EXPLANATORY STATEMENT

Select Legislative Instrument No. 48, 2015

Issued by the Minister for Immigration and Border Protection

Migration Act 1958

Migration Amendment (Resolving the Asylum Legacy Caseload) Regulation 2015

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

The *Migration Amendment (Resolving the Asylum Legacy Caseload) Regulation 2015* (the Regulation) amends the *Migration Regulations 1994* (the Migration Regulations). The Regulation is consequential to the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (the RALC Act).

In particular, the Regulation amends the Migration Regulations to:

- facilitate the operation of the fast track assessment process created by the RALC Act to expedite the processing of protection claims by specified cohorts of unauthorised maritime arrivals;
- omit most references to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (the Refugee Convention) in order to give effect to the new statutory framework relating to refugees as a result of Schedule 5 to the RALC Act – which articulates Australia's interpretation of its protection obligations under the Refugee Convention; and
- streamline a number of requirements around the Safe Haven Enterprise visa (SHEV) including:
    - simplifying the process for making a SHEV application as a family member;
    - harmonising the regulations surrounding the Temporary Protection Visa (TPV) and SHEV to enable people to more easily move between the two classes;
    - ensuring that the travel rights available to a SHEV holder are the travel rights outlined in the SHEV.

A Statement of Compatibility with Human Rights (Statement) has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.* 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 D.

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

The Office of Best Practice Regulation (OBPR) has been consulted in relation to the amendments made by Schedules 1 and 2 to the Regulation. The OBPR advises that a regulation impact statement is not required as these changes are consequential to amendments made by the RALC Act. The OBPR consultation reference is 17300.

The OBPR was consulted in relation to the amendments made by Schedule 3 to the Regulation. A short form RIS was prepared and is attached at Attachment C. The OBPR consultation reference number is 17519.

The relevant review tribunals have been consulted in relation to the amendments made by the Regulation. Advice provided was taken into account in developing the amendments.

No other consultations were undertaken because the amendments are not likely to have a direct, or a substantial indirect, effect on business or restrict competition, or impact significantly on other government departments, non-government organisations, businesses or other interested parties.

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

Sections 1 to 4 of the Regulation commence the day after this instrument is registered.

Part 1 of Schedule 1 to the Regulation commences on the later of:

- the start of the day after this instrument is registered; and
- the commencement of Schedule 4 to the RALC Act.

Part 2 of Schedule 1 to the Regulation commences on the later of:

- the start of the day after this instrument is registered; and
- the commencement of Schedule 4 to the RALC Act; and
- the commencement of Part 2 of Schedule 1 to the *Migration Amendment (Protection and Other Measures) Act 2015.*

However, the provisions do not commence at all if Part 2 of Schedule 1 to the *Migration Amendment (Protection and Other Measures) Act 2015* does not commence.

Schedule 2 to the Regulation commences on the later of:

- the start of the day after this instrument is registered; and
- the commencement of Part 2 of Schedule 5 to the RALC Act.

Schedule 3 to the Regulation commences on the later of:

- the start of the day after this instrument is registered; and
- immediately after the commencement of Division 2 of Part 1 of Schedule 2 to the RALC Act.

Schedule 4 to the Regulation commences on the later of:

- the start of the day after this instrument is registered; and
- the commencement of Part 2 of Schedule 5 to the RALC Act.

Authority: Subsection 504(1) of the *Migration Act 1958*

ATTACHMENT A

AUTHORISING PROVISIONS

Subsection 504(1) of 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 of the Migration Act may apply:

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

- paragraph 412(1)(c) of the Migration Act, which relevantly provides that an application for review of a Refugee Review Tribunal-reviewable decision must be accompanied by the prescribed fee (if any);

- subsection 415(1) of the Migration Act, which provides that the Refugee Review Tribunal (RRT) may, for the purposes of the review of an RRT-reviewable decision, exercise all the powers and discretions that are conferred by the Migration Act on the person who made the decision;

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

- 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, including fees payable in connection with the review of decisions made under the Migration Act or the Migration Regulations, whether or not such review is provided for by or under the Migration Act; and

- paragraph 504(1)(b) of the Migration Act, which relevantly provides that the Governor-General may make regulations making provision for the remission, refund or waiver of fees of a kind referred to in paragraph 504(1)(a) or for exempting persons from making the payment of such fees.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Migration Amendment (Resolving the Asylum Legacy Caseload) Regulation 2015

This Legislative Amendment 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*.

Overview of the Legislative Amendments in Schedule 1

Schedule 1 to the Regulation amends the Migration Regulations. These amendments are consequential to the RALC Act, which implements certain initiatives to increase efficiency and improve integrity across the whole protection status determination process.

Schedule 4 to the RALC Act creates a new fast track assessment process and removes access to the Refugee Review Tribunal (RRT) for fast track applicants. These applicants are defined as: unauthorised maritime arrivals (UMAs) who entered Australia on or after 13 August 2012 up until 1 January 2014 and who made a valid application for a protection visa; and other cohorts specified by legislative instrument.

Schedule 4 to the RALC Act further requires the Minister for Immigration and Border Protection (the Minister) to refer fast track reviewable decisions to a new body, the Immigration Assessment Authority (the IAA), which will conduct merits review, that will be a review on the papers, and limited to the information that was before the Minister unless there are exceptional circumstances to justify considering new information. These amendments to the Migration Regulations will support and clarify certain aspects of the new fast track assessment process and the operation of the IAA and will ensure consistency with the policy intention of the RALC Act.

Schedule 1 to the Regulation seeks to:

- prescribe shortened timeframes for fast track applicants to respond to an invitation by the Minister to provide further information, or to comment on information, during the consideration of the visa application (the primary assessment stage);
- prescribe timeframes for applicants before the IAA to respond to an invitation to provide further information, or to comment on information, during a review by the IAA (the review stage);
- provide that the IAA's obligation to disclose adverse information to a referred applicant does not apply to information that the referred applicant provided to the IAA;
- provide that a bridging visa held by a fast track applicant will cease 28 days after the conclusion of the fast track assessment process; and
- prescribe the directions that the IAA may make if the IAA remits a decision to the Minister for reconsideration. The IAA will have the power either to affirm the decision of the Minister to refuse to grant a protection visa or to remit the matter for reconsideration with directions. The directions that may be made by the IAA will mirror those set out in regulation 4.33 of the Regulations for the purposes of

paragraph 415(2)(c) of the Migration Act in relation to the powers of the Refugee Review Tribunal.

