

EXPLANATORY STATEMENT

Migration Regulations 1994

Migration (Arrangements for Protection, Refugee and Humanitarian Visas) Instrument (LIN 20/169) 2020

(subregulation 2.07(5) and items 1401, 1402, 1403 and 1404 of Schedule 1)

1. The instrument, LIN 20/169, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Regulations) and for items 1401, 1402, 1403 and 1404 of Schedule 1 to the Regulations.
2. The instrument repeals *Migration (LIN 18/029: Arrangements for Protection, Refugee and Humanitarian Visas) Instrument 2018* (F2019C00149), made under subregulation 2.07(5) and for items 1401, 1402, 1403 and 1404 of Schedule 1 to the Regulations in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA). Subsection 33(3) of the AIA states that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
3. Subregulation 2.07(5) of the Regulations empowers the Minister, if an item of Schedule 1 prescribes criteria or requirements by reference to a legislative instrument, to specify in a legislative instrument the following criteria:
 - (a) an approved form for making an application for a class of visa;
 - (b) the way in which an application for a class of visa must be made;
 - (c) the place at which an application for a class of visa must be made.
4. The instrument operates to specify the form, place and manner for making an application for the following visas:
 - (a) Protection (Class XA) visa;
 - (b) Refugee and Humanitarian (Class XB) visa;
 - (c) Temporary Protection (Class XD) visa;
 - (d) Safe Haven Enterprise (Class XE) visa.

5. The purpose of the instrument is to update the arrangements for making an application for a Protection (Class XA) visa, a Temporary Protection (Class XD) visa or a Safe Haven Enterprise (Class XE) visa. Specifically, the instrument makes changes so that an application for one of these visas must be made using the internet form specified for that visa, as an internet application (internet application). If an applicant is unable to make an internet application, the instrument specifies that an application may be made using the relevant paper form specified for the visa and by posting it to the Department.
6. The change to the arrangements for the Protection (Class XA) visa, the Temporary Protection (Class XD) visa and the Safe Haven Enterprise (Class XE) visa reflect that the Department's preferred lodgement method is internet application. This aligns with the Department's expansion of online lodgement capability, allowing the Department to better manage visa applications and improve efficiency. The instrument continues to provide for paper based application methods for applicants who are unable to make an internet application.
7. The instrument maintains the arrangements in LIN 18/029, for making an application a Refugee and Humanitarian (Class XB) visa.
8. In accordance with paragraph 15J(2)(e) of the *Legislation Act 2003*, consultation was not necessary. The Instrument is of a minor or machinery nature due to its administrative character and does not substantially alter existing arrangements.
9. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 42552).
10. The maker of the instrument (Senior Executive Service Band One, Refugee, Humanitarian and Settlement Division) was appropriately delegated by the *Minister (Instrument-making Powers) Delegation 2020/252* (LIN 20/252).
11. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
12. The instrument applies to applications for a visa made on or after the instrument commences.

13. The instrument commences on the day after it is registered on the Federal Register of Legislation.