

## **EXPLANATORY STATEMENT**

### *Migration Act 1958*

#### *Migration Amendment (Pacific Labour Scheme) Regulations 2018*

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 relevantly provides that the Governor-General may make regulations prescribing matters required or permitted 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 *Migration Amendment (Pacific Labour Scheme) Regulations 2018* (the Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to:

- Implement initiatives promoting Australia’s international policy in relation to employment opportunities and pathways for Pacific Island Countries (PICs) by making changes to Subclass 403 Temporary Work (International Relations) visa (‘Subclass 403’) in order to:
  - introduce a new Pacific Labour Scheme (PLS) stream;
  - provide for applicants, subject to conditions, to be granted a multi-year, multi-entry visa in the Seasonal Workers Program (SWP) stream; and
  - strengthen integrity measures in the PLS and SWP streams by introducing a new condition that allows the visa holder, under limited circumstances, to change their sponsor.
- Update the settings relating to when visas are in effect for all streams in the Subclass 403 to provide administrative flexibility for visa processing officers (VPOs), and greater certainty for visa holders in relation to their permitted period of stay in Australia.

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 Regulations are compatible with human rights. A copy of the Statement is at Attachment B.

Details of the Regulations are set out in Attachment C.

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments made by the Regulations. No Regulation Impact Statement is required. The OBPR consultation reference is 21749.

The Department, as part of an inter-departmental program initiative, has consulted extensively with the Department of Foreign Affairs and Trade and the Department of Jobs and Small Business.

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

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

The Regulations commence on 1 July 2018. The Regulations apply only to new applications. They do not apply to applications that have already been made, but not yet decided, at the time the Regulations commence.

## **AUTHORISING PROVISIONS**

Subsection 504(1) of the Migration Act relevantly provides 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, the following provisions of the Migration Act may apply:

- Subsection 29(3) relevantly provides that the Minister may grant a visa to travel to and enter Australia, and to remain in Australia;
- Subsection 31(3) provides that the regulations may prescribe criteria for a visa or visas of a specified class;
- Subsection 31(4) 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 41(1) provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions;
- Subsection 41(2) provides without limiting subsection (1), the regulations may provide that a visa, or visas of a specified class, are subject to a condition that, despite anything else in this Act, the holder of the visa will not, after entering Australia, be entitled to be granted a substantive visa (other than a protection visa or a temporary visa of a specified kind) while he or she remains in Australia or a condition in relation to work restrictions; and
- Subsection 68(1) provides that a visa has effect as soon as it is granted, subject to subsection 68(2) which provides that a visa may provide that it comes into effect on a specified day.

**Statement of Compatibility with Human Rights**

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

***Migration Amendment (Pacific Labour Scheme) Regulations 2018***

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*.

**Overview of the Legislative Instrument**

This amendment supports the whole-of-Government ‘stepping up Australia’s engagement in the Pacific’ initiative through changes to Subclass 403 Temporary Work (International Relations) visa (‘Subclass 403’) to:

- Introduce a new ‘Pacific Labour Scheme’ (PLS) stream that allows for low and semi-skilled workers from Pacific Island Countries (PICs) to undertake non-seasonal work in rural and regional Australia for up to three years.
  - The Pacific Labour Scheme aims to foster economic development of/in PICs and will be supported by a ‘Pacific Labour Facility’ (PLF), managed by the Department of Foreign Affairs and Trade (DFAT). Working with DFAT and the partner government, the PLF will assess the suitability of employers and workers to participate in the program, provide pastoral care to workers, and provide pre-arrival and post-departure support.
- Provide for new visa conditions in support of the ‘Seasonal Worker Program’ (SWP) stream allowing multi-year, multi-entry visas.
- Change the Subclass 403’s ‘when visa is in effect’ clause so that a visa’s stay period commences upon the visa holder’s arrival in Australia, rather than at the time of grant. This change will provide visa holders with additional time to make travel arrangements and prepare for their stay in Australia.
- Introduce a new visa condition for the SWP and PLS scheme that restricts a worker to only work for the sponsor in relation to which the visa was granted, *unless* a change of sponsor has been approved by the Department of Home Affairs (the Department). The new visa condition will allow for a discretion to address situations of worker exploitation or where employment arrangements are otherwise compromised.

