

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 189

Issued by the Minister for Immigration and Citizenship

Migration Act 1958

Migration Amendment Regulations 2008 (No. 6)

Subsection 504(1) of the *Migration Act 1958* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In addition, regulations may be made pursuant to the provisions of the Act in Attachment A.

The purpose of the Regulations is to amend the *Migration Regulations 1994* (the Principal Regulations) to provide for persons and organisations who the Minister refused to approve as a sponsor under subregulation 1.20AA(2) of the Principal Regulations to apply to the Migration Review Tribunal (MRT) for review of that decision; facilitate the lawful entry and stay of persons from a select group of countries invited to undertake seasonal work in Australia in accordance with an approved program; and create a new Superyacht Crew (Temporary) (Class UW) and Subclass 488 (Superyacht Crew) visa.

In particular, the Regulations would include four schedules that would:

- Schedule 1:
 - provide for persons and organisations who the Minister refused to approve as a sponsor under subregulation 1.20AA(2) in Division 1.4 of Part 1 of the Principal Regulations to be eligible to apply to the MRT to have that decision reviewed;
- Schedule 2:
 - provide for the Subclass 416 (Special Program) visa to allow for the entry and temporary stay in Australia of persons invited to undertake seasonal work in Australia in accordance with an approved program;
- Schedule 3:
 - prescribe the requirements for making an application for the new Superyacht Crew (Temporary) (Class UW) visa;
 - prescribe the eligibility criteria for the new Subclass 488 (Superyacht Crew) under the Superyacht Crew (Temporary) (Class UW) visa class, the circumstances applicable to the grant of the visa, when the visa is in effect and the conditions to be imposed on the visa holder;
 - prescribe a ground for cancelling a Superyacht Crew (Temporary) (Class UW) in regulation 2.43 of the Principal Regulations;
 - specify the undertakings for which a sponsor of a Superyacht Crew (Temporary) (Class UW) visa applicant accepts responsibility;

- prescribe new condition 8114 to specify that the visa holder on which the condition is imposed cannot work otherwise than as a member of the crew of a superyacht;
- ensure that the holder of a Subclass 488 (Superyacht Crew) visa can apply for a Bridging A (Class WA) visa and that new condition 8114 is imposed on a bridging visa granted to a previous Subclass 488 (Superyacht Crew) visa holder; and
- specify the visa subclasses that a holder of a Superyacht Crew (Temporary) (Class UW) visa can and cannot apply for in Australia.

Details of the Regulations are set out in Attachment B.

Schedule 1 of the Regulations has retrospective effect to 9 August 2008. Schedule 2 of the Regulations commences on 19 September 2008, and Schedule 3 of the Regulations commences on 27 October 2008.

The Office of Legislative Drafting and Publishing advises that the amendments made by the Regulations are not contrary to subsection 12(2) of the *Legislative Instruments Act 2003* as the change does not result in:

- the rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of registration being affected so as to disadvantage that person; or
- liabilities being imposed on a person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of registration.

The Office of Best Practice Regulation's Business Cost Calculator and Assessment Checklists were used to determine that there was no compliance cost on business or impact on competition in relation to these amendments.

The amendments contained in Schedule 1 were developed in consultation with the Migration Review Tribunal.

The amendments contained in Schedule 2 were developed in consultation with government agencies, including the Department of Education, Employment and Workplace Relations, the Department of Foreign Affairs and Trade, AusAID, the Department of Agriculture, Fisheries and Forestry, the Department of Finance and Deregulation, the Department of Prime Minister & Cabinet, the Department of Treasury, the Australian Taxation Office, the Department of Resources, Energy and Tourism, the Department of Infrastructure, Transport, Regional Development and Local Government and the Workplace Ombudsman.

The Queensland Department of Tourism, Regional Development and Industry and the Australian Customs Service were consulted in relation to the amendments to create the Superyacht Crew (Temporary) (Class UW) and Subclass 488 (Superyacht Crew) visa.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

ATTACHMENT A

Subsection 504(1) of the *Migration Act 1958* (the Act) provides in part that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 5(1) of the Act provides, amongst other things, that “prescribed” means prescribed by the regulations.

In addition to subsection 504(1), the following provisions may apply:

- section 29 of the Act, which deals with visas, in particular:
 - subsection 29(2) of the Act, which provides that a visa to travel to, enter and remain in Australia may be one to travel to and enter Australia during a prescribed or specified period;
 - subsection 29(3) of the Act, which provides that a visa to travel to, enter and remain in Australia may be one to remain in Australia during a prescribed or specified period and if the holder leaves Australia during a prescribed or specified period, to travel to and re-enter it during a prescribed or specified period.
- section 31 of the Act, which deals with classes of visa, in particular:
 - subsection 31(1) of the Act, which provides that there are to be prescribed classes of visas;
 - subsection 31(3) of the Act, which provides that the regulations may prescribe criteria for a visa or visas of a specified class;
 - subsection 31(4) of the Act, which provides that the regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia, or both;
 - subsection 31(5) of the Act, which provides that the regulations specify that a visa is a visa of a particular class;
- subsection 40(1) of the Act, which provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- subsection 40(2) of the Act, which provides that without limiting subsection 40(1), the circumstances may be, or may include, that, when the person is granted the visa, the person:
 - is outside Australia; or
 - is in immigration clearance; or
 - has been refused immigration clearance and has not subsequently been immigration cleared; or
 - is in the migration zone and, on last entering Australia, was immigration cleared or bypassed immigration clearance and had not subsequently been immigration cleared;

- section 41 of the Act, which provides that the regulations may provide that a visa is subject to specified conditions, including conditions imposing restrictions about work that may be done in Australia by the holder;
- subsection 45A of the Act, which provides that the regulations may prescribe that a non-citizen who makes an application for a visa is liable to pay a visa application charge if, assuming the charge were paid, the application would be a valid visa application;
- subsection 45B(1) of the Act, which provides that the regulations may prescribe the amount that is the amount of a visa application charge, not exceeding the visa application charge limit;
- subsection 45B(2), which provides that the amount of visa application charge prescribed in relation to an application may be nil;
- section 46 of the Migration Act, which provides when an application for a visa is a valid application, and in particular:
 - subsection 46(1), which provides that an application for a visa is valid, if and only if, it is for a visa of a class specified in the application and it satisfies the criteria and requirements prescribed under section 46;
 - subsection 46(2) of the Act, which provides that an application for a visa is valid if it is an application for a visa of a class prescribed for the purposes of this subsection, and under the regulations, the application is taken to have been validly made;
 - subsection 46(3) of the Act, which provides that the regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application; and
 - subsection 46(4) of the Act, which provides that, without limiting subsection 46(3), the regulations may also prescribe the circumstances that must exist for an application for a visa of a specified class to be a valid application, how and where an application for a visa of a specified class must be made, and where an applicant must be when an application for a visa of a specified class is made;
- subsection 73 of the Act, which provides that the regulations may provide that the Minister may grant a bridging visa permitting the non-citizen to remain in, or to travel to, enter and remain in Australia:
 - during a specified period; or
 - until a specified event happens.
- paragraph 116(1)(g), which provides that the Minister may cancel a visa if he or she is satisfied that a prescribed ground for cancelling a visa applies to the holder;
- paragraph 347(2)(d) of the Act, which provides that the regulations may prescribe those persons eligible to apply to the Migration Review Tribunal (MRT) for review of a decision that is reviewable by the MRT for reason that is prescribed under subsection 338(9) of the Act.

