# EXPLANATORY STATEMENT

Select Legislative Instrument No. 163, 2014

Issued by the Minister for Immigration and Border Protection

*Migration Act 1958*

*Australian Citizenship Act 2007*

*Migration Legislation Amendment (2014 Measures No. 2) Regulation 2014*

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing all matters which by the Migration 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 Migration Act.

Section 54 of the *Australian Citizenship Act 2007* (the Citizenship Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Citizenship Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Citizenship Act.

In addition, regulations may be made pursuant to the provisions of the Migration Act and Citizenship Act detailed in Attachment A.

The purpose of the *Migration Legislation Amendment (2014 Measures No. 2) Regulation 2014* (the Regulation) is to amend the *Migration Regulations 1994* (the Migration Regulations) and the *Australian Citizenship Regulations 2007* (the Citizenship Regulations) to strengthen and improve immigration and citizenship policy.

In particular, the Regulation amends the Migration Regulations to:

- extend the entry period (the period between the grant of the visa and entry into Australia) and maximum period of stay (the period between entry into Australia and exit out of Australia) from three months to six months for a Subclass 400 (Temporary Work (Short Stay Activity)) visa to provide greater flexibility within the temporary work visa programme;

- facilitate automated processing of persons departing Australia by providing that a completed passenger card must be provided to either an officer, an authorised system or deposited at a place of a kind specified in a legislative instrument made by the Minister (for example, a drop box at an airport);

- allow the Minister to authorise the disclosure of certain information (including personal identifiers) about visa holders which can currently be disclosed to the Australian Federal Police or the police force or police service of a State or Territory (the police), to the CrimTrac Agency (CrimTrac). CrimTrac is an executive agency that provides information-sharing services to the police. Providing this information to CrimTrac is a more efficient way of sharing the information;

- expand the scope of personal information that can be disclosed to the police to include certain identification reference numbers, and to allow those identifiers and certain information currently disclosable to the police to be disclosed to the CrimTrac Agency. This assists in the ability to correctly identify persons and their interactions with the police for the purposes of assessing compliance with visa conditions and determining whether to revoke or vary a residence determination;

- allow applicants for Student visas who are enrolled in Advanced Diploma courses with an approved education provider to access streamlined visa processing arrangements. Streamlined visa processing arrangements already apply to certain Higher Education courses and providers. This amendment extends the streamlined arrangements to Advanced Diploma courses in the Vocational Education and Training sector as well as the Higher Education sector;

- amend the definition of 'financial institution' applicable to all Student visas to clarify that both the financial institution and the regime under which that institute operates must meet effective prudential assurance criteria; and

- create an exception to the exclusion periods applied by public interest criterion (PIC) 4020. PIC 4020 provides that a person is precluded from being granted certain visas for a certain period if the person or a family member is refused a visa because of provision of a bogus document or false or misleading information, or for failing to satisfy the Minister as to their identity in a visa application. These amendments exempt persons who were minors at the time of the refused visa application from being subject to the exclusion period.

The Regulation also amends the Citizenship Regulations:

- as a consequence of the *Australian Citizenship Amendment (Intercountry Adoption) Bill 2014* (the Bill) which, if legislated, would ensure that a person could be eligible for Australian citizenship by adoption in accordance with a bilateral arrangement. The Citizenship Act provides that the Minister must register all persons who become an Australian citizen by adoption, in a manner prescribed in the Citizenship Regulations. This amendment adds a reference to persons who become an Australian citizen by adoption in accordance with a bilateral arrangement to ensure that the requirement to register those persons as Australian citizens can be complied with. The amendment only commences if the Bill is passed; and

- to update references to instruments made by the Minister that enable a person to pay fees at the correct exchange rate for an application made under the Citizenship Act in a foreign country and using a foreign currency. The instruments will be updated on 3 November 2014 to include the Nigerian local currency and on 1 January 2015 to update the exchange rates and foreign currencies that may be used to pay fees in specified countries.

Statements of Compatibility with Human Rights (Statements) have been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statements' overall assessment is that the Regulation is compatible with human rights. A copy of the Statements is at Attachment B.

Details of the Regulation are set out in Attachment C.

The Migration Act and the Citizenship Act specify no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Office of Best Practice Regulation (OBPR) has been consulted in relation to the amendments made by the Regulation:

- regarding the amendments made by Schedule 1, OBPR advises that the amendments are minor and a regulation impact statement is not required. The OBPR consultation reference is 16675;

- regarding the amendments made by Schedule 2, OBPR advises that the proposal does not appear to have a regulatory impact upon business, community organisations or individuals and a regulation impact statement is not required. The OBPR consultation reference is 16357;

- regarding the amendments made by Schedule 3, OBPR were consulted twice in relation to different aspects of the amendments. OBPR advises that the amendment that allows disclosing information to CrimTrac are minor and machinery in nature and therefore a regulation impact statement is not required. The OBPR consultation reference is 16867. OBPR further advises in relation to the disclosure of the Central Names Index number and the Client ID number that it would not impose new regulatory compliance costs on businesses, individuals or community organizations and therefore a regulation impact statement was not required. The OBPR consultation reference is 17457;

- regarding the amendments made by Schedule 4, the regulation impact statement requirements have been met. The OBPR consultation reference is 16815;

- regarding the amendments made by Schedule 5, OBPR advises that the changes have a minor impact on individuals and no further analysis in the form of a regulation impact statement is required. The OBPR consultation reference is 16893;

- regarding the amendments made by Schedule 6, OBPR advises that the changes are machinery in nature and do not impose new regulatory compliance costs on businesses, individuals or community organisations. The OBPR consultation reference is 17655;

- regarding the amendments made by Schedule 7, OBPR advises that the amendments are machinery in nature so a regulatory impact statement is not required. The OBPR consultation reference is 17194.

Other consultation was undertaken on the Regulation as outlined here:

- Regarding the amendments made by Schedule 1, more than 70 relevant stakeholders, including government agencies, migration agents and sporting bodies were consulted on the nature of the amendments. The Department of Immigration and Border Protection (the department) also engages on a regular basis with relevant stakeholders to ensure the Subclass 400 visa aligns with industry, business and key government agency requirements in relation to major sporting events. The changes are a direct result of stakeholder feedback received, since the Subclass 400 visa commenced in March 2013 that greater flexibility in the visa validity settings is required.

- Regarding the amendments made by Schedule 2, the department manages the passenger card on behalf of the Australian Government. The Passenger Data Steering Committee (PDSC) is an interdepartmental committee which meets biannually to set the strategic direction of the passenger card and passenger information collection at the border, consideration of card content, design and certain border management/processing issues. The core membership of the PDSC includes the department, the Australian Customs and Border Protection Service, the Australian Bureau of Statistics, the Department of Agriculture, the Australian Taxation Office, the Australian Transaction Reports and Analysis Centre and the Department of Health and Ageing. Consultation has been undertaken with the PDSC regarding the changes to the collection of passenger cards. Consultation has also been undertaken with airport corporations through the PDSC as well as in other forums such as the National Passenger Facilitation Committee (NPFC). The NPFC includes representation from a number of key Commonwealth agencies, airport corporations, tourism councils and international airlines. Airport corporations see the move to automated passenger cards and automated processing as contributing to reducing airport congestion and improving passenger facilitation and the overall traveller experience at airports.

- Regarding the amendments made by Schedule 3, the department has hosted a number of meetings with the police since late 2013. Through these meetings, the department has ensured that the police have been apprised of departmental compliance functions and how information disclosure can assist with the efficient and effective undertaking of departmental compliance activities. Following consultation with the police concerning the development of the overarching memorandum of understanding for the disclosure of information and how information may be used and managed, it was proposed that information provision under existing systems maintained and operated by the CrimTrac Agency would best meet the police requirements for timely and usable data. This is because it will enable name and address searching functionality without requiring any additional systems development by the police. Streamlining police access to data ensures that the compliance role of the department receives the highest possible support by the police. An information technology solution between the department, CrimTrac and the police is currently being designed. Design considerations include ensuring that the solution meets data usage, storage and disposal requirements as defined within the memorandum of understanding. The department also consulted with the Privacy Commissioner about the specifics of this amendment. The Privacy Commissioner made a number of suggestions regarding the form of the amendments, and those suggestions are reflected in the amendments and discussed in detail in the Statement of Compatibility with Human Rights for this amendment at Attachment B.

- Regarding the amendments made by Schedule 4, relevant Commonwealth agencies, including the Department of Prime Minister and Cabinet, Department of Education and Department of Industry, were consulted. Consultation included the benefits of allowing student visa applicants who are enrolled in courses of study for the award of an Advanced Diploma to be able to access similar streamlined visa processing arrangements to those available to applicants who are enrolled in courses of study for the award of a Bachelor, Masters or Doctorate degree. Consideration was given to various issues, including integrity concerns about how to ensure that potential education providers or their educational business partners could attract applicants who are of low immigration risk to accord with the intention for streamlined visa processing. The department had also engaged on a regular basis with relevant stakeholders, including education providers, to manage existing streamlined visa processing arrangements and ensure that concerns raised by stakeholders could be resolved or attended to accordingly.

- Regarding the amendments made by Schedule 5, no further consultation was undertaken because the amendments are minor in nature and do not substantially alter existing arrangements. This accords with a circumstance where consultation may not be necessary under section 18 of the *Legislative Instrument Act 2003* (the Legislative Instruments Act);

- Regarding the amendments made by Schedule 6, no further consultation was undertaken because the amendments are machinery in nature and do not substantially alter existing arrangements. This accords with a circumstance where consultation may not be necessary under section 18 of the Legislative Instruments Act.

- Regarding the amendments made by Schedule 7, no further consultation was undertaken because the amendments are machinery in nature and do not substantially alter existing arrangements. This accords with a circumstance where consultation may not be necessary under section 18 of the Legislative Instruments Act.

The Regulation is a legislative instrument for the purposes of the Legislative Instruments Act.

Schedules 1, 2, 3, 4, 5, 7 and 8 of the Regulation commence on 23 November 2014.

Item 1 of Schedule 6 to the Regulation commences on the later of:
- 23 November 2014; and
- the day after the *Australian Citizenship Amendment (Intercountry Adoption) Act 2014* commences.

However, the provisions do not commence at all if the *Australian Citizenship Amendment (Intercountry Adoption) Act 2014* does not commence.

Item 2 of Schedule 6 to the Regulation commences on 3 November 2014.

Item 3 of Schedule 6 to the Regulation commences on 1 January 2015.

**ATTACHMENT A**

## AUTHORISING PROVISIONS

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provides that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing all matters which by the Migration 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 Migration Act.

