

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Required Medical Assessment) Amendment Instrument (LIN 24/032) 2024

- 1 The instrument *Migration (Required Medical Assessment) Amendment Instrument (LIN 24/032) 2024* (departmental reference LIN 24/032) 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) (F2015L01826) 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.
- 3 The instrument commences on 1 July 2024. It 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 the instrument and must be assessed by the person specified in the instrument.
- 5 IMMI 15/144 specifies the mandatory immigration medical assessment health requirements that certain visa applicants must undertake in order to satisfy Public Interest Criteria (PIC) 4005 and 4007 by reference to their country or jurisdiction of citizenship or residence and their intended period of stay, and who they must be assessed by.
- 6 The primary purpose of LIN 24/032 is to introduce a mandatory hepatitis B testing requirement for certain classes of persons specified in IMMI 15/144 as recommended by the Department of Home Affairs' (the Department) Clinical Advisory Team and Chief Medical Officer. Pursuant to paragraphs 4005(1)(aa) and 4007(1)(aa) of Schedule 4 to the Migration Regulations, this instrument specifies the class of persons who are aged over 15 years of age and who are born in a high hepatitis B risk country or jurisdiction. An applicant who is a member of this class of persons must undertake mandatory hepatitis B testing.
- 7 LIN 24/032 also clarifies the meaning of 'provisional visa', a term which is used to identify certain temporary visa subclasses. Medical assessment requirements for provisional visa applicants are equivalent to those for permanent visa applicants.

Continuation of existing IMMI 15/144

- 8 IMMI 15/144 as originally made was also made under paragraph 4006A(1)(aa) of Schedule 4 to the Migration Regulations applying to all Subclass 457 (Temporary Work (Skilled)) visa applicants.
- 9 The Subclass 457 visa, along with PIC 4006A, was repealed on 18 March 2018 by the *Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018*. However, Subclause 6702(2) in Part 67 of Schedule 13 to the Migration Regulations provides that PIC 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.
- 10 The effect of this is that IMMI 15/144, as in force immediately before 18 March 2018, continues to apply in relation to PIC 4006A of Schedule 4 to the Migration Regulations and relevant visa applications made before 18 March 2018.
- 11 IMMI 15/144 was also amended by *Migration (Required Medical Assessment) Amendment Instrument (LIN 23/042) 2023* and commenced on 1 July 2023. For all non-PIC 4006A applications made on or before 30 June 2024, IMMI 15/144 as amended by LIN 23/042 continues to apply.

Consultation

- 12 Extensive external consultation was undertaken with:
 - Bupa Medical Visa Services;
 - The Burnett Institute;
 - Health Equity Matters;
 - Department of Health and Aged Care;
 - State and Territory Health Departments;
 - State and Territory Sexual Health Clinics;
 - Blood Borne Viruses and Sexually Transmissible Infections Standing Committee; and
 - National Blood Borne Virus and Sexually Transmissible Infections Surveillance Subcommittee.
- 13 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 OIA24-06519.

Details of the instrument

- 14 Details of the instrument are set out in **Attachment A**

Parliamentary scrutiny etc.

- 15 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*. As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.

- 16 The instrument is made by the Chief Medical Officer of the Department, a delegate of the Minister, in accordance with paragraphs 4005(1)(aa) and 4007(1)(aa) of Schedule 4 to the Migration Regulations

Section 1 Name

This section provides that the name of the instrument is the *Migration (Required Medical Assessment) Amendment Instrument (LIN 24/032) 2024*.

Section 2 Commencement

This section provides that the instrument commences on 1 July 2024.

Section 3 Authority

This section provides that LIN 24/032 is made under paragraphs 4005(1)(aa) and 4007(1)(aa) of Schedule 4 to the Migration Regulations.

Section 4 Schedules

Section 4 indicates that Schedule 1 to LIN 24/032 provides a list of items amending IMMI 15/144, and Schedule 2 specifies instruments being repealed.

Schedule 1 Amendments

Item 1 of Schedule 1 amends IMMI 15/144 to insert new section 4, which inserts two new definitions to IMMI 15/144. First, the term ‘provisional visa’ means a temporary visa of a subclass mentioned in Schedule 4 to the instrument. The intention is the term ‘provisional visa’ generally refers to temporary visas that are part of a two-stage application process where applicants have a pathway to a permanent visa.

New section 4 also provides that the term ‘high hepatitis B risk jurisdiction’ means a country or jurisdiction *not* mentioned in new Schedule 5 to IMMI 15/144. Schedule 5 lists low hepatitis B-risk countries and jurisdictions based on World Health Organisation (WHO) data. If an applicant is in a class of persons where their citizenship or residence status is *not* listed in Schedule 5, and the applicant falls under a category where hepatitis B testing is mandatorily required because of their place of birth, they must undertake hepatitis B testing as required under this instrument.

Item 1 also inserts a new section 5 into IMMI 15/144. Section 5 is an application and transitional provision to provide that the amendments made by the amending instruments LIN 23/042 and LIN 24/032 will not apply in relation to an application for a Subclass 457 (Temporary Work (Skilled)) visa. Section 4 of the amending instrument LIN 23/042 included an application provision with the same effect; the amendments in LIN 24/032 ensure that this application provision is now included appropriately on the face of the principal instrument IMMI 15/144, instead of appearing only in the amending instrument.

- The note under section 5 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 makes clear that LIN 24/032 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) in

Part 67 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 24/032.

Item 2 of Schedule 1 to LIN 24/032 substitutes Schedule 1 to IMMI 15/144 to update the reference to country or jurisdiction name, and to add mandatory hepatitis B testing requirement as mentioned above for certain applicants falling under Column D of Schedule 1. Item 2 also makes minor changes to wording for clarity.

Item 3 of Schedule 1 to LIN 24/032 substitutes Schedule 2 to IMMI 15/144 to update country or jurisdiction name, and to add mandatory hepatitis B testing requirement for certain applicants falling under Column D of Schedule 2. Item 3 also makes minor changes to wording for clarity.

Item 4 of Schedule 1 to LIN 24/032 substitutes Schedule 3 to IMMI 15/144 to makes minor changes to wording for clarity.

Item 5 of Schedule 1 to LIN 24/032 inserts two additional Schedules into IMMI 15/144 after Schedule 3. New Schedule 4 provides a list of provisional visas that IMMI 15/144 would apply to. New Schedule 5 lists low hepatitis B risk countries and jurisdictions for the purposes IMMI 15/144 to assist the applicant to identify whether or not they fall within the definition of a class of persons born in a 'high hepatitis B risk jurisdiction'.

Schedule 2 Repeals

Pursuant to section 4 of this instrument, Schedule 2 provides that the *Migration (Required Medical Assessment) Amendment Instrument (LIN 23/042) 2023* is repealed. The application provision in section 4 of LIN 23/042 has been incorporated into the principal instrument as a result of the amendment in item 1 of Schedule 1.