



Home Affairs Legislation Amendment (2020 Measures No. 2) Regulations 2020

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 12 November 2020

David Hurley
Governor-General

By His Excellency's Command

Alan Tudge
Minister for Population, Cities and Urban Infrastructure
for the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

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1 Name

This instrument is the *Home Affairs Legislation Amendment (2020 Measures No. 2) Regulations 2020*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	14 November 2020
2. Schedules 1 and 2	14 November 2020.	14 November 2020
3. Schedule 3	1 January 2021.	1 January 2021
4. Schedules 4 and 5	14 November 2020.	14 November 2020

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

- (a) the *Australian Citizenship Act 2007*;
- (a) the *Migration Act 1958*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Subclass 417 visas

Migration Regulations 1994

1 Regulation 1.03

Insert:

specified Subclass 417 work means work that:

- (a) was carried out in one or more areas of Australia specified for the purposes of this definition by the Minister under regulation 1.15FAA; and
- (b) was of one or more kinds specified for the purposes of this definition by the Minister under regulation 1.15FAA.

2 After regulation 1.15F

Insert:

1.15FAA Specified Subclass 417 work

The Minister may, by legislative instrument, specify areas of Australia and kinds of work for the purposes of the definition of *specified Subclass 417 work* in regulation 1.03.

3 Paragraph 1225(3B)(c) of Schedule 1

Omit “specified work in regional Australia”, substitute “specified Subclass 417 work”.

4 Subparagraph 1225(3B)(ca)(i) of Schedule 1

Omit “specified work in regional Australia”, substitute “specified Subclass 417 work”.

5 Subitem 1225(5) of Schedule 1

Repeal the following definitions:

- (a) definition of *regional Australia*;
- (b) definition of *specified work*.

6 Clause 417.111 of Schedule 2

Repeal the following definitions:

- (a) definition of *regional Australia*;
- (b) definition of *specified work*.

7 Paragraphs 417.211(5)(a) and (6)(a) of Schedule 2

Omit “specified work in regional Australia”, substitute “specified Subclass 417 work”.

Schedule 2—Subclass 124 and 858 visas

Part 1—Subclass 124 visas

Migration Regulations 1994

1 Subregulation 1.12(7)

Omit “a Distinguished Talent (Migrant) (Class AL) visa or”.

2 Item 1112 of Schedule 1

Repeal the item.

3 Part 124 of Schedule 2

Repeal the Part.

Part 2—Subclass 858 visas

Division 1—Main amendments

Migration Regulations 1994

4 Subregulation 1.12(7) (heading)

Repeal the heading, substitute:

Distinguished Talent (Class BX) visas

5 Subregulation 1.12(7)

Omit “(Residence)”.

6 Item 1113 of Schedule 1 (heading)

Omit “(Residence)”.

7 Paragraph 1113(3)(b) of Schedule 1

Omit “must be in Australia”, substitute “may be in or outside Australia.”.

8 After paragraph 1113(3)(b) of Schedule 1

Insert:

(ba) Applicant in Australia must hold:

- (i) a substantive visa; or
- (ii) a Subclass 010 Bridging A visa; or
- (iii) a Subclass 020 Bridging B visa; or
- (iv) a Subclass 030 Bridging C visa.

9 Paragraph 1113(3)(c) of Schedule 1

Omit “(Residence)”.

10 Clause 858.211 of Schedule 2

Repeal the clause.

11 Paragraphs 858.221(a) and 858.223(1)(a) and (2)(b) of Schedule 2

Omit “4005”, substitute “4007”.

12 At the end of Subdivision 858.22 of Schedule 2

Add:

858.228

- (1) The applicant satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is an applicant for a Subclass 858 visa satisfies special return criteria 5001, 5002 and 5010.

13 Division 858.3 of Schedule 2 (note 2 to the heading)

Omit “(Residence)”.

14 Paragraph 858.311(a) of Schedule 2

Omit “(Residence)”.

15 Clause 858.312 of Schedule 2

Repeal the clause.

16 At the end of subclause 858.321(3) of Schedule 2

Add:

; and (d) the applicant was in Australia at the time the applicant’s visa application was made.

17 Paragraph 858.322(a) of Schedule 2

Omit “4005”, substitute “4007”.

18 At the end of Subdivision 858.32 of Schedule 2

Add:

858.327

The applicant satisfies special return criteria 5001, 5002 and 5010.

19 Clause 858.411 of Schedule 2

Repeal the clause, substitute:

858.411

The applicant may be in or outside Australia when the visa is granted, but not in immigration clearance.

Note: The second instalment of the visa application charge must be paid before the visa can be granted.

