

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Arrangements for subclass 417 visa applications) Amendment Instrument (LIN 23/047) 2023

- 1 The instrument, departmental reference LIN 23/047, is made under the following provisions:
 - subregulation 2.07(5) of the *Migration Regulations 1994* (the Migration Regulations);
 - paragraph 417.211(2)(a) of Schedule 2 to the Migration Regulations; and
 - subparagraph 417.211(2)(b)(ii) of Schedule 2 to the Migration Regulations.
- 2 The instrument amends *Migration (Arrangements for subclass 417 visa applications) Instrument (LIN 22/051) 2022* (F2022L00830) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). 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 July 2023, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 Subregulation 2.07(5) of the Migration Regulations provides that if an item of Schedule 1 to the Migration Regulations prescribes criteria or requirements by reference to a legislative instrument made under subregulation 2.07(5), the Minister may specify:
 - An approved form for making an application for a visa of a specified class;
 - The way in which an application for a visa of a specified class must be made;
 - The place at which an application for a visa of a specified class must be made;
 - Any other matter.
- 5 Item 1225 of Schedule 1 to the Migration Regulations sets out the requirements for making a valid application for a Working Holiday (Temporary) (Class TZ) visa, the only subclass for which is the Subclass 417 (Working Holiday) visa. These requirements include:
 - the application must be made using the approved form specified by the Minister in a legislative instrument made under subregulation 2.07(5) (see subitem 1225(1) of Schedule 1 to the Migration Regulations);
 - the application must be made at the place and in the manner specified in a legislative instrument made under subregulation 2.07(5) (see paragraph 1225(3) of Schedule 1 to the Migration Regulations);

- an applicant for a Subclass 417 visa must hold a valid passport issued by a foreign country specified in a legislative instrument for the purposes of paragraph 1225(3A)(b) (see paragraph 1225(3A)(b) of Schedule 1 to the Migration Regulations).
- 6 Part 417 of Schedule 2 to the Migration Regulations sets out the criteria which an applicant must satisfy to be granted a Subclass 417 visa, including:
- the applicant holds a valid holiday eligible passport of the kind, or of one of the kinds, specified in a legislative instrument made by the Minister for the purposes of subclause 417.211(2)(a) of Schedule 2 to the Migration Regulations; and
 - the applicant is aged at least 18 and no more than 35 for the purposes of subclause 417.211(2)(b)(i) of Schedule 2 to the Migration Regulations; or
 - if a younger age is specified in the instrument mentioned in paragraph 417.211(2)(a) for the kind of passport the applicant holds (or, if paragraph 417.211(1A)(a) applies, held) – that younger age (see subparagraph 417.211(2)(b)(ii) of Schedule 2 to the Migration Regulations).
- 7 LIN 22/051 specifies the requirements that an applicant must meet to make a valid Working Holiday (Temporary) (Class TZ) visa application, and the time of application criteria for the Subclass 417 (Working Holiday) visa.
- 8 The purpose of this instrument is to amend LIN 22/051 to increase the maximum age for eligible United Kingdom applicants for a Subclass 417 visa, from 30 to 35 years. These amendments expand the eligibility requirements for United Kingdom applicants for a Subclass 417 visa, by increasing the age from 30 to 35.

Consultation

- 9 Significant consultation in relation to increasing the age for eligible United Kingdom applicants for a Subclass 417 visa occurred with, and was agreed by, the Government of the United Kingdom. The Department of Home Affairs undertook significant bilateral negotiations with the Government of the United Kingdom, in line with Australia's Working Holiday Maker commitments under the Australia-United Kingdom Free Trade Agreement. The negotiations were supported by the Department of Foreign Affairs and Trade. No concerns were raised with the eligible age for United Kingdom applicants for a Subclass 417 visa being increased from 30 to 35.
- 10 The instrument amends LIN 22/051 to implement this agreement. No public consultation was undertaken on the instrument as it was not considered necessary. This is because the measures in the instrument are machinery in nature, are beneficial to visa applicants, and no liabilities are imposed.
- 11 The Office of Impact Analysis (OIA) was also consulted and considered that the measures in the instrument are unlikely to have more than a minor or machinery regulatory impact and therefore an Impact Analysis is not required.
- The OIA reference number is OBPR22-01839.

Details of the instrument

- 12 Section 1 sets out the name of the instrument.

- 13 Section 2 provides that the instrument commences on 1 July 2023.
- 14 Section 3 provides that Schedule 1 to the instrument amends LIN 22/051.
- 15 Item 1 of Schedule 1 to the instrument amends Item 19 in Schedule 1 to LIN 22/051 by amending the age to show that there is no maximum age specified, meaning that the maximum age is 35 years as provided by subparagraph 417.211(2)(b)(i) of Schedule 2 to the Migration Regulations.

Parliamentary scrutiny etc.

- 16 The instrument exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under subregulation 2.07(5) of and Schedule 2 to the Migration Regulations, which is exempt from disallowance under subitem 20(b) of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 17 As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
- 18 The instrument is made by a delegate of the Minister, in accordance with subregulation 2.07(5) of the Migration Regulations, paragraph 417.211(2)(a) of Schedule 2 to the Migration Regulations, and subparagraph 417.211(2)(b)(ii) of Schedule 2 to the Migration Regulations.