

## **EXPLANATORY STATEMENT**

Issued by the Minister for Home Affairs and Minister for Immigration and Border Protection

*Migration Act 1958*

*Migration Amendment (Investor Retirement Visa) Regulations 2018*

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

Subsection 504(1) of the Migration Act in summary provides that the Governor-General may make regulations prescribing matters required or permitted by the Migration Act to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Migration Act.

In addition, subsection 46(3) of the Migration Act provides that the regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application.

The *Migration Amendment (Investor Retirement Visa) Regulations 2018* (the Regulations) amend the *Migration Regulations 1994* to provide that applications for an Investor Retirement (Class UY) visa made on or after 1 June 2018 are only valid if the applicant is the holder of a Class UY visa, or if the last substantive visa held by the applicant since last entering Australia was a Class UY visa.

The closure of the Class UY visa, which consists of one visa subclass, the Subclass 405 (Investor Retirement) visa, was announced in the 2018-19 Federal Budget, as part of the establishment of a pathway to permanent residence for current holders of the Retirement (Temporary)(Class TQ) visas and the Class UY visa. The Class TQ visa, which consists of one visa subclass, the Subclass 410 (Retirement) visa, is already closed to new applicants. The reason for the closure of the Class UY visa is that the visa no longer aligns with Australia's economic priorities.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of the Statement is at [Attachment A](#).

Details of the Regulations are set out in [Attachment B](#).

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments made by the Regulations. No Regulation Impact Statement is required. The OBPR consultation reference is 23745.

Consultation has been undertaken in relation to the Class UY visa as part of a review of Australia's business, investment and talent visas. No further consultation was undertaken because the proposed amendments relate to a budget measure. This accords with

subsection 17(1) of the *Legislation Act 2003* (the Legislation Act) which requires consultations to be appropriate and reasonably practicable.

The Migration Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the Legislation Act.

The Regulations commence on 1 June 2018.

**ATTACHMENT A****Statement of Compatibility with Human Rights**

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

***Migration Amendment (Investor Retirement Visa) Regulations 2018***

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**

The *Migration Amendment (Investor Retirement Visa) Regulations 2018* (the Regulations) amend the *Migrations Regulations 1994* to provide that applications for an Investor Retirement (Class UY) visa made on or after 1 June 2018 would only be valid if the applicant is the holder of a Class UY visa, or the last substantive visa held since entering Australia was a Class UY visa. The Class UY visa has only one subclass, the Subclass 405 (Investor Retirement) visa (Subclass 405 visa). The purpose of this amendment is to close the visa class to new applicants who have not previously held a Subclass 405 visa.

The Regulations apply only to new visa applications. They do not apply to applications that have already been made, but not yet decided, at the time the Regulations commence. Individuals who currently hold a Subclass 405 visa are not affected by the Regulations, and will be able to apply for new Subclass 405 visas when their current one expires.

With the heavy focus on passive investment into state and territory bonds, the economic benefits that this visa originally offered in 2005 do not align with Australia's current economic priorities.

**Human rights implications**

These Regulations do not engage any applicable human rights (or more generally Australia's international legal obligations). This is because current Subclass 405 visa holders retain their visa, and will be able to apply for a new Subclass 405 visa when their current one expires.

**Conclusion**

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Peter Dutton MP  
Minister for Home Affairs  
Minister for Immigration and Border Protection**

**ATTACHMENT B****Details of the Migration Amendment (Investor Retirement Visa) Regulations 2018**Section 1 – Name

This section provides that the title of the Regulations is the *Migration Amendment (Investor Retirement Visa) Regulations 2018* (the Regulations).

Section 2 – Commencement

Subsection 2(1) provides that each provision of the Regulations specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms. The table states that the Regulations commence on 1 June 2018. A note clarifies that this table relates only to the Regulations as originally made. It will not be amended to deal with any later amendments of the Regulations.

Subsection 2(2) provides that any information in column 3 of the table is not part of the Regulations. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument. Column 3 of the table provides the date/details of the commencement date.

The purpose of this section is to provide for when the amendments made by the Regulations commence.

Section 3 – Authority

This section provides that the Regulations are made under the *Migration Act 1958* (the Migration Act).

The purpose of this section is to set out the Act under which the Regulations are made.

Section 4 – Schedule

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

The effect of this section is that the *Migration Regulations 1994* (the Migration Regulations) are amended as set out in the applicable items in the Schedule to the Regulations.

The purpose of this section is to provide for how the amendments in the Regulations operate.

**Schedule 1 – Amendments*****Migration Regulations 1994*****Item 1 – At the end of subitem 1212B(3) of Schedule 1 (before the note)**

This item inserts new paragraph (e) in subitem 1212B(3) of Schedule 1 to the Migration Regulations.

The purpose of paragraph 1212B(3)(e) is to restrict applications for the Investor Retirement (Class UY) visa to those people who already hold a Class UY visa or whose last substantive visa since last entering Australia was a Class UY visa. The effect of the amendment is to close the visa class to new applicants who have not previously held a Class UY visa, have left Australia since last holding a Class UY visa or have held another substantive visa since last holding a Class UY visa.

**Item 2 – In the appropriate position in Schedule 13**

This item inserts new Part 70 in Schedule 13 to the Migration Regulations.

New clause 7001 provides that the amendments made by Schedule 1 to the Regulations apply in relation to an application for a visa made on or after 1 June 2018. The effect of this provision is that the amendments do not affect applications that have been made, but are not finally determined, at the commencement of the Regulations.