

EXPLANATORY STATEMENT

Issued by the Minister for Home Affairs

Migration Act 1958

Migration Amendment (2025 Measures No. 1) Regulations 2025

The *Migration Act 1958* 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.

Overview

The *Migration Amendment (2025 Measures No. 1) Regulations 2025* (the Amendment Regulations) amend the *Migration Regulations 1994* to:

- in Part 1 of Schedule 1 to the Amendment Regulations—provide that a person who is convicted of an offence of intentional wage theft under section 327A of the *Fair Work Act 2009* (Fair Work Act) in relation to a non-citizen (other than the holder of a permanent visa) is subject to a ‘migrant worker sanction’ for the purposes of the ‘prohibited employer’ provisions of the Migration Act;
- in Part 2 of Schedule 1 to the Amendment Regulations—authorise the collection, use or disclosure of personal information, by the Minister, an officer of the Department or another person, for the purposes of informing a decision by the Minister to issue a certificate to a person who is affected by the High Court's decision in *Love v Commonwealth; Thoms v Commonwealth* (2020) 270 CLR 152, and for the Australian Government to determine whether to make an offer of permanent stay in Australia to the person who is issued the certificate or who is affected by the decision in *Love v Commonwealth; Thoms v Commonwealth* (2020) 270 CLR 152;
- in Part 3 of Schedule 1 to the Amendment Regulations—modernise the approach to prescribed penalties in reg 5.20(2) of the Migration Regulations for infringement notices that may be issued as an alternative to prosecution for an offence against section 229 or 230 of the Migration Act (in relation to the carriage of undocumented persons or concealed persons to Australia by air or sea) to refer to a number of penalty units rather than prescribed dollar amounts, ensuring that the infringement notice penalties will keep pace with any increases in the value of a penalty unit under the *Crimes Act 1914* (the current value of a penalty unit is \$330);
- in Part 4 of Schedule 1 to the Amendment Regulations—make amendments in relation to the BVR to strengthen the legislative framework that supports effective management of members of the NZYQ cohort on BVRs in the Australian community, including:
 - to provide that certain community protection conditions that are currently imposed by operation of law - where a BVR holder has been convicted of certain

serious offences against minors or vulnerable people, or offences involving violence or sexual assault - will instead be imposed as a decision by the Minister, following consideration of the test established for conditions relating to curfew and electronic monitoring requirements following the High Court's decision in *YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs* [2024] HCA 40;

- to temporarily suspend the effect of certain conditions, including electronic monitoring (8621), curfew (8620) and limitations on proximity to schools and childcare facilities (8623), during periods where the BVR holder is under arrest, in custody or admitted as an in-patient in a hospital, registered mental health facility or other medical facility;
 - to provide that a BVR holder, or a former BVR holder who is an unlawful non-citizen, may not make a valid application for any prescribed class of visa other than a protection visa or a further BVR;
 - to make other amendments to clarify and enhance the BVR framework, and particularly to strike an effective balance on limitations imposed, appropriately, by condition 8623 on the BVR holder's freedom of movement with ensuring community protection.
- in Part 5 of Schedule 1 to the Amendment Regulations—provide for the application of amendments in the other Parts of Schedule 1 to the Regulations.

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

The Amendment Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Consultation

Details of consultation undertaken by the Department in relation to measures in each Part of the Schedule to the Amendment Regulations are set out in Attachment A. To the extent that consultation was considered necessary and appropriate in relation to each measure, this accords with consultation requirements under subsection 17(1) of the *Legislation Act 2003* (the Legislation Act).

Parliamentary scrutiny etc

The Amendment Regulations are a disallowable legislative instrument for the purposes of section 42 of the Legislation Act.

The Migration Act does not specify any conditions that needs to be satisfied before the power to make the Amendment Regulations may be exercised.

A Statement of Compatibility with Human Rights (the Statement) has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement is included at Attachment B.

The Amendment 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 basis 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 Amendment Regulations will be repealed by operation of Division 1 of Part 3 of Chapter 3 of the Legislation Act. Specifically, that Division (under section 48A) operates to automatically repeal a legislative instrument that has the sole purpose of amending or repealing another instrument. As the Amendment Regulations will automatically repeal, they do not engage the sunseting framework under Part 4 of the Legislation Act.

Details of consultation undertaken for the *Migration Amendment (2025 Measures No. 1) Regulations 2025*

Part 1 – Prohibited Employers

The Department of Home Affairs consulted with the Department of Employment and Workplace Relations (DEWR) on the development and operation of the intentional wage underpayment law reforms established in the *Fair Work Act 2009*. DEWR was also consulted on the approach to prescribing relevant persons (non-citizens other than permanent visa holders) in relation to these amendments.

Part 2 – Resolution of Status (Class CD) visas

The Department has undertaken consultation with government agencies, including the National Indigenous Australians Agency and the Attorney-General's Department (AGD). All stakeholders are supportive of the amendments. Broader public consultation was not considered necessary as the amendments are intended to enhance established processes and are beneficial in nature. The amendments will impose no new obligations, and will not adversely affect the rights or interests of visa applicants.

Part 3 – Prescribed penalties

The Department consulted with AGD, which indicated support for the amendments to replace the current prescribed dollar amounts for certain financial penalties with a number of penalty units. The amendments are also consistent with AGD's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, which provides that as a matter of general practice in Commonwealth legislation, pecuniary penalties should be expressed in penalty units (and attract the application of the standard 'penalty unit' provisions of the *Crimes Act 1914*).

Part 4 – Amendments relating to Bridging R (Class WR) visas

The Department consulted with the Australian Border Force, the Australian Federal Police, the Department of the Prime Minister and Cabinet and AGD in relation to the amendments in Part 4.

Statement of Compatibility with Human Rights

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

Migration Amendment (2025 Measures No 1) Regulations 2025

The amendments to the Migration Regulations are 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 (2025 Measures No. 1) Regulations 2025* (the Amendment Regulations) amend the Migration Regulations to:

- prescribe the offence for intentional wage underpayment against the *Fair Work Act 2009* for the purposes of paragraph 245AYF(3)(a) of the Migration Act and prescribe a class of persons to be a 'prescribed person' for the purposes of paragraph 245AYF(3)(b) of that Act (Part 1);
- authorise the Minister and the Department of Home Affairs (the Department) to collect, use, and disclose personal information (including sensitive information) for the purpose of deciding whether to issue an offer of permanent stay to a non-citizen who has made a claim in relation to the High Court's decision in *Love v Commonwealth; Thoms v Commonwealth* (2020) 270 CLR 152 (Part 2);
- change the prescribed penalty in dollar amount for an infringement notice to be paid by a master, owner, agent charterer and operator of a vessel, air or sea, on which a non-citizen is brought into Australia without visa that is in effect to a number of penalty units (Part 3);
- clarify operation of certain conditions based on the existence of convictions for offences in which the victim was a minor or vulnerable person and make imposition subject to consideration of the post-YBFZ test in new cl 070.612A (Part 4). These conditions are:
 - 8612 – notify details of persons who reside with the BVR holder;
 - 8615 – notify associations and memberships of any organisation that engages in activities involving more than incidental contact with minor or vulnerable person;
 - 8622 – must not perform work with or participate in any regular organised activity involving more than incidental contact with minors or any other vulnerable person;
 - 8623 – must not go within 50 metres of a school, childcare centre or day care centre; and

- 8626 – notify Minister of any changes to online profiles or usernames.
- clarify operation of condition 8624 – if the BVR holder has been convicted of an offence involving violence or sexual assault, must not contact, or attempt to contact, the victim of the offence or a member of the victim’s family;
- substitute 200m in condition 8623 (‘the holder must not go within 200 metres of a school, childcare centre or day care centre’) with 50m (Part 4).
- suspend operation of certain conditions when the BVR holder is in criminal custody or in medical or mental health treatment facility (Part 4).
- prevent current and former holders of a BVR from making a valid application for another visa, other than a protection visa or a BVR (Part 4).

Further details regarding each Part to the Amendment Regulations is set out below.

Part 1 – Prohibited employers

Part 1 of Schedule 1 to the *Migration Amendment (2025 Measures No 1) Regulations 2025* (the Amendment Regulations) amends the *Migration Regulations 1994* (the Migration Regulations) to further strengthen the Government’s response to the exploitation of migrant workers in Australia. Specifically, it helps to further protect temporary visa holders from employers found to have intentionally underpaid a temporary migrant worker.

The Amendment Regulations build on a prohibition measure that commenced on 1 July 2024, contained within sections 245AYA – 245AYN of the *Migration Act 1958* (the Migration Act). The Amendment Regulations amend the Migration Regulations:

- to prescribe the offence of intentional wage theft under section 327A of the *Fair Work Act 2009* (Fair Work Act) for the purposes of paragraph 245AYF(3)(a) of the Migration Act; and
- to prescribe a non-citizen (other than the holder of a permanent visa) as a person to whom the offence related for the purposes of paragraph 245AYF(3)(b) of the Migration Act.

Prohibitions seek to protect temporary migrant workers from employers who have been found to have engaged in serious, deliberate or repeated exploitation of temporary migrant workers (that is, non-compliance with employer obligations under the Migration Act, *Criminal Code Act 1995* and the Fair Work Act prescribed as ‘migrant worker sanctions’). ‘Migrant worker sanctions’ are defined under sections 245AYE to 245 AYJ of the Migration Act.

For a prohibition to be declared, a person must be subject to a ‘migrant worker sanction’. A migrant worker sanction applies to a person where they meet any one of the criteria set out in sections 245AYE to 245AYJ of the Migration Act. These criteria are constructed to be objective. This amendment expands on the current criteria for a migrant worker sanction to include a person who has been convicted of intentional wage underpayment, and that behaviour is related to a non-citizen (other than a permanent visa holder). Once the Minister is aware that a migrant worker sanction applies, the Minister can consider issuing a ‘show cause’ notice to the person subject to the migrant worker sanction. Based on an assessment of

the nature of the migrant worker sanction, and the person's response to the show cause notice, the Minister (or delegate) can make a prohibition declaration.

