EXPLANATORY STATEMENT

Select Legislative Instrument No. 82, 2014

Issued by the Minister for Immigration and Border Protection

Migration Act 1958

Australian Citizenship Act 2007

Migration Legislation Amendment (2014 Measures No. 1) Regulation 2014

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

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

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

The purpose of the *Migration Legislation Amendment (2014 Measures No. 1) Regulation 2014* (the Regulation) is to amend the *Migration Regulations 1994* (the Migration Regulations) and the *Australian Citizenship Regulations 2007* (the Citizenship Regulations to strengthen and improve immigration and citizenship policy.

In particular, the Regulation amends the Migration Regulations to:

- increase the prescribed amount of Visa Evidence Charge (VEC) from $70.00 to $150.00. The VEC is a charge payable if a person requests a visa label affixed to their passport as evidence of their visa grant. All visa grants are recorded electronically and can be verified online and therefore a fee is charged if a person seeks a visa label as evidence of their visa grant. This is in accordance with the government's move toward digital services. Online verification of visa status is now widely used and accepted. It is intended that the increased charge will strike a balance between encouraging clients to use online verification, while remaining non-prohibitive for those that continue to want a label in the short term. The increase of the VEC is within the permitted visa evidence charge limit of $250 under the Migration *(Visa Evidence) Charge Act 2012* (Schedule 1);

- reduce the number of visa subclasses for which holders are exempt from payment of a VEC. Twelve subclasses will be removed from the

exemption list. The exemption list was originally created to facilitate the transition from paper to online visa verification for certain visas. Certain visa holders will remain exempt from paying VEC (Schedule 1);

- clarify that an applicant for a student visa must declare all family members in their application or before their student visa is granted. If an undeclared family member applies for a student visa on the basis of family relationship with the student they will be ineligible for the grant of the visa. The exception is where the person became a family member after the student obtained their visa (for example, through marriage or birth). The purpose is to encourage applicants for a student visa to declare all family members prior to their application being decided (Schedule 2);

- ensure that skills assessments issued by assessing authorities for the purpose of visa applications are only valid for a period of three years, or if a shorter validity period is specified in the assessment, for that shorter period . Previously, skills assessments did not expire for the purposes of visa applications. This change will ensure that applicants are not able to meet skills criteria by providing assessments that may not meet current standards. The default three year validity period is to align with the existing three year validity period for English Language tests (Schedule 3);

- substitute all relevant references to the Australian Agency for International Development (AusAID) with equivalent Department of Foreign Affairs and Trade (DFAT) terms. This is to reflect that AusAID no longer exists as an executive agency and its functions are now administered by DFAT. The amendments ensure that the Migration Regulations reflect the Machinery-of-Government changes that came into effect on 18 September 2013 (Schedule 5); and

- make technical amendments to clarify the references to penalties in the Infringement Notice requirements for alleged breaches of the Civil Penalty provisions (Schedule 7).

The Regulation also amends the Citizenship Regulations to:

- update references to instruments made by the Minister which set out information relating to payment of fees in a foreign country and using a foreign currency. The Citizenship Regulations refer to each of these instruments and therefore references to them must be updated whenever the instruments are amended. The purpose is to enable a person to pay the correct fee for an application made under the Citizenship Act in a foreign country and using a foreign currency (Schedule 4);

- update references to the social welfare payments and associated codes that qualify an applicant for concessional application fees when applying for citizenship by conferral. For example, the amendments relevantly provide that

an applicant for Australian citizenship by conferral may be eligible for an application concession fee if they receive Youth Allowance and hold a pensioner concession card endorsed with code YAL (Schedule 6);

- expand the information that may be included on the back of a notice of evidence of citizenship to include the date or dates that previous notices were issued. The information on the back of a notice is used to assist other agencies in conducting identity verification (Schedule 6); and

- repeal an obsolete note in Schedule 2 to the Citizenship Regulations that provides that in limited circumstances dependants may be listed on the back of a parent's notice of evidence of citizenship. The note is repealed to reflect that in practice, for many years individual notices have been issued to dependants, rather than their details being included on the back of a notice of evidence of citizenship (Schedule 6).

A Statement of Compatibility with Human Rights (the Statement) has been completed, in accordance with *Human Rights (Parliamentary Scrutiny) Act 2011*, for each of the Schedules to the Regulation. The Statement's overall assessment is that the Regulation is compatible with human rights. A copy of the Statement is at Attachment B.

Details of the Regulation are set out in Attachment C.

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

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments made by the Regulation. The OBPR considers that the changes have a 'minor' impact on business or the not-for-profit sector and no further analysis (in the form of a Regulation Impact Statement) is required. The OBPR consultation references are as follows:

- 16283 (Schedule 1);
- 16372 (Schedule 2);
- 15217 (Schedule 3);
- 16480 (Schedule 4);
- 17020 (Schedule 5);
- 16166 (Schedule 6); and
- 16890 (Schedule 7)

In relation to the amendments made by Schedule 1, the department has consulted with various stakeholders including the Migration Institute of Australia and the Law Council of Australia as the peak bodies representing registered migration agents. The department has also consulted with the Department of Defence, AusAID (as it was then known), Department of Foreign Affairs and Trade and the Department of Education, Employment and Workplace Relations (as it was known at the time).

The department has circulated fact sheets of information to stakeholders and explained that the fee charged for visa labels has been examined to further discourage reliance on visa labels as a means of checking visa entitlements. Also, the department has assessed and reviewed the current visa subclass exemptions from having to pay the VEC. Impacted government stakeholders were given the opportunity to provide feedback as to how the changes may affect their clients and stakeholders. Consultation promoted the department's online options and the move away from providing evidence. The availability of online verification makes any VEC exemption requirement unnecessary.

In relation to the amendments made by Schedule 2, no consultation was undertaken with external stakeholders as the amendments are minor in nature and do not substantially alter existing arrangements. The amendments clarify the original policy intention behind the requirements that a secondary applicant for a student visa must satisfy to be eligible for the grant of the visa. Appropriate consultation was undertaken when these provisions were originally inserted into the Migration Regulations.

In relation to the amendments made by Schedule 3, information about creating a validity period for skills assessments was provided to Trades Recognition Australia within the Department of Industry, and the National Office of Overseas Skills Recognition within the Department of Education. Neither body raised any issues.

In relation to the amendments made by Schedule 4, no consultation outside the department was undertaken. This is because the amendments are periodic and mechanical in nature and do not impose regulatory compliance costs on business, community organisations or individuals. Thus, the changes are not likely to have a direct, or a substantial indirect, effect on business or restrict competition.

In relation to the amendments made by Schedule 5, no further consultation was undertaken as the changes are of a minor nature and do not substantially alter existing arrangements.

In relation to the amendments made by Schedule 6, during 2013 and 2014 the Department of Social Services and the Department of Veterans' Affairs were consulted regarding the amendments and the purpose behind them. Specifically, they were consulted to confirm the types of social welfare payments they make, their associated codes, and the cards that those codes are endorsed on that are indicative of permanent or long-term disadvantage. No further consultations were necessary as the remaining amendments are minor in nature and do not substantially alter existing arrangements.

In relation to the amendments made by Schedule 7, consultation was unnecessary because the amendments are minor in nature and do not substantially alter existing arrangements.

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

The Regulation commences on 1 July 2014.

ATTACHMENT A

AUTHORISING PROVISIONS

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

In addition, the following provisions may apply:

- subsection 31(3) of the Migration Act, which provides that the *Migration Regulations 1994* (the Migration Regulations) may prescribe criteria for a visa or visas of a specified class (which, without limiting the generality of this subsection, may be a class provided for by section 32, 36, 37, 37A or 38B but not by section 33, 34, 35, 38 and 38A);

- subsection 31(5) of the Migration Act, which provides that a visa is a visa of a particular class if the Migration Act or the Migration Regulations specify that it is a visa of that class;

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

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

- subsection 45(1) of the Migration Act, which provides that, subject to the Migration Act and the Migration Regulations, a non-citizen who wants a visa must apply for a visa of a particular class;

- subsection 46(1) of the Migration Act, which relevantly provides that, subject to subsections 46(1A), (2) and (2A), an application for a visa is valid if, and only if:
    - it is for a visa of a class specified in the application; and
    - it satisfies the criteria and requirements prescribed under this section; and
    - subject to the Migration Regulations providing otherwise, any visa application charge that the Migration Regulations require to be paid at the time when the application is made, has been paid; and
    - any fees payable in respect of it under the Migration Regulations have been paid; and
    - it is not prevented by section 48 (visa refused or cancelled earlier), 48A (protection visa), 91E (CPA and safe third countries), 91K (temporary safe haven visa), 91P (non-citizens with access to protection from third countries), 161 (criminal justice), 164D

(enforcement visa), 195 (detainees) or 501E (visa refused or cancelled on character grounds);

- paragraph 46(1)(b) of the Migration Act, which provides that, subject to subsections 46(1A), (2) and (2A), an application for a visa is valid if, and only if it satisfies the criteria and requirements prescribed under this section;

- subparagraph 65(1)(a)(ii) of the Migration Act, which relevantly provides that, after considering a valid application for a visa, the Minister, if satisfied that the other criteria for it prescribed by the Migration Act or the Migration Regulations have been satisfied, is to grant the visa;

- paragraph 65(1)(b) of the Migration Act, which relevantly provides that, after considering a valid application for a visa, the Minister, if not so satisfied, is to refuse to grant the visa;

- subsection 71(1) of the Migration Act, which provides that a person who makes a request under section 70 is liable to pay visa evidence charge;

- subsection 71(2) of the Migration Act, which provides the amount of visa evidence charge is the prescribed amount which must not exceed the visa evidence charge limit for the request;

- subsection 71(3) of the Migration Act, which relevantly provides that without limiting subsection 71(2) of the Migration Act, regulations made for the purposes of that subsection may do any one or more of the following:
    - specify circumstances in which the amount of the visa evidence charge is nil;

- subsection 71A(1) of the Migration Act, which provides that if:
    - a person makes a request under section 70 in relation to a visa; and
    - the amount of visa evidence charge for the request has been paid;

  an officer must, within a reasonable time after the request is made, give the person a prescribed form of the evidence of the visa;

- subsection 71B(1) of the Migration Act, which provides that the Migration Regulations may make provision for, or in relation to, any of the following matters relating to the visa evidence charge:
    - the circumstances in which a prescribed form of evidence of a visa may be requested or given;
    - the method of payment (including the currency in which the charge must be paid);
    - the persons who may be paid the charge on behalf of the Commonwealth;

  - the remission, refund or waiver (in whole or in part) of the charge;
  - the exemption (in whole or in part) of a person from the liability to pay the charge.

