

Migration Amendment Regulations 2003 (No. 9) 2003 No. 296

EXPLANATORY STATEMENT

STATUTORY RULES 2003 No. 296

Issued by the Minister for Immigration and Multicultural and Indigenous Affairs

Migration Act 1958

Migration Amendment Regulations 2003 (No. 9)

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

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

The purpose of the Regulations is to amend the *Migration Regulations 1994* (the Principal Regulations) to amend the criteria for the grant of student visa subclasses, amend student visa evidentiary requirements for English language proficiency, financial capacity and other requirements, and provide financial requirements for family members seeking to join student visa holders in Australia.

The Regulations effect changes to the Principal Regulations to:

- extend the sources of financial support for certain applicants to include:
 - any individual providing support to the applicant;
 - certain aunts and uncles;
 - loans;
 - the provincial or state government of a foreign country with the support of the national government;
 - certain bodies approved by the Minister; and
 - any source except non-cash assets;
- limit 'financial support from an education provider' to a certain type of scholarship or a waiver of fees (except for school students);
- limit the maximum period for which certain students must give evidence of funds;
- remove the savings history requirement for a further short stay visa to complete studies;
- change the requirements for financial support for family members to:
 - require certain primary applicants to give evidence of funds for only those family members accompanying them on the student visa; and
 - therefore require family members who subsequently apply to give evidence of certain funds.

- introduce an English language proficiency requirement for certain high-risk schools sector applicants;
- limit the period of English language training that can be undertaken on a student visa by high risk students;
- provide an exemption from the English language proficiency test for students who have studied in some English-speaking countries;
- require a lower English language proficiency score for certain applicants;
- extend the courses that can be undertaken under the vocational education and training sector;
- codify the age requirements for schools sector applicants - currently an 'appropriate age' is required - the amendments specify the appropriate ages;
- require that certain schools sector applicants cannot repeat more than 18 months of studies already undertaken offshore;
- allow certain higher education sector applicants to undertake, or to have completed, a foundation course in Australia instead of Year 12 studies;
- change the name of two student visa sectors to better reflect the courses they cover;
- provide access to unrestricted work rights only to family members of students who have commenced masters and doctorate courses;
- introduce a visa condition to require all student visa holders to continue to satisfy all visa criteria; and
- facilitate the transfer of masters by coursework from the masters and doctorate sector to the higher education sector from 1 July 2004.

Details of these Regulations are set out in [Attachment B](#).

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

The Regulations commence on 1 December 2003.

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ATTACHMENT A

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

In addition, the following provisions may apply:

- paragraph 5(2)(b) of the Act provides that the regulations prescribe the evidence of the person's English language proficiency;
- subsection 31(1) of the Act provides that the regulations are to prescribe classes of visas;
- subsection 31(3) of the Act provides that the regulations may prescribe criteria for a visa or visas of a specified class;
- subsection 41(1) of the Act provides that the regulations may provide that visas or visas of a specified class are subject to specified conditions;
- paragraph 41(2)(b) of the Act provides that the regulations may provide that a visa, or visas of a specified class, are subject to a condition imposing restrictions about the work that may be done by the holder, which, without limiting the generality of this paragraph, may be restriction on doing any work, work other than specified work or work of a specified kind;
- section 46 of the Act deals with when an application for a visa is a valid application; in particular:
 - subsection 46(3) provides that the regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application;
 - paragraph 46(4)(b) provides that, without limiting subsection 46(3), the regulations may also prescribe how an application for a visa of a specified class must be made.

ATTACHMENT B

Regulation 1 - Name of Regulations

This regulation provides that these regulations are the *Migration Amendment Regulations 2003* (No. 9).

Regulation 2 - Commencement

This regulation provides that these regulations commence on 1 December 2003.

Regulation 3 - Amendment of *Migration Regulations 1994*

This regulation provides that Schedule 1 to these regulations amends the *Migration Regulations 1994* (the "Migration Regulations").

Regulation 4 - Transitional

This regulation provides that the amendments made by Schedule 1 to these regulations apply in relation to an application for a visa made on or after 1 December 2003.

Schedule 1 - Amendments

Item [1] - Regulation 1.03, definition of education sector, paragraphs (e) and (f)

This item substitutes paragraphs (e) and (f) of the definition of *education sector* in regulation 1.03 of Part 1 of the Migration Regulations with new paragraphs (e) and (f). This amendment is consequential to the change of subclass names made by these regulations to Subclasses 574 and 575, at items [70] and [85], respectively.

Item [2] - Regulation 1.03, definition of exchange student

This item omits the definition of *exchange student* in regulation 1.03 of Part 1 of the Migration Regulations. This amendment is consequential to the insertion of a definition of *secondary exchange student* in regulation 1.03.

Item [3] - Regulation 1.03, after definition of school-age dependant

This item inserts a definition of *secondary exchange student* in regulation 1.03 of Part 1 of the Migration Regulations.

This amendment provides that *secondary exchange student* means an overseas secondary school student participating in a secondary school exchange program that is approved by: (a) the state or territory education authority of Australia that administers the program; (b) and the Education Minister.

The purpose of the definition of *secondary exchange student* is to clarify that an exchange student is a secondary school exchange student participating in a secondary school exchange program.

Item [4] - Subregulation 1.12(1)

This item makes a consequential amendment to subregulation 1.12(1) of Part 1 of the Migration Regulations consequential to the insertion of new subregulation 1.12(2A) by these regulations.

Item [5] - After subregulation 1.12(2)

This item inserts subregulation 1.12(2A) in Part 1 of the Migration Regulations.

New subregulation 1.12(2A) provides that a person is the member of the family unit of a holder of a Student (Temporary) (Class TU) visa if the person is:

- a spouse of the holder; or
- a dependent child of the holder, or of that spouse, who is unmarried and has not turned 18.

The purpose of new subclause 1.12(2A) is to expand the definition of *member of the family unit* in relation to Student (Temporary) (Class TU) visas to a spouse of the holder and a dependent child of the holder, or of that spouse, who is unmarried and less than 18 years of age.

Item [6] - Paragraph 1.15A(2)(d)

This item amends paragraph 1.15A(2)(d) in Part 1 of the Migration Regulations by inserting the reference to "a Student (Temporary) (Class TU) visa".

This amendment makes it a requirement that applicants for a Student (Temporary) (Class TU) visa who claim to be in a de facto relationship must satisfy the Minister that for the period of 12 months immediately preceding the date of application:

- they had a mutual commitment to a shared life as husband and wife to the exclusion of all others; and
- the relationship between them was genuine and continuing; and
- they had been living together or not been living separately and apart on a permanent basis.

The purpose of the amendment made by this item is to ensure that applicants for a Student (Temporary) (Class TU) visa who claim to be in a de facto relationship demonstrate that they have been in a genuine relationship for the period of 12 months immediately preceding the date of application.

Item [7] - Subregulation 1.44(2)

This item substitutes subregulation 1.44(2) in Part 1 of the Migration Regulations.

New subregulation 1.44(2) provides that for Parts 573 and 574 of Schedule 2 to the Migration Regulations, the Minister may specify by Gazette Notice a course of study that is not conducted in English as a course in relation to which the applicant need not provide evidence of his or her English language proficiency in relation to a:

- Subclass 573 (Higher Education Sector) visa where the applicant proposes to undertake a masters degree by coursework; or
- Subclass 574 (Postgraduate Research Sector) visa.

This amendment is consequential to Masters degrees by coursework being gazetted under Subclass 573.

Item [8] - Schedule 1, subparagraph 1128BA(3)(e)(ii)

This item amends subparagraph 1128BA(3)(e)(ii) of Schedule 1 of the Migration Regulations by omitting the reference to Subclass 574 (Masters and Doctorate Sector) visa and replacing it with Subclass 574 (Postgraduate Research Sector) visa.

This amendment is consequential to the amendment of the name of Subclass 574 by these regulations.

Item [9] - Schedule 1, subparagraph 1128BA(3)(e)(v)

This item substitutes subparagraph 1128BA(3)(e)(v) of Schedule 1 of the Migration Regulations with new subparagraph 1128BA(3)(e)(v).

New subparagraph 1128BA(3)(e)(v) replaces the reference to Subclass 575 (Non-award Foundation/Other Sector) visa with the new title of Subclass 575 (Non-Award Sector) visa.

This amendment is consequential to the amendment of the name of Subclass 575 by these regulations.

Item [10] - Schedule 1, subparagraph 1128CA(3)(f)(ii)

This item amends subparagraph 1128CA(3)(f)(ii) of Schedule 1 of the Migration Regulations by omitting the reference to Subclass 574 (Masters and Doctorate Sector) visa and replacing it with a reference to Subclass 574 (Postgraduate Research Sector) visa.

This amendment is consequential to the amendment of the name of Subclass 574 by these regulations.

Item [11] - Schedule 1, subparagraph 1128CA(3)(f)(v)

This item substitutes subparagraph 1128CA(3)(f)(v) of Schedule 1 of the Migration Regulations with new subparagraph 1128CA(3)(f)(v).

New subparagraph 1128CA(3)(f)(v) replaces the reference to Subclass 575 (Non-award Foundation/Other Sector) with the new title of Subclass 575 (Non-Award Sector) visa.

This amendment is consequential to the amendment of the name of Subclass 575 by these regulations.

Item [12] - Schedule 1, subparagraph 1212A(3)(d)(iii)

This item amends subparagraph 1212A(3)(d)(iii) of Schedule 1 of the Migration Regulations by omitting the reference to Subclass 574 (Masters and Doctorate Sector) visa and replacing it with a reference to Subclass 574 (Postgraduate Research Sector) visa.

This amendment is consequential to the amendment of the name of Subclass 574 by these regulations.

Item [13] - Schedule 1, subparagraph 1212A(3)(d)(vi)

This item substitutes subparagraph 1212A(3)(d)(vi) of Schedule 1 of the Migration Regulations with new subparagraph 1212A(3)(d)(vi).

New subparagraph 1212A(3)(d)(vi) replaces the reference to Subclass 575 (Non-award Foundation/Other Sector) with the new title of Subclass 575 (Non-Award Sector) visa.

This amendment is consequential to the amendment of the name of Subclass 575 by these regulations.

Item [14] - Schedule 1, paragraph 1222(1)(b)

This item amends paragraph 1222(1)(b) of Schedule 1 to the Migration Regulations by inserting a reference to condition 8104.

Condition 8104 provides that the visa holder must not engage in work for more than 20 hours per week whilst the holder is in Australia.

The amendment made by this item is consequential to the inclusion of condition 8104 as an additional condition which may be attached to student visas for Masters degree or Doctorate students by these regulations.

Item [15] - Schedule 1, paragraph 1222(1)(ba)

This item amends paragraph 1222(1)(ba) of Schedule 1 to the Migration Regulations by inserting a reference to condition 8104.

Condition 8104 provides that the visa holder must not engage in work for more than 20 hours per week whilst the holder is in Australia.

The amendment made by this item is consequential to the inclusion of condition 8104 as an additional condition which may be attached to student visas by these regulations.

Item [16] - Schedule 1, paragraph 1222(3)(d)

This item substitutes paragraph 1222(3)(d) of Schedule 1 of the Migration Regulations with new paragraph 1222(3)(d).

New paragraph 1222(3)(d) provides that an application by a person claiming to be a member of the family unit of a person who is an applicant for a student visa may be made at the same time and place as, and combined with, the application by that person.

The purpose of new paragraph 1222(3)(d) is to clarify that an application by a person who is the member of the family unit of an applicant for a student visa is able to be made together with that applicant.

Item [17] - Schedule 1, subitem 1222(4)

This item amends subitem 1222(4) of Schedule 1 of the Migration Regulations by omitting the references to "574 Masters and Doctorate Sector" and "575 Non-award Foundation/Other Sector" replacing them with references to "574 Postgraduate Research Sector" and "575 Non-Award Sector".

This amendment is consequential to the amendment of the names of Subclasses 574 and 575 by these regulations.

Item [18] - Schedule 2, Division 570.1

This item substitutes Division 570.1 of Schedule 2 to the Migration Regulations with new Division 570.1.

New clause 570.111 provides that the following phrases have the same meaning as provided in Schedule 5A: "course fees", "fully funded", "living costs" and "travel costs". A note in new clause 570.111 states that "foreign country" is defined in the *Acts Interpretation Act 1901*.

The purpose of new clause 570.111 is to allow the use of terms defined in Schedule 5A in Part 570.

Item [19] - Schedule 2, clause 570.229

This item substitutes clause 570.229 of Schedule 2 to the Migration Regulations with new clause 570.229.

New clause 570.229 provides that where an applicant is subject to assessment level 3, 4 or 5, the total period or periods of ELICOS (English Language Intensive Course for Overseas Students) that the applicant is seeking to undertake together with any previous periods of ELICOS undertaken while the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa (or any subsequent bridging visa) must not exceed:

- 60 weeks if the applicant is subject to assessment level 3; or
- 40 weeks if the applicant is subject to assessment level 4 or 5.

The purpose of new clause 570.229 is to prevent students undertaking excessive periods of ELICOS.

Item [20] - Schedule 2, clause 570.232

This item amends clause 570.232 of Schedule 2 to the Migration Regulations.

The item amends clause 570.232 by replacing the alternative requirement that an applicant has been offered a place in a course of study, with a new alternative requirement that the applicant is the subject of a current offer of enrolment in a course of study.

The purpose of the amendment to clause 570.232 is to clarify policy intention that an offer in a principal course of study must be a current offer in order to be valid.

Item [21] - Schedule 2, subclause 570.321(1)

This item amends subclause 570.321(1) of Schedule 2 to the Migration regulations to provide that unless at time of application the applicant met the requirements of subclause 570.312(4), the applicant must satisfy the criteria in clauses 570.322 to 570.332.

This amendment is consequential to the insertion of new clause 570.332 in Schedule 2 to the Migration Regulations.

Item [22] - Schedule 2, subparagraph 570.321(2)(b)(ii)

This item amends subparagraph 570.321(2)(b)(ii) of Schedule 2 to the Migration Regulations.

Following this amendment, paragraph 570.321(2)(b) requires either that the Minister has no reason to believe that the applicant is not a genuine applicant for entry and stay as a member of

the family unit of the primary person or that the applicant satisfies the criteria in clauses 570.322 to 570.332.

This amendment is consequential to the insertion of new clause 570.332 in Schedule 2 to the Migration Regulations.

Item [23] - Schedule 2, after clause 570.331

This item inserts clause 570.332 into Schedule 2 to the Migration Regulations.

New subclause 570.332(1) applies to an applicant who is a member of the family unit of a person (called the primary person), to whom new subclause 570.332(2) applies and who was not included in the visa application made by the primary person. Such an applicant must provide evidence in accordance with Schedule 5B for the assessment level to which the primary person was subject at the time of the decision in relation to the primary person. New subclause 570.332(2) applies to a primary person who satisfies new paragraphs 570.332(2)(a), (b) and (c).

New subclause 570.332(3) provides that if the applicant is a member of the family unit of a primary person to whom subclause (4) applies and was not included in the primary person's visa application, then the Minister must be satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual. New subclause 570.332(4) applies to a primary person who satisfies new paragraphs 570.332(4)(a), (b) and (c).

The purpose of new clause 570.332 is to ensure that certain applicants who are members of the family unit of a primary person and who were not included in that person's application for a student visa meet the financial requirements specified in new subclauses 570.332(1) and (3).

Item [24] - Schedule 2, paragraph 570.611(1)(a)

This item amends paragraph 570.611(1)(a) of Schedule 2 to the Regulations to provide that if an applicant satisfies the primary criteria for the grant of a Subclass 570 (Independent ELICOS Sector) visa then the additional condition 8516 must be attached to the visa.

Condition 8516 requires the holder to continue to be a person who would satisfy the primary criteria for the grant of the visa.

Item [25] - Schedule 2, subparagraph 570.616(1)(a)(i)

This item substitutes subparagraph 570.616(1)(a)(i) of Schedule 2 to the Migration Regulations with new subparagraph 570.616(1)(a)(i).

New subparagraph 570.616(1)(a)(i) provides that if an applicant satisfies the secondary criteria for the grant of a Subclass 570 (Independent ELICOS Sector) visa then in all cases the additional condition 8516 must be attached to the visa.

Condition 8516 requires the holder to continue to be a person who would satisfy the primary criteria for the grant of the visa.

Item [26] - Schedule 2, Division 571.1

This item substitutes Division 571.1 of Schedule 2 to the Migration Regulations with new Division 571.1.

New clause 571.111 provides that the following phrases have the same meaning as provided in Schedule 5A: "course fees", "fully funded", "living costs" and "travel costs". A note in new clause 571.111 states that "foreign country" is defined in the *Acts Interpretation Act 1901*.

The purpose of new clause 571.111 is to allow the use of terms defined in Schedule 5A in Part 571.

Item [27] - Schedule 2, subclause 571.221(1)

This item amends subclause 571.221(1) of Schedule 2 to the Migration Regulations.

Following this amendment, subclause 571.221(1) provides that unless at the time of application, the applicant met the requirements of subclause 571.211(4) or (5), the applicant satisfies the criteria in clauses 571.222 to 571.236.

This amendment is consequential to the insertion of new clauses 571.235 and 571.236 in Schedule 2 to the Migration Regulations.

Item [28] - Schedule 2, subparagraph 571.221(2)(b)(ii)

This item amends subparagraph 571.221(2)(b)(ii) of Schedule 2 to the Migration Regulations.

Following this amendment, paragraph 571.221(2)(b) requires that either the Minister has no reason to believe that the applicant is not a genuine student or the applicant satisfies the criteria in clauses 571.223 to 571.236.

This amendment is consequential to the insertion of new clauses 571.235 and 571.236 in Schedule 2 to the Migration Regulations.

Item [29] - Schedule 2, subparagraph 571.221(3)(b)(ii)

This item amends subparagraph 571.221(3)(b)(ii) of Schedule 2 to the Migration Regulations.

Following this amendment, paragraph 571.221(3)(b) requires that either the Minister has no reason to believe that the applicant is not a genuine student or the applicant satisfies the criteria in clauses 571.223 to 571.236.

This amendment is consequential to the insertion of new clauses 571.235 and 571.236 in Schedule 2 to the Migration Regulations.

Item [30] - Schedule 2, clause 571.231

This item amends clause 571.231 of Schedule 2 to the Migration Regulations. The amendment omits reference to assessment levels 4 and 5 so that the provision only applies to assessment level 3 applicants.

The amendment made by this item is consequential to the insertion by these regulations of specific age requirements in Schedule 5A to the Migration Regulations.

Item [31] - Schedule 2, clause 571.232

This item amends clause 571.232 of Schedule 2 to the Migration Regulations.

The item amends clause 571.232 by replacing the alternative requirement that an applicant has been offered a place in a course of study, with a new alternative requirement that the applicant is the subject of a current offer of enrolment in a course of study.

The purpose of the amendment to clause 571.232 is to clarify policy intention that an offer in a principal course of study must be a current offer in order to be valid.

Item [32] - Schedule 2, after clause 571.234

This item inserts clauses 571.235 and 571.236 in Schedule 2 to the Migration Regulations.

New clause 571.235 provides that where an applicant is subject to assessment level 3, 4 or 5, the total period or periods of ELICOS (English Language Intensive Course for Overseas Students) that the applicant is seeking to undertake together with any previous periods of ELICOS undertaken while the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa (or any subsequent bridging visa) must not exceed:

- 60 weeks if the applicant is subject to assessment level 3; or
- 40 weeks if the applicant is subject to assessment level 4 or 5.

The purpose of new clause 571.235 is to prevent students undertaking excessive periods of ELICOS without commencing studies in a principal course.

New clause 571.236 provides that if an applicant is not a secondary exchange student, then the applicant must not intend to undertake a year or level of school study that is more than 18 months below a year or level that the applicant has previously undertaken in Australia or another country.

The purpose of new clause 571.236 is to make law departmental policy which is to the effect that an applicant for a Subclass 571 (Schools Sector) visa should not be granted a visa if they seek to regress their studies by more than 18 months.

Item [33] - Schedule 2, subclause 571.321(1)

This item amends subclause 571.321(1) of Schedule 2 to the Migration Regulations to provide that unless at time of application the applicant met the requirements of subclause 571.312(4), the applicant must satisfy the criteria in clauses 571.322 to 571.332.

This amendment is consequential to the insertion of new clause 571.332 in Schedule 2 to the Migration Regulations.

Item [34] - Schedule 2, subparagraph 571.321(2)(b)(ii)

This item amends subparagraph 571.321(2)(b)(ii) of Schedule 2 to the Migration Regulations.

Following this amendment, paragraph 571.321(2)(b) requires either that the Minister has no reason to believe that the applicant is not a genuine applicant for entry and stay as a member of the family unit of the primary person or that the applicant satisfies the criteria in clauses 571.322 to 571.332.

This amendment is consequential to the insertion of new clause 571.332 in Schedule 2 to the Migration Regulations.

Item [35] - Schedule 2, after clause 571.331

This item inserts clause 571.332 into Schedule 2 to the Migration Regulations.

New subclause 571.332(1) applies to an applicant who is a member of the family unit of a person (called the primary person), to whom new subclause 571.332(2) applies and who was not included in the visa application made by the primary person. Such an applicant must provide evidence in accordance with Schedule 5B for the assessment level to which the primary person was subject at the time of the decision in relation to the primary person. New subclause 571.332(2) applies to a primary person who satisfies new paragraphs 571.332(2)(a), (b) and (c).

New subclause 571.332(3) provides that if the applicant is a member of the family unit of a primary person to whom subclause (4) applies and was not included in the primary person's visa application, then the Minister must be satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual. New subclause 571.332(4) applies to a primary person who satisfies new paragraphs 571.332(4)(a), (b) and (c).

The purpose of new clause 571.332 is to ensure that certain applicants who are members of the family unit of a primary person and who were not included in that person's application for a student visa meet the financial requirements specified in new subclause 571.332(1) and (3).

Item [36] - Schedule 2, paragraph 571.611(1)(a)

This item amends paragraph 571.611(1)(a) of Schedule 2 to the Regulations to provide that if an applicant satisfies the primary criteria for the grant of a Subclass 571 (Schools Sector) visa then the additional condition 8516 must be attached to the visa.

Condition 8516 requires the holder to continue to be a person who would satisfy the primary criteria for the grant of the visa.

Item [37] - Schedule 2, subparagraph 571.613(1)(a)(i)

This item substitutes subparagraph 571.613(1)(a)(i) of Schedule 2 to the Migration Regulations with new subparagraph 571.613(1)(a)(i).

New subparagraph 571.613(1)(a)(i) provides that if an applicant satisfies the secondary criteria for the grant of a Subclass 571 (Schools Sector) visa then in all cases the additional condition 8516 must be attached to the visa.

