

EXPLANATORY STATEMENT

Migration Regulations 1994

Migration (LIN 20/229: COVID-19 Pandemic event for Subclass 408 (Temporary Activity) visa and visa application charge for Temporary Activity (Class GG) visa) Instrument 2020

(subregulation 2.07(5), paragraphs 408.229(b) and (c) of Schedule 2)

1. The instrument, LIN 20/229, is made under subregulation 2.07(5) and paragraphs 408.229(b) and (c) of Schedule 2 to the *Migration Regulations 1994* (the Regulations).
2. The instrument repeals the *Migration (LIN 20/122: COVID-19 Pandemic event for Subclass 408 (Temporary Activity) visa and visa application charge for Temporary Activity (Class GG) visa) Instrument 2020* (LIN 20/122) (F2020L00409) made under subregulation 2.07(5) and paragraphs 408.229(b) and (c) of Schedule 2 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. An applicant is eligible for the grant of a Subclass 408 (Temporary Activity) visa (Subclass 408 visa) if the applicant is undertaking work directly associated with an event specified in a legislative instrument for the purposes of paragraph 408.229(b) and the applicant is in a class of persons specified in an instrument in relation to the event for the purposes of paragraph 408.229(c) of Schedule 2 to the Regulations. The visa application charge amount is nil for an applicant in a class of persons specified in a legislative instrument made for the purposes of subparagraph 1237(2)(a)(i) of Schedule 1 to the Regulations and under subregulation 2.07(5) of the Regulations.

4. The instrument operates to specify, in section 7, the COVID-19 pandemic as declared by the World Health Organization on 11 March 2020 (the COVID-19 pandemic), as an event for paragraph 408.229(b) of Schedule 2 to the Regulations. The instrument also operates to specify, in sections 8 and 9, the classes of persons for the purposes of paragraph 408.229(c) of Schedule 2 and subparagraph 1237(2)(a)(i) of Schedule 1 to the Regulations. Accordingly, the instrument operates so that a person who is in a specified class of persons is eligible to apply for a Subclass 408 visa in relation to the COVID-19 pandemic and with a nil visa application charge.
5. The purpose of the instrument is to adjust and expand the measure introduced by LIN 20/122 to respond to the COVID-19 pandemic, which has evolved since the measure was initially implemented.
6. The instrument updates the class of persons specified in LIN 20/122 to ensure that an applicant must either hold a substantive temporary visa that is 28 days or less from ceasing to be in effect or otherwise held a substantive temporary visa that is not beyond 28 days of ceasing to be effect before the application for the Subclass 408 visa is made. This is consistent with the requirements in Schedule 1 to the Regulations. In particular, item 5 of the table under subitem 1237(3) of Schedule 1 to the Regulations sets out additional requirements for applicants who do not hold a substantive visa. This provision has the effect that an applicant for a Subclass 408 visa who does not hold a substantive visa must have held a substantive visa that has not exceeded 28 days of ceasing to be in effect.
7. The instrument also specifies an additional class of persons who are eligible to apply for a Subclass 408 visa in relation to the COVID-19 pandemic. The additional class of persons is specified to enable an identified cohort of people, with the relevant skills and qualifications to undertake work in the aged care sector, to apply for the Subclass 408 visa. Specifically, the instrument enables substantive temporary visa holders who, on their current visa are not entitled to work but who have the relevant skills and qualifications to undertake work in the aged care sector, to apply for a Subclass 408 visa. The instrument also enables any person who was the holder of a substantive

temporary visa (whether with or without working rights) that ceased to be in effect not more than 28 days before making an application, and who have the relevant skills and qualifications to undertake work in the aged care sector, to apply for a Subclass 408 visa.

8. A person is considered to have the relevant skills and qualifications if they have received an offer of employment from an *approved provider* or a *service provider* of a Commonwealth-funded aged care service, as defined in the *Aged Care Quality and Safety Commission Act 2018*, to undertake work in the aged care sector.
9. The instrument responds to workforce shortages in the aged care sector as a result of the COVID-19 pandemic, by facilitating a pathway for relevantly skilled and qualified current and former substantive temporary visa holders to work in the aged care sector, provided they fall within the class of persons specified in subsection 8(2) of the instrument.
10. The existing class of persons and the additional class of persons specified in the instrument can apply for a Subclass 408 visa with a nil visa application charge. The instrument specifies that both classes of persons must be in Australia and unable to depart due to the COVID-19 pandemic.
11. The instrument applies to applications made on or after commencement of the instrument as well as to applications made but not finally determined before commencement. This approach ensures those who applied for a Subclass 408 visa before the commencement of the instrument are not required to re-apply for a Subclass 408 visa in relation to the COVID-19 pandemic if they are in either classes of persons specified. This approach is beneficial because the parameters of the existing class has not changed and the specification of the additional class of persons means that the cohort of people eligible to apply for a Subclass 408 visa is more encompassing. For example, a relevantly skilled and qualified applicant will be able to be considered to be in the additional class of persons despite their application preceding commencement of the instrument when the additional class of persons was

not yet specified provided their application was not finally determined when the instrument commenced.

12. The instrument commences the day after it is registered on the Federal Register of Legislation.
13. Consultation was undertaken in relation to the new measure with the Department of Health and aged care industry representatives, including the Aged Care Guild, BaptistCare and Estia Health.
14. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 43056).
15. The maker of the instrument (Senior Executive Service Band One, Immigration Programs Division) was appropriately delegated by the *Minister (Instrument-making Powers) Delegation Instrument 2020* (LIN 20/191), signed on 3 August 2020.
16. 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.