

## EXPLANATORY STATEMENT

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

*Migration Regulations 1994*

### ***Migration Legislation Amendment (Specified Work and Areas for Subclass 417 and 462 Visas) Instrument (LIN 24/020) 2024***

- 1 The instrument, departmental reference LIN 24/020, is made under regulations 1.15FAA and 1.15FA of the *Migration Regulations 1994* (the Migration 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 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* (the Acts Interpretation Act). That subsection provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 3 The instrument commences on the day after the instrument is registered on the Federal Register of Legislation. It 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 the kinds of work specified in LIN 22/012 and LIN 22/013 for the definitions of *specified Subclass 417 work* and *specified Subclass 462 work* in regulation 1.03 of the Migration Regulations.
- 5 The amendments extend ‘specified work’ beyond flood and bushfire recovery to other forms of natural disasters such as cyclones or storm surges. These changes recognise the important role of working holiday makers in helping regions in the aftermath of natural disasters, and their valuable support to businesses and communities to recover as quickly as possible.
- 6 The instrument replaces the existing specified flood recovery work provisions in LIN 22/012 and LIN 22/013, respectively by expanding this kind of work to include recovery work undertaken in specified flood, cyclone and other severe weather affected areas. The instrument also amends the associated areas of Australia specified in LIN 22/012 and LIN 22/013 by expanding the areas of Australia where recovery work can be undertaken where the area is affected by bushfire, flood, cyclone or other severe weather.
- 7 The instrument specifies, for the definitions of both *specified Subclass 417 work* and *specified Subclass 462 work*, recovery work in relation to flood, cyclone or other severe weather, and the areas

of Australia in which that work must be carried out. It specifies work carried out after 31 December 2021 in an area affected by flood, cyclone or other severe weather, including:

- clean-up, construction or any other work in association with restitution or restoration of services, land, waterways, property or infrastructure; and
  - work providing support services or assistance to people living, working or volunteering in the area affected by flood, cyclone or other weather.
- 8 The instrument also expands the areas of Australia in which bushfire recovery work can be carried out in bushfire affected areas as specified in item 1 of Schedule 1. This instrument makes no further changes to the bushfire recovery work provisions in LIN 22/012 and LIN 22/013, respectively.
- 9 The Australian Government has initiated changes to the Working Holiday Maker (WHM) program in recognition of the important contribution that Working Holiday (Temporary) (Class TZ) and Work and Holiday (Temporary) (Class US) visa holders make to these affected areas, by recognising this recovery work for the purpose of meeting the ‘specified work’ requirements for a second or third visa holder under the Working Holiday Maker program.

### ***Consultation***

- 10 The Department of Home Affairs (the Department) has undertaken consultation with the National Emergency Management Agency to ensure the currency of the updated list of affected areas, and to manage the expansion of the categories to include a broader range of natural disasters. Information in relation to the changes will be made available to affected visa holders and visa applicants on the Department’s website.
- 11 The Office of Impact Analysis (OIA) was consulted and considered that the measures in this instrument did not require the preparation of impact analysis. The OIA reference number is OIA24-06616.

### ***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 the day after the instrument is registered on the Federal Register of Legislation.
- 14 Section 3 provides for the instrument being made under regulations 1.15FAA and 1.15FA of the Migration Regulations.
- 15 Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in each Schedule of this instrument and any other item in a Schedule to this instrument has effect according to its terms.
- 16 Schedule 1 to the instrument amends the *Migration (Specified work and areas for subclass 417 visas) Instrument (LIN 22/012) 2022 (LIN 22/012)*.
- 17 Item 1 of Schedule 1 repeals the definition of flood affected area. This is a consequential amendment, where item 2 repeals and replaces section 8A with a new provision that, together with new item 5 of Schedule 1 (per the amendment in item 4 described below), directly deals with areas affected by

flood, cyclone or other severe weather. The narrower definition of flood affected area is no longer required as a result of this amendment.