Condition 8516 requires the holder to continue to be a person who would satisfy the secondary criteria for the grant of the visa.

Item [38] - Schedule 2, Division 572.1

This item substitutes Division 572.1 of Schedule 2 to the Migration Regulations with new Division 572.1.

New clause 572.111 provides that the following phrases have the same meaning as provided in Schedule 5A: "course fees", "fully funded", "living costs" and "travel costs". A note in new clause 572.111 states that "foreign country" is defined in the *Acts Interpretation Act 1901*.

The purpose of new clause 572.111 is to allow the use of terms defined in Schedule 5A in Part 572.

Item [39] - Schedule 2, subclause 572.221(1)

This item amends subclause 572.221(1) of Schedule 2 to the Migration Regulations.

Following this amendment, subclause 572.221(1) provides that unless at the time of application, the applicant met the requirements of subclause 572.211(4) or (5), the applicant satisfies the criteria in clauses 572.222 to 572.234.

This amendment is consequential to the insertion of new clause 572.234 in Schedule 2 to the Migration Regulations.

Item [40] - Schedule 2, subparagraph 572.221(2)(b)(ii)

This item amends subparagraph 572.221(2)(b)(ii) of Schedule 2 to the Migration Regulations.

Following this amendment, paragraph 572.221(2)(b) requires that either the Minister has no reason to believe that the applicant is not a genuine student or the applicant satisfies the criteria in clauses 572.223 to 572.234.

This amendment is consequential to the insertion of new clause 572.234 in Schedule 2 to the Migration Regulations.

Item [41] - Schedule 2, subparagraph 572.221(3)(b)(ii)

This item amends subparagraph 572.221(3)(b)(ii) of Schedule 2 to the Migration Regulations.

Following this amendment, paragraph 572.221(3)(b) requires that either the Minister has no reason to believe that the applicant is not a genuine student or the applicant satisfies the criteria in clauses 572.223 to 572.234.

This amendment is consequential to the insertion of new clause 572.234 in Schedule 2 to the Migration Regulations.

Item [42] - Schedule 2, clause 572.231

This item amends clause 572.231 of Schedule 2 to the Migration Regulations.

This item amends clause 572.231 by replacing the alternative requirement that an applicant has been offered a place in a course of study, with a new alternative requirement that the applicant is the subject of a current offer of enrolment in a course of study.

The purpose of new clause 572.231 is to clarify policy intention that an offer in a principal course of study must be a current offer in order to be valid.

Item [43] - Schedule 2, after clause 572.233

This item inserts clause 572.234 into Schedule 2 to the Migration Regulations.

New clause 572.234 provides that where an applicant is subject to assessment level 3, 4 or 5, the total period or periods of ELICOS (English Language Intensive Course for Overseas Students) that the applicant is seeking to undertake together with any previous periods of ELICOS undertaken while the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa (or any subsequent bridging visa) must not exceed:

- 60 weeks if the applicant is subject to assessment level 3; or
- 40 weeks if the applicant is subject to assessment level 4 or 5.

The purpose of new clause 572.234 is to prevent students undertaking excessive periods of ELICOS without commencing studies in a principal course.

Item [44] - Schedule 2, subclause 572.321(1)

This item amends subclause 572.321(1) of Schedule 2 to the Migration regulations to provide that unless at time of application, the applicant met the requirements of subclause 572.312(4), the applicant must satisfy the criteria in clauses 572.322 to 572.332.

This amendment is consequential to the insertion of new clause 572.332 in Schedule 2 to the Migration Regulations.

Item [45] - Schedule 2, subparagraph 572.321(2)(b)(ii)

This item amends subparagraph 572.321(2)(b)(ii) of Schedule 2 to the Migration Regulations.

Following this amendment, paragraph 572.321(2)(b) requires that either the Minister has no reason to believe that the applicant is not a genuine student or the applicant satisfies the criteria in clauses 572.322 to 572.332.

This amendment is consequential to the insertion of new clause 572.332 in Schedule 2 to the Migration Regulations.

Item [46] - Schedule 2, after clause 572.331

This item inserts clause 572.332 into Schedule 2 to the Migration Regulations.

New subclause 572.332(1) applies to an applicant who is a member of the family unit of a person (called the primary person), to whom new subclause 572.332(2) applies and who was not included in the visa application made by the primary person. Such an applicant must provide evidence in accordance with Schedule 5B for the assessment level to which the primary person was subject at the time of the decision in relation to the primary person. New subclause 572.332(2) applies to a primary person who satisfies new paragraphs 572.332(2)(a), (b) and (c).

New subclause 572.332(3) provides that if the applicant is a member of the family unit of a primary person to whom subclause (4) applies and was not included in the primary person's visa application, then the Minister must be satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual. New subclause 572.332(4) applies to a primary person who satisfies new paragraphs 572.332(4)(a), (b) and (c).

The purpose of new clause 572.332 is to ensure that certain applicants who are members of the family unit of a primary person and who were not included in that person's application for a student visa meet the financial requirements specified in new subclause 572.332(1) and (3).

Item [47] - Schedule 2, paragraph 572.611(1)(a)

This item amends paragraph 572.611(1)(a) of Schedule 2 to the Regulations to provide that if an applicant satisfies the primary criteria for the grant of a Subclass 572 (Vocational Education and Training Sector) visa then the additional condition 8516 must be attached to the visa.

Condition 8516 requires the holder to continue to be a person who would satisfy the primary criteria for the grant of the visa.

Item [48] - Schedule 2, subparagraph 572.616(1)(a)(i)

This item substitutes subparagraph 572.616(1)(a)(i) of Schedule 2 to the Migration Regulations with new subparagraph 572.616(1)(a)(i).

New subparagraph 572.616(1)(a)(i) provides that if an applicant satisfies the secondary criteria for the grant of a Subclass 572 (Vocational Education and Training Sector) visa then in all cases the additional condition 8516 must be attached to the visa.

Condition 8516 requires the holder to continue to be a person who would satisfy the secondary criteria for the grant of the visa.

Item [49] - Schedule 2, Division 573.1

This item substitutes Division 573.1 of Schedule 2 to the Migration Regulations with new Division 573.1.

New clause 573.111 provides that the following phrases have the same meaning as provided in Schedule 5A: "course fees", "fully funded", "living costs" and "travel costs". A note in new clause 573.111 states that "foreign country" is defined in the *Acts Interpretation Act 1901*.

The purpose of new clause 573.111 is to allow the use of terms defined in Schedule 5A in Part 573.

Item [50] - Schedule 2, paragraph 573.211(4)(a)

This item substitutes paragraph 573.211(4)(a) of Schedule 2 to the Migration Regulations with new paragraph 573.211(4)(a).

New paragraph 573.211(4)(a) makes it a requirement that the applicant is either the holder of a Subclass 560, 562 or 573 visa that is subject to condition 8101, or a Subclass 574 visa that is subject to condition 8101 and was granted on the basis that the applicant proposed to commence, or had commenced, a Masters degree by coursework as his or her principal course.

The purpose of this amendment is to allow applicants to meet this requirement following the gazettal of Masters degrees by coursework under Part 573, where the applicant has previously been granted a Subclass 574 (Masters and Doctorate Sector) visa to undertake a Masters degree by coursework as his or her principal course.

Item [51] - Schedule 2, paragraph 573.211(5)(a)

This item substitutes paragraph 573.211(5)(a) of Schedule 2 to the Migration Regulations with new paragraph 573.211(5)(a).

New paragraph 573.211(5)(a) makes it a requirement that the applicant is either the holder of a Subclass 560, 562 or 573 visa that is subject to condition 8206, or a Subclass 574 visa that is subject to condition 8206 and was granted on the basis that the applicant proposes to commence, or has commenced, a Masters degree by coursework as his or her principal course.

The purpose of this amendment is to allow applicants to meet this requirement following the gazettal of Masters degrees by coursework under Part 573, where the applicant has previously

been granted a Subclass 574 (Masters and Doctorate Sector) visa to undertake a Masters degree by coursework as his or her principal course.

Item [52] - Schedule 2, clause 573.221(1)

This item amends subclause 573.221(1) of Schedule 2 to the Migration Regulations.

Following this amendment, subclause 573.221(1) provides that unless at the time of application, the applicant met the requirements of subclause 573.211(4) or (5), the applicant satisfies the criteria in clauses 573.222 to 573.234.

This amendment is consequential to the insertion of new clause 573.234 in Schedule 2 to the Migration Regulations.

Item [53] - Schedule 2, subparagraph 573.221(2)(b)(ii)

This item amends subparagraph 573.221(2)(b)(ii) of Schedule 2 to the Migration Regulations.

Following this amendment, paragraph 573.221(2)(b) requires that either the Minister has no reason to believe that the applicant is not a genuine student or the applicant satisfies the criteria in clauses 573.223 to 573.234.

This amendment is consequential to the insertion of new clause 573.234 in Schedule 2 to the Migration Regulations.

Item [54] - Schedule 2, subparagraph 573.221(3)(b)(ii)

This item amends subparagraph 573.221(3)(b)(ii) of Schedule 2 to the Migration Regulations.

Following this amendment, paragraph 573.221(3)(b) requires that either the Minister has no reason to believe that the applicant is not a genuine student or the applicant satisfies the criteria in clauses 573.222 to 573.234.

This amendment is consequential to the insertion of new clause 573.234 in Schedule 2 to the Migration Regulations.

Item [55] - Schedule 2, clause 573.231

This item amends clause 573.231 of Schedule 2 to the Migration Regulations.

This item amends clause 573.231 by replacing the alternative requirement that an applicant has been offered a place in a course of study, with a new alternative requirement that the applicant is the subject of a current offer of enrolment in a course of study.

The purpose of the amendment to clause 573.231 is to clarify policy intention that an offer in a principal course of study must be a current offer in order to be valid.

Item [56] - Schedule 2, after clause 573.233

This item inserts clause 573.234 into Schedule 2 to the Migration Regulations.

New clause 573.234 provides that where an applicant is subject to assessment level 3, 4 or 5, the total period or periods of ELICOS (English Language Intensive Course for Overseas Students) that the applicant is seeking to undertake together with any previous periods of ELICOS

undertaken while the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa (or any subsequent bridging visa) must not exceed:

- 60 weeks if the applicant is subject to assessment level 3; or
- 40 weeks if the applicant is subject to assessment level 4 or 5.

The purpose of new clause 573.234 is to prevent students undertaking excessive periods of ELICOS without commencing studies in a principal course.

Item [57] - Schedule 2, paragraph 573.312(4)(a)

This item substitutes paragraph 573.312(4)(a) of Schedule 2 to the Migration Regulations with new paragraph 573.312(4)(a).

New paragraph 573.312(4)(a) makes it a requirement that the applicant is either the holder of a Subclass 560, 563, 573 or 574 visa that was granted on the basis that the primary applicant proposed to commence, or had commenced, a Masters degree by coursework as his or her principal course, and which is subject to condition 8101 or 8104.

The purpose of this amendment is to allow applicants to meet this requirement following the gazettal of Masters degrees by coursework under Part 573, where the applicant has previously been granted a Subclass 574 (Masters and Doctorate Sector) visa to undertake a Masters degree by coursework as his or her principal course, and to take into consideration the possible imposition of condition 8104 following the amendments made by these regulations.

Item [58] - Schedule 2, paragraph 573.312(4)(c)

This item amends paragraph 573.312(4)(c) of Schedule 2 to the Migration Regulations by including a reference to Subclass 574 (Postgraduate Research Sector). Paragraph 573.312(4)(c) now requires an applicant to be the member of the family unit of a person who is the holder of a Subclass 560, 562, 573 or 574 visa.

The purpose of this amendment is to allow applicants to meet this requirement following the gazettal of Masters degrees by coursework under Part 573, where the applicant has previously been granted a Subclass 574 visa to undertake a Masters degree by coursework as his or her principal course.

Item [59] - Schedule 2, paragraph 573.312(4)(d)

This item amends paragraph 573.312(4)(d) of Schedule 2 to the Migration Regulations by including a reference to Subclass 574 (Postgraduate Research Sector). Paragraph 573.312(4)(d) now requires an applicant to give to the Minister evidence that the holder of the Subclass 560, 562, 573, or 574 visa has commenced a course of study.

The purpose of this amendment is to allow applicants to meet this requirement following the gazettal of Masters degrees by coursework under Part 573, where the applicant has previously been granted a Subclass 574 visa to undertake a Masters degree by coursework as his or her principal course.

Item [60] - Schedule 2, paragraph 573.312(5)(b)

This item substitutes paragraph 573.312(5)(b) of Schedule 2 to the Migration Regulations with new paragraph 573.312(5)(b).

New paragraph 573.312(5)(b) requires an applicant to be a member of the family unit of a person who holds a Subclass 560, 562 or 573 student visa, having satisfied the primary criteria for that visa, or holds a Subclass 574 visa that was granted on the basis that the primary applicant proposed to commence, or had commenced, as a principal course, a course of study for the award of a Masters degree by coursework.

The purpose of this amendment is to allow applicants to meet this requirement following the gazettal of Masters degrees by coursework under Part 573, where the applicant has previously been granted a Subclass 574 visa to undertake a Masters degree by coursework as his or her principal course.

Item [61] - Schedule 2, subclause 573.321(1)

This item amends subclause 573.321(1) of Schedule 2 to the Migration regulations to provide that unless at time of application, the applicant met the requirements of subclause 573.312(4), the applicant must satisfy the criteria in clauses 573.322 to 573.332.

This amendment is consequential to the insertion of new clause 572.332 in Schedule 2 to the Migration Regulations.

Item [62] - Schedule 2, subparagraph 573.321(2)(b)(ii)

This item amends subparagraph 573.321(2)(b)(ii) of Schedule 2 to the Migration Regulations.

Following this amendment, paragraph 573.321(2)(b) requires either that the Minister has no reason to believe that the applicant is not a genuine applicant for entry and stay as a member of the family unit of the primary person or that the applicant satisfies the criteria in clauses 573.322 to 573.332.

This amendment is consequential to the insertion of new clause 573.332 in Schedule 2 to the Migration Regulations.

Item [63] - Schedule 2, after clause 573.331

This item inserts clause 573.332 into Schedule 2 to the Migration Regulations.

New subclause 573.332(1) applies to an applicant who is a member of the family unit of a person (called the primary person), to whom new subclause 573.332(2) applies and who was not included in the visa application made by the primary person. Such an applicant must provide evidence in accordance with Schedule 5B for the assessment level to which the primary person was subject at the time of the decision in relation to the primary person. New subclause 573.332(2) applies to a primary person who satisfies new paragraphs 573.332(2)(a), (b) and (c).

New subclause 573.332(3) provides that if the applicant is a member of the family unit of a primary person to whom subclause (4) applies and was not included in the primary person's visa application, then the Minister must be satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual. New subclause 573.332(4) applies to a primary person who satisfies new paragraphs 573.332(4)(a), (b) and (c).

The purpose of new clause 573.332 is to ensure that certain applicants who are members of the family unit of a primary person and who were not included in that person's application for a student visa meet the financial requirements specified in new subclause 573.332(1) and (3).

Item [64] - Schedule 2, paragraph 573.611(1)(a)

This item amends paragraph 573.611(1)(a) of Schedule 2 to the Regulations to provide that if an applicant satisfies the primary criteria for the grant of a Subclass 573 (Higher Education Sector) visa then the additional condition 8516 must be attached to the visa.

Condition 8516 requires the holder to continue to be a person who would satisfy the primary criteria for the grant of the visa.

Item [65] - Schedule 2, subparagraph 573.616(1)(a)(i)

This item substitutes subparagraph 573.616(1)(a)(i) of Schedule 2 to the Migration Regulations with new subparagraph 573.616(1)(a)(i).

New subparagraph 573.616(1)(a)(i) provides that if an applicant satisfies the secondary criteria for the grant of a Subclass 573 (Higher Education Sector) visa then in all cases the additional condition 8516 must be attached to the visa.

Condition 8516 requires the holder to continue to be a person who would satisfy the secondary criteria for the grant of the visa.

Item [66] - Schedule 2, subclause 573.617(1)

This item amends subclause 573.617(1) of Schedule 2 to the Migration Regulations.

The amendment made by this item is consequential to the insertion of new subclause 573.617(3) by these regulations.

Item [67] - Schedule 2, subparagraph 573.617(1)(b)(i)

This item amends subparagraph 573.617(1)(b)(i) of Schedule 2 to the Migration Regulations to include a reference to Subclass 574 (Postgraduate Research Sector).

The purpose of this amendment is to allow applicants to meet this requirement following the gazettal of Masters degrees by coursework under Part 573, where the applicant has previously been granted a Subclass 574 visa to undertake a Masters degree by coursework as his or her principal course.

Item [68] - Schedule 2, subclause 573.617(2)

This item amends subclause 573.617(2) of Schedule 2 to the Migration Regulations.

The amendment made by this item is consequential to the insertion of new subclause 573.617(3) by these regulations.

Item [69] - Schedule 2, after subclause 573.617(2)

This item inserts new subclause 573.617(3) in Schedule 2 to the Migration Regulations.

New subclause 573.617(3) provides that conditions 8101 and 8104 are not imposed on a visa granted to a secondary applicant who satisfies the secondary criteria as a member of the family unit of a primary applicant who satisfies the primary criteria for a Subclass 560, 562, 573 or 574 visa if:

- the application was made in Australia, and the secondary applicant is the holder of a Subclass 560, 563, 573 or 574 visa that is not subject to condition 8101, 8104 or 8105, and the primary applicant has commenced a course of study for the award of a Masters degree by coursework and the primary applicant is continuing that course of study; or
- the application was made in Australia, and the secondary applicant meets the requirements of subclause 573.312(4), and the primary applicant has commenced a course of study for the award of a Masters degree by coursework, and the primary applicant is continuing that course of study.

The purpose of this amendment is to ensure that applicants who satisfy the secondary criteria and are granted a Subclass 573 (Higher Education Sector) visa, are not able to obtain unrestricted work rights unless the visa holder who satisfied the primary criteria has commenced a Masters degree by coursework. This amendment is consequential to the gazettal of Masters degrees by coursework under Part 573.

Item [70] - Schedule 2, Part 574, heading

This item substitutes the heading to Part 574 of Schedule 2 to the Migration Regulations with the new heading "Subclass 574 Postgraduate Research Sector".

The purpose of the amendment follows the gazettal of courses leading to the award of a Masters degree by coursework to Subclass 573 (Higher Education Sector). The new name of Subclass 574 more accurately reflects the types of courses that fall under this subclass.

Item [71] - Schedule 2, Division 574.1

This item substitutes Division 574.1 of Schedule 2 to the Migration Regulations with new Division 574.1.

New clause 574.111 provides that the following phrases have the same meaning as provided in Schedule 5A: "course fees", "fully funded", "living costs" and "travel costs". A note in new clause 574.111 states that "foreign country" is defined in the *Acts Interpretation Act 1901*.

The purpose of new clause 574.111 is to allow the use of terms defined in Schedule 5A in Part 574.

Item [72] - Schedule 2, subclause 574.221(1)

This item amends subclause 574.221(1) of Schedule 2 to the Migration Regulations.

Following this amendment, subclause 574.221(1) provides that unless at the time of application, the applicant met the requirements of subclause 574.211(4) or (5), the applicant satisfies the criteria in clauses 574.222 to 574.234.

This amendment is consequential to the insertion of new clause 574.234 in Schedule 2 to the Migration Regulations.

Item [73] - Schedule 2, subparagraph 574.221(2)(b)(ii)

This item amends subparagraph 574.221(2)(b)(ii) of Schedule 2 to the Migration Regulations.

Following this amendment, paragraph 574.221(2)(b) requires that either the Minister has no reason to believe that the applicant is not a genuine student or the applicant satisfies the criteria in clauses 574.223 to 574.234.

This amendment is consequential to the insertion of new clause 574.234 in Schedule 2 to the Migration Regulations.

Item [74] - Schedule 2, subparagraph 574.221(3)(b)(ii)

This item amends subparagraph 574.221(3)(b)(ii) of Schedule 2 to the Migration Regulations.

Following this amendment, paragraph 574.221(3)(b) requires that either the Minister has no reason to believe that the applicant is not a genuine student or the applicant satisfies the criteria in clauses 574.222 to 574.234.

This amendment is consequential to the insertion of new clause 574.234 in Schedule 2 to the Migration Regulations.

Item [75] - Schedule 2, clause 574.231

This item amends clause 574.231 of Schedule 2 to the Migration Regulations.

This item amends clause 574.231 by replacing the alternative requirement that an applicant has been offered a place in a course of study, with a new alternative requirement that the applicant is the subject of a current offer of enrolment in a course of study.

The purpose of new clause 574.231 is to clarify policy intention that an offer in a principal course of study must be a current offer in order to be valid.

Item [76] - Schedule 2, clause 574.233

This item inserts clause 574.234 into Schedule 2 to the Migration Regulations.

New clause 574.234 provides that where an applicant is subject to assessment level 3, 4 or 5, the total period or periods of ELICOS (English Language Intensive Course for Overseas Students) that the applicant is seeking to undertake together with any previous periods of ELICOS undertaken while the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa (or any subsequent bridging visa) must not exceed:

- 60 weeks if the applicant is subject to assessment level 3; or
- 40 weeks if the applicant is subject to assessment level 4 or 5.

The purpose of new clause 574.234 is to prevent students undertaking excessive periods of ELICOS without commencing studies in a principal course.

Item [77] - Schedule 2, paragraph 574.312(4)(a)

This item amends paragraph 574.312(4)(a) of Schedule 2 to the Migration Regulations.

The amendment to paragraph 574.312(4)(a) makes it a requirement that the applicant is the holder of a Subclass 560, 563, 573 or 574 visa which is subject to condition 8101 or 8104.

The purpose of this amendment is to allow applicants to meet this requirement taking into consideration the possible imposition of condition 8104 following the amendments made by these regulations.

Item [78] - Schedule 2, subclause 574.321(1)

This item amends subclause 574.321(1) of Schedule 2 to the Migration regulations to provide that unless at time of application, the applicant met the requirements of subclause 574.312(4), the applicant must satisfy the criteria in clauses 574.322 to 574.332.

This amendment is consequential to the insertion of new clause 574.332 in Schedule 2 to the Migration Regulations.

Item [79] - Schedule 2, subparagraph 574.321(2)(b)(ii)

This item amends subparagraph 574.321(2)(b)(ii) of Schedule 2 to the Migration Regulations.

Following this amendment, paragraph 574.321(2)(b) requires either that the Minister has no reason to believe that the applicant is not a genuine applicant for entry and stay as a member of the family unit of the primary person or that the applicant satisfies the criteria in clauses 574.322 to 574.332.

This amendment is consequential to the insertion of new clause 574.332 in Schedule 2 to the Migration Regulations.

