

## **EXPLANATORY STATEMENT**

### *Migration Regulations 1994*

#### **Migration (LIN 20/184: Subclass 462 (Work and Holiday) visa – Specified work and areas) Instrument 2020**

##### *regulation 1.15FA of the Regulations*

1. The instrument, LIN 20/184, is made under regulation 1.15FA of the *Migration Regulations 1994* (the Regulations).
2. The instrument repeals the *Migration (LIN 20/104: Subclass 462 (Work and Holiday) Visa – Specified Areas of Australia and Kinds of Work) Instrument 2020* (LIN 20/104) (F2020L00223) made under regulation 1.15FA of 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, under 1.15FA of the Regulations, areas of Australia and kinds of work for the purposes of the definition of *specified Subclass 462 work* in regulation 1.03 of the Regulations. Paragraphs 462.218(a) and 462.219(a) of Schedule 2 to the Regulations require an applicant for a second or third Subclass 462 (Work and Holiday) visa (Subclass 462 visa) to have carried out a period or periods of *specified Subclass 462 work*.
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 in any Australian postcode area for the purposes of the definition of *specified Subclass 462 work* in regulation 1.03 of the Regulations. *COVID-19* is defined in section 4 of the instrument.

5. The instrument enables relevant applicants who undertake critical COVID-19 work in the healthcare and medical sectors after 31 January 2020 in any postcode area in Australia to count this work towards eligibility for a second or third Subclass 462 visa and satisfy the criteria at paragraph 462.218(a) or 462.219(a) of Schedule 2 to the Regulations.
6. The instrument specifies all areas within any Australian postcode area for the purposes of the definition of *specified Subclass 462 work* 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 Subclass 462 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. 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 462 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 462 visa only 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 11 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 462 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. A secondary purpose of the instrument is to insert a timeframe, being ‘after 31 July 2019’, for the specification of bushfire recovery work. The inclusion of this timeframe at section 10 of the instrument ensures only bushfire recovery work carried out after 31 July 2019 counts towards meeting the eligibility criteria for a second or third

Subclass 462 visa. This timeframe was omitted from LIN 20/104 due to a drafting error.

9. The specification of bushfire recovery work carried out after 31 July 2019 in section 10 of the instrument is a continuation of the measure introduced in LIN 20/104 and is not a fundamental change to the framework for applications for a second or third Subclass 462 visa. The instrument continues to enable Subclass 462 visa holders to count bushfire recovery work carried out after 31 July 2019 in a specified local government area towards the eligibility criteria for a second or third Subclass 462 visa if the application was made on or after 5 March 2020 when LIN 20/104 commenced.
10. 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 areas as the instrument continues to operate the same way in relation to other kinds of work already specified in LIN 20/104.
11. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference Number: 42811).
12. 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* (LIN 20/191), signed on 3 August 2020.
13. 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.

14. The instrument commences on the day after it is registered on the Federal Register of Legislation.