



## **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**

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I, Jodie Bjerregaard, as delegate of the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, make this instrument.

Dated 07 September 2020

Jodie Bjerregaard  
Senior Executive Service Band One  
Temporary Visa Program Branch  
Department of Home Affairs

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## Part 1—Preliminary

### 1 Name

- (1) This instrument is the *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*.
- (2) This instrument may be cited as LIN 20/229.

### 2 Commencement

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

### 3 Authority

This instrument is made under the following provisions of the Regulations:

- (a) subregulation 2.07(5);
- (b) paragraph 408.229(b) of Schedule 2;
- (c) paragraph 408.229(c) of Schedule 2.

### 4 Definitions

Note: The expressions *permanent visa*, *substantive visa* and *visa application charge* are defined in subsection 5(1) of the *Migration Act 1958*.

In this instrument:

*approved provider* has the same meaning as in the *Aged Care Quality and Safety Commission Act 2018*.

*COVID-19 pandemic* means the pandemic declared by the World Health Organization on 11 March 2020, caused by the coronavirus COVID-19.

*Regulations* means the *Migration Regulations 1994*.

*service provider* of a Commonwealth-funded aged care service has the same meaning as in the *Aged Care Quality and Safety Commission Act 2018*.

*Subclass 408 visa* means a Subclass 408 (Temporary Activity) visa.

*substantive temporary visa* means a substantive visa, other than a permanent visa.

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## 5 Repeal

This 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)*, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

## 6 Application

This instrument applies to an application for a Subclass 408 visa that is either:

- (a) made on or after commencement of this instrument; or
- (b) made but not finally determined before commencement of this instrument.

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## **Part 2—Event, classes of persons and visa application charge**

### **7 Event**

For paragraph 408.229(b) of Schedule 2 to the Regulations, the COVID-19 pandemic is specified.

### **8 Classes of persons**

- (1) For paragraph 408.229(c) of Schedule 2 to the Regulations, an applicant for a Subclass 408 visa is in a class of persons in relation to the event specified in section 7 if, at the time of application, the applicant is:
  - (a) in Australia; and
  - (b) unable to depart Australia as a result of the COVID-19 pandemic; and
  - (c) either:
    - (i) the holder of a substantive temporary visa that is 28 days or less from ceasing to be in effect; or
    - (ii) was the holder of a substantive temporary visa that ceased to be in effect not more than 28 days before the application for a Subclass 408 visa is made; and
  - (d) unable to make a valid application, or meet the criteria set out in Schedule 2 to the Regulations, for:
    - (i) a visa of the same Subclass as the visa mentioned in paragraph (c); or
    - (ii) a substantive temporary visa of any other Subclass other than a Subclass 408 visa.
- (2) For paragraph 408.229(c) of Schedule 2 to the Regulations, an applicant for a Subclass 408 visa is in a class of persons in relation to the event specified in section 7 if, at the time of application, the applicant is:
  - (a) in Australia; and
  - (b) unable to depart Australia as a result of the COVID-19 pandemic; and
  - (c) either:

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- (i) the holder of a substantive temporary visa, which has a condition attached prohibiting the holder from working in Australia; or
  - (ii) was the holder of a substantive temporary visa that ceased to be in effect not more than 28 days before the application for a Subclass 408 visa is made; and
  - (d) in receipt of an offer of employment from an approved provider or a service provider of a Commonwealth-funded aged care service to undertake work in the aged care sector.

Note: Subparagraphs 8(1)(c)(ii) and 8(2)(c)(ii) above are in accordance with the requirements in Schedule 1 to the Regulations. 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, which has the effect that an applicant who does not hold a substantive visa must have held a substantive visa that ceased to be in effect not more than 28 days before making an application.

## **9 Visa application charge**

The classes of persons mentioned in section 8 are specified for the purposes of subparagraph 1237(2)(a)(i) of Schedule 1 to the Regulations.

Note: Subparagraph 1237(2)(a)(i) provides that the first instalment amount of the visa application charge is nil for an applicant in a class of persons specified in a legislative instrument made for the purposes of that subparagraph.