While the measures introduced by these changes have some human rights implications, the changes must be assessed in context of the number of complementary initiatives being implemented by the PLF. These include:

- Ensuring that job opportunities for Australian citizens and permanent residents are not adversely impacted, through labour-market testing requirements before any employer is able to sponsor workers under either the SWP or the PLS.
- Reiterating that Australian workplace laws apply to all workers participating in the SWP or PLS, and supporting the Fair Work Ombudsman (FWO) in providing compliance, education and outreach activities in industries utilising the PLS, to ensure

participants and employer sponsors are aware of their workplace rights and obligations. This includes access to paid leave arrangements, fair wages and reasonable limitation of working hours.

- Ensuring affordable accommodation and appropriate living arrangements for PLS workers.
- Facilitating the introduction of workers to their local communities, including local diaspora communities.
- Providing education on financial literacy, including banking services, remittance transfers, tax returns and access to superannuation benefits.
- Providing pastoral care services through the PLF with an aim to support the mental health of workers while in Australia and post-departure.
- In the event of serious ill health, accident or death of a worker participating in the PLS or SWP, the PLF is responsible for resolving the matter in partnership with the Australian government, the Australian employer, relevant partner government, emergency services and if applicable, ComCover.
- Proactively pursuing women's economic empowerment and gender equality through careful consideration of the gender dimensions of women and men as participants or potential participants in labour mobility; focussing on the consequences for women and men left behind when others in families and communities participate in labour mobility schemes; and disaggregating the development impacts for women and men.
- Supporting efforts to increase access by people with disability to the benefits of labour mobility both as participating workers and as family members of workers. In-country disabled people's organisations, both in Australia and the PICs, will be core partners in any work on inclusion of persons with disability.

## **Human rights implications**

This amendment, and the programs supporting it, engages the following rights:

- Right to work and rights at work
- Right to health
- Rights of equality and non-discrimination

### Right to work and rights at work

This amendment engages Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which states that:

*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular:*

*(a) Remuneration which provides all workers, as a minimum, with:*

*(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*

*(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;*

*(b) Safe and healthy working conditions;*

*(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*

*(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.*

This amendment positively affects the right to work and rights at work of PLS and SWP visa holders by implementing measures to combat worker exploitation by introducing a condition that allows workers to change sponsors where approved by the Department. This will allow workers in situations of worker exploitation to obtain the Department's approval to change sponsors without invalidating their visa. Workers in circumstances of exploitation will also be able to apply for a further PLS stream visa onshore where a change in sponsor results in a longer period of employment.

These measures will allow a meaningful opportunity for workers to escape situations of exploitation without losing their visas, and aim to reduce the risks associated with low-skilled workers being tied to a single sponsor for a three year period. Where a worker has been transferred away from a sponsor due to worker exploitation, the sponsor would be referred to the FWO, and the relevant agencies would seek to prevent that sponsor from continuing to participate in the program.

### Right to health

This amendment interacts with the Right to health of PLS workers, particularly through Article 12(1) of the ICESCR, which states:

*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

The policy settings of the PLS have been designed to positively interact with the Right to health, and ensure that workers have access to a range of health services while in Australia without being a threat/major cost to public health in Australia or a danger to the Australian community.

As a part of the visa application process, workers are required to:

- Satisfy Public Interest Criterion (PIC) 4005. This generally means that the worker will be required to verify that they are free from tuberculosis, and are free from a disease or condition that is a threat/major cost to public health in Australia or a danger to the Australian community. These requirements vary depending on the applicant's country of residence and the type of work they will be performing in Australia.
- Demonstrate that they have adequate health insurance that provides an equivalent level of cover to Australia's Medicare system. One of the conditions related to the grant of the visa will be that workers maintain this health insurance for their period of stay in Australia.

## Rights of equality and non-discrimination

This amendment engages the Rights of equality and non-discrimination, primarily Articles 2(1) and 26 of the International Covenant on Civil and Political Rights (ICCPR).