Details of the proposed *Migration Amendment Regulations 2008 (No. 6)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Migration Amendment Regulations 2008 (No. 6)*

Regulation 2 – Commencement

This regulation provides for when the Regulations commence or are taken to have commenced.

Paragraph (a) provides that regulations 1, 2, and 3 as well as Schedule 1 (Amendments relating to sponsorship) to the Regulations are taken to have commenced on 9 August 2008.

Paragraph (b) provides that regulation 4 and Schedule 2 (Amendments relating to seasonal workers) to the Regulations commence on 19 September 2008.

Paragraph (c) provides that regulation 5 and Schedule 3 (Amendments relating to Superyacht Crew (Class UW) and Subclass 488 (Superyacht Crew) visas) to the Regulations commence on 27 October 2008.

Regulation 3 – Amendment of *Migration Regulations 1994*

Subregulation 3(1) provides that Schedule 1 (Amendments relating to sponsorship) amends the *Migration Regulations 1994* (the Principal Regulations).

Subregulation 3(2) provides that the amendments made by Schedule 1 apply in relation to a decision, relating to sponsorship, made on or after 9 August 2008.

Regulation 4 – Amendment of *Migration Regulations 1994*

Subregulation 4(1) provides that Schedule 2 (Amendments relating to seasonal workers) amends the Principal Regulations.

Subregulation 4(2) provides that the amendments made by Schedule 2 apply in relation to an application for a visa made on or after 19 September 2008.

Regulation 5 – Amendment of *Migration Regulations 1994*

Subregulation 5(1) provides that Schedule 3 (Amendments relating to Superyacht Crew (Class UW) and Subclass 488 (Superyacht Crew) visas) amends the Principal Regulations.

Subregulation 5(2) provides that the amendments made by Schedule 4 apply in relation to an application for a visa made on or after 27 October 2008.

Schedule 1 – Amendments relating to sponsorship

Item [1] – Paragraph 4.02(5)(k)

This item replaces reference to “nominator.” with “nominator;” in paragraph 4.02(5)(k) in Division 4.1 of Part 4 of the Principal Regulations.

This amendment is technical in nature and consequential to the amendment made by Item [2].

Item [2] – After paragraph 4.02(5)(k)

This item inserts new paragraph 4.02(5)(l) after paragraph 4.02(5)(k) in Division 4.1 of Part 4 of the Principal Regulations.

Subsection 338(9) of the *Migration Act 1958* (the Act) provides that a decision prescribed for the purposes of that subsection is reviewable by the Migration Review Tribunal (MRT).

Paragraph 4.02(4)(m) in Division 4.1 of Part 4 of the Principal Regulations provides that a decision under subregulation 1.20AA(2) to refuse to approve a person or an organisation as a sponsor of a temporary visa applicant is a MRT-reviewable decision for the purposes of subsection 338(9) of the Act.

Paragraph 347(2)(d) of the Act provides that an application for review by the MRT of a decision prescribed under subsection 338(9), may only be made by the person prescribed in the regulations for the purposes of that subsection.

New subsection 4.02(5)(l) prescribes, for the purposes of paragraph 347(2)(d), in the case of a decision to which paragraph 4.02(4)(m) relates, the person or organisation to whose approval the decision relates has standing to apply to the MRT for review of that decision.

On 9 August 2008 Schedule 3 to the Migration Amendment Regulations 2008 (No. 3) (Select Legislative Instrument No. 166 of 2008) inserted new paragraph 4.02(4)(m) in the Principal Regulations to prescribe a decision made under subregulation 1.20AA(2) as a MRT-reviewable decision for the purposes of subsection 338(9) of the Act. To ensure that the right to apply to the MRT to access this review right comes into effect at the same time as the right to review by the MRT was created, this amendment applies retrospectively on and from 9 August 2008.

The effect of this amendment is to give those persons and organisations to whom the Minister has refused to approve as a sponsor under subsection 1.20AA(2), standing to apply to the MRT to seek review of that decision. This right to apply for review is taken to be in effect in relation to all decisions made under subsection 1.20AA(2) on or after 9 August 2008.

Schedule 2 – Amendments relating to seasonal workers

Item [1] – Schedule 1, paragraph 1205(3)(b)

This item substitutes paragraph 1205(3)(b) in Schedule 1 to the Principal Regulations with new paragraphs (aa) and (b).

Current paragraph 1205(3)(b) provides that an applicant for a Cultural/Social (Temporary) (Class TE) visa, other than those applying for a Subclass 416 (Special Program) visa or a

Subclass 420 (Entertainment) visa) within that class, must be physically present in Australia to make an application in Australia.

New paragraph 1205(3)(aa) provides that an applicant for a Subclass 416 (Special Program) visa who is seeking to satisfy a criterion for the grant of that visa specified in new paragraph 416.222(d) of Schedule 2 (as inserted by item [3] of this schedule), must be located outside Australia at the time when his or her application is made.

The effect of this amendment is that all applicants for Subclass 416 (Special Program) visas seeking to meet the criteria for grant on seasonal worker grounds must be located outside Australia at the time of making their applications.

New paragraph 1205(3)(b) provides that all applicants for a Cultural/Social (Temporary) (Class TE) visa, other than those applying for a Subclass 416 (Special Program) visa or a Subclass 420 (Entertainment) visa, must be physically present in Australia in order to make an application in Australia. New paragraph 1205(3)(b) does not apply to an applicant for a Subclass 416 (Special Program) visa applying on seasonal worker grounds. The effect of this amendment is to preserve the operation of the previous paragraph 1205(3)(b) for all applicants for a Cultural/Social (Temporary) (Class TE) visa, other than for those seeking to meet the seasonal worker criteria for a Subclass 416 (Special Program) visa.

The purpose of this amendment is to require all applicants for Subclass 416 (Special Program) visa seeking to satisfy the seasonal worker criteria for grant to be outside Australia at the time the application is made.

Item [2] – Schedule 2, paragraph 416.222(c)

This item replaces reference to “paragraph.” with “paragraph; or” in paragraph 416.222(c) in Subdivision 416.22 of Division 416.2 of Part 416 of Schedule 2 to the Principal Regulations.

This amendment is technical in nature and consequential to the amendment made by Item [3] of this schedule.

Item [3] – Schedule 2, after paragraph 416.222(c)

This item inserts new paragraph 416.222(d) after paragraph 416.222(c) in Subdivision 416.22 of Division 416.2 of Part 416 of Schedule 2 to the Principal Regulations.

