



Migration Amendment (Bridging Visa Conditions) Regulations 2021

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 15 April 2021

David Hurley
Governor-General

By His Excellency's Command

Alex Hawke
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

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1 Name

This instrument is the *Migration Amendment (Bridging Visa Conditions) Regulations 2021*.

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.	16 April 2021

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Migration Regulations 1994

1 Subclause 050.616A(1) of Schedule 2

After “8207,”, insert “8303.”.

2 Subclause 050.616A(1) of Schedule 2

Omit “and 8548”, substitute “, 8514, 8548, 8550, 8551, 8552, 8553, 8554, 8555, 8556, 8560, 8562, 8563 and 8578”.

3 Clause 070.611 of Schedule 2

Omit “8506,”.

4 Subclause 070.612(2) of Schedule 2

Before “8550”, insert “8505”.

5 Subclause 070.612(2) of Schedule 2

Omit “and 8563”, substitute “, 8563, 8564 and 8578”.

6 At the end of Division 070.6 of Schedule 2

Add:

070.613

In addition to any other condition imposed by another provision of this Division, if the person to whom the visa would be granted has signed a code of behaviour that is in effect for the **Subclass 050 (Bridging (General)) visa**, condition 8566 may be imposed.

Note: The requirement to sign a code of behaviour may be imposed in accordance with section 195A of the Act.

070.614

In addition to any other condition imposed by another provision of this Division, condition 8506 may be imposed.

7 Clause 8566 of Schedule 8

Repeal the clause, substitute:

- 8566 If the person to whom the visa is granted has signed a code of behaviour that:
- (a) has been approved by the Minister in accordance with clause 4.1 of Schedule 4; and
 - (b) when the visa is granted, is in effect in relation to that visa or another visa; the holder must not breach the code.

Note: The requirement to sign a code of behaviour may be imposed by public interest criterion 4022 or in accordance with section 195A of the Act.

8 In the appropriate position in Schedule 13

Insert:

Part 96—Amendments made by the Migration Amendment (Bridging Visa Conditions) Regulations 2021

9601 Operation of Schedule 1

The amendments of these Regulations made by Schedule 1 to the *Migration Amendment (Bridging Visa Conditions) Regulations 2021* apply in relation to a bridging visa granted on or after the commencement of that Schedule.

EXPLANATORY STATEMENT

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

Migration Act 1958

Migration Amendment (Bridging Visa Conditions) Regulations 2021

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 2021* (the Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to allow the Minister to specify that certain bridging visas are subject to specified visa conditions.

In particular, the Regulations allow the Minister to impose a number of existing visa conditions, relating to the safety and security of the Australian community, on Subclass 050 (Bridging (General)) visas and Subclass 070 (Bridging (Removal Pending)) visas. The conditions may be imposed if the visa is granted by the Minister exercising his or her personal power under section 195A of the Migration Act to grant a visa to a detainee.

The amendments provide the Minister with additional options to manage unlawful non-citizens who are being considered for release from immigration detention. Permission to reside temporarily in the community on a bridging visa, pending visa processing or departure from Australia, is a privilege granted subject to satisfactory compliance with Australian laws and respect for the Australian community. The additional visa conditions will reinforce that fundamental requirement. The amendments more closely align the conditions available for the Subclass 050 visa with the conditions available for the Subclass 070 visa.

The matters dealt with in the Regulations are appropriate for implementation in regulations rather than by Parliamentary enactment. It has been the consistent practice of the Government of the day to provide for detailed visa conditions in the Migration Regulations. The Migration Act expressly provides, in section 41, for visa conditions to be prescribed in regulations.

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

A Statement of Compatibility with Human Rights has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is at Attachment B.

Details of the Regulations are set out in Attachment C.

The regulation changes relate to the immigration status of a non-citizen who holds a bridging visa granted by the Minister under section 195A of the Act. The changes are considered to be of a machinery nature as they add to the existing cancellation framework under the migration legislation, and apply in circumstances where the Minister exercises his or her personal power under section 195A to grant a visa to a non-citizen in immigration detention. As a result, external consultation was not considered necessary or appropriate. This accords with subsection 17(1) of the *Legislation Act 2003* (the Legislation Act), which requires that the rule-maker must be satisfied that there has been undertaken any consultation that is considered by the rule-maker to be appropriate and reasonably practicable.

The Office of Best Practice Regulation (OBPR) advised that a Regulation Impact Statement is not required (OBPR reference 43432).

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

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

The Department follows standard practices to notify clients about the Regulations, including updating its website and notifying peak bodies. The visa conditions imposed on bridging visas granted by the Minister under section 195A are explained to visa holders when they are released from immigration detention.

