Treasury Laws Amendment (Working Holiday Maker Reform) Act 2016

No. 89, 2016

An Act to amend the law relating to taxation and migration, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

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Treasury Laws Amendment (Working Holiday Maker Reform) Act 2016

No. 89, 2016

An Act to amend the law relating to taxation and migration, and for related purposes

[*Assented to 2 December 2016*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (Working Holiday Maker Reform) Act 2016*.

2 Commencement

(1) Each provision of this Act 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. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	2 December 2016
2. Schedule 1	The later of: (a) 1 July 2017; and (b) the day Part 1 of Schedule 1 to the *Income Tax Rates Amendment (Working Holiday Maker Reform) Act 2016* commences. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	1 July 2017 (paragraph (a) applies)
3. Schedules 2 to 4	At the same time as Part 1 of Schedule 1 to the *Income Tax Rates Amendment (Working Holiday Maker Reform) Act 2016* commences.	2 December 2016

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Visa application charges

Migration Regulations 1994

1 Paragraphs 1224A(2)(a) and 1225(2)(a) of Schedule 1

Omit “$440”, substitute “$390”.

2 In the appropriate position in Schedule 13

Insert:

Part 59—Amendments made by the Treasury Laws Amendment (Working Holiday Maker Reform) Act 2016

5901 Operation of Schedule 1

The amendments of these Regulations made by Schedule 1 to the *Treasury Laws Amendment (Working Holiday Maker Reform) Act 2016* apply in relation to an application for a visa made on or after the commencement of that Schedule.

Schedule 2—Registration of employers of working holiday makers

A New Tax System (Australian Business Number) Act 1999

1 After paragraph 26(3)(jb)

Insert:

(jc) whether the entity is registered under section 16-147 in Schedule 1 to the *Taxation Administration Act 1953*, and (if it is so registered) the day the registration took effect;

(jd) whether the entity's registration under that section has been cancelled under section 16-148 in that Schedule, and (if it has been cancelled) the day the cancellation took effect;

Income Tax Assessment Act 1997

2 Subsection 995-1(1)

Insert:

working holiday maker has the meaning given by subsection 3A(1) of the *Income Tax Rates Act 1986*.

working holiday taxable income has the meaning given by subsections 3A(2) and (3) of the *Income Tax Rates Act 1986*.

Taxation Administration Act 1953

3 After paragraph 15-30(f) in Schedule 1

Insert:

(fa) in relation to withholding payments that are *working holiday taxable income—whether an entity is registered under section 16-147;

4 At the end of Subdivision 16-BA in Schedule 1

Add:

Registration of employers of working holiday makers

16-146 Employers of working holiday makers must be registered

(1) An entity must apply to the Commissioner to register under section 16-147 if:

(a) the entity must pay an amount to the Commissioner under subsection 16-70(1) from salary, wages, commission, bonuses or allowances it pays to an individual as the individual's *working holiday taxable income; and

(b) in a case where a period has been determined under subsection 16-148(5) during which the entity cannot apply under this section—the period has ended.

(2) The entity must apply in the *approved form by the day on which the entity is first required to withhold an amount under Division 12 from salary, wages, commission, bonuses or allowances it pays to an individual as the individual's *working holiday taxable income.

(3) However, the Commissioner may allow a longer period for applying.

(4) An entity that contravenes this section is liable to an administrative penalty of 20 penalty units.

Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

Note 2: Division 298 contains machinery provisions for administrative and civil penalties.

(5) This section does not affect an obligation that an entity has under section 16-140.

16-147 Registering employers of working holiday makers

(1) The Commissioner must register an entity under this section if, and only if, the entity:

(a) has applied under section 16-146 for registration; and

(b) has made a declaration to the Commissioner, in the *approved form, that states that the entity:

(i) has a genuine business requirement to employ one or more *working holiday makers; and

(ii) agrees to comply with the *Fair Work Act 2009* in relation to its employment of any individual who is a working holiday maker; and

(iii) agrees to check that any individual it employs as a working holiday maker holds a visa that causes that person to be a working holiday maker; and

(c) has given to the Commissioner, in the approved form, information relating to its employment, or proposed employment, of working holiday makers.

(2) Subparagraph (1)(b)(i) does not apply if the entity is not carrying on a *business.

(3) The registration takes effect on the day determined by the Commissioner.

Notification of the Commissioner's decision

(4) The Commissioner must notify the entity of:

(a) the Commissioner's decision on the application; and

(b) if the Commissioner decides to register the entity—the day on which the registration takes effect;

within 30 days after the making of the application.

Note: The decision on the application is reviewable (see section 20-80).

(5) If the Commissioner decides to register the entity, the *Australian Business Registrar must enter in the *Australian Business Register a statement that the entity is registered under this section. The statement must specify the day on which the registration takes effect.

(6) Entry of the statement in the *Australian Business Register under subsection (5) is taken to be a notification of the entity for the purposes of subsection (4).

