



## **Migration Amendment (Bridging Visa Conditions) Regulations 2023**

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

Dated 7 December 2023

David Hurley  
Governor-General

By His Excellency's Command

Andrew Giles  
Minister for Immigration, Citizenship and Multicultural Affairs

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## 1 Name

This instrument is the *Migration Amendment (Bridging Visa Conditions) Regulations 2023*.

## 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	8 December 2023

Note: This table relates only to the provisions of this instrument as originally made.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

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

## 3 Authority

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

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### Part 1—Amendments

#### *Migration Regulations 1994*

##### 1 Regulation 1.03

Insert:

*community safety order* has the same meaning as in Division 395 of the *Criminal Code*.

##### 2 Subregulation 2.03(1)

Omit “regulations 2.03A and 2.03AA”, substitute “other provisions of these Regulations”.

##### 3 Subregulation 2.05(1)

After “subregulation (2)”, insert “and regulation 2.25AE”.

##### 4 Regulation 2.20A (note)

Repeal the note, substitute:

Note 1: See section 494C of the Act for when a person is taken to have received a document given by one of the methods specified in section 494B of the Act.

Note 2: The Minister must not give a person an invitation, for the purposes of paragraph (a) of this subregulation, while a community safety order made in relation to the person is in force (see paragraph 76AA(7)(a) of the Act).

##### 5 Paragraph 2.25AA(1)(b)

Omit “non-citizen; and”, substitute “non-citizen.”.

##### 6 Paragraph 2.25AA(1)(c)

Repeal the paragraph.

##### 7 Subregulation 2.25AA(2)

Repeal the subregulation, substitute:

- (2) Despite anything in Schedule 1 and Divisions 070.2 to 070.4 of Part 070 of Schedule 2, the Minister may grant the eligible non-citizen a Bridging R (Class WR) visa if the Minister is satisfied that, at the time of decision, the eligible non-citizen’s removal from Australia is not reasonably practicable.

Note 1: See Divisions 070.5 and 070.6 of Part 070 of Schedule 2 for when the visa is in effect and the conditions to which it is subject.

Note 2: The Minister must not grant the eligible non-citizen a visa under this subregulation while a community safety order made in relation to the non-citizen is in force (see paragraph 76AA(7)(b) of the Act).

##### 8 Subregulation 2.25AB(2)

Repeal the subregulation, substitute:

- (2) Despite anything in Schedule 1 and Divisions 070.2 to 070.4 of Part 070 of Schedule 2, the Minister may grant the non-citizen a Bridging R (Class WR) visa

if the Minister is satisfied that, at the time of decision, the non-citizen continues to hold a Bridging R (Class WR) visa.

Note 1: See Divisions 070.5 and 070.6 of Part 070 of Schedule 2 for when the visa is in effect and the conditions to which it is subject.

Note 2: The Minister must not grant the non-citizen a visa under this subregulation while a community safety order made in relation to the non-citizen is in force (see paragraph 76AA(7)(b) of the Act).

## **9 Before paragraph 2.25AC(a)**

Insert:

- (aa) condition 8612;
- (ab) condition 8616;

## **10 Paragraph 2.25AC(c)**

Repeal the paragraph.

## **11 Subregulation 2.25AD(1)**

Repeal the subregulation, substitute:

- (1) For the purposes of paragraph 76E(1)(a) of the Act, the following conditions are prescribed:
  - (a) condition 8617;
  - (b) condition 8618;
  - (c) condition 8620;
  - (d) condition 8621.

## **12 At the end of Division 2.5 of Part 2**

Add:

### **2.25AE Period for which certain conditions are imposed on Subclass 070 (Bridging (Removal Pending)) visa**

- (1) If one or more of the following conditions are imposed on a Subclass 070 (Bridging (Removal Pending)) visa granted to a non-citizen, the visa is subject to those conditions for a period of 12 months from the day the visa is granted:
  - (a) condition 8617;
  - (b) condition 8618;
  - (c) condition 8620;
  - (d) condition 8621.
- (2) Subregulation (1) does not prevent another Subclass 070 (Bridging (Removal Pending)) visa being granted to the non-citizen, before or after the 12-month period referred to in subregulation (1) ends, with any one or more of those conditions imposed on the visa.
- (3) To avoid doubt, if another Subclass 070 (Bridging (Removal Pending)) visa is granted to the non-citizen with any one or more of those conditions imposed on the visa, then the visa is subject to those conditions for a period of 12 months from the day the visa is granted.

### **13 Paragraph 070.511(a) of Schedule 2**

After “paragraph 76A(3)(a)”, insert “or 76AA(2)(b) or (3)(c)”.

### **14 Clause 070.611 of Schedule 2**

Repeal the clause, substitute:

#### **070.611**

- (1) If the visa is not a visa that is taken to be granted under paragraph 76AA(2)(b) or (3)(c) of the Act:
  - (a) conditions 8303, 8513, 8514, 8541, 8542 and 8543 must be imposed; and
  - (b) condition 8401 must be imposed if condition 8621 is not imposed under subclause 070.612A(1).
- (2) If the visa is taken to be granted under paragraph 76AA(2)(b) or (3)(c) of the Act, conditions 8401, 8513, 8514, 8541, 8542, 8543, 8551, 8552, 8553, 8554, 8555, 8556, 8560, 8561, 8562, 8563, 8614 and 8625 must be imposed.

### **15 Subclause 070.612(1) of Schedule 2**

Repeal the subclause, substitute:

- (1) If the visa was granted under regulation 2.25AA or 2.25AB, conditions 8551, 8552, 8553, 8554, 8555, 8556, 8560, 8561, 8562, 8563, 8614, 8616 and 8625 must be imposed, in addition to any other condition imposed by or under another provision of this Division.

### **16 Subclause 070.612(2) of Schedule 2**

Omit “condition mentioned in clause 070.611”, substitute “other condition imposed by or under another provision of this Division”.

### **17 Subclauses 070.612A(1) to (2A) of Schedule 2**

Repeal the subclauses, substitute:

- (1) If subclause (3) applies to the visa, each of the following conditions must be imposed by the Minister unless the Minister is satisfied that it is not reasonably necessary to impose that condition for the protection of any part of the Australian community (including because of any other conditions imposed by or under another provision of this Division):
  - (a) 8621;
  - (b) 8617;
  - (c) 8618;
  - (d) 8620.

Note: See regulation 2.25AE for the period for which the visa is subject to these conditions (if imposed).

- (2) The Minister must decide whether or not to impose each of the conditions listed in subclause (1) in the order in which those conditions are listed in that subclause.
- (2A) Conditions imposed by or under this clause are in addition to any other condition imposed by or under another provision of this Division.

**18 Clause 070.612B of Schedule 2**

Repeal the clause, substitute:

**070.612B**

- (1) If subclause (4) applies to the visa and the holder has been convicted of an offence involving a minor or any other vulnerable person, conditions 8612, 8615, 8622, 8623 and 8626 must be imposed.
- (2) If subclause (4) applies to the visa and the holder has been convicted of an offence involving violence or sexual assault, condition 8624 must be imposed.
- (3) Conditions imposed by or under this clause are in addition to any other condition imposed by or under another provision of this Division.
- (4) This subclause applies to a visa if:
  - (a) 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
  - (b) the visa was granted under regulation 2.25AB.

**19 Clause 070.613 of Schedule 2**

After “imposed by”, insert “or under”.

**20 Clause 070.614 of Schedule 2**

Repeal the clause, substitute:

**070.614**

If the visa is not a visa taken to be granted under paragraph 76AA(2)(b) or (3)(c) of the Act, condition 8506 may be imposed in addition to any other condition imposed by or under another provision of this Division.

**21 Clause 8612 of Schedule 8**

Omit “The”, substitute “If the holder has been convicted of an offence involving a minor or any other vulnerable person, the”.

**22 Clause 8613 of Schedule 8**

Repeal the clause.

**23 Subclause 8614(1) of Schedule 8**

Omit “(1)”.

**24 Subclause 8614(2) of Schedule 8**

Repeal the subclause.

**25 Clause 8615 of Schedule 8**

Repeal the clause, substitute:

- 8615 (1) If the holder has been convicted of an offence involving a minor or any other vulnerable person, the holder must:

- (a) 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
- (b) notify Immigration of any change in those details (including the beginning or end of any association or membership) within 2 working days after the change occurs.