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

ATTACHMENT A

Subsection 504(1) of the *Migration Act 1958* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In addition, the following provisions may apply:

- subsection 31(1), which provides that there are to be prescribed classes of visas;
- subsection 31(3), which provides that the regulations may prescribe criteria for a visa or visas of a specified class (which, without limiting the generality of this subsection, may be a class provided for by sections 32, 36, 37, 37A or 38B but not by sections 33, 34, 35, 38 or 38B of the Act);
- subsection 41(1), which provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions;
- paragraph 41(2)(b), which provides that, without limiting subsection 41(1) of the Act, the regulations may provide that a visa, or visas of a specified class, are subject to a condition imposing restrictions about the work that may be done in Australia by the holder, which, without limiting the generality of this paragraph, may be restrictions on doing any work, or work other than specified work, or work of a specified kind;
- Subsection 41(3), which provides that in addition to any conditions specified under subsection 41(1) of the Act, the Minister may specify that a visa is subject to such conditions as are permitted by the regulations for the purposes of this subsection;
- Section 73, which provides that if the Minister is satisfied that an eligible non-citizen satisfies the criteria for a bridging visa as prescribed under subsection 31(3) of the Act, the Minister may grant a bridging visa permitting the non-citizen to remain in, or travel to, enter and remain in Australia during a specified period or until a specified event happens;
- subsection 195A(2), which provides that, if the Minister thinks that is in the public interest to do so, the Minister may grant a person to whom this section applies a visa of a particular class (whether or not the person has applied for the visa).

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 2021

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The *Migration Amendment (Bridging Visa Conditions) Regulations 2021* amends the *Migration Regulations 1994* (the Regulations).

The amending regulations make available four (4) discretionary visa conditions on the Subclass 070 (Bridging (Removal Pending)) visa and 13 discretionary visa conditions on the Subclass 050 (Bridging (General)) visa. These additional discretionary conditions can only be imposed by the Minister personally, and only if the Minister grants a Subclass 050 visa or Subclass 070 visa to an unlawful non-citizen in immigration detention using their Ministerial Intervention powers under section 195A of the *Migration Act 1958* (the Migration Act).

The amending regulations also:

- make amendments so that condition 8566 may be imposed on a Subclass 070 visa if the person to whom the visa would be granted has signed a code of behaviour that is in effect for the Subclass 050; and
- make one (1) existing mandatory condition on the Subclass 070 visa discretionary so that contradictory conditions are not imposed on the same visa.

The objective of the amending regulations is to strengthen the community placement options available to the Minister when considering whether to release an individual from immigration detention in cases where the individual poses a risk to public safety. Imposition of these conditions would be at the discretion of the Minister and it is intended they would be applied on a case by case basis and be proportionate to the potential community protection risks posed by the individual.

A visa holder in Australia is required to abide by the conditions of their visa. Should a visa holder breach a visa condition, their visa may be subject to cancellation action and the individual may be returned to immigration detention.

Conditions available for Subclass 070 visa grants by the Minister

The following discretionary conditions will be made available to the Minister to attach to a **Subclass 070** visa granted by the Minister under section 195A as a result of the amending regulations:

Condition #	Description
8505	The holder must continue to live at the address specified by the holder before grant of the visa.

8506*	The holder must notify Immigration at least 2 working days in advance of any change in the holder's residential address.
8564	The holder must not engage in criminal conduct.
8578	<p>The holder must notify Immigration of a change to any of the following within 14 days after the change occurs:</p> <ul style="list-style-type: none"> (a) the holder's residential address; (b) an email address of the holder; (c) a phone number of the holder; (d) the holder's passport details; (e) the address of an employer of the holder; f) the address of the location of a position in which the holder is employed
<p>* This condition was previously mandatory for all Subclass 070 visas, but has been made discretionary. This change recognises that the Minister can now impose condition 8505 (<i>the holder must continue to live at the address specified by the holder before the grant of the visa</i>) when granting a Subclass 070 under s 195A, and the two conditions would be contradictory if imposed on the same visa.</p>	

Discretionary imposition of condition 8566 on Subclass 070 visas granted to non-citizens who have signed the code of behaviour

New clause 070.613 makes it discretionary for condition 8566 to be imposed if the person to whom the visa would be granted has signed a code of behaviour that is in effect for the BVE.

Condition 8566, as amended, provides:

If the person to whom the visa is granted has signed a code of behaviour that:

- (a) *has been approved by the Minister in accordance with clause 4.1 of Schedule 4; and*
- (b) *when the visa is granted, is in effect in relation to that visa or another visa;*

the holder must not breach the code.

