

EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration and Multicultural Affairs

Migration Regulations 1994

Migration (Arrangements for Work and Holiday (Subclass 462) Visa Applications) (India) Amendment Instrument (LIN 24/059) 2024

- 1 The instrument, departmental reference LIN 24/059, is made under paragraph 1224A(3)(a) and subparagraph 1224A(3)(b)(iii) of Schedule 1, and paragraph 462.221(c) of Schedule 2 to the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument amends *Migration (Arrangements for Work and Holiday (Subclass 462) Visa Applications) Instrument (LIN 21/019) 2021* (F2021L00152) (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 on 16 September 2024. It is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 LIN 21/019 specifies the requirements that an applicant must meet to make a valid application for a Subclass 462 (Work and Holiday) visa in accordance with Schedule 1 to the Migration Regulations. It also specifies educational qualifications required to be met for the grant of the visa under paragraph 462.221(c) of Schedule 2 to the Migration Regulations.
- 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. 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
 - if the applicant is not, and has not previously been in Australia as the holder of a Subclass 462 visa, other than an offshore COVID-19 affected visa, the 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 Part 462 of Schedule 2 to the Migration Regulations sets out the criteria that an applicant must satisfy to be granted a Subclass 462 visa. This includes the requirement in paragraph 462.221(c), which provides:
- if the applicant is not, and has not previously been in Australia as the holder of a Subclass 462 visa, other than an offshore COVID-19 affected visa, the applicant is the holder of an educational qualification specified in an instrument in writing in relation to the foreign country that issued the passport mentioned in paragraph 1224A(3)(a) of Schedule 1 to the Migration Regulations.
- 7 The purpose of this instrument is to amend LIN 21/019 to implement Subclass 462 (Work and Holiday) visa arrangements agreed to by the Australian Government and the Government of India. The instrument amends LIN 21/019 to:
- specify India as a foreign country for the purpose of paragraph 1224A(3)(a) of Schedule 1 to the Migration Regulations; and
 - specify applicants who hold a valid passport issued by India are in a class of persons exempt from the requirement to provide evidence they have the support of the foreign government for the purpose of subparagraph 1224A(3)(b)(iii) of Schedule 1 to the Migration Regulations; and
 - specify the educational qualifications required for Subclass 462 visa applicants from India for the purpose of paragraph 462.221(c) of Schedule 2 to the Migration Regulations.
- 8 Eligibility to apply for a Subclass 462 visa is restricted to applicants who hold a valid passport issued by a foreign country mentioned in a legislative instrument made for paragraph 1224A(3)(a) of Schedule 1 to the Migration Regulations. These amendments enable applicants who hold a valid passport issued by India to apply for a Work and Holiday (Temporary) (Class US) visa.

Consultation

- 9 In connection with the India-Australia Economic Cooperation and Trade Agreement, the Government of Australia and the Government of India agreed to implement a non-reciprocal Work and Holiday visa arrangement for passport holders from India. Arrangements were confirmed through side letters between the former Minister for Trade, Tourism and Investment, the Hon Dan Tehan MP, and the Hon Shri Piyush Goyal, Minister of Commerce and Industry, Consumer Affairs, Food and Public Distribution and Textiles, Government of India. This instrument gives effect to those arrangements.
- 10 The Office of Impact Analysis (OIA) was consulted and considered that a detailed Impact Analysis was not required. The OIA reference number is OIA24-06953.

Details of the instrument

- 11 Details of the instrument are set out in the [Attachment](#).

Parliamentary scrutiny etc.

- 12 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because instruments made under Part 2 and Schedules 1 and 2 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.

- 13 The instrument was made by the Minister for Immigration and Multicultural Affairs in accordance with the Migration Regulations.

Details of the Migration (Arrangements for Work and Holiday (Subclass 462) Visa Applications) (India) Amendment Instrument (LIN 24/059) 2024

- 1 Section 1 provides that the name of the instrument is the *Migration (Arrangements for Work and Holiday (Subclass 462) Visa Applications) (India) Amendment Instrument (LIN 24/059) 2024*.
- 2 Section 2 provides the instrument commences on 16 September 2024.
- 3 Section 3 provides the instrument is made under paragraph 1224A(3)(a) and subparagraph 1224A(3)(b)(iii) of Schedule 1, and paragraph 462.221(c) of Schedule 2 to the *Migration Regulations 1994* (the Migration Regulations).
- 4 Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.
- 5 Item 1 of Schedule 1 to the instrument amends the table in subsection 4(2) of *Migration (Arrangements for Work and Holiday (Subclass 462) Visa Applications) Instrument (LIN 21/019) 2021* (LIN 21/019) by inserting India into the table of foreign countries. Eligibility to apply for, and to be granted, a Subclass 462 visa is restricted to applicants who hold a valid passport issued by any of the foreign countries mentioned in subsection 4(2). See paragraph 1224A(3)(a) of Schedule 1, and paragraphs 462.221(aa) and 462.221A(b) of Schedule 2 to the Migration Regulations. The effect of this amendment is to enable applicants who hold a passport issued by India to be eligible to apply for a Subclass 462 visa.
- 6 Item 2 of Schedule 1 to the instrument amends the table in subsection 4(3) by inserting India into the table of foreign countries. If an applicant is not, and has not previously been in Australia as the holder of a Subclass 462 visa, other than an offshore COVID-19 affected visa, the applicant is to provide evidence they have support for the grant of the visa from the foreign country that issued the passport. An exemption applies to applicants who are in a class of persons specified by the Minister in an instrument in writing for the subparagraph. This effect of this amendment means applicants who hold a valid passport issued by India are exempt from the requirement to provide evidence they have the support of the government for the grant of the visa.
- 7 Item 3 of Schedule 1 to the instrument amends Schedule 2 to LIN 21/019, inserting the educational qualifications required for applicants who hold a valid passport issued by India. Under paragraph 462.221(c), if the applicant is not, and has not previously been, in Australia as the holder of a Subclass 462 (Work and Holiday) visa, other than an offshore COVID-19 affected visa, the applicant must hold an educational qualification specified in an instrument in writing for the paragraph. The specified educational qualification for passport holders from India is successful completion of at least 2 years of post-secondary education.