

EXPLANATORY STATEMENT

Migration Regulations 1994

Migration (LIN 20/182: Subclass 417 (Working Holiday) visa—Specified work and places) Instrument 2020

Subitem 1225(5) of Schedule 1

1. The instrument, LIN 20/182, is made under subitem 1225(5) of Schedule 1 to the *Migration Regulations 1994* (the Regulations).
2. The instrument repeals *Migration (LIN 20/103: Subclass 417 (Working Holiday) Visa – Regional Australia and Specified Work) Instrument 2020* (LIN 20/103) (F2020L00224) made under subitem 1225(5) of Schedule 1 to the Regulations 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. The instrument operates to specify places and kinds of work for the definitions of *regional Australia* and *specified work* in subitem 1225(5) of Schedule 1 to the Regulations, respectively, for the Working Holiday (Temporary) (Class TZ) visa (Class TZ visa). Paragraphs 417.211(5)(a) and 417.211(6)(a) of Schedule 2 to the Regulations require an applicant for a second or third Subclass 417 (Working Holiday) visa (Subclass 417 visa) within the Class TZ visa, to have carried out a period or periods of specified work in regional Australia.
4. The purpose of the instrument is to specify critical COVID-19 work in the healthcare and medical sectors carried out after 31 January 2020 for the definition of *specified work* in subitem 1225(5) of Schedule 1 to the Regulations. *COVID-19* is defined in section 4 of the instrument. The instrument also specifies all places occupying any

postcode area within a State or Territory of Australia for the definition of *regional Australia* in subitem 1225(5) of Schedule 1 to the Regulations.

5. The instrument enables relevant applicants who have carried out critical COVID-19 work in the healthcare and medical sectors after 31 January 2020 in any place in Australia to count this work towards eligibility for a second or third Subclass 417 visa and satisfy the criteria at paragraph 417.211(5)(a) or 417.211(6)(a) of Schedule 2 to the Regulations.
6. While not all postcode areas within a State or Territory are generally considered regional, they have been specified for the definition of *regional Australia* by the instrument in relation to critical COVID-19 work in the healthcare and medical sectors only. This approach is beneficial to relevant applicants who have carried out this work anywhere in Australia and who are seeking to apply for a second or third visa. This reflects the nationwide impact of COVID-19 and the importance of the work carried out by these visa holders to assist the Australian community. Limiting the specification of places where applicants can carry out this kind of work to those usually considered regional Australia would be detrimental to visa holders in non-regional areas and to the national interest. This approach further supports the national health response to COVID-19 by ensuring people with skills in critical COVID-19 work in the healthcare and medical sectors are incentivised to carry out that work and not look for other work to meet the criteria for a second or third Subclass 417 visa.
7. Relevant applicants may count critical COVID-19 work in the healthcare and medical sectors carried out after 31 January 2020 towards eligibility for a second or third Subclass 417 visa where the application for that visa is made on or after the commencement of the instrument. The instrument does not extend to applications made before commencement of the instrument but not finally determined despite the date mentioned in section 9 of the instrument. A person who has carried out such work after 31 January 2020 and seeks to count this work towards eligibility for a second or third Subclass 417 visa may only do so if the application is made on or after commencement

of the instrument. The instrument therefore does not have a retrospective commencement.

8. Bushfire recovery work carried out after 31 July 2019, as specified in section 8 of the instrument, is a continuation of the measure introduced in LIN 20/103 and therefore is not a fundamental change to the framework for applications for a second or third Subclass 417 visa. The instrument continues to enable bushfire recovery work carried out after 31 July 2019 in a specified local government area to be counted towards the eligibility criteria for a second or third Subclass 417 visa if the application was made on or after 5 March 2020 when LIN 20/103 commenced.
9. Consultation was undertaken before the instrument was made with the Department of Education, Skills and Employment, the Department of Agriculture, the Department of Health, the Chief Medical Officer and the Victorian Department of Health. This consultation was in relation to the specification of critical COVID-19 work in the healthcare and medical sectors. No consultation was undertaken in relation to specification of other work and respective places as the instrument continues to operate the same way in relation to other kinds of work already specified in LIN 20/103.
10. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference Number: 42811).
11. The maker of the instrument (Acting Senior Executive Service Band One, Immigration and Community Protection Policy Division) was appropriately delegated by the *Minister (Instrument-making Powers) Delegation Instrument 2020* (LIN 20/191), signed on 3 August 2020.
12. Under paragraph (b) of item 20 of the table in 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.
13. The instrument commences on the day after it is registered on the Federal Register of Legislation.