Note: The requirement to sign a code of behaviour may be imposed by public interest criterion 4022 or in accordance with section 195A of the Act.

Condition 8566 was created on 14 December 2013 by the *Migration Amendment (Bridging Visas – Code of Behaviour) Regulation 2013*, and provided '[i]f the person to whom the visa is granted has signed a code of behaviour that is in effect for the visa, the holder must not breach the code'.

At that time, the code of behaviour was only applicable to the Subclass 050 visa. The explanatory statement to the 2013 amendments noted that the condition was introduced to implement the Government's policy intention to hold people who are granted a visa by the Minister under section 195A to a higher level of accountability than was previously the case for these visa holders.

The code of behaviour was not applied to Subclass 070 visas at that time because of the limited use of those visas. However, given the potential overlap between the cohorts of non-citizens who are granted a Subclass 050 visa, and those who are granted a Subclass 070 visa, it is appropriate to make the imposition of the code of behaviour, together with condition 8566, an option for the Minister when granting Subclass 070 visas under section 195A.

The same code of behaviour applies for both visas, and its terms have not changed since it was created by legislative instrument on 14 December 2013 (www.legislation.gov.au/Details/F2013L02105).

Unless the non-citizen has already signed the code of behaviour in relation to a previous visa grant, the Minister will decide in each case, before exercising the power under section 195A to grant a Subclass 070 visa, whether the code must be signed. If the non-citizen has signed the code of behaviour, it will be open to the Minister to impose condition 8566 on the visa.

Conditions available for Subclass 050 visa grants by the Minister

The following additional discretionary conditions will be made available to the Minister to attach to a **Subclass 050** visa granted by the Minister under section 195A as a result of the amending regulations:

Condition #	Description
8303	The holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community.
8514	During the visa period of the visa, there must be no material change in the circumstances on the basis of which it was granted.
8550	The holder must notify the Minister of any change in the holder's personal details, including a change to any of the following contact information: (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;

	<p>(e) an online profile used by the holder;</p> <p>(f) a user name of the holder;</p> <p>not less than 2 working days before the change is to occur.</p>
8551	<p>(1) The holder must obtain the Minister's approval before taking up employment in the following occupations, or occupations of a similar kind:</p> <p>(a) occupations that involve the use of, or access to, chemicals of security concern;</p> <p>(b) occupations in the aviation or maritime industries;</p> <p>(c) occupations at facilities that handle security-sensitive biological agents.</p> <p>(2) In this clause:</p> <p>chemicals of security concern means chemicals specified by the Minister in an instrument in writing for this definition.</p> <p>Note: The Minister's instrument will refer to chemicals that have been identified, by the Council of Australian Governments, as chemicals of security concern. Without limiting what the Council might identify, the chemicals may include:</p> <p>(a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and</p> <p>(b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.</p>
8552	<p>The holder must notify the Minister of any change in the holder's employment details, not less than 2 working days before the change is to occur.</p>
8553	<p>The holder must not become involved in activities that are prejudicial to security (within the meaning of section 4 of the <i>Australian Security Intelligence Organisation Act 1979</i>).</p>
8554	<p>(1) The holder must not acquire any of the following goods:</p> <p>(a) weapons;</p> <p>(b) explosives;</p> <p>(c) material or documentation that provides instruction on the use of weapons or explosives.</p> <p>(2) In this clause:</p>

	<p>weapon means a thing made or adapted for use for inflicting bodily injury.</p>
8555	<p>The holder must obtain the Minister's approval before undertaking the following activities, or activities of a similar kind:</p> <ul style="list-style-type: none"> (a) flight training; (b) flying aircraft.
8556	<p>The holder must not communicate or associate with:</p> <ul style="list-style-type: none"> (a) an entity listed under Part 4 of the <i>Charter of the United Nations Act 1945</i>; or (b) an organisation prescribed by the regulations made under the <i>Criminal Code Act 1995</i> for the purposes of paragraph (b) of the definition of terrorist organisation in subsection 102.1(1) of the Criminal Code.
8560	<p>(1) The holder must obtain the Minister's approval before acquiring chemicals of security concern.</p> <p>(2) In this clause:</p> <p>chemicals of security concern means chemicals specified by the Minister in an instrument in writing for this definition.</p> <p>Note: The Minister's instrument will refer to chemicals that have been identified, by the Council of Australian Governments, as chemicals of security concern. Without limiting what the Council might identify, the chemicals may include:</p> <ul style="list-style-type: none"> (a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and (b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.
8562	<p>(1) The holder must not take up employment in:</p> <ul style="list-style-type: none"> (a) occupations that involve the use of, or access to, weapons or explosives; or (b) occupations of a similar kind. <p>(2) In this clause:</p> <p>weapon means a thing made or adapted for use for inflicting bodily injury.</p>

