



## **Migration (Transitional operation of regulation 5.19 for certain 457 visa holders) Amendment Instrument (LIN 20/190) 2020**

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I, Alan Tudge, Minister for Population, Cities and Urban Infrastructure, make the following instrument.

Dated 13 November 2020

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

- (1) This instrument is the *Migration (Transitional operation of regulation 5.19 for certain 457 visa holders) Amendment Instrument (LIN 20/190) 2020*.
- (2) This instrument may be cited as LIN 20/190.

## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this instrument	The day after this instrument is registered.	24 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Note: This table relates only to the provisions of this instrument as originally made.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 subregulation 5.19(6) of the *Migration Regulations 1994*.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

### *Migration (IMMI 18/052: Transitional operation of regulation 5.19 for certain 457 visa holders) Instrument 2018*

#### 1 Section 1

Repeal the section, substitute:

##### 1 Name

- (1) This instrument is the *Migration (IMMI 18/052: Specified Persons and Periods of Time for Regulation 5.19) Instrument 2018*.
- (2) This instrument may be cited as IMMI 18/052.

#### 2 Section 4

Insert:

*concession period* means the concession period mentioned in subregulation 1.15N(1) of the Regulations.

*coronavirus reduced work period*: see subsection 7A(3).

*coronavirus unpaid leave period*: see subsection 7B(3).

#### 3 At the end of section 7

Add:

- (3) This section has effect, in relation to paragraphs 5.19(5)(f) and (g) of the Regulations, subject to sections 7A and 7B of this instrument.

#### 4 After section 7

Insert:

#### **7A Different periods of time for purposes of paragraph 5.19(5)(f) of the Regulations—COVID-19**

- (1) For the purposes of paragraph 5.19(5)(f) of the Regulations, this section determines a different period of time, in relation to an application, for a person in relation to whom there are one or more coronavirus reduced work periods.
- (2) Subparagraph 5.19(5)(f)(i) of the Regulations applies in relation to the person as if the reference in that subparagraph to a total period of at least 3 years were a reference to a total period of at least 3 years (or, if the person is a specified person, at least 2 years) less the total length of the coronavirus reduced work periods in relation to the person.

Note: For *specified person*, see section 4.

- (3) A *coronavirus reduced work period* in relation to a person is a period:
  - (a) that occurred:
    - (i) during the concession period; and

- (ii) during the period of 4 years (or, if the person is a specified person, 3 years) immediately before the application is made; and
- (b) throughout which the person was employed in the position in relation to which the visa, or visas, mentioned in paragraph 5.19(5)(e) of the Regulations in relation to the application were granted; and
- (c) throughout which:
  - (i) that employment was on a basis other than a full-time basis (for example, the employment was on a part-time basis or the person was stood down), but would have been on a full-time basis were it not for the coronavirus known as COVID-19; or
  - (ii) the person was on unpaid leave from that employment because of the coronavirus known as COVID-19.

### **7B Different periods of time for purposes of paragraph 5.19(5)(g) of the Regulations—COVID-19**

- (1) For the purposes of paragraph 5.19(5)(g) of the Regulations, this section determines a different period of time, in relation to an application, for a person in relation to whom there are one or more coronavirus unpaid leave periods.
- (2) Paragraph 5.19(5)(g) of the Regulations applies in relation to the person as if the reference in that paragraph to a total period of at least 3 years were a reference to a total period of at least 3 years (or, if the person is a specified person, at least 2 years) less the total length of the coronavirus unpaid leave periods in relation to the person.

Note: For *specified person*, see section 4.

- (3) A *coronavirus unpaid leave period* in relation to a person is a period:
  - (a) that occurred:
    - (i) during the concession period; and
    - (ii) during the period of 4 years (or, if the person is a specified person, 3 years) immediately before the application is made; and
  - (b) throughout which the person:
    - (i) was employed in the occupation in relation to which the visa, or visas, mentioned in paragraph 5.19(5)(e) of the Regulations in relation to the application were granted; and
    - (ii) was on unpaid leave from that employment because of the coronavirus known as COVID-19.

### **5 After section 8**

Insert:

### **8A Application of amendments made by LIN 20/190**

The amendments made by items 2 to 4 of Schedule 1 to the *Migration (Transitional operation of regulation 5.19 for certain 457 visa holders) Amendment Instrument (LIN 20/190) 2020* apply in relation to:

- (a) an application made on or after 1 February 2020 and before the commencement of this section, if the application was not finally determined before that commencement; or
- (b) an application made on or after that commencement.