

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Required medical assessments) Amendment Instrument (LIN 22/065) 2022

- 1 The instrument, Departmental reference LIN 22/065, is made under paragraphs 4005(1)(aa) and 4007(1)(aa) of Schedule 4 to the *Migration Regulations 1994* (the Regulations).
- 2 The instrument amends *REQUIRED MEDICAL ASSESSMENT* (F2015L01826) (IMMI 15/144) 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. This means that paragraphs 4005(1)(aa) and 4007(1)(aa) of Schedule 4 to the Regulations also include a power to amend or repeal an instrument made under those provisions.
- 3 The instrument commences on 1 July 2022, 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 Regulations each provides that if an applicant is in a class of persons specified by the Minister in an instrument in writing for that paragraph, then the applicant must undertake any medical assessment specified in the instrument and must be assessed by the person specified in the instrument unless a Medical Officer of the Commonwealth decides otherwise.
- 5 IMMI 15/144 provides that applicants mentioned in that instrument for paragraphs 4005(1)(aa) and 4007(1)(aa) of Schedule 4 to the Regulations 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 the instrument is to amend IMMI 15/144 by updating the additional medical assessments for the class of persons mentioned in paragraph 2(c) of IMMI 15/144 for paragraphs 4005(1)(aa) and 4007(1)(aa) of Schedule 4 to the Regulations.
- 7 Unless the applicants have applied for a Visitor (Subclass 600) visa for temporary stay in Australia of not more than 6 months, the instrument requires visa applicants from higher tuberculosis risk countries to undertake latent tuberculosis screening as part of their immigration medical examination, if the applicants intend to:
 - work as, or study or train to be, a doctor, dentist, nurse or paramedic; or
 - work as, or study or train to be, a health care worker, or to work within a health care, aged care or disability care facility, in a health care profession not mentioned above.

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

- 8 IMMI 15/144 was also made under paragraph 4006A(1)(aa) 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*.
- 9 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 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 Regulations and relevant visa applications made before 18 March 2018.
- 10 The instrument does not make changes to the class of persons or additional medical assessments mentioned in IMMI 15/144 for paragraph 4006A(1)(aa) of Schedule 4 to the Regulations.

Consultation

- 11 Consultation was undertaken with external stakeholders including the State and Territory tuberculosis programs and chest clinics, the National Tuberculosis Advisory Committee, the Department of Health, and migration medical service providers. No concerns were raised with the additional medical assessments being amended in the instrument.
- 12 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a minor or machinery nature and no regulatory impact statement was required. The OBPR reference number is 44188.

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 1 July 2022.
- 15 Section 3 provides that Schedule 1 to the instrument amends IMMI 15/144.
- 16 Item 1 of Schedule 1 to the instrument amends paragraph 2(d) of IMMI 15/144 by removing reference to column E from that paragraph. That is, only columns B, C and D of Schedule 2 to IMMI 15/144 apply to the class of persons mentioned in paragraph 2(c) of IMMI 15/144 for paragraphs 4005(1)(aa), 4006A(1)(aa) and 4007(1)(aa) of Schedule 4 to the Regulations.
- 17 Item 2 of Schedule 1 to the instrument amends section 2 of IMMI 15/144 by adding paragraphs 2(f) and (g). Paragraph 2(g) provides that the additional medical assessments mentioned in new Schedule 3 to IMMI 15/144 apply to the class of persons mentioned in paragraph 2(c) of IMMI 15/144 for paragraphs 4005(1)(aa) and 4007(1)(aa) of Schedule 4 to the Regulations. Column E of Schedule 2 to IMMI 15/144 applies only in relation to paragraph 4006A(1)(aa) of Schedule 4 to the Regulations.
- 18 Item 3 of Schedule 1 to the instrument amends Schedule 2 to IMMI 15/144. It is a technical amendment that is consequential to the insertion of new Schedule 3 to IMMI 15/144 by item 5.

- 19 Item 4 of Schedule 1 to the instrument amends the heading of column E of Schedule 2 to IMMI 15/144. The effect is to make it clear that column E does not apply in relation to paragraphs 4005(1)(aa) and 4007(1)(aa) of Schedule 4 to the Regulations anymore.
- 20 Item 5 of Schedule 1 to the instrument amends IMMI 15/144 by adding new Schedule 3 to it. Schedule 3 specifies the additional medical assessments which apply only to the class of persons mentioned in paragraph 2(c) of IMMI 15/144 for paragraphs 4005(1)(aa) and 4007(1)(aa) of Schedule 4 to the Regulations.

Parliamentary scrutiny etc.

- 21 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under paragraphs 4005(1)(aa) and 4007(1)(aa) of Schedule 4 to 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*.
- 22 The instrument is made by a delegate of the Minister, Chief Medical Officer, in accordance with paragraphs 4005(1)(aa) and 4007(1)(aa) of Schedule 4 to the Regulations.

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