

EXPLANATORY STATEMENT

Issued by the Minister for Immigration and Border Protection

Migration Act 1958

Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016

The *Migration Act 1958* (the Migration Act) is an Act relating to the entry into, and presence in, Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

Subsection 504(1) of the Migration Act in summary provides that the Governor-General may make regulations prescribing matters required or permitted by the Migration Act 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 in Attachment A.

The purpose of the Regulation is to amend the *Migration Regulations 1994* (Migration Regulations) to:

- Address inappropriate use of the Subclass 457 programme by imposing an obligation on standard business sponsors to require them not to engage in recruitment practices which discriminate against potential employees on the grounds of immigration status or citizenship;
- Streamline the processing of Subclass 457 visa applications by requiring visa applicants to enter details of a nomination by a sponsor or proposed sponsor when making internet visa applications;
- Remove visa criteria which require provision of evidence of English language proficiency by Subclass 457 visa applicants who are already required to demonstrate such proficiency to obtain occupational registration or licensing;
- Clarify that in deciding whether there are compelling reasons for giving special consideration to granting a Subclass 202 (Global Special Humanitarian) visa to an applicant, where the applicant has been proposed by an individual proposer, the Minister must have regard to the capacity of the Australian community to provide for the permanent settlement of persons such as the applicant in Australia;
- Introduce a simplified international student visa framework which would:
 - reduce the current eight student visa subclasses to two visa subclasses: Subclass 500 (Student) and Subclass 590 (Student Guardian);
 - streamline application and processing requirements for student visa applicants, in particular by making criteria common to all applicants, including criteria relating to enrolment, English language requirements, financial capacity, and genuineness of application for entry and stay as a student;

- simplify a range of requirements including enrolment requirements, financial requirements, and requirements relating to visas previously held if the application is made in Australia;
- repeal the provisions relating to the current regulatory assessment level framework and streamlined processing provisions and introduce new requirements to strengthen the integrity of the programme by providing a larger range of factors for decision makers to assess genuineness and the need for individuals to provide evidence of financial and English proficiency;
- revise a condition placed on student visas to make it clear to visa holders what kinds of courses they are permitted to undertake while holding the particular visa and when a change of course would require them to apply for a new student visa; and
- make other amendments to repeal duplicate and redundant provisions and clarify the operation of the relevant provisions.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulation is compatible with human rights. A copy of the Statement is at [Attachment B](#).

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

Details of the Regulation are set out in [Attachment C](#).

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

The Regulation commenced on the day after it was registered and the substantive provisions commenced on the dates specified.

The Office of Best Practice Regulation (the OBPR) has been consulted regarding the amendments made by the Regulation. The OBPR considers that the changes in Schedules 1, 2 and 3 will not have a significant regulatory impact on business and no further analysis (in the form of a Regulation Impact Statement (RIS)) is required. The OBPR consultation references are as follows:

- 18006 (Schedule 1);
- 18647 (Schedule 2); and
- 19285 (Schedule 3).

In relation to the amendments in Schedule 4 the OBPR considers that the amendments are compliant with the Government's RIS requirements and the RIS is consistent with best practice. The OBPR consultation reference is 18083. The Department has completed a RIS which can be found in [Attachment D](#).

In relation to the amendments made by Schedule 1, a broad range of external stakeholders were consulted by the Independent Review into Integrity in the 457 Programme, as recorded in its September 2014 report titled 'Robust New Foundations –A streamlined, transparent and responsive system for the 457 programme'. The amendments implement a recommendation of

that report. The Attorney-General's Department and the Department of Foreign Affairs and Trade were consulted on the form of the amendments.

In relation to the amendments made by Schedule 2, no consultation was appropriate or practicable as the instrument does not substantially alter existing arrangements. This accords with subsection 17(1) of the *Legislation Act 2003* which envisages consultations where appropriate and reasonably practicable.

In relation to the amendments made by Schedule 3, no consultation was appropriate or practicable as the instrument does not substantially alter existing arrangements. The amendment is a technical change to correct an error which was introduced during the drafting of amendments to these provisions which took effect on 1 June 2013.

In relation to the amendments made by Schedule 4, wide consultation on specific topics occurred throughout the development of the simplified student visa framework. The Department of Immigration and Border Protection prepared a discussion paper entitled *Future directions for streamlined processing* which was circulated to education peak bodies, State and Territory governments, and relevant Australian Government agencies on 18 November 2014. Formal submissions were invited by 19 December 2014. A working group was formed which comprised of a wide range of agencies including representatives of the Department of Immigration and Border Protection, the Department of Education and Training, Austrade, NSW and Victorian State governments, and each education peak body, including representatives of the higher education, vocational education and training, ELICOS and schools sectors. The working group was the primary forum for consultation on the proposed simplified student visa framework, and meetings were held on 13 July, 4 August and 21 August 2015. The Department of Immigration and Border Protection held roadshows in Canberra, Sydney, Adelaide, Melbourne, Perth and Brisbane between 22 June and 9 July 2015 to inform international education stakeholders, including education providers, of the proposed simplified student visa framework and the next steps. In addition, the Department of Immigration and Border Protection met with representatives from the Department of Education and Training, the Department of Foreign Affairs and Trade, the Department of Defence, Austrade, the Australian Skills Quality Authority and the Tertiary Education Quality Standards Agency.

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 of the Migration Act may apply:

- Subsections 29(2) and 29(3), which provide that the regulations may prescribe a period during which the holder of a visa may travel to, enter and remain in Australia;
- Subsection 31(1), which provides that the regulations may prescribe classes of visas;
- Subsection 31(3), which provides that the regulations may prescribe criteria for a visa or visas of a specified class (which, without limiting the generality of this subsection, may be a class provided for by section 32, 36, 37, 37A or 38B but not by section 33, 34, 35, 38 or 38A);
- Subsection 31(4), which provides that the regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia, or both;
- Subsection 31(5), which provides that the regulations may specify that a visa is a visa of a particular class;
- Subsection 40(1), which provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- Subsection 40(2), which provides that, without limiting subsection 40(1), the circumstances may be, or may include, that when the person is granted the visa, the person:
 - (a) is outside Australia; or
 - (b) is in immigration clearance; or
 - (c) has been refused immigration clearance and has not subsequently been immigration cleared; or
 - (d) is in the migration zone and, on last entering Australia, was immigration cleared or bypassed immigration clearance and had not subsequently been immigration cleared;
- Subsection 41(1), which provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions;

- Subsection 41(2), which provides that, without limiting subsection 41(1), the regulations may provide that a visa, or visas of a specified class, are subject to:
 - (a) a condition that, despite anything else in the Act, the holder of the visa will not, after entering Australia, be entitled to be granted a substantive visa (other than a protection visa), while he or she remains in Australia; or
 - (b) a condition imposing restrictions about the work that may be done in Australia by the holder, which, without limiting the generality of this paragraph, may be restriction on doing any work, work other than specified work or work of a specified kind;
- Subsection 41(3), which provides that, in addition to any conditions specified under subsection 41(1), the regulations may prescribe conditions which the Minister may impose on a visa;
- Section 45A, which provides that the regulations may prescribe that a non-citizen who makes an application for a visa is liable to pay a visa application charge if, assuming the charges were paid, the application would be a valid visa application;
- Subsection 45B(1), which provides that the regulations may prescribe the amount of visa application charge, not exceeding the visa application charge limit;
- Subsection 45B(2), which provides that the regulations may prescribe that the visa application charge in relation to an application may be nil;
- Subsection 45C(1), which provides that the regulations may:
 - (a) provide that the visa application charge may be payable in instalments; and
 - (b) specify how those instalments are to be calculated; and
 - (c) specify when the instalments are payable;
- Paragraph 45C(2)(b), which provides that the regulations may make provision for the remission, refund or waiver of the visa application charge or an amount of visa application charge;
- Subsection 46(3), which provides that the regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application;
- Subsection 46(4), which provides that the regulations may prescribe, without limiting subsection 46(3):
 - (a) the circumstances that must exist for an application for a visa of a specified class to be a valid application; and
 - (b) how an application for a visa of a specified class must be made; and
 - (c) where an application for a visa of a specified class must be made; and
 - (d) where an applicant must be when an application for a visa of a specified class is made;

- Paragraph 116(1)(g), which provides that the Minister may cancel a visa if he or she is satisfied that a prescribed ground for cancelling a visa applies to the holder;
- Section 140A, which provides that Division 3A of Part 2 of the Act applies to visas of a prescribed kind;
- Subsection 140E(1), which provides that the Minister must approve a person as a sponsor in relation to one or more classes of sponsor if prescribed criteria are satisfied;
- Subsections 140E(2), which provides that the regulations may prescribe classes of sponsor;
- Subsection 140E(3), which allows different criteria to be prescribed for different kinds of visa, different classes of sponsor and different classes of person within a class of sponsor;
- Subsections 140F(1) and (2), which provide that the regulations may establish a process for the Minister to approve a person as a sponsor, and that different processes may be prescribed for different kinds of visa and different classes of sponsor;
- Subsections 140GA(1) and (3), which provide that the regulations may establish a process for the Minister to vary a term of a person's approval as a sponsor, and that different processes and different criteria may be prescribed for different kinds of visa, different kinds of terms and different classes of sponsor;
- Subsection 140GB(2), which provides that the Minister must approve an approved sponsor's nomination if prescribed criteria are satisfied;
- Subsection 140GB(3), which provides that the regulations may establish a process for the Minister to approve an approved sponsor's nomination;
- Subsection 140GB(4), which provides that different criteria and different processes may be prescribed for different kinds of visa and different classes of sponsor;
- Subsection 140H(1), which provides that a person who is or was an approved sponsor must satisfy the sponsorship obligations prescribed by the regulations;
- Subsections 140H(4) and (5), which provide that the regulations may require a person to satisfy sponsorship obligations in respect of each visa holder sponsored by the person or generally, and that the sponsorship obligations must be satisfied in the manner (if any) and within the period (if any) prescribed by the regulations;
- Subsection 140H(6), which provides that different kinds of obligations may be prescribed for different kinds of visa and different classes of sponsor;
- Section 140L, which provides that the regulations may prescribe the circumstances in which the Minister may, or must, take one or more of the actions

in section 140M of the Act, and that different circumstances and different criteria may be prescribed for different kinds of visa and different classes of sponsor;

- Subsection 276(4), which provides that a person will not be considered to give immigration assistance in the circumstances prescribed by the regulations;
- Subsection 338(9), which provides the regulations may prescribe a decision as a Part 5-reviewable decision;
- Subparagraph 504(1)(a)(i), which provides that the regulations may make provision for the charging and recovery of fees in respect of any matter under the Act or the regulations;
- Paragraph 504(1)(e), which provides that regulations may be made in relation to the giving of documents to, the lodging of documents with, or the service of documents on, the Minister, the Secretary or any other person or body, for the purposes of the Act; and
- Subsection 504(2) which provides that section 14 of the *Legislation Act 2003* does not prevent, and has not prevented regulations whose operation depends on a country or other matter being specified or certified by the Minister in an instrument in writing made under the regulations after the regulations have taken effect.

Statement of Compatibility with Human Rights

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

Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016

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 – Discriminatory Recruitment Practices

Overview of the Measure

This measure implements a recommendation from the Independent Review into Integrity in the 457 Programme (the 457 Integrity Review) and its report titled ‘Robust New Foundations – A streamlined, transparent and responsive system for the 457 programme’. Recommendation 10.6 of the review/report recommended ‘*that the department should explore options that would enable the enforcement of the attestation relating to non-discriminatory employment practices.*’

Prior to these amendments, paragraphs 2.59(f) and 2.68(g) of the *Migration Regulations 1994* (the Regulations) provided that in order for a standard business sponsorship to be approved or varied under the Temporary Work (Skilled) (Subclass 457) visa programme, the sponsorship applicant must have attested in writing that the applicant has a strong record of, or a demonstrated commitment to employing local labour and non-discriminatory employment practices. The attestation was not binding on the sponsor and the Department was unable to take action when an employer acted in a manner contrary to the attestation.

The measure in Schedule 1 creates a new sponsor obligation in Division 2.19 of Part 2A of the Regulations to require standard business sponsors to refrain from engaging in discriminatory recruitment practices. ‘Discriminatory recruitment practice’ is defined to mean a recruitment practice that directly or indirectly discriminates against a person based on the immigration status or citizenship of the person, other than a practice engaged in to comply with a Commonwealth, State or Territory law. The new obligation seeks to address a community concern that some employers may be relying on the Subclass 457 programme to employ foreign workers without having regard to the availability of local labour. Related to the new sponsor obligation, the criteria for approval to become or remain a standard business sponsor (paragraphs 2.59(f) and 2.68(g)) have been amended to require a written declaration that the applicant will not engage in discriminatory recruitment practices. The provisions also retain the existing requirement for an attestation that the applicant has a strong record of, or a demonstrated commitment to, employing local labour.

Human rights implications

The measure creating a binding obligation that a sponsor must not engage in discriminatory recruitment practices is indirectly relevant to Article 6 and 4 and engages Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Article 6 and Article 4 of the ICESCR

Article 6 of ICESCR provides that:

The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

It is the long standing position of the Australian Government that an authority from the Australian Government needs to be granted before a non-citizen is permitted to work. This authority and associated ‘work rights’ are attached to certain types of visas, including the subclass 457 visa. A person is not permitted to work in Australia unless work rights have been granted, and merely arriving lawfully in Australia does not entitle a person to work rights in the absence of a visa with work rights.

