

EXPLANATORY STATEMENT

*Migration Act 1958***Migration (Approved Activities) Instrument (LIN 20/053) 2020***(paragraph 235(7)(a) and paragraph 245AF(a))*

1. Instrument LIN 20/053 is made under paragraphs 235(7)(a) and 245AF(a) of the *Migration Act 1958* (the Act).
2. The Instrument repeals IMMI 10/019 (F2010L01570) made under paragraph 235(7)(a) and paragraph 245AF(a) of the Act and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA). Subsection 33(3) of the AIA states that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.
3. Paragraph 235(3) of the Act provides that an unlawful non-citizen who performs work in Australia, whether for reward or otherwise, commits an offence. However, paragraph 235(7)(a) of the Act provides that ‘work’ for the purposes of section 235 of the Act does not include a voluntary activity performed by a detainee in immigration detention, if that activity is of a kind approved in writing by the Secretary. Further, paragraph 245AF(a) of the Act provides that no offence is committed where a person in immigration detention engages voluntarily in an activity of a kind approved in writing by the Secretary.
4. The purpose of the instrument is to specify the approved activities for detainees in immigration detention. This ensures that those detainees who participate in the approved activities will not be considered to be performing work in breach of paragraph 235(3) of the Act.
5. This instrument operates to specify the approved activities if voluntarily engaged in by a detainee in immigration detention. The below activities differ in comparison to the previous instrument IMMI 10/019:
 - painting has been included as an activity for personal purposes;

- food preparation has been included with cooking;
 - community activities have been limited to activities performed for charitable and other non for profit organisations.
6. Instrument LIN 20/053 makes updates to IMMI 10/019 by adding the activities listed in paragraph 5. In accordance with paragraph 15J(2)(e) of the *Legislation Act 2003*, external consultation was not necessary as the change was of a minor or machinery nature and does not substantially change the previous instrument IMMI 10/019.
 7. The Office of Best Practice Regulation (OBPR) have advised that a Regulatory Impact Statement is not required for this instrument (OBPR Reference: 43021).
 8. Under section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
 9. The Instrument commences on the day after it is registered on the Federal Register of Legislation.