Clause 416.222 is a criterion to be satisfied at the time of decision by persons seeking to satisfy the primary criteria for the grant of a Subclass 416 (Special Program) visa. New paragraph 416.222(d) provides that an applicant meets the requirements of clause 416.222 if he or she has been invited to undertake seasonal work in Australia:

- by an organisation approved by the Secretary for the purposes of paragraph 416.222(d) (new sub-subparagraph 416.222(d)(i)); and
- in accordance with a program for undertaking seasonal work approved by the Secretary for the purposes of paragraph 416.222(d) (new sub-subparagraph 416.222(d)(ii)).

The effect of this amendment is to limit the grant of a Subclass 416 (Special Program) visa for the purposes of undertaking seasonal work, to applicants who

- have received an invitation from an organisation that has previously been approved by the Secretary of the Department of Immigration and Citizenship for the purposes of employing or facilitating the employment of seasonal workers; and
- have received an invitation in relation to a specific program of seasonal work that has been approved by the secretary.

The purpose of this amendment is to create a further eligibility criterion for the Subclass 416 (Special Program) visa to facilitate certain non-citizens to undertake seasonal work in Australia as part of a Seasonal Worker Pilot Scheme.

Item [4] – Schedule 2, clause 416.311

This item substitutes clause 416.311 with new clause 416.311 in Subdivision 416.31 of Division 416.3 of Part 416 of Schedule 2 to the Principal Regulations.

Clause 416.311 is a criterion to be satisfied at the time of application by a person seeking to satisfy the secondary criteria for the grant of a Subclass 416 (Special Purpose) visa.

New subclause 416.311(a) provides that an applicant meets the requirements of that clause if they are a member of the family unit (within the meaning of regulation 1.12) of a person ('primary applicant') who has applied for a Subclass 416 (Special Program) visa on the basis that they are seeking to satisfy the primary criteria for grant of that visa (that is, the criteria prescribed in Division 416.2 of Part 416).

New subclause 416.311(b) provides that a member of the family unit of the primary applicant for a Subclass 416 (Special Program) visa is not able to meet the requirements of clause 416.311 where the relevant primary applicant is seeking to satisfy the criterion in new paragraph 416.222(d).

The effect of this amendment is to preclude members of the family unit from meeting the time of application criteria for a Subclass 416 (Special Program) visa where the primary applicant is applying on seasonal worker grounds.

The purpose of this amendment is to prevent persons from applying for a Subclass 416 (Special Program) visa to undertake seasonal work in Australia from including family members in the application.

Item [5] – Schedule 2, clause 416.321

This item substitutes clause 416.321 with new clause 416.321 in Subdivision 416.32 of Division 416.3 of Part 416 of Schedule 2 to the Principal Regulations.

Clause 416.321 is a criterion to be satisfied at the time of decision by persons seeking to satisfy the secondary criteria for the grant of a Subclass 416 (Special Program) visa.

New paragraph 416.321(1)(a) provides that an applicant meets the requirements of that clause if, at the time of decision on the visa application, they continue to be a member of the family unit (within the meaning of regulation 1.12) of the primary applicant for a Subclass 416 (Special Program) visa.

New paragraph 416.321(1)(b) provides that, despite new paragraph 416.321(1)(a), a member of the family unit of the primary applicant for a Subclass 416 (Special Program) visa is not able to meet the requirements of clause 416.321 where the relevant primary applicant is seeking to satisfy the criterion in new paragraph 416.222(d).

The effect of this amendment is to preclude members of the family unit from meeting the time of decision criteria for a Subclass 416 (Special Program) visa where the primary applicant is applying on seasonal worker grounds.

The purpose of this amendment is to prevent persons granted a Subclass 416 (Special Program) visa to undertake seasonal work in Australia from including family members in the application.

Item [6] – Schedule 2, Division 416.4

This item substitutes Division 416.4 with new Division 416.4 in Part 416 of Schedule 2 to the Principal Regulations.

Division 416.4 of Part 416 prescribes specific circumstances that apply to the grant of a Subclass 416 (Special Program) visa.

New clause 416.411 provides that, where the applicant satisfied the criterion in paragraph 416.222(d), that applicant must be located outside Australia at the time the decision on the application is made.

New clause 416.412 preserves the operation of clauses 416.411 and 416.412.

The effect of this amendment is that persons applying for a Subclass 416 (Special Program) visa on seasonal worker grounds must be outside of Australia at the time the visa is granted.

The purpose of this amendment is to ensure that applicants for a Subclass 416 (Special Program) visa on seasonal worker grounds are outside Australia, preferably in their home country, at the time of applying, in order to meet selection criteria set out by the countries which are participating in the seasonal worker pilot scheme.

Item [7] – Schedule 2, clause 416.611

This item substitutes clause 416.611 with new clause 416.611 in Division 416.6 of Part 416 of Schedule 2 to the Principal Regulations.

Division 416.6 of Part 416 specifies conditions that apply to the grant of a Subclass 416 (Special Program) visa. Schedule 8 to the Principal Regulations specifies those visa conditions applicable to the grant of a visa.

New subclause 416.611(1) provides that, where the applicant satisfies the primary criteria for the grant of the visa, condition 8107 is a mandatory condition attached to the grant of that visa. This amendment preserves the operation of clause 416.611.

New subclause 416.611(2) provides that, where the applicant satisfies the criterion in paragraph 416.222(d), visa conditions 8501 and 8503 are further mandatory conditions attached to the visa. The effect of this amendment is to provide for holders of Subclass 416

(Special Program) visas granted on seasonal worker grounds to be subject to additional visa conditions 8501 and 8503.

The purpose of this amendment is to:

- preclude Subclass 416 (Special Program) visa holders granted on seasonal worker grounds (‘seasonal workers’) from applying for a further substantive visa after entering Australia;
- require seasonal workers to maintain adequate arrangements for health insurance while the holder is in Australia; and
- prevent seasonal workers from securing employment with employers, or undertaking particular employment roles in the workplace, inconsistent with the purposes of the particular seasonal work program approved by the Secretary (in relation to which the visa holder was granted a visa).

Schedule 3 – Amendments relating to Superyacht Crew (Class UW) and Subclass 488 (Superyacht Crew) visas

Part 1 – General amendments to the *Migration Regulations 1994*

Item [1] – Regulation 1.03, definition of *member of the crew*

This item substitutes a new definition of “member of the crew” in Regulation 1.03, in Division 1.2 of Part 1 of the Principal Regulations.

This item is to ensure the definition of “member of the crew” applies to a member of the crew of a “superyacht” as well as a “non-military ship”. It is different from the previous definition of “member of the crew” only in that the word “superyacht” is inserted.