20 Division 858.6 of Schedule 2

Repeal the Division, substitute:

858.6—Conditions

858.611

If the applicant is outside Australia when the visa is granted:

- (a) first entry must be made before the date specified by the Minister; and
- (b) if the applicant satisfies the secondary criteria for the grant of the visa, condition 8515 may be imposed.

Division 2—Amendments relating to Subclass 773 visas

Migration Regulations 1994

21 At the end of subclause 773.213(2) of Schedule 2

Add:

; (zy) Distinguished Talent (Class BX).

Schedule 3—Payment of citizenship fees

Australian Citizenship Regulation 2016

1 Subsection 16(7)

Repeal the subsection, substitute:

(7) In this section:

conversion instrument means the *Migration (LIN 21/001: Payment of Visa Application Charges and Fees in Foreign Currencies) Instrument 2021* as in force on 1 January 2021.

places and currencies instrument means the *Migration (LIN 21/002: Places and Currencies for Paying of Fees) Instrument 2021* as in force on 1 January 2021.

2 In the appropriate position in Part 4

Insert:

27 Application of amendment made by Schedule 3 to the *Home Affairs Legislation Amendment (2020 Measures No. 2) Regulations 2020*

The amendment of section 16 made by Schedule 3 to the *Home Affairs Legislation Amendment (2020 Measures No. 2) Regulations 2020* applies in relation to an application made on or after 1 January 2021.

Schedule 4—Application of Migration Amendment (COVID-19 Concessions) Regulations 2020

Migration Regulations 1994

1 Subclause 9101(1) of Schedule 13

Omit “The amendments”, substitute “Subject to subclause (1A), the amendments”.

2 After subclause 9101(1) of Schedule 13

Insert:

(1A) The amendment of these Regulations made by item 9 of Part 2 of Schedule 1 to the *Migration Amendment (COVID-19 Concessions) Regulations 2020* applies in relation to an application for a visa:

- (a) made, but not finally determined, before 19 September 2020; or
- (b) made on or after 19 September 2020.

3 Subclause 9102(2) of Schedule 13

Omit all the words after “in relation to”, substitute:

an application for a visa:

- (a) made, but not finally determined, before 19 September 2020; or
- (b) made on or after 19 September 2020.

Schedule 5—Application and transitional provisions

Migration Regulations 1994

1 In the appropriate position in Schedule 13

Insert:

Part 92—Amendments made by the Home Affairs Legislation Amendment (2020 Measures No. 2) Regulations 2020

Division 1—Operation of Schedule 1

9201 Operation of Schedule 1

Application of amendments

- (1) The amendments made by Schedule 1 to the *Home Affairs Legislation Amendment (2020 Measures No. 2) Regulations 2020* apply in relation to an application for a Subclass 417 (Working Holiday) visa made on or after 14 November 2020.

Specified work taken to be specified Subclass 417 work

- (2) For the purposes of these Regulations, as amended by Schedule 1 to the *Home Affairs Legislation Amendment (2020 Measures No. 2) Regulations 2020*, work that:
 - (a) was carried out at a time occurring before 14 November 2020; and
 - (b) at that time, was specified work in regional Australia (within the meaning of item 1225 of Schedule 1 to these Regulations, as in force at that time);is taken to be specified Subclass 417 work.

Saving of instruments

- (3) An instrument that:
 - (a) specified a place for the purposes of the definition of **regional Australia** in subitem 1225(5) of Schedule 1; and
 - (b) was in force immediately before 14 November 2020;continues in force (and may be dealt with) as if it:
 - (c) had been made under regulation 1.15FAA, as inserted by Schedule 1 to the *Home Affairs Legislation Amendment (2020 Measures No. 2) Regulations 2020*; and
 - (d) specifies that place as an area for the purposes of the definition of **specified Subclass 417 work** in regulation 1.03.
- (4) An instrument that:
 - (a) specified a kind of work for the purposes of the definition of **specified work** in subitem 1225(5) of Schedule 1; and
 - (b) was in force immediately before 14 November 2020;

continues in force (and may be dealt with) as if it:

- (c) had been made under regulation 1.15FAA, as inserted by Schedule 1 to the *Home Affairs Legislation Amendment (2020 Measures No. 2) Regulations 2020*; and
- (d) specifies that kind of work for the purposes of the definition of *specified Subclass 417 work* in regulation 1.03.

