EXPLANATORY STATEMENT

Issued by the Minister for Immigration and Border Protection

Migration Act 1958

Migration Legislation Amendment (2016 Measures No. 4) Regulation 2016

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

Subsection 504(1) of the Migration Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Migration Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Migration Act.

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

The purpose of the *Migration Legislation Amendment (2016 Measures No. 4) Regulation 2016* (the Regulation) is to amend the *Migration Regulations 1994* (the Migration Regulations) to strengthen and update immigration citizenship policy.

In particular, the Regulation amends the Migration Regulations to:

- reduce the time period that the holder of a Subclass 457 (Temporary Work (Skilled)) visa can remain in Australia after ceasing employment with their sponsor, from 90 days to 60 days, to improve the integrity of the program;

- permit holders (or former holders) of a Subclass 462 (Work and Holiday) visa to apply for a second Subclass 462 (Work and Holiday) visa if they have carried out work in areas of Australia specified by the Minister, of a kind specified by the Minister for at least three months as the holder of the first Subclass 462 (Work and Holiday) visa. In line with the Government's White Paper on Developing Northern Australia, the specified work is intended to be work undertaken in the agriculture, forestry, fisheries, tourism and hospitality industries in the Northern Territory and northern parts of Western Australia and Queensland;

- ensure that the requirements to provide certain information to a person prior to conducting an identification test under section 257A of the Migration Act extend to citizens. These provisions currently only apply to non-citizens; and

- change the definition of *member of the family unit* for most visas except protection, refugee and humanitarian visas to:
    - set an upper age limit of 23 years for children or step-children who are dependent unless they are incapacitated for work. The amendment also removes provision for family members outside the nuclear family from being included as a member of the family unit. These

amendments make the provisions about who can accompany a visa holder as a family member more consistent with who can be sponsored by an existing permanent resident or citizen as a family member; and

- simplify the provisions that allow a family member who holds a specified temporary visa to be eligible for a further visa even where they are no longer a member of the family unit, for example because they are now over 23 years of age. This ensures the family unit is kept together for subsequent visas.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulation is compatible with human rights. A copy of the Statement is at Attachment B.

The Migration Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

Details of the Regulation are set out in Attachment C.

The Regulation is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulation commences on 19 November 2016.

The Office of Best Practice Regulation (the OBPR) has been consulted regarding the amendments made by the Regulation. The OBPR considers that the changes in the Regulation will not have a significant regulatory impact on business and except for the amendments in Schedule 2, no further analysis in the form of a Regulation Impact Statement is required. The OBPR consultation references are as follows:

- 19543 (Schedule 1);
- 19212 (Schedule 2);
- 20833 (Schedule 3); and
- 21001 (Schedule 4).

In relation to the amendments made by Schedule 1, no consultation was undertaken under section 17 of the Legislation Act because this instrument is of a minor and machinery nature and does not substantially alter existing arrangements. This accords with subsection 17(1) of the *Legislation Act 2003* which envisages consultations where appropriate and reasonably practicable.

Regarding the amendments made by Schedule 2, in consultation with OBPR a short-form Regulation Impact Statement has been prepared and is at Attachment D. The Government undertook extensive consultations in preparing the White paper on Developing Northern Australia. No additional consultation was undertaken for these amendments as they support the recommendations of the White Paper on Developing Northern Australia.

For the amendments made by Schedule 3, consultation was conducted in the development of the *Migration Amendment (Strengthening Biometrics Integrity) Act 2015* with the Attorney-General's Department regarding the impacts on human rights and privacy and the Office of the Australian Information Commissioner regarding the Privacy Impact Assessment. This consultation informed the development of the legislation, particularly with regard to collecting personal identifiers from minors and incapable persons. As the amendments made by Schedule 3 are consequential to the amendments made by the Act, no further consultation was necessary. This accords with subsection 17(1) of the *Legislation Act 2003* which envisages consultations where appropriate and reasonably practicable.

In relation to the amendments made by Schedule 4, no further consultation was considered appropriate as a primary intention of the amendment is to better align the migration arrangements for family of new entrants to Australia with existing arrangements for family members of Australian citizens or permanent residents. This accords with subsection 17(1) of the *Legislation Act 2003* which envisages consultations where appropriate and reasonably practicable.

ATTACHMENT A

AUTHORISING PROVISIONS

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provides that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing all matters which by the Migration 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 Migration Act.

In addition, the following provisions of the Migration Act may apply:

- subsection 5(1), which defines the term ***member of the family unit*** of a person, to have the meaning given by the regulations for the purposes of the definition;

- subsection 31(1), which provides that the regulations may prescribe criteria for a visa or visas of a specified class;

- subsection 31(3), which provides that the regulations may prescribe criteria for a visa or visas of a specified class (which, without limiting the generality of this subsection, may be a class provided for by section 32, 35A, 37, 37A or 38B but not by section 33, 34, 35, 38 or 38A);

- subsection 40(1), which provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;

- subsection 41(1), which provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions;

- subsection 46(2), which provides that, subject to subsection 46(2A), 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), 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;

- paragraph 46(4), which relevantly provides that, without limiting subsection 46(3), the regulations may prescribe the circumstances that must exist for an application for a visa of a specified class to be a valid application, how and where such an application must be made, and where an applicant must be when such an application is made;

- Subsection 258B(1), which provides that before an authorised officer carries out an identification test on a person for the purposes of section 257A, the authorised officer must inform the person of such matters as are prescribed;

- subsection 258B(3), which provides that the authorised officer may comply with section 258B (Information to be provided — authorised officers carrying out identification tests); and

- subsection 258D(1), which provides that the regulations may prescribe the manner in which an identification test is to be carried out on a person under section 257A (Person may be required to provide personal identifiers).

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Migration Legislation Amendment (2016 Measures No. 4) Regulation 2016

This 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*.

Schedule 1 – Visa condition 8107

This amendment seeks to reduce the time period that the holder of a Subclass 457 (Temporary Work (Skilled)) visa can remain in Australia after ceasing employment with their sponsor from 90 days to 60 days. The mechanism for implementing this policy is visa condition 8107 in Schedule 8 to the *Migration Regulations 1994* (the Migration Regulations). All Subclass 457 visas granted to applicants who satisfy the primary criteria are subject to condition 8107 (see subclause 457.611(2) of Schedule 2 of the Migration Regulations).

