

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Specified Subclass 417 Work Exemption) Instrument (LIN 24/039) 2024

- 1 The instrument, departmental reference LIN 24/039, is made under subitem 1225(3BA) of Schedule 1 to the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument commences on 1 July 2024. It is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 3 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, for which the only subclass is the Subclass 417 (Working Holiday) visa.
- 4 If a Subclass 417 (Working Holiday) visa applicant is, or has previously been, in Australia as the holder of a Subclass 417 (Working Holiday) visa, the application must be accompanied by a declaration by that applicant that the individual has carried out ‘specified Subclass 417 work’ (as defined in regulation 1.03 of the Migration Regulations) for a total period of at least three months as the holder of the first Subclass 417 (Working Holiday) visa (see paragraph 1225(3B)(c) of Schedule 1 to the Migration Regulations).
- 5 Paragraph 1225(3B)(ca) of Schedule 1 to the Migration Regulations will apply to a Subclass 417 (Working Holiday) visa applicant, if, disregarding any COVID-19 affected visa, that applicant held two Subclass 417 (Working Holiday) visas in Australia. In these circumstances, the application must be accompanied by a declaration by that applicant that:
 - the applicant carried out ‘specified Subclass 417 work’ for a total period of at least six months; and
 - all of that work was carried out while the applicant held a second Subclass 417 (Working Holiday) visa or while the applicant held a bridging visa that was in effect and was granted on the basis of the application for the second Subclass 417 (Working Holiday) visa (made at a time when the applicant held the first Subclass 417 (Working Holiday) visa); and
 - all of that work was carried out on or after 1 July 2019.
- 6 Subitem 1225(3BA) of Schedule 1 to the Migration Regulations provides that paragraphs 1225(3B)(c) and 1225(3B)(ca) of Schedule 1 to the Migration Regulations do not apply if a Subclass 417 (Working Holiday) visa applicant holds a passport of a kind specified by the Minister in a legislative instrument made for the purposes of that subitem.
- 7 The purpose of the instrument is to specify the kinds of passports, held by applicants for second or third Subclass 417 (Working Holiday) visas for the purposes of subitem 1225(3BA) of Schedule 1 to the Migration Regulations. This cohort will be exempt from the requirements for making a valid application for a second or third Subclass 417 (Working Holiday) visa as detailed in paragraphs 4 and 5.

- 8 That cohort will also be exempt (under paragraph 417.211(1A)(b) of Schedule 2 to the Migration Regulations) from needing to satisfy the criteria for a successful grant of a second or third Subclass 417 (Working Holiday) visa set out in subclauses 417.211(5) and (6) of Schedule 2 to the Migration Regulations. These criteria require most applicants for a second or third Subclass 417 (Working Holiday) visa to have carried out ‘specified Subclass 417 work’.
- 9 The instrument specifies this cohort to be United Kingdom passport holders and that passport must indicate that the applicant’s nationality is a British citizen or a British national (overseas).
- 10 The instrument is made following Australia becoming a signatory to the Australia-United Kingdom Free Trade Agreement (the A-UKFTA), which was signed on 17 December 2021 and came into force on 31 May 2023. Under the terms of the A-UKFTA ‘Side Letters on Mutual Understandings on Mobility’, the Australian and United Kingdom Governments agreed to exempt eligible citizens, who participate in the Working Holiday Maker program from working during their stay in Australia or the United Kingdom.
- 11 Through this instrument, the Australian Government is complying with its Working Holiday Maker commitments under the A-UKFTA and it enables eligible second and third Subclass 417 (Working Holiday) visa applicants, who are citizens of the United Kingdom, to continue to participate in the Working Holiday Maker program without needing to undertake and satisfy the ‘specified Subclass 417 work’ requirement provisions within the Migration Regulations.

Consultation

- 12 Significant consultation in relation to the exemption for eligible United Kingdom citizens, who apply for second and third Subclass 417 (Working Holiday) visas, from having to undertake and satisfy the ‘specified Subclass 417 work’ requirement provisions within the Migration Regulations occurred with, and was agreed to, 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 A-UKFTA. These negotiations were supported by the Department of Foreign Affairs and Trade. No concerns were raised with the specified work exemption for eligible United Kingdom citizens.
- 13 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 regulatory impact and therefore an Impact Analysis is not required. The OIA reference number is OIA24-07524.

Details of the instrument

- 14 Section 1 provides the name of the instrument.
- 15 Section 2 provides that the instrument commences on 1 July 2024.
- 16 Section 3 provides that the instrument is made under subitem 1225(3BA) of Schedule 1 to the Migration Regulations.
- 17 Section 4 provides for definitions used in the instrument.

- 18 Section 5 provides that a valid passport issued by a country or region mentioned in an item of Schedule 1 to the instrument which satisfies the conditions mentioned in that item of Schedule 1 to the instrument is specified for the purposes of subitem 1225(3BA) of Schedule 1 to the Migration Regulations.
- 19 Item 1 of Schedule 1 of the instrument provides for United Kingdom passport holders. That passport must indicate that the applicant's nationality is a British citizen or a British national (overseas).

Parliamentary scrutiny etc.

- 20 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under subitem 1225(3BA) of Schedule 1 to the Migration Regulations, and is exempt from disallowance under subitem 20(b) of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 21 As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
- 22 The instrument was made by the Minister for Immigration, Citizenship and Multicultural Affairs in accordance with subitem 1225(3BA) of Schedule 1 to the Migration Regulations.