Division 2—Operation of Schedule 2

9202 Operation of Part 1 of Schedule 2

- (1) The amendments made by Part 1 of Schedule 2 to the *Home Affairs Legislation Amendment (2020 Measures No. 2) Regulations 2020* (the **amending regulations**) do not apply in relation to:
 - (a) an application for a Subclass 124 (Distinguished Talent) visa made before 14 November 2020; or
 - (b) a Subclass 124 (Distinguished Talent) visa granted:
 - (i) before 14 November 2020; or
 - (ii) on or after 14 November 2020, if the application for the visa was made before 14 November 2020.
- (2) In particular, despite the repeal or amendment of provisions of these Regulations by Part 1 of Schedule 2 to the amending regulations, those provisions, as in force immediately before 14 November 2020, continue to apply in relation to an application for a Subclass 124 (Distinguished Talent) visa if:
 - (a) the application is taken to have been made by a person before, on or after 14 November 2020 in accordance with regulation 2.08 or 2.08A; and
 - (b) for an application taken to have been made in accordance with regulation 2.08—the non-citizen mentioned in paragraph 2.08(1)(a) applied for his or her visa before 14 November 2020; and
 - (c) for an application taken to have been made in accordance with regulation 2.08A—the original applicant mentioned in paragraph 2.08A(1)(a) applied for his or her visa before 14 November 2020.

9203 Operation of Part 2 of Schedule 2

- (1) The amendments made by Division 1 of Part 2 of Schedule 2 to the *Home Affairs Legislation Amendment (2020 Measures No. 2) Regulations 2020* apply in relation to an application for a Subclass 858 (Distinguished Talent) visa made on or after 14 November 2020.
- (2) The amendments made by Division 2 of Part 2 of Schedule 2 to the *Home Affairs Legislation Amendment (2020 Measures No. 2) Regulations 2020* apply in relation to an application for a Subclass 773 (Border) visa made on or after 14 November 2020.
- (3) For the purposes of paragraph 773.213(2)(zy) of Schedule 2, as inserted by Division 2 of Part 2 of Schedule 2 to the *Home Affairs Legislation Amendment (2020 Measures No. 2) Regulations 2020*, it does not matter whether a Distinguished Talent (Class BX) visa was granted before, on or after 14 November 2020.

Division 3—Transitional provisions relating to Subclass 417 and 462 visas

9204 Definitions

- (1) In this Division:

COVID-19 pandemic event 408 visa means a Subclass 408 (Temporary Activity) visa granted on the basis that the applicant satisfied the criterion in clause 408.219A of Schedule 2 on the basis of clause 408.229 (Australian Government endorsed events) in relation to:

- (a) if no instrument made under subclause (2) of this clause is in effect—the COVID-19 pandemic (within the meaning of LIN 20/229, as in force on 14 November 2020); or
- (b) an event specified under subclause (2) of this clause.

special Subclass 417 work means specified Subclass 417 work of a kind:

- (a) if no instrument made under subclause (3) of this clause is in effect—specified by section 9 of LIN 20/182, as in force on 14 November 2020; or
- (b) specified under subclause (3) of this clause.

Note: Section 9 of LIN 20/182 specified critical COVID-19 work in the healthcare and medical sectors.

special Subclass 462 work means specified Subclass 462 work of a kind:

- (a) if no instrument made under subclause (4) of this clause is in effect—specified by section 11 of LIN 20/184, as in force on 14 November 2020; or
- (b) specified under subclause (4) of this clause.

Note: Section 11 of LIN 20/184 specified critical COVID-19 work in the healthcare and medical sectors.

- (2) The Minister may, by legislative instrument, specify an event for the purposes of paragraph (b) of the definition of **COVID-19 pandemic event 408 visa** in subclause (1), if the event is specified for the purposes of paragraph 408.229(b) of Schedule 2.
- (3) The Minister may, by legislative instrument, specify kinds of specified Subclass 417 work for the purposes of the definition of **special Subclass 417 work** in subclause (1).
- (4) The Minister may, by legislative instrument, specify kinds of specified Subclass 462 work for the purposes of the definition of **special Subclass 462 work** in subclause (1).

9205 Transitional provision—applicants for second Subclass 417 visas who carried out specified Subclass 417 work under COVID-19 pandemic event visas

Scope of this clause

- (1) This clause applies in relation to an application (the **second 417 application**) for a Subclass 417 (Working Holiday) visa made on or after 14 November 2020, if:

- (a) the applicant has held only one Subclass 417 (Working Holiday) visa (the **first 417 visa**) in Australia; and
- (b) before the day (the **second 417 application day**) the second 417 application is made, the applicant carried out specified Subclass 417 work as the holder of:
 - (i) an eligible 408 visa; or
 - (ii) a bridging visa that was in effect and granted on the basis of an application for an eligible 408 visa; and
- (c) some or all of that work was special Subclass 417 work.

