EXPLANATORY STATEMENT

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

*Migration Act 1958*

*Migration Regulations 1994*

***Migration (Arrangements for Work and Holiday (Subclass 462) Visa Applications) Instrument (LIN 21/019) 2021***

1. The instrument, Departmental reference LIN 21/019, is made under subregulation 2.07(5), paragraph 1224A(3)(a) and subparagraph 1224A(3)(b)(iii) of Schedule 1, and paragraph 462.221(c) of Schedule 2 to the *Migration Regulations 1994* (the Migration Regulations).
2. The instrument repeals *Migration (LIN 19/184: Arrangements for Work and Holiday Visa Applications) Instrument 2019* (F2019L00918) (LIN 19/184) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). That subsection provides that where an Act confers a power to make a legislative instrument, the power includes a power to amend or repeal that instrument, subject to any conditions that apply to the initial instrument-making power.
3. Paragraph 13(1)(a) of the *Legislation Act 2003* (the Legislation Act) provides that subsection 33(3) of the Acts Interpretation Act applies to an instrument-making power in the Migration Regulations as if the Migration Regulations were an Act. This means that the provisions of the Migration Regulations to make the instrument also include a power to amend or repeal.
4. The instrument commences on 1 March 2021, and is a legislative instrument for the Legislation Act.

***Purpose***

1. The purpose of the instrument is to update the following requirements in relation to applications for Work and Holiday (Temporary) (Class US) visas (Class US visas): the list of countries where an applicant is exempt from providing evidence of home government support; the education requirements for applicants from various countries; and the place and manner for making an application.
2. Item 1224A of Schedule 1 to the Migration Regulations prescribes the requirements that an applicant for a Class US visa must meet to make a valid application. Some of these requirements need to be specified in a legislative instrument, relevantly:
	* the form, place and manner of making the application, as specified in an instrument made under subregulation 2.07(5) of the Migration Regulations (see subitem 1224A(1) and paragraph 1224A(3)(aa));
	* paragraph 1224A(3)(a) of Schedule 1 to the Migration Regulations requires an applicant to hold a valid passport issued by a foreign country specified in an instrument;
	* subparagraph 1224A(3)(b)(iii) of Schedule 1 to the Migration Regulations requires an applicant to have the support for the grant of the visa from the government of a foreign country that issued the applicant’s passport, unless the applicant is exempt from providing this by an instrument made for the purpose of the provision.
3. Division 462 of Schedule 2 to the Migration Regulations prescribes the criteria to be considered for the grant of the Subclass 462 (Work and Holiday) visa (which is the only subclass for Class US visas) once an application for a Work and Holiday visa has been made.
	* Clause 462.212 of Schedule 2 to the Migration Regulations provides that, at the time of application, an applicant must be at least 18 and no more than 35, or if in an instrument made for paragraph 1224A(3)(a) of Schedule 1 to the Migration Regulations a younger age is specified for the foreign country that issued the passport the applicant holds, that younger age.
	* Paragraph 462.221(c) of Schedule 2 to the Migration Regulations requires, at the time of decision, that an applicant must hold an educational qualification that is specified in an instrument, in relation to a foreign country specified for paragraph 1224A(3)(a) of Schedule 1 to the Migration Regulations.
4. The purpose of the instrument is to specify the abovementioned matters. The instrument also updates and clarifies the drafting of LIN 19/184.

***Consultation***

1. Consultation in relation to changes to provision of government support occurred with, and was agreed to by, Czech Republic, Hungary, Slovak Republic and Vietnam. Changes to educational qualifications have been made consistent with the terms of the relevant bilateral Memorandum of Understanding. No public consultation was undertaken, as the instrument is machinery in nature.
2. The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument would have a minor regulatory impact and a regulatory impact statement is not required. The OBPR reference number is 24785.

***Details of the instrument***

1. Section 1 sets out the name of the instrument.
2. Section 2 provides for the commencement of the instrument on 1 March 2021. This aligns with official communications with relevant partner countries (as outlined in relation to consultation above).
3. Section 3 sets out the definition of ***authorising email***. This term is defined to mean an email, sent by an officer of the Department, authorising an applicant to make an application using an alternative form, or in an alternative place or an alternative manner. This definition enables an application to be provided in an alternative manner to what is specified, in circumstances where the applicant cannot meet the primary specified requirements in Schedule 1.
4. Section 4 sets out arrangements for making a Class US visa application. Section 4 also specifies the upper age limit for an applicant at the time of application for a Class US visa.
5. Paragraph 4(1)(a) sets out, for subitem 1224A(1) of Schedule 1 to the Migration Regulations, that the form an applicant specified in column 1 of the table in Schedule 1 to the instrument must use to make an application for a Class US visa is specified in column 2 of the table. For example, this means that an applicant who is or has been in Australia as the holder of a Class US visa as captured by item 1 of the table must apply using form 1208 (Internet) or form 1208 if the applicant has received an authorising email.
6. Paragraph 4(1)(b) further sets out, for paragraph 1224A(3)(aa) of Schedule 1 to the Migration Regulations, that the approved place and manner to make an application for a Work and Holiday visa is specified in column 3 of the table in Schedule 1 to the instrument. Expanding on the example above, an applicant captured by item 1 of the table must apply via the internet or, if the applicant has received an authorising email, in accordance with the instructions on that email (and attaching a copy of such).
7. Paragraph 4(2)(a) specifies the foreign countries from which an applicant must hold a valid passport for paragraph 1224A(3)(a) of Schedule 1 to the Migration Regulations. This means that an applicant for a Class US visa must hold a valid passport from one of the countries listed in the table in this provision. In addition, paragraph 4(2)(b) specifies that the applicant, who holds the passport from the listed country, must be aged no more than 30. For clarity, at the time of application, in accordance with clause 462.212 of Schedule 2 to the Migration Regulations and paragraph 4(2)(b) of the instrument, an applicant must be aged at least 18 and no more than 30.
8. Subsection 4(3) specifies a class of applicants who are excluded from the requirement in subparagraph 1224A(3)(b)(iii) of Schedule 1 to the Migration Regulations to provide evidence of government support for the grant of a Class US visa. An applicant is in a class of persons who are exempt if they hold a valid passport issued by any of the foreign countries mentioned in the subsection.
9. Section 5 specifies, for paragraph 462.221(c) of Schedule 2 to the Migration Regulations, the educational qualifications an applicant from a specified foreign country must hold by reference to Schedule 2 of the instrument. The qualifications set out in an item in column 2 of the table in Schedule 2 are specified for the purpose of the country in column 1 for that item. For example, for an applicant from Hungary, the specified educational qualifications are tertiary qualifications or successful completion of at least 2 years of undergraduate university study.
10. Section 6 repeals LIN 19/84. That instrument is being replaced by operative provisions of the instrument.

***Parliamentary scrutiny etc.***

1. The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because instruments made under Schedules 1 and 2 to the Migration Regulations are exempt under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
2. The instrument was made by a delegate of the Minister, Senior Executive Service Band One, Immigration Programs Division, in accordance with subregulation 2.07(5), paragraph 1224A(3)(a) and subparagraph 1224A(3)(b)(iii) of Schedule 1, and paragraph 462.221(c) of Schedule 2 to the Migration Regulations. The Senior Executive Service Band One was delegated the power to make the instrument by *Migration (Ministerial Instrument-making Powers) Delegation 2020/252*.