

EXPLANATORY STATEMENT

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

Migration Act 1958

Migration Amendment (Pacific Australia Labour Mobility) 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.

In addition, regulations may be made pursuant to the provisions listed in Attachment A.

The *Migration Amendment (Pacific Australia Labour Mobility) Regulations 2022* (the Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to repeal the existing Seasonal Worker Program and Pacific Labour Scheme streams from the Subclass 403 (Temporary Work (International Relations)) visa and replace them with a new Pacific Australia Labour Mobility (PALM) stream. The combined PALM stream provides for the entry and temporary stay of workers from countries with which Australia has arrangements across a range of industry sectors where there are identified market gaps and workforce needs including but not limited to horticulture, meat processing, dairy, wool, grains, fisheries (including aquaculture), forestry, hospitality and aged care.

The Regulations also raise the visa application charge for the Australian Agriculture Worker visa stream to make it more consistent with the charge for other economic visas. In particular:

Part 1 of Schedule 1 – Australian Agriculture Worker Stream

Part 1 of Schedule 1 raises the first instalment of the Visa Application Charge (VAC) for a Subclass 403 visa in the Australia Agriculture Worker stream from \$315 to \$630 to bring it in line with other temporary work visas that provide for workers in low skilled through to highly skilled occupations.

The Australian Agriculture Visa Program is being introduced to address workforce shortages across Australia's primary industries. It will provide a basis for the ongoing growth of our primary industries as they strive to reach \$100 billion in value by 2030. The program provides for the entry and temporary stay of workers from participating countries to work across primary industry sectors including horticulture, meat processing, dairy, wool, grains, fisheries (including aquaculture) and forestry. The program is a demand driven program designed to be scalable to meet identified labour market gaps and is open to low-skilled, semi-skilled and skilled workers. The implementation approach, including the VAC has been formulated through discussions and consultation with industry. The \$630 VAC for the AAW stream recognises that the AAW visa is an economic visa, and not a foreign aid related visa, like the PALM visa (for which the VAC is \$315), and sits at the lower end of the equivalent

employer sponsored skilled visas such as the Temporary Skilled Shortage Visa (for which the VAC is \$1290), enabling employers to address labour shortages with skilled workers where employers can't source an appropriately skilled Australian worker. The \$630 VAC also recognises the significant cost to the Australian Government in mitigating the risk of worker exploitation and an increase in targeted sponsor monitoring as a result of the introduction of this visa.

Part 2 of Schedule 1 – Pacific Australia Labour Mobility Stream

Part 2 of Schedule 1 repeals the Seasonal Worker Program and the Pacific Labour Scheme streams from Subclass 403 (Temporary Work (International Relations)) and replaces them with a single new Pacific Australia Labour Mobility stream.

The new stream is available to visa applicants who are participating as a worker in the PALM scheme administered by the Department of Foreign Affairs and Trade (DFAT), on the basis of bilateral arrangements negotiated with foreign governments taking into account factors including the requirements of the Australian labour market and labour shortages in particular industry sectors. The growth of Pacific labour is also central to the Australian Government's Pacific Step-up objectives, with this foreign aid related visa contributing to the Pacific nations' recovery from the economic impacts of COVID-19. Visa applicants must be sponsored by an employer who is an approved temporary activities sponsor and has been accredited under an arrangement with DFAT to participate in the PALM scheme.

Further details of the Regulations are set out in [Attachment C](#).

The matters dealt with in the Regulations are appropriate for implementation in regulations rather than by Parliamentary enactment. It has been the consistent practice of the Government of the day to provide for detailed visa criteria and conditions in the Migration Regulations rather than in the Migration Act itself. The Migration Act expressly provides for these matters to be prescribed in regulations.

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

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. The Statement is at [Attachment B](#).

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments. No Regulation Impact Statement is required. The OBPR consultation reference number is OBPR22-01572.

Subsection 17(1) of the *Legislation Act 2003* (the Legislation Act) requires that appropriate and reasonably practicable consultation be undertaken prior to implementing changes to regulations.

In relation to Part 1 of Schedule 1, the implementation approach to the AAW, including the VAC, has been formulated through discussions and consultation during Whole of

Government agriculture visa forums (Departments of Foreign Affairs and Trade; Home Affairs; Agriculture, Water and the Environment; Prime Minister and Cabinet; Treasury; and Fair Work Ombudsman) and the Agriculture Visa Industry Reference Group meetings which included a broad range of union and industry representatives and employers.

In relation to Part 2 of Schedule 1, the Department of Foreign Affairs and Trade, together with the Department of Education, Skills and Employment and the Department of Agriculture, Water and the Environment, consulted stakeholders over a six-week period between 10 June to 18 July 2021. Forty-five written submissions and ninety-two website submissions were received from interested stakeholders. In addition, the government hosted forty-seven consultations, the majority of which were held virtually due to the evolving COVID-19 situation. Feedback was received from industry, employers, workers, unions, community groups, states and territories, and Pacific and Timorese governments. The consultation summary is publically available at: <https://www.dfat.gov.au/publications/countries-economies-and-regions/pacific-labour-mobility-consultation-summary>.

Part 1 of Schedule 1 commences on 5 March 2022. This commencement date aligns with the departmental systems release.

Part 2 of Schedule 1 commences on 4 April 2022. This commencement date allows systems and other administrative processes to be put in place before applications for the PALM stream visa commence.

