EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 35

Issued by the Minister for Immigration and Citizenship

Migration Act 1958

Immigration (Guardianship of Children) Act 1946

Migration Legislation Amendment Regulation 2012 (No. 1)

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

Section 12 of the *Immigration (Guardian of Children) Act 1946* (the IGOC Act), provides, in part, that the Governor-General may make regulations, not inconsistent with the IGOC Act, prescribing all matters which by the IGOC Act are required to permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the IGOC Act.

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

The purpose of the Regulation is to amend the *Migration Regulations 1994* (the Principal Regulations) and the *Immigration (Guardianship of Children) Regulations 2001* (the IGOC Regulations) to strengthen and improve immigration policy. The Regulation contains amendments to implement some recommendations made in the Hon Michael Knight AO's report, *Strategic Review of the Student Visa Program 2011* (dated 30 June 2011).

Part of the Regulation (section 4 and Schedule 2) is contingent upon a Proclamation being made that, under item 2 of the table in subsection 2(1) of the *Migration Amendment (Complementary Protection) Act 2011*, fixes 24 March 2012 as the day on which items 1 to 17 of Schedule 1 to the Act commence.

A Statement of Compatibility with Human Rights has been completed for the Regulation, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement's assessment is that the measures in the Regulation are compatible with human rights because they do not raise any human right issues, or advance the protection of human rights. A copy of the Statement is at Attachment B.

An overview of the Regulation is set out in Attachment C.

Details of the Regulation are set out in Attachment D.

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

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the proposed amendments.

In relation to the amendments made by Schedules 1, 2 and 3, the OBPR advises that the regulations are machinery-of-government or minor in nature and no further analysis (in the form of a Regulation Impact Statement) is required. The OBPR consultation references are:

- 13409 (Schedule 1);
- 12503 (Schedule 2); and
- 13398 (Schedule 3).

In relation to the amendments made by Schedule 1 to the Regulation, the Department of Immigration and Citizenship (the Department) contacted the Attorney-General's Department and was advised that they did not need to be consulted regarding the removal of criminal offences from the IGOC Regulations. The Department undertook wide internal consultation. In accordance with section 18(2)(a) of the Legislative Instruments Act 2003, no further external consultation was undertaken because the amendments are of a minor nature and do not substantially alter the existing arrangements, other than to reduce the administrative burden on states and territories and reduce the criminal liability of custodians.

In relation to the amendments made by Schedule 2 to the Regulation, the Department consulted with the Office of International Law of the Attorney-General's Department on the list of instruments to be included as examples that may define crimes against peace, war crimes or crimes against humanity.

In relation to the amendments made by Schedule 3 to the Regulation, the Department of Immigration and Citizenship (the Department) consulted the Migration Review Tribunal (MRT) and the Refugee Review Tribunal (RRT) with regard to the number of additional Members they would require to assist them in managing their current and future workloads. The Department also undertook wide internal consultation.

In relation to the amendments made by Schedules 4 and 5 to the Regulation, the OBPR assessed a Regulation Impact Statement (the RIS) prepared by the Department as being adequate. A copy of the RIS is at Attachment E. Further, the amendments made by Schedule 2 implement some recommendations made in the Hon Michael Knight AO's report, *Strategic Review of the Student Visa Program 2011* (dated 30 June 2011). This report was the consequence of wide consultations.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Schedules 1, 2, 3 and 4 of the Regulation commence on 24 March 2012 and Schedule 5 of the Regulation commences on 26 March 2012.

ATTACHMENT A

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

In addition, the following provisions of the Migration Act may apply:

- subsection 5(1) of the Act, which provides that 'prescribed' means prescribed by the regulations;

- subsection 31(1) of the Act, which provides that the *Migration Regulations 1994* (the Principal Regulations) may prescribe classes of visas;

- subsection 31(3) of the Act, which provides that the regulations may prescribe criteria for a visa or visas of a specified class (which, without limiting the generality of this subsection, may be a class provided for by section 32, 36, 37, 37A or 38B but not by section 33, 34, 35, 38 or 38A);

- subparagraph 36(2C)(a)(i) of the Act, which provides that a non-citizen is taken not to satisfy the criterion mentioned in paragraph 36(2)(aa) if the Minister has serious reasons for considering that the non-citizen has committed a crime against peace, a war crime or a crime against humanity, as defined by international instruments prescribed by the regulations;

- subsection 40(1) of the Act, which provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;

- subsection 41(1) of the Act, which provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions;

- subsection 41(2) of the Act, which provides that, without limiting subsection 41(1), the regulations may provide that a visa, or visas of a specified class, are subject to:

    - a condition that, despite anything else in the Act, the holder of the visa will not, after entering Australia, be entitled to be granted a substantive visa (other than a protection visa), while he or she remains in Australia; or

    - a condition imposing restrictions about the work that may be done in Australia by the holder, which, without limiting the generality of this paragraph, may be restriction on doing any work, work other than specified work or work of a specified kind.

- subsection 41(3) of the Act, which provides that, in addition to any conditions specified under subsection 41(1), the regulations may, for the purposes of this subsection, permit conditions, which the Minister may specify that a visa is subject to.

- section 65 of the Act, which provides for the Minister to grant or refuse a visa. In particular:
    - subparagraph 65(1)(a)(ii) of the Act, which provides that after considering a valid application for a visa, the Minister is to grant the visa, if satisfied that the criteria for it other than the health criteria prescribed by the Act or the Principal Regulations have been satisfied; and
    - paragraph 65(1)(b) of the Act, which provides that, after considering a valid application for a visa, the Minister is to refuse to grant the visa if not satisfied that the relevant criteria are met;

- paragraph 395(b) of the Act which provides that the Migration Review Tribunal (the MRT) relevantly consists of such number (not exceeding the prescribed number) of Senior Members as are appointed in accordance with the Act;

- paragraph 395(c) of the Act which provides that the MRT relevantly consists of such number (not exceeding the prescribed number) of other Members as are appointed in accordance with the Act;

- paragraph 412(1)(c) of the Act which provides that an application for review of an RRT-reviewable decision must be accompanied by the prescribed fee (if any);

- paragraph 415(2)(c) of the Act, which provides that, if the decision relates to a prescribed matter, the Refugee Review Tribunal (RRT) may remit the matter for reconsideration in accordance with such directions or recommendations of the Tribunal as are permitted by the regulations;

- subsection 458(2) of the Act which provides that the total number of persons appointed to the Refugee Review Tribunal as a Deputy Principal Member and as Senior Members and other Members must not exceed the prescribed number;

- paragraph 504(1)(b) of the Act which provides that the regulations may make provision for the remission, refund or waiver of fees, which may be prescribed by the regulations or for exempting persons from payment of such fees;

- paragraph 504(1)(e) of the Act, which provides that regulations may be made in relation to the giving of documents to, the lodging of documents with, or the service of documents on, the Minister, the Secretary or any other person or body, for the purposes of the Act;

- section 505 of the Act, which provides that, to avoid doubt, regulations for the purpose of prescribing a criterion for visas of a class may provide that the Minister, when required to decide whether an applicant for a visa of the class satisfies the criterion:
    - is to get a specified person or organisation, or a person or organisation in a specified class, to:
        - give an opinion on a specified matter; or

- make an assessment of a specified matter; or
- make a finding about a specified matter; or
- make a decision about a specified matter; and

o is:

- to have regard of that opinion, assessment, finding or decision in; or
- to take that opinion, assessment, finding or decision to be correct for the purposes of;

deciding whether the applicant satisfies the criterion; and

- paragraph 43(1A)(c) of the *Administrative Appeals Tribunal Act 1975* (as substituted in relation to an RRT-reviewable decision by section 452 of the Act), which provides that a Tribunal may, if the decision relates to a matter prescribed for the purposes of paragraph 415(2)(c) of the *Migration Act 1958* – remit the matter for reconsideration in accordance with such directions or recommendations of the Tribunal as are permitted by the regulations under that Act.

Section 12 of the *Immigration (Guardianship of Children) Act 1946* (the IGOC Act) relevantly provides that the Governor-General may make regulations, not inconsistent with the IGOC Act, prescribing all matters which by the IGOC 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 IGOC Act, and in particular for:

o prescribing the principles to be observed in relation to the placing of non-citizen children with custodians;

o regulating the placing of such children with custodians and the transfer of such children from one custodian to another;

o prescribing provisions to be observed by custodians in relation to the custody, control, welfare, care, education, training and employment of non-citizen children;

o providing that any provision of the laws of any State or Territory relating to child welfare shall not apply in relation to non-citizen children, and making provision in lieu of any such provision;

o (db) making provision for preventing non-citizen children from leaving Australia without the consent in writing of the Minister; and

o prescribing penalties, not exceeding Forty dollars, for any offence against the regulations.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

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

- **Schedule 1 – Amendments of *Immigration (Guardianship of Children) Regulations 2001***

Overview of the amendments

The *Immigration (Guardianship of Children) Regulations 2001* (the IGOC Regulations) set out custodianship arrangements for unaccompanied minors for whom the Minister for Immigration and Citizenship is guardian. The amendments make it easier for custodians to fulfil their reporting obligations in relation to certain aspects of the care and welfare of unaccompanied minors by creating a direct relationship to the delegated guardian rather than state and territory child welfare agencies. The amendments also remove criminal penalties which may be a deterrent to becoming a custodian and are unnecessary given state and territory child welfare legislation which continues to apply. The majority of proposed custodians are contracted service providers with expertise in out-of-home care and child welfare. If the amendments make it easier for custodians to meet their obligations, service providers may be more willing to be appointed as custodians which would benefit the unaccompanied minors for whom the Minister is guardian.

Human rights implications

Although the regulations that have been amended cover issues of child welfare and collection of personal information, the amendments do not seek to alter these aspects of the regulations. Rather, the amendments are technical in nature as they relate to changing the officer to which custodians must report and removing criminal penalties. However, broadly speaking the rights of children are engaged by the amendments.

The amendments aim to improve the custodian arrangements to make it easier for custodians to comply with their obligations under the IGOC Regulations and therefore create an incentive for suitable carers to agree to be appointed custodians of unaccompanied minors for whom the Minister is guardian. This serves to promote both the best interests of the child and the obligation to provide special protection to children deprived of their family environment under Articles 3 and 20 of the Convention on the Rights of the Child.

Although the removal of criminal penalties could be seen as limiting the protection of vulnerable children, the rationale for this is that unaccompanied minors covered by the IGOC Regulations still have the protection of relevant state and territory child protection legislation which is considered the appropriate avenue for protecting the welfare of children. The amendments therefore engage, but would not limit, the rights of children.

Conclusion

The amendments to the Principal Regulations are compatible with Human Rights because they advance the protection of human rights

- **Schedule 2 – Amendments of *Migration Regulations 1994* relating to complementary protection**

Overview of the amendments

The changes to the *Migration Regulations 1994* (the Principal Regulations) support the changes to the *Migration Act 1958* are done by the *Migration Amendment (Complementary Protection) Act 2011* (the CP Act). The CP Act (and supporting amendments to the *Migration Regulations 1994*) introduce a new criterion that allows a Protection visa to be granted in circumstances that engage Australia's *non-refoulement* obligations under the *International Covenant on Civil and Political Rights* (the ICCPR), the *Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty* and the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the CAT).

Human rights implications

The CP Act (and supporting amendments to the Principal Regulations) advance human rights by integrating complementary protection claims into the protection visa framework which previously only assessed claims raising protection obligations under the *Convention Relating to the Status of Refugees* (the Refugees Convention). Prior to the implementation of the CP Act, claims raising Australia's *non-refoulement* obligations under the CAT (Article 3) and the ICCPR (in relation to Articles 6 and 7) have been considered through the ministerial intervention process. Integration into the Protection visa framework provides greater efficiency, transparency and accountability by allowing all claims to be considered in a single, integrated process with access to merits review.

Complementary protection reflects Australia's longstanding commitment to protecting people at risk of the most serious forms of abuse. Eligible persons who face a real risk of significant harm are able to be granted a Protection visa. Significant harm is where:

- the non-citizen will be arbitrarily deprived of his or her life; or
- the death penalty will be carried out on the non-citizen; or
- the non-citizen will be subjected to torture; or
- the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
- the non-citizen will be subjected to degrading treatment or punishment.

These provisions are consistent with Australia's *non-refoulement* obligations that arise under the treaties mentioned above.

Eligible family members applying at the same time are also able to be granted a Protection visa under the new arrangements. This is consistent with Australia's obligations to protect the family as a fundamental unit of society (Article 23 of the ICCPR). Persons granted Protection visas under the new provisions have access to a wide range of benefits and services, on the same basis as Protection visa holders who have been found to be refugees.

Conclusion

The amendments to the Principal Regulations are compatible with human rights because they advance the protection of human rights.

- **Schedule 3 – Amendments of *Migration Regulations 1994* relating to Migration Review Tribunal and Refugee Review Tribunal**

Overview of the amendments

The Migration Review Tribunal (the MRT) and the Refugee Review Tribunal (the RRT) have experienced a very large increase in caseload in the last two years resulting in an increased backlog and increased delays. The increased caseload has been particularly noticeable in the student visa cohort.

The increasing delays have caused uncertainty and distress for genuine applicants and provide an incentive for others to misuse the review process to extend their stay in Australia. Significantly, the RRT's compliance with the 90-day processing timeframe has decreased to approximately 50 per cent.

On 25 November 2011, the Minister announced that, as part of the decision to process all Irregular Maritime Arrivals (IMAs) onshore and while they are living in the community, a single review process would be established through the RRT during 2012. The current process of reviews being conducted by the Independent Protection Assessment Office will cease once their current workload has been completed. Further, complementary protection measures in the CP Act and the regulations in Schedule 2 to this Regulation commence on 24 March 2012 and are likely to increase further the workload of the RRT due to the consequential additional complexity in assessing protection claims.

The Principal Regulations (at regulations 4.22 and 4.29) previously prescribed a total Membership of 119 (excluding the Principal Member and the Deputy Principal Member) for the MRT and 120 (excluding the Principal Member) for the RRT. This means the Principal Regulations previously allowed for a potential combined total of 242 Members. However all Members of the MRT have also been appointed as Members of the RRT so that they are able to review applications across both Tribunals. Cross-appointment of Members enables the Tribunals to constitute MRT or RRT cases to Members depending on the lodgments and allows the greatest flexibility.

Whilst the Principal Regulations prescribed 121 Members for each Tribunal, the MRT and RRT have a total membership of 112, comprising the Principal Member, a Deputy Principal Member, 9 Senior Members, 36 full-time Members and 65 part-time Members. This means the MRT and RRT have nine vacant Member positions.

In order to manage the increase in lodgments at the RRT and the already high volume of lodgments in the MRT, it is estimated that an additional three Senior Members and an additional 30-35 Members will immediately be required noting that this may comprise full-time or part-time Members.

In addition to this, subregulation 4.22(1) prescribed the maximum number of Senior Members to be appointed to the MRT as nine. However no such restriction applied to the RRT. The maximum number of Senior Members of the MRT is increased to 15.

It is likely that the workload of the Tribunals will continue to increase over the next few years. Therefore, the Regulations have been amended to allow a total of 180 Members which include the Principal Member, Deputy Principal Member, Senior Members and Members. This enables three Senior Members and 35 Members to be appointed immediately and allows the appointment of further Members if required without further regulation amendment.

Human rights implications

The amendments to the Principal Regulations that enable the Tribunals to appoint additional Members do not engage any of the applicable rights or freedoms.

Articles of the International Covenant on Civil and Political Rights which pertain to the right to take proceedings before a court (Article 9(4)), the right to submit reasons against expulsion (Article 13) and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law (Article 14(1)) were considered, but ultimately not raised.

However, while not raising human rights issues, the amendments provide a benefit to individuals seeking the services of the MRT and/or RRT in so far as the amendments afford greater administrative efficiency and access to justice.

Conclusion

The amendments to the Principal Regulations do not raise any human rights issues.

- **Schedule 4 – Amendments of Migration Regulations 1994 relating to student visas and Schedule 5 – Further amendments of Migration Regulations 1994 relating to student visas**

Overview of the Regulation Amendment

These amendments to the *Migration Regulations 1994* (the Regulations) implement recommendations 3, 5, 6, 7, 11, 12, 13, 18 and 28 of the *Strategic Review of the Student Visa Program 2011*.

The amendments:

- allow for streamlined processing of Student visa applicants who have a confirmation of enrolment for an eligible course at an eligible university; and
- enable streamlined processing of eligible accompanying family members and eligible Student Guardian visa applicants; and
- remove the English language test requirements for Schools Sector Student visa applicants subject to assessment level (AL) 4; and
- increase the maximum period of English Language Intensive Courses for Overseas Students (ELICOS) (or other English language tuition) that a Schools Sector Student visa applicant subject to AL3 or AL4 can undertake; and
- insert a new requirement in respect of the maximum period of ELICOS (or other English language tuition) that a Schools Sector Student visa applicant subject to AL5 can undertake for consistency with AL 3 and AL4; and
- allow unlimited part-time ELICOS study for Student Guardian visa holders; and
- provide for limited work rights hours to be measured over a fortnight rather than a week; and

- allow unlimited work rights for higher degree by research students if they have commenced their masters degree by research or doctoral degree course.