Item [80] - Schedule 2, after clause 574.331

This item inserts clause 574.332 into Schedule 2 to the Migration Regulations.

New subclause 574.332(1) applies to an applicant who is a member of the family unit of a person (called the primary person), to whom new subclause 574.332(2) applies and who was not included in the visa application made by the primary person. Such an applicant must provide evidence in accordance with Schedule 5B for the assessment level to which the primary person was subject at the time of the decision in relation to the primary person. New subclause 574.332(2) applies to a primary person who satisfies new paragraphs 574.332(2)(a), (b) and (c).

New subclause 574.332(3) provides that if the applicant is a member of the family unit of a primary person to whom subclause (4) applies and was not included in the primary person's visa application, then the Minister must be satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual. New subclause 574.332(4) applies to a primary person who satisfies new paragraphs 574.332(4)(a), (b) and (c).

The purpose of new clause 574.332 is to ensure that certain applicants who are members of the family unit of a primary person and who were not included in that person's application for a student visa meet the financial requirements specified in new subclause 574.332(1) and (3).

Item [81] - Schedule 2, paragraph 574.611(1)(a)

This item amends paragraph 574.611(1)(a) of Schedule 2 to the Regulations to provide that if an applicant satisfies the primary criteria for the grant of a Subclass 574 (Postgraduate Research Sector) visa then the additional condition 8516 must be attached to the visa.

Condition 8516 requires the holder to continue to be a person who would satisfy the primary criteria for the grant of the visa.

Item [82] - Schedule 2, subparagraph 574.616(1)(a)(i)

This item substitutes subparagraph 574.616(1)(a)(i) of Schedule 2 to the Migration Regulations with new subparagraph 574.616(1)(a)(i).

New subparagraph 574.616(1)(a)(i) provides that if an applicant satisfies the secondary criteria for the grant of a Subclass 574 (Postgraduate Research Sector) visa then in all cases the additional condition 8516 must be attached to the visa.

Condition 8516 requires the holder to continue to be a person who would satisfy the secondary criteria for the grant of the visa.

Item [83] - Schedule 2, paragraph 574.616(1)(d)

This item amends paragraph 574.616(1)(d) of Schedule 2 to the Migration Regulations.

The amendment made by this item is consequential to the insertion of new subclauses 574.617 and 574.618 by these regulations.

Item [84] - Schedule 2, clause 574.617

This item substitutes clause 574.617 of Schedule 2 to the Migration Regulations with new clause 574.617, and inserts new clause 574.618.

New clause 574.617 provides that conditions 8101 and 8104 do not apply to a student visa granted to an applicant (called the "secondary applicant") who satisfies the secondary criteria as a member of the family unit of another person (called the "primary person") if:

- the secondary applicant is the holder of a Subclass 560, 563 or 574 visa that was not subject to condition 8101, 8104 or 8105; or
- the secondary applicant meets the requirements of subclause 574.312(4) and the primary person has commenced a course of study for the award of a Masters degree or a Doctorate.

Condition 8101 prevents the visa holder from undertaking any work in Australia. Condition 8104 provides that the visa holder must not engage in work for more than 20 hours per week whilst the holder is in Australia. Like condition 8104, condition 8105 provides that the visa holder must not engage in work for more than 20 hours per week whilst the holder is in Australia. However this restriction excludes work that was specified as a course requirement when the course particulars were entered in the Commonwealth Register of Institutions and Courses for Overseas Students. In the student visa subclasses, condition 8104 is applied to applicants who satisfy the secondary criteria, whereas condition 8105 is applied to applicants who satisfy the primary criteria.

Subclause 574.312 contains some of the time of application requirements that must be met by applicants seeking to be granted a Subclass 574 (Postgraduate and Research Sector) visa.

The purpose of new clause 574.617 is to limit unrestricted work rights to applicants who hold a Subclass 560, 563 or 574 visa that does not restrict work rights from having condition 8101 and 8104 attached to a Subclass 574 (Postgraduate Research Sector) visa, or members of the family unit of student visa holders who have commenced either a Masters degree or a Doctorate.

New clause 574.618 provides that condition 8104 applies to a student visa granted to an applicant (called the "secondary applicant") who satisfies the secondary criteria as a member of the family unit of another person (called the "primary person") if:

- the secondary applicant is the holder of a Subclass 560, 563 or 574 visa that is subject to condition 8104; and
- the secondary applicant meets the requirements of subclause 574.312(4).

The purpose of new clause 574.618 is to restrict work rights of members of the family unit of a primary person while the primary person is undertaking preliminary studies, but has not commenced a Masters degree or Doctorate.

Item [85] - Schedule 2, Part 575, heading

This item substitutes the heading to Part 575 of Schedule 2. The new heading to Part 575 is Subclass 575 Non - Award Sector.

The purpose of the amendment is to delete the reference to "Foundation/Other" studies. Foundation courses are preliminary courses and Subclass 575 visas are rarely granted to applicants who do not propose to undertake a further course of study after their foundation course. Instead, students undertaking a foundation course will be granted a visa in the sector of their principal course. Thus the new heading to Part 575 better reflects those courses to be undertaken in this sector.

Item [86] - Schedule 2, Division 575.1

This item substitutes Division 575.1 of Schedule 2 to the Migration Regulations with new Division 575.1.

New clause 575.111 provides that the following phrases have the same meaning as provided in Schedule 5A: "course fees", "fully funded", "living costs" and "travel costs". A note in new clause 575.111 states that "foreign country" is defined in the *Acts Interpretation Act 1901*.

The purpose of new clause 575.111 is to allow the use of terms defined in Schedule 5A in Part 575.

Item [87] - Schedule 2, subclause 575.221(1)

This item amends subclause 575.221(1) of Schedule 2 to the Migration Regulations.

Following this amendment, subclause 575.221(1) provides that unless at the time of application, the applicant met the requirements of subclause 575.211(4) or (5), the applicant satisfies the criteria in clauses 575.222 to 575.234.

This amendment is consequential to the insertion of new clause 575.234 in Schedule 2 to the Migration Regulations.

Item [88] - Schedule 2, subparagraph 575.221(2)(b)(ii)

This item amends subparagraph 575.221(2)(b)(ii) of Schedule 2 to the Migration Regulations.

Following this amendment, paragraph 575.221(2)(b) requires that either the Minister has no reason to believe that the applicant is not a genuine student or the applicant satisfies the criteria in clauses 575.223 to 575.234.

This amendment is consequential to the insertion of new clause 575.234 in Schedule 2 to the Migration Regulations.

Item [89] - Schedule 2, subparagraph 575.221(3)(b)(ii)

This item amends subparagraph 575.221(3)(b)(ii) of Schedule 2 to the Migration Regulations.

Following this amendment, paragraph 575.221(3)(b) requires that either the Minister has no reason to believe that the applicant is not a genuine student or the applicant satisfies the criteria in clauses 575.222 to 575.234.

This amendment is consequential to the insertion of new clause 575.234 in Schedule 2 to the Migration Regulations.

Item [90] - Schedule 2, clause 575.231

This item amends clause 575.231 of Schedule 2 to the Migration Regulations.

This item amends clause 575.231 by replacing the alternative requirement that an applicant has been offered a place in a course of study, with a new alternative requirement that the applicant is the subject of a current offer of enrolment in a course of study.

The purpose of new clause 575.231 is to clarify policy intention that an offer in a principal course of study must be a current offer in order to be valid.

Item [91] - Schedule 2, after clause 575.233

This item inserts clause 575.234 into Schedule 2 to the Migration Regulations.

New clause 575.234 provides that where an applicant is subject to assessment level 3, 4 or 5, the total period or periods of ELICOS (English Language Intensive Course for Overseas Students) that the applicant is seeking to undertake together with any previous periods of ELICOS undertaken while the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa (or any subsequent bridging visa) must not exceed:

- 60 weeks if the applicant is subject to assessment level 3; or
- 40 weeks if the applicant is subject to assessment level 4 or 5.

The purpose of new clause 575.234 is to prevent students undertaking excessive periods of ELICOS without commencing studies in a principal course.

Item [92] - Schedule 2, subclause 575.321(1)

This item amends subclause 575.321(1) of Schedule 2 to the Migration regulations to provide that unless at time of application, the applicant met the requirements of subclause 575.312(4), the applicant must satisfy the criteria in clauses 575.322 to 575.332.

This amendment is consequential to the insertion of new clause 575.332 in Schedule 2 to the Migration Regulations.

Item [93] - Schedule 2, subparagraph 575.321(2)(b)(ii)

This item amends subparagraph 575.321(2)(b)(ii) of Schedule 2 to the Migration Regulations.

Following this amendment, paragraph 575.321(2)(b) requires either that the Minister has no reason to believe that the applicant is not a genuine applicant for entry and stay as a member of

the family unit of the primary person or that the applicant satisfies the criteria in clauses 575.322 to 575.332.

This amendment is consequential to the insertion of new clause 575.332 in Schedule 2 to the Migration Regulations.

Item [94] - Schedule 2, after clause 575.331

This item inserts clause 575.332 into Schedule 2 to the Migration Regulations.

New subclause 575.332(1) applies to an applicant who is a member of the family unit of a person (called the primary person), to whom new subclause 575.332(2) applies and who was not included in the visa application made by the primary person. Such an applicant must provide evidence in accordance with Schedule 5B for the assessment level to which the primary person was subject at the time of the decision in relation to the primary person. New subclause 575.332(2) applies to a primary person who satisfies new paragraphs 575.332(2)(a), (b) and (c).

New subclause 575.332(3) provides that if the applicant is a member of the family unit of a primary person to whom subclause (4) applies and was not included in the primary person's visa application, then the Minister must be satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual. New subclause 575.332(4) applies to a primary person who satisfies new paragraphs 575.332(4)(a), (b) and (c).

The purpose of new clause 575.332 is to ensure that certain applicants who are members of the family unit of a primary person and who were not included in that person's application for a student visa meet the financial requirements specified in new subclause 575.332(1) and (3).

Item [95] - Schedule 2, paragraph 575.611(1)(a)

This item amends paragraph 575.611(1)(a) of Schedule 2 to the Regulations to provide that if an applicant satisfies the primary criteria for the grant of a Subclass 575 (Non-Award Sector) visa then the additional condition 8516 must be attached to the visa.

Condition 8516 requires the holder to continue to be a person who would satisfy the primary criteria for the grant of the visa.

Item [96] - Schedule 2, subparagraph 575.616(1)(a)(i)

This item substitutes subparagraph 575.616(1)(a)(i) of Schedule 2 to the Migration Regulations with new subparagraph 575.616(1)(a)(i).

New subparagraph 575.616(1)(a)(i) provides that if an applicant satisfies the secondary criteria for the grant of a Subclass 575 (Non-Award Sector) visa then in all cases the additional condition 8516 must be attached to the visa.

Condition 8516 requires the holder to continue to be a person who would satisfy the secondary criteria for the grant of the visa.

Item [97] - Schedule 2, Division 576.1

This item substitutes Division 576.1 of Schedule 2 to the Migration Regulations with new Division 576.1.

New clause 576.111 provides that the following phrases have the same meaning as provided in Schedule 5A: "course fees", "fully funded", "living costs" and "travel costs". A note in new clause 576.111 states that "foreign country" is defined in the *Acts Interpretation Act 1901*.

The purpose of new clause 576.111 is to allow the use of terms defined in Schedule 5A in Part 576.

Item [98] - Schedule 2, subclause 576.221(1)

This item amends subclause 576.221(1) of Schedule 2 to the Migration Regulations.

Following this amendment, subclause 576.221(1) provides that unless at the time of application, the applicant met the requirements of subclause 576.211(4) or (5), the applicant satisfies the criteria in clauses 576.222 to 576.232.

This amendment is consequential to the insertion of new clause 576.232 in Schedule 2 to the Migration Regulations.

Item [99] - Schedule 2, subparagraph 576.221(2)(b)(ii)

This item amends subparagraph 576.221(2)(b)(ii) of Schedule 2 to the Migration Regulations.

Following this amendment, paragraph 576.221(2)(b) requires that either the Minister has no reason to believe that the applicant is not a genuine student or the applicant satisfies the criteria in clauses 576.222 to 576.232.

This amendment is consequential to the insertion of new clause 576.232 in Schedule 2 to the Migration Regulations.

Item [100] - Schedule 2, subparagraph 576.221(3)(b)(ii)

This item amends subparagraph 576.221(3)(b)(ii) of Schedule 2 to the Migration Regulations.

Following this amendment, paragraph 576.221(3)(b) requires that either the Minister has no reason to believe that the applicant is not a genuine student or the applicant satisfies the criteria in clauses 576.222 to 576.232.

This amendment is consequential to the insertion of new clause 576.232 in Schedule 2 to the Migration Regulations.

Item [101] - Schedule 2, after clause 576.231

This item inserts new clause 576.232 in Schedule 2 to the Migration Regulations.

New clause 576.232 provides that where an applicant is subject to assessment level 5, the total period or periods of ELICOS (English Language Intensive Course for Overseas Students) that the applicant is seeking to undertake together with any previous periods of ELICOS undertaken while the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa must not exceed 40 weeks.

The purpose of new clause 576.232 is to prevent students undertaking excessive periods of ELICOS without commencing studies in a principal course.

Item [102] - Schedule 2, paragraph 576.312(4)(a)

This item amends paragraph 576.312(4)(a) of Schedule 2 to the Migration Regulations.

Paragraph 576.312(4)(a) provides that an applicant meets the requirements of this paragraph if they are the holder of a Subclass 560 (Student) visa, a Subclass 563 (Iranian Postgraduate Student Dependant) visa or a Subclass 576 (AusAID or Defence Sector) visa that was subject to condition 8101 or condition 8104.

Condition 8101 prevents the visa holder from undertaking any work in Australia. Condition 8104 provides that the visa holder must not engage in work for more than 20 hours per week whilst the holder is in Australia.

The purpose of the amendment is to restrict unlimited work rights of members of the family unit of a Subclass 576 (AusAID or Defence Sector) visa holder to a Subclass 576 visa holder who has commenced a Masters degree or Doctorate.

Item [103] - Schedule 2, subclause 576.321(1)

This item amends subclause 576.321(1) of Schedule 2 to the Migration regulations to provide that unless at time of application the applicant met the requirements of subclause 576.312(4), the applicant must satisfy the criteria in clauses 576.322 to 576.333.

This amendment is consequential to the insertion of new clause 576.333 in Schedule 2 to the Migration Regulations.

Item [104] - Schedule 2, subparagraph 576.321(2)(b)(ii)

This item amends subparagraph 576.321(2)(b)(ii) of Schedule 2 to the Migration Regulations.

Following this amendment, paragraph 576.321(2)(b) requires either that the Minister has no reason to believe that the applicant is not a genuine applicant for entry and stay as a member of the family unit of the primary person or that the applicant satisfies the criteria in clauses 576.322 to 576.333.

This amendment is consequential to the insertion of new clause 576.333 in Schedule 2 to the Migration Regulations.

Item [105] - Schedule 2, clause 576.326

This item omits clause 576.326 of Schedule 2 to the Migration Regulations

This amendment is consequential to the insertion of new clause 576.333 in Schedule 2 to the Migration Regulations which provides new financial requirements which supersede the requirements in clause 576.326.

Item [106] - Schedule 2, after clause 576.332

This item inserts new clause 576.333 into Schedule 2 to the Migration Regulations.

New clause 576.333 applies to an applicant who is a member of the family unit of a person (called the primary person), who is the holder of a Subclass 576 (AusAID or Defence Sector) visa granted on or after 1 November 2003 on the basis of satisfying the primary criteria in Subdivision 576.21, and the primary person was subject to assessment level 2 at the time of the decision to grant the visa, and the applicant was not included in the primary person's visa application.

Such an applicant must provide evidence that the primary person has funds from an acceptable source in accordance with Schedule 5B for assessment level 2.

New subclause 576.333(2) provides that the Minister must also be satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that applicant.

The purpose of new subclause 576.333 is to ensure that applicants who are members of the family unit of a person who were not included in that person's application for a student visa meet the financial requirements for the assessment level to which that person was subject.

Item [107] - Schedule 2, paragraph 576.611(1)(a)

This item amends paragraph 576.611(1)(a) of Schedule 2 to the Regulations to provide that if an applicant satisfies the primary criteria for the grant of a Subclass 576 (AusAID or Defence Sector) visa then the additional condition 8516 must be attached to the visa.

Condition 8516 requires the holder to continue to be a person who would satisfy the primary criteria for the grant of the visa.

Item [108] - Schedule 2, subparagraph 576.613(1)(a)(i)

This item substitutes subparagraph 576.613(1)(a)(i) of Schedule 2 to the Migration Regulations with new subparagraph 576.613(1)(a)(i).

New subparagraph 576.613(1)(a)(i) provides that if an applicant satisfies the secondary criteria for the grant of a Subclass 576 (AusAID or Defence Sector) visa then in all cases the additional condition 8516 must be attached to the visa.

Condition 8516 requires the holder to continue to be a person who would satisfy the secondary criteria for the grant of the visa.

Item [109] - Schedule 2, subclause 576.614(1)

This item makes a technical amendment to subclause 576.614(1) of Schedule 2 to the Migration Regulations which is consequential to the insertion of new subclause 576.614(3) by these regulations.

Item [110] - Schedule 2, subclause 576.614(2)

This item makes a technical amendment to subclause 576.614(2) of Schedule 2 to the Migration Regulations which is consequential to the insertion of new subclause 576.614(3) by these regulations.

Item [111] - Schedule 2, after subclause 576.614(2)

This item inserts new subclause 576.614(3) into Schedule 2 to the Migration Regulations.

New paragraph 576.614(3)(a) provides that conditions 8101 and 8104 do not apply to a student visa granted to an applicant (called the "secondary applicant") who satisfies the secondary criteria as a member of the family unit of another person (called the "primary person") who satisfies the primary criteria for the grant of a Subclass 576 (AusAID or Defence Sector) if:

- the application is made in Australia; and

- the secondary applicant is the holder of a Subclass 560, 563 or 576 visa that was not subject to condition 8101, 8104 or 8105; and
- the primary applicant has commenced a course of study for the award of a Masters degree or a Doctorate; and
- the primary person is continuing that course of study.

New paragraph 576.614(3)(b) provides that conditions 8101 and 8104 do not apply to a student visa granted to an applicant (called the "secondary applicant") who satisfies the secondary criteria as a member of the family unit of another person (called the "primary person") who satisfies the primary criteria for the grant of a Subclass 576 (AusAID or Defence Sector) if:

- the application is made in Australia; and
- the secondary applicant meets the requirements of subclause 576.312(4); and
- the primary applicant has commenced a course of study for the award of a Masters degree or a Doctorate; and
- the primary person is continuing that course of study.

Condition 8101 prevents the visa holder from undertaking any work in Australia. Condition 8104 provides that the visa holder must not engage in work for more than 20 hours per week whilst the holder is in Australia. Like condition 8104, condition 8105 provides that the visa holder must not engage in work for more than 20 hours per week whilst the holder is in Australia. However this restriction excludes work that was specified as a course requirement when the course particulars were entered in the Commonwealth Register of Institutions and Courses for Overseas Students. In the student visa subclasses, condition 8104 is applied to applicants who satisfy the secondary criteria, whereas condition 8105 is applied to applicants who satisfy the primary criteria.

Subclause 576.312 contains some of the time of application requirements that must be met by applicants seeking to be granted a Subclass 576 (Postgraduate and Research Sector) visa with permission to work.

The purpose of new clause 576.614 is to restrict work rights of members of the family unit of a primary person whilst the primary person is undertaking a course that does not lead to an award of a Masters degree or Doctorate.

Item [112] - Schedule 5A, clause 5A101, definition of *first 12 months*, subparagraph (a)(i)

This item amends subparagraph (a)(i) of the definition of "first 12 months" in clause 5A101 of Schedule 5A to the Migration Regulations. This amendment is a technical amendment that clarifies that the first 12 months for an applicant means the period that begins on the day:

- of the applicant's expected arrival in Australia (if the application is made outside Australia); or
- that the student visa is expected to be granted to the applicant (if the application is made in Australia).

Item [113] - Schedule 5A, clause 5A101, after definition of *first 12 months*

This item inserts definitions of "first 24 months" and "first 36 months" in clause 5A101 of Schedule 5A to the Migration Regulations.

The definition of "first 24 months" for an applicant means the period that begins on the day of the applicant's expected arrival in Australia (if the application is made outside Australia), or on the day that the student visa is expected to be granted to the applicant (if the application is made in Australia), and ends on the earlier of either the day 24 months after the beginning of the period, or the last day of the applicant's proposed stay in Australia.

The definition of "first 36 months" for an applicant means the period that begins on the day of the applicant's expected arrival in Australia (if the application is made outside Australia), or on the day that the student visa is expected to be granted to the applicant (if the application is made in Australia), and ends on the earlier of either the day 36 months after the beginning of the period, or the last day of the applicant's proposed stay in Australia.

Item [114] - Schedule 5A, clause 5A101, after definition of *fully funded*

This item inserts a definition of "foundation course" in clause 5A101 in Schedule 5A of the Migration Regulations.

"Foundation course" is defined as a course that is registered at the level of foundation studies.

Item [115] - Schedule 5A, clause 5A101, definition of value

This item omits the definition of "value" in clause 5A101 in Schedule 5A to the Migration Regulations.

The amendment made by this item is consequential to the value of an item of property ceasing to be considered to be an acceptable source of funds when determining the financial capacity of an applicant.

Item [116] - Schedule 5A, paragraph 5A103(1)(b)

This item makes a technical amendment to paragraph 5A103(1)(b) of Schedule 5A to the Migration Regulations by omitting the reference to "a government" and inserting a reference to "the government".

Item [117] - Schedule 5A, clause 5A104

This item substitutes clause 5A104 of Schedule 5A to the Migration Regulations with new clause 5A104.

New clause 5A104 provides a comprehensive definition of "living costs" and "school costs". New clause 5A104 uses a table structure: the first column refers to the item number; the second column refers to the description of the applicant; and the third column provides the method of calculating the rate of costs. New subclause 5A104(1) relates to the calculation of an applicant's living costs for a period, and new subclause 5A104(2) relates to the calculation of an applicant's school costs for a period.

The purpose of new clause 5A104 is to give greater certainty and clarity to the calculation of "living costs" and "school costs". New clause 5A104 also varies the financial requirements for certain applicants based on their source of funds, assessment level, length of period of study and whether or not the applicant has a spouse and/or a dependent child or children who are family

applicants. The financial requirements for these applicants have been varied so they do not have to provide evidence of living or school costs for family members who are not family applicants and who do not intend to join the applicant in Australia.

Item [118] - Schedule 5A, clause 5A105

This item omits clause 5A105 of Schedule 5A to the Migration Regulations.

