

EXPLANATORY STATEMENT

Migration Regulations 1994

MIGRATION (IMMI 18/103: ARRANGEMENTS FOR PARTNER AND PROSPECTIVE MARRIAGE VISA APPLICATIONS) INSTRUMENT 2018

(Subregulation 2.07(5))

1. The instrument, IMMI 18/103, is made under subregulation 2.07(5) of the *Migration Regulations 1994* ('the Regulations') for the purposes of items 1124B, 1129, 1214C, 1215 and 1220A of Schedule 1 to the Regulations.
2. This instrument repeals IMMI 17/101 (F2017L01496) made under subregulation 2.07(5) of the Regulations and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA). Subsection 33(3) of the AIA states 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.
3. The instrument IMMI 18/103 operates to specify the approved form, place and manner for making an application for the following visas:
 - a. Partner (Residence) (Class BS) visa;
 - b. Partner (Migrant) (Class BC) visa;
 - c. Partner (Temporary) (Class UK) visa;
 - d. Prospective Marriage (Temporary) (Class TO) visa; and
 - e. Partner (Provisional) (Class UF) visa.
4. The purpose of instrument IMMI 18/103 is to vary the requirements for making a valid application for the specified Partner visas, to address amendments made to the Regulations, specified in the *Home Affairs Legislation Amendment (2018 Measures No. 1) Regulations 2018*. The changes to the Regulations allow for the specification of the

- required application form and address for lodgement of a visa application to be specified in the instrument rather than directly in Schedule 1 to the Regulations.
5. Providing for the form, place and manner to be specified in the instrument will allow more flexible and responsive legislative changes to the required forms or changes to addresses for lodgement of the specified visa applications.
 6. The instrument provides for the use of a specified online form for the specified visa applications. The instrument does not allow in-person lodgement for specified Partner visa applications, however paper applications will still be accepted in compelling circumstances and only if the applicant receives written authorisation from an officer of Department of Home Affairs ('the Department') prior to submitting their application.
 7. Before this instrument was made, consultation was undertaken in accordance with section 17 of the *Legislation Act 2003*. The Department consulted with the Law Council of Australia and with the public through the Department's Public Facing Website in November 2017.
 8. The instrument is made by a delegate of the Minister for Home Affairs and Minister for Immigration and Border Protection. The instrument making power is delegated to all Senior Executive Service, Band One Officers of Visa Delivery Transformation Division under *Minister – Delegations Instrument No. 5 of 2018 (Instrument Making Powers (MHA No. 5 of 2018))*.
 9. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement (RIS) is not required (OBPR Reference: 21350).
 10. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
 11. The instrument commences on 1 July 2018.