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***

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.

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.

The instrument commences on 25 September 2023 and is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

Purpose

1. 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.
1. 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.
2. 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.
3. 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.
4. 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.
5. 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

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.

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

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*.

Section 2 of the instrument provides that the instrument commences on 25 September 2023.

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.

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.

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.

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*.

As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.

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).