The amendment made by this item is consequential to the value of an item of property ceasing to be considered to be an acceptable source of funds when determining the financial capacity of an applicant.

Item [119] - Schedule 5A, subclause 5A205(1)

This item makes a technical amendment to subclause 5A205(1) of Schedule 5A to the Migration Regulations to clarify that an applicant must provide evidence in accordance with new clause 5A205.

Item [120] - Schedule 5A, paragraph 5A205(1)(a)

This item amends paragraph 5A205(1)(a) of Schedule 5A to the Migration Regulations by omitting the reference to "the full period" and inserting a reference to "the first 36 months".

The purpose of this amendment is to make financial capacity requirements less onerous by changing the period of time that applicants must show that they have funds from an acceptable source that are sufficient to meet certain expenses, from the full period of time during which an applicant proposes to stay in Australia to, a maximum period of 36 months.

In addition, an applicant will be required to make a declaration that he or she has access to funds from an acceptable source that are sufficient to meet expenses for the remainder of the applicant's stay in Australia after the expiry of the first 36 months, in accordance with new paragraph 5A205(1)(aa).

Item [121] - Schedule 5A, after paragraph 5A205(1)(a)

This item inserts new paragraph 5A205(1)(aa) in Schedule 5A to the Migration Regulations.

New paragraph 5A205(1)(aa) requires an applicant to make a declaration that he or she has access to funds from an acceptable source that are sufficient to meet course fees, living costs and school costs for the remainder of the applicant's proposed stay in Australia after the first 36 months. New paragraph 5A205(1)(aa) is inserted following the amendment made to paragraph 5A205(1)(a) of Schedule 5A by these regulations.

Item [122] - Schedule 5A, after subclause 5A205(1)

This item inserts new subclause 5A205(1A) in Schedule 5A to the Migration Regulations.

New subclause 5A205(1A) provides that if the applicant is:

- fully funded; or
- not funded, wholly or partly, by the Commonwealth government, or the government of a State or Territory of Australia, or the government of a foreign country, or a multilateral agency, and proposes to undertake a course of study that is less than 12 months in duration, and if applying in Australia proposes to stay in Australia for a total period of less than 12 months; or

- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by a provincial or state government in a foreign country that has the written support of the government of that country; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by an organisation specified by the Minister in a Gazette Notice;

the applicant must give evidence that he or she has access to funds that are sufficient to support each member of the applicant's family unit who is not a family applicant.

The purpose of new subclause 5A205(1A) is to ensure that applicants who are specified in this new subclause have access to sufficient funds to support those members of their family who are not family unit applicants and do not intend to accompany them to Australia.

Item [123] - Schedule 5A, subclause 5A205(2) definition of *acceptable individual*, paragraph (e)

This item makes a technical amendment to paragraph (e) of the definition of "acceptable individual" in subclause 5A205(2) of Schedule 5A to the Migration Regulations which is consequential to the insertion of new paragraph (f) in this definition.

Item [124] - Schedule 5A, subclause 5A205(2) definition of *acceptable individual*, after paragraph (e)

This item inserts new paragraph (f) in the definition of "acceptable individual" in subclause 5A205(2) of Schedule 5A to the Migration Regulations.

New paragraph (f) provides that an uncle or aunt of an applicant who is an Australian citizen, Australian permanent resident or eligible New Zealand citizen, and is usually resident in Australia, is considered to be an acceptable individual.

The purpose of new paragraph (f) is to allow certain aunts or uncles of applicants to help an applicant financially whilst they are studying in Australia. Financial support by uncles and aunts is considered culturally appropriate for applicants from various countries. The additional requirement that the uncle or aunt is an Australian citizen, Australian permanent resident or eligible New Zealand citizen, and is usually resident in Australia, provides greater assurance that the financial support provided is reliable and accessible.

Item [125] - Schedule 5A, subclause 5A205(2), after definition of *acceptable individual*

This item inserts a definition of "financial support" in subclause 5A205(2) of Schedule 5A to the Migration Regulations.

The new definition of "financial support" provides that this term means, from an applicant's proposed education provider, either:

- a scholarship that is awarded on the basis of merit and an open selection process, and is awarded to a student who is enrolled in a course leading to a Certificate IV qualification or a higher qualification, and is awarded to the greater of either, not more than 10% of overseas students in a course intake, or not more than 3 overseas students in a course intake; or
- a waiver of the applicant's course fees where the applicant is part of an exchange program that involves a formal agreement between an education provider and an education institution in a foreign country and the reciprocal waiver of course fees as part of that agreement, and the

applicant will be studying full-time, and the applicant's proposed studies will be credited to a course undertaken by the applicant in the applicant's home country.

The purpose of the definition of "financial support" and its use in Schedule 5A is to prescribe what is an acceptable scholarship or exchange program for the purposes of determining whether an applicant meets financial capacity requirements in Schedule 5A.

Item [126] - Schedule 5A, subclause 5A205(2), definition of *funds from an acceptable source*, paragraph (b)

This item amends paragraph (b) of the definition of "funds from an acceptable source" in subclause 5A205(2) of Schedule 5A to the Migration Regulations.

This amendment is consequential to the insertion of the definition of the term "financial support" in Schedule 5A by these regulations.

Item [127] - Schedule 5A, subclause 5A205(2) definition of *funds from an acceptable source*, subparagraph (b)(iii)

This item amends subparagraph (b)(iii) of the definition of "funds from an acceptable source" in subclause 5A205(2) in Schedule 5A to the Migration Regulations.

This amendment is a technical amendment consequential to the insertion of new subparagraphs (b)(iv), (v) and (vi) in the definition of "funds from an acceptable source" in subclause 5A205(2).

Item [128] - Schedule 5A, subclause 5A205(2), definition of *funds from an acceptable source*, after subparagraph (b)(iii)

This item inserts new subparagraphs (iv), (v) and (vi) in paragraph (b) of the definition of "funds from an acceptable source" in subclause 5A205(2) of Schedule 5A to the Migration Regulations.

New subparagraph (iv) provides that financial support from the applicant's proposed education provider is an acceptable source of funds.

New subparagraph (v) provides that financial support from a provincial or state government in a foreign country, provided with the written support of the government of that country is an acceptable source of funds.

New subparagraph (vi) provides that financial support from an organisation specified by the Minister in a Gazette Notice is an acceptable source of funds.

The purpose of the amendments made by this item is to expand the range of sources of financial support that applicants may rely on in order to satisfy the relevant financial capacity requirement in Schedule 5A which apply to the applicant.

Item [129] - Schedule 5A, subclause 5A205(2), definition of *funds from an acceptable source*, after paragraph (b)

This item inserts new paragraphs (c) and (d) in the definition of "funds from an acceptable source" in subclause 5A205(2) of Schedule 5A to the Migration Regulations.

New paragraph (c) provides that a loan from a financial institution that is made to, and held in the name of, an acceptable individual is an acceptable source of funds.

New paragraph (d) provides that a loan from the government of the applicant's home country is an acceptable source of funds.

The purpose of the amendment made by this item is to expand the range of sources of funds that applicants may rely on in order to satisfy the relevant financial capacity requirement in Schedule 5A.

Item [130] - Schedule 5A, subclause 5A208(1)

This item makes a technical amendment to subclause 5A208(1) of Schedule 5A to the Migration Regulations to clarify that an applicant must provide evidence and a declaration in accordance with new clause 5A208.

Item [131] - Schedule 5A, paragraph 5A208(1)(a)

This item amends paragraph 5A208(1)(a) of Schedule 5A to the Migration Regulations by omitting the reference to "the full period" and inserting a reference to the "first 24 months".

The purpose of this amendment is to make financial capacity requirements less onerous by changing the period of time that applicants must show that they have funds from an acceptable source that are sufficient to meet certain expenses, from the full period of time during which an applicant proposes to stay in Australia to a maximum period of 24 months.

In addition, an applicant will be required to make a declaration that he or she has access to funds from an acceptable source that are sufficient to meet expenses for the remainder of the applicant's stay in Australia after the expiry of the first 24 months, in accordance with new paragraph 5A208(1)(aa).

Item [132] - Schedule 5A, after paragraph 5A208(1)(a)

This item inserts new paragraph 5A208(1)(aa) in Schedule 5A to the Migration Regulations.

New paragraph 5A208(1)(aa) requires an applicant to make a declaration that he or she has access to funds from an acceptable source that are sufficient to course fees, living costs and school costs for the remainder of the applicant's proposed stay in Australia after the first 24 months. New paragraph 5A208(1)(aa) is inserted following the amendment made to paragraph 5A208(1)(a) by these regulations.

Item [133] - Schedule 5A, after subclause 5A208(1)

This item inserts new subclause 5A208(1A) in Schedule 5A to the Migration Regulations.

New subclause 5A208(1A) provides that for subclause (1), if the applicant is:

- fully funded; or
- not funded, wholly or partly, by the Commonwealth government, or the government of a State or Territory of Australia, or the government of a foreign country, or a multilateral agency, and proposes to undertake a course of study that is less than 12 months in duration, and if applying in Australia, proposes to stay in Australia for a total period of less than 12 months; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by a provincial or state government in a foreign country that has the written support of the government of that country; or

- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by an organisation specified by the Minister in a Gazette Notice;

the applicant must give evidence that he or she has access to funds that are sufficient to support each member of the applicant's family unit who is not a family applicant.

The purpose of new subclause 5A208(1A) is to ensure that applicants who are specified in this new subclause must have sufficient funds to support those members of their family who are not family applicants and do not intend to accompany the applicant to Australia.

Item [134] - Schedule 5A, subclause 5A208(2), definition of *acceptable individual*

This item inserts a new definition of "financial support" in subclause 5A208(2) of Schedule 5A to the Migration Regulations.

The new "financial support" definition provides that this term means, from an applicant's proposed education provider, either:

- a scholarship that is awarded on the basis of merit and an open selection process, and is awarded to a student who is enrolled in a course leading to a Certificate IV qualification or a higher qualification, and is awarded to the greater of either, not more than 10% of overseas students in a course intake, or not more than 3 overseas students in a course intake; or
- a waiver of the applicant's course fees where the applicant is part of an exchange program that involves a formal agreement between an education provider and an education institution in a foreign country and the reciprocal waiver of course fees as part of that agreement, and the applicant will be studying full-time, and the applicant's proposed studies will be credited to a course undertaken by the applicant in the applicant's home country.

The purpose of the definition of "financial support" and its use in Schedule 5A is to prescribe what is an acceptable scholarship or exchange program for the purposes of determining whether an applicant meets financial capacity requirements in Schedule 5A.

Item [135] - Schedule 5A, subclause 5A208(2) definition of *funds from an acceptable source*, paragraph (a)

This item amends paragraph (a) of the definition of "funds from an acceptable source" in subclause 5A208(2) of Schedule 5A to the Migration Regulations by replacing the reference to "an acceptable individual" with a reference to "the applicant, or an individual who is providing support to the applicant".

The amendment made by this item expands the range of persons who can provide financial support to an applicant and ensures that there is consistency with the current financial capacity requirements for assessment level 3 applicants for Subclass 571, 573 or 574 visas as currently provided in Schedule 5A which relate to who is able to hold either a money deposit or a loan from a financial institution in the definition of "funds from an acceptable source".

Item [136] - Schedule 5A, subclause 5A208(2) definition of *funds from an acceptable source*, paragraph (b)

This item amends paragraph (b) of the definition of "funds from an acceptable source" in subclause 5A208(2) of Schedule 5A to the Migration Regulations by replacing the reference to "an acceptable individual" with a reference to "the applicant, or an individual who is providing support to the applicant".

The amendment made by this item expands the range of persons who can provide financial support to an applicant through a loan from a financial institution. The amendments also ensure that there is consistency with financial capacity requirements for assessment level 3 applicants for Subclass 571, 573 or 574 visas as currently provided in Schedule 5A which relate to who is able to hold either a money deposit or a loan from a financial institution in the definition of "funds from an acceptable source".

Item [137] - Schedule 5A, subclause 5A208(2), definition of *funds from an acceptable source*, paragraph (d)

This item amends paragraph (d) of the definition of "funds from an acceptable source" in subclause 5A208(2) of Schedule 5A to the Migration Regulations.

This amendment is consequential to the insertion of the definition of "financial support" in Schedule 5A made by these regulations.

Item [138] - Schedule 5A, subclause 5A208(2), definition of *funds from an acceptable source*, subparagraph (d)(iv)

This item makes a technical amendment to paragraph (d) of the definition of "funds from an acceptable source", in subclause 5A208(2) in Schedule 5A to the Migration Regulations, that is consequential to the insertion of new subparagraphs (v), (vi) and (vii).

Item [139] - Schedule 5A, subclause 5A208(2), definition of *funds from an acceptable source*, after subparagraph (d)(iv)

This item inserts new subparagraphs (v), (vi) and (vii) in paragraph (d) of the definition of "funds from an acceptable source" in subclause 5A208(2) of Schedule 5A to the Migration Regulations.

New subparagraph (iv) provides that financial support from the applicant's proposed education provider is an acceptable source of funds.

New subparagraph (v) provides that financial support from a provincial or state government in a foreign country, provided with the written support of the government of that country is an acceptable source of funds.

New subparagraph (vi) provides that financial support from an organisation specified by the Minister in a Gazette Notice is an acceptable source of funds.

The purpose of the amendment made by this item is to expand the range of sources of financial support that applicants may rely on in order to satisfy the relevant financial capacity requirement in Schedule 5A.

Item [140] - Schedule 5A, subclause 5A211(1)

This item makes a technical amendment to subclause 5A211(1) of Schedule 5A to the Migration Regulations to clarify that an applicant must provide evidence and a declaration in accordance with new clause 5A211.

Item [141] - Schedule 5A, paragraph 5A211(1)(c)

This item substitutes paragraph 5A211(1)(c) in Schedule 5A to the Migration Regulations with new paragraph 5A211(1)(c).

New paragraph 5A211(1)(c) requires an applicant to make a declaration that he or she has access to funds from an acceptable source that are sufficient to course fees, living costs and school costs for the remainder of the applicant's proposed stay in Australia after the first 12 months.

Item [142] - Schedule 5A, after subclause 5A211(1)

This item substitutes subclause 5A211(2) of Schedule 5A to the Migration Regulations with new subclauses 5A211(2) and (3).

New subclause 5A211(2) provides that if the applicant is:

- fully funded; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs for the full period will be met by a provincial or state government in a foreign country that has the written support of the government of that country; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs for the full period will be met by an organisation specified by the Minister in a Gazette Notice;

the applicant must give evidence that he or she has access to funds that are sufficient to support each member of the applicant's family unit who is not a family applicant.

The purpose of new subclause 5A211(2) is to ensure that applicants who are specified in this new subclause must have access to sufficient funds to support those members of their family who are not family applicants and do not intend to accompany the applicant to Australia.

New subclause 5A211(3) provides that the value of an item of property is not included as funds from an acceptable source.

Item [143] - Schedule 5A, clause 5A303

This item makes a technical amendment to clause 5A303 which is consequential to the insertion of new subclause 5A303(2) by these regulations.

Item [144] - Schedule 5A, paragraph 5A303(d)

This item substitutes paragraph 5A303(d) of Schedule 5A to the Migration Regulations with new paragraph 5A303(d).

Paragraph 5A303(d) provides that if the applicant is not an exchange student, the applicant must give evidence that at the time of application, he or she was or will be:

- if proposing to undertake year 9 studies - less than 17 years old when commencing Year 9; and
- if proposing to undertake year 10 studies - less than 18 years old when commencing Year 10; and
- if proposing to undertake year 11 studies - less than 19 years old when commencing Year 11; and

- if proposing to undertake year 12 studies - less than 20 years old when commencing Year 12.

The purpose of this amendment is to clarify policy intention that applicants are not to enter the Australian school system at an age significantly older than Australian students.

Item [145] - Schedule 5A, clause 5A303

This item inserts new subclause 5A303(2) in Schedule 5A to the Migration Regulations.

New subclause 5A303(2) provides that an applicant must not undertake studies at the year 8 level or lower unless he or she is a secondary exchange student.

Item [146] - Schedule 5A, clause 5A304

This item substitutes clause 5A304 of Schedule 5A to the Migration Regulations with new clause 5A304.

The overall purpose of new clause 5A304 is to enhance the integrity of the student visa program by ensuring that assessment level 4 applicants for Subclass 571 (Schools Sector) visas have appropriate levels of English language proficiency. The amendments made by this item will help to ensure that Subclass 571 visa holders are able to successfully complete their secondary school studies.

New subclause 5A304(1) provides that an applicant who:

- is a secondary exchange student; or
- is in Australia at the time of making the application; or
- is outside Australia at the time of making the application and is less than 16 years old at the time of making the application; or
- applies before 1 April 2004, and is outside Australia at the time of making the application, and is at least 16 years old at the time of making the application; or
- has undertaken at least 5 years of study in English in 1 or more of the following countries; Australia, Canada, New Zealand, South Africa, the Republic of Ireland, the United Kingdom, or the United States of America;

must give evidence that he or she has a level of English language proficiency that satisfies his or her proposed education provider.

The purpose of new paragraph 5A304(1)(e) is to permit applicants who have lived and studied in an English speaking country for a significant period of time to rely on this as evidence of their English language proficiency to his or her education provider.

New subclause 5A304(2) provides that if an applicant is not a secondary exchange student and will undertake an ELICOS, or other English language tuition before commencing his or her principal course, the applicant must give evidence that the ELICOS, or other English language tuition, will have a duration of no more than 30 weeks.

The purpose of new subclause 5A304(2) is to restrict the amount of English language tuition an applicant may undertake in Australia in order to satisfy the English language proficiency requirements of the applicant's proposed education provider.

New subclause 5A304(3) applies to an applicant who does not meet the requirements in new subclause 5A304(1) and the applicant is not undertaking an ELICOS, or other English language tuition, before commencing his or her principal course. Where these circumstances apply to an applicant, the applicant must give evidence that he or she achieved, in an IELTS test that was taken less than 2 years before the time of making the decision on the application, an Overall Band Score of at least 5.0, or the required score in an English language proficiency test that is specified in a Gazette Notice for clause 5A102.

New subclause 5A304(4) applies to an applicant who does not meet the requirements in new subclause 5A304(1) and is undertaking an ELICOS, or other English language tuition, before commencing his or her principal course. Where these circumstances apply to an applicant, the applicant must give evidence that he or she achieved, in an IELTS test that was taken less than 2 years before the time of making the decision on the application, an Overall Band Score of at least 4.0, or the required score in an English language proficiency test that is specified in a Gazette Notice for clause 5A102.

New subclause 5A304(5) provides that the Minister may waive the requirements of new subclause 5A304(3) or (4).

New subclause 5A304(6) requires that the Minister must be satisfied of the matters in subclause 5A304(7) or (8) if the Minister proposes to waive the requirements in subclause 5A304(3) or (4) for an application made by a PRC applicant.

New subclauses 5A304(7) and (8) provides that the Minister must be satisfied of the specified requirements when he or she proposes to waive the requirements of new subclauses 5A304(3) or (4) in relation to an application made by a "PRC applicant".

The meaning of "PRC applicant" is provided in new subclause 5A304(9) to mean a PRC citizen who is in the PRC, and is not in the Hong Kong Special Administrative Region or the Macau Special Administrative Region, and has applied to undertake, as a principal course, a course gazetted under regulation 1.40A for Subclass 571.

The purpose of new subclauses 5A304(7) and (8) is to ensure that the English language standard of PRC applicants, who may be subject to the waiving of the English language requirements in new subclauses 5A304(3) or (4), is sufficient for them to undertake and successfully complete secondary school studies conducted in English in Australia. Where the application is lodged by an agent of an education provider, the provisions provide greater certainty that the agent has a record in lodging student visa applications for PRC school sector students that resulted in the a grant rate of at least 70 per cent.

The requirements in new subclauses 5A304(7) and (8) are included for applications for Subclass 571 (Schools Sector) visas made by PRC applicants for the following reasons:

- applications made by PRC applicants have a very high fraud rate;
- a significant proportion of PRC Subclass 571 visa holders are unable to complete secondary school studies within the anticipated time;
- a large increase in protection visa applications by PRC Subclass 571 visa holders in the past two years;
- PRC Subclass 571 visa holders have great difficulty re-entering the Chinese education system, so, if seeking a tertiary qualification, they must successfully complete secondary school and commence tertiary education in Australia; and

- significant growth is expected in the number of PRC applicants wanting to undertake secondary education in Australia in the near future makes it necessary to ensure that a high proportion are able to successfully complete secondary studies, and go on to undertake tertiary studies.

In new subparagraphs 5A304(8)(a)(vi) and (b)(vii), the reference to "applications lodged by the agent for PRC applications" is not restricted to applications lodged by the agent in the financial year in question (as calculated in these subparagraphs), the financial year restriction only applies to decisions made during this period.

Item [147] - Schedule 5A, subclause 5A305(1)

This item makes a technical amendment to subclause 5A305(1) of Schedule 5A to the Migration Regulations to clarify that an applicant must provide evidence and a declaration in accordance with new clause 5A305.

Item [148] - Schedule 5A, paragraph 5A305(1)(a)

This item amends paragraph 5A305(1)(a) of Schedule 5A to the Migration Regulations by omitting the reference to "the full period" and inserting a reference to "the first 36 months".

The purpose of this amendment is to make financial capacity requirements less onerous by changing the period of time that applicants must show that they have funds from an acceptable source sufficient to meet certain expenses, from the full period of time during which an applicant proposes to stay in Australia, to the period of 36 months.

In addition, an applicant will be required to make a declaration that he or she has access to funds from an acceptable source that are sufficient to meet certain expenses for the remainder of the applicant's stay in Australia after the expiry of the first 36 months, in accordance with new paragraph 5A305.

Item [149] - Schedule 5A, paragraphs 5A305(1)(b) and (c)

This item substitutes paragraphs 5A305(1)(b) and (c) in Schedule 5A to the Migration Regulations with new paragraph 5A305(1)(b).

New paragraph 5A305(1)(b) requires an applicant to make a declaration that he or she has access to funds from an acceptable source that are sufficient to meet course fees, living and school costs for the remainder of the applicant's proposed stay in Australia after the first 36 months. New paragraph 5A305(1)(b) is inserted following the amendment made to paragraph 5A305(1)(a) by these regulations.

Item [150] - Schedule 5A, after subclause 5A305(1)

This item inserts new subclause 5A305(1A) in Schedule 5A to the Migration Regulations.

New subclause 5A305(1A) provides that if the applicant is:

- fully funded; or
- not funded, wholly or partly, by the Commonwealth government, or the government of a State or Territory of Australia, or the government of a foreign country, or a multilateral agency, and proposes to undertake a course of study that is less than 12 months in duration, and if applying in Australia proposes to stay in Australia for a total period of less than 12 months; or

- the subject of an arrangement by which the applicant's course fees, living costs and travel costs are met by a provincial or state government in a foreign country that has the written support of the government of that country; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs are met by an organisation specified by the Minister in a Gazette Notice;

the applicant must give evidence that he or she has access to funds that are sufficient to support each member of the applicant's family unit who is not a family applicant.

