EXPLANATORY STATEMENT

Issued by the Minister for Immigration and Border Protection

Migration Act 1958

Migration Legislation Amendment (2017 Measures No. 4) Regulations 2017

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

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

Paragraph 504(1)(h) of the Migration Act provides that the Governor-General may make regulations making provision for the remission, refund or waiver of charges under the *Migration (Health Services) Charge Act 1991* (the Charge Act 1991), which impose a charge on visa applications lodged on or after 21 August 1991 and before the commencement of the *Migration (Visa Application) Charge Act 1997*. All affected visa applications have been finalised, and the Charge Act 1991 is therefore redundant.

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

The *Migration Legislation Amendment (2017 Measures No. 4) Regulations 2017* (the Regulations) amend the *Migrations Regulations 1994* (the Migration Regulations) to strengthen and update immigration policy, and to repeal the *Migration (Health Services) Charge Regulations* (the Charge Regulations).

In particular, Schedules 1, 2, and 3 to the Regulations amend the Migration Regulations to:

- Make provision for outstanding public health debts, and specify requirements for adequate arrangements for health insurance. The overall aim of these amendments is to ensure that while a temporary visa holder remains in Australia, the visa holder's health costs are not a burden on Australia's health care system. These amendments include the following:
    - a new outstanding public health debt condition; and
    - a new definition of adequate health insurance.

- Address identified gaps in the character and integrity visa refusal and cancellation framework to:
    - broaden the wording of condition 8303 (visa holder must not engage in activities which are violent or disruptive towards a group in the community) to additionally forbid activities which may endanger or threaten any individual, and to impose this condition on a wider range of visas;
    - impose condition 8564 (the visa holder must not engage in criminal conduct) on a wider range of visas;

    - introduce a new visa condition (condition 8304) which requires non-citizens to maintain a single official identity (when dealing with Government agencies) during their stay in Australia;
    - prevent people from applying for or being granted a Resident Return Visa where their last visa has been cancelled or is under consideration for cancellation; and
    - broaden the powers to refuse a visa on fraud grounds by expanding the scope of Public Interest Criterion 4020 (integrity of documents and information submitted in relation to visa applications) to allow consideration of the visa applicant's behaviour:
        - in the previous 10 years, rather than the previous 12 months; and
        - in relation to previous visa applications, as well as visas previously granted.

- Allow the Minister to make a legislative instrument specifying the form, manner, and place for making a valid application for Parent and Partner classes, and replace the application requirements prescribed in Schedule 1 to the Migration Regulations. The amendments provide greater efficiency and flexibility for making administrative changes to application requirements, such as increased provision for online applications, the location of processing centres for applications, and approved form numbers.

Schedule 4 to the Regulations repeals the Charge Regulations, which are redundant. It is proposed to repeal the Charge Act 1991 in a future Statute Update Bill.

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments made by the Regulations. The OBPR considers that the following amendments have minor regulatory impacts, and no further analysis in the form of a Regulation Impact Statement is required.

The OBPR consultation references are as follows:

- 21913 (Schedule 1)
- 22369 (Schedule 2)
- 22323 and 21350 (Schedule 3)
- 22885 (Schedule 4).

In relation to Schedule 1, consultations were undertaken with the Commonwealth Department of Health, State Health authorities and the Private Health Insurance Ombudsman. All stakeholders were supportive of the introduction of measures to dissuade visa holders from incurring public health debts.

In relation to Schedules 2, 3, and 4 no further consultation was considered necessary or appropriate because the amendments do not substantially alter existing arrangements. This accords with subsection 17(1) of the *Legislation Act 2003* (the Legislation Act) which envisages consultations where appropriate and reasonably practicable.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall

assessment is that the Regulations are compatible with human rights. A copy of the Statement is at Attachment B.

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

Details of the Regulations are set out in Attachment C.

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

The Regulations commence on 18 November 2017. Where relevant, the Regulations apply only to new visa applications. They do not apply to applications that have already been made, but not yet decided, at the time the Regulations commence.

ATTACHMENT A

AUTHORISING PROVISIONS

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

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

- subsection 31(3), which provides that the regulations may prescribe criteria for a visa or visas of a specified class;

- subsection 41(1), which provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions. Subsection 41(3) provides that in addition to any conditions specified under subsection (1), or in subsection (2B), the Minister may specify that a visa is subject to such conditions as are permitted by the regulations for the purposes of this subsection;

- subsection 65(1), which provides (in part) that after considering a valid application for a visa, the Minister – if satisfied that the health criteria for it (if any) have been satisfied; and the other criteria for it prescribed by this Act or the regulations have been satisfied – is to grant the visa; or, if not so satisfied, is to refuse to grant the visa;

- paragraph 504(1)(h), which provides that the Governor-General may make regulations making provision for the remission, refund or waiver of charges under the Charge Act 1991; and

- subsection 504(2), which provides that section 14 of the *Legislation Act 2003* does not prevent regulations whose operation depends on a country or other matter being specified by the Minister in an instrument made under the regulations after the commencement of the regulations.

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 (2017 Measures No. 4) Regulations 2017

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

Schedule 1 – Health debt and health insurance arrangements

Overview

The health cost arrangements

Several million temporary visa holders enter Australia each year. Of these, some need to access public health services during their stay in Australia. In some cases, typically where the costs are not covered by insurance, or the visa holder is not eligible for Medicare, they fail to pay for the health care service provided. This has the cumulative effect of leaving substantial debts that burden the Australian public health care system. State and Territory health authorities have raised the issue of non-payment of these debts as a significant concern on a number of occasions.

These amendments to the *Migration Regulations 1994* (the Migration Regulations) create more robust health costs arrangements that are intended to ease the burden on Australia's healthcare system by ensuring that responsibility for health costs in relation to certain visa holders is clearly identified as that of the visa holder. The new health cost arrangements apply to most temporary visas. They are aimed at improving visa holders' understanding of their liability for public health expenses they incur in Australia.

The amendments:

- create a new visa condition that the visa holder must not have an 'outstanding public health debt', defined as a debt relating to public health or aged care services that has been reported to the Department of Immigration and Border Protection (the Department) as outstanding by a Commonwealth, State or Territory health authority under an agreement between the authority and the Department; and
- create a framework for clarifying what constitutes having 'adequate health insurance', where that is a requirement for the grant of a visa.

1. No outstanding public health debt

Australian citizens and permanent residents pay for their health care in a number of ways. Most taxpayers contribute to health care costs through the Medicare levy. Temporary residents who are taxpayers in Australia but do not have access to Medicare are eligible for claiming an exemption from paying the Medicare levy. Additionally, Australian citizens and permanent residents may choose to purchase private health insurance to cover additional

expenses and allow for a choice of doctors, specialists or hospital facilities. In circumstances where private health insurance is used, Australian citizens and permanent residents may be required to make a 'gap' payment. This is the amount of money paid for hospital or medical charges, over and above the rebate received from Medicare or their private health insurance.

Temporary visa holders generally do not have access to Medicare. In limited circumstances, some temporary visa holders are eligible for Medicare through a Reciprocal Heath Care Arrangement (RHCA) and some temporary visa holders are provided with Medicare eligibility (for example, Protection Visa holders). Where they are not covered by an RHCA, and are not otherwise eligible for Medicare, they are expected to pay directly for the health care services they receive in Australia. In the event that these health care costs are unpaid, the financial burden falls to publicly funded health care providers. These providers have noted cases where temporary visa holders incurred debts for treatment for which they did not pay, and for which they were unlikely to pay, and where there was limited capacity for the relevant health authority to recover the debt.

The new condition will help ensure temporary visa holders understand that Australia's health system is not a free service and that they are liable to pay their debts. To further ensure visa applicants understand this obligation, their acknowledgement will be sought through both paper and e-forms, and this will be reinforced in the visa grant letter. Where a visa holder does incur a public health debt, they will need to make arrangements with the health service provider to resolve it. If they are not able to pay the debt in full, this may include arranging an appropriate payment plan.

The costs the visa holder incurs may be covered in part or full by their individual insurance arrangements. If costs are not paid, and the person does not have any payment plan in place with the health service provider to whom the monies are owed, those costs may constitute an 'outstanding public health debt' if they relate to public health or aged care services and are reported to the Department as outstanding by a health authority under an agreement between the authority and the Department.

A decision on reporting a debt will ultimately be a matter for the relevant health authority. For example, a relevant health authority may choose not to inform the Department of a health debt where the debt is too small to warrant referral, where the authority is inclined to waive the debt for compelling/compassionate reasons, or where an appropriate payment plan is in place. When a debt is resolved, the health authority will notify the Department that this has happened.

In situations where an outstanding public health debt has been reported, the initial action for the Department will be to encourage the visa holder to contact the health facility to which the monies are owed and arrange to pay the debt. Breach of a visa condition is a ground for considering cancelling that visa. However, the preferred outcome is to have the debt repaid prior to the person being granted further visas or cancellation being pursued. On occasions consideration of visa cancellation may be appropriate; however this would be discretionary and due consideration will be given to individual circumstances.

2. Adequate health insurance

Some visa holders are required to maintain adequate arrangements for health insurance (for example, condition 8501). This can be in the form of travel insurance, specific health insurance or a combination of both. The maintenance of adequate health insurance helps offset any public health costs which may otherwise be incurred and mitigate the personal financial risk to visa holders and to the Australian community.

The requirement for some visa holders to maintain adequate arrangements for health insurance, already exists for many temporary visas. Prior to the introduction of this amendment, what constituted 'adequate arrangements for health insurance' was explained in policy guidance. In addition, a variety of terminology was used in the Migration Regulations to convey the requirement. These amendments clarify the meaning of 'adequate arrangements for health insurance'. This includes a power for the Minister to specify relevant requirements in a legislative instrument, as well as a provision that, if not specified by legislative instrument, the arrangement to be covered by health insurance must be an arrangement that the Minister considers adequate in the circumstances. This ensures that the decision-maker has sufficient discretion in determining whether arrangements for health insurance are adequate where the person's situation and requirements for health insurance are not covered by the instrument.

Human rights implications

These amendments have been considered against key international treaties, in particular the following convention articles.

Protection of the family unit

Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR) provides that "no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation".

Article 23(1) of the ICCPR recognises that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State".

The existing requirement to have adequate health insurance, and the new condition that the holder must not have an outstanding health debt, apply to some temporary visas that permit non-citizens to enter Australia, on a temporary basis, to be with their family members. These requirements do not apply to visa pathways aimed at providing permanent residence opportunities to family members, such as Child and Partner visas.

The changes do not have an impact on the entry and stay of temporary visa holders (whether primary or secondary visa holders), including those with family members in Australia, where they take responsibility for their health care costs while here. Further, the amendments make minimal changes to existing arrangements – the requirement to have adequate health insurance already existed and is being clarified, and the liability to pay health debts already exists, but a potential visa consequence is being introduced if the debt is not paid.

In the event that temporary visa holders do incur an outstanding public health debt, the primary focus of the Department will be to encourage the visa holder to arrange to repay the

debt. Cancellation for breach of a visa condition is discretionary and individual circumstances will be given due consideration. These circumstances would take into account impacts on the visa holder, as well as on any family members who may remain in Australia. It is intended that cancellation will only be considered in cases where there is a serious breach or repeated breaches suggest a pattern of adverse behaviour in the area of compliance with visa conditions.

The amendments do not change the ability of family members to enter and remain in Australia, provided they make arrangements for the payment of their health debts, as they are already required to do.

Greater awareness of their liability for the cost of health treatment also reinforces the reason to purchase health insurance prior to entry to Australia. In situations where a visa holder has family onshore, this will provide an added safeguard, decreasing the potential reliance of the visa holder on their family in Australia.

Rights relating to health and non-discrimination

Article 2(1) of the ICCPR provides that:

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

Article 26 of the ICCPR provides that:

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

Article 2(2) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) provides that:

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

Article 4 of the ICESCR provides that:

> the States Parties to the present Covenant recognize that, in the enjoyment of those 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 in 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.