Article 2(1) of the ICCPR states 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 states 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.*

Participation in the PLS, as established through this amendment, is limited by DFAT's policy to citizens of specific countries (starting with Kiribati, Nauru and Tuvalu), and to people of a certain age (generally 21-45, with some exemptions for individuals aged 18-20).

It is expected that the countries eligible for the programme will be expanded to additional PICs based on need and impact. In extending the program, DFAT will consider countries':

- geographic isolation from global markets;
- size of the economies;
- size and disbursement of country's population;
- levels of public and private investment;
- trade opportunities;
- unemployment levels; and
- occurrences of natural disasters and economic shocks, which hinder economic development.

The restriction of the PLS by country and age is a part of the Australian Government's legitimate objective of improving the economic resilience of the Pacific region by increasing opportunities for labour mobility to satisfy unmet demand in our labour market, investing in skills, and helping countries to capture growth potential in sectors such as tourism.

These restrictions will be included as a part of material promoting the PLS. It is expected that neither of these restrictions limit the rights to equality and non-discrimination of individuals of other countries/ages, who are able to enter Australia through alternative visa programs.

In light of the above, to the extent that these amendments limit the right to equality and non-discrimination, that limitation is necessary, reasonable and proportionate to the aim of improving economic resilience in the Pacific region through providing employment

opportunities, creating incentives for education and skills development, increasing income levels and remittances and promoting economic stability.

### **Conclusion**

The Disallowable Legislative Instrument is compatible with human rights because it promotes the protection of human rights and, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**The Hon Peter Dutton MP**  
**Minister for Home Affairs**  
**Minister for Immigration and Border Protection**



## ATTACHMENT C

### Details of the *Migration Amendment (Pacific Labour Scheme) Regulations 2018*

#### Section 1 – Name

This section provides that the title of the Regulations is the *Migration Amendment (Pacific Labour Scheme) Regulations 2018* (the Regulations).

#### Section 2 – Commencement

This section is the formal enabling provision for the instrument (that is, for the whole of the Regulations), providing that the instrument commences on 1 July 2018.

#### Section 3 – Authority

This section provides that the Regulations are made under the *Migration Act 1958* (the Migration Act).

#### Section 4 – Schedule

The purpose of this section is to provide for how the amendments in these Regulations operate.

## **Schedule 1 - Amendments**

### ***Migration Regulations 1994***

#### Overview

Subclass 403 Temporary Work (International Relations) visa ('Subclass 403') is designed to facilitate the entry of persons to work or undertake an activity that promotes Australia's international relations policy.

To promote Australia's relations with neighbouring Pacific island countries, these amendments expand and support initiatives to increase labour mobility pathways within Subclass 403 by introducing:

- a new Pacific Labour Scheme ('Pacific Labour') stream to provide a temporary visa pathway for participants in the scheme to work in Australia for up to three years;
- allow participants in the Seasonal Worker Program ('Seasonal Workers') stream, subject to conditions, to be granted a multi-year, multi-entry visa, for up to three years; and
- amend the 'visa in effect' settings to benefit Subclass 403 visa holders by providing them more time to prepare for their entry and stay in Australia, while not impacting on the visa holder's granted period of stay.

These amendments also strengthen integrity measures in the Pacific Labour and the Seasonal Workers streams by introducing a new condition that provides the visa holder must only work for the sponsor in relation to which the visa was granted, though allowing the visa holder, under limited circumstances and approved in writing by the Secretary, to change their sponsor. The purpose of providing visa holders in these streams with the capacity to change their sponsor is to address situations of worker exploitation, or where employee/employer relationships have become untenable.

#### The Pacific Labour Scheme

This scheme is an initiative implemented by the Department of Foreign Affairs and Trade ('DFAT') and the Department ('the Department'). DFAT is responsible for the development and ongoing management of the Scheme in negotiation bilateral agreements with participating Pacific island countries, determining programme parameters and targeted industries (for example, agriculture, tourism, hospitality and aged care).

DFAT established the Pacific Labour Facility ('PLF') to support the administration of the scheme and provide targeted support for participants in the Seasonal Workers program. The PLF is the principal agency promoting the scheme within participating Pacific island countries, and facilitates the recruitment of prospective employees and sponsoring Australian employers.

