LIN 23/042.
- 21 Item 1 of Schedule 1 substitutes Schedule 1 to IMMI 15/144. Column A of the table provides a list of countries that applies to the class of persons who is a citizen of a country or who has spent three or more consecutive months in a country during the last five years. The list includes all countries that are considered as lower Tuberculosis risk countries. Item 1 of Schedule 1 also amends Schedule 1 to IMMI 15/144 to provide that the serum creatinine/eGFR test is a required medical assessment for certain classes of persons.
- 22 Item 2 of Schedule 1 substitutes Schedule 2 to IMMI 15/144. New Schedule 1 to IMMI 15/144 provides that the serum creatinine/eGFR test is a required medical assessment for certain classes of persons.
- Item 2 of Schedule 1 also amends Column C of the table in Schedule 2 to IMMI 15/144 by inserting a new class of persons comprised of persons aged 15 or older for temporary stay visa applicants intending to stay in Australia for six months or more. The intention of inserting this new age group was to capture the requirement of undertaking a serum creatinine/eGFR test, in addition to all other required examinations as listed.
- 23 Item 3 of Schedule 1 substitutes Schedule 3 to IMMI 15/144. The new Schedule provides that the serum creatinine/eGFR test is a mandatory medical assessment requirement for the class of persons who is a citizen of a country or who has spent three or more consecutive months during the last five years in a country or countries that is not listed in new Column A of Schedule 1 to IMMI 15/144.

Parliamentary scrutiny etc.

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

- 25 As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
- 26 The instrument was made by a delegate of the Minister in accordance with paragraphs 4005(1)(aa) and 4007(1)(aa) of Schedule 4 to the Migration Regulations.