



Migration Legislation Amendment Regulation 2012 (No. 1)¹

Select Legislative Instrument 2012 No. 35

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Immigration (Guardianship of Children) Act 1946* and the *Migration Act 1958*.

Dated 21 March 2012

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

CHRIS BOWEN
Minister for Immigration and Citizenship

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1 Name of regulation

This regulation is the *Migration Legislation Amendment Regulation 2012 (No. 1)*.

2 Commencement

This regulation commences as follows:

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

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

Schedule 1 amends the *Immigration (Guardianship of Children) Regulations 2001*.

Note There are no transitional arrangements for the amendments made by Schedule 1.

4 Amendment of *Migration Regulations 1994* — Schedule 2

- (1) Schedule 2 amends the *Migration Regulations 1994*.
- (2) The amendments made by Schedule 2 apply in relation to an application for a visa:
 - (a) made on or after the commencement of items 1 to 17 of Schedule 1 to the *Migration Amendment (Complementary Protection) Act 2011*; or

- (b) 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*.

**5 Amendment of *Migration Regulations 1994* —
Schedule 3**

Schedule 3 amends the *Migration Regulations 1994*.

Note There are no transitional arrangements for the amendments made by Schedule 3.

**6 Amendment of *Migration Regulations 1994* —
Schedule 4**

- (1) Schedule 4 amends the *Migration Regulations 1994*.
- (2) The amendments made by Schedule 4 apply in relation to an application for a visa made on or after 24 March 2012.

**7 Amendment of *Migration Regulations 1994* —
Schedule 5**

- (1) Schedule 5 amends the *Migration Regulations 1994*.
- (2) The amendments made by Schedule 5 apply in relation to a visa that is in effect on 26 March 2012.
- (3) The amendments made by Schedule 5 also apply in relation to an application for a visa:
 - (a) made on or after 26 March 2012; or
 - (b) made, but not finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*) before 26 March 2012.
- (4) 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 *Migration Regulations 1994*.

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

(section 3)

[1] **Regulation 3, definition of *authority***

substitute

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 Act.

[2] **Regulation 4**

omit

[3] **Regulation 7**

substitute

7 Effect of State laws

- (1) The laws of a State under which children may become State wards do not apply in relation to a non-citizen child.
- (2) However, if the Minister has delegated to an officer or authority of a State the Minister's powers and functions under section 5 of the 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:
 - (a) in the custody and care of any person or authority; or
 - (b) a State ward.

[4] Regulation 8

substitute

8 Acknowledgment by custodians

If, under the Act, the Minister places a non-citizen child in the custody of a custodian, the custodian must give the Minister an acknowledgment in writing of acceptance of responsibility for the welfare and care of the child.

[5] Subregulation 9 (1), penalty

omit

[6] Subregulation 10 (1)

omit

authority of the State in which the custodian lives,

insert

Minister,

[7] Subregulation 10 (1), penalty

omit

[8] Subregulation 10 (2)

omit

authority of the State in which he or she lives, or a person authorised by that authority,

insert

Minister, or a person authorised by the Minister,

[9] Subregulation 10 (2), penalty

omit

[10] Regulation 11

omit

authority of a State must keep a Register of Custodians for the State

insert

Minister must keep a Register of Custodians

[11] Subregulation 12 (1)

omit

authority of the State in which he or she is registered,

insert

Minister,

[12] Subregulation 12 (1), penalty

omit

[13] Subregulation 12 (2), penalty

omit

[14] Regulations 13 to 16

substitute

13 Consent to taking child out of State

The custodian must not, without the consent of the Minister, take or send the child out of the State in which the non-citizen child resides, or let the child go or be taken out of that State.

14 Notice to be given of certain events

The custodian must immediately give notice to the Minister, and do anything else in relation to a non-citizen child that the Minister requires, if the child:

- (a) absconds or is taken from the custody of the child's custodian; or

- (b) becomes seriously ill, or meets with a serious accident; or
- (c) dies.

Penalty: 1 penalty unit.

