

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Arrangements for New Zealand Citizen (Family Relationship) visa applications) Amendment Instrument (LIN 22/062) 2022

- 1 The instrument, Departmental reference LIN 22/062, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Regulations).
- 2 The instrument amends *Migration (IMMI 18/076: Arrangements for Other Family Visa Applications and New Zealand (Family Relationship) Visa Applications) Instrument 2018* (F2018L00772) (IMMI 18/076) 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. 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 July 2022, 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) specified in IMMI 18/076 for making an application for a New Zealand Citizen (Family Relationship) (Temporary) (Class UP) visa (Class UP visa).
- 5 Item 1214BA of Schedule 1 to the Regulations prescribes the requirements that an applicant for a Class UP visa must meet to make a valid visa application. These requirements include that the application for a Class UP visa must be made using the approved form, at the place and in the manner specified in a legislative instrument made under subregulation 2.07(5) of the Regulations.
- 6 Schedule 2 to the *Home Affairs Legislation Amendment (2022 Measures No. 1) Regulations 2022* (the Amendment Regulations) amends the Regulations to allow Class UP visa applicants outside Australia to make a valid application in Australia. Prior to this amendment, applicants outside of Australia had to make their applications outside of Australia by lodging an application with a departmental office overseas, which posed challenges for applicants during COVID-19 related lockdowns, when some departmental offices outside Australia were not able to operate.
- 7 The instrument coincides with the amendments made to the Regulations by the Amendment Regulations. It removes the requirement for applicants outside Australia to make an application for a Class UP visa at a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia. The instrument does not make changes to the arrangements for making applications for other classes of visa specified in IMMI 18/076.

Consultation

- 8 The Office of Best Practice Regulation (OBPR) was consulted and considered that the instrument dealt with matters of a minor or machinery nature and no regulatory impact statement was required. The OBPR reference number is 44683.
- 9 No further external consultation was undertaken for the instrument. This is because the changes implemented by the instrument follow amendments made to the Regulations by the Amendment Regulations, where no consultations were considered necessary or appropriate. This accords with subsection 17(1) of the Legislation Act, as the amendments made by the Amendment Regulations would be entirely beneficial to visa applicants, would have no disadvantageous impact on visa applicants' rights, and would impose no liabilities.

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 1 July 2022.
- 12 Section 3 provides that Schedule 1 to the instrument amends IMMI 18/076.
- 13 Item 1 of Schedule 1 to the instrument amends the table in Schedule 3 to IMMI 18/076. It removes the requirement for applicants outside Australia to make a Class UP visa application at a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia.

Parliamentary scrutiny etc.

- 14 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*.
- 15 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.
- 16 The instrument is made by a delegate of the Minister, in accordance with subregulation 2.07(5) of the Regulations.

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