

## **EXPLANATORY STATEMENT**

### *Migration Regulations 1994*

#### **Migration Legislation Amendment (Health Workforce Certificates Measures No. 2)**

#### **Instrument (LIN 20/274) 2020**

*(Subregulations 2.72(9) and 2.72C(11))*

1. The instrument, LIN 20/274, is made under subregulations 2.72(9) and 2.72C(11) of the *Migration Regulations 1994* (the Regulations).
2. The instrument amends *Migration (LIN 19/048: Specification of Occupations— Subclass 482 Visa) Instrument 2019* (F2019C00265) and *Migration (LIN 19/219: Occupations for Subclass 494 Visa) Instrument 2019* (F2019L01403) 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 amends LIN 19/048 and LIN 19/219 to introduce the Health Workforce Exemption Certificate (HWEC), which is a certificate exempting sponsors who are hospital employers from the requirement of obtaining a Health Workforce Certificate (HWC) each time the sponsor nominates a hospital-based position in one of the following medical occupations: General Practitioner, Resident Medical Officer, or Medical Practitioner (not elsewhere classified).
4. The instrument operates so that a sponsoring employer can obtain a HWEC, which is valid for 12 months. A HWEC may be utilised for multiple nominations for a medical occupation position based in a hospital during the 12 month period. This is intended to reduce the administrative burden for hospital-based sponsors so they do not have to obtain a HWC each time they wish to nominate a prospective employee for a hospital-based position.
5. The purpose of the instrument is to implement the requirement for a hospital employer who is a sponsor to obtain a current HWEC for a nomination for a hospital-based position. The HWC that was already specified in LIN 19/048 and LIN 19/219 continues to be required to be obtained by a sponsoring employer for a nomination for non-hospital-based positions.
6. The instrument also makes changes in the following ways:

- a. LIN 19/048 –
    - i. simplifying the definition of HWC in section 4 of the instrument. The instrument removes paragraph (c) of the definition of HWC and inserts a new definition of health workforce certifier in section 4 of the instrument, maintaining the same certifiers with one small change;
    - ii. changing the name of Rural Health West Ltd from Western Australian Centre for Remote and Rural Medicine Ltd reflecting a change in the organisation’s name (ABN 29 123 188 367);
    - iii. removing the requirements in paragraph (a) of the definition of HWC. Similar requirements are added to new subsection 9(2), in relation to HWECs, and subsection 9(3) in relation to HWCs. The differing requirements reflect that HWECs are applicable to hospital-based positions only and HWCs are applicable to non-hospital-based positions.
    - iv. requiring the relevant certificate to specify the occupation in new subsections 9(2) and (3). The consequential change was to remove paragraph (b) of the definition of HWC to avoid repetition;
    - v. including a definition of HWEC into section 4 of the instrument.
  - b. LIN 19/219 –
    - i. inserting definitions of HWC, health workforce certifier and HWEC in section 4 of the instrument. The terms were not previously defined. The list of health workforce certifiers was previously mentioned in paragraph 5(3)(c);
    - ii. repealing subsections 5(2) and (3) and inserting new subsections 5(2), (3) and (4) which include the following changes:
      - A. including requirements in relation to a HWEC in new subsection 5(2);
      - B. clarifying the requirements in relation to a HWC in new subsection 5(3);
      - C. clarifying the requirements in relation to a HWEC in new subsection 5(4).
7. Consultation was undertaken prior to the making of the instrument with the Department of Health.
8. The instrument commences on 16 December 2020. The amendments to:
- a. LIN 19/048 apply in relation to a nomination made under subsection 140GB(1) of the *Migration Act 1994* on or after 16 December 2020; and

- b. LIN 19/219 apply in relation to a nomination made on or after 16 December 2020.
9. LIN 19/048 and LIN 19/219 as in force immediately before the date of commencement of the instrument, continue to apply in relation to an application for approval of a nomination made before 16 December 2020.
10. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference: 43170).
11. Under section 42 of the *Legislation Act 2003*, the instrument is subject to disallowance and therefore a Statement of Compatibility with Human Rights has been provided at **Attachment A**.

## **Attachment A**

### **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

#### **Migration Legislation Amendment (Health Workforce Certificates Measures No.2) Instrument (LIN 20/274) 2020**

This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Instrument**

The *Migration Regulations 1994* set out requirements for the grant of a Temporary Skill Shortage (Subclass 482) visa and the Skilled Employer Sponsored Regional (Skilled) (Subclass 494) visa. One requirement for both visa subclasses is that the applicant be nominated by their employer, in an occupation that appears on one of the skilled occupations lists for the relevant subclass of visa. The occupation lists are specified by instrument LIN 19/048 for the Subclass 482 visa and LIN 19/219 for the Subclass 494 visa.

These instruments also include inapplicability conditions (‘caveats’) for certain occupations for the purpose of nominations, to provide clarification for applications and ensure the integrity of this visa program. Relevantly, the current instruments specify a caveat requiring that a health workforce certificate (HWC) from a Rural Workforce Agency (RWA) be provided when an employer nominates a person for a position in one of the following medical occupations: General Practitioner, Resident Medical Officer, and Medical Practitioner not elsewhere classified.

RWAs are government-funded, not-for-profit, agencies that aim to attract, recruit and support health professionals needed in rural and remote communities and the certification requirement is aimed at directing overseas-trained doctors away from over-serviced metropolitan and outer metropolitan areas to areas of workforce shortage, especially rural and remote areas.

This instrument (LIN 20/274) amends current instruments LIN 19/048 and LIN 19/219 with the effect of adding a second type of certificate called a “health workforce exemption certificate” (HWEC). This certificate will be issued by the same authorities and applies to the same occupations as the existing HWC. A HWEC is valid for 12 months and can be used by the employer for multiple nominations during that period. It is expected that HWECs will be issued for hospital-based positions and this is intended to reduce the administrative burden for hospital employers who currently need to obtain a health workforce certificate each time they wish to nominate a person for a hospital-based position. This amendment implements policy measures introduced by the Department of Health and recognises that a HWC is currently always issued by RWAs for hospital-based positions. This amendment will allow employers

nominating a prospective employee for those medical occupations to provide a HWEC for hospital-based positions and continue to provide a HWC for non-hospital-based positions in order to meet the certification requirement in the caveat.

### **Human rights implications**

The measure in this instrument has been assessed against the seven core international human rights treaties. In aiming to reduce the administrative burden on medical employers, particularly hospitals, in meeting visa requirements when nominating foreign medical professionals, this measure may assist those employers to more quickly commence the employment of such professionals. As such, this measure may broadly promote the right to work in Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) of those medical professionals, and the right to health in Article 12 of the ICESCR of the Australian community, by having such staff commence as quickly as possible.

### **Conclusion**

The legislative instrument is compatible with human rights.

**The Hon Alan Tudge MP**

**Minister for Population, Cities and Urban Infrastructure**

**On behalf of the Minister for Immigration, Citizenship, Migrant Services and  
Multicultural Affairs**