In its General Comment 18, the UN Human Rights Committee stated that:

> The Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.

The object of the *Migration Act 1958* (the Migration Act) is to 'regulate, in the national interest, the coming into, and presence in, Australia of non-citizens'. In that sense the purpose of the Migration Act is to differentiate on the basis of nationality between non-citizens and citizens. The UN Human Rights Committee has recognised in the ICCPR context that:

> The Covenant does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory […] Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment (CCPR General Comment 15, 11 April 1986).

In its General Comment on Article 2 of the ICESCR (E/C.12/GC/20), UNCESCR has stated (at 13) that:

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

The measures in this Schedule apply to people based on their visa status. As the treaties do not provide for a right of entry to Australia, it is appropriate for the Government to set conditions on that entry that are aimed at promoting the general welfare of the Australian community. The existing requirement to have adequate health insurance (for example, where condition 8501 is applied to a visa) is aimed at supporting visa holders so that entrants will be less likely to avoid accessing health care and will mitigate the likelihood of them incurring high health care costs.

Through the clarification of health insurance settings and raising the awareness of a person's liability to pay for their health care costs, a visa holder is better able to mitigate the risk of debt. If an outstanding public health debt is incurred, this in itself will not prevent a person from entering or remaining in Australia. It is open to them to take steps to resolve the debt at any stage.

The new health costs arrangements are necessary, reasonable and proportionate to achieve the aim of limiting the financial burden on Australia's public health system, through raising the awareness of temporary visa holders of their liability to pay for health services used in Australia.

Article 12 of the ICESCR recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

These measures do not prevent persons to whom the new legislation applies from seeking and obtaining medical care.

A person who requires urgent medical assistance will not be denied it if they are unable to pay for the treatment or they do not have adequate health insurance. As is already the case, such a person will incur a debt for the treatment. The amendments ensure that visa holders are aware of health costs in Australia and their responsibility to pay for these and to further encourage them to obtain adequate health insurance for their stay. These amendments will also not prevent a person from seeking or obtaining further medical treatment even if they have a debt. Although there is a possibility of the visa being cancelled, this would only be considered where there is a serious breach and the visa holder shows a disregard for the condition applied to their visa and makes no effort to repay the debt.

Article 5 of the International Convention on the Rights of Persons with a Disability (CRPD) prohibits discrimination on the basis of disability. Article 18 recognises the right of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality on an equal basis with others, including by ensuring that such persons are not deprived, on the basis of disability, of their ability to utilise relevant processes such as immigration proceedings. Article 25 of the CRPD refers to the right for persons with disability not to be discriminated against on health grounds.

The measures in these amendments do not discriminate or treat people with disabilities differently from people with other medical conditions. Having a disability or other medical condition (other than, in some cases, active tuberculosis) will not of itself result in consideration of visa cancellation for persons affected by these amendments – it will depend on whether the person incurs a public health debt.

The amendments will define 'adequate arrangements for health insurance' and provide that the Minister can specify, by legislative instrument, requirements for health insurance for the purposes of this definition. It is the responsibility of the applicant or visa holder to purchase the required health insurance. They may also purchase additional cover if they consider their own needs and the purpose of their visit warrant it.

Further, as outlined above, the amendments make minimal changes to existing arrangements – the requirement to have adequate health insurance already exists and is being clarified, and the liability to pay health debts already exists, but a potential visa consequence is being introduced if the debt is not paid. That consequence, which will be applicable to the holders of some temporary visa, and not to the holders of other types of visa, and will be applied on a discretionary basis and in consideration of the individual circumstances of the person, is reasonable and proportionate to the legitimate aim of limiting the financial burden on Australia's public health system.

Conclusion

The legislative instrument is compatible with human rights because, to the extent that it may limit human rights under the ICCPR, ICESCR and CRPD those limitations are reasonable, necessary and proportionate, to mitigate the financial impact on Australia's public health services and the Australian community from temporary entrants without access to Medicare.

Schedule 2 – Integrity, identity and community protection amendments

Overview

Schedule 2 to the *Migration Legislation Amendment (2017 Measures 4) Regulations 2017* involves six measures requiring amendments to the Migration Regulations. The purpose of these amendments is to provide clear messaging to visa holders on the expectations of the Australian Government and Australian community concerning the behaviour and conduct of non-citizens in Australia; prevent permanent residents from attempting to circumvent cancellation processes; and strengthen provisions aimed at preventing bogus documents or misleading information being provided in visa applications.

These amendments will:

- amend existing clause 8303 in Schedule 8 to expand the scope of condition 8303, so that it forbids activities that endanger or threaten any individual. This is in addition to the current setting of condition 8303, which forbids disruptive or violent activities that endanger or threaten the Australian community or groups within the Australian community. Condition 8303 will be applied mandatorily to most temporary visas;

- impose existing clause 8564 in Schedule 8 mandatorily on most temporary visas. Condition 8564 requires the applicant to not engage in criminal conduct. Currently this condition is only applied on a discretionary basis to the Bridging Visa E (BVE);

- introduce new clause 8304 in Schedule 8 to create a new condition that will be imposed mandatorily to most temporary visas. Condition 8304 will require visa holders to identify themselves by the same name in all dealings with Commonwealth, State or Territory government agencies. In circumstances where a holder changes his or her name, they will be required, as soon as practicable, to notify the change to government agencies with which they have dealings. They will also be required to take reasonable steps to ensure the change is given effect by those agencies;

- amend existing subitem 1305(3) of Schedule 1 to the Migration Regulations to prevent former temporary visa holders whose visas have been cancelled on behaviour-related grounds from making a BVE application. Instead, the Department will be able to grant BVEs to non-citizens, without an application, who do not pose a risk to the Australian community and for whom it is appropriate to remain in the Australian community while they make arrangements to depart, or otherwise resolve their status. 'Behaviour-related grounds' are defined as grounds where:
    - visa applicants have had their previous visa cancelled under paragraph 116(1)(e) of the Migration Act because they have been assessed as a risk to public health, safety or the good order of the community or an individual;
    - visa applicants have had their previous visa cancelled under paragraph 116(1)(b) of the Act due to breaching visa condition 8564 (must not engage in criminal conduct).

- amend existing subparagraph 1128(3)(d)(i) in Schedule 1 and insert new clause 155.223 into Division 155.2 of Schedule 2 to introduce new criteria to prevent people from applying for, or being granted, a Resident Return Visa (RRV) where their

permanent visa has been cancelled, or where their visa is being considered for cancellation;

- amend existing subclause 4020(1) in Schedule 4 to strengthen the integrity of visa applications and give broader refusal powers on fraud grounds under Public Interest Criterion 4020 (PIC 4020). PIC 4020 will be strengthened by expanding the period in which previous cases of visa application fraud can be considered from 12 months prior to 10 years.

Human rights implications

1. Changes to condition 8303

Currently, condition 8303 states that 'the holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community.' The condition will additionally require that visa holders refrain from activities that endanger or threaten any *individual*. The amended condition will apply to most temporary visa holders.

The intention of the amended condition 8303 is twofold:

- Firstly, it sends a clear message, explicitly requiring that the behaviour of temporary visa holders is consistent with Australian government and community expectations. It advises visa holders what sorts of behaviour can result in visa cancellation.

- Secondly, it empowers the Minister to cancel a person's visa where they engage in adverse behaviour against individuals within the community, such as where there is objective evidence of harassment, stalking, intimidation, bullying, or otherwise threatening an individual, but which may not necessarily be subject to criminal sanctions. These activities may include public 'hate speech' or online vilification targeted at both groups and individuals based on gender, sexuality, religion, and ethnicity. Evidence provided by law enforcement agencies of conspiracy to cause harm or incite violence against an individual can also be considered under condition 8303.

The amended condition 8303 is mandatorily applied to most temporary visas, except for Bridging Visas E and F to which it will be applied discretionarily, and Subclass 773 (Border) visa which, due to its broad application, requires maximum flexibility.

The amendment does not fundamentally change the scope of condition 8303, which is an existing visa condition. Rather, it adds an additional prohibited behaviour to address a gap in the types of behaviours that are captured by this visa condition. When assessing whether condition 8303 has been breached, officers have the discretion to take account of all the circumstances of the applicant and consider each case on its own merits. This means that officers will have discretion to determine whether the visa condition has been breached, and the discretion to not cancel the visa even where the visa condition has been breached.

If a visa holder has breached visa condition 8303 they may be considered for cancellation under paragraph 116(1)(b) of the Migration Act. This cancellation power provides officers with the discretion to determine whether cancellation is appropriate.

The amendments do not change the legislative settings concerning natural justice. Before a visa is cancelled, the visa holder will be notified of the Department's intention to cancel the visa by way of a Notice of Intention to Consider Cancellation (NOICC). This is a statutory requirement under the Migration Act. Visa holders will be given the opportunity to provide reasons why the visa should not be cancelled. Reasons not to cancel the visa may include the impact of separation from family members and the best interests of children under the age of 18 years. The exception to the right to natural justice is if the Minister makes a personal decision to cancel without natural justice under section 133C of the Migration Act in the public interest.

The proposed amendment to condition 8303 does not change the legislative settings concerning access to merits or judicial review. When a visa holder is onshore, the cancellation decision will be merits reviewable and judicially reviewable. When a visa holder is outside Australia or in immigration clearance at time of decision, cancellation decisions cannot be reviewed based on merits but may be reviewed by the Federal Court.

The practical effect of these amendments is that visa holders will have a greater awareness of the sort of behaviour that is considered to be unacceptable in Australia. The vast majority of visa holders do not engage in unlawful or unacceptable behaviour while they are in Australia, however, it is important to ensure that all non-citizens who wish to travel to and stay in Australia understand the standards of behaviour that are expected.

In circumstances where a person's visa is cancelled or refused they will be liable for detention under section 189 of the Act and may be removed from Australia, and/or may be separated from the family unit.

However, for reasons stated below, the amendments to condition 8303 are for a legitimate purpose and are compatible with human rights. It is designed to strengthen the Department's ability to protect individuals within the Australian community from activities of temporary visa holders who endanger or threaten any individual. To the extent that this amendment may limit human rights, the Government considers those limitations as reasonable, proportionate, and necessary.

<u>Obligations concerning detention of an unlawful non-citizen</u>

Right to security of the person and freedom from arbitrary detention.

The right to security of the person and freedom from arbitrary detention is contained in Article 9 of the International Covenant on Civil and Political Rights (ICCPR).

Article 9

1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

Article 9 is a prohibition on arbitrary detention. The concept of arbitrariness goes beyond mere lawfulness and requires that the detention of the individual is reasonable, necessary and proportionate to achieve a legitimate aim. In this case, the legitimate aim is the protection of

the Australian community from behaviour that threatens or endangers an individual. In line with community expectations, it is appropriate that a person who engages in these activities should not be entitled to hold a visa, and should be removed from Australia.

The amended condition will apply to holders of Temporary Protection Visas and Safe Haven Enterprise Visas who have been found to engage Australia's *non-refoulement* obligations. Australia takes its international obligations seriously, and will not remove a person where it would be inconsistent with Australia's *non-refoulement* obligations. The Australian Government's position is that the detention of individuals who engage Australia's protection obligations is neither unlawful nor arbitrary *per se* under international law. Continuing detention may become arbitrary after a certain period of time without proper justification. The determining factor, however, is not the length of detention, but whether the grounds for the detention are justifiable. *Non-refoulement* obligations are considered as part of a decision to cancel a visa under section 116 of the Act.

The cancellation and detention of a non-citizen due to a breach of conditions 8303 are considered neither unlawful nor arbitrary under international law. The Government has processes in place to mitigate any risk of a non-citizen's detention becoming indefinite or arbitrary through internal administrative review processes, Commonwealth Ombudsman enquiry processes, reporting and Parliamentary tabling, and the use of the Minister's personal non-compellable powers to grant a visa or residence where it is considered in the public interest.

Rights relating to families and children

Articles 17 and 23 of the ICCPR prohibit arbitrary interference with family unity.