The amendments affect Parts 573, 574, 575 and 580 of Schedule 2 to the Regulations. Schedules 5A and 5B to the Regulations are amended in respect to Schools Sector Student visa requirements. Clauses 8201, 8104 and 8105 of Schedule 8 to the Regulations are amended to enable changes to Student visa holders' work rights and Student Guardian visa holders' ability to undertake ELICOS on a part-time basis. Additionally, as a consequence of the repeal of Student visas as visas for the purposes of regulation 2.07AO, related references to regulation 2.07AO are repealed from regulation 1.41 and 1.42, and Parts 571, 572, 573, 574, and 580 of Schedule 2 to the Regulations.

Human rights implications

Rights of the Child – Article 10(1) of the International Convention on the Rights of the Child

Article 10(1) of the International Convention on the Rights of the Child (CROC) provides that:

> "…applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family."

The extent to which Article 10(1) of the CROC is engaged is determined by Article 2(1) of the CROC which states that "States Parties shall respect and ensure the rights set forth in the [CROC] to each child *within their jurisdiction*…" (emphasis added).

The amendments to the regulations support Article 10(1) of the CROC by simplifying and expediting the visa application process for eligible dependant children of Student visa applicants and holders who are within the Australian jurisdiction. The amendments also provide streamlined processing for eligible parents or guardians within the Australian jurisdiction.

Conclusion

The Regulation Amendment is compatible with human rights because it advances the protection of human rights and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

ATTACHMENT C

The Regulation amends the *Immigration (Guardianship of Children) Regulations 2001* (the IGOC Regulations) to:

- simplify custodianship arrangements by enabling custodians to report to, and seek consent from, the Minister or his or her delegated guardian rather than from an authority of a State, meaning that where a state or territory agency does not accept the delegation of guardianship for particular children, they will not have a function in relation to custodians for those children;

- allow the Minister to manage the Register of Custodians at a national level of all non-citizen children for whom the Minister is guardian rather than through state or territory authorities; and

- remove certain criminal penalties applicable to custodians under the current IGOC Regulations for failing to meet their obligations as custodians.

The Regulation also amends the *Migration Regulations 1994* (the Principal Regulations) to:

- introduce complementary protection criteria as a new additional basis for the grant of a Protection (Class XA) visa;

- provide for the fee and waiver of the fee, and refund or waiver of a fee in relation to an application for review by the Refugee Review Tribunal for applicants granted Protection visas on the basis of the new complementary protection provisions;

- provide what are permissible and not permissible directions for the Refugee Review Tribunal and the Administrative Appeals Tribunal when reviewing a Protection visa decision based on the new complementary protection provisions;

- increase the maximum prescribed number of Senior Members of the Migration Review Tribunal (the MRT) to 15;

- increase the maximum prescribed number of other Members of the MRT to 163;

- increase the maximum prescribed number of Members (other than the Principal Member) of the Refugee Review Tribunal to 179;

- provide for a new subset of eligible Subclass 573 (Higher Education Sector), 574 (Postgraduate Research Sector), and 575 (Non-Award Sector) visa applicants enrolled to study certain courses at certain specified education providers, who would be subject to new visa requirements intended to streamline visa processes;

- provide that the Minister may specify the education providers eligible to participate in the streamlined visa processing arrangements in an instrument in writing, including their educational business partner providers;

- exempt the Minister from the requirement to specify a course in an instrument in writing made under regulation 1.40A if the course is undertaken by eligible Subclass 573 (Higher Education Sector), 574 (Postgraduate Research Sector), and 575 (Non-Award Sector) visa applicants;

- exempt students eligible for streamlined visa processing from being subject to the Assessment Level (AL) regime and the requirements set out in Schedule 5A to the Principal Regulations;

- provide for new visa requirements for Subclass 580 (Student Guardian) visa applicants whose nominating student is an eligible student at the time his or her visa was granted;

- repeal a Subclass 571 (Schools Sector), Subclass 572 (Vocational Education and Training Sector), Subclass 573 (Higher Education Sector), Subclass 574 (Postgraduate Research Sector) and Subclass 580 (Student Guardian) visa as visas for the purposes of regulation 2.07AO;

- repeal certain provisions for Subclass 571 (Schools Sector), Subclass 572 (Vocational Education and Training Sector), Subclass 573 (Higher Education Sector), Subclass 574 (Postgraduate Research Sector) and Subclass 580 (Student Guardian) visas providing for persons designated under regulation 2.07AO in Parts 571, 572, 573, 574, and 580 in Schedule 2 to the Principal Regulations that are considered to be spent;

- amend English language requirements for Subclass 571 (Schools Sector) visa applicants subject to AL4 to be consistent with AL1 to AL3 English language requirements for that visa;

- increase the maximum duration of English Language Intensive Course for Overseas Students (ELICOS) study a Subclass 571 (Schools Sector) visa applicant subject to AL3 or AL4 who is not a secondary exchange student and will undertake an ELICOS (or other English language tuition) before commencing his or her principal course can undertake to 50 weeks;

- require a Subclass 571 (Schools Sector) visa applicant subject to AL5 who will not be a secondary exchange student and will undertake an ELICOS (or other English language tuition) before commencing his or her principal course, to give evidence that the ELICOS (or other English language tuition) will have a duration of no more than 50 weeks;

- amend visa conditions 8104 and 8105 to provide that student work entitlements are measured as 40 hours a fortnight instead of 20 hours a week;

- amend visa condition 8105 to provide unlimited work rights for Subclass 574 (Postgraduate Research Sector) visa holders if they have commenced their masters degree by research or doctoral degree;

- provide that Subclass 580 (Student Guardian) visa holders may undertake ELICOS study of less than 20 hours per week while the holder of that visa, while maintaining the three month study restriction for any other studies or training that is not ELICOS; and

- clarify that a secondary applicant subject to AL4 must give a declaration stating that they have access to funds from an acceptable source that are sufficient to meet certain costs for the remainder of their stay in Australia after the first 24 months.

ATTACHMENT D

Details of the *Migration Legislation Amendment Regulation 2012 (No. 1)*

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Migration Legislation Amendment Regulation 2012 (No. 1)*.

Section 2 – Commencement

This section provides for the Regulation to commence as follows:

(a) for sections 1 and 2 on the day it is registered;
(b) for section 3 and Schedule 1 on 24 March 2012;
(c) for section 4 and Schedule 2 on the commencement of items 1 to 17 of Schedule 1 to the *Migration Amendment (Complementary Protection) Act 2011*;
(d) for section 5 and Schedule 3 on 24 March 2012;
(e) for section 6 and Schedule 4 on 24 March 2012; and
(f) for section 7 and Schedule 5 on 26 March 2012.

Section 3 – Amendment of *Immigration (Guardianship of Children) Regulations 2001* – Schedule 1

Section 3 provides that Schedule 1 to the Regulation amends the *Immigration (Guardianship of Children) Regulations 2001* (the IGOC Regulations).

Section 4 – Amendment of *Migration Regulations 1994* – Schedule 2

Subsection 4(1) provides that Schedule 2 to the Regulation amends the *Migration Regulations 1994* (the Principal Regulations).

Subsection 4(2) provides the amendments made by Schedule 2 to the Regulation apply in relation to an application for a visa:

- made on or after the commencement of items 1 to 17 of Schedule 1 to the *Migration Amendment (Complementary Protection) Act 2011*; or

- made, but not finally determined (within the meaning of subsection 5(9) of the *Migration Act 1958*) before the commencement of items 1 to 17 of Schedule 1 to the *Migration Amendment (Complementary Protection) Act 2011*.

Section 5 – Amendment of *Migration Regulations 1994* – Schedule 3

Section 5 provides that Schedule 3 to the Regulation amends the Principal Regulations.

Section 6 – Amendment of *Migration Regulations 1994* – Schedule 4

Subsection 6(1) provides that Schedule 4 to the Regulation amends the Principal Regulations.

Subsection 6(2) provides that the amendments made by Schedule 4 apply in relation to an application for a visa made on or after 24 March 2012.

Section 7 – Amendment of *Migration Regulations 1994* – Schedule 5

Subsection 7(1) provides that Schedule 5 to the Regulation amends the Principal Regulations.

Subsection 7(2) provides that the amendments made by Schedule 5 apply in relation to a visa that is in effect on 26 March 2012.

Subsection 7(3) provides that the amendments made by Schedule 5 apply in relation to an application for a visa:

- made on or after 26 March 2012; or
- made, but not finally determined (within the meaning of subsection 5(9) of the *Migration Act 1958*) before 26 March 2012.

Subsection 7(4) provides that the amendments made by Schedule 5 also apply in relation to a visa which, on 26 March 2012, is subject to condition 8104 or 8105 in Schedule 8 to the Principal Regulations.

Schedule 1 – Amendments of *Immigration (Guardianship of Children) Regulations 2001*

Item [1] – Regulation 3, definition of 'authority'

This item substitutes the definition of 'authority' in regulation 3 with a new definition of 'Minister.'

The purpose of substituting the definition of 'authority' is to remove reference to an authority of a State in the *Immigration (Guardianship of Children) Regulations 2001* (IGOC Regulations), and to support arrangements for custodians to report directly to the Minister. This change is consequential to subsequent amendments made in items [2], [3], [6], [8], [10], [11] and [14] below for custodians to report directly to the Minister, rather than to the authority of a State.

The new definition of 'Minister' includes an officer or authority of the Commonwealth or of any State or Territory that is a delegate of the Minister, under subsection 5(1) of the *Immigration (Guardianship of Children) Act 1946* (IGOC Act). This makes it explicitly clear that a reference in the IGOC Regulations to 'Minister' is taken to be a reference to an officer or authority delegated by the Minister under section 5 of the IGOC Act.

Item [2] – Regulation 4

This item omits regulation 4.

The purpose of this amendment is to achieve the objective set out at item [1] above, with regard to removing reference to an authority of a State.

Item [3] – Regulation 7

This item substitutes regulation 7.

New subregulation 7(1) provides that the laws of a State under which children may become State wards do not apply in relation to a non-citizen child.

The purpose of this amendment is to explain the interaction between State child welfare legislation and the IGOC Act and IGOC Regulations by providing that State laws under which children become State wards do not apply to any non-citizen child under the IGOC Regulations. Previously, subregulation 7(1) was limited to non-citizen children for whom the Minister's guardianship has been delegated to state and territory child welfare agencies.

New subregulation 7(2) provides that if the Minister has delegated to an officer or authority of a State the Minister's powers and functions under section 5 of the IGOC Act in relation to a non-citizen child, a Minister of the State, and an officer or authority of that State, has the rights and powers in relation to the child that the Minister and the authority would have if the child were, under the laws of the State, in the custody and care of any person or authority, or a State ward.

The purpose of this amendment is to ensure that subregulation 7(2), despite new subregulation 7(1), maintains its meaning and effect. That is, a Minister, officer or authority of a State still have the rights and powers in relation to a non-citizen child that they would have under the laws of the State where the Minister has delegated his or her rights and powers to an officer or authority of that State under section 5 of the IGOC Act.

Item [4] – Regulation 8

This item substitutes regulation 8.

The amendment omits the penalty provided in subregulation 8(1) and the application of strict liability to subregulation 8(1).

The purpose of omitting the penalty previously provided in subregulation 8(1) is to meet the overall objective of the amendments to remove deterrents to suitable carers from being willing to be custodians. The reason for removing the application of strict liability in subregulation 8(2) is that it is no longer relevant as the penalty in subregulation 8(1) has been removed.

Item [5] – Subregulation 9(1), penalty

This item omits the penalty in subregulation 9(1). The purpose of removing this penalty is the same as that provided at item [4] above.

Item [6] – Subregulation 10(1)

This item omits 'authority of the State in which the custodian lives' in subregulation 10(1) and inserts in its place 'Minister'.

The effect of this amendment is to provide that the custodian of a non-citizen child must not place the child in the care of another person without the consent of the Minister, rather than the authority of the State in which the custodian lives.

The purpose of this amendment is to achieve the objective set out at item [1] above, with regard to removing reference to an authority of a State.

Item [7] – Subregulation 10(1), penalty

This amendment omits the penalty in subregulation 10(1). The purpose of removing this penalty is the same as that provided at item [4] above.

Item [8] – Subregulation 10(2)

This item omits reference in subregulation 10(2) to the authority of the State in which a non-citizen child lives, or a person authorised by that authority, and inserts in its place reference to the Minister, or a person authorised by the Minister.

The effect of this amendment is to provide that a person in whose care a non-citizen child is placed must give the Minister, and not the authority of a State, all reasonable help for inspecting the conditions under which the child is living and for finding out whether the duties and obligations of the custodian are being carried out.

The purpose of this amendment is to achieve the objective set out at item [1] above, with regard to removing reference to an authority of a State.

Item [9] – Subregulation 10(2), penalty

This item omits the penalty in subregulation 10(2). The purpose of removing this penalty is the same as that provided at item [4] above.

Item [10] – Regulation 11

This item omits reference to the authority of a State in regulation 11 and inserts in its place reference to the Minister.

The effect of this amendment is to provide that the Minister, and not the authority of a State, is responsible for keeping a Register of Custodians. The purpose of this amendment is to achieve the objective set out at item [1] above, with regard to removing reference to an authority of a State.

Item [11] – Subregulation 12(1)

This item omits reference in subregulation 12(1) to the authority of the State in which a non-citizen child is registered and inserts in its place reference to the Minister.

The effect of this amendment is to provide that custodians must notify the Minister, rather than an authority of a State, of a change in their place of living. This supports arrangements for custodians to report directly to the Minister rather than to an authority of a State.

The purpose of this amendment is to achieve the objective set out at item [1] above, with regard to removing reference to an authority of a State.

Item [12] – Subregulation 12(1), penalty

This item omits the penalty in subregulation 12(1). The purpose of removing this penalty is the same as that provided at item [4] above.

Item [13] – Subregulation 12(2), penalty

This item omits the penalty in subregulation 12(2). The purpose of removing this penalty is the same as that provided at item [4] above.

Item [14] – Regulations 13 to 16

This item substitutes regulations 13 to 16.

Regulation 13

The effect of the amendment to regulation 13 is to refer to the State in which a non-citizen child resides, and not the State in which the custodian of the non-citizen child is registered, in the requirement for consent to be given for the non-citizen child to be taken out of 'the State'. The amendment also has the effect of removing reference to the authority of a State and replaces it with reference to the Minister.

The purpose of the amendment is to provide that it is the Minister, and not the authority of the State, that must consent to a non-citizen child being taken or sent out of the State in which the non-citizen

child resides. In this regard, the amendment achieves the objective set out at item [1] above, with regard to removing reference to an authority of a State. It also removes the obligation for an authority of the State to amend the Register of Custodians, because it is provided in item [10] above that the responsibility for keeping the Register rests with the Minister and the Register will be national, rather than state-based.

The amendment also removes the penalty provision from subregulation 13(1). The purpose of removing this penalty is the same as that provided at item [4] above.

Regulation 14

The effect of this amendment is to provide that custodians have a responsibility to report to the Minister, rather than to an authority of a State, if a non-citizen child absconds or is taken from the custody of their custodian, becomes seriously ill, meets with a serious accident, or dies.

The purpose of this amendment is to achieve the objective set out at item [1] above, with regard to removing reference to an authority of a State.

The penalty in regulation 14 is not removed. The reason for this is that, bearing in mind the duty of care owed to non-citizen children to whom the IGOC Regulations apply, the circumstances set out in regulation 14 are of such gravity that it is appropriate to retain the criminal penalty for breaching it.

Regulation 15

The effect of this amendment is to remove reference to the authority of a State in which a non-citizen child's custodian is registered and inserts in its place reference to the Minister. The amendment also removes reference to the State in which a non-citizen child's custodian is registered and replaces it with reference to the State in which a non-citizen child resides.

The purpose of this amendment is to reflect that authorities of a State are no longer required to maintain a Register of Custodians (see item [10] above) and to achieve the objective set out at item [1] above, with regard to removing reference to an authority of a State.

Regulation 16

The effect of this amendment is to remove reference to the State in which a non-citizen child's custodian is registered and inserts in its place reference to the State in which the child resides. The amendment also removes reference to the consent of the authority of a State and inserts in its place reference to the consent of the Minister.

The purpose of this amendment is to omit reference to the state of registration of a non-citizen child's custodian, which is a system that no longer operates as a consequence of the amendment in item [10] above, and instead refers to the state of residence of the non-citizen child which gives effect to the intended practical operation of this provision. The change also provides that it is the Minister, and not an authority of a State, who provides consent for a non-citizen child to leave the State in which they reside for a destination outside the Commonwealth, which is consistent with the objective set out at item [1] above, with regard to removing reference to an authority of a State.

