EXPLANATORY STATEMENT

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

Migration Act 1958

Migration Amendment (Subclass 417 and 462 Visas) Regulations 2022

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.

Australia's Working Holiday Maker (WHM) program builds people-to-people and cultural links between Australia and partner countries. Arrangements under the WHM program, including some eligibility requirements such as the age range for participants, are established on a bilateral basis between Australia and the relevant partner country or jurisdiction. While WHM visa holders can choose to supplement their holiday with short-term employment, employment is not the primary objective of the visa. However, WHM visa holders have become an important source of labour, particularly in regional Australia.

The WHM program consists of two visa subclasses, namely:

- the Working Holiday (Subclass 417) visa; and
- the Work and Holiday (Subclass 462) visa.

Both WHM visas are granted with a 12-month stay period. The key differences between the two visas are that the Work and Holiday (Subclass 462) visa arrangements are generally subject to a cap on the number of first visas that may be granted annually (except for the United States of America) and include additional eligibility requirements such as a minimum education level, English language proficiency or letters of support from the partner country Government. The Working Holiday (Subclass 417) visa arrangements are uncapped with no limit on the annual number of first visa grants.

There are incentives for people who have been granted a first WHM visa to carry out minimum periods of 'specified work' in locations and industries specified for this purpose in legislative instruments by the Minister. While WHM visa holders can choose to work in any area or industry, a person who has held only one WHM visa in Australia may then be granted a second visa if they have carried out at least three months of specified work. If a person undertakes at least six months of specified work while holding their second WHM visa or a related bridging visa, they may be eligible to be granted a third WHM visa.

The *Migration Amendment (Subclass 417 and 462 Visas) Regulations 2022* (the Amendment Regulations) amends the *Migration Regulations 1994* (the Migration Regulations) to:

- provide certain concessions to facilitate the grant of further WHM visas to certain holders and former holders of those visas in Australia who have been affected by the COVID-19 pandemic;
- establish an instrument-making power for the Minister to exempt holders of certain passports from meeting 'specified work' requirements when they apply for a second or third WHM visa; and
- introduce statutory procedural fairness processes for employers who the Minister is considering specifying as an 'excluded employer' for the purpose of 'specified work' under the WHM program.

Concessions for certain WHMs in Australia affected by the COVID-19 pandemic

As a result of the COVID-19 pandemic, WHM visa holders who remained in Australia after travel restrictions were imposed on 20 March 2020 were unable to take full advantage of their visa because of significant disruptions to domestic travel and employment opportunities. The pandemic environment also prevented many from being able to complete the specified work requirements to become eligible for a subsequent WHM visa.

In recognition of this fact, and of the important contribution that WHM visa holders make to the Australian economy including to critical industries during the pandemic, the Government is implementing further concessions. These concessions for WHMs who apply in Australia build on concessions that commenced on 1 July 2021 for those WHM visa holders who were unable to enter Australia at all during the pandemic or who had to leave early and are applying from outside Australia. Those earlier concessions were implemented by amendments to the Migration Regulations in the *Home Affairs Legislation Amendment (2021 Measures No. 1) Regulations 2021*.

To give effect to the concessions for WHMs who apply in Australia, the Amendment Regulations introduce a definition of ***onshore COVID-19 affected visa***. This definition enables the implementation of the concessions for WHM visa applicants who apply in Australia for a WHM visa between 5 March 2022 (the commencement of the amendments) and 31 December 2022, and who were in Australia on 20 March 2020 as the holder or former holder of a WHM visa (the ***onshore COVID-19 affected visa***). Consequential amendments also ensure the existing concessions for WHMs who apply when outside Australia are preserved.

The Amendment Regulations also make changes to the WHM visa criteria for WHMs who have held an ***onshore COVID-19 affected visa***. These changes operate so that, when a person who has held an ***onshore COVID-19 affected visa*** makes an application in Australia on or before 31 December 2022 for another WHM visa, the ***onshore COVID-19 affected visa*** is treated as not being a WHM visa for the purposes of the usual visa criteria, that is, it is treated as though it never existed. The applicant will therefore not need to meet the usual requirements for that WHM visa and thus will not be disadvantaged by not having been able to complete specified work whilst holding an ***onshore COVID-19 affected visa*** due to the

difficulties of working and moving around Australia during the pandemic. The ***onshore COVID-19 affected visa*** will also not count towards the maximum limit on the total number of WHM visas a person may hold in Australia, which is also intended to benefit WHM visa holders who were adversely affected by the pandemic.

The Amendment Regulations also amend the Migration Regulations to allow eligible WHM visa applicants in Australia who apply by 31 December 2022 to lodge a valid WHM visa application without holding a valid passport. The purpose of this amendment is to avoid disadvantaging WHMs who were unable to obtain a new passport in Australia because of administrative difficulties during COVID-19, so that they can lodge an application as soon as possible after the commencement of the amendments and be granted a bridging visa to remain lawfully in Australia while waiting to obtain the new passport. All applicants for a WHM visa will be required to hold a valid passport in order for the visa to be granted. This amendment may be of particular benefit to applicants whose current visas are about to cease or who are about to exceed the age limit to apply for a WHM visa as established in the relevant bilateral arrangement.

It is also intended that persons who held an ***onshore COVID-19 affected visa*** will be eligible to apply for their next WHM visa without needing to pay a visa application charge. This will be provided for in an instrument made by the Minister under an existing power in the Migration Regulations.

Together, these amendments are intended to provide to WHM visa applicants in Australia, whose time in Australia on an earlier WHM visa was adversely affected by the COVID-19 pandemic, the opportunity to remain in Australia longer and enjoy the full working holiday experience, and a new opportunity to meet the 'specified work' requirements for a subsequent WHM visa if they choose to do so.

Power to exempt certain passport holders from the requirement to undertake 'specified work'

The Amendment Regulations amend the Migration Regulations to allow the Minister to specify, in a legislative instrument, the holders of certain passports as being exempt from meeting the 'specified work' requirements that applicants for a second or third WHM visa must otherwise meet.

Although the amendment does not itself refer to any specific passport holders, the current intention is to use this new power to give effect to Australia's commitments given in connection with the signing of the Australia-United Kingdom Free Trade Agreement (A-UKFTA). As announced jointly by the Prime Ministers of Australia and the United Kingdom (UK) on 15 June 2021, and confirmed by exchange of letters which constitute a Memorandum of Understanding between Australia and the UK signed on 16 December 2021 ('the MOU'), Australia and the UK agreed to increase the maximum eligible age for UK WHM applicants from 30 to 35 years; and to provide UK WHMs the opportunity to stay in Australia for up to three years with no requirement to carry out 'specified work'.

The A-UKFTA was signed on 17 December 2021, but has not yet entered into force. The new WHM arrangements as expressed in the MOU are to be implemented within two years of the A-UKFTA entering into force, on a date to be jointly decided by Australia and the UK. This amendment will allow timely implementation, via the making of a new legislative instrument specifying holders of UK passports, once the timeframe has been agreed with the UK.

The amendment will also facilitate the future implementation of any other such arrangements that may be agreed on a bilateral basis with WHM partner countries and jurisdictions.

Providing procedural fairness before excluding an employer from the WHM program's 'specified work' arrangements

Under amendments to the Migration Regulations that commenced on 28 July 2021, made by the *Migration Amendment (Subclass 417 and 462 Visas) Regulations 2021* (the 2021 WHM Amendment Regulations), work carried out for an 'excluded employer' is ineligible for the purpose of meeting 'specified work' requirements for a second or third WHM visa. The Minister may specify 'excluded employers' in a legislative instrument under subregulation 1.15FB(2) in order to give effect to the exclusion.

It is intended that any instrument made under subregulation 1.15FB(2) would list only employers (being a person, partnership or unincorporated association) who pose a risk to the safety or welfare of a person performing work in their employment. The intention of that measure is to dissuade WHMs from working with these employers, although it does not prevent them from doing so. The Explanatory Statement to the 2021 WHM Amendment Regulations stated that the intention was to provide procedural fairness through a policy-based mechanism to employers whom the Minister was considering listing for this purpose.

In response to concerns raised by both the Senate Standing Committee for the Scrutiny of Delegated Legislation[1] and the Parliamentary Joint Committee on Human Rights (PJCHR),[2] the Government considers it appropriate to include a procedural fairness mechanism in the Migration Regulations.

The Amendment Regulations therefore amend the Migration Regulations to introduce certain statutory procedural fairness processes in relation to the Minister's existing power to specify, by legislative instrument, 'excluded employers' for the purposes of the WHM program. Before specifying a person, partnership or unincorporated association, the Minister will be required to advise that employer in writing of the Minister's intention to do so, and the reasons. The Minister must also allow that employer at least 28 days to make a written

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[1] Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 14 of 2021*, 29 September 2021, p. 37; Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 16 of 2021*, 25 November 2021, p. 35.

