

EXPLANATORY STATEMENT

Issued by the Minister for Immigration, Citizenship and Multicultural Affairs

Migration Act 1958

Migration Amendment (Repeal of Australian Agriculture Worker Stream) 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 (Repeal of Australian Agriculture Worker Stream) Regulations 2022* (the Regulations) amends the *Migration Regulations 1994* (the Migration Regulations) to repeal the Australian Agriculture Worker (AAW) stream from the Subclass 403 (Temporary Work (International Relations)) visa. The AAW stream was inserted in Subclass 403 by the *Migration Amendment (Australian Agriculture Workers) Regulations 2021* on 30 September 2021 to provide for the temporary entry of agricultural workers under the AAW program administered by the Department of Foreign Affairs and Trade (DFAT).

On 4 April 2022 the *Migration Amendment (Pacific Australia Labour Mobility) Regulations 2022* inserted the Pacific Australia Labour Mobility (PALM) stream in Subclass 403. The purpose of the PALM stream is to provide for the temporary entry of workers under the PALM scheme administered by DFAT. At the same time, the Seasonal Worker Program (SWP) and Pacific Labour Scheme (PLS) streams were repealed from Subclass 403 as the SWP and the PLS were combined into the PALM scheme.

A dedicated agriculture worker visa stream is no longer required as agricultural workers can be accommodated through the PALM stream of Subclass 403 using the existing regulations and system capabilities. Repeal of the AAW stream by the Regulations means that the PALM scheme remains the key program for meeting agricultural workforce shortages.

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

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments. No Regulation Impact Statement is required. The OBPR consultation reference number is OBPR22-02917.

The Department of Home Affairs (the Department) consulted with the Department of Foreign Affairs and Trade, the Department of Employment and Workplace Relations, and the Treasury. Consultations led by the Department of Foreign Affairs and Trade occurred with national peak body representatives including the National Farmers Federation (NFF), AUSVEG, Australian Meat Industry Council (AMIC), Australian Fresh Produce Alliance (AFPA), Citrus Australia, Approved Employers Australia (AEA) and the Australian Workers Union (AWU). The consultations undertaken accord with subsection 17(1) of the *Legislation Act 2003* (the Legislation Act).

The amendments commence on the day after registration on the Federal Register of Legislation.

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

The Regulations amend the Migration Regulations which are exempt from sunseting under table item 38A of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. The Migration Regulations are exempt from sunseting on the bases that the repeal and remaking of the Migration Regulations:

- is unnecessary as the Migration Regulations are regularly amended numerous times each year to update policy settings for immigration programs;
- would require complex and difficult to administer transitional provisions to ensure, amongst other things, the position of the many people who hold Australian visas, and similarly, there would likely be a significant impact on undecided visa and sponsorship applications; and
- would demand complicated and costly systems, training and operational changes that would impose significant strain on Government resources and the Australian public for insignificant gain, while not advancing the aims of the Legislation Act.

The Department follows standard practices to notify clients about the Regulations, including updating its website and notifying peak bodies.

The Migration Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

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

AUTHORISING PROVISIONS

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provides that the Governor-General may make 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 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 40(1), which provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- subsection 45A, which provides that the regulations may prescribe that a non-citizen who makes an application for a visa is liable to pay a visa application charge if, assuming the charges were paid, the application would be a valid visa application;
- paragraph 46(1)(b), which provides that a visa application is valid if, and only if, it satisfies the criteria and requirements prescribed under section 46;
- paragraph 46(1)(ba), which provides that a visa application is valid if, and only if, any visa application charge that the regulations require to be paid at the time the application is made has been paid, subject to the regulations providing otherwise;
- 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; and
- paragraph 46(4)(a), which provides that, without limiting subsection 46(3), the regulations may prescribe the circumstances that must exist for an application for a visa of a specified class to be a valid application.

Statement of Compatibility with Human Rights

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

Migration Amendment (Repeal of Australian Agriculture Worker Stream) 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 (Repeal of Australian Agriculture Worker Stream) Regulations 2022* amends the *Migration Regulations 1994* (the Migration Regulations) to repeal the Australian Agriculture Worker (AAW) stream from the Subclass 403 (Temporary Work (International Relations)) visa.

The AAW stream was inserted in Subclass 403 by the *Migration Amendment (Australian Agriculture Workers) Regulations 2021* on 30 September 2021 to provide for the temporary entry of workers from a range of countries negotiated through bilateral agreements, designed to meet identified labour market gaps in Australia's primary industry sectors including horticulture, meat processing, dairy, wool, grains, fisheries (including aquaculture) and forestry.

On 4 April 2022 the *Migration Amendment (Pacific Australia Labour Mobility) Regulations 2022* inserted the Pacific Australia Labour Mobility (PALM) stream in the Subclass 403. The PALM stream mirrored the AAW stream visa criteria and provides for the temporary entry of workers in all sectors, including agriculture. At the same time the Seasonal Worker Program (SWP) and Pacific Labour Scheme (PLS) streams were repealed from Subclass 403 as the SWP and the PLS were combined into the PALM scheme.