Item [15] – Regulations 19 and 20

This item omits current regulations 19 and 20.

The purpose of omitting regulation 19 is to remove the possibility that a notice mentioned in the definition of ‘authority’ may continue to have effect as if it were a notice made for regulation 4, as both the definition of ‘authority’ and regulation 4 are removed in item [1] above.

The purpose of omitting regulation 20 is to remove reference to an authority of a State, given the definition of ‘authority’ is to be removed in item [1] above, and to ensure there is no possibility of an authority of a State complying with regulation 11 by keeping a Register of Custodians, given that the Register of Custodians be kept by the Minister in item [10] above.

Schedule 2 – Amendments of *Migration Regulations 1994* relating to complementary protection

Item [1] – After regulation 2.03A

This item inserts new regulation 2.03B in Division 2.1 of Part 2 of the Principal Regulations.

Subparagraph 36(2C)(a)(i) of the Act provides that a non-citizen is taken not to satisfy the criterion mentioned in paragraph 36(2)(aa) of the Act if the Minister has serious reasons for considering that the non-citizen has committed a crime against peace, a war crime or a crime against humanity, as defined by international instruments prescribed by the regulations.

Paragraph 36(2)(aa) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia (other than a non-citizen mentioned in paragraph 36(2)(a)) to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm.

New subregulation 2.03B provides that for subparagraph 36(2C)(a)(i) of the Act, each international instrument that defines a crime against peace, a war crime or a crime against humanity is prescribed.

Examples of instruments that may define crimes against peace, war crimes or crimes against humanity include:

- Rome Statute of the International Criminal Court, done at Rome on 17 July 1998.
- Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, signed at London on 8 August 1945.
- Charter of the International Military Tribunal, signed at London on 8 August 1945.
- Convention on the Prevention and Punishment of the Crime of Genocide, approved in New York on 9 December 1948.
- The First Convention within the meaning of the *Geneva Conventions Act 1957*.
- The Second Convention within the meaning of the *Geneva Conventions Act 1957*.
- The Third Convention within the meaning of the *Geneva Conventions Act 1957*.
- The Fourth Convention within the meaning of the *Geneva Conventions Act 1957*.
- Protocol I within the meaning of the *Geneva Conventions Act 1957*.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), done at Geneva on 8 June 1977.
- Statute of the International Criminal Tribunal for the former Yugoslavia, adopted by the United Nations Security Council on 25 May 1993.
- Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994; adopted by the United Nations Security Council on 8 November 1994.

The purpose of this amendment is to prescribe every international instrument that defines a crime against the peace, a war crime or a crime against humanity for subparagraph 36(2C)(a)(i) of the Act, with a list of examples provided for guidance.

Item [2] – Division 4.1, heading

This item substitutes the heading for Division 4.1 of Part 4 of the Principal Regulations.

The previous heading for 'Division 4.1 of Part 4 of the Principal Regulations was Division 4.1 Review of decisions other than decisions relating to refugee status'.

The new heading is 'Division 4.1 Review of decisions other than decisions relating to protection visas'.

The purpose of the new heading is to make it clear that 'Division 4.2 of Part 4 of the Principal Regulations relates to protection visas'.

Item [3] – Subregulation 4.31B(3)

This item substitutes subregulation 4.31B(3) and inserts new subregulation 4.31B(3A) of Subdivision 4.2.3 in Division 4.2 of Part 4 of the Principal Regulations.

In regulation 4.31B the reference to the Tribunal is to the Refugee Review Tribunal (RRT).

Previous subregulation 4.31B(3) provided that if:

- the Tribunal determines that the applicant for the visa that was the subject of the review is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol – the fee for review by the Tribunal of an RRT-reviewable decision is not payable; and

- a fee has been paid under this regulation and, following the Tribunal's determination, the matter in relation to which the fee was paid is remitted by a court for reconsideration by the Tribunal – no further fee is payable under this regulation.

New subregulation 4.31B(3) provides that no fee is payable if the Tribunal determines that the applicant for the visa that was the subject of the review is a person to whom Australia has protection obligations:

- under the Refugees Convention as amended by the Refugees Protocol; or

- because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm.

New subregulation 4.31B(3A) provides that no further fee is payable under this regulation if:

- a fee has been paid under this regulation; and

- following the Tribunal's determination, the matter in relation to which the fee was paid is remitted by a court for reconsideration by the Tribunal.

The term 'Refugees Convention' is defined in subsection 5(1) of the Act to mean the Convention relating to the Status of Refugees done at Geneva on 28 July 1951. The term 'Refugees Protocol' is defined in subsection 5(1) of the Act to mean the Protocol relating to the Status of Refugees done at New York on 31 January 1967.

The purpose of this amendment is to allow for a fee waiver not only if the RRT determines that an applicant for a visa that was the subject of a review is owed protection obligations under the Refugees Convention as is previously the case, but also if the RRT determines, on the basis of the new complementary protection provisions, that Australia has protection obligations to the person because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm.

Item [4] – After paragraph 4.31C(1)(a)

This item inserts new paragraph 4.31C(1)(aa) after paragraph 4.31C(1)(a) of Subdivision 4.2.3 of Division 4.2 of Part 4 of the Principal Regulations.

New paragraph 4.31C(1)(aa) provides that regulation 4.31C applies to a review of a decision both:

- on review by a court, the decision is remitted for reconsideration by the Tribunal; and
- the Tribunal determines that the applicant for the visa that was the subject of the review is a person to whom Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm.

The Regulations previously allowed for the situation where a decision is remitted by a court for reconsideration by the Tribunal and the Tribunal determined that the applicant for the visa that was the subject of the review is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol.

The purpose of this amendment is to allow for a fee waiver or refund in circumstances where a decision is remitted by a court for reconsideration by the RRT and the RRT determines that the applicant for the visa that was the subject of the review is a person to whom Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm.

Item [5] – After subregulation 4.33(3)

This item inserts new subregulation 4.33(4) after subregulation 4.33(3) of Subdivision 4.2.3 of Division 4.2 of Part 4 of the Principal Regulations.

New subregulation 4.33(4) provides that for paragraph 415(2)(c) of the Act and paragraph 43(1A)(c) of the *Administrative Appeals Tribunals Act 1975* (as substituted in relation to an RRT-reviewable decision by section 452 of the Act):

- it is a permissible direction that the applicant satisfies each matter, specified in the direction, that relates to establishing whether the applicant is a person to whom Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm; and

- it is not a permissible direction that the applicant satisfies a matter that relates to establishing whether there are serious reasons for considering that:
    - the applicant has committed a crime against peace, a war crime or a crime against humanity, as defined by an international instrument mentioned in regulation 2.03B; or
    - the applicant committed a serious non-political crime before entering Australia; or
    - the applicant has been guilty of acts contrary to the purposes and principles of the United Nations; and
- it is not a permissible direction that the applicant satisfies a matter that relates to establishing whether there are reasonable grounds that:
    - the applicant is a danger to Australia's security; or
    - the applicant, having been convicted by a final judgment of a particularly serious crime, including a crime that consists of the commission of a serious Australian offence or serious foreign offence, is a danger to the Australian community.

Paragraph 415(2)(c) of the Act provides that the Tribunal may, if the decision relates to a prescribed matter, remit the matter for reconsideration in accordance with such directions or recommendations of the Tribunal as are permitted by the regulations.

Paragraph 43(1A)(c) of the *Administrative Appeals Tribunals Act 1975* (as substituted in relation to an RRT-reviewable decision by section 452 of the Act) provides that the Tribunal may, if the decision relates to a matter prescribed for the purposes of paragraph 415(2)(c) of the *Migration Act 1958*, remit the matter for reconsideration in accordance with such directions or recommendations of the Tribunal as are permitted by the regulations under that Act.

The purpose of this amendment is to provide what is and what is not permissible directions in relation to the Administrative Appeals Tribunal's (AAT) reviews of Protection visa decisions based on the new complementary protection provisions introduced by the *Migration Amendment (Complementary Protection) Act 2011*.

The amendments relating to impermissible directions are required because the AAT (not the RRT) is the body that has the jurisdiction to deal with a matter in subsection 36(2C) of the Act.

Item [6] – Schedule 2, clause 866.211

This item substitutes clause 866.211 of Part 866 of Schedule 2 to the Principal Regulations.

Previous clause 866.211 provided the applicant claims to be a person to whom Australia has protection obligations under the Refugees Convention and:

- makes specific claims under the Refugees Convention; or
- claims to be a member of the same family unit as a person who:
    - has made specific claims under the Refugees Convention; and
    - is an applicant for a Protection (Class XA) visa.

New clause 866.211 provides that one of the following is satisfied:

- the applicant:

- claims to be a person to whom Australia has protection obligations under the Refugees Convention; and
- makes specific claims under the Refugees Convention.

- the applicant claims to be a member of the same family unit as a person who is:
  - claiming to be a person to whom Australia has protection obligations under the Refugees Convention and has made specific claims under the Refugees Convention; and
  - an applicant for a Protection (Class XA) visa.
- the applicant claims to be a person to whom Australia has protection obligations because the applicant claims that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm.
- the applicant claims to be a member of the same family unit as a person who is:
  - claiming to be a person to whom Australia has protection obligations because the applicant claims that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm; and
  - an applicant for a Protection (Class XA) visa.

The purpose of this amendment is to extend the time of application criteria for a Protection (Class XA) visa to an applicant who claims to be a person to whom Australia has protection obligations because that person has claimed that, as necessary and foreseeable consequence of that person being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm, or a member of the same family unit as that person.

Item [7] – Schedule 2, Clause 866.221

This item substitutes clause 866.221 of Part 866 of Schedule 2 to the Principal Regulations.

Previous clause 866.221 provided that the Minister:

- is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention; or
- is satisfied that:
  - the applicant is a member of the same family unit as an applicant whom the Minister is satisfied is a person to whom Australia has protection obligations under the Refugees Convention; and
  - the applicant mentioned above has been granted a Protection (Class XA) visa.

New clause 866.221 provides that one of the following is satisfied:

- the Minister is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.
- the Minister is satisfied that:
  - the applicant is a person who is a member of the same family unit as an applicant whom the Minister is satisfied is a person to whom Australia has protection obligations under the Refugees Convention; and

- the applicant mentioned above has been granted a Protection (Class XA) visa.

- the Minister is satisfied that the applicant:
  - is not a person to whom Australia has protection obligations under the Refugees Convention; and
  - is a person to whom Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm.
- the Minister is satisfied that:
  - the applicant is a member of the same family unit as an applicant whom the Minister is satisfied is not a person to whom Australia has protection obligations under the Refugees Convention and is a person to whom Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm; and
  - the applicant mentioned above has been granted a Protection (Class XA) visa.

The purpose of this amendment is to extend the grounds on which a Protection (Class XA) visa may be granted to an applicant who is not a person to whom Australia has protection obligations under the Refugees Convention but who is a person to whom Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm, or a member of the same family unit as that person.

Item [8] – Schedule 2, clause 866.230

This item substitutes clause 866.230 of Part 866 in Schedule 2 to the Principal Regulations.

Previous clause 866.230 provided that if the applicant is a child referred to in paragraph 2.08(1)(b):

- the applicant is a member of the same family unit as an applicant mentioned in paragraph 866.221(a); and
- the applicant mentioned in paragraph 866.221(a) has been granted a Subclass 866 (Protection) visa.

New clause 866.230 provides that if the applicant is a child mentioned in paragraph 2.08(1)(b) then either:

- Both of the following apply:
  - the applicant is a member of the same family unit as an applicant mentioned in subclause 866.221(2);
  - the applicant mentioned in subclause 866.221(2) has been granted a Subclass 866 (Protection) visa; or
- Both of the following apply:
  - the applicant is a member of the same family unit as an applicant mentioned in subclause 866.221(4);
  - the applicant mentioned in subclause 866.221(4) has been granted a Subclass 866 (Protection) visa.

Subregulation 2.08(1) provides that if a non-citizen applies for a visa and after the application is made, but before it is decided, a child, other than a contributory parent newborn child, is born to the non-citizen, then:

- the child is taken to have applied for a visa of the same class at the time he or she was born; and
- the child's application is taken to be combined with the non-citizen's application.

The purpose of this amendment is to require a child who is an applicant for a Protection (Class XA) visa because of paragraph 2.08(1)(b) to be either:

- a member of the same family unit of a person who:
    - the Minister is satisfied is a person to whom Australia has protection obligations under the Refugees Convention; and
    - has been granted a Subclass 866 (Protection) visa; or
- a member of the same family unit of a person who:
    - the Minister is satisfied is not a person to whom Australia has protection obligations under the Refugees Convention; and
    - is a person to whom Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm; and
    - has been granted a Subclass 866 (Protection) visa.

This amendment expands the basis for which an affected child could be granted a Protection visa to encompass the new complementary protection grounds.

Schedule 3 – Amendments of *Migration Regulations 1994* relating to Migration Review Tribunal and Refugee Review Tribunal

Item [1] – Subregulation 4.22(1)

This item amends the prescribed number of appointed Senior Members at the Migration Review Tribunal (the MRT) under subregulation 4.22(1) in Division 4.1 of Part 4 of the *Migration Regulations 1994* (the Principal Regulations) by omitting '9 is prescribed.' and inserting '15 is prescribed.'.

The purpose of increasing the prescribed number in subregulation 4.22(1) is to provide the MRT with the ability to appoint additional Senior Members in order to manage the existing backlog of cases and the anticipated increases in the MRT's caseload.

Item [2] – Subregulation 4.22(2)

This item amends the prescribed number of appointed 'other' Members of the MRT in subregulation 4.22(2) in Division 4.1 of Part 4 of the Principal Regulations by omitting '110 is prescribed.' and inserting '163 is prescribed.'. The purpose of increasing this prescribed number is the same as that provided at item [1] above but for other Members rather than Senior Members.

Item [3] – Regulation 4.29

This item amends the prescribed number of appointed Members (other than the Principal Member) of the Refugee Review Tribunal (the RRT) in regulation 4.29 in Division 4.1 of Part 4 of the Principal Regulations by omitting '120.' and inserting '179.'

The purpose of increasing the prescribed number in regulation 4.29 is to provide the RRT with the ability to appoint additional Members (other than the Principal Member) in order to manage the existing backlog of cases and the anticipated increases in the RRT's caseload.

Schedule 4 – Amendments of *Migration Regulations 1994* relating to student visas

Item [1] – Regulation 1.40A

This item substitutes regulation 1.40A by inserting new subregulations 1.40A(1) and (2) in Division 1.8 of Part 1 of the Principal Regulations.

Previous regulation 1.40A provided that the Minister must specify by an instrument in writing the types of courses for each Subclass of student visa, except Subclass 576 (AusAID or Defence Sector).

New subregulation 1.40A(1) provides that the Minister must specify, by instrument in writing, the types of courses of each Subclass of student visa.

New subregulation 1.40A(2) provides that the Minister is not required to specify a course if:

- the Subclass of student visa is Subclass 576 (AusAID or Defence Sector); or
- the course is undertaken by:
    - an applicant for a Subclass 573 (Higher Education Sector) visa who is an eligible higher degree student within the meaning of Part 573 of Schedule 2; or
    - an applicant for a Subclass 574 (Postgraduate Research Sector) visa who is an eligible higher degree student within the meaning of Part 574 of Schedule 2; or
    - an applicant for a Subclass 575 (Non-Award Sector) visa who is an eligible university exchange student within the meaning of Part 575 of Schedule 2.

The purpose of this amendment is to exempt the Minister from the requirement to specify a course in an instrument in writing under regulation 1.40A, if the course is undertaken by an applicant for a Subclass 573 or 574 visa who is an eligible higher degree student within the meaning of Part 573 or 574 respectively, or an applicant for a Subclass 575 visa who is an eligible university exchange student within the meaning of Part 575.

The amendments made by items [18], [29] and [40] below provide for new defined terms ‘eligible higher degree student’ for Part 573 and 574, and ‘eligible university exchange student’ for Part 575. These new definitions specify the type of courses for which a Subclass 573 or 574 visa applicant is an eligible higher degree student, and the type of course for which a Subclass 575 visa applicant is an eligible university exchange student.

Items [18] and [29] insert a new definition of ‘eligible higher degree student’ in Part 573 and 574 of Schedule 2 to the Principal Regulations, respectively.

Item [40] inserts a new definition of ‘eligible university exchange student’ in Part 575 of Schedule 2 to the Principal Regulations.

Item [2] – Subregulation 1.41(1)

This item substitutes subregulation 1.41(1) and inserts new subregulation 1.41(1A) in Division 1.8 of Part 1 of the Principal Regulations.