15 Power to apprehend child absent without consent

- (1) This regulation applies if a non-citizen child:
 - (a) has absconded; or
 - (b) has been unlawfully taken from the custody of the child's custodian; or
 - (c) without the consent of the Minister, has been taken from, or has left, the State in which the child resides.
- (2) If the child is found in Australia, a member of the police force or police service of a State, or a person authorised by the Minister, may apprehend the child, hold the child in custody and hand the child over to a person or authority entitled to custody of the child.

16 Notice if child suspected to be leaving the Commonwealth without consent

If the master, owner or agent of an aircraft or ship has reason to suspect that a passenger or intending passenger for a destination outside the Commonwealth is a non-citizen child and is leaving the State in which the child resides, without the consent of the Minister, the master, owner or agent must, before the departure of the aircraft or ship, give notice in writing to the Minister, stating the name of the passenger or intending passenger and the reason for the suspicion.

[15] Regulations 19 and 20

omit

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

(section 4)

[1] **After regulation 2.03A**

insert

2.03B Protection visas — international instruments

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

- 1 Rome Statute of the International Criminal Court, done at Rome on 17 July 1998.
- 2 Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, signed at London on 8 August 1945.
- 3 Charter of the International Military Tribunal, signed at London on 8 August 1945.
- 4 Convention on the Prevention and Punishment of the Crime of Genocide, approved in New York on 9 December 1948.
- 5 The First Convention within the meaning of the *Geneva Conventions Act 1957*.
- 6 The Second Convention within the meaning of the *Geneva Conventions Act 1957*.
- 7 The Third Convention within the meaning of the *Geneva Conventions Act 1957*.
- 8 The Fourth Convention within the meaning of the *Geneva Conventions Act 1957*.
- 9 Protocol I within the meaning of the *Geneva Conventions Act 1957*.
- 10 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.
- 11 Statute of the International Criminal Tribunal for the former Yugoslavia, adopted by the United Nations Security Council on 25 May 1993.

12 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.

[2] Division 4.1, heading

substitute

**Division 4.1 Review of decisions other than
 decisions relating to protection
 visas**

[3] Subregulation 4.31B (3)

substitute

- (3) 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:
- (a) under the Refugees Convention as amended by the Refugees Protocol; or
 - (b) 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.
- (3A) No further fee is payable under this regulation if:
- (a) a fee has been paid under this regulation; and
 - (b) 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.

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

insert

(aa) both:

- (i) on review by a court, the decision is remitted for reconsideration by the Tribunal; and
- (ii) 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; or

[5] After subregulation 4.33 (3)

insert

- (4) For paragraph 415 (2) (c) of the Act 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):
 - (a) 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
 - (b) it is not a permissible direction that the applicant satisfies a matter that relates to establishing whether there are serious reasons for considering that:
 - (i) 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
 - (ii) the applicant committed a serious non-political crime before entering Australia; or

-
- (iii) the applicant has been guilty of acts contrary to the purposes and principles of the United Nations; and
 - (c) it is not a permissible direction that the applicant satisfies a matter that relates to establishing whether there are reasonable grounds that:
 - (i) the applicant is a danger to Australia's security; or
 - (ii) 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.

[6] Schedule 2, clause 866.211

substitute

- 866.211
- (1) One of subclauses (2) to (5) is satisfied.
 - (2) The applicant:
 - (a) claims to be a person to whom Australia has protection obligations under the Refugees Convention; and
 - (b) makes specific claims under the Refugees Convention.
 - (3) The applicant claims to be a member of the same family unit as a person who is:
 - (a) mentioned in subclause (2); and
 - (b) an applicant for a Protection (Class XA) visa.
 - (4) 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.
 - (5) The applicant claims to be a member of the same family unit as a person who is:
 - (a) mentioned in subclause (4); and
 - (b) an applicant for a Protection (Class XA) visa.

[7] Schedule 2, clause 866.221

substitute

866.221 (1) One of subclauses (2) to (5) is satisfied.

(2) The Minister is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

Note See paragraph 36 (2) (a) of the Act.

