

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Arrangements for Bridging visa applications) Amendment Instrument 2023

- 1 The instrument, Departmental reference LIN 23/019, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument amends *Migration (Arrangements for Bridging visa applications) Instrument (LIN 21/045) 2021* (F2022C00774) (LIN 21/045) 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 includes a power to amend or repeal an instrument made under that provision.
- 3 The instrument commences on the day after it is registered, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The instrument operates to specify arrangements for making bridging visa applications. Subregulation 2.07(5) of the Regulations provides that if an item of Schedule 1 to the Regulations prescribes criteria or requirements by reference to a legislative instrument made under subregulation 2.07(5), the Minister may, by legislative instrument, specify the following:
 - (a) an approved form for making an application for a visa of a specified class;
 - (b) the way in which an application for a visa of a specified class must be made;
 - (c) the place at which an application for a visa of a specified class must be made.
- 5 The purposes of the instrument are to update LIN 21/045, to prescribe Form 1364 (Internet) for online application for a Bridging A (Class WA) visa (BVA), a Bridging C (Class WC) visa (BVC), and a Bridging E (Class WE) visa (BVE); and to make amendments consequential to the making of the *Migration Amendment (Transitioning TPV/SHEV Holders to Resolution of Status Visas) Regulations 2023* (the Amendment Regulations).
- 6 Currently, applicants for a Subclass 851 (Resolution of Status) visa (RoS) using paper Form 1364 also make an application for a BVA, BVC, and BVE using that form. Form 1364 (Internet) will be included as a prescribed Internet form to enable online lodgement.
- 7 Prescribing Form 1364 (Internet) for online lodgement will align the paper and internet Form 1364, reduce processing delays and ensure that RoS applicants are taken to have applied for a BVA, BVC and BVE where appropriate.
- 8 However, if an application for a BVA, BVC or BVE cannot be made in ImmiAccount or the online portal, it may be made using an approved paper form by email to

bv.abc.lodgement@homeaffairs.gov.au, if the applicant has received a written notice from the Department authorising the applicant to do so. In which case, the application must attach the written notice to the application and must submit the application within 7 calendar days after the written notice was sent.

- 9 This change only applies to BVA, BVC or BVE visa applications. It does not affect the current lodgement options for Bridging B (Class WB) visa, Bridging D (Class WD) visa, , or Bridging F (Class WF) visa applicants.
- 10 Following amendments to the Regulations made by the Amending Regulations, certain persons who hold a Subclass 785 (Temporary Protection) visa (TPV) or a Subclass 790 (Safe Haven Enterprise) visa (SHEV) will be able to make a valid application for a RoS. A TPV or a SHEV held by a member of the affected cohort will not expire upon lodgement of a RoS application, but will instead remain in effect until the RoS application is decided. As a BV is not required for this cohort of applicants to maintain their status as lawful non-citizens, they will be excluded from the instrument. Therefore, Form 1364 and Form 1364 (Internet) will not be taken to be an application for a BVA, BVC, or BVE for a person who holds either a TPV or a SHEV.

Consultation

- 11 No consultation was done for this instrument. This is because it concerns matters of an administrative nature.
- 12 The Office of Impact Analysis (OIA) was consulted and considered that the instrument dealt with matters of a minor or machinery nature and no impact analysis was required. The OIA reference number is OBPR22-02182.

Details of the instrument

- 13 Section 1 sets out the name of the instrument.
- 14 Section 2 provides for the commencement of the instrument on the day after it is registered.
- 15 Section 3 provides that LIN 21/045 (F2022C00774) is amended as set out in Schedule 1 to the instrument.
- 16 Item 1 of Schedule 1 to the instrument amends section 4 of LIN 21/045. It inserts a new subsection 4(5) to exclude potential applicants holding a TPV or SHEV from using Form 1364 and Form 1364 (Internet) to apply for a BVA, BVC or BVE.
- 17 Item 1 of Schedule 1 to the instrument amends the table in Schedule 1 to LIN 21/045, to provide that Internet Form 1364 (Internet) is an approved form for BVA, BVC or BVE visa applications.

Parliamentary scrutiny etc.

- 18 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) of 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*.

- 19 The instrument was made by a delegate of the Minister, in accordance with subregulation 2.07(5) of the Regulations.