8563	<p>(1) The holder must not undertake the following activities, or activities of a similar kind:</p> <ul style="list-style-type: none"> (a) using or accessing weapons or explosives; (b) participating in training in the use of weapons or explosives; (c) possessing or accessing material or documentation that provides instruction on the use of weapons or explosives. <p>(2) In this clause:</p> <p>weapon means a thing made or adapted for use for inflicting bodily injury.</p>
8578	<p>The holder must notify Immigration of a change to any of the following within 14 days after the change occurs:</p> <ul style="list-style-type: none"> (a) the holder's residential address; (b) an email address of the holder; (c) a phone number of the holder; (d) the holder's passport details; (e) the address of an employer of the holder; (f) the address of the location of a position in which the holder is employed.

There are significant benefits to these amending regulations, including:

- Providing Ministers with a more rigorous set of discretionary conditions should they wish to consider releasing an individual who poses a higher level of security risk from held immigration detention.
- Strengthening the community placement options available for individuals who pose a public safety risk and to whom these stricter conditions may be imposed. Without these stricter conditions, the public safety risk posed by the individual would not be mitigated and the person may remain in immigration detention.
- The amending regulations would be consistent with the findings of the *Detention Capability Review* (2016). This review noted that while the Migration Act provides for the mandatory detention of unlawful non-citizens, the legal and policy framework also provides for the ability to manage the majority of individuals in the community through the grant of Bridging visas. The review proposed a status resolution focused, risk-based approach to placing individuals in the community, including the ability to flexibly impose a suite of visa conditions that are appropriate to the individual's risk profile. The review also recommended a closer alignment of conditions available for different Bridging visas.

Human rights implications

This Disallowable Legislative Instrument engages the following rights:

- The rights relating to the freedom of movement in Articles 12 of the *International Covenant on Civil and Political Rights* (ICCPR)
- The right to freedom of assembly and association contained in article 22 of the ICCPR
- Rights relating to privacy in Article 17 of the ICCPR
- The right to work and rights in work in Article 6 of the ICESCR

Rights relating to the freedom of movement in Articles 12 of the ICCPR

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 protection 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.*

Article 12 concerns those *lawfully within the territory of a State*, and Subclass 070 and Subclass 050 visa holders subject to the conditions will be considered to be *lawfully* residing in the community.

While condition 8505 (which requires holders of a Subclass 070 visa to remain living at the address specified by the holder prior to the grant of a visa) places limitations on this right, the limitation is reasonable, necessary and proportionate when balanced against community protection concerns, including protecting public order and national security.

The conditions are necessary when considering granting a Subclass 070 visa or Subclass 050 visa for high risk cases as they allow the Department to closely monitor the circumstances of the individual and respond appropriately if the individual engages in behaviour that may put the Australian community or public order at risk. As the conditions may apply in high risk cases, in light of the community protection considerations, the amending regulations present the least rights restrictive measure available to enable the grant of a Subclass 070 visa or Subclass 050 visa in high risk cases. It is intended that the Minister only imposes this condition on the visas of those assessed to pose community protection risks.

The 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...*

The amending regulations will allow the Minister to impose condition 8556 on Subclass 050 visa holders. This condition prohibits a visa holder from communicating or associating with an entity listed under Part 4 of the *Charter of the United Nations Act 1945*; or an organisation prescribed by the regulations made under the *Criminal Code Act 1995* for the purposes of paragraph (b) of the definition of terrorist organisation in subsection 102.1(1) of the *Criminal*

Code. Current Subclass 050 visa conditions do not allow the Minister to impose a condition which can mitigate the risks associated with high risk individuals with links to these entities of concern. The Minister is currently able to impose this condition on Subclass 070 visa holders.

It is intended that this discretionary condition would only be attached to visas granted to individuals who would pose a high risk to national security or public order if they were permitted to associate with these entities of concern. Limitation of the right to freedom of assembly and association is necessary and proportionate when considering granting a Subclass 050 visa to an individual who poses a high risk to public order and national security. It is also the least restrictive measure to address these concerns, as the limitation only applies to certain types of entities of concern. The amending regulations will allow persons who may have connections with entities of concern to be granted a Subclass 050 visa on the condition that they do not communicate with or associate with the entities of concern.

Rights relating to privacy in Article 17 of the ICCPR

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.