Human rights implications

The amendments in Schedule 1 to the Regulation are consequential to Schedule 4 of the RALC Act. The Statement of Compatibility with Human Rights previously prepared in relation to the RALC Act addressed the human rights implications of Schedule 4 of the RALC Act and, as a result, these consequential amendments to the Migration Regulations.

Non-refoulement obligations

Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) states:

> *No State party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.*

Non- refoulement obligations also arise, by implication, in relation to Articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR).

Article 6 of the ICCPR states:

> *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

Article 7 of the ICCPR states:

> *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*

Australia's *non-refoulement* obligations under the ICCPR and the CAT require Australia not to return a person to a country in certain circumstances. The government is of the view that, provided Australia's international obligations are satisfied, the government can decide how it processes claims. The ICCPR and CAT do not specify how this should occur and consequently it is Australia that determines how this will occur under the Migration Act.

Australia's implementation of the above obligations is further complemented by the ability of the Minister to exercise his or her non-compellable powers under the Migration Act to grant a visa.

Shortened Timeframes regarding Code of Procedures

In addition to supporting the framework for the fast track assessment process established by the RALC Act, Schedule 1 to the Regulation makes changes to the timeframes to the codes of procedure relating to natural justice provisions in the Migration Act for the primary assessment and review stage. All fast track applicants, like other non-citizens seeking Australia's protection, will have their protection claims fully assessed under the current framework. The same concepts and tests will apply to fast track applicants' cases and circumstances as to all other non-citizens making protection visa applications.

The shortened timeframes do not change the substance of the current primary protection visa assessment process in migration legislation. Rather, the timeframes to respond to an invitation to provide further information, or respond to adverse information, will be shortened from four weeks to two weeks, which will increase efficiency in the process without impacting on the applicant's ability to fully articulate all of their claims in the application form and during their interview with the Department of Immigration and Border Protection.

Conclusion
The amendments contained within Schedule 1 to Regulation are consequential to Schedule 4 to the RALC Act. The amendments are compatible with human rights as they do not raise any human rights issues.

Overview of the Legislative Amendments in Schedule 2
These amendments in Schedule 2 are a consequence of Part 2 of Schedule 5 to the RALC Act. Part 2 of Schedule 5 removes most references to the Refugee Convention from the Migration Act and creates a new, self-contained statutory framework which articulates Australia's interpretation of its protection obligations under the Refugee Convention.
The purpose of the amendment to the Migration Regulations is to remove references to the Refugee Convention and to reflect the new language inserted into the Migration Act by Part 2 of Schedule 5 to the RALC Act.

Human rights implications
The Legislative Amendment in Schedule 2 to the Regulation is purely consequential to the amendments in Part 2 of Schedule 5 to the RALC Act. The Legislative Amendment makes changes to provisions in the Migration Regulations to reflect the language of the new statutory framework relating to refugees. Specifically, provisions in the Migration Regulations currently referring to the Refugee Convention are being amended to refer instead to the new definition of "refugee" and other associated concepts in Part 2 of Schedule 5 to the RALC Act. Therefore, the content of the Statement of Compatibility with Human Rights previously prepared for the RALC Act addresses the human rights implications of Part 2 of Schedule 5, and as a result the consequential amendments to the Migration Regulations.

Conclusion
The Legislative Amendment is compatible with human rights as it does not raise any human rights issues.

Overview of the Legislative Amendments in Schedule 3

Safe Haven Enterprise visas (SHEVs) were created by the RALC Act.

The changes seek to resolve a number of technical issues and policy issues that have become evident since the initial SHEV regulations were passed in the RALC Act.

These include:

- repealing the redundant regulation based definition of 'member of the same family unit' and related technical changes as this definition is already provided in the Migration Act;

- prescribing circumstances in which the Minister may waive the 'no further stay' condition 8503 (which may have been attached to a Temporary Protection Visa (TPV) that the person held) to allow the Minister to waive the condition once the person has met the SHEV pathway requirements;
- removing access to Bridging B (Class WB) visas (BVBs) for SHEV holders and people whose last substantive visa was a SHEV, as Bridging Visa B contains different travel rights to those available to SHEV holders;
- providing that applicants cannot make simultaneous applications for a TPV and a SHEV;
- providing that only one member of a family needs to indicate an intent to work or study while accessing minimum social security benefits in a regional area when that family makes a combined application; and
- providing that when a person holds either a TPV or SHEV and applies for either a TPV or SHEV, their current visa will only cease once the application is refused, or if the application is withdrawn, after the original visa period would have expired.

For further details on these measures please refer to Attachment D.

Human rights implications

With the exception of the removal of access to BVBs (details below), the amendments listed above are largely technical in nature and relate to the SHEV regulations created by the RALC Act. The Statement of Compatibility with Human Rights made in relation to RALC Act address the human rights implications of those regulations. These amendments do not limit the human rights of SHEV applicants and SHEV holders.

Some of the amendments promote human rights, for example, ensuring that a TPV or SHEV continues until a subsequent TPV or SHEV application is decided means that visa holders retain continuity in access to services. In addition, the measures relating to:

- the ability of the Minister to waive condition 8503, and
- the amendment that will provide that only one member of a family unit needs to indicate an intent to work or study while accessing minimum social security benefits in a regional area

will both have a positive effect on the human rights of applicants as they will allow greater access to onshore non-protection visas and possible pathways to Australian citizenship in some instances.

<u>Removal of access to BVBs</u>

The RALC Act made it a condition imposed on all SHEV holders that they must seek permission before travelling overseas and are not to travel to the country in respect of which protection was sought. If the visa holder breaches this condition a discretion to cancel the visa under s116(1)(b) of the Migration Act will be enlivened.

However, due to an oversight in the Government-sponsored amendments, the RALC Act did not make a consequential amendment to remove the access of SHEV holders to BVBs. If SHEV holders were to be granted BVBs whilst waiting for a further substantive visa to be granted, the intended restriction on travel could not be enforced.