Article 17(1)

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

Article 23(1)

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

The prohibition on arbitrary interference with family does not amount to a right to remain in Australia where a non-citizen does not hold a visa.

Article 3 of the Convention on the Rights of the Child (CRC) requires that the best interests of the child must be treated as a primary consideration.

Article 3(1)

> *In all actions concerning children, whether undertaken by a public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

Officers have discretion to determine whether or not condition 8303 has been breached, and whether or not to cancel the person's visa if there has been a breach. This requires the officer to take into account the broader circumstances of the visa holder. For example, the officer must consider the nature and seriousness of the conduct, the best interests of children under the age of 18 years, the impact of separation from family members, and the safety of the Australian community.

Any family members, children or other persons who held visas only because of the visa held by the person whose visa has been cancelled under condition 8303 may also have their visas cancelled under section 140 of the Migration Act. As discussed above, the impact of the visa cancellation on the wellbeing of any child and the family will be assessed by the officer who will consider all relevant factors when determining whether or not condition 8303 has been breached, and whether or not to cancel the person's visa if there has been a breach.

Any separation from family members in Australia caused by an unlawful non-citizen being removed as a result of breaching visa condition 8303 will not be inconsistent with Articles 17 and 23 of the ICCPR or Article 3 of the CRC as the decision to cancel will appropriately weigh the impact of separation from family and the best interests of any children against the non-citizen's risk to the community by engaging in this prohibited conduct.

2. ***Condition 8564***

Condition 8564 states that the visa holder 'must not engage in criminal conduct' and currently can only be imposed on BVEs. The amendments will broaden the application of condition 8564 so that it will be mandatorily imposed on most temporary visas.

The intention of the broader application of condition 8564 is twofold:

- First, it sends a clear message to temporary visa holders that criminal conduct is not acceptable and that such behaviour may result in visa cancellation and removal from Australia. This is designed to deter temporary visa holders from engaging in that conduct.

- Secondly, applying this visa condition to more visas will capture criminal conduct that is not captured by section 501 or paragraph 116(1)(e), such as 'boiler room' scams where non-citizens are brought to Australia to initiate scams through calling people in other countries, credit card scams, other financially motivated crimes that do not threaten the physical safety of an individual or the community, and driving offences that are of sufficient seriousness to be regarded as attracting a criminal penalty. These activities are inconsistent with the expectations of the Australian community that non-citizens who come Australia on temporary visas will abide by Australian laws and community standards and it is appropriate that these types of conduct can lead to possible visa cancellation.

Condition 8564 is mandatorily applied to most temporary visas, except for BVEs and Bridging Visas F, to which it will be applied discretionarily, and Subclass 773 (Border) visas which, due to its broad application, requires maximum flexibility.

If a visa holder has breached visa condition 8564 they will be considered for cancellation under paragraph 116(1)(b) of the Migration Act. This cancellation power provides officers with the discretion to determine whether cancellation is justifiable.

The amendments do not change the legislative settings concerning natural justice. Before a visa is cancelled, the visa holder will be notified of the Department's intention to cancel the visa by way of a NOICC. This is a statutory requirement under the Migration Act. Visa holders will be given the opportunity to provide reasons why the visa should not be cancelled. Reasons not to cancel the visa may include the impact of separation from family members and the best interests of children under the age of 18 years. The exception to the right to natural justice is if the Minister makes a personal decision to cancel without natural justice under section 133C of the Migration Act in the public interest.

The amendment to condition 8564 does not change the legislative settings concerning access to merits or judicial review. When a visa holder is onshore, the cancellation decision will be merits reviewable and judicially reviewable. When a visa holder is outside Australia or in immigration clearance at time of decision, cancellation decisions cannot be reviewed based on merits but may be reviewed by the Federal Court.

The practical effect of these amendments is greater numbers of people being liable for consideration under the general cancellation provisions. Where a person's visa is cancelled they will be liable for detention under section 189 of the Act and may be removed from Australia, including potentially in circumstances which lead to separation from family members in Australia.

However, for reasons stated below, the amendment to condition 8564 is for a legitimate purpose and is compatible with human rights. It is designed to strengthen the Department's ability to protect the Australian community from temporary visa holders who engage in criminal conduct. To the extent that this amendment may limit human rights, the Government considers those limitations as reasonable, proportionate, and necessary.

Obligations concerning detention of an unlawful non-citizen

As set out above, Article 9 of the ICCPR is a prohibition on arbitrary detention. The concept of arbitrariness goes beyond mere lawfulness and requires that the detention of the individual is reasonable, necessary and proportionate to achieve a legitimate aim. In this case, the legitimate aim is the protection of the Australian community from criminal conduct. In line with community expectations, it is appropriate that a person who engages in these activities should not be entitled to hold a visa, and should be removed from Australia. Therefore it is reasonable, necessary and proportionate to expand the application of this condition to a greater number of temporary visas.

The amended condition applies to holders of Temporary Protection Visas and Safe Haven Enterprise Visas who have been found to engage Australia's *non-refoulement* obligations. Australia takes its international obligations seriously and will not remove a person where it would be inconsistent with Australia's *non-refoulement* obligations. The Australian Government's position is that the detention of individuals who engage Australia's protection obligations is neither unlawful nor arbitrary *per se* under international law. Continuing detention may become arbitrary after a certain period of time without proper justification. The determining factor, however, is not the length of detention, but whether

the grounds for the detention are justifiable. *Non-refoulement* obligations are considered as part of a decision to cancel a visa under section116 of the Migration Act.

The cancellation and detention of a non-citizen due to a breach of condition 8564 is considered neither unlawful nor arbitrary under international law. The Government has processes in place to mitigate any risk of a non-citizen's detention becoming indefinite or arbitrary through internal administrative review processes, Commonwealth Ombudsman enquiry processes, reporting and Parliamentary tabling, and the use of the Minister's personal non-compellable powers to grant a visa or residence where it is considered in the public interest.

Rights relating to families and children

As set out above, Articles 17 and 23 of the ICCPR prohibit arbitrary interference with family unity.

The prohibition on arbitrary interference with family does not amount to a right to remain in Australia where a non-citizen does not hold a visa.

Article 3 of the Convention on the Rights of the Child (CRC) requires that the best interests of the child must be treated as a primary consideration.

Officers have discretion to determine whether or not condition 8564 has been breached, and whether or not to cancel the person's visa if there has been a breach. This requires the officer to take into account the broader circumstances of the visa holder. For example, the officer must consider the nature and seriousness of the conduct, the best interests of children under the age of 18 years, the impact of separation from family members, and the safety of the Australian community.

Any family members, children or other persons who held visas only because of the visa held by the person whose visa has been cancelled under condition 8564 may also have their visas cancelled under section 140 of the Migration Act. As discussed above, the impact of the visa cancellation on the wellbeing of any child and the family will be assessed by the officer who will consider all relevant factors when determining whether or not condition 8564 has been breached, and whether or not to cancel the person's visa if there has been a breach.

Any separation from family members in Australia caused by an unlawful non-citizen being removed as a result of breaching visa condition 8564 will not be inconsistent with Articles 17 and 23 of the ICCPR or Article 3 of the CRC as the decision to cancel will appropriately weigh the impact of separation from family and any children's best interests against the non-citizen's risk to the community by engaging in this prohibited conduct.

3. Condition 8304

Condition 8304 is a new visa condition under Schedule 8 that will require most temporary visa holders to identify themselves by the same name in all dealings with Commonwealth, State or Territory government agencies. In circumstances where such a visa holder changes his or her name, they will be required, as soon as practicable, to notify the change to government agencies with which they have dealings. They will also be required to take reasonable steps to ensure the change is given effect by those agencies. This condition does

not impose extra obligations on people that would be inconsistent with the notification requirements of other government agencies.

The phrase 'as soon as practicable' is not defined in legislation, and provides the basis for taking into account compelling and compassionate circumstances. Guidance on what is 'as soon as practicable' under policy will allow officers to take into account the specific circumstances of a visa holder. For example, in circumstances where a visa holder who is subject to the amendments is seeking protection from domestic violence, or other circumstances where there is a threat of harm to the visa holder or their children, it may be necessary for them to change their name with certain government agencies, but not in other contexts. In such circumstances, the 'practicable' period would be that which allows individuals to ensure their own safety first. The primary basis on which cancellation would be considered is where there is evidence of the intentional use of more than one identity concurrently in order to gain an advantage or to deceive.

The intention of condition 8304 is twofold:

- Firstly, it sends a clear message to temporary visa holders that identity fraud conducted by operating under more than one official identity is not acceptable and that such behaviour may result in visa cancellation and removal from Australia. This will deter temporary visa holders from engaging in that conduct.

- Secondly, it aims to mitigate identity fraud, such as the use of aliases to escape government detection concerning law enforcement, tax, and social security. This condition is in response to heightened risks when a person is able to deal with different government agencies under different names preventing law enforcement agencies from sharing important information and protecting Australia's national security. An example of this risk is the case of Man Haron Monis who, prior to the 2015 Martin Place Siege, used several identities, aliases and titles when dealing with agencies such as Australia Post, Australian Business Registry and the Australian Electoral Commission as he was not always required to prove his 'legal name' with formal documentation.

As the Department is the first point of contact with non-citizens entering Australia, the Department has a central role in ensuring and recording the identity of temporary visa holders for the duration of their stay in Australia (commencement of identity authority). The introduction of new condition 8304 is reflective of the Department's role as a commencement of identity authority and the primary conduit for managing changes of name by non-citizens, and managing the expectations of non-citizens concerning their responsibility to notify the Department of any changes to identity.

If a visa holder has breached visa condition 8304 and there is evidence of the intentional use of more than one identity concurrently in order to gain an advantage or to deceive, a visa holder may be considered for cancellation under paragraph 116(1)(b) of the Migration Act. This cancellation power provides officers with the discretion to determine whether cancellation is appropriate.

The amendments do not change the legislative settings concerning natural justice. Before a visa is cancelled, the visa holder will be notified of the Department's intention to cancel the visa by way of a NOICC. This is a statutory requirement under the Migration Act. Visa

holders will be given the opportunity to provide reasons why the visa should not be cancelled. Reasons not to cancel the visa may include the impact of separation from family members and the best interests of children under the age of 18 years. The exception to the right to natural justice is if the Minister makes a personal decision to cancel without natural justice under section 133C of the Migration Act in the public interest.

The amendment to condition 8304 does not change the legislative settings concerning access to merits or judicial review. When a visa holder is onshore, the cancellation decision will be merits reviewable and judicially reviewable. When a visa holder is outside Australia or in immigration clearance at time of decision, cancellation decisions cannot be reviewed based on merits but may be reviewed by the Federal Court.

The practical effect of these amendments may be a number of non-citizens being liable for consideration under the general cancellation provisions on the basis of identity fraud. Where a person's visa is cancelled or refused they will be liable for detention under section 189 of the Migration Act and may be removed from Australia, including in circumstances that lead to separation from family members in Australia.

However, for the reasons stated below, the introduction of condition 8304 is for a legitimate purpose and is compatible with human rights. It is designed to strengthen the Department's ability to protect the Australian community, and the integrity of the visa framework, from temporary visa holders who deliberately engage in identity fraud. To the extent that this amendment may limit human rights, the Government considers those limitations as reasonable, proportionate, and necessary.

Obligations concerning detention of an unlawful non-citizen

As set out above, Article 9 of the ICCPR is a prohibition on arbitrary detention. The concept of arbitrariness goes beyond mere lawfulness and requires that the detention of the individual is reasonable, necessary and proportionate to achieve a legitimate aim. In this case, the legitimate aim is the protection of the Australian community from identity fraud. In line with community expectations, it is appropriate that a person who engages in these activities to gain an advantage they would otherwise not be entitled to, or to engage in criminal conduct, should not be entitled to hold a visa, and should be removed from Australia.