This right is engaged as the amending regulations allow the Minister to impose conditions 8550, 8552 and 8578 on holders of Subclass 050 visas and condition 8578 on holders of Subclass 070 visas, which require the visa holder to report specific personal information to the Department, such as changes to their address, contact details, and the place and nature of employment. Regular reporting assists the Department monitor a visa holder's personal situation and commence compliance action if necessary in the individual's circumstances. The conditions currently available to the Minister when considering the release of high risk individuals from immigration detention through the grant of a Subclass 050 visa or Subclass 070 visa under section 195A of the Migration Act are insufficient to mitigate the risk posed by high risk cases to national security.

Accordingly, while these requirements limit the right to privacy, the limitation is reasonable and necessary when granting a Subclass 050 visa and Subclass 070 visa due to the high risk the individuals pose to public safety and national security. The intention is that these conditions are only imposed by the Minister where it is considered that there is no less rights restrictive way of achieving the objective and only for cases where the individual has previously demonstrated that they may pose a public safety or national security risk. This could include circumstances where the individual has previously had a visa cancelled as a result of character or security concerns or where there is a history of non-compliance with migration laws.

There are adequate protections in place with regard to the Department's collection, use and disclosure of an individual's personal information, which is undertaken in accordance with, and subject to, domestic laws (including the *Privacy Act 1988* and the *Australian Border Force Act 2015*).

Rights relating to work in Article 6 of the ICESCR

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 allow the Minister to impose conditions 8551, 8555, 8560 and 8562 on Subclass 050 visa holders, which prohibit the visa holder from taking up certain high risk employment or requires the Minister to approve certain high risk occupations prior to commencement. The amending regulations therefore limit the work rights provided for in the ICESCR. It is intended that these conditions would only be attached to visas granted to individuals who pose a high risk to the community if they were permitted to engage in high risk employment without Ministerial approval. They are the least restrictive option, as they only prohibit the most high risk fields of employment, and it is possible for the Minister to approve the employment under conditions 8551, 8555 and 8560. Limitation of this right is necessary when the Minister is personally considering granting of a Subclass 050 visa under s195A of the Migration Act to a high risk individual and the discretionary imposition of these conditions by the Minister personally is proportionate to the potential risk posed by each individual to public safety and national security.

Conclusion

The measures in this Disallowable Legislative Instrument are for the legitimate purpose of protecting the Australian community by ensuring that, when the Minister is exercising his or her power under s195A of the Act, there are sufficient discretionary conditions available to address the individual potential concerns of granting a particular person a visa. The amending regulations support the management of non-citizens in the community wherever possible and helps ensure immigration detention is used as a last resort. Therefore, the amending regulations are compatible with human rights as, to the extent it may limit some human rights, those limitations are reasonable, necessary and proportionate to the objective.

Details of the Migration Amendment (Bridging Visa Conditions) Regulations 2021

Section 1 – Name

This section provides that the title of the Regulations is the *Migration Amendment (Bridging Visa Conditions) Regulations 2021* (the Regulations).

Section 2 – Commencement

Subsection 2(1) provides that each provision of the Regulations 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 table states that the Regulations commence on the day after registration on the Federal Register of Legislation.

A note clarifies that 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.

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

The purpose of this section is to provide for when the amendments made by the Regulations commence.

Section 3 – Authority

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

Section 4 – Schedules

The purpose of this section is to provide for how the amendments in these Regulations operate.

Schedule 1 – Amendments

Migration Regulations 1994

Item [1] – Subclause 050.616A(1) of Schedule 2

Item [2] – Subclause 050.616A(1) of Schedule 2

These items amend clause 050.616A of Schedule 2 to the Regulations so that the visa conditions applicable to Subclass 050 visas granted by the Minister under section 195A may

include any of the following additional conditions: 8303, 8514, 8550, 8551, 8552, 8553, 8554, 8555, 8556, 8560, 8562, 8563, and 8578.

All of the additional conditions are existing conditions, the text of which is set out in Schedule 8 to the Migration Regulations. Details of the conditions and the reason for inclusion in clause 050.616A are set out below. Breach of a visa condition may provide a basis for cancellation of the visa under paragraph 116(1)(b) of the Migration Act. This may include cancellation by the Minister, acting personally under subsection 133C(3) of the Migration Act. The Minister may exercise the power at subsection 133C(3) if he considers that it is in the public interest to do so. This provides the Minister with the capacity to respond quickly to any breach of visa conditions, which is particularly appropriate in relation to the conditions outlined below because of the risks to the Australian community to which they are directed.