- subparagraph 504(1)(a)(i) of the Migration Act, which relevantly provides that the Governor-General may make regulations making provision for and in relation to the charging and recovery of fees in respect of any matter under the Migration Act or the Migration Regulations;

- paragraph 504(1)(i) of the Migration Act, which relevantly provides that the Governor-General may make regulations enabling a person who is alleged to have contravened section 137 to pay to the Commonwealth, as an alternative to prosecution, a prescribed penalty, not exceeding $1000;

- paragraph 504(1)(j) of the Migration Act, which relevantly provides that the Governor-General may make regulations enabling a person who is alleged to have contravened section 229 or 230 to pay to the Commonwealth, as an alternative to prosecution, a prescribed penalty, not exceeding:
  - in the case of a natural person — 30 penalty units; and
  - in the case of a body corporate — 100 penalty units;

- paragraph 504(1)(jaa) of the Migration Act, which relevantly provides that the Governor-General may make regulations enabling a person who is alleged to have committed an offence against subsection 245N(2) to pay to the Commonwealth, as an alternative to prosecution, a prescribed penalty, not exceeding 10 penalty units;

- section 505 of the Migration 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
  - is:
    - to have regard to 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

- subsection 506A(1) of the Migration Act, which provides that the Migration Regulations may provide for a person who is alleged to have contravened a civil penalty provision to pay a penalty to the Commonwealth as an alternative to proceedings for a civil penalty order against the person.

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

In addition, the following provisions may apply:

- section 21 of the Citizenship Act relevantly provides that a person may make an application to the Minister to become an Australian citizen, with subsections 21(2) - 21(8) dealing with the eligibility requirements;

- subsection 37(1) of the Citizenship Act provides that a person may make an application to the Minister for evidence of the person's Australian citizenship;

- subsection 37(2) of the Citizenship Act provides that the Minister may give the person a notice stating that the person is an Australian citizen at a particular time;

- subsection 37(3) of the Citizenship Act relevantly provides that the notice must be in a form prescribed by the Citizenship Regulations and contain any other matter prescribed by the Citizenship Regulations;

- paragraph 46(1)(d) of the Citizenship Act relevantly provides that an application made under a provision of the Citizenship Act must be accompanied by the fee (if any) prescribed by the Citizenship Regulations; and

- subsection 46(3) of the Citizenship Act, which provides that the Citizenship Regulations may make provision for and in relation to the remission, refund or waiver of any fees of a kind referred to in paragraph 46(1)(d) of the Citizenship Act.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

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 relating to visa evidence charge**

Overview of the Legislative Instrument

The amendments in Schedule 1 will continue to promote the department's visa label reduction strategy. These amendments are subsequent to the measures introduced by the *Migration (Visa Evidence) Charge Act 2012* (the VEC Act) and the *Migration (Visa Evidence) Charge (Consequential Amendments) Charge Act 2012* (Consequential Amendment Act) which implemented the Visa Evidence Charge (VEC) as a fee payable by certain applicants who request a visa label to be printed and affixed to their passport.

Since the introduction of the VEC in 2012, demand for visa labels has decreased by approximately 90%. The department seeks to further reduce the residual demand for visa labels.

Relevantly, section 71 of the *Migration Act 1958* (the Migration Act) sets the requirement that a person who makes a request to obtain a visa label is liable to pay the VEC. Regulation 2.19A sets out the requirement that the prescribed amount of VEC is $70.00 for the purpose of subsection 71(2) of the Migration Act and that it must accompany a request by a person to be given a prescribed form of evidence of a visa. Subregulations 2.19A(3) and (4) also set out the circumstances in which the prescribed VEC is nil.

The amendments will increase the VEC to $150.00, which is below the legislative limit of $250.00 prescribed by section 7 of the VEC Act.

Additionally, the amendments are intended to exclude certain visa subclasses from subregulation 2.19A(3) so that holders of the relevant visa subclasses will not be exempt from paying the VEC. These include holders of:

- a Subclass 050 (Bridging (General)) visa;
- a Subclass 051 (Bridging (Protection Visa Applicant)) visa;
- a Subclass 060 (Bridging F) visa;
- a Subclass 070 (Bridging (Removal Pending)) visa;
- a Subclass 416 (Special Program) visa for which the holder satisfied the requirements of paragraph 416.222(d) of Schedule 2;

- a Subclass 574 (Postgraduate Research Sector) visa;
- a Subclass 576 (Foreign Affairs or Defence Sector) visa, noting that the Subclass 576 visa subclass name is changed by other amendments which will also to commence on 1 July 2014 to remove AusAID references;
- a Subclass 773 (Border) visa;
- a Subclass 851 (Resolution of Status) visa;
- a Subclass 852 (Witness Protection (Trafficking) (Permanent)) visa;
- a Subclass 866 (Protection) visa;
- a criminal justice stay visa; and
- a student visa for which the amount of the visa applicant charge was nil on the basis that the requirement in paragraph 1222(2)(a)(i), (iii), (iv), (v) or (vi) of Schedule 1 to the *Migration Regulations 1994* (the Migration Regulations) was satisfied.

These amendments affect Part 2 of the Migration Regulations and the particular visa subclasses outlined above including subclasses 050, 051, 060, 070, 416, 574, 576, 773, 851, 852, 866, and also a criminal justice stay visa and paragraphs 1222(2)(a)(i), (iii), (iv), (v) or (vi) of Schedule 1 to the Migration Regulations.

Human rights implications

The amendments in Schedule 1 do not engage any of the applicable rights or freedoms.

The changes will increase the efficiency of client service resources by further reducing visa label demand.

Conclusion

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

- **Schedule 2 – Amendments relating to members of the family unit for student visas**

Overview of the Legislative Instrument

The amendments in Schedule 2 repeals Item 1222(3)(e) of Schedule 1 and amends clauses 570.314, 571.314, 572.314, 573.314, 574.314, 575.314 and 576.314 (hereafter referred to as clause 57X.314) of Schedule 2 to the Migration Regulations. The amendments clarify that in order to be eligible for grant of a subsequent visa as a dependant of a student visa holder:

- the secondary applicant must have become a member of the family unit of the primary applicant before the grant of the student visa to the primary applicant; and

- must have been declared by the primary applicant either in their student visa application or in written information to the Minister before the primary applicant obtained their visa.

The exception is if the secondary applicant satisfies the Minister that they only became a member of the family unit of the primary applicant after the grant of the student visa to the primary applicant and before the secondary applicant made their application.

These amendments are necessary to remove ambiguity in the way the requirements for making an application for a subsequent student visa are currently worded in the Migration Regulations. The policy intention is that primary student visa applicants are required to declare all of the members of their family unit in their application. If members of the family unit are not declared in the application, or before the student visa is granted, they are precluded from being eligible for grant of a subsequent visa as a dependant of a student visa holder.

An exception to this is where an individual becomes a member of the family unit of a student visa holder after visa grant, for instance due to marriage or birth. In those circumstances, the individual is required to provide evidence that this has occurred when applying for a subsequent student visa as a dependant.

If clause 57X.314 remains as it is currently worded, there is a risk that it will be interpreted differently from the policy intention. It is possible, for example, that clause 57X.314 may be interpreted to mean that students can declare their family members at any time without any implications on their undeclared family members' eligibility for a subsequent student visa.

Declaring family members upfront is critical in order to provide the department with information about the applicant's circumstances and consider whether they are a genuine student and a genuine temporary entrant. It also ensures that financial safeguards are in place for the student and their family members' welfare while the student is studying in Australia.

Human rights implications

The amendments in Schedule 2 have been assessed against the seven core international human rights treaties.

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

As these amendments deal with eligibility for members of a family unit to join international students in Australia as holders of a student visa, rights in relation to family, parents and children are relevant.

The right to respect for the family – Articles 17 and 23 of the International Covenant on Civil and Political Rights (ICCPR)

Article 17(1) of the ICCPR states that:

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

Article 23(1) of the ICCPR states that:

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

The rights of parents and children – Article 3 of the Convention on the Rights of the Child (CRC)

Article 3(1) of the CRC states that:

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

The government allows family members of international students to accompany the students in Australia as their dependants. They may apply for a student visa at the same time as the primary applicant or after the primary applicant has been granted a visa.

Regardless of whether or not members of the family unit will accompany the primary applicant to Australia, the intention behind requiring applicants to declare upfront all members of their family unit in the primary student visa application is to enable an accurate assessment to be made as to whether the primary applicant is a genuine student and temporary entrant and whether they have sufficient funds, before the visa is granted, to meet course fees, living costs, travel costs and school costs (for school-age children) for themselves and their dependants. The changes are intended to facilitate accurate and timely processing of student visa applications and do not amount to unlawful or arbitrary interference with a visa applicant's privacy, family, home or correspondence. As they enable assessment of financial capacity in relation to school fees and living costs for a primary applicant and members of their family unit prior to grant of a student visa, the changes also take into account the entitlement of families to protection by society and the State, and have the best interests of the child as a primary consideration.

While the amendments relating to Item 1222(3)(e) of Schedule 1 and clauses 570.314, 571.314, 572.314, 573.314, 574.314, 575.314 and 576.314 of Schedule 2 to the Migration Regulations do concern the rights of parents, family and children, in the circumstances, they are considered reasonable, legitimate and proportionate for the objective they are intended to achieve.

Conclusion

The amendments in Schedule 2 are compatible with human rights as they do not raise any human rights issues.

- **Schedule 3 – Amendments relating to skills assessment validity**

Overview of the Legislative Instrument

The amendments in Schedule 3 are designed to ensure that skills assessments issued by either assessing authorities or relevant assessing authorities for the purpose of visa applications are only valid for a period of 3 years, or if a shorter validity period is specified in the assessment, for that shorter period. Assessing authorities and relevant assessing authorities assess the suitability of an applicant's skills according to different criteria depending on the type of visa applied for.