Work under COVID-19 pandemic event visas to be counted for purposes of second 417 application

- (2) The following provisions apply in relation to the work mentioned in paragraph (1)(b) of this clause in the same way as those provisions apply in relation to specified Subclass 417 work that the applicant carried out as the holder of the first 417 visa:
 - (a) paragraph 1225(3B)(c) of Schedule 1;
 - (b) paragraph 417.211(5)(a) of Schedule 2.

When second 417 visa is in effect

- (3) If, on the second 417 application day, the applicant holds an eligible 408 visa, then a Subclass 417 (Working Holiday) visa granted on the basis of the second 417 application is a temporary visa permitting the holder to travel to, enter and remain in Australia until 12 months after the date that the eligible 408 visa would have otherwise ceased to be in effect.
- (4) Subclause (3) has effect despite clause 417.511 of Schedule 2.

Meaning of eligible 408 visa

- (5) For the purposes of this clause, an **eligible 408 visa** is a COVID-19 pandemic event 408 visa granted on the basis of an application made:
 - (a) while the applicant held the first 417 visa; or
 - (b) within 28 days after the day when the first 417 visa ceased to be in effect; or
 - (c) while the applicant held an earlier eligible 408 visa; or
 - (d) within 28 days after an earlier eligible 408 visa held by the applicant ceased to be in effect.

9206 Transitional provision—applicants for third Subclass 417 visas who carried out specified Subclass 417 work under COVID-19 pandemic event visas

Scope of this clause

- (1) This clause applies in relation to an application (the **third 417 application**) for a Subclass 417 (Working Holiday) visa made on or after 14 November 2020, if:
 - (a) the applicant has held 2 Subclass 417 (Working Holiday) visas in Australia (the earlier of which is the **first 417 visa** and the latter of which is the **second 417 visa**); and

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- (b) before the day (the **third 417 application day**) the third 417 application is made, the applicant carried out specified Subclass 417 work as the holder of:
- (i) an eligible 408 visa; or
 - (ii) a bridging visa that was in effect and granted on the basis of an application for an eligible 408 visa; or
 - (iii) if, when the application for the second 417 visa was made, the applicant held a COVID-19 pandemic event 408 visa to which subclause (6) applies—a bridging visa granted on the basis of the application for the second 417 visa; and
- (c) some or all of that work was special Subclass 417 work.

Work under COVID-19 pandemic event visas to be counted for purposes of third 417 application

- (2) The following provisions apply in relation to the specified Subclass 417 work mentioned in paragraph (1)(b) of this clause in the same way as those provisions apply in relation to specified Subclass 417 work that the applicant carried out as the holder of the second 417 visa:
- (a) subparagraph 1225(3B)(ca)(ii) of Schedule 1;
 - (b) paragraph 417.211(6)(c) of Schedule 2.

When third 417 visa is in effect

- (3) If, on the third 417 application day, the applicant holds an eligible 408 visa, then a Subclass 417 (Working Holiday) visa granted on the basis of the third 417 application is a temporary visa permitting the holder to travel to, enter and remain in Australia until 12 months after the date that the eligible 408 visa would have otherwise ceased to be in effect.
- (4) Subclause (3) has effect despite clause 417.511 of Schedule 2.

Meaning of eligible 408 visa etc.

- (5) For the purposes of this clause, an **eligible 408 visa** is a COVID-19 pandemic event 408 visa granted on the basis of an application made:
- (a) while the applicant held the second 417 visa; or
 - (b) within 28 days after the day when the second 417 visa ceased to be in effect; or
 - (c) while the applicant held an earlier eligible 408 visa; or
 - (d) within 28 days after an earlier eligible 408 visa held by the applicant ceased to be in effect.
- (6) For the purposes of subparagraph (1)(b)(iii), this subclause applies to a COVID-19 pandemic event 408 visa granted on the basis of an application made:
- (a) while the applicant held the first 417 visa; or
 - (b) within 28 days after the day when the first 417 visa ceased to be in effect; or
 - (c) while the applicant held an earlier COVID-19 pandemic event 408 visa to which this subclause applies; or
 - (d) within 28 days after an earlier COVID-19 pandemic event 408 visa to which this subclause applies held by the applicant ceased to be in effect.