The work rights of temporary non-citizens may be conditioned or limited on a case by case basis. Article 4 of ICESCR provides that the State may subject the rights enunciated in the ICESCR:

...only to such limitations as are determined by law only insofar as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in democratic society.

The authority from the Australian Government granting work rights and conditions or limitations placed on temporary non-citizens in respect of those work rights is lawful as a matter of domestic law and serves the objectives of maintaining the integrity of Australia’s migration program, ensuring the continued access of Australian citizens and permanent residents to employment, and ensuring that temporary non-citizens are not the subject of exploitation. As such, the proposed amendments are justified in accordance with Article 4 of ICESCR.

Article 2 of the ICESCR

Article 2.2 provides:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The obligation in the measure requires a sponsor to have non-discriminatory recruitment practices in relation to the citizenship and immigration status of prospective employees. The obligation may overlap to some extent with the rights enunciated in Article 2.2, in the sense that discrimination on the grounds of citizenship or immigration status may also involve discrimination on the other grounds. These grounds are already captured in the *Racial Discrimination Act 1975*, which in relation to work reflects the obligations in the ICESCR.

In relation to migrant workers and the right to work, the Committee on Economic, Social and Cultural Rights, in its General Comment Number 18 noted that (at 18):

The principle of non-discrimination as set out in article 2.2 of the Covenant [...] should apply in relation to employment opportunities for migrant workers and their families. In this regard the Committee underlines the need for national plans of action to be devised to respect and promote such principles by all appropriate measures legislative or otherwise.

However, that aspect does not relate to the right to work, rather, it is relevant to non-discrimination more generally. This measure, with its focus on recruitment practices, goes directly to non-discrimination in employment opportunities.

Conclusion

The measure is compatible with human rights insofar as any limitations upon Article 6 of the ICESCR comply with limitation requirements in Article 4 of the ICESCR. Further, the amendment positively engages in Article 2 of the ICESCR as the amendments have as their objective non-discrimination in employment opportunities.

Schedule 2 – Processing of Subclass 457 visas

Overview of the measure

Schedule 2 amends the *Migration Regulations 1994* to give effect to two policy changes relating to the Subclass 457 Temporary Work (Skilled) visa. The amendments:

- adjust the criteria which must be met for an applicant to make a valid application for a Subclass 457 (Temporary Work (Skilled)) visa. The criteria are set out in item 1223A of Schedule 1 to the *Migration Regulations 1994* (the Regulations); and
- adjust the English language criteria which must be met by certain applicants in order for the visa to be granted. The criteria are set out in Schedule 2 to the Regulations.

Criteria for making a valid Subclass 457 visa application

These amendments simplify provisions and assist in the efficient processing of applications. In order to meet the requirements of item 1223A of Schedule 1 of the Regulations, applicants previously entered an identification number which identified the sponsor or proposed sponsor. This number related to the identity of the sponsor and was not specific to the nomination or proposed nomination. This meant that visa applications were not automatically linked to the relevant nomination at the time the visa application was lodged. This slowed visa processing because the processing officer was required to manually identify the relevant nomination. To address this issue, systems were changed to prevent a visa application from being lodged online unless the visa application identified an approved nomination or an application for approval of a nomination which has not been finalised. To provide legislative authority for this approach, some references in item 1223A to the identity of the sponsor were replaced with references to the nomination. As a result, applicants no longer enter a number linked to the identity of the sponsor, and they instead enter a number linked to the nomination.

English language criteria

These amendments improve the flexibility and efficiency of the Subclass 457 programme, and simplify requirements for certain visa applicants, by amending the English language criteria for the Subclass 457 visa. Previously, applicants were required to provide evidence of English language proficiency to the Department, via specified test results, even if they were

able to demonstrate English proficiency by test results, or by some other means, that was satisfactory to Australian occupational licensing or registration authorities. In circumstances where the registration and licensing authorities impose and assess English language requirements, it is duplication and ‘red tape’ for the Department to require the same or equivalent evidence via specified test results. The amendment repeals a criterion which imposed such a requirement (paragraph 457.223(4)(ea)). In addition, to give full effect to the policy of reliance on assessment by occupational licensing and registration authorities, it is necessary to amend the instrument under subclause 457.223(11) so that visa applicants are exempt from the Department’s English language testing requirements if they have already met the same or higher English language requirements to gain an occupational registration or license. That instrument is amended with effect from the commencement date of this regulation. The changes do not adversely impact English proficiency levels in the 457 programme.

Human rights implications

Criteria for making a valid Subclass 457 visa application

This amendment has been assessed against the seven core international human rights treaties and it does not engage any of the applicable rights or freedoms.

English language criteria

This amendment has been assessed against the seven core international human rights treaties. Generally, Australia owes human rights obligations only to those within its territory and/or jurisdiction. The Subclass 457 visa to which this amendment relates may be applied for onshore (i.e. where the applicant is in Australia) or offshore (i.e. where the applicant is outside Australia). Therefore, the human rights implications assessed below are relevant to the extent that they pertain to persons seeking to satisfy the criteria for the grant of a Subclass 457 visa while onshore.

Recognition of the right to work – Article 6 of the ICESCR

As the measure has an impact on the work rights of non-citizens, Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) is relevant.

Article 6 provides:

The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

The work rights of temporary non-citizens may be conditioned or limited on a case by case basis. Article 4 of ICESCR provides that the State may subject the rights enunciated in the ICESCR:

...only to such limitations as are determined by law only insofar as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in democratic society.

It is the long standing position of the Australian Government that an authority from the Government needs to be granted before a non-citizen is permitted to work. This authority and associated ‘work rights’ are attached to certain types of visas, including the Subclass 457 visa. A person is not permitted to work in Australia unless work rights have been granted, and merely arriving lawfully in Australia does not entitle a person to work rights.

The authority from the Government granting work rights and conditions or limitations placed on temporary non-citizens in respect of those work rights are lawful as a matter of domestic law and serve the objectives of maintaining the integrity of Australia's migration programme, ensuring the continued access of Australian citizens and permanent residents to employment, and ensuring that temporary non-citizens are not the subject of exploitation. As such, the proposed amendments are justified in accordance with Article 4 of ICESCR.

Prohibition on discrimination – Articles 2 and 26 of the International Covenant on Civil and Political Rights

As the measure purports to discriminate in favour of those exempted, consideration has to be had to whether this engages Article 2 and Article 26 of the International Covenant on Civil and Political Rights (ICCPR).

Article 2 provides:

Each State Party to the present Covenant undertakes to respect and to ensure all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2 of the ICESCR reflects the provision relating to discrimination in article 2(1) of the ICCPR.

Article 26 of the ICCPR provides:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee, to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

'Language' is listed in these articles of the ICESCR and the ICCPR as a ground upon which an individual may be discriminated. However, not all treatment that differs among individuals or groups on any of the grounds mentioned above will amount to prohibited discrimination. The UN Human Rights Committee has recognised that 'not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant'.

As outlined above, the purpose of this amendment is to amend the English language exemption provisions of the Subclass 457 programme by providing an exemption to the standard English language requirements for visa applicants who have already met the same or higher English language requirements to gain an occupational registration or license. The main objective of the English language requirement is to ensure that those working and living in Australia have minimum standards of English, which protects the community and applicant in a range of areas such as healthcare and workplace health and safety.

While the measure affects a cohort of applicants differently, it is an administrative measure that will benefit some persons seeking entry to Australia on a Subclass 457 visa by streamlining the current requirements for English language proficiency in certain circumstances. The measure is reasonable and proportionate in achieving a legitimate objective and is therefore compatible with human rights.

Conclusion

These amendments are compatible with human rights as they do not raise any human rights issues.

Schedule 3 – Subclass 202 (Global Special Humanitarian) Visas

Overview of the measure

The proposed amendment to the *Migration Regulations 1994* (the Regulations) corrects an error in the criteria for the Subclass 202 (Global Special Humanitarian) visa by providing that the capacity of the Australian community to provide for persons such as the applicant, rather than the applicant individually, must be taken into consideration in deciding whether there are compelling reasons for giving special consideration to granting the applicant a permanent visa.

An applicant proposed for a Subclass 202 (Global Special Humanitarian) visa by an individual proposer must meet the time of decision criterion at subclause 202.222(2), which currently requires that:

..... the Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a permanent visa, having regard to:

- (a) the degree of discrimination to which the applicant is subject in the applicant's home country; and*
- (b) the extent of the applicant's connection with Australia; and*
- (c) whether or not there is any suitable country available, other than Australia, that can provide for the applicant's settlement and protection from discrimination; and*
- (d) the capacity of the Australian community to provide for the permanent settlement of the applicant in Australia.*

The *Migration Amendment Regulation 2013 (No 2)* (Select Legislative Instrument No 75, 2013), which commenced on 1 June 2013, repealed the previous subclause 202.222(2) and substituted the current subclause. This amendment was intended to facilitate the introduction of a new subclause 202.222(3) which was inserted at the same time. Subclause 202.222(3) applies when an applicant for a Subclass 202 visa is proposed by an approved proposing organisation in the Community Proposal Pilot.

The amendment to subclause 202.222(2) was intended only to facilitate the introduction of the new subclause 202.222(3). However, an unintended change was made to paragraph 202.222(2)(d). The previous paragraph had provided that the Minister must have regard to “the capacity of the Australian community to provide for the permanent settlement of persons such as the applicant in Australia”. In the substituted subclause 202.222(2) this was changed to “the capacity of the Australian community to provide for the permanent settlement of the applicant in Australia”.

Under paragraph 202.222(3)(d) the intention is that the Minister will have regard to the capacity of the community to provide for the settlement of the individual applicant as applicants to whom subclause 202.222(3) applies are proposed by approved sponsoring organisations, which are community organisations. By contrast, paragraph 202.222(2)(d) is intended to refer to the overall capacity of the Australian community to provide for the settlement of persons such as the applicant, who might fall within paragraphs 202.222(2)(a), (b) and (c). It is not intended to refer to capacity to provide for the particular applicant. Capacity is to be determined by reference to the number of “places” the government has decided to make available under the humanitarian programme and the priorities set out in policy.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms as it is a minor and technical correction.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Schedule 4 – Student Visa Simplification

Overview of the measure

The amendments to the *Migration Regulations 1994* (the Regulations) implement the recommendations of the *Future directions for streamlined visa processing* report; including a simplified student visa framework based on the report's two key recommendations:

- reduce the number of student visa subclasses from eight to two (Recommendation Eight); and
- implement a new combined country and provider immigration risk framework to guide student visa evidentiary requirements and create streamlined visa application processing opportunities for education providers across all sectors (Recommendation One).

The amendments to simplify the student visa framework include changes to:

- Reduce the number of student visa subclasses from eight to two (create one new student visa subclass and one new student guardian visa subclass);
- Repeal provisions relating to the student visa assessment level framework and streamlined visa processing arrangements, including Part 1 Division 1.8 of the Regulations, Schedule 5A to the Regulations and Schedule 5B to the Regulations, as well as removing restrictions on applicants from certain countries applying for a student visa in Australia and removing restrictions on bringing family members for study less than 10 months;
- Introduce new financial and English requirements where the evidentiary requirements will generally be guided by the applicant's combined education provider and country risk, but also gives flexibility to decision makers to take into account the individual circumstances of the applicant in determining whether evidence is needed;
- Introducing a new course change condition to make it clear to students what kinds of course changes are permitted on the student visa and what kinds require a new student visa;
- Amend references to student visas (and related terminology) throughout the Regulations to reflect the new student visa framework;

- Simplify visa requirements, including making the requirements clearer and easier to understand, while retaining existing policy settings where relevant, including:
 - Simplifying enrolment requirements;
 - Replacing qualifying visa requirements for applicants in Australia with a requirement that applicants must hold a substantive temporary visa that is not a visa specified in a legislative instrument;
 - Simplifying requirements for the student guardian visa, for example requirements relating to dependents under 6 years of age;
- Restructure student visa regulations so that more detail is specified in legislative instruments for requirements relating to:
 - Categories of persons exempt from paying a visa application charge;
 - Visa application arrangements (including forms, place and manner of lodgement);
 - Evidence of intended studies;
 - Visa subclasses that preclude an application for a student visa in Australia,
 - English language test scores and exemption categories;
 - Evidence of financial capacity, including amount and type of funds;
- Repeal duplicate and redundant provisions relating to student visas.

Human rights implications

Prospective international students can apply for a Student visa overseas or within Australia. Similarly, individuals can apply for the Student Guardian 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.

The student visa reforms engage the following human rights:

Right to education

Article 13(1) of the [International Covenant on Economic, Social and Cultural Rights \(ICESCR\)](#) sets out:

The States Parties to the present Covenant recognise the right of everyone to education...

In relation to primary, secondary and tertiary education in particular, Article 13(2) of the ICESCR states that:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, in particular by the progressive introduction of free education.

The student visa reforms promote the right to education by simplifying the student visa framework and therefore making Australia's student visa programme more accessible to genuine international students by making requirements easier to understand and the application process easier to navigate. Measures taken to simplify the student visa framework include:

- simplified requirements for enrolment, English proficiency, and financial capacity; and
- expanding eligibility for student visas for applicants who are in Australia, applicants studying school courses and family members wishing to accompany a student to Australia.

The amendments will also reduce red tape and deliver a more targeted approach to immigration integrity to allow genuine students to study in Australia.