Subsections 245AYG(1) and (2) provides a regulation-making power for matters to be prescribed for the purpose of a 'migrant worker sanction'. As outlined in the Explanatory Memorandum to the Migration Amendment (Strengthening Employer Compliance) Bill 2023:

The purpose of this regulation-making power [was] to provide the Government with the ability to respond to changes to workplace laws and to the dynamic and shifting nature of migrant worker exploitation, ensuring that the scheme [could] continue to remain fit for purpose in the future. Focusing the scope and application of the power aligns with scrutiny principles and best practice for provision of matters in delegated legislation, and ensures that the regulation-making power is appropriately targeted to achieving the scheme's overarching objectives.

On 1 January 2025, a new criminal offence (section 327A of the Fair Work Act) for intentional wage underpayments (wage theft) commenced. Including this new offence as a prescribed offence for which a person can be subject to a 'migrant worker sanction' supports visa program integrity by addressing the misuse of visa programs, or visa rules, to exploit temporary migrant workers, complementing the protections for vulnerable workers outlined in the Fair Work Act.

Part 2 – Resolution of Status (Class CD) visas

Part 2 of Schedule 1 to the Amendment Regulations amends the Migration Regulations to allow the Minister, or an officer of the Department, or another person to collect, use and disclose personal information, including sensitive information (see Australian Privacy Principle (APP) 3.3), for the purposes of informing:

- a decision by the Minister whether to issue a certificate of the kind mentioned in subregulation 2.07AQ(3A) in relation to the person; or
- a decision by the Australian Government whether or not to make an offer of a permanent stay in Australia to a person in respect of whom a certificate of the kind mentioned above has been or could be issued.

Where a person is issued a certificate by the Minister (or delegate) by reason of the High Court's decision in *Love v Commonwealth; Thoms v Commonwealth* (2020) 270 CLR 152 (*Love*), and the person has accepted an offer of permanent stay in Australia by the Australian Government, they will be taken to have made a valid application for a Subclass 851 (Resolution of Status) visa (RoS visa), which is a permanent visa (see subregulation 2.07AQ(3A)).

The offer of permanent residency is only made to those who meet or probably meet all three limbs of the tripartite test set out in *Mabo v Queensland [No. 2]* (1992) 175 CLR 1 (*Mabo [No. 2]*). The Department's assessment as to whether an individual meets (or probably meets) the tripartite test is based on case law established by the High Court's decision in *Love* and subsequent judgments, and informed, as appropriate, by legal advice.

The effect of these amendments is that the collection, use or disclosure of the personal information for the purpose of informing the decision whether to issue the certificate or to make the offer of permanent stay will be considered as 'required or authorised by or under

Australian law' within the APP 6.2(b). The Department will therefore no longer be required to seek consent of individuals to use and disclose personal information for this purpose, nor will there be any doubt as to whether the Department could collect personal information for this purpose.

The grant of a RoS visa to the *Love*-affected person will provide certainty as to their immigration status and also facilitate their access to government entitlements and services for which they may be eligible such as JobSeeker, Rental Assistance, social housing and the National Disability Insurance Scheme.

Part 3 – Prescribed penalties

Part 3 of Schedule 1 to the Amendment Regulations amends the Migration Regulations to support the increase in infringement notice penalties applicable to a breach of sections 229 or 230 of the Migration Act.

Section 229 of the Migration Act provides that it is an absolute liability offence for a master, owner, agent, charterer and operator of a vessel to bring a non-citizen without a visa that is in effect into Australia. Similarly, section 230 provides that it is a strict liability offence if an unlawful non-citizen is found concealed on a vessel when it arrives in the migration zone. The Migration Act provides that the penalties for these offences, upon conviction, are a fine not exceeding 100 penalty units and a fine of 100 penalty units respectively. The Migration Regulations provide for the payment of a prescribed penalty as an alternative to prosecution under sections 229 and 230 of the Migration Act. This is prescribed in subregulation 5.20(2) of the Migration Regulations at the specific amount of \$3,000 for a natural person, or \$5,000 for a body corporate.

The Amendment Regulations amend subregulation 5.20(2) to change the prescribed penalty for offences against sections 229 or 230 of the Migration Act to 12 penalty units for individuals and 25 penalty units for body corporates.

The current value of the section 229 and 230 infringements has not increased since regulation 5.20 was included in the Migration Regulations in 2009.

Amending the Migration Regulations to align the penalty with a set number of penalty units will allow the infringement to rise with the Consumer Price Index (CPI), be consistent with similar border infringements, and remain an effective compliance tool. This will provide an incentive for airlines to improve and enforce internal uplift guidelines, which will ensure that they are uplifting genuine travellers to Australia.

The *Crimes Act 1914* prescribes penalty units at \$330 per unit. Amending the penalty in line with the units above will change the current penalty value for an individual from \$3,000 to \$3,960 and for a body corporate from \$5,000 to \$8,250.

Part 4—Amendments relating to Bridging R (Class WR) visas

Part 4 of Schedule 1 to the Amendment Regulations makes amendments to clarify the operation of a number of visa conditions, enable the conditions to be imposed on a BVR following consideration of the post-*YBFZ* test under new cl 070.612A rather than by operation of law, and to allow the suspension of certain conditions in certain circumstances.

The High Court of Australia's decision in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37 (*NZYQ*) resulted in the release from immigration detention of a cohort of people (the *NZYQ* cohort) comprised of unlawful non-citizens who

have exhausted all avenues to remain in Australia, but where there is no real prospect of their removal from Australia becoming practicable in the reasonably foreseeable future.

Each non-citizen required to be released from immigration detention following the High Court's reasoning in *NZYQ* is granted a BVR with conditions, including certain community protection-related conditions. These are provided for in Part 070 of Schedule 2 to the Migration Regulations. These enforceable visa conditions on BVRs are intended to manage non-citizens who may pose a potential risk to the Australian community.

In practice, this means that as an individual's circumstances change over a period of time, further BVRs may need to be granted with conditions that are adapted to reflect the individual's changing circumstances. The Amendment Regulations allow certain visa conditions to be imposed in a more targeted manner, under the new cl 070.612A, to improve administrative and operational efficiencies, while also ensuring that enforced conditions remain necessary, appropriate and adapted to the particular individual's circumstances.

The amendments made by the Amendment Regulations:

- a) clarify operation of conditions (8612, 8615, 8622, 8623, and 8626) based on the existence of convictions against minors or any vulnerable persons and make imposition on a BVR subject to consideration of the post-*YBFZ* test under new cl 070.612A rather than by operation of law;
- b) clarify the circumstances in which condition 8624 (holder not to contact victims or victim's family) is to be imposed by confining 'family' to immediate family members of the victim and make imposition of the condition on a BVR subject to consideration of the post-*YBFZ* test under new cl 070.612A rather than by operation of law;
- c) replace the reference to '200 metres' in condition 8623 with '50 metres';
- d) suspend operation of certain visa conditions when a BVR holder is in criminal custody or in medical or mental health treatment facilities; and
- e) prevent current and former holders of a BVR from making a valid application for another visa, other than a protection visa or a subsequent BVR.

Minor or Vulnerable People amendments

Subclause 070.612B(1) in Schedule 2 to the Migration Regulations currently provides that a BVR granted to non-citizens who have been convicted of an offence involving an minor or vulnerable person is subject to the following conditions:

- a) 8612 – notify details of persons who reside with the BVR holder;
- b) 8615 – notify associations and memberships of any organisation that engages in activities involving more than incidental contact with minor or vulnerable person;
- c) 8622 – must not perform work with or participate in any regular organised activity; involving more than incidental contact with minors or any other vulnerable person;
- d) 8623 – must not go within 200 metres of a school, childcare centre or day care centre; and
- e) 8626 – notify Minister of any changes to online profiles or usernames.

The conditions currently apply by operation of law when the fact exists that conviction for a relevant offence has occurred, i.e. these conditions are mandatory conditions imposed on

BVRs granted to non-citizens convicted on an offence involving a minor or vulnerable person. This has resulted in:

- an impractical obligation for the decision-maker in every case to not only determine the existence of a conviction but the circumstances around the conviction (criminal histories generally only record the offence, the conviction and the sentence and do not go into matters such as whether the victim was a minor or a vulnerable person), and
- the condition being imposed by operation of law because as a factual matter a relevant conviction exists, but that conviction is not known to the Department or the decision-maker, with the result being that the mandatory condition is not recorded in departmental systems, nor communicated to the visa holder.

This has raised a number of operational difficulties, not least of which is determining whether a relevant conviction exists and as a consequence, whether the relevant condition is imposed.

The amendments made by the Amendment Regulations make imposition of conditions contingent on a conviction involving a minor or vulnerable person, a state of mind consideration - subject to consideration of the post-*YBFZ* test under new cl 070.612A - rather than by operation of law, instead of ones that are imposed by operation of law. The conditions are intended to be imposed where the Minister is satisfied on the balance of probabilities that the BVR holder poses a substantial risk of seriously harming ‘minors or vulnerable persons’ and that the imposition of the condition is reasonably necessary, appropriate and adapted to manage that risk. Once the BVR is granted, conditions 8612, 8615, 8622, 8623 and 8626 are in effect for a period of 12 months.

Non-citizens who are granted BVRs with specific prescribed conditions (including conditions 8612, 8615, 8622, 8623 and 8626) will be afforded procedural fairness under section 76E of the Migration Act. In accordance with section 76E, as soon as practicable after making the decision to grant a BVR subject to a prescribed condition, the Minister must invite the person to make representations as to why the BVR should not be subject to those conditions. In addition, should a visa holder make representations in accordance with section 76E, and a further BVR is not be granted without the relevant conditions attached, the visa holder can seek merits review of that decision at the ART.

Condition 8623

Condition 8623 states that if the holder has been convicted of an offence involving a minor or vulnerable person the holder must not go within 200 metres of a school, childcare centre or day care centre.

