EXPLANATORY STATEMENT

Issued by the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Migration Act 1958

Migration Amendment (Australian Agriculture Worker) Regulations 2021

This instrument amends the *Migration Regulations 1994* (the Migration Regulations) to insert an new Australian Agriculture Worker stream in the Subclass 403 (Temporary Work (International Relations)) visa, in response to identified Australian labour market gaps and workforce needs in primary industry sectors.

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, not inconsistent with the Migration Act, 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 listed in Attachment A.

The *Migration Amendment (Australian Agriculture Worker) Regulations 2021* (the Regulations) amend the Migration Regulations to insert a new Australian Agriculture Worker stream in the Subclass 403 (Temporary Work (International Relations)) visa, to provide for the entry and temporary stay of workers across primary industry sectors including horticulture, meat processing, dairy, wool, grains, fisheries (including aquaculture) and forestry in response to identified labour market gaps and workforce needs in primary industry sectors now and in the future.

The new stream will be available to visa applicants who are participating in the Australian Agriculture Worker Program (the AAWP), and who are sponsored by an employer who is participating in the AAWP.

The AAWP will be established on the basis of bilateral agreements with foreign governments, to be negotiated by the Department of Foreign Affairs and Trade taking into consideration factors including the requirements of the Australian labour market and labour shortages in particular industry sectors.

Visa applicants participating in the AAWP will come from countries where the foreign government is a party to an agreement under the AAWP, in accordance with the requirements of the agreement as approved by the Department of Foreign Affairs and Trade.

Employers participating in the AAWP will have completed an accreditation process approved by the Department of Foreign Affairs and Trade, and each visa holder will be required to have a temporary activities sponsor. Visa holders may work for an employer

other than the sponsor so long as the employment is in accordance with an arrangement endorsed by the Department of Foreign Affairs and Trade. This will facilitate labour movement as needed in the relevant sectors.

The matters dealt with in the Regulations are appropriate for implementation in regulations rather than by Parliamentary enactment. It has been the consistent practice of the Government of the day to provide for detailed visa criteria and conditions in the Migration Regulations rather than in the Migration Act itself. The Migration Act expressly provides for these matters to be prescribed in regulations, as can be seen in the authorising provisions listed at Attachment A. These include, for example, subsection 31(3), which provides that the regulations may prescribe criteria for a visa or visas of a specified class.

The current Migration Regulations have been in place since 1994, when they replaced regulations made in 1989 and 1993. Providing for these details to be in delegated legislation rather than primary legislation gives the Government the ability to respond quickly to emerging situations such as the COVID-19 pandemic.

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.

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments. The OBPR consultation reference number is 44182. A minor Regulation Impact Statement (RIS) is provided at Attachment C.

Consultation in relation to the Regulations was undertaken with the Department of Foreign Affairs and Trade, the Department of Agriculture, Water and the Environment, and the Department of Education, Skills and Employment. Key industry bodies were also consulted, including the National Farmer's Federation, AusVeg, and the Australian Fresh Produce Alliance. Following the Government's announcement on 23 August 2021, the Government is beginning formal consultation on the design of the AAWP to ensure that the arrangement meets industry needs and facilitates the requirements of small farmers and growers wishing to participate in the program. This consultation accords with subsection 17(1) of the *Legislation Act 2003* (the Legislation Act).

The Regulations commence on registration.

Further details of the Regulations are set out in Attachment D.

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.

ATTACHMENT A

AUTHORISING PROVISIONS

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provides that the Governor-General may make regulations (the 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, the following provisions of the Migration Act may also be relevant:

- subsection 29(1), which provides that the Minister may grant a non-citizen permission, to be known as a visa, to do either or both of the following: (a) travel to and enter Australia; (b) remain in Australia;

- subsection 29(2), which provides that, without limiting subsection 29(1), a visa to travel to, enter and remain in Australia may be one to:

  (a) travel to and enter Australia during a prescribed or specified period; and

  (b) if, and only if, the holder travels to and enters during that period, remain in Australia during a prescribed or specified period or indefinitely;

