

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Arrangements for Work and Holiday (Subclass 462) Visa Applications) Amendment Instrument (Papua New Guinea) (LIN 23/062) 2023 (No. 2)

- 1 The instrument, Departmental reference LIN 23/062, is made under subregulation 2.07(5) of the *Migration Regulations 1994* (the Migration Regulations) and subparagraph 1224A(3)(b)(iii) of Schedule 1 to the Regulations.
- 2 The instrument amends *Migration (Arrangements for Work and Holiday (Subclass 462) Visa Applications) Instrument (LIN 21/019) 2021 (F2022C00702) (LIN 21/019)* 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 retrospectively on 1 August 2023 and is a legislative instrument for the *Legislation Act 2007* (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 1224A of Schedule 1 to the Migration Regulations sets out the requirements for making a valid application for a Work and Holiday (Temporary) (Class US) visa, the only subclass for which is the Subclass 462 (Work and 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 1224A(1) of Schedule 1 to the Migration Regulations);
 - an applicant must hold a valid passport issued by a foreign country specified in an instrument in writing (see paragraph 1224A(3)(a) 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 1224A(3)(aa) of Schedule 1 to the Migration Regulations); and
 - an applicant is to provide evidence they have support for the grant of the visa from the foreign country, unless the applicant is a member of a class of persons specified by the Minister in an instrument in writing (see subparagraph 1224A(3)(b)(iii) of Schedule 1 to the Migration Regulations)).
- 6 The purpose of this instrument is to retrospectively add Papua New Guinea passport holders to the class of persons who are excluded from the requirement in subparagraph 1224A(3)(b)(iii) of Schedule 1 to the Migration Regulations. This enables applicants from Papua New Guinea to make valid applications for a Subclass 462 visa without providing evidence of support for the grant of the visa from the Papua New Guinea government.
- 7 This instrument amends LIN 21/019 to implement Subclass 462 visa arrangements agreed to by the Australian Government and the Government of Papua New Guinea. This will assist to simplify the application process and remove the administrative burden for both countries.
- 8 In accordance with subsection 12(1A) of the Legislation Act, section 2 of the instrument provides that the instrument is taken to have commenced on 1 August 2023. The effect of this provision is that an application for a Subclass 462 visa made on or after 1 August 2023 will not be invalid solely because the applicant, from Papua New Guinea has failed to provide evidence of support from their home country.
- 9 For subsection 12(2) of the Legislation Act, the instrument does not affect the rights of any persons as to disadvantage the person, and does not impose a liability on a person in respect of anything done or omitted to be done before the instrument is registered.

Consultation

- 10 The Department has undertaken bilateral negotiations with the Government of Papua New Guinea. The negotiations have been supported by the Department of Foreign Affairs and Trade.
- 11 The Office of Impact Analysis (OIA) was consulted and considered the measures in this 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 OBPR ID24785.

Details of the instrument

- 12 Section 1 sets out the name of the instrument.
- 13 Section 2 provides that the instrument is taken to have commenced on 1 August 2023.
- 14 Section 3 provides that Schedule 1 to the instrument amends LIN 21/019.

- 15 Item 1 of Schedule 1 to the instrument amends subsection 4(3) of LIN 21/019 by adding applicants holding Papua New Guinea passports to the class of persons who are exempt from having to provide evidence of home government support for the grant of a Subclass 462 visa.

Parliamentary scrutiny etc.

- 16 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 Migration Regulations, for the purpose of subparagraph 1224A(3)(b)(iii) of Schedule 1 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 was made by a delegate of the Minister, in accordance with subregulation 2.07(5) of the Migration Regulations and subparagraph 1224A(3)(b)(iii) of Schedule 1 to the Migration Regulations.