

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Arrangements for Resident Return visa applications) Instrument (LIN 22/019) 2022

- 1 The instrument, Departmental reference LIN 22/019, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the **Regulations**).
- 2 The instrument repeals *Migration (IMMI 17/031 Arrangements for Resident Return Visa Applications) Instrument 2017* (IMMI 17/031) (F2017L00324) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*. 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. This means that subregulation 2.07(5) of the Regulations also includes a power to amend or repeal an instrument made under that provision.
- 3 The instrument commences on the day after it is registered, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The purpose of the instrument is to update the approved form, place and manner (“the arrangements”) for making an application for a Return (Residence) (Class BB) visa (Class BB visa). The instrument follows recent amendments to the Regulations by the *Migration Amendment (2022 Measures No. 1) Regulations 2022* (the amendment Regulations) (F2022L00255). Previously, an applicant for a Class BB visa had to be in Australia to make an application in Australia, unless making an internet application, and IMMI 17/031 specified arrangements accordingly. That requirement was removed by the amendment Regulations and the instrument correspondingly updates the specified arrangements for Class BB visa applications.
- 5 The instrument also provides that applications for Class BB visas must be made using an internet form through ImmiAccount. This is in line with the Department’s and the whole-of-government strategic transition to online processes. An applicant who has received a written notice from the Department may make an application using a different form and manner.
- 6 The instrument also specifies the arrangements for making an application for a Special Eligibility (Class CB) visa (class CB visa) and for a Resident Return (Temporary) (Class TP) visa (Class TP visa). The instrument has updated the arrangements for those visas by removing the option to make an application by courier service. The drafting has also been updated to align with current drafting standards.
- 7 Items 1128, 1118A and 1216 of Schedule 1 to the Regulations prescribe the requirements that an applicant for a Class BB, Class CB and Class TP visa must respectively meet to make a valid visa application for that class. The instrument specifies the approved form, place and manner for making an application for each class of visa under subregulation 2.07(5) and for the following provisions of Schedule 1 to the Regulations:

- subitem 1128(1) and paragraph 1128(3)(a);
- subitem 1118A(1) and paragraph 1118A(3)(a);
- subitem 1216(1) and paragraphs 1216(3)(a) and 1216(3B)(a).

Consultation

- 8 The Office of Best Practice Regulation (OBPR) was consulted and considered that the instrument dealt with matters of a minor nature and no regulatory impact statement was required. The OBPR reference number is 44453.
- 9 No further consultation was undertaken as the amendments do not substantially alter existing arrangements. This accords with subsection 17(1) of the Legislation Act.

Details of the instrument

- 10 Section 1 sets out the name of the instrument.
- 11 Section 2 provides for the commencement of the instrument on the day after it is registered.
- 12 Section 3 sets out definitions of terms used in the instrument.
- 13 Section 4 sets out the arrangements for making an application for a Class CB visa. That section provides an application must be made using form 47SV and must be posted, with sufficient prepaid postage to the specified address.
- 14 Section 5 sets out the arrangements for making an application for a Class BB visa.
- 15 Subsection 5(1) specifies that an application must be made using form 1085E through ImmiAccount.
- 16 Subsection 5(2) specifies that if the application cannot be made in accordance with subsection 5(1), it may be made using form 1085 by sending it to residentsreturn@homeaffairs.gov.au if:
 - the Department has given written notice inviting the person to make the visa application using form 1085 (paragraph 5(2)(a)); and
 - the person attaches the written notice received from the Department to the application (paragraph 5(2)(b)); and
 - the application is received by the Department by 11:59pm (AEST or AEDST as applicable in the place where the email is received), two calendar days after the Department sends the written notice (paragraph 5(2)(c)).
- 17 Section 6 sets out the arrangements for making an application for a Class TP visa.
- 18 Subsection 6(1) specifies, for subitem 1216(1) and paragraphs 1216(3)(a) of Schedule 1 to the Regulations, that an application for a Class TP visa must be made using form 1085 at a diplomatic, consular or immigration office maintained by or on behalf of the Commonwealth of Australia.

- 19 Subsection 6(2) specifies, for subitem 1216(1) and paragraph 1216(3B)(a) of Schedule 1 to the Regulations, that an application for a Class TP visa must be made using form 1085 and must be posted, with sufficient prepaid postage to the specified address. Subsection 6(2) sets out the arrangements for making an application if the applicant is covered by subitem 1216(3A) of Schedule 1 to the Regulations.

Parliamentary scrutiny etc.

- 20 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 section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 21 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.
- 22 The instrument was made by a delegate of the Minister, in accordance with the subregulation 2.07(5), subitem 1128(1), paragraph 1128(3)(a), subitem 1118A(1), paragraph 1118A(3)(a), subitem 1216(1) and paragraphs 1216(3)(a) and 1216(3B)(a) of Schedule 1 to the Regulations.