In addition, the following provisions may apply:

- subsection 29(2) of the Migration Act, which provides that, without limiting subsection 29(1), a visa to travel to, enter and remain in Australia may be one to:
    - travel to and enter Australia during a prescribed or specified period;
    - if, and only if, the holder travels to and enters during that period, remain in Australia during the a prescribed or specified period or indefinitely;
- subsection 29(3) of the Migration Act, which provides that, without limiting subsection 29(1), a visa to travel, enter and remain in Australia may be one to:
    - travel to and enter Australia during a prescribed or specified period; and
    - if, and only if, the holder travels to and enters during that period:
        - remain in it during a prescribed or specified period or indefinitely; and
        - if the holder leaves Australia during a prescribed or specified period, travel to and re-enter it during a prescribed or specified period;
- subsection 31(3) of the Migration Act, which provides that the *Migration Regulations 1994* (the Migration 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 section 32, 36, 37, 37A or 38B but not by section 33, 34, 35, 38 and 38A);
- subsection 40(1) of the Migration Act, which provides that the Migration Regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- subsection 46(1) of the Migration Act, which relevantly provides that, subject to subsections 46(1A), (2) and (2A), an application for a visa is valid if, and only if:
    - it is for a visa of a class specified in the application; and
    - it satisfies the criteria and requirements prescribed under this section; and
    - subject to the Migration Regulations providing otherwise, any visa application charge that the Migration Regulations require to be paid at the time when the application is made, has been paid; and
    - any fees payable in respect of it under the Migration Regulations have been paid; and

  - it is not prevented by section 48 (visa refused or cancelled earlier), 48A (protection visa), 91E (CPA and safe third countries), 91K (temporary safe haven visa), 91P (non-citizens with access to protection from third countries), 161 (criminal justice), 164D (enforcement visa), 195 (detainees) or 501E (visa refused or cancelled on character grounds);
- subparagraph 65(1)(a)(ii) of the Migration Act, which relevantly provides that, after considering a valid application for a visa, the Minister, if satisfied that the other criteria for it prescribed by the Migration Act or the Migration Regulations have been satisfied, is to grant the visa;
- paragraph 65(1)(b) of the Migration Act, which provides that, after considering a valid application for a visa, the Minister, if not so satisfied, is to refuse to grant the visa;
- subsection 197AB(1) of the Migration Act, which provides that, if the Minister thinks it is in the public interest to do so, the Minister may make a determination (residence determination) that one or more specified persons to whom this Subdivision (from section 197AA through to section 197AG) applies are to reside at a specified place, instead of being detained at a place covered by the definition of immigration detention in subsection 5(1);
- subsection 197AB(2) of the Migration Act, which provides that a residence determination must specify the person or persons covered by the determination by name, not by description of a class of persons, and specify the conditions to be complied with by the person or persons covered by the determination;
- subsection 197AD(1) of the Migration Act, which provides, if the Minister thinks that it is in the public interest to do so, the Minister may, at any time, revoke or vary a residence determination in any respect (subject to subsection 197AD(2));
- paragraph 504(1)(c) of the Migration Act, which relevantly provides that the regulations may make provision for or in relation to the furnishing or obtaining of information with respect to:
  - persons on board a vessel arriving at a port in Australia in the course of, or at the conclusion of, a voyage or flight that commenced at, or during which the vessel called at, a place outside Australia; and
  - persons on board a vessel leaving a port in Australia and bound for, or calling at, a place outside Australia; and
  - persons on board an aircraft arriving at or departing from an airport in Australia, being an aircraft operated by an international air carrier; and
- subsection 506(1) of the Migration Act, which provides that regulations under paragraph 504(1)(c) may provide for the giving of different information about different classes of people.

Section 54 of the *Australian Citizenship Act 2007* (the Citizenship Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Citizenship Act.

In addition, the following provisions may apply:

- section 19E of the Citizenship Act, which provides that if the Minister approves the person becoming an Australian citizen, the Minister must register the person in the manner prescribed by the *Australian Citizenship Regulations 2007* (Citizenship Regulations);
- paragraph 46(1)(d) of the Citizenship Act, which relevantly provides that an application made under a provision of the Citizenship Act must be accompanied by the fee (if any) prescribed by the Citizenship Regulations; and
- subsection 46(3) of the Citizenship Act, which provides that the Citizenship Regulations may make provision for and in relation to the remission, refund or waiver of any fees of a kind referred to in paragraph 46(1)(d) of the Citizenship Act.

**ATTACHMENT B**

## Statement of Compatibility with Human Rights

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

**Migration Legislation Amendment (2014 Measures No. 2) Regulation 2014**

This legislative amendment 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 Legislative Instrument – Schedule 1**

This item amends the *Migration Regulations 1994* to allow Subclass 400 (Temporary Work (Short Stay Activity)) visa (Subclass 400) visa holders to travel to and enter Australia within six months after the date of visa grant (previously this setting was three months). The amendments also extend the maximum period of stay from three months to six months. The definition of "non-ongoing", as it applies to the Subclass 400 visa, has also been amended to reflect the extended maximum period of stay. This amendment ensures the definition of "non-ongoing" and the maximum period of stay for Subclass 400 visa holders is consistent.

The new visa validity settings provide greater flexibility across all streams in the Subclass 400 visa and are advantageous for business, applicants for the Subclass 400 visa (Subclass 400 visa applicants) and visa processing offices by:

- allowing Subclass 400 applicants to apply up to six months before their intended travel;
- supporting businesses in the planning and management of projects and major events;
- providing flexibility to certain applicants that have a genuine need to remain in Australia for up to six months; and
- having the ability to process visa applications over a longer period of time leading up to the commencement of major events.

**Human rights implications**

The amendments in Schedule 1 of the Regulations have been considered against each of the seven core international human rights treaties. The legislative amendments do not engage any of the applicable rights or freedoms.

**Conclusion**

The amendments in Schedule 1 of the Regulations are compatible with human rights as they do not raise any human rights issues.

**Overview of the Legislative Instrument – Schedule 2**

Amendment to regulation 3.01 of the *Migration Regulations 1994* (the Regulations) to facilitate automated processing of persons departing Australia by providing that a completed passenger card must be provided to either an officer, an authorised system or deposited at a place of a kind specified in a legislative instrument made by the Minister (for example, a drop box at an airport).

Regulation 3.01 of the Regulations will be amended to allow persons departing Australia to provide completed passenger cards to an officer or an authorised system, or deposit the completed passenger card at a place of a kind specified in a legislative instrument made by the Minister.

**Human rights implications**

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

**Conclusion**

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

**Overview of the Legislative Instrument – Schedule 3**

As a result of regulation amendments made in December 2013 (*Migration Amendment (Disclosure of Information) Regulation 2013*) and March 2014 (*Schedule 4 of Migration Amendment (2014 Measures No. 1) Regulation 2014*), regulation 5.34F of the *Migration Regulations 1994* (the Migration Regulations) permits the Department of Immigration and Border Protection (the department) to disclose certain information to the Australian Federal Police and to state and territory police (the police). This includes names, addresses, dates of birth, sex and immigration status of Bridging E visa (Class WE visa) holders and people subject to a residence determination (community detainees).

Schedule 3 to this regulation further amends regulation 5.34F to authorise the disclosure of personal information of Class WE visa holders and community detainees to the CrimTrac Agency (CrimTrac). CrimTrac, which falls within the Commonwealth Attorney General's Portfolio, is an Executive Agency responsible for providing national information-sharing services between Australia's police, law enforcement and national security agencies.

This regulation also amends regulation 5.34F to allow the disclosure of a unique identifier to prevent misidentification (the Central Names Index (CNI) Number, an identifier used by the National Automated Fingerprint Identification System) and the disclosure of the departmental Client ID reference number. These identifiers will be used in communication between the police and the department to ensure that positive identification of individuals is maintained and that parties are not required to resort to less reliable name searching methods.

Discussions between the department and the police representatives have indicated that the preferred method for receiving information from the department is through

a national data register, such as CrimTrac, and that provision of a unique identifier will assist in identification of an individual.

Should the police become aware that an individual is charged or is being investigated, they will support departmental compliance activities by alerting the department and providing relevant documentation so that community placement can be reviewed. With increased certainty of identification, the police will be better placed to support the work of the department.

Information sharing with police services through CrimTrac systems ensures that information is maintained within a controlled and protected environment. Providing access to this information through existing CrimTrac systems allows for an increased level of control of the information and increases the ability of the department to manage storage, usage and disposal of the information.

**Human rights implications**

The Parliamentary Joint Committee on Human Rights has taken an interest in the aforementioned amendments to regulation 5.34F in December 2013 and March 2014. The Committee provided extensive commentary and questions in their second report of the 44th Parliament and responses were provided and considered by the Committee in their fourth report. This amendment simply adds great specificity to the previous amendment.

This legislative instrument engages human rights related to Privacy; as recognised in article 17 of the *International Covenant on Civil and Political Rights* (ICCPR).

Article 17 states:

1. *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, not to unlawful attacks on his honour and reputation.*
2. *Everyone has the right to the protection of the law against such interference or attacks.*

The amendment made by Schedule 3 to this Regulation may be considered to place a limit on the privacy of Class WE visa holders in the community and community detainees. The right to privacy as outlined in article 17 of the ICCPR is not absolute and may be limited in the interests of public order. In this instance, the disclosure of personal information of Class WE visa holders and community detainees to CrimTrac, and the provision of a unique personal identifier to prevent misidentification, assists the Police in determining the identity of Class WE visa holders and community detainees. Through this identification process, the Police will then be better placed to notify the department, support the compliance work of the department and to also undertake community policing functions. CrimTrac provides a central database for use by the Police and minimises risk of misuse of the data, especially in its disposal. Inclusion of a unique personal identifier ensures that the Police can determine the identity of a Class WE visa holder or community detainee. Without this information, an individual may be inadvertently misidentified as an alleged perpetrator of a criminal offence. Use of CrimTrac systems, combined with provision of unique identifiers, will assist in mitigating this risk.

The department is in the process of putting in place formal arrangements through a memorandum of understanding with the Police services to cover the disclosure of the specific information and the Minister's expectations about how information will be used. To ensure protection of information, CrimTrac will also sign this single memorandum of understanding for information sharing. Provision of personal information will not commence until memorandum of understanding arrangements have been formally put in place.

Access to this information is only to be undertaken in relation to legitimate law enforcement activities. The memorandum of understanding will specify that lawful access within relevant police organisations is limited to those with a need to know. Furthermore, a match with the information held in the CrimTrac system is dependent on the Police processes being undertaken when identifying a person of interest.

