

EXPLANATORY STATEMENT

Migration Regulations 1994

Migration (Regional Areas) Instrument (LIN 20/292) 2020

(subregulation 1.15M(1); subregulation 1.15M(2); subregulation 5.19(16); subparagraph 888.226(2)(c)(i) of Schedule 2; paragraph 892.213(3)(b) of Schedule 2)

1. The instrument, LIN 20/292, is made under subregulation 1.15M(1); subregulation 1.15M(2) and subregulation 5.19(16) of the *Migration Regulations 1994* (the Regulations); subparagraph 888.226(2)(c)(i) and paragraph 892.213(3)(b) of Schedule 2 to the Regulations.
2. The instrument repeals *Migration (LIN 19/217: Regional Areas) Instrument 2019 (F2019L01446)* 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 operates to specify:
 - a. a part of Australia to be a designated city or major regional centre for the purposes of subregulation 1.15M(1) of the Regulations;
 - b. a part of Australia to be a regional centre or other regional area for the purposes of subregulation 1.15M(2) of the Regulations;
 - c. a part of Australia as regional Australia for the purposes of subregulation 5.19(16) of the Regulations;
 - d. an area for the purposes of paragraph 892.213(3)(b) of Schedule 2 of the Regulations;
 - e. an area for the purposes of subparagraph 888.226(2)(c)(i) of Schedule 2 of the Regulations.
4. The purpose of the instrument is to give effect to changes to the Regulations by the *Migration Amendment (Temporary Graduate Visas) Regulations 2020* (the Amendment Regulations). In relation to the instrument, the Amendment Regulations amend the definition of ***designated regional area*** in regulation 1.15M. The new definition allows the Minister to specify a part of

Australia to be a *designated city or major regional centre* or a *regional centre or other regional area*.

5. The instrument specifies parts of Australia to be a *designated city or major regional centre* or a *regional centre or other regional area* for the purposes of new regulation 1.15M of the Regulations. This is done by specifying postcodes for each area in table 1 and table 2 of Schedule 1 to the instrument, respectively.
6. The specified parts of Australia that are a designated regional area are the same as those specified in the previous instrument, LIN 19/217. The instrument also does not make changes to the specified postcodes for the purposes of the definition of *regional Australia* in subregulation 5.19(16) and for the purposes of subparagraph 888.226(2)(c)(i) and paragraph 892.213(3)(b) of Schedule 2 to the Regulations. These areas are specified in table 1 and 2 of Schedule 1 to the instrument.
7. The Amendment Regulations also operate to provide access to a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream (Subclass 485 visa PSWS) in certain circumstances, where the applicant lived in a designated regional area for at least two years before applying for the second visa. An applicant for a Subclass 485 visa PSWS who studied in a regional centre or other regional area will be eligible for a two year visa grant. An applicant for a Subclass 485 visa PSWS who studied in a designated city or major regional centre will be eligible for a one year visa grant.
8. The instrument includes at section 7, that it applies to applications for a Subclass 485 visa PSWS made on or after 20 January 2021 and to a Subclass 485 visa PSWS granted on or after 20 January 2021.
9. The instrument also applies, as set out in section 7 to:
 - a. a nomination made under paragraph 140GB(1)(b) of the *Migration Act 1958* (the Act) on or after 20 January 2021;
 - b. an application for approval of a nomination made under subregulation 5.19(1) of the Regulations on or after 20 January 2021;
 - c. an application for a Subclass 189 (Skilled—Independent) visa; a Subclass 190 (Skilled—Nominated) visa; a Subclass 491 (Skilled Work Regional (Provisional)) visa; a Subclass 888 (Business Innovation and Investment) (Permanent) visa; and a Subclass 892 (State/Territory Sponsored Business Owner) visa made on or after 20 January 2021;

- d. an assessment made under section 93 of the Act on or after 20 January 2021;
 - e. a Subclass 491 (Skilled Work Regional (Provisional)) visa granted on or after 20 January 2021.
10. Other than the time specified for the instrument's application provisions (on or after 20 January 2021 in all cases) and the inclusion of the Subclass 485 visa PSWS in the instrument, the instrument continues to apply in the same manner as LIN 19/217.
 11. Consultation was undertaken with the Department of Education, Skills and Employment in relation to the regional measures in Schedule 1 to the Amendment Regulations. No specific consultation was undertaken in relation to the instrument, as the instrument changes were necessary to give effect to the changes introduced by the Amendment Regulations.
 12. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 25049).
 13. Under 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.
 14. The instrument commences immediately following the commencement of Schedule 1 to the *Migration Amendment (Temporary Graduate Visas) Regulations 2020*, on 20 January 2021.