This raises issues relating to freedom of movement under Article 12 of the ICCPR, in particular the right to leave any country (Art 12(2)). The Statement of Compatibility for the RALC Act explained the compatibility of the travel restrictions on SHEV holders with Article 12 (see Supplementary Explanatory Memorandum for [HA110]). While this amendment may mean that SHEV holders may feel discouraged from leaving Australia more so than if they held a BVB, this is consistent with the policy intention for SHEVs as explained in the Statement of Compatibility to the RALC Act.

The amendments are reasonable and proportionate in pursuit of the Government's legitimate aim of offering protection to genuine refugees and those fearing significant harm, while also protecting the integrity of the protection visa regime by enabling cancellation of a protection visa (which includes a SHEV) where circumstances indicate the person does not, or no longer, requires Australia's protection. The amendments are therefore consistent with Australia's international human rights obligations.

Conclusion

The above amendments to the Migration Regulations are compatible with human rights because they are consistent with Australia's human rights obligations and to the extent that they may also limit human rights, those limitations are reasonable, necessary and proportionate.

The Hon. Peter Dutton MP

Minister for Immigration and Border Protection

ATTACHMENT C

Regulation Impact Statement

Name of department/agency: Department of Immigration and Border Protection

OBPR Reference number: 17519

Name of proposal: Introduction of new Safe Haven Enterprise Visa (SHEV) and Safe Haven Transitional Visa (SHTV).

Summary of the proposed policy and any options considered:

The Government wishes to encourage the backlog of 30,000 asylum seekers to seek employment in regional locations. People in this cohort will be able to apply for a SHEV, instead of, or as well as a Temporary Protection Visa (TPV), where they undertake to work in a listed "regional location". Any State/Territory or Local Government Area can 'opt-in' to be a listed regional location.

Holders of a SHEV for 3 years will then be able to apply for a SHTV if they can demonstrate that they worked in a regional area for 24 out of 36 months. They also need to demonstrate that they did not receive income support for more than 12 months out of 36. A SHTV will have the same services and conditions to a SHEV or a TPV, but the holder will be able to leave Australia and re-enter, and the visa holder will have the potential to apply for a permanent onshore visa after 3 years if they meet certain conditions.

There was an option not to introduce these new visa products, but the SHEV and the SHTV may positively contribute to economic growth in Regional Australia by encouraging refugees to work in listed locations, without added fiscal pressure on government social support services, and without any additional red tape burden on businesses.

What are the regulatory impacts associated with this proposal? Explain.

There is no regulatory burden on business or community organisations. Businesses and community organisations will not have to undertake any new or additional process outside of normal employment processes that would be undertaken to recruit new staff.

The only regulatory burden on applicants for these visas would be to submit an application for the SHTV.

What are the regulatory costs associated with this proposal? Explain and quantify.

- Application for the visa.

Average annual regulatory costs (from business as usual)				
Change in costs ($ million)	Business	Community organisations	Individuals	Total change in cost
Total, by sector	$0.00	$0.00	$0.030	$0.030
Cost offset ($ million)	Business	Community organisations	Individuals	Total, by source
Agency	$	$	-$0.2272	-$0.2272
Are all new costs offset? ☒ Yes, costs are offset □ No, costs are not offset □ Deregulatory—no offsets required				
Total (Change in costs – Cost offset) ($ million) = -$0.1972				

The regulatory onset for the introduction of this visa will be offset by the repeal of the *Migration Amendment (Offshore Resources Activity) Act 2013*.

ATTACHMENT D

Details of the *Migration Amendment (Resolving the Asylum Legacy Caseload) Regulation 2015*

Section 1 – Name of Regulation

This section provides that the title of the instrument is the *Migration Amendment (Resolving the Asylum Legacy Caseload) Regulation 2015* (the Regulation).

Section 2 – Commencement

This section provides that sections 1 to 4 and anything in the instrument not elsewhere covered in the table commence on the day after the instrument is registered.

Part 1 of Schedule 1 to the Regulation commences on the later of:
- the start of the day after the instrument is registered; and
- the commencement of Schedule 4 to the RALC Act.

Part 2 of Schedule 1 to the Regulation commences on the later of:
- the start of the day after the instrument is registered; and
- the commencement of Schedule 4 to the RALC Act; and
- the commencement of Part 2 of Schedule 1 to the *Migration Amendment (Protection and Other Measures) Act 2015*.

However, the provisions do not commence if Part 2 of Schedule 1 to the *Migration Amendment (Protection and Other Measures) Act 2015* does not commence.

Schedule 2 to the Regulation commences on the later of:
- the start of the day after the instrument is registered; and
- the commencement of Part 2 of Schedule 5 to the RALC Act.

Schedule 3 to the Regulation commences on the later of:
- the start of the day after this instrument is registered; and
- immediately after the commencement of Division 2 of Part 1 of Schedule 2 to the RALC Act.

Schedule 4 to the Regulation commences on the later of:
- the start of the day after the instrument is registered; and
- the commencement of Part 2 of Schedule 5 to the RALC Act.

Section 3 – Authority

This section provides that this instrument is made under the *Migration Act 1958* (the Migration Act).

The purpose of this section is to set out the Act under which the instrument is made.

Section 4 – Schedules

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

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

Schedule 1 – Amendments relating to fast track assessment process

Part 1 – Main amendments

Item [1] – After sub-subparagraph 2.15(1)(b)(ii)(A)

Regulation 2.15 specifies time periods for visa applicants to respond to invitations from the Minister to give additional information or comments. This item provides that a fast track applicant, who is not in immigration detention, must respond within 14 days after the applicant is notified of the invitation. If the applicant is in immigration detention, the response period is three working days after the applicant is notified of the invitation, as prescribed in Paragraph 2.15(1)(a). The only change from the existing provisions applicable to other visa applicants in Australia is that the 14-day response period is specified in lieu of the standard 28-day response period. This change implements the Government's policy to expedite the processing of the protection visa applications of unauthorised maritime arrivals.

