

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 and 462 visas) Amendment Instrument (LIN 22/050) 2022

- 1 The instrument, Departmental reference LIN 22/050, is made under regulations 1.15FA and 1.15FAA of the *Migration Regulations 1994* (the Regulations).
- 2 The instrument amends *Migration (Specified work and areas for subclass 417 visas) Instrument (LIN 22/012) 2022* (LIN 22/012) and *Migration (Specified work and areas for subclass 462 visas) Instrument (LIN 22/013) 2022* (LIN 22/013) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*. 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 regulations 1.15FA and 1.15FAA of the Regulations also include a power to amend or repeal an instrument made under those provisions.
- 3 The instrument commences on 1 July 2022, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The purpose of the instrument is to amend the areas of Australia and kinds of work specified in LIN 22/012 and LIN 22/013 for the definition of *specified Subclass 417 work* and *specified Subclass 462 work* in regulation 1.03 of the Regulations, respectively.
- 5 The instrument specifies flood recovery work and the areas in which that work must be carried out. Work carried out after 31 December 2021 in a flood affected area, both paid and unpaid, including clean-up, construction or any other work in association with restitution or restoration of services, land, waterways, property or infrastructure, and providing support services or assistance to people living, working or volunteering in the affected areas, are specified as the kinds of work for the definition of *specified Subclass 417 work* or *specified Subclass 462 work*. This expansion of the specified kinds of work and areas of Australia gives effect to the Minister's announcement on 31 March 2022, encouraging visa holders and employers to support communities affected by the catastrophic flood disasters in northern New South Wales and Queensland. The kinds of flood recovery work specified in the instrument must be carried out in flood affected areas as mentioned in item 9 of Schedule 1 and item 9 of Schedule 2 to the instrument.
- 6 The instrument updates bushfire recovery work specified in LIN 22/013 to ensure both paid and unpaid bushfire recovery work carried out after 31 July 2019 in a bushfire affected area are specified as the kinds of work for the definition of *specified Subclass 417 work* or *specified Subclass 462 work*. The recognition of volunteer bushfire recovery work is consistent with the approach taken in LIN 22/012.
- 7 The instrument updates the areas in which tourism and hospitality work must be carried out by adding four additional postcodes 4406, 4416, 4498 and 7215, which are not part of *Northern Australia* or

Remote and Very Remote Australia. Work carried out after 21 June 2021 in areas of Australia within postcodes 4406, 4416, 4498 and 7215, 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* or *specified Subclass 462 work*.

- 8 The instrument removes postcode 7001 from *Remote and Very Remote Australia* mentioned in item 4 of Schedule 1 to both LIN 22/012 and LIN 22/013. The inclusion of postcode 7001 as an area of *Remote and Very Remote Australia* is an error caused by the incorrect information on the Australian Bureau of Statistics (the ABS) Correspondence spreadsheet. The removal of 7001 does not affect applicants who have already undertaken tourism and hospitality work in areas of Australia within postcode 7001 before the commencement of the instrument.
- 9 The instrument also makes technical amendments to bushfire recovery work and critical COVID-19 work specified in LIN 22/012 and LIN 22/013. These amendments are consequential to the insertion of new section 8A to LIN 22/012 and new section 9A to LIN 22/012 by item 7 of Schedule 1 and item 7 Schedule 2 to the instrument, respectively. The instrument does not make changes to other kinds of work specified in LIN 22/012 and LIN 22/013.

Consultation

- 10 External consultation was undertaken with the ABS and the Emergency Management Australia. No concerns were raised with the amendments being made to LIN 22/012 and LIN 22/013.
- 11 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a minor or machinery nature and no regulatory impact statement was required. The OBPR reference number is 22-02065.

Details of the instrument

- 12 Details of the instrument are set out in **Attachment A**.

Parliamentary scrutiny etc.

- 13 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under regulations 1.15FA and 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*.
- 14 The instrument is made by a delegate of the Minister, acting under regulations 1.15FA and 1.15FAA of the Regulations.

Details of the *Migration (Specified work and areas for subclass 417 and 462 visas) Amendment Instrument (LIN 22/050) 2022*

Section 1 Name

This section provides that the name of the instrument is the *Migration (Specified work and areas for subclass 417 and 462 visas) Amendment Instrument (LIN 22/050) 2022* (the instrument).

Section 2 Commencement

This section provides that the instrument commences on 1 July 2022.

Section 3 Amendment

This section provides that:

- Schedule 1 to the instrument amends *Migration (Specified work and areas for subclass 417 visas) Instrument (LIN 22/012) 2022* (LIN 22/012); and
- Schedule 2 to the instrument amends *Migration (Specified work and areas for subclass 462 visas) Instrument (LIN 22/013) 2022* (LIN 22/013).

Schedule 1 Amendments to LIN 22/012

Item 1 of Schedule 1 to the instrument inserts the definition of *flood affected area* to section 4 of LIN 22/012. It provides that *flood affected area* means one or more areas of Australia mentioned in new item 5 of Schedule 1 to LIN 22/012.

Items 2 and 3 of Schedule 1 to the instrument amend section 6 of LIN 22/012, to add four additional postcodes 4406, 4416, 4498 and 7215 to the areas in which tourism and hospitality work must be carried out.

Items 4, 5 and 6 of Schedule 1 to the instrument amend paragraph 7(1)(a) and subsections 7(2) and 8(2) of LIN 22/012, respectively. These are technical amendments consequential to the insertion of new section 8A to LIN 22/012.

Item 7 of Schedule 1 to the instrument amends LIN 22/012, to specify flood recovery work and the areas in which that work must be carried out for the definition of *specified Subclass 417 work* in regulation 1.03 of the Regulations.

Item 8 of Schedule 1 to the instrument amends item 4 of Schedule 1 to LIN 22/012, to remove postcode 7001 from *Remote and Very Remote Australia*.

Item 9 of Schedule 1 to the instrument amends Schedule 1 to LIN 22/012, to add a list of areas of Australia defined as *flood affected area*.

Schedule 2 Amendments to LIN 22/013

Item 1 of Schedule 2 to the instrument inserts the definition of *flood affected area* to section 4 of LIN 22/013. It provides that *flood affected area* means one or more areas of Australia mentioned in new item 5 of Schedule 1 to LIN 22/013.

Items 2 and 3 of Schedule 2 to the instrument amend section 7 of LIN 22/013, to add four additional postcodes 4406, 4416, 4498 and 7215 to the areas in which tourism and hospitality work must be carried out.

Item 4 of Schedule 2 to the instrument amends paragraph 8(1)(a) of LIN 22/013, to ensure unpaid bushfire recovery work carried out after 31 July 2019 in a bushfire affected area would also be specified as the kinds of work for the definition of *specified Subclass 462 work*.

Items 5 and 6 of Schedule 2 to the instrument amend subsections 8(2) and 9(2) of LIN 22/013. These are technical amendments consequential to the insertion of new section 9A to LIN 22/013.

Item 7 of Schedule 2 to the instrument amends LIN 22/013, to specify flood recovery work and the areas in which that work must be carried out for the definition of *specified Subclass 462 work* in regulation 1.03 of the Regulations.

Item 8 of Schedule 2 to the instrument amends item 4 of Schedule 1 to LIN 22/013, to remove postcode 7001 from *Remote and Very Remote Australia*.

Item 9 of Schedule 2 to the instrument amends Schedule 1 to LIN 22/013, to add a list of areas of Australia defined as *flood affected area*.