Condition 8107 currently stipulates that a 457 visa holder cannot cease employment for more than 90 consecutive days. The practical effect of this is that, if a 457 holder has not found a new sponsor within 90 days of ceasing employment with their current sponsor, they will be in breach of their visa condition and their visa may be cancelled.

Human rights implications

The amendments in this Schedule have been assessed against the seven core international human rights treaties and it engages the right to work.

The amendments will reduce the current time period of 90 days that 457 visa holders are allowed to remain in Australia once their employment with their sponsor has ceased, to a 60 day period. This reduction in time may impact on the rights of 457 visa holders under Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), as it may limit their ability to access further employment in Australia. However, States may subject such rights to limitations in line with Article 4 of the ICESCR.

Article 6 and Article 4 of the ICESCR

Article 6 of ICESCR provides that:

> *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.*

It is the long-standing position of the Australian Government that an authority from the Australian Government needs to be granted before a temporary non-citizen is permitted to work. This authority and associated 'work rights' are attached to certain types of visas, including the Subclass 457 visa. A person is not permitted to work in Australia unless work rights have been granted and if those work rights cease, the person must not engage in work while in Australia.

The work rights of temporary non-citizens may be conditioned or limited on a case by case basis. 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.*

The authority from the Australian Government placing conditions or limitations on the work rights of 457 visa holders is contained in the Migration Regulations and is therefore 'determined by law' for the purpose of Article 4. The measure relates to the fact that a visa holder must have employment with a sponsor in order to remain in Australia. This is part of a long-standing policy that seeks to protect the opportunity of Australian citizens and permanent residents to compete for positions in the Australian labour market while allowing employers access to foreign workers to fill skills gaps. As such, the measure is intended to promote the legitimate objective of regulating the Australian labour market.

Article 2 of the ICESCR

Article 2.2 provides that:

> *The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

In relation to migrant workers and the right to work, the United Nations Committee on Economic, Social Council Rights, in its General Comment Number 18 noted that (at [18]):

> 'The principle of non-discrimination as set out in article 2.2 of the Covenant […] should apply in relation to employment opportunities for migrant workers and their families. In this regard the Committee underlines the need for national plans of action to be devised to respect and promote such principles by all appropriate measures legislative or otherwise.'

However, the United Nations Committee on Economic Social and Cultural Rights has stated that limiting the work entitlements of non-citizens would not constitute unlawful discrimination under Article 2 of the ICESCR. As such, Article 2.2 is not intended to restrict States from exercising the authority to limit the work entitlements of non-citizens where the limitation does not otherwise contravene the non-discrimination principle.

The measure relates to the fact that a visa holder must have employment with a sponsor in order to remain in Australia. This is part of a long-standing policy that seeks to protect the opportunity of Australian citizens and permanent residents to compete for positions in the Australian labour market while allowing employers access to foreign workers where there is a genuine need.

The current time period of 90 days is a considerable gap in employment. This amendment is intended to contribute to Subclass 457 visa holders being less vulnerable to informal

employment and reduces the period in which they can compete within the Australian labour market for further employment. As such, the measure is intended to promote the legitimate objective of regulating the Australian labour market and to protect the opportunity of Australian citizens and permanent residents to compete for positions in the Australian labour market

Conclusion

The amendments in this Schedule are compatible with human rights because it advances the protection of Australian workers' access to employment.

Schedule 2 – Subclass 462 (Work and Holiday) visas

This Schedule amends the Migration Regulations to allow Work and Holiday (Subclass 462) visa holders to apply for and be granted a second Work and Holiday visa if they meet certain legislative requirements. In particular, applicants will be required to demonstrate that while holding their first Work and Holiday visa they performed three months 'specified Subclass 462 work' (meaning work of a kind specified by the Minister, carried out in one or more areas of Australia specified by the Minister), and that this work was remunerated in accordance with relevant Australian legislation and awards.

The amendments made to the Migration Regulations by this Schedule will allow applications for a second Work and Holiday (subclass 462) visa where the applicant:

- is, or has previously been, in Australia as the holder of a Subclass 462 visa at the time of application;
- is in or outside Australia, but not in immigration clearance;
- declares that he or she has carried out 'specified Subclass 462 work' for a total period of at least 3 months while holding a subclass 462 visa;
- has not previously held more than one Subclass 462 visa in Australia; and
- if he or she is in Australia, holds a substantive visa or has held a substantive visa at any time in the period of 28 days immediately before making the application.

Further, these amendments will allow the Minister to make a legislative instrument that specifies the eligible kinds of work, and the locations where that work must be carried out, for the purposes of 'specified Subclass 462 work' and, therefore, for the purposes of granting a second Work and Holiday visa. In line with the Government's White Paper on Developing Northern Australia, 'specified Subclass 462 work' will be work undertaken in the agriculture, forestry, fisheries, tourism and hospitality industries and the areas in which this work must be undertaken will include all of the Northern Territory, and northern parts of Western Australia and Queensland.

The amendments will also specify that a person cannot be granted more than two Work and Holiday visas, and each visa is valid for 12 months stay in Australia.

Human rights implications

The amendments in this Schedule have been assessed against the seven core international human rights treaties and engage the following human rights:

Right to Freedom of Movement

Article 12(1) of the International Covenant on Civil and Political Rights ICCPR sets out:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

To the extent that this Legislative Instrument may engage the right to freedom of movement set out in Article 12 of the International Covenant on Civil and Political Rights (ICCPR), the Department of Immigration and Border Protection notes that the UN Human Rights Committee has recognised in the ICCPR context that "*The Covenant does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory […] Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment*" (CCPR General Comment 15, 11 April 1986). As such, the Australian Government is permitted to create visa criteria which set out particular requirements regarding a visa holder's employment for the purposes of continued permission to enter and remain in Australia without offending the obligations under the ICCPR.

However, these amendments do not oblige Work and Holiday visa holders to live or work in any part of Australia and thus do not limit the rights set out in Article 12 of the ICCPR. The amendments simply set out the eligibility requirements for a second visa should a Work and Holiday visa holder seek to continue to remain in Australia using this particular visa. It is also worth noting that for those visa holders who are seeking to acquire eligibility for a second Work and Holiday visa, the requirement relates only to a period of three months, within a 12 month visa validity.

A first Work and Holiday visa holder is not required to demonstrate that they are completing, or are intending to complete, three months specified Subclass 462 work. That is, they can begin working in a job that counts towards the three months period but are free to leave that job for any reason with no consequences for the status of their first Work and Holiday visa. Whether or not a Work and Holiday visa holder has completed specified work has no effect on their first visa – only for their eligibility for a second Work and Holiday visa.

