

## EXPLANATORY STATEMENT

Issued by authority of the Minister for Immigration, Citizenship, Migrant Services and  
Multicultural Affairs

*Migration Act 1958*

*Migration Regulations 1994*

### ***Migration (Post COVID-19 economic recovery event for Subclass 408 visas) Instrument (LIN 21/008) 2021***

- 1 The instrument, Departmental reference 21/008, is made under paragraph 408.229(b) of Schedule 2 to the *Migration Regulations 1994* (the Migration Regulations).
- 2 The instrument commences on 27 February 2021, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

- 3 A person may be eligible for the grant of a Subclass 408 (Temporary Activity) visa (a Subclass 408 visa) where one of the primary criteria set out in Subdivision 408.2 of Schedule 2 to the Migration Regulations applies. One of the primary criteria is that the person seeks to enter or remain in Australia to work directly with an ‘Australian Government endorsed event’ (see clause 408.229). Such an event must be specified by legislative instrument, and an applicant for a Subclass 408 visa pursuant to this clause must be in a class of persons specified in that instrument in relation to the event (see paragraphs 408.229(b) and (c)).
- 4 The purpose of the instrument is to specify an Australian Government endorsed event and a class of persons in relation to that event for the purpose of clause 408.229 of Schedule 2 to the Migration Regulations.

#### ***Consultation***

- 5 The Department broadly consulted Commonwealth agencies on measures introduced in the instrument, which support Australia’s post COVID-19 economic recovery. No public consultation was undertaken.
- 6 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument would have a minor regulatory impact and a regulatory impact statement is not required. The OBPR reference number is 43422.

#### ***Details of the instrument***

- 7 Section 1 sets out the name of the instrument.
- 8 Section 2 provides for the commencement of the instrument on 27 February 2021. This date aligns with updates to Departmental systems that will allow applications to be made under this instrument.
- 9 Section 3 sets out definitions of terms used in the instrument.

- 10 Section 4 provides that the period of recovery from the economic effects of COVID-19 in Australia is a specified event under paragraph 408.229(b) of Schedule 2 to the Migration Regulations.
- 11 Section 5 sets out, for paragraph 408.229(c) of Schedule 2 to the Migration Regulations, the class of persons in relation to the specified event described in section 4 of the instrument. An applicant will be in the specified class if:
- they are employed full time as an essential staff member of a business that is relocating to Australia and will assist in Australia’s response to the economic effects of COVID-19 (paragraph (a));
  - they will assist with the establishment of the business’s operations in Australia (paragraph (b));
  - they make an application for a Subclass 408 visa in relation to the event between 27 February 2021 and 30 June 2022 (paragraph (c));
  - they have not previously been granted a Subclass 408 visa in relation to the event specified in section 4 (paragraph (d)).
- 12 An applicant for a Subclass 408 visa in relation to an Australian Government endorsed event (as specified for clause 408.229 of Schedule 2 to the Migration Regulations) will need to nominate which event they are applying in relation to at the time of application for a visa. At the time of making the instrument, a number of different events are specified for this purpose.<sup>1</sup> Thus, an application for a Subclass 408 visa in relation to an Australian Government endorsed event, may only be for one specified event at a time.

***Parliamentary scrutiny etc.***

- 13 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because instruments made under Schedule 2 of the Migration Regulations are prescribed in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (see paragraph 44(2)(b) of the Legislation Act).
- 14 The instrument was made by a delegate of the Minister, Senior Executive Service Band One, Immigration Programs Division, in accordance with paragraph 408.229(b) of Schedule 2 to the Migration Regulations. The Senior Executive Service Band One was delegated the power to make the instrument by *Migration (Ministerial Instrument-making Powers) Delegation 2020/252*.

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<sup>1</sup> See, for example, 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* which relates to people who work in essential services.