

## EXPLANATORY STATEMENT

Issued by the delegate of the Minister

### *Migration (IMMI 18/103: Arrangements for Partner and Prospective Marriage Visa Applications) Amendment (No. 1) Instrument 2024*

The instrument *Migration (IMMI 18/103: Arrangements for Partner and Prospective Marriage Visa Applications) Amendment (No. 1) Instrument 2024* (LIN 24/077) is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Migration Regulations).

The instrument amends *Migration (IMMI 18/103: Arrangements for Partner and Prospective Marriage Visa Applications) Instrument 2018* (IMMI 18/103).

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

IMMI 18/103 specifies the approved form, place and manner for making an application for a number of visa classes, including the Partner (Residence) (Class BS) visa and the Partner (Migrant) (Class BC) visa.

The purpose of this instrument is to amend IMMI 18/103 to specify Form 40SP and Form 40SP (Internet) as approved forms for the sponsorship form required to be completed and signed by the spouse or de facto partner for an applicant to a Partner (Residence) (Class BS) visa.

IMMI 18/103 also currently specifies the place and manner for making an application for the Partner (Residence) (Class BS) visa or the Partner (Migrant) (Class BC) visa for a holder of a Subclass 445 (Dependent Child) visa. Currently, the application must be made by posting the application to the office that is processing the parent's permanent Partner visa application.

This instrument also amends IMMI 18/103 to specify that a holder of a Subclass 445 (Dependent Child) visa who is making an application for the Partner (Residence) (Class BS) or the Partner (Migrant) (Class BC) visa may upload their application to ImmiAccount or send it via the online portal available on the Department's website (as alternatives to posting the application).

This instrument is covered by the exemption from disallowance provided by table item 20 of regulation 10 of the *Legislation (Exemptions and Other Matters) Regulations 2015*. A statement of compatibility with human rights is therefore not required.

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 OIA24-08386.

No consultation was undertaken in relation to this instrument. This is because the amendments to IMMI 18/103 are assessed to be beneficial in nature, improving administration and accessibility for clients of the Department. In particular, the changes are deemed to be beneficial for visa applicants by providing additional and more efficient lodgement options.

The instrument commences on the day after it is registered on the Federal Register of Legislation.

Further details of the instrument are set out in **Attachment A**.

The instrument will be repealed by operation of Division 1 of Part 3 of Chapter 3 of the *Legislation Act 2003* (Legislation Act). Specifically, that Division (under section 48A) automatically repeals a legislative instrument that has the sole purpose of amending or repealing another instrument. As the instrument will automatically repeal, it does not engage the sunseting framework under Part 4 of the Legislation Act.

The Migration Regulations specify no conditions that need to be satisfied before the power to make the instrument may be exercised.

**Details of the Migration (IMMI 18/103: Arrangements for Partner and Prospective Marriage Visa Applications) Amendment (No. 1) Instrument 2024**

**Section 1 – Name of Regulations**

This section sets out the name of the instrument, which is the *Migration (IMMI 18/103: Arrangements for Partner and Prospective Visa Applications) Amendment (No. 1) Instrument 2024* (LIN 24/077).

**Section 2 – Commencement**

This section provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.

**Section 3 – Authority**

This section provides that this instrument is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Migration Regulations).

**Section 4 – Schedules**

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

***Migration (IMMI 18/103: Arrangements for Partner and Prospective Marriage Visa Applications) Instrument 2018***

Schedule 1 of this instrument amends *Migration (IMMI 18/103: Arrangements for Partner and Prospective Marriage Visa Applications) Instrument 2018* (IMMI 18/103).

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, by legislative instrument, specify any of the following matters for the purposes of such a criterion or requirement:

- 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.

## **Item [2] – Section 4**

This item inserts a definition of *ImmiAccount*. This is defined to mean the interactive portal for online services available through the Department’s website at <https://immi.homeaffairs.gov.au>.

This item also inserts a definition of *online portal* in section 4 of IMMI 18/103. *Online portal* is defined to mean the online services portal *Partner processing enquiry form* available through the Department’s website at <https://immi.homeaffairs.gov.au/help-support/departmental-forms/online-forms/partner-processing-enquiry-form>.

## **Item [2] – After subsection 6(1)**

This item inserts new subsection 6(2) in IMMI 18/103.

The new subsection specifies Form 40SP and Form 40SP (Internet) as approved forms for the purposes of subparagraph 1124B(3)(e)(ii) of Schedule 1 to the Migration Regulations. Form 40SP and Form 40SP (Internet) are sponsorship forms that are to be completed by a prospective sponsor for an applicant to a partner category visa.

Subparagraph 1124B(3)(e)(ii) of Schedule 1 to the Migration Regulations relevantly provides that:

- an applicant for the Partner (Residence) (Class BS) visa
- to whom section 48 of the *Migration Act 1958* applies
- must provide the approved form specified by the Minister in a legislative instrument
- that has been completed and signed by the spouse or de facto partner of the applicant.

The effect of new subsection 6(2) is to specify Form 40SP and Form 40SP (Internet) as the approved forms to be completed by the sponsor and provided by the applicant.

## **Item [3] – Schedule 1 (table)**

Item 2 repeals and substitutes the table in Schedule 1 to IMMI 18/103.

Section 6 of IMMI 18/103 specifies the approved form and manner for applying for a Partner (Residence) (Class BS) visa under Item 1124B of Schedule 1 to the Migration Regulations. Section 6 provides that this is set out in item 1 of the table in Schedule 1 to IMMI 18/103.

Section 7 of IMMI 18/103 specifies the approved form and manner for applying for a Partner (Migrant) (Class BC) visa under Item 1129 of Schedule 1 to the Migration Regulations. Section 7 provides that this is set out in item 2 of the table in Schedule 1 to IMMI 18/103.

The new table has the effect of amending the ‘Place and Manner’ requirement for applicants for the Partner (Residence) (Class BS) visa and the Partner (Migrant) (Class BC) visa, where the applicant is a holder of a Subclass 445 (Dependent Child) visa. It does this by amending Column D ‘Place and manner’ for the row dealing with the Subclass 445 (Dependent Child) visa in items 1 and 2 of the table.

The new table provides that a holder of a Subclass 445 (Dependent Child) visa may make an application for a Partner (Residence) (Class BS) visa or a Partner (Migrant) (Class BC) visa in Australia, but not in immigration clearance, through any of the following methods:

- (a) posting the application to the office that is processing the parent's permanent Partner visa application;
- (b) uploading the application onto ImmiAccount;
- (c) providing the application to the Department using the online portal.

The new table also makes a minor editorial change that updates the previous reference of "Row No." to "Item". The reference to "Item" is consistent with modern drafting practices.

The table otherwise remains the same in substance as before the commencement of LIN 24/077.