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

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

AUTHORISING PROVISIONS

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provides that the Governor-General may make regulations (the Regulations) prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

In addition, the following provisions of the Migration Act may also be relevant:

- subsection 29(1), which provides that the Minister may grant a non-citizen permission, to be known as a visa, to do either or both of the following: (a) travel to and enter Australia; (b) remain in Australia;
- subsection 29(2), which provides that, without limiting subsection 29(1), a visa to travel to, enter and remain in Australia may be one to:
 - (a) travel to and enter Australia during a prescribed or specified period; and
 - (b) if, and only if, the holder travels to and enters during that period, remain in Australia during a prescribed or specified period or indefinitely;
- subsection 30(2), which provides that a visa to remain in Australia (whether also a visa to travel to and enter Australia) may be a visa, to be known as a temporary visa, to remain during a specified period, or until a specified event happens, or while the holder has a specified status;
- subsection 31(1), which provides that the Regulations may prescribe classes of visas;
- subsection 31(3), which provides that the Regulations may prescribe criteria for a visa or visas of a specified class;
- subsection 31(4), which provides that the Regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia, or both;
- subsection 31(5), which provides that the Regulations may specify that a visa is a visa of a particular class;
- section 40, which provides that the Regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- subsection 41(1) which provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions;
- subsection 45B(1), which provides that the amount of visa application charge is the amount, not exceeding the visa application charge limit, prescribed in relation to the application (the visa application charge limit is determined under the *Migration (Visa Application) Charge Act 1997*);
- subsection 45B(2), which provides that the amount prescribed in relation to an application may be nil;

- paragraph 46(1)(b), which provides that the Regulations may prescribe the criteria and requirements for making a valid application for a visa;
- subsection 46(3), which provides that the Regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application;
- subsection 46(4), which provides that, without limiting subsection 46(3), the Regulations may prescribe:
 - (a) the circumstances that must exist for an application for a visa of a specified class to be a valid application; and
 - (b) how an application for a visa of a specified class must be made; and
 - (c) where an application for a visa of a specified class must be made; and
 - (d) where an applicant must be when an application for a visa of a specified class is made;
- subsection 140E(1), which provides that the Minister must approve a person as a work sponsor in relation to one or more classes prescribed for the purposes of subsection 140E(2) if prescribed criteria are satisfied; and
- subsection 140E(2) which provides that the regulations must prescribe classes in relation to which a person may be approved as work sponsor or family sponsor.

Statement of Compatibility with Human Rights

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

Migration Amendment (Pacific Australia Labour Mobility) 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

The *Migration Amendment (Pacific Australia Labour Mobility) Regulations 2022* (the Amendment Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to assist streamlining the administration of the Pacific Australia Labour Mobility (PALM) scheme by combining the Seasonal Worker Program (SWP) and Pacific Labour Scheme (PLS) streams in the Subclass 403 (Temporary Work (International Relations)) visa into one stream. The PALM scheme is a response to identified Australian labour market gaps and workforce needs in primary industry and other sectors, in conjunction with the Australian Agriculture Worker (AAW) program, which is also a stream of the Subclass 403 visa.

The Amendment Regulations also make adjustments to the visa application charge (VAC) for a visa in the AAW stream. These adjustments ensure that the VAC for the AAW stream is more consistent with the VAC for other temporary work visas.

Pacific Australia Labour Mobility (PALM) stream

The Amendment Regulations support the whole-of-Government continued commitment to strengthen Australia's engagement in the Pacific and expansion of the Pacific labour initiative through streamlining the administration of the PALM scheme.

The Amendment Regulations repeal the existing SWP and PLS streams from the Subclass 403 (Temporary Work (International Relations)) visa (the 'Subclass 403 visa') and replace them with one single PALM stream, with effect from 4 April 2022.

The SWP and PLS facilitated workers from nine Pacific island countries and Timor-Leste to participate in the two temporary visa programs, namely;

- the SWP, which provided access to short-term (up to 9 months) seasonal work opportunities in the Australian agricultural sector and in selected locations in the accommodation sector; and
- the PLS, which provided access to longer-term low and semi-skilled work placements in rural and regional Australia for up to three years.

Under both programs prospective employers needed to be approved by the Government to sponsor the workers to enter and remain in Australia to work under the programs.

The PALM scheme is administered by the Department of Foreign Affairs and Trade (DFAT) on the basis of bilateral arrangements negotiated with foreign governments taking into account factors including the requirements of the Australian labour market and labour shortages in particular industry sectors. As with the requirements for the SWP and PLS, under the PALM scheme the visa applicant must be sponsored by an employer (who is an approved temporary activities sponsor) and who has been accredited under an arrangement with DFAT to participate in the PALM scheme. DFAT will continue to manage the PALM scheme through a provider, namely the Pacific Labour Facility (PLF). Working with DFAT and the partner government, the PLF will assess the suitability of employers and workers to participate in the scheme, provide pastoral care to workers, and provide pre-arrival and post-departure support.

The PALM scheme will improve efficiencies for employers seeking to recruit workers from nine Pacific island countries and Timor-Leste to undertake seasonal work (up to nine months within a 12 months period) in sectors such as horticulture and accommodation, and non-seasonal work (for up to four years) across a range of industry sectors where there are identified market gaps and workforce needs including horticulture, meat processing, dairy, wool, grains, fisheries (including aquaculture), forestry, hospitality and aged care. The PALM scheme, which incorporates both seasonal and non-seasonal placements, will be more responsive to circumstances applicable to the worker and address labour shortages in Australia's critical industries.

Aligned with the objectives of the SWP and PLS, the PALM scheme aims to:

- benefit the Pacific and Timor-Leste communities by providing opportunities for workers from participating countries to gain knowledge, work experience and skills in Australia;
- contribute to social capital and economic development in participating countries by increasing economic activity through wage earning and remittances;
- provide benefits to the Australian economy and to Australian employers by helping to fill workforce shortages, where there is not enough suitable Australian labour available.

