

## EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration and Multicultural Affairs

*Migration Regulations 1994*

### ***Migration (Specification of Foreign Countries for Subclass 462 (Work and Holiday) Visa Pre-Application Process) Instrument (LIN 24/058) 2024***

- 1 The instrument, departmental reference LIN 24/058, is made under paragraph 1224A(3A)(b) of Schedule 1 to the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument commences on 16 September 2024. It is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

- 3 The purpose of this instrument is to specify foreign countries for the purposes of paragraph 1224A(3A)(b) of Schedule 1 to the Migration Regulations.
- 4 Item 1224A (Work and Holiday (Temporary)(Class US)) of Schedule 1 to the Migration Regulations sets out the requirements to be met to make a valid application for a Subclass 462 (Work and Holiday) visa. The Work and Holiday program aims to provide visas for temporary stay in Australia of young adults who have achieved a specified level of education from countries that have agreed to participate in the program. These countries are specified in the instrument made under paragraph 1224A(3)(a). The arrangements with each country include the maximum number of visas that may be granted each program year to eligible nationals of that country.
- 5 The *Migration Amendment (Subclass 462 (Work and Holiday) Visa) Regulations 2024* amended item 1224A to insert a new subitem 1224A(3A) with an additional requirement to be met by the passport holders of some of the countries participating in the Work and Holiday program. The additional requirement applies to applicants who:
  - are not, and have not previously been, in Australia as the holder of a Subclass 462 (Work and Holiday) visa (see paragraph 1224A(3A)(a)); and
  - hold a valid passport issued by a foreign country specified by the Minister in a legislative instrument made for the purposes of this paragraph (see paragraph 1224A(3A)(b)).
- 6 In order to make a valid application for Subclass 462 (Work and Holiday) visa, these applicants are required (amongst other things) to meet the requirements set out in the table, including:
  - the applicant is a selected participant for a visa pre-application process conducted under subsection 46C(1) of the *Migration Act 1958* (the Migration Act);
  - at the time the applicant became a registered participant for the visa pre-application process, the applicant held a valid passport issued by the foreign country to which that process relates; and

- the application is made on or before the date specified in the notice given to the applicant after becoming a selected participant.
- 7 Subsection 46C(1) of the Migration Act empowers the Minister to arrange a visa pre-application process (also referred to generally as a ‘ballot’) involving the random selection of registered participants who will then be permitted to lodge an application for a relevant visa. Applicants who are successful in a visa pre-application process for the Subclass 462 visa (and who meet relevant Schedule 1 criteria) will be eligible to apply for the visa.
  - 8 The requirement to be selected in a visa pre-application process only applies to applicants who hold a passport issued by a country specified in this instrument for the purposes of paragraph 1224A(3A)(b) of the Migration Regulations. The specified countries are the People’s Republic of China, India and Vietnam.
  - 9 Selection in a ballot is limited to applicants holding passports issued by these countries because demand for the Subclass 462 visa is significantly high (or in the case of India which is new to the Work and Holiday visa program, is anticipated to be significantly high) and exceeds, or is expected to exceed, the maximum number of visas that may be granted each program year to nationals of these countries, as agreed through bilateral arrangements. A ballot for these countries will assist in efficiently managing the volume of applications received by the Department and ensures fairness as all registered participants have an equal chance of being selected.

### ***Consultation***

- 10 The Department consulted with the Department of Foreign Affairs and Trade in relation to the legislative framework to implement the visa pre-application process for the Work and Holiday visa program. This consultation was considered reasonable and appropriate for the purposes of section 17 of the Legislation Act, where the purpose of the instrument is to give effect to arrangements agreed between Australia and the countries specified in the instrument.
- 11 The Office of Impact Analysis (OIA) was consulted and considered the legislative changes are unlikely to have a more than minor regulatory impact, and as such, an Impact Analysis is not required. The OIA reference number is OBPR22-03816.

### ***Details of the instrument***

- 12 Section 1 provides that the name of the instrument is the *Migration (Specification of Foreign Countries for Subclass 462 (Work and Holiday) Visa Pre-Application Process) Instrument (LIN 24/058) 2024*.
- 13 Section 2 provides the instrument commences on 16 September 2024.
- 14 Section 3 provides the instrument is made under paragraph 1224A(3A)(b) of Schedule 1 to the Migration Regulations.
- 15 Section 4 provides that for the purpose of paragraph 1224A(3A)(b) of Schedule 1 to the Migration Regulations, the following countries are specified:
  - People’s Republic of China;
  - India;
  - Vietnam.

- 16 The note to section 4 explains that an applicant who holds a valid passport issued by a foreign country mentioned in this section, and who is not, and has not previously been, in Australia as the holder of a Subclass 462 (Work and Holiday) visa, is required to be selected in a visa pre-application process conducted in accordance with subsection 46C(1) of the Migration Act before making an application. This requirement is set out in subitem 1224A(3A) of Schedule 1 to the Migration Regulations.
- 17 The purpose of the requirement in subitem 1224A(3A) is to support efficient management of visa applications where demand for a Subclass 462 visa is significantly high. Arranging for ballots to be conducted in relation to specific countries assists in ensuring the number of visa applications better aligns with the number of intended visa grants agreed to through bilateral arrangements with those countries. While this may result in nationals of those countries having to meet additional requirements, the use of a ballot allows the program to function equitably with random selection being the fairest way to distribute the visas available. The use of a ballot process in the Work and Holiday program where demand is high, is reasonable, necessary and proportionate to the aim of the program to provide intended numbers of visas to eligible applicants in a fair and equitable way.

***Parliamentary scrutiny etc.***

- 18 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because instruments made under Schedule 1 of the Migration Regulations are prescribed as being exempt from disallowance under paragraph 44(2)(b) of the Legislation Act. This exemption is provided for by table item 20(b) in regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
- 19 The instrument was made by the Minister for Immigration and Multicultural Affairs in accordance with the Migration Regulations.