

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Arrangements for Visitor (Class FA) visa applications) Amendment Instrument (LIN 23/074) 2023

- 1 The instrument, Departmental reference LIN 23/074, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Migration Regulations) and item 3 of the table in subitem 1236(6) of Schedule 1 to the Migration Regulations.
- 2 The instrument amends *Migration (Arrangements for Visitor (Class FA) visa applications) Instrument (LIN 21/056) 2021* (LIN 21/056). Subsection 33(3) of the *Acts Interpretation Act 1901* 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 25 September 2023 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 to the Migration Regulations prescribes criteria or requirements by reference to a legislative instrument made under subregulation 2.07(5), the Minister may specify:
 - 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;
 - any other matter.
- 5 Subitem 1236(6) of Schedule 1 to the Migration Regulations prescribes the requirements an applicant seeking to satisfy the primary criteria for a Subclass 600 (Visitor) visa in the ‘Approved Destination Status’ (ADS) stream must meet to make a valid visa application. Item 3 of the table in this subitem requires the applicant must be intending to travel to Australia as a member of a tour organised by a travel agent specified by the Minister in an instrument in writing for this item.
- 6 Subsection 8(2) of LIN 21/056 provides that each travel agent mentioned in Schedule 1 to that instrument is specified for the purpose of item 3 of the table in subitem 1236(6) of Schedule 1 to the Migration Regulations.

- 7 The ADS scheme was paused by the Government of the People's Republic of China (PRC) in early 2020 due to border restrictions in response to the COVID-19 pandemic. On 10 August 2023, the Chinese Government announced Australia's inclusion on a list of countries recommencing the ADS scheme.
- 8 The purpose of the instrument is to amend the table of the ADS approved travel agents in China, (currently found in Schedule 1 of LIN 21/056), by removing ADS travel agents and updating the current business name of the approved ADS travel agents in China, if it had changed.
- 9 Updating the table of ADS approved travel agents in LIN 21/056 ensures the integrity of the Subclass 600 visa program and the ADS scheme, and removes the possibility of invalid applications being made on the basis of reference to a travel agent's new business name. It will also assist Chinese Subclass 600 visa applicants in the ADS stream to deal only with approved ADS travel agents in China.

Consultation

- 10 Consultation was undertaken with key government stakeholders, including Austrade, the Department of Foreign Affairs and Trade, Tourism Australia and the Australian Consulate-General of Guangzhou.
- 11 The Office of Impact Analysis (OIA) was consulted and considered that the measures in this instrument are unlikely to have more than a minor impact and therefore an Impact Analysis is not required.
 - The OIA reference number is OIA23-05595.

Details of the instrument

- 12 Section 1 of the instrument provides that the name of the instrument is the *Migration (Arrangements for Visitor (Class FA) visa applications) Amendment Instrument (LIN 23/074) 2023*.
- 13 Section 2 of the instrument provides that the instrument commences on 25 September 2023.
- 14 Section 3 of the instrument provides that the instrument is made under subregulation 2.07(5) of the Migration Regulations and item 3 of the table in subitem 1236(6) of Schedule 1 to the Migration Regulations.
- 15 Section 4 of the instrument provides that each instrument mentioned in Schedule 1 to the instrument is amended as set out in the applicable item in the Schedule.
- 16 Item 1 of Schedule 1 to the instrument amends Schedule 1 to LIN 21/056 by substituting a new table of ADS approved travel agents in China for the purpose of item 3 of the table in subitem 1236(6) of Schedule 1 to the Migration Regulations.

Parliamentary scrutiny etc.

- 17 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because a legislative instrument made under Part 2 of, or Schedule 1 to the Migration Regulations is exempt from disallowance under subitem 20(b) of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

- 18 As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
- 19 The instrument is made by a delegate of the Minister, in accordance with the following provisions of the Migration Regulations:
- subregulation 2.07(5); and
 - item 3 of the table in subitem 1236(6).