

## EXPLANATORY STATEMENT

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

*Migration Regulations 1994*

### ***Migration (Specified work and areas for subclass 462 visas) Instrument (LIN 22/013) 2022***

- 1 The instrument, Departmental reference LIN 22/013, is made under regulation 1.15FA of the *Migration Regulations 1994* (the Regulations).
- 2 The instrument repeals *Migration (LIN 20/184: Subclass 462 (Work and Holiday) visa – Specified work and areas) Instrument 2020* (F2020L01034) (LIN 20/184) 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. This means that regulation 1.15FA of the Regulations also include a power to amend or repeal an instrument made under that provision.
- 3 The instrument commences on 5 March 2022, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

- 4 Applicants applying for second or third Work and Holiday (Subclass 462) visas (subclass 462 visa) must satisfy the criteria under subsections 462.218(1) or 462.219(1) of Schedule 2 to the Regulations. This includes demonstrating the applicant has carried out a period or periods of *specified Subclass 462 work*, which is defined in regulation 1.03 of the Regulations. The definition of *specified Subclass 462 work* states in paragraphs (a) and (b) that the areas of Australia the work was carried out in and the kinds or work for a subclass 462 visa are specified by the Minister under regulation 1.15FA, which provides the instrument making power.
- 5 The purpose of the instrument is to specify, under regulation 1.15FA of the Regulations, areas of Australia and kinds of work for the definition of *specified Subclass 462 work* in regulation 1.03 of the Regulations. This enables subclass 462 visa applicants who have undertaken the kinds of work in the corresponding area(s) specified in the instrument to count this work towards eligibility for a second or third subclass 462 visa and satisfy the criteria at paragraph 462.218(1)(a) or 462.219(1)(a) of Schedule 2 to the Regulations.
- 6 The instrument uses terms *bushfire affected area*, *Northern Australia*, *Regional Australia*, and *Remote and Very Remote Australia* and defines each term to be one or more areas of Australia specified in an item of Schedule 1 to the instrument, to align with the use of these terminologies by the Department in public communications for subclass 462 visa applicants and holders and their employers.
- 7 The instrument expands the kinds of tourism and hospitality work specified in LIN 20/184 and the areas in which that work must be carried out. Work carried out after 21 June 2021 in 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 462 work*. Section 2C of the Acts Interpretation Act provides that the reference to ‘a person’ in the instrument includes a body politic or corporate as well as an individual. This

expansion of the definition and specified areas gives effect to the Minister’s announcement on 22 June 2021, benefiting visa holders and employers in tourism and hospitality industries and regions that continue to experience labour shortages. The kinds of tourism and hospitality work specified in the instrument must be carried out in Northern Australia and Remote and Very Remote Australia. The instrument does not make changes to other kinds of work specified in LIN 20/184.

### **Consultation**

- 8 The instrument addresses the Joint Standing Committee on Migration’s (JSCM) recommendations on the Working Holiday Maker program, where Recommendation 3 provides that subclass 462 visa holders “*should be able to work in tourism and hospitality in all hard-to-staff rural and remote areas of Australia as part of their 88 days or 6 months to qualify for their second-or third-year WHM visa*” (see [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Migration/WorkingHolidayMaker/Report/section?id=committees%2Freportjnt%2F024567%2F75459](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Migration/WorkingHolidayMaker/Report/section?id=committees%2Freportjnt%2F024567%2F75459)). The JSCM has consulted broadly considering 89 written submissions received from a range of agricultural industry bodies, associations and representatives including the National Farmers’ Federation and Growcom.
- 9 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a machinery nature and no regulatory impact statement was required. The OBPR reference number is 44225.

### **Details of the instrument**

- 10 Section 1 sets out the name of the instrument.
- 11 Section 2 provides for the commencement of the instrument on 5 March 2022.
- 12 Section 3 sets out the purpose of the instrument. The effect is to provide that the kinds of work and areas of Australia specified in the instrument are for the definition of *specified Subclass 462 work* in regulation 1.03 and for regulation 1.15FA of the *Migration Regulations 1994* (the Regulations).
- 13 Section 4 sets out definitions of terms used in the instrument. Under this section:
  - *bushfire affected area* is defined to be one or more areas of Australia mentioned in item 1 of Schedule 1 to the instrument.
  - *Northern Australia* is defined to be one or more areas of Australia mentioned in item 2 of Schedule 1.
  - *Regional Australia* is defined to be one or more area of Australia mentioned in item 3 of Schedule 1.
  - *Remote and Very Remote Australia* is defined to be one or more areas of Australia mentioned in item 4 of Schedule 1.
- 14 Sections 5, 6, 7, 8 and 9 each specify different areas of Australia and different kinds of work for paragraphs (a) and (b) of the definition of *specified Subclass 462 work* in regulation 1.03, and for regulation 1.15FA of the Regulations.

- 15 Section 10 repeals *Migration (LIN 20/184: Subclass 462 (Work and Holiday) visa—Specified work and areas) Instrument 2020*.
- 16 Items 1, 2, 3 and 4 of Schedule 1 to the instrument each mentions the areas of Australia defined as *bushfire affected area, Northern Australia, Regional Australia* and *Remote and Very Remote Australia* respectively.

***Parliamentary scrutiny etc.***

- 17 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument made under regulation 1.15FA 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*.
- 18 The instrument is made by a delegate of the Minister, acting under regulation 1.15FA of the Regulations.