The spatial proximity limit of 200 metres presents operational challenges as it may cause undue hardship or unduly limit an individual’s freedom of movement, for example where their commuting route to employment, shops or medical appointments necessarily involves coming within 200 metres of these facilities. This condition also has limited utility in circumstances where the holder was convicted of an offence involving a vulnerable person other than a minor, as there is no obvious reason to restrict access to schools, childcare centres or day care centres in that circumstance.

The amendments made by the Amendment Regulations:

- ensure that condition 8623 is imposed on BVRs granted to those BVR holders convicted of an offence:
 - against a minor or vulnerable person;

- involving production, publication, possession, supply or sale of, or other dealing in child abuse material;
- involving consenting to or procuring the employment of a child, or employing a child, in connection with child abuse material; or
- involving acts done in preparation for, or to facilitate, the commission of a sexual offence against a person under 16;
- replace the reference to 200 metres in condition 8623 with 50 metres; and
- ensure that the decision-maker is required to consider, based on the facts of the case and on the balance of probabilities, whether condition 8623 must be imposed on a BVR.

The intention of the amendments in the Amendment Regulations is that condition 8623 should be imposed only where it is appropriate in the individual circumstances and not just because the BVR holder may come into contact with a minor or vulnerable person.

The amendments also seek to provide a definition of vulnerable person as:

- a person who is at least 18; and
- has a disability.

The amendments rely on the understanding that a minor (being a person under the age of 18) is inherently vulnerable. The amendments clarify the requirements of the category of ‘vulnerable persons’ who no longer meet the definition of a minor, being individuals over the age of 18 who have a disability.

The imposition of this condition is subject to periodic review at least once in every 12-month period. If the Minister grants a further BVR during or after that period, the Minister would at that time be required to re-consider whether to impose the condition for the protection of any part of the Australian community. The grant of a further BVR restarts the 12-month period of effect for this condition.

Condition 8624

Condition 8624 currently provides that if the holder has been convicted of an offence involving violence or sexual assault, the holder must not contact, or attempt to contact, the victim of the offence or a member of the victim’s family. The condition applies by operation of law on a mandatory basis to a BVR when the fact exists that conviction for a relevant offence has occurred.

Despite being mandatory, applying condition 8624 is not always appropriate, for example, for historical offences or where the offender has since reconciled with the victim or their family member. It also raises specific issues where the victim is a member of the offender’s family, therefore limiting the access the offender has to their own family. In addition, subclause 070.612B(2) in Schedule 2 to the Amendment Regulations is currently difficult to administer in practice due to ambiguities around what may be within the scope of terms such as ‘member of the victim’s family’; for example, whether a cousin, aunt or uncle is considered a member of the family.

The amendments made by the Amendment Regulations ensure that the decision-maker has capacity to consider, given the facts of the case, whether condition 8624 must be imposed on a BVR, subject to consideration of the post-*YBFZ* test under new cl 070.612A (rather than by

operation of law). It is intended that the condition should be imposed only where it is appropriate in the circumstances and not just because the BVR holder may come into contact with a victim or a member of the victim's family.

The amendments made by the Amendment Regulations define 'member of the victim's family' in condition 8624 to include:

- a spouse or de facto partner of the victim
- a parent or guardian of the victim
- a child of the victim
- a sibling of the victim.

The imposition of this condition is subject to a periodic review at least once in every 12-month period. If the Minister grants a further BVR during or after that period, the Minister would at that time be required to re-consider whether to impose the condition for the protection of any part of the Australian community. The grant of a further BVR restarts the 12-month period of effect for this condition.

Suspension of BVR conditions

Some BVRs are granted subject to conditions 8401 (reporting), 8620 (electronic monitoring) and 8621 (curfew). There are some instances where BVR holders who have these conditions imposed are subsequently detained in criminal custody (either on remand or serving a prison sentence) or receiving treatment at a medical or mental health facility.

In such instances, a BVR holder's detention in criminal custody or treatment at a medical or mental health facility makes it impractical or impossible to comply with these conditions, resulting in breaches which may constitute a criminal offence.

Previously, those visa conditions can only be removed by granting a new BVR without the conditions imposed. A further BVR had to be granted if the conditions were to again be imposed once the BVR holder was released from criminal custody or has concluded their treatment at the medical or mental health facility. This is an administratively burdensome process.

The amendments made by the Amendment Regulations ensure that relevant conditions are suspended where the holder is in criminal custody or receiving treatment at a medical or mental health facility. The term "criminal custody" includes its various forms (such as custodial episodes that capture the time between reception and discharge from custody, remand, sentences of imprisonment, protective custody for mental health reasons, etc.) whilst "receiving treatment at a medical or mental health facility" covers circumstances where a person is a registered in-patient receiving treatment at a registered facility, ongoing treatment within the confines of a formal care/treatment plan.

Preventing visa applications from current and former BVR holders

Under subsection 501E(2) of the Migration Act, a person who holds a visa of a prescribed kind is not subject to the application bar in subsection 501(1). Currently, regulation 2.12AA prescribes BVRs. The amendments made by item 6 repeal regulation 2.12AA, such that BVRs are no longer prescribed for the purposes of paragraph 501E(2)(b). The amendments clarify the Government's policy intention that BVR holders, especially those in the NZYQ

cohort, who have exhausted all lawful avenues to remain in Australia and are on a removal pathway, are not offered further migration pathways to remain in Australia, and so do not engage or alter the existing rights of BVR holders.

Human rights implications

Part 1 – Prohibited employers

Part 1 of Schedule 1 to the Disallowable Legislative Instrument engages the following rights:

- Right to work and the right to just and favourable conditions of work – Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Right to a fair trial and right not to be tried or punished twice for the same offence – Article 14 of the International Covenant on Civil and Political Rights (ICCPR)
- Equality and non-discrimination – Articles 2(1) and 26 of the ICCPR
- Right to privacy – Article 17 of the ICCPR

Rights relating to work and just and favourable conditions of work

The Amendment Regulations engage Article 6(1) of the ICESCR, which states that:

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

Article 7 of ICESCR states that:

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;

...

The Amendment Regulations support the right of temporary migrant workers to the enjoyment of just and fair conditions of work, fair wages and equal remuneration for work of equal value without distinction of any kind.

The Amendment Regulations allow the Minister to consider prohibiting an employer convicted of intentional wage theft under the Fair Work Act, from allowing additional temporary migrant workers to commence working for that employer.

Imposition of these prohibitions in respect of employers who have been convicted of wage theft seeks to protect temporary migrant workers from unscrupulous employers. It also prevents that employer from accessing the migration program to meet labour needs for a specified time period.

While the measure may limit a temporary migrant worker's opportunity to work for a certain business that has been convicted of an intentional wage-theft offence against a non-citizen, the primary focus is the protection of the temporary migrant worker and regulating the behaviour of the employer.

The employer is not obliged to cease the employment of any existing employees and those existing employees (including those who are temporary migrant workers) can continue working for the prohibited employer, if they choose to do so.

Importantly, the new measure does not:

- prevent those already employed temporary migrant workers from seeking employment with another employer; or
- affect the employment status of existing employees; or
- impose a penalty on a temporary migrant worker who chooses to commence work with a prohibited employer during the prohibition period.

Right to a fair trial and right not to be tried or punished twice for the same offence

The Amendment Regulations may engage the right for someone not to be tried or punished twice for the same offence in Article 14(7) of the ICCPR.

Where a person is subject to a migrant worker sanction, the prohibition on certain employers from employing additional temporary migrant workers for a specified period may raise concerns about the right not to be tried or punished twice for the same offence. For the purposes of paragraph 245AYQ(3)(a), this relates to a conviction for the offence of intentional wage theft. The intent of the resulting prohibition is not to 're-prosecute', 're-convict' or punish the employer for the same offence / contravention, triggering the *same* penalties; rather it is to protect possible future temporary migrant workers from an employer that has engaged in serious, repeated or deliberate non-compliance in their actions against temporary migrant workers.

The prohibition will only be triggered by the most serious cases, and it will come into effect after a deliberation of the circumstances of the case, including consideration of any additional information the employer would like considered through 'show cause' processes. It therefore offers sufficient flexibility to consider individual circumstances and treat cases differently. It is not intended as a limitation on the right not to be tried or punished again for an offence.

A decision to declare a person to be a prohibited employer will still be subject to merits review at the ART and no change is being made to these procedural fairness processes.

Equality and non-discrimination

Article 2(1) of the ICCPR states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as 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.

The Amendment Regulations may engage the right to equality and non-discrimination in Article 26 and Article 2(1) of the ICCPR.

The prohibition on sanctioned employers from employing additional temporary migrant workers, will operate in relation to prescribed persons, namely non-citizens other than the holder of a permanent visa. They will not operate in relation to the employment of Australian citizens or Australian permanent residents. While this represents a differentiation based on immigration and citizenship status, this amendment is consistent with the overarching intent of the prohibition measure introduced under sections 245AYA – 245AYN of the Migration Act, that is to address the exploitation of migrant workers.

The differential treatment between non-citizens (other than permanent visa holders) and citizens through this measure, does not impair the enjoyment of rights that both groups are entitled to enjoy without distinction. Through the differentiation, the Amendment Regulations promote the right of temporary migrant workers to enjoy equitable conditions at work, as they are more likely to be in a vulnerable employment position compared to Australian citizen and permanent resident workers.

Right to privacy

Article 17(1) of the ICCPR states:

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

The Amendment Regulations may engage the right to privacy as employers who are declared to be a ‘prohibited employer’ on the basis that they are subject to a ‘migrant worker sanction’ for committing an intentional wage theft offence against a non-citizen, will have certain information about them published on the Department’s website.

Section 245AYM of the Migration Act requires the Minister to publish information about employers subject to an ‘employer prohibition’ on the Department’s website, including:

- details of the prohibited employer,
- the contravention(s) that gave rise to the prohibition, and
- the period during which the person is a prohibited employer.

Publishing this information on the Department’s website is in line with the purpose of the Amendment Regulations, being to protect temporary migrant workers from unscrupulous and exploitative work practices by employers who have engaged in serious, deliberate or repeated exploitation of temporary migrant workers by providing that information in a publicly available format.