The purpose of new subclause 5A305(1A) is to ensure that applicants who are specified in this new subclause have sufficient funds to support those members of their family who are not a family unit applicant and do not intend to accompany the applicant to Australia.

Item [151] - Schedule 5A, subclause 5A305(2), definition of *acceptable individual*, paragraph (e)

This item makes a technical amendment to paragraph (e) of the definition of "acceptable individual" in subclause 5A305(2) of Schedule 5A to the Migration Regulations which is consequential to the insertion of new paragraph (f) in this definition.

Item [152] - Schedule 5A, subclause 5A305(2), after definition of *acceptable individual*, paragraph (e)

This item inserts new paragraph (f) in the definition of "acceptable individual" in subclause 5A305(2) of Schedule 5A to the Migration Regulations.

New paragraph (f) provides that an uncle or aunt of an applicant who is an Australian citizen, Australian permanent resident or eligible New Zealand citizen, and is usually resident in Australia, is considered to be an acceptable individual.

The purpose of new paragraph (f) is to allow certain aunts or uncles of applicants to help an applicant financially whilst they are studying in Australia. Financial support by uncles and aunts is considered culturally appropriate for applicants from various countries. The additional requirement that the uncle or aunt is an Australian citizen, Australian permanent resident or eligible New Zealand citizen, and is usually resident in Australia, provides greater assurance that the financial support provided is reliable and accessible.

Item [153] - Schedule 5A, subclause 5A305(2), definition of *funds from an acceptable source*, paragraph (a)

This item substitutes paragraph (a) of the definition of "funds from an acceptable source" in subclause 5A305(2) of Schedule 5A of the Migration Regulations with new paragraphs (a) and (aa).

New paragraph (a) provides that a money deposit held by an acceptable individual is an acceptable source of funds if the applicant has successfully completed at least 75% of their principal course requirements, has applied for the visa in order to complete the course, and does not propose to undertake any further course.

New paragraph (aa) provides that an acceptable source of funds is a money deposit that an acceptable individual has held for at least the 6 months immediately before the date of the application.

The effect of new paragraph (a) is to remove the savings period requirement for applicants who have successfully completed most of their principal course and are only seeking a further visa to complete this course. This reduces the likelihood that such applicants will be refused a student visa for failing the financial requirements where they rely on money deposits. New paragraph (aa) applies to an applicant who does not satisfy paragraph (a).

Item [154] - Schedule 5A, subclause 5A305(2), definition of funds from an acceptable source, subparagraph (d)(vi)

This item amends subparagraph (d)(iv) in subclause 5A305(2) definition of "funds from an acceptable source" in Schedule 5A to the Migration Regulations.

This amendment is a technical amendment consequential to the insertion of new subparagraphs 5A305(2)(d)(v) and (vi).

Item [155] - Schedule 5A, subclause 5A305(2), definition of funds from an acceptable source, after subparagraph (d)(iv)

This item inserts new subparagraphs (d)(v) and (vi) in the definition of "funds from an acceptable source" in subclause 5A305(2) of Schedule 5A to the Migration Regulations.

New subparagraph (d)(v) provides that financial support from a provincial or state government in a foreign country that has the written support of the government of that country is an acceptable source of funds.

New subparagraph (d)(vi) provides that financial support from an organisation specified by the Minister in Gazette Notice is an acceptable source of funds.

The purpose of the amendments made by this item is to expand the range of sources of financial support that an applicant may rely on in order to satisfy the financial capacity requirements in Schedule 5A which apply to the applicant.

Item [156] - Schedule 5A, clause 5A306

This item makes a technical amendment to clause 5A306 which is consequential to the insertion of new subclause 5A306(2) by these regulations.

Item [157] - Schedule 5A, subparagraph 5A306(a)(iii)

This item substitutes subparagraph 5A306(a)(iii) of Schedule 5A to the Migration Regulations with new subparagraph 5A306(a)(iii).

New subparagraph 5A306(a)(iii) provides that if the applicant is not an exchange student, the applicant must give evidence that at the time of application, he or she was or will be:

- if proposing to undertake year 9 studies - less than 17 years old when commencing year 9; and
- if proposing to undertake year 10 studies - less than 18 years old when commencing year 10; and
- if proposing to undertake year 11 studies - less than 19 years old when commencing year 11; and

- if proposing to undertake year 12 studies - less than 20 years old when commencing year 12.

The purpose of this amendment is to clarify policy intention that applicants are not to enter the Australian school system at an age significantly older than Australian students.

Item [158] - Schedule 5A, clause 5A306

This item inserts new subclause 5A306(2) in Schedule 5A to the Migration Regulations.

New subclause 5A306(2) provides that an applicant must not undertake studies at the year 8 level or lower unless he or she is a secondary exchange student.

Item [159] - Schedule 5A, subclause 5A308(1)

This item makes a technical amendment to subclause 5A308(1) of Schedule 5A to the Migration Regulations which is consequential to amendments made to clause 5A308 below.

Item [160] - Schedule 5A, paragraph 5A308(1)(a)

This item amends paragraph 5A308(1)(a) of Schedule 5A to the Migration Regulations by omitting the reference to "the full period" and inserting a reference to "the first 24 months".

The purpose of this amendment is to make financial capacity requirements less onerous by changing the period of time that applicants must show that they have funds from an acceptable source that are sufficient to meet certain expenses, from the full period of time during which an applicant proposes to stay in Australia, to a maximum period of 24 months.

In addition, an applicant will be required to make a declaration that he or she has access to funds from an acceptable source that are sufficient to meet expenses for the remainder of the applicant's stay in Australia after the expiry of the first 24 months, in accordance with new paragraph 5A308(1)(aa).

Item [161] - Schedule 5A, after paragraph 5A308(1)(a)

This item inserts new paragraph 5A308(1)(aa) in Schedule 5A to the Migration Regulations.

New paragraph 5A308(1)(aa) requires an applicant to make a declaration that he or she has access to funds from an acceptable source that are sufficient to course fees, living costs and school costs for the remainder of the applicant's proposed stay in Australia after the first 24 months. New paragraph 5A308(1)(aa) is inserted following the amendment made to paragraph 5A308(1)(a) by these regulations.

Item [162] - Schedule 5A, after subclause 5A308(1)

This item inserts new subclause 5A308(1A) in Schedule 5A to the Migration Regulations.

New subclause 5A308(1A) provides that for subclause (1), if the applicant is:

- fully funded; or
- not funded, wholly or partly, by the Commonwealth government, or the government of a State or Territory of Australia, or the government of a foreign country, or a multilateral agency, and proposes to undertake a course of study that is less than 12 months in duration, and if applying in Australia proposes to stay in Australia for a total period of less than 12 months; or

- the subject of an arrangement by which the applicant's course fees, living costs and travel costs are met by a provincial or state government in a foreign country that has the written support of the government of that country; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs are met by an organisation specified by the Minister in a Gazette Notice;

the applicant must give evidence that he or she has access to funds that are sufficient to support each member of the applicant's family unit who is not a family applicant.

The purpose of new subclause 5A308(1A) is to ensure that applicants who are specified in this new subclause have sufficient funds to support those members of their family who are not a family applicant and do not intend to accompany them to Australia.

Item [163] - Schedule 5A, paragraph 5A308(2)(a)

This item substitutes paragraph 5A308(2)(a) in Schedule 5A of the Migration Regulations with new paragraphs 5A308(2)(a) and (aa).

New paragraph 5A308(2)(a) provides that a money deposit held by the applicant or a person providing support to the applicant is an acceptable source of funds if the applicant has successfully completed at least 75% of their principal course requirements, has applied for the visa in order to complete the course, and does not propose to undertake any further course. New paragraph 5A308(2)(aa) provides that an acceptable source of funds is a money deposit that the applicant or a person providing support to the applicant has held for at least the 3 months immediately before the date of the application.

The effect of new paragraph 5A308(2)(a) is to remove the savings period requirement for applicants who have successfully completed most of their

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principal course and are only seeking a further visa to complete this course. This reduces the likelihood that such applicants will be refused a student visa for failing the financial requirements where they rely on money deposits. New paragraph 5A308(2)(a) applies to an applicant who does not satisfy paragraph 5A308(2)(aa) and has the same effect as former paragraph 5A308(2)(a).

Item [164] - Schedule 5A, subparagraph 5A308(2)(d)(v)

This item amends subparagraph 5A308(2)(d)(v) of Schedule 5A to the Migration Regulations.

This amendment is a technical amendment consequential to the insertion of new subparagraphs 5A308(2)(d)(vi) and (vii).

Item [165] - Schedule 5A, after paragraph 5A308(2)(d)(v)

This item inserts new subparagraphs 5A308(2)(d)(vi) and (vii) in Schedule 5A to the Migration Regulations.

New subparagraph 5A308(2)(d)(vi) provides that financial support from a provincial or state government in a foreign country that has the written support of the government of that country is an acceptable source of funds.

New subparagraph 5A308(2)(d)(vii) provides that financial support from an organisation specified by the Minister in Gazette Notice is an acceptable source of funds.

The purpose of this amendment is to expand the range sources of financial support that an applicant may rely on to satisfy the financial capacity requirements in Schedule 5A which apply to the applicant.

Item [166] - Schedule 5A, subparagraph 5A309(a)(iii)

This item substitutes subparagraph 5A309(a)(iii) of Schedule 5A to the Migration Regulations with new subparagraph 5A309(a)(iii).

Subparagraph 5A309(a)(iii) provides that if the applicant is not an exchange student, the applicant must give evidence that at the time of application, he or she was or will be:

- if proposing to undertake year 9 studies - less than 17 years old when commencing Year 9; and
- if proposing to undertake year 10 studies - less than 18 years old when commencing Year 10; and
- if proposing to undertake year 11 studies - less than 19 years old when commencing Year 11; and
- if proposing to undertake year 12 studies - less than 20 years old when commencing Year 12.

The purpose of this amendment is to clarify policy intention that applicants are not to enter the Australian school system at an age significantly older than Australian students.

Item [167] - Schedule 5A, subclause 5A311(1)

This item makes a technical amendment to subclause 5A311(1) of Schedule 5A to the Migration Regulations to clarify that an applicant must provide evidence and a declaration in accordance with new clause 5A311.

Item [168] - Schedule 5A, paragraph 5A311(1)(c)

This item amends paragraph 5A311(1)(c) of Schedule 5A to the Migration Regulations.

The amendment made by this item requires that if an applicant is not an exchange student, he or she must give a declaration stating that he or she has access to funds from an acceptable source that are sufficient to meet the course fees, living costs and school costs for the remainder of his or her expected stay in Australia after the first 12 months.

The purpose of this amendment is to clarify that the declaration only relates to the period of time after the first 12 months of the applicant's stay in Australia.

This is a technical amendment to ensure consistency in wording with similar provisions for assessment level 3 and 4 applicants in Schedule 5A.

Item [169] - Schedule 5A, subclause 5A311(2)

This item substitutes subclause 5A311(2) in Schedule 5A to the Migration Regulations with new subclauses 5A311(1A) and (2).

New subclause 5A311(1A) provides that if the applicant is:

- fully funded; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by a provincial or state government in a foreign country that has the written support of the government of that country; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by an organisation specified by the Minister in a Gazette Notice;

the applicant must give evidence that he or she has access to funds that are sufficient to support each member of the applicant's family unit who is not a family applicant.

The purpose of new subclause 5A311(1A) is to ensure that specified in this subclause have sufficient funds to support those members of their family who are not family applicants and do not intend to accompany the applicant to Australia.

New subclause 5A311(2) provides that the value of an item of property is not included as funds from an acceptable source.

Item [170] - Schedule 5A, paragraph 5A404(e)

This item makes a technical amendment to paragraph 5A404(e) of Schedule 5A to the Migration Regulations which is consequential to the insertion of new paragraph 5A404(f) by these regulations.

Item [171] - Schedule 5A, after paragraph 5A404(e)

This item inserts new paragraph 5A404(f) in Schedule 5A to the Migration Regulations.

New paragraph 5A404(f) provides that an applicant will satisfy the English language requirements if the applicant has:

- a level of English language proficiency that satisfies the applicant's proposed education provider; and
- undertaken at least 5 years of study in English in 1 or more of the following countries: Australia; Canada; New Zealand; South Africa; the Republic of Ireland; the United Kingdom; or the United States of America.

The purpose of this amendment is to permit applicants who have lived and studied in an English speaking country for a significant period of time to rely on this as evidence of their English language proficiency.

Item [172] - Schedule 5A, subclause 5A405(1)

This item makes a technical amendment to subclause 5A405(1) of Schedule 5A to the Migration Regulations to clarify that an applicant must provide evidence and a declaration in accordance new clause 5A405.

Item [173] - Schedule 5A, paragraph 5A405(1)(a)

This item amends paragraph 5A405(1)(a) of Schedule 5A to the Migration Regulations by omitting the reference to "the full period" and inserting a reference to "the first 36 months".

The purpose of this amendment is to make financial capacity requirements less onerous by changing the period of time that applicants must show that they have funds from an acceptable source that are sufficient to meet certain expenses from the full period of time during which an applicant proposes to stay in Australia, to a maximum period of 36 months.

In addition, an applicant will be required to make a declaration that he or she has access to funds from an acceptable source that are sufficient to meet expenses for the remainder of the applicant's stay in Australia after the expiry of the first 36 months, in accordance with new paragraph 5A405(1)(aa).

Item [174] - Schedule 5A, after paragraph 5A405(1)(a)

This item inserts new paragraph 5A405(1)(aa) in Schedule 5A to the Migration Regulations.

New paragraph 5A405(1)(aa) requires an applicant to make a declaration that he or she has access to funds from an acceptable source that are sufficient to meet the course fees, living costs and school costs for the remainder of the applicant's proposed stay in Australia after the first 36 months. New paragraph 5A405(1)(aa) is inserted following the amendment made to paragraph 5A405(1)(a) by these regulations.

Item [175] - Schedule 5A, after subclause 5A405(1)

This item inserts new subclause 5A405(1A) in Schedule 5A to the Migration Regulations.

New subclause 5A405(1A) provides that if the applicant is:

- fully funded; or
- not funded, wholly or partly, by the Commonwealth government, or the government of a State or Territory of Australia, or the government of a foreign country, or a multilateral agency, and proposes to undertake a course of study that is less than 12 months in duration, and if applying in Australia proposes to stay in Australia for a total period of less than 12 months; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by a provincial or state government in a foreign country that has the written support of the government of that country; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by an organisation specified by the Minister in a Gazette Notice;

the applicant must give evidence that he or she has access to funds that are sufficient to support each member of the applicant's family unit who is not a family applicant.

The purpose of new subclause 5A405(1A) is to ensure that applicants who are specified in this new subclause have sufficient funds to support those members of their family who are not family applicants and do not intend to accompany the applicant to Australia.

Item [176] - Schedule 5A, subclause 5A405(2), definition of *acceptable individual*, paragraph (e)

This item makes a technical amendment to paragraph (e) of the definition of "acceptable individual" in subclause 5A405(2) of Schedule 5A to the Migration Regulations which is consequential to the insertion of new paragraph (f) in this definition.

Item [177] - Schedule 5A, subclause 5A405(2), definition of *acceptable individual*, paragraph (e)

This item inserts new paragraph (f) in the definition of "acceptable individual" in subclause 5A405(2) of Schedule 5A to the Migration Regulations.

New paragraph (f) provides that an uncle or aunt of an applicant who is an Australian citizen, Australian permanent resident or eligible New Zealand citizen, and is usually resident in Australia, is considered to be an acceptable individual.

The purpose of new paragraph (f) is to allow certain aunts or uncles of applicants to help an applicant financially whilst they are studying in Australia. Financial support by uncles and aunts is considered culturally appropriate for applicants from various countries. The additional requirement that the uncle or aunt is an Australian citizen, Australian permanent resident or eligible New Zealand citizen, and is usually resident in Australia, provides greater assurance that the financial support provided is reliable and accessible.

Item [178] - Schedule 5A, subclause 5A405(2), after definition of *acceptable individual*

This item inserts a new definition of "financial support" in subclause 5A405(2) of Schedule 5A to the Migration Regulations.

The new "financial support" definition provides that this term means, from an applicant's proposed education provider, either:

- a scholarship that is awarded on the basis of merit and an open selection process, and is awarded to a student who is enrolled in a course leading to a Certificate IV qualification or a higher qualification, and is awarded to the greater of either, not more than 10% of overseas students in a course intake, or not more than 3 overseas students in a course intake; or
- a waiver of the applicant's course fees where the applicant is part of an exchange program that involves a formal agreement between an education provider and an education institution in a foreign country and the reciprocal waiver of course fees as part of that agreement, and the applicant will be studying full-time, and the applicant's proposed studies will be credited to a course undertaken by the applicant in the applicant's home country.

The purpose of the definition of "financial support" and its use in Schedule 5A is to prescribe what is an acceptable scholarship or exchange program for the purposes of determining whether an applicant meets financial capacity requirements in Schedule 5A.

Item [179] - Schedule 5A, subclause 5A405(2), definition of *funds from an acceptable source*, paragraph (a)

This item substitutes paragraph (a) of the definition of *funds from an acceptable source* in subclause 5A405(2) of Schedule 5A of the Migration Regulations with new paragraph (a) and (aa).

New paragraph (a) provides that a money deposit held by an acceptable individual is an acceptable source of funds if the applicant has successfully completed at least 75% of their principal course requirements, has applied for the visa in order to complete the course, and does not propose to undertake any further course.

New paragraph (aa) provides that an acceptable source of funds is a money deposit that an acceptable individual has held for at least 6 months immediately before the date of the application.

The effect of new paragraph (a) is to remove the savings period requirement for applicants who have successfully completed most of their principal course and are only seeking a further visa to complete this course. This reduces the likelihood that such applicants will be refused a student visa for failing the financial requirements where they rely on money deposits. New paragraph (aa) has the same effect as former paragraph (a) and applies to an applicant who cannot satisfy paragraph (a).

Item [180] - Schedule 5A, subclause 5A405(2), definition of *funds from an acceptable source*, paragraph (b)

This item amends paragraph (b) of the definition of "funds from an acceptable source" in subclause 5A405(2) of Schedule 5A to the Migration Regulations.

This amendment is consequential to the definition of the term "financial support" in Schedule 5A inserted by these regulations.

Item [181] - Schedule 5A, subclause 5A405(2), definition of *funds from an acceptable source*, subparagraph (b)(v)

This item makes a technical amendment to subparagraph (b)(v) of the definition of "funds from an acceptable source" in subclause 5A405(2) in Schedule 5A to the Migration Regulations. The amendment made by this item is consequential to the insertion of new subparagraphs (b)(vi) and (vii) of the definition of "funds from an acceptable source" in new subclause 5A405(2).

Item [182] - Schedule 5A, subclause 5A405(2), definition of *funds from an acceptable source*, after subparagraph (b)(v)

This item inserts new subparagraphs (vi) and (vii) in paragraph (b) of the definition of "funds from an acceptable source" in subclause 5A405(2) of Schedule 5A to the Migration Regulations.

New subparagraph (vi) provides that financial support from a provincial or state government in a foreign country, provided with the written support of the government of that country is an acceptable source of funds.

New subparagraph (vii) provides that an organisation specified by the Minister in a Gazette Notice is an acceptable source of funds.

The purpose of the amendments made by this item is to expand the range of sources of financial support that applicants may rely on in order to satisfy the relevant financial capacity requirement in Schedule 5A.

Item [183] - Schedule 5A, subclause 5A405(2), definition of *funds from an acceptable source*, after paragraph (b)

This item inserts new paragraphs (c) and (d) in the definition of "funds from an acceptable source" in subclause 5A405(2) of Schedule 5A to the Migration Regulations.

New paragraph (c) provides that a loan from a financial institution that is made to, and held in the name of, an acceptable individual is an acceptable source of funds.

New paragraph (d) provides that a loan from the government of the applicant's home country is an acceptable source of funds.

The purpose of the amendments made by this item is to expand the range of sources of funds that applicants may rely on in order to satisfy the relevant financial capacity requirement in Schedule 5A.

Item [184] - Schedule 5A, subclause 5A406(2)

This item substitutes subclause 5A406(2) of Schedule 5A to the Migration Regulations with new subclause 5A406(2).

New subclause 5A406(2) provides that "vocational education and training course" means a vocational education and training course which leads to the award of a qualification from the Australian Qualification Framework at the diploma level, advanced diploma level or Certificate IV level (where the course is of at least 1 year's duration).

The purpose of new subclause 5A406(2) is to include certain Certificate IV level courses in the definition of "vocational education and training course". Certificate IV level courses are considered by the education industry to be satisfactory principal courses. The requirement that a Certificate IV level course is of at least 1 year's duration ensures that these courses will be less likely to attract non-genuine applicants.

Item [185] - Schedule 5A, paragraph 5A407(e)

This item makes a technical amendment to paragraph 5A407(e) in Schedule 5A to the Migration Regulations which is consequential to the insertion of new paragraph 5A407(f) by these regulations.

Item [186] - Schedule 5A, after paragraph 5A407(e)

This item inserts new paragraph 5A407(f) in Schedule 5A to the Migration Regulations.

New paragraph 5A407(f) provides that an applicant will satisfy the English language requirements if the applicant has:

- a level of English language proficiency that satisfies the applicant's proposed education provider; and
- undertaken at least 5 years of study in English in 1 or more of the following countries: Australia; Canada; New Zealand; South Africa; the Republic of Ireland; the United Kingdom; or the United States of America.

The purpose of this amendment is to permit applicants who have lived and studied in an English speaking country for a significant period of time to rely on this as evidence of their English language proficiency.

Item [187] - Schedule 5A, subclause 5A408(1)

This item makes a technical amendment to subclause 5A408(1) of Schedule 5A to the Migration Regulations to clarify that an applicant must provide evidence and a declaration in accordance with new clause 5A405.

Item [188] - Schedule 5A, paragraph 5A408(1)(a)

This item amends paragraph 5A408(1)(a) of Schedule 5A to the Migration Regulations by omitting the reference to "the full period" and inserting a reference to "the first 24 months".

The purpose of this amendment is to make financial capacity requirements less onerous by changing the period of time that applicants must show that they have funds from an acceptable source that is sufficient to meet certain expenses, from the full period of time during which an applicant proposes to stay in Australia, to a maximum period of 24 months.

In addition, an applicant will be required to make a declaration that he or she has access to funds from an acceptable source that are sufficient to meet expenses for the remainder of the applicant's stay in Australia after the expiry of the first 24 months, in accordance with new paragraph 5A408(1)(aa).