Right to Work

The amendments made by the Legislative Instrument positively engage and support 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.

The amendments allow for a second Work and Holiday visa to be granted, and as such support the Work and Holiday visa holders to continue to work in Australia for a further 12 month period.

This principle is reflected by the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR), which 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 a Work and Holiday visa holder for the provision of a second Work and 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

The proposed amendments are compatible with human rights because they support the relevant human rights and to the extent that they may also limit human rights, those limitations are reasonable, necessary and proportionate.

Schedule 3 – Information to be provided before identification test

Subregulation 3.20(1) of the Migration Regulations prescribes the information that must be provided by an authorised officer to a person under section 258B(1) of the Migration Act before the authorised officer can carry out an identification test on a person under section 257A of the Migration Act. The power under section 257A is applicable to non-citizens and citizens subject to s257A(3) of the Migration Act. However, regulation 3.20(1)(e), (f), (g) and (h) reference non-citizens only when prescribing the information that must be given.

Similarly, subregulation 3.20(2), which provides that if, for the purposes of section 258B(3) of the Migration Act, a form is to be given, it must be given with enough time to allow the subject of the identification test to read and understand it, also only refers to a 'non-citizen'.

The Regulation changes the references to 'non-citizen' in subregulation 3.20 to 'person'.

Human rights implications

Article 2 of the International Covenant on Civil and Political Rights (ICCPR) provides that a party to the Covenant "*respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*"

Further, Article 26 of the ICCPR provides that:

"*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."*

The proposed amendment expands to whom the prescribed information in subregulation 3.20 must be given, to include citizens who are subject to identity tests and not just non-citizens. The application of the power under section 257A to non-citizens and citizens means that the information prescribed under subregulation 3.20 should be provided to both these categories of persons in order to meet the policy intention of providing safeguards in terms of the information to be given to persons before identification tests are carried out. As such, this amendment seeks to remove the unintended distinction between citizens and non-citizens in sub-regulation 3.20 and therefore means that the protections provided by section 258B of the Migration Act and subregulation 3.20 of the Migration Regulations, apply equally to citizens and non-citizens. As such the proposed amendment supports the rights of equality and non-discrimination mentioned above.

Conclusion

The amendments in this Schedule are compatible with human rights because it supports the human rights discussed above.

Schedule 4 – Member of the family unit – direct family

The measures in Schedule 4 will amend the definition of ***member of the family unit*** in regulation 1.12 of the Migration Regulations. The definition sets out which family members a primary visa applicant is eligible to include in an application for a permanent or certain temporary visa applications.

The amendments made by this Schedule simplify and limit the definition of ***member of the family unit.*** The ***members of the family unit*** definition is limited to the spouse or de facto partner of a primary applicant, and children of the primary applicant or their partner, who are dependent. It will provide an age limit for eligible children of 23 years, or of any age if that child is incapacitated to work.

Prior to these amendments, the definition operated to provide a more generous migration pathway for family members of new entrants to Australia than is available to family members of Australian citizens and existing permanent residents. This resulted from the definition permitting extended family members to be included on a visa application. These family members also often benefitted from differential visa pricing and processing timeframes attributable to the primary applicant's claims for migration.

The amendments will not be applied to refugee, humanitarian and protection visas. The previous definition of ***member of the same family unit*** will continue to apply to these visas.

The amendments also simplify and clarify existing provisions in the definition. These allow a visa applicant's previous status as a ***member of the family unit*** to apply in a specific way for specified visa subclasses. This will continue to ensure family members are not disadvantaged, due to the passage of time. For example, this will allow a child to remain onshore with their parents in certain circumstances where they would otherwise no longer be eligible to be included in their parent's subsequent related visa application, having attained an age over 23 years

Human rights implications

These amendments have been considered against key international treaties, in particular the following Convention articles.

Protection of the family unit

Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR) provides that "no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation".

Article 23(1) of the ICCPR recognises that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State".

To the extent that the proposed amendments could be said to engage these rights, the protection of the family unit under articles 17 and 23 does not amount to a right to enter and remain in Australia where there is no other right to do so. Nor do they give rise to an obligation on a State to take positive steps to facilitate family reunification.

It is estimated that around 5,900 extended family members a year will no longer be eligible to migrate as secondary applicants. However, these family members are open to apply for other visa classes where they meet the eligibility criteria for in their own right. This is consistent with arrangements for relatives of Australian citizens and existing permanent residents.

Rights to equality and non-discrimination

Article 2(1) of the ICCPR provides that "each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Article 26 of the ICCPR recognises that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law".

Whilst, the amendments limit the definition of ***member of the family unit***, Article 2(1) and 26 of the ICCPR are not engaged as the change does not impact direct family members, ie: spouse, de facto partner or minor children. Additionally, the UN Human Rights Committee has recognised in the ICCPR context that "The Covenant does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory […] Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment" (CCPR General Comment 15, 11 April 1986).

Conclusion

The amendments in Schedule 4 are compatible with human rights because, to the extent that it may limit human rights under the ICCPR, those limitations are reasonable, necessary and proportionate, by better aligning migration pathways for relatives of new migrants with those for Australian citizens and existing permanent residents.

ATTACHMENT C

Details of the *Migration Legislation Amendment (2016 Measures No. 4) Regulation 2016*

Section 1 – Name

This section provides that the title of the Regulation is the *Migration Legislation Amendment (2016 Measures No. 4) Regulation 2016* (the Regulation).

Section 2 – Commencement

This section provides for the Regulation to commence on 19 November 2016.

Subsection 2(1) provides that each provision of the instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

A note clarifies that this table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

Subsection 2(2) provides that any information in column 3 of the table is not part of the instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument. Column 3 of the table provides the date/details of the commencement date.

Section 3 – Authority

The purpose of this section is to set out the authority under which the Regulation is made, namely the *Migration Act 1958* (the Migration Act).

Section 4 – Schedules

The purpose of this section is to provide for how the amendments in each Schedule of the Regulation operate.

It provides that each instrument specified in a Schedule to the Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule to the Regulation has effect according to its terms.

Schedule 1 – Visa condition 8107

Migration Regulations 1994

Item 1 – Paragraph 8107(3)(b) of Schedule 8

This item omits "90" and substitutes "60" in paragraph 8107(3)(b) of the *Migration Regulations 1994* (the Migration Regulations).