- subsection 30(2), which provides that a visa to remain in Australia (whether also a visa to travel to and enter Australia) may be a visa, to be known as a temporary visa, to remain during a specified period, or until a specified event happens, or while the holder has a specified status;

- subsection 31(1), which provides that the Regulations may prescribe classes of visas;

- subsection 31(3), which provides that the Regulations may prescribe criteria for a visa or visas of a specified class;

- subsection 31(4), which provides that the Regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia, or both;

- subsection 31(5), which provides that the Regulations may specify that a visa is a visa of a particular class;

- section 40, 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 45B(1), which provides that the amount of visa application charge is the amount, not exceeding the visa application charge limit, prescribed in relation to the application (the visa application charge limit is determined under the *Migration (Visa Application) Charge Act 1997*);

- subsection 45B(2), which provides that the amount prescribed in relation to an application may be nil;

- paragraph 46(1)(b), which provides that the Regulations may prescribe the criteria and requirements for making a valid application for a visa;

- 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;

- subsection 46(4), which provides that, without limiting subsection 46(3), the Regulations may prescribe:

    (a) the circumstances that must exist for an application for a visa of a specified class to be a valid application; and
    (b) how an application for a visa of a specified class must be made; and
    (c) where an application for a visa of a specified class must be made; and
    (d) where an applicant must be when an application for a visa of a specified class is made;

- subsection 140E(1), which provides that the Minister must approve a person as a work sponsor in relation to one or more classes prescribed for the purposes of subsection 140E(2) if prescribed criteria are satisfied; and

- subsection 140E(2) which provides that the regulations must prescribe classes in relation to which a person may be approved as work sponsor or family sponsor.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Migration Amendment (Australian Agriculture Workers) Regulations 2021

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

Overview of the Disallowable Legislative Instrument

The *Migration Amendment (Australian Agriculture Workers) Regulations 2021* (the AAW Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to support the Government's objective to fill labour shortages in primary industry sectors.

COVID-19 has impacted Australia's agriculture sector by limiting the supply of overseas workers, while COVID-19 related travel restrictions and practical difficulties have impeded international and domestic movement. The departure of temporary migrants has placed further pressure on the supply of low and semi-skilled workers, in particular, seasonal workers in primary industry sectors.

Despite temporary measures introduced to encourage Australian workers and temporary visa holders to relocate and take up work in the agriculture sector, the Government continues to receive reports of growers unable to harvest crops due to labour shortages. The Australian Agriculture Worker (AAW) Program will provide the agriculture sector with a wider pool of workers to draw from where Australian workers and workers available through Pacific labour mobility schemes are not sufficient to meet primary industry labour needs in Australia.

The Department of Home Affairs has responsibilities under the *Migration Act 1958* for the grant of visas under the AAW Program. The Department of Foreign Affairs and Trade (DFAT) is the policy owner and will manage the AAW Program, including negotiating bilateral agreements with foreign countries, stipulating the eligibility requirements for each participant in the program, and undertaking procurement processes to manage the accreditation of employers and their participation in the program. DFAT will also approve the arrangements in Australia between the employer and the worker.

Through the AAW Program, the Government is committed to:

- a new, sustainable and scalable program, with robust integrity, governance measures and industry support, to meet agricultural workforce needs now and into the future
- providing the framework for a safe workplace that is free of exploitation or harassment for all workers in the agriculture sector, including foreign workers, and

- a well-managed visa program that meets identified Australian labour market gaps, provides for continued growth of the Pacific labour mobility schemes and delivers COVID-safe entry of workers into Australia.

The AAW Regulations include changes to the existing Subclass 403 (Temporary Work (International Relations)) visa (the 'Subclass 403 visa') in the Migration Regulations to:

- introduce a new AAW visa stream within the Subclass 403 visa that provides for overseas workers from participating countries to enter Australia and undertake work in primary industry sectors, including, horticulture, meat processing, dairy, wool, grains, fisheries (including aquaculture) and forestry, and

- introduce a new visa condition for the AAW visa stream that requires workers to work for an employer who is the sponsoring employer in relation to which the visa was granted or for an employer in accordance with an arrangement endorsed by DFAT. This condition provides workers with the flexibility to change employer where circumstances change.