9207 Transitional provision—applicants for second Subclass 462 visas who carried out specified Subclass 462 work under COVID-19 pandemic event visas

Scope of this clause

- (1) This clause applies in relation to an application (the **second 462 application**) for a Subclass 462 (Work and Holiday) visa made on or after 14 November 2020, if:
 - (a) the applicant has held only one Subclass 462 (Work and Holiday) visa (the **first 462 visa**) in Australia; and
 - (b) before the day (the **second 462 application day**) the second 462 application is made, the applicant carried out specified Subclass 462 work as the holder of:
 - (i) an eligible 408 visa; or
 - (ii) a bridging visa that was in effect and granted on the basis of an application for an eligible 408 visa; and
 - (c) some or all of that work was special Subclass 462 work.

Work under COVID-19 pandemic event visas to be counted for purposes of second 462 application

- (2) The following provisions apply in relation to the work mentioned in paragraph (1)(b) of this clause in the same way as those provisions apply in relation to specified Subclass 462 work that the applicant carried out as the holder of the first 462 visa:
 - (a) subparagraph 1224A(3)(c)(ii) of Schedule 1;
 - (b) clause 462.218 of Schedule 2.

When second 462 visa is in effect

- (3) If, on the second 462 application day, the applicant holds an eligible 408 visa, then a Subclass 462 (Work and Holiday) visa granted on the basis of the second 462 application is a temporary visa permitting the holder to travel to, enter and remain in Australia until 12 months after the date that the eligible 408 visa would have otherwise ceased to be in effect.
- (4) Subclause (3) has effect despite Division 462.5 of Schedule 2.

Meaning of eligible 408 visa

- (5) For the purposes of this clause, an **eligible 408 visa** is a COVID-19 pandemic event 408 visa granted on the basis of an application made:
 - (a) while the applicant held the first 462 visa; or
 - (b) within 28 days after the day when the first 462 visa ceased to be in effect; or
 - (c) while the applicant held an earlier eligible 408 visa; or
 - (d) within 28 days after an earlier eligible 408 visa held by the applicant ceased to be in effect.

9208 Transitional provision—applicants for third Subclass 462 visas who carried out specified Subclass 462 work under COVID-19 pandemic event visas

Scope of this clause

- (1) This clause applies in relation to an application (the **third 462 application**) for a Subclass 462 (Work and Holiday) visa made on or after 14 November 2020, if:
- (a) the applicant has held 2 Subclass 462 (Work and Holiday) visas in Australia (the earlier of which is the **first 462 visa** and the latter of which is the **second 462 visa**); and
 - (b) before the day (the **third 462 application day**) the third 462 application is made, the applicant carried out specified Subclass 462 work as the holder of:
 - (i) an eligible 408 visa; or
 - (ii) a bridging visa that was in effect and granted on the basis of an application for an eligible 408 visa; or
 - (iii) if, when the application for the second 462 visa was made, the applicant held a COVID-19 pandemic event 408 visa to which subclause (6) applies—a bridging visa granted on the basis of the application for the second 462 visa; and
 - (c) some or all of that work was special Subclass 462 work.

Work under COVID-19 pandemic event visas to be counted for purposes of third 462 application

- (2) The following provisions apply in relation to the specified Subclass 462 work mentioned in paragraph (1)(b) of this clause in the same way as those provisions apply in relation to specified Subclass 462 work that the applicant carried out as the holder of the second 462 visa:
- (a) subparagraph 1224A(3)(c)(ia) of Schedule 1;
 - (b) clause 462.219 of Schedule 2.

When third 462 visa is in effect

- (3) If, on the third 462 application day, the applicant holds an eligible 408 visa, then a Subclass 462 (Work and Holiday) visa granted on the basis of the third 462 application is a temporary visa permitting the holder to travel to, enter and remain in Australia until 12 months after the date that the eligible 408 visa would have otherwise ceased to be in effect.
- (4) Subclause (3) has effect despite Division 462.5 of Schedule 2.

Meaning of eligible 408 visa etc.

- (5) For the purposes of this clause, an **eligible 408 visa** is a COVID-19 pandemic event 408 visa granted on the basis of an application made:
- (a) while the applicant held the second 462 visa; or
 - (b) within 28 days after the day when the second 462 visa ceased to be in effect; or
 - (c) while the applicant held an earlier eligible 408 visa; or
 - (d) within 28 days after an earlier eligible 408 visa held by the applicant ceased to be in effect.

- (6) For the purposes of subparagraph (1)(b)(iii), this subclause applies to a COVID-19 pandemic event 408 visa granted on the basis of an application made:
 - (a) while the applicant held the first 462 visa; or
 - (b) within 28 days after the day when the first 462 visa ceased to be in effect;
or
 - (c) while the applicant held an earlier COVID-19 pandemic event 408 visa to which this subclause applies; or
 - (d) within 28 days after an earlier COVID-19 pandemic event 408 visa to which this subclause applies held by the applicant ceased to be in effect.