Paragraph 8107(3)(b) provided that the holder of a Subclass 457 (Temporary Work (Skilled)) visa (Subclass 457 visa) must not cease employment for more than 90 consecutive days.

The purpose of this amendment is to reduce the time period that the holder of a Subclass 457 visa can remain in Australia after ceasing employment from 90 days to 60 days. This amendment is intended to contribute to Subclass 457 visa holders being less vulnerable to informal employment and reduces the period in which they can compete within the Australian labour market for further employment.

The effect of this amendment is that if a primary 457 holder has not found a new sponsor within 60 days of ceasing employment with their current sponsor, they will be in breach of their visa condition and their visa may be cancelled.

Item 2 – Subclause 8107(3B) of Schedule 8

This item repeals subclause 8107(3B) of the Migration Regulations.

This subclause was applicable to visas granted on the basis that the holder met the requirements of subclause 457.223(8) of the Migration Regulations.

The purpose of this amendment is to remove a redundant provision consequential to the repeal of subclause 457.223(8) on 23 March 2013.

This amendment does not affect any current visa holders as there are no outstanding applications assessed against this criterion.

Schedule 2 – Subclass 462 (Work and Holiday) visas

Migration Regulations 1994

Item 1 – Regulation 1.03

This item inserts a new definition into the Regulations which provides that *specified Subclass 462 work* is work of a kind specified by the Minister (see item 2 below), and carried out in an area or areas of Australia specified by the Minister (see item 2 below). The Regulation makes changes to allow certain non-citizens to apply for a second Subclass 462 (Work and Holiday) visa (Work and Holiday visa) if they have carried out *specified Subclass 462 work* for a total period of at least 3 months while on their first Work and Holiday visa. *Specified Subclass 462 work* is intended to be work undertaken in the agriculture, forestry, fisheries, tourism and hospitality industries and the areas in which this work must be undertaken is intended to include all of the Northern Territory, and northern parts of Western Australia and Queensland.

The purpose of these amendments is to give effect to an initiative arising from the Government's White Paper on Developing Northern Australia (the White Paper) and to create an incentive for holders of a Work and Holiday visa to spend time working in northern Australia in the above industries. This will help address the challenges identified by

the White Paper associated with meeting Australia's northern workforce needs, and will assist affected sectors in meeting seasonal peaks.

Item 2 – After Regulation 1.15F

This item allows the Minister to specify in an instrument the kind of work that applicants for a second Work and Holiday visa (second time applicants) must have undertaken, and the area(s) of Australia in which the work must have been carried out, in order for it to be considered *specified Subclass 462 work*.

Item 3 – Subregulation 2.05(4A)

This item is consequential to the changes at item 6 below, which removes the ability of some applicants to apply for up to three Work and Holiday visas. These provisions relate to a now-ceased Memorandum of Understanding (MoU), and no longer operate in practice.

This item makes changes so that the Minister is no longer prohibited from waiving certain visa conditions for holders of a Work and Holiday visa or a Subclass 020 (Bridging B) visa granted to an applicant for a Work and Holiday visa. The relevant conditions are:

- for holders of a Work and Holiday visa, condition 8503 (prevents the holder from being granted a substantive visa, other than a Protection visa, while the holder remains in Australia) and condition 8540 (prevents the holder from being granted a substantive visa, other than a Protection visa or a Work and Holiday visa, while the holder remains in Australia); and
- for holders of a Subclass 020 (Bridging B) visa granted to an applicant for a Work and Holiday visa, condition 8540 (see above).

The effect of this amendment is that the Minister can waive these conditions in compelling and compassionate circumstances as set out in regulation 2.05. It is no longer necessary to apply a prohibition on waiving these conditions.

Item 4 – Paragraph 1224A(3)(b) of Schedule 1

This item amends the paragraph to exclude applicants who have formerly been in Australia as holders of a Work and Holiday visa from certain application validity requirements.

This is because item 6 introduces new application validity requirements which apply to second time applicants for a Work and Holiday visa. See item 6.

Item 5 – Subparagraph 1224A(3)(b)(ii) of Schedule 1

This item makes a technical amendment to remove a redundant reference to the Work and Holiday visa.

Item 6 – Paragraph 1224A(3)(c) of Schedule 1

This item removes the application validity requirements which apply to applicants who have previously held a Work and Holiday visa. These requirements formerly applied to applicants who had access to up to three Work and Holiday visas in accordance with a MoU which has

now ceased. As a result of the MoU ceasing, these validity criteria no longer operate in practice.

This item also introduces new application validity requirements which apply to second time applicants for a Work and Holiday visa. These applicants must declare that they have carried out *specified Subclass 462* work for a total period of at least 3 months as the holder of that visa, must not be in immigration clearance and, if they are in Australia, must hold or have held a substantive visa at any time in the 28 days immediately before they make the application.

Item 7 – Subclause 020.611(2A) of Schedule 2

This item is consequential to the changes at item 6 above, which remove the ability of some applicants to apply for up to three Work and Holiday visas. These provisions relate to a now-ceased MoU, and no longer operate in practice.

This item removes the requirement to mandatorily impose condition 8540 on a Subclass 020 (Bridging B) visa granted to a person who is an applicant for a Work and Holiday visa. Condition 8540 prevents the holder from being granted a substantive visa, other than a Protection visa or a Work and Holiday visa, while the holder remains in Australia.

Item 8 – Division 462.1 of Schedule 2 (note)

This item is a technical amendment which notes that *specified Subclass 462 work* is defined in regulation 1.03.

Item 9 – Paragraph 462.211(a) of Schedule 2

This item amends the paragraph in order to exclude applicants who are, or have formerly been, in Australia as holders of a Work and Holiday visa from the requirement to meet the criteria specified in this clause. This is because the new clause at item 10 applies to second time applicants.

Clauses 462.211 and 462.211A (see item 10 below) require applicants for a first Work and Holiday visa to meet certain criteria that reflect the bilaterally agreed Work and Holiday arrangements set out in MoUs between Australia and individual partner countries. The differing requirements at 462.211 and 462.211A reflect the differing bilaterally agreed eligibility requirements.