(2) Subclause (1) does not apply in relation to the following:

- (a) an organisation formed for a purpose of engaging in communications on governmental or political matters;
- (b) an organisation whose regular functions or activities involve communications on governmental or political matters.

### **26 Subclause 8616(1) of Schedule 8**

Repeal the subclause, substitute:

- (1) The holder must notify Immigration of the details of any contact with any individual who is known by the holder to have been charged with, or convicted of, a criminal offence.

### **27 At the end of subclause 8616(2) of Schedule 8**

Add:

; or (c) incidental contact.

### **28 Paragraph 8617(b) of Schedule 8**

Omit "persons;", substitute "persons."

### **29 Paragraph 8617(c) of Schedule 8**

Repeal the paragraph.

### **30 Subclause 8618(2) of Schedule 8**

Repeal the subclause, substitute:

- (2) If the holder is declared bankrupt, the holder must notify Immigration within 5 working days after the holder is so declared.

### **31 Subclause 8618(3) of Schedule 8**

Omit ", bankruptcy or financial hardship", substitute "or bankruptcy".

### **32 Clause 8619 of Schedule 8**

Repeal the clause.

### **33 Subclause 8620(3) of Schedule 8 (paragraph (a) of the definition of notified address)**

Repeal the paragraph, substitute:

- (a) either:
  - (i) the address notified by the holder under condition 8513; or
  - (ii) if the holder has notified another address under condition 8625—the last address so notified by the holder;

### **34 At the end of Schedule 8**

Add:

- 8625 The holder must notify the Minister of any change in the following:
- (a) the holder's name;
  - (b) an address of the holder;
  - (c) a phone number of the holder;
  - (d) an email address of the holder;
- within 2 working days after the change occurs.
- 8626 If the holder has been convicted of an offence involving a minor or any other vulnerable person, the holder must notify the Minister of any change in the following:
- (a) an online profile used by the holder;
  - (b) a user name of the holder;
- within 2 working days after the change occurs.

## **Part 2—Application provisions**

### ***Migration Regulations 1994***

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

Insert:

## **Part 127—Amendments made by the Migration Amendment (Bridging Visa Conditions) Regulations 2023**

### **12701 Operation of amendments**

- (1) Regulations 2.25AA and 2.25AB, as amended by Part 1 of Schedule 1 to the *Migration Amendment (Bridging Visa Conditions) Regulations 2023*, apply in relation to the grant of a visa on or after the commencement of that Part.
- (2) Regulation 2.25AE, as inserted by that Part, applies in relation to a visa granted before, on or after the commencement of that Part.
- (3) Schedules 2 and 8, as amended by that Part, apply in relation to a visa granted on or after the commencement of that Part.

## EXPLANATORY STATEMENT

Issued by the Minister for Immigration, Citizenship and Multicultural Affairs

*Migration Act 1958*

*Migration Amendment (Bridging Visa Conditions) Regulations 2023*

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

Subsection 504(1) of the Migration Act provides that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

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

The *Migration Amendment (Bridging Visa Conditions) Regulations 2023* (the Amendment Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to:

- make technical amendments to provisions enabling the Minister to grant a Bridging R (Class WR) visa (BVR) without application; and
- make amendments consequential to amendments of the Migration Act that would be made by the *Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Matters) Act 2023* (Serious Offenders Act); and
- set out the operation and application of certain visa conditions which must be applied to a Subclass 070 (Bridging (Removal Pending)) visa (BVR) in certain circumstances; and
- provide for periodic review of the imposition of certain visa conditions (including curfews and monitoring devices), to ensure appropriate and effective consideration of the visa conditions necessary to manage the risk posed by a BVR holder to the Australian community.

Following the High Court's judgment in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs & Anor (S28/2023) (NZYQ)* on 8 November 2023, the *Migration Amendment (Bridging Visa Conditions) Act 2023* inserted and amended a number of visa conditions in the Migration Regulations, and commenced on 18 November 2023. The Amendment Regulations are complementary to these changes, **enhancing the BVR framework and further strengthening the Government's approach to managing risks to the Australian community.**

The Amendment Regulations amend provisions which **enable the Minister to grant a BVR visa without application to an individual, including in circumstances where the non-citizen otherwise indicates they may not comply with the conditions of their BVR.** In circumstances where those non-citizens may pose a risk to vulnerable people in the community, this amendment substantially enhances the protection of the community by ensuring that those non-citizens who are released from immigration detention as a consequence of the High Court's decision in *NZYQ* are subject to appropriate and enforceable visa conditions. In some

circumstances, a breach of a visa condition by a BVR holder may also constitute a criminal offence under the Migration Act.

The Amendment Regulations provide for a range of new and amended conditions for BVR visa holders, some of which **apply to those individuals who have committed offences involving a minor or a vulnerable person, or offences involving violence and sexual assault.**

The new or amended conditions provided by the Amendment Regulations include those relating to the reporting of residence information (condition 8612), interstate and overseas travel (condition 8614), associations and memberships of organisations involving minors (condition 8615), contact with individuals involved in criminal activities (condition 8616), financial transactions (condition 8617), bankruptcy (condition 8618), personal contact details (condition 8625) and personal information online (condition 8626).

The Serious Offenders Act would amend the *Criminal Code Act 1995* to create a new statutory scheme enabling the Minister to apply to a court for a community safety detention order (CSDO) or a community safety supervision order (CSSO) (collectively, community safety orders (CSO)). The Amendment Regulations provide that **a BVR that is taken to be granted to a non-citizen who is subject to a CSO (under paragraphs 76AA(2)(b) or 76AA(3)(c) of the Migration Act) is subject to a specific set of visa conditions.** These conditions have been selected to complement but not duplicate any conditions imposed under a CSO. The specific set of conditions are focused on managing the migration status of the BVR holder, including in relation to their immigration status, national security matters and potential removal, if that becomes reasonably practicable. These conditions are consistent with how migration matters are managed for other non-NZYQ affected BVR holders.

The Amendment Regulations also provide that if conditions 8617 (financial transactions), 8618 (bankruptcy), 8620 (curfews) or 8621 (electronic monitoring) are imposed on a BVR granted to a non-citizen, those conditions will be imposed only for 12 months from the day of visa grant. The intention is to ensure that the imposition of these conditions is subject to a form of 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 reconsider whether it is not reasonably necessary 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 these visa conditions.

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

The current Migration Regulations have been in place since 1994, when they replaced regulations made in 1989 and 1993. Providing for these details to be in delegated legislation rather than primary legislation gives the Government the ability to effectively manage the operation of Australia's visa program and respond quickly to emerging needs.

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

The Office of Impact Analysis (the OIA) has been consulted in relation to the amendments. No Impact Analysis is required. The OIA consultation reference number is OIA23-06022.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

Section 17 of the Legislation Act provides that the rule-maker must be satisfied that there has been undertaken any consultation that is appropriate and reasonably practicable before making a legislative instrument. The Department has consulted other Commonwealth agencies in the course of developing the Amendment Regulations, including the Attorney-General's Department.

The Regulations commence on the day after they are registered on the Federal Register of Legislation.

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

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

**AUTHORISING PROVISIONS**

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

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

- subsection 31(3) of the Migration Act provides that the regulations may prescribe criteria for a visa or visas of a specified class;
- subsection 41(1) of the Migration Act provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions;
- subsection 41(3) of the Migration Act provides that in addition to any specified conditions, the Minister may specify that a visa is subject to such conditions as are permitted by the regulations for the purposes of this subsection;
- paragraph (b) of the definition of ‘monitoring condition’ in subsection 76B(4) of the Migration Act provides that a prescribed condition is not a ‘monitoring condition’.

## **Statement of Compatibility with Human Rights**

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

### **Migration Amendment (Bridging Visa Conditions) Regulations 2023**

These amendments 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 Regulations**

The *Migration Amendment (Bridging Visa Conditions) Regulations 2023* (the Amendment Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to:

- make technical amendments to provisions enabling the Minister to grant a Bridging R (Class WR) visa without application; and
- make amendments consequential to those made by the *Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Matters) Act 2023* (Serious Offenders Act); and
- spell out the operation and application of certain visa conditions which must be applied to a Subclass 070 (Bridging (Removal Pending)) visa (BVR) in certain circumstances; and
- provide that certain conditions imposed on a BVR cease to be in effect 12 months after grant, including conditions relating to curfews and electronic monitoring.