(3) The Minister is satisfied that:

- (a) the applicant is a person who is a member of the same family unit as an applicant who is mentioned in subclause (2); and
- (b) the applicant mentioned in subclause (2) has been granted a Protection (Class XA) visa.

Note See paragraph 36 (2) (b) of the Act.

(4) The Minister is satisfied that the applicant:

- (a) is not a person to whom Australia has protection obligations under the Refugees Convention; and
- (b) 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.

Note See paragraph 36 (2) (aa) of the Act.

(5) The Minister is satisfied that:

- (a) the applicant is a person who is a member of the same family unit as an applicant mentioned in subclause (4); and
- (b) the applicant mentioned in subclause (4) has been granted a Protection (Class XA) visa.

Note See paragraph 36 (2) (c) of the Act.

[8] Schedule 2, clause 866.230*substitute*

- 866.230 (1) If the applicant is a child mentioned in paragraph 2.08 (1) (b), subclause (2) or (3) is satisfied.
- (2) Both of the following apply:
- (a) the applicant is a member of the same family unit as an applicant mentioned in subclause 866.221 (2);
- (b) the applicant mentioned in subclause 866.221 (2) has been granted a Subclass 866 (Protection) visa.
- (3) Both of the following apply:
- (a) the applicant is a member of the same family unit as an applicant mentioned in subclause 866.221 (4);
- (b) the applicant mentioned in subclause 866.221 (4) has been granted a Subclass 866 (Protection) visa.

**Schedule 3 Amendments of *Migration Regulations 1994* relating to
Migration Review Tribunal and
Refugee Review Tribunal**
(section 5)

[1] Subregulation 4.22 (1)

omit

9 is prescribed.

insert

15 is prescribed.

[2] Subregulation 4.22 (2)

omit

110 is prescribed.

insert

163 is prescribed.

[3] Regulation 4.29

omit

120.

insert

179.

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

(section 6)

[1] Regulation 1.40A

substitute

1.40A Courses to be specified by Minister

- (1) The Minister must specify, by instrument in writing, the types of courses for each subclass of student visa.
- (2) The Minister is not required to specify a course if:
 - (a) the subclass of student visa is Subclass 576 (AusAID or Defence Sector); or
 - (b) the course would be undertaken by:
 - (i) an applicant for a Subclass 573 (Higher Education Sector) visa who would be an eligible higher degree student within the meaning of Part 573 of Schedule 2; or
 - (ii) an applicant for a Subclass 574 (Postgraduate Research Sector) visa who would be an eligible higher degree student within the meaning of Part 574 of Schedule 2; or
 - (iii) an applicant for a Subclass 575 (Non-Award Sector) visa who would be an eligible university exchange student within the meaning of Part 575 of Schedule 2.

[2] Subregulation 1.41 (1)

substitute

- (1) 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.

- (1A) An assessment level does not apply in relation to an eligible passport held by:
- (a) 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
 - (b) 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
 - (c) 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.

[3] Subregulation 1.42 (7)

substitute

- (7) Subregulations (1) to (6) do not apply to:
- (a) 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
 - (b) 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
 - (c) 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.

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

omit

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

omit

[6] Schedule 2, clause 570.229*substitute*

- 570.229 (1) 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:
- (a) for an applicant who is subject to assessment level 3 — 60 weeks; or
 - (b) for an applicant who is subject to assessment level 4 or 5 — 40 weeks.
- (2) 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:
- (a) for an applicant who is subject to assessment level 3 — 60 weeks; or
 - (b) for an applicant who is subject to assessment level 4 or 5 — 50 weeks.

[7] Schedule 2, subclause 571.223 (2)*substitute*

- (2) An applicant meets the requirements of this subclause if:
- (a) the applicant gives the Minister evidence in accordance with the requirements mentioned in Schedule 5A for the highest assessment level for the applicant; and
 - (b) the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
 - (i) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
 - (ii) any other relevant matter; and

-
- (c) 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.