The memorandum of understanding will also specify that compliance with information disclosure and storage requirements contained within Commonwealth, State and Territory laws, along with applicable internal governance remain in effect. The memorandum of understanding will address privacy and security requirements and that further dissemination of information not authorised by law is prohibited.

CrimTrac will be subject to the same information usage, storage and disposal requirements as federal, state and territory police services. The memorandum of understanding specifies that CrimTrac are the conduit for information disclosure to police but will not receive any information or documentation from police. All information from police will be provided directly to the department and CrimTrac will not be required to forward, store or dispose of any police information.

The terms of the memorandum of understanding will provide direction to CrimTrac on the requirements for superseding and destruction of data when it becomes outdated to ensure that Class WE visa holders and community detainees are no longer identified if their status changes.

This regulation change ensures that the disclosure is required or authorised by law, ensuring that such disclosures are consistent with the *Privacy Act 1988*.

The limitation of privacy contained in this legislative instrument is reasonable and lawful and supports the department's compliance activities, specifically by allowing prompt consideration of visa cancellation. As such, there is a clear and proportional connection between the objective of this amendment and the limitation of the right to privacy.

The department wrote to the Australian Privacy Commissioner seeking feedback regarding the (then) proposed change to the Migration Regulations to allow disclosure of personal information of Class WE visa holders and community detainees to CrimTrac and to provide certain unique identifiers.

In his written response, the Privacy Commissioner provided a number of suggestions to limit privacy risks as a result of the amendment. The department will formally respond to the Privacy Commissioner advising him on how his suggestions have been adopted.

In particular, the department is committed to ensuring that appropriate privacy checks and limitations are implemented through the wording of the amendment and through the memorandum of understanding that is being developed between the department, federal, state and territory police and CrimTrac.

The department will confirm to the Privacy Commissioner that to address the concerns that he raised, the amendment is narrowly drafted. It specifically lists the personal information that may be provided, and that the identifiers to be disclosed to police and CrimTrac are limited to the Central Name Index and the Client ID. Disclosure by the department of any other personal information or unique identifier as part of the information disclosure will not be allowed.

In addition, information to be provided will be in accordance with the Privacy Commissioner's requirement that it will be only inclusive of current BVE holders and community detainees.

Furthermore, the amendment defines the purpose for which personal information may be disclosed and the authorisation for the disclosure.

Also in accordance with suggestions made by the Privacy Commissioner, privacy checks will be included in the memorandum of understanding between the department, federal, state and territory police and CrimTrac. These checks will impose robust privacy practices and procedural requirements on police and CrimTrac for the usage, storage and disposal of information provided by the department and that the requirements apply irrespective of how the information is provided. The memorandum of understanding will also include specific guidance on how the unique identifiers may be used and that they are limited in their application and may not be adopted by police as their own identifier.

The memorandum of understanding will place obligations on police and CrimTrac in relation to assurance that information access is undertaken only by personnel with a legitimate policing need for access. The memorandum of understanding will also specify that CrimTrac will maintain an audit log so that inappropriate access can be identified.

The department will monitor the effectiveness of the information disclosure arrangements established through the memorandum of understanding and will undertake due diligence and oversight of police practices around usage, storage and disposal of information provided. The Police and CrimTrac have been informed that this may require on-site access by departmental officers.

**Conclusion**

The amendment made by Schedule 3 of the Regulation is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**Overview of the Legislative Instrument – Schedule 4**

Streamlined visa processing (SVP) arrangements have been in place since March 2012 for international students studying bachelors, masters, doctoral degrees or non-award programmes at specified Australian universities. From 22 March 2014, SVP arrangements were extended to low immigration risk non-university higher education providers. The amendments made by this Schedule will provide a SVP arrangement for eligible students enrolled in a course of study for the award of an Advanced Diploma.

Generally, student visa applications are assessed under the Assessment Level (AL) Framework. There are three ALs in the student visa programme and they serve to align student visa evidentiary requirements to the immigration risk posed by applicants by country and education sector. AL 1 represents the lowest immigration risk and AL 3 the highest. The higher the AL, the greater the evidence an applicant is required to demonstrate to support their claims for the grant of a student visa.

Since the introduction of SVP, eligible students can also be assessed under SVP arrangements. Unlike the AL Framework, these students are subject to lower evidentiary requirements, irrespective of their country of origin or education sector. Students recruited under SVP arrangements are generally considered to have lower immigration risk as education providers take on the additional responsibility of vetting students for their genuineness.

The reason for extending SVP to eligible Advanced Diploma students is to improve the competitiveness of the vocational educational and training (VET) sector and bring it in line with the higher education sector. Since the commencement of SVP in 2012, higher education sector visa grants have increased. However, the VET Sector visa grants have not grown at the same rate. The extension of SVP arrangements to eligible Advanced Diploma students will give VET providers direct access to SVP.

The amendments in Schedule 4 will amend provisions relating to the Subclass 572 (VET Sector) visa and the Subclass 573 (Higher Education Sector) visa so that applicants enrolled in Advanced Diploma courses at participating education providers have access to SVP. The related legislative instrument (IMMI 14/007) is repealed and a new legislative instrument will be made to specify participating education providers will also be amended to include new providers.

**Human rights implications**

Prospective international students can apply for a student visa overseas or within Australia. Australia's human rights obligations are engaged only in relation to those persons within its territory and/or jurisdiction. As such, the following analysis of the human rights implications of the amendments relate only to *applicants applying for the relevant visas whilst in Australia*.

Article 26 of the International Covenant on Civil and Political Rights (ICCPR) – Protection against discrimination on grounds of nationality

Article 26 of the ICCPR provides that:

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

However, not every treatment that differs among individuals or groups on any of the grounds mentioned in Article 26 will amount to prohibited discrimination. The UN Human Rights Committee has recognised that "*not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant*".

The SVP and AL Framework assigns risk upfront across all student visa subclasses. The Framework is structured on clear, objective and evidence-based criteria, including statistical analysis of refusal, cancellation and non-compliance rates. In reviewing AL settings, information from the department's service delivery network (overseas posts and visa processing offices) and other key stakeholder feedback (peak education bodies and relevant government agencies) is considered. Based on the quantitative and qualitative information, the level of evidentiary requirements that applicants must show are assigned to them by country and education sector. Low risk applicants have lower requirements in relation to financial capacity, English language ability, education qualifications etc.. while higher risk applicants have higher requirements.

International Students are also provided with an alternative application process outside of the AL Framework through SVP. Through this model SVP eligible students have lower evidentiary requirements (similar to AL 1) irrespective of their nationality. The department is generally able to assign these students lower immigration risk as education providers take on greater responsibility to ensure that the students they recruit are genuine. In essence, this means that generally SVP students have lower evidentiary requirements relating to financial capacity, English language requirements and educational qualifications.

This differentiation of visa requirements is necessary to ensure that the department has confidence that applicants are genuine students and not using the student visa programme for entering Australia for reasons other than studying. This differentiation can be considered reasonable and proportionate to achieve its objective of maintaining the integrity of Australia's student visa programme by preventing potential abuse from non-genuine international students. These assessment methods also assist Australia's reputation as a destination of choice for international study and ensure that the student visa programme can continue operating.

Therefore, although premised on differential treatment, the student visa assessment regime does not amount to prohibited discrimination as it is based on reasonable and objective criteria with the legitimate aim of preventing exploitation of visa applicants and preserving the integrity of Australia's education sector.

Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) - The recognition of the right to education

Article 13(1) of the ICESCR states that:

> *The States Parties to the present Covenant recognise the right of everyone to education…*

In relation to tertiary education in particular, Article 13(2)(c) of the ICESCR states that:

> *Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, in particular by the progressive introduction of free education.*

It is noted that Article 4 of ICESCR allows for limitations to the rights contained therein on the following basis:

> *The States Parties to the present Covenant recognise that, in the enjoyment of these rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.*

Limitations imposed by the student visa framework on non-citizens pursuing study in Australia are lawful by virtue of these amendments. The extension of the SVP arrangements to students studying Advanced Diplomas will benefit many potential international students without compromising on the integrity of the student visa programme or compromise the general welfare of society.

The student visa programme supports the purpose of promoting the general welfare in a democratic society. The Australian Government's student visa programme has been effective in delivering significant benefits to the nation. International students in Australia make an important contribution to Australia's economy. Additionally, international education serves to build cultural, trade and commercial links with other countries, enhancing Australia's national security and bilateral relations.

Under SVP, a more structured recruitment practice by education providers and immigration risk assessment by the department will ensure that only genuine students are granted visas. The recruitment of genuine students promotes the general welfare in a number of ways:

- genuine students are more likely to focus on an education outcome rather than other activities such as working illegally which can make them vulnerable to exploitation.
- as students are assessed for financial capacity, they are less likely to face hardship while living in Australia. They are also less likely to impact on other bodies such as welfare agencies, embassies, police and health providers.
- genuine students are more likely to abide by the conditions of their visa and depart Australia when their visa ends.
- as part of the assessment process, students have to show evidence that they have acceptable health cover in Australia ensuring their general wellbeing while in Australia.

Overall, it is open to all persons to apply to study in Australia under the SVP arrangements and the AL Framework. These risk based approaches are important as they ensure that only genuine international students can live and study in Australia and deters non-genuine students exploiting our visa system for purposes other than study.

**Conclusion**

The amendments made by Schedule 4 of the Regulation are compatible with human rights, because to the extent that the amendments may limit human rights they are reasonable, necessary and proportionate.

**Overview of the Legislative Instrument – Schedule 5**

The amendments to the *Migration Regulations 1994* (the Regulations) seek to allow minors (applicants under the age of 18) to be exempt from the exclusion periods specified in Public Interest Criterion (PIC) 4020 (2) and (2B) so they are not unfairly affected by the fraudulent actions of their parents or guardians.

*PIC 4020*

PIC 4020 was introduced in 2011 to strengthen the integrity of Australia's immigration programme by detecting and preventing visa fraud. PIC 4020 provides a ground to refuse the grant of a visa where there is evidence that the visa applicant has given, or caused to be given, to the Minister, an officer, the Migration Review Tribunal or a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:

- the application for the visa; or
- a visa that the applicant held in the period of 12 months before the application was made.

On 22 March 2014, an amendment to the *Migration* Regulations *1994* introduced an identity requirement into PIC 4020 so that:

- a visa must not be granted unless the Minister is satisfied of the identity of the person; and
- the decision to refuse to grant a visa will not be subject to waiver; and
- a 10 year exclusion period will apply to the grant of a visa where the previous visa was refused under PIC4020.