Item 10 – Clause 462.211A of Schedule 2

This item:

- Amends clause 462.211A in order to exclude applicants who are, or have formerly been, in Australia as holders of a Work and Holiday visa from the requirement to meet the criteria specified in this clause at the time they apply for the visa. This is because the new clause created by this item (see below) applies to second time applicants. As noted at item 9, clauses 462.211 and 462.211A require applicants for a first Work and Holiday visa to meet certain criteria that reflect the bilaterally agreed

Work and Holiday arrangements set out in MoUs between Australia and individual partner countries.

- Creates a new clause setting out the criteria which second time applicants for a Work and Holiday visa must meet at the time they apply for the visa. Applicants for a second Work and Holiday visa are not covered under MoU arrangements. Unlike first time applicants, these applicants do not need to demonstrate functional English or that the application meets the requirements of a Work and Holiday arrangement between the Australian Government and the government of a foreign country. They must, however, meet age requirements, eligible passport requirements and the new requirements inserted at item 11 below.

Item 11 – At the end of Subdivision 462.21 of Schedule 2

This item creates a requirement that, at the time of application, the Minister must be satisfied that applicants for a second Work and Holiday visa have carried out *specified Subclass 462 work* for a total period of at least 3 months and been remunerated for the work in accordance with Australian legislation and awards. The work must also have been undertaken on or after 19 November 2016.

Any work completed prior to 19 November 2016 would not count towards second Work and Holiday visa eligibility.

Item 12 – Clause 462.221 of Schedule 2

This item amends the clause in order to exclude applicants who are, or have formerly been, in Australia as holders of a Work and Holiday visa from the requirement to meet the criteria specified in this clause at the time of decision. This is because the new clause at item 13 applies to second time applicants.

Item 13 – After clause 462.221 of Schedule 2

This item sets out the requirements that applicants for a second Work and Holiday visa must meet at the time a decision is made on the application. Unlike first time applicants, these second time applicants do not need to demonstrate their educational qualifications, functional English or that the application meets the requirements of a Work and Holiday arrangement between the Australian Government and the government of a foreign country. They must, however, continue to satisfy the Minister that they have undertaken *specified Subclass 462 work*.

Item 14 – Clause 462.512 of Schedule 2

This item amends the clause in order to exclude applicants who are in Australia at the time of grant and hold a Work and Holiday visa at the time of application. This is because the new clause at item 15 applies to these applicants.

Item 15 – At the end of Division 462.5 of Schedule 2

This item provides that a visa granted to an applicant who is in Australia at the time of grant and who held a Work and Holiday visa at the time of application is valid for 12 months after the date that their previous visa would otherwise have ceased.

Schedule 3 – Information to be provided before identification test

Migration Regulations 1994

Items 1 and 2 – Paragraphs 3.20(1)(e), (f), (g) and (h) and subregulation 3.20(2)

These items substitute the term 'non-citizen' in paragraphs 3.20(1)(e), 3.20(1)(f), 3.20(1)(g), 3.20(1)(h) and subregulation 3.20(2) with the term 'person'.

The effect of this amendment is that an authorising officer conducting an identification test must give the information to the person prior to the identification test, regardless of whether the person is a citizen or non-citizen.

The purpose of this amendment is to support section 275A of the Migration Act by reflecting that prior to an identification test, information is to be given to both citizens and non-citizens. Regulation 3.20 of the Migration Regulations sets out the information to be provided to a person under subsection 258B(1) of the Migration Act before an authorised officer carries out an identification test on a person for the purposes of section 257A of the Migration Act.

Schedule 4 – Member of the family unit – direct family

Migration Regulations 1994

Item 1 – Regulation 1.03 (definition of *dependent child*)

This item inserts the words "or step-child" after the words "a child" wherever occurring in the definition of *dependent child*. The purpose of this amendment is to make it clear that for the purposes of the definition, references to a child include a step-child.

Item 2 – Regulation 1.03 (subparagraph (b)(ii) of the definition of *dependent child*)

This item inserts the words "or step-child's" after the words "the child's" in subparagraph (b)(ii) of the definition of *dependent child*, to make it clear that the reference to a child's incapacitation includes a reference to a step-child's incapacitation.

Item 3 – Regulation 1.12

This item repeals regulation 1.12 and substitutes a new regulation 1.12 (Member of the family unit). The purpose of regulation 1.12 is to define the meaning of ***member of the family unit*** as the term is used in the Migration Act and the Migration Regulations. In particular, regulation 1.12 sets out when a family member can be included in a visa application and granted a visa as a ***member of the family unit*** of a principal applicant satisfying the primary criteria**.** New regulation 1.12 makes changes to the meaning of ***member of the family unit*** in respect of most visas, and simplifies and clarifies the special

provisions relating to other visas. The effect and operation of the subregulations in new regulation 1.12 are as follows.

Subregulation 1.12(1) sets out the Scope of regulation 1.12 by providing that it has effect for the purposes of the definition of ***member of the family unit*** in subsection 5(1) of the Migration Act. That definition provides that ***member of the family unit*** has the meaning given by the regulations made for the purposes of the definition. Regulation 1.12 therefore provides the meaning of ***member of the family unit*** when the term is used in both the Migration Act and the Migration Regulations.

Subregulation 1.12(2) sets out a General Rule for the meaning of ***member of the family unit***. This meaning applies in respect of the majority of visa applications and visa holders, but it is subject to the later subregulations in regulation 1.12 relating to specific visas (for further details of these specific meanings, see the discussion on the following subregulations, below). The general rule provides that a person is a member of the family unit of another person (the family head) if the person is:

- a spouse or de facto partner of the family head; or
- a child or step-child of the family head or of the family head's spouse or de facto partner, if the child or step-child is not engaged to be married or has a spouse or de facto partner and
  - is aged under 18; or is aged between 18 and 23 and is dependent on the family head or on the spouse or de facto partner of the family head; or
  - is aged over 23 and is wholly or substantially reliant on the family head, or spouse or de facto partner of the family head, because the person is incapacitated for work due to loss of bodily or mental functions (this provision relies on paragraph 1.05A(b) of the definition of ***dependent***); or
- is a dependent child of a person who meets the above dot point.

The terms "dependent child" and "dependent" are defined in Regulation 1.03 and 1.05A of the Migration Regulations respectively.

The general rule set out in new subregulation 1.12(2) differs from the general definition that was in the repealed regulation 1.12(1). Previously, a dependent child or step-child of any age could be included in the family unit, and a dependent relative of any age who was single and usually resident in the household could also be included. The new general rule restricts the age of dependent children to 23 except in limited circumstances, and does not allow the inclusion of single dependent relatives. This amendment has the effect of bringing the range of family members who can be included in a visa application more into line with family members of Australian citizens and permanent residents. Family members who are now excluded from being a ***member of the family unit*** are required to meet the requirements for a visa in their own right.