Item [189] - Schedule 5A, after paragraph 5A408(1)(a)

This item inserts new paragraph 5A408(1)(aa) in Schedule 5A to the Migration Regulations.

New paragraph 5A408(1)(aa) requires an applicant to make a declaration that he or she has access to funds from an acceptable source that are sufficient to meet course fees, living costs and school costs for the remainder of the applicant's proposed stay in Australia after the first 24 months. New paragraph 5A408(1)(aa) is inserted following the amendment made to paragraph 5A408(1)(a) by these regulations.

Item [190] - Schedule 5A, after subclause 5A408(1)

This item inserts new subclause 5A408(1A) in Schedule 5A to the Migration Regulations.

New subclause 5A408(1A) provides that if the applicant is:

- fully funded; or
- not funded, wholly or partly, by the Commonwealth government, or the government of a State or Territory of Australia, or the government of a foreign country, or a multilateral agency, and proposes to undertake a course of study that is less than 12 months in duration, and if applying in Australia proposes to stay in Australia for a total period of less than 12 months; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by a provincial or state government in a foreign country that has the written support of the government of that country; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by an organisation specified by the Minister in a Gazette Notice;

the applicant must give evidence that he or she has access to funds that are sufficient to support each member of the applicant's family unit who is not a family applicant.

The purpose of new subclause 5A408(1A) is to ensure that applicants who are specified in this new subclause have sufficient funds to support those members of their family who are not family member applicants and do not intend to accompany the applicant to Australia.

Item [191] - Schedule 5A, subclause 5A408(2), definition of *acceptable individual*

This item inserts a definition of "financial support" in subclause 5A408(2) of Schedule 5A to the Migration Regulations.

The new "financial support" definition provides that this term means, from an applicant's proposed education provider, either:

- a scholarship that is awarded on the basis of merit and an open selection process, and is awarded to a student who is enrolled in a course leading to a Certificate IV qualification or a higher qualification, and is awarded to the greater of either, not more than 10% of overseas students in a course intake, or not more than 3 overseas students in a course intake; or
- a waiver of the applicant's course fees where the applicant is part of an exchange program that involves a formal agreement between an education provider and an education institution in a foreign country and the reciprocal waiver of course fees as part of that agreement, and the applicant will be studying full-time, and the applicant's proposed studies will be credited to a course undertaken by the applicant in the applicant's home country.

The purpose of the definition of "financial support" and its use in Schedule 5A is to prescribe what is an acceptable scholarship or exchange program for the purposes of determining whether an applicant meets financial capacity requirements in Schedule 5A.

Item [192] - Schedule 5A, subclause 5A408(2), definition of funds from an acceptable source, paragraph (a)

This item substitutes paragraph (a) of the definition of "funds from an acceptable source" in subclause 5A408(2) of Schedule 5A of the Migration Regulations with new paragraph (a) and paragraph (aa).

New paragraph (a) provides that a money deposit held by the applicant or an individual supporting the applicant is an acceptable source of funds if the applicant has successfully completed at least 75% of their principal course requirements, has applied for the visa in order to complete the course, and does not propose to undertake any further course.

New paragraph (aa) provides that an acceptable source of funds is a money deposit that the applicant or an individual who is providing support to the applicant has held for at least the 3 months immediately before the date of the application.

The effect of new paragraph (a) is to remove the savings period requirement for applicants who have successfully completed most of their principal course and are only seeking a further visa to complete this course. This reduces the likelihood that such applicants will be refused a student visa for failing the financial requirements where they rely on money deposits. New paragraph (aa) applies to an applicant who does not satisfy paragraph (a) and has the same effect as former paragraph (a).

Item [193] - Schedule 5A, subclause 5A408(2), definition of funds from an acceptable source, paragraph (b)

This item amends paragraph (b) of the definition of "funds from an acceptable source" in subclause 5A408(2) of Schedule 5A to the Migration Regulations by replacing the reference to "an acceptable individual" with a reference to "the applicant, or an individual who is providing support to the applicant".

The amendment made by this item expands the range of persons who can provide financial support to an applicant. It also ensures that there is consistency with financial capacity requirements for assessment level 3 applicants for Subclass 571, 573 or 574 visas as currently provided in Schedule 5A which relate to who is able to hold either a money deposit or a loan from a financial institution in the definition of "funds from an acceptable source".

Item [194] - Schedule 5A, subclause 5A408(2), definition of funds from an acceptable source, paragraph (d)

This item amends paragraph (d) of the definition of "funds from an acceptable source" in subclause 5A408(2) of Schedule 5A to the Migration Regulations.

This amendment is consequential to the definition of "financial support" in Schedule 5A inserted by these regulations.

Item [195] - Schedule 5A, subclause 5A408(2), definition of *funds from an acceptable source*, paragraph (d)(v)

This item amends subparagraph (d)(v) of the definition of "funds from an acceptable source" in subclause 5A408(2) of Schedule 5A to the Migration Regulations.

This amendment is a technical amendment consequential to the insertion of new subparagraphs (d)(vi) and (vii) in the definition of "funds from an acceptable source" in subclause 5A408(2).

Item [196] - Schedule 5A, subclause 5A408(2), definition of *funds from an acceptable source*, after subparagraph (d)(v)

This item inserts new subparagraphs 5A408(2)(d)(vi) and (vii) in Schedule 5A to the Migration Regulations.

New subparagraph 5A408(2)(d)(vi) provides that financial support from a provincial or state government in a foreign country that has the written support of the government of that country is an acceptable source of funds.

New subparagraph 5A408(2)(d)(vii) provides that financial support from an organisation specified by the Minister in Gazette Notice is an acceptable source of funds.

The purpose of this amendment is to expand the range of sources of funds that an applicant may rely on to satisfy the financial capacity requirements in Schedule 5A which apply to the applicant.

Item [197] - Schedule 5A, subclause 5A411(1)

This item makes a technical amendment to subclause 5A411(1) of Schedule 5A to the Migration Regulations to clarify that an applicant must provide evidence and a declaration in accordance with new clause 5A411.

Item [198] - Schedule 5A, subclause 5A411(1)(c)

This item amends paragraph 5A411(1)(c) of Schedule 5A to the Migration Regulations.

The amendment made by this item requires that if an applicant is not an exchange student, he or she must give a declaration stating that he or she has access to funds from an acceptable source that are sufficient to meet course fees, living costs and school costs for the remainder of his or her expected stay in Australia after the first 12 months, in addition to giving the required evidence in paragraphs 5A511(1)(a) and (b).

The purpose of this amendment is to clarify that the declaration only relates to the period of time after the first 12 months of the applicant's stay in Australia and to provide greater consistency in wording with similar provisions for assessment level 3 and 4 applicants.

Item [199] - Schedule 5A, subclause 5A411(2)

This item substitutes subclause 5A411(2) of Schedule 5A to the Migration Regulations with new subclauses 5A411(1A) and (2).

New subclause 5A411(1A) provides that if the applicant is:

- fully funded; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by a provincial or state government in a foreign country that has the written support of the government of that country; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by an organisation specified by the Minister in a Gazette Notice;

the applicant must give evidence that he or she has access to funds that are sufficient to support each member of the applicant's family unit who is not a family applicant.

The purpose of new subclause 5A411(2) is to ensure that applicants who are specified in this new subclause have sufficient funds to support those members of their family who are not family applicants and do not intend to accompany the applicant to Australia.

New subclause 5A411(3) provides that the value of an item of property is not included as funds from an acceptable source.

Item [200] - Schedule 5A, clause 5A504

This item substitutes clause 5A504 of Schedule 5A to the Migration Regulations with new clause 5A504.

New subclause 5A504(1) provides that an applicant must give evidence that one of the circumstances specified in new paragraphs 5A504(1)(a) - (e) applies to them in order to satisfy the English language requirements.

New paragraph 5A504(1)(a) is satisfied if an applicant:

- will not undertake an ELICOS (English Language Intensive Course of Study) before commencing his or her principal course; and
- has achieved an Overall Band Score of 6.0 in an IELTS test, or the required score in an English language proficiency test that is specified in a Gazette Notice, taken less than 2 years before the time of application.

New paragraph 5A504(1)(aa) is satisfied if an applicant:

- has achieved an Overall Band Score of 5.5 in an IELTS test, or the required score in an English language proficiency test that is specified in a Gazette Notice, taken less than 2 years before the time of application; and
- has a certificate of enrolment in a foundation course of at least 1 year's duration that is to be undertaken before commencing the principal course.

New paragraph 5A504(1)(b) is satisfied if an applicant:

- will undertake an ELICOS before commencing his or her principal course of no more than 30 weeks in duration; and

- has achieved an Overall Band Score of 5.0 in an IELTS test, or the required score in an English language proficiency test that is specified in a Gazette Notice, taken less than 2 years before the time of application.

New paragraph 5A504(1)(c) is satisfied if:

- an applicant is fully funded; and
- an applicant has a level of English language proficiency that satisfies his or her proposed education provider; and
- the applicant is to undertake an ELICOS prior to commencing his or her principal course, the ELICOS is of no more than 30 weeks duration.

New paragraph 5A504(1)(d) is satisfied if an applicant was in Australia at the time of making the application and had, less than 2 years before the time of application:

- successfully completed the requirements for a Senior Secondary Certificate of Education, in a course that was conducted in Australia and in the English language; or
- as the holder of a student visa, studied towards a Certificate IV level (or higher) qualification in a course that was conducted in the English language.

New paragraph 5A504(1)(e) is satisfied if an applicant has:

- a level of English language proficiency that satisfies the applicant's proposed education provider; and
- has undertaken at least 5 years of study in English in 1 or more of the following countries: Australia; Canada; New Zealand; South Africa; the Republic of Ireland; the United Kingdom; or the United States of America.

The purpose of new paragraph 5A504(1)(e) is to permit applicants who have lived and studied in an English speaking country for a significant period of time to rely on this as evidence of their English language proficiency.

New subclause 5A504(2) provides that an applicant is not required to give evidence of English language proficiency if:

- the application was made outside Australia; and
- the applicant provides a certificate of enrolment in a course gazetted for subregulation 1.44(2) and will not undertake any other course before commencing this course. Subregulation 1.44(2) relates to courses not conducted in English.

Item [201] - Schedule 5A, subclause 5A505(1)

This item makes a technical amendment to subclause 5A505(1) of Schedule 5A to the Migration Regulations to clarify that an applicant must provide evidence and a declaration in accordance with new clause 5A505.

Item [202] - Schedule 5A, paragraph 5A505(1)(a)

This item amends paragraph 5A505(1)(a) of Schedule 5A to the Migration Regulations by omitting the reference to "the full period" and inserting a reference to "the first 36 months".

The purpose of this amendment is to make financial capacity requirements less onerous by changing the period of time that applicants must show that they have funds from an acceptable source that are sufficient to meet certain expenses from the full period of time during which an applicant proposes to stay in Australia, to a maximum period of 36 months.

In addition, an applicant will be required to make a declaration that he or she has access to funds from an acceptable source that are sufficient to meet expenses for the remainder of the applicant's stay in Australia after the expiry of the first 36 months, in accordance with new paragraph 5A505(1)(aa).

Item [203] - Schedule 5A, after paragraph 5A505(1)(a)

This item inserts new paragraph 5A505(1)(aa) in Schedule 5A to the Migration Regulations.

New paragraph 5A505(1)(aa) requires an applicant to make a declaration that he or she has access to funds from an acceptable source that are sufficient to meet the course fees, living costs and school costs for the remainder of the applicant's proposed stay in Australia after the first 36 months. New paragraph 5A505(1)(aa) is inserted following the amendment made to paragraph 5A505(1)(a) by these regulations.

Item [204] - Schedule 5A, after subclause 5A505(1)

This item inserts new subclause 5A505(1A) in Schedule 5A to the Migration Regulations.

New subclause 5A505(1A) provides if the applicant is:

- fully funded; or
- not funded, wholly or partly, by the Commonwealth government, or the government of a State or Territory of Australia, or the government of a foreign country, or a multilateral agency, and proposes to undertake a course of study that is less than 12 months in duration, and if applying in Australia proposes to stay in Australia for a total period of less than 12 months; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by a provincial or state government in a foreign country that has the written support of the government of that country; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by an organisation specified by the Minister in a Gazette Notice;

the applicant must give evidence that he or she has access to funds that are sufficient to support each member of the applicant's family unit who is not a family applicant.

The purpose of new subclause 5A505(1A) is to ensure that applicants who are specified in this new subclause have sufficient funds to support those members of their family who are not family applicants and do not intend to accompany the applicant to Australia.

Item [205] - Schedule 5A, subclause 5A505(2), definition of *acceptable individual*, paragraph (e)

This item makes a technical amendment to paragraph (e) of the definition of "acceptable individual" in subclause 5A505(2) of Schedule 5A to the Migration Regulations which is consequential to the insertion of new paragraph (f) in this definition.

Item [206] - Schedule 5A, subclause 5A505(2), after definition of *acceptable individual*, after paragraph (e)

This item inserts new paragraph (f) in the definition of "acceptable individual" in subclause 5A505(2) of Schedule 5A to the Migration Regulations.

New paragraph (f) provides that an uncle or aunt of an applicant who is an Australian citizen, Australian permanent resident or eligible New Zealand citizen, and is usually resident in Australia, is considered to be an acceptable individual.

The purpose of new paragraph (f) is to allow certain aunts or uncles of applicants to help an applicant financially whilst they are studying in Australia. Financial support by uncles and aunts is considered culturally appropriate for applicants from various countries. The additional requirement that the uncle or aunt is an Australian citizen, Australian permanent resident or eligible New Zealand citizen, and is usually resident in Australia, provides greater assurance that the financial support provided is reliable and accessible.

Item [207] - Schedule 5A, subclause 5A505(2), after definition of *acceptable individual*

This item inserts a definition of "financial support" in subclause 5A505(2) of Schedule 5A to the Migration Regulations.

The new "financial support" definition provides that this term means, from an applicant's proposed education provider, either:

- a scholarship that is awarded on the basis of merit and an open selection process, and is awarded to a student who is enrolled in a course leading to a Certificate IV qualification or a higher qualification, and is awarded to the greater of either, not more than 10% of overseas students in a course intake, or not more than 3 overseas students in a course intake; or
- a waiver of the applicant's course fees where the applicant is part of an exchange program that involves a formal agreement between an education provider and an education institution in a foreign country and the reciprocal waiver of course fees as part of that agreement, and the applicant will be studying full-time, and the applicant's proposed studies will be credited to a course undertaken by the applicant in the applicant's home country.

The purpose of the definition of "financial support" and its use in Schedule 5A is to prescribe what is an acceptable scholarship or exchange program for the purposes of determining whether an applicant meets financial capacity requirements in Schedule 5A.

Item [208] - Schedule 5A, subclause 5A505(2), definition of *funds from an acceptable source*, paragraph (a)

This item substitutes paragraph (a) of the definition of "funds from an acceptable source" in subclause 5A505(2) of Schedule 5A of the Migration Regulations with new paragraph (a) and (aa).

New paragraph (a) provides that a money deposit held by an acceptable individual is an acceptable source of funds if the applicant has successfully completed at least 75% of their principal course requirements, has applied for the visa in order to complete the course, and does not propose to undertake any further course.

New paragraph (aa) provides that an acceptable source of funds is a money deposit that an acceptable individual has held for at least the 6 months immediately before the date of the application.

The effect of new paragraph (a) is to remove the savings period requirement for applicants who have successfully completed most of their principal course and are only seeking a further visa to complete this course. This reduces the likelihood that such applicants will be refused a student visa for failing the financial requirements where they rely on money deposits. New paragraph (aa) applies to an applicant who does not satisfy paragraph (a) has the same effect as former paragraph (a).

Item [209] - Schedule 5A, subclause 5A505(2), definition of *funds from an acceptable source*, paragraph (d)

This item amends paragraph (d) of the definition of *funds from an acceptable source* in subclause 5A505(2) of Schedule 5A to the Migration Regulations.

This amendment is consequential to the definition of "financial support" in Schedule 5A inserted by these regulations.

Item [210] - Schedule 5A, subclause 5A505(2), definition of *funds from an acceptable source*, subparagraph (d)(v)

This item amends subparagraph (d)(v) of the definition of "funds from an acceptable source" in subclause 5A505(2) of Schedule 5A to the Migration Regulations.

This amendment is a technical amendment consequential to the insertion of new subparagraphs (d)(vi) and (vii) of the definition of "funds from an acceptable source" in subclause 5A505(2).

Item [211] - Schedule 5A, subclause 5A505(2), definition of *funds from an acceptable source*, after subparagraph (d)(v)

This item inserts new subparagraphs 5A505(2)(d)(vi) and (vii) in Schedule 5A to the Migration Regulations.

New subparagraph 5A505(2)(d)(vi) provides that financial support from a provincial or state government in a foreign country that has the written support of the government of that country is an acceptable source of funds.

New subparagraph 5A505(2)(d)(vii) provides that financial support from an organisation specified by the Minister in Gazette Notice is an acceptable source of funds.

The purpose of this amendment is to expand the range of sources of funds that an applicant may rely on to satisfy the financial capacity requirements in Schedule 5A which apply to the applicant.

Item [212] - Schedule 5A, clause 5A506

This item substitutes clause 5A506 of Schedule 5A to the Migration Regulations with new clause 5A506.

New clause 5A506 provides that the applicant must give evidence that he or she has successfully completed secondary schooling to the:

- year 12 level (or its equivalent); or
- year 11 level (or its equivalent), and has successfully completed in Australia a foundation course of at least 1 year's duration; or

- year 11 level (or its equivalent), and has a certificate of enrolment in a foundation course of at least 1 year's duration.

The purpose of new clause 5A506 is to ensure that applicants must show that they have attained, or propose to attain, an appropriate level of education in order to be able to successfully undertake tertiary courses of study. Foundation courses of at least 1 year's duration are considered by the education industry to be sufficient alternatives to the completion of the year 12 level by applicants.

Item [213] - Schedule 5A, clause 5A507

This item substitutes clause 5A507 of Schedule 5A to the Migration Regulations with new clause 5A507.

New subclause 5A507(1) provides that an applicant must give evidence that one of the circumstances specified in new paragraphs 5A507(1)(a) - (e) applies to the applicant in order to satisfy the English language requirements.

New paragraph 5A507(1)(a) is satisfied if an applicant:

- will not undertake an ELICOS (English Language Intensive Course of Study) before commencing his or her principal course; and
- has achieved an Overall Band Score of 6.0 in an IELTS test, or the required score in an English language proficiency test that is specified in a Gazette Notice, taken less than 2 years before the time of application.

New paragraph 5A507(1)(aa) is satisfied if an applicant:

- has achieved an Overall Band Score of 5.5 in an IELTS test, or the required score in an English language proficiency test that is specified in a Gazette Notice, taken less than 2 years before the time of application; and
- has a certificate of enrolment in a foundation course of at least 1 year's duration that is to be undertaken before commencing the principal course.

New paragraph 5A507(1)(b) is satisfied if an applicant:

- will undertake an ELICOS of no more than 30 weeks in duration before commencing his or her principal course; and
- has achieved an Overall Band Score of 5.0 in an IELTS test, or the required score in an English language proficiency test that is specified in a Gazette Notice, taken less than 2 years before the time of application.

New paragraph 5A507(1)(c) is satisfied if:

- an applicant is fully funded; and
- an applicant has a level of English language proficiency that satisfies his or her proposed education provider; and
- the applicant is to undertake an ELICOS prior to commencing his or her principal course, the ELICOS is of no more than 30 weeks duration.

New paragraph 5A507(1)(d) is satisfied if an applicant was in Australia at the time of making the application and had, less than 2 years before the time of application:

- successfully completed the requirements for a Senior Secondary Certificate of Education, in a course that was conducted in Australia and in the English language; or
- as the holder of a student visa, studied towards a Certificate IV level (or higher) qualification in a course that was conducted in the English language.

New paragraph 5A507(1)(e) is satisfied if an applicant has:

- a level of English language proficiency that satisfies the applicant's proposed education provider; and
- undertaken at least 5 years of study in English in 1 or more of the following countries: Australia; Canada; New Zealand; South Africa; the Republic of Ireland; the United Kingdom; or the United States of America.

The purpose of new paragraph 5A507(1)(e) is to permit applicants who have lived and studied in an English speaking country for a significant period of time to rely on this as evidence of their English language proficiency.

New subclause 5A507(2) provides that an applicant is not required to give evidence of English language proficiency if:

- the application was made outside Australia; and
- the applicant provides a certificate of enrolment in a course gazetted for subregulation 1.44(2); and
- will not undertake any other course before commencing this course.

Subregulation 1.44(2) relates to courses not conducted in English.

Item [214] - Schedule 5A, subclause 5A508(1)

This item makes a technical amendment to subclause 5A508(1) of Schedule 5A to the Migration Regulations to clarify that an applicant must provide evidence and a declaration in accordance with new clause 5A508.

Item [215] - Schedule 5A, paragraph 5A508(1)(a)

This item amends paragraph 5A508(1)(a) of Schedule 5A to the Migration Regulations by omitting the reference to "the full period" and inserting a reference to "the first 24 months".

The purpose of this amendment is to make financial capacity requirements less onerous by changing the period of time that applicants must show that they have funds from an acceptable source to meet certain expenses from, the full period of time during which an applicant proposes to stay in Australia, to a maximum period of 24 months.

In addition, an applicant will be required to make a declaration that he or she has access to funds from an acceptable source that are sufficient to meet expenses for the remainder of the applicant's stay in Australia after the expiry of the first 24 months, in accordance with new paragraph 5A508(1)(aa).

Item [216] - Schedule 5A, after paragraph 5A508(1)(a)

This item inserts new paragraph 5A508(1)(aa) in Schedule 5A to the Migration Regulations.

New paragraph 5A508(1)(aa) requires an applicant to make a declaration that he or she has access to funds from an acceptable source that are sufficient to meet course fees, living costs and school costs for the remainder of the applicant's proposed stay in Australia after the first 24 months. New paragraph 5A508(1)(aa) is inserted following the amendment made to paragraph 5A508(1)(a) by these regulations.

Item [217] - Schedule 5A, after subclause 5A508(1)

This item inserts new subclause 5A508(1A) in Schedule 5A to the Migration Regulations.

New subclause 5A508(1A) provides that if the applicant is:

- fully funded; or
- not funded, wholly or partly, by the Commonwealth government, or the government of a State or Territory of Australia, or the government of a foreign country, or a multilateral agency, and proposes to undertake a course of study that is less than 12 months in duration, and if applying in Australia proposes to stay in Australia for a total period of less than 12 months; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by a provincial or state government in a foreign country that has the written support of the government of that country; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by an organisation specified by the Minister in a Gazette Notice;

the applicant must give evidence that he or she has access to funds that are sufficient to support each member of the applicant's family unit who is not a family applicant.

