

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Payment of visa application charges and fees in foreign currencies) Instrument (LIN 23/004) 2023

- 1 The instrument, Departmental reference LIN 23/004, is made under paragraph 5.36(1A)(a) of the *Migration Regulations 1994* (the Regulations).
- 2 The instrument repeals *Migration (Payment of visa application charges and fees in foreign currencies) Instrument (LIN 22/003) 2022 (No. 2)* 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 the day after registration and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 A number of fees and charges are payable in relation to visa applications. Under subregulation 5.36(1A) of the Regulations, the amount of certain fees payable in a foreign currency is worked out on the basis of:
 - if the currency for the payment is specified in a legislative instrument for paragraph 5.36(1A)(a)—the exchange rate specified in the instrument; or
 - for any other currency—the method outlined in subregulation 5.36(2), which provides a formula using an exchange rate obtained on a commercial basis (paragraph 5.36(1A)(b)).
- 5 The Department bi-annually reviews Acceptable Currencies and Foreign Currency Exchange Rates (AC&FCER) and accordingly updates foreign currency instruments made for paragraphs 5.36(1)(a), (1)(b) and (1A)(a) of the Regulations (see also *Migration (Places and currencies for paying of fees) Instrument (LIN 23/005) 2023*).
- 6 As a result of the bi-annual AC&FCER review, it was identified that there were very few transactions to support the continued specification of additional currencies and foreign currency exchange rates. Foreign currency data indicated that in the 2019-20 financial year, there were 8,081 foreign currency transactions made in 32 currencies, for a total of AUD\$32.054 million. Comparatively, in the 2022-23 financial year (to 31 January 2023) there were five foreign currency transactions in one currency for a total of AUD\$728.

- 7 The reduced number of foreign currency transactions and the use of foreign currency exchange rates is a result of the Department progressively moving away from paper applications and cash transactions to electronic applications and payments through the IMMI account platform.
- 8 Accordingly, the purpose of the instrument is to specify the Australian dollar and exchange rate of 1.00000 for paragraph 5.36(1A)(a) of the Regulations. The expected benefits of this change include:
 - removing foreign currency volatility
 - consistency with Department of Foreign Affairs and Trade (DFAT) processes to minimise cash handling risk
 - consistency with citizenship fees that utilise the AC&FCER and now accept only the Australian dollar (from July 2022)
- 9 The Department will review the changes to the instrument periodically. If necessary, the instrument can be updated to revert back to specifying foreign currencies.

Consultation

- 10 As only five foreign currency transactions have been made in the 2022-23 financial year (to 31 January 2023) it is deemed that this instrument affects very few people and so consultation was not considered necessary.
- 11 The Office of Impact Analysis (OIA) was consulted and considered that the instrument dealt with matters of a minor or machinery nature and no regulatory impact statement was required. The OIA reference number is 25184.

Details of the instrument

- 12 Paragraph (a) specifies the Australian dollar for paragraph 5.36(1A)(a) of the Regulations.
- 13 Paragraph (b) specifies the exchange rate for the currency mentioned in paragraph (a) is 1.00000, for paragraph 5.36(1A)(a) of the Regulations. The intention of this paragraph is to make clear that the formula in subregulation 5.36(2) should not be used when payment is made in the Australian dollar.
- 14 Paragraph (c) repeals *Migration (Payment of visa application charges and fees in foreign currencies) Instrument (LIN 22/003) 2022 (No. 2)*.

Parliamentary scrutiny etc.

- 15 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because under paragraph (b) of item 20 of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.

- 16 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 in accordance with Departmental resources and arrangements.
- 17 The instrument was made by a delegate of the Minister, in accordance with paragraph 5.36(1A)(a) of the Regulations.