The affected visas are:

- Subclass 186 Employer Nomination Scheme; Employer Nomination (Permanent) (Class EN);
- Subclass 187 Regional Sponsored Migration Scheme; Regional Employer Nomination (Permanent) (Class RN);
- Subclass 189 Skilled – Independent; Skilled – Independent (Permanent) (Class SI);
- Subclass 190 Skilled – Nominated; Skilled – Nominated (Permanent) (Class SN);
- Subclass 485 Skilled – Temporary Graduate; Skilled (Provisional) (Class VC); and
- Subclass 489 Skilled – Regional (Provisional); Skilled – Regional Sponsored (Provisional) (Class SP)

The amendments are necessary to overcome the current problem whereby the Minister's delegate must accept an expired skills assessment, or an assessment older than three years (if the assessment does not contain an explicit expiry date), despite being aware that the occupational requirements applied by the current assessing authority for the applicant's nominated occupation have been changed substantially and the applicant may not, if assessed today, be issued with a satisfactory skills assessment.

Human rights implications

The amendments in Schedule 3 have been considered against each of the seven core international human rights treaties.

The amendments merely qualify the existing requirement for a skills assessment to be provided with an application for one of the visas listed above. They do this by requiring that at the date of application, or invitation for the applicant to apply for the relevant visa, not more than three years have passed since the date of the assessment. The purpose of the amendments is to ensure that skills assessments provided in

support of an application for a visa listed above address current occupational requirements applied by assessing authorities and relevant assessing authorities. The intention is that this will lead to accurate declaration of an applicant's skills and of their eligibility for one of the visas listed above.
The amendments do not engage any of the rights enunciated in the seven core international human rights treaties.

Conclusion

The amendments in Schedule 3 are compatible with human rights as they do not raise any human rights issues.

- **Schedule 4 – Amendments relating to foreign currencies and places**

Overview of the Legislative Instrument

Regulation 12A of the *Australian Citizenship Regulations 2007* (the Citizenship Regulations) sets out among other things, in which foreign currencies and countries a citizenship application fee may be paid and how the exchange rate is to be calculated.

The acceptable foreign currencies and countries are set out in legislative instruments made under regulations 5.36(1) and (1A) of the *Migration Regulations 1994*.

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

Consequently, to ensure that citizenship application fees can continue to be paid in foreign currencies and countries, subregulation 12A(7) of the Citizenship Regulations must be amended to specify the updated instrument numbers.

The updating of the instrument number is the only change and is merely technical in nature. There is no change to the substantive content of the instrument.

Human rights implications

The amendments in Schedule 4 have been assessed against the seven core international human rights treaties and do not engage any of the applicable rights or freedoms.

Conclusion

The amendments in Schedule 4 are compatible with human rights as they do not raise any human rights issues.

- **Schedule 5 – Amendments relating to the substitution of AusAID references**

Overview of the Legislative Instrument

On 31 October 2013, the Australian Agency for International Development (AusAID) ceased to exist as an executive agency and the Department of Foreign Affairs and Trade (DFAT) assumed responsibility for international aid and development. The Migration Regulations and associated instruments still contain references to AusAID. This change will substitute all relevant references to AusAID in the Migration Regulations with an equivalent DFAT or Foreign Affairs term.

Human rights implications

The amendments in Schedule 5 are merely technical in nature and do not engage any of the applicable rights and freedoms contained in the seven core international human rights treaties.

Conclusion

The amendments in Schedule 5 are compatible with human rights as they do not raise any human rights issues.

- **Schedule 6 – Amendments relating to Australian citizenship fees and other measures**

Overview of the Legislative Instrument

The amendments in Schedule 6 amend provisions in the Citizenship Regulations relating to information that may be included in a notice of evidence of Australian citizenship (notice), which is a document that may be provided by the Minister as evidence of a person's Australian citizenship. The Citizenship Regulations are also amended to ensure that provisions relating to eligibility requirements for concessions for the citizenship by conferral application fee are correct.

The purpose behind the amendments is firstly, to repeal a note in Schedule 2 to the Citizenship Regulations that allowed the Minister to list the names of the following type of dependant on the back of a notice:

- children who had not attained the age of 16 years at the time of the responsible parent's application for evidence of Australian citizenship; and
- children whose application was made prior to 1 July 2002; and
- children whose responsible parent is named in the notice.

The note has been repealed to reflect that the Minister has in practice, for many years, not included dependants' details on the back of a parent's notice. Rather, the Minister has issued individual notices, even to children under the age of 16 who are applying with a responsible parent. So despite the repeal of the note, children under the age of 16 will continue to be issued with their own notice.

Secondly, the amendments also enable the Minister to list on the back of a notice the date of any notice previously given to the person, along with the applicant's legal name at the time they acquired Australian citizenship and any other name or date of birth in which a notice has previously been given. The intention is that this will assist agencies that use the notices in determining identity to more readily identify cases of fraud. This is because the notice will provide agencies with a comprehensive picture of when and why a person has applied for a notice.

The amendments will enable, but not require, this information to be listed, as there will be instances where it is not appropriate to include the details of a notice previously given to the person, such as when doing so may endanger the person or a person connected with them.

Thirdly, the amendments update the references to social welfare payments and associated codes that qualify an applicant for concessional application fees when applying for citizenship by conferral. The amendments are based on consultations with the Department of Social Services and Department of Veterans' Affairs. Eligibility for concession fees are determined, among other requirements, on the basis of the type of concession card held by the applicant and the code endorsed on that card. The reason behind updating the payments and codes is to ensure that the eligibility requirements for concessional application fees for citizenship by conferral reflect the current pensions and benefits payable to people suffering permanent or long-term financial disadvantage.

Human rights implications

The amendments in Schedule 6 have been assessed against the seven core international human rights treaties.

The amendments relating to repeal of the note enabling children under 16 to be listed on their parents' notice do not raise human rights issues. While the Minister will no longer be able to include children under 16 years of age in their parents' notice, it does not have an impact on the rights of children under 16 years of age or their parents. In relation to this, please note that the Minister's current practice is to provide individuals, including children under 16 years of age, with their own notice. Children under 16 will, therefore, continue to be able to obtain their own notice.

While the amendments to Schedule 3 to the Citizenship Regulations, including those repealing obsolete or redundant provisions, relate specifically to people subject to long or short-term financial disadvantage and to holders of a pensioner and health care concession cards, they do not raise any issues with those people's right to equality and non-discrimination. Instead, the amendments set out arrangements for determining eligibility for fee concessions, with the aim of reducing the financial barrier to acquiring citizenship that may be experienced by applicants who suffer from permanent or long-term financial disadvantage. That disadvantage is evidenced by the endorsement of particular social welfare payment codes on a pensioner concession card or health care card that indicate the person is aged, has a disability or has some other permanent or long-term impediment to entering the workforce.

Conclusion

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

- **Schedule 7 – Amendments relating to infringement notices**

Overview of the Legislative Instrument

The amendments in Schedule 7 correct a technical error in the description of penalties in the Infringement Notice requirements for alleged breaches of the Civil Penalty provisions. The current Migration Regulations setting out requirements for infringement notices and their payment do not correctly link the relevant prescribed penalties for contraventions of these civil penalty provisions.

The amendment does not change the basis upon which an entity may be issued an infringement notice, the penalty itself, or any remedies available to the affected party.

Human rights implications

The amendments in Schedule 7 have been considered against the seven core international human rights treaties. They do not engage any of the applicable rights or freedoms therein.

Conclusion

The amendments in Schedule 7 are compatible with human rights as they do not raise any human rights issues

ATTACHMENT C

Details of the *Migration Legislation Amendment (2014 Measures No. 1) Regulation 2014*

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Migration Legislation Amendment (2014 Measures No. 1) Regulation 2014* (the Regulation).

Section 2 – Commencement

This section provides that the Regulation commences on 1 July 2014.

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

Section 3 – Authority

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

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

Section 4 – Schedule(s)

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

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

Schedule 1 – Amendments relating to Visa Evidence Charge

Item 1 – Subregulation 2.19A(2) of Schedule 2

This item amends subregulation 2.19A(2) of Division 2.4 of Part 2 of the *Migration Regulations 1994* (the Migration Regulations) to omit the reference to '$70.00' and in its place substitute with '$150.00'.

The purpose of this item is to increase the prescribed amount of visa evidence charge (VEC) to $150.00. The VEC is the amount which must be paid by a person (unless exempted) who requests evidence of their visa grant.

Item 2 – Subregulation 2.19A(3) (table items 1 to 4, 15, 19 to 20, 23 to 25, 27 and 28) of Schedule 2

This item amends subregulation 2.19A(3) of Division 2.4 of Part 2 of the Migration Regulations to repeal references to certain visa subclasses from the list of subclasses which are exempt from attracting the VEC.

The purpose of this item is to remove references to visa subclasses which no longer need to be exempt from attracting the VEC as the circumstances which justified the exemption of these subclasses from paying VEC have either changed or no longer exist. The exemption list was originally created to facilitate the transition from paper to online visa verification for certain visas.

The visa subclasses that are removed from the exemption list are:

- Subclass 050 (Bridging (General)) visa;
- Subclass 051 (Bridging (Protection Visa Applicant)) visa;
- Subclass 060 (Bridging F) visa;
- Subclass 070 (Bridging (Removal Pending)) visa;
- Subclass 416 (Special Program) visa for which the holder satisfied the requirements of paragraph 416.222(d) of Schedule 2;
- Subclass 574 (Postgraduate Research Sector) visa;
- Subclass 576 (Foreign Affairs or Defence Sector) visa;
- Subclass 773 (Border) visa;
- Subclass 851 (Resolution of Status) visa;
- Subclass 852 (Witness Protection (Trafficking) (Permanent)) visa;
- Subclass 866 (Protection) visa;
- a criminal justice stay visa; and
- a student visa for which the amount of the visa applicant charge was nil on the basis that the requirement in paragraph 1222(2)(a)(i), (iii), (iv), (v) or (vi) of Schedule 1 to the Migration Regulation was satisfied.

Schedule 2 – Amendments relating to members of the family unit for student visas

Item 1 – Paragraph 1222(3)(e) of Schedule 1

This item repeals paragraph 1222(3)(e) of Schedule 1 to the Migration Regulations.

Subregulation 1.12(2) provides that a person is a member of the family unit of a Student (Temporary) (Class TU) visa (student visa) applicant if:

- the person is the applicant's spouse or de facto partner (as defined by section 5CB of the Migration Act); or
- a dependent child of the applicant, or of that spouse or de facto partner, who is unmarried and has not turned 18.

Previously, a person claiming to be a member of the family unit of an applicant for a student visa must have, among other requirements, satisfied repealed paragraph 1222(3)(e) in order for their application to be valid.

