

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Arrangements for Other Visas) Amendment Instrument (LIN 23/012) 2023

- 1 The instrument, Departmental reference LIN 23/012, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Migration Regulations) for subitem 1127A(1) of Schedule 1 to the Migration Regulations.
- 2 The instrument amends *Migration (IMMI 18/089: Arrangements for Other Visas) Instrument 2018* (IMMI 18/089) 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 start of the day after the instrument is registered and is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 Subregulation 2.07(5) of the Migration Regulations provides that if an item of Schedule 1 prescribes criteria or requirements by reference to a legislative instrument made under subregulation 2.07(5), the Minister may, by legislative instrument, specify an approved form for making an application for a visa of a specified class; the way in which an application must be made; the place at which it must be made; and any other matter.
- 5 Paragraph 1127AA(3)(a) of Schedule 1 to the Regulations provides that an application for a Resolution of Status (Class CD) visa (**RoS visa**) must be made at the place and in the manner specified by the Minister in a legislative instrument made for that item under subregulation 2.07(5) of the Migration Regulations.
- 6 The instrument amends IMMI 18/089 to provide that an application for a RoS visa must be made by completing the relevant internet form or, upon written authorisation by an officer of the Department of Home Affairs, by posting the application to a specified address of the Department.
- 7 The instrument is intended to support the Government's policy of transitioning certain persons who hold or have held a Subclass 785 (Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa to a RoS visa. The instrument will enable those persons to apply for a RoS visa by directing their applications to a specified address of the Department of Home Affairs.

Consultation

- 8 No consultation was done for this instrument. This is because the amendments made by this instrument are of a technical and administrative nature and would not benefit from consultation.

- 9 The Office of Best Practice Regulation (OBPR) was 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 OBPR22-03791.

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 the day after the instrument is registered.
- 12 Section 3 provides that Schedule 1 to the instrument amends IMMI 18/089.
- 13 Item 1 of Schedule 1 inserts a definition for the Department's interactive portal for online services (ImmiAccount).
- 14 Item 2 of Schedule 1 substitutes section 7 of IMMI 18/089 with a new provision stating that an application for a RoS visa must be made by completing approved form 1364 (Internet) and making an Internet application, or by completing form 1364 and posting the application to the specified address if the applicant has been authorised to do so by an officer of the Department.
- 15 Item 3 of Schedule 1 repeals Schedule 2 to IMMI 18/089.

Parliamentary scrutiny etc.

- 16 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under Part 2 of the Migration Regulations, which is prescribed by subitem 20(b) of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 17 The instrument was made by a delegate of the Minister for Immigration, Citizenship and Multicultural Affairs, in accordance with subregulation 2.07(5) of the Migration Regulations.