Prior to the current amendments being made, PIC 4020 provided that a three-year exclusion period was applicable, which had the effect that an applicant could not be granted certain visas if they had made a previous visa application where a bogus document or false or misleading information was detected, unless the three year period was waived under subclause 4020(4). A ten-year exclusion period was also applicable under subclause 4020(2B), with the effect that a person could not be granted certain visas if they had made a previous visa application where they were not able to satisfy the delegate of their identity. The purpose of imposing an exclusion period was to:

- deter visa fraud - both general deterrence, by sending a clear message to all potential visa applicants that Australia does not tolerate fraud against its migration program, and specific deterrence, to ensure an individual detected attempting to commit visa fraud is subject to a penalty; and

- prevent inefficient use of departmental resources where a person continues to make applications following a visa refusal on the basis of PIC 4020.

Applicants are still required to meet all other requirements of PIC 4020, they are only exempt from the exclusion periods in (2) and (2B) if the application for the refused visa was made when they were a minor. A person who is a minor when they, or a member of their family unit apply for a visa that is refused under subclause 4020(1) or 4020(2A) will not be prevented from lodging future applications by the exclusion periods (either as a minor or when they become adult) and would be assessed in their own right.

An exclusion period for fraud is imposed by other like-minded countries, including Australia's Five Country Conference (FCC) partners, the United States, Canada and the United Kingdom. The United States imposes a life ban; the United Kingdom imposes a ban of 10 years.

PIC 4020 is a 'one fails, all fail' criterion, whereby all applicants for a visa would not be granted a visa if a bogus document, or false or misleading information is provided by any of the applicants, or where any of the applicants fail to satisfy the delegate of their identity.

*Amendments to PIC 4020*

These changes will ensure that minors are not unfairly affected by the fraudulent actions of their parents or guardians by exempting them from the periods specified in PIC 4020(2) and (2B). The policy is based on the department's view that a minor should not be penalised for the fraudulent actions of a parent/s or guardian/s.

**Human rights implications**

This amendment applies both to minors who are onshore and those who are offshore at the time of application for a visa. Australia's human rights obligations are engaged only in relation to persons within its territory and/or jurisdiction. As such, the analysis of the human rights implications of this amendment is relevant only to the extent that it applies to persons who seek to apply for a visa whilst onshore (that is, in Australia at the time of visa application). PIC 4020 applies to all skilled migration, student, business skills, family and temporary visas, but not to Refugee and Humanitarian visas. In respect of people already onshore, Articles 3 and Articles 16(1) of the CRC may be relevant.

*Best interests of the child – Article 3 of the Convention on the Rights of the Child (CRC)*

Under Article 3 of the CRC, the best interests of the child are to be treated as a primary consideration in all actions concerning children. However, these may be outweighed by other considerations, including the legitimate objective of maintaining integrity in Australia's visa system.

The amendment provides that in the event of a child, as part of a family unit, being refused a visa on grounds of having failed to satisfy PIC 4020, they will not be subjected to the exclusion periods under PIC 4020(2) and PIC 4020(2B). This will allow the affected child to reapply in their own right once they have reached adulthood unhindered by their parent/s' or guardian/s' fraudulent activities. It will also allow for individual consideration to be given to each child's application, whether or not their parent or guardian has previously failed to satisfy PIC 4020, and in this way, to each child's best interests. This approach treats the best interests of the child, namely their ability to apply for a visa despite their parents' or guardians' fraudulent activity, as a primary consideration.

*Arbitrary or unlawful interference with family – Article 16(1) of the CRC*

Under article 16(1) of the CRC, children are not to be subjected to arbitrary or unlawful interference with his or her privacy, family or correspondence, nor to unlawful attacks on his or her honour and reputation. The amendment does not cause the separation of children from their parents or guardians, or impact upon the aim of keeping families together, as children of people who are found not to satisfy PIC 4020 will still be refused; rather, the impact of the amendment will only be that those children will not be subject to the exclusion period that would apply to their parents, and so they will be able to make an application for a visa despite their parents' or guardians' fraudulent activity. The amendments are consistent with the principle set out in Article 16(1) of the CRC.

**Conclusion**

The amendments made by Schedule 5 of the Regulation are compatible with human rights.

**Overview of the Legislative Instrument – Schedule 6**

Australian citizenship by adoption in accordance with a bilateral arrangement

The amendments proposed by the Australian Citizenship Amendment (Intercountry Adoption) Bill 2014 (Intercountry Adoption Bill) would allow for the acquisition of Australian citizenship by a person adopted outside Australia by an Australian citizen in accordance with a bilateral arrangement between Australia and another country. If the Intercountry Adoption Bill receives Royal Assent then a person would be eligible to apply for Australian citizenship under section 19C of the Citizenship Act, where they were adopted by an Australian citizen in accordance with the *Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption* or a bilateral arrangement.

Under section 19E of the Citizenship Act, if the Minister approves an adopted person discussed above becoming an Australian citizen, the Minister must register the person in a manner prescribed by the *Australian Citizenship Regulations 2007* (the Citizenship Regulations)

Old regulation 6 of the Citizenship Regulations provided that a person is registered by the Minister by:

- making a record of the fact that the person is an Australian citizen by adoption in accordance with the Hague Convention on Intercountry Adoption; and
- including the record on a data storage system kept by the Department of Immigration and Border Protection.

Regulation 6 of the Citizenship Regulations is amended to add a reference to a person who is an Australian citizen by adoption in accordance with a bilateral arrangement to ensure that the requirement to register new Australian citizens by adoption can be complied with.

Payment of fees for applications under the Citizenship Act

Regulation 12A of the Citizenship Regulations sets out, among other things, the foreign currencies and countries in which a citizenship application fee may be paid and how the exchange rate is to be calculated.

The acceptable foreign currencies and countries are set out in legislative instruments made under regulations 5.36(1) and 5.36(1A) of the Migration Regulations.

The relevant instruments, *Places and Currencies for Paying of Fees* and *Payment of Visa Application Charges and Fees in Foreign Currencies*, are updated in January and July each year and are given a new instrument number each time.

As of 3 November 2014, the instruments will be updated to include reference to the Nigerian local currency and the relevant exchange rate, in recognition that the Nigerian local currency will be accepted for applications in Nigeria. No amendments to the other exchange rates, prescribed currencies and prescribed places will be made at that time.

Consequently, subregulation 12A(7) of the Citizenship Regulations must also be amended to specify the updated instrument numbers that apply from 3 November 2014.

On 1 January 2015, the exchange rates, foreign currencies and specified places set out in the instruments will be updated thus requiring reference to the instruments to also be updated in subregulation 12A(7) of the Citizenship Regulations.

This amendment is merely technical in nature.

**Human rights implications**

The amendment has been assessed against the seven core international human rights treaties and does not engage any of the applicable rights or freedoms.

**Conclusion**

The amendments in Schedule 6 of the Regulation are compatible with human rights as they do not raise any human rights issues.

**Overview of the Legislative Instrument – Schedule 7**

The Regulation amends the definition of 'financial institution', previously in clause 5A101 of Schedule 5A, clause 5B101 of Schedule 5B, and subclause 580.111 of Schedule 2 to the Migration Regulations. The new definition is inserted into Regulation 1.03 to the Migration Regulations.

This amendment clarifies that if an applicant who is subject to assessment level 3 under the student visa Assessment Level (AL) Framework provides evidence of funds in the form of a money deposit or a bank loan to demonstrate their financial capacity, the financial institution used to demonstrate the funds must provide effective prudential assurance.

The previous definition of 'financial institution' in clause 5A101, clause 5B101 and subclause 580.111 stated:

> **financial institution**
> *means a body corporate that, as part of its normal activities:*
> *(a) takes money on deposit and makes advances of money; and*
> *(b) does so under a regulatory regime, governed by the central bank (or its equivalent) of the country in which it operates, that the Minister is satisfied provides effective prudential assurance.*

Amendments to this definition are necessary to remove ambiguity in the way it is currently worded in the Migration Regulations. If the definition remains as it is, there is a risk that it will be interpreted differently from how it is intended. The Courts have, for example, interpreted clause 5A101 to mean that it is the regime under which financial institutions operate that must provide effective prudential assurance, rather than individual financial institutions.

The practical effect of the Court's interpretation is that either every financial institution in a particular country must be accepted as legitimate (where the Minister is satisfied as to the regulatory regime in that country), or, conversely, no financial institutions in that country can be accepted as legitimate (where the Minister is not satisfied as to the regulatory regime). The practical effect of this second scenario would be that nobody from that country would be able to satisfy the delegate that they had the requisite financial capacity to study in Australia if they use a money deposit or a bank loan from a financial institution in that country.

Due to this interpretation, decision makers will not be able to lawfully make an assessment of individual financial institutions and refuse visa applications in cases where they are not satisfied that the financial institution provides effective prudential assurance. Every student visa refusal on the basis that the decision maker is not satisfied the funds are with or from an 'acceptable' financial institution would face a high risk of being overturned if challenged through judicial review. This outcome is of particular concern because of serious integrity issues in certain countries within which documents can be obtained through fraudulent activities or bribery and the actual funds are non-existent, even where the documentation issued by the financial institution is legitimate. Amending the definition of 'financial institution' will enhance integrity in the student visa programme.

**Human rights implications**

The amendments have been assessed against the seven core international human rights treaties.

Prospective international students can apply for a student visa overseas or within Australia. Australia's human rights obligations are engaged only in relation to those persons within its territory and/or jurisdiction. As such, the following analysis of the human rights implications of the regulation amendment relates only to applicants applying for the relevant visas whilst in Australia.

The right to education – Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

Article 13(1) of the ICESCR states that:

> *The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.*

The amendments apply so that where student visa applicants rely on financial institutions to provide evidence that they have sufficient funds, the Minister is satisfied that those financial institutions themselves, as well as the regime under which they operate, comply with effective prudential assurance requirements. They do not otherwise impact upon the existing definition of 'financial institution', which, prior to the amendments being made, already provided that the Minister must be satisfied that the regulatory regime, under which the institution operates, provides effective prudential assurance.

The amendments do not have an impact on the availability, accessibility or encouragement of education to a person who meets the requirements for a student visa. To the extent that they engage the right to education, they are considered reasonable, legitimate and proportionate for the objective of strengthening the integrity in the student visa programme.

The right to equality and non-discrimination – Article 26 of the International Covenant on Civil and Political Rights (ICCPR)

Article 26 of the ICCPR provides that:

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

The requirement that the financial institution used to demonstrate funds must meet the definition in Regulation 1.03 of the Migration Regulations only applies to applicants subject to assessment level 3 under the AL Framework. The reason for this is that assessment level 3 is the highest risk level under the AL Framework, and so this group must satisfy higher evidentiary requirements.

