

EXPLANATORY STATEMENT

Migration Regulations 1994

Migration (LIN 19/088: Arrangements for Work and Holiday Visa Applications)

Amendment Instrument 2019

(Subregulation 2.07(5), paragraph 1224A(3)(a) and subparagraph 1224A(3)(b)(iii) of Schedule 1, paragraphs 462.212(b) and 462.221(c) of Schedule 2 to the Regulations)

1. The instrument, LIN 19/088, is made under subregulation 2.07(5), paragraph 1224A(3)(a) and subparagraph 1224A(3)(b)(iii) of Schedule 1 of the *Migration Regulations 1994* (the Regulations) and paragraphs 462.212(b) and 462.221(c) of Schedule 2 to the Regulations.
2. In accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA) the instrument amends LIN 18/174 (F2018L01576) made under subregulation 2.07(5), paragraph 1224A(3)(a) and subparagraph 1224A(3)(b)(iii) of Schedule 1 of the Regulations and paragraphs 462.212(b) and 462.221(c) of Schedule 2 to the Regulations. Subsection 33(3) of the AIA 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. LIN 18/174 operates to specify the requirements needed when making an application for a Work and Holiday (Temporary) (Class US) visa (Work and Holiday visa) as follows:
 - a. for the purposes of subitem 1224A(1) of Schedule 1 to the Regulations, the instrument specifies the approved form for making a valid application;
 - b. for the purposes of paragraph 1224A(3)(a) of Schedule 1 to the Regulations, the instrument specifies the foreign countries that have issued a foreign passport that must be held by a person seeking to make an application;
 - c. for the purposes of paragraph 1224A(3)(aa) of Schedule 1 to the Regulations, the instrument specifies the place and manner in which an application must be made;

- d. for the purposes of subparagraph 1224A(3)(b)(iii) of Schedule 1 to the Regulations, the instrument specifies the class of persons that do not have to provide evidence of government support for the grant of a Work and Holiday visa.
4. LIN 18/174 also operates to specify:
 - a. the minimum standard of education qualifications an applicant for a Work and Holiday visa and a Subclass 462 (Work and Holiday) visa (Subclass 462 visa) must satisfy at the time of application; and
 - b. the upper age limit for persons seeking to meet the criteria for a Subclass 462 visa.
 5. The purpose of the amending instrument is to exempt Chilean applicants from being required to provide evidence of government support for the grant of their visa. Existing exempt foreign countries include Argentina, the People's Republic of China, the State of Israel, Singapore and the United States of America.
 6. The instrument also amends lodgement requirements for Malaysian applicants. The amendments provide that applications are to be made online, except if an officer of the Department has sent an authorising email to the applicant.
 7. Consultation was undertaken before the instrument was made as follows:
 - a. the post in Chile, including the Department of Foreign Affairs and Trade Head of Mission, was consulted regarding the change to exempt applicants from Chile from providing evidence of government support for the grant of a Work and Holiday (Temporary) (Class US) visa. This is a reciprocal change to the Work and Holiday arrangement between Chile and Australia, agreed to by the Government of the Republic of Chile;
 - b. the post in Malaysia was consulted regarding the commencement date for the change to lodgement requirements for Malaysian applicants, which is part of the phased expansion of online lodgement in this visa class.
 8. The Office of Best Practice Regulation (OBPR) have advised that a Regulatory Impact Statement is not required (OBPR Reference: 23760 and 24785).

9. The officer (Senior Executive Service, Band One, Immigration and Visa Services Division) who made the instrument was delegated the powers required to make the instrument in *Minister – Delegations Instrument No. 5 of 2018 (Instrument Making Powers) (MHA No. 5 of 2018)*, signed on 10 April 2018.
10. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
11. Schedule 1 to the Instrument will commence on 18 February 2019. Schedule 2 to the instrument will commence on 4 March 2019.