The proposed amendments therefore support and are consistent with the right to education.

Rights to equality and non-discrimination

Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 of the International Covenant on Civil and Political Rights sets out that 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law'. It provides that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

However, not all treatment that differs among individuals or groups on any of the grounds mentioned in article 26 will amount to prohibited discrimination. The UN Human Rights Committee has recognised that 'not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant'.

English and Financial requirements

Under the new student visa framework, English and financial evidentiary requirements will be guided by the new combined country and provider immigration risk framework.

The proposed changes engage the obligations under Articles 2 and 26 of the ICCPR given that the requirement for applicants to provide evidence of English language proficiency and financial capacity will, under policy, be guided by the combined immigration risk associated with the applicant's country listed on their passport and education provider. The combined

immigration risk is determined through a statistical analysis of refusal, cancellation and non-compliance rates associated with applicants from particular education providers and countries. Applicants will have access to an online tool on the department's website in which they will input their education provider and country details and be provided with information about what evidence of financial capacity and English proficiency they will need to include in their application.

In practice, students associated with lower immigration risk will generally have lower evidentiary requirements, similar to the current Assessment Level 1. However, the new requirements also give greater flexibility for officers to take into account the individual circumstances of the applicant to require, or not require, specified evidence, irrespective of the applicant's country listed on their passport or their education provider.

The purpose of these differing requirements is to maintain the integrity of the student visa programme, and to ensure that applicants have adequate funds and English proficiency for their stay in Australia. It is also intended that provider and country immigration risk outcomes will be updated on a six monthly basis based on statistical analysis of immigration risk data noted above. The differentiation in evidentiary requirements can be considered reasonable and proportionate to achieve its objective of maintaining the integrity of Australia's Student visa programme and facilitating the lawful entry and temporary stay of genuine international students because it is a reasonable method of addressing the integrity risk raised in the objective statistical data discussed above.

Therefore, although premised on differential treatment, the proposed changes do not amount to prohibited discrimination as they are based on reasonable and objective criteria with the legitimate aim of preserving the integrity of Australia's international education sector.

Restrictions on applications in Australia

The new simplified student visa framework will remove current restrictions on applicants from certain countries needing to demonstrate exceptional reasons for grant of an initial student visa in Australia. The changes are compatible with rights to equality and non-discrimination as the new framework will only prevent holders of certain temporary visas (to be specified in a legislative instrument) from applying for a student visa in Australia where required to support the objectives and maintain the integrity of the student visa programme or the source visa programme. It is intended that holders of the following visa subclasses will not be able to apply for a student visa in Australia: Subclass 426 Domestic Worker (Temporary) — Diplomatic or Consular visa; Subclass 403 Temporary Work (International Relations) visa in the Domestic Worker (Diplomatic or Consular) stream; Subclass 995 Diplomatic (Temporary) visa granted to a person who satisfied the primary criteria on the basis of being a diplomatic or consular representative or a representative of an international organisation; Subclass 771 Transit visa; or a Subclass 600 Visitor visa in the 'Sponsored Family' stream or in the 'Approved Destination Status' stream. Applicants who do not hold a substantive visa will continue to be able to be granted a student visa in Australia in the same circumstances as under the current arrangements.

These changes mean that a greater range of temporary visa holders will be able to apply for a student visa in Australia.

Therefore the proposed changes do not amount to prohibited discrimination and in fact support this right by removing the requirement of differential treatment on the basis of the country listed on the applicant's passport.

Best interests of the child

The new student visa framework engages the rights of children as per Article 3 (1) of the [Convention on the Rights of the Child \(CRC\)](#), which states:

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.

Article 3 of the CRC requires that the best interests of the child are treated as a primary consideration in all actions concerning children. These amendments positively engage Article 3 of the CRC.

Student guardian visa requirements

Student guardian visas will continue to be available to allow children to be cared for by a parent, legal custodian or suitable relative while they study in Australia. Requirements for the student guardian visa will continue to require the guardian to reside with the student and provide for their accommodation, support and general welfare.

Student guardian visa applicants will not be able to obtain a student guardian visa if they have children under the age of 6 unless compelling and compassionate reasons exist. This aims to ensure that appropriate arrangements exist for the care of the young child under the age of six and these are not at the expense of providing suitable care for the child studying in Australia. However, under policy, a compelling and compassionate reason for the grant of the student guardian visa will be that the student guardian visa applicant is the sole parent of the nominating student and the child or children under 6 years will be accompanying the student and student guardian to Australia.

The strengthening of financial requirements for student guardian visa applicants to demonstrate their capacity to financially support the student under the age of 18 who they intend to care for in Australia supports the obligation under Article 3 of the CRC by seeking to ensure that children's families have the financial means to provide for their welfare while they study in Australia.

Requirements for applicants under 18

Student visa applicants under 18 will continue to be required to meet public interest criterion 4018, which requires the grant of the visa to be in the best interests of the child and public interest criterion 4017 which requires consent for grant of the visa by all people who can legally determine where a child lives and in accordance with relevant laws. Students under the age of 18 will also be required to have appropriate arrangements in place for their accommodation, support and general welfare in order to be granted a visa and while they hold the student visa (or until they turn 18).

Therefore these continued requirements support, and are consistent with, Article 3(1) of the CRC.

Rights of the parents

Article 3 (2) of the [CRC](#) states:

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

Under the CRC, countries are required to respect the responsibilities, rights and duties of parents or other persons who have responsibility for the child to provide direction and guidance in the child's exercise of the rights recognised in the CRC. Countries are also required under the CRC to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. The Government is committed to acting in accordance with Article 3 of the CRC. Rights of the parents have been taken into account when developing the simplified student visa framework.

Requirements for applicants under 18

To ensure the rights of parents, student visa applicants under the age of 18 will continue to be required to meet criteria relating to child custody (public interest criterion 4017 discussed above). Furthermore student visa requirements and conditions relating to the welfare of students under the age of 18 promote the rights of parents to make arrangements for their child's welfare, accommodation and support in Australia, either personally, through a suitable relative or through the student's education provider (eg homestay or boarding school).

Therefore the continued requirements support and are consistent with Article 3(2) of the CRC.

Family Unity

Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR) states:

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:

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

Applicants for the student guardian visa will need to meet a requirement that does not allow them to reside with another student guardian visa holder or the other parent of the student. The purpose of this requirement is to ensure that student guardian visas are not used as an alternative pathway for family reunification where other immigration pathways are not available and so to protect the integrity of the student visa programme. Family reunification is not the purpose of the visa. The purpose of the visa is to give parents choice regarding the arrangements for the welfare of the child, by allowing a parent or suitable relative to care for a student in Australia where they do not already have a right to reside in Australia, for example, by being a permanent resident. As such, this requirement is aimed at preventing the Student

Guardian Visa being used for purposes other than the provision of care for students under the age of 18 years studying in Australia.

However, this requirement does not prevent another parent visiting a student or the student guardian applicant on a visitor visa and thus families retain the ability to maintain family contact throughout the duration of the student's studies. It also does not prevent families from utilising other means of communication between family members, for example telephone calls, or indeed the student and the student guardian visiting other family members in their country of origin.

Student guardian visa applicants will not be able to obtain a student guardian visa if they have children under the age of 6 unless compelling and compassionate reasons exist. This aims to ensure that appropriate arrangements exist for the care of the young child under the age of 6 and these are not at the expense of providing suitable care for the child studying in Australia. However, under policy, a compelling and compassionate reason for the grant of the student guardian visa will be that the student guardian visa applicant is the sole parent of the nominating student and the child or children under 6 years will be accompanying the student and student guardian to Australia. Additionally, as discussed above, students and student guardians have a number of means of communicating with family members overseas, for example telephone calls, or indeed the student and the student guardian visiting other family members in their country of origin.

To the extent that the proposed amendments could be said to engage these rights, the protection of the family unit under articles 17 and 23 does not amount to a right to enter and remain in Australia where there is no other right to do so. Nor have they been interpreted as giving rise to an obligation on a State to take positive steps to facilitate family reunification. The requirements discussed above do not permanently separate family members, and as discussed above, students and student guardians have a number of means of communicating with other family members overseas including visiting these family members in their country of origin. As such, these requirements are consistent with the rights in Articles 17 & 23 of the ICCPR.

Conclusion

The proposed amendments are compatible with human rights because they support the relevant human rights 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**Details of the Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016****Section 1 – Name**

This section provides that the title of the Regulation is the *Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016*.

Section 2 – Commencement

Subsection 2(1) provides that each provision of the instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

The table provides the following commencement dates for the amendments:

- | | | |
|----------------------|---|--|
| • Sections 1 – 4 | - | The day after the instrument is registered |
| • Schedules 1 – 3 | - | 19 April 2016 |
| • Schedule 4 | - | 1 July 2016 |
| • Schedule 5, item 1 | - | 19 April 2016 |
| • Schedule 5, item 2 | - | 1 July 2016 |

A note clarifies that this table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

Subsection 2(2) provides that any information in column 3 of the table is not part of the instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument. Column 3 of the table provides the date/details of the commencement date.

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

Section 3 – Authority

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

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

Section 4 – Schedule(s)

This section provides that each instrument that is specified in a Schedule to this 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 effect of this section is that the *Migration Regulations 1994* (the Migration Regulations) are amended as set out in the applicable items in Schedules 1 to 5 to the instrument.

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

Schedule 1 – Discriminatory recruitment practices

Migration Regulations 1994

Item 1 – Subregulation 2.57(1)

This item inserts a definition of ***discriminatory recruitment practice*** in regulation 2.57 in Division 2.11 of Part 2A of the Migration Regulations. The definition provides that ***“discriminatory recruitment practice means a recruitment practice that directly or indirectly discriminates against a person based on the immigration status or citizenship of the person, other than a practice engaged in to comply with a Commonwealth, State or Territory law.”***

The purpose of the definition is to give content to the new criteria for approval as a standard business sponsor and the new obligation on standard business sponsors outlined below at items 2, 3, and 4.

Item 2 – Paragraph 2.59(f)

This item repeals and substitutes paragraph 2.59(f) in Division 2.13 of Part 2A of the Migration Regulations.

Regulation 2.59 sets out the criteria for approval as a standard business sponsor. Approval as a standard business sponsor enables the approved sponsor to nominate and sponsor non-citizens to work in Australia on Subclass 457 Temporary Work (Skilled) visas.

New paragraph 2.59(f) contains two limbs. The first limb reproduces the previous wording, which requires an applicant, who is lawfully operating a business in Australia, to attest that the applicant has a strong record of, or a demonstrated commitment to, employing local labour. The second limb sets out a new requirement. It requires the applicant to declare, in writing, that the applicant will not engage in discriminatory recruitment practices. As noted in item 1, discriminatory recruitment practice is defined as recruitment that discriminates on the basis of immigration status or citizenship. This terminology replaces the previous terminology of ‘a demonstrated commitment to ... non-discriminatory employment practices’. The new language is more precise. It makes it clear that the criterion relates specifically to recruitment of workers, and is not concerned with other aspects of employment. It also requires a written declaration that the applicant will not engage in discriminatory recruitment practices, which is stronger than the previous requirement for an attestation of ‘commitment’ to the principle of non-discrimination. A ‘declaration’ is more appropriate than an ‘attestation’ in this context because an attestation usually relates to an existing state of affairs, whereas a declaration is more suited to an expression of an intention to act in a particular way in the future. In addition, the new declaration will be mandatory for every applicant, whereas the previous expression of ‘commitment’ was optional, because applicants were given a choice between attesting to a strong record of non-discriminatory employment practices and, in the alternative, attesting to an ongoing commitment to those principles. The purpose of this change is to put applicants on notice about their responsibilities as a standard business sponsor, which will be subject to monitoring and enforcement under the new sponsorship obligation outlined at item 4 below.

Item 3 – Paragraph 2.68(g)

This item repeals and substitutes paragraph 2.68(g) in Division 2.16 of Part 2A of the Migration Regulations.

Regulation 2.68 sets out the criteria for the variation of the terms of approval as a standard business sponsor. Variation of the terms of approval is the basis by which a sponsorship is renewed for a further period of time. The criteria are the same as the criteria for the initial approval. New paragraph 2.68(g) is the same as new paragraph 2.59(f), as set out in item 2, and the rationale for the change is as explained in item 2.

Item 4 – After regulation 2.87B

This item inserts regulation 2.87C in Division 2.19 of Part 2A of the Migration Regulations. Regulation 2.87C is a new obligation on standard business sponsors. Standard business sponsors are able to nominate and sponsor non-citizens to work in Australia on Subclass 457 Temporary Work (Skilled) visas. The new obligation requires the sponsor not to engage in, or have engaged in, discriminatory recruitment practices during the period of the person's approval as a sponsor.

Sponsorship in relation to temporary sponsored work visas is governed by Division 3A of Part 2 of the Migration Act. Subsection 140H(1) of the Migration Act provides that a person who is or was an approved sponsor must satisfy the sponsorship obligations prescribed by the regulations. The obligations are prescribed in Division 2.19 of Part 2A of the Migration Regulations.

New regulation 2.87C provides that the obligation starts on the day that the person is or was approved as a standard business sponsor and ends when the person ceases or ceased to be a standard business sponsor. Discriminatory recruitment practice is defined in subregulation 2.57(1), as amended by item 1 above, to mean a recruitment practice that directly or indirectly discriminates against a person based on the immigration status or citizenship of the person, other than a practice engaged in to comply with a Commonwealth, State or Territory law.