Regulation 1.41 requires the Minister to specify an assessment level for a kind of eligible passport, in relation to each Subclass of student visa, to which an applicant for a student visa who seeks to satisfy the primary criteria will be subject, other than an applicant who is a person designated under

regulation 2.07AO and applies for certain Subclasses of student visas. The term 'Eligible passport' is defined in regulation 1.40.

Assessment levels within each student visa Subclass range from assessment level AL 1 to AL 5 and can broadly be described as representing varying degrees of immigration risk, ranging from AL 1 (low) to AL 5 (extremely high).

The higher the assessment level, the higher are the minimum evidentiary standards an applicant has to satisfy in respect of financial capacity, English language proficiency and other requirements. Assessment level requirements are set out in Schedule 5A to the Principal Regulations.

New subregulation 1.41(1) provides that the Minister must specify, by instrument in writing, an assessment level for a kind of eligible passport, in relation to each Subclass of student visa, to which an applicant for a student visa who seeks to satisfy the primary criteria will be subject.

New subregulation 1.41(1A) provides that an assessment level does not apply in relation to an eligible passport held by:

- an applicant for a Subclass 573 (Higher Education Sector) visa who is an eligible higher degree student within the meaning of Part 573 of Schedule 2; or
- an applicant for a Subclass 574 (Postgraduate Research Sector) visa who is an eligible higher degree student within the meaning of Part 574 of Schedule 2; or
- an applicant for a Subclass 575 (Non-Award Sector) visa who is an eligible university exchange student within the meaning of Part 575 of Schedule 2.

The purpose of this amendment is to exempt a new cohort of eligible student visa applicants within the existing Subclass 573, 574 or 575 visa frameworks from the assessment level regime. Under the new streamlined visa processing arrangements, this new cohort of student visa applicants are assessed against new visa requirements in respect of financial capacity, English language proficiency and other relevant matters, inserted by items [22], [33] and [44] below.

The amendment replaces provisions relating to persons designated under regulation 2.07AO, with the new provisions relating to eligible students, as a consequence of the amendment made by item [4] below.

Item [3] – Subregulation 1.42(7)

This item substitutes subregulation 1.42(7) in Division 1.8 of Part 1 of the Principal Regulations.

Subregulation 1.42(1) provides that an applicant for a student visa who seeks to satisfy the primary criteria is subject to the highest assessment level at the time of application for the relevant course of study for the Subclass of student visa. However, subregulations 1.42(2) to (6) provide for exceptions to this general rule, by providing that certain applicants are subject to assessment level 2.

Previous subregulation 1.42(7) provided that subregulations (1) to (6) do not apply to an applicant who is a person designated under regulation 2.07AO.

New subregulation 1.42(7) provides that subregulations (1) to (6) do not apply to:

- an applicant for a Subclass 573 (Higher Education Sector) visa who is an eligible higher degree student within the meaning of Part 573 of Schedule 2; or

- an applicant for a Subclass 574 (Postgraduate Research Sector) visa who is an eligible higher degree student within the meaning of Part 574 of Schedule 2; or

- an applicant for a Subclass 575 (Non-Award Sector) visa who is an eligible university exchange student within the meaning of Part 575 of Schedule 2.

The purpose of this amendment is to exempt a new cohort of eligible student visa applicants within the existing Subclass 573, 574 or 575 visa frameworks from the assessment level regime. Under the new streamlined visa processing arrangements, this new cohort of eligible student visa applicants will be assessed against new requirements in respect of financial capacity, English language proficiency, and other relevant matters, inserted by item [22], [33] and [44] below.

The amendment replaces provisions relating to persons designated under regulation 2.07AO, with new provisions relating to eligible students, as a consequence of the amendment made by item [4] below.

Item [4] – Paragraphs 2.07AO(3)(n) to (r)

This item omits paragraphs 2.07AO(3)(n) to (r) in Division 2.2 of Part 2 of the Principal Regulations.

Regulation 2.07AO, by operation of subsection 46(2) of the *Migration Act 1958*, enables certain persons designated under subregulation 2.07AO(2) to make a valid application for certain types of temporary or permanent visas in Australia, which are set out in subregulation 2.07AO(3).

Relevantly, paragraphs 2.07AO(3)(n) to (r) list a Subclass 571 (Schools Sector) visa, a Subclass 572 (Vocational Educational and Training Sector) visa, a Subclass 573 (Higher Education Sector) visa, a Subclass 574 (Postgraduate Research Sector) visa, and a Subclass 580 (Student Guardian) visa as visas for the purposes of subregulation 2.07AO(3).

In 2008, a direct pathway to permanent residence for such persons was created. Therefore, regulation 2.07AO and associated provisions would now be considered to be spent.

As part of the Government's deregulation agenda, certain amendments in Schedule 5 to the Regulation repeal or substitute provisions relating to persons designated under regulation 2.07AO within the student visa framework.

The purpose of this amendment is to repeal a Subclass 571 (Schools Sector) visa, a Subclass 572 (Vocational Educational and Training Sector) visa, a Subclass 573 (Higher Education Sector) visa, a Subclass 574 (Postgraduate Research Sector) visa, and a Subclass 580 (Student Guardian) visa as visas for the purposes of regulation 2.07AO.

Item [5] – Paragraphs 2.12BF(1)(m) to (q)

This item omits paragraphs 2.12BF(1)(m) to (q) in Division 2.2AA of Part 2 of the Principal Regulations.

The purpose of this amendment is to remove a Subclass 571 (Schools Sector) visa, a Subclass 572 (Vocational Education and Training Sector) visa, a Subclass 573 (Higher Education Sector) visa, a

Subclass 574 (Postgraduate Research Sector) visa, and a Subclass 580 (Student Guardian) visa, as a visa for the purposes of regulation 2.12BF.

The amendment made by this item is a consequential amendment to the amendment made by item [4] above.

Item [6] – Schedule 2, clause 570.229

This item substitutes clause 570.229 in Part 570 of Schedule 2 to the Principal Regulations.

Clause 570.229 is a time of decision criterion which limits the aggregate period of an English Language Intensive Course for Overseas Students (ELICOS) that a Subclass 570 (Independent ELICOS Sector) visa applicant may undertake. This includes an ELICOS that an applicant is seeking to undertake, together with any ELICOS that has previously been undertaken as the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa (or any subsequent bridging visa).

Previous clause 570.229 provided that an applicant who is subject to assessment level 3 must not exceed more than 60 weeks of ELICOS and an applicant who is subject to assessment levels 4 or 5 must not exceed more than 40 weeks of ELICOS.

New subclause 570.229(1) provides that if the applicant is subject to assessment level 3, 4 or 5, the aggregate of the period, or periods, of ELICOS that the applicant is seeking to undertake, together with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 570, 572, 573, 574, 575 or 576 visa, or any subsequent bridging visa, does not exceed:

- for an applicant who is subject to assessment level 3 – 60 weeks; or
- for an applicant who is subject to assessment level 4 or 5 – 40 weeks.

New subclause 570.229(2) provides that if the applicant is subject to assessment level 3, 4 or 5, the aggregate of the period, or periods, of ELICOS that the applicant is seeking to undertake, together with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 571 visa, or any subsequent bridging visa, does not exceed:

- for an applicant who is subject to assessment level 3 – 60 weeks; or
- for an applicant who is subject to assessment level 4 or 5 – 50 weeks.

The purpose of this amendment is to establish the maximum period of aggregate ELICOS for various applicants for their relevant Subclass of student visa, depending on the assessment level of the applicant. It distinguishes applicants who have previously undertaken ELICOS as the holder of only a Subclass 571(Schools Sector) visa or any subsequent bridging visa.

The purpose of this item is to make amendments consequential to the amendments that made by items [60] and [62] below in this Schedule to clauses 5A301 and 5A304 in Part 3 of Schedule 5A to the Principal Regulations.

The amendment in item [60] below amends clause 5A301 by inserting a new requirement that an applicant who is subject to assessment level 5, who is not a secondary exchange student, and will undertake an ELICOS (or other English language tuition) before commencing his or her principal course, must provide evidence that their ELICOS (or other English language tuition) will be no longer than 50 weeks.

The amendment in item [62] below amends clause 5A304 to provide an increase to the maximum period of ELICOS that can be undertaken by an applicant who is subject to assessment level 4, is not a secondary exchange student, and will undertake an ELICOS (or other English language tuition) prior to the commencement of their principal course. This maximum period is increased from 30 weeks to 50 weeks.

As it is intended that the new 50 week ELICOS requirement in Schedule 5A applies to Subclass 571 (Schools Sector) visa applicants subject to assessment level 4 or 5, consequential amendments to clause 570.229 are necessary to increase the maximum duration of aggregate periods of previous ELICOS an applicant may have undertaken as the holder of a Subclass 571 (Schools Sector) visa, or any subsequent bridging visa. The existing aggregate ELICOS requirements have been retained in relation to all other prescribed student visa Subclasses and to Subclass 571 (Schools Sector) visa applicants subject to assessment level 3.

Item [7] – Schedule 2, subclause 571.223(2)

This item substitutes subclause 571.223(2) in Part 571 of Schedule 2 to the Principal Regulations.

Clause 571.223 is a time of decision criterion. Previous paragraphs 571.223(2)(a) and (b) set out a series of requirements that must be met by applicants who are, and are not, persons designated under regulation 2.07AO.

New subclause 571.223(2) provides that an applicant meets the requirements of this subclause if:

- the applicant gives the Minister evidence in accordance with the requirements mentioned in Schedule 5A for the highest assessment level for the applicant; and
- the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
    - the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
    - any other relevant matter; and
- the Minister is satisfied that, while the applicant holds the visa, the applicant will have access to the funds demonstrated or declared in accordance with the requirements in Schedule 5A relating to the applicant's financial capacity.

The amendment replicates the requirements set out in previous paragraph 571.223(2)(a), which applied to an applicant who is not a person designated under regulation 2.07AO. The amendment also repeals provisions relating to persons designated under regulation 2.07AO in current paragraph 571.223(2)(b), as a consequence of the amendment made by item [4] above.

The effect of this amendment is that the requirements in subclause 571.223(2) apply generally to applicants seeking to satisfy the criteria for the grant of a Subclass 571 (Schools Sector) visa.

Item [8] – Schedule 2, clause 571.230

This item omits ', unless the applicant is a person designated under regulation 2.07AO' in clause 571.230 in Part 571 of Schedule 2 to the Principal Regulations.

Clause 571.230 is a time of decision criterion, which requires an applicant for a Subclass 571 visa to hold a passport of a kind specified in a Gazette Notice made under regulation 1.40, unless the applicant is a person designated under regulation 2.07AO.

The amendment omits reference to a person designated under regulation 2.07AO in clause 571.230.

The amendment made by this item is a consequential amendment to the amendment made by item [4] above.

Item [9] – Schedule 2, clause 571.235

This item substitutes clause 571.235 in Part 571 of Schedule 2 to the Principal Regulations.

Clause 571.235 is a time of decision criterion which limits the aggregate period of an ELICOS that a Subclass 571 (Schools Sector) visa applicant may undertake. This includes an ELICOS that an applicant is seeking to undertake, together with any ELICOS that has previously been undertaken as the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa (or any subsequent bridging visa).

Previous clause 571.235 provided that an applicant who is subject to assessment level 3 must not exceed more than 60 weeks of ELICOS and an applicant who is subject to assessment levels 4 or 5 must not exceed more than 40 weeks of ELICOS.

New subclause 571.235(1) provides that if the applicant is subject to assessment level 3, 4 or 5, the aggregate of the period, or periods, of ELICOS that the applicant is seeking to undertake, together with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 570, 572, 573, 574, 575 or 576 visa, or any subsequent bridging visa, does not exceed:

- for an applicant who is subject to assessment level 3 – 60 weeks; or
- for an applicant who is subject to assessment level 4 or 5 – 40 weeks.

New subclause 571.235(2) provides that if the applicant is subject to assessment level 3, 4 or 5, the aggregate of the period, or periods, of ELICOS that the applicant is seeking to undertake, together with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 571 visa, or any subsequent bridging visa, does not exceed:

- for an applicant who is subject to assessment level 3 – 60 weeks; or
- for an applicant who is subject to assessment level 4 or 5 – 50 weeks.

The purpose of this amendment is to establish the maximum period of aggregate ELICOS for various applicants for their relevant Subclass of student visa, depending on the assessment level of the applicant. It distinguishes applicants who have previously undertaken ELICOS as the holder of only a Subclass 571(Schools Sector) visa or any subsequent bridging visa.

The purpose of this item is to make amendments consequential to the amendments made by items [60] and [62] below in this Schedule to clauses 5A301 and 5A304 in Part 3 of Schedule 5A to the Principal Regulations.

The amendment in item [60] below amends clause 5A301 by inserting a new requirement that an applicant who is subject to assessment level 5, who is not a secondary exchange student, and will undertake an ELICOS (or other English language tuition) before commencing his or her principal course, must provide evidence that their ELICOS (or other English language tuition) will be no longer than 50 weeks.

The amendment in item [62] below amends clause 5A304 to provide an increase to the maximum period of ELICOS that can be undertaken by an applicant who is subject to assessment level 4, is not a secondary exchange student, and will undertake an ELICOS (or other English language tuition)

prior to the commencement of their principal course. This maximum period has been increased from 30 weeks to 50 weeks.

As it is intended that the new 50 week ELICOS requirement in Schedule 5A applies to Subclass 571 (Schools Sector) visa applicants subject to assessment level 4 or 5, consequential amendments to clause 571.235 are necessary to increase the maximum duration of aggregate periods of previous ELICOS an applicant may have undertaken as the holder of a Subclass 571 (Schools Sector) visa, or any subsequent bridging visa. The existing aggregate ELICOS requirements have been retained in relation to all other prescribed student visa Subclasses and to Subclass 571 (Schools Sector) visa applicants subject to assessment level 3.

Item [10] – Schedule 2, subparagraph 571.312(2)(d)(ii)

This item substitutes subparagraph 571.312(2)(d)(ii) in Part 571 of Schedule 2 to the Principal Regulations.

The amendment made by this item is a consequential amendment to the amendment made by item [11] below.

Item [11] – Schedule 2, paragraph 571.312(2)(e)

This item omits paragraph 571.312(2)(e) in Part 571 of Schedule 2 to the Principal Regulations.

Clause 571.312 is a time of application criterion, which must be satisfied by a secondary applicant if the application is made in Australia. Relevantly, a secondary applicant satisfies clause 571.312 if the applicant is the holder of a visa specified in subclause 571.312(2), or a person designated under regulation 2.07AO (paragraph 571.312(2)(e)).

The amendment omits paragraph 571.312(2)(e), which is consequential to the amendment made by item [4] above.

Item [12] – Schedule 2, subclause 572.223 (2)

This item substitutes subclause 572.223 (2) in Part 572 of Schedule 2 to the Principal Regulations.

Clause 572.223 is a time of decision criterion. Previous paragraphs 572.223(2)(a) and (b) set out a series of requirements that must be met by applicants who are, and are not, persons designated under regulation 2.07AO.

New subclause 572.223(2) provides that an applicant meets the requirements of this subclause if:

- the applicant gives the Minister evidence in accordance with the requirements mentioned in Schedule 5A for the highest assessment level for the applicant; and
- the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
    - the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
    - any other relevant matter; and
- the Minister is satisfied that, while the applicant holds the visa, the applicant will have access to the funds demonstrated or declared in accordance with the requirements in Schedule 5A relating to the applicant's financial capacity.

The amendment replicates the requirements set out in previous paragraph 572.223(2)(a), which applied to an applicant who is not a person designated under regulation 2.07AO. The amendment also repeals provisions relating to persons designated under regulation 2.07AO in current paragraph 572.223(2)(b), as a consequence of the amendment made by item [4] above.

The effect of this amendment is that the requirements in substituted subclause 572.223(2) apply generally to applicants seeking to satisfy the criteria for the grant of a Subclass 572 (Vocational Education and Training Sector) visa.

Item [13] – Schedule 2, clause 572.230

This item omits ', unless the applicant is a person designated under regulation 2.07AO' in clause 572.230 in Part 572 of Schedule 2 to the Principal Regulations.

Clause 572.230 is a time of decision criterion, which requires an applicant for a Subclass 572 visa to hold a passport of a kind specified in a Gazette Notice made under regulation 1.40, unless the applicant is a person designated under regulation 2.07AO.

The amendment omits reference to a person designated under regulation 2.07AO in clause 572.230, which is consequential to the amendment made by item [4] above.

Item [14] – Schedule 2, clause 572.234

This item substitutes clause 572.234 in Part 572 of Schedule 2 to the Principal Regulations.

Clause 572.234 is a time of decision criterion which limits the aggregate period of an ELICOS that a Subclass 572 (Vocational Education and Training Sector) visa applicant may undertake. This includes an ELICOS that an applicant is seeking to undertake, together with any ELICOS that has previously been undertaken as the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa (or any subsequent bridging visa).