To this end, the definition of 'financial institution' provides safeguards to ensure that the funds demonstrated by applicants are genuinely available and students have genuine access to the funds. The amendments to the definition of 'financial institution' are intended for the legitimate objective of addressing integrity concerns in certain countries in which students and certain financial institutions engage in fraudulent activities in the provision of financial documentation for visa application purposes. Aside from this, the amendments do not amount to discrimination on the basis of any other ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

While lists of 'financial institutions' for student visas are currently available for certain countries, other options to demonstrate financial capacity are available to students. It is open for students to use a financial institution in Australia or another country if they do not wish to use those in the applicable lists from their own country. In addition to a money deposit and a bank loan from a 'financial institution', 'funds from an acceptable source' applicable to assessment level 3 applicants also include a loan and financial support from certain governments and organisations. Another option is obtaining a student visa through the streamlined visa processing arrangements available to students from any countries who are enrolled in an eligible course with an eligible education provider. Under those arrangements, the legislative requirements in relation to financial institutions and other evidentiary requirements specified in Schedules 5A and 5B to the Migration Regulations do not apply.

**Conclusion**

To the extent that the amendments made by Schedule 7 of the Regulation to the definition of 'financial institution' under the Migration Regulations engage the right to education and the right to equality and non-discrimination, in the circumstances, they are reasonable, legitimate and proportionate to the objective they are intended to achieve.

**The Hon. Scott Morrison MP**

**Minister for Immigration and Border Protection**

**ATTACHMENT C**

**Details of the *Migration Legislation Amendment (2014 Measures No. 2) Regulation 2014***

Section 1 – Name

This section provides that the title of the Regulation is the *Migration Legislation Amendment (2014 Measures No. 2) Regulation 2014* (the Regulation).

Section 2 – Commencement

This section provides that 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 and that any other statement in column 2 has the effect according to its terms.

Schedules 1, 2, 3, 4, 5, 7 and 8 of the Regulation commence on 23 November 2014.

Item 1 of Schedule 6 to the Regulation commences on the later of:

- 23 November 2014; and
- the day after the *Australian Citizenship Amendment (Intercountry Adoption) Act 2014* commences.

However, the provisions do not commence at all if the *Australian Citizenship Amendment (Intercountry Adoption) Act 2014* does not commence.

Item 2 of Schedule 6 to the Regulation commences on 3 November 2014.

Item 3 of Schedule 6 to the Regulation commences on 1 January 2015.

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

Section 3 – Authority

This section provides that the Regulation is made under the *Citizenship Act 2007* (the Citizenship Act) and the *Migration Act 1958* (the Migration Act).

The purpose of this section is to set out the Acts under which the Regulation is made.

Section 4 – Schedules

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

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

**Schedule 1 –Subclass 400 visas**

Item 1 – Clause 400.111 of Schedule 2 (paragraph (a) of the definition of *non-ongoing*)

This item omits the number "3" in paragraph (a) of the definition of "non-ongoing" under clause 400.111 of Schedule 2 to the *Migration Regulations 1994* (the Migration Regulations) and in its place substitute with "6".

The defined term "non-ongoing" sets out, for the purpose of satisfying a criterion for the grant of a Subclass 400 (Temporary Work (Short Stay Activity)) visa (Subclass 400 visa), the circumstances for which a person's proposed participation in an event or proposed engagement in an activity is non-ongoing.

The old definition relevantly provided that "the event, activity or work is likely to be completed within a continuous period of three months or less."

The new definition relevantly provides that "the event, activity or work is likely to be completed within a continuous period of six months or less."

This amendment is consequential to the amendment made by Item 3 of this Schedule, which, in effect, extends the maximum period a holder of a Subclass 400 visa may be permitted to remain in Australia after first entry from three to six months. Accordingly, this amendment ensures the definition of "non-ongoing" accords with the maximum period a holder of a Subclass 400 visa may be permitted to remain in Australia.

The purpose of this amendment is to ensure the definition of "non-ongoing" and the maximum period of stay for a Subclass 400 visa holder is consistent.

The effect of this amendment is that an event, activity or work related to an application for a Subclass 400 visa must be likely to be completed within six months rather than three months.

Item 2 – Paragraph 400.511(a) of Schedule 2

This item omits the number "3" in paragraph 400.511(a) of Schedule 2 to the Migration Regulations and in its place substitute with "6".

Old paragraph 400.511(a) of Schedule 2 provided that a holder of a Subclass 400 visa could travel to and enter Australia, within three months after the date of the grant of the visa.

New paragraph 400.511(a) of Schedule 2 provides that a holder of a Subclass 400 visa could travel to and enter Australia, within six months after the date of the grant of the visa.

The effect of the amendment is that the maximum period an applicant for a Subclass 400 visa has to enter Australia after the date of the grant of the visa is increased from three months to six months.

The purpose of this item is to provide event organisers and applicants with the flexibility to submit their Subclass 400 visa applications well in advance of their planned arrival date. In addition, the purpose is to enable the department to manage the processing of Subclass 400 visa applications over a longer period of time because it will likely reduce the influx of visa applications close to the commencement of major events.

Item 3 – Subparagraph 400.511(b)(i) of Schedule 2

This item omits the number "3" in subparagraph 400.511(b)(i) of Schedule 2 to the Migration Regulations and in its place substitute with "6".

Old paragraph 400.511(b)(i) of Schedule 2 provided a holder of a Subclass 400 visa may be granted a visa to remain in Australia for three months after first entry to Australia.

New paragraph 400.511(b) of Schedule 2 provides that a holder of a Subclass 400 visa may be granted a visa to remain in Australia for six months after first entry to Australia.

The effect of the amendment is that the maximum period an applicant for a Subclass 400 visa may be permitted to remain in Australia has increased from three to six months.

The purpose of this item is to provide greater flexibility within the Subclass 400 visa programme regarding the maximum period an applicant may be permitted to remain in Australia after first entry.

**Schedule 2 – Passenger cards**

Item 1 – Division 3.1 (heading)

This item repeals the heading of "Division 3.1 – Information to be given by arriving persons" and substitutes the new heading "Division 3.1 – Information to be given".

Old heading of Division 3.1 referred to information to be given by arriving persons.

New heading for Division 3.1 refers to information to be given.

The purpose and effect of this amendment is to provide a heading for Division 3.1 which better reflects the scope of Division 3.1, as that division relates to information to be given by persons departing Australia as well as persons arriving in Australia.

Item 2 – paragraph 3.01(3)(b)

This item repeals paragraph 3.01(3)(b) of Division 3.1 of Part 3 to the Regulations and substitutes new paragraphs 3.01(3)(b) and 3.01(3)(c).

Old paragraph 3.01(3)(b) provided that a person to whom regulation 3.01 applies must provide completed passenger cards to an officer. Regulation 3.01 applies to the classes of persons departing from or arriving in Australia as specified in subregulation 3.01(2).

New paragraphs 3.01(3)(b) and 3.01(3)(c) provide that a person who is required to complete a passenger card, in accordance with subregulation 3.01(2), must:

- if the person is arriving in Australia – provide the completed passenger card to an officer; and
- if the person is departing Australia – either:
    - provide the completed passenger card to an officer or an authorised system; or
    - deposit the completed passenger card at a place of a kind specified in a legislative instrument made by the Minister for this subparagraph.

The effect of this amendment is that a person departing Australia who is required to complete a passenger card may either provide the completed passenger card to an officer or an authorised system, or deposited the completed passenger card at a place of a kind specified in a legislative instrument made by the Minister. A place of a kind to be specified by the Minister may be a drop box or other receptacle for the deposit of completed passenger cards located in Australia's international airports.

The requirements for persons arriving in Australia are unchanged in that those persons must still provide the completed passenger cards to an officer.

The purpose of this amendment is to facilitate the automated processing for persons departing Australia by expanding the means by which a departing passenger may give their passenger cards. The option of giving passenger cards at a place of a kind specified in a legislative instrument made by the Minister provides an alternative means for the provision of passenger cards by departing passengers, other than to give to an officer.

Item 3 – regulation 3.02 (heading)

This item repeals the heading of regulation 3.02 of "Passenger card" and substitutes new heading "3.02 Passenger cards for persons entering Australia".

This is a consequential amendment relating to item 4, which provides for the questions that must be included in the passenger cards for persons entering Australia.

The purpose and effect of this amendment is to align the heading of regulation 3.02 with the scope of subregulation 3.02(1), as amended by Item 4.

Item 4 – subregulation 3.02(1)

This item amends subregulation 3.02(1) to insert the words "for a person entering Australia" immediately after the word "card".

Old subregulation 3.02(1) provided that a passenger card must include the following questions, or substantially similar questions:

- "Do you currently suffer from tuberculosis?"
- "Do you have any criminal convictions?"

New subregulation 3.02(1) provides that a passenger card for a person entering Australia must include the following questions, or substantially similar questions:

- "Do you currently suffer from tuberculosis?"
- "Do you have any criminal convictions?"

The purpose and effect of this amendment is to specify in subregulation 3.02(1) the questions that must be included in the passenger cards for persons entering Australia.

This amendment is required because the questions in subregulation 3.02(1) dealing with the issues of tuberculosis and criminal convictions are particularly relevant for persons arriving in Australia. The questions are only required to be included in passenger cards for persons entering Australia because those cards are used for specific purposes that are not relevant to persons departing Australia.

For example criminal convictions are relevant to the use of the card to grant a visa to persons arriving from New Zealand. The question about tuberculosis is relevant to determining whether or not a person arriving in Australia from another country should be referred to the Department of Health. Subregulation 3.02(1) is not required to apply to passenger cards for persons departing Australia as passenger cards for persons departing Australia are not required for those purposes.

Item 5 - subregulation 3.02(3)

This item amends subregulation 3.02(3) to omit "A" and substitute "The".

This amendment removes the more general reference to "a" passenger card in subregulation 3.02(2).

The purpose and effect of this amendment is to make clear that the reference to passenger card in subregulation 3.02(3) is to the passenger card referred to in subregulation 3.02(1).

**Schedule 3 – Disclosure of information to CrimTrac**

Item 1 – Regulation 1.03

This item inserts new definitions for the terms "CNI number" and "CrimTrac" into regulation 1.03 of Part 1 of the *Migration Regulation 1994* (the Migration Regulations).

"CNI Number" is defined to mean a central names index number generated by the National Automated Fingerprint Identification System maintained by or on behalf of CrimTrac.