The purpose of the new obligation is to provide a basis for the enforcement of the requirement that standard business sponsors must not engage in discriminatory recruitment practices. This requirement has been known to applicants for approval as standard business sponsors since the legislative changes in 2009 which introduced the current sponsorship framework. From 14 September 2009, applicants for approval as standard business sponsors were subject to the criteria noted in items 2 and 3 above. As noted, those criteria have now been strengthened. Standard business sponsors who fail to comply with the new obligation may be sanctioned. Section 140K of the Migration Act provides for a range of sanctions against a person who is or was an approved sponsor and who failed to comply with sponsorship obligations. The sanctions include cancellation of sponsorship and application to a court for a civil penalty order.

The new obligation provides a basis for enforcement action, which was previously lacking, in relation to inappropriate use of the Subclass 457 programme by sponsors who rely excessively or exclusively on Subclass 457 visa holders despite the availability of qualified Australian citizens or permanent residents. The obligation also prohibits discrimination against overseas workers, which is consistent with Australia's obligations under international

law relating to international trade, including agreements between Australia and other countries.

The new obligation is distinct from the labour market testing requirement imposed by section 140GBA of the Migration Act. Where applicable, labour market testing may work in a way to give preference to suitably qualified and available Australian citizen and permanent resident workers. This discrimination is recognised by the exemption in the new sponsorship obligation for recruitment practices undertaken to comply with a Commonwealth law. In cases where labour market testing does not apply, there is scope for the new sponsor obligation to apply. Some sponsors, despite complying with the documentary requirements of labour market testing, may not be making a genuine effort to recruit Australian workers. This was noted by the Independent Review into Integrity in the 457 Programme, in its September 2014 report titled ‘Robust New Foundations – A streamlined, transparent and responsive system for the 457 programme’, where it was stated that labour market testing provisions are “subject to manipulation by those that have not made a serious effort to find a local worker” (pages 45- 46). In such cases, those sponsors may be investigated for failure to comply with the new sponsor obligation.

Schedule 2 – Processing of Subclass 457 Visas

Migration Regulations 1994

Item 1 – Paragraphs 1223A(3)(d) and (da) of Schedule 1

This item repeals and substitutes paragraphs 1223A(3)(d) and (da) of Schedule 1 to the Migration Regulations.

New paragraphs 1223A(3)(d) and (da) prescribe matters which a visa applicant must satisfy in order for an application for a Subclass 457 Temporary Work (Skilled) visa to be a valid application. New paragraph 1223A(3)(d) deals with visa applicants who are nominated by a party or proposed party to a labour agreement. Parties to labour agreements, which are a form of work agreement, are approved sponsors pursuant to the definition of ‘approved sponsor’ in subsection 5(1) of the Migration Act. New paragraph 1223A(3)(da) deals with visa applicants who are nominated by a standard business sponsor or a person who has applied to be approved as a standard business sponsor. The amendments reorder the paragraphs to reflect the sequence of the provisions to which they refer. Accordingly, paragraph 1223A(3)(d) now deals with labour agreements whereas it previously dealt with standard business sponsors, and paragraph 1223A(3)(da) now deals with standard business sponsors whereas it previously dealt with labour agreements.

Prior to the amendments made by this item, an intending Subclass 457 visa applicant was required to provide the reference number of the sponsor or proposed sponsor by entering a reference number for the sponsor as part of the mandatory internet visa application process. As a result of the changes made by this item, the visa applicant must now enter the reference number for the nomination, rather than the reference number for the sponsor. The visa application is not accepted by the online system unless the reference number for the nomination is entered into the system.

The purpose of this amendment is to streamline visa applications and visa processing, which will reduce the time required to process visa applications. Previously, when the applicant

provided the reference number for the sponsor or proposed sponsor, it was necessary for the Department to manually link the visa application to the nomination by that sponsor or proposed sponsor. By changing the system so that the visa applicant must enter the reference number for the nomination, the system automatically links all relevant information – visa applicant, sponsor or proposed sponsor, and nomination details. This results in more efficient visa processing without disadvantaging visa applicants or sponsors.

Item 2 – Paragraph 457.223(4)(ea) of Schedule 2

This item repeals paragraph 457.223(4)(ea) of Schedule 2 to the Migration Regulations.

Paragraph 457.223(4)(ea) was a criterion which required applicants for Subclass 457 visas to have proficiency in English of a standard required for any occupational licence, registration or membership required to undertake the applicant's nominated occupation in Australia. The criterion only operated in cases where the required standard of English proficiency was higher than the normal requirements of the Subclass 457 visa, which are provided for in paragraph 457.223(4)(eb). In addition, the criterion only operated in cases where the occupational licensing or registration authorities required English proficiency to be demonstrated by achieving specified test results. This produced the anomalous outcome that applicants who had demonstrated the higher level of English proficiency, to the satisfaction of occupational licensing or registration authorities, by some means other than test results, were nevertheless required to provide test results to the Department to satisfy the criterion imposing the lower requirements of paragraph 457.223(4)(eb).

The repeal of paragraph 457.223(4)(ea), in conjunction with an amendment of the instrument providing for 'exempt applicants' under subclause 457.223(11), which takes effect at the same time as the repeal, eliminates duplication and 'red tape' in relation to English proficiency. The new position is that visa applicants are not required to provide evidence of English proficiency to the Department if they have already demonstrated the same level or a higher level of proficiency in order to obtain an occupational licence, registration or membership required to undertake the applicant's nominated occupation in Australia.

Item 3 – Subparagraph 457.223(4)(eb)(ii) of Schedule 2; Item 4 – Subparagraph 457.223(4)(eb)(iii) of Schedule 2

These items make technical amendments which are consequential to item 2.

Schedule 3 – Subclass 202 (Global Special Humanitarian) Visas

Migration Regulations 1994

Item 1 – Paragraph 202.222(2)(d) of Schedule 2

This item inserts the words "persons such as" after the words "settlement of" in paragraph 202.222(2)(d) of Part 202 (Subclass 202 – Global Special Humanitarian) of Schedule 2 to the *Migration Regulations 1994* (the Migration Regulations).

Part 202 sets out the criteria to be satisfied by an applicant for a Subclass 202 (Global Special Humanitarian) visa. If the applicant's entry to Australia has been proposed by an individual proposer under subclause 202.211(2) and the proposer is not, or has not been, the

holder of a Subclass 202 visa, the applicant must satisfy, amongst other criteria, the criterion at subclause 202.222(2).

Subclause 202.222(2) requires that the Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a permanent visa, having regard to the factors listed in paragraphs 202.222(2)(a), (b), (c) and (d). The intention is that under paragraph 202.222(2)(d), the Minister must have regard to the capacity of the Australian community to provide for the permanent settlement of persons such as the applicant in Australia.

From 1 June 2013, a drafting error in the *Migration Amendment Regulation 2013 (No. 2)* (Select Legislative Instrument No. 75, 2013) inadvertently removed the words “persons such as” from paragraph 202.222(2)(d). This amendment restores the words to paragraph 202.222(2)(d) to make it clear that the intention is that the Minister must have regard to the capacity of the Australian community to provide for the permanent settlement of all persons in the same circumstances as the applicant, not just the permanent settlement of applicant.

Schedule 4 – Student Visa Simplification

Migration Regulations 1994

Item 1 – Regulation 1.03

This item inserts a definition of ***AASES form*** in regulation 1.03 in Division 1.2 of Part 1 of the Migration Regulations. The definition provides that “***AASES form***, for a secondary exchange student, means an Acceptance Advice of Secondary Exchange Student form from the relevant State or Territory education authority, containing the following declarations:

- (a) a declaration made by the student’s exchange organisation, accepting the student;
- (b) a declaration made by the student’s parents, or the person or persons having custody of the student, agreeing to the exchange”.

The term ***AASES*** was previously defined in Schedule 5A to the Migration Regulations, which is repealed by item 39 of this Schedule (see below). It is necessary to retain the definition as the term ***AASES form*** is used in Public Interest Criterion 4012A in Schedule 4 to the Migration Regulations, as amended by item 34 of this Schedule (see below).

An ***ASSEES form*** may also be specified in a legislative instrument made by the Minister under paragraph 1222(5)(b) of Schedule 1 to the Migration Regulations for the purposes of paragraph 1222(3)(c) of item 1222 (Student (Temporary)(Class TU)) of Schedule 1 to the Migration Regulations, as substituted by item 23 of this Schedule (see below), as evidence of an intended course of study required to be provided by an applicant for a student visa who is a secondary exchange student.

Item 2 – Regulation 1.03

This item repeals the definitions of ***agreed starting date***, ***assessment level*** and ***certificate of enrolment*** from regulation 1.03 in Division 1.2 of Part 1 of the Migration Regulations, as the terms are no longer used in the Migration Regulations following the amendments made by this Schedule.

Item 3 – Regulation 1.03

This item inserts a new definition of **confirmation of enrolment** in regulation 1.03 in Division 1.2 of Part 1 of the Migration Regulations. The definition provides that “**confirmation of enrolment**, in relation to a student and a registered provider, means a confirmation by the registered provider that the student is enrolled in a registered course provided by the registered provider, as required by section 19 of the *Education Services for Overseas Students Act 2000*”.

Section 19 of the *Education Services for Overseas Students Act 2000* sets out information that a registered provider must give the Department of Education and Training about a person who becomes an accepted student of the provider. Regulation 1.03 of the *Education Services for Overseas Students Act 2000* defines the term “**confirmation of enrolment**” as meaning the information required to be provided to the Department of Education and Training by the registered provider. Applicants provide this information to the Department of Immigration and Border Protection as part of their application. It is then confirmed by the Department of Education and Training.

The definition of **confirmation of enrolment** replaces the previous defined terms **certificate of enrolment** and **electronic confirmation of enrolment** which are repealed from regulation 1.03 of the Migration Regulations by items 2 and 5 of this Schedule respectively. The confirmation will now be in electronic form rather than in the form of a paper copy as referred to in the previous definition of **certificate of enrolment**, and a separate definition of **electronic confirmation of enrolment** is no longer required.

The term **confirmation of enrolment** is used in Public Interest Criterion 4012A in Schedule 4 and condition 8533 in Schedule 8 to the Migration Regulations, as amended by items 34 and 47 of this Schedule, respectively, below.

A **confirmation of enrolment** may also be specified in a legislative instrument made by the Minister under paragraph 1222(5)(b) of Schedule 1 to the Migration Regulations for the purposes of paragraph 1222(3)(c) of item 1222 (Student (Temporary)(Class TU)) of Schedule 1 to the Migration Regulations, as substituted by item 23 of this Schedule (see below), as evidence of an intended course of study required to be provided by certain applicants for a student visa.

Item 4 – Regulation 1.03 (definition of **education provider**)

This item amends the definition of **education provider** in regulation 1.03 in Division 1.2 of Part 1 of the Migration Regulations by substituting “location” for “State or Territory” wherever occurring. The effect of this amendment is that the definition of **education provider** now means, for a registered course in a location, each institution, body or person that is a registered provider of the course in that location for the purposes of the *Education Services for Overseas Students Act 2000*.

This amendment aligns the definition of **education provider** in regulation 1.03 of the Migration Regulations with the definition of “**registered provider**” in the *Education Services for Overseas Students Act 2000*, where the term is defined to mean, for a course for a location, an approved provider that is registered as a provider for the course for the location.

Item 5 – Regulation 1.03

This item repeals the definitions of *electronic confirmation of enrolment*, *eligible passport*, *eligible student visa*, *highest assessment level*, *provider default*, *provider default day*, and *relevant course of study* from regulation 1.03 in Division 1.2 of Part 1 of the Migration Regulations, as the terms are no longer used in the Migration Regulations following the amendments made by this Schedule.

Item 6 – Regulation 1.03 (definition of *secondary exchange student*)

This item amends the definition of *secondary exchange student* in regulation 1.03 in Division 1.2 of Part 1 of the Migration Regulations, by omitting all the words after “approved” and substituting “by the State or Territory education authority that administers the program”. The effect of this amendment is that *secondary exchange student* is defined to mean an overseas secondary school student participating in a secondary school student exchange program approved by the State or Territory education authority that administers the program. The previous reference to the Education Minister has been omitted because the Commonwealth no longer has any role in approving secondary school student exchange programs.

Item 7 – Regulation 1.03 (before paragraph (a) of the definition of *student visa*)

This item amends the definition of *student visa* in regulation 1.03 in Division 1.2 of Part 1 of the Migration Regulations, by inserting a new paragraph (aa) which refers to a Subclass 500 (Student) visa.

The effect of this amendment is that the term *student visa*, where ever used in the Migration Regulations, includes a visa of new Subclass 500 (Student), inserted in Schedule 2 of the Migration Regulations by item 32 of this Schedule (see below).

The definition of *student visa* also continues to cover visas of Subclasses 570 (Independent ELICOS Sector), 571 (Schools Sector), 572 (Vocational Education and training Sector), 573 (Higher Education Sector), 574 (Postgraduate Research Sector), 575 (Non-Award Sector) and 576 (Foreign Affairs or Defence Sector). Those subclasses are repealed by item 32 of this Schedule (see below), but visas of those subclasses that were applied for prior to the repeal will continue to be *student visas* for the purposes of the Migration Regulations.

Item 8 – Regulation 1.03

This item repeals the definitions of *subsidised student* and *suspended education provider* from regulation 1.03 in Division 1.2 of Part 1 of the Migration Regulations, as the terms are no longer used in the Migration Regulations following the amendments made by this Schedule.

