



## **Migration Amendment (Subclass 417 and 462 Visas) Regulations 2022**

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 03 March 2022

David Hurley  
Governor-General

By His Excellency's Command

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

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## 1 Name

This instrument is the *Migration Amendment (Subclass 417 and 462 Visas) Regulations 2022*.

## 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	5 March 2022.	5 March 2022

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Migration Act 1958*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

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

#### *Migration Regulations 1994*

##### 1 Regulation 1.03 (definition of *COVID-19 affected visa*)

Repeal the definition, substitute:

*COVID-19 affected visa* means an offshore COVID-19 affected visa or an onshore COVID-19 affected visa.

##### 2 Regulation 1.03

Insert:

*offshore COVID-19 affected visa* means:

- (a) a Subclass 417 (Working Holiday) visa, or a Subclass 462 (Work and Holiday) visa, covered by subregulation 1.15P(1); or
- (b) a Subclass 417 (Working Holiday) visa, or a Subclass 462 (Work and Holiday) visa, of a kind specified for the purposes of this definition by the Minister under subregulation 1.15P(2).

*onshore COVID-19 affected visa* means:

- (a) a Subclass 417 (Working Holiday) visa, or a Subclass 462 (Work and Holiday) visa, covered by subregulation 1.15P(2A); or
- (b) a Subclass 417 (Working Holiday) visa, or a Subclass 462 (Work and Holiday) visa, of a kind specified for the purposes of this definition by the Minister under subregulation 1.15P(2B).

##### 3 Before subregulation 1.15P(1)

Insert:

*Offshore COVID-19 affected visas*

##### 4 Subregulation 1.15P(2)

After “definition of”, insert “*offshore*”.

##### 5 After subregulation 1.15P(2)

Insert:

*Onshore COVID-19 affected visas*

- (2A) A Subclass 417 (Working Holiday) visa or a Subclass 462 (Work and Holiday) visa (the *covered visa*) is covered by this subregulation if:
- (a) the covered visa is granted to a person before 20 March 2020; and
  - (b) on 20 March 2020, either:
    - (i) the covered visa is in effect; or
    - (ii) the person does not hold a substantive visa and the covered visa is the last substantive visa held by the person; and

- (c) the person is in Australia on 20 March 2020; and
- (d) between 5 March 2022 and 31 December 2022, the person applies for a Subclass 417 (Working Holiday) visa or a Subclass 462 (Work and Holiday) visa; and
- (e) the person is in Australia when the application is made; and
- (f) if the covered visa is cancelled before the application is made—it was cancelled on the ground specified in paragraph 2.43(1)(g).

(2B) 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 *onshore COVID-19 affected visa* in regulation 1.03.

*Instruments under this regulation*

## **6 Subregulation 1.15P(3)**

Omit “subregulation (2), a legislative instrument under that subregulation”, substitute “subregulation (2) or (2B), legislative instruments under those subregulations”.

## **7 After paragraph 1224A(3)(a) of Schedule 1**

Insert:

- (aaa) Paragraph (a) does not apply if:
  - (i) the applicant is in Australia; and
  - (ii) when entering Australia, the applicant held a valid passport issued by a foreign country specified in an instrument in writing made under paragraph (a); and
  - (iii) the passport expired after the applicant entered Australia.

## **8 Paragraph 1224A(3)(b) of Schedule 1**

After “Subclass 462 (Work and Holiday) visa”, insert “other than an offshore COVID-19 affected visa”.

## **9 Paragraph 1224A(3)(c) of Schedule 1**

After “Subclass 462 (Work and Holiday) visa” (first occurring), insert “other than an offshore COVID-19 affected visa”.

## **10 Subparagraph 1224A(3)(c)(ii) of Schedule 1**

After “if”, insert “, disregarding any COVID-19 affected visa,”.

## **11 Subparagraph 1224A(3)(c)(ia) of Schedule 1**

After “if”, insert “, disregarding any COVID-19 affected visa,”.

## **12 Subparagraph 1224A(3)(c)(iii) of Schedule 1**

Before “the applicant has not held”, insert “disregarding any COVID-19 affected visa,”.