"CrimTrac" is defined to mean the CrimTrac Agency, established as an Executive Agency by the Governor-General by order under section 65 of the *Public Service Act 1999.*

The purpose and effect of this item is to provide definitions for both these terms to be used in the amended regulation 5.34F of Division 5.6 of Part 5 to the Migration Regulations.

Item 2 – Regulation 5.34F (heading)

This item repeals the existing heading for regulation 5.34F of Division 5.6 of Part 5 to the Migration Regulations and substitutes a new heading.

Old heading was "5.34F Disclosure of information to police".

New heading is "5.34F Disclosure of information to police and CrimTrac".

This item is consequential to the amendment of subregulation 5.34F(2) by the amendment below.

The purpose and effect of this amendment is to reflect that under the amended subregulation 5.34F(2) information may be disclosed to both the Police and CrimTrac.

Item 3 – Subregulation 5.34F(2)

This item amends subregulation 5.34F(2) of Division 5.6 of Part 5 to the Migration Regulations to change the structure of the subregulation and to include the word "CrimTrac".

Old Subregulation 5.34F(2) provided that the Minister may authorise the disclosure of any information mentioned in subregulation 5.34F(4) about the person, or a class of such persons, to the Australian Federal Police or the police force or police service of a State or Territory.

New Subregulation 5.34F(2) provides that the Minister may authorise the disclosure of any information mentioned in subregulation 5.34F(4) about the person, or a class of such persons, to the Australian Federal Police, the police force or police service of a State or Territory or CrimTrac.

The effect of this amendment is to add CrimTrac as a body to whom information mentioned in subregulation 5.34F(4) may be disclosed.

The purpose of adding CrimTrac as a body is to ensure that the information is available to the police in the most effective and accessible form. If the information were not included in CrimTrac databases, the police would be required to match an individual's name against the information provided by the department by performing a manual search. Name searching is inherently inaccurate due to the high likelihood of transcription errors and spelling variations.

Relying on a manual search would also add to the administrative burden on the police and lower the accuracy of information provided to the department. By disclosing information under subregulation 5.34F(4) to CrimTrac, any match will automatically register when the police consult CrimTrac during the normal course of their work. This automation combined with the inclusion of unique identifiers makes it more likely that the police will be able to identify a Class WE visa holder or a person under a residence determination and inform the department of the identification. This provides the Minister with the best available information with which to determine whether

a Class WE visa holder has complied with the conditions of their visa, or whether a person under a residence determination should continue to be in the community.

The inclusion of information about Class WE visa holders and people under a residence determination on the CrimTrac system does not in any way suggest that those persons are criminals. Despite the name, CrimTrac's databases do not only contain information on criminals.

Item 4 – At the end of subregulation 5.34F(4)

This item inserts two new paragraphs into subregulation 5.34F(4) of Division 5.6 of Part 5 to the Migration Regulations.

Subregulation 5.34F(4) lists information for which the Minister may authorise the disclosure, under new subregulation 5.34F(2) about a person, or a class of such persons, to the police or CrimTrac.

In addition to the information that can already be disclosed about a person under subregulation 5.34F(4), new paragraph 5.34F(4)(f) provides that the CNI number of the person or persons can be disclosed, and new paragraph 5.34F(4)(g) provides that the client number of the person or persons can be disclosed.

Client number is defined in regulation 1.03 to mean a client identification number generated by an electronic system maintained by or on behalf of Immigration.

By enabling the Minister to authorise the disclosure of the CNI to the various bodies, the police will be able to identify Class WE visa holders and persons under a residence determination more accurately. This is because when the police provide a set of fingerprints to the National Automated Fingerprint Identification System, that system will match the CNI provided by the department, allowing the police to confirm that the individual is a Class WE visa holder or a person under a residence determination. police can then inform the department with confidence that no misidentification has taken place.

Further, by disclosing the client number to the various bodies, the information provided back to the department can be more accurately, and with greater certainty, matched to the relevant person. This is particularly important where a name is not sufficiently unique for identification, for example when the name is in widespread use, or when the name has multiple spellings.

The effect of this amendment is that the CNI number of the person or persons and the client number of the person or persons can now be disclosed.

The purpose of providing these two identifiers is to increase the accuracy and certainty of information received by the department to assist the Minister in determining whether a person has satisfied their visa conditions or if a person should continue to hold a residence determination.

**Schedule 4 –Subclass 572 and 573 visas and other matters**

The purpose of the amendments made by this Schedule is to introduce, for applicants for a Student (Temporary)(Class TU) visa (student visa applicants) who are enrolled in courses of study for the award of an Advanced Diploma, a streamlined visa processing arrangement (arrangement) that is similar to arrangements currently in place for eligible student visa applicants who are enrolled in courses of study for the award of a Bachelor, Masters or Doctorate degree.

The appropriate visa options for student visa applicants enrolled in courses of study for the award of an Advanced Diploma is the Subclass 572 (Vocational Education and Training Sector) visa (Subclass 572 visa) and the Subclass 573 (Higher Education Sector) visa (Subclass 573 visa). The relevant visa option for eligible student visa applicants enrolled with an eligible Vocational Education and Training (VET) provider or their educational business partners for the award of an Advanced Diploma is the Subclass 572 visa.

Likewise, the relevant visa option for eligible student visa applicants enrolled with an eligible Higher Education provider or their educational business partners for the award of an Advanced Diploma is the Subclass 573 visa.

The new arrangement does not affect or change the relevant visa option that will be required by the student visa applicants to undertake the relevant courses of study in Australia.

The items below will explain the purpose of the individual amendments made, how they operate and their effects.

Item 1 – Before subparagraph 1.40A(2)(b)(i)

This item inserts a new subparagraph 1.40A(2)(b)(ia) into regulation 1.40A of Part 1 of the Migration Regulations.

New subparagraph 1.40A(2)(b)(ia) provides, in effect, that the Minister is not required to specify a course if the course would be undertaken by an applicant for a Subclass 572 (Vocational Education and Training Sector) visa who would be an eligible vocational education and training student within the meaning of Part 572 of Schedule 2.

The purpose of this amendment is to exempt the Minister from the requirement to specify a course in an instrument in writing under regulation 1.40A, if the course is a course enrolled into by student visa applicants for a Subclass 572 visa who are eligible VET students within the meaning of Part 572 of Schedule 2 to the Migration Regulations.

Amendments made by item 4 below provide for new defined terms “educational business partner”, “eligible education provider” and “eligible vocational education and training student” to be inserted into clause 572.111 of Schedule 2 to the Migration Regulations, respectively.

The defined term "eligible vocational education and training student" relevantly sets out Advanced Diploma in the VET sector as a course of study that must be enrolled in, in order for student visa applicants to satisfy a requirement to access the new arrangement. As such, it is not necessary for the Minister to specify the course of study that must be enrolled into by an applicant for a Subclass 572 visa who would be an eligible vocational education and training student within the meaning of Part 572 of Schedule 2.

This amendment has the effect of ensuring that courses of study do not need to be specified by the Minister for student visa applicants who would be eligible vocational education and training students as the relevant courses are already specified in the requirements under the definition "eligible vocational education and training student".

Item 2 – Before paragraph 1.41(1A)(a)

This item inserts a new paragraph 1.41(1A)(aa) into subregulation 1.41(1A) of Part 1 to the Migration Regulations.

Regulation 1.41 requires the Minister to specify an assessment level for a kind of eligible passport in relation to each subclass of student visa, to which an applicant for a student visa who seeks to satisfy the primary criteria is subject to. The term "eligible passport" is defined in regulation 1.40.

Assessment levels within each student visa subclass ranges from assessment level 1 to 3, which by operation of subregulation 1.41(4) represents the varying degrees of immigration risk ranging from assessment level 1 (low) to assessment level 3 (high).

The higher the assessment level, the higher the minimum evidentiary standards a student visa applicant has to satisfy in respect of financial capacity, English language proficiency and other requirements. Assessment level requirements are set out in Schedules 5A and 5B to the Migration Regulations.

New paragraph 1.41(1A)(aa) provides, in effect, that an assessment level does not apply in relation to an eligible passport held by an applicant for a Subclass 572 (Vocational Education and Training Sector) visa who is an eligible vocational education and training student within the meaning of Part 572 of Schedule 2.

The purpose and effect of this amendment is to exempt a new cohort of eligible student visa applicants within the existing Subclass 572 visa framework from the assessment level regime. Under the new arrangement, the new cohort of student visa applicants is assessed against a new criterion in respect of financial capacity, English language proficiency and other relevant matters, inserted by item 8 below.

Item 3 – Before paragraph 1.42(7)(a)

This item inserts a new paragraph 1.42(7)(aa) into subregulation 1.42(7) of Part 1 to the Migration Regulations.

Regulation 1.42 sets out the assessment levels that student visa applicants are subject to. Relevantly, the default is provided by subregulation 1.42(1), which provides that an applicant for a student visa who seeks to satisfy the primary criteria is subject to the highest assessment level at the time of application for the relevant course of study for the subclass of student visa.

New paragraph 1.42(7)(aa) provides, in effect, that subregulations 1.42(1) to (6) do not apply to an applicant for a Subclass 572 (Vocational Education and Training Sector) visa who is an eligible vocational education and training Sector student within the meaning of Part 572 of Schedule 2.

Similar to the amendments made above, the purpose and effect of this amendment is to exempt a new cohort of eligible student visa applicants within the existing Subclass 572 visa framework from the assessment level regime. Under the new arrangement, the new cohort of student visa applicants is assessed against a new criterion in respect of financial capacity, English language proficiency and other relevant matters, inserted by item 8 below.

Item 4 – Clause 572.111 of Schedule 2

This item inserts new defined terms "educational business partner", "eligible education provider" and "eligible vocational education and training student" into clause 572.111 of Schedule 2 to the Migration Regulations.

New defined term "educational business partner", in relation to an eligible education provider, means an education provider specified as an educational business partner in an instrument made under clause 572.112.

New defined term "eligible education provider" means an education provider specified as an eligible education provider in an instrument made under clause 572.112.

New defined term "eligible vocational education and training student" means an applicant for a Subclass 572 visa in relation to whom the following apply:

- the applicant is enrolled in a principal course of study for the award of an advanced diploma in the vocational education and training sector;
- the principal course of study is provided by an eligible education provider;
- if the applicant proposes to undertake another course of study before, and for the purposes of, the principal course of study:
    - the applicant is also enrolled in that course; and
    - that course is provided by the eligible education provider or an educational business partner of the eligible education provider.