In addition, the PALM scheme will deliver new flexibilities, including:

- a visa validity of up to 4 years, with provision for multiple entry to Australia, providing eligible employers with greater workforce stability and giving Pacific and Timorese workers more time to develop skills, complete qualifications and earn income to send home to their families;
- increased support for worker skills development and more flexibility for Pacific and Timorese workers to move between eligible employers to better respond to workforce demands, improve productivity and workers' earning capacity;
- improved career pathways for workers and the ability for workers to transit from the PALM scheme seasonal cohort to the non-seasonal cohort in Australia, providing certainty and longer-term work; and
- increased support for industry growth and labour market needs by removing recruitment caps for eligible employers with consistently good track record recruiting under the PALM scheme.

The visa criteria and conditions for the amalgamated PALM visa stream are largely the same as the criteria for the PLS and SWP streams that it is replacing. The criteria primarily relate to the applicant being a participant in the relevant scheme administered by DFAT and that the sponsoring employer is approved. As with the SWP and PLS streams, the PALM stream visa criteria are aimed at ensuring the suitability of the employer to sponsor the applicant in the scheme.

It is also a requirement that there must be no ‘adverse information’ (as defined in existing regulation 1.13A) known to the Department about the sponsoring employer or a person associated with the sponsoring employer, or if there is, it must be reasonable to disregard the information. This requirement, which is aimed at protecting workers, is the same as the criteria for the existing SWP and PLS streams, aligns with other temporary activity sponsored visa programs and is consistent with requirements that an organisation would have to meet to be approved as a Temporary Activities Sponsor to meet the requirements of employer-sponsored visas. The *Migration Act 1958* provides a right to seek merits review of a decision to refuse to grant a Subclass 403 visa, if an applicant fails to satisfy any of these criteria, including a decision that there was adverse information known about the employer and that it would not be reasonable to disregard adverse information.

As is the case with the SWP and PLS streams and with the other streams of the subclass 403 visa, the total validity period of the visa and the period of each stay are specified in individual cases in accordance with policy for the relevant stream.

The PALM stream does not replicate the criterion that the worker be entering Australia to participate in a program of seasonable work, which was a criterion for the SWP stream. Instead, the nature and duration of the work will be managed administratively as part of DFAT’s program settings including through the consideration of workers’ skills and circumstances, approval of recruitment based on labour market needs and overall endorsement of the worker to participate in the PALM scheme, and supported by visa grant settings, and will result in additional flexibilities for the worker to upskill and remain working in Australia in more long term employment.

Compared to the SWP and PLS streams, the PALM stream includes a different visa condition that facilitates workers to work for either:

- an employer (who is the sponsoring employer) in relation to which the visa was granted; or
- for an employer in accordance with an arrangement endorsed by DFAT.

This condition provides workers with the flexibility to move between employers with the support of DFAT where circumstances may change, and is less restrictive in relation to portability between approved employers than a similar visa condition which applied to the SWP and PLS streams.

The PALM scheme will continue to offer protections for workers, including:

- improved worker support arrangements, supported by worker welfare reporting requirements;
- a 24/7 worker welfare helpline to maintain the paramount importance of worker wellbeing; and

- a holistic, robust assurance approach to provide oversight and ensure program integrity.

The measures introduced by the Amendment Regulations are made in the context of a number of complementary initiatives being implemented by the PALM scheme. These include:

- Ensuring that job opportunities for Australian citizens and permanent residents are not adversely impacted, through labour-market testing requirements before any employer is able to sponsor overseas workers under the PALM scheme.
- Reiterating that Australian workplace laws apply to all workers participating in the PALM scheme, and supporting the Fair Work Ombudsman (FWO) in providing compliance, education and outreach activities in industries utilising the PALM scheme, to ensure participants and employer sponsors are aware of their workplace rights and obligations. This includes access to paid leave arrangements, fair wages and reasonable limitation of working hours.
- Securing affordable accommodation and appropriate living arrangements for PALM scheme workers by the sponsoring employer prior to the workers' arrival in Australia.
- Facilitating the introduction of workers to their local communities, including local diaspora communities.
- Providing education on financial literacy, including banking services, remittance transfers, tax returns and access to superannuation benefits.
- Providing pastoral care services to support the mental health of workers while in Australia and post-departure.
- In the event of serious ill health, accident or death of a worker participating in the PALM scheme, the PLF is accountable for managing the matter in partnership with the Australian Government, the Australian employer, the relevant partner government, emergency services and if applicable, ComCover.

Australian Agriculture Worker (AAW) stream

The Amendment Regulations also make adjustments in relation to the existing AAW stream of the Subclass 403 visa. The AAW visa program provides for the entry and temporary stay of workers from participating countries to work across primary industry sectors including horticulture, meat processing, dairy, wool, grains, fisheries (including aquaculture) and forestry. Arrangements with participating countries are negotiated on a bilateral basis by DFAT, taking into consideration factors including the requirements of the Australian labour market and labour shortages in particular industry sectors.

These changes raise the first instalment of the visa application charge (VAC) on an application for a Subclass 403 visa in the AAW stream from \$315 to \$630. This increase in VAC for the AAW stream will make the VAC consistent with the VAC for other temporary work visas. The VAC may be paid by the applicant directly or by the applicant's proposed employer in the first instance who will then recoup the VAC from the applicant through agreed salary deductions after commencement of work. The VAC recognises the significant cost to the Australian Government of mitigating the risk of worker exploitation and an increase in sponsor monitoring requirements for the AAW program.

Human rights implications

The Amendment Regulations, and the programs supporting them, engage the following rights, particularly for those subclass 403 visa applicants and holders who are already in Australia:

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

Right to work and rights at work

The Amendment Regulations engage Articles 6(1) and 7 of the ICESCR. Article 6(1) states:

The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

Article 7 states:

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

- (a) Remuneration which provides all workers, as a minimum, with:*
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;*
- (b) Safe and healthy working conditions;*
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.*

The Amendment Regulations positively engage the right to work and rights at work of PALM scheme participants.