Visas granted in the AAW stream will be valid for up to 4 years, with multiple entries, and allow overseas workers who are part of the AAW Program to stay and work in Australia for a defined period of time specified by the Minister.

The measures introduced by the AAW Regulations are made in the context of a number of complementary initiatives being implemented by the AAW Program. 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 overseas workers under the AAW Program.
- Reiterating that Australian workplace laws apply to all workers participating in the AAW Program, and supporting the Fair Work Ombudsman (FWO) in providing compliance, education and outreach activities in industries utilising the AAW Program, 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.
- Securing affordable accommodation and appropriate living arrangements for AAW Program workers by the sponsoring employer prior to the workers' arrival in Australia.
- 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 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 AAW Program, the labour hiring provider is accountable for managing the matter in partnership with the Australian Government, the Australian employer, the relevant partner government, emergency services and if applicable, ComCover.

Human rights implications

This Disallowable Legislative Instrument, and the programs supporting it, engage the following rights:

- the right to work and rights at work in Articles 6(1) and 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and
- the rights of equality and non-discrimination in Article 2(2) of the ICESCR and Article 26 of the International Covenant on Civil and Political Rights (ICCPR).

Right to work and rights at work

This Disallowable Legislative Instrument engages Articles 6(1) and 7 of the ICESCR. Article 6(1) states:

> *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.*

Article 7 states:

> *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 Disallowable Legislative Instrument positively engages the right to work and rights at work of AAW visa stream holders by providing the following initiatives:

- development and implementation of activities and projects to support the welfare of AAW visa stream holders, including anti-exploitation measures;
- establishment and operation of an agriculture compliance unit within the FWO;
- establishment and operation of a dedicated compliance team for AAW visa stream holders and sponsors within the Australian Border Force;

- establishment and implementation of accreditation standards and registration processes for employers accessing the visa program.

These initiatives, directed at addressing worker exploitation and ensuring compliance with relevant workplace standards, positively engage the right to work and rights at work of AAW visa stream holders by implementing measures to combat worker exploitation. For example, they introduce a new visa condition that permits workers in situations of worker exploitation to change employer without breaching their visa conditions and in accordance with an arrangement endorsed by DFAT. In circumstances of worker exploitation, a worker may apply for a further AAW visa in Australia where a change in sponsoring employer results in a longer period of employment.

These measures provide an 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 employer for the period of visa grant. Where a worker has been transferred from an employer due to worker exploitation, the employer will be referred to the FWO and relevant agencies to remove the employer from the AAW Program.

These initiatives, directed at addressing worker exploitation and ensuring compliance with relevant workplace standards, support the right to work and rights at work of AAW visa stream holders.

Rights of equality and non-discrimination

This Disallowable Legislative Instrument engages the rights of equality and non-discrimination in Article 2 of the ICESCR and Article 26 of the ICCPR.

Article 2(2) of the ICESCR states:

> *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.*

Article 26 of the ICCPR states:

> *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.*

Setting visa requirements that depend on a number of factors, including whether a person is a participant of the AAW Program, may engage the above rights to non-discrimination, including, for those persons who are already in Australia, as they relate to the right to work.

In its General Comment 18, the UN Human Rights Committee stated that:

> *The Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.*

Similarly, in its General Comment on Article 2 of the ICESCR (E/C.12/GC/20), the UNCESCR has stated (at 13) that:

> *Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.*

Neither the ICCPR nor the ICESCR give a right for non-citizens to enter Australia for the purposes of seeking residence or employment. The UN Human Rights Committee, in its General Comment 15 on the position of aliens under the ICCPR, stated that:

> *The [ICCPR] 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. However, in certain circumstances an alien may enjoy the protection of the [ICCPR] even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.*
>
> *Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment. A State may also impose general conditions upon an alien who is in transit. However, once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the [ICCPR].*

As such, Australia is able to set requirements for the entry of non-citizens into Australia and conditions for their stay, and does so on the basis of reasonable and objective criteria.