The new condition will apply to holders of Temporary Protection Visas and Safe Haven Enterprise Visas who have been found to engage Australia's *non-refoulement* obligations. Australia takes its international obligations seriously and will not remove a person where it would be inconsistent with Australia's *non-refoulement* obligations. The Australian Government's position is that the detention of individuals who engage Australia's protection obligations is neither unlawful nor arbitrary *per se* under international law. Continuing detention may become arbitrary after a certain period of time without proper justification. The determining factor, however, is not the length of detention, but whether the grounds for the detention are justifiable. *Non-refoulement* obligations are considered as part of a decision to cancel a visa under section 116 of the Migration Act.

The cancellation of a visa, and detention of a non-citizen, due to a breach of condition 8304 is considered neither unlawful nor arbitrary under international law. The Government has processes in place to mitigate any risk of a non-citizen's detention becoming indefinite or arbitrary through internal administrative review processes, Commonwealth Ombudsman

enquiry processes, reporting and Parliamentary tabling, and the use of the Minister's personal non-compellable powers to grant a visa or residence where it is considered in the public interest.

Rights relating to families and children

As set out above, Articles 17 and 23 of the ICCPR prohibit arbitrary interference with family unity.

The prohibition on arbitrary interference with family does not amount to a right to remain in Australia where a non-citizen does not hold a visa.

Article 3 of the Convention on the Rights of the Child (CRC) requires that the best interests of the child must be treated as a primary consideration.

The prohibition on arbitrary interference with family does not amount to a right to remain in Australia where a non-citizen does not hold a visa. Any separation from family members in Australia caused by an unlawful non-citizen being removed as a result of breaching visa condition 8304 would be justified because of the non-citizen's risk to the community by engaging in this prohibited conduct.

Officers have discretion to determine whether or not condition 8304 has been breached, and whether or not to cancel the person's visa if there has been a breach. This requires the officer to take into account the broader circumstances of the visa holder. For example, the officer must consider the nature and seriousness of the conduct, the best interests of children under the age of 18 years, the impact of separation from family members, and the safety of the Australian community.

Any family members, children or other persons who held visas only because of the visa held by the person whose visa has been cancelled under condition 8304 may also have their visas cancelled under section 140 of the Migration Act. As discussed above, the impact of the visa cancellation on the wellbeing of any child and the family will be assessed by the officer who will consider all relevant factors when determining whether or not condition 8304 has been breached, and whether or not to cancel the person's visa if there has been a breach.

Any separation from family members in Australia caused by an unlawful non-citizen being removed as a result of breaching visa condition 8304 will not be inconsistent with Articles 17 and 23 of the ICCPR or Article 3 of the CRC as the decision to cancel will appropriately weigh the impact of separation from family and any children's best interests against the non-citizen's risk to the community by engaging in this prohibited conduct.

4. Changes to Bridging Visa E application validity

The amendments to BVE eligibility will prevent former temporary visa holders who have been cancelled on behaviour-related grounds (see below) from making a BVE application, which would then need to be considered against the character provisions in section 501 of the Migration Act. Instead, the Department will grant BVEs to non-citizens who do not pose a risk to the Australian community, without the need for the non-citizen to apply, where it would be appropriate for them to remain in the Australian community while they make arrangements to depart, or otherwise resolve their status.

For the purposes of the paragraph above, 'behaviour-related grounds' are considered to be where a visa applicant has had their previous visa cancelled under paragraph:

- 116(1)(e) of the Migration Act (must not be a risk to the health, safety or the good order of the community or the individual);

- 116(1)(b) for breach of condition 8564 (must not engage in criminal conduct);

- 116(1)(b) for breach of condition 8303 (must not engage in activities disruptive to, or violence threatening harm to, the Australian community or a group within the community or activities that threaten or endanger an individual).

The intention of amending the BVE application validity requirements is to give the Department greater control over when a non-citizen will be permitted to remain in the community while making arrangements to depart or otherwise resolve their status. The aim is to ensure that any individual who poses a serious risk to the safety of the community or an individual in the community will not be allowed back into the community on a bridging visa. Conversely, individuals who have a visa cancelled under any condition other than 8564 or 8303 will be able to apply for a BVE should they wish to do so, and will be assessed in the usual way.

Obligations concerning detention of an unlawful non-citizen

As set out above, Article 9 of the ICCPR is a prohibition on arbitrary detention. The concept of arbitrariness goes beyond mere lawfulness and requires that the detention of the individual is reasonable, necessary and proportionate to achieve a legitimate aim. The objective of this proposal is to ensure the safety of the Australian community, which is a legitimate objective under the ICCPR. In line with community expectations, it is appropriate that a person who endangers or threatens an individual should not be entitled to hold a visa and may be subject to immigration detention prior to removal from Australia.

Detention itself does not occur as a result of the amended regulation, but as a result of the operation of section 189 of the Migration Act, following the cancellation of a visa on behaviour related grounds. Detention can be brought to an end if the person chooses to depart Australia or is granted a visa. Persons who have had their visa cancelled on behaviour-related grounds can continue to be considered for grant of a BVE without application, enabling them to reside in the community prior to their departure from Australia.

Australia takes its obligations to people in immigration detention very seriously. The Australian Government's position is that the detention of individuals requesting protection is neither unlawful nor arbitrary *per se* under international law. Continuing detention may become arbitrary after a certain period of time without proper justification. The determining factor, however, is not the length of detention, but whether the grounds for the detention are justifiable.

The Government has processes in place to mitigate any risk of a non-citizen's detention becoming indefinite or arbitrary through internal administrative review processes, Commonwealth Ombudsman enquiry processes, reporting and Parliamentary tabling, and the use of the Minister's personal non-compellable powers to grant a visa or residence where it is considered in the public interest.

Rights relating to families and children

As discussed above, the prohibition on arbitrary interference with family does not amount to a right to remain in the Australian community where a non-citizen does not hold a visa. Any separation from family members in the community caused by an unlawful non-citizen being detained and not being eligible for a BVE will be justified because the impact of the separation from family members will be appropriately weighed against the non-citizen's risk to the community by engaging in this prohibited conduct in the Department's decision whether to grant a BVE. Detention and potential separation from family members is also considered at the cancellation stage.

Officers have discretion to determine whether or not a non-citizen is suitable to be granted a BVE. This requires the officer to take into account the broader circumstances of the visa holder. Comprehensive policy guidance will outline officer discretion and state that officers should only decide not to grant a BVE to a non-citizen where there is a serious risk that the individual is a threat to the community. Within their discretionary powers, officers must consider the type of crime, whether the person has been granted bail, and whether the person has been charged or convicted. The officer must also consider the best interests of children under the age of 18 years, and the impact of separation from family members.

For the reasons set out above, this amendment to BVE eligibility is for a legitimate purpose and is compatible with human rights. It is designed to strengthen the Department's ability to protect the Australian community from non-citizens who pose a serious risk to the safety of the Australian community. To the extent that this amendment may limit human rights, the Government considers those limitations as reasonable, proportionate, and necessary.

5. Changes to Resident Return Visa application validity

The proposed amendment will introduce new criteria to prevent people from applying for, or being granted, an RRV where their last visa has been cancelled or they are being considered for cancellation. The RRV enables the holder of a permanent visa to re-enter Australia once the travel facility on their permanent visa has expired.

Currently, except for instances of fraud, once an RRV application has been made there are currently no grounds for refusal and no bar to grant in circumstances where a person is being considered for visa cancellation, or their visa has been cancelled. Because the visa must be granted, the Department must then repeat the entire cancellation process in respect of the RRV on the same grounds. This creates a time-consuming and unnecessary secondary cancellation process. The proposed amendments seek to remove this redundant step by creating an eligibility ground for RRV grant that the applicant holds a permanent visa that has not been cancelled or is not subject to cancellation consideration.

The intention is to prevent visa holders from stalling the visa cancellation assessment of their permanent visa by applying for an RRV, and then re-applying for a new RRV when their current RRV becomes subject to cancellation. Any RRV applicant whose current permanent visa is being considered for cancellation will be ineligible for an RRV. Any RRV applicant whose current permanent visa becomes subject to consideration for visa cancellation after they have applied for an RRV, but before it has been granted, will be ineligible for an RRV. If a person's visa is not cancelled, or the cancellation is overturned at merits or judicial review they can make a further application for an RRV. This reflects the purpose of an RRV

which is to facilitate travel for the holder of a permanent visa. It is not appropriate for an RRV to be granted in circumstances where the permanent visa may be, or is cancelled.

This proposed amendment does not change the visa cancellation process for the permanent visa including natural justice or access to merits or judicial review.

The purpose of this amendment is to remove a redundant process – that the Department must repeat an entire cancellation process under the RRV if the person's previous visa was cancelled. It does not impact upon the visa outcome of the applicant because the outcome remains the same: that their visa will be cancelled. There is no substantive impact on the persons affected. Accordingly, this amendment does not engage human rights.

6. Changes to Public Interest Criterion 4020

The proposed amendment to subclause 4020(1) will strengthen the integrity of visa applications in two ways:

- expanding the period in which previous cases of fraud can be considered from 12 months to 10 years prior to the current visa application; and
- enabling delegates to consider instances of fraud in visa applications made, in addition to the current provision that limits consideration to fraud in visas held.

The intention behind amending subclause 4020(1) is to capture applicants who have engaged in a pattern of behaviour where they will withdraw their application once notified by the Department of suspected fraud, only to re-attempt their visa application after the period of 12 months has elapsed, using new genuine documents that withstand scrutiny. This amendment will mean that a visa applicant who is currently, or has within the previous 10 years, provided bogus documentation or information that is false or misleading in relation to a visa application does not meet subclause 4020(1) and their application can be refused on this basis.

A 10-year review period is a necessary, reasonable and proportionate measure to protect the integrity of the visa framework. There is a risk that where a visa applicant has provided fraudulent documents in visa applications, they will also give incorrect, bogus, or fraudulent information to other government agencies, such as social security and tax. It is the Department's view that a lesser time exclusion would not be as effective in achieving this goal given the current trend for applicants to actively 'wait out' the exclusion period and immediately re-apply.

Other than expanding the amount of time that can be considered, the amended subclause 4020(1) does not change how Departmental officers assess cases of fraud. Under policy guidance, flexibility is applied when officers assess an applicant against subclause 4020(1). The officer will take account of all the circumstances of the applicant and consider each case on its own merits.

Circumstances that will be considered include:

- Whether the incorrect information was more than a typographical error, or the person did not realise the documents provided were not genuine.
- Whether the omission was the result of the applicant being ignorant to its relevance.

- Whether the information was also 'false or misleading' at the time it is given.

The Government's position is that the amendments to PIC 4020 are reasonable and justified in order to protect the integrity of the migration program and ensure that people who lie to get a visa, or provide false documents are not entitled to a visa.

Officers have discretion to determine whether or not the visa applicant has deliberately submitted fraudulent documents. This discretion will enable officers to apply subclause 4020(1) in a reasonable and proportionate way. For example, policy guidance states that applicants who accidentally provide false or incorrect information will not be subject to refusal under subclause 4020(1). Such unintentional provision of false or incorrect information includes typographical errors, misunderstanding the requirements of the visa application form, or the provision of the wrong documents.

Currently, subclause 4020(4) gives delegates the discretion to waive the requirements of any or all of subclause 4020(1). Where the bar has been waived, the visa holder can lawfully apply for another visa. Each waiver request must be assessed on its merits. When considering a waiver request, officers must consider whether the existing circumstances of the individual have changed to an extent where the person requires a visa, such as in compelling and compassionate circumstances. Compelling and compassionate circumstances may include instances where the person is unfit to travel, death or serious illness in the family, or natural disaster or civil unrest in the applicant's home county.

Policy guidance states that PIC 4020(1) will apply in circumstances where the provision of false or bogus information is likely to be deliberate, such as claiming another person's identity document or personal information as one's own. Such discretion will be in accordance with community expectations of protecting Australia institutions and government agencies from deliberate cases of fraud from non-citizens.

Persons in Australia who engage in fraud and are excluded from further visa applications under this amendment will be expected to depart Australia. Any separation from family members in Australia as a result of this will not be inconsistent with Articles 17 and 23 of the ICCPR as the application of PIC 4020 will take into account any mitigating or compelling circumstances and weigh these against the need to protect the integrity of the migration programme.