The PALM scheme, in particular the new visa stream being implemented by the Amendment Regulations, provides a visa scheme that allows its holders to enter and work in Australia and thus broadly supports participants' right to work, including opportunities for existing SWP and PLS participants, as well as future PALM stream visa holders, to continue working in Australia.

Existing holders of visas in the SWP and PLS streams will be unaffected by the changes to implement the new PALM scheme while they continue to hold their existing visas. If those visa holders wish to continue living and working in Australia beyond that time, they will be

eligible to apply for a subclass 403 visa in the PALM stream, or any other visa that suits their circumstances. Applicants who have lodged a SWP or PLS stream visa prior to the commencement of the Amendment Regulations will also be unaffected by the introduction of the PALM stream as their applications will be assessed under the PLS and SWP stream regulations in place at the time of lodgement of their Subclass 403 application.

The general requirement is that an applicant for a Subclass 403 visa in the PALM stream must be outside Australia, unless the applicant is in Australia and, at the time the application is made, the applicant holds a subclass 403 visa in the PALM, PLS or SWP streams. This means that a person who holds a visa in one of the repealed SWP or PLS streams and who is in Australia, can lodge an application under the PALM scheme to remain working in Australia as a holder of a PALM stream visa, under the conditions of that stream, and not be disadvantaged.

This measure also allows SWP workers in Australia who hold a Subclass 403 visa in the SWP stream to take up opportunities to move into longer term, non-seasonal roles under the PALM scheme, as they are able to make an application for a visa under PALM scheme in Australia without having to leave Australia to apply. This measure also allows workers in Australia under the PLS to lodge a visa application in the PALM scheme to remain in Australia for a total combined period on the PLS and PALM scheme of 4 years, which was limited to 3 years under the PLS stream.

These measures therefore implement opportunities for existing PLS and SWP stream visa holders to participate in the PALM scheme so as not to disadvantage SWP and PLS workers currently in Australia, and support their right to work.

Consistent with the SWP and PLS, the PALM scheme incorporates the following initiatives:

- development and implementation of activities and projects to support the welfare of PALM scheme stream holders, including anti-exploitation measures;
- establishment of a 24/7 worker welfare helpline to maintain the paramount importance of worker wellbeing;
- delivery of a holistic, robust assurance approach to provide oversight and ensure program integrity; and
- providing support for the FWO to proactively educate and support workers and employers on their rights and obligations under Australian workplace law and investigate when needed.

These initiatives, directed at addressing worker exploitation and ensuring compliance with relevant workplace standards, positively engage the right to work and rights at work of PALM stream visa holders by implementing measures to combat worker exploitation. For example, the Amendment Regulations include a visa condition that permits workers in situations of worker exploitation to change employer in accordance with an arrangement endorsed by DFAT without breaching their visa conditions.

These measures provide an opportunity for workers to escape situations of exploitation without risking cancellation of their visas, and aim to reduce the risks associated with workers being tied to a single employer for the period of visa grant. Where a worker has transferred from an employer due to worker exploitation, the employer will be referred to the

FWO by a relevant agency, such as DFAT or the Australian Border Force. DFAT may remove the employer from the PALM scheme, depending on the outcome of FWO investigations.

These initiatives therefore support the right to work and rights at work of PALM stream visa holders.

Rights of equality and non-discrimination

The Amendment Regulations engage the rights of equality and non-discrimination in Article 2 of the ICESCR and Article 26 of the ICCPR, particularly for persons already in Australia.

Article 2(2) of the ICESCR states:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 of the ICCPR states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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

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

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

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

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

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

The [ICCPR] does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the [ICCPR] even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.

Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment. A State may also impose general conditions upon an alien who is in transit. However, once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the [ICCPR].

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

The Amendment Regulations for the PALM stream consolidate the existing SWP and PLS streams and aim to provide high-level requirements that focus on protections for workers. Aligning with requirements of the SWP and PLS streams which the PALM stream is replacing, a PALM stream visa applicant must be participating, as a worker, in the PALM scheme administered by DFAT. Visa eligibility includes meeting program eligibility requirements considered by DFAT as well as being employed directly in relation to a recruitment approval by an employer who is an approved temporary activities sponsor and has been accredited under an arrangement with DFAT to participate in the PALM scheme.

The PALM scheme will target sectors and industries that generally match workforce gaps in Australia with the skill sets of the participating workers. A worker's ability to participate in the PALM scheme, and hence their ability to obtain a visa to work in Australia as part of this scheme, is based on whether they are a citizen of one of the nine Pacific island countries or Timor-Leste, with which Australia has an arrangement for this purpose.

The Participating Country will ensure that the nominated government authority in that country and their recruitment agents put forward eligible candidates to be considered for the PALM scheme. Under the bilateral arrangements, the Participating Country will give consideration to gender equity and equitably balancing the geographical composition of the work-ready pool and in the selection of candidates for the scheme. This includes reaching out to remote, outer and rural communities.

Information about visa eligibility will be included as a part of material promoting the PALM scheme. The PLF, working with DFAT and the partner government, will further assess the suitability of employers and workers to participate in the scheme.

The requirements for the grant of a visa in the PALM stream, including requirements to be a participant in the PALM scheme, and requirements relating to being sponsored by an approved employer, are therefore reasonable and proportionate to the aims of ensuring the suitability of employment opportunities for workers in the scheme. Further, while countries outside the nine Pacific island countries and Timor-Leste will not be participants of the PALM scheme, citizens of other countries may be able to enter and work in Australia through

alternative visa programs. To the extent that this aspect may limit the rights of equality and non-discrimination of persons from countries outside the Pacific island countries and Timor-Leste, the targeted approach of the PALM scheme is necessary, reasonable and proportionate and aimed at the legitimate objectives of improving the livelihood of the Pacific island countries and Timor-Leste, maintaining and enhancing opportunities for Australian workers, creating incentives for education and skills development, and promoting economic stability in the Pacific, Timor-Leste and in Australia.