The term "principal course" is defined in regulation 1.40. It is intended that student visa applicants may also propose to undertake another course for the Subclass 572 visa, including a registered English Language Intensive Course for Overseas Students, a foundation course, or other pathway course (e.g. bridging course).

Similar to the amendments made above, the purpose and effect of this amendment is to exempt a new cohort of eligible student visa applicants within the existing Subclass 572 visa framework from the assessment level regime. Under the new arrangement, the new cohort of student visa applicants is assessed against a new criterion in respect of financial capacity, English language proficiency and other relevant matters, inserted by item 8 below.

It is intended that "eligible education providers" and their "educational business partners" are specified by the Minister by a legislative instrument made under new subclause 572.112, which is inserted by item 5 below.

Item 5 – At the end of Division 572.1 of Schedule 2

This item insets a new clause 572.112 into Part 572 of Schedule 2 to the Migration Regulations.

New clause 572.112 provides that, for this Part, the Minister may, by legislative instrument:

- specify an education provider as an eligible education provider; and
- specify one or more other education providers as educational business partners of the education provider mentioned in paragraph 572.112(a).

The purpose and effect of this amendment is to provide the Minister with the power to specify in a legislative instrument, those education providers and their educational business partners, that he or she has accepted to participate in the new arrangement in the Subclass 572 visa programme for the award of an Advanced Diploma in the VET Sector.

Item 6 – At the end of subdivision 572.21

This item inserts a new clause 572.212 into Part 572 of Schedule 2 to the Migration Regulations.

New clause 572.212 provides that, if the applicant is an eligible vocational education and training student, the applicant must have a confirmation of enrolment in each course of study for which the applicant is an eligible vocational education and training student.

The purpose of the amendment is to ensure that a student visa applicant who is an eligible vocational education and training student has a confirmation of enrolment for each course of study, including the principal course of study for an award of an Advanced Diploma enrolled with an eligible education provider or their educational business partners.

A confirmation of enrolment indicates the course of study and the provider at which the course is provided. Student visa applicants need to have confirmation of enrolment for each course of study for which they are an eligible vocational education and training student to satisfy new clause 572.212.

A student visa applicant is not considered to be an eligible VET student if the applicant does not have a confirmation of enrolment for each course of study for which he or she is an eligible VET student. In these circumstances, it is intended that new clause 572.212 would not apply to the student visa applicant.

Item 7 – Paragraph 572.223(1)(b) of Schedule 2

This item amends paragraph 572.223(1)(b) of Schedule 2 to the Migration Regulations to insert after the word "subclause", "(1A) or".

This is a technical amendment that is consequential to the amendments made below, which inserts a new subclause 572.223(1A) into Part 572 of Schedule 2 to the Migration Regulations.

The purpose and effect of this amendment is to ensure that the requirement for the Minister to be satisfied that the student visa applicant is a genuine applicant for entry and stay as a student includes the requirement that must be satisfied by applicants who are eligible VET student.

Item 8 – After subclause 572.223(1) of Schedule 2

This item inserts a new subclause 572.223(1A) into Part 572 of Schedule 2 to the Migration Regulations.

Clause 572.223 of Schedule 2 is a time of decision criterion for the grant of the Subclass 572 visa. Relevantly, paragraph 572.223(1)(b) requires the Minister to be satisfied that the applicant is a genuine applicant for entry and stay as a student because the applicant meets the requirements of subclause 573.223(2).

New subclause 572.223(1A) provides that, if the applicant is, and was, at the time of application, an eligible higher degree student who has a confirmation of enrolment in each course of study for which the applicant is an eligible vocational education and training student:

- the applicant gives the Minister evidence that the applicant has:
    - a level of English language proficiency that satisfies the applicant's eligible education provider; and
    - educational qualifications required by the eligible education provider; and
- the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
    - the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
    - any other relevant matter; and
- the Minister is satisfied that, while the applicant holds the visa, the applicant will have sufficient funds to meet:
    - the costs and expenses required to support the applicant during the proposed stay in Australia; and
    - the costs and expenses required to support each member (if any) of the applicant's family unit.

New subclause 573.223(1A) sets out new requirements relating to financial capacity, English language proficiency, and other relevant matters that apply to an applicant who is an eligible VET and has a confirmation of enrolment for each course of study for which the applicant is an eligible VET student.

The purpose of the amendment is to provide for a set of requirements that must be met by a student visa applicant who is an eligible VET student, which is separate to the requirements that must be met by an applicant who is not an eligible VET student.

The effect of this amendment is that a student visa applicant who is an eligible VET student would be assessed against requirements in respect of financial capacity, English language proficiency and other relevant matters that would be self-contained within Part 572 in Schedule 2 to the Migration Regulations.

The requirements in new subclause 572.223(1A) are broadly based on requirements for assessment level 1 (low risk) applicants, which have the least onerous evidentiary requirements. It is intended that the amendment reduce visa processing times for student visa applicants who are eligible VET students.

A further effect of this amendment is that, if a student visa applicant is an eligible VET student at time of application, but does not have a confirmation of enrolment for each course of study for which he or she is an eligible VET student at time of decision, the applicant is no longer considered to be an eligible VET student. In these circumstances, it is intended that new subclause 572.223(1A) would not apply to the student visa applicant and that applicant would be expected to meet the requirements in subclause 572.223(2).

Item 9 – Subclause 572.223(2) of Schedule 2

This item amends subclause 572.223(2) of Schedule 2 to the Migration Regulations by omitting all the words before paragraph (a) and in their place substitute with "(2) If subclause (1A) does not apply:".

This is a technical amendment that is consequential to the amendments made above, which sets out the requirements relating to financial capacity, English language proficiency, and other relevant matters that must be satisfied by student visa applicants who are eligible VET student.

The purpose and effect of this amendment is to clarify the requirements that must be satisfied by student visa applicants who are not eligible VET students.

Item 10 – Clause 572.231 of Schedule 2

This item repeals and substitutes clause 572.231 of Schedule 2 to the Migration Regulations.

Previous clause 572.231 provides that the applicant is enrolled in, or is the subject of a current offer of enrolment in, a course of study that is:

- a principal course; and
- of a type that was specified for Subclass 572 visas by the Minister in a legislative instrument:
    - made under regulation 1.40A; and
    - in force at the time the application was made.

Substituted clause 572.231 substantially mirrors the previous provision, but restrict the application of this provision to circumstances in which new subclause 572.223(1A) does not apply.

This is a technical amendment that is consequential to the amendments made by item 8 above, which sets out the requirements relating to financial capacity, English language proficiency, and other relevant matters that must be satisfied by student visa applicants who are eligible VET students.

Similar to the amendment made above, the purpose and effect of this amendment is to clarify the requirements that must be satisfied by student visa applicants who are not eligible VET students.

Item 11 – After subparagraph 572.322(b)(i) of Schedule 2

This item inserts a new subparagraph 572.322(b)(ia) into Part 572 of Schedule 2 to the Migration Regulations.

Clause 572.322 of Schedule 2 is a time of decision criterion for applicants seeking to satisfy the secondary criteria for the grant of the Subclass 572 visa and requires the applicant to be a member of the family unit of a primary person described in paragraph 572.322(a) or 572.322(b).

New subparagraph 572.322(b)(ia) provides, in effect, that the applicant is a member of the family unit of a person (the primary person) if the primary person satisfies the primary criteria in Subdivisions 572.21 and 572.22, and the primary person is an eligible vocational education and training student.

The purpose and effect of this amendment is to allow applicants seeking to satisfy the secondary criterion for the grant of the Subclass 572 visa to rely on a primary person who is an eligible VET student for the purposes of clause 573.322.

Item 12 – Clause 573.111 of Schedule 2 (before subparagraph (a)(i) of the definition of *eligible higher degree student*)

This item inserts a new subparagraph (ia) under the definition of "eligible higher degree student" in clause 573.111 of Schedule 2 to the Migration Regulations.

New subparagraph (ia) provides, in effect, that eligible higher degree students, for the purposes of Part 573 of Schedule 2, includes applicants that are enrolled in a principal course of study for the award of an Advanced Diploma in the higher education sector.

The amendments made by item 4 above inserted a new arrangement for courses of study for the award of an Advanced Diploma in the VET Sector, which is similar to the arrangement currently in clause 573.111 for courses of study for the award of a Bachelor degree or a Masters degree by coursework (existing arrangement).

It is intended that student visa applicants who have enrolled in courses of study for the award of an Advanced Diploma in the Higher Education Sector would also be able to access the existing arrangement.

The purpose and effect of this amendment is allow for student visa applicants who have enrolled in courses of study for the award of an Advanced Diploma in the Higher Education Sector to be able to access the existing arrangement for the grant of the Subclass 573 visa.

Item 13 – Clause 988.113 of Schedule 2

This item amends clause 988.113 of Schedule 2 to the Migration Regulations to insert the word "section" before the reference to "71A".

This is a technical amendment and is made for the purpose ensuring that the reference to "71A" is a reference to section 71A of the *Customs Act 1901*.

**Schedule 5 – Public interest criterion 4020**

Items 1 and 3 – Paragraphs 4020(2)(b) and 4020(2B)(b) of Schedule 4

These items omit the words "the application" and substitutes "to grant the visa" in paragraphs 4020(2)(b) and 4020(2B)(b) of Schedule 4 to the *Migration Regulation 1994* (the Migration Regulations).

This amendment is minor and technical in nature. By referring to "to grant the visa" rather than "the application" the wording of paragraph 4020(2)(b) and 4020(2B)(b) more closely reflects the language of section 65 of the Migration Act, which provides that the Minister must either grant or refuse to grant a visa. It is not intended that this will have any effect on the interpretation of these paragraphs; it is purely a technical amendment to provide consistency in wording across the Migration Regulations and the Migration Act.

Items 2 and 4 – After subclauses 4020(2) and 4020(2B) of Schedule 4

Items 2 and 4 inserts new subclauses 4020(2AA) and 4020(2BA) into clause 4020 (PIC 4020) of Schedule 4 to the Migration Regulations.

Subclause 4020(2AA) provides that subclause 4020(2) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.

Subclause 4020(2BA) provides that subclause 4020(2B) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.

To satisfy existing PIC 4020, an applicant must either satisfy subclauses (4020)(1), (2), (2A) and (2B), or satisfy subclause 4020(4).

Relevantly, subclause 4020(2) provides that the Minister is satisfied that during the period:

- starting 3 years before the application was made; and
- ending when the Minister makes a decision to grant or refuse the application,

the applicant and each member of a family unit of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause 4020(1).