Following the High Court's judgment in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs & Anor (S28/2023) (NZYQ)* on 8 November 2023, the *Migration Amendment (Bridging Visa Conditions) Act 2023* inserted and amended a number of visa conditions in the Migration Regulations and commenced on 18 November 2023. The Amendment Regulations are complementary to these changes and reinforce the effective operation of the BVR framework.

The Amendment Regulations amend provisions which enable the Minister to grant a BVR visa without application to an individual, including in circumstances where the non-citizen otherwise indicates they may not comply with the conditions of their BVR. In circumstances where those non-citizens may pose a risk to vulnerable people in the community, this amendment substantially enhances the protection of the community by ensuring that those non-citizens who are released from immigration detention as a consequence of the High Court's decision in *NZYQ* are subject to appropriate and enforceable visa conditions. In some circumstances, a breach of a visa condition may constitute a criminal offence.

The Amendment Regulations provide for a range of new and amended conditions for BVR visa holders, some of which apply to those individuals who have committed offences involving a minor or a vulnerable person, or offences involving violence and sexual assault. The new or amended conditions provided by the Amendment Regulations include those

relating to the reporting of residence information (condition 8612), interstate and overseas travel (condition 8614), associations and memberships of organisations involving minors (condition 8615), contact with individuals involved in criminal activities (condition 8616), financial transactions (condition 8617), bankruptcy (condition 8618), personal contact details (condition 8625) and personal information online (condition 8626).

The Serious Offenders Act would amend the *Criminal Code Act 1995* to create a new statutory scheme enabling the Minister to apply to a court for a community safety detention order (CSDO) or a community safety supervision order (CSSO) (collectively, community safety orders (CSO)). The Amendment Regulations provide that a BVR that is taken to be granted to a non-citizen who is subject to a CSO (under paragraphs 76AA(2)(b) or 76AA(3)(c) of the Migration Act) is subject to a specific set of visa conditions. These conditions have been selected to complement but not duplicate any conditions imposed under a CSO. The specific set of conditions are focused on managing the migration status of the BVR holder, including in relation to their immigration status, national security matters and potential removal, if that becomes reasonably practicable. These conditions are consistent with how migration matters are managed for other non-NZYQ affected BVR holders.

The Amendment Regulations also provide that if conditions 8617 (financial transactions), 8618 (bankruptcy), 8620 (curfews) or 8621 (electronic monitoring) are imposed on a BVR granted to a non-citizen, those conditions will be imposed only for 12 months from the day of grant. The intention is to ensure that the imposition of these conditions is subject to a form of review after 12 months. If the Minister grants a further BVR during or after that period, the Minister would at that time be required to re-consider whether it is not reasonably necessary to impose the condition for the protection of any part of the Australian community.

### **Human rights implications**

These amendments engage the following rights:

- The rights of equality and non-discrimination in Articles 2 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR) and Article 2 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)
- The right to privacy in Article 17 of the ICCPR
- The right to freedom of movement in Article 12 of the ICCPR
- The right to freedom of assembly and association contained in Article 22 of the ICCPR
- The right to work in Article 6 of the ICESCR.

### **The rights of 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.*

Article 2(2) of the ICESCR states:

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

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].*

Similarly, in its General Comment on Article 2 of the ICESCR, the UN Committee on Economic, Social and Cultural Rights has stated (at 13) that:

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

Neither the ICCPR nor the ICESCR give a right for non-citizens to enter Australia. 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 Regulations will continue to only apply to members of the NZYQ-affected cohort and not to other visa holders. The measures introduced by these amendments also impose requirements on members of this cohort that would not apply to Australian citizens who have previously offended.

The measures will have the effect of further defining the offence provisions in relation to the application provision in relation to the BVRs and the conditions attached to them that were introduced by the Amending Act. The Government considers this to be reasonable and necessary to ensure that BVR holders in the NZYQ-affected cohort have a clear understanding of conditions relevant to their visa that are intended to enhance community safety and to ensure that members of this cohort remain engaged in arrangements to manage their temporary stay in, and when practicable, removal from Australia.

Condition 8624 is required to be imposed on a BVR holder in the NZYQ-affected cohort who has been convicted of an offence involving violence or sexual assault. Condition 8624 provides that the holder of the visa must not contact, or attempt to contact, the victim of the offence or a member of the victim's family. The measure has been limited to the NZYQ-affected cohort because a large proportion of this cohort includes individuals with serious criminal history. However, the orders in NZYQ mean detention is not available for this cohort, and the usual recourse of detention and removal cannot be effected. While this measure will engage the right to freedom from discrimination, this condition is therefore reasonable and necessary to minimise risk to vulnerable people in the Australian community.

While the grant of a BVR with conditions attached to the NZYQ-affected cohort may engage the right to freedom from discrimination, the Instrument makes a number of amendments that make the imposition of conditions more proportionate to the objectives sought to be obtained. The Instrument:

- amends the reporting requirement regarding household members in 8612 so that it will only apply in circumstances where a person has been convicted of an offence involving a minor or other vulnerable person;
- repeals condition 8613 which required all BVR holders in the NZYQ-affected cohort to obtain the Minister's approval before commencing work, or a regular organised activity, involving more than incidental contact with a minor or any other vulnerable person – repealing this condition will remove overlap with condition 8622;
- amends condition 8614 to repeal the requirement to notify the Minister within two days of departing for overseas or interstate travel – to make plain the requirement that BVR holders must notify Immigration of travel at least seven working days in advance ;
- amends the reporting requirement regarding associations and organisations in condition 8615 so that it will only apply in circumstances where the holder has been convicted of an offence involving a minor or other vulnerable person;

- amends the reporting requirement regarding contact with criminal entities in condition 8616 so it only applies to contact with an individual who has been charged with, or convicted of, an offence;
- repeals the requirement to report changes in banking arrangements in condition 8617 and financial hardship in condition 8618;
- repeals the requirement to report financial circumstances to the Minister in condition 8619;
- creates a 12-month time limit after which certain conditions cease. The relevant conditions are those that can be imposed where the Minister considers it reasonably necessary for the protection of the community;
- limits the conditions that apply to a person who is also subject to a CSSO; and
- repeals the requirement that condition 8550 be imposed, which requires that the visa holder must notify the Minister of any change in personal details (including an online profile or user name), and introduces new conditions 8625 and 8626. Together, these provide that a BVR holder in the NZYQ-affected cohort who has been convicted of an offence involving a minor or other vulnerable person is required to provide their online profile or internet user details, and that all BVR holders must notify the Minister of any changes to their name, address, phone number or email address.

These amendments ensure that conditions can be attached to BVRs granted to the NZYQ-affected cohort in a focussed way that takes into account the individual circumstances of the visa holder, and the community protection needs, based on a risk assessment to be undertaken on an annual (or earlier) basis. The amendments also ensure that the conditions applied complement but do not duplicate any conditions made under a Community Supervision Safety Order.

Members of the NZYQ-affected cohort 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 NZYQ-affected cohort and aimed at the legitimate objective of protecting community safety.

## **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.

Prior to amendment by this Instrument, condition 8612 required a visa holder in the NZYQ-affected cohort to notify the Department of the full names and dates of birth of any persons who ordinarily reside with the visa holder. Amending this measure to provide that only holders of a BVR in the NZYQ-affected cohort who have been convicted of an offence involving a minor or other vulnerable person will mandatorily have this condition imposed ensures that the measure is proportionate to the risk posed by a particular BVR holder in the cohort.

Condition 8621 requires a BVR holder in the NZYQ-affected cohort to wear a monitoring device at all times. Where condition 8621 is not imposed, it is mandatory for condition 8401, requiring the BVR holder to report to the Department at specified times, to be imposed. This requirement is reasonable, necessary and proportionate to achieve the legitimate objective of protecting the community and ensuring the BVR holder remains in contact with the Department to progress their removal from Australia.