Repealed paragraph 1222(3)(e) relevantly provided that a person claiming to be a member of the family unit of an applicant seeking to satisfy the primary criteria (primary applicant) must be declared by the primary applicant either in:

- the primary applicant's student visa application; or
- written information provided by the primary applicant to the Minister after the time of application and before the time of the decision.

The exception was if the person only became a family member after the primary applicant obtained their student visa.

The effect and purpose of this item is that a student visa applicant no longer needs to satisfy the requirement in repealed paragraph 1222(3)(e) in order to make a valid application.

Items 2 to 8 – clauses 570.314, 571.314, 572.314, 573.314, 574.314, 575.314 and 576.314 of Schedule 2

These items substitute new clauses 570.314, 571.314, 572.314, 573.314, 574.314, 575.314 and 576.314 of Schedule 2 to the Migration Regulations.

The Migration Regulations provide that certain applicants for a student visa must declare all members of the family unit and demonstrate that they have sufficient funds to support themselves and their family. The proportion of the costs that must be demonstrated is affected by the reported size of the primary applicant's family composition. Accordingly, obtaining accurate information on a primary applicant's true family composition, before their student visa application is decided, is essential to enable the department to properly assess whether a primary applicant can support themselves and their family members. Information about the applicant's circumstances is also critical in assessing whether they are a genuine student and a genuine temporary entrant.

Subregulation 2.07AF(3) relevantly provides that a primary applicant is required to declare their existing family members in their student visa application. Subregulation 2.07AF(4) relevantly provides that if a person only became a family member after the time of application but before the time of decision the primary applicant must inform the Minister of this in writing before a decision on their student visa is made. Subregulation 2.07AF(5) provides that subregulations 2.07AF(3) and (4) apply whether or not the family member is, or intends to become, an applicant for a student visa.

Repealed clauses 570.314, 571.314, 572.314, 573.314, 574.314, 575.314 and 576.314 of Schedule 2 supported the requirement that a primary applicant declare all family members before a decision on their student visa application was made. The repealed

clauses relevantly provided that where an applicant for a student visa sought to satisfy the secondary criteria (secondary applicant) and:

- the secondary applicant was not declared by the primary applicant as part of the primary applicant's student visa application; or
- in written information provided by the primary applicant to the Minister after the time of application but before the time of decision;

the secondary applicant must give the Minister evidence that they only became a member of the family unit of the primary applicant after the primary applicant obtained their student visa.

The effect of this item is that a primary applicant for a student visa must declare all members of their family unit in their application or before they are granted the visa. The requirement to declare applies whether or not the family member is, or intends to become, an applicant for a student visa.

An undeclared family member who subsequently applies for a student visa as a secondary applicant is ineligible for the grant of the visa. This is the case even where the secondary applicant, at time of application, declares that they are a family member of the student and produces evidence supporting that claim.

However, the secondary applicant may be eligible for the grant of the student visa if the secondary applicant provides the Minister with evidence, at time of application, that satisfies the Minister that they only became a member of the family unit of the student after the student obtained their visa and before the secondary applicant made their application.

The purpose of this item is to clarify the requirements that a secondary applicant for a student visa must satisfy in order to be eligible for the grant of the visa.

Schedule 3 – Amendments relating to skills assessment validity

Item 1 – After paragraph 186.234(2)(aa) of Schedule 2

This item inserts paragraphs 186.234(2)(ab) and 186.234(2)(ac) after subclause 186.234(2)(aa) of Schedule 2 to the Migration Regulations.

Repealed subclause 186.234(2) provided that an applicant met that subclause if at the time of application all of the following applied:

- an assessing authority specified by the Minister in an instrument in writing for this subclause, as the assessing authority for the occupation, has assessed the applicant's skills as suitable for the occupation;
- the assessment is not for a Subclass 485 (Temporary Graduate) visa;
- the applicant has been employed in the occupation for at least 3 years on a full-time basis and at the level of skill required for the occupation.

With the addition of paragraphs 186.234(2)(ab) and (ac), subclause 186.234(2) now additionally requires that:

- if the assessment specifies a period during which the assessment is valid, and the period does not end more than 3 years after the date of the assessment—the period has not ended;
- if the assessment did not specify a period of less than three years—not more than 3 years have passed since the date of the assessment.

The effect and purpose of this item is to ensure that skills assessments issued by assessing authorities for the purpose of Subclass 186 (Employer Nomination Scheme) visa applications are only valid if issued less than three years before the time of application, or if a shorter validity period is specified in the assessment, issued less than that shorter period before the time of application. Prior to this amendment, skills assessments did not expire for the purposes of visa applications, even if the assessment specified a validity period. This change ensures that applicants are not able to meet skills criteria by providing old assessments that may not meet current standards. The default three year validity period is to align with the existing three year validity period for English Language tests.

Item 2 – Paragraph 187.234(b) of Schedule 2

This item substitutes paragraph 187.234(b).

Repealed paragraph 187.234(b) provided that as one alternative, the applicant could meet the criteria of clause 187.234 if at the time of application:

- the applicant's occupation is specified by the Minister in an instrument in writing for this subparagraph;
- the applicant did not obtain the necessary qualification in Australia;
- the applicant's skills had been assessed as suitable for the occupation by an assessing authority specified by the Minister in the instrument for the first point above as the assessing authority for the occupation; and
- the assessment was not for a Subclass 485 (Temporary Graduate) visa.

New paragraph 187.234(b) contains the same requirements and additionally requires that:

- if the assessment specified a period during which the assessment was valid, and the period did not end more than 3 years after the date of the assessment—the period had not ended;
- if the assessment did not specify a period of less than three years—not more than 3 years had passed since the date of the assessment;

The paragraph was reorganised to accommodate these changes, but apart from the addition of the two new requirements is the same in substance as the old paragraph 187.234(b).

The effect and purpose of this item is to ensure that skills assessments issued by assessing authorities for the purpose of Subclass 187 (Employer Nomination Scheme) visa applications are only valid if issued less than three years before the time of application, or if a shorter validity period is specified in the assessment, issued less than that shorter period before the time of application. Prior to this amendment, skills assessments did not expire for the purposes of visa applications, even if the assessment specified a validity period. This change ensures that applicants are not able to meet skills criteria by providing old assessments that may not meet current standards. The default three year validity period is to align with the existing three year validity period for English Language tests.

Item 3 – At the end of subclause 189.212(1) of Schedule 2

This item inserts new paragraphs 189.212(1)(c) and 189.212(1)(d) at the end of existing subclause 189.212(1).

Subclause 189.212(1) provided that an applicant met that subclause if at the time of invitation to apply for the visa all of the following applied:

- the relevant assessing authority had assessed the applicant's skills as suitable for the applicant's nominated skilled occupation; and
- the assessment is not for a Subclass 485 (Temporary Graduate) visa;

With the insertion of new paragraphs 189.212(1)(c) and (d) it is now additionally required that:

- if the assessment specified a period during which the assessment was valid, and the period did not end more than 3 years after the date of the assessment—the period had not ended;
- if the assessment did not specify a period of less than three years—not more than 3 years have passed since the date of the assessment;

The effect and purpose of this item is to ensure that skills assessments issued by assessing authorities for the purpose of Subclass 189 (Skilled–Independent) visa applications are only valid if issued less than three years before the time of invitation, or if a shorter validity period is specified in the assessment, issued less than that shorter period before the time of invitation. Prior to this amendment, skills assessments did not expire for the purposes of visa applications, even if the assessment specified a validity period. This change ensures that applicants are not able to meet skills criteria by providing old assessments that may not meet current standards. The default three year validity period is to align with the existing three year validity period for English Language tests.

Item 4 – At the end of subclause 190.212(1) of Schedule 2

This item inserts new paragraphs 190.212(1)(c) and 190.212(1)(d) at the end of existing subclause 190.212(1).

Old subclause 190.212(1) provided that an applicant met that subclause if at the time of invitation to apply for the visa all of the following applied:

- the relevant assessing authority had assessed the applicant's skills as suitable for the applicant's nominated skilled occupation; and
- the assessment is not for a Subclass 485 (Temporary Graduate) visa;

With the insertion of new paragraphs 190.212(1)(c) and (d), subclause 190.212 now additionally requires that:

- if the assessment specified a period during which the assessment was valid, and the period did not end more than 3 years after the date of the assessment—the period had not ended;
- if the assessment did not specify a period of less than three years—not more than 3 years have passed since the date of the assessment;

The effect and purpose of this item is to ensure that skills assessments issued by assessing authorities for the purpose of Subclass 190 (Skilled–Nominated) visa applications are only valid if issued less than three years before the time of invitation, or if a shorter validity period is specified in the assessment, issued less than that shorter period before the time of invitation. Prior to this amendment, skills assessments did not expire for the purposes of visa applications, even if the assessment specified a validity period. This change ensures that applicants are not able to meet skills criteria by providing old assessments that may not meet current standards. The default three year validity period is to align with the existing three year validity period for English Language tests.

Item 5 – Subclause 485.224(1) of Schedule 2

This item substitutes subclause 485.224(1).

Repealed subclause 485.224(1) required that the skills of the applicant for the applicant's nominated skilled occupation have been assessed by a relevant assessing authority as suitable for that occupation.

New subclause 485.224 contains the same requirement, but requires that it is met at time of application, and contains the additional requirements that:

- if the assessment specified a period during which the assessment was valid, and the period did not end more than 3 years after the date of the assessment—the period had not ended;
- if the assessment did not specify a period of less than three years—not more than 3 years had passed since the date of the assessment;

The subclause was reorganised to accommodate these changes, but apart from the addition of the two new requirements and the alteration to the time that the criteria must be met, it is the same in substance as the old subclause 485.224(1).

The effect and purpose of this item is to ensure that skills assessments issued by assessing authorities for the purpose of Subclass 485 (Temporary Graduate) visa applications are only valid if issued less than three years before the time of application, or if a shorter validity period is specified in the assessment, issued less than that shorter period before the time of application. Prior to this amendment, skills assessments did not expire for the purposes of visa applications, even if the assessment specified a validity period. This change ensures that applicants are not able to meet skills criteria by providing old assessments that may not meet current standards. The default three year validity period is to align with the existing three year validity period for English Language tests.

Item 6 – At the end of subclause 489.222(1) of Schedule 2

This item inserts new paragraphs 489.222(1)(c) and 489.222(1)(d) at the end of existing subclause 489.222(1).

