

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Arrangements for Visitor (Class FA) visa applications) Amendment Instrument (LIN 22/005) 2022

- 1 The instrument, Departmental reference LIN 22/005, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Regulations).
- 2 The instrument amends *Migration (arrangements for Visitor (Class FA) visa applications) Instrument (LIN 21/056) 2021* (LIN 21/056) 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. This means that subregulation 2.07(5) of the Regulations also include a power to amend or repeal an instrument made under that provision.
- 3 The instrument commences on 5 March 2022, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The purpose of the instrument is to amend the approved form, place and manner (the arrangements) for making an application for a Visitor (Class FA) visa in the Tourist stream (Tourist stream visa) in Australia.
- 5 The instruments aligns the arrangements for making an application for a Tourist stream visa for applicants outside Australia and applicants in Australia.
- 6 The instrument also places a limitation on when an applicant in Australia may make an application (see paragraph 18 for further detail).
- 7 Further information about the enabling provisions is provided in the explanatory statement to LIN 21/056.

Consultation

- 8 Consultation was undertaken with key stakeholders, including the Department of Foreign Affairs and Trade, Austrade, and Tourism Visa Advisory Group representatives. The Department's contracted Service Delivery Partners were advised of the proposed transition to 100 per cent online lodgement. Further communication will be undertaken with clients and other stakeholders prior to final implementation of the changes.
- 9 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a minor nature and a regulatory impact statement is not required. The OBPR reference number is 44183.

Details of the instrument

- 10 Section 1 sets out the name of the instrument.
- 11 Section 2 provides for the commencement of the instrument on 5 March 2022.
- 12 Section 3 provides that LIN 21/056 is amended as set out in Schedule 1.
- 13 Item 1 of Schedule 1 to the instrument omits ‘arrangements’ and inserts ‘Arrangements’ in section 1 of LIN 21/056. As a result of this amendment, the name of LIN 21/056 is updated to be *Migration (Arrangements for Visitor (Class FA) visa applications) Instrument (LIN 21/056) 2021*.
- 14 Item 2 of Schedule 1 substitutes the note in section 3 of LIN 21/056. The note is updated to reference new terms inserted by the instrument and to correct a drafting error.
- 15 Item 3 of Schedule 1 substitutes section 5 of LIN 21/056. Section 5 sets out for subitem 1236(1) and item 1 of the table in subitem 1236(3) of Schedule 1 to the Regulations the arrangements for making an application for a Tourist stream visa.
- 16 Subsection 5(2) specifies that an applicant for a Tourist stream visa must make an application using form 1419 (Internet) through ImmiAccount and must indicate that they are making an application for a Tourist stream visa.
- 17 Subsection 5(3) specifies that if a person seeking to apply for a Tourist stream visa has received a written notice they may make an application using form 1419 in accordance with the directions in the written notice. This provision does not exclude the applicant from making an application in accordance with subsection 5(2).
- 18 Subsection 5(4) specifies that an applicant in Australia must make an application before, or within 28 days after, the day the applicant ceases to hold a substantive visa or a criminal justice visa. This reflects some of the criteria in Schedules 2 and 3 to the Regulations for grant of the visa, and in doing so prevents persons who will not be granted a visa from making a valid application (see subclause 600.223(2) of Schedule 2 and subclause 3001(1) and subparagraph 3001(2)(c)(iv) of Schedule 3 to the Regulations).

Parliamentary scrutiny etc.

- 19 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because instruments made under Part 2 of and Schedule 1 to the Regulations are exempt under paragraph b of item 20 in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 20 The instrument is appropriate to be exempt from disallowance as it concerns matters of an administrative nature. Updating legislative instruments that specify administrative matters allows for consistent internal management of the migration policy framework.
- 21 The instrument was made by a delegate of the Minister, in accordance with subregulation 2.07(5), subitem 1236(1) and item 1 of the table in subitem 1236(3) of Schedule 1 to the Regulations.