Conclusion

These amendments are compatible with human rights. The amendments address emerging integrity, identity, and community protection risks arising from the conduct of a small number of non-citizens, as well as the exploitation of current visa settings. To the extent that these amendments may limit human rights, the Government considers those limitations as reasonable, proportionate and necessary.

Schedule 3 – Lodgement of partner and permanent parent visa applications

Overview

On 18 April 2015, Schedule 6 to the *Migration Amendment (2015 Measures No. 1) Regulation 2015* inserted subregulation 2.07(5) in the *Migration Regulations 1994* ('the Migration Regulations'). Subregulation 2.07(5) provides a power for the Minister to make an instrument specifying the form, way, place and any other matter for making an application where Schedule 1 to the Migration Regulations refers to matters specified in a legislative instrument.

At the same time the majority of items in Schedule 1 were amended to provide for relevant application matters to be specified in a legislative instrument for many visa classes. However, no amendments were made at that time for the Parent and Partner visa classes. The purpose of these amendments is to align the Parent and Partner visa classes with amendments made to other visa classes in 2015. These amendments amend Schedule 1 to vary the requirements for making valid applications for Parent and Partner visas, allowing a number of matters to be specified in a legislative instrument rather than directly in Schedule 1 to the Regulations.

The amendments provide that the approved form required for applying for a visa, the place at which and manner in which an application must be made, are to be specified by the Minister in a legislative instrument.

Enabling these matters to be specified in a legislative instrument allows the Department to quickly and flexibly manage the way the application process is administered. For example, future legislative instruments may allow increased self-service through online lodgement, or by posting the application to a specified address.

It is envisaged that there may be benefits to applicants through easier access to application lodgement arrangements which are set out in a more consolidated and orderly way.

Human rights implications

These amendments do not engage any of the applicable rights or freedoms.

Conclusion

These amendments are compatible with human rights as they do not raise any human rights issues.

Schedule 4 – Repeals

Overview

These amendments repeal the *Migration (Health Services) Charge Regulations* (the Charge Regulations) which are redundant, as they are no longer in use. The Charge Regulations deal with the refund of charges governed by the *Migration (Health Services) Charge Act 1991* (the 1991 Charge Act). The purpose of the 1991 Charge Act (which is also redundant and will be repealed at a later date) was to provide the basis for calculation of visa fees prior to the introduction of the *Visa Application Charge with the Migration (Visa Application) Charge Act 1997* (the 1997 Charge Act). The 1997 Charge Act imposed the "Migrant Health Services Charge", which applied to any visas lodged and undecided prior to 1 May 1997.

All affected visa applications have been finalised. Accordingly, the facility in the Charge Regulations, which provides for the refund of charges under the 1991 Charge Act, is no longer required.

Human rights implications

The Charge Regulations no longer have any operation because there are no visa applications affected. These amendments therefore do not engage any of the applicable rights or freedoms.

Conclusion

These amendments are compatible with human rights as they do not raise any human rights issues.

The Hon Peter Dutton MP, Minister for Immigration and Border Protection

ATTACHMENT C

Details of the *Migration Legislation Amendment (2017 Measures No. 4) Regulations 2017*

Section 1 – Name

This section provides that the title of the Regulations is the *Migration Legislation Amendment (2017 Measures No. 4) Regulations 2017* (the Regulations).

Section 2 – Commencement

This section provides that the instrument commences on 18 November 2017.

Section 3 – Authority

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

Section 4 – Schedules

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

The effect of this section is that the *Migration Regulations 1994* (the Migration Regulations) and the *Migration (Health Services) Charge Regulations* (the Charge Regulations) are amended as set out in the applicable items in the Schedules to the Regulations.

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

Schedule 1 – Health debts and health insurance arrangements

Migration Regulations 1994

Item 1 – Regulation 1.03

This item inserts the definitions of ***adequate arrangements for health insurance*** and ***outstanding public health debt*** into regulation 1.03.

Adequate arrangements for health insurance

Some visa holders are required to maintain adequate arrangements for health insurance (condition 8501). This can be in the form of travel insurance, specific health insurance, a combination of both travel and health insurance, or other acceptable arrangements. The maintenance of adequate health insurance helps to offset any public health costs which may otherwise be incurred and to mitigate any financial risk to visa holders and the Australian community.

Prior to this amendment, there was no definition of "adequate health insurance" in the Migration Act or the Migration Regulations. However, the term "adequate health insurance" (or variations on that term) is used regularly throughout Schedules 2 and 8 to the Migration Regulations. For example, a requirement to maintain adequate health insurance while in Australia (condition 8501) is already applied – on either a discretionary or mandatory basis – to some temporary visas. For visas with a mandatory health insurance requirement, this is generally accompanied by a Schedule 2 health requirement that must be satisfied at the time of decision.

Policy and procedural guidance has provided assistance, to date, in the application of relevant provisions. For example:

- for the purpose of student visas, Overseas Student Health Cover (OSHC) constitutes adequate health insurance; and
- for other temporary visa holders, what constitutes "adequate" can be flexible, but generally conforms to a set of minimum standards outlined under policy.

The insertion of the new definition of ***adequate arrangements for health insurance*** provides a more robust and flexible health insurance setting. The definition works with new regulation 1.15K, and together they ensure a strong legislative basis for implementing clear, consistent policy.

As a consequence of this amendment, and the amendment inserting new regulation 1.15K, where someone is required to have adequate arrangements for health insurance, the person must have arrangements for health insurance which meet the requirements specified by the Minister in a legislative instrument. If no requirements are specified, the arrangement to be covered by health insurance must be an arrangement that the Minister considers adequate in the circumstances. This ensures that the decision-maker has appropriate discretion in determining whether arrangements for health insurance are adequate where the person's situation and requirements for health insurance are not covered by the instrument. For example, health insurance would not be required if a person demonstrates they are eligible for

Medicare under a Reciprocal Health Care Agreement (RHCA), by presenting their Medicare card.

Outstanding public health debt

Several million temporary visa holders enter Australia each year. Of these, some need to access public health services during their stay in Australia. In some cases (typically where the costs are not covered by insurance, or the visa holder is not eligible for Medicare) they fail to pay for the health care service provided. This has the cumulative effect of leaving substantial debts that burden the Australian public health care system. State and Territory health authorities have raised the issue of non-payment of these debts as a significant concern on a number of occasions.

The insertion of the new definition of ***outstanding public health debt*** is one of several measures in these amendments intended to create more robust health costs arrangements. These new arrangements are designed to ease the burden on Australia's healthcare system by ensuring that responsibility for health costs in relation to certain visa holders is clearly identified as that of the visa holder.

The other measures include: the insertion of new condition 8602 ('the holder must not have an outstanding public health debt') by item 49 of this Schedule; and the imposition of new condition 8602 on a range of temporary visas.

The new provisions allow relevant health authorities to notify the Department that an outstanding public health debt exists, so the Department can take appropriate visa action. The Department will not play any role in the collection of outstanding public health debts, and will not determine the point at which health authorities consider a debt outstanding.

Agreements between the Department and relevant Commonwealth, State and Territory health authorities outline the process of the reporting of debts to the Department. A decision on reporting a debt will ultimately be a matter for the relevant health authority. For example, a relevant health authority may choose not to inform the Department of a health debt where the debt is too small to warrant referral, where the authority is inclined to waive the debt for compelling/compassionate reasons, or where an appropriate payment plan is in place. Conversely, an authority may choose to report a small debt in the situation where the visa holder is a repeat customer with multiple previous debts.

The details required to be reported (in respect of the reporting of an outstanding health debt) will be outlined in individual agreements between each State or Territory health authority and the Department. All debts reported must relate to publicly-funded or subsidised health or aged care services. Where a debt is composed of both public and private monies, only the public aspect of the debt can be reported as an outstanding public health debt.

Item 49 provides further information regarding when a breach of new condition 8602 occurs (in relation to an outstanding public health debt).

Breach of a visa condition is a ground for considering cancelling that visa. However, the preferred outcome (and that sought by the Department) is to have the debt repaid prior to the person being granted further visas or cancellation being pursued. In situations where an outstanding public health debt has been reported, the initial action for the Department will be

to encourage the visa holder to contact the health facility to which the monies are owed and arrange to pay the debt. On occasion consideration of visa cancellation may be appropriate, however this would be discretionary and due consideration will be given to individual circumstances.

Item 2 – At the end of Division 1.2 of Part 1

This item adds regulation 1.15K, which works with the definition of ***adequate arrangements for health insurance*** in regulation 1.03 (please see above for further details regarding that new definition).

Regulation 1.15K ensures that the Minister can specify minimum health insurance requirements for relevant visa holders by legislative instrument. Different requirements can be specified for different classes of person, in accordance with section 33 of the *Acts Interpretation Act 1901*. If requirements for adequate arrangements for health insurance are not specified by legislative instrument under this regulation, then paragraph (b) of the definition of ***adequate arrangements for health insurance*** will apply. That is, when the person's situation and requirements for health insurance are not covered by the instrument, the ability for the Minister to consider an arrangement to be covered by health insurance as adequate (in the circumstances as specified in paragraph (b) of the definition) ensures that the decision-maker has sufficient discretion for different or complex cohorts.

Specific health insurance providers are not to be prescribed in the instrument. Instead, requirements are set out for the kinds of product to be held.

The instrument would not be disallowable because it is made under Part 2 of the Migration Regulations, and therefore is exempted from disallowance by section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (see table item 20).

Item 3 – At the end of Division 188.6 of Schedule 2
Item 4 – At the end of Division 300.6 of Schedule 2
Item 5 – At the end of Division 400.6 of Schedule 2
Item 13 – Clause 405.611 of Schedule 2
Item 16 – At the end of Division 407.6 of Schedule 2
Item 22 – At the end of Division 410.6 of Schedule 2
Item 23 – Clause 417.611 of Schedule 2
Item 26 – At the end of clause 457.611 of Schedule 2
Item 27 – At the end of Division 461.6 of Schedule 2
Item 28 – Clause 462.611 of Schedule 2
Item 29 – At the end of Division 476.6 of Schedule 2
Item 32 – Clause 485.611 of Schedule 2
Item 33 – At the end of Division 489.6 of Schedule 2
Item 36 – Paragraph 500.611(1)(a) of Schedule 2
Item 37 – Paragraph 500.612(1)(a) of Schedule 2
Item 40 – At the end of Division 590.6 of Schedule 2
Item 41 – At the end of Division 600.6 of Schedule 2
Item 42 – Clause 601.611 of Schedule 2
Item 44 – Clause 651.611 of Schedule 2
Item 45 – At the end of Division 676.6 of Schedule 2
Item 46 – Clause 771.612 of Schedule 2

Item 47 – At the end of Division 773.6 of Schedule 2
Item 48 – At the end of Division 988.6 of Schedule 2

These items make amendments providing for condition 8602 (see item 49) to be imposed on a mandatory basis on visas of the following subclasses: Subclass 188 (Busines Innovation and Investment (Provisional)), Subclass 300 (Prospective Marriage), Subclass 400 (Temporary Work (Short Stay Specialist)), Subclass 405 (Investor Retirement), Subclass 407 (Training), Subclass 410 (Retirement), Subclass 417 (Working Holiday), Subclass 457 (Temporary Work (Skilled)), Subclass 461 (New Zealand Citizen Family Relationship (Temporary)), Subclass 462 (Work and Holiday), Subclass 476 (Skilled (Recognised Graduate)), Subclass 485 (Temporary Graduate), Subclass 489 (Skilled (Regional (Provisional)), Subclass 500 (Student), Subclass 590 (Student Guardian), Subclass 600 (Visitor), Subclass 601 (Electronic Travel Authority), Subclass 651 (eVisitor), Subclass 676 (Tourist), Subclass 771 (Transit), Subclass 773 (Border) and Subclass 988 (Maritime Crew).

The key message as a consequence of the imposition of this new condition is that visa holders are liable for any public health costs they incur. To achieve consistency across visa products, the new condition is imposed on the range of temporary visas mentioned above.