Repealed subclause 489.222(1) provided that an applicant met that subclause if at the time of invitation to apply for the visa all of the following applied:

- the relevant assessing authority had assessed the applicant's skills as suitable for the applicant's nominated skilled occupation; and
- the assessment is not for a Subclass 485 (Temporary Graduate) visa;

With the insertion of new paragraphs 489.222(1)(c) and (d) subclause 489.222(1) now additionally requires that:

- if the assessment specified a period during which the assessment was valid, and the period did not end more than 3 years after the date of the assessment—the period had not ended;
- if the assessment did not specify a period of less than 3 years—not more than 3 years have passed since the date of the assessment;

The effect and purpose of this item is to ensure that skills assessments issued by assessing authorities for the purpose of Subclass 489 (Skilled–Regional (Provisional)) visa applications are only valid if issued less than three years before the time of invitation, or if a shorter validity period is specified in the assessment, issued less than that shorter period before the time of invitation. Prior to this amendment, skills assessments did not expire for the purposes of visa applications, even if the assessment specified a validity period. This change ensures that applicants are not able to meet skills criteria by providing old assessments that may not meet current standards. The default three year validity period is to align with the existing three year validity period for English Language tests.

Schedule 4– Amendments relating to foreign currencies and places

Item 1 – Subregulation 12A(7)

This item substitutes subregulation 12A(7) of the *Australian Citizenship Regulations 2007* (the Citizenship Regulations).

This item provides that in this regulation:

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

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

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

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

As the above legislative instruments are periodically updated to reflect changes in exchange rates, the references to them in subregulation 12A(7) must also be updated. These legislative instruments are updated as of 1 July 2014 and hence this amendment updates references to them as of 1 July 2014.

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

Schedule 5 – Amendments relating to the substitution of AusAID references

The purpose of the amendments in each Part of this Schedule is to amend the Migration Regulations to remove references to *AusAID* and relevant associated terms, including *AusAID Minister* and *AusAID student visa*. These terms are replaced with the terms *Foreign Affairs*, *Foreign Minister* and *Foreign Affairs student visa* respectively.

These amendments are consequent to the amendments made by the *Migration Amendments (AusAID) Regulation 2013* (the amendment regulation), which was made to give effect to the Administrative Arrangement Order (AAO) of 18 September 2013.

The AAO relevantly provided for the function of international development and aid to be transferred to, and administered by, the Department of Foreign Affairs and Trade (DFAT). As a result of the AAO, the Australian Agency for International Development (AusAID) ceased to be an executive agency.

Prior to the cessation as an executive agency, one of AusAID's functions was to support the delivery of Australian Awards, which are prestigious international scholarships and fellowships funded by the government offering the next generation of global leaders an opportunity to undertake study, research and professional development in Australia.

These amendments will have the effect of reflecting DFAT's role as the administrator of the government's international development and aid function. These amendments (which will replace most of the relevant terms) will not substantially affect existing arrangements. There will be a small number of provisions whereby the references to 'AusAID' will be maintained, but they will be amended to include a reference to the equivalent DFAT term. The purpose of maintaining the remaining references to 'AusAID' is to preserve the operation of existing arrangements.

Items 1 and 2 – definition of *AusAID* and *AusAID Minister*

Item 1 substitutes the definition of *AusAID* (including the note) in regulation 1.03 of Part 1 of the Migration Regulations.

The new definition provides that ***AusAID*** means the body that was known as the Australian Agency for International Development.

Item 2 substitutes the definition of *AusAID Minister* (including the note) under regulation 1.03 of Part 1 of the Migration Regulations.

The new definition provides that ***AusAID Minister*** means a Minister who was responsible for administering AusAID.

The amendments effected by items 1 and 2 identify the authority that formerly administered the function of international development and aid and is consequential to the amendments made below at items 2, 4, 9, 11, 12, 14 and 17 which substitutes the terms 'AusAID' and 'AusAID Minister' with 'Foreign Affairs' and 'Foreign Minister', respectively.

Item 3 – Regulation 1.03 (definitions of *AusAID recipient* and *AusAID student*)

This item repeals the terms *AusAID recipient* and *AusAID student* (and their respective notes) under regulation 1.03 of Part 1 of the Migration Regulations.

This item is consequential to the amendments at Item 7 below, which repeal the provisions that set out the meaning for the terms *AusAID recipient* and *AusAID student*. The purpose of this item is to repeal these terms under regulation 1.03 as they are now redundant.

Item 4 – Regulation 1.03 (sub-sub-subparagraph (a)(i)(C)(I) of the definition of *eligible student visa*)

This item amends sub-sub-subparagraph (a)(i)(C)(I) of the definition of *eligible student visa* under regulation 1.03 of Part 1 of the Migration Regulations to include reference to the term *Foreign Minister*. This item also retains the reference to the *AusAID Minister* to ensure any persons caught in the transition are not affected.

Item 5 – Regulation 1.03

This item inserts the terms *Foreign Affairs recipient* and *Foreign Affairs student* into regulation 1.03 of Part 1 of the Migration Regulations.

The inserted terms provide that for:

- ***Foreign Affairs recipient***: see subregulation 1.04A(2).
- ***Foreign Affairs student***: see subregulation 1.04A(3).

The purpose of this item is to set out the reference to the amendments at Item 7 below, which relevantly provides for the meaning to the terms *Foreign Affairs recipient* and *Foreign Affairs student*.

Item 6 – Regulation 1.03

This item amends regulation 1.03 of Part 1 to the Migration Regulations to insert a definition of *Subclass 576 (Foreign Affairs or Defence Sector) visa*.

The purpose of this item is that specific references to a 'Subclass 576 (Foreign Affairs or Defence Sector)' visa (Subclass 576 visa) will be taken to also include any reference to a 'Subclass 576 (AusAID or Defence Sector) visa'. This item is consequential to the amendment at Item 10 below, which amends the title of the Subclass 576 visa.

Item 7 – Regulation 1.04A

Item 7 substitutes regulation 1.04A of Part 1 of the Migration Regulations.

New subregulation 1.04A(1) maintains the operation of previous subregulation 1.04A(1), but adds a new definition of *Foreign Affairs student visa*, which means:

- a Subclass 560 (Student), Subclass 562 (Iranian Postgraduate Student) or Subclass 576 (Foreign Affairs or Defence Sector) visa granted to a person who, as an applicant:
    - satisfied the primary criteria for the grant of the visa; and

    - was a student in a full-time course of study or training under a scholarship scheme or training program approved by the Foreign Minister or AusAID Minister; or
- an equivalent former visa or entry permit; or
- an equivalent transitional visa.

New subregulation 1.04A(2) provides that a person is a *Foreign Affairs recipient* if:

- either:
    - the person is the holder of a Foreign Affairs student visa and has ceased:
        - the full-time course of study or training to which that visa relates; or
        - another course approved by the Foreign Minister or AusAID Minister in substitution for that course; or
    - if the person is not the holder of an Foreign Affairs student visa—the person has in the past been the holder of a Foreign Affairs student visa and has ceased:
        - the full-time course of study or training to which the last Foreign Affairs student visa held by the person related; or
        - another course approved by the Foreign Minister or AusAID Minister in substitution for that course; and
- the person has not spent at least 2 years outside Australia since ceasing the course.

New subregulation 1.04A(3) provides that a person is a Foreign Affairs student if:

- the person has been approved by the Foreign Minister or AusAID Minister to undertake a full-time course of study or training under a scholarship scheme or training program approved by the Foreign Minister or AusAID Minister; and
- the person is:
    - the holder of a Foreign Affairs student visa granted in circumstances where the person intended to undertake the full-time course of study or training; or
    - an applicant for a student visa whose application shows an intention to undertake a full-time course of study or training; and
- in the case of a person mentioned in subparagraph (b)(i)—the person has not ceased:
    - the full-time course of study or training to which the visa relates; or
    - another course approved by the Foreign Minister or AusAID Minister in substitution for that course.

The purpose of this item is to set out the meaning of the terms *Foreign Affairs recipient* and *Foreign Affairs students*, which are referred to in the amendments at Item 5 above.

New regulation 1.04A operates in a similar manner to that of existing regulation 1.04A, but sets the requirements that must be met in order to satisfy the

definition of *Foreign Affair Student visa*, *Foreign Affairs recipient* or *Foreign Affairs students*. Accordingly, new regulation 1.04A maintains some references to the term *AusAID Minister* to cover persons caught in the transition.

Item 8 – Regulation 1.04AA

This item amends Part 1 of the Migration Regulations to repeal regulation 1.04AA.

Consistent with the intention to remove all relevant references to *AusAID* and associated terms, various regulations which operate to support those references are redundant. The purpose of this item is to repeal regulation 1.04AA as it only operates to maintain to the operation of *AusAID* related requirement, which is redundant as a result of the removal of references to the term *AusAID* and associated provisions that support the operation of *AusAID*.

Item 9 – Sub-subparagraph 1229(4)(a)(ii)(D) of Schedule 1

This item inserts a reference to the term *Foreign Minister* into this provision and also retains a reference to the term *AusAID Minister*.

The purpose of this item is to include a reference to scholarship schemes and training programmes approved by the 'Foreign Minister' in the eligibility criteria for the Skilled (Provisional) (Class VC) visa (Class VC visa).

The effect of this item is to allow valid applications for a Class VC visa by applicants whose student visa application is based on the intention to study or train under a scholarship scheme or training programme approved by the Foreign Minister (as well as those previously approved by the AusAID Minister).

Item 10 – Part 576 of Schedule 2 (heading)

This item substitutes the heading of Part 576 of Schedule 2 to the Migration Regulations. The new heading is 'Subclass 576 – Foreign Affairs or Defence Sector'.

The purpose of this item is to rename the Subclass 576 visa to reflect the change in administrative arrangement. This is a technical amendment for the purpose of supporting the Machinery-of-Government (MoG) changes to repeal and substitute relevant references to *AusAID* with an equivalent DFAT term.

Item 11 – Part 576.111 of Schedule 2 (definition of *course of study*)

This item inserts a reference in Part 576.111 to the term *Foreign Minister*, following on from item 7 above, which provides that a *course of study* may mean a course of study or training under a scholarship scheme or training programme approved by the 'Foreign Minister' (or the 'Defence Minister').

This item retains the reference to *AusAID Minister* and inserts a new reference to the *Foreign Minister*. This item covers transitional cases where, at the time of application, the course of study was approved by the *AusAID Minister*.