The purpose of new subclause 5A508(1A) is to ensure that applicants who are specified in this new subclause must have sufficient funds to support those members of their family who are not family applicants and do not intend to accompany the applicant to Australia.

Item [218] - Schedule 5A, subclause 5A508(2)

This item substitutes subclause 5A508(2) of Schedule 5A of the Migration Regulations with new subclause 5A508(2).

New subclause 5A508(2) provides new definitions for "financial support" and "funds from an acceptable source".

The new definition of "financial support" provides that this term means, from an applicant's proposed education provider, either:

- a scholarship that is awarded on the basis of merit and an open selection process, and is awarded to a student who is enrolled in a course leading to a Certificate IV qualification or a higher qualification, and is awarded to the greater of either, not more than 10% of overseas students in a course intake, or not more than 3 overseas students in a course intake; or
- a waiver of the applicant's course fees where the applicant is part of an exchange program that involves a formal agreement between an education provider and an education institution in

a foreign country and the reciprocal waiver of course fees as part of that agreement, and the applicant will be studying full-time, and the applicant's proposed studies will be credited to a course undertaken by the applicant in the applicant's home country.

The purpose of the new definition of "financial support" and its use in Schedule 5A is to prescribe what is an acceptable scholarship or exchange program for the purposes of determining whether an applicant meets financial capacity requirements in Schedule 5A.

The new definition of "funds from an acceptable source" provides that the following sources of funds may be provided by the applicant as evidence of his or her ability to meet the financial capacity requirements.

New paragraph (a) of the new definition of "funds from an acceptable source" provides that a money deposit held by an acceptable individual is an acceptable source of funds if the applicant has successfully completed at least 75% of their principal course requirements, has applied for the visa in order to complete the course, and does not propose to undertake any further course.

The effect of new paragraph (a) is to remove the savings period requirement for applicants who have successfully completed most of their principal course and are only seeking a further visa to complete this course. This reduces the likelihood that such applicants will be refused a student visa for failing the financial requirements where they rely on money deposits.

New paragraph (b) of the new definition of "funds from an acceptable source" provides that an acceptable source of funds is a money deposit held by the applicant or an individual who is providing support to the applicant has held for at least the 3 months immediately before the date of the application.

New paragraph (c) of the new definition of "funds from an acceptable source" provides that an acceptable source of funds is a loan from a financial institution made to, and held in the name of, the applicant or an individual supporting the applicant.

New paragraph (d) of the new definition of "funds from an acceptable source" provides that an acceptable source of funds is a loan from the government of the applicant's home country.

New paragraph (e) of the new definition of "funds from an acceptable source" provides that an acceptable source of funds is financial support from:

- the applicant's proposed education provider; or
- the Commonwealth government, or the government of a State or Territory of Australia; or
- the government of a foreign country; or
- a corporation that conducts commercial activities outside the country in which it is based and employs the applicant in a role in relation to which the applicant's principal course is of direct relevance; or
- a multilateral agency; or
- a provincial or state government in a foreign country provided with the written support of the government of that country; or
- an organisation specified by the Minister in a Gazette Notice.

The purpose of the new definition of "funds from an acceptable source" in new subclause 5A508(2) is to expand the range of acceptable sources of funds on which an applicant may rely to satisfy the financial capacity requirements applicable to the applicant in Schedule 5A.

Item [219] - Schedule 5A, paragraph 5A509(b)

This item substitutes paragraph 5A509(b) of Schedule 5A to the Migration Regulations with new paragraphs 5A509(b) and (c).

New paragraph 5A509(b) provides that the applicant must give evidence that he or she has successfully completed secondary schooling to the year 11 level (or its equivalent), and has successfully completed in Australia a foundation course of at least 1 year's duration.

Alternately, new paragraph 5A509(c) provides that the applicant must give evidence that he or she has successfully completed secondary schooling to the year 11 level (or its equivalent), and has a certificate of enrolment in a foundation course that is to be undertaken before commencing the applicant's principal course.

The purpose of new paragraphs 5A509(b) and (c) is to ensure that applicants must show that they have attained an appropriate level of education in order to be able to successfully undertake tertiary courses of study. Foundation courses of at least 1 year's duration are considered by the education industry to be sufficient alternatives to the completion of the year 12 level by applicants.

Item [220] - Schedule 5A, subclause 5A511(1)

This item makes a technical amendment to subclause 5A511(1) of Schedule 5A to the Migration Regulations to clarify that an applicant must provide evidence and a declaration in accordance with new clause 5A511.

Item [221] - Schedule 5A, paragraph 5A511(1)(c)

This item amends paragraph 5A511(1)(c) of Schedule 5A to the Migration Regulations.

The amendment made by this item requires that an applicant must give a declaration stating that he or she has access to funds from an acceptable source that are sufficient to meet the specified fees and costs for the remainder of his or her expected stay in Australia after the first 12 months, in addition to giving the required evidence in paragraphs 5A511(1)(a) and (b).

The purpose of this amendment is to clarify that the declaration only relates to the period of time after the first 12 months of the applicant's stay in Australia.

Item [222] - Schedule 5A, subclause 5A511(2)

This item substitutes subclause 5A511(2) of Schedule 5A to the Migration Regulations with new subclauses 5A511(2) and (3).

New subclause 5A511(2) provides that if the applicant is:

- fully funded; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by a provincial or state government in a foreign country that has the written support of the government of that country; or

- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by an organisation specified by the Minister in a Gazette Notice;

the applicant must give evidence that he or she has access to funds that are sufficient to support each member of the applicant's family unit who is not a family applicant.

The purpose of new subclause 5A511(2) is to ensure that applicants who are specified in this new subclause must have sufficient funds to support those members of their family who are not family applicants and do not intend to accompany the applicant to Australia.

New subclause 5A511(3) provides that the value of an item of property is not included as funds from an acceptable source.

Item [223] - Schedule 5A, paragraph 5A604(2)(e)

This item makes a technical amendment to paragraph 5A604(2)(e) of Schedule 5A to the Migration Regulations which is consequential to the insertion of new paragraph 5A604(2)(f) by these regulations.

Item [224] - Schedule 5A, after paragraph 5A604(2)(e)

This item inserts new paragraph 5A604(2)(f) in Schedule 5A to the Migration Regulations.

New paragraph 5A604(2)(f) provides that an applicant will satisfy the English language requirements if the applicant has:

- a level of English language proficiency that satisfies the applicant's proposed education provider and
- undertaken at least 5 years of study in English in 1 or more of the following countries: Australia; Canada; New Zealand; South Africa; the Republic of Ireland; the United Kingdom; or the United States of America.

The purpose of this amendment is to permit applicants who have lived and studied in an English speaking country for a significant period of time to rely on this as evidence of their English language proficiency.

Item [225] - Schedule 5A, subclause 5A605(1)

This item makes a technical amendment to subclause 5A605(1) of Schedule 5A to the Migration Regulations which is consequential to the amendments made by these regulations to clause 5A605 below.

Item [226] - Schedule 5A, after subclause 5A605(1)

This item inserts new subclause 5A605(1A) in Schedule 5A to the Migration Regulations.

New subclause 5A605(1A) provides that for subclause (1), if the applicant is:

- fully funded; or
- not funded, wholly or partly, by the Commonwealth government, or the government of a State or Territory of Australia, or the government of a foreign country, or a multilateral agency, and proposes to undertake a course of study that is less than 12 months in duration, and if applying in Australia proposes to stay in Australia for less than 12 months; or

- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by a provincial or state government in a foreign country that has the written support of the government of that country; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by an organisation specified by the Minister in a Gazette Notice;

the applicant must give evidence that he or she has access to funds that are sufficient to support each member of the applicant's family unit who is not a family applicant.

The purpose of new subclause 5A605(1A) is to ensure that applicants who are specified in this new subclause must have sufficient funds to support those members of their family who are not family applicants and do not intend to accompany the applicant to Australia.

Item [227] - Schedule 5A, subclause 5A605(2), definition of *acceptable individual*, paragraph (e)

This item makes a technical amendment to paragraph (e) of the definition of "acceptable individual" in subclause 5A605(2) of Schedule 5A to the Migration Regulations which is consequential to the insertion of new paragraph (f) in this definition.

Item [228] - Schedule 5A, subclause 5A605(2), definition of *acceptable individual*, after paragraph (e)

This item inserts new paragraph (f) in the definition of "acceptable individual" in subclause 5A605(2) of Schedule 5A to the Migration Regulations.

New paragraph (f) provides that an uncle or aunt of an applicant who is an Australian citizen, Australian permanent resident or eligible New Zealand citizen, and is usually resident in Australia, is considered to be an acceptable individual.

The purpose of new paragraph (f) is to allow certain aunts or uncles of applicants to help an applicant financially whilst they are studying in Australia. Financial support by uncles and aunts is considered culturally appropriate for applicants from various countries. The additional requirement that the uncle or aunt is an Australian citizen, Australian permanent resident or eligible New Zealand citizen, and is usually resident in Australia, provides greater assurance that the financial support provided is reliable and accessible.

Item [229] - Schedule 5A, subclause 5A605(2), after definition of *acceptable individual*

This item inserts a definition of "financial support" in subclause 5A605(2) of Schedule 5A to the Migration Regulations.

The new "financial support" definition provides that this term means, from an applicant's proposed education provider, either:

- a scholarship that is awarded on the basis of merit and an open selection process, and is awarded to a student who is enrolled in a course leading to a Certificate IV qualification or a higher qualification, and is awarded to the greater of either, not more than 10% of overseas students in a course intake, or not more than 3 overseas students in a course intake; or
- a waiver of the applicant's course fees where the applicant is part of an exchange program that involves a formal agreement between an education provider and an education institution in a foreign country and the reciprocal waiver of course fees as part of that agreement, and the

applicant will be studying full-time, and the applicant's proposed studies will be credited to a course undertaken by the applicant in the applicant's home country.

The purpose of the definition of "financial support" and its use in Schedule 5A is to prescribe what is an acceptable scholarship or exchange program for the purposes of determining whether an applicant meets financial capacity requirements in Schedule 5A.

Item [230] - Schedule 5A, subclause 5A605(2), definition of *funds from an acceptable source*, paragraph (a)

This item substitutes paragraph (a) of the definition of "funds from an acceptable source" in subclause 5A605(2) of Schedule 5A of the Migration Regulations with new paragraphs (a) and (aa).

New paragraph (a) provides that a money deposit held by an acceptable individual is an acceptable source of funds if the applicant has successfully completed at least 75% of their course, has applied for the visa in order to complete the course, and does not propose to undertake any further course. New paragraph (aa) provides that an acceptable source of funds is a money deposit that an acceptable individual has held for at least the 6 months immediately before the date of the application.

The effect of new paragraph (a) is to remove the savings period requirement for applicants who have successfully completed most of their principal course and are only seeking a further visa to complete this course. This reduces the likelihood that such applicants will be refused a student visa for failing the financial requirements where they rely on money deposits. New paragraph (aa) applies to an applicant who does not satisfy paragraph (a) and has the same effect as former paragraph (a).

Item [231] - Schedule 5A, subclause 5A605(2), definition of *funds from an acceptable source*, paragraph (d)

This item amends paragraph (b) of the definition of "funds from an acceptable source" in subclause 5A605(2) of Schedule 5A to the Migration Regulations.

This amendment is consequential to the definition of the term "financial support" in Schedule 5A inserted by these regulations.

Item [232] - Schedule 5A, subclause 5A605(2), definition of *funds from an acceptable source*, subparagraph (d)(v)

This item amends subparagraph (d)(v) of the definition of "funds from an acceptable source" in subclause 5A605(2) of Schedule 5A to the Migration Regulations.

This amendment is a technical amendment consequential to the insertion of new subparagraphs (d)(vi) and (vii) of the definition of "funds from an acceptable source" in subclause 5A605(2).

Item [233] - Schedule 5A, subclause 5A605(2), definition of *funds from an acceptable source*, after paragraph (d)(v)

This item inserts new subparagraphs (d)(vi) and (vii) in the definition of "funds from an acceptable source" in 5A605(2) of Schedule 5A to the Migration Regulations.

New subparagraph 5A605(2)(d)(vi) provides that financial support from a provincial or state government in a foreign country that has the written support of the government of that country is a fund from an acceptable source. New subparagraph 5A605(2)(d)(vii) provides that financial

support from an organisation specified by the Minister in Gazette Notice is a fund from an acceptable source.

The purpose of this amendment is to expand the range of sources of funds that an applicant may rely on to satisfy the financial capacity requirements in Schedule 5A which apply to the applicant.

Item [234] - Schedule 5A, paragraph 5A607(2)(e)

This item makes a technical amendment to paragraph 5A607(2)(e) of Schedule 5A to the Migration Regulations which is consequential to the insertion of new paragraph 5A607(2)(f) by these regulations.

Item [235] - Schedule 5A, after paragraph 5A607(2)(e)

This item inserts new paragraph 5A607(2)(f) in Schedule 5A to the Migration Regulations.

New paragraph 5A607(2)(f) provides that an applicant will satisfy the English language requirements if the applicant has:

- a level of English language proficiency that satisfies the applicant's proposed education provider; and
- has undertaken at least 5 years of study in English in 1 or more of the following countries: Australia; Canada; New Zealand; South Africa; the Republic of Ireland, the United Kingdom; or the United States of America.

The purpose of this amendment is to permit applicants who have lived and studied in an English speaking country for a significant period of time to rely on this as evidence of their English language proficiency.

Item [236] - Schedule 5A, subclause 5A608(1)

This item makes a technical amendment to subclause 5A608(1) of Schedule 5A to the Migration Regulations which is consequential to the amendments made by these regulations to new clause 5A608.

Item [237] - Schedule 5A, after subclause 5A608(1)

This item inserts new subclause 5A608(1A) in Schedule 5A to the Migration Regulations.

New subclause 5A608(1A) provides that if the applicant is:

- fully funded; or
- not funded, wholly or partly, by the Commonwealth government, or the government of a State or Territory of Australia, or the government of a foreign country, or a multilateral agency, and proposes to undertake a course of study that is less than 12 months in duration, and if applying in Australia proposes to stay in Australia for a total period of less than 12 months; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by a provincial or state government in a foreign country that has the written support of the government of that country; or

- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by an organisation specified by the Minister in a Gazette Notice; or
- holds an International Postgraduate Research Scholarship funded by the Commonwealth Government;

the applicant must give evidence that he or she has access to funds that are sufficient to support each member of the applicant's family unit who is not a family applicant.

The purpose of new subclause 5A608(1A) is to ensure that applicants who are specified in this new subclause must have sufficient funds to support those members of their family who are not family applicants and do not intend to accompany the applicant to Australia.

Item [238] - Schedule 5A, subclause 5A608(2)

This item substitutes subclause 5A608(2) of Schedule 5A of the Migration Regulations with new subclause 5A608(2).

New subclause 5A608(2) provides new definitions of "financial support" and "funds from an acceptable source".

The new definition of "financial support" provides that this term means, from an applicant's proposed education provider, either:

- a scholarship that is awarded on the basis of merit and an open selection process, and is awarded to a student who is enrolled in a course leading to a Certificate IV qualification or a higher qualification, and is awarded to the greater of either, not more than 10% of overseas students in a course intake, or not more than 3 overseas students in a course intake; or
- a waiver of the applicant's course fees where the applicant is part of an exchange program that involves a formal agreement between an education provider and an education institution in a foreign country and the reciprocal waiver of course fees as part of that agreement, and the applicant will be studying full-time, and the applicant's proposed studies will be credited to a course undertaken by the applicant in the applicant's home country.

The purpose of the definition of "financial support" and its use in Schedule 5A is to prescribe what is an acceptable scholarship or exchange program for the purposes of determining whether an applicant meets financial capacity requirements in Schedule 5A.

The new definition of "funds from an acceptable source" in new subclause 5A608(2) provides that the sources of funds in paragraphs (a) - (d) may be provided by the applicant as evidence of his or her ability to meet the financial capacity requirements.

New paragraph (a) of the new definition of "funds from an acceptable source" provides that an acceptable source of funds is a money deposit held by the applicant or an individual supporting the applicant.

New paragraph (b) of the new definition of "funds from an acceptable source" provides that an acceptable source of funds is a loan from a financial institution made to, and held in the name of, the applicant or an individual supporting the applicant.

New paragraph (c) of the new definition of "funds from an acceptable source" provides that an acceptable source of funds is a loan from the government of the applicant's home country.

New paragraph (d) of the new definition of "funds from an acceptable source" provides that an acceptable source of funds is financial support from:

- the applicant's proposed education provider; or
- the Commonwealth government, or the government of a State or Territory of Australia; or
- the government of a foreign country; or
- a corporation that conducts commercial activities outside the country in which it is based and employs the applicant in a role in relation to which the applicant's principal course is of direct relevance; or
- a multilateral agency; or
- a provincial or state government in a foreign country provided with the written support of the government of that country; or
- an organisation specified by the Minister in a Gazette Notice.

The purpose of the new definition of "funds from an acceptable source" in new subclause 5A608(2) is to expand the range of acceptable sources of funds on which an applicant may rely to satisfy the financial capacity requirements applicable to the applicant in Schedule 5A.

Item [239] - Schedule 5A, subclause 5A611(1)

This item makes a technical amendment to subclause 5A611(1) of Schedule 5A to the Migration Regulations to clarify that an applicant must provide evidence and a declaration in accordance with new clause 5A611.

Item [240] - Schedule 5A, paragraph 5A611(1)(c)

This item amends paragraph 5A611(1)(c) of Schedule 5A to the Migration Regulations.

The amendment made by this item requires that an applicant must give a declaration stating that he or she has access to funds from an acceptable source that are sufficient to meet the specified fees and costs for the remainder of his or her expected stay in Australia after the first 12 months, in addition to giving the required evidence in paragraphs 5A611(1)(a) and (b).

The purpose of this amendment is to clarify that the declaration only relates to the period of time after the first 12 months of the applicant's stay in Australia and to provide greater consistency in wording with similar provisions for assessment level 3 and 4 applicants

Item [241] - Schedule 5A, subclause 5A611(2)

This item substitutes subclause 5A611(2) of Schedule 5A to the Migration Regulations with new subclauses 5A611(1A) and (2).

New subclause 5A611(1A) provides that if the applicant is:

- fully funded; or

- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by a provincial or state government in a foreign country that has the written support of the government of that country; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by an organisation specified by the Minister in a Gazette Notice;

the applicant must give evidence that he or she has access to funds that are sufficient to support each member of the applicant's family unit who is not a family applicant.

The purpose of new subclause 5A611(1A) is to ensure that applicants who are specified in this new subclause must have sufficient funds to support those members of their family who are not family applicants and do not intend to accompany the applicant to Australia.

New subclause 5A611(2) provides that the value of an item of property is not included as funds from an acceptable source.

Item [242] - Schedule 5A, paragraph 5A704(e)

This item makes a technical amendment to paragraph 5A704(e) of Schedule 5A to the Migration Regulations which is consequential to the insertion of new paragraph 5A704(f) by these regulations.

Item [243] - Schedule 5A, after paragraph 5A704(e)

This item inserts new paragraph 5A704(f) in Schedule 5A to the Migration Regulations.

New paragraph 5A704(f) provides that an applicant will satisfy the English language requirements if the applicant has:

- a level of English language proficiency that satisfies the applicant's proposed education provider; and
- undertaken at least 5 years of study in English in 1 or more of the following countries: Australia; Canada; New Zealand; South Africa; the Republic of Ireland; the United Kingdom; or the United States of America.

The purpose of this amendment is to permit applicants who have lived and studied in an English speaking country for a significant period of time to rely on this as evidence of their English language proficiency.

Item [244] - Schedule 5A, subclause 5A705(1)

This item makes a technical amendment to subclause 5A705(1) of Schedule 5A to the Migration Regulations to clarify that an applicant must provide evidence and a declaration in accordance with new clause 5A705.

Item [245] - Schedule 5A, paragraph 5A705(1)(a)

This item amends paragraph 5A705(1)(a) of Schedule 5A to the Migration Regulations by omitting the reference to "the full period" and inserting a reference to "the first 36 months".

The purpose of this amendment is to make financial capacity requirements less onerous by changing the period of time that applicants must show that they have funds from an acceptable

source that are sufficient to cover certain expenses, from the full period of time during which an applicant proposes to stay in Australia, to a maximum period of 36 months.

In addition, an applicant will be required to make a declaration that he or she has access to funds from an acceptable source that are sufficient to meet expenses for the remainder of the applicant's stay in Australia after the expiry of the first 36 months, in accordance with new paragraph 5A705(1)(aa).

Item [246] - Schedule 5A, after paragraph 5A705(1)(a)

This item inserts new paragraph 5A705(1)(aa) in Schedule 5A to the Migration Regulations.

New paragraph 5A705(1)(aa) requires an applicant to make a declaration that he or she has access to funds from an acceptable source that are sufficient to meet course fees, living costs and schooling costs for the remainder of the applicant's proposed stay in Australia, after the first 36 months. New paragraph 5A705(1)(aa) is inserted following the amendment made to paragraph 5A705(1)(a) by these regulations.

Item [247] - Schedule 5A, after subclause 5A705(1)

This item inserts new subclause 5A705(1A) in Schedule 5A to the Migration Regulations.

New subclause 5A705(1A) provides that if the applicant is:

- fully funded; or
- not funded, wholly or partly, by the Commonwealth government, or the government of a State or Territory of Australia, or the government of a foreign country, or a multilateral agency, and proposes to undertake a course of study that is less than 12 months in duration, and if applying in Australia proposes to stay in Australia for a total period of less than 12 months; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs are met by a provincial or state government in a foreign country that has the written support of the government of that country; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs are met by an organisation specified by the Minister in a Gazette Notice;

the applicant must give evidence that he or she has access to funds that are sufficient to support each member of the applicant's family unit who is not a family applicant.

The purpose of new subclause 5A705(1A) is to ensure that applicants who are specified in this new subclause must have sufficient funds to support those members of their family who are not accompanying them to Australia.

Item [248] - Schedule 5A, subclause 5A705(2), definition of *acceptable individual*, paragraph (e)

This item makes a technical amendment to paragraph (e) of the definition of "acceptable individual" in subclause 5A705(2) of Schedule 5A to the Migration Regulations which is consequential to the insertion of new paragraph (f) in this definition.

Item [249] - Schedule 5A, subclause 5A705(2), definition of *acceptable individual*, after paragraph (e)

This item inserts new paragraph (f) in the definition of "acceptable individual" in subclause 5A705(2) of Schedule 5A to the Migration Regulations.

New paragraph (f) provides that an uncle or aunt of an applicant who is an Australian citizen, Australian permanent resident or eligible New Zealand citizen, and is usually resident in Australia, is considered to be an acceptable individual.