Previous clause 572.234 provided that an applicant who is subject to assessment level 3 must not exceed more than 60 weeks of ELICOS and an applicant who is subject to assessment levels 4 or 5 must not exceed more than 40 weeks of ELICOS.

New subclause 572.234(1) provides that if the applicant is subject to assessment level 3, 4 or 5, the aggregate of the period, or periods, of ELICOS that the applicant is seeking to undertake, together with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 570, 572, 573, 574, 575 or 576 visa, or any subsequent bridging visa, does not exceed:

- for an applicant who is subject to assessment level 3 – 60 weeks; or
- for an applicant who is subject to assessment level 4 or 5 – 40 weeks.

New subclause 572.234(2) provides that if the applicant is subject to assessment level 3, 4 or 5, the aggregate of the period, or periods, of ELICOS that the applicant is seeking to undertake, together with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 571 visa, or any subsequent bridging visa, does not exceed:

- for an applicant who is subject to assessment level 3 – 60 weeks; or
- for an applicant who is subject to assessment level 4 or 5 – 50 weeks.

The purpose of this amendment is to establish the maximum period of aggregate ELICOS for various applicants for their relevant Subclass of student visa, depending on the assessment level of the applicant. It distinguishes applicants who have previously undertaken ELICOS as the holder of only a Subclass 571(Schools Sector) visa or any subsequent bridging visa.

The purpose of this item is to make amendments consequential to the amendments made by items [60] and [62] below in this Schedule to clauses 5A301 and 5A304 in Part 3 of Schedule 5A to the Principal Regulations.

The amendment in item [60] below amends clause 5A301 by inserting a new requirement that an applicant who is subject to assessment level 5, who is not a secondary exchange student, and will undertake an ELICOS (or other English language tuition) before commencing his or her principal course, must provide evidence that that their ELICOS (or other English language tuition) will be no longer than 50 weeks.

The amendment in item [62] below amends clause 5A304 to provide an increase to the maximum period of ELICOS that can be undertaken by an applicant who is subject to assessment level 4, is not a secondary exchange student, and will undertake an ELICOS (or other English language tuition) prior to the commencement of their principal course. This maximum period has been increased from 30 weeks to 50 weeks.

As it is intended that the new 50 week ELICOS requirement in Schedule 5A applies to Subclass 571 (Schools Sector) visa applicants subject to assessment level 4 or 5, consequential amendments to clause 572.234 are necessary to increase the maximum duration of aggregate periods of previous ELICOS an applicant may have undertaken as the holder of a Subclass 571 (Schools Sector) visa, or any subsequent bridging visa. The existing aggregate ELICOS requirements are retained in relation to all other prescribed student visa Subclasses and to Subclass 571 (Schools Sector) visa applicants subject to assessment level 3.

Item [15] – Schedule 2, subparagraph 572.312(2)(d)(iii)

This item substitutes subparagraph 572.312(2)(d)(iii) in Part 572 of Schedule 2 to the Principal Regulations.

The amendment made by this item is a consequential amendment to the amendment made by item [16] below.

Item [16] – Schedule 2 paragraph 572.312(2)(e)

This item omits paragraph 572.312(2)(e) in Part 572 of Schedule 2 to the Principal Regulations.

Clause 572.312 is a time of application criterion, which must be satisfied by a secondary applicant who makes their application in Australia. Relevantly, a secondary applicant would satisfy clause 572.312 if the applicant is the holder of one of the visas specified in subclause 572.312(2), or a person designated under regulation 2.07AO (paragraph 572.312(2)(e)).

The amendment omits paragraph 572.312(2)(e), which is consequential to the amendment made by item [4] above.

Item [17] – Schedule 2, Division 573.1, heading

This item substitutes the heading in Division 573.1 of Part 573 of Schedule 2 to the Principal Regulations.

The new heading is '573.1 Interpretation and preliminary'.

Item [18] – Schedule 2, clause 573.111, after definition of 'course of study', including the note

This item inserts new defined terms 'educational business partner', 'eligible education provider' and 'eligible higher degree student' in clause 573.111 after the definition of 'course of study' (including the note) in Part 573 of Schedule 2 to the Principal Regulations.

New defined term 'educational business partner', in relation to an eligible education provider, means an education provider specified as an educational business partner in an instrument made under new clause 573.112.

New defined term 'eligible education provider' means an education provider specified as an eligible education provider in an instrument made under new clause 573.112.

New defined term 'eligible higher degree student' means an applicant for a Subclass 573 visa in relation to whom the following apply:

- the applicant is enrolled in a principal course of study for the award of:
  - a bachelor's degree; or
  - a masters degree by coursework;
- the principal course of study is provided by an eligible education provider;
- if the applicant proposes to undertake another course of study before, and for the purposes of, the principal course of study:
  - the applicant is also enrolled in that course; and
  - that course is provided by the eligible education provider or an educational business partner of the eligible education provider.

It is intended that the other course of study an applicant may propose to undertake may be an ELICOS, a foundation course, or other pathway course (e.g. a bridging course or vocational educational course).

The purpose of the amendment is to provide for a new defined cohort of student visa applicants who are eligible higher degree students within the existing Subclass 573 visa framework. Applicants who are eligible higher degree students within the meaning of Part 573 are subject to new visa criteria, inserted in Part 573 of Schedule 2 to the Principal Regulations by items [20] and [22] below.

It is intended that eligible education providers and their educational business partners are specified by the Minister in an instrument in writing made under new clause 573.112, which is inserted by item [19] below.

Item [19] – Schedule 2, after clause 573.111

This item inserts new clause 573.112 after clause 573.111 in Part 573 of Schedule 2 to the Principal Regulations.

New clause 573.112 provides that for Part 573, the Minister may, by instrument in writing, specify an education provider as an eligible education provider, and specify one or more other education providers as educational business partners of the education provider.

The purpose of the amendment is to provide the Minister with the power to specify education providers and their educational business partners, in an instrument in writing, for the purposes of the new streamlined visa processing arrangements.

It is intended that eligible education providers and their educational business partners are education providers that have been accepted by the Minister to participate in the new streamlined visa processing arrangements.

Item [20] – Schedule 2, after clause 573.211

This item inserts new clause 573.212 after clause 573.211 in Part 573 of Schedule 2 to the Principal Regulations.

New clause 573.212 provides that if the applicant is an eligible higher degree student, the applicant must have a confirmation of enrolment in each course of study for which the applicant is an eligible higher degree student.

The purpose of the amendment is to ensure that an applicant who is an eligible higher degree student has a confirmation of enrolment for each course of study for which they are an eligible higher degree student.

A confirmation of enrolment indicates the course of study and the provider at which the course of study is provided. The applicant needs to have confirmation of enrolments for each course of study for which they are an eligible higher degree student to satisfy new clause 573.212.

An applicant is not considered to be an eligible higher degree student if the applicant does not have a confirmation of enrolment for each course of study for which they are an eligible higher degree student. In these circumstances, it is intended that new clause 573.212 would not apply to the applicant.

Item [21] – Schedule 2, paragraph 573.223(1)(b)

This item inserts '(1A) or', after 'requirements of subclause' in paragraph 573.223(1)(b) in Part 573 of Schedule 2 to the Principal Regulations.

The amendment is consequential to the amendment made by item [22] below, which inserts new subclause 573.223(1A) in Part 573 of Schedule 2 to the Principal Regulations.

Item [22] – Schedule 2, subclause 573.223(2)

This item substitutes subclause 573.223(2) and inserts new subclause 573.223(1A) after subclause 573.223(1) in Part 573 of Schedule 2 to the Principal Regulations

Clause 573.223 is a time of decision criterion for the grant of a Subclass 573 (Higher Education Sector) visa. Relevantly, paragraph 573.223(1)(b) requires the Minister to be satisfied that the applicant is a genuine applicant for entry and stay as a student because the applicant meets the requirements of subclause 573.223(2).

Paragraph 573.223(2)(a) provides that for an applicant who is not a person designated under regulation 2.07AO:

- the applicant gives the Minister evidence in accordance with the requirements mentioned in Schedule 5A for the highest assessment level for the applicant; and
- the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
    - the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
    - any other relevant matter; and
- the Minister is satisfied that, while the applicant holds the visa, the applicant will have access to the funds demonstrated or declared in accordance with the requirements in Schedule 5A relating to the applicant's financial capacity.

Paragraph 573.223(2)(b) provides that for an applicant who is a person designated under regulation 2.07AO — the Minister is satisfied that:

- the applicant has the financial capacity to undertake the course, without contravening any condition of the visa relating to work, because the applicant has access to sufficient funds of the person's own or provided by a relative; and
- the applicant's proficiency in English is appropriate to the proposed course of study; and
- the applicant is a genuine applicant for entry and stay as a student, having regard to:
    - the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
    - any other relevant matter.

New subclause 573.223(1A) provides that if the applicant is an eligible higher degree student who has a confirmation of enrolment in each course of study for which the applicant is an eligible higher degree student:

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

- the costs and expenses required to support each member (if any) of the applicant's family unit.

Subclause 573.223(2) provides that if the applicant is not an eligible higher degree student, or does not have a confirmation of enrolment in each course of study for which the applicant is an eligible higher degree student:

- the applicant gives the Minister evidence in accordance with the requirements mentioned in Schedule 5A for the highest assessment level for the applicant; and
- the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
  - the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
  - any other relevant matter; and
- the Minister is satisfied that, while the applicant holds the visa, the applicant will have access to the funds demonstrated or declared in accordance with the requirements in Schedule 5A relating to the applicant's financial capacity.

New subclause 573.223(1A) sets out new requirements relating to financial capacity, English language proficiency, and other relevant matters that apply to an applicant who is an eligible higher degree student and has a confirmation of enrolment for each course of study for which the applicant is an eligible higher degree student. New subclause 573.223(1A) also replicates the requirement in previous subparagraph 573.223(2)(a)(ii).

Substituted subclause 573.223(2) retains the requirements in previous paragraph 573.223(2)(a) and applies to an applicant who is not an eligible higher degree student, or does not have a confirmation of enrolment in each course of study for which the applicant is an eligible higher degree student. The substitution of subclause 573.223(2) also has the effect of repealing previous paragraph 573.223(2)(b) relating to persons designated under regulation 2.07AO, as a consequence of the amendment made by item [4] above, which repeals a Subclass 573 (Higher Education Sector) visa as a visa for the purposes of regulation 2.07AO.

The purpose of the amendment is to provide for a set of requirements that must be met by applicants who are eligible higher degree students, and a separate set of requirements that must be met by applicants who are not eligible higher degree students.

The effect of the amendment is that an applicant who is an eligible higher degree student would be assessed against requirements in respect of financial capacity, English language proficiency and other relevant matters that would be self-contained within Part 573 in Schedule 2 to the Principal Regulations.

The requirements in new subclause 573.223(1A) are broadly based on previous requirements for assessment level 1 (low risk) applicants, which has the least onerous evidentiary requirements. It is intended that the amendment reduce visa processing times for applicants who are eligible higher degree students.

A further effect of the amendment is that if an applicant is an eligible higher degree student at time of application, but does not have a confirmation of enrolment for each course of study for which they are an eligible higher degree student at time of decision, the applicant is no longer considered to be an eligible higher degree student. In these circumstances, it is intended that new subclause 573.223(1A) would not apply to the applicant. Such an applicant would be expected to meet the requirements in substituted subclause 573.223(2).

Item [23] – Schedule 2, clauses 573.230 and 573.231

This item substitutes clauses 573.230 and 573.231 in Part 573 of Schedule 2 to the Principal Regulations.

Clause 573.230

Previous clause 573.230 required an applicant to hold a passport of a kind specified in a Gazette Notice made under regulation 1.40, unless the applicant is a person designated under regulation 2.07AO.

New clause 573.230 provides that the applicant holds a passport of a kind specified in an instrument made under regulation 1.40.

The amendment omits the reference to a person designated under regulation 2.07AO in clause 573.230, which is consequential to the amendment made by item [4] above.

The effect of the amendment is that the requirements in clause 573.230 apply generally to applicants seeking to satisfy the criteria for the grant of a Subclass 573 (Higher Education Sector) visa.

Clause 573.231

Previous clause 573.231 was a time of decision criterion that required an applicant to be enrolled in, or be the subject of a current offer of enrolment in, a course of study that is:

- a principal course; and
- the principal course is of a type that was specified for Subclass 573 visas by the Minister in a Gazette Notice:
    - made under regulation 1.40A; and
    - in force at the time the application was made.

New clause 573.231 retains the requirement in previous clause 573.231 but only applies if the applicant is not an eligible higher degree student, or does not have a confirmation of enrolment in each course of study for which the applicant is an eligible higher degree student.

The effect of the amendment is that an applicant who is an eligible higher degree student, and has a confirmation of enrolment for each course of study for which they are an eligible higher degree student, is exempt from the requirement in clause 573.231.

If an applicant is an eligible higher degree student at time of application, but does not have a confirmation of enrolment for each course of study for which they are an eligible higher degree student at time of decision, the applicant is expected to meet the requirement in clause 573.231.

Item [24] – Schedule 2, clause 573.234

This item substitutes clause 573.234 in Part 573 of Schedule 2 to the Principal Regulations.

Clause 573.234 is a time of decision criterion which limits the aggregate period of ELICOS that a Subclass 573 (Higher Education Sector) visa applicant may undertake. This includes an ELICOS that an applicant is seeking to undertake, together with any ELICOS that has previously been undertaken as the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa (or any subsequent bridging visa).

Previous clause 573.234 provided that an applicant who is subject to assessment level 3 must not exceed more than 60 weeks of ELICOS and an applicant who is subject to assessment levels 4 or 5 must not exceed more than 40 weeks of ELICOS.

New subclause 573.234(1) provides that if the applicant is subject to assessment level 3, 4 or 5, the aggregate of the period, or periods, of ELICOS that the applicant is seeking to undertake, together with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 570, 572, 573, 574, 575 or 576 visa, or any subsequent bridging visa, does not exceed:

- for an applicant who is subject to assessment level 3 – 60 weeks; or
- for an applicant who is subject to assessment level 4 or 5 – 40 weeks.

New subclause 573.234(2) provides that if the applicant is subject to assessment level 3, 4 or 5, the aggregate of the period, or periods, of ELICOS that the applicant is seeking to undertake, together with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 571 visa, or any subsequent bridging visa, does not exceed:

- for an applicant who is subject to assessment level 3 – 60 weeks; or
- for an applicant who is subject to assessment level 4 or 5 – 50 weeks.

The purpose of this amendment is to establish the maximum period of aggregate ELICOS for various applicants for their relevant Subclass of student visa, depending on the assessment level of the applicant. It distinguishes applicants who have previously undertaken ELICOS as the holder of only a Subclass 571 (Schools Sector) visa or any subsequent bridging visa.

The purpose of this item is to make amendments consequential to the amendments that are made by items [60] and [62] below in this Schedule to clauses 5A301 and 5A304 in Part 3 of Schedule 5A to the Principal Regulations.

The amendment in item [60] below amends clause 5A301 by inserting a new requirement that an applicant who is subject to assessment level 5, who is not a secondary exchange student, and will undertake an ELICOS (or other English language tuition) before commencing his or her principal course, must provide evidence that that their ELICOS (or other English language tuition) will be no longer than 50 weeks.

The amendment in item [62] below amends clause 5A304 to provide an increase to the maximum period of ELICOS that can be undertaken by an applicant who is subject to assessment level 4, is not a secondary exchange student, and will undertake an ELICOS (or other English language tuition) prior to the commencement of their principal course. This maximum period has been increased from 30 weeks to 50 weeks.

As it is intended that the new 50 week ELICOS requirement in Schedule 5A apply to Subclass 571 (Schools Sector) visa applicants subject to assessment level 4 or 5, consequential amendments to clause 573.234 are necessary to increase the maximum duration of aggregate periods of previous ELICOS an applicant may have undertaken as the holder of a Subclass 571 (Schools Sector) visa, or any subsequent bridging visa. The existing aggregate ELICOS requirements are retained in relation to all other prescribed student visa Subclasses and to Subclass 571 (Schools Sector) visa applicants subject to assessment level 3.

Item [25] – Schedule 2, subparagraph 573.312(2)(d)(iii)

This item omits '(Graduate Skilled); or', and inserts '(Graduate – Skilled).' in subparagraph 573.312(2)(d)(iii) in Part 573 of Schedule 2 to the Principal Regulations.

The amendment made by this item is a consequential amendment to the amendment made by item [26] below.

Item [26] – Schedule 2, paragraph 573.312(2)(e)

This item omits paragraph 573.312(2)(e) in Part 573 of Schedule 2 to the Principal Regulations.

Clause 573.312 is a time of application criterion, which must be satisfied by a secondary applicant who makes their application in Australia. Relevantly, a secondary applicant satisfies clause 573.312 if the applicant is the holder of a visa specified in subclause 573.312(2), or a person designated under regulation 2.07AO (paragraph 572.312(2)(e)).

