

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Arrangements for Work and Holiday (Subclass 462) Visa Applications) Amendment (Papua New Guinea) Instrument (LIN 23/034) 2023

- 1 The instrument, departmental reference LIN 23/034, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Migration Regulations) and paragraph 462.221(c) of Schedule 2 to the Regulations.
- 2 The instrument amends *Migration (Arrangements for Work and Holiday (Subclass 462) Visa Applications) Instrument (LIN 21/019) 2021* (F2022C00702) (LIN 21/019) 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 on 1 July 2023, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 Subregulation 2.07(5) of the Migration Regulations provides that if an item of Schedule 1 to the Migration Regulations prescribes criteria or requirements by reference to a legislative instrument made under subregulation 2.07(5), the Minister may specify:
 - An approved form for making an application for a visa of a specified class;
 - The way in which an application for a visa of a specified class must be made;
 - The place at which an application for a visa of a specified class must be made;
 - Any other matter.
- 5 Item 1224A of Schedule 1 to the Migration Regulations sets out the requirements for making a valid application for a Work and Holiday (Temporary) (Class US) visa, the only subclass for which is the Subclass 462 (Work and Holiday) visa. These requirements include:
 - the application must be made using the approved form specified by the Minister in a legislative instrument made under subregulation 2.07(5) (see subitem 1224A(1) of Schedule 1 to the Migration Regulations);
 - an applicant must hold a valid passport issued by a foreign country specified in an instrument in writing (see paragraph 1224A(3)(a) of Schedule 1 to the Migration Regulations);

- the application must be made at the place and in the manner specified in a legislative instrument made under subregulation 2.07(5) (see paragraph 1224A(3)(aa) of Schedule 1 to the Migration Regulations); and
- an applicant is to provide evidence they have support for the grant of the visa from the foreign country, unless the applicant is a member of a class of persons specified by the Minister in an instrument in writing (see subparagraph 1224A(3)(b)(iii) of Schedule 1 to the Migration Regulations)).

6 Part 462 of Schedule 2 to the Migration Regulations sets out the criteria which an applicant must satisfy to be granted a Subclass 462 visa, including:

- if the applicant is not, and has not previously been in Australia as the holder of a Subclass 462 visa other than an offshore COVID-19 affected visa, the applicant (amongst other things) is to hold an educational qualification specified for paragraph 462.221(c) of Schedule 2 to the Migration Regulations in relation to the foreign country that issued the passport mentioned in paragraph 1224A(3)(aa) of Schedule 1 to the Migration Regulations.

7 LIN 21/019 specifies the requirements that an applicant must meet to make a valid Work and Holiday (Temporary) (Class US) visa application, as well as educational qualifications for paragraph 462.221(c) of Schedule 2 to the Migration Regulations.

8 The purpose of this instrument is to amend LIN 21/019 to implement Subclass 462 visa arrangements agreed to by the Australian Government and the Government of Papua New Guinea. The instrument amends LIN 21/019 to:

- specify Papua New Guinea as a foreign country for the purpose of paragraph 1224A(3)(a) of Schedule 1 to the Migration Regulations; and
- specify the educational qualifications required for Subclass 462 visa applicants from Papua New Guinea (for the purpose of paragraph 462.221(c) of Schedule 2 to the Migration Regulations).

9 These amendments enable Papua New Guinean applicants to apply for a Subclass 462 visa, as a Subclass 462 visa is restricted to applicants who hold a valid passport issued by a foreign country mentioned in a legislative instrument made for paragraph 1224A(3)(a) of Schedule 1 to the Migration Regulations.

Consultation

10 Significant consultation in relation to adding Papua New Guinea as a Subclass 462 visa partner country occurred with, and was agreed by, the Australian Government and the Government of Papua New Guinea. Prime Ministers for both countries met at the fourth Papua New Guinea-Australia Annual Leaders' Dialogue on 12 January 2023 and were supported by both Ministers for Foreign Affairs. The dialogue and negotiations resulted in the agreement by both Prime Ministers to implement the *Work and Holiday Visa Arrangement* signed on 12 October 2011, commencing on 1 July 2023. The announcement to implement this agreement was made by the Prime Minister of Australia on 12 January 2023.

- 11 The instrument amends LIN 21/019 to implement these agreements. No public consultation was undertaken on the instrument as it was not considered necessary. This is because the measures in the instrument are machinery in nature, are beneficial to visa applicants, have no disadvantageous impacts on visa applicants' rights, and no liabilities are imposed.
- 12 The Office of Impact Analysis (OIA) was also consulted and considered that the measures in instrument are unlikely to have more than a minor or machinery regulatory impact and therefore an Impact Analysis is not required.
 - The OIA reference number is OIA23-04478.

Details of the instrument

- 13 Section 1 sets out the name of the instrument.
- 14 Section 2 provides that the instrument commences on 1 July 2023.
- 15 Section 3 provides that Schedule 1 to the instrument amends LIN 21/019.
- 16 Item 1 of Schedule 1 to the instrument amends subsection 4(2) of LIN 21/019 by inserting Papua New Guinea into the table of foreign countries, where the eligibility to apply for, and to be granted, a Subclass 462 visa is restricted to applicants who hold a valid passport issued by any of those foreign countries.
- 17 Item 2 of Schedule 1 to the instrument amends Schedule 2 to LIN 21/019 by specifying the educational qualifications required for applicants who hold a valid passport issued by Papua New Guinea.

Parliamentary scrutiny etc.

- 18 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 Migration Regulations, for the purpose of provisions in Item 1224A of Schedule 1 and paragraph 462.221(c) of Schedule 2 to the Migration Regulations, which is exempt from disallowance under subitem 20(b) of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 19 As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
- 20 The instrument was made by a delegate of the Minister, in accordance with subregulation 2.07(5) of the Migration Regulations and paragraph 462.221(c) of Schedule 2 to the Migration Regulations.

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