

EXPLANATORY STATEMENT

Issued by authority of the Secretary of the Department of Home Affairs

Migration Act 1958

Migration (Approved Activities) Instrument (LIN 24/054) 2024

1. The instrument, *Migration (Approved Activities) Instrument (LIN 24/054) 2024*, departmental reference LIN 24/054, is made under paragraph 245AF(a) of the *Migration Act 1958* (the Migration Act).
2. The instrument repeals *Migration (Approved Activities) Instrument (LIN 20/053) 2020* (LIN 20/053) 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 2024. It is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

4. The *Migration Amendment (Strengthening Employer Compliance) Act 2024* (the Strengthening Employer Compliance Act) received the Royal Assent on 20 February 2024 and commences on 1 July 2024.
5. Prior to the commencement of the Strengthening Employer Compliance Act, section 235 of the Migration Act prohibited a lawful non-citizen from working in breach of their visa conditions or an unlawful non-citizen from working. Paragraph 235(7)(a) provided that ‘work’ for the purposes of section 235 of the Act did not include a voluntary activity performed by a detainee in immigration detention, if that activity was of a kind approved in writing by the Secretary (i.e. the Secretary of the Department of Home Affairs).
6. Subdivision C of Division 12 of Part 2 of the Migration Act creates offences, and provides for civil penalties, to deal with where a person allows or refers a non-citizen to work unlawfully.
7. Section 245AF of the Migration Act (which was not amended or repealed by the Strengthening Employer Compliance Act) sets out circumstances in which Subdivision C of Division 12 of Part 2 of the Act does not apply. Paragraph 245AF(a) of the Migration Act provides that the Subdivision does not apply where a detainee in immigration detention voluntarily engages in an activity of a kind approved in writing by the Secretary for the purposes of the paragraph.
8. LIN 20/053 provided for approved activities that a detainee could voluntarily engage in for the purposes of paragraphs 235(7)(a) and 245AF(a) of the Migration Act.
9. Section 235 of the Migration Act was repealed on 1 July 2024, on commencement of the Strengthening Employer Compliance Act. As a result, LIN 20/053 was impliedly repealed on 1 July 2024 to the extent that it provided for matters under paragraph 235(7)(a) of the Migration Act.
10. The purpose of this instrument is to repeal and remake LIN 20/053 to reflect the repeal of the enabling provision under paragraph 235(7)(a) of the Migration Act. LIN 24/054 provides for approved activities for the purposes of paragraph 245AF(a) of the Migration Act commencing on 1 July 2024. It maintains the list of approved activities as previously specified in LIN 24/054, with no substantive changes to that list.

11. Further details of the instrument are set out in the **Attachment**.

Consultation

12. External consultation was not conducted or required as the change was of a minor or machinery nature. The purpose of LIN 24/054 is to make clear that the list of specified activities previously specified for both paragraphs 237(7)(a) and 245AF(a) of the Act continues to have effect for the purposes of paragraph 245AF(a), while appropriately removing reference to now-repealed paragraph 237(7)(a). The policy settings and details of approved activities specified in the instrument have not been substantively altered from former LIN 20/053.

13. The Office of Impact Analysis (OIA) has been consulted in relation to the amendments and no Regulation Impact Statement is required. The OIA consultation reference number is OIA24-07058.

Parliamentary scrutiny etc.

14. This instrument is exempt from disallowance under section 42 of the *Legislation Act 2003* (the Legislation Act). Paragraph 44(2)(b) of the Legislation Act provides that section 42 of that Act does not apply if a legislative instrument is prescribed by regulation for the purposes of that paragraph. This instrument is made under Part 2 of the Migration Act, which is prescribed under item 20(a) of regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

15. As the instrument is exempt from disallowance, under paragraph 15J(2)(f) of the Legislation Act a Statement of Compatibility with Human Rights is not required.

16. The instrument was made by the Secretary of the Department of Home Affairs in accordance with paragraph 245AF(a) of the Migration Act.

17. The Migration Act specifies no conditions that need to be satisfied before the power to make the instrument may be exercised.

Details of Migration (Approved Activities) Instrument (LIN 24/054) 2024**Section 1 Name**

1. This section provides that the name of the instrument is the *Migration (Approved Activities) Instrument (LIN 24/054) 2024* (LIN 24/054) (the instrument).

Section 2 Commencement

2. This section provides that the instrument commences on 1 July 2024.

Section 3 Authority

3. This section provides that the instrument is made under paragraph 245AF(a) of the *Migration Act 1958* (Migration Act).

Section 4 Definitions

4. This section provides for definitions used or referred to in the instrument.

Section 5 Schedule

5. This section provides in effect that Schedule 1 to the instrument provides for the repeal of the instruments set out in the Schedule.

Section 6 Approved activities

6. Subdivision C of Division 12 of Part 2 of the Migration Act (Subdivision C) creates offences, and provides for civil penalties, to deal with the following situations:
 - where a person allows an unlawful non-citizen to work, or refers an unlawful non-citizen for work;
 - where a person allows a lawful non-citizen to work, or refers a non-citizen for work, in breach of the non-citizen's visa conditions.
7. Section 245AF of the Migration Act provides circumstances where Subdivision C does not apply.
8. Paragraph 245AF(a) of the Migration Act provides that Subdivision C does not apply where a detainee in immigration detention voluntarily engages in an activity of a kind approved in writing by the Secretary for the purposes of the paragraph.
9. This section of the instrument sets out approved activities for the purposes of paragraph 245AF(a) of the Migration Act. As a consequence it will not be an offence or a civil penalty provision under Subdivision C for a person to:
 - allow or refer an unlawful non-citizen to undertake those activities;
 - allow or refer a lawful non-citizen to undertake those activities in breach of the non-citizen's visa conditions;

where the non-citizen is a detainee in immigration who voluntarily engages in any of those activities.

10. The approved activities in this section are the same as in LIN 20/053.

Schedule 1 Repeals

11. Schedule 1 of the instrument repeals *Migration (Approved Activities) Instrument (LIN 20/053) 2020* (LIN 20/053).

Item 1

12. Item 1 of Schedule 1 repeals LIN 20/053.

13. The *Migration Amendment (Strengthening Employer Compliance) Act 2024* (the Strengthening Employer Compliance Act) received Royal Assent on 20 February 2024 and commences on 1 July 2024. Amongst other things, the Strengthening Employer Compliance Act repeals section 235 of the Migration Act.

14. Prior to the commencement of the Strengthening Employer Compliance Act, section 235 of the Migration Act prohibited:

- a lawful non-citizen from working in breach of their visa conditions; and
- an unlawful non-citizen from working.

15. Paragraph 235(7)(a) provided that ‘work’ for the purposes of section 235 of the Act did not include a voluntary activity performed by a detainee in immigration detention, if that activity was of a kind approved in writing by the Secretary (i.e. Secretary of the Department of Home Affairs).

16. LIN 20/053 provided for approved activities that a detainee could voluntarily engage in for the purposes of paragraphs 235(7)(a) and 245AF(a) of the *Migration Act 1958* (Migration Act).

17. Section 235 of the Migration Act was repealed on 1 July 2024 on the commencement of the Strengthening Employer Compliance Act. As a result, LIN 20/053 was impliedly repealed on 1 July 2024 to the extent that it provided for matters under paragraph 235(7)(a) of the Migration Act.

18. For the avoidance of doubt, this item repeals LIN 20/053 in its entirety.