

## EXPLANATORY STATEMENT

### *Migration Regulations 1994*

#### ***Migration (LIN 19/217: Regional Areas) Instrument 2019***

*(Regulation 1.15M; subregulation 5.19(16); subparagraph 888.226(2)(c)(i); and paragraph 892.213(3)(b))*

1. This instrument, *Migration (LIN 19/217: Regional Areas) Instrument 2019* (LIN 19/217), is made under regulation 1.15M; subregulation 5.19(16); subparagraph 888.226(2)(c)(i) of Schedule 2; and paragraph 892.213(3)(b) of Schedule 2 of the *Migration Regulations 1994* (the Regulations).
  
2. This instrument operates to:
  - a) specify parts of Australia, by postcode, for the purposes of the new definition of *designated regional area* under regulation 1.03 of the Regulations;
  - b) specify parts of Australia, by postcode, for the purposes of the definition of *regional Australia* in subregulation 5.19(16) of the Regulations;
  - c) specify areas by postcode, for the purposes of paragraphs 888.226(2)(c)(i) and 892.213(3)(b) of the Regulations; and
  - d) repeal the following instruments that currently specify postcodes, including for the purposes as set out in paragraphs 2(a) and (b) above, in accordance with subsection 33(3) of the *Acts Interpretations Act 1901*:
    - i) *Migration Regulations 1994 – Specification under item 6D101 of Schedule 6D – Location Of Campuses And Postcodes – June 2012* (IMMI 12/015) [F2012L01444]; and
    - ii) *Migration Regulations 1994 – Specification of Areas for Business Innovation and Investment (Permanent) Visa and State and Territory Sponsored Business Owner Visa – IMMI 12/118* [F2012L02239].
  
3. The purpose of this instrument is to implement a consistent specification of areas identified in some way as regional, across the skilled migration program, to give effect

to the changes to the Regulations made by the *Migration Amendment (New Skilled Regional Visas) Regulations 2019* (the Amendment Regulations).

4. In particular, to streamline specifications related to regional areas in Australia, the new definition *designated regional area*, as inserted by the Amendment Regulations. *Designated regional area* is defined in regulation 1.03 as meaning a part of Australia specified in an instrument under regulation 1.15M.
5. The instrument provides that parts of Australia that come within a postcode specified in column 3 of the table in section (3) of Part 2 are specified:
  - a) to be designated regional areas for the purposes of regulation 1.15M of the Regulations;
  - b) for the purposes of the definition of regional Australia in subregulation 5.19(16) of the Regulations, and;
  - c) for the purposes of subparagraph 888.226(2)(c)(i) and paragraph 892.213(3)(b) of Schedule 2 to the Regulations.
6. The note under the table in section (3) of Part 2 of the instrument outlines that parts of the table are for information only. Column 1 outlines the relevant State or Territory for a corresponding postcode in column 3. Column 2 provides that corresponding postcodes in column 3 are categorised as “Cities and major regional centres” or “Regional centres and other regional areas”.
7. The specifications for *designated regional area* has been consolidated with the specifications for *regional Australia* for the purposes of the definition under subregulation 5.19(16) and ‘area’ for the purposes of paragraph 892.213(3)(b) and subparagraph 888.226(2)(c)(i) of the Regulations.
8. This instrument applies in relation to:
  - a) a nomination made under paragraph 140GB(1)(b) of the *Migration Act 1958* (the Act) on or after 16 November 2019;
  - b) an application for approval of a nomination made under subregulation 5.19(1) of the Regulations on or after 16 November 2019;

- c) an application for a Subclass 189 (Skilled—Independent) visa, Subclass 190 (Skilled—Nominated) visa, Subclass 491 (Skilled Work Regional (Provisional)) visa; Subclass 888 (Business Innovation and Investment (Permanent)) visa; and Subclass 892 (State/Territory Sponsored Business Owner) visa;
  - d) an assessment made under section 93 of the Act on or after 16 November 2019; and
  - e) a Subclass 491 (Skilled Work Regional (Provisional)) visa granted on or after 16 November 2019.
9. Furthermore, to avoid doubt, the application provision of this instrument outlines that despite the repeal of IMMI 12/118 made by this instrument, IMMI 12/118 continues to apply, on and after 16 November 2019, in relation to an application for a Subclass 888 (Business Innovation and Investment (Permanent)) visa that was made before 16 November 2019, and not finally determined before 16 November 2019.
10. The subject of this instrument is part of a package introducing new regional visas designed to deliver a migration program that can respond more effectively to the needs of regional Australia. These changes will also assist with governmental priorities to attract highly skilled migrants to regional areas and ease population pressure in major cities.
11. Section 17 of the *Legislation Act 2003* requires consultations which are appropriate and reasonably practicable to be undertaken. The following Commonwealth government agencies were consulted in relation to the instrument: Attorney-General's Department; Department of Education (then Department of Education and Training); Department of Finance; Department of Foreign Affairs and Trade; Department of Health; Department of Human Services; Department of Industry, Innovation and Science; Department of Infrastructure, Transport, Cities and Regional Development (then Department of Infrastructure, Regional Development and Cities); Department of Employment, Skills, Small and Family Business (then Department of Jobs and Small Business); Department of the Prime Minister and Cabinet; Department of Social Services; and The Treasury.

12. Pursuant to the frequency and volume of the legislative amendments that are required to maintain a dynamic and responsive immigration system, it has been a consistent practice to include certain criteria and conditions in delegated legislation. The criteria for the new Subclass 491 and Subclass 494 visas have been included in delegated legislation rather than primary legislation to give the Government oversight and the ability to respond in a timely and transparent manner to emerging situations, which may include changes in the labour market and the economy. In addition, instruments made under delegated legislation are subject to the scrutiny framework out in the *Legislation Act 2003*, and oversight of the amendments is available to the Parliament under the same legislation.
13. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 25045).
14. 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.
15. The whole of this instrument commences at the same time as Schedule 1 and Schedule 2 to the *Migration Amendment (New Skilled Regional Visas) Regulations 2019* commence.