

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Arrangements for subclass 417 visa applications) Instrument (LIN 22/051) 2022

- 1 The instrument, Departmental reference LIN 22/051, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Regulations).
- 2 The instrument repeals *Migration (LIN 19/183: Arrangements for Working Holiday Visa Applications) Instrument 2019* (F2019L00903) (LIN 19/183) 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. This means that subregulation 2.07(5) of the Regulations also includes a power to amend or repeal an instrument made under that provision.
- 3 The instrument commences on 1 July 2022, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The instrument operates to specify arrangements for making a Working Holiday (Subclass 417) visa (subclass 417 visa) application.
- 5 Item 1225 of Schedule 1 to the Regulations prescribes the requirements that an applicant for a subclass 417 visa must meet to make a valid visa application. Subitems 1225(1) and (3) of Schedule 1 to the Regulations require that the application for a subclass 417 visa must be made using the approved form, at the place and in the manner, specified in relation to a class of persons that includes the applicant in a legislative instrument made under subregulation 2.07(5) of the Regulations.
- 6 Division 417 of Schedule 2 to the Regulations prescribes the criteria to be considered for the grant of a subclass 417 visa once an application for that visa has been made. Subclause 417.211(2) of Schedule 2 to the Regulations provides that an applicant for a subclass 417 visa must hold a working holiday eligible passport of the kind or of one of the kinds, specified in a legislative instrument made for that subclause. The subclause further provides that the applicant must be at least 18 years of age and no more than 35 years of age, or a younger age if that age is specified in a legislative instrument for the kind of passport that the applicant holds. A *working holiday eligible passport* is defined in subitem 1225(5) of Schedule 1 and clause 417.111 of Schedule 2 to the Regulations to mean a valid passport held by a person who is a member of a class of persons specified in a legislative instrument mentioned in subitem 1225(3) of Schedule 1 to the Regulations.
- 7 The purpose of the instrument is to update the abovementioned matters specified in LIN 19/183.

- 8 The instrument specifies that an applicant is in a class of persons, if the applicant:
- holds a passport that:
 - is issued by a country or region mentioned in an item of Schedule 1 to the instrument; and
 - satisfies the conditions mentioned in the item; or
 - is in Australia and previously held a passport that:
 - was issued by a country or region mentioned in an item of Schedule 1 to the instrument, when the applicant entered Australia; and
 - satisfied the conditions mentioned in the item, when the applicant entered Australia; and
 - expired after the applicant entered Australia.
- 9 If an applicant is a member of a class of persons specified in the instrument, the applicant must make a subclass 417 visa application using Form 1150 (Internet) in ImmiAccount as an Internet application. However, if an application for a subclass 417 visa cannot be made as an Internet application, it may be made using Form 1150 by email to WHM.invited.applications@homeaffairs.gov.au, if the applicant has received a written notice from the Department authorising the applicant to do so. In which case, the application must be submitted within 7 calendar days after which the written notice was sent.
- 10 The instrument specifies valid passports held by applicants who are members of a class of persons specified in the instrument as working holiday eligible passports. It is noted that a passport is not a working holiday eligible passport if it is not issued by a country or region mentioned in Schedule 1 to the instrument. The instrument updates the younger age specified for working holiday eligible passports issued by Denmark or Italy, to increase the eligible age for Danish or Italian applicants for a subclass 417 visa to the maximum of 35 years of age (see subparagraph 417.211(2)(b)(i) of Schedule 2 to the Regulations).
- 11 It has been consistent practice that specific detail regarding the lodgement of visa applications be included in delegated legislation. This facilitates the operation of a dynamic and responsive immigration program. Changing the manner in which subclass 417 visa applications are lodged and other minor administrative matters would not be an appropriate use of the parliament's time. Amending primary legislation would also likely cause a time delay in which subclass 417 visa applicants can be lodged. For these reasons, it is appropriate that the matters contained in the instrument and LIN 19/183 are specified in delegated legislation.

Consultation

- 12 The Department of Home Affairs has undertaken bilateral negotiations with the Government of Denmark and the Government of Italy, respectively. The negotiations have been supported by the Department of Foreign Affairs and Trade. No concerns were raised with the maximum eligible age for Danish and Italian applicants for a subclass 417 visa being updated in the instrument.
- 13 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a minor or machinery nature and no regulatory impact statement was required. The OBPR reference number is OBPR22-01839.

Details of the instrument

- 14 Section 1 sets out the name of the instrument.
- 15 Section 2 provides for the commencement of the instrument on 1 July 2022.
- 16 Section 3 sets out the definitions of terms used in the instrument.
- 17 Section 4 provides that the instrument repeals LIN 19/183.
- 18 Section 5 sets out the approved forms and the place and manner in which a subclass 417 visa application must be lodged by an applicant who is a member of a class of persons specified in the instrument.
- 19 Section 6 sets out the working holiday eligible passports held by an applicant who is a member of a class of persons specified in the instrument, and the younger age for working holiday eligible passports issued by the countries or regions mentioned in Schedule 1 to the instrument.
- 20 Schedule 1 to the instrument mentions the countries or regions which may issue working holiday eligible passports, the conditions those passports must satisfy, and the younger age specified for those passports.

Parliamentary scrutiny etc.

- 21 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 Regulations, which is exempt from disallowance under paragraph (b) of item 20 in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 22 The instrument is appropriate to be exempt from disallowance as it concerns matters of an administrative nature. Updating legislative instruments that specify administrative matters allows for consistent internal management of the migration policy framework in accordance with Departmental resources and arrangements.
- 23 The instrument is made by a delegate of the Minister, in accordance with subregulation 2.07(5) of the Regulations.