(7) A failure to comply with subsection (4) or (5) does not affect the validity of the Commissioner's decision.

Basis of registration

(8) A registration under this section is granted on the basis that:

(a) the registration may be cancelled under section 16-148; and

(b) the registration may be cancelled, suspended, varied or made subject to conditions by or under later legislation; and

(c) no compensation is payable if the registration is cancelled, suspended, varied or made subject to conditions as mentioned in any of the above paragraphs.

16-148 Cancelling the registration of employers of working holiday makers

(1) The Commissioner may cancel an entity's registration under section 16-147 if:

(a) the entity advises the Commissioner, in the *approved form, that the entity does not employ, and does not intend to employ, any individual who is a *working holiday maker; or

(b) the Commissioner is satisfied that:

(i) the entity; or

(ii) if the entity is a partnership—any of the partners; or

(iii) if the entity is a company—any director, shareholder or employee of the company who participates in the management or control of the company; or

(iv) if the entity is a trustee of a trust—any appointer of trustees of the trust, or any person who participates in the control of the trust;

is not a fit and proper person.

(2) The cancellation takes effect on the day determined by the Commissioner. The day must not be earlier than the day on which notice of the cancellation is given under subsection (6).

(3) If the Commissioner is considering whether the entity, or another person mentioned in subparagraph (1)(b)(ii), (iii) or (iv), is a fit and proper person, the Commissioner must give the entity a notice that:

(a) informs the entity accordingly; and

(b) invites the entity to make submissions to the Commissioner on the matter within 28 days after the Commissioner gives the notice.

(4) Without limiting the matters to which the Commissioner may have regard in considering whether the entity, or another person

mentioned in subparagraph (1)(b)(ii), (iii) or (iv), is a fit and proper person, the Commissioner must have regard to:

(a) whether a court has made a finding, in proceedings commenced by the Fair Work Ombudsman, that the entity has contravened the *Fair Work Act 2009*; and

(b) whether the entity has failed to withhold amounts as required by Division 12; and

(c) any relevant information the entity has provided in submissions to the Commissioner within the period specified in paragraph (3)(b).

(5) The Commissioner must, having regard to the reasons for the cancellation, determine a period, starting when the cancellation takes effect, during which the entity cannot apply under section 16-146 for registration.

Notification of the cancellation

(6) The Commissioner must notify the entity of:

(a) the cancellation; and

(b) the day on which the cancellation takes effect; and

(c) the period determined under subsection (5) for the cancellation.

Note: A decision to cancel, including a determination under subsection (5), is reviewable (see section 20-80).

(7) The *Australian Business Registrar must enter in the *Australian Business Register a statement that the entity's registration under section 16-147 has been cancelled. The statement must specify the day on which the cancellation takes effect.

(8) A failure to comply with subsection (6) or (7) does not affect the validity of the Commissioner's decision.

5 Section 20-80 in Schedule 1 (after table item 60)

Insert:

62	Decision under section 16-147 not to register an entity that has applied to be registered
63	Decision under section 16-148 to cancel a registration (including making a determination under subsection 16-148(5))

6 Application of amendments

The amendments made by this Schedule apply in relation to amounts required to be paid to the Commissioner under subsection 16-70(1) in Schedule 1 to the *Taxation Administration Act 1953* if those amounts are required under Division 12 in that Schedule to be withheld on or after 1 January 2017.

Schedule 3—Reporting on working holiday makers

Taxation Administration Act 1953

1 Division 352 in Schedule 1 (heading)

Repeal the heading, substitute:

Division 352—Commissioner's reporting obligations

2 Section 352-1 in Schedule 1

Omit "an annual report on the working of the indirect tax laws", substitute "annual reports on the working of the indirect tax laws and on working holiday makers".

3 At the end of Division 352 in Schedule 1

Add:

Subdivision 352-C—Reporting on working holiday makers

Table of sections

352-25 Commissioner must prepare annual report on working holiday makers

352-25 Commissioner must prepare annual report on working holiday makers

(1) As soon as practicable after 30 June in each year, the Commissioner must prepare and give to the Minister a report relating to:

(a) the taxation of *working holiday makers; and

(b) the registration process referred to in sections 16-146 to 16-148.

(2) Without limiting subsection (1), the report must include statistics and information derived by the Commissioner from that registration process.

(3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

Schedule 4—Protected information

Taxation Administration Act 1953

1 Subsection 355-65(8) in Schedule 1 (cell at table item 5, column headed "and the record or disclosure …")

Repeal the cell, substitute:

is for the purpose of ensuring an entity's compliance with the *Fair Work Act 2009*.

2 Application of amendments

The amendments made by this Schedule apply in relation to disclosures of information on or after 1 January 2017 (whether the information was acquired before, on or after that day).

[*Minister's second reading speech made in—*
House of Representatives on 12 October 2016
Senate on 7 November 2016]

(144/16)