

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Arrangements for Work and Holiday (Subclass 462) Visa Applications) Amendment Instrument (LIN 21/085) 2021

- 1 The instrument, Departmental reference LIN 21/085, 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 Regulations).
- 2 The instrument amends *Migration (Arrangements for Work and Holiday (Subclass 462) Visa Applications) Instrument (LIN 21/019) 2021* (LIN 21/019) 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 1 January 2022, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The purpose of the instrument is to amend the following requirements to make an application for, and be granted, a Subclass 462 (Work and Holiday) visa (subclass 462 visa)¹ as specified in LIN 21/019:
 - the valid passports an applicant may hold to be eligible to make an application for a subclass 462 visa (see paragraph 1224A(3)(a) of Schedule 1 to the Regulations);
 - the age an applicant must be at the time of application (see paragraph 462.212(b) of Schedule 2);
 - the list of countries where an applicant is exempt from providing evidence of home government support when applying for a subclass 462 visa (subparagraph 1224A(3)(b)(iii) of Schedule 1); and
 - the educational requirements for applicants to be granted a visa under paragraph 462.221(c) of Schedule 2 to the Regulations.
- 5 Further information about the enabling provisions is provided in the explanatory statement to LIN 21/019.
- 6 The instrument also amends the definition section of LIN 21/019 to align with similar legislative instruments.

¹ A subclass 462 visa is the only subclass of visa available under a Work and Holiday (Temporary) (Class US) visa (see item 1224A of Schedule 1 to the Regulations).

Consultation

- 7 Consultation in relation to changes to provision of government support occurred with, and was agreed to by government representatives from Switzerland, Greece, Ecuador and Uruguay. Department of Foreign Affairs and Trade were consulted for awareness of the changes negotiated and agreed to. The Department of the Prime Minister and Cabinet was consulted on changes relating to Switzerland.
- 8 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a minor nature and no regulatory impact statement was required. The OBPR reference number is 44625.

Details of the instrument

- 9 Section 1 sets out the name of the instrument.
- 10 Section 2 provides for the commencement of the instrument on 1 January 2022.
- 11 Section 3 provides that Schedule 1 to the instrument amends LIN 21/019 as set out in the Schedule.
- 12 Item 1 of Schedule 1 substitutes the definition of ‘authorising email’ with ‘written notice’. There is no practical effect to applicants from this change. The definition of written notice has the same intent and function as authorising email (see further for items 6 and 7 below).
- 13 Item 2 of Schedule 1 adds Switzerland to the table in subsection 4(2) of LIN 21/019. Switzerland is specified as a foreign country for paragraph 1224A(3)(a) of Schedule 1 to the Regulations. This change means if a person holds a valid passport issued by Switzerland they may make an application for a subclass 462 visa. This amendment also means an applicant from Switzerland must be aged at least 18 and no more than 30 years old at the time of application (see paragraph 462.212(b) of Schedule 2).
- 14 Item 3 of Schedule 1 omits Ecuador and Greece from the table in subsection 4(3) of LIN 21/019. This amendment means that applicants who hold a passport issued by Ecuador or Greece will be required to provide evidence of home government support (see subparagraph 1224A(3)(b)(iii) of Schedule 1 to the Regulations).
- 15 Items 4 and 5 of Schedule 1 insert Switzerland and Uruguay into the table in subsection 4(3) of LIN 21/019. Applicants who hold a valid passport issued by Switzerland or Uruguay are specified for subparagraph 1224A(3)(b)(iii) of Schedule 1 to the Regulations and are exempt from providing evidence of home government support.
- 16 Items 6 and 7 of Schedule 1 substitute references to ‘authorising email’ with ‘written notice’, consistent with the substituted definition. This means if an applicant has received a written notice, they may make an application for a subclass 462 visa in accordance with the instructions in the written notice.
- 17 Item 8 inserts the educational requirements for an applicant for a first visa from Switzerland into the table in Schedule 2 of LIN 21/019. The effect of this amendment is that under paragraph 462.221(c) of Schedule 2 to the Regulations, Swiss applicants are required to complete 2 years of study following compulsory schooling in Switzerland.

Parliamentary scrutiny etc.

- 18 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 Regulations are exempt under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 19 The instrument was made by a delegate of the Minister, 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 Regulations.