The PLF assesses prospective employees' skills, qualifications and general eligibility for the scheme, and matches the prospective employee with an appropriate and participating Australian employer, who is or is willing, for the purposes of the scheme, to be a 'temporary activities sponsor' approved by the Department. The PLF is responsible for ensuring written agreements to employ and sponsor the employee are made, and securing work agreements for a period of up to three years.

When a participating employee and sponsoring employer are ‘matched’ by the PLF, all relevant information will be provided to DFAT for review and endorsement.

In order to lawfully enter and work in Australia, participating employees must apply for a Subclass 403 visa in the Pacific Labour stream and must specify in their application a sponsor who is or has an active application to be an approved temporary activities sponsor. The applicant must satisfy the primary criteria in the Pacific Labour stream for the grant of the visa as introduced by these Regulations.

A record of endorsed prospective employees and sponsoring employers who have been ‘matched’ by the PLF and officially endorsed by DFAT will be available to the Department. This record of endorsed participants in the scheme will be an assurance that appropriate qualification, skill, general eligibility checks, and agreements have been undertaken by DFAT.

#### Item 1 – After paragraph 2.56(b)

Regulation 2.56 lists visas to which the sponsorship regime in Division 3A of Part 2 of the Migration Act applies. This item adds Subclass 403 visa in the Pacific Labour stream to this list. Subclass 403 visa in the Seasonal Workers stream is already prescribed under regulation 2.56.

#### Item 2 – Paragraph 1234(3)(b) of Schedule 1

Paragraph 1234(3)(b) provides that a person who applies for a Subclass 403 visa may be in or outside Australia, but not in immigration clearance at the time of application. However, the provision is subject to paragraph (c), which provides that an applicant seeking to satisfy the primary criteria for a Subclass 403 visa in the Seasonal Workers stream must be outside Australia at the time of application.

This item provides that paragraph (b) is also subject to new paragraph 1234(3)(caa), which applies to applicants seeking to satisfy the criteria for a Subclass 403 in the Pacific Labour stream if they do not hold a Subclass 403 visa in the Pacific Labour stream when the application is made. Paragraph 1234(3)(caa) is inserted by item 4 below.

#### Item 3 – Paragraph 1234(3)(ca) of Schedule 1

This item removes a reference to repealed subitem 1234(3B), which catered for a small caseload of historical Seasonal Workers applications made on or before 18 May 2017, where an applicant could have a special program sponsor rather than a temporary activities sponsor. Subitem (3B) was no longer required and served no practical purpose, as the relevant caseload of applications have been processed.

The effect of this amendment is that an application for a Subclass 403 visa in the Seasonal Workers stream must specify a person who has agreed to sponsor the applicant and that person is an approved temporary activities sponsor or has applied for approval, but the application has not been decided.

#### Item 4 – After paragraph 1234(3)(ca) of Schedule 1

This item inserts paragraph 1234(3)(caa) for the purpose of ensuring that an applicant seeking to satisfy the criteria for Subclass 403 visa in the Pacific Labour stream, and who does not hold a valid Subclass 403 visa in that stream when the application is made, must be located outside Australia at the time of application. In effect, applicants in the Pacific Labour stream who hold a Subclass 403 visa in that stream when the application is made, are permitted to be in Australia at the time of application. This addresses circumstances where a visa holder needs an additional visa in the Pacific Labour stream to remain in Australia beyond the life of their existing visa due to a change in their period of employment.

This item further inserts paragraph 1234(3)(cab) to provide that an applicant seeking to satisfy the primary criteria in the Pacific Labour stream must meet additional requirements set out in subitem (3C) introduced by these Regulations. The requirements in subitem (3C) are described below at item 6.

#### Item 5 – Subitem 1234(3) of Schedule 1 (note)

This amendment updates the listed streams in the note for this subitem to include the new Pacific Labour stream. The note informs the reader that an applicant for a Subclass 403 visa cannot meet the secondary criteria for the grant of the visa if the primary applicant holds a Subclass 403 visa in the Seasonal Workers stream, the Pacific Labour stream, and the Domestic Worker (Diplomatic or Consular) stream. An applicant cannot satisfy the secondary criteria in these streams as no secondary criteria are prescribed.