Transparency about prohibited employers is necessary to support the objectives of the measure, by allowing temporary migrant workers to be informed about any previous exploitative actions of the employer, and to make an informed decision on whether or not to work for that employer. Publication will also help to hold prohibited employers to account, by supporting third parties to report any suspected breaches of the prohibition by the employer. Prior to publication, the Minister must consider certain matters when making a prohibition declaration, including the nature and severity of the non-compliance and the employer's history of compliance and non-compliance. A defined period for the prohibition declaration also applies, which helps to ensure that interferences with the privacy rights of employers would not be arbitrary.

The Government considers that the publication of prohibited employers is reasonable, necessary and proportionate to achieving legitimate aims.

Part 2 – Resolution of Status (Class CD) visas

Part 2 of Schedule 1 to the Disallowable Legislative Instrument engages the following rights:

- Right to privacy – Article 17 of the ICCPR
- Equality and non-discrimination – Articles 2(1) and 26 of the ICCPR

Right to privacy

Article 17(1) of the ICCPR states:

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

Pursuant to Article 17(1) of the ICCPR, any interference with an individual's privacy must have a lawful basis. In addition to requiring a lawful basis for limitation on the right to privacy, Article 17 prohibits arbitrary interference with privacy. Interference which is lawful may nonetheless be arbitrary where that interference is not in accordance with the objectives of the ICCPR and is not reasonable in the circumstances.

The Amendment Regulations permit the secondary use or disclosure of personal information, including sensitive information, without seeking or obtaining consent of the individual, on the basis that such information is considered to be 'required or authorised by or under Australian law' within the APP 6.2(b), in order to facilitate a *Love* assessment.

The Amendment Regulations enable the Department to share relevant personal information, including information already held by the Department, relating to a potentially *Love*-affected person with any person without seeking further consent from the individual and/or their Elder. It is intended that information would be used to assist in providing advice to the Minister as to whether the person meets (or probably meets) the tripartite test, for eligibility to issue the certificate. Information may also be disclosed for the purpose of deciding whether to make an offer of permanent stay associated with the issue of the certificate. For example, further information may be required to decide whether to make an offer of permanent stay on the basis that a person satisfies the threshold in *Love*, that is the person meets or probably meets all three limbs of the tripartite test.

The amendments provide that personal information about any person may be collected, used or disclosed, and are not being limited to personal information about the potentially *Love*-affected person who is being considered for a RoS visa grant. This is because the information that may need to be used or disclosed may be information concerning another person to whom the potentially *Love*-affected person is claiming a familial or cultural connection. There may also be personal information about an Elder whose views have been sought in relation to whether that other person meets the tripartite test, and the amendments authorise the collection, use and disclosure of that personal information.

The amendments also authorise the collection, use and disclosure of personal information (including sensitive information) by or to a third party to inform decision-making under subregulation 2.07AQ(3A). For example, to establish whether a person meets or probably meets the tripartite test, the Department may contact a Land Council to ask whether a particular individual is recognised as a native title holder.

The Department already collects personal information, including sensitive information about a person's racial or ethnic origin, under the Privacy Act and there are existing mechanisms to protect the information the Department holds. These include but are not limited to staff access controls, audit controls, training and internal procedures and policies on how to manage and use the information that is collected.

The limitation on the right to privacy is reasonable, necessary and proportionate to provide access to the permanent RoS visa, and provide certainty for the *Love*-affected cohort, many of whom are unable to apply for another visa, as to their immigration status.

Equality and non-discrimination

The Amendment Regulations engage the rights of equality and non-discrimination contained in Article 2(1) and Article 26 of the ICCPR. This is because the amendments authorise the use and disclose of personal information relevant to determining whether an individual meets the tripartite test without the requirement for written consent, in order to benefit only individuals potentially affected by the High Court's decision in *Love*, being those persons who are not Australian citizens but who claim to be an Aboriginal or Torres Strait Islander person, and who have accepted an offer of permanent stay in Australia made by the Australian Government.

Article 2(1) of the ICCPR states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 of the ICCPR provides that:

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

However, 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.

These amendments are intended to ensure a person's assessment for a permanent RoS visa is progressed without the significant delay (caused by the need to obtain written consent) and are necessary and reasonable to provide members of this cohort greater certainty regarding their immigration status in Australia and to facilitate access to relevant government entitlements and services. This is proportionate to the objective of promoting the rights of Aboriginal and Torres Strait Islander persons, including economic, cultural and social rights.

Part 3 – Prescribed penalties

Part 3 of Schedule 1 to the Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Part 4–Amendments relating to Bridging R (Class WR) visas

Part 4 of Schedule 1 to the Disallowable instrument engages the following rights:

- The rights of equality and non-discrimination in Articles 2 and 26 of the ICCPR.
- The right to freedom of movement in Article 12 of the ICCPR.
- The right to respect for family contained in Article 17 and 23 of the ICCPR.

Equality and non-discrimination

Article 2(1) of the ICCPR states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 of the ICCPR states:

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

In its General Comment 18, the UN Human Rights Committee (UNHRC) 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 [ICCPR].

The ICCPR does not give a right for non-citizens to enter Australia. The UNHRC, 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 and stay of non-citizens in Australia and does so on the basis of reasonable and objective criteria.

The amendments made by the Amendment Regulations will only apply to BVR holders, and not to Australian citizens or non-citizens who hold other visas and who have previously offended.

While the grant of a BVR with specific conditions may engage the right to freedom from discrimination, the amendments in the Amendment Regulations provide that imposition no longer occurs by operation of law, and instead requires the Minister to consider the post-YBFZ test as part of the decision-making process prior to determining whether each condition which relates to a minor or vulnerable person must be imposed. This ensures that the imposition of such conditions is made in a more targeted way that better takes into account the individual circumstances of the visa holder and the community protection needs based on a risk assessment.

The measures also have the effect of removing some of the ambiguity concerning the application of visa conditions imposed on the BVR holders. The Government considers the removal of ambiguity in relation to these requirements to be reasonable and necessary both for the purposes of community safety and to ensure that members of a cohort who have exhausted all avenues to remain lawfully in Australia on a substantive visa, remain engaged in arrangements to manage their temporary stay in, and when practicable, removal from Australia.

Members of the NZYQ cohort especially have no substantive visa to remain in Australia, having had their visa applications refused, or a visa cancelled, in most cases on character grounds, and who have not previously been granted a bridging visa due to safety risks they may pose to the Australian community. Consequently, the Government considers these measures to be proportionate to the particular circumstances of the relevant cohort of non-citizens and aimed at the legitimate objective of protecting community safety.

Right to freedom of movement

Article 12 of the ICCPR relevantly states:

1) *Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*

...

3) *The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant.*

The amendments made to condition 8623 represent a significant lessening of restriction of movement on the holder of a BVR with condition 8623 attached.

This ensures that the limitation on the right to freedom of movement is the least rights restrictive means of achieving the legitimate objective of ensuring community safety, and is reasonable, necessary and proportionate to that objective. The amendments to provide that imposition of condition 8623 is done by the Minister, following consideration of the post-YBFZ test in cl 070.612A rather than by operation of law, allows the Minister to consider the individual risk that the visa holder poses to the safety of any part of the Australian community and whether it is appropriate and necessary in that individual's circumstances to have the conditions imposed, and not just because the BVR holder may come into contact with a minor or vulnerable person.

Rights relating to families

Article 17(1) of the ICCPR states:

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

Pursuant to Article 17(1) of the ICCPR, any interference with an individual's privacy or family must have a lawful basis. In addition to requiring a lawful basis for limitation on the right to privacy, Article 17 prohibits arbitrary interference with both privacy and family. Interference which is lawful may nonetheless be arbitrary where that interference is not in accordance with the objectives of the ICCPR and is not reasonable in the circumstances.

Article 23(1) of ICCPR states:

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

The amendments provide for the imposition of condition 8624 on a BVR by the Minister following consideration of the post-YBFZ test, rather than mandatory by operation of law. Condition 8624 provides that if the holder has been convicted of an offence involving

violence or sexual assault, the holder must not contact, or attempt to contact, the victim of the offence or a member of the victim's family.

The amendments allow the decision-maker to determine, on the facts of the case and subject to consideration of the post-*YBFZ* test under new cl 070.612A, whether it is appropriate and necessary under new cl 070.612A in the circumstances to impose condition 8624, and not just because the BVR holder may come into contact with a victim or a member of the victim's family. For example, where the offending relates to historical offences or where the offender has since reconciled with the victim or their family member.

The amendments positively engage the rights relating to families by lifting the restriction on the BVR's holder's right to associate with those family members who may also be family members of the BVR holder.

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 Tony Burke MP
Minister for Home Affairs**

Details of the Migration Amendment (2025 Measures No. 1) Regulations 2025

Section 1 – Name

This section provides that the title of the Regulations is the *Migration Amendment (2025 Measures No. 1) Regulations 2025* (the Amendment Regulations).

Section 2 – Commencement

This section provides for the instrument to commence on the day after registration.

Section 3 – Authority

This section provides that the *Migration Amendment (2025 Measures No. 1) Regulations 2025* are made under the *Migration Act 1958* (the Migration Act).

Section 4 – Schedules

This section provides that each measure that is specified in a Schedule to these Regulations is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to these Regulations has effect according to its terms. Schedule 1 to the Regulations amend the *Migration Regulations 1994*.

Schedule 1—Amendments

Part 1—Prohibited employers

Migration Regulations 1994

Item [1] – After Division 5.3B of Part 5

This item inserts new Division 5.3C – Prohibited Employers after current Division 5.3B of Part 5 of the Migration Regulations. This Division provides for offences, persons, or circumstances to be prescribed for the purposes of providing that a person is subject to a migrant worker sanction for the purposes of the prohibited employers scheme set out in in Subdivision E of Division 12 of Part 2 of the Migration Act. Subdivision E provides a power for the Minister to declare that a person is a Prohibited Employer in certain circumstances where the person is subject to a migrant worker sanction. While the declaration remains in force, a Prohibited Employer is subject to a prohibition on allowing additional non-citizens to begin working for them, and certain information about the Prohibited Employer must be published on the Department’s website.