Condition 8550 is repealed as a requirement for BVR holders in the NZYQ-affected cohort and new condition 8625 will require the BVR holder to notify the Minister of a change of name, address, phone number and email address, while new condition 8626 will require the BVR holder to notify the Minister of a change on online profiles or internet user names. Condition 8625 will be mandatory for all BVR holders in the NZYQ-affected cohort, while condition 8626 will only be mandatory where the BVR holder has been convicted of an offence involving a minor or a vulnerable person. While the mandatory imposition of condition 8625 will limit the right to privacy, the limitation is reasonable, necessary and proportionate in protecting community safety and ensuring that the BVR holder remains in contact with the Department to progress their removal from Australia when it becomes reasonably practicable.

The Amending Regulations will ensure that the limitation on the right to privacy by conditions 8617, 8618, 8620 and 8621 is more proportionate, as they are mandatory unless the Minister is satisfied that their imposition is not reasonably necessary for the protection of the community, having regard to the other conditions imposed. These conditions, respectively, require a BVR holder in the NZYQ-affected cohort to:

- notify of transactions over \$10,000 AUD
- notify of debts in excess of \$10,000 AUD
- abide by the requirement to remain at a notified address between 10pm on one day and 6am on the next day or between such other times as are specified in writing, and
- wear a monitoring device at all times

The amendments also provide that conditions 8617, 8618, 8620 and 8621 will cease to be in effect 12 months after a BVR is granted. This further ensures the proportionality of the impact on a person's right to privacy by prescribing an end date to those conditions and, if required, a review of the individual's circumstances to determine whether it is appropriate that the conditions continue to be imposed.

Making these conditions mandatory unless the Minister is satisfied that they are not reasonably necessary for the protection of the community ensures that the measure is the least rights restrictive means to obtain the legitimate objective of community safety. It is reasonable, necessary and proportionate as it allows the Minister to consider the individual risk that the visa holder poses to the safety of the community and whether it is necessary in that individual's circumstances to have the conditions imposed.

Conditions 8617, 8618, 8620 and 8621 will not be applied for visas granted by operation of law under paragraph 76AA(3)(a) to avoid possible duplication the requirements imposed by a CSSO.

The Migration Regulations, as amended by the Regulations requires that condition 8621 must be imposed on a BVR granted to the NZYQ-affected cohort unless the Minister is satisfied that it is not reasonably necessary to impose the condition for the protection of the Australian community or a part of that community (or that it is not reasonably necessary to impose the condition in addition to any other conditions imposed by or under another provision of Division 070.6). Condition 8621 relevantly requires that the holder must wear a monitoring device at all times, and must allow an authorised officer to fit, install, repair or remove the monitoring device or any related monitoring equipment.

Further, condition 8617 has been amended so that a BVR holder in the NZYQ-affected cohort is no longer required to notify of changes in their banking arrangements; condition 8618 has been amended so that a BVR holder in the NZYQ-affected cohort is no longer required to notify of significant financial hardship; and condition 8619 has been repealed, meaning that a BVR holder in the NZYQ-affected cohort no longer needs to provide information about their current financial circumstances.

The right to privacy will be engaged, and limited, by amendments requiring that if a BVR holder in the NZYQ-affected cohort has been convicted of an offence involving a minor or any other vulnerable person, conditions 8612, 8615, 8622, 8623 and 8626 must be applied. These conditions provide, respectively, that the person must notify the department of the details of persons they reside with; that the person must notify the department within 5 working days of the details of any membership of any association or organisation; that the person must not perform any work, or participate in any regular organised activity, involving more than incidental contact with a minor or any other vulnerable person; that the person must not go within 200 metres of a school, childcare centre or day care centre; and that the person must notify the Minister of any change to their online profile or internet user name. These limitations are reasonable and necessary as they are aimed at protecting community safety and the most vulnerable members of the community. They are proportionate as they are only mandatory for persons of high risk in relation to the conditions, being persons who have previously been convicted of an offence involving a minor or another vulnerable person.

### **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.*

Conditions 8620 and 8621, which provide, respectively, that a BVR holder in the NZYQ-affected cohort need to abide by a curfew or need to wear a monitoring device, are amended so that they are mandatory unless the Minister is satisfied that it is not reasonably necessary for the protection of the community for the BVR holder in the NZYQ-affected cohort to have the condition imposed, or to impose the condition in addition to any other conditions imposed by another provision. Where a CSSO is imposed, conditions 8620 and 8621 will not be imposed.

The amendments also provide that conditions 8620 and 8621 will cease to be in effect 12 months after a BVR is granted. This ensures that any restriction on movement is time limited and that a review of the individual's circumstances is required for conditions to be imposed beyond this timeframe.

This ensures that the limitation on the right to freedom of movement is the least rights restrictive means of obtaining the legitimate objective of ensuring community safety, and is reasonable, necessary and proportionate to that objective as it allows the Minister to consider the individual risk that the visa holder poses to the safety of the community and whether it is appropriate in that individual's circumstances to have the conditions imposed.

### **Right to freedom of assembly and association contained in Article 22 of the ICCPR**

Article 22 of the ICCPR relevantly states:

- 1) *Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*
- 2) *No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others...*

Condition 8615 is amended to provide that reporting of membership of organisations is only required in circumstances where the BVR holder has been convicted of an offence involving a minor or any other vulnerable person. While the requirement to report such a membership may still limit the right to freedom of association, the amendments ensure that the measure will be more proportionate, by ensuring that it is limited to BVR holders in the NZYQ-affected cohort where there is a greater risk to community safety. By taking into account the individual circumstances of the visa holder before applying the condition, the measure ensures that it is the least rights restrictive option to achieve the objectives of protecting the community while providing a disincentive for association with entities or conduct that may

hamper the Government's objective of resolving the visa holder's status by way of third country resettlement.

The right to freedom of association will be limited by amendments requiring that if a BVR holder in the NZYQ-affected cohort has been convicted of an offence involving a minor, condition 8615 must be applied. This condition provides that the person must notify the department within 5 working days of the details of any membership of any association or organisation. This limitation is reasonable and necessary as it is aimed at protecting community safety and vulnerable persons in the community and it is proportionate as it is only mandatory for persons of high risk in relation to the condition.

The right to freedom of association may also be limited by amendments requiring condition 8624 to be imposed on a BVR holder in the NZYQ-affected cohort who has been convicted of an offence involving violence or sexual assault. Condition 8624 provides that the holder of the visa must not contact, or attempt to contact, the victim of the offence or a member of the victim's family. While this measure may limit the right to association if the condition is applied, this is reasonable, necessary and proportionate. The condition will only be applied where the BVR holder in the NZYQ-affected cohort has been convicted of a violent offence or a sexual assault and is aimed at the legitimate objective of protecting the victim of that offence or the victim's family.

### **Rights relating to work**

Article 6(1) of the ICESCR provides:

*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*

The Amending Regulations repeal condition 8613, which requires a BVR holder in the NZYQ-affected cohort to seek the Minister's approval before commencing work, or a regular organised activity, involving more than an incidental contact with a minor or other vulnerable person. This condition is being repealed as it overlaps with condition 8622, which provides that a visa holder in the NZYQ-affected cohort must not work with minors and vulnerable persons if convicted of a relevant offence.

This measure engages the right to work, and to the extent that a visa holder without an offence relevant to condition 8622 will no longer need to seek the Minister's approval before commencing to perform work, or a regular organised activity, involving more than an incidental contact with a minor or other vulnerable person, the right to work is promoted.

The right to work will also be engaged, and limited, by amendments requiring that if a BVR holder in the NZYQ-affected cohort has been convicted of an offence involving a minor, condition 8622 must be applied. This condition provides that the person subject to the condition must not perform any work, or participate in any regular organised activity, involving more than incidental contact with a minor or any other vulnerable person. This limitation is reasonable and necessary as it is aimed at protecting community safety and vulnerable persons in the community and it is proportionate as it is only mandatory for persons of high risk in relation to the conditions.

**Conclusion**

The measures in this Instrument are compatible with human rights as, to the extent they limit some human rights, those limitations are reasonable, necessary and proportionate to the objectives of ensuring the safety of the community.