Item 12 – Paragraphs 576.211(4)(d) and 576.322(b) of Schedule 2

This item inserts a reference to the term *Foreign Minister* into paragraphs 576.211(4)(d) and 576.322(b) of Schedule 2 to the Migration Regulations, also following on from Item 7 above, so that provision is made for an applicant having the support of the *Foreign Minister*. This item retains the respective references to the term *AusAID Minister* and inserts new references to the term *Foreign Minister*.

The amendment in paragraph 576.211(4)(d) maintains the reference to the term *AusAID Minister*, as well as refer to the term *Foreign Minister*, as the paragraph is part of time of application criteria visa applicants must meet.

Item 13 – Clause 580.114 (note)

This item substitutes the note under clause 580.114 of Schedule 2 to the Migration Regulations.

New note under clause 580.114 provides that ***Assessment level***, ***Australian permanent resident***, ***custody***, ***Defence Minister***, ***education provider***, ***eligible New Zealand citizen***, ***Foreign Affairs recipient***, ***Foreign Affairs student***, ***Foreign Minister***, ***home country*** and ***relative*** are defined in regulation 1.03. ***Member of the family*** unit is defined in regulation 1.12.

Similar to the amendments at Item 10 above, the purpose of this item is to support the MoG changes to repeal and substitute relevant references to *AusAID* with an equivalent DFAT term.

Item 14 – Subparagraph 5010(4)(a)(ii) of Schedule 5

This item inserts a new reference to the term *Foreign Minister* in subparagraph 5010(4)(a)(ii) of Schedule 5. This item retains the reference to *AusAID Minister* to cover any persons caught in the transition.

Item 15 – Subclause 5010(6) of Schedule 5 (definition of *AusAID student visa*)

This item amends subclause 5010(6) of Schedule 5 to the Migration Regulations to repeal the definition of *AusAID student visa*.

This item is consequential to the amendment at Item 7 above, which inserts a definition of *Foreign Affairs student*. As the definition of *Foreign Affairs student* is the DFAT equivalent of the definition of *AusAID student*, the definition of *AusAID student* is redundant. The purpose of this item is to support the MoG changes by repealing a provision that is redundant.

Item 16 – Subclause 5010(6) of Schedule 5

This item amends subclause 5010(6) of Schedule 5 of the Migration Regulations to insert a definition of *Foreign Affairs student visa*, which is the same meaning as in new regulation 1.04A.

The purpose of this item is to set out the reference to the amendments at Item 7 above, which relevantly provides for the meaning to the term *Foreign Affairs student visa*.

Item 17 – Amendments of listed provisions

This item sets out, in a table, a list of provisions under the Migration Regulations that are also amended to substitute references to *AusAID* and associated terms with equivalent DFAT terms.

Table items 1 to 5, 9, 10, 23, 46, 48, 49, 52, 53 and 57 amend the following provisions under Migration Regulations to omit the references to the term *AusAID* and in their place substitute with *Foreign Affairs*.

- Regulation 1.03 of Part 1 (paragraph (f) of the definition of *eligible student visa*)
- Regulation 1.03 of Part 1 (paragraph (g) of the definition of *student visa*)
- Subparagraph 1.04B(b)(i) of Part 1
- Paragraph 1.40A(2)(a) of Part 1
- Subregulation 2.19A(3) of Part 2 (table item 19A)
- Subitem 1222(4) of Schedule 1
- Sub-subparagraph 1229(4)(a)(ii)(F) of Schedule 1
- Division 462.1 of Schedule 2 (note to heading)
- Part 2 of Schedule 4 (table item 4058G, column 2)
- Paragraph 5010(3)(b) of Schedule 5
- Sub-subparagraph 5010(4)(a)(i)(B) of Schedule 5
- Subclause 5A108(1) of Schedule 5A
- Part 8 of Schedule 5A (heading)
- Paragraph 8104(5)(a) of Schedule 8

Table items 6 to 8, 11, 13, 15, 17, 19, 21, 24, 25, 27, 29, 31, 33, 35, 39, 41, 43, 45, 47, 58, 60 and 62 amend the following provisions under Migration Regulations to omit the references to the phrase *an AusAID* and in their place substitute with *a Foreign Affairs*.

- Sub-subparagraphs 1222(2)(a)(iii)(A) and (iv)(A) of Schedule 1
- Subparagraph 1222(3)(c)(iii) of Schedule 1
- Sub-subparagraph 1222(3)(h)(iv)(A) of Schedule 1
- Clause 405.224 of Schedule 2
- Clause 405.326 of Schedule 2
- Subclause 410.321(7) of Schedule 2
- Subclause 416.228(1) of Schedule 2

- Subclause 416.325(1) of Schedule 2
- Subclause 417.221(6) of Schedule 2
- Paragraph 462.221(e) of Schedule 2
- Clause 570.230A of Schedule 2
- Clause 571.229A of Schedule 2
- Clause 572.229A of Schedule 2
- Clause 573.229A of Schedule 2
- Clause 574.229A of Schedule 2
- Clause 575.229A of Schedule 2
- Clause 580.225 of Schedule 2
- Subclause 676.222(1) of Schedule 2
- Subclause 773.225(1) of Schedule 2
- Clause 4012A of Schedule 4
- Paragraphs 5010(1)(a) and (2)(a) of Schedule 5
- Subclause 8202(1) of Schedule 8
- Subclause 8202(4) of Schedule 8
- Clause 8532 of Schedule 8

Table items 12, 14, 16, 18, 20, 22, 26, 28, 30, 32, 34, 36 to 38, 40, 42, 44, 50, 51 and 54 to 56 amend the following provisions under Migration Regulations to omit the references to the phrase *the AusAID Minister* and in their place substitute with *the Foreign Minister*.

- Clause 405.224 of Schedule 2
- Clause 405.326 of Schedule 2
- Subclause 410.321(7) of Schedule 2
- Subclause 416.228(1) of Schedule 2
- Subclause 416.325(1) of Schedule 2
- Subclause 417.221(6) of Schedule 2
- Clause 570.230A of Schedule 2
- Clause 571.229A of Schedule 2
- Clause 572.229A of Schedule 2
- Clause 573.229A of Schedule 2
- Clause 574.229A of Schedule 2
- Clause 575.229A of Schedule 2
- Clause 576.229 of Schedule 2
- Clause 576.332 of Schedule 2
- Clause 580.225 of Schedule 2
- Subclause 676.222(1) of Schedule 2
- Subclause 773.225(1) of Schedule 2
- Paragraph 5010(5)(a) of Schedule 5
- Subclauses 5A104(1) and (2) of Schedule 5A (table item 3, column headed "Description of applicant", paragraph (b))
- Subclause 5A805(1) of Schedule 5A
- Paragraph 5A805(3)(e) of Schedule 5A
- Subparagraph 5A806(a)(i) of Schedule 5A

Table items 59 and 61 amend subclause 8202(1) and subclause 8202(4) of Schedule 8 to the Migration Regulations respectively, to omit the references to '(AusAID' and in their place substitute with '(Foreign Affairs'.

Consistent with the intention to support the MoG changes, the purpose of this amendment is to set out all the relevant provisions that need to be amended to substitute references to *AusAID* and associated *AusAID provisions* with the equivalent DFAT term.

In addition and similar to the amendments at Item 7 of this Schedule above, this amendment retains some of the references to *AusAID Minister* to ensure the ongoing operation of the relevant provisions.

Schedule 6 – Amendments relating to Australian citizenship fees and other measures

Item 1 – Schedule 2 (notes 2 and 3)

This item repeals notes 2 and 3 of Schedule 2 to the Citizenship Regulations and substitutes new note 2.

Repealed note 2 of Schedule 2 relevantly provided that the department could, in limited circumstances, include the names of children:

- who had not attained the age of 16 years at the time of the responsible parent's application for evidence of Australian citizenship;
- whose application was made prior to 1 July 2002; and
- whose responsible parent is named in the notice

on the back of a notice of evidence of Australian Citizenship.

The item repeals this note.

The effect and purpose of the amendment is to reflect that the Minister has in practice, for many years, not included dependants' details on the back of a notice. Rather, the Minister has issued individual notices, including to dependants. Therefore, the repeal of the note will have no effect on current practice as dependants will continue to be issued with their own notice.

Repealed note 3 of Schedule 2 provided that, if relevant, a notice of evidence of Australian citizenship may list the following information on the back of the notice, along with the signature, or printed or stamped signature, of the Minister:

- the applicant's legal name a time of acquisition of Australian citizenship, if different to the applicant's current legal name;
- any other name in which a notice of evidence has previously been given;
- any other dates of birth in which a notice of evidence has previously been given.

New note 2 of Schedule 2, in effect, enables an officer to list on the back of a notice of evidence the same information as repealed note 3 of Schedule 2. The note is simply renumbered with the repeal of old note 2 of Schedule 2. However, it now also enables an officer to list the date of any notice of evidence previously given to the person.

It is intended that the inclusion of this information be discretionary, as there will be instances where it is not appropriate to include the particulars of any notice previously given to the person, for example, when doing so may endanger the person or a person connected with them.

A notice of evidence of Australian citizenship can be used to support applications for a range of government services including social security payments, first home owner schemes and Australian passports. Many financial institutions require evidence of citizenship to access loans. It is not uncommon for a person to apply for several notices of evidence of Australian citizenship after first acquiring it. This can occur when a person claims that their notice has been lost or stolen, or if they have changed their legal identity.

The purpose of the amendment is to strengthen the integrity of the citizenship programme. Specifically, the inclusion of dates, where relevant, on the back of a notice will assist agencies in verifying an applicant's identity. This is because the notice will provide agencies with a comprehensive view of when a person has applied for a notice and the details of previous notices held.

Item 2 – Schedule 3 (cell at table item 9, column headed "Application")

This item substitutes the cell at table item 9, column headed "Application" in Schedule 3 to the Citizenship Regulations.

Repealed cell at table item 9 relevantly provided that an applicant for Australian citizenship by conferral was eligible for a concessional application fee where:

- the applicant held a pensioner concession card or health care card, endorsed by the Human Services Department or Centrelink with one of the following codes: AGB; AGE; CAR; DSB; DSP; NS; PA; PPP; SA; SL; WA; WFA; WFD; WID; and
- did not claim eligibility on the basis of the criteria in subsection 21(2) of the Citizenship Act.