#### Item 6 – Subitem 1234(3B) of Schedule 1

This item is made for the purpose of paragraph 1234(3)(cab), inserted by item 4 of these Regulations. This item ensures that an applicant for a Subclass 403 visa in the Pacific Labour stream:

- is endorsed by DFAT to participate in the Pacific Labour Scheme; and
- specifies in their application a person (that is, an employer) who:
  - has agreed to be the applicant’s sponsor, and either is an approved temporary activities sponsor, or has made an application for approval as a temporary activities sponsor which has not yet been decided; and
  - has been endorsed by DFAT to be the sponsor for the applicant.

A record of endorsed pacific island workers and sponsoring employers that have been ‘matched’ together by the PLF and endorsed by DFAT for the purposes of participation in the scheme, will be available to the Department’s visa processing officers for verification.

For the purposes of lodging a valid visa application, the applicant and the person who has agreed to be the applicant’s sponsor, must be endorsed by DFAT.

#### Item 7 – Subdivision 403.2 of Schedule 2 (note)

The note in Division 403.2 provides that an applicant must satisfy the criteria in Subdivision 403.21, which are the common criteria to be satisfied for all streams in Subclass 403. The note also provides that an applicant must, in addition, satisfy the criteria which relate to a particular stream.

This item is a consequential amendment to update the note so that it refers to Subdivision 403.27, which contains the new criteria for the Pacific Labour stream, as one of the streams of the Subclass 403 visa.

#### Item 8 – Paragraph 403.261(b) of Schedule 2

This is a consequential amendment resulting from the changes made by item 3 to these Regulations. This amendment removes a redundant reference to the historical cohort of applications in the Seasonal Workers stream made on or before 18 May 2017 where the specified sponsor is a special program sponsor.

This amendment effectively means that all sponsors in the Seasonal Workers stream must be an approved temporary activities sponsor at the time of decision for the grant of the visa in the stream.

#### Item 9 – After Subdivision 403.26 of Schedule 2

This item inserts the primary criteria for the Pacific Labour stream. The criteria are intended to ensure that an applicant continues to be endorsed by DFAT as an active participant in the scheme at the time of decision, and that the applicant's sponsor:

- has agreed to sponsor the applicant;
- is a temporary activities sponsor approved by the Department; and
- is endorsed by DFAT to sponsor the applicant.

The endorsement of the applicant and the sponsor by DFAT reflects their leading role in framing the policy settings and in administering the scheme. The endorsement of both the applicant and sponsor is, in effect, an assurance of support from DFAT that an assessment of each participant has been finalised, and their participation in the scheme is genuine.

The criteria further ensures that the agreement to sponsor the applicant continues to be current and the relationship between the sponsor and applicant has not ceased. These provisions safeguard the integrity of the scheme to address any adverse changes in the sponsor/applicant relationship that may have occurred following the lodgement of the application.

This item further includes the standard criteria that:

- there must be no adverse information known to the Department about the sponsor or a person associated with the sponsor, unless it is reasonable to disregard that information; and
- that the applicant satisfies standard public interest criteria to ensure appropriate health checks have been performed and evaluated, and that the applicant is aware of important Australian social values.

In addition to the primary criteria inserted by this item, an applicant must also meet the ‘common criteria’ for Subclass 403 set out in Division 403.21 of Schedule 2 to the Migration Regulations. These common criteria require the applicant to have:

- adequate health insurance;
- a genuine intention to remain temporarily in Australia; and
- access to adequate means of support.

The applicant must also satisfy a number of other standard public interest criteria.

#### Item 10 – After subclass 403.411(2) of Schedule 2

This amendment relates to the circumstances applicable to the grant of a Subclass 403 visa in the Pacific Labour stream. In effect, the amendment provides that an applicant in this stream may be in or outside of Australia at the time of grant if the applicant:

- already holds a Subclass 403 visa in the stream; or
- their last substantive visa was a Subclass 403 visa in the Pacific Labour stream; and
- is seeking to satisfy the primary criteria for the grant of a new Subclass 403 visa in same stream.