Item 9 – Subregulation 1.04A(1)

This item repeals the definitions of *AIDAB*, *equivalent former visa or entry permit* and *equivalent transitional visa* from subregulation 1.04A(1) in Division 1.2 of Part 1 of the

Migration Regulations. These terms are redundant. They are and no longer used in the Migration Regulations and not required for transitional purposes.

Item 10 – Subregulation 1.04A(1) (definition of *Foreign Affairs student visa*)

This item repeals the definition of *Foreign Affairs student visa* in subregulation 1.04A(1) in Division 1.2 of Part 1 of the Migration Regulations, and substitutes a new definition which provides that a *Foreign Affairs student visa* means a student visa granted to an applicant who satisfied the primary criteria for 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.

The effect of this amendment is to remove specific references to Subclass 560 (Student), Subclass 562 (Iranian Postgraduate) and Subclass 576 (Foreign Affairs or Defence Sector) visas from the definition, and to substitute a reference to a student visa. The amended definition therefore extends to any student visa granted to a student in a full-time course of study or training under a scholarship scheme or training program approved by the Foreign Minister or the AusAID Minister. This includes a new Subclass 500 (Student) visa, which is inserted in the definition of *student visa* in regulation 1.03 of the Migration Regulations, by item 7 of this Schedule, above.

The new definition of *Foreign Affairs student visa* also omits the references to an equivalent former visa or entry permit, and an equivalent transitional entry permit in previous paragraphs (b) and (c) of the definition, respectively. These provisions were for transitional purposes and are no longer required.

Item 11 – Subparagraph 1.04B(b)(i)

This item amends subparagraph 1.04B(b)(i) of Division 1.2 in Part 1 of the Migration Regulations by omitting the words “Subclass 576 (Foreign Affairs or Defence Sector) visa” and substituting the words “student visa”.

The purpose of regulation 1.04B is to define the term *Defence student*. The effect of this amendment is that a person will come within the definition of *Defence student* if the person holds a student visa and has been approved by the Defence Minister to undertake a full-time course of study or training under a scholarship scheme or training program approved by the Defence Minister. This includes the holder of a new Subclass 500 (Student) visa, which is inserted in the definition of *student visa* in regulation 1.03 of the Migration Regulations, by item 7 of this Schedule (see above), as well as the holder of Subclass 576 (Foreign Affairs or Defence Sector) visa that was applied for before the repeal of that subclass (see item 32 of this Schedule, below).

Item 12 – Division 1.8

This item repeals Division 1.8 (Special provisions for student visas) of Part 1 of the Migration Regulations.

Division 1.8 contained six regulations: regulations 1.40 (Eligible passport and principal course); 1.40A (Courses to be specified by the Minister); 1.41 (Assessment levels to be specified by the Minister); 1.42 (Assessment level of applicant); 1.43 (Notification of

assessment level); and 1.44 (Evidence required). These regulations established a legislative framework to align student visa requirements to the immigration risk posed by applicants from particular countries studying in particular education sectors. The higher an applicable assessment level, the greater the evidence an applicant was required to demonstrate to satisfy the requirements for grant of a student visa. Assessment levels could be set depending on risk factors specified in regulation 1.41 such as the number of cancellations of student visas having particular characteristics. The operation of this legislative framework was complex and inflexible as it tended to remove any discretion for decision makers to act where appropriate to protect the integrity of the student visa program or to facilitate study in Australia by genuine students.

The legislative framework under Division 1.8 and Schedules 5A and 5B (repealed by item 39 of this Schedule, below) is replaced by requirements in new Subclass 500 (Student), inserted in Schedule 2 to the Migration Regulations by item 32 of this Schedule, below, that strengthen the integrity of the program and ensure appropriate visa settings to support the competitiveness of Australia's international education sector by increasing flexibility for decision-makers to require applicants to provide evidence of English and financial capability based on an assessment of the applicant's individual circumstances and risk factors such as the applicant's country of origin and education provider. For further details, see the notes on new Subclass 500 (Student), below.

Item 13 – Subregulation 2.05(5)

This item repeals subregulation 2.05(5) in Division 2.1 of Part 2 of the Migration Regulations.

Subregulation 2.05(5) related to the grant of a further visa to a person who held, or had applied for, a Subclass 497 (Graduate – Skilled) visa. Subclass 497 was repealed in 2007, and the provision is no longer required.

Item 14 – Subregulation 2.06AAB(1) (table items 15 to 21)

This item repeals items 15 to 21 of the table in subregulation 2.06AAB(1) and substitutes new items 15 and 16 which refer to Subclass 500 (Student) and Subclass 590 (Student Guardian), respectively.

Subregulation 2.06AAB(1) prescribes visas for the purposes of paragraph 46A(1A)(b) of the Migration Act, as visas for which certain unauthorised maritime arrivals in Australia may make a valid visa application in certain circumstances, despite subsection 46A(1) of the Migration Act. Items 15 to 21 of the table in subregulation 2.06AAB(1) prescribed visas of Subclasses 570 (Independent ELICOS Sector), 571 (Schools Sector), 572 (Vocational Education and Training Sector), 573 (Higher Education Sector), 574 (Postgraduate Research Sector), 575 (Non-Award Sector) and 580 (Student Guardian), respectively. Those subclasses are repealed by item 32 of this Schedule and can no longer be applied for. This amendment ensures that valid applications can continue to be made for the new Subclass 500 (Student) and Subclass 590 (Student Guardian) visas.

Item 15 – Regulation 2.07AF (heading)

This item repeals the heading of regulation 2.07AF in Division 2.2 of Part 2 of the Migration Regulations, and substitutes a new heading: “2.07AF – Applications for Student (Temporary) (Class TU) visas”.

The previous heading referred to “Certain Applications for Student (Temporary)(Class TU) visas”. However, the amendments to regulation 2.07AF made by item 16 of this Schedule, below, mean the regulation will apply generally to applications for student visas and consequently, the word “certain” is omitted from the heading.

Item 16 – Subregulations 2.07AF(1) and (2)

This item repeals subregulations 2.07AF(1) and (2) in Division 2.2 of Part 2 of the Migration Regulations, and substitutes new subregulations 2.07AF(1) and (2). New subregulation 2.07AF(1) provides that regulation 2.07AF applies in respect of an application for a Student (Temporary)(Class TU) visa. New subregulation 2.07AF(2) provides that, despite anything in regulation 2.07, an application for a Student (Temporary)(Class TU) visa may be made on behalf of an applicant.

Previously subregulations 2.07AF(1) and (2) applied only to applications made on form 157E (that is, internet applications). The subregulations provided that an application made on form 157E could be made on behalf of an applicant, and that the application was taken to have been made outside Australia. Under the revised arrangements, virtually all student visa applications will be made by internet, and a student visa may be granted to an applicant in or outside Australia, irrespective of where the application was made. It is therefore no longer necessary to deem an internet application to have been made outside Australia as the location of the place of application is now irrelevant to the circumstances applicable to the grant of the visa. Provision for an application to be made on behalf of an applicant is retained as it facilitates an application being made on an applicant’s behalf by an education provider or agent.

Item 17 – Subregulation 2.07AF(3)

This item amends subregulation 2.07AF(3) in Division 2.2 of Part 2 of the Migration Regulations by omitting the words “made on form 157A, 157A (Internet), 157E or 157G”. The references to specific application forms is no longer necessary as all applicants for a visa of Student (Temporary)(Class TU) are required to provide the information specified in subregulation 2.07AF(3) relating to members of the applicant’s family unit.

Item 18 – Subregulation 2.07AF(6)

This item repeals subregulation 2.07AF(6) in Division 2.2 of Part 2 of the Migration Regulations. Subregulation 2.07AF(6) provided that certain applications for a visa of Student (Temporary)(Class TU) were taken to have been made outside Australia. Under the revised arrangements, it is therefore no longer necessary to deem applications to have been made outside Australia as the location of the place of application is now irrelevant to the circumstances applicable to the grant of the visa.

Item 19 – Regulation 2.07AG (heading)

This item repeals the heading of regulation 2.07AG in Division 2.1 of Part 2 of the Migration Regulations, and substitutes a new heading: “2.07AG – Applications for certain substantive visas by persons for whom condition 8503 or 8534 has been waived under subregulation 2.05(4AA) or (5A)”. This amendment is consequential to the repeal of subregulation 2.05(5) by item 13 of this Schedule, above.

Item 20 – Subregulation 2.07AG(2)

This item amends subregulation 2.07AG(2) in Division 2.1 of Part 2 of the Migration Regulations by omitting a reference to subregulation 2.05(5). This amendment is consequential to the repeal of subregulation 2.05(5) by item 13 of this Schedule, above.

Item 21 – Paragraph 2.21B(1)(a)

This item amends paragraph 2.21B(1)(a) in Division 2.5 of Part 2 of the Migration Regulations by omitting a reference to form 157P. Form 157P was formerly used by holders of student visas applying for a further visa with permission to work. However, since 2008 all student visa holders have been permitted to work for specified hours, and it is no longer necessary for any holder of a student visa to use form 157P to apply for permission to work.

Item 22 – Subdivision 2.9.2A

This item repeals subdivision 2.9.2A (Automatic cancellation of student visas) in Division 2.9 of Part 1 of the Migration Regulations. Subdivision 2.9.2A contained one regulation 2.50A – meaning of office of Immigration for the purposes of paragraph 137J(2)(b) of the Migration Act, as an office where a student whose visa has been automatically cancelled may make submissions for cancellation of the revocation. The regulation is not required as “office of Immigration” is intended to have its usual meaning under the Migration Regulations.

Item 23 – Item 1222 of Schedule 1

This item repeals and substitutes item 1222 (Student (Temporary)(Class TU)) in Part 2 of Schedule 1 to the Migration Regulations.

The effect of this amendment is to prescribe new requirements for making a valid application for a visa of Student (Temporary)(Class TU), and also, in conjunction with item 32 of this Schedule, below, reduce the subclasses in Class TU from eight subclasses to two. Details of the requirements set out in substituted item 1222 for making a valid application for a visa of Student (Temporary)(Class TU) are:

Form: Subitem 1222(1) provides that the form for making a valid application for a visa of Student (Temporary)(Class TU) is the approved form specified by the Minister in a legislative instrument for item 1222, made under subregulation 2.07(5). Subregulation 2.07(5) of the Migration Regulations provides a general power for the Minister to specify a form in a legislative instrument. This allows flexibility to change forms quickly and at short notice if administrative arrangements or other circumstances change in the future.

Visa application charge: Subitem 1222(2) sets out the visa application charge (VAC) that must be paid on an application for a visa of Class TU. Paragraph 1222(2)(a) prescribes the amount of the first instalment payable when the application is made.

Subparagraph 1222(2)(a)(i) provides that the first instalment is nil for an applicant who is included in a class of persons specified in an instrument under paragraph (5)(a). Specification in an instrument of the classes of applicants exempt from paying a VAC allows flexibility to specify groups of applicants for whom payment of the VAC would not be appropriate, for instance students studying under a government-supported scholarship or training program, and to change the specification if it becomes appropriate to do so in the future.

Subparagraph 1222(2)(a)(ii) provides that for other applicants the base application charge is \$550, the additional applicant charge for an applicant over 18 is \$410, and the additional applicant charge for an applicant under 18 is \$135. Additional applicant charge is payable by an applicant who claims to be a member of the family unit of another applicant and seeks to combine that application with that applicant's application.

Paragraph 1222(2)(b) provides that the second instalment (payable before grant of the visa) is nil.

Other: Subitems 1222(3) and (4) prescribe other requirements to be met for making a valid application for a visa of Class TU.

Paragraph 1222(3)(a) provides that an application must be made at the place, and in the manner, (if any), specified by the Minister in a legislative instrument for item 1222 made under subregulation 2.07(5). Subregulation 2.07(5) of the Migration Regulations provides a general power for the Minister to specify the place and manner for making an application. Specification of the place and manner for making an application in an instrument allows flexibility to change administrative arrangements for making an application when required by changing circumstances. For instance, the Minister could specify that an application may be made as an internet application when appropriate electronic facilities become available.

Paragraph 1222(3)(b) provides that an applicant may be in or outside Australia, but not in immigration clearance. The effect of this provision is there are no restrictions on the physical location of an applicant at the time the applicant applies, other than preventing an application being made while the applicant is in immigration clearance on arrival in Australia.

Paragraph 1222(3)(c) requires that an applicant seeking to satisfy the primary criteria for grant of a Subclass 500 (student) visa must accompany the application with evidence of the applicant's intended course of study in Australia, or activities related to study in Australia, that satisfies the requirements specified in an instrument under paragraph (5)(b). Specification of the requirements for the evidence in an instrument allows flexibility to specify different types of evidence as appropriate, and to make adjustments if administrative arrangements and other circumstances change in the future. Examples of the requirements for types of evidence that may be specified include letters of support from the appropriate government department for Defence and Foreign Affairs students, an ABASES form for secondary exchange students, a confirmation of enrolment for other students, and a letter from the educational institution for an applicant to remain in Australia for purposes related to thesis marking.

Paragraph 1222(3)(d) provides that if an applicant seeking to satisfy the primary criteria for the grant of a Subclass 500 (Student) visa will be under 18 at any time while in Australia, the application must be accompanied by evidence of intended arrangements for the applicant's accommodation, support and general welfare. This evidence will be used to assess the application against the requirements of public interest criterion 4012A (see items 34 and 35 of this Schedule, below). This requirement is to ensure that applicants include all relevant information in their applications at the time they apply, to facilitate efficient visa processing.