Condition 8303 - The holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community

This visa condition has existed in the Migration Regulations since 1994. It is available for a wide range of temporary visas, and it is appropriate that it is now made available to the Minister when granting Subclass 050 visas under section 195A of the Act. The purpose of the condition is to communicate and reinforce the message that disruptive activities and violence are not acceptable.

Condition 8514 – During the visa period of the visa, there must be no material change in the circumstances on the basis of which it was granted

This visa condition has existed in the Migration Regulations since 1994. It is a mandatory condition for all grants of Subclass 070 visas. It was not previously available in relation to grants of Subclass 050 visas. It is appropriate that it is now made available to the Minister when granting Subclass 050 visas under section 195A of the Act. The purpose of the condition is to provide a basis for cancellation of the visa if there has been a material change in the circumstances on the basis of which it was granted. This amendment more closely aligns the conditions available for the Subclass 050 visa with the conditions available for the Subclass 070 visa.

Conditions 8550 to 8556 and 8560 to 8563

These conditions were created on 18 June 2013 by the *Migration Amendment Regulation 2013 (No. 4)*. The conditions were created for the Subclass 070 visa and have not previously been applied to any other visa. The conditions were created because of the possibility that some non-citizens who are in immigration detention, and whose removal from Australia is not reasonably practicable, may present risks to the Australian community, including risks relating to potential terrorism. The purpose of the conditions is to strengthen the controls in place to better manage these non-citizens in the community.

It is appropriate that the conditions are now made available for the Minister to impose on a discretionary basis when granting Subclass 050 visas under section 195A of the Migration Act. This additional flexibility in relation to the Subclass 050 will provide the Minister with additional options to manage cases of concern.

A summary of the conditions is set out below.

Condition 8550

Condition 8550 provides that a visa holder must notify the Minister of any change in the holder's personal details, including contact information, including a change to any of the following information:

- the holder's name;
- an address of the holder;
- a phone number of the holder;
- an email address of the holder;
- an online profile or other online identifier used by the holder; and
- a user name of the holder

not less than two working days before the change is to take place.

This close monitoring of personal details for visa holders may be appropriate in cases where there are potential security risks.

Condition 8551

Condition 8551 provides that a visa holder must obtain the Minister's approval before taking up employment in the following occupations, or occupations of a similar kind:

- occupations that involve the use of or access to chemicals of security concern;
- occupations in the aviation or maritime industries; and
- occupations at facilities that handle security-sensitive biological agents.

The condition provides that 'chemicals of security concern' means chemicals specified by the Minister in an instrument in writing for this definition. The current instrument is IMMI 13/083, which commenced on 13 July 2013 (www.legislation.gov.au/Details/F2013L01185).

The chemicals include:

- (a) industrial chemicals, including chemicals used in the retail, pharmaceutical or pool and spa sectors, that could be diverted from their lawful use to other purposes such as terrorist-related activities; and
- (b) agricultural and veterinary chemicals that could be diverted from their lawful use to other purposes, including terrorist-related activities.

The purpose of this condition is to allow the Minister to prevent visa holders working in occupations where there is a potential risk to security and to facilitate cancellation of the bridging visa if the visa holder takes up such employment without the Minister's approval.

Condition 8552

Condition 8552 provides that a visa holder must notify the Minister of any change in the holder's employment details, not less than two working days before the change is to take place.

As with condition 8550, this close monitoring of visa holders may be appropriate in cases where there are potential security risks.

Condition 8553

Condition 8553 provides that a visa holder must not become involved in activities that are prejudicial to security within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*.

In appropriate cases, this condition may be imposed to ensure that the visa holder is aware of the Australian government's position on activities that are prejudicial to security, and to reinforce the message that the visa may be cancelled if the visa holder engages in such activities.

Condition 8554

Condition 8554 provides that a visa holder must not acquire any of the following goods:

- weapons,
- explosives;
- material or documentation that provides instruction on the use of weapons or explosives.

The condition also defines the term 'weapon' to mean 'a thing made or adapted for use for inflicting bodily injury'.

The purpose of this condition is to facilitate possible cancellation of the bridging visa if the visa holder acquires any of these items.

Condition 8555

Condition 8555 provides that a visa holder must obtain the Minister's approval before undertaking the following activities, or activities of a similar kind:

- flight training; or
- flying aircraft.

The purpose of this condition is to facilitate possible cancellation of the bridging visa if the visa holder engages in such activities without the Minister's approval.

Condition 8556

Condition 8556 provides that a visa holder is not permitted to communicate or associate with entities listed under Part 4 of the *Charter of the United Nations Act 1945* (the Charter of the United Nations Act) or with organisations prescribed by regulations made under the *Criminal Code Act 1995* for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the Criminal Code.