The item provides that a “member of the crew” of a superyacht is a person who is involved in the usual day to day routine maintenance or business of the superyacht while it is at sea, including a supernumerary member of the crew. It does not matter whether the person works as an employee, a contractor or in another capacity. Examples of supernumerary members of the crew include:

- a person who performs specialist repair or maintenance work while it is at sea (for example, an electrical engineer);
- an entertainer who works on the ship while it is at sea; or
- a chef who works on the ship while it is at sea.

“Member of the crew” does not include a person who only works on a superyacht while it is in port or dry dock unless the person travelled with the superyacht to reach the port or dry dock, or travels with the superyacht after completing the work in port or dry dock. This will ensure for example that a Subclass 488 (Superyacht Crew) visa is not available to a person who is flown into and out of Australia only for the purpose of performing work on the superyacht when it is in dry dock.

This definition of “member of the crew”, together with the definition of “superyacht” (see item [2]), determines who is eligible for the Superyacht Crew visa under new Part 488 of the Regulations (see item [19]).

Item [2] – Regulation 1.03, after the definition of *substituted Subclass 676 visa*

This item inserts a definition of “superyacht” in Regulation 1.03, in Division 1.2 of Part 1 of the Principal Regulations.

A superyacht is defined as a sailing ship or motor vessel of a kind that is specified by the Minister under regulation 1.15G to be a superyacht (see item [3]).

Item [3] – After regulation 1.15F

This item inserts new regulation 1.15G in Division 1.2 of Part 1 of the Principal Regulations.

New regulation 1.15G provides that the Minister may, by instrument in writing, specify that a sailing ship or motor vessel of a particular kind is a superyacht.

It is envisaged that a superyacht may be defined as a sailing ship or motor vessel that, for example, is used for sport or leisure, is 24 metres or greater in load line length and does not carry cargo.

Item [4] – Paragraph 1.20(2)(b)

This item inserts a reference to the Superyacht Crew (Temporary) (Class UW) visa in paragraph 1.20(2)(b) in Division 1.4 of Part 1 of the Principal Regulations.

The effect of the item is to exclude the Superyacht Crew (Temporary) (Class UW) visa from the application of paragraph 1.20(2)(b). This item also corrects a typographical error where the closing bracket was previously incorrectly placed.

Subregulation 1.20(2) sets out the undertakings a sponsor makes in relation to applicants for certain permanent and temporary visas.

The Superyacht Crew (Temporary) (Class UW) visa is excluded from paragraph 1.20(2)(b) because the sponsor will instead make the undertakings listed in new subparagraph 1.20(2)(f) (see item [6]).

Item [5] – Subparagraph 1.20(2)(e)(ii)

This item is a minor technical amendment which is consequential to item [6] below which inserts new subparagraph 1.20(2)(f) after 1.20(2)(e)(ii). This item changes the punctuation in subparagraph 1.20(2)(e)(ii) to allow new subparagraph 1.20(2)(f) to be inserted.

Item [6] – After paragraph 1.20(2)(e)

This item inserts new paragraph 1.20(2)(f) in Division 1.4 of Part 1 of the Principal Regulations.

The item provides that if the application is for a Superyacht Crew (Temporary) (Class UW) visa, the sponsor undertakes to accept responsibility for:

- all financial obligations to the Commonwealth incurred by the applicant arising out of the applicant's stay in Australia; and
- compliance with the standards for wages and working conditions under all relevant legislation and awards in relation to employment entered into by the applicant in Australia; and
- unless the Minister otherwise decides, compliance by the applicant with the conditions under which the applicant was allowed to enter Australia.

The matters for which the sponsor of a Superyacht Crew (Temporary) (Class UW) visa applicant accepts responsibility are largely the same as those that apply to sponsors of other temporary visa applicants under paragraph 1.20(2)(b). The difference is that new subparagraph 1.20(2)(f)(ii) provides that the sponsor must accept responsibility for compliance with the standards for wages and working conditions under all relevant legislation and awards in relation to employment entered into by the applicant in Australia.

This item is to ensure that the Superyacht Crew visa does not create a financial burden for Australian taxpayers and that visa holders are not exploited by their employers. It is also to ensure that Superyacht Crew visa holders comply with the conditions on their visa and do not become unlawful non-citizens. This is consistent with existing sponsorship arrangements for temporary visas. Employers must also ensure that the conditions of employment of Superyacht Crew visa holders are equal to the conditions of employment of Australian citizens or Australian permanent residents employed in the superyacht industry.

The sponsor makes the undertakings by signing a declaration on approved form 1366 (see clause 488.222 inserted by item [14]).

If the sponsor does not comply with the undertakings they make under paragraph 1.20(2)(f), the Minister may cancel the Superyacht Crew (Temporary) (Class UW) visa under section 116(1)(g) of the Act. That paragraph provides that the Minister may cancel a visa if a prescribed ground for cancelling the visa applies. The prescribed grounds are set out in new paragraph 2.43(1)(lb) (see item [8]).

Item [7] – After regulation 2.07AQ

This item inserts new regulation 2.07AR in Division 2.2 of Part 2 of the Principal Regulations.

New regulation 2.07AR provides that an application for a Superyacht Crew (Temporary) (Class UW) visa may be made on behalf of an applicant.

This regulation aims to make the visa application process more convenient for members of the crew of superyachts by allowing third parties such as employers and agents to apply for a Superyacht Crew visa on behalf of the applicant.

Item [8] – After paragraph 2.43(1)(la)

This item inserts new paragraph 2.43(1)(lb) in Division 2.9 of Part 2 of the Principal Regulations.

This provision allows the Minister to cancel a Superyacht Crew (Temporary) (Class UW) visa where the visa holder's sponsor has not complied, or is not complying, with the undertakings given by the sponsor in accordance with approved form 1366.

The undertakings on approved form 1366 reflect the undertakings prescribed in paragraph 1.20(2)(f) (see item [6]).

The purpose of this provision is to encourage sponsors to comply with their undertakings. This new provision will also prevent sponsors who have not complied with their undertakings from continuing their non-compliance in respect of their visa holders and provide the Minister with a tool to remove a visa holder from a situation in which they are being exploited.

A sponsor who has defaulted on their undertakings is also prevented by clause 488.222, inserted by item [22], from sponsoring further Superyacht Crew visa applicants. Item [22] will operate as a bar on the sponsor preventing them from sponsoring more visa holders.

Part 2 – Amendments of Schedule 1 to the *Migration Regulations 1994*

Item [9] – After item 1227

This item inserts new item 1227A Superyacht Crew (Temporary) (Class UW) in Schedule 1 to the Principal Regulations.

This item creates the new Superyacht Crew visa class. It sets out the methods for applying for a Superyacht Crew (Temporary) (Class UW) visa. An application for a Superyacht Crew (Temporary) (Class UW) visa that is not made in accordance with item 1227A is not valid and, in accordance with subsection 47(3) of the Act, cannot be considered.

Sub-item 1227A(1) provides that the application form for the Superyacht Crew (Temporary) (Class UW) visa is form 1365 or 1365 (Internet). This means that the visa can be applied for using a paper form, or over the Internet.