Paragraph 1222(3)(e) provides that an application by a person claiming to be a member of the family unit of a person who is seeking to satisfy the primary criteria for the grant of a Subclass 500 (Student) visa may be made at the same time and place as, and combined with, the application by that person. The effect of this provision is that an applicant who is seeking to satisfy the secondary criteria and is making a combined application only has to pay the relevant additional applicant charge of the VAC and not the base application charge as the application will be combined in a way permitted by Schedule 1 (see paragraph 2.12C(4)(a) in Division 2.2A of Part 2 of the Migration Regulations).

Paragraph 1222(3)(f) provides that an application by a person claiming to be a member of the family unit of a person who is seeking to satisfy the primary criteria for the grant of a Subclass 590 (Student Guardian) visa must be made at the same time and place as, and combined with, the application by that person. The effect of this provision is that an application by a person seeking to satisfy the secondary criteria for grant of a Subclass 590 (Student Guardian) can only be made as a combined application and cannot be made separately from an application by a person seeking to satisfy the primary criteria. Secondary applicants for Subclass 590 must be aged under 6 years (see new clause 590.312, inserted in Schedule 2 to the Migration Regulations by this schedule, below).

Requirement to hold a substantive visa: Subitem 1222(4) sets out requirements to be met by an applicant for a visa of Student (Temporary)(Class TU) who is in Australia. The applicant must hold a substantive temporary visa, other than a substantive temporary visa specified in an instrument under paragraph (5)(c). This provision prevents applicants holding certain visas from making a valid application for a Class TU visa in Australia, if required to support the objectives and integrity of the student visa program or other visas. For instance, it would not be compatible with the purposes of a Subclass 771 (Transit) visa to allow holders to apply for a student visa during their time in Australia.

If an applicant who is in Australia does not hold a substantive temporary visa, the applicant must meet the following requirements:

- the last substantive visa held by the applicant must have been a student visa, a special purpose visa, or a Diplomatic (Temporary)(Class TF) visa granted to the holder as the spouse or de facto partner, or a dependent relative, of a diplomatic or consular representative of a foreign country;
- the application must have been made within 28 days after the day when the last substantive visa held by the applicant ceased to be in effect; or, if the last substantive visa was cancelled and the Administrative Appeals Tribunal set aside the cancellation or set aside and substitute the Minister's decision not to revoke the cancellation, 28 days after the day the last substantive visa ceased to be in effect or the day on which the applicant is taken to have been notified of the Tribunal's decision; and

- the applicant must not have previously been granted a visa on the basis of an application made when the applicant did not hold a substantive visa.

The purpose of subitem 1222(4) is to set out requirements relating to visas which an applicant in Australia must hold, or must meet if the applicant does not hold a substantive visa or has had a substantive visa cancelled, in order to make a valid application for a Student (Temporary)(Class TU) visa. These requirements were previously criteria prescribed in Schedule 2 for the relevant repealed student visa subclasses, to be satisfied after a valid application had been made. Moving these requirements to Schedule 1 prevents a valid application from being made (and having to be refused) if an applicant in Australia does not hold a relevant substantive temporary visa and cannot meet the objective requirements to be met by an applicant who does not hold a substantive visa.

Power to make legislative instruments: Subitem 1222(5) provides powers for the Minister to make legislative instruments specifying the classes of persons to whom subparagraph 1222(2)(a)(i) applies, the requirements that evidence required by paragraph 1222(3)(c) must satisfy, and substantive temporary visas for the purposes of subitem 1222(4).

Subclasses: Subitem 1222(6) provides that the subclasses of Student (Temporary)(Class TU) are 500 (Student) and 590 (Student Guardian).

Definition: Subitem 1222(7) provides that in item 1222, the term **course of study** has the same meaning as in clause 500.111. Clause 500.111 defines the term for the purposes of the new Subclass 500 (Student), inserted in Schedule 2 of the Migration Regulations by item 32 of this schedule. For further details, please see below.

Item 24 – Subparagraph 1229(4)(a)(ii) of Schedule 1

This item repeals subparagraph 1229(4)(a)(ii) in item 1229 (Skilled (Provisional)(Class VC) in part 2 of Schedule 1 to the Migration Regulations, and substitutes a new subparagraph 1229(4)(a)(ii).

Subparagraph 1229(4)(a) requires that an applicant for a Skilled (Provisional)(Class VC) (Subclass 485 (Temporary Graduate)) visa must meet subparagraph 1229(4)(a)(i), (ii), (iii) or (iv). New subparagraph 1229(4)(a)(ii) is met if the applicant holds a Bridging A (Class WA) or Bridging B (Class WB) visa that was granted on the basis of a valid application for a visa, and the applicant has held an eligible student visa at any time during the period of 6 months ending immediately before the day on which the application for a Subclass 485 (Temporary Graduate) visa was made.

The effect of this amendment is that an applicant may hold a Bridging A or B visa granted on the basis of any valid application, provided the applicant held an eligible student visa within the prescribed time. The subparagraph previously prevented an applicant from holding a Bridging A or B visa on the basis of a valid application for a number of student visas which were not eligible student visas. The definition of **eligible student visa** is simplified by item 26 of this Schedule, below, and it is no longer necessary to specify the relevant visa applications which do not meet the requirements of subparagraph 1229(4)(a)(ii). Applicants for the grant of a Subclass 485 (Temporary Graduate) visa will still have to satisfy criteria in Schedule 2 that may limit eligibility, for example requirements relating to qualifications obtained in Australia.

Item 25 – Sub-subparagraph 1229(4)(a)(iii)(A) of Schedule 1

This item omits the words “other than a visa mentioned in sub-subparagraphs (ii)(A) to (F)” from sub-subparagraph 1229(4)(a)(ii)(A) of item 1229 of Part 2 of Schedule 1 to the Migration Regulations.

This amendment is consequential to the amendment made to subparagraph 1229(4)(a)(ii) by item 24 of this Schedule, above. The effect of that amendment is to omit sub-subparagraphs 1229(4)(a)(ii)(A) to (F) as they contained references to student visas which are no longer required.

Item 26 – At the end of item 1229 of Schedule 1

This item adds a new subitem (11) at the end of item 1229 (Skilled (Provisional)(Class VC)) in Part 2 of Schedule 1 to the Migration Regulations. For the purposes of item 1229, new subitem 1229(11) provides a definition of ***eligible student visa*** to mean a student visa other than a visa granted to a Foreign Affairs student or a Defence student, or a visa granted on the basis of the applicant being a member of the family unit of the holder of a student visa.

The definition of ***eligible student visa*** is omitted from regulation 1.03 by item 5 of this Schedule, above, because following the amendments made by this Schedule the term now occurs only in item 1229 of Schedule 1. The new definition in subitem 1229(11) for the purposes of item 1229 simplifies the previous definition by providing that an ***eligible student visa*** can be any student visa that is granted to a primary applicant, except a student visa granted to a primary applicant who is a Defence student or a Foreign Affairs student.

Item 27 – Paragraph 010.611(3A)(a) of Schedule 2

This amendment repeals paragraph 010.611(3A)(a) of Schedule 2 to the Migration Regulations. The paragraph referred to a Graduate – Skilled (Temporary)(Class UQ) visa. Graduate – Skilled (Temporary)(Class UQ) was repealed in 2007. The paragraph is now redundant and is no longer required.

Item 28 – Clause 020.222 of Schedule 2

This amendment repeals clause 020.222 of Schedule 2 to the Migration Regulations. The clause referred to a Graduate – Skilled (Temporary)(Class UQ) visa. Graduate – Skilled (Temporary)(Class UQ) was repealed in 2007. The clause is now redundant and is no longer required.

Item 29 – Paragraph 020.611(3)(a) of Schedule 2

This amendment repeals paragraph 020.611(3)(a) of Schedule 2 to the Migration Regulations. The paragraph referred to a Graduate – Skilled (Temporary)(Class UQ) visa. Graduate – Skilled (Temporary)(Class UQ) was repealed in 2007. The paragraph is now redundant and is no longer required.

Item 30 – Clause 402.111 of Schedule 2 (definition of *principal course*)

This item repeals the definition of *principal course* in clause 402.111 of Subclass 402 (Training and Research) in Schedule 2 of the Migration Regulations, and substitutes: “*principal course*: see clause 402.112”.

The term *principal course* was previously defined in clause 402.111 for the purposes of Subclass 402 as having the meaning given by regulation 1.40. Regulation 1.40 was located in Division 1.8 of Part 1 of the Migration Regulations. Division 1.8 is repealed by item 12 of this Schedule, above. As a consequence, *principal course* is now defined for the purposes of Subclass 402 in a new clause 402.112, inserted in Subclass 402 by item 31 of this Schedule, below.

Item 31 – At the end of Part 402.1 of Schedule 2

This item adds a new clause 402.112 in Subclass 402 (Training and Research) in Schedule 2 to the Migration Regulations. The purpose of new clause 402.112 is to define the meaning of *principal course* in relation to an applicant for a Subclass 402 visa.

Clause 402.112 repeats the definition of *principal course* that was given in respect of an applicant for a Subclass 402 visa in subregulation 1.40(3) of Division 1.8 of Part 1 of the Migration Regulations which is repealed by item 12 of this Schedule (see above). The definition provides that if an applicant has undertaken a course of study that is a registered course, the course is a *principal course*. The definition also describes which course is the *principal course* in circumstances where the applicant has undertaken two or more courses of study that are registered courses.

Item 32 – Parts 570 to 580 of Schedule 2

This item repeals Parts 570 to 580 of Schedule 2 to the Migration Regulations, and substitutes two new Parts: Subclass 500 – Student, and Subclass 590 – Student Guardian.

The Parts repealed from Schedule 2 are:

- Subclass 570 – Independent ELICOS Sector;
- Subclass 571 – Schools Sector;
- Subclass 572 – Vocational Education and Training Sector;
- Subclass 573 – Higher Education Sector;
- Subclass 574 – Postgraduate Research Sector;
- Subclass 575 – Non-Award Sector;
- Subclass 576 – Foreign Affairs or Defence Sector; and
- Subclass 580 – Student Guardian.

Details of the substituted Parts are as follows.

Subclass 500 - Student

New Subclass 500 (Student) replaces repealed Subclasses 570 to 576. Subclass 500 includes common criteria that was duplicated in the repealed subclasses, and also simplifies and streamlines the requirements for individual groups of students so they do not need to be dealt with in specific subclasses.

500.1 – Interpretation

Clause 500.111 provides the following definitions of terms used in Subclass 500:

- **course of study**: the meaning of this term varies depending on the type of student. For a **secondary exchange student** it means a full-time course of study under a secondary school student exchange program administered by a State or Territory education; for a **Foreign Affairs student** or a **Defence student** it means a full-time course of study or training under a scholarship scheme or a training program approved by the relevant Minister; and for any other student it means a full-time registered course.
- **higher education course** means a course of study leading to the award of a diploma (higher education); an advanced diploma (higher education); an associate degree; a bachelor degree; a graduate certificate (higher education); a graduate diploma (higher education); a bachelor honours degree; a masters degree (course work); or a masters degree (extended). The awards referred to in this definition are as they appear in the Australian Qualifications Framework delivered by the Department of Education and Training. The term may be relevant to the imposition of certain conditions on student visas (see clause 500.611, below).
- **postgraduate research course** means a masters degree (research), or a doctoral degree. The awards referred to in this definition are as they appear in the Australian Qualifications Framework delivered by the Department of Education and Training. The term may be relevant to the imposition of certain conditions on student visas (see clause 500.611, below).
- **school student** means a student who is enrolled in, or intends to enrol in, a course of study at a primary or secondary school. This term is relevant to the criterion at clause 500.216 (see below).
- The *Note* advises that the meanings of **Defence student**, **Foreign affairs student**, **registered course**, **school-age dependant** and **secondary exchange student** are given in regulation 1.03.

500.2 – Primary criteria

The *Note* advises that the primary criteria must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria. All criteria must be satisfied at the time a decision is made on the application.

Clause 500.211 requires an applicant to meet one of the following:

- if the applicant is not a Defence student or a Foreign Affairs student, and is not seeking to remain in Australia for post graduate thesis marking, the applicant must be enrolled in their course of study at the time the application is decided; or
- if the application is made in Australia, the applicant is seeking to remain for post graduate thesis marking; or

- if the applicant is a Foreign Affairs student or a Defence student, the applicant has the support of the relevant Minister.

The purpose of this clause is to require that an applicant for a Subclass 500 (Student) visa, with the limited exceptions of Foreign Affairs students, Defence students and applicants seeking to remain for post graduate thesis marking, must be enrolled in a course of study that is registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) and has been approved by the relevant education regulator.

Clause 500.212 requires an applicant to be a genuine applicant for entry and stay as a student because:

- the applicant intends genuinely to stay in Australia temporarily, having regard to the applicant's circumstances; the applicant's immigration history; if the applicant is a minor, the intentions of a parent, legal guardian or spouse of the applicant; and any other relevant matter; and
- the applicant intends to comply with any conditions subject to which the visa is granted, having regard to the applicant's record of compliance with any condition of a visa previously held by the applicant (if any); the applicant's stated intention to comply with any conditions to which the visa may be subject; and any other relevant matter.

