

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Specification of ETA-eligible Passports) Amendment Instrument (LIN 22/040) 2022

- 1 The instrument, Departmental reference LIN 22/040, is made under regulation 1.11B(1) of the *Migration Regulations 1994* (the Regulations).
- 2 The instrument amends IMMI 18/084 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.
- 3 The instrument commences on the day after registration on the Federal Register of Legislation, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 A visa applicant may make a valid application for an Electronic Travel Authority (Class UD) visa whilst in immigration clearance if, relevantly, the person has an ETA-eligible passport (see subregulation 2.07AB(2) of the Regulations). Subregulation 1.11B(1) provides that a passport is an ETA-eligible passport in relation to an application for a visa if it:
 - is a valid passport of a kind specified in a legislative instrument by the Minister as an ETA-eligible passport (paragraph 1.11B(1)(a)); and
 - the passport satisfies any conditions specified for it in the legislative instrument (paragraph 1.11B(1)(b)).
- 5 Relevantly, passports issued by the authorities of Taiwan are ETA-eligible passports unless they are passports purporting to be official passports or diplomatic passports.
- 6 The purpose of the instrument is to include an additional condition for passports issued by the authorities of Taiwan. The instrument additionally specifies a condition that a passport issued by the authorities of Taiwan must not be a ‘Taiwanese compatriot document’. A Taiwanese compatriot document may be issued to individuals that do not have a right of residency in Taiwan. A Taiwanese compatriot document is not recognised by Australia as a valid travel document.

Consultation

- 7 No consultation was done for this instrument. This is because the changes are minor and machinery in nature and do not substantially alter the existing arrangements.

Details of the instrument

- 8 Section 1 sets out the name of the instrument.

- 9 Section 2 provides for the commencement of the instrument on the day after registration.
- 10 Section 3 provides that IMMI 18/084 is amended as set out in Schedule 1 to the instrument.
- 11 Item 1 of Schedule 1 substitutes item 30 of the table in Schedule 1 to IMMI 18/084, which specifies the conditions for a passport issued by the authorities of Taiwan to be an ETA-eligible passport. This item adds a new condition that a passport issued by the authorities of Taiwan must not be a Taiwanese ‘compatriot document’ in order to be an ETA-eligible passport. This item also corrects minor drafting errors where references to ‘passport’ were made in the plural form.

Parliamentary scrutiny etc.

- 12 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because instruments made under Part 2 of, and Schedule 1 to, the Regulations are exempt under paragraph (b) of item 20 of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 13 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.
- 14 The instrument was made by the Minister, in accordance with subregulation 1.11B(1) of the Regulations.

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