[2] Parliamentary Joint Committee on Human Rights, Migration Amendment (Subclass 417 and 462 Visas) Regulations 2021 [F2021L01030], Report 10 of 2021; [2021] AUPJCHR 98; Parliamentary Joint Committee on Human Rights, Migration Amendment (Subclass 417 and 462 Visas) Regulations 2021 [F2021L01030], Report 12 of 2021; [2021] AUPJCHR 126.

submission to the Minister about the proposed specification. The Minister is also required to give an 'excluded employer' a copy of the instrument as soon as reasonably practicable.

Consultation

Subsection 17(1) of the *Legislation Act 2003* requires that the rule-maker must be satisfied that there has been undertaken any consultation that is considered by the rule-maker to be appropriate and reasonably practicable to undertake.

The Department has consulted with the Attorney-General's Department and the Department of Foreign Affairs and Trade on the amendments to provide exceptions to the 'specified work' requirements for certain WHMs. Consultation external to Government was not considered necessary given the beneficial nature of the changes.

Given the beneficial nature of the changes to provide concessional arrangements to WHMs in Australia whose stay has been affected by the COVID-19 pandemic, there was no direct consultation with working holiday maker visa holders (as potential beneficiaries of the change), migration agents, lawyers, or other peak bodies in relation to this measure. Stakeholders and interested parties have not raised concerns about comparable concessions provided in the *Home Affairs Legislation Amendment (2021 Measures No 1) Regulations 2021*. As described above, the amendments to provide for procedural fairness processes on the face of the legislation follow consideration of the views and advice provided by the Senate Standing Committee for the Scrutiny of Delegated Legislation and the PJCHR.

The Office of Best Practice Regulation (OBPR) has also been consulted. The OBPR has advised that a Regulation Impact Statement is not required. The OBPR consultation reference number is OBPR reference 44225.

Other matters

The matters dealt with in the Regulations are appropriate for implementation in regulations rather than by Parliamentary enactment. The Migration Act expressly provides for these matters to be prescribed in regulations. 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. Relevantly, 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.

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

The Regulations commence on 5 March 2022. This aligns with scheduled updates to departmental IT systems.

A Statement of Compatibility with Human Rights 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 this Statement is at Attachment A.

Details of the Regulations are set out in Attachment B.

ATTACHMENT A

Statement of Compatibility with Human Rights

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

Migration Amendment (Subclass 417 and 462 Visas) Regulations 2022

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

This Disallowable Legislative Instrument amends the *Migration Regulations 1994* (the Migration Regulations) to:

- facilitate the grant of further working holiday maker (WHM) visas to certain holders and former holders of those visas in Australia who have been affected by the COVID-19 pandemic;
- establish an instrument-making power for the Minister to exempt holders of certain passports from meeting 'specified work' requirements when they apply for a second or third WHM visa; and
- introduce statutory procedural fairness processes for employers whom the Minister is considering specifying as an 'excluded employer' for the purpose of 'specified work' under the WHM program.

The main purpose of the WHM program is to build people-to-people and cultural links between Australia and partner countries. Arrangements under the WHM program, including some eligibility requirements such as the age range for participants, are established on a bilateral basis between Australia and the relevant partner country or jurisdiction. While WHM visa holders can choose to supplement their holiday with short-term employment, employment is not the primary objective of the visa. However, WHM visa holders have become an important source of labour, particularly in regional Australia.

The WHM program consists of two visa subclasses, namely:

- the Working Holiday (Subclass 417) visa; and
- the Work and Holiday (Subclass 462) visa.

Both WHM visas are granted with a 12-month stay period. The key differences between the two visas are that the Work and Holiday (Subclass 462) visa arrangements are generally subject to a cap on the number of first visas that may be granted annually (except for the United States of America) and include additional eligibility requirements such as a minimum education level, English language proficiency or letters of support from the partner country

Government. The Working Holiday (Subclass 417) visa arrangements are uncapped with no limit on the annual number of first visa grants.

There are incentives for people who have been granted a first WHM visa to carry out minimum periods of 'specified work' in locations and industries specified for this purpose in legislative instruments by the Minister. While WHM visa holders can choose to work in any area or industry, a person who has held only one WHM visa in Australia may then be granted a second visa if they have carried out at least three months of specified work. If a person undertakes at least six months of specified work while holding their second WHM visa or a related bridging visa, they may be eligible to be granted a third WHM visa.

Concessions for certain WHMs in Australia affected by the COVID-19 pandemic

As a result of the COVID-19 pandemic, WHM visa holders who remained in Australia after travel restrictions were imposed on 20 March 2020 were unable to take full advantage of their visa because of significant disruptions to domestic travel and employment opportunities. The pandemic environment also prevented many from being able to complete the specified work requirements to become eligible for a subsequent WHM visa. In recognition of this fact, and of the important contribution that WHM visa holders make to the Australian economy including to critical industries during the pandemic, the Government is implementing further concessions. These concessions for WHMs who apply in Australia build on concessions introduced in July 2021 for those WHM visa holders who were unable to enter Australia at all during the pandemic or who had to leave early and are applying from outside Australia.

This Disallowable Legislative Instrument amends the Migration Regulations to:

- introduce a definition of 'onshore COVID-19 affected visa' which enables the implementation of these concessions for WHM visa applicants who apply in Australia for a WHM visa between 5 March 2022 (the commencement of the amendments) and 31 December 2022, and who were in Australia on 20 March 2020 as the holder or former holder of a WHM visa (the ***onshore COVID-19 affected visa***), as well as preserving existing concessions for WHMs who apply from outside Australia.
- make changes to the WHM visa criteria for WHMs who have held an ***onshore COVID-19 affected visa***. These changes operate so that, when a person who has held an ***onshore COVID-19 affected visa*** makes an application in Australia on or before 31 December 2022 for another WHM visa, the ***onshore COVID-19 affected visa*** is treated as not being a WHM visa for the purposes of the usual visa criteria, that is, it is treated as though it never existed. The applicant will therefore not need to meet the usual requirements for that WHM visa and thus will not be disadvantaged by not having been able to complete specified work whilst holding an ***onshore COVID-19 affected visa*** due to the difficulties of working and moving around Australia during the pandemic. The ***onshore COVID-19 affected visa*** will also not count towards the maximum limit on the total number of WHM visas a person may hold in Australia, which is also intended to benefit WHM visa holders who were adversely affected by the pandemic.

- allow eligible WHM visa applicants in Australia who apply by 31 December 2022 to lodge a valid WHM visa application without holding a valid passport. The purpose of this amendment is to avoid disadvantaging WHMs who were unable to obtain a new passport in Australia because of administrative difficulties during COVID-19, so that they can lodge an application as soon as possible after the commencement of the amendments and be granted a bridging visa to remain lawfully in Australia while waiting to obtain the new passport. All applicants for a WHM visa will be required to hold a valid passport in order for the visa to be granted. This amendment may be of particular benefit to applicants whose current visas are about to cease or who are about to exceed the age limit to apply for a WHM visa as established in the relevant bilateral arrangement.

It is also intended that persons who held an ***onshore COVID-19 affected visa*** will be eligible to apply for their next WHM visa without needing to pay a visa application charge. This will be provided for in an instrument made by the Minister under an existing power in the Migration Regulations.

Together, these amendments are intended to provide WHM visa applicants in Australia, whose time in Australia on an earlier WHM visa was adversely affected by the COVID-19 pandemic, the opportunity to remain in Australia longer and enjoy the full working holiday experience, and a new opportunity to meet the specified work requirements for a subsequent WHM visa, if they choose to do so.

Power to exempt certain passport holders from the requirement to undertake 'specified work'

This Disallowable Legislative Instrument amends the Migration Regulations to:

- allow the Minister to specify in a legislative instrument the holders of certain passports as being exempt from meeting the specified work requirements that applicants for a second or third WHM visa must otherwise meet.

Although the amendment does not itself refer to any specific passport holders, the current intention is to use this new power to give effect to Australia's commitments given in connection with the signing of the Australia-United Kingdom Free Trade Agreement (A-UKFTA). As announced jointly by the Prime Ministers of Australia and the United Kingdom (UK) on 15 June 2021, and confirmed by exchange of letters which constitute a Memorandum of Understanding between Australia and the UK signed on 16 December 2021('the MOU'), Australia and the UK agreed to increase the maximum eligible age for UK WHM applicants from 30 to 35 years; and to provide UK WHMs the opportunity to stay in Australia for up to three years with no requirement to carry out 'specified work'. The A-UKFTA was signed on 17 December 2021 but has not yet entered into force. The new WHM arrangements as expressed in the MOU are to be implemented within two years of the A-UKFTA entering into force, on a date to be jointly decided by Australia and the UK. This amendment will allow timely implementation, via the making of a new legislative instrument specifying holders of UK passports, once the timeframe has been agreed with the UK.

The amendment will also facilitate the future implementation of any other such arrangements that may be agreed on a bilateral basis with WHM partner countries and jurisdictions.

