

EXPLANATORY STATEMENT

Migration Act 1958

**DETERMINATION OF PROTECTION (CLASS XA) AND REFUGEE AND
HUMANITARIAN (CLASS XB) VISAS 2014**

(Section 39A)

1. This Instrument is made by the Minister under section 39A of the *Migration Act 1958* (the Act).
2. The purpose of the Instrument is make a determination of the minimum annual combined number of Protection (Class XA) visas and Refugee (Class XB) visas for the purposes of section 39A of the Act.
3. The Instrument operates to specify the Minister's determination of at least the minimum total combined number of Protection (Class XA) visas and Refugee and Humanitarian (Class XB) visas that the Minister must take all reasonable practicable measures to ensure are granted for, the financial year commencing 2015 is 13,750 visas; for the financial year commencing 2016 is 13,750 visas; for the financial year 2017 is 16,250 visas; and for the financial year commencing 2018 is 18,750.
4. This Instrument applies to all applicants who have applied for a Protection (Class XA) visa; or a Refugee and Humanitarian (Class XB) visa.
5. Under section 42 of the *Legislative Instruments Act 2003* and section 39A(4) of the Act, the Instrument is subject to disallowance and therefore a Statement of Compatibility with Human Rights has been provided.
6. The Office of Best Practice Regulation has been consulted and has advised that a Regulatory Impact Statement is not required (OBPR reference 18039).

7. Under section 18(2)(b) of the *Legislative Instruments Act 2003*, consultation was considered inappropriate and unnecessary.
8. Consultation was considered inappropriate due to the Instrument being required as a matter of urgency. This is because the debating of the Resolving the Legacy Caseload Bill presented an opportunity to complete portfolio legislative priorities by the end of the parliamentary year. This enabled Senators to obtain an overview of related legislation, without which they may not have appreciated the interdependencies of the measures. For example, the reintroduction of temporary protection visas is one of the keys to the re-expansion of the Humanitarian Programme. Places which would otherwise go to illegal maritime arrivals can now be used to resettle more refugees and others in humanitarian need from overseas.
9. Consultation was further considered unnecessary because there is a long-established annual consultation process that allows individuals, business, organisations, states and territories, government departments and senior ministers to express their views on the size and composition of the Humanitarian Programme. Every year, the Department publishes a discussion paper and invites the public to make submissions on the Humanitarian Programme. The Department consults state and territory governments and other government agencies, as well as peak refugee and humanitarian bodies. It also considers the advice of the United Nations High Commissioner for Refugees on global resettlement needs and priorities. These consultations inform the government's decisions on the size and composition of the Humanitarian Programme in the year ahead. Settlement service providers, the main business stakeholders in the Humanitarian Programme, are kept informed of changes in the programme by the Department of Social Services. The long lead time for the implementation of the amendment will assist stakeholders to plan for the increases.
10. The Instrument, IMMI 14/117, commences on the day after signature.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Humanitarian Programme government amendment: Increases in the number of Refugee and Humanitarian (Class XB and Class XA) visas to be granted each year

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Humanitarian Programme (a) provides resettlement in Australia to people who are subject to persecution or substantial discrimination amounting to a gross violation of their human rights in their home country and (b) is an avenue protection to people in Australia who engage Australia's protection obligations under the United Nations 1951 Convention relating to the Status of Refugees and its 1967 Protocol (Refugees Convention), the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

The *Migration Regulations 1994* (the Regulations) are amended to provide for two permanent increases over four years in the total number of places available under the Humanitarian Programme each year. The amendments allow Australia to assist more refugees and other people in humanitarian need of resettlement, including those with family and community links in Australia.

Human rights implications

The Legislative Instrument specifies in legislation the number of places in the Humanitarian Programme, and raises it over time, thereby improving the situation for persons who are seeking resettlement or protection in Australia and thus is rights positive.

The Legislative Instrument engages Australia's non-refoulement obligations under the ICCPR and CAT – that is the obligation not to return a person where it would result in them being arbitrarily deprived of their life, have the death penalty carried out or be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The amendments support this objective by providing additional places in the overall Humanitarian Programme, some of which may be used, if required, for the purpose of granting visas to persons in Australia who engage these obligations or the non-refoulement obligation under the Refugees Convention.

Article 10 of the Convention on the Rights of the Child (CRC) requires that applications for family reunification made by minors or their parents are treated in a positive, humane and expeditious manner. This amendment supports this objective by providing additional places in the overall Humanitarian Programme, a proportion of which will be used for family reunification purposes.

Conclusion

The Legislative Instrument is compatible with human rights.

The Hon Scott Morrison MP, Minister for Immigration and Border Protection