Part 4 of the Charter of the United Nations Act provides the mechanism by which Australia implements the United Nations Security Council Financial Sanctions, also known as the

United Nations Terrorist Asset Freezing Regime. Approximately 1600 entities are currently listed.

There are currently 26 terrorist organisations prescribed for the purposes of the Criminal Code (see www.nationalsecurity.gov.au/Listedterroristorganisations).

The purpose of the amendment is to ensure that holders of a visa to which the visa condition applies do not communicate or associate with entities listed under Part 4 of the *Charter of the United Nations Act 1945* or with prescribed terrorist organisations, and to facilitate visa cancellation if such communication occurs or an association is identified.

Condition 8560

Condition 8560 provides that a visa holder must obtain the Minister's approval before acquiring chemicals of security concern. The definition of that term is the same as in condition 8551, outlined above.

The purpose of this condition is to facilitate possible cancellation of the bridging visa if the visa holder acquires such chemicals without the Minister's approval.

Condition 8561

Condition 8561 provides that, if the holder is directed by the Minister to attend an interview that relates to the holder's visa (including an interview with ASIO), the holder must comply with the direction.

The purpose of this condition is to assist in maintaining close supervision over visa holders who may be a security risk, and to facilitate the cancellation of the visa if the visa holder fails to attend an interview as directed.

Condition 8562

Condition 8562 provides that a visa holder must not take up employment in occupations that involve the use of, or access to, weapons or explosives, or occupations of a similar kind.

The purpose of this condition is to allow the Minister to prevent visa holders working in occupations where there is a potential risk to security and to facilitate cancellation of the bridging visa if the visa holder takes up such employment.

Condition 8563

Condition 8563 provides that a visa holder must not undertake the following activities, or activities of a similar kind:

- using or accessing weapons or explosives;
- participating in training in the use of weapons or explosives; and
- possessing or accessing material or documentation that provides instruction on the use of weapons or explosives.

The purpose of this condition is to facilitate possible cancellation of the bridging visa if the visa holder engages in such activities without the Minister's approval.

Condition 8578

Condition 8578 provides that the holder must notify Immigration of a change to any of the following within 14 days after the change occurs: (a) the holder's residential address; (b) an email address of the holder; (c) a phone number of the holder; (d) the holder's passport details; (e) the address of the employer; (f) the address of the location of a position in which the holder is employed.

This visa condition was created on 16 November 2019 by the *Migration Amendment (New Skilled Regional Visas) Regulations 2019* to facilitate the monitoring of holders of regional skilled visas who have undertaken to live, work and study in regional areas. The condition is being made available for the purpose of Subclass 050 visas granted by the Minister because this level of monitoring of bridging visas holders may be appropriate in some cases.

Item [3] – Clause 070.611 of Schedule 2

This item amends clause 070.611 of Schedule 2 to make visa condition 8506 a discretionary condition for the Subclass 070 visa, rather than a mandatory condition.

Condition 8506 states that *the holder must notify immigration at least 2 working days in advance of any change in the holders address*.

This condition can no longer operate as a mandatory condition for all Subclass 070 visas because it would be inconsistent with the discretionary condition 8505 which has been included by item 4 below. Condition 8505 states that *the holder must continue to live at the address specified by the holder before the grant of the visa*.

By changing condition 8506 to a discretionary condition, the Minister, when granting a Subclass 070 visa under section 195A of the Act, will have a choice about which of conditions 8505 and 8506 to impose in a particular case, noting that the Minister will also have other options, in conditions 8550 (two working days in advance of the change, with enhanced reporting requirements) and 8578 (within 14 days after the change).

Item [4] – Subclause 070.612(2) of Schedule 2

Item [5] – Subclause 070.612(2) of Schedule 2

These items amend subclause 070.612(2) of Schedule 2 to the Regulations so that the visa conditions applicable to Subclass 070 visas granted by the Minister under section 195A may include any of the following additional conditions: 8505, 8564, and 8578.

The purpose of this amendment is to expand the choice of visa conditions that are available to the Minister when exercising the power in section 195A to grant a Subclass 070 visa, and to align with the conditions that are available to the Minister when granting Subclass 050.

Conditions 8505 and 8564 are already available for Subclass 050, and condition 8578 is made available for Subclass 050 by item 2 above. See that item for a description of condition 8578.

Condition 8505

Condition 8505 provides that the holder must continue to live at the address specified by the holder before the grant of the visa.

This visa condition has existed in the Migration Regulations since 1994. It is used in three other bridging visa subclasses (Subclass 050, Subclass 051 and Subclass 060). The availability of the condition in Subclass 070 will expand the Minister's options in relation to the monitoring of visa holders and align the options for Subclass 050 and Subclass 070 when the visa is granted by the Minister under section 195A.