New cell at table item 9 relevantly provides that an applicant for Australian citizenship by conferral will be eligible for an application concession fee of $20 if the applicant holds:

- a pensioner concession card or health care card endorsed by the Human Services Department or Centrelink with one of the following codes: PA; SA; WA; or
- a pensioner concession card endorsed by the Human Services Department or Centrelink with one of the following codes: AGE; CAR; DSP; NS; PPP; SL; WFA; WFD; WFW; WID; YAL; or

- a health care card endorsed by the Human Services Department or Centrelink with the code SL; and
    - for an applicant who holds a health care card endorsed by the Human Services Department or Centrelink with the code SL – the applicant produces evidence that the applicant has received the SL benefit for at least 46 of the previous 52 weeks; and
- the applicant does not claim eligibility on the basis of the criteria in subsection 21(2) of the Citizenship Act.

Schedule 3 to the Citizenship Regulations provides for the fees which must accompany an application made under the Citizenship Act. The Schedule provides for a concessional application fee to apply in certain circumstances, including where an applicant is a holder of a pensioner concession card or health care card. Eligibility for concession fees are determined, among other requirements, on the basis of the type of concession card held by the applicant and the code endorsed on that card.

In particular, the effect of this item is firstly, to omit obsolete codes AGB and DSB. A holder of a pensioner concession card endorsed with codes AGB or DSB will have had their card updated to reflect new codes AGE and DSP respectively.

Secondly, codes WFW and YAL have been inserted into this item. Code WFW was previously omitted however it has since been identified that there are clients who still hold pensioner concession cards endorsed with the code. Accordingly, the amendments are intended to ensure that such clients are still eligible for the concessional application fee. Code YAL, when endorsed on a pensioner concession card, represents a payment to a client group assessed as subject to permanent or long-term financial disadvantage.

Thirdly, to relevantly provide that the holder of a health care card endorsed with code NS is ineligible for a concessional application fee. This is because health care cards endorsed with code NS holder are available to persons who are not subject to permanent or long-term financial disadvantage.

Fourthly, to relevantly provide that a holder of a health care card endorsed with code SL, to be eligible for the application concession fee, must produce evidence that they have received the Special Benefits payment (code SL) for at least 46 of the previous 52 weeks. The intention behind this amendment is to clarify the discrepancy between repealed table items 9 and 12 which both relevantly provided that a holder of a health care card endorsed with code SL was eligible for the application concession fee. However, repealed table item 12 relevantly required a holder of a health care card endorsed with code SL to produce evidence that they had received the Special Benefits payment for at least 46 of the previous 52 weeks. This evidentiary requirement was not included in repealed table item 9. This amendment clarifies the original policy intention to restrict the fee concession to holders of a health care card in receipt of the Special Benefits payment for a minimum time.

Finally, to reflect that social welfare codes AGE; CAR; DSP; PPP; WFA; WFD; WFW and WID attach only to pensioner concession cards endorsed by the Human Services Department or Centrelink.

The purpose of this item is to update references to social welfare codes in Schedule 3 of the Citizenship Regulations to ensure that the codes reflect the current pensions and benefits payable to people suffering permanent or long-term financial disadvantage.

Item 3 – Schedule 3 (table items 11 and 12)

This item repeals table items 11 and 12 of Schedule 3 to the Citizenship Regulations.

Repealed table item 11 relevantly provided that, an application for citizenship by conferral must be accompanied by an application fee of $20 where, among other requirements:

- the applicant was a holder of a health care card endorsed by the Human Services Department or Centrelink with code PA; and
- produced evidence that the applicant was:
    - the partner of a holder of a pensioner concessional card with one of the following codes: AGB; AGE; CAR; DSB; DSP; WFA; WFD; WID; or
    - the partner of a holder of a health care card with code SL who had received the SL benefit for at least 46 of the previous 52 weeks.

New cell at table item 9 (see Item 2 of this Schedule), relevantly provides that the holder of a pensioner concession card or health care card endorsed by the Human Services Department or Centrelink with code PA is be eligible for a concessional application fee.

Any person who would have met the more onerous requirements of repealed table item 11 would also meet the requirements of substituted table item 9 as they would hold a card endorsed with code PA.

Since 2003, no additional person has been issued with a pensioner concession card or health care card endorsed with code PA. Further, the client group is now aged and/or suffers barriers to finding work. Accordingly, the client group that repealed table item 11 intended to cover will continue to be covered by the less onerous new cell at table item 9.

Repealed table item 12 relevantly provided that an application for citizenship by conferral must be accompanied by an application fee of $20 where:

- the applicant held a health care card endorsed with code SL; and
- produced evidence that they had received the Special Benefit payment (code SL) for at least 46 of the previous 52 weeks.

These eligibility requirements are now reflected in new cell at table item 9 in Item 2 of this Schedule.

Accordingly, the effect and purpose of this item is to omit redundant table items.

Item 4 – Schedule 3 (cell at table item 13, column headed "Application")

This item substitutes the cell at table item 13, column headed "Application" in Schedule 3 to the Citizenship Regulations.

Repealed cell at table item 13 relevantly provided that an application for citizenship by conferral must be accompanied by an application fee of $20 if:

- the applicant holds a pensioner concession card, endorsed by the Department of Veterans' Affairs, for an Age Service, Invalidity Service or Partner Service pension or an Income Support Supplement; and
- does not claim eligibility on the basis of the criteria in subsection 21(2) of the Citizenship Act.

New cell at table item 13 relevantly provides that an applicant for Australian citizenship by conferral will be eligible for an application concession fee of $20 if the applicant:

- holds a pensioner concession card endorsed by the Department of Veterans' Affairs:
    - for an Age Service, Invalidity Service, or Partner Service pension; or
    - for an Income Support Supplement; or
    - with the code AGE; and
- does not claim eligibility on the basis of the criteria in subsection 21(2) of the Citizenship Act.

The Department of Veterans' Affairs pays Age Pension (code AGE) to eligible clients on behalf of the Department of Social Services. However, repealed cell at table item 13 precluded a holder of a pensioner concession card endorsed by the Department of Veterans' Affairs with code AGE from being eligible for a concessional application fee.

The effect and purpose of this item is to update references to the social welfare codes so that a person, who applies for Australian citizenship by conferral, may be eligible for an application concession fee where, amongst other requirements, the person holds a pensioner concession card endorsed by the Department of Veterans' Affairs with code AGE. The broader intention is that a person, who applies for Australian citizenship by conferral, may be eligible for an application concession fee where, amongst other factors, the person suffers from permanent or long-term financial disadvantage.

Item 5 – Schedule 3 (cell at table item 14, column headed "Application", paragraph (b))

This item substitutes paragraph (b) of table item 14 of Schedule 3 to the Citizenship Regulations.

Repealed paragraph (b) of table item 14 relevantly provided that an applicant who applied for citizenship by conferral was eligible for an application concession fee if:

- the applicant claimed eligibility on the basis of the criteria in subsection 21(2) of the Citizenship Act; and
- any of the following provisions applies to the applicant:
    - paragraph (a) of item 9; or
    - paragraphs (a) and (b) of item 11; or
    - paragraphs (a) and (b) of item 12; or
    - paragraph (a) of item 13.

New paragraph (b) of table item 14 provides:

- either of the following provisions applies to the applicant:
    - paragraph (a) of item 9; or
    - paragraph (a) of item 13; and
- if subparagraph (a)(iii) of the item applies to the applicant – the applicant meets paragraph (b) of item 9.

The effect of this item is that a person who applies for Australian citizenship by conferral may be eligible for a concession fee of $40 if:

- the person applies for Australian citizenship under the general eligibility criteria set out in subsection 21(2) of the Citizenship Act; and
    - holds a pensioner concession card or health care card endorsed by the Human Services Department or Centrelink with one of the following codes: PA; SA; WA; or
    - holds a pensioner concession card endorsed by the Human Services Department or Centrelink with one of the following codes: AGE; CAR; DSP; NS; PPP; SL; WFA; WFD; WFW; WID; YAL; or
    - holds a pensioner concession card endorsed by the Department of Veterans' Affairs for:
        - an Age Service, Invalidity Service, or Partner Service pension; or
        - for an Income Support Supplement; or
        - with the code AGE;
    - holds a health care card endorsed by the Human Services Department or Centrelink with the code SL; and
    - for an applicant who holds a health care card endorsed by the Human Services Department or Centrelink with the code SL – the applicant produces evidence that the applicant has received the SL benefit for at least 46 of the previous 52 weeks.

This item is consequential to the amendments made by Items 2 and 4 of this Schedule and reflects a broader purpose to ensure that the codes referenced reflect the current pensions and benefits payable to people suffering permanent or long-term financial disadvantage.

Item 6 – Schedule 3 (table item 15, column headed "Application")

This item omits "15A to 15D" from table item 15 and substitutes it with "15C to 15D".

This item is consequential to the amendments made in Item 7 of this Schedule, which omits table items 15A and 15B of Schedule 3 to the Citizenship R egulations.

Item 7 – Schedule 3 (table items 15A and 15B)

This item repeals table items 15A and 15B of Schedule 3 to the Citizenship Regulations.

Repealed table items 15A and 15B provided that an applicant for citizenship by conferral was eligible for an application concession fee if the applicant:

- lodged their application prior to 1 October 2007;
- were refused because they did not meet the residence requirements set out in section 22 of the Citizenship Act; and
- made a new application within three months after the applicant became able to satisfy the residence requirement.

The effect and purpose of this item is that an applicant who meets the requirements in repealed table items 15A and 15B will no longer be eligible for an application concession fee. Any applicant who would have been eligible for the concession fee under table items 15A and 15B would have had over 6 years to meet the residence requirement and lodge a new application. Accordingly, the department believes this cohort is unlikely to exist in sufficient numbers to justify maintaining this concession.

Item 8 – Schedule 3 (cell at table item 15C, column headed "Application", subparagraphs (d)(iii) and (iv))

This item repeals subparagraphs (d)(iii) and (iv) of table item 15C of Schedule 3 to the Citizenship Regulations.

The effect and purpose of this item is to omit reference to table items 11 and 12 from table item 15C. This item is consequential to the amendment made in Item 3 of this Schedule.

Schedule 7 – Amendments relating to infringement notices

Item 1 – Division 5.4 (heading)

This item substitutes the heading of Division 5.4 in Part 5 of the Migration Regulations.

The repealed heading of Division 5.4 read as 'Prescribed Penalties'.

New heading of Division 5.4 is 'Infringement notice penalties'.

This item is made as a consequential amendment to the repeal of the definition of 'prescribed penalty' and the insertion of 'infringement notice penalty' in Item 4 of this Schedule.

The effect and purpose of this item is to replace the original heading of the Division with a heading that describes both of the regulations contained within Division 5.4.