Ordinarily, temporary visa holders (most of whom are Medicare ineligible) are already expected to pay for their health care services, whether this be through their insurance or private funding. The condition is imposed on a range of temporary visas where outstanding public health debts could occur.

Item 6 – Clause 403.211 of Schedule 2
Item 7 – Clause 403.313 of Schedule 2
Item 9 – Subclause 405.227(5) of Schedule 2
Item 11 – Subclause 405.329(2) of Schedule 2
Item 14 – Clause 407.216 of Schedule 2
Item 15 – Clause 407.314 of Schedule 2
Item 17 – Clause 408.212 of Schedule 2
Item 18 – Clause 408.314 of Schedule 2
Item 24 – Clause 457.223B of Schedule 2
Item 25 – Clause 457.324D of Schedule 2
Item 30 – Subclauses 485.215(1) and (2) of Schedule 2
Item 31 – Subclauses 485.312(1) and (2) of Schedule 2
Item 34 – Clause 500.215 of Schedule 2
Item 35 – Clause 500.314 of Schedule 2
Item 38 – Clause 590.217 of Schedule 2
Item 39 – Clause 590.313 of Schedule 2

These items make amendments consequential to the insertion of the new definition of ***adequate arrangements for health insurance*** in regulation 1.03 by item 1 of this Schedule. There are various references throughout Schedule 2 to "adequate health insurance", "adequate arrangements for health insurance", "adequate arrangements in Australia for health insurance" and "adequate health insurance cover". These provisions vary to a degree, and the aim of these amendments is to make them all the same, by utilising the phrase which has been defined, that is, ***adequate arrangements for health insurance***. This is consistent with the condition in clause 8501 of Schedule 8 to the Regulations, that is, "[t]he holder must maintain adequate arrangements for health insurance while the holder is in Australia".

Item 8 – At the end of Division 403.6 of Schedule 2

This item adds clause 403.615 to Division 403.6 of Schedule 2, which is the Division dealing with visa conditions in Subclass 403. New clause 403.615 provides that:

- new condition 8602 is to be imposed on a discretionary basis if clause 403.611 applies to the visa applicant. Clause 403.611 relates to those who satisfy the requirements for grant of this visa through the Government Agency stream, Foreign Government Agency stream or the Privileges and Immunities stream. It is unlikely that representatives of foreign governments in Australia will depart Australia, leaving large, unpaid health debts; and
- in any other case, condition 8602 must be imposed.

Item 10 – Paragraphs 405.228(5)(a) and (b) of Schedule 2
Item 12 – Subclauses 405.330(2) and (2A) of Schedule 2

These items also contain amendments consequential to the insertion of the new definition of ***adequate arrangements for health insurance*** in regulation 1.03 by item 1 of this Schedule, and are similarly meant to ensure consistency in the Regulations in relation to how adequate arrangements for health insurance are referred to.

However, as paragraph 405.228(5)(a) and subclause 405.330(2) refer to past arrangements for adequate health insurance in Australia, these provisions have a separate application provision in the amendment made in subclause 6701(2) in item 50 so that the amendments do not apply retrospectively.

Item 19 – Paragraph 408.611(b) of Schedule 2

The amendment made by this item is consequential to the amendment made by item 20, below. The purpose of the amendment is to ensure consistency of language between provisions using similar phraseology.

Item 20 – At the end of Division 408.6 of Schedule 2

This item adds clause 408.613 to impose condition 8602 on Subclass 408 (Temporary Activity) visas. Condition 8602 specifies that a visa holder, who is subject to this condition, must not have an outstanding public health debt (see item 49 below).

This clause permits condition 8602 to be imposed on a discretionary basis where the primary applicant seeks to enter or remain in Australia to work for:

- a government agency (per subparagraph 408.227(a)(ii));
- a foreign government agency (per subparagraph 408.227(a)(iii)); or
- an Australian Government endorsed event (per clause 408.229).

The new clause imposes condition 8602 on a mandatory basis in other circumstances.

Item 21 – Clause 410.612 of Schedule 2 (note)

This item contains a technical amendment, consequential to the addition of clause 410.613 by item 22. New clause 410.613 provides that condition 8602 must be imposed on Subclass 410 (Retirement) visas. The note at the end of clause 410.612 states that there are no conditions on Subclass 410 visas and, as this is no longer correct, the note is being repealed.

Item 43 – At the end of Division 602.6 of Schedule 2

This item adds clause 602.613 so that condition 8602 is imposed on Subclass 602 (Medical Treatment) visas on either a discretionary or mandatory basis. Condition 8602 specifies that a visa holder, who is subject to this condition, must not have an outstanding public health debt (see item 49 below).

This clause imposes condition 8602 on a discretionary basis if the applicant meets the requirements in subclause 602.212(6), where they are unfit to leave Australia.

This clause imposes condition 8602 on a mandatory basis in other circumstances.

Item 49 – At the end of Schedule 8

This item adds a new clause into Schedule 8 to the Regulations, containing condition 8602, which relates to public health debts.

Imposition of new condition 8602 on a visa will enable action to be taken in relation to the visa in the event that an outstanding public health debt is reported to the Department.

The primary goal of these amendments is two-fold, to:

- improve awareness that visa holders are responsible for their health costs; and
- prompt visa holders to settle their health debts.

Therefore, breach of the new condition is unlikely to result in visa cancellation in the first instance. Once a debt is reported, the resultant breach of the visa condition cannot be undone, however if it is subsequently reported as cleared, the Department's records will be updated to reflect this advice. This information may be relevant to any decisions made by the Department in relation to the visa holder.

Item 50 – In the appropriate position in Schedule 13

This item inserts new Part 67 and new subclauses 6701(1), (2) and (3) into Schedule 13 to the Regulations. New Part 67 of Schedule 13 deals with the amendments made by these amending Regulations, that is, the Migration Legislation Amendment (2017 Measures No. 4) Regulations 2017.

Clause 6701 – Operation of amendments

This clause provides for how the amendments made by Schedule 1 to these amending Regulations are to apply.

Subclause 6701(1) provides that the amendments made by Schedule 1 apply in relation to an application for a visa made on or after 18 November 2017.

Subclause 6701(2) ensures that there is no retrospective application of paragraph 405.228(5)(a) and subclause 405.330(2) as a consequence of the amendments made by items 10 and 12 of Schedule 1 to these Regulations. The amendments in items 10 and 12 are part of a package of amendments which are designed to align all provisions relating to whether or not a person is considered to have adequate arrangements for health insurance, and which occur in Schedule 2 to the Regulations. These provisions will now refer to the same phrase, being "adequate arrangements for health insurance". This phrase is now defined in accordance with the new definition in regulation 1.03. However, paragraph 505.228(5)(a) and subclause 405.330(2) both refer to visas previously held by the applicant and it is not intended that the new definition should apply in respect of visas previously held.

Subclause 6701(3) ensures that the operation of new condition 8602 in Schedule 8 does not apply in relation to any debt incurred before the commencement of the Regulations. New condition 8602 is inserted by item 49 of Schedule 2019.

While this provision refers to a debt incurred before the commencement of clause 8602 of Schedule 8, the intention is that any public health or aged care services provided before commencement of clause 8602 would "incur" a debt at that point in time (rather than the date of billing). Therefore, any charges for public health or aged care services provided prior to the commencement of clause 8602 cannot become an outstanding public debt, or part of an outstanding public health debt. Where public health or aged care services are provided for a period that commences prior to commencement of clause 8602, and continues after commencement of clause 8602, the intention is that only those services provided on and after commencement of clause 8602 can incur a debt which is then able to become an outstanding public health debt.

Agreements with Commonwealth, State and Territory health authorities advise that outstanding public health debts should not be reported in relation to services provided prior to the commencement of clause 8602.

Schedule 2 – Integrity, identity and community protection amendments

Migration Regulations 1994

Many of the items in this Schedule impose condition 8303 on a mandatory basis on a wider range of visas than previously imposed. The wording of condition 8303 (visa holder must not engage in activities which are violent or disruptive towards a group in the community) is also broadened to additionally forbid activities which may endanger or threaten an individual. The intention of the amendment is to clearly articulate that there is no tolerance in the Australian community for adverse behaviour such as harassing, stalking, intimidating, bullying or otherwise threatening an individual, or behaviour that would not necessarily be subject to criminal sanctions but is nonetheless either unlawful or unacceptable. For example, a visa holder who conducts targeted cyber-bullying towards a particular person could be considered for cancellation under the updated condition 8303. Apart from certain bridging visas, where the condition is imposed as a discretionary condition, the condition is otherwise imposed as a mandatory condition.

The amendments also impose condition 8564 (the visa holder must not engage in criminal conduct) on a wider range of visas. The condition has been added as a mandatory condition in all cases except in relation to the subclass 060 (Bridging F) visa. The purpose of these amendments is to strengthen messaging regarding community expectations via the character and integrity visa refusal and cancellation framework.

The amendments also introduce a new visa condition (condition 8304) which requires non-citizens to maintain a single official identity when dealing with Government agencies during their stay in Australia. The purpose of the new condition is to require that all official Australian identity documents which identify the visa holder must be in the same name. If a visa holder wants to change their name, it is a condition of their visa that they must update their details with all relevant State or Federal Government agencies. The effect of the new condition is that visa holders will be able to have their visas cancelled if they operate under multiple identities.

In addition, this condition addresses observations made by the Joint Commonwealth – New South Wales Review of the Martin Place Siege (February 2015), which noted that government agencies interacted with Man Haron Monis under a significant range of identities, aliases and titles. While Mr Monis used his legal name when dealing with some Government agencies, he used aliases when dealing with others. The new visa condition will address the practice of maintaining more than one official identity, which may enable criminal activity and assist in the evasion of detection if a person becomes unlawful.

This condition has been added to most visa subclasses as a mandatory condition, with the exception of Subclass 050 (Bridging (General)) visas granted by the Minister personally under section 195A of the Migration Act.

Item 1 – Subparagraph 1128(3)(d)(i) of Schedule 1

This item omits a reference to notices of cancellation made under subsection 135(1) of the Migration Act.

The purpose of the amendment is to broaden the scope of the provision so that it covers all

notices of cancellation under the Migration Act, not just those under subsection 135(1). The effect of the amendment is that a valid application for a Return (Residence) (Class BB) visa (RRV) (which contains Subclasses 155 and 157) cannot be made by a person whose most recent permanent visa has been the subject of a notice proposing cancellation.

Item 2 – Subparagraphs 1128(3)(d)(iii) and (e)(i) of Schedule 1

This item omits references to decisions to cancel which are made under section 134 of the Migration Act.

The amendments are consequential to the amendment made by item 1 above to broaden the scope of the provision so that it covers all cancellations under the Migration Act, not just those under section 134. The effect of the amendments is that a valid application for a RRV (which contains Subclasses 155 and 157) under these provisions cannot be made by a person whose most recent permanent visa has been the subject of a notice to cancel under subsection 135(1) (and a decision to cancel has not been made under any provision of the Migration Act). The purpose is to prevent a person making an application for an RRV if their most recent visa is still under consideration for cancellation.

Item 3 – Subparagraph 1216(3)(c)(i) of Schedule 1

This item omits a reference to notices of proposed cancellation made under subsection 135(1) of the Migration Act.

The purpose of the amendment is to broaden the scope of the provision so that it covers all notices of proposed cancellation under the Migration Act, not just subsection 135(1). The effect of the amendment is that a valid application for a Resident Return (Temporary) (Class TP) visa (which contains Subclass 159) under this provision cannot be made by a person whose most recent permanent visa has been the subject of a notice proposing cancellation.

Item 4 – Subparagraphs 1216(3)(c)(iii) and (d)(i) of Schedule 1

This item omits a reference to cancellations made under section 134 of the Migration Act.

The purpose of the amendment is to broaden the scope of the provision so that it covers all decisions to cancel under the Migration Act, not just section 134. The effect of the amendment is that a valid application for a Resident Return (Temporary) (Class TP) visa (which contains Subclass 159) under this provision cannot be made by a person whose most recent permanent visa has been cancelled.