Item [2] – After subparagraph 2.15(3)(b)(i)

This item provides that, if the Minister invites a fast track applicant to give information or comments at an interview, the interview must be held within 14 days after the applicant is notified of the invitation. If the fast track applicant is in immigration detention, the interview must be held within three working days after the applicant is notified of the invitation, as prescribed in paragraph 2.15(3)(a). The rationale for this provision is as stated in item [1].

Item [3] – At the end of Part 4

This item inserts a new Division dealing with the procedures of the Immigration Assessment Authority (IAA).

Regulation 4.41 provides that the IAA is not required to provide an opportunity for a referred applicant to comment on new information that was provided to the IAA by the referred applicant for the purposes of the IAA's review of a fast track reviewable decision in relation to the referred applicant. This reflects the principle that the Migration Act only requires procedural fairness to be provided in relation to adverse information that was not provided by the applicant for the purpose of the application.

Regulation 4.42 specifies time periods for referred applicants to respond to invitations from the IAA to give new information or comments on new information. A referred applicant in immigration detention must respond within three working days after notification of the invitation. Other referred applicants must respond within seven days after the invitation is

given (in the case of oral invitations to respond in writing) or 14 days after the referred applicant is notified of the invitation (in the case of written invitations to respond in writing). If the response is to be given at interview, the interview must occur within 14 days after the invitation is given. The IAA has discretion under subsection 473DF(3) of the Migration Act to schedule the interview at any reasonable time in the 14-day period.

Regulation 4.43 sets out the permissible directions which the IAA may give to the Minister if the IAA remits a decision for reconsideration. Pursuant to section 473CC of the Migration Act, the IAA may either affirm the fast track reviewable decision or remit the decision to the Minister for reconsideration in accordance with directions or recommendations permitted by regulation.

The directions set out in item 3 are equivalent to the directions which can be made by the Refugee Review Tribunal under regulation 4.33 as amended by item 5 of Schedule 2 of this Regulation. Further explanation of those changes is set out in item 5 of Schedule 2 of this Explanatory Statement.

In summary, the IAA can direct that the referred applicant satisfies certain criteria for a protection visa, or satisfies a particular matter that is relevant to establishing whether those criteria are satisfied. However, the IAA is not able to give directions relating to whether there are serious reasons for considering that the referred applicant has committed crimes against peace, a war crime, crimes against humanity, or a serious non-political crime before entering Australia, or has been guilty of acts contrary to the purposes and principles of the United Nations. In addition, the IAA cannot give directions relating to whether, on reasonable grounds, the referred applicant is considered to be a danger to Australia's security, or having been convicted by a final judgement of a particularly serious crime, a danger to the Australian community. Those matters require a decision by the Minister and the Migration Act provides for review by the Administrative Appeals Tribunal.

Item [4] – After subparagraph 050.511(b)(iii) of Schedule 2

This item provides that a Subclass 050 (Bridging (General) visa, held by a fast track applicant who is undergoing the fast track assessment process, and whose application has been referred to the IAA, will expire 28 days after the IAA notifies the referred applicant of its decision to affirm the refusal of a protection visa.

Item [5] – Subparagraph 050.511(b)(vii) of Schedule 2

This item provides that, if the IAA remits a fast track reviewable decision to the Minister for reconsideration, a Subclass 050 bridging visa held by the referred applicant will expire in accordance with the terms of clause 050.511. This means that the visa will expire upon grant of the protection visa, or 28 days after notification of a refusal decision, or 28 days after the withdrawal of the application, or 28 days after the IAA notifies the referred applicant of its decision to affirm the refusal decision.

Item [6] – After paragraph 051.511(b) of Schedule 2

This item provides that a Subclass 051 (Bridging (Protection Visa Applicant)) visa, held by a fast track applicant undergoing the fast track assessment process, and whose application has been referred to the IAA, will expire 28 days after the IAA notifies the referred

applicant of its decision to affirm the refusal of a protection visa.

Item [7] – Paragraph 051.511(f) of Schedule 2

This item provides that, if the IAA remits a fast track reviewable decision to the Minister for reconsideration, a Subclass 051 bridging visa held by the referred applicant will expire in accordance with the terms of clause 051.511. This means that the visa will expire upon grant of the protection visa, or 28 days after notification of a refusal decision, or 28 days after the withdrawal of the application, or 28 days after the IAA notifies the referred applicant of its decision to affirm the refusal of a protection visa.

Item [8] – After paragraph 051.513(1)(b) of Schedule 2

This item provides that a Subclass 051 bridging visa granted under section 75 of the Migration Act to a fast track applicant undergoing the fast track assessment process will expire 28 days after the IAA notifies the referred applicant of its decision to affirm the refusal of a protection visa. Section 75 of the Migration Act provides for automatic grant of bridging visas if the Minister does not make a decision within a prescribed period.

Part 2 – Other amendments

Item [9] – At the end of regulation 4.43
This item prescribes a new direction under regulation 4.43 to ensure that the IAA can make a direction to the Minister that the grant of the visa is not prevented by section 91WB of the Migration Act (relating to family members who apply after the primary applicant has been granted a protection visa), should the IAA exercise its power to remit the matter for reconsideration.

Schedule 2 – Amendments relating to the Refugee Framework

Schedule 2 to this instrument is inserted as a consequence of Part 2 of Schedule 5 to the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (the RALC Act). Part 2 of Schedule 5 to the RALC Act removes most references to the Refugee Convention from the Migration Act and creates a new, self-contained statutory framework which articulates Australia's interpretation of its protection obligations under the Refugee Convention. The purpose of the items below is to remove references in the Migration Regulations to the Refugee Convention and to reflect the language of the new statutory framework related to refugees.

Item 1 – regulation 2.03B

This item inserts a reference in regulation 2.03B to paragraph 5H(2)(a) of the Migration Act. Paragraph 5H(2)(a) is inserted by item 7 of Part 2 of Schedule 5 to the RALC Act. Paragraph 5H(2)(a) excludes from the definition of refugee, a person who the Minister has serious reasons for considering has committed a crime against peace, a war crime or a crime against humanity, as defined by international instruments prescribed by the regulations.

Current regulation 2.03B prescribes international instruments for the purposes of defining a crime against peace, a war crime or a crime against humanity – in the context of

complementary protection.