Condition 8564

Condition 8564 provides that the holder must not engage in criminal conduct.

This visa condition has existed in the Migration Regulations since 29 June 2013. At that time it applied only to the Subclass 050 visa. The Explanatory Statement for the amendment noted that *"the Government has become increasingly concerned about BVE holders who engage in criminal conduct or represent a risk to public safety. Previously, there was no condition in the Principal Regulations which could be imposed on a visa holder that requires that they do not engage in criminal conduct. The purpose of this condition is to allow condition 8564 to be imposed on a Subclass 050 visa. This sends a strong message to Subclass 050 visa holders about the behaviour expected of them when they are in the Australian Community."*

It is appropriate that this condition should also be available to the Minister when granting Subclass 070 visas under section 195A of the Act. As noted above, the condition imparts an important message to bridging visa holders who may be tempted to commit criminal offences, and will facilitate visa cancellation if such conduct occurs.

Item [6] – At the end of Division 070.6 of Schedule 2

This item inserts new clause 070.613 to impose condition 8566, as a discretionary condition for the Subclass 070 visa. See also item 7 below, which amends condition 8566. Following that amendment, the clause will state:

If the person to whom the visa is granted has signed a code of behaviour that:

- (a) has been approved by the Minister in accordance with clause 4.1 of Schedule 4; and*
- (b) when the visa is granted, is in effect in relation to that visa or another visa;*

the holder must not breach the code.

Note: The requirement to sign a code of behaviour may be imposed by public interest criterion 4022 or in accordance with section 195A of the Act.

Condition 8566 was created on 14 December 2013 by the *Migration Amendment (Bridging Visas – Code of Behaviour) Regulation 2013* and provided *'[i]f the person to whom the visa is granted has signed a code of behaviour that is in effect for the visa, the holder must not breach the code'*.

At that time, the code of behaviour was only applicable to the Subclass 050 visa. The explanatory statement to the 2013 amendments noted that the condition was introduced to

implement the Government's policy intention to hold people who are granted a visa by the Minister under section 195A to a higher level of accountability that was previously the case for these visa holders.

The code of behaviour was not applied to the Subclass 070 visa at that time because of the limited use of that visa. However, given the potential overlap between the cohorts of non-citizens who are granted a Subclass 050 visa, and those who are granted a Subclass 070 visa, it is appropriate to rationalise the position by also making the imposition of the code of behaviour an option for the Minister when granting Subclass 070 visas using the section 195A power.

The same code of behaviour applies for both visas, and its terms have not changed since it was created by legislative instrument on 14 December 2013 (www.legislation.gov.au/Details/F2013L02105). Before exercising the power under section 195A to grant a Subclass 070 visa, the Minister will decide in each case whether the code of behaviour must be signed (unless already signed in relation to a previous visa grant) and whether condition 8566 will be imposed.

Item [7] – Clause 8566 of Schedule 8

As explained at item 6 above, condition 8566 has been amended to provide:

If the person to whom the visa is granted has signed a code of behaviour that:

- (a) has been approved by the Minister in accordance with clause 4.1 of Schedule 4; and*
- (b) when the visa is granted, is in effect in relation to that visa or another visa;*

the holder must not breach the code.

Note: The requirement to sign a code of behaviour may be imposed by public interest criterion 4022 or in accordance with section 195A of the Act.

This amendment ensures that condition 8566 operates in circumstances where the condition has been imposed on a Subclass 070 because the holder has signed a code of behaviour that is in effect for the Subclass 050.

The amendment condition also clarifies how condition 8566 will apply to a visa holder who has that condition imposed on their visa in the event that the current code of behaviour is repealed and replaced. In effect:

- if the visa holder signed a code of behaviour before the visa was granted, and that code was in effect at the time of grant, then they must continue to abide by the terms of the code while the visa is in effect, even if the code has subsequently been repealed;
- if the visa holder signed a code of behaviour before the visa was granted, but that code was repealed before the visa was granted, then the visa holder is not required to abide by the terms of the code.

Item [8] – In the appropriate position in Schedule 13

This item inserts a new Part 96 into Schedule 13 to the Regulations. Schedule 13 is the location of application and transitional provisions for amendments to the Regulations.

New clause 9601 provides that the amendments made by the *Migration Amendment (Bridging Visa Conditions) Regulations 2021* apply in relation to bridging visas granted on or after the commencement date, which is the day after the *Migration Amendment (Bridging Visa Conditions) Regulations 2021* are registered on the Federal Register of Legislation.