

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Arrangements for Protection, Refugee and Humanitarian Visas) Amendment Instrument (LIN 23/049) 2023 (No. 2)

- 1 The instrument, Departmental reference LIN 23/049, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument amends *Migration (Arrangements for Protection, Refugee and Humanitarian Visas) Instrument (LIN 20/169) 2020* 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 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 Subregulation 2.07(5) of the Migration Regulations provides that if an item of Schedule 1 to the Migration Regulations prescribes a criteria or requirements by reference to a legislative instrument made under subregulation 2.07(5), the Minister may, by legislative instrument, specify the following:
 - an approved form for making an application for a visa of a specified class;
 - the way in which an application for a visa of a specified class must be made;
 - the place at which an application for a visa of a specified class must be made; and
 - any other matter.
- 5 Items 1401, 1403 and 1404 of Schedule 1 to the Migration Regulations provides that an application for a visa of the following classes must be in the approved form specified by the Minister in a legislative instrument made for each item under subregulation 2.07(5) of the Migration Regulations:
 - Protection (Class XA) visa;
 - Temporary Protection (Class XD) visa; and
 - Safe Haven Enterprise (Class XE) visa.
- 6 This instrument updates the arrangements for lodging visa applications for these three visa classes. The purpose of this instrument is to increase the administrative efficiencies associated with the lodgement of internet applications for both the department and prospective applicants and to ensure paper applications are being submitted only when there is a genuine need to do so.

Consultation

- 7 No consultation was done for this instrument. This is because the instrument does not substantially alter existing arrangements.
- 8 The Office of Impact Analysis (OIA) was consulted and considered that the instrument dealt with matters of a minor nature and no regulatory impact statement was required. The OIA reference number is OIA23-05013.

Details of the instrument

- 9 Section 1 sets out the name of the instrument.
- 10 Section 2 provides for the commencement of the instrument on 28 August 2023.
- 11 Section 3 sets out that Schedule 1 amends *Migration (Arrangements for Protection, Refugee and Humanitarian Visas) Instrument (LIN 20/169) 2020*.
- 12 Item 1 of Schedule 1 substitutes section 7 of LIN 20/169.
 - New subsection 7(1) provides that for the purposes of item 1401 of Schedule 1 to the Migration Regulations, all Protection (Class XA) visa applications must be made using form 866 (Internet) as an Internet application.
 - New subsection 7(2) provides that if an application cannot be made in accordance with subsection 7(1), the application can be made using form 866 and posted with sufficient prepaid postage to the specified departmental address in Sydney, but only if the Department specifically authorises the applicant to do so.

13 Item 2 of Schedule 1 substitutes section 9 of LIN 20/169.

- New subsection 9(1) provides that for the purposes of item 1403 of Schedule 1 to the Migration Regulations, all Temporary Protection (Class XD) visa applications must be made using form 866 (Internet) as an Internet application.
- New subsection 9(2) provides that if an application cannot be made in accordance with subsection 9(1), the application can be made using form 866 and posted with sufficient prepaid postage to the specified departmental address in Sydney, but only if the Department specifically authorises the applicant to do so.

14 Item 3 of Schedule 1 substitutes section 10 of LIN 20/169.

- New subsection 10(1) provides that for the purposes of item 1404 of Schedule 1 to the Migration Regulations, all Safe Haven Enterprise (Class XE) visa applications must be made using form 866 (Internet) as an Internet application.
- New subsection 10(2) provides that if an application cannot be made in accordance with subsection 10(1), the application can be made using form 866 and posted with sufficient prepaid postage to the specified departmental address in Sydney, but only if the Department specifically authorises the applicant to do so.

Parliamentary scrutiny etc.

- 15 The instrument is exempt from disallowance under section 42 of the Legislation Act because an instrument made under Part 2 and Schedule 1 to the Migration Regulations is prescribed as exempt by item 20 of section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 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 delegate of the Minister in accordance with subregulation 2.07(5) of the Migration Regulations.