The Department of Home Affairs has responsibilities under the *Migration Act 1958* for the grant of Subclass 403 visas under the AAW program and the PALM scheme. The Department of Foreign Affairs and Trade administers both programs, including bilateral agreements with foreign governments to participate in the programs, taking into account factors including the requirements of the Australian labour market and labour shortages in particular industry sectors.

Prospective Subclass 403 visa applicants seeking to participate in the AAW program were required to be outside Australia at the time of application unless the applicant held a Subclass 403 visa in the AAW stream. While Australia signed the first bilateral Memorandum of Understanding with respect to the AAW program on 28 March 2022, the AAW program was not

operationalised and no applications for visas under the Subclass 403 AAW stream have been lodged. No visa holders or pending visa applicants will be impacted by the proposal to repeal the Subclass 403 AAW stream.

Labour market gaps in Australia's primary industry sectors, including agriculture will be accommodated through the PALM stream using the existing regulations and system capabilities.

Non-citizens wishing to enter Australia for work or other purposes may continue to consider other available visa options.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Andrew Giles

Minister for Immigration, Citizenship and Multicultural Affairs

Details of the Migration Amendment (Repeal of the Australian Agriculture Worker Stream) Regulations 2022

Section 1 - Name

This section provides that the name of the Regulations is the *Migration Amendment (Repeal of the Australian Agriculture Worker Stream) Regulations 2022*.

Section 2 - Commencement

This section provides that the Regulations commence on the day after registration on the Federal Register of Legislation.

Section 3 - Authority

This section provides that the Regulations are made under the *Migration Act 1958*.

Section 4 - Schedules

This section provides for how the amendments made by the Regulations operate.

Schedule 1 – Amendments

Migration Regulations 1994

Item [1] – Paragraph 2.56(bab)

This item repeals paragraph 2.56(bab) from the Migration Regulations.

Paragraph 2.56(bab) refers to the Subclass 403 (Temporary Work (International Relations)) visa in the Australian Agricultural Worker stream. This amendment is consequential to the repeal of the stream by the Regulations.

Items [2]-[6] – Amendments to item 1234 (Temporary Work (International Relations))(Class GD) of Schedule 1 to the Migration Regulations

These items amend item 1234 (Temporary Work (International Relations))(Class GD) of Schedule 1 to the Migration Regulations to repeal and make amendments to subparagraph 1234(2)(a)(ia), paragraph 1234(3)(b), paragraphs 1234(3)(cac) and (cad), the note in subitem 1234(3), and subitem 1234(3D).

These provisions refer to applications for a Subclass 403 visa in the Australian Agriculture Worker stream. These items remove those references. The amendments are consequential to the repeal of the Australian Agriculture Worker stream from Subclass 403 by the Regulations.

Item [7] – Subdivision 403.28 of Schedule 2

This item repeals subdivision 403.28 (Criteria for the Australian Agriculture Worker stream) from Subclass 403 (Temporary Work (International Relations)) of Schedule 2 to the Migration Regulations. The Australian Agriculture Worker stream is not required as a separate stream. The stream will be absorbed within the Pacific Australia Labour Mobility scheme administered by the Department of Foreign Affairs and Trade, and Subclass 403 visas in the PALM stream will be granted to agricultural workers on satisfaction of the criteria in subdivision 403.29.

Item [8] – Subclause 403.411(2B) of Schedule 2

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

Subclause 403.411(2B) sets out the circumstances applicable to the grant of an applicant who satisfies the primary criteria for the grant of a Subclass 403 visa in the Australian Agriculture Worker stream. The subclause is no longer be required following the repeal of the Australian Agriculture Worker stream from Subclass 403 by the Regulations.

Item [9] – Subclause 403.411(3) of Schedule 2

This item omits the reference to subclause 403.411(2B) in subclause 403.411(3) of Schedule 2 to the Migration Regulations.

This amendment is consequential to the repeal of subclause 403.411(2B) by item 8 of this Schedule, above.

Item [10] – Clause 403.616 of Schedule 2

This item repeals clause 403.616 of Schedule 2 to the Migration Regulations.

Subclause 403.616 sets out the conditions applicable to a Subclass 403 visa in the Australian Agriculture Worker stream. The subclause is no longer be relevant following the repeal of the Australian Agriculture Worker stream by the Regulations.

Item [11] – Clause 8611 of Schedule 8

This item amends clause 8611 of Schedule 8 to the Migration Regulations to omit the words “the Australian Agriculture Worker stream or”.

Clause 8611 sets out a condition applicable to the work permitted to be performed by the holder of a Subclass 403 visa in the Australian Agriculture Worker stream or the Pacific Australia Labour Mobility stream. The reference in the condition to the Australian Agriculture Worker stream is no longer relevant following the repeal of the stream by the Regulations. The condition continues to be applicable to a Subclass 403 visa in the Pacific Australia Labour Mobility stream.