## **13 Paragraph 1224A(3)(d) of Schedule 1**

Repeal the paragraph, substitute:

## Schedule 1 Amendments

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

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- (d) Subparagraphs (c)(ii) and (iia) do not apply if the applicant holds a passport of a kind specified by the Minister in a legislative instrument made for the purposes of this paragraph.
- (e) Subparagraphs (c)(ii) and (iia) do not apply if:
  - (i) the application is made between 5 March 2022 and 31 December 2022; and
  - (ii) the applicant holds or held an onshore COVID-19 affected visa; and
  - (iii) the applicant has not been granted a Subclass 462 (Work and Holiday) visa on the basis of another application made on or after 5 March 2022.
- (f) Subparagraph (c)(iv) does not apply if:
  - (i) the application is made between 5 March 2022 and 31 December 2022; and
  - (ii) the applicant holds a bridging visa.

#### 14 Subitem 1225(3A) of Schedule 1

After “Subclass 417 (Working Holiday) visa”, insert “other than an offshore COVID-19 affected visa”.

#### 15 Subitem 1225(3B) of Schedule 1

After “Subclass 417 (Working Holiday) visa” (first occurring), insert “other than an offshore COVID-19 affected visa”.

#### 16 Paragraph 1225(3B)(c) of Schedule 1

After “if”, insert “, disregarding any COVID-19 affected visa,”.

#### 17 Paragraph 1225(3B)(ca) of Schedule 1

After “if”, insert “, disregarding any COVID-19 affected visa,”.

#### 18 Paragraph 1225(3B)(d) of Schedule 1

Before “the applicant has not held”, insert “disregarding any COVID-19 affected visa,”.

#### 19 Subitem 1225(3BA) of Schedule 1

Repeal the subitem, substitute:

- (3BA) Paragraphs (3B)(c) and (ca) do not apply if the applicant holds a passport of a kind specified by the Minister in a legislative instrument made for the purposes of this subitem.
- (3BB) Paragraphs (3B)(c) and (ca) do not apply if:
  - (a) the application is made between 5 March 2022 and 31 December 2022; and
  - (b) the applicant holds or held an onshore COVID-19 affected visa; and
  - (c) the applicant has not been granted a Subclass 417 (Working Holiday) visa on the basis of another application made on or after 5 March 2022.
- (3BC) Paragraph (3B)(e) does not apply if:
  - (a) the applicant is in Australia; and
  - (b) when entering Australia, the applicant held a working holiday eligible passport; and
  - (c) the passport expired after the applicant entered Australia.



(3BD) Paragraph (3B)(f) does not apply if.

- (a) the application is made between 5 March 2022 and 31 December 2022; and
- (b) the applicant holds a bridging visa.

## **20 After subclause 417.211(1) of Schedule 2**

Insert:

(1A) However:

- (a) paragraph (2)(a) does not apply if:
  - (i) the applicant is in Australia; and
  - (ii) when entering Australia, the applicant held 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 (2); and
  - (iii) the passport expired after the applicant entered Australia; and
- (b) the applicant does not need to satisfy the criteria in subclauses (5) and (6) if the applicant holds a passport of a kind specified by the Minister in a legislative instrument made for the purposes of subitem 1225(3BA) of Schedule 1; and
- (c) the applicant does not need to satisfy the criteria in subclauses (5) and (6) if:
  - (i) the application is made between 5 March 2022 and 31 December 2022; and
  - (ii) the applicant holds or held an onshore COVID-19 affected visa; and
  - (iii) the applicant has not been granted a Subclass 417 (Working Holiday) visa on the basis of another application made on or after 5 March 2022.

## **21 Subparagraph 417.211(2)(b)(ii) of Schedule 2**

After “holds”, insert “(or, if paragraph (1A)(a) applies, held)”.

## **22 Paragraph 417.221(2)(a) of Schedule 2**

Repeal the paragraph, substitute:

- (a) continues to satisfy the criteria in subclause 417.211(4); and
- (aa) unless paragraph 417.211(1A)(b) or (c) applies—continues to satisfy the criteria in subclauses 417.211(5) and (6); and

## **23 After subclause 417.221(2) of Schedule 2**

Insert:

- (2A) 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).