Sub-item 1227A(2) provides that there is no visa application charge for the Superyacht Crew (Temporary) (Class UW) visa.

Sub-item 1227A(3) sets out the other requirements for a valid Superyacht Crew (Temporary) (Class UW) visa application. Paragraph 1227A(3)(a) provides that an applicant may be in or outside Australia. Paragraph 1227A(3)(b) provides that an applicant must not be the holder of a permanent visa.

Paragraph 1227A(3)(c) provides that if the applicant is in Australia at the time of application, the applicant is the holder of a substantive visa other than a permanent visa. This is to ensure that unlawful non-citizens, holders of non-substantive visas and permanent visa holders, cannot apply for a Superyacht Crew (Temporary) (Class UW) visa. Section 5 of the *Migration Act 1958* provides that “substantive visa” means a visa other than a bridging visa, criminal justice visa or enforcement visa. It is also necessary to exclude permanent visa holders as the grant of a Superyacht Crew visa would cease their permanent visa.

Paragraph 1227A(3)(d) provides four methods of lodgement for a Superyacht Crew (Temporary) (Class UW) visa as: an Internet application, or by post, courier or fax to an address specified by the Minister in an instrument in writing.

Sub-item 1227A(4) provides that the subclass for the Superyacht Crew (Temporary) (Class UW) visa is 488 (Superyacht Crew).

Item [10] – Subitem 1301(1)

This item inserts form 1365 and form 1365 (Internet) in subitem 1301(1) of Schedule 1 to the Principal Regulations.

Forms 1365 and 1365 (Internet) are the approved forms for applying for a Superyacht Crew (Temporary) (Class UW) visa. Item 1301 of Schedule 1 sets out the criteria to make a valid application for a Bridging A (Class WA) visa. The effect of this item is that an application for a Superyacht Crew visa is also an application for a Bridging A (Class WA) visa. The purpose of this amendment is to ensure that a Superyacht Crew visa applicant who is a lawful non-citizen in Australia at the time of application does not become an unlawful non-citizen if their current visa ceases before the Superyacht Crew visa application is finalised.

Part 3 – Amendments of Schedule 2 to the Migration Regulations 1994

Item [11] – Subclause 010.611(4)

This item inserts condition 8114 in subclause 010.611(4) of Schedule 2 to the Principal Regulations.

This item provides that if condition 8114 applies to the visa held by the holder at the time of application for, or grant of, a Subclass 010 (Bridging A) visa, that condition also applies to the Subclass 010 (Bridging A) visa.

A Subclass 010 (Bridging A) visa may be granted to an applicant to ensure they have lawful status during the processing of their substantive visa application, including merits and judicial review.

Item [12] – Subclause 020.611(5)

This item inserts condition 8114 in subclause 020.611(5) of Schedule 2 to the Principal Regulations.

This item provides that if condition 8114 applies to the bridging visa held by the holder at the time of application for a Subclass 020 (Bridging B) visa, that condition also applies to the Subclass 020 (Bridging B) visa.

A Subclass 020 (Bridging B) visa may be granted to an applicant to provide the applicant with permission to travel to, enter and remain in Australia during the processing of their substantive visa application.

Item [13] – Sub-subparagraph 457.211(a)(i)(J)

This item inserts new sub-subparagraph 457.211(a)(i)(J) in Schedule 2 to the Principal Regulations.

The effect of this item is to provide that an applicant can satisfy the time of application criteria for a Business (Long Stay) (Subclass 457) visa if they are the holder of a Superyacht Crew (Temporary) (Class UW) visa. This will ensure that Australian employers who have

been unable to fill skilled positions from the local labour market may be able to sponsor a Superyacht Crew visa holder to remain in Australia temporarily to work.

Item [14] – After Part 487

This item inserts new Part 488 in Schedule 2 to the Principal Regulations.

The new Part sets out the criteria for grant, the circumstances applicable to grant, when the visa is in effect, the conditions, and the way of evidencing for the Subclass 488 (Superyacht Crew) visa.

Interpretation

New Division 488.1 includes a note advising that the terms “member of the crew” and “superyacht” are defined in regulation 1.03 and that regulation 1.15G is also relevant for the purposes of the definition of “superyacht”. (The definition of “member of the crew” is amended by item [1] and the definition of “superyacht” is inserted by items [2] and [3]).

There are no interpretation provisions specific to Part 488.

Primary criteria

New Division 488.2 inserts the primary criteria for the grant of a Subclass 488 (Superyacht Crew) visa. The note at the beginning of the clause advises that all applicants must satisfy the primary criteria.

New Subdivision 488.21 creates the criteria to be satisfied at the time of application for a Subclass 488 (Superyacht Crew) visa.

New Clause 488.211 provides that the applicant must have turned 18. As the Subclass 488 (Superyacht Crew) visa is a work visa and does not provide for secondary applicants to accompany the member of the crew, only adult applicants are eligible to be granted this visa.

New Clause 488.212 provides that the applicant must be a member of the crew of a superyacht. To meet this criterion, applicants must provide evidence to demonstrate they meet the definition of “member of the crew” of a “superyacht” inserted by items [1], [2] and [3] of these Regulations.

New Clause 488.213 provides that the applicant must not intend to engage in activities that will have adverse consequences for employment or training opportunities, or conditions of employment, for Australian citizens or Australian permanent residents. This clause supports the policy that the crew of Australian-owned superyachts should initially be sourced from Australian citizens or Australian permanent residents.

New Subdivision 488.22 creates the criteria to be satisfied at the time of decision of a Subclass 488 (Superyacht Crew) visa application. Clause 488.221 provides that the applicant must continue to be a member of the crew of a superyacht and must continue not to intend to engage in activities that will have adverse consequences for employment or training opportunities, or conditions of employment, for Australian citizens or Australian permanent residents.

New Clause 488.222 provides that an applicant must be sponsored by the captain or owner of the superyacht on which they will be working. The captain or owner who is sponsoring the applicant must also meet certain criteria. Firstly, they must not have defaulted on any previous sponsorship entered into under the Principal Regulations. Secondly, they must have given written undertakings in accordance with approved form 1366. These are the undertakings prescribed under paragraph 1.20(2)(f) (see item [6]). Thirdly, the Minister must have approved the captain or owner as a sponsor for the applicant.

New Clause 488.223 provides that the applicant must satisfy the following public interest criteria set out in Schedule 4 to the Principal Regulations:

- 4001 (character test);
- 4002 (applicant is not assessed by ASIO to pose a security risk to Australia);
- 4003 (applicant is not determined by the Foreign Minister to be a person whose presence in Australia is contrary to Australia's foreign policy interests or whose presence in Australia is directly or indirectly associated with proliferation of weapons of mass destruction);
- 4004 (applicant does not have outstanding debts to the Commonwealth, unless appropriate arrangements have been made for payment);
- 4005 (applicant is free from tuberculosis, or any other disease or condition that is a threat to public health in Australia or a danger to the Australian community, or any disease or condition that will result in significant cost to the Australian community);
- 4013 (within the last 3 years, a visa previously held by the applicant has not been cancelled); and
- 4014 (within the last 3 years, applicant did not leave Australia as an unlawful non-citizen or as the holder of certain bridging visas).