The amendment omits paragraph 572.312(2)(e), which is consequential to the amendment made by item [4] above.

Item [27] – Schedule 2, after subparagraph 573.322(b)(i)

This item inserts new subparagraph 573.322(b)(ia) after subparagraph 573.322(b)(i) in Part 573 of Schedule 2 to the Principal Regulations.

Clause 573.322 is a time of decision criterion for a secondary applicant and requires the applicant to be a member of the family unit of a primary person described in paragraph 573.322(a) or 573.322(b).

New subparagraph 573.322(b)(ia) provides in effect that an applicant is a member of the family of a person (the *primary person*) if the primary person satisfies the primary criteria in Subdivisions 573.21 and 573.22 and the primary person is an eligible higher degree student for the purposes of clause 573.322.

The purpose of the amendment is to allow secondary applicants to rely on a primary person who is an eligible higher degree student for the purposes of clause 573.322.

Item [28] – Schedule 2, Division 574.1, heading

This item substitutes the heading in Division 574.1 of Part 574 of Schedule 2 to the Principal Regulations.

The new heading is '574.1 Interpretation and preliminary'.

Item [29] – Schedule 2, clause 574.111, after definition of 'course of study', including the note

This item inserts new defined terms 'educational business partner', 'eligible education provider' and 'eligible higher degree student' in clause 574.111 after the definition of 'course of study' (including the note) in Part 574 of Schedule 2 to the Principal Regulations.

New defined term ‘educational business partner’, in relation to an eligible education provider, means an education provider specified as an educational business partner in an instrument made under new clause 574.112.

New defined term ‘eligible education provider’ means an education provider specified as an eligible education provider in an instrument made under new clause 574.112.

New defined term ‘eligible higher degree student’ means an applicant for a Subclass 574 visa in relation to whom the following apply:

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

It is intended that the other course of study an applicant may propose to undertake would be an ELICOS, a foundation course, or other pathway course (e.g. a bridging course or vocational educational course).

The purpose of the amendment is to provide for a new defined cohort of student visa applicants who are eligible higher degree students within the existing Subclass 574 visa framework. Applicants who are eligible higher degree students within the meaning of Part 574 are subject to new criteria, inserted in Part 574 of Schedule 2 to the Principal Regulations by items [31] and [33] below.

It is intended that eligible education providers and their educational business partners are specified by the Minister in an instrument in writing made under new clause 574.112, which is inserted by item [30] below.

Item [30] – Schedule 2, after clause 574.111

This item inserts new clause 574.112 after clause 574.111 in Part 574 of Schedule 2 to the Principal Regulations.

New clause 574.112 provides that for Part 574, the Minister may, by instrument in writing, specify an education provider as an eligible education provider, and specify one or more other education providers as educational business partners of the education provider.

The purpose of the amendment is to provide the Minister with the power to specify education providers and their educational business partners in an instrument in writing, for the purposes of the new streamlined visa processing arrangements.

It is intended that eligible education providers and their educational business partners would be education providers that have been accepted by the Minister to participate in the new streamlined visa processing arrangements.

Item [31] – Schedule 2, after clause 574.211

This item inserts new clause 574.212 after clause 574.211 in Part 574 of Schedule 2 to the Principal Regulations.

New clause 574.212 provides that if the applicant is an eligible higher degree student, the applicant must have a confirmation of enrolment in each course of study for which the applicant is an eligible higher degree student.

The purpose of the amendment is to ensure that an applicant who is an eligible higher degree student has a confirmation of enrolment for each course of study for which they are an eligible higher degree student.

A confirmation of enrolment would indicate the course of study and the provider at which the course of study would be provided. The applicant would need to have confirmation of enrolments for each course of study for which they are an eligible higher degree student to satisfy new clause 574.212.

An applicant is not considered to be an eligible higher degree student if the applicant does not have a confirmation of enrolment for each course of study for which they are an eligible higher degree student. In these circumstances, it is intended that new clause 574.212 would not apply to the applicant.

Item [32] – Schedule 2, paragraph 574.223(1)(b)

This item inserts 'subclause (1A) or', after 'requirements of' in paragraph 574.223(1)(b) in Part 574 of Schedule 2 to the Principal Regulations.

The amendment is consequential to the amendment made by item [33] below, which inserts new subclause 574.223(1A) in Part 574 of Schedule 2 to the Principal Regulations.

Item [33] – Schedule 2, subclause 574.223(2)

This item substitutes subclause 574.223(2) and inserts new subclause 574.223(1A) after subclause 574.223(1) in Part 574 of Schedule 2 to the Principal Regulations.

Clause 574.223 is a time of decision criterion for the grant of a Subclass 574 (Postgraduate Research Sector) visa. Relevantly, paragraph 574.223(1)(b) requires the Minister to be satisfied that the applicant is a genuine applicant for entry and stay as a student because the applicant meets the requirements of subclause 574.223(2).

Previous paragraph 574.223(2)(a) provided that for an applicant who is not a person designated under regulation 2.07AO:

- the applicant gives the Minister evidence in accordance with the requirements mentioned in Schedule 5A for the highest assessment level for the applicant; and
- the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
    - the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and

- any other relevant matter; and

- the Minister is satisfied that, while the applicant holds the visa, the applicant will have access to the funds demonstrated or declared in accordance with the requirements in Schedule 5A relating to the applicant's financial capacity.

Previous paragraph 574.223(2)(b) provided that for an applicant who is a person designated under regulation 2.07AO — the Minister is satisfied that:

- the applicant has the financial capacity to undertake the course, without contravening any condition of the visa relating to work, because the applicant has access to sufficient funds of the person's own or provided by a relative; and

- the applicant's proficiency in English is appropriate to the proposed course of study; and

- the applicant is a genuine applicant for entry and stay as a student, having regard to:

    - the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and

    - any other relevant matter.

New subclause 574.223(1A) provides that if the applicant is an eligible higher degree student who has a confirmation of enrolment in each course of study for which the applicant is an eligible higher degree student:

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

Substituted subclause 574.223(2) provides that if the applicant is not an eligible higher degree student, or does not have a confirmation of enrolment in each course of study for which the applicant is an eligible higher degree student:

- the applicant gives the Minister evidence in accordance with the requirements mentioned in Schedule 5A for the highest assessment level for the applicant; and
- the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
    - the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and

    - any other relevant matter; and
- the Minister is satisfied that, while the applicant holds the visa, the applicant will have access to the funds demonstrated or declared in accordance with the requirements in Schedule 5A relating to the applicant's financial capacity.

New subclause 574.223(1A) sets out new requirements relating to financial capacity, English language, and other relevant matters that apply to an applicant who is an eligible higher degree student and has a confirmation of enrolment for each course of study for which the applicant is an eligible higher degree student. New subclause 574.223(1A) also replicates the requirement in current subparagraph 574.223(2)(a)(ii).

Substituted subclause 574.223(2) retains the requirements in previous paragraph 574.223(2)(a), and applies to an applicant who is not an eligible higher degree student, or does not have a confirmation of enrolment in each course of study for which the applicant is an eligible higher degree student. The substitution of subclause 574.223(2) also has the effect of repealing previous paragraph 574.223(2)(b) relating to persons designated under regulation 2.07AO, as a consequence of the amendment made by item [4] above, which repeals a Subclass 574 (Postgraduate Research Sector) visa as a visa for the purposes of regulation 2.07AO.

The purpose of the amendment is to provide for a set of requirements that must be met by applicants who are eligible higher degree students, and a separate set of requirements that must be met by applicants who are not eligible higher degree students.

The effect of the amendment is that an applicant who is an eligible higher degree student would be assessed against requirements in respect of financial capacity, English language proficiency and other relevant matters that would be self-contained within Part 574 in Schedule 2 to the Principal Regulations.

The requirements in new subclause 574.223(1A) are broadly based on existing requirements for assessment level 1 (low risk) applicants, which has the least onerous evidentiary requirements. It is intended that the amendment reduces visa processing times for applicants who are eligible higher degree students.

A further effect of the amendment is that if an applicant was an eligible higher degree student at time of application, but does not have a confirmation of enrolment for the course of study for each course of study for which they are an eligible higher degree student at time of decision, the applicant would no longer be considered to be an eligible higher degree student. In these circumstances, it is intended that new clause 574.223(1A) would not apply to the applicant. Such an applicant would be expected to meet the requirements in substituted subclause 574.223(2).

Item [34] – Schedule 2, clauses 574.230 and 574.231

This item substitutes clauses 574.230 and 574.231 in Part 574 of Schedule 2 to the Principal Regulations.

Clause 574.230

Previous clause 574.230 required an applicant to hold a passport of a kind specified in a Gazette Notice made under regulation 1.40, unless the applicant is a person designated under regulation 2.07AO.

Substituted clause 574.230 provides that the applicant holds a passport of a kind specified in an instrument made under regulation 1.40.

The amendment omits the reference to a person designated under regulation 2.07AO in clause 574.230, which is consequential to the amendment made by item [4] above.

The effect of the amendment is that the requirements in clause 574.230 apply generally to applicants seeking to satisfy the criteria for the grant of a Subclass 574 (Postgraduate Research Sector) visa.

Clause 574.231

Previous clause 574.231 was a time of decision criterion that required an applicant to be enrolled in, or be the subject of a current offer of enrolment in, a course of study that is:

- a principal course; and
- the principal course is of a type that was specified for Subclass 574 visas by the Minister in a Gazette Notice:
    - made under regulation 1.40A; and
    - in force at the time the application was made.

New clause 574.231 retains the requirement in previous clause 574.231 but only applies if the applicant is not an eligible higher degree student, or does not have a confirmation of enrolment in each course of study for which the applicant is an eligible higher degree student.

The effect of the amendment is that an applicant who is an eligible higher degree student, and has a confirmation of enrolment for each course of study for which they are an eligible higher degree student, is be exempt from the requirement in clause 574.231.

If an applicant was an eligible higher degree student at time of application, but does not have a confirmation of enrolment for each course of study for which they are an eligible higher degree student at time of decision, the applicant would be expected to meet the requirement in clause 574.231.

Item [35] – Schedule 2, clause 574.234

This item substitutes clause 574.234 in Part 574 of Schedule 2 to the Principal Regulations.

Clause 574.234 is a time of decision criterion which limits the aggregate period of ELICOS that a Subclass 574 (Postgraduate Research Sector) visa applicant may undertake. This includes an ELICOS that an applicant is seeking to undertake, together with any ELICOS that has previously been undertaken as the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa (or any subsequent bridging visa).

Previous clause 574.234 provided that an applicant who is subject to assessment level 3 must not exceed more than 60 weeks of ELICOS and an applicant who is subject to assessment levels 4 or 5 must not exceed more than 40 weeks of ELICOS.

New subclause 574.234(1) provides that if the applicant is subject to assessment level 3, 4 or 5, the aggregate of the period, or periods, of ELICOS that the applicant is seeking to undertake, together with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 570, 572, 573, 574, 575 or 576 visa, or any subsequent bridging visa, does not exceed:

- for an applicant who is subject to assessment level 3 – 60 weeks; or

- for an applicant who is subject to assessment level 4 or 5 – 40 weeks.

New subclause 574.234(2) provides that if the applicant is subject to assessment level 3, 4 or 5, the aggregate of the period, or periods, of ELICOS that the applicant is seeking to undertake, together with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 571 visa, or any subsequent bridging visa, does not exceed:

- for an applicant who is subject to assessment level 3 – 60 weeks; or
- for an applicant who is subject to assessment level 4 or 5 – 50 weeks.

The purpose of this amendment is to establish the maximum period of aggregate ELICOS for various applicants for their relevant Subclass of student visa, depending on the assessment level of the applicant. It distinguishes applicants who have previously undertaken ELICOS as the holder of only a Subclass 571 (Schools Sector) visa or any subsequent bridging visa.

The purpose of this item is to make amendments consequential to the amendments made by items [60] and [62] below in this Schedule to clauses 5A301 and 5A304 in Part 3 of Schedule 5A to the Principal Regulations.

The amendment in item [60] below amends clause 5A301 by inserting a new requirement that an applicant who is subject to assessment level 5, who is not a secondary exchange student, and will undertake an ELICOS (or other English language tuition) before commencing his or her principal course, must provide evidence that that their ELICOS (or other English language tuition) will be no longer than 50 weeks.

The amendment in item [62] below amends clause 5A304 to provide an increase to the maximum period of ELICOS that can be undertaken by an applicant who is subject to assessment level 4, is not a secondary exchange student, and will undertake an ELICOS (or other English language tuition) prior to the commencement of their principal course. This maximum period has been increased from 30 weeks to 50 weeks.

As it is intended that the new 50 week ELICOS requirement in Schedule 5A applies to Subclass 571 (Schools Sector) visa applicants subject to assessment level 4 or 5, consequential amendments to clause 574.234 are necessary to increase the maximum duration of aggregate periods of previous ELICOS an applicant may have undertaken as the holder of a Subclass 571 (Schools Sector) visa, or any subsequent bridging visa. The existing aggregate ELICOS requirements would be retained in relation to all other prescribed student visa Subclasses and to Subclass 571 (Schools Sector) visa applicants subject to assessment level 3.

Item [36] – Schedule 2, subparagraph 574.312(2)(d)(iii)

This item omits '(Graduate Skilled); or', and inserts '(Graduate – Skilled).' in subparagraph 574.312(2)(d)(iii) in Part 574 of Schedule 2 to the Principal Regulations.

The amendment made by this item is a consequential amendment to the amendment made by item [37] below.

Item [37] – Schedule 2, paragraph 574.312(2)(e)

This item omits paragraph 574.312(2)(e) in Part 574 of Schedule 2 to the Principal Regulations.

Clause 574.312 is a time of application criterion, which must be satisfied by a secondary applicant who makes their application in Australia. Relevantly, a secondary applicant satisfies clause 574.312 if the applicant is the holder of a visa specified in subclause 574.312(2), or a person designated under regulation 2.07AO (paragraph 574.312(2)(e)).

The amendment omits paragraph 574.312(2)(e), which is consequential to the amendment made by item [4] above.

Item [38] – Schedule 2, after subparagraph 574.322(b)(i)

This item inserts new subparagraph 574.322(b)(ia) after subparagraph 574.322(b)(i) in Part 574 of Schedule 2 to the Principal Regulations.

Clause 574.322 is a time of decision criterion for a secondary applicant and requires the applicant to be a member of the family unit of a primary person described in paragraph 574.322(a) or 574.322(b).

New subparagraph 574.322(b)(ia) provides in effect that an applicant is a member of the family of a person (the *primary person*) if the primary person satisfies the primary criteria in Subdivisions 574.21 and 574.22 and the primary person is an eligible higher degree student for the purposes of clause 574.322.

The purpose of the amendment is to allow secondary applicants to rely on a primary person who is an eligible higher degree student for the purposes of clause 574.322.

Item [39] – Schedule 2, Division 575.1, heading

This item substitutes the heading in Division 575.1 in Part 575 of Schedule 2 to the Principal Regulations.

The new heading is '575.1 Interpretation and preliminary'.

Item [40] – Schedule 2, clause 575.111, after definition of 'course of study', including the note

This item inserts new defined terms 'eligible education provider' and 'eligible university exchange student' in clause 575.111 after the definition of 'course of study' (including the note) in Part 575 of Schedule 2 to the Principal Regulations.

New defined term 'eligible education provider' means an education provider specified as an eligible education provider in an instrument made under new clause 575.112.

New defined term 'eligible university exchange student' means an applicant for a Subclass 575 visa in relation to whom the following applies:

- the applicant is enrolled in a full-time course of study that is not leading to an award;
- the course of study is not an ELICOS;
- the course of study is provided by an eligible education provider;
- the course of study is part of:
    - a formal exchange program; or
    - a study abroad program.

The purpose of this amendment is to provide for a new defined cohort of student visa applicants who are eligible university exchange students within the existing Subclass 575 visa framework. Applicants who are eligible university exchange students within the meaning of Part 575 are assessed against new criteria inserted in Part 575 of Schedule 2 to the Principal Regulations by item [42] and [44] below.

It is intended that a formal exchange program involves a formal agreement between an Australian and an overseas university to have a reciprocal exchange of students over time. Exchange students apply to study at the Australian university through their home university and studies at the Australian university generally count towards the student's home university degree. These arrangements allow overseas students to pay for the study they undertake in Australia under the fee regime that applies to them in their home country.

It is intended that a study abroad program refers to a program where overseas students study at an Australian university as part of their home university's degree. It is similar to an exchange program except there is not usually a formal agreement between the two universities. Study abroad students apply to study directly with the Australian university and pay fees directly to the Australian university.

It is intended that eligible education providers are specified by the Minister in an instrument in writing made under new clause 575.112, inserted by item [41] below.

