

EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration and Multicultural Affairs

Migration Regulations 1994

Migration (Arrangements for certain business skills visas) Amendment (LIN 24/078) Instrument 2024

- 1 This instrument, departmental reference LIN 24/078, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument amends *Migration (Arrangements for certain business skills visas) Instrument (LIN 21/026) 2021* (F2021L00171) 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 that apply to the initial instrument-making power.
- 3 The instrument commences at the same time as the *Migration Amendment (National Innovation Visa) Regulations 2024* (National Innovation Visa Regulations). It is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 Subregulation 2.07(5) of the Migration Regulations provides that if an item in Schedule 1 to the Migration Regulations prescribes criteria or requirements by reference to a legislative instrument made under subregulation 2.07(5), the Minister may specify, the approved form, place and manner for an application for a visa of a specified class. Paragraph 1113(3)(a) of Schedule 1 to the Migration Regulations relevantly provides that an application for a National Innovation (Class BX) visa must be made at the place and in the manner (if any) specified by the Minister in a legislative instrument made for item 1113 of Schedule 1 under subregulation 2.07(5).
- 5 The National Innovation Visa Regulations will commence on 6 December 2024, replacing the Subclass 858 (Global Talent) visa with the Subclass 858 (National Innovation) visa. An applicant for the National Innovation visa must be invited to apply for the visa by the Minister in order to make a valid visa application. The purpose and objective of the National Innovation Visa Regulations is to ensure that Australia continues to attract the best and brightest global talents and to drive growth in sectors of national importance as specified under paragraph 858.212(2)(a) of Schedule 2 to the Migration Regulations.
- 6 LIN 24/078 amends LIN 21/026 as a consequence of this new statutory requirement, to specify the relevant approved form for application for a Subclass 858 (National Innovation) visa. It also amends LIN 21/026 to specify the way in, and the place at, which an application for a Subclass 858 visa must be made pursuant to subregulation 2.07(5) of the Migration Regulations.

Consultation

- 7 Consultation was undertaken as part of the development of the National Innovation Visa Regulations. No specific consultation was undertaken in relation to this legislative instrument as it was deemed not necessary due to the change being of a minor or machinery nature. Aside from amending LIN 21/026 to reflect the new visa subclass and associated application lodgement arrangements, the amending instrument does not alter other existing arrangements specified by LIN 21/026.

- 8 The Office of Impact Analysis (OIA) was not consulted on the development of this specific legislative instrument, but was consulted on the National Innovation Visa Regulations. OIA considered no regulatory impact statement was required for the National Innovation Visa Regulations (OBPR reference number: OIA24-07084).

Details of the instrument

- 9 Section 1 sets out the name of the instrument.
- 10 Section 2 provides that the instrument commences at the same time as the National Innovation Visa Regulations.
- 11 Section 3 specifies the authorising provision of this legislative instrument. This instrument is made under subregulation 2.07(5) of the Migration Regulations for the purposes of paragraph 1113(3)(a) of Schedule 1 to the Regulations.
- 12 Section 4 provides for how the amendments in LIN 24/078 operate, which indicates that Schedule 1 to LIN 24/078 will provide a list of item that amend LIN 21/026.
- 13 Item [1] of Schedule 1 to LIN 24/078 inserts a new item 5 to Schedule 1 to LIN 21/026, to specify the approved form, place and manner of how an application for a National Innovation (Class BX) visa can be made. The new item 5 provides that for Class BX applications, the approved form is Form 47NI (Internet) or Form 47NI if authorised in an authorising email. ‘Authorising email’ will continue to have the same meaning as specified in LIN 21/026, to mean an email sent by an officer of the Department of Home Affairs, authorising an applicant to make an application using an alternative form, in an alternative place or in an alternative manner.
- 14 If Form 47NI (Internet) is used, then an internet application must be made for a National Innovation (Class BX) visa. Alternatively, if the applicant is authorised to use Form 47NI, the application must be made by an email to the official email address stated in the authorising email and the application must be made before the end of the period stated in the authorising email.

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 Part 2 of the Migration Regulations, which is prescribed in paragraph (b) of item 20 of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 16 The instrument was made by the Minister for Immigration and Multicultural Affairs in accordance with subregulation 2.07(5) of the Migration Regulations.

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