Procedural fairness for employers being considered by the Minister for exclusion

Under amendments to the Migration Regulations made by the *Migration Amendment (Subclass 417 and 462 Visas) Regulations 2021* (that commenced on 28 July 2021), work carried out for an 'excluded employer' is ineligible for the purpose of meeting 'specified work' requirements for a second or third WHM visa. The Minister may specify 'excluded employers' in a legislative instrument under regulation 1.15FB(2) in order to give effect to the exclusion.

As noted in the Statement of Compatibility with Human Rights for those Regulations, it is intended that any instrument would list only employers (being a person, partnership or unincorporated association) who pose a risk to the safety or welfare of a person performing work in their employment. The intention of that measure was to dissuade WHMs from working with these employers, although it does not prevent them from doing so. The intention was to provide procedural fairness through a policy-based mechanism to employers whom the Minister was considering listing for this purpose.

However, in response to concerns raised by both the Parliamentary Joint Committee on Human Rights (PJCHR) and the Senate Standing Committee for the Scrutiny of Delegated Legislation, the Government considers it appropriate to include a procedural fairness mechanism in the Migration Regulations themselves.

This Disallowable Legislative Instrument therefore amends the Migration Regulations to:

- introduce certain statutory procedural fairness processes in relation to the Minister's existing power to specify, by legislative instrument, 'excluded employers' for the purposes of the WHM program. Before specifying a person, partnership or unincorporated association, the Minister will be required to advise that employer in writing of his/her intention to do so, and the reasons. The Minister must also allow that employer at least 28 days to make a written submission to the Minister about the proposed specification.

Human rights implications

This Disallowable Legislative Instrument engages the following rights:

- the right to work in Article 6(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)
- 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)
- the rights relating to privacy and reputation in Article 17(1) of the ICCPR.

Right to work

The amendments in this Disallowable Legislative Instrument positively engage the right to work in Article 6(1) of the ICESCR, which states 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.*

The amendments to provide concessions to WHMs in Australia who held an ***onshore COVID-19 affected visa****,* through easier access to subsequent WHM visas to remain in Australia, will benefit those visa holders by giving them more time in which to pursue work, holiday and limited study activities, and this may support their rights, particularly the right to work.

Rights of equality and non-discrimination

This Disallowable Legislative Instrument may engage 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.*

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.

The amendment to allow the Minister to exempt, by legislative instrument, holders of certain passports from specified work requirements for second and third visas will enable Australia to give effect to its MOU commitments given in the context of the signing of the A-UKFTA, on a date to be agreed with the UK within two years of the A-UKFTA entering into force. The mechanism will also allow the Minister to exempt other passport holders from the specified work requirements in the future, if required.

This may engage the rights of equality and discrimination, including in relation to the right to work, of those WHM visa holders who are holders of passports that are not exempted under this power.

Access to the unique opportunity provided by the WHM program is already limited to eligible passport holders from certain partner countries and jurisdictions only. Arrangements under the WHM program, including eligibility requirements, are established via bilateral negotiations between Australia and the relevant partner country or jurisdiction. While certain requirements are consistent for all WHM partner countries and jurisdictions, there is some variation across the program according to the terms of the individual bilateral arrangements.

Eligibility requirements for the grant of a WHM visa are published for the information of applicants and prospective applicants ahead of their participation in the WHM program.

This amendment is necessary to give effect to the specific MOU commitments made in the context of the A-UKFTA, which are aimed at optimising bilateral trade and mobility arrangements, and will provide the ability to exempt passport holders from other countries in the future. This amendment does not introduce a new restriction relating to work for non-UK citizens currently participating in the WHM program or who wish to participate in the future; rather, it provides the mechanism to offer an additional benefit, as agreed in the MOU, to UK citizens on the basis that a reciprocal benefit will be provided to Australian participants in the UK's Youth Mobility Scheme. The amendment is therefore also reasonable and proportionate to the objectives of the WHM program and its reciprocal and country-by-country nature.

Rights relating to privacy and reputation

This Disallowable Legislative Instrument supports rights relating to privacy and reputation in Article 17(1) of the ICCPR, which states:

> *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

In its consideration of the *Migration Amendment (Subclass 417 and 462 Visas) Regulations 2021*, the PJCHR considered that the listing of individual employers in a legislative instrument, on the basis that they may pose a health and safety risk to employees, engaged and limited the right to privacy and reputation. The PJCHR noted the intention to provide procedural fairness to employers through policy mechanisms, but raised concerns that the there was no legislative requirement to do so as part of those regulations.

This Disallowable Legislative Instrument supports rights relating to privacy and reputation in that it addresses concerns regarding the lack of a statutory procedural fairness mechanism for employers being considered for exclusion, by introducing a requirement in the Migration Regulations for the Minister to advise the employer in writing of that intention, and allow them at least 28 days in which to respond.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because it supports the right to work and rights relating to privacy and reputation, and, to the extent that it may limit the right of equality and non-discrimination, those limitations are reasonable, necessary and proportionate.

The Honourable Alex Hawke MP, Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

ATTACHMENT B

Details of the *Migration Amendment (Subclass 417 and 462 Visas) Regulations 2022*

Section 1 – Name

This section provides that the name of the instrument is the *Migration Amendment (Subclass 417 and 462 Visas) Regulations 2022* (the Amendment Regulations).

Section 2 – Commencement

This section provides for the commencement of the instrument. The amendments in Schedule 1 to the Amendment Regulations commence on 5 March 2022.

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 Amendment Regulations operate.

Schedule 1 – Amendments

Part 1—Exceptions relating to COVID-19 affected visas and specified work

Migration Regulations 1994

Item [1] – Regulation 1.03 (definition of COVID-19 affected visa)

This item repeals the current definition of ***COVID-19 affected visa*** in regulation 1.03, and substitutes a new, expanded definition of this term. The amendment by this item is a consequential amendment, necessary to reflect the substantive amendments made by items 2 to 6 (described further below).

The current definition of ***COVID-19 affected visa*** in regulation 1.03 is a signpost definition. It refers the reader to subregulations 1.15P(1) and (2) for the term's meaning. Regulation 1.15P describes the visas that are ***COVID-19 affected visas***. Regulation 1.15P currently covers WHM visas that were granted before 20 March 2020 and ceased between that date and 31 December 2021, provided the visa holder was outside Australia when the visa ceased.

The amendments by items 2 to 6 expand regulation 1.15P so that, as amended, it also covers certain WHM visas (to be known as ***onshore COVID-19 affected visa***s), where the person who holds, or held, that visa was in Australia on 20 March 2020, and is applying for a further WHM visa.

To reflect this, the amended definition of ***COVID-19 affected visa*** includes reference to both an ***offshore COVID-19 affected visa*** and an ***onshore COVID-19 affected visa***. These new

terms are also included as defined terms in regulation 1.03, as amended by item [2] (described below).

Item [2] – Regulation 1.03

This item amends current regulation 1.03 by inserting two new defined terms, ***offshore COVID-19 affected visa*** and ***onshore COVID-19 affected visa***. These terms are signpost definitions. They refer the reader to relevant provisions in regulation 1.15P for the meaning of each term, as amended by items [3] to [6] of the Amendment Regulations.

Item [3] – Before subregulation 1.15P(1)

This item inserts a new subheading before current subregulation 1.15P(1).

This subheading makes it clear that subregulations 1.15P(1) and 1.15P(2) deal with ***offshore COVID-19 affected visas*** only. It describes certain visas where the visa applicant is outside Australia when the application is made (that is, the person is 'offshore'). It distinguishes the visas covered by current subregulation 1.15P(1) from the visas covered by subregulation 1.15P(2A) – that is, where the visa applicant is in Australia when the application is made ('onshore').

Item [4] – Subregulation 1.15P(2)

This item amends current subregulation 1.15P(2) by inserting the word '***offshore***' after 'definition of'.

Current subregulation 1.15P(2) provides that the Minister may, by legislative instrument, specify kinds of subclass 417 (Working Holiday) visas and subclass 462 (Work and Holiday) visas for the purposes of the definition of ***COVID-19 affected visa*** in regulation 1.03.

This amendment provides that the scope of subregulation 1.15P(2) is limited to ***offshore COVID-19 affected visas*** (as defined by the new term inserted by item [2]).

Item [5] – After subregulation 1.15P(2)

This item inserts a new subheading and new subregulations 1.15P(2A) and (2B) after current subregulation 1.15P(2).

This new subheading makes it clear that subregulations 1.15P(2A) and 1.15P(2B) deal with ***onshore COVID-19 affected visas***. It describes certain visas where the applicant is in Australia when the application is made (that is, the person is 'onshore'). It distinguishes the visas covered by subregulation 1.15P(2A) from the visas covered by current subregulation 1.15P(1) – that is, where the person is outside Australia when the application is made ('offshore').

This item also inserts subregulations 1.15P(2A) and 1.15P(2B). The purpose of subregulations 1.15P(2A) and 1.15(2B) is to describe visas that are ***onshore COVID-19 affected visa***s.

