

## EXPLANATORY STATEMENT

Issued by authority of the

Minister for Immigration, Citizenship, Migrant Affairs and Multicultural Affairs

*Migration Regulations 1994*

### ***Migration (Excluded health care and community services) Instrument (LIN 22/014) 2022***

- 1 The instrument, Departmental reference LIN 22/014, is made under subclauses 4005(3) and 4007(1B) of Schedule 4 to the *Migration Regulations 1994* (the Regulations).
- 2 The instrument repeals *SPECIFICATION OF HEALTH CARE AND COMMUNITY SERVICES (IMMI 11/073)* (F2011L02242) (IMMI 11/073) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*. 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 The instrument commences on the day after it is registered on the Federal Register of Legislation, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

- 4 Under subregulation 2.25A(1) of the Regulations, in determining whether an applicant satisfies the criteria for the grant of a visa, the Minister must seek the opinion of a Medical Officer of the Commonwealth (MOC) (defined in regulation 1.03 of the Regulations) on, relevantly, whether a person meets the requirements of paragraphs 4005(1)(c) or 4007(1)(c) of Schedule 4 to the Regulations.
- 5 Subclauses 4005(1) and 4007(1) of Schedule 4 to the Regulations provide that an applicant must be free from a disease or condition in relation to which:
  - a person who has it would be likely to require health care or community services or meet the medical criteria for the provision of a community service (subparagraphs 4005(1)(c)(i) and 4007(1)(c)(i)); and
  - the provision of the health care or community services for that disease or condition would be likely to result in significant cost to the Australian community (in the areas of health care and community services) regardless of whether the health care or community services will actually be used in connection with the applicant (sub subparagraphs 4005(1)(c)(ii)(A) and 4007(1)(c)(ii)(A)).
- 6 By making a legislative instrument under subclauses 4005(3) and 4007(1B), the Minister can exclude the cost of specified health care and community services from the consideration of costs under sub subparagraphs 4005(1)(c)(ii)(A) and 4007(1)(c)(ii)(A). The specified costs are excluded from the assessment of the health criteria in relation to all temporary visas that are subject to the health criteria, other than specified temporary visas that provide a pathway to permanent residence. These visas are specified in a separate instrument. See the *Migration (Temporary visa subclass for the purpose of health requirement) Specification (LIN 22/007) 2022*.

- 7 The instrument specifies health care and community services for this purpose. The health care and community services specified in the instrument are provided by the Australian government to Australian citizens and permanent residents and generally are not available to temporary visa holders. This means that it is reasonable to exclude these costs from a MOC's considerations under regulation 2.25A in relation to applicants for temporary visas other than the specified temporary visas that lead to permanent residence.
- 8 The instrument also updates and clarifies the drafting of IMMI 11/073.
- 9 For clarity, this instrument applies to relation to clauses 4005 and 4007 of Schedule 4 to the Migration Regulations and relevant temporary visa applications made on or after the day that the instrument commences.

*Continuation of effect of IMMI 11/073*

- 10 IMMI 11/073 was also made under subclause 4006A(1B) of Schedule 4 to the Regulations. Clause 4006A, however, was repealed on 18 March 2018 by the *Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018*.
- 11 Subclause 6702(2) of Schedule 13 to the Regulations provides that clause 4006A of Schedule 4 to the Regulations and any instruments made under that clause continues 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 11/073, as in force immediately before 18 March 2018, continues to apply in relation to clause 4006A of Schedule 4 to the Regulations and relevant visa applications made before 18 March 2018.

***Consultation***

- 12 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument is unlikely to have a regulatory impact on business, individuals or community organisations and a regulatory impact statement is not required. The OBPR reference number is 43084.
- 13 No consultation was done for this instrument. This is because the change is in response to the rollout of the National Disability Insurance Scheme (NDIS) and reflects the eligibility criteria for NDIS support. The instrument substantially replicates IMMI 11/073 and confers a benefit to relevant visa applicants by excluding in the legislative instrument the cost associated with NDIS support from consideration during visa application processing.

***Details of the instrument***

- 14 Section 1 sets out the name of the instrument.
- 15 Section 2 provides that the instrument commences the day after registration on the Federal Register of Legislation.
- 16 Section 3 sets out definition of terms used in the instrument.
- 17 Section 4 specifies the health care and community services for subclauses 4005(3) and 4007(1B) of Schedule 4 to the Regulations that are excluded from consideration by a MOC in relation to certain temporary visa applications.

- 18 Paragraph 4(a) provides that social security payments are excluded from a MOC's consideration. MOCs do not assess social security payments as temporary visa holders are generally ineligible to receive those payments.
- 19 Paragraph 4(b) provides that benefits derived from holding a health care card or pensioner concession card are excluded from a MOC's consideration. MOCs do not assess current or future eligibility for health care or pension concession cards, as eligibility is difficult to pre-determine. As most temporary visa holders are not eligible for health care or pension concession cards, MOCs do not assess the costs associated with the benefits derived from a holding such a card.
- 20 Paragraph 4(c) provides that the provision of pharmaceuticals listed under the pharmaceuticals benefits scheme (PBS) that, if the applicant ceases to take, would not be seriously detrimental to their life or wellbeing, are excluded from a MOC's consideration. MOCs do not assess the costs associated with providing such pharmaceuticals as temporary visa holders are generally ineligible to receive benefits under the PBS. However, MOCs do assess the cost of pharmaceuticals listed under the PBS if the cessation of those drugs would be seriously detrimental to the visa holder's life or well-being. It is possible that temporary visa applicants with diseases or medical conditions could access health care or community services even if they are not eligible for them. This might occur, for example, because a hospital will not refuse to provide medical treatment to people who require it. As these cases would result in a cost to the Australian community, it is reasonable that these costs should be taken into account by a MOC when assessing the applicant against the health criteria.
- 21 Paragraph 4(d) provides that services provided under the National Disability Insurance Scheme (NDIS) are excluded from a MOC's consideration. MOCs do not assess benefits under the NDIS as temporary visa holders are generally ineligible for those benefits.
- 22 Section 5 provides that IMMI 11/073 is repealed. That instrument is being replaced by operative provisions of the instrument.

***Parliamentary scrutiny etc.***

- 23 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because instruments made under Schedule 4 of the Migration Regulations are prescribed in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (see paragraph 44(2)(b) of the Legislation Act).
- 24 The instrument was made by a delegate of the Minister, Chief Medical Officer, in accordance with subclauses 4005(3) and 4007(1A) of Schedule 4 to the Migration Regulations.

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