**The Hon Andrew Giles MP**

**Minister for Immigration, Citizenship and Multicultural Affairs**

**Details of the Migration Amendment (Bridging Visa Conditions) Regulations 2023**

**Section 1 - Name**

This section provides that the name of the instrument is the *Migration Amendment (Bridging Visa Conditions) Regulations 2023*.

**Section 2 - Commencement**

This section provides for the commencement of the instrument.

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

The effect of this provision is that the Regulations commence on the day after they are registered on the Federal Register of Legislation.

A note at the foot of the table under subsection 2(1) explains that the table relates only to the provisions of the Regulations as originally made. The table will not be amended to deal with any later amendments of the Regulations.

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

**Section 3 - Authority**

This section provides that the instrument is made under the *Migration Act 1958* (the Migration Act).

**Section 4 - Schedules**

This section provides for how the amendments in the Regulations operate.

**Schedule 1 – Amendments**

**Part 1 – Amendments**

***Migration Regulations 1994***

**Item [1] – Regulation 1.03**

This item inserts a definition of ‘community safety order’ (CSO) and provides that this term has the same meaning as in Division 395 of the *Criminal Code*, as amended by the Serious Offenders Act.

### **Item [2] – Subregulation 2.03(1)**

This item amends the current provision which sets out the prescribed criteria applicable to classes of visas. Previously subregulation 2.03(1) of the *Migration Regulations 1994* (the Migration Regulations) provided that for the purposes of subsection 31(3) of the Migration Act, and subject to regulations 2.03A and 2.03AA, the prescribed criteria for the grant to a person of a visa of a particular class are the primary and secondary criteria set out in Schedule 2 to the Migration Regulations.

This item removes the reference to “regulations 2.03A and 2.03AA” and substitutes “other provisions of these Regulations”, which is consequential to the amendments made by items [7] and [8] of this instrument. Items [7] and [8] amend subregulations 2.25AA(2) and 2.25AB(2) of the Migration Regulations to include criteria that must be met for a Bridging R (Class WR) visa to be granted.

### **Item [3] – Subregulation 2.05(1)**

This item amends subregulation 2.05(1) so that it also refers to regulation 2.25AE (inserted by item [12]).

Previously, subregulation 2.05(1) provided that for subsection 41(1) of the Migration Act, a visa is subject to any conditions specified for that Subclass of visa in Schedule 2, subject to subregulation 2.05(2).

Subregulation 2.05(2) provides that for subsection 41(3) of the Migration Act, the conditions that the Minister is permitted to impose on a visa are the conditions (if any) specified as permitted for that Subclass of visa in Schedule 2.

The amendment to subregulation 2.05(1) ensures that the provision must be read subject to regulation 2.25AE as well as subregulation 2.05(2). See also item [12].

### **Item [4] – Regulation 2.20A (note)**

This item repeals and substitutes the note which follows subregulation 2.20A(2).

Regulation 2.20A sets out the circumstances in which a person is taken to have made a valid application for a Bridging R (Class WR) visa for the purposes of subsection 46(2) of the Migration Act. Prior to the amendments made by this instrument, an application is taken to have been validly made by a person if the person is invited to apply for a BVR by the Minister (using a method in section 494B of the Migration Act) (paragraph 2.20(2)(a)) and the person accepts that invitation within 7 days (paragraph 2.20(2)(b)).

New note 1 reflects the previous note, and refers the reader to section 494C of the Migration Act for when a person is taken to have received a document given by one of the methods specified in section 494B of the Act.

New note 2 refers to paragraph 76AA(7)(a) of the Migration Act (as amended by the Serious Offenders Act), which provides that the Minister must not give a person an invitation, for the purposes of paragraph 2.20A(2)(a) of the Migration Regulations, while a CSO made in relation to the person is in force.

### **Item [5] – Paragraph 2.25AA(1)(b)**

This item makes a minor grammatical amendment to paragraph 2.25AA(1)(b) which is consequential to the repeal of paragraph 2.25AA(1)(c) – see item [6] below.

### **Item [6] – Paragraph 2.25AA(1)(c)**

This item repeals paragraph 2.25AA(1)(c).

Subregulation 2.25AA(1) provides that subregulation 2.25AA(2) applies to an eligible non-citizen if:

- the eligible non-citizen is an unlawful non-citizen (paragraph 2.25AA(1)(a)); and
- section 195A of the Migration Act is not available to the Minister in relation to the grant of a visa to the eligible non-citizen (paragraph 2.25AA(1)(b)); and
- the Minister is satisfied that the eligible non-citizen’s removal from Australia is not reasonably practicable at that time (paragraph 2.25AA(1)(c)).

The requirement in paragraph 2.25AA(1)(c) is replicated in subregulation 2.25AA(2) as amended by this instrument (see item [7] below). As a result, paragraph 2.25AA(1)(c) is no longer required and is repealed.

### **Item [7] – Subregulation 2.25AA(2)**

This item repeals the current provision and substitutes it with a new subregulation 2.25AA(2), which provides that despite anything in Schedule 1 to the Migration Regulations and Divisions 070.2 to 070.4 of Part 070 of Schedule 2, the Minister may grant an eligible non-citizen to whom regulation 2.25AA applies a Bridging R (Class WR) visa if the Minister is satisfied that, at the time of decision, the eligible non-citizen’s removal from Australia is not reasonably practicable.

Previously, subregulation 2.25AA(2) required the Minister to be satisfied that, at the time of decision, the eligible non-citizen satisfies the criteria set out in clause 070.222 of Schedule 2. That criterion in turn requires the Minister to be satisfied that the non-citizen will comply with the conditions of their visa, if granted.

The purpose of this amendment is to ensure that the Minister can grant a Bridging R (Class WR) visa to a non-citizen, without application, even where the Minister is not satisfied that the non-citizen will abide by the conditions to which the visa will be subject under Division 070.6 of Part 070 of Schedule 2.

The grant of a Bridging R (Class WR) visa under regulation 2.25AA is intended to facilitate the release of non-citizens from immigration detention in circumstances where those non-citizens may pose a risk to the community, and to ensure that those non-citizens are subject to appropriate visa conditions. In some circumstances, a breach of a visa condition may constitute a criminal offence.

As a result, this amendment is necessary to ensure that a non-citizen cannot avoid the imposition of those conditions – and the consequences for breaching them – merely by informing the Minister in advance of grant that they do not intend to comply with those conditions.

The amendment also inserts two notes. Note 1 refers the reader to Divisions 070.5 and 070.6 of Part 070 of Schedule 2 for when the BVR is in effect and the conditions to which it is subject.

New note 2 refers to paragraph 76AA(7)(b) of the Migration Act (as amended by the Serious Offenders Act), which provides that the Minister must not grant the eligible non-citizen a visa under subregulation 2.25AA(2) while a CSO made in relation to the person is in force.

#### **Item [8] – Subregulation 2.25AB(2)**

This item repeals the current provision and substitutes it with new subregulations 2.25AB(2) and (3).

Substituted subregulation 2.25AB(2) provides that despite anything in Schedule 1 and Divisions 070.2 to 070.4 of Part 070 of Schedule 2 to the Regulations, the Minister may grant the non-citizen a Bridging R (Class WR) visa if the Minister is satisfied that, at the time of decision, the non-citizen continues to hold a Bridging R (Class WR) visa.

Subregulation 2.25AB(1) of the Migration Regulations applies to a non-citizen who is an eligible non-citizen under subregulation 2.20(18) of the Migration Regulations and holds an existing Bridging R (Class WR) visa.

The purpose of this amendment is to ensure that the Minister can grant a Bridging R (Class WR) visa to a non-citizen, without application, even where the Minister is not satisfied that the non-citizen will abide by the conditions to which the visa will be subject under Division 070.6 of Part 070 of Schedule 2.

The grant of a Bridging R (Class WR) visa under regulation 2.25AB is intended to ensure that the Minister can grant a subsequent visa of that class to a non-citizen where the visa is subject to different conditions than the Bridging R (Class WR) visa previously held by the non-citizen. In circumstances where those non-citizens may pose a risk to the community, this amendment ensures that those non-citizens who are released from immigration detention on the basis that there is no real prospect of their removal from Australia becoming practicable in the reasonably foreseeable future are subject to appropriate visa conditions. In some circumstances, a breach of a visa condition may constitute a criminal offence.

