

EXPLANATORY STATEMENT

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

Migration Act 1958

Migration (Granting of contributory parent visas, parent visas and other family visas in the 2021/2022 financial year) Instrument (LIN 22/006) 2022

- 1 The instrument, Departmental reference LIN 22/006, is made under paragraph 85(1)(b) of the *Migration Act 1958* (the Migration Act).
- 2 The instrument repeals *Migration (Granting of contributory parent visas, parent visas and other family visas in the 2020/2021 financial year) Instrument (LIN 21/025) 2021* (F2021L00511) (LIN 21/025) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). That subsection provides that where an Act confers a power to make a legislative instrument, the power includes a power to amend or repeal that instrument, subject to any conditions that apply to the initial instrument-making power. This means that paragraph 85(1)(b) of the Migration Act also includes a power to amend or repeal an instrument made under that provision.
- 3 The instrument commences on the day after registration on the Federal Register of Legislation and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 Section 85 of the Migration Act provides that the Minister may, by legislative instrument, determine the maximum number of visas of a specified class, or of specified classes, (excluding temporary protection visas or safe haven enterprise visas) that may be granted in a specified financial year.
- 5 The purpose of the instrument is to determine the maximum number of visas that may be granted for certain classes of visas in the 2021-2022 financial year between 1 July 2021 and 30 June 2022 (inclusive). The instrument covers the following visa classes (with item numbers referring to items in Schedule 1 to the *Migration Regulations 1994* (the Migration Regulations)):

Contributory Parent classes of visas

- a. Contributory Parent (Migrant) (Class CA) visa (item 1130);
- b. Contributory Aged Parent (Residence) (Class DG) visa (item 1130A);
- c. Contributory Parent (Temporary) (Class UT) visa (item 1221);
- d. Contributory Aged Parent (Temporary) (Class UU) visa (item 1221A).

Parent classes of visas

- a. Parent (Migrant) (Class AX) visa (item 1124);
- b. Aged Parent (Residence) (Class BP) visa (item 1124A).

Other Family classes of visas

- a. Other Family (Migrant) (Class BO) visa (item 1123A);
- b. Other Family (Residence) (Class BU) visa (item 1123B).

- 6 None of the abovementioned classes of visa are temporary protection visas or safe haven enterprise visas (see subsection 35B(3) and section 37A of the Migration Act).
- 7 The Government's annual migration program allocates a limited number of visa places to Contributory Parent, Parent and Other Family classes of visas. The Government announces the program numbers each year in the Budget. Capping of the visas through a legislative instrument is an annual process which has been in place since 2011. The aim is to facilitate the orderly and equitable processing of visa applications in these visa categories, given that demand significantly outweighs the supply of available places.
- 8 The instrument determines the maximum number of visas for these visa classes as follows:
- a. Contributory Parent visas: 3,600 (which includes 125 visas under the Pathway to Permanent Residence for Retirees that was introduced under the *Migration Amendment (Pathway to Permanent Residence for Retirees) Regulations 2018*);
 - b. Other Family visas: 500;
 - c. Parent visas: 900.
- 9 There are no changes to the maximum numbers for these visa classes that was determined for the 2020/21 financial year in LIN 21/025.

Consultation

- 10 Consultation is undertaken through the Budget and Migration Program planning process each year by the Department of Home Affairs to determine the numbers for the Migration Program. The consultation included formal discussions with stakeholders, 181 public submissions and eight submissions from Government agencies. Varied feedback from the consultations was taken into consideration by Government when considering the Migration Program planning levels.
- 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 25331.

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 defines terms used in the instrument.
- 15 Section 4 of the instrument repeals the previous instrument, *Migration (Granting of contributory parent visas, parent visas and other family visas in the 2020/2021 financial year) Instrument (LIN 21/025) 2021* (F2021L00511).
- 16 Section 5 of the instrument determines that a maximum of 3,600 Contributory Parent visas may be granted in the 2021/22 financial year. Within this maximum, only 125 visas under the Pathway to Permanent Residence for Retirees may be granted (as governed by clauses 143.214 and 143.313 of Schedule 2 to the Migration Regulations).

- 17 Section 6 of the instrument determines that a maximum of 900 Parent Visas may be granted in the 2021/22 financial year.
- 18 Section 7 of the instrument determines that a maximum of 500 Other Family Visas may be granted in the 2021/22 financial year.

Parliamentary scrutiny etc.

- 19 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because the instrument is made under Part 2 of the Migration Act, which is prescribed in paragraph (a) of item 20 of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 20 The instrument was made by the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs in accordance with paragraph 85(1)(b) of the Migration Act.