

EXPLANATORY STATEMENT

Migration Regulations 1994

DETERMINATION – MEANING OF ENGAGED IN EMPLOYMENT 2015

1. This Instrument is made under subregulation 2.06AAB(3) of the *Migration Regulations 1994* (the Regulations).
2. The Safe Haven Enterprise (Class XE) visa (safe haven enterprise visa) was introduced as a class of temporary visas by the *Migration Amendment (Resolving the Asylum Legacy Caseload) Act 2014*. Subsection 46A(1A) of the *Migration Act 1958* (the Act) has the effect that an unauthorised maritime arrival in Australia who holds or has ever held a safe haven enterprise visa (visa holder) is not prevented from making a valid application for certain visa subclasses prescribed in the Regulations, if the applicant satisfies any employment, educational or social security benefit requirements as prescribed under subregulation 2.06AAB(2). Those requirements are satisfied by a visa holder, whether the applicant himself or herself under paragraph 2.06AAB(2)(a), or a member of the same family unit as the applicant under paragraph 2.06AAB(2)(b).
3. Under subparagraph 2.06AAB(2)(a)(i), the employment and social security benefit requirements are satisfied if, for a minimum period or periods totalling 42 months (whether consecutive or non-consecutive), the visa holder is engaged in employment in a regional area and at the same time, does not receive any social security benefits. *Social security benefits* and *regional area* are separately determined by legislative instrument.
4. The purpose and operation of this Instrument is to determine the meaning of *engaged in employment* for the purposes of subparagraph 2.06AAB(2)(a)(i). Under the Instrument, it is sufficient that a visa holder receives any remuneration for work undertaken pursuant to an agreement and that the visa holder's performance of that work takes place in a regional area.
5. For the purposes of this Instrument, the meaning of *engaged in employment* is not limited to a contract of employment between employer and employee. It includes circumstances in which the visa holder and other party are party to an agreement between a principal and an independent contractor. For the purposes of this Instrument, a visa holder is engaged in

employment notwithstanding whether, for example: the agreement is written, oral, formal or informal; the level of control the other person to the agreement has over the visa holder's performance of work; the calculation of remuneration; whether the work is full-time or part-time; whether the visa holder is engaged on a permanent, temporary or casual basis; the visa holder is also engaged in employment (within the meaning of the Instrument) with another party; or the visa holder has an Australian Business Number (ABN) pursuant to which he or she performs his or her tasks under the agreement.

6. Consultation was undertaken before the Instrument was made with the Department of Employment.
7. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required (OBPR Reference 17300).
8. Under section 44 of the *Legislative Instruments Act 2003* the Instrument is exempt from disallowance and therefore a Statement of Compatibility with Human Rights is not required.
9. The Instrument commences on 18 April 2015.