This amendment is necessary to ensure that a non-citizen cannot avoid the imposition of those conditions – and the consequences for breaching them – merely by informing the Minister in advance of grant that they do not intend to comply with those conditions.

The amendment also inserts two notes. Note 1 refers the reader to Divisions 070.5 and 070.6 of Part 070 of Schedule 2 for when the BVR is in effect and the conditions to which it is subject.

New note 2 refers to paragraph 76AA(7)(b) of the Migration Act (as amended by the Serious Offenders Act), which provides that the Minister must not grant the eligible non-citizen a visa under subregulation 2.25AA(2) while a CSO made in relation to the person is in force.

#### **Item [9] – Before paragraph 2.25AC(a)**

This item inserts new paragraphs (aa) and (ab) before paragraph 2.25AC(a) of the Migration Regulations. These paragraphs prescribe two additional visa conditions. Subregulation

2.25AC of the Regulations prescribes visa conditions for the purposes of paragraph (b) of the definition of ‘monitoring condition’ in subsection 76B(4) of the Migration Act.

If a visa condition is prescribed for this purpose, a breach of that condition by the visa holder cannot constitute an offence under subsection 76B(1) of the Migration Act.

Previously, the following conditions were prescribed:

- condition 8617;
- condition 8618;
- condition 8619;
- condition 8621.

The new paragraphs 2.25AA(aa) and (ab) will additionally prescribe the following conditions:

- (aa) – condition 8612;
- (ab) – condition 8616;

The effect of prescribing these two conditions in addition to paragraphs (a) to (d) of regulation 2.25AC of the Regulations is that failure to comply with these visa conditions cannot form part of the offence in subsection 76B(1) of the Migration Act. These amendments focus criminal liability on the most serious threats to community safety through a graduated approach to sanctions and penalties.

#### **Item [10] – Paragraph 2.25AC(c)**

This item repeals paragraph 2.25AC(c).

Paragraph 2.25AC(c) is no longer required because it prescribes visa condition 8619, which is repealed by item [32] below.

#### **Item [11] - Subregulation 2.25AD(1)**

This item repeals subregulation 2.25AD(1) and substitutes a new subregulation 2.25AD(1) which provides that, for the purposes of paragraph 76E(1)(a) of the Migration Act, conditions 8617, 8618, 8620 and 8621 are prescribed.

Paragraph 76E(1)(a) of the Migration Act provides that section 76E applies to a decision to grant a non-citizen a Subclass 070 (Bridging (Removal Pending)) visa if there is no real prospect of the removal of the applicant from Australia becoming practicable in the reasonably foreseeable future and the visa is subject to a prescribed condition.

The amendment made by this item is consequential to the amendment made by item [17], below. As conditions 8617 and 8618 must now be imposed unless the Minister is satisfied that it is not reasonably necessary to impose the condition for the protection of the Australian community, those conditions will be treated similarly to conditions 8620 and 8621, which were previously and continue to be prescribed for the purposes of paragraph 76E(1)(a) of the Migration Act. Visa condition 8620 imposes a curfew, and visa condition 8621 requires the visa holder to wear an electronic monitoring device.

Subsection 76E(2) makes clear for the avoidance of doubt that the rules of natural justice do not apply in relation to a decision to grant a non-citizen a Subclass 070 (Bridging (Removal

Pending)) visa subject to the prescribed conditions, now including conditions 8617 and 8618. Subsection 76E(3) of the Migration Act provides a mechanism for the visa holder to make representations to the Minister about why the visa should not be subject to one or more of the conditions prescribed by regulation 2.25AD.

#### **Item [12] – At the end of Division 2.5 of Part 2**

This item inserts new regulation 2.25AE, which provides that if certain specified visa conditions are imposed on a BVR, the BVR will be subject to those specified visa conditions for a period of only 12 months.

New subregulation 2.25AE(1) provides that if conditions 8617 (financial transactions), 8618 (bankruptcy), 8620 (curfews) or 8621 (electronic monitoring) 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.

The intention is to ensure that the imposition of these conditions is subject to a form of review at least every 12 months. If the Minister grants a further BVR during or after that period, the Minister would at that time be required to consider whether it is not reasonably necessary to impose the condition for the protection of any part of the Australian community (see subclause 070.612A(1), as amended by item [17]).

New 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.

New 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 [13] – Paragraph 070.511(a) of Schedule 2**

This item amends paragraph 070.511(a) of Schedule 2 to include a reference to paragraphs 76AA(2)(b) and 76AA(3)(c) of the Migration Act (as amended by the Serious Offenders Act). A non-citizen is taken to have been granted a BVR by operation of these provisions in certain circumstances, and so a consequential change to paragraph 070.511(a) of Schedule 2 to the Migration Regulations is necessary to reflect that the BVR comes into effect at that point in time as provided for in section 76AA.

#### **Item [14] - Clause 070.611 of Schedule 2**

This item repeals current clause 070.611 of Schedule 2, and substitutes a new clause 070.611.

New subclause 070.611(1) specifies conditions that must be imposed when a Subclass 070 (Bridging (Removal Pending)) visa is granted, other than a BVR which is taken to have been granted under paragraphs 76AA(2)(b) or 76AA(3)(c) of the Migration Act. Conditions 8303, 8513, 8514, 8541, 8542 and 8543 must be imposed (paragraph 070.611(1)(a)). The only change here is to remove the reference to condition 8401, which is now covered by new paragraph 070.611(1)(b).

New subparagraph 070.611(1)(b) provides that if condition 8621 is not imposed under subclause 070.612A(1) of Schedule 2 to the Regulations (see item [17] below), condition 8401 must be imposed. Condition 8401 requires the visa holder to report at the time or times, at a place or in a manner, specified by the Minister from time to time. The intention of this amendment is to ensure that condition 8401 is not unnecessarily imposed where the visa holder is already subject to a monitoring condition, in the form of condition 8621 (electronic monitoring).

New subclause 070.611(2) provides that if the BVR is taken to have been granted under paragraphs 76AA(2)(b) or 76AA(3)(c) of the Migration Act (as amended by the Serious Offenders Act), conditions 8401 (reporting), 8513 (notify of residential address), 8514 (no change in circumstances of visa grant), 8541 (facilitate removal), 8542 (report for removal), 8543 (attend to facilitate removal), 8551 (approval for employment involving chemicals of security concern), 8552 (notify of change in employment details), 8553 (security), 8554 (possession of weapons and explosives), 8555 (piloting aircraft), 8556 (communication with terrorist organisations), 8560 (acquiring chemicals of security concern), 8561 (attending an interview), 8562 (employment involving weapons or explosives), 8563 (activities involving weapons or explosives), 8614 (notification of interstate or overseas travel) and 8625 (notification of change of details) must be imposed.

These conditions have been selected to complement but not duplicate any conditions that may be imposed under a CSO. The conditions specified in clause 070.611(2) are focused on managing the migration status of the BVR holder, including in relation to their immigration status, national security matters and potential removal, if that becomes reasonably practicable. These conditions are consistent with how migration matters are managed for other non-NZYQ affected BVR holders.

#### **Item [15] - Subclause 070.612(1) of Schedule 2**

This item repeals and substitutes subclause 070.612(1) of Schedule 2 to the Regulations.

Previously, paragraph 070.612(1) of Schedule 2 to the Regulations specified further mandatory conditions that must be imposed when a Subclass 070 (Bridging (Removal Pending)) visa is granted without application under regulations 2.25AA or 2.25AB of the Migration Regulations, or is taken to have been granted under subsection 76A(3)(a) of the Migration Act. These conditions were imposed in addition to any condition in clause 070.611 of Schedule 2 to the Regulations.

The substituted subclause 070.612(1) provides that if the visa is granted without application under regulations 2.25AA or 2.25AB, visa conditions 8551 (occupations which require approval), 8552 (notify change of employment), 8553 (involvement in activities prejudicial to security), 8554 (acquiring weapons or explosives), 8555 (approval required before undertaking flight training or flying aircraft), 8556 (communication with certain listed organisations), 8560 (approval required before obtaining certain chemicals), 8561 (requirement to attend interview as directed), 8562 (employment in occupations that involve weapons or explosives), 8563 (engaging activities involving weapons or explosives), 8614 (notification of travel), 8616 (notification of contact with people involved in illegal activities) and 8625 (notification of personal details) must be imposed, in addition to any other condition imposed by or under another provision of Division 070.6 of Part 070 of Schedule 2.