[8] Schedule 2, clause 571.230

omit

, unless the applicant is a person designated under regulation 2.07AO

[9] Schedule 2, clause 571.235

substitute

- 571.235 (1) 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:
- (a) for an applicant who is subject to assessment level 3 — 60 weeks; or
 - (b) for an applicant who is subject to assessment level 4 or 5 — 40 weeks.
- (2) 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:
- (a) for an applicant who is subject to assessment level 3 — 60 weeks; or
 - (b) for an applicant who is subject to assessment level 4 or 5 — 50 weeks.

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

substitute

- (ii) Subclass 427 (Domestic Worker (Temporary) — Executive).

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

omit

[12] Schedule 2, subclause 572.223 (2)

substitute

- (2) An applicant meets the requirements of this subclause if:
- (a) the applicant gives the Minister evidence in accordance with the requirements mentioned in Schedule 5A for the highest assessment level for the applicant; and
 - (b) the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
 - (i) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
 - (ii) any other relevant matter; and
 - (c) 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.

[13] Schedule 2, clause 572.230

omit

, unless the applicant is a person designated under regulation 2.07AO

[14] Schedule 2, clause 572.234

substitute

- 572.234 (1) 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:
- (a) for an applicant who is subject to assessment level 3 — 60 weeks; or
 - (b) for an applicant who is subject to assessment level 4 or 5 — 40 weeks.
- (2) 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:
- (a) for an applicant who is subject to assessment level 3 — 60 weeks; or
 - (b) for an applicant who is subject to assessment level 4 or 5 — 50 weeks.

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

substitute

- (iii) Subclass 497 (Graduate — Skilled).

[16] Schedule 2, paragraph 572.312 (2) (e)

omit

[17] **Schedule 2, Division 573.1, heading**

substitute

573.1 Interpretation and preliminary

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

insert

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

eligible education provider means an education provider specified as an eligible education provider in an instrument made under clause 573.112.

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

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

[19] Schedule 2, after clause 573.111

insert

573.112 For this Part, the Minister may, by instrument in writing:

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

[20] Schedule 2, after clause 573.211

insert

573.212 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.

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

after

requirements of subclause

insert

(1A) or

[22] Schedule 2, subclause 573.223 (2)

substitute

(1A) 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:

- (a) the applicant gives the Minister evidence that the applicant has:
 - (i) a level of English language proficiency that satisfies the applicant's eligible education provider; and

-
- (ii) educational qualifications required by the eligible education provider; and
 - (b) the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
 - (i) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
 - (ii) any other relevant matter; and
 - (c) the Minister is satisfied that, while the applicant holds the visa, the applicant will have sufficient funds to meet:
 - (i) the costs and expenses required to support the applicant during the proposed stay in Australia; and
 - (ii) the costs and expenses required to support each member (if any) of the applicant's family unit.
- (2) 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:
- (a) the applicant gives the Minister evidence in accordance with the requirements mentioned in Schedule 5A for the highest assessment level for the applicant; and
 - (b) the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
 - (i) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
 - (ii) any other relevant matter; and
 - (c) 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.

[23] Schedule 2, clauses 573.230 and 573.231

substitute

- 573.230 The applicant holds a passport of a kind specified in an instrument made under regulation 1.40.
- 573.231 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:
- (a) the applicant is enrolled in, or is the subject of a current offer of enrolment in, a course of study that is a principal course; and
 - (b) the principal course is of a type that was specified for Subclass 573 visas by the Minister in an instrument:
 - (i) made under regulation 1.40A; and
 - (ii) in force at the time the application was made.

[24] Schedule 2, clause 573.234

substitute

- 573.234 (1) 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:
- (a) for an applicant who is subject to assessment level 3 — 60 weeks; or
 - (b) for an applicant who is subject to assessment level 4 or 5 — 40 weeks.
- (2) 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:
- (a) for an applicant who is subject to assessment level 3 — 60 weeks; or

-
- (b) for an applicant who is subject to assessment level 4 or 5 — 50 weeks.

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

omit

(Graduate Skilled); or

insert

(Graduate — Skilled).

