

EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Migration Regulations 1994

Migration (Arrangements for Protection, Refugee and Humanitarian visas) Amendment Instrument (LIN 21/079) 2021

- 1 The instrument, Departmental reference LIN 21/079, is made under subregulation 2.07(5) and item 1402 of Schedule 1 to the *Migration Regulations 1994* (the Regulations).
- 2 The instrument amends *Migration (Arrangements for Protection, Refugee and Humanitarian Visas) Instrument (LIN 20/169) 2020* (F2020L01420) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*. 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, as the power to make the instrument.
- 3 The instrument commences on the day after registration, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The instrument operates to amend the approved form, place and manner (“the arrangements”) requirements for making an application for a Refugee and Humanitarian (Class XB) Visa (Class XB visa).
- 5 Item 1402 of Schedule 1 to the Regulations prescribes the requirements that an applicant for a Class XB visa must meet to make a valid visa application. This includes that if an approved form, place and manner for making an application is specified in a legislative instrument made under subregulation 2.07(5) of the Regulations the application must be made in that way (see also subitem 1402(1) and paragraph 1402(3)(a)).
- 6 Under paragraph 1402(3)(b) of Schedule 1 to the Regulations, an applicant for a Class XB visa must be outside Australia, unless they are covered by subitem 1402(3B) of Schedule 1 to the Regulations. This provision was recently inserted by the *Migration Amendment (Humanitarian Response to Events in Afghanistan) Regulations 2021* for the specific purpose of enabling persons evacuated from Afghanistan to Australia commencing in August 2021 to make a valid application for a Class XB visa in Australia.
- 7 Under this subitem 1402(3B) of Schedule 1 to the Regulations, applications may be made in Australia where, at the time of application, the visa applicant:
 - holds a Subclass 449 (Humanitarian Stay) (Temporary) visa (Subclass 449 visa) (paragraph (a)); and
 - is in a class of persons specified by the Minister in a legislative instrument made under subitem 1402(3C) of Schedule 1 to the Regulations (paragraph (b)).

- 8 The purpose of the instrument is to amend LIN 20/169 to specify the arrangements for applicants covered by subitem 1402(3B) of Schedule 1 to the Regulations to make a visa application for a Class XB visa, to specifically provide that these applicants must make their application using form 842 and in accordance with the written notice sent by the Department notifying the person that they can make a visa application.
- 9 The instrument also amends LIN 20/169 to update the drafting to align with current standards. The instrument makes minor amendments to sections 7, 9 and 10 of LIN 20/169. Those sections specify the arrangements for making an application for a Protection (Class XA) Visa, a Temporary Protection (Class XD) Visa and a Safe Haven Enterprise (Class XE) Visa.

Consultation

- 10 The Department of Home Affairs has consulted broadly through the recently formed Ministerial Advisory Panel (the Panel), the Attorney-General's Department and Australian Afghan communities. Topics of consultation have included how best to support the settlement of those who were part of Australia's evacuation mission out of Afghanistan and have since arrived in Australia on Subclass 449 visas. The Panel is led by the Commonwealth Coordinator-General for Migrant Services, Alison Larkins and a leading expert in refugee settlement, Paris Aristotle AO. The panel is supported by Afghan community leaders in Australia, leading refugee advocates and service providers who are recognised for their long-standing experience in refugee settlement and integration issues.
- 11 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a minor or machinery nature and no regulatory impact statement was required. The OBPR reference number is 44648.

Details of the instrument

- 12 Section 1 sets out the name of the instrument.
- 13 Section 2 provides for the commencement of the instrument on the day after registration on the Federal Register of Legislation.
- 14 Section 3 provides that *Migration (Arrangements for Protection, Refugee and Humanitarian Visas) Instrument (LIN 20/169) 2020* (F2020L01420) is amended as set out in Schedule 1 to the instrument.
- 15 Item 1 of Schedule 1 inserts a definition of 'written notice' in section 4 of LIN 20/169. This term supplements the amendments made to section 8 of LIN 20/169.
- 16 Item 2 of Schedule 1 amends section 7 of LIN 20/169 to substitute 'paper form 866 and posted with correct pre-paid postage amount' with 'form 866 and posted with sufficient prepaid postage'. This reflects that forms do not have to be made on hard-copy paper and can be completed and lodged electronically, without printing to paper. This amendment also ensures that in the case an applicant pays more than the 'correct' postage amount, the application will not be made invalid.
- 17 Item 3 of Schedule 1 amends section 8 of LIN 20/169 to insert the arrangements for making an application for a Class XB visa for an applicant covered by subitem 1402(3B) of Schedule 1 to the Regulations.

- 18 This item replaces the table in section 8 of LIN 20/169. The new table includes a new item, which specifies the arrangements for making an application if the applicant is covered by subitem 1402(3B) of Schedule 1 to the Regulations. Item 2 of the amended table provides that such an applicant must also have received written notice to make an application using the specified form and in the specified manner.
- 19 This item also makes minor amendments to the arrangements already in place for Class XB visa applicants under LIN 20/169. The item also updates the table to reflect changes made to other sections of LIN 20/169 and removes reference to ‘paper’ and ‘correct pre-paid postage’, which is replaced with ‘sufficient postage’.
- 20 Items 4 and 6 of Schedule 1 amend LIN 20/169 to remove reference to ‘paper’ in sections 9 and 10 of LIN 20/169. The word ‘paper’ is removed from before ‘form 866’ and ‘form 1505’ for the same reasons as outlined for item 2 of Schedule 1, above.
- 21 Items 5 and 7 of Schedule 1 amend LIN 20/169 to substitute ‘correct pre-paid postage amount’ with ‘sufficient prepaid postage’ in sections 9 and 10 of LIN 20/169. This amendment is made for the same reasons as outlined for item 2 of Schedule 1, above.

Parliamentary scrutiny etc.

- 22 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under subregulation 2.07(5) and item 1402 of Schedule 1 to the Regulations, which is exempt from disallowance under paragraph (b) of item 20 in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 23 The instrument was made by a delegate of the Minister, acting under subregulation 2.07(5) and item 1402 of Schedule 1 to the Regulations.