The Amendment Regulations also increase the VAC, which is payable at the time the visa application is lodged, from \$315 to \$630 for applicants for the AAW stream of the subclass 403 visa, which may make it somewhat harder for persons of more limited financial means to apply for this visa. In most cases it is expected that employers will pay the VAC on behalf of the applicant, which will then be recouped through agreed salary deductions over a period of time if the visa is granted. This VAC amount is consistent with the VAC for other skilled work visas and recognises the significant cost to the Government of mitigating the risk of worker exploitation and an increase in sponsor monitoring requirements for the AAW program. As such, this increase in the VAC is reasonable and is not expected to have a significant impact on the ability of a person to apply for a visa in the AAW stream of the subclass 403 visa or adversely affect the rights of equality and non-discrimination of such persons, including, for example, in cases when they are wishing to apply for this visa to continue working in Australia.

Conclusion

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

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

Details of the Migration Amendment (Pacific Australia Labour Mobility) Regulations 2022

Section 1 - Name

This section provides that the name of the instrument is the *Migration Amendment (Pacific Australia Labour Mobility) Regulations 2022*

Section 2 - Commencement

This section provides for the commencement of the instrument.

Sections 1 to 4 and anything in the instrument that is not elsewhere covered by the table in this section commences on the day after the instrument is registered.

Part 1 of Schedule 1 commences on 5 March 2022.

Part 2 of Schedule 1 commences on 4 April 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 Regulations operate.

Schedule 1 – Amendments

Part 1 – Australian Agriculture Worker stream

Migration Regulations 1994

Item [1] – After subparagraph 1234(2)(a)(ii) of Schedule 1

This item inserts a new subparagraph 1234(2)(a)(iia) in item 1234 (Temporary Work (International Relations)(Class GD)) of Schedule 1 to the Migration Regulations. New subparagraph 1234(2)(a)(iia) provides that the first instalment of the visa application charge (VAC) for an applicant seeking to meet the primary criteria for a Subclass 403 visa in the Australian Agriculture Worker (AAW) stream is \$630.

The first instalment of VAC for most other applicants for a Subclass 403 visa is \$315, unless the applicant is in a class of persons specified by the Minister in a legislative instrument under subparagraph 1234(2)(a)(i), when the VAC is nil. A VAC of \$630 for applicants in the Australian Agriculture Worker stream aligns the program with comparable economic visa products.

Part 2 – Pacific Australia Labour Mobility stream

Migration Regulations 1994

Item [2] – After paragraph 2.56(bab)

This item inserts a new paragraph 2.56(bac) in regulation 2.56 (Application) of the Migration Regulations.

Regulation 2.56 prescribes kinds of visa for the purposes of section 140A of the Migration Act. Under subsection 140E(1) of the Migration Act, a person may be approved as a work sponsor for the purposes of an application for a visa which is prescribed for section 140A.

New paragraph 2.56(bac) prescribes the Subclass 403 (Temporary Work (International Relations)) visa in the Pacific Australia Labour Mobility stream as a visa in respect of an application for which a person may be approved as a work sponsor under Division 3A of the Migration Act applies.

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

This item omits references to paragraphs (c), (caa) and (cac) from paragraph 1234(3)(b) of item 1234 in Schedule 1 to the Migration Regulations, and substitutes references to paragraphs (cac) and (cae).

This amendment is consequential to the repeal of paragraphs 1234(3)(c) and (caa) by the following item 10, and to the insertion of new paragraph 1234(3)(cae) by item 11, below. The effect of the amendment is that the provision in paragraph 1234(3)(b) that an applicant for a Subclass 403 visa may be in or outside Australia but not in immigration clearance, is subject to new paragraph 1234(3)(cae), which sets out requirements for making an application for a Subclass 403 visa in the new Pacific Australia Labour Mobility stream, inserted by item 17 of this Schedule, below.

Item [4] – Paragraphs 1234(3)(c), (ca), (caa) and (cab) of Schedule 1

This item repeals paragraphs 1234(3)(c), (ca), (caa) and (cab) from subitem 1234(3) of Schedule 1 to the Migration Regulations.

The repealed paragraphs related to applications for a Subclass 403 visa in the Seasonal Worker Program and Pacific Labour Scheme streams. Those streams are repealed from Subclass 403 in Schedule 2 to the Migration Regulations by item 16 of this Schedule, below. The paragraphs therefore are no longer applicable as no further applications for the repealed streams may be made.

Item [5] – After Paragraph 1234(3)(cad) of Schedule 1

This item inserts new paragraphs 1234(3)(cae) and 1234(3)(caf) in item 1234 of Schedule 1 to the Migration Regulations.

New paragraphs 1234(3)(cac) and (cae) set out the requirements for making a valid application for a Subclass 403 visa in the Pacific Australia Labour Mobility stream, which is added to Subclass 403 by item 17 of this Schedule, below.

New paragraph 1234(3)(cae) provides that an applicant seeking to satisfy the criteria for a Subclass 403 visa in the Pacific Australia Labour Mobility stream must be outside Australia, unless:

- the applicant holds a Subclass 403 visa in the Pacific Australia Labour Mobility, Seasonal Worker Program or the Pacific Labour Scheme stream; or
- the last substantive visa held by the applicant was a Subclass 403 visa in the Pacific Australia Labour Mobility, Seasonal Worker Program or the Pacific Labour Scheme stream and that visa ceased less than 28 days before the application was made.