A worker's ability to participate in the AAW Program, and hence their ability to obtain a visa to work in Australia as part of this program, is based on whether they are a citizen of one of the countries with which Australia establishes an arrangement for this purpose. These arrangements will be negotiated on a bilateral basis by DFAT, taking into consideration factors including the requirements of the Australian labour market and labour shortages in particular industry sectors. It is expected that the number of participating countries for the AAW Program will increase over time, subject to Australia's labour market needs and informed by worker exploitation risk assessments.

Information about visa eligibility will be included as a part of material promoting the AAW Program. While not all countries will be participants of the AAW Program, citizens of other countries may be able to enter and work in Australia through alternative visa programs.

In light of the above, to the extent that these amendments may limit the rights of equality and non-discrimination of persons from countries which are not participating in the AAW Program, the targeted approach of the AAW Program is necessary, reasonable and proportionate and aimed at the legitimate objectives of improving employment opportunities for workers from participating countries, maintaining and enhancing opportunities for Australian workers, creating incentives for education and skills development, and promoting economic stability, both in participating countries and in Australia.

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.

ATTACHMENT C

Minor Regulation Impact Statement

The Australian Agriculture Worker Visa Arrangements

Department of Home Affairs

OBPR Reference number: 44182

Summary of the proposed policy and any options considered:

The proposed policy makes changes to the *Migration Regulations 1994* to introduce a new Australian Agriculture Worker (AAW) stream under the Temporary Work (International Relations) (subclass 403) visa. The AAW stream will deliver on the Government objective of making up for the shortfall of overseas workers arising from labour mobility concessions under the Australia-UK free trade agreement (AUKFTA), and deliver a dedicated visa product that provides critical sectors a wider pool of overseas workers to draw from where Australian and Pacific labour is inadequate to meet labour needs.

The AAW visa is being designed for primary industry sectors including horticulture, meat processing, dairy, wool, grains, fisheries (including aquaculture) and forestry. The AAW visa builds on the successful Pacific Labour Mobility schemes that have proved invaluable to the agriculture sector. The schemes have established a benchmark for worker conditions and support which will be replicated for the AAW visa. Visa conditions for the AAW will align with the Pacific programs.

The dedicated AAW visa stream will also position the agriculture sector to access a stabilised workforce for long-term growth prospects.

The Government also considered other options to fill labour shortages in primary industry sectors, including maintaining the status quo and catering for overseas workers through existing visa products. However, this is unlikely to offset the reduction of Working Holiday Maker (WHM) visa holders working in the agriculture sector resulting from the AUKFTA. Under the terms of the agreement, UK WHM visa holders will no longer be required to carry out specified work which includes work in agriculture to qualify for a second or third WHM visa. This option would result in a net loss of at least 8,500 workers per year and disadvantage Australia's primary industry sectors and overall food security.

Another option considered is expanding existing WHM arrangements with some Southeast Asian countries. This option would have been administratively efficient, but ran the very high risk of WHM visa holders not taking up agriculture work, and provided no compulsion for them to do so. This option would require the Government to undergo a lengthy process to update or establish new bilateral agreements with partner countries and may not deliver new workers in the short-term due to COVID-19 travel restrictions and quarantine measures.

What are the regulatory impacts associated with this proposal?

The proposal will reduce regulatory burden on employers and businesses in primary industry sectors by consolidating the endorsement of accredited employers for workers in the AAWP and the Pacific labour mobility programs to one government agency. There will be no additional fees associated with the visa application process under the AAW stream. The

AAW visa program is designed to be industry-led, scalable to meet identified Australian labour market needs, and accessible to smaller primary industry employers. Businesses and community organisations will have additional assistance to attain the necessary endorsements to be an approved employer from the lead agency.

What are the regulatory costs/savings associated with this proposal?

The proposal has no additional regulatory costs for businesses, community organisations and individuals.