New regulation 5.19P in new Division 5.3C operates to provide that a person who is convicted of an offence of intentional wage theft under section 327A of the *Fair Work Act 2009* (Fair Work Act) in relation to a non-citizen (other than the holder of a permanent visa) is subject to a migrant worker sanction for the purposes of the Prohibited Employer provisions of the Migration Act. This would enliven the Minister’s power to make a prohibited employer declaration in relation to the person under section 245AYK of the Act.

New paragraph 5.19P(a) prescribes an offence against subsection 327A(1) of the Fair Work Act for the purposes of paragraph 245AYF(3)(a) of the Migration Act.

New paragraph 5.19P(b) prescribes any non-citizen (other than the holder of a permanent visa) for the purposes of paragraph 245AYF(3)(b) of the Migration Act.

Part 2—Resolution of Status (Class CD) visas

Migration Regulations 1994

Item [2] – After subregulation 2.07AQ(3A)

This item inserts new subregulation 2.07AQ(3B) after current subregulation 2.07AQ(3A) of the Migration Regulations.

Current subregulation 2.07AQ(2) of the Migration Regulations provides that an application for a Resolution of Status (Class CD) visa is taken to have been validly made by a person if the requirements of subregulation 2.07AQ(3) have been met. Subregulation 2.07AQ(3) provides that the requirements are met for a person if the criteria set out in at least 1 item of the table are satisfied.

The criteria in table item 5 of subregulation 2.07AQ(2) are satisfied if:

- the circumstances specified in subregulation 2.07AQ(3A) exist; and
- the person has been offered a permanent stay in Australia by the Australian Government; and
- the person indicates to an authorised officer that they accept the offer of a permanent stay; and
- the authorised officer endorses in writing the person’s acceptance of the offer.

These requirements, read with current subregulation 2.07AQ(3A), operate with the effect that the criteria in table item 5 can only be satisfied by a person who is affected by the High Court’s decision in *Love v Commonwealth; Thoms v Commonwealth* (2020) 270 CLR 152 (*Love*).

Where a person is an applicant for a Subclass 851 (Resolution of Status) visa (a RoS visa), the applicant is taken under subregulation 2.07AQ(2) of the Migration Regulations to have made a valid application for that visa in circumstances where:

- the Minister has issued a certificate to a person who is not or could not be detained under section 189 of the Migration Act by reason of the High Court’s decision in *Love* (see subregulation 2.07AQ(3A)); and
- the Australian Government has made, and that person has accepted, an offer of permanent stay in Australia and the authorised officer has endorsed in writing the person’s acceptance (see item 5 of the table under subregulation 2.07AQ(3) and subregulation 2.07AQ(6)).

A person who, is taken to have made a valid application for a RoS visa, is only required to satisfy two criteria to be granted the visa that the offer of a permanent stay has not been withdrawn, and that the person satisfies public interest criterion 4002 (that the applicant is not assessed by the Australian Security Intelligence Organisation to be directly or indirectly a risk to security, within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*).

This recognises the unique constitutional status of persons who are determined to be members of the *Love*-affected cohort. A person who is *Love*-affected cannot be removed or deported from Australia even if they do not hold a visa that is in effect.

New subregulation 2.07AQ(3B) provides that the Minister, an officer of the Department, or another person may collect, use and disclose personal information (including sensitive personal information for the purposes of informing:

- a decision by the Minister whether to issue a certificate of the kind mentioned in current subregulation 2.07AQ(3A) in relation to a person; or
- a decision by the Australian Government whether or not to make an offer of a permanent stay in Australia to a person:
 - in relation to whom the Minister has issued such a certificate; or
 - for whom, by reason of the High Court's decision in *Love v Commonwealth; Thoms v Commonwealth* (2020) 270 CLR 152, the fact mentioned in subparagraph 2.07AQ(3A)(a)(i) or (ii) exists.

The effect of these amendments is that, so long as it is for the purposes of informing a decision mentioned in either paragraph 2.07AQ(3B)(a) or (b), use or disclosure of such personal information, as well as secondary disclosure, is considered to be 'required or authorised by or under Australian law' for the purposes of Australian Privacy Principle (APP)6.2(b).

The amendments provide a clear statutory authorisation for the collection, use and disclosure of personal information for this purpose, supporting the Department's ability to implement the permanent visa pathway for *Love*-affected persons, which has been available since 20 December 2023.

The grant of a RoS visa to a *Love*-affected person would provide certainty as to their status in Australia under the Migration Act. It also facilitates their access to government entitlements and services for which they may be eligible such as JobSeeker, Rental Assistance, social housing and the National Disability Insurance Scheme.

The amendments enable the Department to share relevant personal information, including information already held by the Department, relating to a potentially *Love*-affected person with any person without seeking further consent from the individual to whom the personal information relates, for example the individual being considered for the visa, or an Elder. The disclosure of certain personal information is necessary to support the provision of advice to the Minister as to whether the person meets (or probably meets) the tripartite test, for eligibility to issue the certificate. Information may also be disclosed for the purpose of deciding whether to make an offer of permanent stay associated with the issue of the certificate. For example, further information may be required to decide whether to make an offer of permanent stay on the basis that a person satisfies the threshold in *Love*, that is the person meets or probably meets all three limbs of the tripartite test.

The amendments also authorise the collection, use and disclosure of personal information (including sensitive information) by or to a third party to inform decision-making under subregulation 2.07AQ(3A). For example, to establish whether a person meets or probably meets the tripartite test, the Department may contact a Land Council to ask whether a particular individual is recognised as a native title holder.

The Department already collects personal information, including sensitive information about a person's racial or ethnic origin, under the Privacy Act and there are existing mechanisms to protect the information the Department holds. These include but are not limited to staff access controls, audit controls, training and internal procedures and policies on how to manage and use the information that is collected.

Part 3—Prescribed penalties

Migration Regulations 1994

Current subregulation 5.20(2) of the Migration Regulations provides that for paragraph 504(1)(j) of the Migration Act, the prescribed penalty to be paid as an alternative to prosecution for a contravention of section 229 or 230 of the Act is:

- in the case of a natural person — \$3 000 (paragraph 5.20(2)(a)); or
- in the case of a body corporate — \$5 000 (paragraph 5.20(2)(b)).

Section 229 of the Migration Act provides for offences in relation to the carriage of non-citizens to Australia without documentation. Section 230 provides for offences for carriage of concealed persons to Australia.

Paragraph 504(1)(j) of the Act relevantly provides that regulations may be made that enable a person who is alleged to have contravened section 229 or 230 to pay to the Commonwealth, as an alternative to prosecution, a prescribed penalty, not exceeding:

- in the case of a natural person — 30 penalty units; and
- in the case of a body corporate — 100 penalty units.

Item [3] – Paragraph 5.20(2)(a)

This item amends current paragraph 5.20(2)(a) of the Migration Regulations, omitting the prescribed dollar amount of “\$3 000” and substituting it with “12 penalty units”.

The substitution of the currently prescribed dollar amount with a reference to a number of penalty units ensures that the pecuniary penalty associated with an infringement notice issued as an alternative to prosecution for an offence against section 229 or 230 of the Migration Act, in the case of a natural person, maintains alignment with other penalties under the Migration Act, and Commonwealth legislation more generally, where penalty units are specified. Subsection 4AA(1) of the *Crimes Act 1914*, as an Act of general application, provides that the value of a penalty unit is set at \$330. Subsection 4AA(3) also provides for indexation of this figure – with indexation to occur on 1 July 2026 and after that, each third 1 July.

The immediate effect of prescribing 12 penalty units increases the penalty from \$3,000 to \$3,960. The operation of subsection 4AA(3) of the Crimes Act also ensures that the pecuniary penalty increases over time, in line with other pecuniary penalties across the Commonwealth statute book that specify penalty units. The prescribed penalty units do not exceed the limit provided for in paragraph 504(1)(j) of the Migration Act (30 penalty units for a natural person).

Item [4] – Paragraph 5.20(2)(b)

This item amends current paragraph 5.20(2)(b) of the Migration Regulations, omitting the prescribed dollar amount of “\$5 000” and substituting it with “25 penalty units”.

The substitution of the currently prescribed dollar amount with a reference to a number of penalty units ensures that the pecuniary penalty associated with an infringement notice

issued as an alternative to prosecution for an offence against section 229 or 230 of the Migration Act, in the case of a body corporate, maintains alignment with other penalties under the Migration Act, and Commonwealth legislation more generally, where penalty units are specified. Subsection 4AA(1) of the *Crimes Act 1914*, as an Act of general application, provides that the value of a penalty unit is set at \$330. Subsection 4AA(3) also provides for indexation of this figure – with indexation to occur on 1 July 2026 and after that, each third 1 July.

The immediate effect of prescribing 25 penalty units is to increase the penalty from \$5,000 to \$8,250. The operation of subsection 4AA(3) of the Crimes Act also ensures that the pecuniary penalty increases over time, in line with other pecuniary penalties across the Commonwealth statute book that specify penalty units. The prescribed penalty units do not exceed the limit provided for in paragraph 504(1)(j) of the Migration Act (100 penalty units for a body corporate).

Part 4—Amendments relating to Bridging R (Class WR) visas

Migration Regulations 1994

Item [5] – After regulation 2.08G

This item inserts new regulation 2.08H after current regulation 2.08G of the Migration Regulations.

New regulation 2.08H operates to prevent certain applicants from making a valid application for a visa, other than a protection visa or a Bridging R (Class WR) visa (BVR).

New subregulation 2.08H(1) provides for the purposes of section 46(3) of the Migration Act that in order to make a valid application for a visa mentioned in subregulation 2.08H(2) the person in respect of whom the application is made, at the time of application, must not:

- hold a BVR;
- be an unlawful non-citizen, whose most recently held visa was a BVR and who has been, or is taken to have been, continuously in the migration zone since that visa ceased to be in effect.