## **24 Paragraphs 462.211(a) and 462.211A(a) of Schedule 2**

Omit “a COVID-19 affected visa”, substitute “an offshore COVID-19 affected visa”.

## **25 Clause 462.211B of Schedule 2**

Repeal the clause, substitute:

## **462.211B**

- (1) If the applicant is, or has previously been, in Australia as the holder of a Subclass 462 (Work and Holiday) visa other than an offshore COVID-19 affected visa, the applicant satisfies the criteria in:
  - (a) clauses 462.212, 462.214 and 462.217; and
  - (b) unless subclause (2) applies—clauses 462.218 and 462.219.
- (2) This subclause applies if:
  - (a) the applicant holds a passport of a kind specified by the Minister in a legislative instrument made for the purposes of paragraph 1224A(3)(d) of Schedule 1; or
  - (b) all of the following apply:
    - (i) the application is made between 5 March 2022 and 31 December 2022;
    - (ii) the applicant holds or held an onshore COVID-19 affected visa;
    - (iii) the applicant has not been granted a Subclass 462 (Work and Holiday) visa on the basis of another application made on or after 5 March 2022.

## **26 Paragraph 462.212(b) of Schedule 2**

After “holds”, insert “(or, if paragraph 1224A(3)(aaa) of Schedule 1 applies, held)”.

## **27 At the end of clause 462.213 of Schedule 2**

Add:

- (3) Subclause (2) does not apply if:
  - (a) the applicant is in Australia; and
  - (b) when entering Australia, the applicant held a valid passport issued by the foreign country; and
  - (c) the passport expired after the applicant entered Australia.

## **28 Clause 462.214 of Schedule 2**

Before “The applicant”, insert “(1)”.

## **29 At the end of clause 462.214 of Schedule 2**

Add:

- (2) Subclause (1) does not apply if:
  - (a) the applicant is in Australia; and
  - (b) 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; and
  - (c) the passport expired after the applicant entered Australia.

## **30 Clauses 462.221 and 462.221A of Schedule 2**

Omit “a COVID-19 affected visa”, substitute “an offshore COVID-19 affected visa”.

## **31 Paragraphs 462.221A(a) and (b) of Schedule 2**

Repeal the paragraphs, substitute:

- (a) continues to satisfy the criteria in clause 462.217; and
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- (aa) unless subclause 462.211B(2) applies—continues to satisfy the criteria in clauses 462.218 and 462.219; and
- (b) either:
  - (i) if the applicant was not in Australia when the application was made—continues to hold the passport mentioned in paragraph 1224A(3)(a) of Schedule 1, or a valid replacement passport issued by the country concerned; or
  - (ii) otherwise—holds a valid passport issued by a foreign country specified in an instrument in writing made under paragraph 1224A(3)(a) of Schedule 1; and

### **32 In the appropriate position in Schedule 13**

Insert:

## **Part 106—Amendments made by the Migration Amendment (Subclass 417 and 462 Visas) Regulations 2022**

### **10601 Operation of Part 1 of Schedule 1**

The amendments made by Part 1 of Schedule 1 to the *Migration Amendment (Subclass 417 and 462 Visas) Regulations 2022* apply in relation to an application for a visa made on or after 5 March 2022.

## Part 2—Excluded employers

### *Migration Regulations 1994*

#### **33 After subregulation 1.15FB(2)**

Insert:

- (2A) Before specifying a person, partnership or unincorporated association under subregulation (2), the Minister must:
- (a) give written notice to the person, partnership or unincorporated association stating that the Minister proposes to specify the person, partnership or unincorporated association and the reasons for doing so; and
  - (b) allow the person, partnership or unincorporated association at least 28 days to make a written submission to the Minister about the proposed specification.

#### **34 After subregulation 1.15FB(3)**

Insert:

- (4) If the Minister, by legislative instrument, specifies a person, partnership or unincorporated association under subregulation (2), the Minister must, as soon as reasonably practicable, give the person, partnership or unincorporated association a copy of the instrument.