Item 5 – Paragraph 1305(3)(f) of Schedule 1

This item omits a reference to condition 8564. The amendment is consequential to the amendment at item 6 below which reinserts this reference (along with an additional reference to condition 8303).

Item 6 – After paragraph 1305(3)(f) of Schedule 1

This item inserts a new provision into the requirements for a valid application for a Bridging E (Class WE) visa (BVE).

The effect of the amendment is that a person cannot make a valid application for a BVE if they have previously held a visa that has been cancelled by reason of a failure to comply with condition 8303 or 8564. The purpose of the amendment is to strengthen the integrity of the BVE by ensuring that people who have been involved in criminal or other disruptive conduct in the past cannot apply for a BVE. The amendment does not prevent the grant of a BVE without application in appropriate circumstances. In particular, a non-citizen in immigration detention may be granted a BVE under regulation 2.25 of the Migration Regulations.

Item 7 – Paragraph 1305(3)(g) of Schedule 1

This item adds a reference to paragraph 2.43(1)(oa) (which is one of the general cancellation grounds specified in subregulation 2.43(1) of the Migration Regulations) into paragraph 1305(3)(g).

The effect of the amendment is that an applicant cannot make a valid application for a BVE if they have previously held a visa that has been cancelled under paragraph 2.43(1)(oa) (which relates to temporary visa holders receiving criminal convictions). The amendment does not prevent the grant of a BVE without application in appropriate circumstances. In particular, a non-citizen in immigration detention may be granted a BVE under regulation 2.25 of the Migration Regulations.

Item 8 – At the end of subitem 1305(3) of Schedule 1

This item inserts a new provision into the requirements for making a valid application for a BVE.

The effect of the amendment is that a person cannot make a valid application for a BVE if they have previously held a visa that has been cancelled because the Minister was satisfied that a ground mentioned in paragraph 116(1)(e) of the Migration Act applied in respect of the applicant. The purpose of the amendment is to strengthen the integrity of the BVE by ensuring that people whose presence in Australia would be or might be a risk to the health, safety or good order of the Australian community or the health or safety of an individual or individuals cannot apply for a BVE. The effect of the amendment is to give the Department greater control over who should be allowed to remain in the community. The amendment does not prevent the grant of a BVE without application in appropriate circumstances. In particular, a non-citizen in immigration detention may be granted a BVE under regulation 2.25 of the Migration Regulations.

Item 9 – Subclause 010.611(1) of Schedule 2
Item 10 – Subclause 010.611(2) of Schedule 2
Item 11 – Subclause 010.611(3) of Schedule 2
Item 12 – Subclause 010.611(3A) of Schedule 2
Item 13 – Subclause 010.611(3B) of Schedule 2
Item 14 – Subclause 010.611(3C) of Schedule 2
Item 15 – Subclause 010.611(4) of Schedule 2

These items amend the Migration Regulations to provide that new condition 8304 (which requires the visa holder to maintain one single official identity when dealing with State and Federal Government agencies) must be imposed on a subclass 010 (Bridging A) visa.

Item 16 – Subclause 020.611(1) of Schedule 2
Item 17 – Subclause 020.611(2) of Schedule 2
Item 18 – Subclause 020.611(3) of Schedule 2
Item 19 –Subclause 020.611(4) of Schedule 2
Item 20 – Subclause 020.611(4A) of Schedule 2
Item 21 – Subclause 020.611(5) of Schedule 2

These items provide that new condition 8304 (which requires the visa holder to maintain one single official identity when dealing with State and Federal Government agencies) must be imposed on a Subclass 020 (Bridging B) visa.

Item 22 – Clause 030.611 of Schedule 2
Item 23 – Clause 030.612 of Schedule 2
Item 24 – Clause 030.613 of Schedule 2
Item 25 – Clause 030.614 of Schedule 2

These items provide that new condition 8304 (which requires the visa holder to maintain one single official identity when dealing with State and Federal Government agencies) must be imposed on a subclass 030 (Bridging C) visa.

Item 26 – Clause 040.611 of Schedule 2

This item provides that new condition 8304 (which requires the visa holder to maintain one single official identity when dealing with State and Federal Government agencies) must be imposed on a Subclass 040 (Bridging D) visa.

Item 27 – Clause 041.611 of Schedule 2

This item provides that new condition 8304 (which requires the visa holder to maintain one single official identity when dealing with State and Federal Government agencies) must be imposed on a Subclass 041 (Bridging D) visa.

Item 28 – Clause 050.611 of Schedule 2
Item 29 –Paragraph 050.611B(a) of Schedule 2
Item 30 – Paragraph 050.611B(b) of Schedule 2
Item 31 – Clause 050.612 of Schedule 2
Item 32 – Subclause 050.612A(2) of Schedule 2
Item 33 – Subclause 050.612A(3) of Schedule 2
Item 34 – Clause 050.612B of Schedule 2
Item 35 – Clause 050.613 of Schedule 2
Item 36 – Subclause 050.613A(1) of Schedule 2
Item 37 – Subclause 050.613A(2) of Schedule 2
Item 38 – Subclause 050.614(1) of Schedule 2
Item 39 – Subclause 050.614(2) of Schedule 2
Item 40 – Subclause 050.615(1) of Schedule 2
Item 41 – Subclause 050.615(2) of Schedule 2
Item 42 – Subclause 050.615A(1) of Schedule 2
Item 43 – Subclause 050.615A(2) of Schedule 2
Item 44 – Subclause 050.616(1) of Schedule 2
Item 45 – Subclause 050.616(2) of Schedule 2

Item 47 – Subclause 050.617(1) of Schedule 2

These items amend the Migration Regulations to provide that:

- new condition 8304 (which requires the visa holder to maintain one single official identity when dealing with State and Federal Government agencies) must be imposed on a Subclass 050 (Bridging E) visa; and
- amended condition 8303 (which prohibits the visa holder from becoming involved in activities that endanger or threaten any individual, or activities which are disruptive to, or threatening harm to, the Australian community) may be imposed on a Subclass 050 (Bridging E) visa.

Item 46 – Subclause 050.616A(1) of Schedule 2

This item inserts conditions 8303 and 8304 into subclause 050.616A(1). The purpose of the amendment is to impose new condition 8304 (which requires the visa holder to maintain one single official identity when dealing with state and federal government agencies) and condition 8303 (which prohibits the visa holder from becoming involved in activities that endanger or threaten any individual, or activities which are disruptive to, or threatening harm to, the Australian community) as additional discretionary conditions in relation to the Subclass 050 (Bridging E) visa in circumstances where the Minister grants the visa personally under section 195A of the Migration Act.

Item 48 – Clause 051.611 of Schedule 2
Item 49 – Subclause 051.611A(1) of Schedule 2
Item 50 – Subclause 051.611A(3) of Schedule 2
Item 51 – Subclause 051.612(1) of Schedule 2

These items amend the Migration Regulations to provide that:

- new condition 8304 (which requires the visa holder to maintain one single official identity when dealing with State and Federal Government agencies) must be imposed on a Subclass 051 (Bridging E) visa; and
- amended condition 8303 (which prohibits the visa holder from engaging in activities which are dangerous or threatening to any individual or which are disruptive to the Australian community) may be imposed on a Subclass 051 (Bridging E) visa (except where the visa has been granted by operation of section 75 of the Act, in which case condition 8303 must be imposed).

Item 52 – Clause 060.611 of Schedule 2
Item 53 – Clause 060.612 of Schedule 2
Item 54 – At the end of Division 060.6 of Schedule 2

These items amend the Migration Regulations to provide that:

- new condition 8304 (which requires the visa holder to maintain one single official identity when dealing with state and federal government agencies) must be imposed on a subclass 060 (Bridging F) visa;
- condition 8303 (which prohibits the visa holder from becoming involved in activities that endanger or threaten any individual, or activities which are disruptive to, or

violence threatening harm to, the Australian community) may be imposed on a subclass 060 (Bridging F) visa (except where the Bridging F visa has been granted by operation of section 75 of the Act, in which case condition 8303 must be imposed on the visa); and

- condition 8564 (the visa holder must not engage in criminal conduct) may be imposed on a subclass 060 (Bridging F) visa.

Item 55 – Clause 070.611 of Schedule 2

This item provides that conditions 8304 (which requires the visa holder to maintain one single official identity when dealing with state and federal government agencies) and 8564 (the visa holder must not engage in criminal conduct) must be imposed on a subclass 070 (Bridging (Removal Pending)) visa.

Item 56 – At the end of Subdivision 155.22 of Division 155.2 of Schedule 2

This item inserts new clause 155.223 which requires that the applicant's current permanent visa must not be the subject of a notice under the Migration Act proposing cancellation. Further, the applicant's most recent permanent visa must not have been cancelled.

The purpose of this amendment is to prevent the grant of a subclass 155 – Resident Return Visa to a person whose most recent visa is being considered for possible cancellation or has been cancelled. The grant of an RRV in these situations could allow a person to circumvent the cancellation process, which would then need to be restarted in relation to the new visa.

Item 57 – At the end of Subdivision 157.22 of Division 157.2 of Schedule 2

This item inserts new clause 157.223 which requires that the applicant's current permanent visa must not be the subject of a notice under the Migration Act proposing cancellation. Further, the applicant's most recent permanent visa must not have been cancelled.

The purpose of this amendment is to prevent the grant of a Subclass 157 – Resident Return Visa to a person whose most recent visa is being or has been cancelled. The grant of an RRV in these situations could allow a person to circumvent the cancellation process, which would then need to be restarted in relation to the new visa

Item 58 – At the end of Subdivision 159.22 of Division 159.2 of Schedule 2

This item inserts new clause 159.224 which requires that the applicant's current permanent visa must not be the subject of a notice under the Migration Act proposing cancellation. Further, the applicant's most recent permanent visa must not have been cancelled.

The purpose of this amendment is to prevent the grant of a Subclass 159 – Resident Return Visa to a person whose most recent visa is being or has been cancelled. The grant of an RRV in these situations could allow a person to circumvent the cancellation process, which would then need to be restarted in relation to the new visa.

Item 59 – At the end of Division 160.6 of Schedule 2
Subclass 160 – Business Owner (Provisional)
Item 60 – At the end of Division 161.6 of Schedule 2
Subclass 161 – Senior Executive (Provisional)
Item 61 – At the end of Division 162.6 of Schedule 2
Subclass 162 – Investor (Provisional)
Item 62 – At the end of Division 163.6 of Schedule 2
Subclass 163 – State/Territory Sponsored Business Owner (Provisional)
Item 63 – At the end of Division 164.6 of Schedule 2
Subclass 164 – State/Territory Sponsored Senior Executive (Provisional)
Item 64 – At the end of Division 165.6 of Schedule 2
Subclass 165 – State/Territory Sponsored Investor (Provisional)
Item 65 – At the end of Division 173.6 of Schedule 2
Subclass 173 – Contributory Parent (Temporary)
Item 66 – Clause 188.614 of Schedule 2
Subclass 188 – Business Innovation and Investment (Provisional)
Item 67 – Clause 300.616 of Schedule 2
Subclass 300 – Prospective Marriage
Item 68 – At the end of Division 309.6 of Schedule 2
Subclass 309 – Partner (Provisional)

These items amend the Migration Regulations to provide that conditions 8303, 8304 and 8564 must be imposed on the above visa subclasses.

The purpose of these amendments is to reinforce messaging concerning Australian Government and community expectations of temporary visa holders' behaviour and conduct.

Item 69 – Clause 400.613 of Schedule 2
Subclass 400 – Temporary Work (Short Stay Activity)
Item 70 – Subclauses 403.611(2), 403.612(2) and 403.613(2) of Schedule 2
Subclass 403 – Temporary Work (International Relations)
Item 71 – Subclause 403.614(2) of Schedule 2
Subclass 403 – Temporary Work (International Relations)

These items amend the Migration Regulations to provide that conditions 8304 and 8564 must be imposed on the above visa subclasses.

The purpose of the amendments is to reinforce messaging concerning Australian Government and community expectations of temporary visa holders' behaviour and conduct.