This clause allows a delegate deciding whether an applicant is a genuine applicant for entry and stay as a student to take into consideration whether the applicant intends to stay temporarily, as well as a range of other matters including intention to comply with visa conditions and any other relevant matter. This criterion is a key integrity measure in the student visa program in enabling non-genuine applicants to be refused the grant of a student visa.

Clause 500.213 provides that an applicant may be required to provide evidence of English language proficiency. This clause replaces the previous provisions in Schedule 5A to the Migration Regulations, repealed by item 39 of this Schedule, below, which established a regulatory framework requiring the provision of evidence on the basis of assessment levels. Clause 500.213 strengthens the integrity and enhances the competitiveness of the student visa program by making the requirements more flexible and allowing consideration of a larger range of factors such as the immigration risk associated with the applicant's country of origin and education provider, before requiring evidence to be given. At the same time, this provision allows the requirements to be more streamlined for applicants who would not be required to provide evidence. Details of clause 500.213 are:

Subclause 500.213(1) provides that if required to do so by the Minister, in writing or by use of a computer program available online, at any time, the applicant must give to the Minister evidence that the applicant has a level of English language proficiency that meets the requirements specified in an instrument.

Under section 495A of the Migration Act, the Minister may arrange for a computer program for any purposes for which the Minister may exercise a power under the designated migration law. The Minister is taken to have exercised the power that was exercised by the operation of the computer program under the arrangement. It is intended to make a computer program available as part of the online application process, under which an applicant's country of origin and education provider, will be assessed and, if coming within the risk settings in the computer program, a

requirement will then be made for the applicant to provide the specified evidence. If the computer program fails to make the requirement at the time of application, it would still be open for a decision maker, acting under clause 500.213, to require the applicant to provide the evidence. The applicant must provide the evidence to satisfy clause 500.213 and the application may be refused if the applicant fails to provide the evidence.

If the requirement to give evidence is made, the applicant must give the evidence specified in an instrument. The evidence specified will be evidence of the results of different English language tests. Provision for the evidence to be specified in an instrument allows the types of evidence to be changed should it become appropriate to do so, for instance, if new tests are developed and adopted in the future.

Subclause 500.213(2) provides that the requirement to give evidence in subclause (1) does not apply to an applicant within a class of applicants specified in an instrument. The classes of applicants specified may include, for example, students having a certain citizenship or students intending to study English in Australia through an English Language Intensive course for Overseas Students (ELICOS). Providing for the exempt classes to be specified in an instrument will allow the specified classes to be changed in the future, for instance if it becomes appropriate for a new class to be made exempt from this requirement.

Subclause 500.213(3) provides power for the Minister to make a legislative instrument specifying the evidence required to be given for purposes of subclause (1), and specifying the classes of applicants to whom subclause (1) does not apply.

Clause 500.214 requires an applicant to have genuine access to certain funds, as described in subclauses (2) and (3). In deciding whether the applicant has genuine access to the funds, a range of factors may be taken into consideration including the source of the funds (for example, if the applicant is relying on funds from a third party such as a family friend, the nature of the relationship between the applicant and the person providing the funds), the employment, income, assets or savings history of the applicant or the person providing the funds (if relevant), and any other information relevant to availability of the funds to the applicant in Australia.

Further details of subclauses 500.214(2) and (3) are:

Subclause 500.214(2) requires that while the applicant holds the visa, sufficient funds will be available to meet the costs and expenses of the applicant during the applicant's intended stay in Australia, and the costs and expenses of each member of the applicant's family unit (if any) who will be in Australia.

Subclause 500.214(3) requires that if required to do so by the Minister, in writing or by use of a computer program available online, at any time, the applicant gives to the Minister evidence of financial capacity that satisfies the requirements specified in an instrument.

This subclause replaces the previous regulatory framework for the provision of evidence of an applicant's financial capacity. This provision is intended to operate in the same way as subclause 500.213(1), including provision for a computer program to

be arranged to make the requirement to give evidence of financial capacity at the time an applicant lodges an electronic application. For further details, see the notes on subclause 500.213(1), above. Provision for the requirements for the evidence to be specified in an instrument allows the types of evidence to be changed if circumstances change, for instance in response to changes in costs.

Subclause 500.214(4) provides power for the Minister to make a legislative instrument specifying the evidence required to be given for purposes of subclause (3).

The purpose of clause 500.214 is to ensure that applicants for a student visa have sufficient funds to cover their costs and expenses in Australia. This requirement is intended to reduce the risk of international students experiencing financial hardship while in Australia. While student visa holders are permitted to work for specified hours, this is intended to supplement available funds and to provide an alternative to, or replace the need for, genuine access to funds from other sources.

Clause 500.215 requires an applicant to give evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.

Clause 500.216 prescribes age requirements to be met by an applicant who is a school student.

Clause 500.217 prescribes the public interest criteria to be satisfied by an applicant.

Clause 500.218 prescribes the special return criteria to be satisfied by an applicant.

500.3 – Secondary criteria

Clause 500.311 requires a secondary applicant to be a member of the family unit of a person who holds a student visa, having satisfied the primary criteria, and either:

- the secondary applicant was included as a member of the person's family unit in that person's application, as required by subregulation 2.07AF(3); or
- the secondary applicant became a member of the person's family unit after that person's application was made, and before a decision was made on the application the Minister was informed of the secondary applicant's details, as required by subregulation 2.07AF(4); or
- the secondary applicant became a member of the person's family unit after the grant of a student visa to the person and before the secondary person's application was made.

Clause 500.312 requires a secondary applicant to be a genuine applicant for entry and stay as a member of the family unit of a person who holds a student visa, having satisfied the primary criteria, having regard to factors set out in the clause. This clause operates in the same way as clause 500.212; see the notes on that clause above.

Clause 500.313 requires the applicant to have genuine access to funds of a kind mentioned in subclause 500.313(2) and, if subclause 500.313(3) applies, that subclause. This clause operates in the same way as clause 500.214; see the notes on that clause above.

Clause 500.314 requires an applicant to give evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.

Clause 500.315 requires that if the secondary applicant is a school-age dependent of the person who satisfies the primary criteria, and the period of stay exceeds 3 months, the applicant must provide evidence that adequate arrangements have been made for the education of the applicant in Australia.

Clause 500.316 provides that if the secondary applicant is a member of the family unit of a Foreign Affairs student or a Defence student, the secondary applicant must have the support of the relevant Minister for the grant of the visa.

Clause 500.317 prescribes the public interest criteria to be satisfied by a secondary applicant.

Clause 500.318 prescribes the special return criteria to be satisfied by a secondary applicant.

500.4 – Circumstances applicable to grant

Clause 500.411 provides that an applicant may be in or outside Australia when the visa is granted, but not in immigration clearance.

500.5 – When visa is in effect

Clause 500.511 provides that a Subclass 500 (Student) visa is a temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

500.6 – Conditions

Clause 500.611 sets out the conditions to which a Subclass 500 (Student) visa granted to a person who satisfies the primary criteria may be subject. Subclause 500.611(1) sets out the conditions which must be imposed on the visa. Subclause 500.611(2) sets out the conditions which the decision maker may impose on the visa.

Clause 500.612 sets out the conditions to which a Subclass 500 (Student) visa granted to a person who satisfies the secondary criteria may be subject. Subclause 500.612(1) sets out the conditions which must be imposed on the visa. Subclause 500.612(2) sets out the conditions which the decision maker may impose on the visa.

Subclass 590 – Student Guardian

New Subclass 590 (Student Guardian) replaces repealed Subclass 580. Subclass 590 simplifies and clarifies the requirements for grant of a student guardian visa.

590.1 – Interpretation

Clause 590.111 provides that for the purposes of Subclass 590 ***nominating student***, in respect of an applicant for a Subclass 590 visa, means a person who nominates the applicant on form 157N, and at the time of decision for the applicant, holds student visa that was granted on the basis that the person met the primary criteria for the grant of the student visa.

590.2 – Primary criteria

The *Note* advises that an applicant must satisfy all the primary criteria. All criteria must be satisfied at the time a decision is made on the application.

Clause 590.211 sets out requirements to be met by an applicant in relation to the applicant's nominating student. The applicant must meet one of subclauses (2), (3) or (4).

- *Subclause 590.211(2)* may be satisfied if the nominated student has not turned 18 and the applicant is able to provide appropriate accommodation, support and general welfare for the applicant. The applicant must be either a parent of the nominating student or a person who has custody of the nominating student; or a relative of the nominating student who has turned 21 and the nomination of the applicant is supported by a parent or a person who has custody of the nominating student.
- *Subclause 590.211(3)* may be satisfied if the nominating student has turned 18 and there are exceptional reasons why the nominating student needs the applicant to reside with the nominating student in Australia. The applicant must be able to provide for the appropriate accommodation, support and general welfare of the nominating student and must be a relative who has turned 21.
- *Subclause 590.311(4)* may be satisfied if the grant of the visa will significantly benefit the relationship between the government of Australia and the government of a foreign country, the applicant has turned 21, and, if the nominating student has not turned 18, the nomination is supported by a parent or a person who has custody of the nominating student.

Clause 590.212 requires that the applicant must have a genuine intention to reside in Australia with the nominating student, and that the nominating student must have a genuine intention to reside in Australia with the applicant. The clause further requires that unless the applicant met the requirements of subclause 590.211(4) above (significant benefit to Australia), the nominating student must not intend to reside in Australia with any holder of a student guardian visa other than the applicant or with a parent or person who has custody of the nominating student other than the applicant. The *Note* points out that if an applicant meets the requirements of subclause 590.211(4), the nominating student may intend to reside with one or more holders of a student guardian visa in addition to the applicant. In other cases, the requirement prevents more than one family member residing in Australia as a student guardian of a nominating student.

Clause 590.213 requires that if any member of the applicant's family unit has not turned 6, the applicant must establish compelling and compassionate reasons for the grant of the visa unless the applicant meets the requirements of subclause 590.211(4).

Clause 590.214 requires the applicant to have made appropriate arrangements for the period of the applicant's proposed stay in Australia, for the accommodation, support and general welfare of each member of the applicant's family unit who has not turned 18 and who does not hold a student visa.

Clause 590.215 requires an applicant to be a genuine applicant for entry and stay as a student guardian, having regard to factors set out in the clause. This clause operates in the same way as clauses 500.212 and 500.312; see the notes on those clauses above.

Clause 590.216 requires an applicant to have genuine access to certain funds, as described in subclauses (2) and (3). Further details of clause 590.216 are:

Subclause 590.216(2) requires that while the applicant holds the visa, sufficient funds will be available to meet the costs and expenses of the applicant during the applicant's intended stay in Australia; the costs and expenses of each member of the applicant's family unit (if any) who will be in Australia; and, unless the applicant meets the requirements of subclause 590.211(4) on the grounds of significant benefit to the relationship between Australia and a foreign country, the costs and expenses of each nominating student.

Subclause 590.216(3) requires the applicant to give to the Minister evidence of financial capacity that satisfies the requirements specified in an instrument.

Provision for the requirements for the evidence to be specified in an instrument allows the types of evidence to be changed if circumstances change, for instance in response to changes in costs.

Subclause 590.216(4) provides power for the Minister to make a legislative instrument specifying the evidence required to be given for purposes of subclause (3).

Clause 590.217 requires the applicant to provide evidence of adequate arrangements in Australia for health insurance during the period of the applicant's stay in Australia.

Clause 590.218 prescribes the public interest criteria to be satisfied by an applicant for a Subclass 590 (Student Guardian) visa.

Clause 590.219 prescribes the special return criteria to be satisfied by an applicant for a Subclass 590 (Student Guardian) visa.

590.3 – Secondary criteria

Clause 590.311 requires a secondary applicant to be a member of the family unit of a person who satisfies the primary criteria.

Clause 590.312 requires a secondary applicant must not have turned 6.

Clause 590.313 requires a secondary applicant to give evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.

Clause 590.314 prescribes the public interest criteria to be satisfied by a secondary applicant.

Clause 590.315 prescribes the special return criteria to be satisfied by a secondary applicant.

590.4 – Circumstances applicable to grant

Clause 590.411 provides that an applicant may be in or outside Australia when the visa is granted, but not in immigration clearance.

590.5 – When visa is in effect

Clause 590.511 provides that a Subclass 590 (Student Guardian) visa in a temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

590.6 – Conditions

Clause 590.611 sets out the conditions which must be imposed on a Subclass 590 (Student Guardian) visa granted to a person who satisfies the primary criteria.

Clause 590.612 sets out the conditions which must be imposed on a Subclass 590 (Student Guardian) visa granted to a person who satisfies the secondary criteria.

Item 33 – Item 4012A of Schedule 4

This item omits the words “and who is not a Foreign Affairs student or a Defence student” from item 4012A of Schedule 4 (Public interest criteria and related provisions) to the Migration Regulations. This amendment is consequential to the amendment made by item 35 of this Schedule, below.

Item 34 – Subparagraphs 4012A(b)(i), (ii) and (iii) of Schedule 4

This item repeals subparagraphs 4012A(b)(i), (ii) and (iii) of Schedule 4 to the Migration Regulations, and substitutes new subparagraphs 4012A(b)(i) and (ii). New subparagraphs (i) and (ii) refer to a “confirmation of enrolment” and “AASES form”, respectively.

