

EXPLANATORY STATEMENT

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

Migration Act 1958

Migration Regulations 1994

Migration (Designated regional areas for certain skilled and temporary graduate visas) Instrument (LIN 22/022) 2022

- 1 The instrument, Departmental reference LIN 22/022, is made under subregulations 1.15M(1) and (2), the definition of **regional Australia** in subregulation 5.19(16) and subparagraph 888.226(2)(c)(i) and paragraph 892.213(3)(b) of Schedule 2 to the *Migration Regulations 1994* (the Regulations).
- 2 The instrument repeals *Migration (Regional Areas) Instrument (LIN 20/292) 2020* (F2021L00044) (LIN 20/292) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*. 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 5 March 2022, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

- 4 The purpose of the instrument is to expand the parts and areas of Australia that are specified for subregulation 1.15M(1), the definition of **regional Australia** in subregulation 5.19(16), and for subparagraph 888.226(2)(c)(i) and paragraph 892.213(3)(b) of Schedule 2 to the Regulations. The instrument adds postcodes in the local government areas of Moreton Bay and Ipswich, Queensland as specified parts and areas of Australia for this purpose.
- 5 The instrument also specifies parts of Australia for subregulation 1.15M(2) of the Regulations. The instrument operates such that those parts of Australia are also specified for the definition of **regional Australia** in subregulation 5.19(16) and as areas for subparagraph 888.226(2)(c)(i) and paragraph 892.213(3)(b) of Schedule 2 to the Regulations. The parts of Australia specified for the subregulation 1.15M(2) are unchanged from LIN 20/292.
- 6 The instrument includes an updated application section from LIN 20/292. This reflects that applications for a Subclass 189 (Skilled—Independent) visa or Subclass 190 (Skilled—Nominated) visa are covered by assessments made under section 93 of the *Migration Act 1958* (the Act).

Operation of the authorising provisions

- 7 Subregulations 1.15M(1) and (2) of the Regulations provide the Minister may specify by legislative instrument a part of Australia to be a **designated city or major regional centre** or a **regional centre or other regional area** respectively. Any part of Australia specified to be a designated city or major regional centre or a regional centre or other regional area is also a **designated regional area**—see the definition in regulation 1.03 of the Regulations.

- 8 Subregulation 5.19(16) defines that, for regulation 5.19, **regional Australia** means a part of Australia specified in a legislative instrument made by the Minister for the purpose of that definition.
- 9 Subparagraph 888.226(2)(c)(i) of Schedule 2 provides that an applicant must reside in an area specified by the Minister in a legislative instrument when applying for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Business Innovation stream. Similarly, paragraph 892.213(3)(b) of Schedule 2 provides that an applicant must reside in, or operate their main business in, an area specified by the Minister in a legislative instrument when applying for a Subclass 892 (State/Territory Sponsored Business Owner) visa.

Consultation

- 10 State and territory governments were consulted on the effectiveness of regional migration initiatives during a 2019 review process. Consultation occurred with the following state and territory government agencies on expanding the parts and areas of Australia covered by subsections 3(1) and (3) of the instrument:
 - Australian Capital Territory–Chief Minister, Treasury and Economic Development Directorate;
 - Queensland–Department of Employment, Small Business and Training;
 - New South Wales–Department of Planning, Industry and Environment;
 - South Australia–Department for Innovation and Skills;
 - Victoria–Department of Jobs, Precincts and Regions;
 - Western Australia–Department of Training and Workforce Development;
 - Northern Territory–Department of Industry, Tourism and Trade;
 - Tasmania–Department of State Growth.
- 11 This consultation demonstrated support for expanding these parts and areas of regional Australia, as doing so would allow more business to attract and retain skilled migrants.
- 12 Consultation was also undertaken with the Centre for Population on expanding these parts and areas of Australia.
- 13 The measures implemented in the instrument are consistent with the outcomes of consultation.
- 14 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a minor nature and no regulatory impact statement was required. The OBPR reference number is 44201.

Details of the instrument

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

Parliamentary scrutiny etc.

- 16 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is prescribed in paragraph (b) of item 20 of section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

- 17 The instrument was made by the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs in accordance with subregulations 1.15M(1) and (2), the definition of *regional Australia* in subregulation 5.19(16), and subparagraph 888.226(2)(c)(i) and paragraph 892.213(3)(b) of Schedule 2 to the Regulations.

Details of the Migration (Designated regional areas for certain skilled and temporary graduate visas) Instrument (LIN 22/022) 2022

Section 1 Name

This section provides that the name of the instrument is the *Migration (Designated regional areas for certain skilled and temporary graduate visas) Instrument (LIN 22/022) 2022*.

Section 2 Commencement

This section provides that the instrument commences on 5 March 2022.

Section 3 Regional areas

Section 3 specifies parts and areas of Australia for subregulations 1.15M(1) and (2), the definition of **regional Australia** in subregulation 5.19(16), subparagraph 888.226(2)(c)(i) and paragraph 892.213(3)(b) of Schedule 2 to the Regulations.

Subsection 3(1) provides that, for subregulation 1.15M(1) of the Regulations, a part of Australia within a postcode mentioned in the table in that provision is specified as a **designated city or major regional area**. For example, a part of Australia within the postcode 2259 in New South Wales, 3211 in Victoria, 4207 in Queensland, 6214 in Western Australia, 5173 in South Australia, 7004 in Tasmania or any postcode area in the Australian Capital Territory is a designated city or major regional area. The parts that are specified for this purpose have been expanded to include postcodes in the local government areas of Ipswich and Moreton Bay in Queensland.