Subregulation 1.15P(2A) provides that a subclass 417 visa or subclass 462 visa is an ***onshore COVID-19 affected visa*** if all of the following requirements are met:

- the covered visa is granted to a person before 20 March 2020: paragraph 1.15P(2A)(a);
- on 20 March 2020 the covered visa was either in effect or, if the person did not hold a substantive visa on that day, the visa was the last substantive visa held by the person: paragraph 1.15P(2A) (b);
- the person mentioned in paragraph 1.15P(2A)(a) was in Australia on 20 March 2020: paragraph 1.15P(2A)(c);
- the person applies for another subclass 417 visa or subclass 462 visa, between 5 March 2022 and 31 December 2022 in Australia: paragraph 1.15P(2A)(d);
- the person is in Australia when the application is made: paragraph 1.15P(2A)(e); and
- if the covered visa is cancelled before the application for a further WHM visa is made—the visa was cancelled because the former visa holder asked the Minister, in writing, to cancel the visa (which is a ground for visa cancellation under section 116 of the Migration Act, prescribed in paragraph 2.43(1)(g) of the Migration Regulations).

The new term ***onshore COVID-19 affected visa*** establishes a cohort that are referred to and provided concessions by the amendments outlined in Part 1 of Schedule 1 to the Amendment Regulations.

As part of the same package of measures, but separate to the Amendment Regulations, it is also intended that this cohort may be eligible, in certain circumstances, for a 'nil' visa application charge concession, by way of a legislative instrument made by the Minister under paragraph 1224A(2)(a) and subparagraph 1225(2)(a)(i) in Schedule 1 to the Migration Regulations.

The Amendment Regulations and proposed 'nil' visa application charge concession extend the concessions introduced by the *Home Affairs Legislation Amendment (2021 Measures No. 1) Regulation 2021,* which are available to certain WHM visa applicants who apply outside Australia. The amendments provide former WHM visa holders in Australia an opportunity to enjoy the full working holiday experience, where it has been disrupted by the COVID-19 pandemic. It provides an opportunity to apply for a further WHM visa in Australia, and thereby regain access to subsequent subclass 417 or subclass 462 visas, subject to meeting eligibility requirements. The concessions recognise that holders of these WHM visas who remained in Australia during the pandemic continued to contribute to Australia's economy, and in some cases directly contributed to the COVID-19 response by working in critical sectors, but without these concessions, would not be eligible to apply for a further WHM visa.

Subregulation 1.15P(2B) provides that the Minister may, by legislative instrument, specify kinds of subclass 417 visas and subclass 462 visas for the purposes of the definition of ***onshore COVID-19 affected visa*** in regulation 1.03. This capacity to expand the definition of ***onshore COVID-19 affected visa*** in a legislative instrument has been included to provide appropriate flexibility to deal with future contingencies, as highlighted by the continuing uncertainty caused by the COVID-19 pandemic, and the need to ensure measures are in place to support Australia's economic recovery.

Relevantly, subregulation 1.15P(3), as amended by item [6] provides that a legislative instrument made under new subregulation 1.15P(2B) may specify kinds of WHM visas by reference to circumstances relating to a person who holds or held the visa.

Current subregulation 1.15P(2) already allows the Minister to specify kinds of subclass 417 visas and subclass 462 visas for the purposes of the current definition of ***onshore COVID-19 affected visa***. New subregulation 1.15P(2B) is drafted in the same language as current subregulation 1.15P(2). Having two separate instrument-making heads of power rather than one would appropriately enable the Minister to make clear whether a new cohort is an ***onshore COVID-19 affected visa*** or an ***offshore COVID-19 affected visa***

This item also inserts a subheading after new subregulation 1.15P(2B) and before subregulation 1.15P(3). This subheading supports and clarifies the application of subregulation 1.15P(3), as amended by item [6], to instruments made under either current subregulation 1.15P(2) or new subregulation 1.15P(2B)

Item [6] – Subregulation 1.15P(3)

This item amends subregulation 1.15P(3) by inserting a reference to new subregulation 1.15P(2B).

Current subregulation 1.15P(3) provides that a legislative instrument made under subregulation 1.15P(2) may specify kinds of subclass 417 visas and subclass 462 visas by reference to circumstances relating to a person who holds or held the visa.

The amendment means that a legislative instrument made under either subregulation 1.15P(2) or 1.15P(2B) may specify kinds of subclass 417 visas and subclass 462 visas by reference to circumstances relating to a person who holds or held the visa.

This ensures that there is flexibility to target future concessions to whatever circumstances may arise as a result of the pandemic, and for applicants who are making an application either in or outside Australia.

Item [7] – After paragraph 1224A(3)(a) of Schedule 1

This item makes amendments to subitem 1224A(3) of Schedule 1 by inserting new paragraph 1224A(3)(aaa) after paragraph 1224A(3)(a).

Paragraph 1224A(3)(a) provides that an applicant must hold a valid passport issued by a foreign country specified in an instrument in writing for that paragraph, at the time of making the application for a Work and Holiday (Temporary) (Class US) visa.

New paragraph 1224A(3)(aaa) provides that paragraph 1224A(3)(a) does not apply where:

- the applicant is in Australia; and
- when entering Australia, the applicant held a valid passport issued by a foreign country specified in an instrument in writing made under paragraph 1224A(3)(a); and
- the passport expired after the applicant entered Australia.

This means that new paragraph 1224A(3)(aaa) allows visa applicants whose passport expired in Australia to make a valid application for a new subclass 462 visa.

Some holders and former holders of subclass 462 visas in Australia are currently unable to renew their expired passports, experiencing administrative difficulties resulting from some countries' consulates and embassies temporarily suspending passport services during the COVID-19 pandemic. The amendments therefore enable affected applicants to lodge a valid application for a Work and Holiday (Temporary) (Class US) visa without having to wait for a new passport, subject to meeting other Schedule 1 requirements. This benefits applicants who would otherwise be disadvantaged by such a delay, for example those who would exceed the age limit to apply for the visa. These applicants are, however, still required to hold a valid passport in order to be granted the visa (the amendment at item [31] refers).

Item [8] – Paragraph 1224A(3)(b) of Schedule 1

This item amends paragraph 1224A(3)(b) by inserting the phrase "other than an offshore COVID-19 affected visa" after "subclass 462 (Work and Holiday) visa".

Item [13], described below, repeals and replaces paragraph 1224A(3)(d).

The amendment by this item preserves the current effect of existing paragraph 1224A(3)(d), which is that an ***offshore COVID-19 affected visa*** is to be disregarded when assessing whether a person has been the holder of a subclass 462 visa per the chapeau to paragraph 1223A(3)(b).

This means that paragraph 1223A(3)(b), as amended, applies to a person who is outside Australia, has only held one subclass 462 visa, and that visa is an ***offshore COVID-19 affected visa***. In effect, the applicant is treated as a person who has never held a subclass 462 visa.

Item [9] – Paragraph 1224A(3)(c) of Schedule 1

This item amends paragraph 1224A(3)(c) by inserting the phrase "other than an offshore COVID-19 affected visa" after "subclass 462 (Work and Holiday) visa".

Item [13], described below, repeals and replaces paragraph 1224A(3)(d).

The amendment by this item preserves the current effect of existing paragraph 1224A(3)(d), which is that an ***offshore COVID-19 affected visa*** is to be disregarded when assessing whether a person has been the holder of a subclass 462 visa per the chapeau to paragraph 1223A(3)(c).

This means that paragraph 1223A(3)(c) does not apply to a person who is outside Australia, has only held one subclass 462 visa, and that visa is an ***offshore COVID-19 affected visa***.

Item [10] – Subparagraph 1224A(3)(c)(ii) of Schedule 1

This item amends subparagraph 1224A(3)(c)(ii) of Schedule 1 by inserting the phrase ", disregarding any COVID-19 affected visa," so that it appears after "if" in the subparagraph.

In order to apply for a second subclass 462 visa, applicants must declare that they have undertaken three months of specified work (subparagraph 1224A(3)(c)(ii)).

The effect of this item is that where:

- the applicant is in Australia and has held only one subclass 462 visa, and that visa is an ***onshore COVID-19 affected visa***, subparagraph 1224A(3)(c)(ii) would not be relevant to the applicant. The applicant would not need to make the declaration about the three-month work requirement.
- the applicant has held two subclass 462 visas, and one of those visas is a ***COVID-19 affected visa*** (i.e. either an ***offshore COVID-19 affected visa*** or ***onshore COVID-19 affected visa***), the applicant is treated as a person who has held one subclass 462 visa and would need to make the declaration about the three-month work requirement.

Subclause 1224A(3)(c)(ii) is not be relevant to a person who is outside Australia, has only held one subclass 462 visa, and that visa is an ***offshore COVID-19 affected visa***. Item [8] above refers.

'Specified work' requirements and concessions

The 'specified work' requirements under the WHM program provide incentives for WHM visa holders in Australia to work in locations and industries specified for this purpose by the Minister, referred to as 'specified work'. While WHM visa holders in Australia can work in any area or industry (if they choose to work at all during their stay in Australia), a person who has held their first WHM visa in Australia (having never been previously in Australia as a holder of a WHM visa) may then be granted a second visa if they have carried out at least three months of specified work. If a person undertakes at least six months of specified work whilst holding their second WHM visa, they may then be eligible to be granted a third WHM visa. The nature of 'specified work' varies depending on the subclass.