New subregulation 2.08H(2) for the purposes of subsection (1) operates to specify:

- all prescribed classes of visa; and
- to the extent that a visa mentioned is not covered by new paragraph 2.08H(2)(a) - a visa mentioned in subsection 31(2) of the Migration Act for which an application may be made,

except for a protection visa or a BVR.

Section 46 of the Migration Act provides the requirements that an application for a visa must meet to be a valid visa application. Subsection 46(3) of the Migration Act provides that the Migration Regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid visa application.

The purpose of new regulation 2.08H(2) is to prescribe for the purposes of section 46(3) of Migration Act, the criterion and classes of visa, to which the criterion applies, to make a valid application for a visa other than a protection visa or a BVR.

Note 1 under subregulation 2.08H(2) draws the reader's attention to subsection 31(1) of the Migration Act, with reference to the term 'prescribed classes of visas' for the purpose of new paragraph 2.08H(2)(a). Subsection 31(1) of the Migration Act provides that there are to be prescribed classes of visas, and subregulation 2.01(1) of the Migration Regulations prescribes those classes of visas.

Note 2 under subregulation 2.08H(2) draws the reader's attention to section 48A of the Migration Act. Of note, a person may be prevented from applying for a protection visa because of section 48A of the Migration Act.

The purpose of the note is to draw attention to the effect of section 48A of the Migration Act. Despite new 2.08H of the Migration Regulations, the person may nonetheless be prevented from applying for a protection visa because of section 48A of the Migration Act.

New regulation 2.08H will not operate to displace any applicable bar that a person may be subject to under the Migration Act or Migration Regulations.

Item [6] – Regulation 2.12AA

This item operates to repeal regulation 2.12AA of the Migration Regulations.

Regulation 2.12AA was inserted into the Migration Regulations in 2005 to support the BVR when it was first established, alongside the ‘deemed application’ arrangements provided for in regulation 2.20A and item 1307 of Schedule 1 to the Regulations. Under regulation 2.20A, the Minister may invite a person to apply for a BVR, and if the invitation is accepted within 7 days, the person is taken to have made the application and the application is taken to have been validly made for the purposes of subsection 46(2) of the Act.

The Migration Regulations were subsequently amended in 2013 to insert regulation 2.25AA, to provide for the grant of a BVR without application in certain circumstances. Following the High Court’s ex tempore judgment in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs & Anor (S28/2023) (NZYQ)* on 8 November 2023, further amendments of the Migration Regulations were made, together with amendments of the Migration Act, to implement enhanced community protection conditions and requirements for the BVR to support management of members of the NZYQ-affected cohort in the Australian community. Where a non-citizen is NZYQ-affected, they are granted a BVR without application under regulation 2.25AB of the Migration Regulations. A BVR may also be granted under section 195A of the Migration Act by exercise of the Minister’s personal power under that provision.

Regulation 2.12AA was considered necessary when the BVR was first introduced, in order to engage the exception to the application bar in subsection 501E(1) of the Act. Subsection 501E(1) provides that person is not allowed to make an application for a visa, or have an application for a visa made on the person's behalf, at a particular time (the application time) that occurs during a period throughout which the person is in the migration zone if:

- at an earlier time during that period, the Minister made a decision under section 501, 501A, 501B or 501BA to refuse to grant a visa to the person or to cancel a visa that has been granted to the person; and
- the decision was neither set aside nor revoked before the application time.

Subsection 501E(2) provides for a limited exception to the bar, by providing that subsection 501E(1) does not prevent a person, at the application time, from making an application for:

- a protection visa; or
- a visa specified in the regulations for the purposes of this subsection.

Regulation 2.12AA prescribes the BVR for this purpose, and to allow for the deemed application mechanism provided in regulation 2.20A for subsection 46(2) of the Act to operate despite the subsection 501E(1) bar; however, this provision is now redundant. If a non-citizen who has been the subject of a character cancellation or refusal decision covered by subsection 501E(1) is to be granted a BVR, they would be granted, without application, under either regulation 2.25AB or section 195A – to ensure that they are appropriately subject to the community protection conditions that are imposed on a BVR granted under one of those provisions.

The repeal of regulation 2.12AA therefore reflects the intention that where a non-citizen is granted a BVR pending their departure or removal from Australia, if they have previously been the subject of visa refusal or cancellation on character grounds, they should be subject to appropriate community protection conditions. As such, the bar in subsection 501E(1) is intended to apply, and so it is necessary and appropriate to repeal regulation 2.12AA to ensure that it is clear that the ‘application by invitation’ mechanism under regulation 2.20A is not available.

Item [7] – Before paragraph 2.25AD(1)(a)

Item [8] – At the end of subregulation 2.25AD(1)

These items insert new paragraphs 2.25AD(1) (aa), (ab), (e), (f), (g) and (h) into subregulation 2.25AD(1). These paragraphs refer to community protection conditions 8612, 8615, 8622, 8623, 8624 and 8626 respectively. The effect be to prescribe these conditions for the purposes of subsection 76E(1) of the Migration Act. Section 76E applies in relation to a decision to grant a non-citizen a BVR if the BVR is subject to one or more prescribed conditions. Subregulation 2.25AD(1) prescribes visa conditions for this purpose.

Together, the amendments in these items provide that conditions 8612, 8615, 8622, 8623, 8624 and 8626 are prescribed conditions for section 76E. Subsection 76E(2) provides that, to avoid doubt, the rules of natural justice do not apply to the making of a decision to grant a BVR that is subject to one or more prescribed conditions. Subsection 76E(3) provides that as soon as practicable *after* making the decision, the Minister must:

- give the non-citizen, in the way that the Minister considers appropriate in the circumstances:
 - written notice that sets out the decision; and
 - any other prescribed information; and
- invite the person to make representations to the Minister, within the period and in the manner specified by the Minister, as to why the first visa should not be subject to one or more of the conditions prescribed for the purposes of paragraph (1).

Subsection 76E(3), together with subsection 76E(4), ensures that procedural fairness is afforded to the BVR holder after the decision to grant the BVR subject to one or more prescribed conditions is made. The inclusion of conditions 8612, 8615, 8622, 8623, 8624 and 8626 in subregulation 2.25AD(1) is a consequential amendment to support the amendment in item 13. That item repeals and replaces current clause 070.612A in order to add 8612, 8615, 8622, 8623, 8624 and 8626 to that clause as conditions that must be imposed by the Minister if the requirements in subclause 070.612A(2) are met.

Item [9] – Before paragraph 2.25AE(1)(a)

Item [10] – At the end of subregulation 2.25AE(1)

These items insert new paragraphs (aa), (ab), (e), (f), (g) and (h) into subregulation 2.25AE(1). These paragraphs refer to community protection conditions 8612, 8615, 8622, 8623, 8624 and 8626 respectively. The intent is to ensure that if these conditions are imposed on a BVR, the BVR is subject to those conditions for a period of 12 months from the day the BVR is granted.

The intention is to ensure that the imposition of these conditions is subject to a form of review at least every 12 months, consistent with the conditions already prescribed in subregulation 2.25AE(1), including 8620 (curfew), 8621 (EM) and financial reporting conditions 8617 and 8618.

Subregulation 2.25AE(1) provides that if any of the prescribed conditions are imposed on a BVR granted to a non-citizen, those conditions will be imposed for 12 months from the day the visa is granted to the non-citizen. Subregulation 2.25AE(2) provides that subregulation 2.25AE(1) does not prevent another BVR grant to the non-citizen at any time before or after the 12-month period ends, with any one or more of the conditions referred to in subregulation 2.25AE(1) imposed on the visa. Subregulation 2.25AE(3) provides, for the avoidance of doubt, that if another BVR is granted to the non-citizen with any one or more of the specified conditions imposed, then that visa is subject to those conditions for a period of 12 months from the day the visa is granted.

Item [11] – At the end of Division 2.5 of Part 2

This item adds new regulation 2.25AF at the end of Division 2.5 of Part 2 of the Regulations to provide for the suspension of certain prescribed visa conditions while a BVR holder is detained in custody (in prison, lockup, remand centre, secure medical facility or like facility) or admitted as an in-patient to receive treatment at a public or private hospital, registered mental health facility or other registered medical facility. The relevant conditions are conditions 8401, 8620, 8621 and 8623 (for the purposes of this regulation, referred to as *community safety conditions*).

Regulation 2.25AF applies if a non-citizen holds a BVR that is subject to one or more community safety conditions. The regulation provides that during any period in which the BVR holder is under arrest, detained in custody or admitted as an in-patient to receive treatment at a public or private hospital, registered mental health facility or other registered medical facility (*the suspension period*), the BVR is taken not be subject to community safety conditions imposed on the BVR. Currently, if a BVR holder is detained by State or Territory police on a criminal matter and the BVR is subject to condition 8621 (electronic monitoring), it may be necessary in certain circumstances for the police to engage with the Department to arrange for the electronic monitoring device to be removed temporarily, while the BVR holder remains in police custody. While condition 8621 remains in force, the BVR holder is required to continue to wear the device, even while in custody – and as such, the police and the Department engage in relation to whether it is open to make a further BVR decision that would have the effect of removing condition 8621 while the BVR holder is in custody (where this mitigates the community protection risk for the purposes of clause 070.612A). Regulation 2.25AF therefore operates to displace the effect of condition 8621 temporarily in these circumstances without requiring a further BVR grant to achieve the same effect – and importantly, also ensuring that when the prescribed suspension period under subregulation 2.25AF(2) or (4) ends, the requirement under condition 8621 comes back into force at that point by operation of law.

Subregulation 2.25AF(5) further provides that if under regulation 2.25AE a BVR is subject to a community safety condition for a period of 12 months from the day the BVR is granted, and under new regulation 2.25AF the BVR is taken not to be subject to a community safety condition for a suspension period, the suspension period does not affect the expiry of the overall 12-month period.

Item [12] – Clause 070.111 of Schedule 2

This item inserts the definition of the term of *vulnerable person* in clause 070.111 of Schedule 2 to the Regulations. *Vulnerable person* is defined to mean a person who:

- is at least 18; and
- has a disability.