All other applicants seeking to satisfy the primary criteria in the Pacific Labour stream must be outside Australia at the time of grant. The amendment aligns with the amendments inserted by item 4 of these Regulations, where only an applicant who holds a valid Subclass 403 visa in the Pacific Labour stream may be in or outside Australia at the time of application, and all other applicants must be outside Australia at the time of application.

#### Item 11 – Subclause 403.411(3) of Schedule 2

This subclause makes a consequential amendment to reflect item 10 above, by inserting a reference to subclause 403.411(2A).

Subclause 403.411(3) provides for circumstances not covered subclauses (1), (2) or the new subclause (2A) inserted above by item 10. Subclass 403.411(3) provides that, unless one of subclauses (1), (2) or (2A) applies, the applicant must be in the same location (that is, either in or outside Australia) at the time of grant as when applying for the visa.

#### Item 12 – Clause 403.511 of Schedule 2

The purpose of this amendment is to provide greater administrative certainty for visa processing officers and visa holders, in relation to when the visa is in effect and the specified period in which the visa holder is able to remain in Australia. In addition, the amendment provides greater certainty about the ‘visa in effect’ period depending on whether the visa applicant is in or outside Australia at the time the visa is granted.

When the visa holder is in Australia at the time of grant, the visa permits the holder to remain in Australia from the date of grant and will cease at the end of the period of time specified by the Minister. This may mean, for example, the visa holder can remain in Australia for three months calculated from the day of grant. In this example, the permission to remain in Australia ends at the conclusion of the three months. During this permitted period of stay, the holder is allowed to leave Australia, and to travel to and re-enter Australia.

In circumstances where the visa holder is outside Australia at the time of grant, the holder will be able to travel to and enter Australia by a specified date. Furthermore, providing a specified date by which the visa holder must travel to and enter Australia ensures the visa holder's reason for coming to Australia remains current and aligns with the reason for the grant of the visa. The period in which the visa holder can stay in Australia will begin on the day the visa holder first enters Australia and will end at the end of the period of time specified by the Minister. These arrangements allow the holder sufficient time to make appropriate travel plans and living arrangements in Australia, without adversely impacting on the grant period of the visa or the holder's period of stay in Australia.

These amendments apply to each stream of the Subclass 403 visa, and provide flexibility for visa holders to travel to and remain in Australia in accordance with the arrangements made with their employer. Furthermore, the outcome will remove the need for delegates to speculate about when a visa holder will enter and leave Australia, for the purpose of determining the length of grant of the visa, and will provide certainty for delegates when specifying the period of stay for visas in each stream of Subclass 403.

#### Item 13 – Subclause 403.614(2) of Schedule 2

This item amends the mandatory conditions to which a Subclass 403 visa in the Seasonal Workers stream is subject. The amendment replaces condition 8107 with new condition 8577, which is described in further detail below at item 15. Condition 8107 does not provide for a change of approved sponsor in relation to a Subclass 403 visa holder. The purpose of condition 8577 is to permit the visa holder, upon receiving approval in writing from the Secretary of the Department, to change their approved temporary activities sponsor. However, condition 8577 does replicate some of the requirements of condition 8107, specifically that the visa holder:

- must not cease to work for the sponsor in relation to whom the visa was granted; and
- is not permitted to work for any other person or to be self-employed during their stay in Australia.

Visas in the Seasonal Workers stream will continue to be subject to mandatory conditions 8303, 8501, and 8503.

In addition to the above, this item introduces two new discretionary conditions for the Seasonal Workers stream: conditions 8575 and 8576. These two conditions are introduced at item 15 of these Regulations. In effect, these conditions provide that the holder must not stay in Australia for more than the specified time in any period of 12 months. In particular, condition 8575 specifies that the visa holder must not stay in Australia for more than 7 months in any period of 12 months, and condition 8576 specifies that the visa holder must not stay in Australia for more than 10 months in any period of 12 months.

Paragraph (b) of this item provides that if the Minister chooses to impose either condition 8575 or 8576 on this visa, the Minister may specify only one of these conditions. The purpose of introducing these two conditions into the Seasonal Workers stream is to address circumstances where the visa may be granted for multiple years and permit multiple entry into Australia. New policy settings for the program mean the visa may be granted for up to three years reflects to better facilitate the visa holder's capacity to work for the same sponsor over multiple seasons. Discretionary conditions 8575 and 8576 maintain the

seasonal nature of the program by providing safeguards to prevent visa holders remaining in Australia for the entire period for which the visa has been granted.