This item amends regulation 2.03B to also prescribe international instruments for the purposes of new paragraph 5H(2)(a).

Item 2 – subregulation 4.31B(3)

This item repeals current subregulation 4.31B(3) and substitutes new subregulation 4.31B(3).

Current subregulation 4.31B(3) provides that no fee for review by the Refugee Review Tribunal (RRT) is payable if the RRT determines that the applicant for the visa that was the subject of the review is a person to whom Australia has protection obligations on the grounds of refugee protection or complementary protection. Protection obligations on these grounds is provided for in paragraphs 36(2)(a) and (aa) of the Migration Act.

Current subregulation 4.31B(3) contains a reference to the Refugee Convention. Item 2 therefore amends subregulation 4.31B(3) to remove the reference to the Refugee Convention and support the amendments made by Part 2 of Schedule 5 to the RALC Act.

Item 2 also simplifies subregulation 4.31B(3) by substituting paragraphs 4.31B(3)(a) and (b) with an amended subregulation 4.31B(3). Current paragraphs 4.31B(3)(a) and (b) describe remittals on the grounds of refugee protection and complementary protection respectively. However, remittals on these grounds are also described in regulation 4.33. Subregulations 4.33(3) and (4) describe permissible directions on the grounds of refugee protection and complementary protection respectively. As such, additional descriptions of remittals on these grounds are not required in subregulation 4.31B(3). Therefore, to simplify the subregulation, paragraphs 4.31B(3) (a) and (b) are being substituted with new subregulation 4.31B(3) which simply refers to a permissible direction under regulation 4.33. This substitution does not alter the operation of subregulation 4.31B(3).

Item 3 –paragraph 4.31C(1)(a)

This item repeals current paragraph 4.31C(1)(a) and substitutes new paragraph 4.31C(1)(a).

Current paragraph 4.31C(1)(a) provides that regulation 4.31C applies to a review by the RRT of a decision if on review by a court, the decision is remitted for reconsideration by the Tribunal; and the Tribunal determines that the applicant for the visa that was the subject of the review is a person to whom Australia has protection obligations on the grounds of refugee protection.

The paragraph currently contains a reference to the Refugee Convention. Item 3 amends paragraph 4.31C(1)(a) to remove the reference to the Refugee Convention and instead refer to a remittal under regulation 4.33.

As noted above, remittals on the grounds of refugee protection and complementary protection are described in subregulation 4.33. As such, additional descriptions of remittals on these grounds are not required in paragraphs 4.31C(1)(a) and (aa). Therefore, to simplify subregulation 4.31C(1), new paragraph 4.31C(1)(a) simply refers to a permissible direction under regulation 4.33. This does not alter the operation of paragraph 4.31C(1)(a).

This amendment is complemented by the amendment in item 4 below.

Item 4 – paragraph 4.31C(1)(aa)

This item repeals current paragraph 4.31C(1)(aa).

Current paragraph 4.31C(1)(aa) provides that regulation 4.31C applies to a review by the RRT of a decision if on review by a court, the decision is remitted for reconsideration by the Tribunal; and the Tribunal determines that the applicant for the visa that was the subject of the review is a person to whom Australia has protection obligations on the grounds of complementary protection.

Item 3 above amends paragraph 4.31C(1)(a) to refer to regulation 4.33 – which describes remittals on the grounds of complementary protection under subregulation 4.33(4). As such an additional description of a remittal on the grounds of complementary protection is not required in paragraph 4.31C(1)(aa). Therefore, to simplify subregulation 4.31C(1), and to avoid duplication, paragraph 4.31C(1)(aa) is being repealed.

Item 5 – paragraphs 4.33(3)(a) and (b)

This item repeals current paragraphs 4.33(3)(a) and (b) and substitutes new paragraphs 4.33(3)(a), (aa) and (b). The purpose of this amendment is to remove references to the Refugee Convention and to reflect the language of the new statutory framework relating to refugees, inserted by Part 2 of Schedule 5 to the RALC Act. Where the RRT finds an applicant to be a refugee within the meaning of subsection 5H(1) of the Migration Act, it is intended that a permissible direction be made under paragraph 4.33(3)(a). This is unless paragraph 4.33(3)(a) is not applicable, for example, where assessments include members of the same family unit.

Paragraph 4.33(3)(a)

Current paragraph 4.33(3)(a) provides that it is a permissible direction by the RRT that the applicant satisfies each matter, specified in the direction, that relates to establishing whether the applicant is a person to whom Australia has protection obligations on the grounds of refugee protection. Current paragraph 4.33(3)(a) contains a reference to the Refugee Convention and is intended to refer to a person who satisfies the criteria for refugee status under Article 1A(2) of the Refugee Convention. Article 1A(2) of the Refugee Convention is codified in item 7 of Part 2 of Schedule 5 to the RALC Act in new subsection 5H(1).

Item 5 therefore replaces the reference to the Refugee Convention in paragraph 4.33(3)(a) with a reference to “a refugee within the meaning of subsection 5H(1) of the Act” to support the amendments made by Part 2 of Schedule 5 to the RALC Act.

Paragraph 4.33(3)(aa)

Item 5 also inserts new paragraph 4.33(3)(aa) which provides that it is a permissible direction by the RRT that subsection 36(3) does not apply to the applicant. Subsection 36(3) provides that Australia is taken not to have protection obligations in respect of a person with a right to enter and reside in any other country apart from Australia. Subsection 36(3) is qualified by subsections 36(4) – (7). The reference to subsection 36(3) in new paragraph 4.33(3)(aa) therefore incorporates references to subsections 36(4) – (7). New paragraph 4.33(3)(aa) puts beyond doubt that the RRT can make a direction that subsection 36(3) does not apply to the person.

Paragraph 4.33(3)(b)

Current paragraph 4.33(3)(b) provides that it is not a permissible direction by the RRT that the applicant satisfies a matter specified in Articles 1F, 32 or 33(2) of the Refugee Convention. Articles 1F and 33(2) are codified in Part 2 of Schedule 5 to the RALC Act. Article 32 has not been expressly codified in a provision in the Migration Act.