ATTACHMENT D

Details of the *Migration Amendment (Australian Agriculture Workers) Regulations 2021*

Section 1 - Name

This section provides that the name of the instrument is the *Migration Amendment (Australian Agriculture Workers) Regulations 2021.*

Section 2 - Commencement

This section provides for the commencement of the instrument.

Schedule 1 commences on registration.

Section 3 - Authority

This section provides that the instrument is made under the *Migration Act 1958* (the Migration Act).

Section 4 - Schedules

This section provides for how the amendments in the Regulations would operate.

Schedule 1 – Amendments

Migration Regulations 1994

Item [1] – After paragraph 2.56(baa)

This item adds a new paragraph 2.56(bab) to regulation 2.56 of the Migration Regulations.

Regulation 2.56 (Application) prescribes visa for purposes of section 140A of the Migration Act, to which Division 3A (Sponsorship) of Part 2 of the Migration Act applies. Under subsection 140E(1) of the Migration Act, a person may be approved as a work sponsor for the purposes of an application for a visa to which Division 3A applies.

New paragraph 2.56(bab) prescribes the Subclass 403 (Temporary Work (International Relations)) visa in the Australian Agriculture Worker stream as a visa to which Division 3A of the Migration applies. The Australian Agriculture Worker stream is inserted in Subclass 403 (Temporary Work (International Relations)) by items 7-11 of this Schedule (please see below).

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

This item inserts a reference to new paragraph 1234(3)(cac) in paragraph 1234(3)(b) of Item 1234 (Temporary Work (International Relations) (Class GD)) of Schedule 1 to the Migration Regulations.

The effect of this amendment is that the provision of paragraph 1234(3)(b) that an applicant for a Temporary Work (International Relations)(Class GD) visa may be in or outside Australia but not in immigration clearance, is subject to new paragraph 1234(3)(cac), which is inserted in Item 1234 by the following item of this Schedule.

Item [3] – After paragraph 1234(3)(cab) of Schedule 1

This item inserts a new paragraphs 1234(3)(cac) and (cad) in Item 1234 (Temporary Work (International Relations) (Class GD)) of Schedule 1 to the Migration Regulations.

New paragraphs 1234(3)(cac) and (cad) set out the requirements for making a valid application for the Subclass 403 (Temporary Work (International Relations)) visa in the Australian Agriculture Worker stream.

New paragraph 1234(3)(cac) provides that an applicant must be outside Australia if:

- the applicant does not hold a Subclass 403 visa in the Australian Agriculture Worker stream; or
- the last substantive visa held by the applicant was a Subclass 403 visa in the Australian Agriculture Worker stream and that visa expired more than 28 days before the application was made.

The effect of this provision is that an applicant who does not hold a Subclass 403 visa in the Australian Agriculture Worker stream must be outside Australia when applying for the visa, but an applicant who holds the visa, or who held the visa and makes the application not more than 28 days since it expired, may be in or outside Australia but not in immigration clearance.

New paragraph 1234(3)(cad) provides that an applicant seeking to satisfy the primary criteria for a Subclass 403 visa in the Australian Agriculture Worker stream must meet the requirements of subitem 1234(3D). New subitem 1234(3D) is inserted in Schedule 1 to the Migration Regulations by item 5 of this Schedule, below.

Item [4] – Subitem 1234(3) of Schedule 1 (note)

This item inserts a reference to the Australian Agriculture Worker stream in the note following subitem 1234(3) of Schedule 1 to the Migration Regulations.

The effect of this amendment is that the note advises that an applicant for a Temporary Work (International Relations)(Class GD) visa cannot meet the secondary criteria for the grant of the visa if the primary applicant holds a Subclass 403 (Temporary Work (International Relations)) visa in the Australian Agriculture Worker stream (see clause 403.311 of Schedule 2 to the Migration Regulations).

Item [5] – After subitem 1234(3C) of Schedule 1

This item inserts a new subitem 1234(3D) in Schedule 1 to the Migration Regulations.

