

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Securities in which an investment is a designated investment) Instrument (LIN 23/018) 2023

- 1 The instrument, Departmental reference LIN 23/018, is made under subregulation 5.19A(1) of the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument repeals *Migration Regulations 1994 – Securities in which an investment is a designated investment for the purposes of Subclasses 162, 165, 188, 405, 888, 891 & 893 –IMMI 12/106* (F2012L02220) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). 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 the day after registration, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 Subregulation 5.19A(1) of the Migration Regulations provides that, subject to subregulation 5.19(2), the Minister may, by legislative instrument, specify a security issued by an Australian Government State or Territory government authority as a security in which an investment is a designated investment for the purposes of a Part of Schedule 2 to the Migration Regulations.
- 5 Subregulation 5.19(2) of the Migration Regulations provides that the Minister may specify a security if and only if:
 - an investment in the security matures in not less than 4 years from its date of issue;
 - repayment of principal is guaranteed by the issuing authority;
 - an investment in the security cannot be transferred or redeemed before maturity except by operation of law or under other conditions acceptable to the Minister;
 - investment in the security is open to the general public at commercially competitive rates of return; and
 - the Minister is satisfied that the Commonwealth will not be exposed to any liability as a result of an investment in the security by a person.
- 6 The instrument specifies matters relating to an application for a Subclass 188 (Business Innovation and Investment (Provisional)) visa, Subclass 405 (Investor Retirement) visa, Subclass 888 (Business Innovation and Investment (Permanent)) visa, Subclass 891 (Investor) visa, and Subclass 893 (State or Territory Sponsored Investor) visa.
 - The Subclass 405 visa is closed to new applications, however there are still applications in progress.

- From 1 July 2021, as a result of amendments made by the *Home Affairs Legislation Amendment (2021 Measures No. 1) Regulations 2021*, applicants for the Subclass 188 visa in the Investor stream are no longer required to make a designated investment. However, there are still applications in progress which were made before 1 July 2021; those applicants are required to make a designated investment.
- 7 While IMMI 12/106 also specified the Subclass 162 (Investor (Provisional)) visa and the Subclass 165 (State/Territory Sponsored Investor (Provisional)) visa, the instrument does not specify these subclasses as these subclasses are closed to new applicants and there are no applications in progress.
 - 8 Securities issued by State or Territory government authorities are specified in this instrument as securities in which an investment is a designated investment for the purposes of applications for Subclass 188, 405, 888, 891 and 893 visas.

Consultation

- 9 No consultation was done for this instrument. This is because the instrument substantially replicates previously existing arrangements.
- 10 The Office of Impact Analysis (OIA) (formerly the Office of Best Practice Regulation) was consulted and considered that the instrument dealt with matters of a machinery nature and no regulatory impact statement was required. The OIA reference number is OIA23-04554.

Details of the instrument

- 11 Paragraph (a) of the instrument repeals *Migration Regulations 1994 – Securities in which an investment is a designated investment for the purposes of Subclasses 162, 165, 188, 405, 888, 891 & 893 –IMMI 12/106* (F2012L02220).
- 12 Paragraph (b) of the instrument specifies each security issued by a State or Territory government authority referred to in the Schedule to the instrument as a security in which an investment is a designated investment for the purposes of Parts 188, 405, 888, 891 and 893 of Schedule 2 to the Regulations.
- 13 Schedule 1 to the instrument lists 8 types of securities and each of the relevant State or Territory government security issuing authorities.

Parliamentary scrutiny etc.

- 14 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because an instrument made under Part 5 of the Migration Regulations is prescribed by subitem 20(b) of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 15 As the instrument is exempt from disallowance, no Statement of Compatibility with Human Rights is required.
- 16 The instrument was made by the Minister for Immigration, Citizenship and Multicultural Affairs in accordance with subregulation 5.19A(1) of the Migration Regulations. In specifying the securities mentioned in Schedule 1 to the instrument, the Minister was satisfied of each of the matters set out by subregulation 5.19A(2).