The amendments by the Amendment Regulations are intended to benefit WHMs who were in Australia on 20 March 2020 and have been in Australia during the COVID-19 pandemic. The amendments in effect provide another opportunity to meet the 'specified work' requirements for a subsequent WHM visa. An ***onshore COVID-19 affected visa*** would be disregarded when counting the number of WHM visas the applicant has held in Australia when assessing the requirements in respect of undertaking 'specified work' in relation to a subsequent WHM visa application.

Item [11] – Subparagraph 1224A(3)(c)(iia) of Schedule 1

This item amends subparagraph 1224A(3)(c)(iia) of Schedule 1 by inserting the phrase ", disregarding any COVID-19 affected visa," so that it appears after "if" in the subparagraph. As provided for by the amendment at item [1], the term ***COVID-19 affected visa*** is defined in regulation 1.03, and covers both ***offshore COVID-19 affected visa***s and ***onshore COVID-19 affected visa***s.

Current subparagraph 1224A(3)(c)(iia) provides that, to be eligible for grant of a third subclass 462 visa, the applicant must declare that they have undertaken another six months of 'specified work'.

The effect of this amendment is that, where:

- the applicant has held two subclass 462 visas, and one of those visas is a ***COVID-19 affected visa***, subparagraph 1224A(3)(c)(iia) would not be relevant to the applicant. The applicant would instead need to make the declaration about the three-month work requirement under subparagraph 1224A(3)(c)(ii) (item [10] refers).
- the applicant has held three subclass 462 visas, and one of those visas is a ***COVID-19 affected visa***, the applicant is treated as a person who has held two subclass 462 visas and would need to make the declaration about the six-month work requirement.

The amendment is intended to benefit those holders of a ***COVID-19 affected visa***, as the visa that was affected by the pandemic would be disregarded when counting the total number of visas the applicant has held in Australia for assessing the 'specified work' requirements in respect of an application for a subsequent WHM visa.

Item [12] – Subparagraph 1224A (3)(c)(iii) of Schedule 1

This item amends subparagraph 1224A(3)(c)(iii) of Schedule 1 by inserting the phrase "disregarding any COVID-19 affected visa," before the existing text "the applicant has not held".

Subparagraph 1224A(3)(c)(iii) requires an applicant for a subclass 462 visa to have held not more than two subclass 462 visas in Australia (including any held by the applicant at the time of application).

The effect of this amendment is that an applicant who has held three subclass 462 visas, where one of those visas is a ***COVID-19 affected visa,*** can make a further application for a Work and Holiday (Temporary) (Class US) visa (subject to also meeting the other 'valid application' requirements set out in item 1224A of Schedule 1).

The item is intended to benefit those holders of a ***COVID-19 affected visa***, as the visa they did not use or only partially used, because of the COVID-19 pandemic, will not count towards the limit on the total number of subclass 462 visas that they may hold.

Item [13] – Paragraph 1224A(3)(d) of **Schedule 1**

This item repeals current paragraph 1224A(3)(d) and inserts new paragraphs 1224A(3)(d), (e) and (f).

The effect of current paragraph 1224A(3)(d) is to disregard a subclass 462 visa covered by subregulation 1.15P(1) or a subclass 462 visa of a kind specified by the Minister under subregulation 1.15P(2) when assessing the requirements under paragraphs 1224A(3)(b) and (c).

The amendments by items [8] to [10] preserve the effect of current 1224A(3)(d), with new paragraphs 1224A(3)(d), (e) and (f) supporting the new concessions for WHMs in Australia who have been affected by the COVID-19 pandemic, as well as arrangements to exempt certain passport holders from the 'specified work' requirement to support Australia's bilateral relationships.

Paragraph 1224A(3)(d)

This item establishes two new exceptions to the requirements under subparagraphs 1224A(3)(c)(ii) and (iia) for a visa applicant to make a declaration that they have undertaken either three months or six months of specified work.

New paragraph 1224A(3)(d) exempts the visa applicant from the requirement to make a declaration about completing specified work, if the applicant holds a passport of a kind specified by the Minister.

The kinds of passports for the purpose of new paragraph 1224A(3)(d) would be specified by the Minister in a legislative instrument under this paragraph.

This provision is intended to mirror the approach in new subitem 1225(3BA) in relation to the Working Holiday (Temporary) (Class TZ) visa (see item [19]), and would allow the Minister to exempt certain passport holders from the specified work requirements for subsequent Subclass 462 visas. This ensures a consistent framework across the WHM program with respect to implementing appropriate 'specified work' exemptions from time to time, as may be negotiated by Australia in bilateral arrangements with other countries under the WHM program. By providing for this to be dealt with in a legislative instrument by the Minister, this also provides appropriate flexibility and responsiveness to support the implementation of specific bilateral arrangements that may be agreed in future.

Paragraph 1224A(3)(e)

New paragraph 1224A(3)(e) exempts the applicant from making a declaration about completing specified work, where:

- the application for a Work and Holiday (Temporary) (Class US) visa is made between 5 March 2022 and 31 December 2022; and
- the applicant holds or held an ***onshore COVID-19 affected visa***; and
- the applicant has not been granted a subclass 462 visa on the basis of another application made on or after 5 March 2022.

An applicant is eligible for this concession only once. This concession would allow the person to apply for an additional subclass 462 visa that replaces the visa that was affected by the COVID-19 pandemic, providing another opportunity to meet the specified work requirements for a subsequent subclass 462 visa.

Paragraph 1224A(3)(f)

This item also inserts new paragraph 1224A(3)(f), which modifies the operation of subparagraph 1224A(3)(c)(iv). Subparagraph 1224A(3)(c)(iv) provides that if the applicant for a subclass 462 visa is in Australia, the applicant must hold a substantive visa or have held a substantive visa at any time in the period of 28 days immediately before making the application. The effect of this item is that the applicant can still make an application for a Work and Holiday (Temporary) (Class US) visa even if they hold only a bridging visa (of any class) at the time of application, if they make the application between 5 March 2022 and 31 December 2022.

There is a large cohort of applicants who are in Australia on bridging visas and have not held a substantive visa for longer than 28 days. The amendment by this item would enable some of these persons to return to the Work and Holiday visa program after 5 March 2022.

Item [14] – Subitem 1225(3A) of Schedule 1

This item amends current subitem 1225(3A) by inserting the phrase "other than an offshore COVID-19 affected visa" after "subclass 417 (Working Holiday) visa".

The amendment at item [19] (described below) repeals and replaces subitem 1225(3BA).

The amendment by this item preserves the current effect of subitem 1225(3BA), which is that a subclass 417 visa covered by subregulation 1.15P(1) or a subclass 417 visa of a kind specified by the Minister under subregulation 1.15P(2) is to be disregarded when assessing whether a person has been the holder of a subclass 417 visa in Australia for the chapeau to item 1225(3A).

This means that amended subitem 1225(3A) would not apply to a person who is outside Australia, has only held one subclass 417 visa in Australia, and that visa is an ***offshore COVID-19 affected visa***.

Item [15] – Subitem 1225(3B) of Schedule 1

This item amends current subitem 1225(3B) of Schedule 1 by inserting the phrase "other than an offshore COVID-19 affected visa" after the first reference in the current subitem to "subclass 417 (Working Holiday) visa".

The amendment by item [19] (described below) repeals and replaces subitem 1225(3BA).

The amendment by this item preserves the current effect of subitem 1225(3BA) which is that a subclass 417 covered by subregulation 1.15P(1) or a subclass 417 visa of a kind specified by the Minister under subregulation 1.15P(2) is to be disregarded when assessing whether a person has been the holder of a subclass 417 visa in Australia for the chapeau to subitem 1225(3B).

This means that amended subitem 1225(3B) would not apply to a person who is outside Australia, has only held one subclass 417 visa in Australia, and that visa is an ***offshore COVID-19 affected visa***.

Item [16] – Paragraph 1225(3B)(c) of Schedule 1

This item amends current paragraph 1225(3B)(c) by inserting the expression ", disregarding any COVID-19 affected visa," after "if" in the current paragraph.

In order to apply for a second subclass 417 visa, applicants must declare that they have undertaken three months of specified work (current paragraph 1225(3B)(c)).

The effect of this item is that where:

- the applicant is in Australia and has held only one subclass 417 visa, and that visa is an ***onshore COVID-19 affected visa***, paragraph 1225(3B)(c) would not be relevant to the applicant. The applicant would not need to make the declaration about the three-month work requirement.
- the applicant has held two subclass 417 visas, and one of those visas is a ***COVID-19 affected visa*** (i.e. either an ***offshore COVID-19 affected visa*** or ***onshore COVID-19 affected visa***), the applicant is treated as a person who has held one subclass 417 visa and would need to make the declaration about the three-month work requirement.