The effect of this provision is that an applicant who does not hold a Subclass 403 visa in the Pacific Australia Labour Mobility, Seasonal Worker Program or Pacific Labour Scheme stream must be outside Australia when applying for the visa, but an applicant who already holds a Subclass 403 visa in one of those streams, or who held the visa and makes the application not more than 28 days since it ceased, and is applying for a visa in the Pacific Australia Labour Mobility stream may be in or outside Australia but not in immigration clearance.

In particular, an applicant who holds, or held, a Subclass 403 visa in one of the repealed Seasonal Worker Program or Pacific Labour Scheme streams may apply for a Subclass 403 visa in the Pacific Australia Labour Mobility stream to continue their stay in Australia, without having to go offshore to apply for the visa.

New paragraph 1234(4)(caf) provides that an applicant seeking to satisfy the primary criteria for a Subclass 403 visa in the Pacific Australia Labour Mobility stream must also meet the requirements of subitem 1234(3E). New subitem 1234(3E) is inserted in Schedule 1 to the Migration Regulations by item 14 of this Schedule, below.

Item [6] – Subitem 1234(3) of Schedule 1 (note)

This item amends the note after subitem 1234(3) in item 1234 of Schedule 1 to the Migration Regulations, by omitting the words “the Seasonal Worker Program stream, the Pacific Labour Scheme stream, the Australian Agriculture Worker Stream” and substituting “the Australian Agriculture Worker stream, the Pacific Australia Labour Mobility stream”.

This amendment is consequential to the repeal of the Seasonal Worker Program and Pacific Labour Scheme streams and the addition of the Pacific Australia Labour Mobility stream by this Schedule. The note now advises an applicant for a Temporary Work (International Relations) (Class GD) visa cannot meet the secondary criteria for the grant of the visa if the primary applicant holds a Subclass 403 (Temporary Work (International Relations)) visa in the Australian Agriculture Worker or Pacific Australia Labour Mobility streams (see clause 403.311 of Schedule 2 to the Migration Regulations).

Item [7] – Subitems 1234(3A) and (3C) of Schedule 1

This item repeals subitems 1234(3A) and 1234(3C) from item 1234 of Schedule 1 to the Migration Regulations. The repealed subitems applied to applications for a Subclass 403 visa in the Seasonal Worker Program and Pacific Labour Scheme streams, respectively. Both those streams are repealed by this Schedule and no further applications may be made.

Item [8] – After subitem 1234(3D) of Schedule 1

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

New subitem 1234(3E) sets out further requirements for making a valid application for a Subclass 403 visa in the new Pacific Australia Labour Mobility stream. These requirements are:

- the applicant must be participating as a worker in the Pacific Australia Labour Mobility scheme administered by the Department of Foreign Affairs and Trade. To participate in the scheme, an applicant must come from a country of which the government is a party to an arrangement under the Pacific Australia Labour Mobility scheme, in accordance with the requirements of the arrangement and be supported by an employer recruitment approval as approved by the Department of Foreign Affairs and Trade
- the applicant must specify in the application a person who has agreed to be the applicant’s sponsor, and that person must be approved as a temporary activities sponsor under subsection 140E(1) of the Migration Act, or have applied for approval as a sponsor and the application has not yet been decided; and
- the sponsor must be participating as an employer in the Pacific Australia Labour Mobility scheme administered by the Department of Foreign Affairs and Trade. To participate in the program, the sponsor must have completed an accreditation process approved by the Department of Foreign Affairs and Trade.

There is no provision under section 338 of the Migration Act for review by the Administrative Appeals Tribunal of a decision that an application for a Subclass 403 in the Pacific Australia Mobility scheme does not meet the requirements in item 1234 of Schedule 1 to the Migration Regulations. As the requirements are objective, provision for merits review would not be appropriate.

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

Item [9] – Clause 403.111 of Schedule 2 (at the end of the note)

This item adds “For adverse information: see regulation 1.13A” at the end of the note following clause 403.111 of Subclass 403 in Schedule 2 to the Migration Regulations.

The term *adverse information* is used in Subclass 403 in respect of the Australian Agriculture Worker stream, and the new Pacific Australia Mobility stream inserted by this Schedule, below. The purpose of this amendment is to indicate that the definition of the term may be found in regulation 1.13A of the Migration Regulations. Further details of the meaning of the term *adverse information* are given in the notes on item 12, below.

Item [10] – Division 403.2 of Schedule 2 (note)

This item omits a reference to subdivision 403.28 wherever it occurs in the note in Division 403.2 of Subclass 403 (Temporary Work (International Relations)) in Schedule 2 to the Migration Regulations, and substitutes a reference to subdivision 403.29.

This amendment is consequential to the addition of subdivision 403.29 (Criteria for the Pacific Australia Labour Mobility stream) in Subclass 403 by item 17 of this Schedule, below. The effect of the amendment to the note is that an applicant for a Subclass 403 visa must satisfy the criteria in subdivision 403.21 (Common criteria) and also the criteria in one of subdivisions 403.22 to 403.29.

Item [11] – Subdivisions 403.26 and 403.27 of Schedule 2

This item repeals Subdivisions 403.26 and 403.27 from Subclass 403 in Schedule 2 to the Migration Regulations.

The repealed subdivisions set out the criteria to be met for grant of a Subclass 403 visa in the Seasonal Worker Program and Pacific Labour Scheme streams, respectively. Those streams are now closed and streamlined into the new Pacific Australia Labour Mobility stream, added to Subclass 403 by the following item of this Schedule.

