

EXPLANATORY STATEMENT

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

Migration Regulations 1994

Migration (Specified work and areas for subclass 417 visas) Instrument (LIN 22/012) 2022

- 1 The instrument, Departmental reference LIN 22/012, is made under regulation 1.15FAA of the *Migration Regulations 1994* (the Regulations).
- 2 The instrument repeals *Migration (LIN 20/182: Subclass 417 (Working Holiday) visa – Specified work and places) Instrument 2020* (LIN 20/182), made for the definitions of *regional Australia* and *specified work* in subitem 1225(5) of Schedule 1 to the Regulations. The definitions of regional Australia and specified work in subitem 1225(5) of Schedule 1 to the Regulations were repealed by the *Home Affairs Legislation Amendment (2020 Measures No. 2) Regulations 2020* (the Amendment Regulations). The Amendment Regulations inserted the new instrument making power, regulation 1.15FAA which replaced the function of the repealed definitions. The Amendment Regulations also inserted transitional provisions in paragraphs 9201(3)(c) and 9201(4)(c) of Schedule 13 to the Regulations, which provide that LIN 20/182 continues in force (and may be dealt with) as if it had been made under regulation 1.5FAA of the Regulations.
- 3 LIN 20/182 is repealed under regulation 1.15FAA in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). That subsection provides that where an Act confers a power to make a legislative instrument, the power includes a power to amend or repeal that instrument, subject to any conditions that apply to the initial instrument-making power. This means that regulation 1.15FAA of the Regulations also include a power to amend or repeal an instrument made under that provision.
- 4 The instrument commences on 5 March 2022, and is a legislative instrument for the *Legislation Act 2003* (Legislation Act).

Purpose

- 5 The instrument is made following the changes to the Regulations by the Amendment Regulations outlined in paragraph 2. The Amendment Regulations inserted a definition of *specified Subclass 417 work* under regulation 1.03 and regulation 1.15FAA which allows the Minister to specify in an instrument areas of Australia and kinds of work for the purposes of the definition of *specified Subclass 417 work* in regulation 1.03.
- 6 Applicants applying for second or third Working Holiday (Subclass 417) visas (subclass 417 visa) must satisfy the criteria under subsection 417.211(5) or 417.211(6) of Schedule 2 to the Regulations. This includes demonstrating the applicant has carried out a period or periods of *specified Subclass 417 work*, which is defined in regulation 1.03 of the Regulations. The definition of *specified Subclass 417 work* states in paragraphs (a) and (b) that the areas of Australia the work was carried out in and the kinds or work for a Subclass 417 visa are specified by the Minister under regulation 1.15FAA, which provides the instrument making power.

- 7 The purpose of the instrument is to specify, under regulation 1.15FAA of the Regulations, areas of Australia and kinds of work for the definition of *specified Subclass 417 work* in regulation 1.03 of the Regulations. This enables subclass 417 visa applicants who have undertaken the kinds of work in the corresponding area(s) specified in the instrument to count this work towards eligibility for a second or third subclass 417 visa and satisfy the criteria at paragraph 417.211(5)(a) or 417.211(6)(a) of Schedule 2 to the Regulations.
- 8 The instrument uses terms *bushfire affected area*, *Northern Australia*, *Regional Australia*, and *Remote and Very Remote Australia* and defines each term to be one or more areas of Australia specified in an item of Schedule 1 to the instrument, to align with the use of these terminologies by the Department in public communications for subclass 417 visa applicants and holders and their employers.
- 9 The instrument updates LIN 20/182 and specifies tourism and hospitality work and the areas in which that work must be carried out. Work carried out after 21 June 2021 in Northern Australia and Remote and Very Remote Australia, for a person providing accommodation services, food and beverage services, and services directly to tourists, are specified as the kinds of work for the definition of *specified Subclass 417 work*. Section 2C of the Acts Interpretation Act provides that the reference to ‘a person’ in the instrument includes a body politic or corporate as well as an individual. This expansion of the definition and specified areas gives effect to the Minister’s announcement on 22 June 2021, benefiting visa holders and employers in tourism and hospitality industries and regions that continue to experience labour shortages. The kinds of tourism and hospitality work specified in the instrument must be carried out in Northern Australia and Remote and Very Remote Australia. The instrument does not make changes to other kinds of work specified in LIN 20/182.

Consultation

- 10 The instrument addresses the Joint Standing Committee on Migration’s (JSCM) recommendations on the Working Holiday Maker program, where Recommendation 3 provides that subclass 417 visa holders “*should be able to work in tourism and hospitality in all hard-to-staff rural and remote areas of Australia as part of their 88 days or 6 months to qualify for their second-or third-year WHM visa*” (see https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Migration/WorkingHolidayMaker/Report/section?id=committees%2Freportjnt%2F024567%2F75459). The JSCM has consulted broadly considering 89 written submissions received from a range of agricultural industry bodies, associations and representatives including the National Farmers’ Federation and Growcom.
- 11 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a machinery nature and no regulatory impact statement was required. The OBPR reference number is 44225.

Details of the instrument

- 12 Section 1 sets out the name of the instrument.
- 13 Section 2 provides for the commencement of the instrument on 5 March 2022.
- 14 Section 3 sets out the purpose of the instrument. The effect is to provide that the kinds of work and areas of Australia specified in the instrument are for the definition of *specified Subclass 417 work* in regulation 1.03 and for regulation 1.15FAA of the *Migration Regulations 1994* (the Regulations).

- 15 Section 4 sets out definitions of terms used in the instrument. Under this section:
- *bushfire affected area* is defined to be one or more areas of Australia mentioned in item 1 of Schedule 1 to the instrument.
 - *Northern Australia* is defined to be one or more areas of Australia mentioned in item 2 of Schedule 1.
 - *Regional Australia* is defined to be one or more area of Australia mentioned in item 3 of Schedule 1.
 - *Remote and Very Remote Australia* is defined to be one or more areas of Australia mentioned in item 4 of Schedule 1.
- 16 Sections 5, 6, 7, and 8 each specifies different areas of Australia and different kinds of work for paragraphs (a) and (b) of the definition of *specified Subclass 417 work* in regulation 1.03, and for regulation 1.15FAA of the Regulations.
- 17 Section 9 repeals *Migration (LIN 20/182: Subclass 417 (Working Holiday) visa—Specified work and places) Instrument 2020*.
- 18 Items 1, 2, 3 and 4 of Schedule 1 to the instrument each mention the areas of Australia defined as *bushfire affected area*, *Northern Australia*, *Regional Australia* and *Remote and Very Remote Australia* respectively.

Parliamentary scrutiny etc.

- 19 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under regulation 1.15FAA of the Regulations, which is exempt from disallowance under paragraph (b) of item 20 in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 20 The instrument is made by a delegate of the Minister, acting under regulation 1.15FAA of the Regulations.