Amended paragraph 1225(3B)(c) is not relevant to a person who is outside Australia, has only held one subclass 417 visa in Australia, and that visa is ***an offshore COVID-19 affected visa*** (item [14] refers).

The amendment benefits those holders of a ***COVID-19 affected visa*** as the visa that was affected by the pandemic would be disregarded when counting the number of visas the applicant has held in Australia for assessing the requirements in respect of undertaking specified work for a subsequent visa.

Item [17] – Paragraph 1225(3B)(ca) of Schedule 1

This item amends current paragraph 1225(3B)(ca) by inserting the expression ", disregarding any COVID-19 affected visa," after "if" in the current paragraph.

In order to obtain a third subclass 417 visa, applicants must declare that they have undertaken another six months of specified work (current paragraph 1225(3B)(ca)).

The effect of this item is that where:

- the applicant has held two subclass 417 visas, and one of those visas is a ***COVID-19 affected visa***, paragraph 1225(3B)(ca) would not be relevant to the applicant. The applicant would instead need to make the declaration about the three-month work requirement under paragraph 1225(3B)(c) – see item [16] above;
- the applicant has held three subclass 417 visas, and one of those visas is a ***COVID-19 affected visa***, the applicant is treated as a person who has held two subclass 417 visas and would need to make the declaration about the six-month work requirement.

The amendment by this item is intended to benefit those holders of a ***COVID-19 affected visa*** as the visa that was affected by the pandemic would be disregarded when counting the number of visas the applicant has held in Australia for assessing the requirements in respect of undertaking specified work for a subsequent visa.

Item [18] – Paragraph 1225(3B)(d) of Schedule 1

This item amends current paragraph 1225(3B)(d) by inserting the phrase "disregarding any COVID-19 affected visa," before "the applicant has not held".

Current paragraph 1225(3B)(d) requires an applicant for a subclass 417 visa to have held not more than two subclass 417 visas in Australia (including any held by the applicant at the time of application).

The effect of this item is that an applicant who has held three subclass 417 visas, and one of those visas is a ***COVID-19 affected visa***, can make a further application for a Working Holiday (Temporary) (Class TZ) visa.

The amendment by this item is intended to benefit those holders of a ***COVID-19 affected visa*** as the visa they did not use or only partially used, because of the COVID-19 pandemic, will not count towards the limit on the number of subclass 417 visas that they may hold.

Item [19] – Subitem 1225(3BA) of Schedule 1

This item repeals current subitem 1225(3BA) of Schedule 1, and replaces it with new subitems 1225(3BA), (3BB), (3BC) and (3BD).

Subitems 1225(3BA) and (3BB)

The current effect of subitem 1225(3BA), which is to disregard a subclass 417 covered by subregulation 1.15P(1) or a subclass 417 visa of a kind specified by the Minister under subregulation 1.15P(2) when assessing the requirements under subitem 1225(3A) and 1225(3B), is preserved through the amendments by items 14 to 18, as described above.

The amendment by this item establishes two new exceptions to the requirements under paragraphs 1225(3B)(c) and (ca) for an applicant to make a declaration that they have undertaken either three months or six months of specified work.

New subitem 1225(3BA) operates to exempt the applicant from making a declaration about completing specified work if the applicant holds a passport of a kind specified by the Minister. The kinds of passports for the purpose of new subitem 1225(3BA) would be listed by the Minister in a separate legislative instrument. Listing in a legislative instrument provides appropriate flexibility with the timing for implementation of this provision, and adding or removing listed passports. This will ensure that the new provision is responsive to, and can effectively support the implementation of, arrangements agreed under new international commitments.

Although the provision does not itself refer to any specific passport holders, the intention would be to use this provision to give effect to Australia's commitments given in connection with the signing of the Australia-United Kingdom Free Trade Agreement (A-UKFTA). This was announced jointly by the Prime Ministers of Australia and the United Kingdom (UK) on 15 June 2021, and confirmed by exchange of letters which constitute a Memorandum of Understanding between Australia and the UK signed on 16 December 2021. The new arrangements as expressed in the Memorandum of Understanding are to be implemented

within two years of the A-UKFTA entering into force, on a date to be jointly decided by Australia and the UK.

The mechanism also allows the Minister to exempt other passport holders from the specified work requirements in the future, if required.

New subitem 1225(3BB) also exempt the applicant from making a declaration about completing 'specified work', where:

- the application for a Working Holiday (Temporary) (Class TZ) visa is made between 5 March 2022 and 31 December 2022; and
- the applicant holds or held an ***onshore COVID-19 affected***; and
- the applicant has not been granted a subclass 417 visa on the basis of another application made on or after 5 March 2022.

An applicant is eligible for this concession only once. This concession would allow the person to apply for an additional Working Holiday (Temporary) (Class TZ) visa that replaces the visa that was affected by the COVID-19 pandemic, and provide another opportunity to meet the 'specified work' requirements for grant of a subsequent, further subclass 417 visa.

Subitem 1225(3BC)

New subitem 1225(3BC) modifies the operation of current paragraph 1225(3B)(e).

Paragraph 1225(3B)(e) provides that, if an applicant is, or has previously been, in Australia as the holder of a subclass 417 visa, they must hold a working holiday eligible passport to make a valid application for a Working Holiday (Temporary) (Class TZ) visa.

New subitem 1225(3BC) provides that paragraph 1225(3B)(e) does not apply where:

- the applicant is in Australia; and
- when entering Australia, the applicant held a working holiday eligible passport; and
- the passport expired after the applicant entered Australia.

New paragraph 1225(3B)(e) therefore allows applicants in Australia whose passport has expired to make a valid application for a further Working Holiday (Temporary) (Class TZ), subject to meeting other relevant requirements in item 1225 of Schedule 1.

Some holders and former holders of subclass 417 visas in Australia are currently unable to renew their expired passports because of administrative difficulties, such as the Consulates and Embassies of some countries having temporarily ceased offering that service during the COVID-19 pandemic. The amendments allow affected applicants to lodge a valid application for a new subclass 417 visa without having to wait for a new passport. This is intended to benefit applicants who would otherwise be disadvantaged by such a delay, for example those who would exceed the age limit to apply for the visa.

The applicant would, however, still be required to hold a valid passport in order to be granted the visa (item [23] refers).

Subitem 1225(3BD)

New subitem 1225(3BD) modifies the operation of current paragraph 1225(3B)(f) in certain circumstances. Paragraph 1225(3B)(f) provides that if the applicant for a Working Holiday (Temporary) (Class TZ) visa is in Australia, the applicant must hold a substantive visa or have held a substantive visa at any time in the period of 28 days immediately before making the application.

The effect of subitem 1225(3BD) is to provide that the applicant can still make an application for a WHM visa even if they hold only a bridging visa (of any class) at the time of application, if the application is made between 5 March 2022 and 31 December 2022 inclusive.

This amendment provides a mechanism for former subclass 417 visa holders who have remained in Australia on bridging visas during the COVID-19 pandemic to return to the WHM program, and apply for a further Working Holiday (Temporary) (Class TZ) visa if they choose.

Item [20] – After subclause 417.211(1) of Schedule 2

This item inserts new subclause 417.211(1A). This subclause provides certain limited exceptions to the criteria to be satisfied at time of application.

Paragraph 417.211(1A)(a)

New paragraph 417.211(1A)(a) provides an exception to the criterion that an applicant holds a working holiday eligible passport of the kind, or of one of the kinds, specified in a legislative instrument made by the Minister, as set out in paragraph 417.211(2)(a).

The exception would be available where:

- the applicant is in Australia; and
- when entering Australia, the applicant held a working holiday eligible passport specified in paragraph 417.211(2)(a); and
- the passport expired after the applicant entered Australia.

Some holders and former holders of subclass 417 visas in Australia are currently unable to renew their expired passports because of administrative difficulties, such as the Consulates and Embassies of some countries having temporarily ceased offering that service during the COVID-19 pandemic. The amendments therefore allow affected applicants to lodge a valid application for a new subclass 417 visa without having to wait for a new passport. This is intended to benefit applicants who would otherwise be disadvantaged by such a delay, for example those who would exceed the age limit to apply for the visa.

They would, however, still be required to hold a valid passport at time of decision, in order to be granted the visa (item [23] refers).

Paragraph 417.211(1A)(b)

New paragraph 417.211(1A)(b) provides an exception to the criterion that an applicant needs to meet the specified work requirements set out in paragraphs 417.211(5) and (6).

The exception would be available where the applicant holds a passport of a kind specified by the Minister in a legislative instrument made for the purposes of new subitem 1225(3BA) of Schedule 1 (item [19] refers).

Paragraph 417.211(1A)(c)

New paragraph 417.211(1A)(c) provides an exception to the criterion that an applicant needs to meet the specified work requirements set out in paragraphs 417.211(5) and (6).

The exception would be available where:

- the application is made between 5 March 2022 and 31 December 2022; and
- the applicant holds or held an ***onshore COVID-19 affected visa***; and
- the applicant has not been granted a subclass 417 visa on the basis of another application made on or after 5 March 2022.