- 18 Item 2 of Schedule 1 repeals section 8A of LIN 22/012 and inserts two new provisions; a replacement section 8A and new section 9.
- 19 New section 8A provides for recovery work – flood, cyclone and other severe weather. The new subsection 8A(1) specifies that the work carried out in the area mentioned in item 5 of Schedule 1 of the instrument, is an area affected by flood, cyclone or other severe weather. This kind of work can be undertaken after 31 December 2021 and includes clean-up, construction or any other work in association with restitution or restoration of services, land, waterways, property or infrastructure or providing support services or assistance to people living, working or volunteering in the area affected by flood, cyclone or other severe weather. New subsection 8A(2) provides for an area of Australia to be specified as an area affected by flood, cyclone or other severe weather, as mentioned in item 5 of Schedule 1 of the instrument, for the purposes of *specified Subclass 417 work* in regulation 1.03 of the Migration Regulations.
- 20 New section 9 provides that the amendments made by this instrument will apply to any application for a Working Holiday (Temporary) (Class TZ) (Working Holiday) visa made, but not finally determined, before the commencement of this instrument; or an application made on or after the commencement of this instrument.
- 21 Item 3 of Schedule 1 repeals and substitutes item 1 of Schedule 1 to LIN 22/012. This expands the bushfire affected areas of Australia for the purposes of the definition of ‘bushfire affected area’ in section 4 and bushfire recovery work in section 7 of LIN 22/012.
- 22 Item 4 of Schedule 1 repeals and substitutes item 5 of Schedule 1 to LIN 22/012. This expands the areas of Australia affected by flood, cyclone or other severe weather for the purpose of the recovery work – flood, cyclone or other severe weather provision (the new section 8A) of LIN 22/012, as detailed in paragraph 21.
- 23 Schedule 2 to the instrument amends the *Migration (Specified work and areas for subclass 462 visas) Instrument (LIN 22/013) 2022 (LIN 22/013)*.
- 24 Item 1 of Schedule 2 repeals the definition of flood affected area. This is a consequential amendment, where item 2 repeals and replaces section 9A with a new provision that, together with new item 5 of Schedule 1 (per the amendment in item 4 described below), directly deals with areas affected by flood, cyclone or other severe weather. The narrower definition of flood affected area is no longer required as a result of this amendment.
- 25 Item 2 of Schedule 2 repeals section 9A of LIN 22/012 and inserts two new provisions; a replacement section 9A and new section 10.
- 26 New section 9A provides for recovery work – flood, cyclone and other severe weather. The new subsection 9A(1) specifies that the work carried out in the area mentioned in item 5 of Schedule 1 of the instrument, is an area affected by flood, cyclone or other severe weather. This kind of work can be undertaken after 31 December 2021 and includes clean-up, construction or any other work in association with restitution or restoration of services, land, waterways, property or infrastructure or providing support services or assistance to people living, working or volunteering in the area affected by flood, cyclone or other severe weather. New subsection 9A(2) provides for an area of Australia to

be specified as an area affected by flood, cyclone or other severe weather, as mentioned in item 5 of Schedule 1 of the instrument, for the purposes of *specified Subclass 462 work* in regulation 1.03 of the Migration Regulations.

- 27 New section 10 provides that the amendments made by this instrument will apply to any application for a Work and Holiday (Temporary) (Class US) (Work and Holiday) visa made, but not finally determined, before the commencement of this instrument; or an application made on or after the commencement of this instrument. This approach appropriately recognises the contribution made by Work and Holiday visa holders who have already undertaken recovery work in specified areas of Australia affected by flood, cyclone or other severe weather since 31 December 2021, and who have already made an application for a further Work and Holiday visa that has not yet been decided. It also creates an incentive for other current Work and Holiday visa holders to consider undertaking recovery work in these areas ahead of applying for a further Work and Holiday visa.
- 28 Item 3 of Schedule 2 repeals and substitutes item 1 of Schedule 1 to LIN 22/013. This expands the bushfire affected areas of Australia for the purposes of the definition of ‘bushfire affected area’ in section 4 and bushfire recovery work in section 8 of LIN 22/013.
- 29 Item 4 of Schedule 2 repeals and substitutes item 5 of Schedule 1 to LIN 22/013. This expands the areas of Australia affected by flood, cyclone or other severe weather for the purpose of the recovery work – flood, cyclone or other severe weather provision (the new section 9A) of LIN 22/013, as detailed in paragraph 28.

***Parliamentary scrutiny etc.***

- 30 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under regulations 1.15FAA and 1.15FA of the Migration Regulations, and is exempt from disallowance under subitem 20(b) of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 31 As the instrument is exempt from disallowance, a Statement of Compatibility with Human Rights is not required.
- 32 The instrument is made by a delegate of the Minister in accordance with regulations 1.15FAA and 1.15FA of the Migration Regulations.

**The Honourable Andrew Giles MP**

**Minister for Immigration, Citizenship and Multicultural Affairs**