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

omit

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

insert

- (ia) the primary person is an eligible higher degree student;

[28] Schedule 2, Division 574.1, heading

substitute

574.1 Interpretation and preliminary

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

insert

educational business partner, in relation to an eligible education provider, means an education provider specified as an educational business partner in an instrument made under clause 574.112.

eligible education provider means an education provider specified as an eligible education provider in an instrument made under clause 574.112.

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

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

[30] Schedule 2, after clause 574.111

insert

574.112 For this Part, the Minister may, by instrument in writing:

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

[31] Schedule 2, after clause 574.211

insert

574.212 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.

[32] Schedule 2, paragraph 574.223 (1) (b)*after*

requirements of

insert

subclause (1A) or

[33] Schedule 2, subclause 574.223 (2)*substitute*

(1A) 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:

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

-
- (2) 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:
- (a) the applicant gives the Minister evidence in accordance with the requirements mentioned in Schedule 5A for the highest assessment level for the applicant; and
 - (b) the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
 - (i) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
 - (ii) any other relevant matter; and
 - (c) 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.

[34] Schedule 2, clauses 574.230 and 574.231

substitute

- 574.230 The applicant holds a passport of a kind specified in an instrument made under regulation 1.40.
- 574.231 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:
- (a) the applicant is enrolled in, or is the subject of a current offer of enrolment in, a course of study that is a principal course; and
 - (b) the principal course is of a type that was specified for Subclass 574 visas by the Minister in an instrument:
 - (i) made under regulation 1.40A; and
 - (ii) in force at the time the application was made.

[35] Schedule 2, clause 574.234*substitute*

- 574.234 (1) 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:
- (a) for an applicant who is subject to assessment level 3 — 60 weeks; or
 - (b) for an applicant who is subject to assessment level 4 or 5 — 40 weeks.
- (2) 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:
- (a) for an applicant who is subject to assessment level 3 — 60 weeks; or
 - (b) for an applicant who is subject to assessment level 4 or 5 — 50 weeks.

[36] Schedule 2, subparagraph 574.312 (2) (d) (iii)*omit*

(Graduate Skilled); or

insert

(Graduate — Skilled).

[37] Schedule 2, paragraph 574.312 (2) (e)*omit*

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

insert

- (ia) the primary person is an eligible higher degree student;

[39] **Schedule 2, Division 575.1, heading**

substitute

575.1 Interpretation and preliminary

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

insert

eligible education provider means an education provider specified as an eligible education provider in an instrument made under clause 575.112.

eligible university exchange student means an applicant for a Subclass 575 visa in relation to whom the following apply:

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

[41] Schedule 2, after clause 575.111*insert*

- 575.112 For this Part, the Minister may, by instrument in writing, specify an education provider as an eligible education provider.

[42] Schedule 2, after clause 575.211*insert*

- 575.212 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.

[43] Schedule 2, paragraph 575.223 (1) (b)*after*

requirements of subclause

insert

(1A) or

[44] Schedule 2, subclause 575.223 (2)*substitute*

(1A) 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:

- (a) the applicant gives the Minister evidence that the applicant has:
- (i) a level of English language proficiency that satisfies the applicant's eligible education provider; and
 - (ii) educational qualifications required by the eligible education provider; and

-
- (b) the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
 - (i) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
 - (ii) any other relevant matter; and
 - (c) the Minister is satisfied that, while the applicant holds the visa, the applicant will have sufficient funds to meet:
 - (i) the costs and expenses required to support the applicant during the proposed stay in Australia; and
 - (ii) the costs and expenses required to support each member (if any) of the applicant's family unit.
- (2) 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:
- (a) the applicant gives the Minister evidence in accordance with the requirements mentioned in Schedule 5A for the highest assessment level for the applicant; and
 - (b) the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
 - (i) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
 - (ii) any other relevant matter; and
 - (c) 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.

[45] Schedule 2, clause 575.231*substitute*

- 575.231 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:
- (a) the applicant is enrolled in, or is the subject of a current offer of enrolment in, a course of study that is a principal course; and
 - (b) the principal course is of a type that was specified for Subclass 575 visas by the Minister in an instrument:
 - (i) made under regulation 1.40A; and
 - (ii) in force at the time the application was made.

