

## EXPLANATORY STATEMENT

Issued by authority of the Minister

*Migration Regulations 1994*

### ***Migration (Payment of Visa Application Charges and Fees in Foreign Currencies) Instrument (LIN 21/003) 2021 (No. 2)***

- 1 The instrument, Departmental reference LIN 21/003, is made under paragraph 5.36(1A)(a) of the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument repeals *Migration (LIN 21/001:Payment of Visa Application Charges and Fees in Foreign Currencies) Instrument 2021* (LIN 21/001) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). This 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 Paragraph 13(1)(a) of the *Legislation Act 2003* (the Legislation Act) provides that subsection 33(3) of the Acts Interpretation Act applies to an instrument-making power in the Migration Regulations as if the Regulations were an Act. This means that paragraph 5.36(1A)(a) of the Migration Regulations also includes a power to amend or repeal an instrument made under that provision.
- 4 The instrument commences on 1 July 2021, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

- 5 Under paragraph 46(1)(d) of the *Australian Citizenship Act 2007* (Citizenship Act), an application made under that Act, must be accompanied by the fee (if any) prescribed by the *Australian Citizenship Regulation 2016* (Citizenship Regulation). Subregulation 16(2) of the Citizenship Regulation provides that for the purposes of paragraph 46(1)(d) of the Citizenship Act, the payment of the fee must be made in a currency that is specified in the places and currencies instrument as a currency in which a fee may be paid in that place. If the currency in which the payment is to be made is specified in the places and currencies instrument, the amount of the payment is to be worked out using the exchange rate for the currency specified in the conversion instrument.
- 6 Conversion instrument has the same meaning as in subregulation 16(7) of the Citizenship Regulation. This definition refers to the instrument made under subregulation 5.36(1A) of the Migration Regulations. Instruments made under the Migration Regulations are incorporated in the Citizenship Regulation because the Citizenship Act does not currently permit the Minister to make instruments under the Citizenship Regulation.

- 7 Due to the operation of section 14 of the Legislation Act, it is not possible to incorporate, by reference, the instrument made under subregulation 5.36(1A) of the Migration Regulations as in force from time to time. Rather, the new instrument would have to be incorporated, by reference, every time the Citizenship Regulation is amended. The Citizenship Regulation has been amended to incorporate this instrument.
- 8 Subregulation 5.36(1) provides that payment of a fee must be made in a place, being Australia or a foreign country, that is specified in a legislative instrument made by the Minister for the purposes of this paragraph; and in a currency that is specified for the purposes of this paragraph in an legislative instrument as a currency in which a fee may be paid in that place.
- 9 Subregulation 5.36(1A) provides that the amount of the payment is to be worked out as follows:
- if the currency in which the amount is to be paid is specified by the Minister in an instrument in writing for this paragraph, use the exchange rate for the currency specified in the notice;
  - if the currency in which the amount is to be paid is not specified in an instrument for paragraph 5.36(1A)(a), use the formula in subregulation 5.36(2).
- 10 Regulation 5.36(4) provides that a fee for the purpose of regulation 5.36 includes: an instalment of visa application charge; or an amount of visa evidence charge; or an amount of nomination training contribution charge; or a fee payable under the Migration Regulations except regulation 5.14C.
- 11 LIN 21/003 repeals the *Migration (LIN 21/001: Payment of Visa Application Charges and Fees in Foreign Currencies) Instrument 2021* as in force on 1 January 2021 and operates to specify the currency applicable and the exchange rate for the currency specified for the purpose of subregulation 5.36(1A) as at 1 July 2021.
- 12 The Department of Home Affairs (Home Affairs) undertakes a biannual update of the exchange rates for the specified foreign currencies to the Australian dollar. The purpose of this instrument is to reflect changes in foreign currencies exchange rates since the previous update. LIN 21/003 ensures that Home Affairs officers stationed at overseas posts can advise on and collect the correct amount of visa application charge payments from clients.

### ***Consultation***

- 13 In accordance with paragraph 15J(2)(e) of the *Legislation Act 2003*, consultation was not necessary. The instrument is of a minor nature and does not substantially alter existing arrangements.
- 14 The Office of Best Practice Regulation (OBPR) has advised that the instrument dealt with matters of a minor machinery nature and no regulatory impact statement was required. The OBPR reference number is 25184.

### ***Details of the instrument***

- 15 Paragraph (a) states each currency is specified in the table in Schedule 1 of the instrument.
- 16 Paragraph (b) states the exchange rate for each currency specified in the table in Schedule 1 of the instrument.

- 17 Paragraph (c) repeals *Migration (LIN 21/001: Payment of Visa Application Charges and Fees in Foreign Currencies) Instrument 2021*.
- 18 Schedule 1 sets out the updated currencies and corresponding exchange rate in a table.
- 19 Schedule 1 sets out the International Organization for Standardization (ISO) Code listed for each currency in the table for information only.

**Parliamentary scrutiny etc.**

- 20 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because under paragraph (b) of item 20 of the table in 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.
- 21 The instrument was made by the Chief Finance Officer, Finance Division, in accordance with the *Migration (Minister—Instrument-making powers for Department and Australian Border Force) Delegation 2021*.