

EXPLANATORY STATEMENT

Migration Regulations 1994

Migration (LIN 20/122: COVID-19 Pandemic event for Subclass 408 (Temporary Activity) visa and visa application charge for Temporary Activity (Class GG) visa) Instrument 2020

(subregulation 2.07(5), paragraphs 408.229(b) and (c) of Schedule 2)

1. The instrument, LIN 20/122, is made under subregulation 2.07(5) and paragraphs 408.229(b) and (c) of Schedule 2 to the *Migration Regulations 1994* (the Regulations).
2. An applicant is eligible for grant of a visa in the Subclass 408 (Temporary Activity) (Subclass 408 visa) if they are undertaking work directly associated with an event specified in a legislative instrument and the applicant is in a class of persons specified in an instrument in relation to the event. The visa application charge amount is nil for an applicant in a class of persons specified in a legislative instrument made for the purposes of subparagraph 1237(2)(a)(i) of Schedule 1 to the Regulations and under subregulation 2.07(5) of the Regulations.
3. The instrument operates to specify an event and a class of persons for grant of a Subclass 408 visa in relation to that event for paragraphs 408.229(b) and (c) of Schedule 2 to the Regulations respectively. The instrument also operates to specify the class of persons for a nil visa application charge under subregulation 2.07(5) of the Regulations and for the purposes of subparagraph 1237(2)(a)(i) of Schedule 1 to the Regulations.
4. The instrument specifies the COVID-19 pandemic as declared by the World Health Organization on 11 March 2020, as an event for paragraph 408.229(b) of Schedule 2 to the Regulations. The instrument also specifies the class of persons for the purposes of paragraph 408.229(c) of Schedule 2 and subparagraph 1237(2)(a)(i) of Schedule 1 to the Regulations.
5. The purpose of the instrument is to provide a pathway for certain former and current holders of temporary visas to lawfully remain in Australia and who would otherwise be

required to depart Australia who, but for the COVID-19 pandemic, are unable to leave Australia. The instrument limits the class of persons who can be granted the visa to those who hold a visa that is 28 days or less from ceasing to be in effect, or held a visa that is no more than 28 days from ceasing to be in effect. It further limits the class of persons to those who are unable to apply for the same temporary visa they hold or held or any other subclass of temporary visa other than the Subclass 408 visa.

6. The purpose of the instrument is also to implement a measure to respond to workforce shortages during the COVID-19 pandemic in relation to areas including, but not limited to, agriculture, aged care and public health. The instrument is designed to allow holders of temporary visas who are engaged in or have the relevant skills to undertake critical work relating to supply of essential goods and services, provided the applicant falls within the class of persons specified by the instrument.
7. The instrument commences on the day after it is signed. An instrument may commence before it is registered if the instrument does not disadvantage or impose any liabilities on any persons in accordance with section 12 of the *Legislation Act 2003*. As the instrument facilitates a pathway for persons to remain lawful in Australia and undertake work in relation to the COVID-19 pandemic, commencement of the instrument prior to registration is not detrimental to any persons.
8. Consultation was undertaken with Commonwealth Departments as part of the whole of government response to the COVID-19 pandemic.
9. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 26404).
10. The officer (Senior Executive Service, Band one, Temporary Visa Program Branch) who made the instrument was delegated the powers required to make the instrument in the Instrument of Delegation LIN 19/228, signed on 17 September 2019.

11. Under item 20 of 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.

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