Subregulation 1.12(3) lists all classes of protection, refugee and humanitarian visas. For these visas, the meaning of ***member of the family unit*** in subregulation 1.12(4) applies, rather than the general rule in subregulation 1.12(2).

Subregulation 1.12(4) sets out the meaning of ***member of the family unit*** in relation to the protection, refugee and humanitarian visas listed in subregulation 1.12(3). This meaning incorporates the provisions in subregulation 1.12(2) but in addition provides for the inclusion of:

- dependent children of any age (without the 23 years age restriction); and
- single dependent relatives of any age who are usually resident in the household of the family head.

Subregulation 1.05A(2) of the Migration Regulations sets out when a person is dependent on another for the purposes of protection, refugee and humanitarian visas.

The effect of new subregulation 1.12(4) is to continue the definition in previous subregulation 1.12(1) for the purposes of protection, refugee and humanitarian visas. Due to the special nature of those visas, no changes have been made regarding family members who may be included in the application.

Subregulation 1.12(5) makes specific provision for Members of the family unit of applicant for a new visa on the basis of earlier status as member of the family unit. The ***new visas*** to which the subregulation applies are listed in column 1 of the table after paragraph 1.12(5)(b). A person may be a ***member of the family unit*** for the purposes of an application for a ***new visa*** if they are included in an application by another person seeking to satisfy the primary criteria for one of those visas, and the person either:

- meets the requirements of subregulation 1.12(2); or

- holds a visa of a kind listed in column 2 of the table (an ***old visa***) that was granted to the person on the basis that they were a member of the family unit of a primary applicant for the same kind of visa.

Subregulation 1.12(5) is intended to simplify and consolidate the special provisions that were previously in subregulations 1.12(3), (4), (5), (5A), (8), (10), (11) and (12) of repealed regulation 1.12. The effect of the subregulation is that when a person holds an ***old visa*** granted on the basis that the person was a ***member of the family unit*** of a primary applicant, the person will continue to be a ***member of the family unit*** for the purposes of an application for a corresponding ***new visa*** if included in a primary applicant's application for the relevant visa, even though the person may no longer meet the requirements of subregulation 1.12(2). For instance, if the person is a minor child of the primary applicant but by the time of the application for the ***new visa*** has passed 23 years of age (and other provisions do not apply), the family can remain together onshore as a family unit.

The special provisions in subregulation 1.12(5) recognise that for some visas an ***old visa*** may be held over a lengthy period of time but the intention is that once a person satisfies the requirements as a ***member of the family unit***, the person may continue their stay in Australia as a ***member of the family unit***.

Subregulation 1.12(6) deals with applications for, or holders of, Student (Temporary)(Class TU) visas. For the purposes of student visas, a person is a ***member of the family unit*** if the person is a spouse or de facto partner of the primary applicant or holder, or is an unmarried dependent child aged under 18 of a primary applicant or student visa holder, or their spouse or de facto partner. Subregulation 1.12(6) repeats provisions that were previously in subregulations 1.12(5) and (5A) of repealed regulation 1.12, continuing specific provisions in respect of student visas which impose an age limit of 18 years on dependent children who may be included as secondary applicants.

Subregulation 1.12(7) makes special provisions in relation to Distinguished talent visas when a primary applicant has not turned 18 years. In those cases, the application may include as ***members of the family unit*** a parent of the applicant, and any person who would meet the requirements of subregulation 1.12(2) as a ***member of the family unit*** in relation to that parent. Only one parent may be included in the application in accordance with subregulation 1.12(7), but the other parent and any siblings of the primary applicant may then be included in the application as ***members of the family unit*** of that parent provided they meet subregulation 1.12(2).

Subregulation 1.12(7) continues and simplifies the provisions of previous subregulations 1.12(6) and (7) of repealed regulation 1.12. Provision is required for the inclusion of a parent as a ***member of the family unit*** in an application for a distinguished talent visa where the primary applicant is under 18 years because in some cases primary applicants for these visas may be very young, for instance in the case of a child prodigy.

Item 4 – Regulation 2.07AF (note)

The note in regulation 2.07AF refers to the specific meaning of ***member of the family unit*** in relation to applications for student visas. This amendment is consequential to the definition of ***member of the family unit*** for applications for student visas being moved from subregulation 1.12(2) of repealed regulation 1.12 to new subregulation 1.12(6), inserted by item 3 of this Schedule (see above).

Item 5 – Regulation 2.07AP (example**)**

Regulation 2.07AP permits an application for a Maritime Crew (Temporary)(Class ZM) visa (a Maritime Crew visa) to be made on behalf of an applicant. This amendment is consequential to references to "a spouse, de facto partner or dependent child" in respect of an application for a Maritime Crew visa being replaced with "member of the family unit" by item 13 of this Schedule (see below).

Item 6 – Subparagraph 3.01(2)(e)(ii)

The effect of subparagraph 3.01(2)(e)(ii) is to exempt family members of the crews of non-military ships from having to provide a passenger card on arrival in Australia. These persons hold a Maritime Crew visa and are required to provide the evidence of identity and information prescribed in regulation 3.03AA. This amendment is consequential to the amendments made by items of this Schedule which replace references to "a spouse, de facto partner or dependent child" of a member of a crew of a non-military ship with a reference to "a member of the family unit" in respect of applications for and grant of a Maritime Crew visa. See items 13, 24, and subsequent items, below.

Items 7, 8, 10 and 11 – Subregulation 3.03AA(2) (table)

Regulation 3.03AA deals with the evidence of identity and other information that must be provided by the holders of Maritime Crew visas on arrival in Australia. The table in subregulation 3.03AA(2) sets out the information that a clearance officer may require the holder of a Maritime Crew visa to provide in a range of different circumstances. Previously, a number of items on this table referred to a spouse, de facto partner or dependent child of a member of the crew of a non-military ship. These items amend those references to refer instead to "a member of the family unit". These amendments are consequential to the

amendments made by items 13, 24 and subsequent items of this Schedule, below, which have the effect that a Maritime Crew visa is now applied for and granted to a member of the family unit of a primary applicant, rather than a spouse, de facto partner or dependent child.