Subsection 3(2) provides that, for subregulation 1.15M(2) of the Regulations, a part of Australia within a postcode mentioned in the table in that provision is specified as a **regional centre or other regional area**. For example, a part of Australia within the postcode 2527 in New South Wales is a regional centre or other regional area. There is no change to the parts of Australia specified for this purpose from LIN 20/292.

The parts of Australia specified in subsections 3(1) and 3(2) are also defined to be **designated regional areas** (see regulation 1.03 of the Regulations).

Subsection 3(3) provides that the parts of Australia specified in subsections (1) and (2) are also:

- specified parts of Australia for the definition of **regional Australia** in subregulation 5.19(16) of the Regulations; and
- specified areas for subparagraph 888.226(2)(c)(i) and paragraph 892.213(3)(b) of Schedule 2 to the Regulations.

The specification in subsection (3) applies despite any overlap between subsections (1) and (2).

Section 4 Application

Section 4 sets out how the instrument applies to different mechanisms relating to visa nominations, applications, grants and points test assessments after the commencement of the instrument.

Nominations under paragraph 140GB(1)(b) of the Migration Act

Paragraph 4(a) sets out that the instrument applies to nominations made under paragraph 140GB(1)(b) of the Act, after the instrument commences, which are required in relation to Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) (Subclass 494 visa) and Subclass 482 (Temporary Skill Shortage) (Subclass 482 visa) visas. Before an application for the Subclass 494 visa can be made the Minister must, amongst other requirements, be satisfied that the proposed position for the visa applicant is located in **regional Australia**. Before an application for the Subclass 482 visa can be made for a nomination for an occupation on the Regional Occupation List the Minister must, amongst other requirements, be satisfied that the proposed position for the visa applicant is located in **regional Australia**. For the Regional Occupation List for the Subclass 482 visa, see *Migration (LIN 19/048: Specification of Occupations—Subclass 482 Visa) Instrument 2019*,¹ current at the time of making the instrument.

Application for approval of a nomination under subregulation 5.19(1) of the Regulations

Paragraph 4(b) provides that the instrument applies to applications for approval of a nomination under subregulation 5.19(1) of the Regulations made after the instrument commences. This relevantly relates to a Subclass 187 (Regional Sponsored Migration Scheme) visa in the Temporary Residence Transition stream. An application for this type of visa can be made if the Minister has approved the nomination of the proposed position under subregulation 5.19(1), and the proposed position is located in **regional Australia** (see also subclause 187.223(4) of Schedule 2 of the Regulations). An approved nomination under subregulation 5.19(1) is also required before making an application for a Subclass 186 (Employer Nomination Scheme) visa in either the Temporary Residence Transition or Labour Agreement streams. There is no charge for this approval where the proposed position is in **regional Australia**.

Visa applications

Paragraph 4(c) sets out that the instrument applies to applications for a second Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream (Subclass 485 visa), a Subclass 491 (Skilled Work Regional (Provisional)) visa (Subclass 491 visa), a Subclass 888 (Business Innovation and Investment (Permanent)) visa (Subclass 888 visa) and a Subclass 892 (State/Territory Sponsored Business Owner) visa (Subclass 892 visa) made after the commencement of the instrument.

Certain eligibility requirements relating to the location of study or work for an application for a subclass 485 or 491 visa are imposed by reference to **regional centre or other regional area** and **designated regional area** (see clauses 485.232, 485.233 and 491.217 of Schedule 2 to the Regulations).

The instrument also specifies the area in which a visa applicants must reside to be eligible to apply for a subclass 888 or 892 visa (see clauses 888.226 and 892.213 of Schedule 2 to the Regulations). For a Subclass 892 visa, the applicant must also operate their main business or businesses in a specified area.

¹ That instrument is available at [Migration \(LIN 19/048: Specification of Occupations—Subclass 482 Visa\) Instrument 2019 \(legislation.gov.au\)](#) at the time of making LIN 22/022.

Assessments made under section 93 of the Migration Act

Paragraph 4(d) sets out that the instrument applies to assessments under section 93 of the Act after the instrument commences. Under subsection 93(1) of the Act, the Minister makes assessments on a points based system that relate to applications for the following:

- Subclass 189 (Skilled—Independent) visa in the Points-tested stream;
- Subclass 190 (Skilled—Nominated) visa;
- Subclass 491.

A prescribed number of ‘points’ need to be obtained before a person can apply for these types of visas. Applicants receive five points if they studied in a **designated regional area** (see item 6D101 of Schedule 6D to the Regulations).

Visas granted after the instrument commences

Paragraph 4(e) sets out the instrument applies to a grant, after the instrument commences, of a second Subclass 485 visa, a Subclass 489 (Skilled—Regional (Provisional)) visa or a Subclass 491 visa. Visa holders must live, work and study either only in a part of Australia that was a designated regional centre or other regional area or was a designated regional area at the time the visa was granted (see clauses 485.613, 489.613 and 491.612 of Schedule 2 to the Regulations and conditions 8610, 8539 and 8579).

Section 5 Repeal

The *Migration (Regional Areas) Instrument (LIN 20/292) 2020* (F2021L00044) is repealed under this section. It is being replaced by operative provisions of this instrument.