#### Item 14 – At the end of Subdivision 403.6 of Schedule 2

This item provides for the mandatory and discretionary conditions that can be imposed on a Subclass 403 visa in the Pacific Labour stream. A visa granted in this stream is subject to mandatory conditions 8303, 8501 and new 8577 (see item 15 of these Regulations). These mandatory conditions mirror the mandatory conditions applicable to the Seasonal Workers stream, except that condition 8503 will be discretionary in relation to Subclass 403 visas in the Pacific Labour stream. Condition 8503 has the effect of preventing the visa holder from making a valid application for a substantive visa, other than a protection visa, while the visa holder is in Australia.

Condition 8303 provides that the visa holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the community.

Condition 8501 provides that the holder must maintain adequate arrangements for health insurance while the holder is in Australia.

Condition 8577 ensures that the visa holder must only work for the sponsor in relation to whom the visa was granted, and may only change their sponsor upon written approval by the Secretary (see item 13 above).

Visa conditions that may be imposed at the discretion of the Minister are prescribed in subclause (3) of this item. These conditions mirror the integrity framework prescribed across the streams of the Subclass 403 visa, with the exception of condition 8503 which is a discretionary condition for visas in the Pacific Labour stream but mandatory for visas granted in the other streams of the Subclass 403 visa.

#### Item 15 – After clause 8573 of Schedule 8

This item inserts three new visa conditions in Schedule 8 to the Migration Regulations. These conditions were briefly discussed above in the context of items 13 and 15.

##### *Conditions 8575 and 8576*

Conditions 8575 and 8576 were designed for a Subclass 403 visa in the Seasonal Workers stream to apply in circumstances where the visa is granted for multiple years to permit the visa holder to work for the same sponsor over multiple seasons, without needing to lodge a new application each year and pay the associated fees. These conditions have the effect of maintaining the seasonal nature of the program. They also strengthen the integrity of the program by providing an appropriate safeguard to prevent the holder from remaining in Australia for the entire granted period of stay, which in some circumstances may be up to three years.

As noted above in item 13, new condition 8575 specifies that the visa holder must not stay in Australia for more than 7 months in any period of 12 months, and condition 8576 specifies



that the visa holder must not stay in Australia for more than 10 months in any period of 12 months.

As a practical illustration, for an applicant granted a Subclass 403 visa that is subject to condition 8575 with permission to remain in Australia for multiple years, the date of the visa holder's first entry into Australia will trigger the commencement of the first 12 month period. During this period, the holder will be permitted to re-enter and remain in Australia for a cumulative period of seven months. Once the visa holder has been in Australia for a total period of seven months, they must leave Australia for the remainder of the 12 month period. If the visa holder re-entered Australia before the 12 month period had ended, the holder would be in breach of their visa condition and this would enliven a ground for cancellation.

#### *Condition 8577*

The purpose of new condition 8577 is to ensure that a visa holder works solely for the sponsor in relation to whom the visa was granted. The condition does, however, provide a mechanism for the visa holder to change their temporary activities sponsor under certain circumstances, with the written approval of the Department's Secretary. As a prerequisite for the Secretary's approval to allow for a change in sponsor, a proposed new sponsor will need to be endorsed by DFAT for a Subclass 403 visa holders in the Pacific Labour stream. For holders of a Subclass 403 visa in the Seasonal Workers stream, the proposed new sponsor will need to have agreed in writing to sponsor the visa holder. These prerequisites mirror the related primary criteria for grant of a Subclass 403 visa – see paragraph 403.261(a) (Seasonal Workers) and subparagraph 403.271(b)(i) (Pacific Labour).

#### Item 16 – In the appropriate position in Schedule 13

This item inserts Part 7301 into Schedule 13 – Transitional Arrangements. The purpose of the amendments is to provide that the amendments made by Schedule 1 to the Regulations apply to applications for a visa made on or after 1 July 2018.