This definition is established for the purposes of clause 070.612A, as inserted by item 13 of this Part – and particularly where the expression appears in paragraph 070.612A(2)(d) for the purposes of determining whether conditions 8612, 8615, 8626, 8622 or 8623 are to be imposed under subclause 070.612A. It is also relied on by conditions 8615 and 8622, as amended by items 17 and 19.

Of note, subclause 070.612A(2) requires the Minister to consider, amongst other things, whether on the balance of probabilities the BVR holder poses a substantial risk of seriously harming any part of the Australian community by committing a serious offence. The expression ‘any part of the Australian community’ would extend on its ordinary meaning to include any individual, including a vulnerable person, as part of the Australian community.

Item [13] – Clauses 070.612A and 070.612B of Schedule 2

This item repeals current clauses 070.612A and 070.612B and substitutes a new single clause 070.612A.

Current clause 070.612A provides for the imposition of the following four visa conditions in certain circumstances:

- condition 8621 (electronic monitoring);
- condition 8617 (financial circumstances reporting);
- condition 8618 (debt or bankruptcy reporting);
- condition 8620 (curfew);

if the Minister is satisfied on the balance of probabilities that the BVR holder poses a substantial risk of seriously harming any part of the Australian community by committing a *serious offence* (as defined in clause 070.111) under any Australian law, and the Minister is satisfied that imposition of each of the four condition is on the balance of probabilities, reasonably necessary, and reasonably appropriate and adapted for the purpose of protecting any part of the Australian community from serious harm by addressing that significant risk.

The current test in clause 070.612A (the ‘post-YBFZ test’) was inserted on 7 November 2024 by the *Migration Amendment (Bridging Visa Conditions) Regulations 2024*, following the High Court’s judgment in *YBFZ v Citizenship and Multicultural Affairs & Anor* [2024] HCA 40 (YBFZ).

The following community protection conditions are currently imposed in certain circumstances by operation of law under current clause 070.612B of Schedule 2 to the Migration Regulations:

- condition 8612 (notify household details / changes);
- condition 8615 (notify association etc with organisation involving more than incidental contact with a minor or vulnerable person);

- condition 8626 (notify change in online profile details etc);
- condition 8622 (not to perform work etc involving more than incidental contact with a minor or vulnerable person);
- condition 8623 (not to go within prescribed distance of a school, childcare or day care centre);
- condition 8624 (not to contact victim of an offence, or family members of the victim).

Together with the repeal of current clause 070.612B, new clause 070.612A would extend the application of the post-YBFZ test from the current four conditions (8621, 8617, 8618 and 8620) to also operate in relation to the imposition of the additional six community protection conditions mentioned above.

New subclause 070.612A sets out the ten conditions that must be imposed on a BVR granted under regulation 2.25AA or 2.25AB of the Migration Regulations, or under section 195A of the Act, if the requirements in subclause 070.612A(2) are met. Subclause 070.612A(3) provides that the order in which the community protection conditions in subclause 070.612A(1) are listed is the order in which the Minister must decide whether or not to impose the condition on the visa.

The note under subclause 070.612A(3) also makes clear that the order in which the conditions are listed in subclause 070.612A(1) is the order for the purposes of subsection 76E(4A) of the Act.

For the purposes of paragraphs 070.612A(2)(b) and (c), the Minister must be satisfied, on the balance of probabilities, that the imposition of each condition and the combined effect of the condition(s) imposed is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing that substantial risk. That is, the imposition of any of the conditions should be directed to enhancing community safety and mitigating the substantial risk identified of a ‘serious offence’ being committed.

Despite the subject of the High Court’s decision in *YBFZ* being confined to conditions 8621 and 8620, clause 070.612A operates to apply the post-*YBFZ* test to all ten community protection conditions mentioned in subclause 070.612A(1). This ensures the same test is applied consistently when considering whether to impose these important community protection conditions and ensuring, when having regard to the risk of harm the non-citizen imposes, consideration is given to the protective purpose of protecting any part of the Australian community from serious harm.

Of note, paragraph 070.612A(2)(d) provides, in effect, that the imposition of condition 8612, 8615, 8626, 8622 or 8623 is dependent on the BVR holder having been convicted of any one or more of the following offences:

- an offence in which the victim was a minor or vulnerable person;
- an offence involving production, publication, possession, supply or sale of, or other dealing in, child abuse material (within the meaning of Part 10.6 of the Criminal Code);
- an offence that involves consenting to or procuring the employment of a child, or employing a child, in connection with material referred to in subparagraph (ii);

- an offence that involves acts done in preparation for, or to facilitate, the commission of a sexual offence against a person under 16.

Paragraph 070.612A(e) similarly provides that the imposition of condition 8624 is dependent on the BVR holder having been convicted of an offence involving violence or sexual assault.

Significantly, subclause 070.612A(4) provides that the Minister is not required to consider whether to impose a community protection condition mentioned in paragraph 070.612A(2)(d) or (e) unless the holder has been convicted of an offence mentioned in that paragraph. The example under subclause 070.612A(4) demonstrates the effect of these provisions, taken together – that is, if the BVR holder has not been convicted of an offence mentioned in paragraph 070.612A(2)(d), the Minister must not impose any of community protection conditions 8612, 8615, 8626, 8622 or 8623, and is not required as part of the decision-making process under clause 070.612A to consider whether or not to impose such a condition.

Subclause 070.612A(5) provides that community protection conditions imposed by or under clause 070.612A are in addition to any other condition imposed by or under another provision of Division 070.6 of Part 070 of Schedule 2 to the Migration Regulations. This replicates the effect of current subclause 070.612A(2A).

Subclause 070.612A(6) operates for the purposes of paragraph 070.612A(2)(a), providing that subclause 070.612A(6) applies to a visa if:

- the visa was granted under regulation 2.25AA and, at the time of grant, there was no real prospect of the removal of the holder from Australia becoming practicable in the reasonably foreseeable future; or
- the visa was granted under regulation 2.25AB; or
- the visa was granted under section 195A of the Act.

This replicates the effect of current subclause 070.612A(3).

Finally, subclause 070.612A(7) provides that nothing in subclause 070.612A requires the Minister to decide whether or not to impose a community protection condition if the visa must, under subsection 76E(4) of the Act, be granted without it being subject to that condition.

Item [14] – At the end of clause 8401 of Schedule 8

This item adds a note at the end of condition 8401 in Schedule 8 to the Regulations. This note refers the reader to new regulation 2.25AF, which provides for the suspension of certain visa conditions during certain periods, including condition 8401.

Item [15] – Clause 8612 of Schedule 8

This item omits the words “If the holder has been convicted of an offence involving a minor or any other vulnerable person, the holder must” in subclause 8612(1) and substitute with “The holder must”.

Current subclause 8612(1) provides that “If the holder has been convicted of an offence involving a minor or any other vulnerable person, the holder must:...”.

New paragraph 070.612A(2)(d) operates to provide that condition 8621 is only capable of being imposed if the BVR holder has been convicted of any one or more of the offences mentioned in that paragraph. The amendment of condition 8612 is therefore a consequential amendment as it is not necessary to replicate the reference to the precondition in paragraph 070.612A(2)(d) in the body of the condition. The reference in condition 8612 to “convict[ion] of an offence involving a minor or any other vulnerable person” is, in effect, redundant.

Item [16] – Subclause 8615(1) of Schedule 8

This item omits the words “If the holder has been convicted of an offence involving a minor or any other vulnerable person, the holder must” in subclause 8615(1) and substitute with “The holder must”.

Current subclause 8615(1) provides that “If the holder has been convicted of an offence involving a minor or any other vulnerable person, the holder must...”.

New paragraph 070.612A(2)(d) operates to provide that condition 8615 is only capable of being imposed if the BVR holder has been convicted of any one or more of the offences mentioned in that paragraph. The amendment of condition 8615 is therefore a consequential amendment as it is not necessary to replicate the reference to the precondition in paragraph 070.612A(2)(d) in the body of the condition. The reference in current condition 8615 to a conviction of an offence involving a minor or a vulnerable person is, in effect, redundant.

Item [17] – Paragraph 8615(1)(a) of Schedule 8

This item omits the words “any other vulnerable persons” in paragraph 8615(1)(a) and substitute “vulnerable persons (within the meaning of Part 070 of Schedule 2).”

Current paragraph 8615(1)(a) provides that the holder must “...within 5 working days of the grant, notify Immigration of the details of the holder’s association with, or membership of, any organisation that engages in activities involving more than incidental contact with minors or any other vulnerable persons; and...”.

This is a consequential amendment to ensure that the term ‘vulnerable person’ used in condition 8615 has the same meaning as the definition of *vulnerable person* established by item 12 of this Part in clause 070.111 of Schedule 2 to the Migration Regulations.

Item [18] – At the end of clauses 8620 and 8621 of Schedule 8

This item adds a note at the end of clauses 8620 and 8621 in Schedule 8 to the Migration Regulations. This note refers the reader to regulation 2.25AF, which provides for the suspension of certain visa conditions during certain periods, including conditions 8620 and 8621.

Item [19] – Subclause 8622(1) of Schedule 8

This item repeals subclause 8622(1) and substitutes it with a new subclause 8622(1), providing that the BVR holder must not perform any work, or participate in any regular organised activity, involving more than incidental contact with a minor or vulnerable person (within the meaning of Part 070 of Schedule 2).

New paragraph 070.612A(2)(d) operates to provide that condition 8622 is only capable of being imposed if the BVR holder has been convicted of any one or more of the offences

mentioned in that paragraph. The amendment of condition 8622 is therefore a consequential amendment as it is not necessary to replicate the reference to the precondition in paragraph 070.612A(2)(d) in the body of the condition. The reference in current condition 8622 to a conviction of an offence involving a minor or a vulnerable person is, in effect, redundant.

Item [20] – Clause 8623 of Schedule 8

This item omits the words “If the holder has been convicted offence that involves a minor or any other vulnerable person, the holder” and substitute with the words “The holder”.