Item [12] – At the end of Division 403.2 of Schedule 2

This item adds new Subdivision 403.29 – Criteria for the Pacific Australia Labour Mobility stream – in Division 403.2 (Primary Criteria) of Subclass 403 in Schedule 2 to the Migration Regulations.

The purpose of new Subdivision 403.29 is to set out the stream-specific criteria to be satisfied by an applicant for a Subclass 403 (Temporary Work (International Relations)) visa in the new Pacific Australia Labour Mobility stream. An applicant is required to satisfy the criteria set out in Subdivision 403.29 in addition to the common criteria, including Public Interest Criteria and Special Return Criteria, set out in Subdivision 403.21.

New Subdivision 403.29 has one clause 403.291. The criteria to be satisfied under clause 403.291 are:

- The applicant must be participating, as a worker, in the Pacific Australia Labour Mobility scheme administered by the Department of Foreign Affairs and Trade. This is essentially the same as a criterion that an applicant is required to meet to make a valid application for the visa; see item 14 of this Schedule, above. This criterion ensures that the person is still a participant in the program at the time of the decision to grant the visa.
- An approved temporary activity sponsor must have agreed to sponsor the applicant, and the sponsor must be participating, as an employer, in the Pacific Australia Labour Mobility scheme. These requirements are explained in relation to item 14 of this Schedule, above. This criterion ensures that the employer is still a participant in the Pacific Australia Labour Mobility scheme at the time of the decision to grant the visa.
- The sponsor must not have ceased to be sponsor of the applicant.

- There must be no adverse information known about the sponsor or a person associated with the sponsor, or if there is, it must be reasonable to disregard the information.
- The applicant must be seeking to enter Australia for the purposes of the Pacific Australia Labour Mobility scheme, or the applicant must be in Australia as the holder of a Subclass 403 visa in the Pacific Australia Labour Mobility stream, Seasonal Worker Program stream or the Pacific Labour Mobility stream, or the last substantive visa held by the applicant must have been a Subclass 403 visa in the Pacific Australia Labour Mobility stream, the Seasonal Worker Program stream or the Pacific Labour Scheme stream.
- The applicant must satisfy Public Interest Criterion 4005, relating to health requirements, and Public Interest Criterion 4019, requiring the signing of a values statement.

The meaning of *adverse information* for the purposes of paragraph 403.291(e) is set out in regulation 1.13A of the Migration Regulations which applies whenever the term is used in the Migration Regulations. Regulation 1.13A defines *adverse information* as follows:

“1.13A (1) *Adverse information* about a person is any adverse information relevant to the person’s suitability as:

- (a) an approved sponsor; or
- (b) a nominator (within the meaning of regulation 5.19).

(2) Without limiting subregulation (1), *adverse information* about a person includes information that the person:

- (a) has contravened a law of the Commonwealth, a State or a Territory; or
- (b) is under investigation, subject to disciplinary action or subject to legal proceedings in relation to a contravention of such a law; or
- (c) has been the subject of administrative action (including being issued with a warning) for a possible contravention of such a law by a Department or regulatory authority that administers or enforces the law; or
- (d) has become insolvent (within the meaning of section 95A of the *Corporations Act 2001*); or
- (e) has given, or caused to be given, to the Minister, an officer, the Tribunal or an assessing authority a bogus document, or information that is false or misleading in a material particular.

(3) Nothing in this regulation affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

(4) In this regulation:

information that is false or misleading in a material particular means information that is:

- (a) false or misleading at the time it is given; and
- (b) relevant to any of the matters the Minister may consider when making a decision under the Act or these Regulations, whether or not the decision is made because of that information.

Note: For the definition of ***bogus document***, see subsection 5(1) of the Act.”

The criterion in paragraph 403.291(e) is consistent with requirements that an organisation would have to meet to be approved as a sponsor. It is designed to ensure that no adverse information has come to light between the time of approval as a sponsor and consideration of

a visa application on the basis of sponsorship by the sponsor. If it has, it must be considered whether it would be reasonable to disregard the information. The departmental Procedural Instructions provide the following guidance in considering whether it would be reasonable to disregard any adverse information:

Circumstances in which it may be reasonable to disregard the adverse information

There are no definitive rules in relation to when it will be reasonable to disregard adverse information which is known about an applicant or a person associated with the applicant. Decision makers must exercise judgement and assess the circumstances of each case on their merit. Factors which may be taken into account in deciding whether it is reasonable to disregard the adverse information include but are not limited to:

- *the nature of the adverse information;*
- *how the adverse information arose;*
- *whether the adverse information arose recently or a long time ago; and*
- *whether the person has taken any steps to ensure the circumstances which led to the adverse information did not recur.*

Examples of circumstances in which it may be reasonable to disregard adverse information may include situations where the person:

- *has developed practices and procedures to ensure the relevant conduct was not repeated; and*
- *has complied with sponsorship obligations on all other occasions and the decision maker is satisfied that the breach for which the infringement notice was issued was a one-off and is unlikely to recur; and*
- *has disassociated themselves from the overseas employer or agents involved in preparing fraudulent applications, or the sponsor may have introduced additional quality control measures; and*
- *has the capacity to comply with their sponsorship obligations; and*
- *has not been the subject of disciplinary action in relation to exploitation and mistreatment of vulnerable migrant workers.*

Due to the wide range of information that may be captured by the definition of adverse information (noting that it must be relevant to their suitability to be a sponsor), it is appropriate to provide that the information may be disregarded if it is reasonable to do so. This would allow the visa application to proceed, for instance, in circumstances where the decision maker is satisfied that the risk of any adverse consequences to the visa holder, or repeat of the circumstances that led to the adverse information, has been mitigated.

In view of the varied and complex situations in which adverse information may arise, that may be different from case to case, it is not possible to set out in the legislation all the circumstances when it would be reasonable to disregard the adverse information, and it may result in an unreasonable outcome to do so. Rather, a decision maker must assess the factors relevant to a particular case.

