



LIN 22/038

**Migration (Specified persons and periods of time for regulation 5.19)  
Instrument (LIN 22/038) 2022**

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I, Alex Hawke, Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, make this instrument under the following provisions of the *Migration Regulations 1994* (the **Regulations**):

- (a) subparagraph 5.19(5)(a)(iii);
- (b) subregulation 5.19(6);
- (c) paragraph 5.19(8)(b).

Dated 17 March 2022

The Hon Alex Hawke MP  
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

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**1 Name**

This instrument is the *Migration (Specified persons and periods of time for regulation 5.19) Instrument (LIN 22/038) 2022*.

**2 Commencement**

This instrument commences on 18 March 2022.

**3 Definitions**

In this instrument:

**application** means an application under subregulation 5.19(1) of the Regulations for approval of the nomination of a position in Australia.

**concession period** means the concession period mentioned in subregulation 1.15N(1) of the Regulations.

**COVID-19** means the pandemic declared by the World Health Organization on 11 March 2020, caused by the coronavirus COVID- 19.

**COVID-19 reduced work period**: see subsection 6(2).

**COVID-19 unpaid leave period**: see subsection 7(2).

**identified person** has the meaning given by the paragraph 5.19(5)(c) of the Regulations.

**specified person**: see subsection 4(1).

**specified 457 visa holder**: see subsection 4(2).

**subclass 457 visa** means a Subclass 457 (Temporary Work (Skilled)) visa as in force under Schedule 2 to the Regulations before 18 March 2018.

**4 Specified persons**

- (1) For subparagraph 5.19(5)(a)(iii) of the Regulations, a person (a **specified person**) mentioned in subsection (2) or (3) is specified.
- (2) A person (a **specified 457 visa holder**) who, on 18 April 2017:
  - (a) held a subclass 457 visa; or
  - (b) was an applicant for a subclass 457 visa that was subsequently granted.
- (3) Commencing on 1 July 2022—a person who:
  - (a) has been in Australia for at least 12 months between 1 February 2020 and 14 December 2021; and
  - (b) at the time of application, is employed by a person actively and lawfully operating a business in Australia.

**5 Periods of time—relevant specified 457 visa holders without a COVID-19 reduced work period or COVID-19 unpaid leave period**

- (1) For subregulation 5.19(6) of the Regulations, the following periods of time are specified if the identified person in an application is a specified 457 visa holder:
  - (a) for paragraphs 5.19(5)(e), (f) and (g) of the Regulations—a period of 3 years is determined, instead of a period of 4 years mentioned in those provisions; and
  - (b) for paragraph 5.19(5)(e) of the Regulations—a total period of at least 2 years is determined, instead of a total period of at least 3 years mentioned in those provisions; and

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- (c) for subparagraph 5.19(5)(f)(i) and paragraph 5.19(5)(g) of the Regulations—a total period of at least 2 years (not including any periods of unpaid leave) is determined, instead of a total period of at least 3 years (not including any periods of unpaid leave) mentioned in those provisions.
  - (2) Subsection (1) is subject to sections 6 and 7.

**6 Different periods of time for paragraph 5.19(5)(f) of the Regulations—COVID-19**

- (1) For subregulation 5.19(6) of the Regulations, the following periods of time are specified for subparagraph 5.19(5)(f)(i) of the Regulations if the identified person in an application has a COVID-19 reduced work period and:
  - (a) the person is a specified 457 visa holder—a total period of at least 2 years less the COVID-19 reduced work period (not including any other period of unpaid leave); or
  - (b) is any other person—a total period of at least 3 years less the COVID-19 reduced work period (not including any other period of unpaid leave) is determined instead of a total period of at least 3 years (not including any period of unpaid leave) mentioned in the subparagraph.

*Note* The reference to a COVID-19 reduced work period in this section includes a reference to multiple COVID-19 reduced work periods—see paragraph 23(b), *Acts Interpretation Act 1901*.

- (2) A **COVID-19 reduced work period** is a period, in relation to an identified person in an application, that is:
  - (a) during the concession period;
  - (b) if the person is:
    - (i) a specified 457 visa holder—in the 3 years immediately before the application;
    - (ii) any other person—in the 4 years immediately before the application;
  - (c) a period during which the person was employed in a position in respect of which any visa mentioned in paragraph 5.19(5)(e) of the Regulations was granted; and
  - (d) a period during which the person:
    - (i) was not employed as mentioned in paragraph (c) on a full time basis, but would have been employed on a full time basis were it not for COVID-19; or
    - (ii) was on unpaid leave from the employment because of COVID-19.

**7 Different periods of time for paragraph 5.19(5)(g) of the Regulations—COVID-19**

- (1) For subregulation 5.19(6) of the Regulations, the following periods of time are specified for paragraph 5.19(5)(g) of the Regulations if the identified person in an application has a COVID-19 unpaid leave period and:
  - (a) the person is a specified 457 visa holder—a total period of at least 2 years less the COVID-19 unpaid leave period (not including any other period of unpaid leave); or
  - (b) is any other person—a total period of at least 3 years less the COVID-19 unpaid leave period (not including any other period of unpaid leave)

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is determined instead of a total period of at least 3 years (not including any period of unpaid leave) mentioned in the paragraph.

*Note* The reference to a COVID-19 unpaid leave period in this section includes a reference to multiple COVID-19 unpaid leave periods—see paragraph 23(b), *Acts Interpretation Act 1901*.

- (2) A **COVID-19 unpaid leave period** is a period, in relation to an identified person in an application, that is
- (a) during the concession period;
  - (b) if the person is:
    - (i) a specified 457 visa holder—in the 3 years immediately before the application;
    - (ii) any other person—in the 4 years immediately before the application;
  - (c) during which the person:
    - (i) was employed in the occupation for which any visa mentioned in paragraph 5.19(5)(e) of the Regulations for the application was granted; and
    - (ii) was on unpaid leave from the employment because of COVID-19.

## 8 Exemption

- (1) For paragraph 5.19(8)(b) of the Regulations:
    - (a) a specified person; and
    - (b) commencing on 1 July 2022—a person mentioned in subsection (2) is exempt from the operation of paragraph 5.19(5)(c) of the Regulations.
  - (2) A person who, after 18 April 2017:
    - (a) applied for a subclass 457 visa that was subsequently granted;
    - (b) has been in Australia for a period of at least 12 months between 1 February 2020 and 14 December 2021; and
    - (c) at the time of application, is employed by a person who is actively and lawfully operating a business in Australia.
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