The effect of new paragraph 417.211(1A)(c) is that where a person has held an ***onshore COVID-19 affected*** in these circumstances they would not need to satisfy the specified work requirements. This is because an applicant would not be required to re-satisfy certain criteria that they previously met for the grant of a subclass 417 visa.

An applicant is only eligible, under new paragraph 417.211(1A)(c), for the exception from meeting criteria in paragraphs 417.211(5) and (6) once. This concession would allow the person to apply for an additional subclass 417 visa that replaces the visa that was affected by the COVID-19 pandemic, providing another opportunity to meet the specified work requirements for a subsequent subclass 417 visa if they choose.

Item [21] – Subparagraph 417.211(2)(b)(ii) of Schedule 2

This item amends current subparagraph 417.211(2)(b)(ii) to insert a reference to new paragraph 417.211(1A)(a) (as inserted by the amendment in item [20]).

Current subparagraph 417.211(2)(b)(ii) refers to a passport that the applicant holds. As the amendment by item [20] expressly allows for certain circumstances where the applicant is not required to hold a current, valid passport at time of application (per new paragraph 417.211(1A)(a)), it is necessary to reflect this in other time of application criteria that refer to the applicant holding a passport.

Item [22] – Paragraph 417.221(2)(a) of Schedule 2

This item repeals current paragraph 417.221(2)(a) and replaces it with new paragraphs 417.221(2)(a) and (aa).

Current paragraph 417.221(2)(a) provides that an applicant must continue to satisfy the criteria in paragraph 417.211(2)(a) and subclauses 417.211(4), (5) and (6) at time of decision.

New paragraph 417.221(2)(a) makes clear that the applicant must continue to satisfy the criteria in clause 417.211(4) at time of decision. New paragraph 417.221(2)(aa) provides that the applicant must continue to satisfy the criteria in subclauses 417.211(5) and (6) (the 'specified work' requirements), but subject to certain limited exceptions.

These exceptions operate where new paragraph 417.211(1A)(b) or (c) applies (as described in item [20] above), in relation to either:

- an applicant who holds a passport of a kind specified for the purposes of paragraph 1225(3BA): per paragraph 417.211(1A)(b);
- certain applicants who hold (or held) an ***onshore COVID-19 affected visa***: per paragraph 417.211(1A)(c).

The purpose of paragraphs 417.221(2)(a) and (aa) is to support new paragraphs 417.211(1A)(b) and (c) and ensure their effect carries through consistently from time of application to time of decision. This ensures the limited exceptions to the 'specified work' requirement provided by paragraphs 417.211(1A)(b) and (c) at time of application also apply at time of decision. If new paragraph 417.211(1A)(b) or (c) does not apply at time of application, the applicant would be required to continue to meet the 'specified work' requirements in subclauses 417.211(5) and (6) at the time of decision.

Item [23] - After subclause 417.221(2) of Schedule 2

This item inserts new subclause 417.221(2A) after current subclause 417.221(2) of Schedule 2.

New paragraph 462.221(2A) provides that the applicant holds a working holiday eligible passport of the kind, or of one of the kinds, specified in a legislative instrument made by the Minister for the purposes of subclause 417.211(2).

The effect of new paragraph 462.221(2A) is to require that an applicant holds a valid passport of a particular kind at the time of decision.

This preserves the current requirement in the Migration Regulations that an applicant must hold a valid passport at time of decision, but allows an applicant to have held an expired passport at the time of application in the circumstances described in new subclause 417.211(1A), inserted by item [20].

Item [24] – Paragraphs 462.211(a) and 462.211A(a) of Schedule 2

This item amends current paragraphs 462.211(a) and 462.211A(a) of Schedule 2 by omitting "a COVID-19 affected visa" and replacing it with the new term "an offshore COVID-19 affected visa".

These are consequential amendments, necessary to preserve the current effect of paragraphs 462.211(a) and 462.211A(a), where the applicant must be outside Australia at the time of application. Where these paragraphs currently refer to a ***COVID-19 affected visa***, this relies on the current regulation 1.03 definition of the term, and is a reference to a visa covered by current subregulation 1.15P(1), or a subclass 462 visa of kind specified by the Minister

under subregulation 1.15P(2). As a result of the amendments by items [1] and [2], the new defined term ***offshore COVID-19 affected visa*** has the same scope and effect as the current term ***COVID-19 affected visa***.

Item [25] – Clause 462.211B of Schedule 2

This item repeals current clause 462.211B, and replaces it with a new clause with the same clause number.

New clause 462.211B sets out the circumstances in which certain criteria in Schedule 2 to the Migration Regulations apply at time of application for a subclass 462 visa.

New subclause 462.211B(1) provides that if the applicant is, or has previously been, in Australia as the holder of a subclass 462 visa other than an ***offshore COVID-19 affected visa***, the applicant must satisfy the criteria in clauses 462.212, 462.214 and 462.217. Unless new subclause 462.211B(2) applies, the applicant would also need to satisfy the criteria in clauses 462.218 and 462.219.

This means that new clause 462.211B would be relevant to an applicant:

- who is in Australia regardless of whether any of their previous subclass 462 visas was an ***onshore COVID-19 affected visa*** or an ***offshore COVID-19 affected visa***, or
- who is not in Australia but has previously been in Australia as the holder of a subclass 462 that is not an ***offshore COVID-19 affected visa***.

New clause 462.211B would not be relevant to an applicant who is not in Australia, has previously been in Australia only once as the holder of a subclass 462 visa, and that visa is an ***offshore COVID-19 affected visa***. Amended clauses 462.211 and 462.211A (see item [19] above) are relevant to such an applicant.

New subclause 462.211B(2) provides two circumstances in which an applicant would not need to meet the specified work requirements set out in clauses 462.218 and 462.219.

New paragraph 462.211B(2)(a) sets out the circumstances where an applicant holds a passport of a kind specified by the Minister in a legislative instrument made for the purposes of new paragraph 1224A(3)(d) of Schedule 1 (item [13] refers).

The effect of new subclause 462.211B(1) and paragraph 462.211B(2)(a) is that where a person holds this type of passport, they would need to satisfy clauses 462.212, 462.214 and 462.217 but not the 'specified work' requirements set out in clauses 462.218 and 462.219.

New paragraph 462.211B(2)(b) sets out the circumstance where:

- the application is made between 5 March 2022 and 31 December 2022; and
- the applicant holds or held an ***onshore COVID-19 affected visa***; and
- the applicant has not been granted a subclass 417 visa on the basis of another application made on or after 5 March 2022.

The effect of new subclause 462.211B(1) and paragraph 462.211B(2)(b) is that where a person has held an ***onshore COVID-19 affected visa,*** they would need to satisfy clauses 462.212, 462.214 and 462.217 but not the specified work requirements set out in clauses 462.218 and 462.219. This is because an applicant would not be required to re-satisfy certain criteria that they previously met for the grant of a subclass 462 visa.

An applicant who has held an ***onshore COVID-19 affected*** is only eligible for the exception from meeting criteria in clauses 462.218 and 462.219 once. This concessional arrangement allows the person to apply for an additional subclass 462 visa that replaces the visa that was affected by the COVID-19 pandemic, providing another opportunity to meet the specified work requirements for a subsequent subclass 462 visa if they choose.

No amendments are made to clauses 462.218 and 462.219, which provide that a reference to a subclass 462 visa does not include a ***COVID-19 affected visa*** when determining how many subclass 462 visas an applicant has held in Australia under subclauses 462.218(1) and 462.219(1). However, in assessing the 'specified work' requirements set out in clauses 462.218 and 462.219, any type of ***COVID-19 affected visa*** would be disregarded in applying these criteria. This is because the definition of ***COVID-19 affected visa*** is expanded by the amendment at item [1] to include both an ***onshore COVID-19 affected visa*** and ***offshore COVID-19 affected visa***.

Item [26] – Paragraph 462.212(b) of Schedule 2

This item amends current paragraph 462.212(b) by inserting reference to new paragraph 1224A(3)(aaa).

The amendment by this item reflects the amendments made to paragraph 1224A(3)(aaa) of Schedule 1 (see item [7]), which allow for an applicant to hold an expired passport when making a valid application for a Work and Holiday visa.

Current paragraph 462.212(b) refers to a passport that an applicant holds. This item makes amendments to refer to a passport that the applicant previously 'held', if paragraph 1224A(3)(aaa) of Schedule 1 applied.

Item [27] – At the end of clause 462.213 of Schedule 2

This item amends current clause 462.213 by adding a new subclause 462.213(3) at the end of the current clause.

Current subclause 462.213(2) provides that an applicant must hold a valid passport issued by the foreign country mentioned in subclause 462.213(1), at time of application.

New subclass 462.213(3) provides an exception to holding such a passport at the time of making the application where:

- the applicant is in Australia; and
- when entering Australia, the applicant held a valid passport issued by the foreign country; and
- the passport expired after the applicant entered Australia.