The purpose of new paragraph (f) is to allow certain aunts or uncles of applicants to help students financially while the applicant is studying in Australia. Financial support by uncles and aunts is considered culturally appropriate for applicants from various countries. The additional requirement that the uncle or aunt is an Australian citizen, Australian permanent resident or eligible New Zealand citizen, and is usually resident in Australia, provides greater assurance that the financial support provided is reliable and accessible.

Item [250] - Schedule 5A, subclass 5A705(2), after definition of *acceptable individual*

This item inserts a definition of "financial support" in subclause 5A705(2) of Schedule 5A to the Migration Regulations.

The new "financial support" definition provides that this term means, from an applicant's proposed education provider, either:

- a scholarship that is awarded on the basis of merit and an open selection process, and is awarded to a student who is enrolled in a course leading to a Certificate IV qualification or a higher qualification, and is awarded to the greater of either, not more than 10% of overseas students in a course intake, or not more than 3 overseas students in a course intake; or
- a waiver of the applicant's course fees where the applicant is part of an exchange program that involves a formal agreement between an education provider and an education institution in a foreign country and the reciprocal waiver of course fees as part of that agreement, and the applicant will be studying full-time, and the applicant's proposed studies will be credited to a course undertaken by the applicant in the applicant's home country.

The purpose of the definition of "financial support" and its use in Schedule 5A is to prescribe what is an acceptable scholarship or exchange program for the purposes of determining whether an applicant meets financial capacity requirements in Schedule 5A.

Item [251] - Schedule 5A, subclause 5A705(2), definition of *funds from an acceptable source*, paragraph (b)

This item amends paragraph (b) of the definition of "funds from an acceptable source" in subclause 5A705(2) of Schedule 5A to the Migration Regulations.

This amendment is consequential to the definition of "financial support" in Schedule 5A inserted by these regulations.

Item [252] - Schedule 5A, subclause 5A705(2), definition of *funds from an acceptable source*, subparagraph (b)(iv)

This item makes a technical amendment to subparagraph (b)(iv) of the definition of "funds from an acceptable source" in subclause 5A705(2) of Schedule 5A to the Migration Regulations. This amendment is consequential to the insertion of new paragraphs (c) and (d) of the definition of "funds from an acceptable source" in subclause 5A705(2) by these Regulations.

Item [253] - Schedule 5A, subclause 5A705(2), definition of *funds from an acceptable source*, after subparagraph (b)(iv)

This item inserts new subparagraphs 5A705(2)(d)(v) and (vi) in Schedule 5A to the Migration Regulations.

New subparagraph 5A705(2)(d)(v) provides that financial support from a provincial or state government in a foreign country that has the written support of the government of that country is a fund from an acceptable source. New subparagraph 5A705(2)(d)(vi) provides that financial support from an organisation specified by the Minister in a Gazette Notice is a fund from an acceptable source.

The purpose of this amendment is to expand the range of sources of funds that an applicant may rely on to satisfy the financial capacity requirements in Schedule 5A which apply to the applicant.

Item [254] - Schedule 5A, subclause 5A705(2), definition of *funds from an acceptable source*, after paragraph (b)

This item inserts new paragraphs (c) and (d) in the definition of "funds from an acceptable source" in subclause 5A705(2) of Schedule 5A to the Migration Regulations.

New paragraph (c) provides that a loan from a financial institution that is made to, and held in the name of, an acceptable individual is an acceptable source of funds.

New paragraph (d) provides that a loan from the government of the applicant's home country is an acceptable source of funds.

The purpose of the amendments made by this item is to expand the range of sources of funds that applicants may rely on in order to satisfy the relevant financial capacity requirement in Schedule 5A.

Item [255] - Schedule 5A, paragraph 5A707(e)

This item makes a technical amendment to paragraph 5A707(e) of Schedule 5A to the Migration Regulations which is consequential to the insertion of new paragraph 5A707(f) by these regulations.

Item [256] - Schedule 5A, after paragraph 5A707(e)

This item inserts new paragraph 5A707(f) in Schedule 5A to the Migration Regulations.

New paragraph 5A707(f) provides that an applicant will satisfy the English language requirements if the applicant has:

- a level of English language proficiency that satisfies the applicant's proposed education provider; and
- undertaken at least 5 years of study in English in 1 or more of the following countries: Australia; Canada; New Zealand; South Africa; the Republic of Ireland; the United Kingdom; or the United States of America.

The purpose of this amendment is to permit applicants who have lived and studied in an English speaking country for a significant period of time to rely on this as evidence of their English language proficiency.

Item [257] - Schedule 5A, subclause 5A708(1)

This item makes a technical amendment to subclause 5A708(1) of Schedule 5A to the Migration Regulations to clarify that an applicant must provide evidence and a declaration in accordance with new clause 5A708.

Item [258] - Schedule 5A, paragraph 5A708(1)(a)

This item amends paragraph 5A708(1)(a) in Schedule 5A to the Migration Regulations by omitting the reference to "the full period" and inserting a reference to "the first 24 months".

The purpose of this amendment is to make financial capacity requirements less onerous by changing the period of time that applicants must show that they have funds from an acceptable source that are sufficient to meet certain expenses, from the full period of time during which an applicant proposes to stay in Australia to, a maximum period of 24 months.

In addition, an applicant will be required to make a declaration that he or she has access to funds from an acceptable source that are sufficient to meet expenses for the remainder of the applicant's stay in Australia after the expiry of the first 24 months, in accordance with new paragraph 5A508(1)(aa).

Item [259] - Schedule 5A, after paragraph 5A708(1)(a)

This item inserts new paragraph 5A708(1)(aa) in Schedule 5A to the Migration Regulations.

New paragraph 5A708(1)(aa) requires an applicant to make a declaration that he or she has access to funds from an acceptable source that are sufficient to meet course fees, living costs and school costs for the remainder of the applicant's proposed stay in Australia after the first 24 months. New paragraph 5A708(1)(aa) is inserted following the amendment made to paragraph 5A708(1)(a) by these regulations.

Item [260] - Schedule 5A, after subclause 5A708(1)

This item inserts new subclause 5A708(1A) in Schedule 5A to the Migration Regulations.

New subclause 5A708(1A) provides that if the applicant is:

- fully funded; or
- not funded, wholly or partly, by the Commonwealth government, or the government of a State or Territory of Australia, or the government of a foreign country, or a multilateral agency, and proposes to undertake a course of study that is less than 12 months in duration, and if applying in Australia proposes to stay in Australia for a total period of less than 12 months; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by a provincial or state government in a foreign country that has the written support of the government of that country; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by an organisation specified by the Minister in a Gazette Notice; or

the applicant must give evidence that he or she has access to funds that are sufficient to support each member of the applicant's family unit who is not a family applicant.

The purpose of new subclause 5A708(1A) is to ensure that applicants who are specified in this new subclause have sufficient funds to support those members of their family who are not family applicants and do not intend to accompany the applicant to Australia.

Item [261] - Schedule 5A, subclause 5A708(2), after definition of acceptable individual

This item inserts a definition of "financial support" in subclause 5A708(2) of Schedule 5A to the Migration Regulations.

The new definition of "financial support" provides that this term means, from an applicant's proposed education provider, either:

- a scholarship that is awarded on the basis of merit and an open selection process, and is awarded to a student who is enrolled in a course leading to a Certificate IV qualification or a higher qualification, and is awarded to the greater of either, not more than 10% of overseas students in a course intake, or not more than 3 overseas students in a course intake; or
- a waiver of the applicant's course fees where the applicant is part of an exchange program that involves a formal agreement between an education provider and an education institution in a foreign country and the reciprocal waiver of course fees as part of that agreement, and the applicant will be studying full-time, and the applicant's proposed studies will be credited to a course undertaken by the applicant in the applicant's home country.

The purpose of the definition of "financial support" and its use in Schedule 5A is to prescribe what is an acceptable scholarship or exchange program for the purposes of determining whether an applicant meets financial capacity requirements in Schedule 5A.

Item [262] - Schedule 5A, subclause 5A708(2), definition of *funds from an acceptable source*, paragraph (a)

This item amends paragraph (a) of the definition of "funds from an acceptable source" in subclause 5A708(2) of Schedule 5A to the Migration Regulations by replacing the reference to "an acceptable individual" with a reference to "the applicant, or an individual who is providing support to the applicant".

The amendment made by this item ensures that there is consistency with financial capacity requirements for assessment level 3 applicants for Subclass 571, 573 or 574 visas as currently provided in Schedule 5A which relate to who is able to hold either a money deposit or a loan from a financial institution in the definition of "funds from an acceptable source".

Item [263] - Schedule 5A, subclause 5A708(2), definition of *funds from an acceptable source*, paragraph (b)

This item amends paragraph (b) of the definition of "funds from an acceptable source" in subclause 5A708(2) of Schedule 5A to the Migration Regulations by replacing the reference to "an acceptable individual" with a reference to "the applicant, or an individual who is providing support to the applicant".

The amendment made by this item expands the range of persons who can provide financial support to an applicant. This item also ensures that there is consistency with financial capacity requirements for assessment level 3 applicants for Subclass 571, 573 or 574 visas as currently provided in Schedule 5A which relate to who is able to hold either a money deposit or a loan from a financial institution in the definition of "funds from an acceptable source".

Item [264] - Schedule 5A, subclause 5A708(2), definition of *funds from an acceptable source*, paragraph (d)

This item amends paragraph (d) of the definition of "funds from an acceptable source" in subclause 5A708(2) of Schedule 5A to the Migration Regulations.

This amendment is consequential to the definition of the term "financial support" in Schedule 5A inserted by these regulations.

Item [265] - Schedule 5A, subclause 5A708(2), definition of *funds from an acceptable source*, subparagraph (d)(v)

This item amends subparagraph (d)(v) of the definition of "funds from an acceptable source" in subclause 5A708(2) of Schedule 5A to the Migration Regulations.

This amendment is a technical amendment consequential to the insertion of new subparagraphs (d)(vi) and (vii) of the definition of "funds from an acceptable source" in subclause 5A708(2).

Item [266] - Schedule 5A, subclause 5A708(2), definition of *funds from an acceptable source*, after subparagraph (d)(v)

This item inserts new subparagraphs (d)(vi) and (vii) in the definition of "funds from an acceptable source" in subclause 5A708(2) of Schedule 5A to the Migration Regulations.

New subparagraph (vi) provides that financial support from a provincial or state government in a foreign country that has the written support of the government of that country is an acceptable source of funds.

New subparagraph (vii) provides that financial support from an organisation specified by the Minister in Gazette Notice is an acceptable source of funds.

The purpose of this amendment is to expand the range of sources of funds that an applicant may rely on to satisfy the financial capacity requirements in Schedule 5A which apply to the applicant.

Item [267] - Schedule 5A, subclause 5A711(1)

This item makes a technical amendment to subclause 5A711(1) of Schedule 5A to the Migration Regulations to clarify that an applicant must provide evidence and a declaration in accordance with new clause 5A711.

Item [268] - Schedule 5A, paragraph 5A711(1)(c)

This item amends paragraph 5A711(1)(c) of Schedule 5A to the Migration Regulations.

The amendment made by this item requires that an applicant must give a declaration stating that he or she has access to funds from an acceptable source that are sufficient to meet the specified fees and costs for the remainder of his or her expected stay in Australia after the first 12 months, in addition to giving the required evidence in paragraphs 5A711(1)(a) and (b).

The purpose of this amendment is to clarify that the declaration only relates to the period of time after the first 12 months of the applicant's stay in Australia and provides greater consistency in wording with similar provisions relating to assessment level 3 and 4 requirements in Schedule 5A.

Item [269] - Schedule 5A, subclause 5A711(2)

This item substitutes subclause 5A711(2) in Schedule 5A to the Migration Regulations, with new subclauses 5A711(1A) and (2).

New subclause 5A711(1A) provides that if the applicant is:

- fully funded; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by a provincial or state government in a foreign country that has the written support of the government of that country; or
- the subject of an arrangement by which the applicant's course fees, living costs and travel costs will be met by an organisation specified by the Minister in a Gazette Notice;

the applicant must give evidence that he or she has access to funds that are sufficient to support each member of the applicant's family unit who is not a family applicant.

The purpose of new subclause 5A711(1A) is to ensure that applicants who are specified in this new subclause have sufficient funds to support those members of their family who are not family applicants and do not intend to accompany the applicant to Australia.

New subclause 5A711(2) provides that the value of an item of property is not included as funds from an acceptable source.

Item [270] - Schedule 5A, clause 5A802

This item makes a technical amendment to clause 5A802 of Schedule 5A to the Migration Regulations which is consequential to the amendments made by these regulations to new clause 5A802.

Item [271] - Schedule 5A, subclause 5A805(2)

This item makes a technical amendment to subclause 5A802(2) of Schedule 5A to the Migration Regulations which is consequential to the amendments made by these regulations to new clause 5A802.

Item [272] - Schedule 5A, paragraph 5A805(2)(c)

This item amends paragraph 5A805(2)(c) of Schedule 5A to the Migration Regulations.

The amendment made by this item requires that an applicant must give a declaration stating that he or she has access to funds from an acceptable source that are sufficient to meet the specified fees and costs for the remainder of his or her expected stay in Australia after the first 12 months, in addition to giving the required evidence in paragraphs 5A805(2)(a) and (b).

The purpose of this amendment is to clarify that the declaration only relates to the period of time after the first 12 months of the applicant's stay in Australia, and provides greater consistency in wording with similar provisions in Schedule 5A which relate to assessment level 3 and 4 applicants.

Item [273] - Schedule 5A, after paragraph 5A805(2)(c)

This item inserts new paragraph 5A805(2)(d) in Schedule 5A to the Migration Regulations.

New paragraph 5A805(2)(d) makes it an additional requirement that if the Minister requires the applicant to provide evidence that they have access to funds that are sufficient to support each member of the applicant's family unit who is not a family applicant, they must do so in writing.

Item [274] - After Schedule 5A

This item inserts new Schedule 5B in the Migration Regulations. New Schedule 5B is titled "Evidentiary requirements for student visas - secondary applicants".

The purpose of new Schedule 5B is to prescribe financial requirements for certain applicants seeking to satisfy the secondary criteria of student visa ("applicants") on the basis of being a member of the family unit of a person who is the holder of a student visa that was granted on the basis of the holder meeting the primary criteria for a student visa ("primary person"). "Student visa" is defined in regulation 1.03 of Part 1 of the Migration Regulations to mean a Student (Temporary) (Class TU) visa.

The effect of the amendment made by this item is to ensure that applicants have access to sufficient funds from an acceptable source or sources to meet costs and expenses including the primary person's course fees, living costs of the primary person, the applicant and any dependent children, school costs of any dependent children and travel costs of the applicant, any family applicant, the primary person and any member of the primary person's family unit in Australia.

Applicants who are required to meet new Schedule 5B were not included in the primary person's visa application and the primary person was not required previously to give evidence that they have the required funds for such applicants.

New Schedule 5B is comprised of 4 new Parts which contain provisions which relate to preliminary matters, the evidentiary requirements for assessment level 4, the evidentiary requirements for assessment level 3 and the evidentiary requirements for assessment level 2. New Schedule 5B is structured to accommodate the inclusion of further requirements if considered necessary.

Part 1 - Preliminary

New Part 1 of new Schedule 5B contains provisions which relate to preliminary matters including defining certain terms, specifying the calculation of certain costs and prescribing the requirements relating to declarations made by persons under the age of 18 years.

New clause 5B101 provides definitions of the following terms: "course fees"; "family applicant"; "financial institution"; "financial support"; "first 12 months"; "first 24 months"; "first 36 months"; "initial period"; "living costs"; "money deposit"; "primary person"; "school costs"; and "travel costs". These defined terms have the same or a similar meaning to terms defined in Schedule 5A to the Migration Regulations.

New clause 5B102 provides details of how an applicant's "living costs" and "school costs" are calculated. An applicant's living costs are based on an amount per year for the applicant, the primary person, and any dependent children of the primary person. An applicant's school costs are based on an amount per year for the applicant, if the applicant is a school-age dependent, or for each child who is a school-age dependent and is a family applicant or the holder of a student visa.

New clause 5B103 provides that where it is a requirement in new Schedule 5B that an applicant must give a declaration, where the applicant is less than 18 years old, then a parent of the applicant or guardian of the applicant must give the declaration on the applicant's behalf.

Part 2 - Evidentiary requirements for assessment level 4

New clause 5B201 provides the evidentiary requirements for applicants for Subclass 570 (Independent ELICOS Sector), 571 (Schools Sector), 572 (Vocational Education and Training Sector), 573 (Higher Education Sector) and 575 (Non-Award Sector) visas where the primary person is the holder of a Subclass 570, 571, 572, 573 or 575 visa and was subject to assessment level 4 at the time of decision.

New subclause 5B201(2) provides the financial requirements that an applicant must satisfy. In order to satisfy the requirements of new subclause (2), an applicant must give evidence that he or she has funds from an acceptable source that are sufficient to meet course fees, living costs and school costs for the first 36 months. The applicant must also give evidence of sufficient funds for travel costs and the sufficiency of the regular income of any individual (including the applicant) providing funds to the applicant. A declaration is also required to be provided by the applicant which declares that he or she has access to sufficient funds for course fees, living costs and school costs for the remainder of the applicant's proposed stay after the first 36 months.

New subclause 5B201(3) defines what are considered to be "funds from an acceptable source". The following sources are specified as being acceptable:

- a money deposit that an acceptable individual has held for at least 6 months immediately before the date of application;
- a loan from a financial institution to an acceptable individual;
- a loan from the government of the primary person's home country;
- financial support from the primary person's education provider or proposed education provider;
- financial support from the Commonwealth government, or the government of a State or Territory;
- financial support from the government of a foreign country;
- financial support from a corporation which conducts commercial activities outside the country in which it is based and employs the primary person in a role of direct relevance to the principal course of the primary person (this source is not acceptable if the primary person holds a Subclass 570 visa);
- financial support from a multilateral agency;
- financial support from a provincial or state government in a foreign country which has the written support of the government of that country; or
- financial support from an organisation gazetted by the Minister.

New subclause 5B201(3) also specifies who is an "acceptable individual" for the purposes of the definition of "funds from an acceptable source".

The purpose of specifying which financial sources and persons are acceptable is to ensure that the financial evidence provided by applicants is genuine, that the funds available to the applicant, the primary person and any dependent children are from secure and reliable sources, and that there is a significantly reduced likelihood that the applicant's access to those funds will

be withdrawn. Further, assessment level 4 applicants are considered to be high risk applicants and are therefore required to meet more stringent financial requirements.

New clause 5B202 provides the evidentiary requirements for applicants for Subclass 574 (Postgraduate Research Sector) visas where the primary person is the holder of a Subclass 574 visa and was subject to assessment level 4 at the time of decision.

New clause 5B202 requires applicants to provide the evidence of sufficient funds for the same costs, fees and other financial information as specified in new subclause 5B201(2) with the exception that the funds must be sufficient to meet course fees, living costs and school costs for the initial period.

New paragraph 5B202(2)(d) requires a declaration to be provided by the applicant which declares that he or she has access to sufficient funds for course fees, living costs and school costs for the remainder of the applicant's proposed stay after the initial period.

New subclause 5B202(3) specifies the same financial sources in the definition of "funds from an acceptable source" and persons who are included in the definition of "acceptable individual" as new subclause 5B201(3).

Part 3 - Evidentiary requirements for assessment level 3

New clause 5B301 provides the evidentiary requirements for applicants for Subclass 570, 571, 572, 573 or 575 visas where the primary person is the holder of a Subclass 570, 571, 572, 573 or 575 visa and was subject to assessment level 3 at the time of decision.

New clause 5B301 requires applicants to provide evidence of sufficient funds for the same costs, fees and other financial information as specified in new subclause 5B201(2) with the exception that the funds must be sufficient to meet course fees, living costs and school costs for the first 24 months.

New paragraph 5B301(2)(d) requires a declaration to be provided by the applicant which declares that he or she has access to sufficient funds for course fees, living costs and school costs for the remainder of the applicant's proposed stay after the first 24 months.

New subclause 5B301(3) specifies the same financial sources in the definition of "funds from an acceptable source" as contained in new subclause 5B201(3) with the exception that paragraphs (a) and (b) of the definition of "funds from an acceptable source" in new subclause 5B301(3) provide that the following sources are acceptable:

- a money deposit that the applicant, or an individual who is providing support to the applicant, has held for at least 3 months immediately before the date of application;
- a loan from a financial institution to the applicant, or an individual who is providing support to the applicant; and
- applicants for a Subclass 570 visa are able to rely on financial support from a corporation which conducts commercial activities outside the country in which it is based and employs the primary person in a role of direct relevance to the principal course of the primary person.

New clause 5B302 provides the evidentiary requirements for applicants for Subclass 574 visas where the primary person is the holder of a Subclass 574 visa and was subject to assessment level 3 at the time of decision.

New clause 5B302 requires applicants to provide evidence of sufficient funds for the same costs, fees and other financial information as specified in new subclause 5B201(2) with the exception that the funds must be sufficient to meet course fees, living costs and school costs for the initial period.

New paragraph 5B302(2)(d) requires a declaration to be provided by the applicant which declares that he or she has access to sufficient funds for course fees, living costs and school costs for the remainder of the applicant's proposed stay after the initial period.

New subclause 5B302(3) specifies the same financial sources in the definition of "funds from an acceptable source" as contained in this definition in new subclause 5B301(3).

Part 4 - Evidentiary requirements for assessment level 2

New clause 5B401 provides the evidentiary requirements for applicants for all student visas where the primary person is the holder of a student visa and was subject to assessment level 2 at the time of decision.

New subclause 5B401(2) provides the financial requirements that an applicant must satisfy. In order to satisfy the requirements of new subclause 5B401(2), an applicant must give evidence that he or she has funds from an acceptable source that are sufficient to meet course fees, living costs and school costs for the first 12 months. The applicant must also give evidence of sufficient funds for travel costs and the sufficiency of the regular income of any individual (including the applicant) providing funds to the applicant. A declaration is also required to be provided by the applicant which declares that he or she has access to sufficient funds for course fees, living costs and school costs for the remainder of the applicant's proposed stay after the first 12 months.

New subclause 5B401(3) provides that "funds from an acceptable source" does not include the value of an item of property. All other sources of funds are able to be relied upon by an applicant.

Item [275] - Further amendments - Schedule 1

Item [276] - Further amendments - Schedule 2

Item [277] - Further amendments - Schedule 5A

Item [278] - Further amendments - Schedule 8

These items make technical amendments to the provisions in Schedules 1, 2, 5A and 8 specified in these items which are consequential to the insertion by these regulations of the new defined term "secondary exchange student" in regulation 1.03 of Part 1 of the Migration Regulations.