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

applicant fails to satisfy any of these criteria, including a decision that there was adverse information known and that it would not be reasonable to disregard adverse information.

Specifically, if the applicant fails to satisfy these criteria and the applicant made their application for a Subclass 403 visa inside Australia, the decision would be reviewable under subsection 338(2) of the Migration Act and the applicant would have a right to apply for review. However, if the applicant was outside Australia at the time of application for a Subclass 403 visa, the decision would be reviewable under subsection 338(5) of the Migration Act and the sponsor would have the right to apply for review.

Item [13] – Subclause 403.411(2A) of Schedule 2

This item repeals subclause 403.411(2A) from Subclass 403 in Schedule 2 to the Migration Regulations.

Repealed subclause 403.411(2A) set out the circumstances applicable to grant of a Subclass 403 visa in the Pacific Labour Scheme stream. As that stream is being repealed from Subclass 403 by this Schedule, the subclause is no longer relevant.

Item [14] – After Subclause 403.411(2B) of Schedule 2

This item inserts new Subclause 403.411(2C) in Subclass 403 in Schedule 2 to the Migration Regulations.

New subclause 403.411(2C) sets out the circumstances applicable to grant of a Subclass 403 visa in the new Pacific Australia Labour Mobility stream. At the time the visa is granted, the applicant may in or outside Australia, but not in immigration clearance, if the applicant holds, or if the last substantive visa held by the applicant was, a Subclass 403 visa in the Pacific Australia Labour Mobility stream, or in the Seasonal Worker Program or Pacific Labour Scheme streams. Otherwise, the applicant must be outside Australia when the visa is granted.

Item [15] – Subclause 403.411(3) of Schedule 2

This item omits “(2A) or (2B)” from subclause 403.411(3) of Subclass 403 in Schedule 2 to the Migration Regulations, and substitute “(2B) or (2C)”.

This amendment is consequential to the repeal of subclause 403.411(2A) by item 18 of this Schedule, above, and the insertion of new subclause 403.411(2C) by item 19, above.

Item [16] – Clauses 403.614 and 403.615 of Schedule 2

This item repeals clauses 403.614 and 403.615 from Subclass 403 in Schedule 2 to the Migration Regulations.

The repealed clauses set out the conditions for a Subclass 403 visa in the Seasonal Worker Program and Pacific Labour Scheme streams, respective. This amendment is consequential to the repeal of those streams by this Schedule.

Item [17] – At the end of Division 403.6 of Schedule 2

This item adds new clause 403.617 to Subclass 403 in Schedule 2 to the Migration Regulations.

The purpose of new clause 403.616 is to prescribe the conditions to which a Subclass 403 visa in the Pacific Australia Labour Mobility stream is subject. The conditions referred to in the clause are set out in Schedule 8 (Visa conditions) to the Migration Regulations.

The visa is subject to the following conditions:

- Condition 8303: the visa holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community;
- Condition 8501: the visa holder must maintain adequate arrangements for health insurance while in Australia; and
- Condition 8611: the visa holder must not work other than for the holder's sponsor in relation to the visa or for another person in accordance with an arrangement endorsed by the Department of Foreign Affairs and Trade, and must not engage in work on the holder's own account.

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

- Condition 8301: after entry, the visa holder must satisfy relevant public interest criteria before the visa ceases;
- Condition 8502: the visa holder must not enter Australia before the entry of a person specified in the visa;
- Condition 8503: the visa holder will not, after entering Australia, be entitled to be granted a substantive visa other than a protection visa;
- Condition 8516: the visa holder must continue to be a person who would satisfy the criteria for the grant of the visa;
- Condition 8525: the visa holder must leave Australia by a specified means of transport on a specified day or within a specified period;
- Condition 8576: the visa holder must not stay in Australia for more than 10 months in any period of 12 months; and
- Condition 8578: the visa holder must notify the Department within 14 days of any changes to residential address, contact details, passport details, or employment.

Section 338 of the Migration Act provides a right to seek a review by the Administrative Appeals Tribunal of a decision to cancel a Subclass 403 visa while the visa holder is in Australia, on the grounds that a condition of the visa was breached by the visa holder.

Item [18] – Clause 8577 of Schedule 8

This item repeals clause 8577 of Schedule 8 (Conditions) to the Migration Regulations.

This amendment removes Condition 8577 which was applied only to a Subclass 403 visa in the Seasonal Worker Program and Pacific Labour Scheme streams. The condition is no longer required following the repeal of those streams by this Schedule.

Item [19] – Clause 8611 of Schedule 8

This item inserts a reference to a Subclass 403 visa in the Pacific Australian Labour Mobility stream, in addition to the existing reference to a Subclass 403 visa in the Australian Agriculture Worker stream, in clause 8611 of Schedule 8 (Conditions) to the Migration Regulations.

This amendment facilitates the imposition of condition 8611 on a Subclass 403 visa in the new Pacific Australia Labour Mobility stream. See item 22 of this Schedule, above.

Item [20] – In the appropriate position in Schedule 13

This item inserts a new Part 104 – Amendments made by the *Migration Amendment (Pacific Australia Labour Mobility) Regulations 2022* – in Schedule 13 (Transitional Arrangements) to the Migration Regulations. New Part 104 has one item 10401 which provides for how the amendments made by Part 2 of Schedule 1 are to operate.

The effect of the transitional provision is that the amendments do not apply in respect of an application for a Subclass 403 visa that is made before 4 April 2022, a visa granted before 4 April 2022, or a visa granted on or after 4 April 2022 that was granted as a result of an application for a Subclass 403 that was made before the 4 April 2022.