Item 5 therefore replaces the references to these Articles of the Refugee Convention with the codified provisions inserted by Part 2 of Schedule 5 to the RALC Act. Articles 1F and 33(2) of the Refugee Convention are codified in new subsections 5H(2) and 36(1C) respectively. Item 5 therefore replaces the references to Articles 1F and 33(2) of the Refugee Convention in paragraph 4.33(3)(b) with references to subsections 5H(2) and 36(1C) respectively to support the amendments made by Part 2 of Schedule 5 to the RALC Act. Item 5 also divides paragraph 4.33(3)(b) into three subparagraphs to clearly describe non-permissible directions by the RRT.

- ***subparagraph 4.33(3)(b)(i)***

New subparagraph 4.33(3)(b)(i) provides that it is not a permissible direction that subsection 5H(1) of the Migration Act applies to the applicant. As new subsection 5H(1) is qualified by new subsection 5H(2), the RRT is not able to make an assessment that subsection 5H(1) applies to a person without considering subsection 5H(2). Subsection 5H(2) codifies Article 1F of the Refugee Convention. The longstanding intention is that the RRT is not to make a decision on matters relating to Article 1F. Similarly, in the context of the new statutory framework relating to refugees, the intention is that the RRT make decisions on matters relating to subsection 5H(2). New subparagraph 4.33(3)(b)(i) gives effect to this intention.

- ***subparagraph 4.33(3)(b)(ii)***

New subparagraph 4.33(3)(b)(ii) supports new subparagraph 4.33(3)(b)(i) to put beyond doubt that it is not a permissible direction by the RRT that subsection 5H(1) does not apply to the applicant because of subsection 5H(2).

New subparagraphs 4.33(3)(b)(i) and (ii) do not alter the effect of new paragraph 4.33(3)(a) which allows the RRT to make a direction that the applicant "is a refugee within the meaning of subsection 5H(1) of the Act".

- ***subparagraph 4.33(3)(b)(iii)***

New subparagraph 4.33(3)(b)(iii) provides that it is not a permissible direction by the RRT that the applicant satisfies, or does not satisfy, the criterion in subsection 36(1C) of the Migration Act. As noted above, subsection 36(1C) codifies Article 33(2) of the Refugee Convention. The longstanding intention is that the RRT is not to make a decision on matters relating to Article 33(2). Similarly, in the context of the new statutory framework relating to refugees, the intention is that the RRT not make decisions on matters relating to subsection 36(1C). New subparagraph 4.33(3)(b)(iii) gives effect to this intention.

Item 6 – Clause 866.111 of Schedule 2

This item repeals clause 866.111 of Schedule 2 of the Migration Regulations and substitutes two notes. Clause 866.111 relates to the subclass 866 protection visa and provides the full title of the Refugee Convention.

The purpose of this amendment is to support the amendments in Part 2 of Schedule 5 to the RALC Act, which remove references to the Refugee Convention in the context of protection visa applications. For this reason, the full title of the Refugee Convention in clause 866.111 is no longer required.

Note 1 is a technical amendment consequential to the removal of clause 866.112 from Subclass 866 by item 16 of Schedule 3 to this regulation.

The purpose of Note 2 is to clarify that there are no interpretation provisions specific to this subclass. Note 2 applies standard wording found in the Migration Regulations that is included when there are no interpretation provisions specific to a subclass. Note 2 is included here for consistency with the Migration Regulations.

Schedule 3 - Safe haven enterprise visas

Items 1, 4, 5, 12, 14, and 16 - Regulation 1.03, subitems 1127AA(3) and 1127AA(5), clauses 785.111, 790.111, and 866.112

Each of existing clauses 785.111, 790.111 and 866.112 and existing subitem 1127AA(5) contains a definition of ‘member of the same family unit’. Although there is some difference in the wording of these definitions, the effect of each is identical. There is also a definition of the term ‘member of the same family unit’ contained in section 5 of the Migration Act which, while worded differently, is also identical in effect.

These items repeal the regulation based definitions as they are redundant in light of the definition in section 5 of the Migration Act.

These items also make a number of small technical changes consequential to the removal of the definitions; this includes inserting notes to replace those definitions, and inserting a note into the definitions regulation (regulation 1.03) after the definition of *member of the family unit*. Each of these notes provides that for *member of the same family unit,* see subsection 5(1) of the Migration Act. The notes are intended to assist people in locating the definition. These are technical changes and are not intended to affect the current interpretation of the term 'member of the same family unit'.

A similar note is also inserted in clause 866.111 by item 6 of Schedule 2 to this regulation.

Item 2 – Subregulation 2.01(2) (after table item 3)

The table at subregulation 2.01(2) contains a list of visas created by the Migration Act and identifies the associated class and subclass in the regulations. As a consequence of the Safe Haven Enterprise Visa being created by subsection 35A(3A) of the Migration Act, it is necessary to include it in this table. This is a technical amendment that is consequential to the insertion of subsection 35(3A) into the Migration Act, Item 1404 into Schedule 1 to the Migration Regulations, and Subclass 790 into Schedule 2 to the Migration Regulations by Division 2 of Part 1 of Schedule 2 to the RALC Act.

Item 3 – After Subregulation 2.05(4AA)

New subregulation 2.05(4AB) prescribes circumstances in which the Minister may waive condition 8503 in relation to a visa. When condition 8503 is applied to a visa, it provides that the holder will not, after entering Australia, be entitled to be granted a substantive visa, other than a protection visa, while the holder remains in Australia.

Condition 8503 is a condition described by paragraph 41(2)(a) of the Migration Act. Paragraph 41(2)(a) relevantly provides the regulations may provide that a visa, or visas of a specified class, are subject to a condition that, despite anything else in this Act, the holder of the visa will not, after entering Australia, be entitled to be granted a substantive visa (other than a protection visa or a temporary visa of a specified kind) while he or she remains in Australia.

Subsection 46(1A) of the Migration Act provides that subject to subsection 46(2) an application for a visa is invalid if:

- the applicant is in the migration zone; and
- since last entering Australia, the applicant has held a visa subject to a condition described in paragraph 41(2)(a); and
- the Minister has not waived that condition under subsection 41(2A); and
- the application is for a visa of a kind that, under that condition, the applicant is not or was not entitled to be granted.