New subitem 1234(3D) sets out further requirements for making a valid application for a Subclass 403 visa in the Australian Agriculture Worker stream. These requirements are:

- The applicant must be participating as a worker in the AAWP administered by the Department of Foreign Affairs and Trade. To participate in the program an applicant

must come from a country where the foreign government is a party to an agreement under the AAWP, in accordance with the requirements of the agreement as approved by the Department of Foreign Affairs and Trade.

- The applicant must specify in the application a person who has agreed to be the applicant's sponsor, and that person has been approved as a temporary activities sponsor under subsection 140E(1) of the Migration Act, or has applied for approval as a sponsor and the application has not yet been decided.

- The sponsor must be participating as an employer in the AAWP administered by the Department of Foreign Affairs and Trade. To participate in the program, the sponsor must have completed an accreditation process approved by the Department of Foreign Affairs and Trade.

There is no provision under section 338 of the Migration Act for review by the Administrative Appeals Tribunal of a decision that an application for a Subclass 403 in the Australian Agriculture Worker stream does not meet the requirements in Item 1234 of Schedule 1 to the Migration Regulations. As the requirements are objective, provision for review would not be appropriate.

A decision under subsection 140E(1) of the Migration Act not to approve a person as a sponsor is prescribed in paragraph 4.02(4)(a) of the Migration Regulations, for the purposes of subsection 338(9) of the Migration Act, as a decision which is reviewable by the Administrative Appeals Tribunal.

Item [6] – Clause 403.111 of Schedule 2 (note)

This item amends the note following clause 403.111 of Schedule 2 to the Migration Regulations, to insert a reference to ***Foreign Affairs***, which is defined in the regulation 1.03 of the Migration Regulations to mean the Department of Foreign Affairs and Trade.

The defined term *Foreign Affairs* is used in the new Australian Agriculture Worker stream in Subclass 403, which is inserted by the following items of this Schedule. It is also currently used in other provisions of Subclass 403, however the reference to *Foreign Affairs* was previously omitted from the note by oversight.

Item [7] – Division 403.2 of Schedule 2 (note to the heading)

This item substitutes references to Subdivision 403.28 for references to Subdivision 403.27 in the note to the heading of Division 403.2 of Schedule 2 to the Migration Regulations, which sets out the primary criteria to be satisfied by an applicant for a Subclass 403 (Temporary Work (International Relations)) visa. This amendment is consequential to the addition in Division 403.2 of a new Subdivision 403.28 (Criteria for the Australian Agriculture Worker stream) by the following item of this Schedule.

Item [8] – At the end of Division 403.2 of Schedule 2

This item adds a new Subdivision 403.28 (Criteria for the Australian Agriculture Worker stream) in Division 403.2 (Primary criteria) of Schedule 2 to the Migration Regulations.

The purpose of new Subdivision 403.28 is to set out the stream-specific criteria to be satisfied by an applicant for a Subclass 403 (Temporary Work (International Relations)) visa in the Australian Agriculture Worker stream. An applicant is required to satisfy the criteria set out in Subdivision 403.28 in addition to the common criteria, including Public Interest Criteria and Special Return Criteria, set out in Subdivision 403.21.

Subdivision 403.28 has one clause 403.281. The criteria to be satisfied under clause 403.281 are:

- The applicant is required to be participating, as a worker, in the AAWP administered by the Department of Foreign Affairs and Trade. This is the same as a criterion that an applicant is required to meet to make a valid application. See item 5 of this Schedule, above. This ensures that the person is still a participant in the program at the time of the decision to grant the visa.

- The approved temporary activity sponsor is required to agree to sponsor the applicant, and the sponsor must be participating, as an employer, in the AAWP administered by the Department of Foreign Affairs and Trade. These requirements are explained in relation to item 5 of this Schedule, above. This criterion ensures that the employer is still a participant in the AAWP at the time of the decision to grant the visa.

- The sponsor must not have ceased to be sponsor of the applicant.

- There must be no adverse information known to Immigration about the sponsor or a person associated with the sponsor, or if there is, it must be reasonable to disregard the information.

- The applicant must be seeking to enter Australia for the purposes of the AAWP, or the applicant must be in Australia as the holder of a Subclass 403 visa in the Australian Agriculture Worker stream or the last substantive visa held by the applicant must have been a Subclass 403 visa in the Australian Agriculture Worker stream.