Item 9 – Subregulation 3.03AA(2) (table item 201, column headed "Information")

This item makes a minor amendment for grammatical consistency.

Item 12 – Paragraphs 3.03AA(3)(b) and (c)

The purpose of subregulation 3.03AA(3) is to confirm that holders of a Maritime Crew visa are not required to provide a passenger card on arrival in Australia. The amendment made by this item is consequential to amendments made by items 13, 24 and subsequent items of this Schedule, below, which have the effect that a Maritime Crew visa will now be applied for and granted to a member of the family unit of the crew of a non-military ship rather than, as previously, to a spouse, de facto partner or dependent child of a member of the crew of a non-military ship.

Item 13 – Paragraph 1227(3)(e) of Schedule 1

Item 1227 of Schedule 1 sets out the criteria to be met by an applicant for a Maritime Crew (Temporary)(Class ZM) visa. Paragraph 1227(3)(e) previously provided that an applicant seeking to satisfy the secondary criteria must claim to be spouse, de facto partner or a dependent child of the a holder of, or primary applicant for a Maritime Crew visa. A dependent relative was not intended to be eligible for the grant of a Maritime Crew visa and therefore paragraph 1227(3)(e) did not refer to a "member of the family unit" as prior to these amendments, that term was defined to include a dependent relative. Item 3 of this Schedule, above, amends the definition of ***member of the family unit*** so that the term now does not include a dependent relative (see the notes on new subregulation 1.12(2) above). Following that amendment, the term ***member of the family unit*** now covers the family members intended to be eligible for a Maritime Crew visa, with a limit of 23 years for dependent children (except in limited circumstances), and therefore it is appropriate to replace references to "a spouse, de facto partner or dependent child" with "a member of the family unit".

Item 14 – Division 124.3 of Schedule 2 (note 2)

The effect of this amendment is to change previous references to subregulations 1.12(1) and (6) in note 2 in Division 124.3 (Secondary criteria for a Subclass 124 (Distinguished Talent) visa) of Schedule 2, to references to subregulations 1.12(2) and (7) respectively. These changes are consequential to the renumbering of the subregulations in new regulation 1.12 that are relevant to the meaning of ***member of the family unit*** in respect of applications for Distinguished talent visas. New regulation 1.12 is inserted by item 3 of this Schedule, above.

Item 15 – Subparagraph 457.511(d)(ii) of Schedule 2

This amendment changes a previous reference to subregulation 1.12(10) to a reference to subregulation 1.12(5). This change is required because the special circumstances under which the holder of a Subclass 457 (Temporary Work (Skilled)) will continue to be a member of the family unit for the purposes of an application for a further Subclass 457 visa are now set out in new subregulation 1.12(5) inserted by item 3 of this Schedule, above.

Item 16 – Subparagraph 457.511(d)(iv) of Schedule 2

This item amends a special provision under which a Subclass 457 visa granted to certain members of the family unit of another applicant will allow the holder to remain in Australia until the end of the day before that visa holder's 23rd birthday, rather than 21st birthday as previously. This amendment extends the period of these visas to bring them into line with the amended definition of ***member of the family unit*** in new subregulation 1.12(2), inserted by item 3 of this Schedule above, which allows a dependent child to be included in an applicant's family unit until the age of 23 years in most circumstances.

Item 17 – Division 858.3 of Schedule 2 (note 2)

The effect of this amendment is to change previous references to subregulations 1.12(1) and (6) in note 2 in Division 858.3 (Secondary criteria for a Subclass 858 (Distinguished Talent) visa) of Schedule 2, to references to subregulations 1.12(2) and (7) respectively. These changes are consequential to the renumbering of the subregulations in new regulation 1.12 that are relevant to the meaning of ***member of the family unit*** in respect of applications for Distinguished talent visas. New regulation 1.12 is inserted by item 3 of this Schedule, above.

Items 18, 19, 20 and 21 – Division 890.1, clause 891.111, Division 892.1 and clause 893.111 of Schedule 2 (notes)

These items amend notes in business skills visa subclasses to change a previous reference to subregulation 1.12(1) to a reference to subregulation 1.12(2). The notes explain the meaning of ***member of the family unit*** for the purposes of the relevant subclasses. This change is required because the general rule for the meaning of ***member of the family unit*** is now located in subregulation 1.12(2), following the amendment made by item 3 of this Schedule, above, which inserted a new regulation 1.12.

Items 22 and 23 – Divisions 988.2 and 988.3 of Schedule 2 (notes)

These items amend the notes in Divisions 988.2 and 988.3 to change references to the spouse, de facto partner or dependent child to "a member of the family unit". This amendment is made because the definition of ***member of the family unit***, as amended by item 3 of this Schedule, above, now aligns with the intended eligibility for secondary applicants for a Subclass 988 visa. For further details, please see the notes on item 24 of this Schedule, below.

Item 24 – Clause 988.321 of Schedule 2

This item amends clause 988.321, which must be satisfied by an applicant seeking to meet the secondary criteria for the grant of a Maritime Crew visa, to change the references to the spouse, de facto partner or dependent child of a holder of a Maritime Crew visa who has satisfied the primary criteria in previous clause 988.321, to "a member of the family unit". Previously the clause did not refer to a ***member of the family unit*** as eligibility for a Maritime Crew visa as a family member was not intended to extend to dependent relatives. New subregulation 1.12(2), inserted by item 3 of this Schedule, above, however, has the effect of removing dependent relatives from the definition of ***member of the family unit*** and it is therefore now appropriate to use that term in clause 988.321 (and elsewhere in relation to a Maritime Crew visa) as it now aligns with the intended eligibility for a Maritime Crew visa on the basis of satisfying the secondary criteria.

Items 25, 26, 27, 28, 29, 30, 31 and 32 – Clause 988.512 of Schedule 2 (table – various provisions)

These items amend a number of provisions in the table in clause 988.512 to change references to "spouse, de facto partner or dependent child" to "a member of the family unit". This amendment is made because the definition of ***member of the family unit***, as amended by item 3 of this Schedule, above, now aligns with the intended eligibility for secondary applicants for a Maritime Crew visa. For further details, please see the notes on item 24 of this Schedule, above.

Schedule 5 – Application and transitional provisions

Migration Regulations 1994

Item 1 – In the appropriate position in Schedule 13

The purpose of this item is to clarify to whom the amendments in the Schedule apply.

