

## **EXPLANATORY STATEMENT**

### *Migration Regulations 1994*

#### **FORMS, FEES, CIRCUMSTANCES AND DIFFERENT WAY OF MAKING AN APPLICATION**

(Paragraphs 2.61(3A)(b), 2.61(3A)(c), 2.61(3B), subregulations 2.66(3), 2.66(4), 2.66(5), 2.73(3), 2.73(5) and 2.73(9), and paragraphs 1223A(1)(bb), 1223A(1)(b), 1223A(1)(ba) and 1223A(1)(bc))

1. This Instrument is made under paragraphs 2.61(3A)(b), 2.61(3A)(c), 2.61(3B), subregulations 2.66(3), 2.66(4), 2.66(5), 2.73(3), 2.73(5) and 2.73(9) and paragraphs 1223A(1)(bb) 1223A(1)(b), 1223A(1)(ba) and 1223A(1)(bc)) of the *Migration Regulations 1994* ('the Regulations').
2. Subregulation 2.61(3A) of the Regulations provides that if a person makes an application for approval as a standard business sponsor the application must be made using the internet; and the application must be made using the form specified by the Minister in an instrument in writing for this paragraph; and the application must be accompanied by the fee specified by the Minister in an instrument in writing for this paragraph.
3. Subregulations 2.61(3B), of the Regulations provides that for subregulation (3A) if the Minister specifies in an instrument in writing, a different way of making an application for approval as a standard business sponsor, in circumstances specified in the instrument, the application may be made in that way; and if the Minister specifies in the instrument a form for the different way of making the application, the application must be made using that form; and if the Minister specifies a different application fee for making the application, the application must be accompanied by that fee.
4. Subregulation 2.66(3) of the Regulations provides that a person may apply to the Minister for a variation of a term of an approval as a standard business sponsor if the application is made using the form specified by the Minister in an instrument in writing.
5. Subregulation 2.66(4) of the Regulations provides that a person may apply to the Minister for a variation of a term of an approval as a standard business sponsor if the application is accompanied by the fee specified by the Minister in an instrument in writing.

6. Subregulation 2.66(5) of the Regulations provides that, if the Minister specifies in an instrument in writing a different way of making an application for a variation of a term of an approval as a standard business sponsor, in circumstances specified in the instrument, the application may be made in that way; and if the Minister specifies in the instrument a form for the different way of making the application, that form is the approved form for making the application; and if the Minister specifies a different application fee for making the application, the application must be accompanied by that fee.
7. Subregulation 2.73(3) of the Regulations provides that, for a person who is nominating an occupation under paragraph 140GB(1)(b) of the Act; and who identifies in the nomination a holder of, or an applicant or a proposed applicant for, a Subclass 457 (Temporary Work (Skilled)) visa as the person who will work in the occupation, the nomination must be on the approved form specified by the Minister in an instrument in writing.
8. Subregulation 2.73(5) of the Regulations provides that, the nomination must be accompanied by the fee specified by the Minister in an instrument in writing.
9. Subregulation 2.73(9) of the Regulations provides that, if the Minister specifies, in an instrument in writing, a different way of making a nomination of an occupation, in circumstances specified in the instrument, the application may be made in that way; and if the Minister specifies in the instrument a form for the different way of making the nomination, the nomination may be made using that form; and if the Minister specifies a different fee for making the nomination, the nomination must be accompanied by that fee; and an instrument made for this subregulation does not apply to a nomination made before 1 July 2010.
10. Paragraph 1223A(1)(b) of the Regulations provides that if the applicant seeks to satisfy the criteria for the grant of a Subclass 457 (Temporary Work (Skilled)) visa and paragraph (bb) does not apply, the applicant must use the form specified by the Minister in an instrument in writing.
11. Paragraph 1223A(1)(ba) of the Regulations provides that if the applicant seeks to satisfy the secondary criteria for the grant of a Subclass 457 (Temporary Work (Skilled)) visa and

paragraph (bb) does not apply; and the applicant has been unable to lodge an application in accordance with paragraph (b) in a circumstance specified by the Minister in an instrument in writing, the application may be made in a way, and using a form, specified by the Minister in that instrument.

12. Paragraph 1223A(1)(bb) of the Regulations provides that if the applicant seeks to satisfy the secondary criteria for the grant of a Subclass 457 (Temporary Work(Skilled)) visa and is not making a combined application with the applicant seeking to satisfy the primary criteria for the grant of that visa; the application must be made as an internet application using the form specified by the Minister in an instrument in writing for this paragraph.
13. Paragraph 1223A(1)(bc) of the Regulations provides that if an applicant seeks to satisfy the secondary criteria for the grant of a Subclass 457 (Temporary Work (Skilled)) visa; and the applicant has been unable to lodge an application in accordance with paragraph (bb) in a circumstance specified by the Minister in an instrument in writing for this paragraph; the application may be made in a way, and using a form, specified by the Minister in that instrument.
14. The purpose of the Instrument is to specify lodgement requirements for sponsorship, sponsorship variation, nomination and visa applications relating to the Subclass 457 (Temporary Work (Skilled)) visa. The instrument also specifies circumstances and provides a different way for making an application if the Department's systems do not allow for an electronic lodgement to be made. All form references are contained in the Instrument together with fee amounts for sponsorship and nomination applications.
15. The instrument operates to provide forms and fees for visa applicants relating to the Subclass 457 (Temporary Work (Skilled)) visa. It also operates to provide for applicants, who are about to become unlawful, an alternative method of lodgement should the elodgement system be temporarily unavailable. It also provides for clients whose application is being blocked by an unforeseen business rule in the department's elodgement system having an alternative method of lodgement.

16. Consultation was undertaken with members of the Ministerial Advisory Council on Skilled Migration, Commonwealth agencies, through an inter-departmental committee, and internal stakeholders.
17. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR Reference 2012/14634).
18. Under section 42 of the *Legislative Instruments Act 2003* the Instrument is subject to disallowance and therefore a Human Rights Statement of Compatibility has been provided.
19. The Instrument IMMI 13/063 commences on 1 July 2013, immediately after commencement of the *Migration Legislation Amendment Regulation 2013 (No. 3)*.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **FORMS, FEES, CIRCUMSTANCES AND DIFFERENT WAY OF MAKING AN APPLICATION**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

A new legislative instrument will be created in order to prescribe the forms and fees for the lodgement of Temporary Work (Skilled) (Subclass 457) sponsorship, sponsorship variation, nomination and visa applications. The instrument is being created because information regarding forms and fees will be removed from the *Migration Regulations 1994* (the Regulations). Moving the information regarding forms and fees from the Regulations to a legislative instrument will allow changes to the forms and fees to be made more easily.

This change will coincide with a move to mandatory “e-lodgement” (computer lodgement) for all Subclass 457 sponsorship, sponsorship variation, nomination and visa applications. An “emergency use only” alternative lodgement pathway has been devised to mitigate the risks associated with the move to mandatory elodgement. The alternative lodgement channel will be restricted to use in specific circumstances which will be prescribed in the new legislative instrument, as will the method of alternative lodgement.

#### **Human rights implications**

The proposed amendments have been considered against each of the seven core international human rights treaties. These amendments seek to effect administrative efficiencies and do not seek to alter any potential benefit to clients.

As such, the proposed amendments do not engage any of the rights enunciated in the seven core international human rights treaties.

#### **Conclusion**

This proposed regulation amendment is compatible with human rights.

**The Hon. Brendan O'Connor MP, Minister for Immigration and Citizenship**