

**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 due to the Instrument being required as a matter of urgency.
  
8. 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**