

## **EXPLANATORY STATEMENT**

### *Migration Regulations 1994*

#### **Migration (IMMI 18/023: Arrangements for Work and Holiday and Working Holiday Visa Applications) Instrument 2018**

*(subregulation 2.07(5), paragraph 1224A(3)(a), subparagraph 1224A(3)(b)(iii) and subitem 1225(5) of Schedule 1 and subclause 417.211(2) and paragraphs 462.212(b) and 462.221(c) of Schedule 2)*

1. Instrument IMMI 18/023 is made under subregulation 2.07(5), paragraph 1224A(3)(a), subparagraph 1224A(3)(b)(iii) and subitem 1225(5) of Schedule 1 and subclause 417.211(2) and paragraphs 462.212(b) and 462.221(c) of Schedule 2 to the *Migration Regulations 1994* (the Regulations).
2. The instrument repeals *Migration (IMMI 17/097: Arrangements for Work and Holiday and Working Holiday Visa Applications) Instrument 2017* under subsection 33(3) of the *Acts Interpretation Act 1901* (the Interpretation Act). Subsection 33(3) of the Interpretation Act states that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
3. The instrument operates to:
  - a. specify foreign countries that have issued a valid passport that must be held by a person making an application for a Work and Holiday (Temporary) (Class US) visa;
  - b. specify education qualifications that must be held by a person making an application for a Subclass 462 (Work and Holiday) visa where the applicant is not, and has not previously been, in Australia as the holder of a Subclass 462 (Work and Holiday) visa;
  - c. specify the approved forms, place and manner for making a valid application for either a Working Holiday (Temporary) (Class TZ) visa or a Work and Holiday (Temporary) (Class US) visa;

- d. specify the foreign countries that may issue a working holiday eligible passport that must be held by a person making an application for a Subclass 417 (Working Holiday) visa;
  - e. specify the upper age limit for persons making an application for either a Subclass 462 (Work and Holiday) visa or a Subclass 417 (Working Holiday) visa; and
  - f. specify that applicants holding a passport issued by specified foreign countries are a class of persons who do not have to provide evidence of government support for the grant of a Work and Holiday (Temporary) (Class US) visa.
4. The purpose of this instrument is to:
- a. specify both Austria and the Czech Republic as foreign countries for the purposes of paragraph 1224A(3)(a) of Schedule 1 to the Regulations, enabling Austrian or Czech passport holders to make an application for a Work and Holiday (Temporary) (Class US) visa;
  - b. specify the educational qualifications that must be held by applicants from Austria or the Czech Republic for a Subclass 462 (Work and Holiday) visa where the applicant is not, and has not previously been, in Australia as the holder of a Subclass 462 (Work and Holiday) visa;
  - c. specify, for applicants from Austria or the Czech Republic, the approved forms, place and manner for making a valid Work and Holiday (Temporary) (Class US) visa application;
  - d. specify that the upper age limit is 30 for applicants from Austria or the Czech Republic who are making a Subclass 462 (Work and Holiday) visa application;
  - e. specify, for subparagraph 1224A(3)(b)(iii) of Schedule 1 to the Regulations, that applicants holding a passport issued by Argentina are a class of persons who do not have to provide evidence of government support for the grant of a Work and Holiday (Temporary) (Class US) visa; and
  - f. update the postal addresses to which an applicant of a Work and Holiday (Temporary) (Class US) or a Working Holiday (Temporary) (Class TZ) visa may post the application.
5. On 19 October 2017, the governments of Australia and Austria signed a Joint Declaration to enable Austrian passport holders to apply for a Work and Holiday

(Temporary) (Class US) visa. The governments of Australia and the Czech Republic signed a Memorandum of Understanding to enable Czech passport holders to apply for a Work and Holiday (Temporary) (Class US) visa. In developing the Joint Declaration and the Memorandum of Understanding, consultation was undertaken with the governments of Austria and the Czech Republic. Third Party Notes have been exchanged with the governments of Austria (TPN: 18/02/EUD dated 11 January 2018) and the Czech Republic (TPN: 18/EUD/3 dated 30 January 2018) confirming the agreed implementation dates of 15 February 2018 and 1 March 2018 respectively.

6. The Australian and Argentinian governments agreed to exempt Argentinian passport holders from the requirement to provide a letter of home government support with an application for a Subclass 462 (Work and Holiday) visa from February 2018. Argentina agreed to cease the reciprocal requirement for Australian passport holders.
7. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference: 23031, 23100 and 23252).
8. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is not subject to disallowance and therefore a Statement of Compatibility with Human Rights is not required.
9. This instrument commences in accordance with section 2 of Part 1 of the instrument.