Subclause 4020(2B) similarly provides that that the Minister is satisfied that during the period:

- starting 10 years before the application was made; and
- ending when the Minister makes a decision to grant or refuse the application,

the applicant and each member of a family unit of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause 4020(2A).

These existing subclauses effectively create exemption periods of three and/or ten years (respectively) where an applicant cannot be granted any visa for which PIC 4020 is a requirement, after being refused a visa under subclause 4020(1) or subclause 4020(2A) (respectively).

The intention of these items is that, if a person was refused a visa as a minor (the first refusal), they will not be refused a subsequent visa because they fall within an exemption period under subclauses 4020(1) or (2A) due to the first refusal.

The purpose of these items is to ensure that a person is not disadvantaged in applying for a visa by an application made when they were a minor because they would not be held accountable for the actions of a parent/guardian.

**Schedule 6 – Fees and adoption**

Item 1 – paragraph 6(a)

This item amends paragraph 6(a) of the *Australian Citizenship Regulations 2007* (the Citizenship Regulations) to insert the words "or a bilateral arrangement" after "Adoption".

Amendments proposed in the *Australian Citizenship Amendment (Intercountry Adoption) Bill 2014* (the Intercountry Adoption Bill) would allow a person to be eligible for Australian citizenship where the person was adopted outside Australia by an Australian citizen in accordance with a bilateral arrangement between Australia and specified countries not party to the *Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption* (Hague Convention).

If the Intercountry Adoption Bill receives Royal Assent then, under section 19C of the Citizenship Act, a person would be eligible to apply for Australian citizenship where that person was adopted by an Australian citizen in accordance with the Hague Convention or a bilateral arrangement.

Under current subsection 19D(1) of the Citizenship Act, if a person makes an application under section 19C of the Citizenship Act, the Minister must, by writing, approve or refuse to approve the person becoming an Australian citizen.

Under current section 19E of the Citizenship Act, if the Minister approves such a person becoming an Australian citizen the Minister must register the person in a manner prescribed by the Citizenship Regulations.

Old regulation 6 of the Citizenship Regulations provided that, for section 19E of the Citizenship Act, a person is registered by the Minister:

- making a record of the fact that the person is an Australian citizen by adoption in accordance with the Hague Convention on Intercountry Adoption; and
- including the record on a data storage system kept by the Department of Immigration and Border Protection.

New regulation 6 of the Citizenship Regulations largely replicates the wording of old regulation 6 and adds reference to a person who is an Australian citizen by adoption in accordance with a bilateral arrangement. The effect of new regulation 6 is that the Minister will be able to comply with the requirement to register new Australian citizens by adoption.

Since the amendment is consequential to the amendments proposed by the Intercountry Adoption Bill it will commence only if the Intercountry Adoption Bill receives the Royal Assent.

Item 2 – Subregulation 12A(7)

This item repeals current subregulation 12A(7) of the Citizenship Regulations and substitutes new subregulation 12A(7).

Regulation 12A of the Citizenship Regulations relevantly provides that payment of fees, for the purposes of certain applications made under the Citizenship Act, must also be made in accordance with the '*conversion instrument*' and '*places and currencies instrument'*.

The reference to *'conversion instrument'* is a reference to a legislative instrument made by the Minister under subregulation 5.36(1A) of the Migration Regulations. The legislative instrument sets out the exchange rates to be used for prescribed foreign currencies in relation to the payment of fees.

The reference to the '*places and currencies instrument'* is a reference to a legislative instrument made by the Minister under subregulation 5.36(1) of the Migration Regulations. The legislative instrument sets out the prescribed places and currencies in which fees may be paid.

The above legislative instruments are periodically updated to reflect changes in exchange rates, prescribed foreign currencies and prescribed places. Generally, these updates occur in January and July of each year. When these updates occur, the references to the legislative instruments in subregulation 12A(7) of the Citizenship Regulations must also be updated.

As of 3 November 2014, the legislative instruments will need to be updated to add reference to the Nigerian local currency and the relevant exchange rate to reflect that Nigerian local currency will be accepted for applications in Nigeria. The other exchange rates, prescribed places and prescribed foreign currencies set out in the legislative instruments will not be updated at that time.

Old subregulation 12A(7) provided that in regulation 12A:

- ***conversion instrument*** means the instrument titled *Payment of Visa Application Charges and Fees in Foreign Currencies*, (IMMI 14/005) that commenced on 1 July 2014.
- ***places and currencies instrument*** means the instrument titled *Places and Currencies for paying of Fees* (IMMI 14/006) that commenced on 1 July 2014.

New subregulation 12A(7) largely replicates the wording of old subregulation 12A(7). However, the effect of the amendment is that the definition of '*conversion instrument*' is amended by repealing the reference to the instrument numbered IMMI 14/005, which commenced on 1 July 2014, and substituting with the reference to the instrument numbered IMMI 14/101, which will commence on 3 November 2014.

The definition of *'places and currencies instrument*' is amended by repealing reference to the instrument numbered IMMI 14/006, which commenced on 1 July 2014, and substituting with reference to the instrument numbered IMMI 14/102, which will commence on 3 November 2014.

The purpose of this amendment is to ensure that a person may make payment of a fee in Nigeria in the Nigerian local currency from 3 November 2014.

Item 3 – Subregulation 12A(7)

As mentioned in item 2 of Schedule 6 to the Bill, the '*conversion instrument*' and '*places and currencies instrument*' are periodically updated to reflect changes in exchange rates, prescribed foreign currencies and prescribed places. The legislative instruments will be updated on 1 January 2015 and hence this amendment updates references to them in subregulation 12A(7) of the Citizenship Regulations as of 1 January 2015.

This item repeals subregulation 12A(7) of the Citizenship Regulations and substitutes new subregulation 12A(7).

New subregulation 12A(7) will provide that in regulation 12A:

- ***conversion instrument*** means the instrument titled *Payment of Visa Application Charges and Fees in Foreign Currencies*, (IMMI 15/001) that commenced on 1 January 2015.

- ***places and currencies instrument*** means the instrument titled *Places and Currencies for paying of Fees* (IMMI 15/002) that commenced on 1 January 2015.

The purpose of this amendment is to ensure that persons may make the payment of a fee in a foreign country, in a foreign currency and at an exchange rate specified by the Minister.

**Schedule 7 – Definition of "financial institution"**

Item 1 – Regulation 1.03

This item inserts a new definition of 'financial institution' as it applies to Student (Temporary) (Class TU) visas.

Old definition was located at Clauses 580.111 of Schedule 2, 5A101 of Schedule 5A and 5B101 of Schedule 5B to the Principal Regulations. That definition provided that financial institution means a body corporate that, as part of its normal activities:

- takes money on deposit and makes advances of money; and
- does so under a regulatory regime, governed by the central bank (or its equivalent) of the country in which it operates, that the Minister is satisfied provides effective prudential assurance.

New definition provides that 'financial institution' means a body corporate that, as part of its normal activities, takes money on deposit and makes advances of money:

- under a regulatory regime:
    - governed by a central bank (or its equivalent) of the country in which the body corporate operates; and
    - that the Minister is satisfied provides effective prudential assurance; and
- in a way that the Minister is satisfied complies with effective prudential assurance requirements.

The amendment also moves the definition to a new location in the Principal Regulations.

The purpose of this item is to provide certainty that the Minister can consider whether financial institutions themselves comply with prudential assurance requirements in addition to whether the regulatory regime provides effective prudential assurance.

Item 2 – Clauses 580.111 of Schedule 2, 5A101 of Schedule 5A and 5B101 of Schedule 5B (definition of *financial institution*)

This item repeals the previous definition of 'financial institution' to reflect that the definition of 'financial institution' is now located in regulation 1.03 of the Principal Regulations. Previously, Clauses 580.111 of Schedule 2, 5A101 of Schedule 5A and 5B101 of Schedule 5B each had an identical definition for 'financial institution'.

The effect and purpose of this amendment is that the definition for 'financial institution' is now in one location.

This amendment is subsequent to the amendment made by item 1, which provides for a new definition of 'financial institution' to be inserted into Regulation 1.03.

**Schedule 8 – Application and transitional provisions**

Item 1 – At the end of Part 4

This item amends Part 4 of the Citizenship Regulations to insert new regulation 27 entitled "Amendments made by the *Migration Legislation Amendment (2014 Measures No. 2) Regulation 2014"*.

New regulation 27(1) provides that the amendments of the Citizenship Regulations made by item 1 of Schedule 6 to the Regulation apply in relation to the following applications made under the Citizenship Act:

- an application made under section 19C of the Citizenship Act, but not finally determined, before the commencement of the item;
- an application made under section 19C of the Citizenship Act on or after the commencement of the item.

New subregulation 27(2) of Part 4 provides that the amendments of the Citizenship Regulations made by item 2 of Schedule 6 to the Regulation apply in relation to an application made under Division 2, 3 or 4 of Part 2 of the Citizenship Act on or after 3 November 2014.

New subregulation 27(3) of Part 4 provides that the amendments of the Citizenship Regulations made by item 3 of Schedule 6 to the Regulation apply in relation to an application made under Division 2, 3 or 4 of Part 2 of the Citizenship Act on or after 1 January 2015.

The effect and purpose of this item is to clarify to whom and when the amendments to the Citizenship Regulations apply.

Item 2 – At the end of Schedule 13

This item amends Schedule 13 to the Migration Regulations to insert new Part 35, entitled "Amendments made by the Migration Legislation Amendment (2014 Measures No. 2) Regulation 2014", which contains new clauses 3501, 3502, 3503, 3504, 3505, and 3506.

New clause 3501 provides that the amendments of the Migration Regulations made by Schedule 1 to the Regulation apply in relation to an application for a visa made on or after 23 November 2014.

New clause 3502 provides that the amendments of the Migration Regulations made by Schedule 2 to the Regulation apply on or after 23 November 2014.

New clause 3503 provides that the amendments of the Migration Regulations made by Schedule 3 to the Regulation apply on or after 23 November 2014.

New clause 3504 provides that the amendments of the Migration Regulations made by Schedule 4 to the Regulation apply in relation to an application for a Student (Temporary) (Class TU) visa made on or after 23 November 2014.

New clause 3505 provides that the amendments of the Migration Regulations made by Schedule 5 to the Regulation apply in relation to the following applications for a visa:

- an application made, but not finally determined, before 23 November 2014;
- an application made on or after 23 November 2014.

New clause 3506 provides that the amendments of the Migration Regulations made by Schedule 7 to the Regulation apply in relation to an application for a visa made on or after 23 November 2014

The purpose and effect of all these amendments is to clarify to whom the amendments in the Regulation applies.