Some holders and former holders of subclass 462 visas in Australia are currently unable to renew their expired passports because of administrative difficulties, such as the Consulates and Embassies of some countries having temporarily ceased offering that service during the COVID-19 pandemic. The amendments allow affected applicants to lodge a valid application for a new subclass 462 visa without having to wait for a new passport. This would benefit applicants who would otherwise be disadvantaged by such a delay, for example those who would exceed the age limit to apply for the visa.

They would, however, still be required to hold a valid passport in order to be granted the visa (item [31] refers).

Item [28] – Clause 462.214 of Schedule 2

This item makes a minor technical amendment to current clause 462.214. This is a consequential amendment, supporting the amendment by item [29], which inserts a new subclause in current clause 462.214. Current clause 462.214 becomes new subclause 462.214(1), but retains its current purpose and effect.

Item [29] – At the end of clause 462.214 of Schedule 2

This item inserts new subclause 462.214(2) at the end of current clause 462.214.

Current clause 462.214 provides that at time of application, the applicant must hold a valid passport issued by a foreign country specified in an instrument in writing made under paragraph 1224A(3)(a) of Schedule 1 to the Migration Regulations.

New subclause 462.214(2) provides a limited exception to this requirement, where:

- the applicant is in Australia; and
- when entering Australia, the applicant held a valid passport issued by a foreign country specified in an instrument in writing made under 1224A(3)(a) of Schedule 1 to the Migration Regulations; and
- the passport expired after the applicant entered Australia.

Some holders and former holders of subclass 462 visas in Australia are experiencing difficulty renewing their passports, including delays beyond their control where passport services offered by some countries' consulates and embassies have been temporarily suspended during the COVID-19 pandemic. The amendments allow affected applicants to make a valid application for a further Work and Holiday visa without having to wait for a new passport.

This is intended to benefit applicants who would otherwise be disadvantaged by such a delay, for example those who would exceed the age limit to apply for the visa. They would, however, still be required to hold a valid passport in order to be granted the visa (item [31] refers).

Item [30] – Clauses 462.221 and 462.221A of Schedule 2

This item amends current clauses 462.221 and 462.221A of Schedule 2 by omitting the reference to "a ***COVID-19 affected visa***" and replacing it with the new term "an ***offshore COVID-19 affected visa***".

This is a consequential amendment, resulting from the change to the definition of ***COVID-19 affected visa*** by item [1]. The reference to ***COVID-19 affected visa*** in current clauses 462.221 and 462.221A of Schedule 2 is intended to be limited to visas covered by subregulation 1.15P(1) or (2) only.

The amendment by item [2] provides that these visas are to be referred to as ***offshore COVID-19 affected visas*** (where the applicant is outside Australia). The amendment by this item therefore ensures the current scope of the exceptions in clauses 462.221 and 462.221A is retained. If these clauses continued to refer to a ***COVID-19 affected visa*** (as amended), this would have the unintended consequence of also covering ***onshore COVID-19 affected visa***s, where the applicant is in Australia. This is not the intention.

Item [31] – Paragraphs 462.221A(a) and (b) of Schedule 2

This item repeals current paragraphs 462.221A(a) and (b) of Schedule 2, and replace them with new paragraphs 462.221A(a), (aa) and (b).

Paragraphs 462.221A(a) and (aa)

Current paragraph 462.221A(a) provides that the applicant must continue to satisfy the criteria in clauses 462.217, 462.218 and 462.219, if the applicant is, or has previously been, in Australia as the holder of a subclass 462 visa (other than a COVID-19 affected visa).

New paragraph 462.221A(a) makes clear that the applicant must continue to satisfy the criteria in clause 462.217 at time of decision, but, through new paragraph 462.221A(aa), there is a limited exception to the requirement to continue to satisfy the criteria in clauses 462.218 and 462.219 (the 'specified work' requirements).

This exception operates where subclause 462.211B(2) applies (as described in item [25] above), in relation to either:

- an applicant who holds a passport of a kind specified for the purposes of paragraph 1224A(3)(d): per paragraph 462.211B(2)(b);
- certain applicants who hold (or held) an ***onshore COVID-19 affected visa***: per paragraph 462.211B(2)(b).

The purpose of new paragraphs 462.221A(a) and (aa) is to support new clause 462.211B. This ensures the limited exceptions to the 'specified work' requirement provided by clause 462.211B at time of application also apply consistently at time of decision. If new subclause 462.211B(2) does not apply at time of application, the 'specified work' requirements in clauses 462.218 and 462.219 would apply at the time of decision.

Paragraph 462.221A(b)

Current paragraph 462.221A(b) provides that the applicant must either:

- continue to hold the passport they held at time of application (of a kind specified under paragraph 1224A(3)(a) of Schedule 1); or
- hold a valid replacement passport issued by the country concerned.

New paragraph 462.221A(b) provides that, at time of decision, the applicant must either:

- if they were not in Australia at the time the application was made – continue to hold the passport they held at time of application (of a kind specified under paragraph 1224A(3)(a) of Schedule 1); or
- hold a valid passport issued by a foreign country specified in an instrument in writing made under paragraph 1224A(3)(a) of Schedule 1.

As amended, paragraph 462.221A(b) preserves the current requirement in the Migration Regulations that an applicant needs to hold a valid passport at time of decision, but would allow the applicant to have held an expired passport at the time of application. This amendment also supports subclause 462.213(3), as inserted by item [27] (described above).

Item [32] – In the appropriate position in Schedule 13

This item insert new Part 106 and clause 10601 into Schedule 13. Schedule 13 provides for the application and transitional provisions that apply to amendments to the Migration Regulations.

New clause 10601 provides that the amendments made by Part 1 of Schedule 1 to the Amendment Regulations apply in relation to a visa application made on or after 5 March 2022.

Part 2—Excluded employers

Migration Regulations 1994

Item [33] – After subregulation 1.15FB(2)

This item amends current regulation 1.15FB by inserting new subregulation 1.15FB(2A).

Under regulation 1.15FB, work carried out for an 'excluded employer' is ineligible for the purpose of meeting 'specified work' requirements for a second or third WHM visa. The Minister may specify 'excluded employers' in a legislative instrument under subregulation 1.15FB(2) in order to give effect to the exclusion.

It is intended that any instrument made under subregulation 1.15FB(2) would list only employers (being a person, partnership or unincorporated association) who pose a risk to the safety or welfare of a person performing work in their employment. The intention of that measure is to dissuade WHMs from working with these employers, although it does not prevent them from doing so. Regulation 1.15FB was inserted by amendments to the Migration Regulations that commenced on 28 July 2021, made by the *Migration Amendment*

(Subclass 417 and 462 Visas) Regulations 2021. The Explanatory Statement to those Regulations stated that the intention was to provide procedural fairness through a policy-based mechanism to employers whom the Minister was considering listing for this purpose.

In response to concerns raised by both the Senate Standing Committee for the Scrutiny of Delegated Legislation and the Parliamentary Joint Committee on Human Rights (PJCHR), the Government considers it appropriate to include a procedural fairness mechanism in the Migration Regulations.

The Amendment Regulations therefore amend the Migration Regulations to introduce certain statutory procedural fairness processes in relation to the Minister's existing power to specify, by legislative instrument, 'excluded employers' for the purposes of the WHM program.

Current regulation 1.15FB defines 'work carried out for an excluded employer' and provides for the Minister to specify those excluded employers in a separate legislative instrument (1.15FB(2)). Work carried out for an excluded employer is ineligible for the purpose of meeting the 'specified work' requirements for a second or third subclass 417 and subclass 462 visa (current 417.211(5)(d); 417.211(6)(f); 462.218(1)(d) and 462.219(1)(f)).

This amendment codifies the procedural fairness steps that would be followed before the Minister may specify an employer as an excluded employer under subregulation 1.15FB(2). The Minister must provide a written notice to the employer with reasons for doing so, and allow the employer at least 28 days to provide written submissions in response.

This amendment ensures that the requirements are clear on the face of the legislation in relation to giving notice, and providing an opportunity for the affected party to give reasons why they should not be excluded.

Item [34] – After subregulation 1.15FB(3)

This item amends current regulation 1.15FB by inserting new subregulation 1.15FB(3A).

Current regulation 1.15FB defines 'work carried out for an excluded employer' and provides for the Minister to specify those excluded employers in a separate legislative instrument (current subregulation 1.15FB(2)). Work carried out for an excluded employer is ineligible for the purpose of meeting the 'specified work' requirements for a second or third subclass 417 and subclass 462 visa (current paragraphs 417.211(5)(d); 417.211(6)(f); 462.218(1)(d) and 462.219(1)(f) of Schedule 2).

New subregulation 1.15FB(3A) provides that the Minister must, as soon as reasonably practicable, after listing an employer as an excluded employer under current regulation 1.15FB(2), give the employer a copy of that legislative instrument. As legislative instruments are required to be registered and published on the Federal Register of Legislation, it is appropriate to ensure that a copy of the instrument that specifies an employer is also provided directly to that party, as soon as reasonably practicable.