New paragraph 070.612A(2)(d) operates to provide that condition 8623 is only capable of being imposed if the BVR holder has been convicted of any one or more of the offences mentioned in that paragraph. The amendment of condition 8623 is therefore a consequential amendment as it is not necessary to replicate the reference to the precondition in paragraph 070.612A(2)(d) in the body of the condition. The reference in current condition 8623 to a conviction of an offence involving a minor or a vulnerable person is, in effect, redundant.

Item [21] – Clause 8623 of Schedule 8

This item omits the reference to “200” and substitutes it with “50”.

Current condition 8623 provides that “if the BVR holder is subject to this condition, the holder must not go within 200 metres of a school, childcare centre or day care centre.”.

The effect of this amendment is to reduce the exclusion zone from 200 metres to 50 metres in relation to a school, childcare centre or day care centre. The change from 200 metres to 50 metres strikes an appropriate and proportionate limit on the movements of a BVR holder who is subject to condition 8623, and having regard to matters of community protection (where, under new clause 070.612A, imposition of condition 8623 is subject to consideration of the post-*YBFZ* test). Further, condition 8623 is only capable of being imposed if:

- the BVR holder has been convicted of any one or more of the offences mentioned in paragraph 070.612A(2)(d); and
- the Minister is satisfied of the matters provided for in paragraphs 070.612A(2)(b) and (c) (the post-*YBFZ* test);
- the other applicable requirements of new clause 070.612A are met.

Although an exclusion zone of 50 metres imposes a limit on the BVR holder’s movements in relation to certain specified locations, this is a reasonable and proportionate limit, done for a protective purpose, having regard to the matters required to be considered in order for condition 8622 to be imposed. Of note, new clause 15607 in Part 5 to Schedule 1 to the Amendment Regulations operates on the amendment of condition 8623 by this item.

Clause 15607 provides that amendment of condition 8623 applies in relation to a visa that is subject to that condition, whether the visa is granted before, on or after the commencement day. The effect of this clause is that regardless of whether the BVR was granted before, on or after the commencement of the amendment of condition 8623 in this item, if condition 8623 is imposed on that visa, the condition provides for a 50 metre exclusion zone rather than the 200 metre exclusion zone.

Item [22] – Clause 8624 of Schedule 8

This item inserts “(1)” before the words “If the”. This is a technical amendment to support the amendments that are made by the following items relating to condition 8624.

Item [23] – Clause 8624 of Schedule 8

This item omits the words “If the holder has been convicted of an offence involving violence or sexual assault, the holder” and substitutes with the words “The holder”.

New paragraph 070.612A(2)(e) operates to provide that condition 8624 is only capable of being imposed if the BVR holder has been convicted of an offence involving violence or sexual assault. The amendment of condition 8624 in this item is therefore a consequential amendment as it is not necessary to replicate the reference to the precondition in paragraph 070.612A(2)(d) in the body of the condition. The reference in current condition 8624 to a conviction of an offence involving violence or sexual assault is, in effect, redundant.

Item [24] – At the end of clause 8624 of Schedule 8

This item establishes a definition of *member of the victim’s family* for the purposes of clause 8624. For the purpose of this condition, *member of the victim’s family* includes, without limitation, each of the following:

- a spouse or de facto partner of the victim;
- a parent or guardian of the victim;
- child of the victim;
- a sibling of the victim.

Of note, subclause 070.612A(2) requires the Minister to consider, amongst other things, whether on the balance of probabilities the BVR holder poses a substantial risk of seriously harming any part of the Australian community by committing a serious offence. The expression ‘any part of the Australian community’, on its ordinary meaning, extends to include a member of the victim’s family as part of the Australian community.

Item [25] – Clause 8626 of Schedule 8

This item omits the words “If the holder has been convicted of an offence involving minor or any other vulnerable person, the holder” and substitute the words “The holder”.

New paragraph 070.612A(2)(d) operates to provide that condition 8626 is only capable of being imposed if the BVR holder has been convicted of any one or more of the offences mentioned in that paragraph. The amendment of condition 8626 is therefore a consequential amendment as it is not necessary to replicate the reference to the precondition in paragraph 070.612A(2)(d) in the body of the condition. The reference in current condition 8626 to a conviction of an offence involving a minor or a vulnerable person is, in effect, redundant.

Part 5—Operation of amendments

Migration Regulations 1994

Item [26] – In the appropriate position in Schedule 13

This item inserts Part 156 into Schedule 13 to the Migration Regulations.

Schedule 13 to the Migration Regulations sets out the application and transitional provisions that apply to amendments of the Migration Regulations. New Part 156 provides for the application and operation of amendments of the Migration Regulations in the Amending Regulations.

Clause 15601 defines certain terms for the purposes of Part 156 of Schedule 13. This includes providing that a reference to the ***amending regulations***, where it appears in Part 156, means the *Migration Amendment (2025 Measures No. 1) Regulations 2025*. This clause also defines commencement day to mean the day the Amendment Regulations commence. Section 2 of the Regulations provides that they commence on the day after registration on the Federal Register of Legislation.

Clause 15602 provides that the amendment of regulation 2.07AQ of the Migration Regulations made by Part 2 of Schedule 1 to the Amendment Regulations operates to authorise the use and disclosure of information that was collected before or after the commencement of new subregulation 2.07AQ(3B).

The effect of this item is to ensure the Department can use and disclose personal information (including sensitive information) that is in the Department's records and information holdings before or after the commencement of subregulation 2.07AQ(3B) for the purpose of informing a decision by the Minister (or a delegate of the Minister) whether to issue a certificate of the kind mentioned in subregulation 2.07AQ(3A) in relation to the person.

Clause 15603 provides that regulation 2.08H as inserted by Part 4 of Schedule 1 to the Amendment Regulations applies in relation to an application for a visa made on or after commencement of that Part. It also provides that regulation 2.08H applies regardless of whether the Bridging R (Class WR) visa mentioned in subregulation 2.08H(1) was granted before, on or after the commencement of regulation 2.08H.

Subclause 15604(1) provides that clause 15604 applies in relation to the amendments of subregulation 2.25AD(1) made by Part 4 of Schedule 1 to the Amendment Regulations to prescribe the following conditions (the ***additional prescribed conditions***) for the purposes of subsection 76E(1) of the Migration Act. The additional prescribed conditions are:

- condition 8612 (notify household details / changes);
- condition 8615 (notify association etc with organisation involving more than incidental contact with a minor or vulnerable person);
- condition 8626 (notify change in online profile details etc);
- condition 8622 (not to perform work etc involving more than incidental contact with a minor or vulnerable person);
- condition 8623 (not to go within prescribed distance of a school, childcare or day care centre);

- condition 8624 (not to contact victim of an offence, or family members of the victim).

Subclause 15604(2) provides that section 76E of the Migration Act applies in relation to visas granted on or after the commencement day that are subject to one or more additional prescribed conditions. The purpose and effect of this provision is to ensure a consistent approach following the commencement of the Amendment Regulations in relation to the availability of the section 76E post-decision procedural fairness where certain community protection conditions are imposed on a BVR.

Subclause 15604(3) provides that if a BVR was granted to a non-citizen before the commencement day and the BVR was subject to one or more of the additional prescribed conditions mentioned in subclause 15604(1) at the commencement day, section 76E of the Migration Act does not apply in relation to the additional prescribed condition. Where a BVR was granted with one or more of these conditions before commencement, the imposition of the condition was by operation of law under repealed clause 070.612B of Schedule 2 to the Migration Regulations, and does not attract the application of section 76E.

Subclause 15604(4) does, however, provide that on and after the commencement day, the Minister may administer the visa as if the additional prescribed condition(s) had been imposed under clause 070.612A, as substituted by Part 4 of Schedule 1 to the Amendment Regulations.

Subclause 15605(1) provides that subject to subclauses 15605(2) and (3), the amendments of subregulation 2.25AE(1) made by Part 4 of Schedule 1 to the Amendment Regulations apply in relation to a BVR that is granted on or after the commencement day.

Subclause 15605(2) provides that subclause 15605(3) applies if, at the commencement day, the person holds a BVR that is subject to one or more of the following conditions:

- condition 8612 (notify household details / changes);
- condition 8615 (notify association etc with organisation involving more than incidental contact with a minor or vulnerable person);
- condition 8626 (notify change in online profile details etc);
- condition 8622 (not to perform work etc involving more than incidental contact with a minor or vulnerable person);
- condition 8623 (not to go within prescribed distance of a school, childcare or day care centre);
- condition 8624 (not to contact victim of an offence, or family members of the victim);

and that BVR does not specify a period for which the BVR is subject to the condition.

Subclause 15605(3) provides that for the purposes of regulation 2.25AE, as amended by Part 4 of Schedule 1 to the Amendment Regulations, the visa is taken to be subject to the condition for a period of 12 months beginning on the commencement day. This subclause operates to start the clock on the 12-month period under regulation 2.25AE for the additional conditions where the BVR was granted before commencement, so that all BVR holders are subject to the same 12-month limit and review period for the expanded list of community

protection conditions, whether the BVR was granted before or after the commencement of the Regulations.

Clause 15606 provides that regulation 2.25AF, as inserted by Part 4 of Schedule 1 to the Amendment Regulations, applies in relation to a BVR that is subject to a community safety condition (within the meaning of subregulation 2.25AF(1)) whether the visa is granted before, on or after the commencement day. This clause ensures that the suspension mechanism provided for in regulation 2.25AF operates consistently in relation to the prescribed conditions regardless of whether the BVR that is subject to the relevant condition(s) was granted before, on or after the commencement of regulation 2.25AF.

Clause 15607 provides that amendment of condition 8623 by Part 4 of Schedule 1 to the Amendment Regulations applies in relation to a visa that is subject to that condition, whether the visa is granted before, on or after the commencement day. The effect of this clause is that regardless of whether a BVR was granted before, on or after the commencement of the amendment of condition 8623 in item 21 in Part 4 of Schedule 1, if condition 8623 is imposed on that visa, the condition provides for a 50 metre exclusion zone rather than the 200 metre exclusion zone.