- The applicant must satisfy Public Interest Criterion 4005, relating to health requirements, and Public Interest Criterion 4019, requiring the signing of a values statement.

Section 338 of the Migration Act provides a right to seek a review by the Administrative Appeals Tribunal of a decision to refuse to grant a Subclass 403 visa on the grounds that an applicant fails to satisfy these criteria.

Item [9] – After subclause 403.411(2A) of Schedule 2

This item inserts a new subclause 403.411(2B) in Subclass 403 in Schedule 2 to the Migration Regulations.

New subclause 403.411(2B) deals with where an applicant for a Subclass 403 visa in the Australian Agriculture Worker stream must be located at the time the visa is granted.

An applicant who held a Subclass 403 visa in the Australian Agriculture Worker stream at the time of application, or whose last substantive visa was a Subclass 403 visa in the Australian Agriculture Worker stream, may be in or outside Australia but not in immigration clearance

when the visa is granted. Other applicants must be outside Australian when the visa is granted.

Item [10] – Subclause 403.411(3) of Schedule 2

This item inserts a reference to new subclause 403.411(2B) in subclause 403.411(3) to ensure that subclause (3) does not apply to persons covered by subclause (2B). This amendment is consequential to the insertion of new subclause 403.411(2B) by item 9 of this Schedule, above.

Item [11] – At the end of Division 403.6 of Schedule 2

This item adds a new clause 403.616 to Division 403.6 (Conditions) of Subclass 403 in Schedule 2 to the Migration Regulations. The purpose of new clause 403.616 is to prescribe the conditions to which a Subclass 403 visa in the Australian Agriculture Worker stream is subject. The conditions are set out in Schedule 8 (Visa conditions) to the Migration Regulations.

The visa is subject to the following conditions:

- condition 8303: the visa holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community;

- condition 8501: the visa holder must maintain adequate arrangements for health insurance while in Australia; and

- condition 8611: this is a new condition inserted by item 12 of this Schedule (see below).

The visa is subject to one of the following conditions if specified by the Minister:

- condition 8575: the visa holder must not stay in Australia for more than 7 months in any period of 12 months; or

- condition 8576: the visa holder must not stay in Australia for more than 10 months in any period of 12 months.

In addition, any of the following conditions may be imposed on the visa at the time it is granted:

- condition 8301: after entry, the visa holder must satisfy relevant public interest criteria before the visa ceases;

- condition 8502: the visa holder must not enter Australia before the entry of a person specified in the visa;

- condition 8503: the visa holder will not, after entering Australia, be entitled to be granted a substantive visa other than a protection visa;

- condition 8516: the visa holder must continue to be a person who satisfies the criteria for the grant of the visa;

- condition 8525: the visa holder must leave Australia by a specified means of transport on a specified day or within a specified period; and

- condition 8578: the visa holder must notify the Department within 14 days of any changes to residential address, contact details, passport details, or employment.

Item [12] – At the end of Schedule 8

This item adds a new condition 8611 in Schedule 8 (Visa Conditions) to the Migration Regulations. The new condition is a prescribed condition imposed on a Subclass 403 visa in the Australian Agriculture Worker stream (see item 11 of this Schedule, above).

Condition 8611 has the effect that the visa holder must not work other than for the visa holder's sponsor in relation to the visa, or for another person under an arrangement endorsed by the Department of Foreign Affairs and Trade, and must not engage in work on the visa holder's own account.

The condition allows a visa holder to undertake work with an employer other than the sponsor, if the Department of Foreign Affairs and Trade endorses the arrangement. An arrangement could be endorsed by the Department of Foreign Affairs and Trade if, for instance, the sponsor did not have employment for the visa holder for a time, and there were labour shortages in position with another employer and it would be appropriate for the visa holder to undertake that work.

Section 338 of the Migration Act provides a right to seek a review by the Administrative Appeals Tribunal of a decision to cancel a Subclass 403 on the grounds that this condition has been breached by the visa holder.