Condition 8503 is a mandatory condition on temporary protection visas (TPVs) granted since 18 October 2013. As a result of holding a TPV subject to condition 8503, subsection 46(1A) means a person will be unable to make a valid application for most visas. This is contrary to the intention that a person who has met the requirements under section 46A(1A) of the Migration Act (SHEV pathway requirements) will be able to apply for a visa from the prescribed list in subregulation 2.06AAB(1). This restriction will continue to apply even if the person no longer held the visa subject to condition 8503 unless the condition was

waived under subsection 41(2A).

This amendment is intended to allow the Minister to waive the condition once the person has met the SHEV pathway requirements.

The purpose of this amendment is to allow the SHEV to act as a pathway to other visas, as without this new waiver power any person who held a SHEV or TPV subject to condition 8503 prior to meeting the SHEV pathway requirements would be unable to make a valid application for a visa other than a TPV or SHEV.

Item 6 – At the end of paragraph 1302(3)(bb)

Existing paragraph 1302(3)(bb) lists certain types of applicants who are ineligible to make a valid application for a Bridging B visa (Subclass 030). This paragraph will be amended to add persons who hold a SHEV and persons whose last substantive visa was a SHEV as persons who are unable to make a valid application for a Bridging B visa , as it is not intended for such persons to be able to make a valid application for a Bridging B visa . The Bridging B Visa contains different travel rights to those available to SHEV holders, so it is not appropriate that a SHEV holder receive a Bridging B Visa .

Items 7 and 11 – At the end of subitem 1403(3) of Schedule 1, At the end of subitem 1404(4) of Schedule 1

Existing Items 1403 and 1404 contain the requirements a person needs to meet to make a valid visa application for a TPV or a SHEV respectively. Item 7 adds paragraphs 1403(3)(e) and (f) to item 1403. Paragraph 1403(3)(e) adds three alternative requirements, one of which needs to be met by an applicant to make a valid TPV application. Paragraph 1404(3)(f) adds one new criterion that needs to be met by all TPV applicants. Item 11 adds paragraph 1404(3)(f) to item 1404, containing four alternative requirements, one of which needs to be met by an applicant to make a valid SHEV application.

The three alternative requirements for a TPV application are:

- new subparagraph 1403(3)(e)(i) – the applicant has not made a valid application for a SHEV;
- new subparagraph 1403(3)(e)(ii) – the applicant has made an application for a SHEV and the SHEV application has been refused, (whether or not it has been finally determined) or withdrawn, or the visa has been granted; or
- A new subparagraph 1403(3)(e)(iii) – a SHEV has been granted to the applicant.

The new requirement that must be met by all TPV applicants is in new paragraph 1403(3)(f) which provides that the application was not made at the same time as an application for a SHEV.

The four alternative requirements for a SHEV application are:

- new subparagraph 1404(4)(f)(i) – the applicant has not made a valid application for a TPV;
- new subparagraph 1404(4)(f)(ii) – the applicant has made a valid application for a TPV, and the TPV application has been refused (whether or not it has been finally determined) or withdrawn, or a TPV has been granted to the applicant;

- new subparagraph 1404(4)(f)(iii) –a TPV has been granted to the applicant; or
- new subparagraph 1404(4)(f)(iv) – the application for the SHEV is made at the same time as an application for a TPV.

Together these two items are intended to ensure that a person may not make simultaneous TPV and SHEV applications. As the requirements that need to be met to be granted a TPV and SHEV are so similar, it is intended that a person can only make an application for one of the visas at a time. Allowing the person to make simultaneous applications for both classes will mean that both applications will need to be decided, which could to lead to the person receiving two sets of review rights, one for each decision. As the requirements for the visas are so similar, allowing the person to pursue the same claims twice would be unnecessary and needlessly burdensome on the review bodies.

In each case the first made application will be valid, while subsequent applications will be invalid until the person is no longer an applicant for the visa (due to the application being refused, granted or withdrawn).

Where an applicant makes simultaneous applications for a TPV and SHEV, only the SHEV application is valid. As the SHEV is a five year visa compared to the maximum three year visa period of the TPV, and as SHEV will offer a pathway to a non-protection visa, a valid SHEV application will be more beneficial to the applicant than a valid TPV application.

Item 11 inserts a note to this effect (Note 2) after paragraph 1404(3)(f), this note provides that "if subparagraph (iii) applies, the TPV application will be invalid: see paragraph 1403(3)(f))".

Subparagraphs 1403(3)(e)(ii) and 1404(4)(f)(ii) allow an application for the respective visa to be made even if an application for the alternative visa has already been made, if the initial application has been refused or if the visa was granted. However, a person who has been refused one of these visas will be unable to make a valid application for either of these visas due to section 48A of the Migration Act unless that bar has been waived under subsection 48B(1) of the Migration Act.

This means that if a person is refused a protection visa, subparagraphs 1403(3)(e)(ii) and 1404(4)(f)(ii) could only be used to make a valid application when the Minister determines in a written notice that the section 48A bar has been waived under section 48B.

Section 48A provides that subject to section 48B, a non-citizen who, while in the migration zone, has made:

- an application for a protection visa, where the grant of the visa has been refused (whether or not the application has been finally determined); or
- applications for protection visas, where the grants of the visas have been refused (whether or not the applications have been finally determined);

may not make a further application for a protection visa, or have a further application for a protection visa made on his or her behalf, while the non-citizen is in the migration zone.

Subsection 48B(1) provides that if the Minister thinks that it is in the public interest to do so, the Minister may, by written notice given to a particular non-citizen, determine that section 48A does not apply to prevent an application for a protection visa made by the non-

citizen in the period starting when the notice is given and ending at the end of the seventh working day after the day on which the notice is given.

Each of these items inserts a note after the body of the paragraph to the effect that "A person to whom [the associated] subparagraph (ii) applies, whose TPV/SHEV application has been refused is prevented by section 48A of the Migration Act from making the Safe Haven Enterprise visa application unless the Minister has made a determination in relation to the person under section 48B of the Act." This note is added to make it clear that these subparagraphs are not intended to circumvent the section 48A bar.