New Clause 488.224 provides that the applicant must satisfy the following special return criteria set out in Schedule 5 to the Principal Regulations:

- 5001 (applicant has not been deported on criminal or security grounds or had a previous visa cancelled on character grounds); and
- 5002 (applicant has not been removed from Australia within last 12 months).

Finally, to meet the criteria at the time of decision, the Minister must be satisfied that the applicant is the holder of a valid passport in the form issued by an official source, or that it would be unreasonable to require the applicant to be the holder of a passport.

Secondary criteria

New Division 488.3 provides that there are no secondary criteria. The note at the beginning of the clause advises that all applicants must satisfy the primary criteria.

Circumstances applicable to grant

New Division 488.4 inserts the circumstances applicable to grant of a Subclass 488 (Superyacht Crew) visa. New Clause 488.411 provides that the applicant may be either in or outside Australia when the Superyacht Crew visa is granted.

When visa is in effect

New Division 488.5 provides for when the visa is in effect.

New Clause 488.511 provides that if the Subclass 488 (Superyacht Crew) visa was granted to an applicant outside Australia, it is a temporary visa permitting the holder to travel to and enter Australia on multiple occasions until a date specified by the Minister, and to remain in Australia for a period, or until a date, specified by the Minister for the purpose.

New Clause 488.512 provides that if the Subclass 488 (Superyacht Crew) visa was granted to an applicant in Australia, it is a temporary visa permitting the holder to remain in Australia for a period, or until a date, specified by the Minister for the purpose. If the holder leaves Australia during the visa period, it is a temporary visa permitting the holder to travel to and enter Australia on multiple occasions until a date specified by the Minister, and to remain in Australia, after each entry, for a period, or until a date, specified by the Minister for the purpose.

These provisions will provide flexibility for an applicant to nominate the period they can remain in Australia. It is intended that, under policy, the maximum period of stay that an applicant can nominate will be 12 months. Also under policy, it is intended that the date until which applicants can travel to and enter Australia will be set at 12 months from the date of visa grant.

Conditions

New Division 488.6 provides for the conditions that attach to a Subclass 488 (Superyacht Crew) visa.

New Clause 488.611 provides that conditions 8107 and 8114 must be imposed on Subclass 488 (Superyacht Crew) visas.

- Condition 8107 provides that the visa holder must not cease to be employed by the employer in relation to which the visa was granted; or work in a position or occupation inconsistent with the position or occupation in relation to which the visa was granted; or engage in work for another person or on the holder's own account while undertaking the employment in relation to which the visa was granted.

The effect of this condition in relation to the Superyacht Crew visa is that an applicant must not cease to be employed by the captain or owner sponsoring the applicant and cannot work in another occupation or position while they are employed as a member of the crew of a superyacht. This ensures that the visa holder remains in the employment of the captain or owner sponsoring the applicant. If the visa holder wishes to work for a different employer as a member of the crew of a superyacht, they must apply for a further Superyacht Crew visa.

- Condition 8114 is a new condition inserted by item [48] of this schedule. It provides that the visa holder must not work in Australia otherwise than as a member of the crew of a superyacht.

Way of giving evidence

Clause 488.711 provides that no evidence need be given for the Superyacht Crew visa.

Item [15] – After subparagraph 570.211(2)(a)(xiii)

This item inserts new subparagraph 570.211(2)(a)(xiiiia) into Part 570 of Schedule 2 to the Principal Regulations.

The effect of this item is to provide that an applicant can satisfy the primary time of application criteria for an Independent ELICOS Sector (Subclass 570) visa if they are the holder of a Superyacht Crew (Temporary) (Class UW) visa. This will enable Superyacht Crew visa holders to meet the time of application criteria for a Student visa if they wish to remain in Australia to undertake study.

Item [16] – After sub-subparagraph 570.227(c)(i)(L)

This item inserts new sub-subparagraph 570.227(c)(i)(LA) into Part 570 of Schedule 2 to the Principal Regulations.

This item inserts a reference to the Superyacht Crew (Temporary) (Class UW) visa in subparagraph 570.227(c)(i), which reflects the list of visas that an applicant could hold to meet the primary time of application criteria for an Independent ELICOS Sector (Subclass 570) visa. This is a consequential amendment to item [15].

Item [17] – After subparagraph 570.312(2)(a)(xiii)

This item inserts new sub-subparagraph 570.312(2)(a)(xiiiia) into Part 570 of Schedule 2 to the Principal Regulations.

The effect of this item is to provide that an applicant can satisfy the secondary time of application criteria for an Independent ELICOS Sector (Subclass 570) visa if they are the holder of a Superyacht Crew (Temporary) (Class UW) visa. This will enable Superyacht Crew visa holders to meet the time of application criteria for a Student visa if they are the member of the family unit of a person who holds, or satisfies the primary criteria for, a Subclass 570 visa.

Item [18] – After subparagraph 571.211(2)(a)(xiii)

This item inserts new subparagraph 571.211(2)(a)(xiiiia) into Part 571 of Schedule 2 to the Principal Regulations.

The effect of this item is to provide that an applicant can satisfy the primary time of application criteria for a Schools Sector (Subclass 571) visa if they are the holder of a Superyacht Crew (Temporary) (Class UW) visa. This will enable Superyacht Crew visa holders to meet the time of application criteria for a Student visa if they wish to remain in Australia to undertake study.

Item [19] – After sub-subparagraph 571.227(c)(i)(L)

This item inserts new sub-subparagraph 571.227(c)(i)(LA) into Part 571 of Schedule 2 to the Principal Regulations.

This item inserts a reference to the Superyacht Crew (Temporary) (Class UW) visa in subparagraph 571.227(c)(i), which reflects the list of visas that an applicant could hold to meet the time of application criteria for a Schools Sector (Subclass 571) visa. This is a consequential amendment to item [18].

Item [20] – After subparagraph 571.312(2)(a)(xiii)

This item inserts new sub-subparagraph 571.312(2)(a)(xiiiia) into Part 571 of Schedule 2 to the Principal Regulations.

The effect of this item is to provide that an applicant can satisfy the secondary time of application criteria for a Schools Sector (Subclass 571) visa if they are the holder of a Superyacht Crew (Temporary) (Class UW) visa. This will enable Superyacht Crew visa holders to meet the time of application criteria for a Student visa if they are the member of the family unit of a person who holds, or satisfies the primary criteria for, a Subclass 571 visa.

Item [21] – After subparagraph 572.211(2)(a)(xiii)

This item inserts new subparagraph 572.211(2)(a)(xiiiia) into Part 572 of Schedule 2 to the Principal Regulations.

