EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Arrangements for Temporary Work (International Relations) (Class GD) visa applications) (LIN 22/009) Instrument 2022

1. The instrument, Departmental reference LIN 22/009, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Regulations).
2. The instrument includes an amendment to *Migration (IMMI 18/085: Arrangements for Temporary Work and Temporary Activity Visa Applications) Instrument 2018* (IMMI 18/085) 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 5 March 2022, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

1. The purpose of the instrument is to specify the approved form, place and manner (the arrangements) for making an application for a Temporary Work (International Relations) (Class GD) visa (Class GD visa). Item 1234 of Schedule 1 to the Regulations prescribes the requirements that an applicant for a Class GD visa must meet to make a valid visa application. This includes the approved form, place and manner for making an application in each visa stream, as specified in an instrument made under subregulation 2.07(5) of the Regulations (see subitem 1234(1) and paragraph 1234(3)(a) of Schedule 1 to the Regulations as well as subsection 33(3A) of the Acts Interpretation Act).

The Subclass 403 (Temporary Work (International Relations)) visa (subclass 403 visa) is the only visa subclass for the Class GD visa. The subclass 403 visa has the following streams: Australian Agriculture Worker; Domestic Worker (Diplomatic or Consular); Foreign Government Agency; Government Agreement; Pacific Labour Scheme; Seasonal Worker Program; and Privileges and Immunities.

The Australian Agriculture Worker stream opens to new applications on 5 March 2022 in line with departmental systems release. The instrument specifies the arrangements to enable applications to be made.[[1]](#footnote-1) The instrument also amends IMMI 18/085 by omitting section 9 of, and Schedule 4 to, that instrument. This means that the arrangements for all streams of subclass 403 visas are contained in the instrument.

There is no change to the arrangements that are specified in the instrument for other streams of subclass 403 visas, noting that the drafting of the arrangements for other streams is updated and simplified from the language used in IMMI 18/085.

Consultation

1. Consultation was undertaken with key Commonwealth agencies in relation to establishing the new Australian Agriculture Worker stream. These included the Department of the Prime Minister and Cabinet, Department of Agriculture, Water and the Environment, Department of Education, Skills and Employment, Department of Foreign Affairs and Trade, Department of the Treasury, the Department of Finance, the Fair Work Ombudsman and the Attorney-General’s Department. The Department also received representations and submissions from industry peak bodies, including the Australian Fresh Produce Alliance and National Farmers’ Federation, in developing the Australian Agriculture Worker stream for the subclass 403 visa.
2. The Office of Best Practice Regulation (OBPR) was not consulted in relation to the instrument as OBPR was consulted in relation to the *Migration Amendment (Australian Agriculture Worker) Regulations 2021* (Amendment Regulations), which created the Australian Agriculture Worker stream for the subclass 403 visa. A minor regulatory impact assessment was completed for the Amendment Regulations. The arrangements specified in the instrument are consequential to the commencement of the Amendment Regulations. The OBPR reference number is 44182.

Details of the instrument

1. Section 1 sets out the name of the instrument.
2. Section 2 provides for the commencement of the instrument on 5 March 2022, which is the date applications open for subclass 403 visas in the Australian Agriculture Worker stream.
3. Section 3 sets out definitions of terms used in the instrument. Under this section:
	* ***ImmiAccount*** is defined to be the online portal located within the Departmental website. The Departmental website URL is https://online.immi.gov.au, which is current as at the time of registration of the instrument. As an interactive computer program, ImmiAccount will display different questions to request differing evidence depending on the stream applicants indicate they are applying for.
	* ***stream visa*** means a Subclass 403 (Temporary Work (International Relations)) visa in the stream to which the visa belongs, i.e. in the Australian Agricultural Worker stream created by Subdivision 403.28 of Schedule 2 to the Regulations, the Domestic Worker (Diplomatic or Consular) stream created by Subdivision 403.24, the Pacific Labour Scheme stream created by Subdivision 403.27 or the Seasonal Worker Program stream created by Subdivision 403.26. A note to the definition directs readers to regulation 2.03 of the Regulations for the meaning of stream.
	* ***written notice*** is defined to be an email from the Department inviting a person to make an application using a form and in a manner other than an internet form through ImmiAccount and includes instructions for how to return the form to the Department.
4. Section 4 provides that Schedule 1 to the instrument amends IMMI 18/085.
5. Section 5 sets out, for subitem 1234(1) and paragraph 1234(3)(a) of Schedule 1 to the Regulations, the arrangements for making an application for an Australian Agriculture Worker, Domestic Worker (Diplomatic or Consular), Pacific Labour Scheme, or Seasonal Worker Program stream visa. Subsection 5(1) specifies that an application for visas in these streams must be made using form 1403 (Internet) through ImmiAccount.
6. Subsection 5(2) specifies that if a person seeking to apply any of these stream visas has received written notice, they may make an application using form 1403 in accordance with the directions in the written notice. However, this does not exclude the applicant from making an application in accordance with subsection 5(1).
7. Section 6 sets out, for subitem 1234(1) and paragraph 1234(3)(a) of Schedule 1 to the Regulations, the arrangements for making an application for a Foreign Government Agency stream, Government Agreement stream or Privileges and Immunities stream visa.
8. Subsection 6(2) specifies how primary applications or combined applications must be made. Primary applications or combined applications must be made using form 1403 (Internet) through ImmiAccount. Paragraph 6(2)(b) specifies that if a person has received written notice, they may make an application using form 1403 in accordance with the directions in the written notice. However, this does not exclude an application from being made in accordance with paragraph 6(2)(a).
9. Paragraph 6(3)(a) specifies that all other applications must be made using form 1481 (Internet) through ImmiAccount. Paragraph 6(3)(b) provides that if a person has received written notice, they may make an application using form 1481 in accordance with the directions in the written notice. However, this does not exclude an application from being made in accordance with paragraph 6(3)(a).
10. Schedule 1 to the instrument amends IMMI 18/085. Items 1 and 2 omit section 9 of, and Schedule 4 to, IMMI 18/085. These provisions are now replaced with sections 5 and 6 of the instrument.

Parliamentary scrutiny etc.

The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because instruments made under Part 2 and Schedule 1 to the Regulations are exempt in paragraph (b) of item 20 in the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

The instrument is appropriate to be exempt from disallowance as it concerns matters of an administrative nature. Updating legislative instruments that specify administrative matters allows for consistent internal management of the migration policy framework.

The instrument was made by a delegate of the Minister, in accordance with subregulation 2.07(5) of, and subitem 1234(1) and paragraph 1234(3)(a) of Schedule 1 to, the Regulations.

1. See *Migration Amendment (Australian Agriculture Worker) Regulations 2021* (F2021L01366) for further detail on the Australian Agriculture Worker stream. [↑](#footnote-ref-1)