Item [41] – Schedule 2, after clause 575.111

This item inserts new clause 575.112 after clause 575.111 in Part 575 of Schedule 2 to the Principal Regulations.

New clause 575.112 provides that, for Part 575, the Minister may, by instrument in writing, specify an education provider as an eligible education provider.

The purpose of the amendment is to provide the Minister with the power to specify education providers in an instrument in writing, for the purposes of the new streamlined visa arrangements.

It is intended that eligible education providers are education providers that are accepted by the Minister to participate in the new streamlined visa processing arrangements.

Item [42] – Schedule 2, after clause 575.211

This item inserts new clause 575.212 after clause 575.211 in Part 575 of Schedule 2 to the Principal Regulations.

New clause 575.212 provides that, if the applicant is an eligible university exchange student, the applicant must have a confirmation of enrolment in the course of study for which the applicant is an eligible university exchange student.

The purpose of the amendment is to ensure that an applicant who is an eligible university exchange student has a confirmation of enrolment for the course of study for which they are an eligible university exchange student.

A confirmation of enrolment indicates the course of study and the provider at which the course of study is provided. The applicant needs to have a confirmation of enrolment for the course of study for which they are an eligible university exchange student to satisfy new clause 575.212.

An applicant is not considered to be an eligible university exchange student if the applicant does not have a confirmation of enrolment for the course of study for which they are an eligible university exchange student. In these circumstances, it is intended that new clause 575.212 does not apply to the applicant.

Item [43] – Schedule 2, paragraph 575.223(1)(b)

This item inserts 'subclause (1A) or', after 'requirements of subclause' in paragraph 575.223(1)(b) in Part 575 of Schedule 2 to the Principal Regulations.

The amendment is consequential to the amendment made by item [44] below.

Item [44] – Schedule 2, subclause 575.223(2)

This item substitutes subclause 575.223(2) and inserts new subclause 575.223(1A) after subclause 575.223(1) in Part 575 of Schedule 2 to the Principal Regulations.

Subclause 575.223(2) is a time of decision criterion for the grant of a Subclass 575 (Non-Award Sector) visa, which broadly requires an applicant to give the Minister evidence in accordance with the requirements mentioned in Schedule 5A for the highest assessment level for the applicant and to satisfy the Minister that the applicant is a genuine applicant for entry and stay as a student and satisfy the Minister that the applicant has sufficient access to funds.

The requirements in Schedule 5A relate to the applicant's financial capacity, English language proficiency, and other relevant matters.

New subclause 575.223(1A) provides that if the applicant is an eligible university exchange student who has a confirmation of enrolment in the course of study for which the applicant is an eligible university exchange student:

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

Substituted subclause 575.223(2) provides that if the applicant is not an eligible university exchange student, or does not have a confirmation of enrolment in the course of study for which the applicant is an eligible university exchange student:

- the applicant gives the Minister evidence in accordance with the requirements mentioned in Schedule 5A for the highest assessment level for the applicant; and

- the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
    - the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
    - any other relevant matter; and
- the Minister is satisfied that, while the applicant holds the visa, the applicant will have access to the funds demonstrated or declared in accordance with the requirements in Schedule 5A relating to the applicant's financial capacity.

New subclause 575.223(1A) sets out new requirements relating to financial capacity, English language proficiency, and other relevant matters that apply to an applicant who is an eligible university exchange student and has a confirmation of enrolment for the course of study for which the applicant is an eligible university exchange student. New subclause 575.223(1A) also replicates the requirement in previous paragraph 575.223(2)(b).

Substituted subclause 575.223(2) retains the requirements in current subclause 575.223(2), and applies to an applicant who is not an eligible university exchange student, or does not have a confirmation of enrolment in the course of study for which the applicant is an eligible university exchange student.

The purpose of the amendment is to provide for a set of requirements that must be met by applicants who are eligible university exchange students, and a separate set of requirement that must be met by applicants who are not eligible university exchange students.

The effect of the amendment is that an applicant who is an eligible university exchange student is assessed against requirements in respect of financial capacity, English language proficiency and other relevant matters that are self-contained within Part 575 in Schedule 2 to the Principal Regulations.

The requirements in new subclause 575.223(1A) are broadly based on previous requirements for assessment level 1 (low risk) applicants, which has the least onerous evidentiary requirements. It is intended that the amendment reduce visa processing times for applicants who are eligible university exchange students.

A further effect of the amendment is that if an applicant is a university exchange degree student at time of application, but does not have a confirmation of enrolment for the course of study for which they are an eligible university exchange student at time of decision, the applicant is no longer considered to be an eligible university exchange student. In these circumstances, it is intended that new clause 575.223(1A) will not apply to the applicant. Such an applicant is expected to meet the requirements in substituted subclause 575.223(2).

Item [45] – Schedule 2, clauses 575.231

This item substitutes clause 575.231 in Part 575 of Schedule 2 to the Principal Regulations.

Previous clause 575.231 was a time of decision criterion that required an applicant to be enrolled in, or be the subject of a current offer of enrolment in, a course of study that is:

- a principal course; and
- the principal course is of a type that was specified for Subclass 575 visas by the Minister in an instrument:
    - made under regulation 1.40A; and

- in force at the time the application was made.

New clause 575.231 retains the requirements of previous clause 575.231 but only applies if the applicant is not an eligible university exchange student, or does not have a confirmation of enrolment in the course of study for which the applicant is an eligible university exchange student.

The effect of the amendment is that an applicant who is an eligible university exchange student, and has a confirmation of enrolment for the course of study for which they are an eligible university exchange student is exempt from the requirement in clause 575.231.

If an applicant is an eligible university exchange student at time of application, but does not have a confirmation of enrolment for the course of study for which they are an eligible university exchange student at time of decision, the applicant is expected to meet the requirement in clause 575.231.

Item [46] – Schedule 2, clause 575.234

This item substitutes clause 575.234 in Part 575 of Schedule 2 to the Principal Regulations.

Clause 575.234 is a time of decision criterion which limits the aggregate period of an ELICOS that a Subclass 575 (Non-Award Sector) applicant may undertake. This includes an ELICOS that an applicant is seeking to undertake, together with any ELICOS that has previously been undertaken as the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa (or any subsequent bridging visa).

Previous clause 575.234 provided that an applicant who is subject to assessment level 3 must not exceed more than 60 weeks of ELICOS and an applicant who is subject to assessment levels 4 or 5 must not exceed more than 40 weeks of ELICOS.

New subclause 575.234(1) provides that if the applicant is subject to assessment level 3, 4 or 5, the aggregate of the period, or periods, of ELICOS that the applicant is seeking to undertake, together with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 570, 572, 573, 574, 575 or 576 visa, or any subsequent bridging visa, does not exceed:

- for an applicant who is subject to assessment level 3 – 60 weeks; or
- for an applicant who is subject to assessment level 4 or 5 – 40 weeks.

New subclause 575.234(2) provides that if the applicant is subject to assessment level 3, 4 or 5, the aggregate of the period, or periods, of ELICOS that the applicant is seeking to undertake, together with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 571 visa, or any subsequent bridging visa, does not exceed:

- for an applicant who is subject to assessment level 3 – 60 weeks; or
- for an applicant who is subject to assessment level 4 or 5 – 50 weeks.

The purpose of this amendment is to establish the maximum period of aggregate ELICOS for various applicants for their relevant Subclass of student visa, depending on the assessment level of the applicant. It distinguishes applicants who have previously undertaken ELICOS as the holder of only a Subclass 571(Schools Sector) visa or any subsequent bridging visa.

The purpose of this item is to make amendments consequential to the amendments made by items [60] and [62] below in this Schedule to clauses 5A301 and 5A304 in Part 3 of Schedule 5A to the Principal Regulations.

The amendment in item [60] amends clause 5A301 by inserting a new requirement that an applicant who is subject to assessment level 5, who is not a secondary exchange student, and will undertake an ELICOS (or other English language tuition) before commencing his or her principal course, must provide evidence that that their ELICOS (or other English language tuition) will be no longer than 50 weeks.

The amendment in item [62] amends clause 5A304 to provide an increase to the maximum period of ELICOS that can be undertaken by an applicant who is subject to assessment level 4, is not a secondary exchange student, and will undertake an ELICOS (or other English language tuition) prior to the commencement of their principal course. This maximum period has been increased from 30 weeks to 50 weeks.

As it is intended that the new 50 week ELICOS requirement in Schedule 5A apply to Subclass 571 (Schools Sector) visa applicants subject to assessment level 4 or 5, consequential amendments to clause 575.234 are necessary to increase the maximum duration of aggregate periods of previous ELICOS an applicant may have undertaken as the holder of a Subclass 571 (Schools Sector) visa, or any subsequent bridging visa. The existing aggregate ELICOS requirements have been retained in relation to all other prescribed student visa Subclasses and to Subclass 571 (Schools Sector) visa applicants subject to assessment level 3.

Item [47] – Schedule 2, after subparagraph 575.322(b)(i)

This item inserts new subparagraph 575.322(b)(ia) after subparagraph 575.322(b)(i) in Part 575 of Schedule 2 to the Principal Regulations.

Clause 575.322 is a time of decision criterion for a secondary applicant and requires the applicant to be a member of the family unit of a primary person described in paragraph 575.322(a) or 575.322(b).

New subparagraph 575.322(b)(ia) provides in effect that an applicant is a member of the family of a person (the *primary person*) if the primary person satisfies the primary criteria in Subdivisions 575.21 and 575.22 and the primary person is an eligible university exchange student.

The purpose of the amendment is to allow secondary applicants to rely on a primary person who is an eligible university exchange student for the purposes of clause 575.322.

Item [48] – Schedule 2, clause 576.232

This item substitutes clause 576.232 in Part 576 of Schedule 2 to the Principal Regulations.

Clause 576.232 is a time of decision criterion which limits the aggregate period of an ELICOS that a Subclass 576 (AusAID or Defence Sector) visa applicant may undertake. This includes an ELICOS that an applicant is seeking to undertake, together with any ELICOS that has previously been undertaken as the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa (or any subsequent bridging visa).

Previous clause 576.232 provided that an applicant who is subject to assessment level 5 must not exceed 40 weeks of ELICOS.

New subclause 576.232(1) provides that if the applicant is subject to assessment level 5, the aggregate of the period, or periods, of ELICOS that the applicant is seeking to undertake, together

with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 570, 572, 573, 574, 575 or 576 visa, or any subsequent bridging visa, does not exceed 40 weeks.

New subclause 576.232(2) provides that if the applicant is subject to assessment level 5, the aggregate of the period, or periods, of ELICOS that the applicant is seeking to undertake, together with the period, or periods, of any previous ELICOS undertaken as the holder of a Subclass 571 visa, or any subsequent bridging visa, does not exceed 50 weeks.

The purpose of this amendment is to establish the maximum period of aggregate ELICOS for an applicant who is subject to assessment level 5. It distinguishes applicants who have previously undertaken ELICOS as the holder of only a Subclass 571 (Schools Sector) visa or any subsequent bridging visa.

Another purpose of this item is to make amendments consequential to the amendments made by item [60] below in this Schedule to clause 5A301 in Part 3 of Schedule 5A to the Principal Regulations.

The amendment in item [60] below amends clause 5A301 by inserting a new requirement that an applicant who is subject to assessment level 5, who is not a secondary exchange student, and will undertake an ELICOS (or other English language tuition) before commencing his or her principal course, must provide evidence that that their ELICOS (or other English language tuition) will be no longer than 50 weeks.

As it is intended that the new 50 week ELICOS requirement in Schedule 5A applies to Subclass 571 (School Sector) visa applicants who are subject to assessment level 5, these consequential amendments to clause 576.232 are necessary.

Item [49] – Schedule 2, clause 580.114

This item omits the words ‘subclause 580.226(5)’, and inserts the words ‘subclauses 580.226(5) and (6)’ in clause 580.114 in Part 580 of Schedule 2 to the Principal Regulations.

Previous clause 580.114 provided a definition for the term ‘funds from an acceptable source’ for the purposes of subclause 580.226(5) only.

The amendment made by this item is a consequential amendment to the amendment made by item [57] below, which inserts new subclause 580.226(6).

Item [50] – Schedule 2, subparagraph 580.211(2)(d)(iii)

This item subparagraph 580.211(2)(d)(iii) in Part 580 of Schedule 2 to the Principal Regulations.

The amendment made by this item is a consequential amendment to the amendment made by item [51] below.

Item [51] – Schedule 2, paragraph 580.211(2)(e)

This item omits paragraph 580.211(2)(e) in Part 580 of Schedule 2 to the Principal Regulations.

Clause 580.211 is a time of application criterion, which must be satisfied by a primary applicant who makes their application in Australia. Relevantly, a primary applicant would satisfy clause 580.211 if the applicant is the holder of a visa specified in subclause 580.211(2), or a person designated under regulation 2.07AO (paragraph 580.211(2)(e)).

The amendment omits paragraph 580.211(2)(e), which is a consequential amendment to the amendment made by item [4] above.

Item [52] – Schedule 2, paragraph 580.226(1)(b)

This item omits the words 'or (1B)' in paragraph 580.226(1)(b) in Part 580 of Schedule 2 to the Principal Regulations.

The amendment made by this item is a consequential amendment to the amendment made by item [56] below, which omits current subclause 580.226(1B).

Item [53] – Schedule 2, paragraph 580.226(1A)(a)

This item omits paragraph 580.226(1A)(a) in Part 580 of Schedule 2 to the Principal Regulations.

Paragraph 580.226(1A)(a) referred to an applicant who is not a person designated under regulation 2.07AO.

The amendment is a consequential amendment to the amendment made by item [4] above, which repeals a Subclass 580 (Student Guardian) visa as a visa for the purposes of regulation 2.07AO.

Item [54] – Schedule 2, paragraph 580.226(1A)(b)

This item omits '(4) or (5);', and inserts '(4), (5) or (6);' in paragraph 580.226(1A)(b) in Part 580 of Schedule 2 to the Principal Regulations.

The amendment made by this item is a consequential amendment to the amendment made by item [57] below, which inserts new subclause 580.226(6).

Item [55] – Schedule 2, paragraph 580.226(1A)(d)

This item omits '(4) or (5);', and inserts '(4), (5) or (6);' in paragraph 580.226(1A)(d) in Part 580 of Schedule 2 to the Principal Regulations.

The amendment made by this item is a consequential amendment to the amendment made by item [57] below, which inserts new subclause 580.226(6).

Item [56] – Schedule 2, subclause 580.226(1B)

This item omits subclause 580.226(1B) in Part 580 of Schedule 2 to the Principal Regulations.

Clause 580.226 is a time of decision criterion for the grant of a Subclass 580 (Student Guardian) visa. Paragraph 580.226(1B)(b) provides that an applicant meets the requirements of this subclause if they are a person designated under regulation 2.07AO and if they meet a series of additional specified requirements.

The amendment made by this item omits subclause 580.226(1B), which is a consequential amendment to the amendment made by item [4] above. The amendment in item [4] above repeals a Subclass 580 (Student Guardian) visa as a visa for the purposes of regulation 2.07AO.

Item [57] – Schedule 2, after subclause 580.226(5)

This item inserts new subclause 580.226(6) after subclause 580.226(5) in Part 580 of Schedule 2 to the Principal Regulations.

Clause 580.226 is a time of decision criterion for the grant of a Subclass 580 (Student Guardian) visa. Subclause 580.226(1A) requires an applicant to give the Minister evidence relating to the applicant's financial capacity in accordance with subclauses 580.226 (2), (3), (4) or (5) if the applicant is not a person designated under regulation 2.07AO. The evidence required from an applicant is based on the assessment level to which the applicant's nominating student was subject.

New subclause 580.226(6) provides that if the nominating student was, at the time his or her visa was granted, an eligible higher degree student within the meaning of Part 573 or 574 or an eligible university exchange student within the meaning of Part 575:

- the evidence for paragraph (1A)(b) is:
    - evidence that the applicant has funds from an acceptable source that are sufficient to meet living costs of the first 12 months; and
    - evidence that the applicant has funds from an acceptable source to meet travel costs; and
    - a declaration by the applicant stating that he or she has access to funds from an acceptable source that are sufficient to meet living costs for the remainder of the full period; and
- 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.

The purpose of this amendment is to allow student guardians of eligible higher degree students within the meaning of Part 573 and 574, or eligible university exchange students within the meaning of Part 575, to also benefit from the amendments made by this regulation to reduce the evidentiary requirements for these eligible Subclass 573, 574 and 575 visa applicants.

New subclause 580.226(6) replicates the requirements in subclause 580.226(5), which apply to an applicant if the nominating student was at the time his or her visa was granted, subject to assessment level 1 or 2.

The effect of this amendment is that an applicant who is nominated by a student who was at the time his or her visa was granted, an eligible higher degree student or an eligible university exchange student, is subject to the same requirements that currently apply to an applicant who is nominated by a student who was at the time his or her visa was granted, subject to assessment level 1 or 2.