The effect of this item is to provide that an applicant can satisfy the primary time of application criteria for a Vocational Education and Training Sector (Subclass 572) visa if they are the holder of a Superyacht Crew (Temporary) (Class UW) visa. This will enable Superyacht Crew visa holders to meet the time of application criteria for a Student visa if they wish to remain in Australia to undertake study.

Item [22] – After sub-subparagraph 572.227(c)(i)(L)

This item inserts new sub-subparagraph 572.227(c)(i)(LA) into Part 572 of Schedule 2 to the Principal Regulations.

This item inserts a reference to the Superyacht Crew (Temporary) (Class UW) visa in subparagraph 572.227(c)(i), which reflects the list of visas that an applicant could hold to meet the time of application criteria for a Vocational Education and Training Sector (Subclass 572) visa. This is a consequential amendment to item [21].

Item [23] – After subparagraph 572.312(2)(a)(xiii)

This item inserts new sub-subparagraph 572.312(2)(a)(xiiiia) into Part 572 of Schedule 2 to the Principal Regulations.

The effect of this item is to provide that an applicant can satisfy the secondary time of application criteria for Vocational Education and Training Sector (Subclass 572) visa if they are the holder of a Superyacht Crew (Temporary) (Class UW) visa. This will enable Superyacht Crew visa holders to meet the time of application criteria for a Student visa if they are the member of the family unit of a person who holds, or satisfies the primary criteria for, a Subclass 572 visa.

Item [24] – After subparagraph 573.211(2)(a)(xiii)

This item inserts new subparagraph 573.211(2)(a)(xiiiia) into Part 573 of Schedule 2 to the Principal Regulations.

The effect of this item is to provide that an applicant can satisfy the primary time of application criteria for a Higher Education Sector (Subclass 573) visa if they are the holder of a Superyacht Crew (Temporary) (Class UW) visa. This will enable Superyacht Crew visa holders to meet the time of application criteria for a Student visa if they wish to remain in Australia to undertake study.

Item [25] – After sub-subparagraph 573.227(c)(i)(L)

This item inserts new sub-subparagraph 573.227(c)(i)(LA) into Part 573 of Schedule 2 to the Principal Regulations.

This item inserts a reference to the Superyacht Crew (Temporary) (Class UW) visa in subparagraph 573.227(c)(i), which reflects the list of visas that an applicant could hold to meet the time of application criteria for a Higher Education Sector (Subclass 573) visa. This is a consequential amendment to item [24].

Item [26] – After subparagraph 573.312(2)(a)(xiii)

This item inserts new sub-subparagraph 573.312(2)(a)(xiiiia) into Part 573 of Schedule 2 to the Principal Regulations.

The effect of this item is to provide that an applicant can satisfy the secondary time of application criteria for a Higher Education Sector (Subclass 573) visa if they are the holder of a Superyacht Crew (Temporary) (Class UW) visa. This will enable Superyacht Crew visa holders to meet the time of application criteria for a Student visa if they are the member of the family unit of a person who holds, or satisfies the primary criteria for, a Subclass 573 visa.

Item [27] – After subparagraph 574.211(2)(a)(xiii)

This item inserts new subparagraph 574.211(2)(a)(xiiiia) into Part 574 of Schedule 2 to the Principal Regulations.

The effect of this item is to provide that an applicant can satisfy the primary time of application criteria for a Postgraduate Research Sector (Subclass 574) visa if they are the holder of a Superyacht Crew (Temporary) (Class UW) visa. This will enable Superyacht Crew visa holders to meet the time of application criteria for a Student visa if they wish to remain in Australia to undertake study.

Item [28] – After sub-subparagraph 574.227(c)(i)(L)

This item inserts new sub-subparagraph 574.227(c)(i)(LA) into Part 574 of Schedule 2 to the Principal Regulations.

This item inserts a reference to the Superyacht Crew (Temporary) (Class UW) visa in subparagraph 574.227(c)(i), which reflects the list of visas that an applicant could hold to meet the time of application criteria for a Postgraduate Research Sector (Subclass 574) visa. This is a consequential amendment to item [27].

Item [29] – After subparagraph 574.312(2)(a)(xiii)

This item inserts new sub-subparagraph 574.312(2)(a)(xiii) into Part 574 of Schedule 2 to the Principal Regulations.

The effect of this item is to provide that an applicant can satisfy the secondary time of application criteria for a Postgraduate Research Sector (Subclass 574) visa if they are the holder of a Superyacht Crew (Temporary) (Class UW) visa. This will enable Superyacht Crew visa holders to meet the time of application criteria for a Student visa if they are the member of the family unit of a person who holds, or satisfies the primary criteria for, a Subclass 574 visa.

Item [30] – After subparagraph 575.211(2)(a)(xiii)

This item inserts new subparagraph 575.211(2)(a)(xiii) into Part 575 of Schedule 2 to the Principal Regulations.

The effect of this item is to provide that an applicant can satisfy the primary time of application criteria for a Non-Award Sector (Subclass 575) visa if they are the holder of a Superyacht Crew (Temporary) (Class UW) visa. This will enable Superyacht Crew visa holders to meet the time of application criteria for a Student visa if they wish to remain in Australia to undertake study.

Item [31] – After sub-subparagraph 575.227(c)(i)(L)

This item inserts new sub-subparagraph 575.227(c)(i)(LA) into Part 575 of Schedule 2 to the Principal Regulations.

This item inserts a reference to the Superyacht Crew (Temporary) (Class UW) visa in subparagraph 575.227(c)(i), which reflects the list of visas that an applicant could hold to meet the time of application criteria for a Non-Award Sector (Subclass 575) visa. This is a consequential amendment to item [30].

Item [32] – After subparagraph 575.312(2)(a)(xiii)

This item inserts new sub-subparagraph 575.312(2)(a)(xiii) into Part 575 of Schedule 2 to the Principal Regulations.

The effect of this item is to provide that an applicant can satisfy the secondary time of application criteria for a Non-Award Sector (Subclass 575) visa if they are the holder of a Superyacht Crew (Temporary) (Class UW) visa. This will enable Superyacht Crew visa holders to meet the time of application criteria for a Student visa if they are the member of the family unit of a person who holds, or satisfies the primary criteria for, a Subclass 575 visa.

Item [33] – After subparagraph 576.211(2)(a)(xiii)

This item inserts new subparagraph 576.211(2)(a)(xiii) into Part 576 of Schedule 2 to the Principal Regulations.

The effect of this item is to provide that an applicant can satisfy the primary time of application criteria for an AusAID or Defence Sector (Subclass 576) visa if they are the holder of a Superyacht Crew (Temporary) (Class UW) visa. This will enable Superyacht Crew visa holders to meet the time of application criteria for a Student visa if they wish to remain in Australia to undertake study.

Item [34] – After subparagraph 576.312(2)(a)(xiii)

This item inserts new sub-subparagraph 576.312(2)(a)(xiii) into Part 576 of Schedule 2 to the Principal Regulations.