The repealed heading did not reflect that the Division contained the prescribed penalties for alleged commission of offences and the penalties payable for alleged breaches of the civil penalty provisions.

Item 2 – Regulation 5.20 (heading)

This item substitutes the heading of regulation 5.20 in Part 5 of the Migration Regulations.

The repealed heading of regulation 5.20 was 'Prescribed penalties – offences (Act, ss137, 229, 230 and 245N).

New heading of regulation 5.20 is 'Offences'.

This item is a consequential amendment to Item 4 of this Schedule. The effect of this item is to simplify the heading of regulation 5.20 and remove the reference to 'prescribed penalty'.

The purpose of this item is to remove unnecessary references to the Migration Act and ensure consistent headings are used within the division.

Item 3 – Regulation 5.20A (heading)

This item substitutes the heading of regulation 5.20 in Part 5 of the Migration Regulations.

The repealed heading of regulation 5.20A was 'Infringement notices – penalty payable to the Commonwealth for section 140Q, 140XE, 140XF, 245AB, 245AC, 245AE or 245AEA of the Act'.

New heading of regulation 5.20A is 'Civil penalty provisions'.

The effect of this item is to simplify the heading of regulation 5.20A.

The purpose of s this item is to remove unnecessary references to the Migration Act and ensure consistent headings are used within the division.

Item 4 – Regulation 5.21

This item inserts the term 'infringement notice penalty' in regulation 5.21 in Division 5.5 of Part 5 of the Migration Regulations.

The item provides that the new term ‘infringement notice penalty’ means:

- for an offence—the penalty prescribed by regulation 5.20 for the offence.
- for a civil penalty provision—the penalty prescribed by regulation 5.20A for the civil penalty provision; and

Between 1 June 2013 and the commencement of this amendment, there was no term that described the penalty prescribed for civil penalty provisions. During that period the term ‘prescribed penalty’ only described the penalty prescribed for an offence.

The effect and purpose of this item is to introduce a new term to capture both penalties prescribed for a civil penalty provision and penalties prescribed for an offence. The actual penalties prescribed for a civil penalty provision and an offence have not been changed. This amendment simply introduces a more efficient means to describe both types of penalties.

Item 5 – Regulation 5.21 (definition of *prescribed penalty*)

This item repeals the term ‘prescribed penalty’ in regulation 5.21 in Division 5.5 of Part 5 of the Migration Regulations.

This item is consequential to the changes in Item 4 of this Schedule as the term ‘infringement notice penalty’ now incorporates the meaning of ‘prescribed penalty’.

Item 6 – Paragraph 5.23(1)(b)

This item inserts the word ‘alleged’ before the word ‘commission’ in paragraph 5.23(1)(b) in Division 5.5 of Part 5 of the Migration Regulations.

Previously, paragraph 5.23(1)(b) provided that an infringement notice must, if the notice is for the commission of an offence, set out the information contained in subparagraphs 5.23(1)(b)(i) and (ii).

Paragraph 5.23(1)(b) now provides that an infringement notice must, if the notice is for the alleged commission of an offence, set out the information contained in subparagraphs 5.23(1)(b)(i) and (ii).

The effect and purpose of this item is to align the wording of this paragraph with the wording in paragraph 5.25(c) in Division 5.5 of Part 5 of the Migration Regulations. In addition, as the person to whom an infringement notice is served has not been convicted of the alleged offence, this amendment provides for a more accurate description of the circumstances.

Item 7 – Paragraph 5.23(1)(ba)

This item omits the words ‘a contravention’ and substitutes the words ‘an alleged contravention’ in paragraph 5.23(1)(ba) in Division 5.5 of Part 5 of the Migration Regulations.

Previously, paragraph 5.23(1)(ba) provided that an infringement notice must, if the notice is for a contravention of a civil penalty provision, set out the day on which, or the period over which, the civil penalty provision is alleged to have been contravened.

Paragraph 5.23(1)(ba) now provides that an infringement notice must, if the notice is for an alleged commission of a civil penalty provision, set out the day on which, or the period over which, the civil penalty provision is alleged to have been contravened.

The effect and purpose of this item is to align the wording of this paragraph with the wording in paragraph 5.25(c) in Division 5.5 of Part 5 of the Migration Regulations. In addition, as the person to whom an infringement notice is served has not been found to have contravened the civil penalty provision, this amendment provides for a more accurate description of the circumstances.

Item 8 – Paragraph 5.23(1)(d)

This item substitutes paragraph 5.23(1)(d) in Division 5.5 of Part 5 of the Migration Regulations.

Repealed paragraph 5.23(1)(d) provided that an infringement notice must set out the prescribed penalty.

New paragraph 5.23(1)(d) now provides that an infringement notice must set out the infringement notice penalty.

This amendment is consequential to Item 4 of this Schedule.

Items 9, 11, 13 and 15 – Regulations 5.24, 5.25, 5.29 and paragraph 5.27(b)

Items 9, 11, 13 and 15 omit ‘prescribed penalty’ and insert ‘infringement notice penalty’ in regulations 5.24, 5.25 and 5.29 and paragraph 5.27(b), respectively.

Previously, regulation 5.24 provided that if an infringement notice has been served on a person, an authorised officer may, if he or she is satisfied that in all the circumstances it is proper to do so, allow a further period for payment of the prescribed penalty, whether or not the period of 28 days after the date of service of the notice has expired.

Previously, regulation 5.25 provided that if the person on whom an infringement notice is served pays the prescribed penalty in relation to the alleged offence or the alleged contravention of a civil penalty provision before:

- the end of:
    - the period of 28 days after the date of service of the notice; or
    - if a further period has been allowed under regulation 5.24 – that further period or;
- the notice is withdrawn

whichever happens first, then:

- any liability of the person in respect of the alleged offence or the alleged contravention of the civil penalty provision is discharged; and
- no further proceedings may be taken in respect of the alleged offence or the alleged contravention of the civil penalty provision; and
- the person is not to be taken to have been convicted of the alleged offence.

Previously, paragraph 5.27(b) provided that if the person has paid the prescribed penalty in accordance with the notice, an authorised officer must arrange for the refund to the person of an amount equal to the amount so paid.

Previously, regulation 5.29 provided that this Division did not prevent more than one infringement notice being served on a person for the same offence or the same contravention of a civil penalty provision, but regulation 5.25 applies to the person if the person pays the prescribed penalty in accordance with one of the infringement notices.'

As a consequential amendment to Item 4 of this Schedule, this item replaces the term 'prescribed penalty' with 'infringement notice penalty' in these provisions.

Item 10 – Regulation 5.25 (heading)

This item substitutes the heading of regulation 5.25 in Division 5.5 of Part 5 of the Migration Regulations.

Repealed heading of regulation 5.25 was 'What happens if the prescribed penalty is paid?'

New heading of regulation 5.25 now provides 'What happens if the infringement notice penalty is paid?'

As a consequential amendment to Item 4 of this Schedule, this amendment replaces the term 'prescribed penalty' with 'infringement notice penalty' in these provisions.

Item 12 – Regulation 5.27 (heading)

This item substitutes the heading of regulation 5.27 in Division 5.5 of Part 5 of the Migration Regulations.

Subregulation 5.28(1) provides that in the hearing of proceedings for:

- a prosecution for an offence specified in an infringement notice; or
- an application for a pecuniary penalty order in relation to a contravention of a civil penalty provision specified in an infringement notice;
- a certificate signed by an authorised officer and stating a matter mentioned in subregulation (2) is evidence of the matter.

Repealed subregulation 5.28(2) provided the matter is that the authorised officer:

- did not allow further time for payment of the penalty specified in the infringement notice under regulation 5.24 and the penalty was not paid within the time allowed for payment of the notice; or
- allowed a further period (as specified in the certificate) for payment of the penalty specified in the infringement notice and the penalty was not paid within that further period; or
- withdrew the infringement notice on a day specified in the certificate.

New subregulation 5.28(2) provides that a matter is that:

- the authorised officer did not allow further time for payment of the infringement notice penalty and the penalty was not paid within 28 days after the date of service of the infringement notice; or
- the authorised officer allowed a further period (as specified in the certificate) for payment of the infringement notice penalty and the penalty was not paid within the further period; or
- the authorised officer withdrew the infringement notice on a day specified in the certificate.

The purpose and effect of this item is to simplify the wording of this provision and make clear its meaning.

Schedule 8 – Amendments relating to transitional arrangements

Item 1 – At the end of Part 4

This item amends Part 4 of the Citizenship Regulations to insert Regulation 25 entitled 'Amendments made by the *Migration Legislation Amendment (2014 Measures No. 1) Regulation 2014*'.

Inserted regulation 25 provides that the amendment of these Regulations made by Schedule 4 to the Regulation applies in relation to an application made under Division 2, 3 or 4 of Part 2 of the Citizenship Act on or after 1 July 2014.

Inserted regulation 25 also provides that the amendments of these Regulations made by items 2 to 8 of Schedule 6 to the Regulation apply in relation to an application made under Division 2 of Part 2 of the Citizenship Act on or after 1 July 2014.

The effect and purpose of the item is to clarify to whom the amendments in these Schedules apply.

Item 2 – At the end of Schedule 13

This item amends Schedule 13 to the Migration Regulations to insert Part 31 entitled 'Amendments made by the *Migration Legislation Amendment (2014 Measures No. 1) Regulation 2014*'and inserts new clauses 3101, 3102, 3103 and 3104.

Inserted clause 3101, entitled ‘Operation of Schedule 1’, provides that the amendments of these Regulations made by Schedule 1 to the Regulation apply in relation to a request under section 70 of the Migration Act for evidence of a visa, made on or after 1 July 2014.

Inserted clause 3102, entitled ‘Operation of Schedules 2 and 3’, provides that the amendments of these Regulations made by Schedules 2 and 3 to the Regulation apply in relation to an application for a visa made on or after 1 July 2014.

Inserted clause 3103, entitled ‘Operation of Schedule 5’, provides that the amendments of these Regulations made by Schedule 5 to the Regulation apply in relation to the following applications for a visa:

- an application made, but not finally determined, before 1 July 2014;
- an application made on or after 1 July 2014.

Inserted clause 3104, entitled ‘Operation of Schedule 7’, provides that the amendments of these Regulations made by Schedule 7 to the Regulation apply on and after 1 July 2014 in relation to an infringement notice served before, on or after that date.

The effect and purpose of this item is to clarify to whom the amendments in these Schedules apply.