

## EXPLANATORY STATEMENT

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

*Migration Regulations 1994*

### ***Migration (Arrangements for bridging visa applications) Amendment Instrument (LIN 22/030) 2022***

- 1 The instrument, Departmental reference LIN 22/030, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Regulations).
- 2 The instrument amends *Migration (Arrangements for Bridging visa applications) Instrument (LIN 21/045) 2021* (F2021L00899) (LIN 21/045) 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 1 August 2022, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

- 4 The instrument operates to specify arrangements for making bridging visa applications. Subregulation 2.07(5) of the Regulations provides that if an item of Schedule 1 to the Regulations prescribes criteria or requirements by reference to a legislative instrument made under that subregulation, the Minister may, by legislative instrument, specify the following:
  - (a) an approved form for making an application for a visa of a specified class;
  - (b) the way in which an application for a visa of a specified class must be made;
  - (c) the place at which an application for a visa of a specified class must be made.
- 5 The purpose of the instrument is to update LIN 21/045, to reflect changes to the approved forms and the place and manner in which a Bridging A (Class WA) (BVA), Bridging B (Class WB) (BVB) or Bridging C (Class WC) (BVC) visa application on paper forms, Internet forms or electronic forms is lodged. Specifically, the instrument expands online lodgement options for BVA, BVB or BVC visa applicants and removes options for in-person and postal lodgement of those visa applications using paper forms.
- 6 The existing approved forms specified in LIN 21/045 for making BVA, BVB or BVC visa applications are Internet forms in ImmiAccount and paper forms. The instrument updates LIN 21/045 by specifying electronic forms as approved forms for BVA, BVB or BVC visa applications made in the new online services portal—‘Submit your Bridging visa application online (Bridging visa A, B or C only)’ (the online portal).
- 7 This new online portal was developed by the Department of Home Affairs (the Department) for BVA, BVB or BVC visa applicants who cannot make their applications using Internet forms in ImmiAccount, such as applicants who cannot access ImmiAccount as their substantive visa applications have been

finally determined and are currently under a merits or judicial review process, or applicants whose substantive visa applications were lodged on paper. The new online portal replaces in-person and postal lodgement options using paper forms, and allows those applicants to use electronic forms and upload their completed BVA, BVB or BVC visa applications online at the Department's website <https://immi.homeaffairs.gov.au/help-support/departamental-forms/online-forms>.

- 8 Mandating online lodgement for BVA, BVB and BVC applications will increase the Department's ability to respond to workload peaks and business continuity pressures, and bring BVA, BVB and BVC processes in line with most other visa programs.
- 9 However, if an application for a BVA, BVB or BVC visa cannot be made in ImmiAccount or the online portal, it may be made using an approved paper form by email to [bv.abc.lodgement@homeaffairs.gov.au](mailto:bv.abc.lodgement@homeaffairs.gov.au), if the applicant has received a written notice from the Department authorising the applicant to do so. In which case, the applicant must attach the written notice to the application and must submit the application within 7 calendar days after the written notice was sent.
- 10 This change only applies to BVA, BVB or BVC visa applications. It does affect the current lodgement options for Bridging D (Class WD) (BVD), Bridging E (Class WE) (BVE) or Bridging F (Class WF) (BVF) visa applicants.
- 11 It has been consistent practice that specific detail regarding the lodgement of visa applications be included in delegated legislation. This facilitates the operation of a dynamic and responsive immigration program. Changing the manner in which bridging visa applications are lodged and other minor administrative matters would not be an appropriate use of the parliament's time. Amending primary legislation would also likely cause a time delay in which bridging visa applicants can be lodged. For these reasons, it is appropriate that the matters contained in the instrument and LIN 21/045 are specified in delegated legislation.

### ***Consultation***

- 12 Consultation was undertaken with key external stakeholders including the Migration Institute of Australia, the Migration Alliance and the Law Council of Australia. No concerns were raised with the place and manner in which a BVA, BVB or BVC visa application is lodged being amended in the instrument.
- 13 The Office of Best Practice Regulation (OBPR) was also 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 43676.

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

- 14 Section 1 sets out the name of the instrument.
- 15 Section 2 provides that the instrument commences on 1 August 2022.
- 16 Section 3 provides that LIN 21/045 (F2021L00899) is amended as set out in Schedule 1 to the instrument.
- 17 Item 1 of Schedule 1 to the instrument inserts new definition of *electronic form* and *ImmiAccount* in section 3 of LIN 21/045.

- 18 Item 2 of Schedule 1 to the instrument substitutes ‘internet’ with ‘Internet’ in section 3 of LIN 21/045, to keep it consistent with the Regulations where the first letter of the word ‘Internet’ is capitalised.
- 19 Items 3 and 4 of Schedule 1 to the instrument inserts new definition of *online portal* and *written notice* in section 3 of LIN 21/045.
- 20 Item 5 of Schedule 1 to the instrument amends section 5 of LIN 21/045. It updates the place and manner for making an application for a visa under paragraphs 1301(3)(a), 1302(3)(a) and 1303(3)(a) of Schedule 1 to the Regulations.
- 21 Item 6 of Schedule 1 to the instrument amends the table in Schedule 1 to LIN 21/045, to provide Internet forms in online portal are the new approved forms for BVA, BVB or BVC visa applications. This change does not apply to BVD, BVE or BVF visa applications.

***Parliamentary scrutiny etc.***

- 22 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under subregulation 2.07(5) of the Regulations, which is exempt from disallowance under paragraph (b) of item 20 in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 23 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 in accordance with Departmental resources and arrangements.
- 24 The instrument is made by a delegate of the Minister, in accordance with subregulation 2.07(5) of the Regulations.