Item [58] – Schedule 2, subparagraph 580.311(2)(d)(iii)

This item substitutes subparagraph 580.311(2)(d)(iii) in Part 580 of Schedule 2 to the Principal Regulations.

The amendment made by this item is a consequential amendment to the amendment made by item [59] below.

Item [59] – Schedule 2, paragraph 580.311(2)(e)

This item omits paragraph 580.311(2)(e) in Part 580 of Schedule 2 to the Principal Regulations.

Clause 580.311 is a time of application criterion, which must be satisfied by a secondary applicant who makes their application in Australia. Relevantly, a secondary applicant would satisfy clause 580.311 if the applicant is the holder of a visa specified in subclause 580.311(2), or a person designated under regulation 2.07AO (paragraph 580.311(2)(e)).

The amendment omits previous paragraph 580.311(2)(e), which is consequential to the amendment made by item [4] above, which repeals a Subclass 580 (Student Guardian) visa as a visa for the purposes of regulation 2.07AO.

Item [60] – Schedule 5A, after subclause 5A301(1)

This item inserts new subclause 5A301(1A) after subclause 5A301(1) in Part 3 of Schedule 5A to the Principal Regulations.

Previously, an applicant seeking to satisfy the criteria for the grant of a Subclass 571 (Schools Sector) visa must give the Minister evidence in accordance with the requirements mentioned in Schedule 5A to the Principal Regulations. Subclause 5A301(1) sets out the English language proficiency requirements for those applicants subject to assessment level 5. Previously, clause 5A301 did not specify any maximum period of ELICOS study for Subclass 571 (Schools Sector) applicants subject to assessment level 5.

New subclause 5A301(1A) provides that an applicant for a Subclass 571 (Schools Sector) visa, who is subject to assessment level 5:

- who is not a secondary exchange student; and
- will undertake an ELICOS (or other English language tuition) before commencing his or her principal course

must give evidence that the ELICOS (or other English language tuition) will have a duration of no more than 50 weeks.

This amendment creates a new requirement that those applicants who are not secondary exchange students and who will undertake an ELICOS (or other English language tuition) before commencing his or her principal course must provide evidence that their ELICOS will be no longer than 50 weeks.

The purpose of this new provision is to create consistent requirements for Subclass 571 (Schools Sector) visa applicants who are subject to assessment levels 3, 4 and 5.

Item [61] – Schedule 5A, subclause 5A304(1)

This item substitutes subclause 5A304(1) in Part 3 of Schedule 5A to the Principal Regulations.

Previously, an applicant seeking to satisfy the criteria for the grant of a Subclass 571 (Schools Sector) visa must give the Minister evidence in accordance with the requirements mentioned in Schedule 5A to the Principal Regulations. Subclause 5A304(1) sets out the English language proficiency requirements for those applicants subject to assessment level 4.

Subclause 5A304(1) provided that an applicant who is a secondary exchange student, is in Australia at the time of application (or is outside Australia and is less then 16 years old) or who has undertaken at least five 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; the United States of America, must give evidence that he or she has a level of English language proficiency that satisfies his or her education provider.

New subclause 5A304(1) provides that an applicant for a Subclass 571 (Schools Sector) visa, who is subject to assessment level 4 must give evidence that he or she has a level of English Language proficiency that satisfies his or her education provider.

The purpose of this amendment is to ensure that the English language proficiency requirements for Subclass 571 (Schools Sector) visa applicants who are subject to assessment level 4 is the same as those subject to assessment levels 1, 2 and 3. This amendment provides consistency for English language requirements across assessment levels 1-4 in the Schools Sector.

Item [62] – Schedule 5A, subclause 5A304(2)

This item omits '30 weeks.' and inserts '50 weeks.' in subclause 5A304(2) of Part 3 of Schedule 5A to the Principal Regulations.

Previously, an applicant seeking to satisfy the criteria for the grant of a Subclass 571 (Schools Sector) visa must give the Minister evidence in accordance with the requirements mentioned in Schedule 5A to the Principal Regulations.

Subclause 5A304(1) sets out the English language proficiency requirements for those applicants subject to assessment level 4. Previously, subclause 5A304(2) provided that an applicant for a Subclass 571 (Schools Sector) visa who is subject to assessment level 4, who is not a secondary exchange student and who will undertake an ELICOS (or other English Language) tuition before commencing his or her principal course, must give evidence that the ELICOS (or other English tuition) will have a duration of no more than 30 weeks.

The purpose of this new provision is to increase the maximum duration that a relevant student may study an ELICOS course from 30 weeks to 50 weeks. This amendment, in conjunction with the amendments made by item [59] above and item [63] below in this Schedule, also creates consistent English Language proficiency requirements for Subclass 571 (Schools Sector) visa applicants who are subject to assessment Levels 3, 4 and 5 who are not secondary exchange students and who will undertake an ELICOS (or other English language tuition) before commencing his or her principal course.

Item [63] – Schedule 5A, subclauses 5A304(3) to (10)

This item omits subclauses 5A304(3) to (10) in Part 3 of Schedule 5A to the Principal Regulations.

An applicant seeking to satisfy the criteria for the grant of a Subclass 571 (Schools Sector) visa must give the Minister evidence in accordance with the requirements mentioned in Schedule 5A to the Principal Regulations.

Previously, subclauses 5A304 (3) to (10) set out English language proficiency requirements for those applicants subject to assessment level 4.

These amendments are consequential to the amendments made by item [61] above in this Schedule.

Item [64] – Schedule 5A, subclause 5A307(2)

This item omits '40 weeks.' and inserts '50 weeks.' in subclause 5A307(2) in Part 3 of Schedule 5A to the Principal Regulations.

An applicant seeking to satisfy the criteria for the grant of a Subclass 571 (Schools Sector) visa must give the Minister evidence in accordance with the requirements mentioned in Schedule 5A to the Principal Regulations.

Clause 5A307(2) sets out the English language proficiency requirements for those applicants subject to assessment level 3.

Subclause 5A307(2) provided that an applicant for a Subclass 571 (Schools Sector) visa who is subject to assessment level 3, who is not a secondary exchange student and who will undertake an ELICOS (or other English Language) tuition before commencing his or her principal course, must give evidence that the ELICOS (or other English tuition) will have a duration of no more than 40 weeks.

The purpose of this new provision is to increase the maximum duration that a relevant student may study an ELICOS course from 40 weeks to 50 weeks. This amendment, in conjunction with the amendments made by items [59] and [61] above in this Schedule, also creates consistent English Language proficiency requirements for Subclass 571 (Schools Sector) visa applicants who are subject to assessment Levels 3, 4 and 5 who are not secondary exchange students and who will undertake an ELICOS (or other English language tuition) before commencing his or her principal course.

Item [65] – Schedule 5B, paragraph 5B201(2)(d)

This item omits '36 months.' and inserts '24 months.' in paragraph 5B201(2)(d) in Part 1 of Schedule 5B to the Principal Regulations.

Paragraph 5B201(2)(a) provides that the applicant must give evidence that the applicant has funds from an acceptable source that are sufficient to meet course fees, living costs, and school costs for the first 24 months.

Paragraph 5B201(2)(d) required that the applicant must give a declaration stating that the applicant 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 5B201(2)(d) provides that the applicant must give a declaration stating that the applicant 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.

The purpose of this amendment is to make a consequential amendment that was not provided in the *Migration Amendment Regulations 2011 (No. 6)* SLI 199, 2011. The effect of this amendment is to make paragraph 5B201(2)(d) consistent with the requirement in current paragraph 5B201(2)(a).

Item [66] – Schedule 8, clause 8201

This item substitutes clause 8201 in Schedule 8 to the Principal Regulations.

Previous clause 8201 provided that for a visa other than:

- a Subclass 675 (Medical Treatment (Short Stay)) visa in relation to which the holder:
    - is under 18; and
    - has experienced a change in circumstances while in Australia; and
    - has the written permission of the Minister to engage for more than 3 months in any studies or training because of compelling and compassionate circumstances; or
- a Subclass 685 (Medical Treatment (Long Stay)) visa in relation to which the holder:
    - is under 18; and
    - has experienced a change in circumstances while in Australia; and
    - has the written permission of the Minister to engage for more than 3 months in any studies or training because of compelling and compassionate circumstances;

while in Australia the holder must not engage, for more than 3 months, in any studies or training.

New subclause 8201(1) provides that while in Australia, the holder must not engage, for more than 3 months, in any studies or training.

New subclause 8201(2) provides that however, subclause 8201(1) does not apply to a visa mentioned in the table.

Item 1 in the table provides for a Subclass 580 (Student Guardian) visa in relation to which the holder is undertaking an ELICOS of less than 20 hours per week.

Regulation 1.03 provides that the term 'ELICOS' means an English Language Intensive Course for Overseas Students that is a registered course.

Item 2 in the table provides for a Subclass 675 (Medical Treatment (Short Stay)) visa in relation to which the holder:

- is under 18; and
- has experienced a change in circumstances while in Australia; and
- has the written permission of the Minister to engage for more than 3 months in any studies or training because of compelling and compassionate circumstances.

Item 3 in the table provides for Subclass 685 (Medical Treatment (Long Stay)) visa in relation to which the holder:

- is under 18; and
- has experienced a change in circumstances while in Australia; and
- has the written permission of the Minister to engage for more than 3 months in any studies or training because of compelling and compassionate circumstances.

The purpose of the amendment is to allow a Subclass 580 (Student Guardian) visa holder to undertake an ELICOS of less than 20 hours per week while in Australia as the holder of that visa. The restriction on engaging in any studies or training for more than 3 months continues to apply.

Schedule 5 – Further amendments of *Migration Regulations 1994* relating to student visas

Item [1] – Schedule 8, subclause 8104(1)

This item amends subclause 8104(1) of Schedule 8 to the Principal Regulations by omitting '20 hours a week', and inserting '40 hours a fortnight'.

Clause 8104 in Schedule 8 to the Principal Regulations (condition 8104) is a mandatory condition that applies to student visa holders who were granted their visas on the basis of having satisfied the secondary criteria (secondary visa holders).

Condition 8104 limits the visa holder's ability to work in Australia while the visa holder is in Australia. The secondary visa holder cannot commence work until the primary visa holder has commenced a course of study. However, secondary visa holders are exempt from the work limitation and are able to work unlimited hours once the primary visa holder has commenced their masters or doctorate degree.

Previous subclause 8104(1) provided that, subject to subclauses (2) to (6), the holder must not engage in work in Australia for more than 20 hours a week while the holder is in Australia.

New subclause 8104(1) provides a new mandatory condition that, subject to subclauses (2) to (6), the holder must not engage in work in Australia for more than 40 hours a fortnight while the holder is in Australia.

The purpose of the amendment is to provide greater flexibility by allowing work hours to be calculated on a fortnightly basis of up to 40 hours per fortnight, instead of up to 20 hours a week, subject to subclauses (2) to (6). The amendment provides a secondary visa holder with more flexibility in managing their part-time or casual work without creating incentives for non-genuine secondary visa holders to come to Australia to access work rights.

The amendments made by item [3] below provides for new defined term 'fortnight' for the purposes of clause 8104.

Item [2] – Schedule 8, subclause 8104(3)

This item amends subclause 8104(3) of Schedule 8 to the Principal Regulations by omitting '20 hours a week', and inserting '40 hours a fortnight'.

Clause 8104 in Schedule 8 to the Principal Regulations (condition 8104) is a mandatory condition that applies to student visa holders who were granted their visas on the basis of having satisfied the secondary criteria (secondary visa holders).

Condition 8104 limits the visa holder's ability to work in Australia while the visa holder is in Australia. The secondary visa holder cannot commence work until the primary visa holder has commenced a course of study. However, secondary visa holders are exempt from the work limitation and are able to work unlimited hours once the primary visa holder has commenced their masters or doctorate degree.

Previous subclause 8104(3) provided that, if the holder is able to engage in work in accordance with subclause (2), the holder must not engage in work for more than 20 hours a week while the holder is in Australia unless subclause (4) or (5) applies.

New subclause 8104(1) provides a new mandatory condition that, if the holder is able to engage in work in accordance with subclause (2), the holder must not engage in work for more than 40 hours a fortnight while the holder is in Australia unless subclause (4) or (5) applies.

The purpose of the amendment is to provide greater flexibility by allowing work hours to be calculated on a fortnightly basis of up to 40 hours per fortnight, instead of up to 20 hours a week, once the primary visa holder has commenced a course of study in accordance with subclause (2), unless subclause (4) or (5) applies. The amendment provides a secondary visa holder with more flexibility in managing their part-time or casual work without creating incentives for non-genuine secondary visa holders to come to Australia to access work rights.

The amendments made by item [3] below provide for a new defined term 'fortnight' for the purposes of clause 8104.

Item [3] – Schedule 8, subclause 8104(6)

This item substitutes subclause 8104(6) of Schedule 8 to the Principal Regulations.

Previous subclause 8104(6) defined the term 'week' as the period of 7 days commencing on a Monday.

New subclause 8104(6) defines the term 'fortnight' as the period of 14 days commencing on a Monday.

The purpose of the amendment is to define the term 'fortnight' for the purposes of clause 8104.

It is intended that the term 'fortnight' refers to the period of 14 days commencing on a Monday and ending on the second following Sunday. This period is inclusive of the Monday on which the 14 day period commences.

Item [4] – Schedule 8, subclause 8105(1)

This item amends subclause 8105(1) of Schedule 8 to the Principal Regulations by omitting '20 hours a week during any week', and inserting '40 hours a fortnight during any fortnight'.

Clause 8105 in Schedule 8 to the Principal Regulations (condition 8105) is a mandatory condition that applies to student visa holders who were granted their visas on the basis of having satisfied the primary criteria (primary visa holder).

Condition 8105 limits the holder's ability to work in Australia when the visa holder's course of study or training is in session. This limitation excludes work that is undertaken as a course requirement. The visa holder must not engage in any work in Australia before the visa holder's course of study or training commences. When the holder's course of study or training is not in session, the holder is not restricted in the number of hours they are able to work.

Previous subclause 8105(1) provided that, subject to subclause (2), the holder must not engage in work in Australia for more than 20 hours a week during any week when the holder's course of study or training is in session.

New subclause 8105(1) provides a new mandatory condition that, subject to subclause (2), the holder must not engage in work in Australia for more than 40 hours a fortnight during any fortnight when the holder's course of study or training is in session.

The purpose of the amendment is to provide greater flexibility by allowing work hours to be calculated on a fortnightly basis of up to 40 hours per fortnight during any fortnight when the visa holder's course of study or training is in session, instead of up to 20 hours a week. The amendment provides a primary visa holder with more flexibility in managing their part-time or casual work without creating incentives for non-genuine students to come to Australia to access work rights.

The amendments made by item [6] below provides for new defined term 'fortnight' for the purposes of clause 8105.

Item [5] – Schedule 8, subclause 8105(2)

This item substitutes subclause 8105(2) of Schedule 8 to the Principal Regulations.

Clause 574.611 in Part 574 of Schedule 2 to the Principal Regulations relevantly requires condition 8105 to be attached to a Subclass 574 visa if the applicant satisfies the primary criteria for that visa.

Previous subclause 8105(1) provided that, subject to subclause (2), the holder must not engage in work in Australia for more than 20 hours a week during any week when the holder's course of study or training is in session. Subclause 8105(1A) provides that the holder must not engage in any work in Australia before the holder's course of study commences.

Previous subclause 8105(2) provided that subclause (1) does not apply to work that was specified as a requirement of the course when the course particulars were entered in the Commonwealth Register of Institutions and Courses for Overseas Students.

New subclause 8105(2) provides that subclause (1) would not apply:

- to work that was specified as a requirement of the course when the course particulars were entered in the Commonwealth Register of Institutions and Courses for Overseas Students; and
- in relation to a Subclass 574 (Postgraduate Research Sector) visa if the holder has commenced the masters degree by research or doctoral degree.

The purpose of the amendment is to exempt the holder of a Subclass 574 (Postgraduate Research Sector) visa from the work restrictions contained in subclause 8105(1) once they have commenced a masters degree by research or doctoral degree. The amendment provides unlimited work rights to the holder of a Subclass 574 (Postgraduate Research Sector) visa if the holder has commenced the masters degree by research or doctoral degree.

Item [6] – Schedule 8, subclause 8105(3)

This item substitutes subclause 8105(3) of Schedule 8 to the Principal Regulations.

Previous subclause 8105(3) defined the term 'week' as the period of 7 days commencing on a Monday.

New subclause 8105(3) defines the term 'fortnight' as the period of 14 days commencing on a Monday.

The purpose of the amendment is to define the term ‘fortnight’ for the purposes of clause 8105.

It is intended that the term ‘fortnight’ refers to the period of 14 days commencing on a Monday and ending on the second following Sunday. This period is inclusive of the Monday on which the 14 day period commences.