Item 8 – Sub item 1404(1) of Schedule 1

This item repeals subitem 1404(1) of Schedule 1 to the Regulations, and substitutes new subitem 1404(1) that provides that the form is the approved form specified by the Minister in a legislative instrument made for item 1404 under subregulation 2.07(5).

The effect of this amendment is that item 1404 of Schedule 1 prescribes the form required for making a SHEV application by reference to an approved form specified in a legislative instrument made by the Minister under subregulation 2.07(5), inserted in the Migration Regulations by this Regulation.

Item 9 – 1404(3)(a) of Schedule 1

This item repeals paragraph 1404(3)(a) of Schedule 1 to the Regulations, and substitutes a new paragraph 1404(3)(a) to provide that an application must be made at the place, and in the manner (if any) specified by the Minister in a legislative instrument made for item 1404(3)(a) under subregulation 2.07(5).

The effect of this amendment is that the relevant items of Schedule 1 prescribe the place and manner required for making an application for a SHEV by reference to the place and manner specified in a legislative instrument made by the Minister under subregulation 2.07(5).

Item 10 – Paragraph 1404(3)(e) of Schedule 1

Existing paragraph 1404(3)(e) contains the requirement that an application is valid only if the person indicates in writing an intention to work or study while accessing minimum social security benefits in a regional area specified under subclause 1404(4).

As constructed, this requirement does not facilitate family members who do not have that intention from applying for a SHEV with an applicant. This could inadvertently lead to families being split as they may receive different kinds of visas with different restrictions and visa periods. For example, if only one parent has the intention, the other parent may be unable to meet the protection claims criteria of a TPV or a SHEV, and as a result that parent and the children of the family could be unable to get any visa and become unlawful.

This amendment is intended to avoid this situation by revoking the current paragraph and substituting a new paragraph that provides instead that a requirement of a valid SHEV application is that the application includes an indication, in writing, that the applicant, or a member of the same family unit as the applicant who is also an applicant for a SHEV,

intends to work or study while accessing minimum social security benefits in a regional area specified under subclause 1404(4).

The purpose of this amendment is to ensure families can stay together on the same visa.

Item 13 – Paragraph 785.511(a) of Schedule 2

Existing clause 785.511 of Schedule 2 provides the time period for which a TPV holder is permitted to remain in, travel to and enter Australia.

Currently clause 785.511 provides that a TPV holder is permitted to remain in, travel to and enter Australia for a period of three years from the date of grant of the TPV, or any shorter period specified by the Minister or, if the TPV holder makes another valid application for a TPV within the three year period, the day when the application is finally determined or withdrawn.

This means that a person who applies for a TPV while still holding a TPV will have no gap between their two visas. In other circumstance the gap between two visas will be covered by a Bridging Visa. This is not desirable with protection visa holders as protection visa holders are eligible for certain payments and benefits that bridging visa holders are not.

This item amends clause 785.511 to account for the fact that a TPV holder may apply for either a TPV or a SHEV as a further protection visa.

It is not intended that withdrawal of an application will lead to the ceasing of a current visa, as unlike the circumstance where a person is refused a further TPV or SHEV, there has been no testing of whether or not the applicant is still an appropriate person to hold a protection visa. To this end clause 785.511 is also amended to provide that, when a further TPV or SHEV application is withdrawn, the TPV holder is entitled to remain in Australia until the end of the three year period, or a shorter period specified by the Minister.

Amended Clause 785.511 provides that a TPV holder is permitted to remain in, travel to and enter Australia for:

- a period of three years from the date of grant of the TPV, or
- any shorter period specified by the Minister or,
- if the TPV holder makes another valid application for a TPV or a valid application for a SHEV within the three year period and that application is withdrawn, the later of the day when the application is withdrawn and the end of the three year period or, if the application is not withdrawn, the day the application is finally determined.

Item 15 – Paragraph 790.511(a) of Schedule 2

Existing clause 790.511 of Schedule 2 provides the time period in which a SHEV holder is permitted to remain in, travel to and enter Australia.

Currently clause 790.511 provides that a SHEV holder is permitted to remain in, travel to and enter Australia for a period of five years from the date of grant of the SHEV or, if the SHEV holder makes another valid application for a SHEV within the five year period, the day when the application is finally determined or withdrawn.

This item amends this paragraph 790.511(a) to account for the fact that a SHEV holder may not only apply for another SHEV, but may also apply for a TPV before the expiration of their SHEV and it is intended that an application for a TPV will similarly extend their visa period.

Paragraph 790.511(a) is also amended to account for the fact that the application for the TPV or SHEV may be withdrawn before the expiration of the five year period and to make clear that, in this case, the SHEV holder is entitled to remain in Australia until the end of the five year period.

Amended paragraph 790.511(a) provides that the SHEV is a temporary visa permitting the holder to travel to, enter and remain in Australia until: in a case in which the holder of the temporary visa (the first visa) makes a valid application for another SHEV or a TPV, within 5 years after the grant of the first visa:

- if the application is withdrawn—the later of the day the application is withdrawn, and the end of 5 years from the date of the grant of the first visa; and
- if the application is not withdrawn—the day the application is finally determined.

Paragraph 790.511(B) continues to provide that in any other case, the SHEV is a temporary visa permitting the holder to travel to, enter and remain in Australia until the end of 5 years from the date of grant of the first visa.

Item 17 – Subparagraphs 8570(a)(i) and (ii) of Schedule 8
This item is a minor grammatical change to reflect the fact that Australia's obligations under the treaties and international instruments to which it is a party are owed to the other States party to those treaties and international instruments and not to individuals. This amendment reflects how protection obligations are described in the Migration Act.

Schedule 4 – Application provisions

This item amends Schedule 13 to the Migration Regulations to insert new Part 40- Amendments made by Migration Amendment (Resolving the Asylum Legacy Caseload) Regulation 2015.

New clause 4001 provides that the amendments to the Migration Regulations made by Schedule 2 to the Regulation apply in relation to the review of an RRT-reviewable decision made on or after the commencement of that Schedule in relation to an application for a Protection visa made on or after 16 December 2014.

The purpose of this amendment is to ensure consistency with the application of the amendments in Part 2 of Schedule 5 to the RALC Act. The application provision is contained in Part 4 of Schedule 5 to the RALC Act.