

## **EXPLANATORY STATEMENT**

*Migration Regulations 1994*

### **Migration (COVID-19 Pandemic event for Subclass 408 (Temporary Activity) visa and visa application charge for Temporary Activity (Class GG) visa) Amendment Instrument (LIN 20/283) 2020**

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

1. The instrument, LIN 20/283, is made under subregulation 2.07(5) of *the Migration Regulations 1994* (the Regulations) and paragraph 408.229(b) and (c) of Schedule 2 to the Regulations.
2. In accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the AIA), the instrument amends *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* (F2020L01145), made under subregulation 2.07(5) and paragraphs 408.229(b) and (c) of Schedule 2 to the Regulations. 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) of Schedule 2 to the Regulations 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.
4. The visa application charge (VAC) 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.
5. The instrument operates to amend LIN 20/229, to specify in new subsections 8(3) and (4) an additional class of persons, who are eligible to apply for a Subclass 408 visa in relation to the

COVID-19 pandemic, with a nil VAC, for the purposes of paragraph 408.229(c) of Schedule 2 and subparagraph 1237(2)(a)(i) of Schedule 1 to the Regulations, respectively.

6. Under new subsection 8(3), an applicant is in a class of persons in relation to the COVID-19 pandemic, if the applicant:
  - a. holds or held a substantive temporary visa which is either 90 days or less from ceasing to be in effect or ceased to be in effect not more than 28 days before the visa application is made; and
  - b. is currently employed, or has received an offer of employment, in one of the following sectors: aged care, agriculture, child care, disability care, food processing or health care.
7. New subsection 8(4) creates a subset of the class of persons specified in subsection 8(3). Subsection 8(4) specifies separate requirements for applicants in relation to employment in the agricultural sector if the applicant:
  - a. holds or held a Subclass 403 (Temporary Work (International Relations)) visa in the Seasonal Worker Program stream that is 90 days or less from ceasing to be in effect or ceased to be in effect not more than 28 days before the visa application is made; and
  - b. is employed, or has received an offer of employment, from an approved employer under the Seasonal Worker Programme.
8. The above requirement maintains the link between Seasonal Worker Programme participants and their approved employers and maintains the employment framework, which is managed by the Department of Education, Skills and Employment.
9. An applicant seeking to be included in the new class of persons, must also be in Australia and unable to apply for:
  - a. the same substantive temporary visa they currently hold; or
  - b. the same substantive temporary visa they previously held; or
  - c. any other substantive temporary visa other than the Subclass 408 visa.
10. The instrument amends the class of person specified in subsection 8(2) of LIN 20/229 to include any applicant whose substantive temporary visa is 90 days or less from ceasing to be in effect. This is beneficial to applicants in this class as they may now apply for a Subclass 408 visa

before their current visa expires. This amendment ensures the 90 day timeframe is applied consistently in relation to aged care work under either subsection 8(2) or (3) of LIN 20/229.

11. The instrument responds to workforce shortages 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 above mentioned critical employment sectors, provided they fall within the class of persons specified in the instrument.
12. The instrument applies, at new section 6A, to applications made on or after commencement of the instrument and to applications made but not finally determined before the instrument commences. 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 after the instrument commences.
13. Consultation with the Department of Agriculture, Water and the Environment and the Department of Education, Skills and Employment as part of the whole of government response to the COVID-19 pandemic was undertaken before the instrument was made.
14. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 43219).
15. The maker of the instrument (Acting Senior Executive Service Band One, Immigration Programs Division) was appropriately delegated by the *Minister (Ministerial Instrument-making Powers) Delegation 2020/252*.
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.
17. The instrument commences on the day after it is registered on the Federal Register of Legislation.