[46] Schedule 2, clause 575.234*substitute*

- 575.234 (1) 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:
- (a) for an applicant who is subject to assessment level 3 — 60 weeks; or
 - (b) for an applicant who is subject to assessment level 4 or 5 — 40 weeks.
- (2) 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:
- (a) for an applicant who is subject to assessment level 3 — 60 weeks; or
 - (b) for an applicant who is subject to assessment level 4 or 5 — 50 weeks.

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

insert

- (ia) the primary person is an eligible university exchange student;

[48] Schedule 2, clause 576.232

substitute

576.232 (1) 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.

(2) 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.

[49] Schedule 2, clause 580.114

omit

subclause 580.226 (5):

insert

subclauses 580.226 (5) and (6):

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

substitute

- (iii) Subclass 497 (Graduate — Skilled).

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

omit

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

omit

or (1B)

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

omit

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

omit

(4) or (5);

insert

(4), (5) or (6);

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

omit

(4) or (5).

insert

(4), (5) or (6).

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

omit

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

insert

(6) 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:

(a) the evidence for paragraph (1A) (b) is:

-
- (i) evidence that the applicant has funds from an acceptable source that are sufficient to meet living costs for the first 12 months; and
 - (ii) evidence that the applicant has funds from an acceptable source that are sufficient to meet travel costs; and
 - (iii) 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
- (b) 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.

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

substitute

- (iii) Subclass 497 (Graduate — Skilled).

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

omit

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

insert

- (1A) An applicant who:
- (a) is not a secondary exchange student; and
 - (b) 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.

[61] Schedule 5A, subclause 5A304 (1)*substitute*

- (1) The applicant must give evidence that he or she has a level of English language proficiency that satisfies his or her proposed education provider.

[62] Schedule 5A, subclause 5A304 (2)*omit*

30 weeks.

insert

50 weeks.

[63] Schedule 5A, subclauses 5A304 (3) to (10)*omit***[64] Schedule 5A, subclause 5A307 (2)***omit*

40 weeks.

insert

50 weeks.

[65] Schedule 5B, paragraph 5B201 (2) (d)*omit*

36 months.

insert

24 months.

[66] Schedule 8, clause 8201*substitute*

- 8201 (1) While in Australia, the holder must not engage, for more than 3 months, in any studies or training.
- (2) However, subclause (1) does not apply to a visa mentioned in the table.

Item Visa

- | | |
|---|---|
| 1 | Subclass 580 (Student Guardian) visa in relation to which the holder is undertaking an ELICOS of less than 20 hours per week |
| 2 | Subclass 675 (Medical Treatment (Short Stay)) visa in relation to which the holder: <ul style="list-style-type: none">(a) is under 18; and(b) has experienced a change in circumstances while in Australia; and(c) 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 |
| 3 | Subclass 685 (Medical Treatment (Long Stay)) visa in relation to which the holder: <ul style="list-style-type: none">(a) is under 18; and(b) has experienced a change in circumstances while in Australia; and(c) 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 |
-

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

(section 7)

[1] Schedule 8, subclause 8104 (1)

omit

20 hours a week

insert

40 hours a fortnight

[2] Schedule 8, subclause 8104 (3)

omit

20 hours a week

insert

40 hours a fortnight

[3] Schedule 8, subclause 8104 (6)

substitute

(6) In this clause:

fortnight means the period of 14 days commencing on a Monday.

[4] Schedule 8, subclause 8105 (1)

omit

20 hours a week during any week

insert

40 hours a fortnight during any fortnight

[5] Schedule 8, subclause 8105 (2)

substitute

- (2) Subclause (1) does not apply:
- (a) 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
 - (b) in relation to a Subclass 574 (Postgraduate Research Sector) visa if the holder has commenced the masters degree by research or doctoral degree.

[6] Schedule 8, subclause 8105 (3)

substitute

- (3) In this clause:
- fortnight*** means the period of 14 days commencing on a Monday.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.