Items 72 and 73 – Clause 405.611 of Schedule 2
Subclass 405 – Investor Retirement

These items amend the Migration Regulations to provide that conditions 8303, 8304 and 8564 must be imposed on the above visa subclasses.

The purpose of these amendments is to reinforce messaging concerning Australian Government and community expectations of temporary visa holders' behaviour and conduct.

Item 74 – Clause 407.613 of Schedule 2
Subclass 407 – Training
Item 75 – Paragraph 408.611(a) of Schedule 2
Item 76 – Paragraph 408.612(a) of Schedule 2
Subclass 408 – Temporary Activity

These items amend the Migration Regulations to provide that conditions 8304 and 8564 must be imposed on the above visa subclasses.

The purpose of the amendments is to reinforce messaging concerning Australian Government and community expectations of temporary visa holders' behaviour and conduct.

Item 77 – Clause 410.612 of Schedule 2
Subclass 410 – Retirement

This item removes a reference to condition 8303 from this clause and is consequential to the amendment at item 78 below which includes condition 8303 as a mandatory condition in the clause.

Item 78 – Clause 410.613 of Schedule 2
Subclass 410 – Retirement
Items 79 and 80 – Clause 417.611 of Schedule 2
Subclass 417 – Working Holiday
Item 81 –Division 445.6 of Schedule 2 (heading)
Subclass 445 –Dependent Child
Item 82 – Clause 449.611 of Schedule 2
Subclass 449 – Humanitarian Stay (Temporary)

These items amend the Migration Regulations to provide that conditions 8303, 8304 and 8564 must be imposed on the above visa subclasses.

The purpose of the amendments is to reinforce messaging concerning Australian Government and community expectations of temporary visa holders' behaviour and conduct.

Item 83 – Subclause 457.611(3) of Schedule 2
Subclass 457 – Temporary Work (Skilled)

This item omits a reference to condition 8303 and is consequential to the inclusion of condition 8303 in subclause 457.611(4) by item 84 below.

Item 84 – Subclause 457.611(4) of Schedule 2
Subclass 457 – Temporary Work (Skilled)
Item 85 – Clause 461.612 of Schedule 2
Subclass 461 – New Zealand Citizen Family Relationship (Temporary)
Item 86 – Clause 462.611 of Schedule 2
Subclass 462 – Work and Holiday
Item 87 – Clause 476.612 of Schedule 2
Subclass 476 – Skilled — Recognised Graduate
Item 88 – Clause 485.611 of Schedule 2
Subclass 485 – Temporary Graduate

Item 89 – Clause 489.616 of Schedule 2
Subclass 489 – Skilled—Regional (Provisional)

These items amend the Migration Regulations to provide that conditions 8303, 8304 and 8564 must be imposed on the above visa subclasses.

The purpose of the amendments is to reinforce messaging concerning Australian Government and community expectations of temporary visa holders' behaviour and conduct.

Items 90 and 91 – Paragraph 500.611(1)(a) of Schedule 2
Subclass 500 – Student

These items amend the Migration Regulations to provide that conditions 8303, 8304 and 8564 must be imposed on the above visa subclass for visa applicants who satisfy the primary criteria for the visa.

The purpose of the amendments is to reinforce messaging concerning Australian Government and community expectations of temporary visa holders' behaviour and conduct.

Item 92 – Paragraph 500.611(2)(b) of Schedule 2
Subclass 500 – Student

This item omits a reference to condition 8303 and is consequential to the inclusion of condition 8303 as a mandatory condition in item 90 above.

Items 93 and 94 – Paragraph 500.612(1)(a) of Schedule 2
Subclass 500 – Student

These items amend the Migration Regulations to provide that conditions 8303, 8304 and 8564 must be imposed on the above visa subclass for visa applicants who satisfy the secondary criteria for the visa.

The purpose of these amendments is to reinforce messaging concerning Australian Government and community expectations of temporary visa holders' behaviour and conduct.

Item 95 – Subclause 500.612(2) of Schedule 2
Subclass 500 – Student

This item omits a reference to condition 8303 and is consequential to the inclusion of condition 8303 as a mandatory condition in item 93 above.

Item 96 – Clause 590.613 of Schedule 2
Subclass 590 – Student Guardian
Item 97 – Clause 600.616 of Schedule 2
Subclass 600 – Visitor
Items 98 and 99 – Clause 601.611 of Schedule 2
Subclass 601 – Electronic Travel Authority
Item 100 – At the end of Division 602.6 of Schedule 2
Subclass 602 – Medical Treatment

Items 101 and 102 – Clause 651.611 of Schedule 2
Subclass 651 – eVisitor
Item 103 – Clause 676.614 of Schedule 2
Subclass 676 – Tourist
Item 104 – Clause 771.612 of Schedule 2
Subclass 771 – Transit
Item 105 – Clause 785.611 of Schedule 2
Subclass 785 – Temporary Protection
Item 106 – At the end of Division 786.6 of Schedule 2
Subclass 786 – Temporary (Humanitarian Concern)
Item 107 – Clause 790.611 of Schedule 2
Subclass 790 – Safe Haven Enterprise
Item 108 – Division 820.6 of Schedule 2 (heading)
Subclass 820 – Partner
Item 109 – Division 884.6 of Schedule 2 (heading)
Subclass 884 – Contributory Aged Parent (Temporary)
Item 110 – Clause 988.613 of Schedule 2
Subclass 988 – Maritime Crew

These items amend the Migration Regulations to provide that conditions 8303, 8304 and 8564 must be imposed on the above visa subclasses.

The purpose of these amendments is to reinforce messaging concerning Australian Government and community expectations of temporary visa holders' behaviour and conduct.

Item 111 – Paragraph 4020(1)(b) of Schedule 4

This item amends clause 4020 of Schedule 4 to the Regulations to extend the period of time over which the Minister may take into account fraudulent conduct from one year to 10 years. The effect of the amendment is that the Minister may refuse the visa if not satisfied that in the previous 10 years before the application was made the applicant has not engaged in any fraudulent conduct in relation to any other visa held, or applied for by the applicant.

This measure discourages individuals from in a pattern of behaviour where they will withdraw their application once notified by the Department of suspected fraud, only to re-attempt their visa application after the period of 12 months has elapsed, using newly obtained documents.

Paragraph 4020(1)(b) will continue to be subject to the existing provision giving delegates the discretion to waive its requirements if there are compelling circumstances that affect the interests of Australia, or of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen that justify the granting of the visa.

Item 112 – Clause 8303 of Schedule 8

This item amends condition 8303, which provides that the visa holder must not become involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community, to broaden its scope to include activities which endanger or threaten an individual.

The effect of the amendment will be to message affected visa holders that, if they engage in

conduct which is disruptive or threatening to any individual, their visa may be subject to cancellation.

This item also creates new condition 8304, which is to be applied to most visa subclasses.

The new condition requires the visa holder to maintain a single identity when dealing with Australian Commonwealth, State and Territory governments and government agencies. This includes using the same name in all official Australian identity documents, notifying the issuer of any name changes as soon as practicable and taking all reasonable steps to ensure the documents are updated to reflect this change.

The effect of the imposition of the new clause on a visa subclass is that the visa may be subject to cancellation if there is evidence that the visa holder is wilfully engaging in the concurrent operation of multiple official identities, to obtain an advantage or otherwise engage in unlawful behaviour.

Item 113 – In the appropriate position in Part 67 of Schedule 13

This item inserts Part 6702 into Schedule 13 – Transitional Arrangements.

The purpose of the provision is to make it clear that the amendments which affect Schedules 1, 2 and 4 (which relate to application requirements and visa criteria) only apply to applications made on or after 18 November 2017. Further, amendments made to Schedule 8 (setting out conditions attached to visas) only apply to visa applications made on or after 18 November 2017.

Schedule 3 – Lodgement of partner and permanent parent visa applications

Migration Regulations 1994

In April 2015, the majority of Schedule 1 items to the Migration Regulations were amended to allow for the way, place and form to be used when making a visa application to be specified by the Minister in a legislative instrument made under subregulation 2.07(5) of the Migration Regulations. Subregulation 2.07(5) relevantly provides that for an item in Schedule 1, the Minister may, by legislative instrument, specify requirements as to the way and place an application must be made, and the form used.

The purpose of these amendments is to align the Parent and Partner visa classes with the amendments made in 2015. In doing so, they allow the Minister to make a legislative instrument to specify the approved form to be used, the manner and place an application is made.

The amendments provide flexibility and improved administrative efficiency in responding to changes to the department's visa application caseload.

The instrument would not be disallowable because it is made under Schedule 1 to the Migration Regulations, and therefore is exempted from disallowance by section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (see table item 20).

Approved form

Items 1, 3, 6, 9, 10, 13, 16, 19, 22, 24, 26, and 29 – Subitems 1124(1), 1124A(1), 1124B(1), 1124B(3)(e)(ii), 1129(1), 1130(1), 1130A(1), 1214C(1), 1215(1), 1220A(1), 1221(1), and 1221A(1) of Schedule 1

The effect of these items is to remove the previous prescribed forms as the approved form, and to provide for the approved form to be specified by the Minister in a legislative instrument made for the items.

Prescribed manner and place of application

Items 2, 4, 7, 11, 14, 17, 20, 23, 25, 27, and 30 – Paragraphs 1124(3)(a), 1124A(3)(a), 1124B(3)(a), 1129(3)(a) and (b), 1130(3)(a), 1130A(3)(a), 1214C(3)(b), 1215(3)(a), 1220A(3)(a), 1221(3)(a), 1221A(3)(a) of Schedule 1

These items repeal the described paragraphs, which specified the manner and place for making a visa application. The effect of the amendments is to substitute new paragraphs to provide that an application must be made in the manner and at the place specified by the Minister in a legislative instrument.

Item 15 – Paragraph 1130(3)(c) of Schedule 1

This is a consequential amendment to reflect the amendments made in Items 13 and 14 above. The purpose of the amendment is to remove the related criterion prescribing the way an application by a person claiming to be a member of a family unit must be made. The

criterion is no longer necessary as the manner for making a visa application will be provided in a legislative instrument.

Items 2, 5, 8, 12, 14, 18, 21, 28, and 31 – Paragraphs 1124(3)(aa), 1124A(3)(bb), 1124B(3)(ca), 1129(3)(f), 1130(3)(b), 1130A(3)(ba), 1214C(3)(fa), 1221(3)(d), 1221A(3)(da) and (e) of Schedule 1

These items repeal the described paragraphs, which specified the manner and place for making a visa application.

These are consequential amendments to reflect the amendments made by Items 2, 4, 7, 11, 14, 17, 20, 23, 25, 27, and 30 above. It is no longer necessary to prescribe these requirements in the Migration Regulations as the manner and place for making a visa application for the relevant visa classes, will be provided in a legislative instrument.

Item 32 – In the appropriate position in Part 67 of Schedule 13

This item inserts Part 6703 into Schedule 13 – Transitional Arrangements.

The purpose of the provision is to make it clear that the amendments made by Schedule 3 apply to applications made on or after 18 November 2017.

Schedule 4 – Repeal of the *Migration (Health Services) Charge Regulations*

Migration (Health Services) Charge Regulations

Item 1 – The whole of the Regulations

This item repeals the *Migration (Health Services) Charge Regulations* (the Charge Regulations), which deal with the refund of charges governed by the *Migration (Health Services) Charge Act 1991* (the 1991 Charge Act). The purpose of the 1991 Charge Act was to provide the basis for calculation of visa fees prior to the introduction of the *Visa Application Charge with the Migration (Visa Application) Charge Act 1997* (the 1997 Charge Act). The 1997 Charge Act imposed the "Migrant Health Services Charge", which applied to any visas lodged and undecided prior to 1 May 1997.

All affected visa applications have been finalised. Accordingly, the facility in the Charge Regulations, which provides for the refund of charges under the 1991 Charge Act, is redundant and no longer required.

It is proposed to repeal the Charge Act 1991 in a future Statute Update Bill.