The effect of this item is to provide that an applicant can satisfy the secondary time of application criteria for an AusAID or Defence Sector (Subclass 576) visa if they are the holder of a Superyacht Crew (Temporary) (Class UW) visa. This will enable Superyacht Crew visa holders to meet the time of application criteria for a Student visa if they are the member of the family unit of a person who holds, or satisfies the primary criteria for, a Subclass 576 visa.

Item [35] – After subparagraph 580.211(2)(a)(xiii)

This item inserts new subparagraph 580.211(2)(a)(xiii) into Part 580 of Schedule 2 to the Principal Regulations.

The effect of this item is to provide that an applicant can satisfy the primary time of application criteria for a Student Guardian (Subclass 580) visa if they are the holder of a Superyacht Crew (Temporary) (Class UW) visa. This will enable Superyacht Crew visa holders to meet the time of application criteria for a Student Guardian visa if they wish to remain in Australia as guardian to a student.

Item [36] – After sub-subparagraph 580.227(c)(i)(L)

This item inserts new sub-subparagraph 580.227(c)(i)(LA) into Part 580 of Schedule 2 to the Principal Regulations.

This item inserts a reference to the Superyacht Crew (Temporary) (Class UW) visa in paragraph 580.227(c)(i), which reflects the list of visas that an applicant could hold to meet the time of application criteria for a Student Guardian (Subclass 580) visa. This is a consequential amendment to item [35].

Item [37] – After subparagraph 580.311(2)(a)(xiii)

This item inserts new sub-subparagraph 580.311(2)(a)(xiii) into Part 580 of Schedule 2 to the Principal Regulations.

The effect of this item is to provide that an applicant can satisfy the secondary time of application criteria for Student Guardian (Subclass 580) visa if they are the holder of a Superyacht Crew (Temporary) (Class UW) visa. This will enable Superyacht Crew visa holders to meet the time of application criteria for a Student visa if they are the member of

the family unit of a person who holds, or satisfies the primary criteria for, a Subclass 580 visa.

Item [38] – After paragraph 845.211(ea)

This item inserts new paragraph 845.211(eb) into Part 845 of Schedule 2 to the Principal Regulations.

The effect of this item is to add Superyacht Crew (Temporary) (Class UW) to the list of visas that an applicant must not be the holder of at time of application for an Established Business in Australia (Subclass 845) visa.

Item [39] – After subparagraph 855.211(1)(a)(iia)

This item inserts new subparagraph 855.211(1)(a)(iib) into part 855 of Schedule 2 to the Principal Regulations.

The effect of this item is to add Superyacht Crew (Temporary) (Class UW) to the list of visas that an applicant must not be the holder of at time of application for a Labour Agreement (Subclass 855) visa.

Item [40] – After sub-subparagraph 855.211(2)(a)(i)(BA)

This item inserts new sub-subparagraph 855.211(2)(a)(i)(BB) into Part 855 of Schedule 2 to the Principal Regulations.

The effect of this item is to add Superyacht Crew (Temporary) (Class UW) to the list of substantive visas that an applicant must not have last held to satisfy the time of application criteria for a Labour Agreement (Subclass 855) visa.

Item [41] – After subparagraph 856.211(1)(a)(iia)

This item inserts new subparagraph 856.211(1)(a)(iib) into Part 856 of Schedule 2 to the Principal Regulations.

The effect of this item is to add Superyacht Crew (Temporary) (Class UW) to the list of visas that an applicant must not be the holder of at time of application for an Employer Nomination Scheme (Subclass 868) visa.

Item [42] – After sub-subparagraph 856.211(2)(b)(i)(BA)

This item inserts new sub-subparagraph 856.211(2)(b)(i)(BB) into Part 856 of Schedule 2 to the Principal Regulations.

The effect of this item is to add Superyacht Crew (Temporary) (Class UW) to the list of substantive visas that an applicant must not have last held to satisfy the time of application criteria for a Employer Nomination Scheme (Subclass 856) visa.

Item [43] – After subparagraph 857.211(1)(a)(iia)

This item inserts new subparagraph 857.211(1)(a)(iib) into Part 857 of Schedule 2 to the Principal Regulations.

The effect of this item is to add Superyacht Crew (Temporary) (Class UW) to the list of visas that an applicant must not be the holder of at time of application criteria for a Regional Sponsored Migration Scheme (Subclass 857) visa.

Item [44] – After sub-subparagraph 857.211(2)(b)(i)(BA)

This item inserts new sub-subparagraph 857.211(2)(b)(i)(BB) into Part 857 of Schedule 2 to the Principal Regulations.

The effect of this item is to add Superyacht Crew (Temporary) (Class UW) to the list of substantive visas that an applicant must not have last held to satisfy the time of application criteria for a Regional Sponsored Migration Scheme (Subclass 857) visa.

Item [45] – After subparagraph 858.211(1)(a)(iia)

This item inserts new subparagraph 858.211(1)(a)(iib) into Part 858 of Schedule 2 to the Principal Regulations.

The effect of this item is to add Superyacht Crew (Temporary) (Class UW) to the list of visas that an applicant must not be the holder of at time of application for a Distinguished Talent (Subclass 858) visa.

Item [46] – After sub-subparagraph 858.211(2)(b)(i)(BA)

This item inserts new sub-subparagraph 858.211(2)(b)(i)(BB) into Part 858 of Schedule 2 to the Principal Regulations.

The effect of this item is to add Superyacht Crew (Temporary) (Class UW) to the list of substantive visas that an applicant must not have last held to satisfy the time of application criteria for a Distinguished Talent (Subclass 858) visa.

Part 4 – Amendment of Schedule 4 to the Migration Regulations 1994

Item [47] – Part 2, after item 4055AA

This item inserts new item 4055AB in Part 2 of Schedule 4 to the Principal Regulations.

New item 4055AB provides that conditions 8107 and 8114 are conditions applicable to a Subclass 488 (Superyacht Crew) visa for the purposes of subclause 4013(2).

Public Interest Criterion (PIC) 4013 provides that if the applicant is affected by a risk factor mentioned in the PIC, the application cannot be made within three years of, for example, the cancellation of the person's visa, unless the Minister is satisfied that compelling circumstances affecting the interests of Australia, or the interests of an Australian citizen or an Australian permanent resident, justify the granting of the visa.

The effect of this item is that an applicant will be affected by a risk factor for the purposes of PIC 4013 if the applicant's Subclass 488 (Superyacht Crew) visa was cancelled because they did not comply with condition 8107 or 8114. For more detail on conditions 8107 and 8114 see Division 488.6 inserted by item [14].

Item [48] – After condition 8113

This item inserts clause 8114 into Schedule 8 to the Principal Regulations.

New condition 8114 provides that the visa holder must not work in Australia otherwise than as a member of the crew of a superyacht. Clause 488.611, inserted by item [14], provides that this condition attaches to Subclass 488 (Superyacht Crew) visa holders. Non-citizens who wish to work in Australia other than as a member of the crew of a superyacht, will need to apply for another visa which permits work in Australia.