EXPLANATORY STATEMENT

Migration Regulations 1994

WORKING HOLIDAY VISA – DEFINITION OF *SPECIFIED WORK* AND *REGIONAL AUSTRALIA* 2016/087

(subitem 1225(5))

1. Instrument IMMI 16/087, Working Holiday Visa – Definitions of *Specified Work* and *Regional Australia* 2016/087, is made under subitem 1225(5) of Schedule 1 to the *Migration Regulations 1994* (the Regulations).

2. The Instrument revokes IMMI 16/041 (F2016L00757) under subsection 33(3) of the *Acts Interpretation Act 1901*, which states where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

3. The Instrument operates for the Minister to specify a place that is in ***regional Australia*** and to specify the work of a kind identified as ***specified work*** for the purposes of an Item 1225 Working Holiday (Temporary) (Class TZ) visa. Under subitem 1225(3B) of Schedule 1, if an applicant has previously held no more than one Working Holiday (Temporary) (Class TZ) visa and holds a working holiday eligible passport and is seeking a second Working Holiday (Temporary) (Class TZ) visa, the application must be accompanied by a declaration that he or she has carried out specified work in regional Australia for a total period of at least 3 months as a holder of that visa. The instrument is also relevant to subclause 417.211(5) of Schedule 2 to the Regulations, which uses the same definition of ***regional Australia*** as subitem 1225(5) of Schedule 1 to the Regulations.

4. The purpose of the Instrument is for the Minister to include in the Schedule to the Instrument that postcodes 6076 and 6111 in Western Australia are a ***regional Australia*** place for the purposes of subitem 1225(5) of Schedule 1 to the Regulations. This will mean Working Holiday (Temporary) (Class TZ) visa holders who have performed three

months ‘specified work’ in ‘regional Australia’ can apply for and be granted a second Working Holiday (Temporary) (Class TZ) visa.

5. Consultation was undertaken with horticulture industry, particularly the Perth Hills district before this Instrument was made.

6. The Office of Best Practice Regulation (OBPR) has advised that a Regulatory Impact Statement is not required (OBPR Reference 21066).

7. Under section 42 of the *Legislation Act 2003*, the Instrument is subject to disallowance and therefore a Statement of Compatibility with Human Rights has been provided.

8. The Instrument commences on the day after registration.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Working Holiday Visa – Definitions of Specified Work and Regional Australia 2016/087

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The amendments to the legislative instrument *Working Holiday Visa – Definitions of Specified Work and Regional Australia 2016/041* will expand the definition of 'regional Australia', for the purposes of subitem 1225(5) of the *Migration Regulations 1994* (the Regulations), to include postcodes 6111 and 6076.

Under subitem 1225(3B) of Schedule 1 and clause 417.211 of Schedule 2 to the Regulations, Working Holiday (subclass 417) visa holders can apply for and be granted a second Working Holiday visa if, amongst other criteria, they have performed three months 'specified work' in 'regional Australia'. The amendments to the legislative instrument will allow Working Holiday (subclass 417) visa holders who have engaged in 'specified work' in postcodes 6111 and 6076, to count this period as part or all of their three months 'specified work' in 'regional Australia'.

Human rights implications

This Disallowable Legislative Instrument positively engages and supports Article 6(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Article 6(1) of ICESCR sets out:

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

As the amendments to the legislative instrument expand the definition of 'regional Australia' to include two more postcodes, Article 6(1) of ICESCR is positively engaged because there are greater opportunities for Working Holiday (subclass 417) visa holders to apply for and be granted a second Working Holiday visa.

This principle is reflected in the United Nation Committee on Economic, Social and Cultural Rights (UNCESCR), in its General Comment on Article 6 (E/C.12/GC/19) has stated (at 4):

> 'The right to work, as guaranteed in the ICESCR, affirms the obligation of States parties to assure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly. This definition underlines the fact that respect for the individual and his dignity is expressed through the freedom of the individual regarding the choice to work, while emphasizing the importance of work for personal development as well as for social and economic inclusion.'

Further, Article 4 of ICESCR provides that the State may subject the rights enunciated in the ICESCR:

> '…only to such limitations as are determined by law only insofar as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in democratic society.'

Any limitations imposed on Working Holiday (subclass 417) visa holders for the provision of a second Working Holiday visa are legitimate, reflecting and justified by Article 4, for the principle reason that they are for the 'purpose of promoting the general welfare in a democratic society'. In other words, the measure will ensure that persons who are in Australia permanently are given the opportunity to seek work in areas where there is high unemployment before those seeking to work and live in Australia only on a temporary basis. Such a limitation, noting the discussion in relation to Article 6 above, is permissible.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.