The change here is to remove reference to conditions 8550, 8612, 8613, 8615, 8617, 8618, 8619, 8622 and 8623, which are now either dealt with by other provisions (see items [17] and [18] below), have been repealed (see items [22] and [32] below), or have been replaced by substantially similar conditions (see item [34]).

The reference to a visa taken to have been granted under subsection 76A(3)(a) of the Migration Act is omitted, because the purpose of that provision was spent immediately after commencement of the *Migration Amendment (Bridging Visa Conditions) Act 2023* on 18 November 2023.

This amendment also makes changes consequential to other changes elsewhere in this instrument that:

- repeal conditions 8613 and 8619 (see items [22] and [32]; and
- include conditions 8622 and 8623 in subclause 070.612B(1) instead (see item [18]).

#### **Item [16] – Subclause 070.612(2) of Schedule 2**

This item omits the words “condition mentioned in clause 070.611”, and substitutes the words “other condition imposed by or under another provision of this Division”.

Previously, subclause 070.612(2) of Schedule 2 to the Migration Regulations provided that if the Minister has granted the visa under section 195A of the Act, conditions 8505, 8550, 8551, 8552, 8553, 8554, 8555, 8556, 8560, 8561, 8562, 8563, 8564 and 8578 may be imposed, in addition to any condition mentioned in clause 070.611.

This purpose of this amendment is to reflect that conditions may or must be imposed not only under clause 070.611 but also under other provisions in Division 070.6. The list of visa conditions is unchanged.

#### **Item [17] - Subclauses 070.612A(1) to (2A) of Schedule 2**

This item repeals subclauses 070.612A(1) to (2A), and substitutes new subclauses 070.612A(1) to (2A).

Current subclause 070.612A(3) provides that the subclause 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 if the visa was granted under regulation 2.25AB.

New subclause 070.612A(1) provides that mandatory conditions 8617 (financial reporting), 8618 (bankruptcy), 8620 (curfews) and 8621 (electronic monitoring) must be imposed by the Minister when a Subclass 070 (Bridging (Removal Pending)) visa is granted if subclause 070.612A(3) applies to the visa, unless the Minister is satisfied that it is not reasonably necessary to impose the condition for the protection of any part of the Australian community, including because of any other conditions imposed by or under Division 070.6.

A note beneath subclause 070.612A(1) refers the reader to regulation 2.25AE (inserted by item [12]) for the period for which the BVR is subject to conditions 8617, 8618, 8620 and 8621.

New subclause 070.612A(2) provides that the Minister must decide whether or not to impose each of the conditions in the following sequential order: 8621, 8617, 8618, and 8620.

This means that the Minister must first consider whether to impose condition 8621, having regard to the reasonable necessity of doing so for the protection of any part of the Australian community and any other conditions to which the visa is subject. Then the Minister must decide whether to impose condition 8617, having regard to the reasonable necessity of doing so for the protection of any part of the Australian community and any other condition to which the visa is subject, including condition 8621 if that has been imposed as a result of the earlier consideration—and so on.

New subclause 070.612A(2A) provides that conditions imposed by or under this clause are in addition to any other condition imposed by or under another provision of Division 070.6 of Part 070 of Schedule 2.

This purpose of this amendment is to provide authority to the Minister to exercise a discretion not to impose a mandatory visa condition, if satisfied that it is not reasonably necessary for the protection of the community.

The requirement for the Minister to consider other conditions placed on the visa is intended to ensure that in considering whether it is not reasonably necessary to impose a particular condition for the protection of any part of the Australian community, the Minister must consider the extent to which other visa conditions contribute to that purpose. These amendments empower the Minister to appropriately consider and impose conditions where necessary to protect the Australian community or a part of the community.

#### **Item [18] - Clause 070.612B of Schedule 2**

This item repeals the existing clause 070.612B of Schedule 2 to the Regulations and substitutes it with a new clause which provides for the following:

- If the Subclass 070 (Bridging (Removal Pending)) visa holder has been convicted of an offence involving a minor or any other vulnerable person, and subclause 070.612B(4) applies to the visa, conditions 8612 (notification of details of occupants in house), 8615 (notification of holder belonging to an organisation), 8622 (if convicted of offence involving minor or vulnerable person, must not engage in certain work), 8623 (if convicted of offence involving minor or vulnerable person, must not go within 200m of school or childcare centre) and 8626 (provide online profile if they convicted of offence involving minor or vulnerable person) must be imposed (subclause 070.612B(1)).
- If the Subclass 070 (Bridging (Removal Pending)) visa holder has been convicted of an offence involving violence or sexual assault, and subclause 070.612B(4) applies to the visa, condition 8624 must be imposed (subclause 070.612B(2)).
- A condition imposed by or under either of the new subclauses 070.612B(1) or (2) will be in addition to any other condition imposed by or under another provision of this Division of Schedule 2 to the Regulations (subclause 070.612B(3)).

New subclause 070.612B(4) of Schedule 2 to the Migration Regulations provides that it 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 if the visa was granted under regulation 2.25AB.

The purpose of this amendment is to:

- strengthen the application of conditions 8612, 8615 and 8626 so that they apply to those individuals with relevant criminal offending involving minors and vulnerable people, and to reinforce community expectations about the protection of especially vulnerable members of society.
- provide certainty that conditions 8622 (if convicted of offence involving minor or vulnerable person, must not engage in certain work), 8623 (if convicted of offence involving minor or vulnerable person, must not go within 200m of school or childcare centre) and 8624 (if convicted of violence or sexual assault, must not contact victim or their family) only apply to individuals with certain criminal backgrounds.

#### **Item [19] – Clause 070.613 of Schedule 2**

This item makes a minor amendment to clause 070.613 of Schedule 2 to the Migration Regulations to refer not only to a visa condition ‘imposed by’ another provision of Division 070.6 of Part 070 of Schedule 2, but also to a visa condition imposed ‘under’ another provision of this division. This is a technical amendment to ensure consistency and clarity of expression.

#### **Item [20] – Clause 070.614 of Schedule 2**

This item repeals and substitutes clause 070.614 of Schedule 2 to the Migration Regulations. The clause now provides that if the BVR is not taken to be granted under paragraphs 76AA(2)(b) or 76AA(3)(c) of the Migration Act, condition 8506 (notify of change of address) may be imposed in addition to any other visa condition imposed by or under another provision of Division 070.6 of Part 070 of Schedule 2 to the Migration Regulations.

This change is consequential to that made by item [14], which imposes visa conditions involving more specific reporting requirements on a BVR taken to have been granted under paragraphs 76AA(2)(b) or 76AA(3)(c) of the Migration Act, as compared to visa condition 8506. The provision is otherwise unchanged.

#### **Item [21] - Clause 8612 of Schedule 8**

This item amends clause 8612 to provide that if the visa holder has been convicted of an offence involving a minor or any other vulnerable person, the holder must provide the Department with details of each person who ordinarily resides with the holder within 5 working days of the visa grant. The holder must also notify the Department of any change within 2 working days.

The purpose of this amendment is to ensure that this visa condition is targeted at those visa holders who have been convicted of a criminal offence involving a minor or a vulnerable person.

#### **Item [22] - Clause 8613 of Schedule 8**

This item repeals the clause.

Previously, visa condition 8613 required a visa holder to obtain the Minister’s approval before commencing to perform work, or a regular organised activity, involving more than incidental interaction with minors or any other vulnerable person. This condition applies

whether the performing work or regular organised activity, and whether or not a working with children or vulnerable people check (however described) is required in relation to the work.

This amendment is being made to avoid overlap between this condition and condition 8622, which prohibits a visa holder who has been convicted of an offence involving a minor or any other vulnerable person from performing work involving more than incidental contact with a minor or other vulnerable person.

#### **Item [23] – Subclause 8614(1) of Schedule 8**

This item omits the text “(1)” from subclause 8614(1) of Schedule 8 to the Regulations.

