

## EXPLANATORY STATEMENT

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

*Migration Regulations 1994*

### ***Migration (Arrangements for Bridging visa applications) Amendment Instrument (LIN 24/045) 2024***

- 1 The instrument, departmental reference LIN 24/045, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument amends *Migration (Arrangements for Bridging visa applications) Instrument (LIN 21/045) 2021* (F2023C00227) (LIN 21/045) 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 it is registered. It is a legislative instrument for the *Legislation Act 2003*.

#### ***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 The purpose of this instrument is to amend LIN 21/045 to provide that an application for a Bridging D (Class WD) visa (BVD) using paper form 1007 and an application for a Bridging E (Class WE) visa (BVE) using paper form 1008 must not be made by any electronic means, including by fax or email.
- 6 Paper form 1005 for a BVE is removed from Schedule 1 to LIN 21/045 to streamline form options for BVEs.

#### ***Consultation***

- 7 No consultation was undertaken in relation to this instrument. This is because it concerns matters of an administrative nature.
- 8 The Office of Impact Analysis (OIA) was consulted and considered that the instrument dealt with matters of a minor or machinery nature and no impact analysis was required. The OIA reference number is OBPR22-03227.

## *Details of the instrument*

- 9 Section 1 sets out the name of the instrument.
- 10 Section 2 provides that the instrument commences the day after registration.
- 11 Section 3 provides that the instrument is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Migration Regulations).
- 12 Section 4 provides what the following Schedules will amend or repeal.
- 13 Item 1 of Schedule 1 to the instrument inserts subsection 4(7) after subsection 4(6) of LIN 21/045. The new subsection specifies that form 866 is an approved form for an application for a BVE except where the applicant is the holder of a Subclass 785 (Temporary Protection) visa or a Subclass 790 (Safe Haven Enterprise) visa.
- 14 Item 2 of Schedule 2 to the instrument substitutes the note after section 5 of LIN 21/045 so as to insert an additional note. Note 1 is identical to the previous note, and states that regulation 2.10C of the Migration Regulations provides for the time of making an internet application. Note 2 is inserted to clarify that no conflict exists between subregulation 2.10(3) of the Migration Regulations where an unlawful non-citizen may submit a bridging visa (BV) application directly to an officer, if located; and LIN 21/045, where the instrument provides applicants for a BV must submit application in a certain way. However, an applicant is not prevented from making an application in the way allowed for under subregulation 2.10(3) of the Migration Regulations.
- 15 Item 3 of Schedule 1 to the instrument substitutes section 6 of LIN 21/045. New paragraph 6(a) provides that an application for a BVD using paper form 1007 must not be made by any electronic means, including fax or email. New paragraph 6(b) provides that a BVD application using paper form 1007 may only be made in person at an interview with an officer of Immigration, but not in immigration clearance (subparagraph 6(b)(i)), or by post to an office of Immigration in Australia (subparagraph 6(b)(ii)).
- 16 Item 4 of Schedule 1 to the instrument inserts section 7 after section 6 of LIN 21/045. New paragraph 7(a) provides that an application for a BVE using paper form 1008 must not be made by any electronic means, including by fax or email. New paragraph 7(b) provides that a BVE application using paper form 1008 may only be made by one of the three following methods.
  - for an applicant in immigration detention – by hand to an officer of Immigration (subparagraph 7(b)(i)), or
  - in person at an interview with an officer of Immigration, but not in immigration clearance (subparagraph 7(b)(ii)), or
  - by post to an office of Immigration in Australia (subparagraph 7(b)(iii)).
- 17 A note is inserted to clarify that while subparagraph 7(b)(i) is limited to applicants in immigration detention, it is not intended to limit the methods available to an applicant in immigration detention.

Accordingly, the note states that subparagraphs 7(b)(ii) and (iii) apply to any applicant, including an applicant in immigration detention.

- 18 Item 5 of Schedule 1 to the instrument amends item 5 of the table in Schedule 1 to LIN 21/045 by removing paper form 1005 as an approved form for an application for a BVE.

***Parliamentary scrutiny etc.***

- 19 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under subregulation 2.07(5) of the Migration Regulations. A legislative instrument made under Part 2 of the Migration Regulations is exempt from disallowance under paragraph (b) of item 20 in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 20 The instrument was made by a delegate of the Minister, in accordance with subregulation 2.07(5) of the Migration Regulations.