This item amends Schedule 13 to the Migration Regulations to insert Part 57, titled 'Amendments made by Migration Legislation Amendment (2016 Measures No. 4) Regulation 2016'. Part 57 sets out the transitional and applications provisions for the amendments made to the Migration Regulations by the Regulation.

Clause 5701, titled 'Operation of Schedule 1', provides that the amendments of the Migration Regulations made by Schedule 1 to the Regulation apply to visas granted on or after 19 November 2016.

This amendment applies to applications made, but not granted, before 19 November 2016. This is appropriate because the amendment relates to the protection of Subclass 457 visa holders from labour exploitation as well as the integrity of the temporary work program.

The amendments made by Schedule 1 relate to condition 8107, which is applied at the time of visa grant. As these amendments apply to all relevant applications granted on or after the commencement of the Regulation, there is no disadvantage to applicants at the time of grant. Further, section 504 of the Migration Act authorises the making of regulations that are necessary or convenient to carry out or give effect to the objectives of the Migration Act, which include regulating the entry and stay of non-citizens in Australia in the national interest. Accordingly, these amendments apply to all relevant applications decided on or after the commencement of the Regulation.

Clause 5702, titled "Operation of Schedule 2", clarifies that the amendments apply in relation to an application for a visa made on or after 19 November 2016.

Clause 5703, titled "Operation of Schedule 3", provides that the amendments to the Migration Regulations made by Schedule 3 to the Regulation apply to the provision of information in connection with an identification test carried out on or after 19 November 2016.

Subclause 5704(1) provides that the amendments made by Schedule 4 apply in relation to an application for a visa made on or after 19 November 2016, or visa granted as a result of such an application. The effect of this provision is that the amended definition of ***member of the family unit*** will apply in respect of applications for visas made on or after 19 November 2016 and visas granted as a result of such applications. This transitional provision clarifies that where new subregulation 1.12(5) refers to an "old visa" granted on the basis that the person was a ***member of the family unit*** of a person who met the primary criteria, the subregulation refers to the previous definition of ***member of the family unit*** if the old visa was applied for prior to 19 November 2016. This is because the amended definition applies only in respect of visas granted on the basis of an application made on or after 19 November 2016.

Subclause 5704(2) makes it clear that despite the amendment made by item 6 of Schedule 4 to subparagraph 3.01(2)(e)(ii) of the Migration Regulations, regulation 3.01 (as amended) does not apply to a person who enters Australia as the holder of a Subclass 988 (Maritime Crew) visa that was granted on the basis that the person was a dependent child, as a result of an application made before 19 November 2016. Regulation 3.01 is intended to operate to exempt holders of Subclass 988 visas from having to provide a passenger card on arrival in Australia. This transitional provision is necessary to make it clear that that the exemption continues to apply to a holder of a Subclass 988 visa granted on the basis of being a dependent child and who arrives in Australia on or after 19 November 2016, when, due to the amendment, subparagraph 3.01(2)(e)(ii) will refer to ***member of the family unit*** and the visa holder may no longer be able to meet the amended definition of ***member of the family unit*** if the visa holder is a dependent child aged over 23 years.

Subclause 5704(3) provides that despite subclause 5704(1), the amendment made to subparagraph 457.511(d)(iv) by item 16 of Schedule 4 applies to a Subclass 457 visa granted on or after 19 November 2016, if the visa was applied for before 19 November 2016 on the basis that the applicant was a member of the family unit in the circumstances described in subregulation 1.12(10) as in force prior to 19 November 2016. The effect of this transitional provision is to allow these applicants who applied prior to 19 November 2016, but where the application was not granted until after that date, to benefit from the relevant amendment which extends the expiry date of the visa from the day before the applicant's 21st birthday to the day before the applicant's 23rd birthday. This subclause also provides that that amendment also applies to a Subclass 457 visa granted as a result of an application made on or after 19 November 2016.

ATTACHMENT D

Short-form Regulation Impact Statement

Name of department/agency: Department of Immigration and Border Protection (DIBP)

OBPR reference number: **19212**

Name of proposal: Establishing a second Work and Holiday (subclass 462) visa initiative for northern Australia to support tourism and agriculture.

Summary of the proposed policy and any options considered:

Work and Holiday (subclass 462) visa holders who undertake three months (88 days) work in the tourism or agriculture in northern Australia will acquire eligibility for a second Work and Holiday visa.

This will create an incentive encouraging Work and Holiday visa holders to perform tourism or agriculture work in northern Australia during their stay, thereby assisting the industry with its short term seasonal labour needs and also encouraging increased tourism visitation to the region.

What are the regulatory impacts associated with this proposal? Explain

The Department expects the proposal to result in a relatively minor increase of regulatory burden in the form of an increased number of Work and Holiday (subclass 462) visa applications from participants.

What are the regulatory costs associated with this proposal? Explain and quantify.

As there is expected to be an increase in the total number of Work and Holiday (subclass 462) visa applications as a result of the proposal, there will be a notional increase in regulatory cost associated with the time taken to complete these additional visa applications.

Based on participation rates in the existing second Working Holiday (subclass 417) visa initiative, which is similar in nature to the Work and Holiday proposal, it is expected that around one in every five Work and Holiday participants will acquire a second Work and Holiday visa. As there were 10,214 Work and Holiday visas were granted in 2013-14, this would translate to approximately 2,000 new Work and Holiday visa applications as a direct result of the proposal.

We therefore calculate the regulatory costs of this proposal to be $29,000 per annum. This costing has been assessed and agreed by the Office of Best Practice Regulation (OBPR) under the Regulatory Burden Management Framework, and is quantified in the regulatory burden and cost offset estimate table below.

Regulatory burden and cost offset estimate table

Average annual regulatory costs (from business as usual)				
Change in costs ($ million)	Business	Community organisations	Individuals	Total change in cost
Total, by sector	$0	$0	$0.029	$0.029
Cost offset ($ million)	Business	Community organisations	Individuals	Total, by source
Agency	$0	$0	($0.679)	($0.679)
Are all new costs offset? ☒ Yes, costs are offset □ No, costs are not offset □ Deregulatory—no offsets required				
Total ($0.029 – $0.679) ($ million) = ($0.65)				

What are the offsets for the regulatory costs associated with this proposal?

The department proposes to use the reduction in regulatory burden of $679,000 per annum from the continuing expansion of online lodgement for visitor visas in China and India (OBPR ID 19031) to fully offset this regulatory cost.