The current subclause 8614(1) of Schedule 8 to the Regulations provides an obligation on the visa holder to notify the Department of any travel interstate or overseas at least 7 working days before undertaking the travel.

This is a consequential amendment and is required because subclause 8614(2) is being repealed (see item [24] below).

#### **Item [24] – Subclause 8614(2) of Schedule 8**

This item repeals the subclause (2) of visa condition 8614.

The current subclause 8614(2) of Schedule 8 to the Regulations provides an obligation on the visa holder to notify the Department of any travel undertaken within 2 working days after departing on the travel, if they cannot meet the 7 working day requirement of subclause 8614(1) of Schedule 8 to the Regulations.

The purpose of this amendment is to make plain what is required by the condition and to avoid any doubt as to when the visa condition has been breached. A breach of visa condition 8614 can involve conduct which constitutes a criminal offence under section 76B of the Migration Act.

#### **Item [25] – Clause 8615 of Schedule 8**

This item repeals and substitutes visa condition 8615.

New subclause 8615(1) places an obligation on the visa holder if the holder has been convicted of an offence involving a minor or any other vulnerable person. In those circumstances the holder must:

- notify the Department 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 within 5 working days of the grant of the visa (paragraph 8615(1)(a)); and
- notify the Department of any change in those details (including the beginning or end of any association or membership) within 2 working days after the change occurs (paragraph 8615(1)(b)).

New subclause 8615(2) provides that subclause 8615(1) does not apply in relation to an organisation formed for a purpose of engaging in, or the regular functions or activities of which involve, communications on governmental or political matters.

The purpose of this amendment is to strengthen the protection of the most vulnerable members of the community.

The reference to organisations formed for a purpose of engaging in, or the regular functions or activities of which involve, communications on governmental or political matters is in order to avoid any issues with the implied freedom of political communication under the Constitution.

#### **Item [26] – Subclause 8616(1) of Schedule 8**

This item repeals and substitutes subclause 8616(1) of Schedule 8.

Currently visa condition 8616 provides that the visa holder must notify the Department of the details of any contact with specified individuals, groups or organisations within 2 working days after the contact occurs, unless the contact was in the course of attending a therapeutic or rehabilitative service, or in connection with legal proceedings or legal advice. The condition applies to contact with:

- any individual, group or organisation that is alleged, or is known by the visa holder, to be engaging in criminal or other illegal activities; or
- any individual, group or organisation that has previously engaged in, or has expressed an intention to engage in, criminal or other illegal activities.

The new visa condition 8616 will apply to contact (other than contact in the course of attending a therapeutic or rehabilitative service, or in connection with legal proceedings or legal advice, or incidental contact) with any individual who is known by the holder to have been charged with, or convicted of, a criminal offence.

The purpose of the amendment is to support community safety and manage the migration status of individuals by reinforcing the obligation to report certain contacts, while also making the reporting obligation clearer. This supports the Government's efforts to protect community safety.

#### **Item [27] – At the end of subclause 8616(2) of Schedule 8**

This item inserts paragraph (c) at the end of subclause 8616(2), which has the effect that the visa holder is not required to notify the Minister of incidental contact.

Currently, subclause 8616(2) provides that the requirement to notify the Minister of certain contacts under subclause 8616(1), does not apply to contact in the course of attending a therapeutic or rehabilitative service or in connection with legal proceedings or legal advice.

The purpose of the amendment made by this item is to include an additional exception to the requirement in subclause 8616(1), being incidental contact.

### **Item [28] - Paragraph 8617(b) of Schedule 8**

This item amends paragraph (b) of visa condition 8617 so paragraph 8617(b) has a full stop at the end of the paragraph. This is a grammatical change that is consequential to the amendment made by item [29] below.

### **Item [29] - Paragraph 8617(c) of Schedule 8**

This item repeals paragraph (c) of visa condition 8617 so that the holder is no longer required to notify the Department of changes to the holder's banking arrangements.

This amendment focuses on the key information required to support the management of the visa holder in the community.

### **Item [30] - Subclause 8618(2) of Schedule 8**

This item repeals and substitutes subclause 8618(2) of Schedule 8 to the Migration Regulations. Previously, subclause 8618(2) provided that a holder who was declared bankrupt or otherwise experienced significant financial hardship, must have notified immigration within 5 working days after the holder was so declared or the financial hardship began. This item removes references to financial hardship.

The purpose of this amendment is to focus the Government's efforts on ensuring community safety where there are indicators of concern.

### **Item [31] - Subclause 8618(3) of Schedule 8**

Previously, visa condition 8618(3) provided that a holder must have notified immigration of any significant change in relation to the holder's debts, bankruptcy or financial hardship within 5 working days after the change occurred. This item removes references to financial hardship.

The purpose of this amendment is to remove the reference to "financial hardship" and focus on key information of concern.

### **Item [32] - Clause 8619 of Schedule 8**

This item repeals visa condition 8619, which provides that the holder must, within 7 days of receiving an oral or written request from the Minister, provide evidence of the holder's current financial circumstances.

This visa condition has been repealed because other conditions relating to an individual's finances, such as condition 8617 and 8618, already require the visa holder to notify the Department of financial information. This amendment achieves an appropriate balance between impost on the individual and the need for reporting conditions to support the effective management of the individual in the community.

### **Item [33] – Subclause 8620(3) of Schedule 8 (paragraph (a) of the definition of *notified address*)**

This item repeals and substitutes paragraph (a) of the definition of *notified address* in subclause 8620(3) of Schedule 8 to the Migration Regulations to ensure that the latest address

of the holder is the address of which the holder has notified the Department pursuant to visa condition 8513 or visa condition 8625 (inserted by item [34]).

### **Item [34] - At the end of Schedule 8**

This item inserts two new visa conditions, 8625 and 8626.

New visa condition 8625 requires the visa holder to notify the Minister of any change in the following:

- the holder's name (paragraph 8625(a));
- an address of the holder (paragraph 8625(b));
- a phone number of the holder (paragraph 8625(c));
- an email address of the holder (paragraph 8625(d));

within 2 working days after the change occurs.

The effect of this amendment is to require that a person whose visa is subject to this condition to notify the Minister of changes to their name or contact information within a specified timeframe. This amendment is consistent with the requirement to notify the Minister of changes to contact information, in existing paragraphs (a) to (d) of visa condition 8550 which requires notification not less than 2 working days before the change is to occur. The purpose of this amendment is to provide clarity about what is required by the condition and to avoid any doubt as to when an offence has been committed.

New visa condition 8626 provides an obligation on the visa holder that, if the holder has been convicted of an offence involving a minor or any other vulnerable person, the holder must notify the Minister of any change in the following:

- an online profile used by the holder (paragraph 8626(a));
- a user name of the holder (paragraph 8626(b));

within 2 working days after the change occurs.

The purpose of this amendment is to require that a person whose visa is subject to this condition notifies the Minister of changes to their online profile or any user name the visa holder uses in connection with online activity within a specified timeframe. This amendment is consistent with the requirement to notify the Minister of changes to a visa holder's online profile and user name, in existing paragraphs (e) and (f) of visa condition 8550 which requires notification not less than 2 working days before the change is to occur.

The purpose of this amendment is to provide clarity about what is required by the condition and to avoid any doubt as to when an offence has been committed.

The amendment strengthens the application of this condition to those individuals with relevant criminal offending involving minors and vulnerable people, and to reinforce community expectations about the protection of especially vulnerable members of society.

## **Part 2 Application Provisions**

### *Migration Regulations 1994*

### **Item [35] – In the appropriate position in Schedule 13**

This item inserts new Part 127 of Schedule 13 to the Migration Regulations, which provides

for the operation of amendments made by this instrument.

New subclause 12701(1) of Schedule 13 to the Migration Regulations provides that the amendments made to regulations 2.25AA and 2.25AB of the Migration Regulations by this instrument apply in relation to a visa granted on or after the commencement of the instrument.

New subclause 12701(2) of Schedule 13 to the Migration Regulations provides that regulation 2.25AE applies in relation to a visa granted before, on or after the commencement of the instrument.

New subclause 12701(3) of Schedule 13 to the Migration Regulations provides that the amendments to Schedules 2 and 8 to the Migration Regulations made by this instrument apply in relation to a visa granted on or after the commencement of the instrument.