The effect of this amendment is to remove references to the superseded terms “certificate of enrolment”, “electronic confirmation of enrolment” and “Acceptance Advice of Secondary Exchange Student (AASES)” from paragraph 4012A(b) and replace them with the new defined terms **confirmation of enrolment** and **AASES form**, inserted in regulation 1.03 by items 1 and 3 of this Schedule, above.

Item 35 – At the end of item 4012A of Schedule 4

This item adds a new paragraph 4012A(c) at the end of item 4012A of Schedule 4 to the Migration Regulations.

Public interest criterion (PIC) 4012A is prescribed as a primary criterion for the grant of a Subclass 500 (Student) visa if the applicant has not turned 18 (see subclause 500.217(2), inserted by item 32 of this Schedule, above). PIC 4012A requires the applicant to intend to reside in Australia with either a parent or a person who has custody of the applicant, or with a relative nominated by a parent or person having custody who is at least 21 and is of good character; or under appropriate arrangements for the applicant’s accommodation, support and general welfare that are confirmed in a statement by the applicant’s education provider.

Previously the criterion did not apply in respect of a Foreign Affairs student or Defence student but it is now intended that the criterion also applies to these students (see item 33 of this Schedule, above). New paragraph 4012A(c) provides that if the applicant is a Foreign Affairs student or Defence student aged under 18, appropriate arrangements for the applicant's accommodation, support and general welfare must have been approved by the relevant Minister.

Item 36 – Part 2 of Schedule 4 (table items 4055A, 4056, 4057 and 4058)

This item repeals items 4055A, 4056, 4057 and 4058 from the table in Part 2 of Schedule 4 to the Migration Regulations, and substitutes a new item 4056. New item 4056 refers to visa Subclass 500 (Student) and conditions 8104, 8105, 8202, 8501, 8517 or 8518.

Part 2 of Schedule 4 specifies conditions applicable for certain subclasses of visas for the purposes of subclause 4013(2). PIC 4013 is prescribed as a primary criterion for the grant of a Subclass 500 (Student) visa (see subclause 500.217(1), inserted by item 32 of this Schedule, above). PIC 4013 requires that if an applicant is affected by a risk factor mentioned, relevantly, in paragraph 4013(2)(b), the application must be made more than 3 years after cancellation of a visa on grounds of breach of a visa condition specified in Part 2. The effect of this amendment is to remove references in Part 2 to student visa subclasses repealed by item 32 of this Schedule, above, and to substitute a reference to new Subclass 500 and specify relevant conditions.

Item 37 – Paragraph 5010(1)(b) of Schedule 5

This item repeals paragraph 5010(1)(b) of Schedule 5 (Special return criteria) to the Migration Regulations and substitutes a new paragraph 5010(1)(b). New paragraph (b) refers to an applicant who “is the holder of a student visa granted to the applicant who was provided financial support by the government of a foreign country”. The subparagraph previously listed the specific subclasses of student visa that are repealed by item 32 of this Schedule, above.

Special return criterion 5010 is prescribed as a primary criterion for the grant of a Subclass 500 (Student) visa (see clause 500.218, inserted by item 32 of this Schedule, above). New paragraph 5010(1)(b) applies to an applicant who holds, or held, a student visa and who was provided with financial support by the government of a foreign country. The effect of this amendment is to update the paragraph so that it applies to the holder of any student visa including a new Subclass 500 (Student) visa, consequentially to the amendment to the definition of *student visa* in regulation 1.03, made by item 7 of this Schedule, above.

Item 38 – Subparagraph 5010(2)(b)(ii) of Schedule 5

This item repeals subparagraph 5010(2)(b)(ii) of Schedule 5 (Special return criteria) to the Migration Regulations and substitutes a new subparagraph 5010(2)(b)(ii). New subparagraph 5010(2)(b)(ii) applies to an applicant when “the last substantive held by the applicant was a student visa granted to the applicant who was provided financial support by the government of a foreign country”. The subparagraph previously listed the specific subclasses of student visa that are repealed by item 32 of this Schedule, above.

Special return criterion 5010 is prescribed as a primary criterion for the grant of a Subclass 500 (Student) visa (see clause 500.218, inserted by item 32 of this Schedule, above). It applies, relevantly, to an applicant whose last substantive visa was a student visa and the applicant was provided with financial support by the government of a foreign country. The effect of this amendment is to update the subparagraph so that it applies to any student visa including a new Subclass 500 (Student) visa, consequentially to the amendment to the definition of *student visa* in regulation 1.03, made by item 7 of this Schedule, above.

Item 39 – Schedules 5A and 5B

This item repeals Schedule 5A (Evidentiary requirements for student visas) and Schedule 5B (Evidentiary requirements for student visas – secondary applicants) to the Migration Regulations. The schedules are repealed consequentially to the repeal of Division 1.8 of Part 1 of the Migration Regulations by item 12 of this Schedule, above.

Item 40 – Clause 8104 of Schedule 8

This item repeals clause 8104 of Schedule 8 (Visa conditions) to the Migration Regulations and substitutes a new clause 8104.

Clause 8104 specifies a condition 8104 which must be imposed on a Subclass 500 (Student) visa granted to a secondary applicant (see paragraph 500.612(1)(a), inserted by item 32 of this Schedule, above). The effect of the condition is that the visa holder must not work for more than 40 hours per fortnight, or commence work before the primary visa holder commences their course of study, unless the primary visa holder is studying for the award of a masters or doctoral degree in which case the condition does not apply.

The new clause 8104 is amended to remove references to repealed visa subclasses, and to restructure the condition to make it clearer.

Item 41 – Paragraph 8105(2)(b) of Schedule 8

This item amends paragraph 8105(2)(b) of Schedule 8 (Visa conditions) to the Migration Regulations by omitting the words “Subclass 574 (Postgraduate Research Sector) visa” and substituting “student visa granted in relation to a masters degree by research or doctoral degree”.

Clause 8105 specifies a condition 8105 which must be imposed on a Subclass 500 (Student) visa granted to an applicant who satisfies the primary criteria (see paragraph 500.611(1)(a), inserted by item 32 of this Schedule, above). The effect of the condition is that the visa holder is restricted to working for no more than 40 hours per fortnight, unless the visa holder is studying certain postgraduate courses. This amendment removes a reference to a Subclass 574 visa, which is repealed by item 32 of this Schedule, above, and substitutes a reference to a student visa granted in relation to certain postgraduate courses. The effect of the amendment is to continue the application of the condition, as the term *student visa* includes a Subclass 500 (Student) visa.

Item 42 – Subclause 8201(2) of Schedule 8 (table item 1)

This item omits “580” in item 1 of the table in subclause 8201(2) of Schedule 8 (Visa conditions) to the Migration Regulations, and substitutes “590”. This amendment is consequential to the repeal of Subclass 580 (Student Guardian) and substitution of new Subclass 590 (Student Guardian) by item 32 of this Schedule, above.

Item 43 – Clause 8202 of Schedule 8

This item repeals clause 8202 in Schedule 8 (Visa conditions) to the Migration Regulations, and substitutes a new clause 8202.

Clause 8202 specifies a condition 8202 which must be imposed on a Subclass 500 (Student) visa (see paragraph 500.611(1)(a), inserted by item 32 of this Schedule, above). The purpose of the condition is to require holders of student visas to maintain enrolment, and for most students, to maintain satisfactory progress. Details of condition 8202 are:

- *Subclause 8202(1)* requires a Defence student, a Foreign Affairs student or a secondary exchange student to be enrolled in a full-time course of study or training.
- *Subclause 8202(2)* requires all other students to maintain enrolment in a full-time registered course at the same, or higher, level than the registered course in relation to which the visa was granted (but see subclause 8202(3) below); and to ensure that the education provider does not certify the visa holder has having failed to achieve satisfactory course progress or course attendance.
- *Subclause 8202(3)* provides that despite subclause 8202(2), a visa holder may change from enrolment in a course at Australian Qualifications Framework (AFQ) Level 10 to a course at AFQ Level 9.

New clause 8202 clarifies the requirements of condition 8202 and updates references to align with the new arrangements for student visas. The new clause also includes requirements to make it clear when students may change courses, and that they would need to apply for a new visa if they intended to change to a course at a lower AFQ level (other than changing from an AFQ Level 10 course to an AFQ Level 9 course). The requirement to maintain enrolment in a full-time registered course also ensures that a student cannot change to a non-registered course. Condition 8202 assists in maintaining the integrity of the student visa program. A student’s stated course of study is relevant to satisfying clause 500.212 and the condition acts as a deterrent to students to misrepresenting their intentions when applying for a visa. The student’s circumstances would be re-assessed should they change to a lower level course.

Item 44 – Clause 8517 of Schedule 8

This item omits references to “Subclass 560, 570, 571, 572, 573, 574, 575 or 576 visa”, and substitutes “student” visa in clause 8517 of Schedule 8 (Visa conditions) to the Migration Regulations.

Clause 8517 species condition 8517 which must be imposed on a Subclass 500 (Student) visa granted to an applicant who satisfies the primary criteria (see paragraph 500.611(1)(a), inserted by item 32 of this Schedule, above). The condition requires that the visa holder must maintain adequate arrangements for the education of any school-age dependant of the holder who is in Australia for more than 3 months as the holder of a student visa as a secondary applicant. This amendment ensures that the condition extends to a school-age dependant

holding a Subclass 500 (Student) visa as a secondary applicant. New Subclass 500 is included in the definition of *student visa* by item 7 of this Schedule, above.

Item 45 – Clause 8532 of Schedule 8

This item omits the words “and is not a Foreign Affairs student or a Defence student” from clause 8532 of Schedule 8 (Visa conditions) to the Migration Regulations. This amendment is made in conjunction with the amendment made by the following item 46.

Item 46 – At the end of clause 8532 of Schedule 8

This item adds new paragraphs (c) and (d) in clause 8532 of Schedule 8 (Visa conditions) to the Migration Regulations.

Clause 8532 specifies condition 8532 which must be imposed on a Subclass 500 (Student) visa granted to an applicant who satisfies the primary criteria (see paragraph 500.611(1)(a), inserted by item 32 of this Schedule, above). Condition 8532 applies if the holder of a student visa has not turned 18. The condition specifies requirements which must be met relating to the visa holder’s accommodation, support and general welfare.

The condition now applies to visa holders who are Defence students or Foreign Affairs students (see item 45 of this Schedule, above). New paragraphs (c) and (d) require that in the case of a Defence student or Foreign Affairs student (respectively), arrangements for the visa holder’s accommodation, support and general welfare must be approved by the relevant Minister, and the visa holder must not enter Australia before those arrangements are due to commence.

Item 47 – Sub-subparagraphs 8533(b)(ii)(A) and (B) of Schedule 8

This item omits the word “certificate” wherever occurring in sub-subparagraphs 8533(b)(ii)(A) and (B) of Schedule 8 (Visa conditions) to the Migration Regulations and substitutes the word “confirmation”. This amendment is consequential to the replacement of the defined term *certificate of enrolment* with the defined term *confirmation of enrolment*. See items 2 and 3 of this Schedule, above.

Item 48 – Paragraphs 8534(b) to (d) of Schedule 8

This item repeals paragraphs 8534(b) to (d) of Schedule 8 (Visa conditions) to the Migration Regulations and substitutes new paragraphs 8534(b) and (c).

Clause 8534 specifies condition 8534 which may be imposed on a Subclass 500 (Student) visa (see paragraph 500.611(2)(b) and subclause 500.612(2), inserted by item 32 of this Schedule, above). The condition prevents the grant of a further visa to the visa holder in Australia, except for a protection visa, a Subclass 485 (Temporary Graduate) visa, or a Subclass 590 (Student Guardian) visa.

The effect of this amendment is to remove redundant references from the condition and to update the references to visas for which the visa holder may apply. The amendment removes previous paragraph 8534(b) which referred to a student visa applied for on form 157P or 157P (Internet). Those forms were used to apply for a student visa with work rights. Since 2008,

all student visas have had a condition allowing work for specified hours and the forms are now redundant as no holder of a student visa is required to apply for permission to work. The amendment also replaces a reference to a Subclass 497 (Graduate – Skilled) visa with a reference to a Subclass 485 (Temporary Graduate) visa. Subclass 497 was repealed in 2012 and the relevant visa is now Subclass 485. Further, the amendment updates a reference to a Subclass 580 (Student Guardian) visa, repealed by item 32 of this Schedule, above, with a reference to the new Subclass 590 (Student guardian) visa, created by item 32 of this Schedule, above.

These amendments allow holders of visas having condition 8534 to continue to apply for the relevant visas, as intended.

Item 49 – Paragraphs 8535(b) and (c) of Schedule 8

This item repeals paragraphs 8535(b) and (c) of Schedule 8 (Visa conditions) to the Migration Regulations and substitutes new paragraph 8535(b).

Clause 8535 specifies condition 8535 which may be imposed on a Subclass 500 (Student) visa granted to an applicant who satisfies the primary criteria, if the applicant is provided with financial assistance by the Commonwealth or the government of a foreign country (see paragraph 500.611(2)(a), inserted by item 32 of this Schedule, above). The condition prevents the grant of a further visa to the visa holder in Australia, except for a protection visa, or a Student (Temporary)(Class TU) visa that is granted to the holder on the basis of support from the Commonwealth government or a foreign government. That is, the holder may be granted a further student visa if the holder has government support.

The effect of this amendment is to remove redundant references from the condition and to update the references to visas for which the visa holder may apply. The amendment removes previous paragraph 8534(b) which referred to a student visa applied for on form 157P or 157P (Internet). Those forms were used to apply for a student visa with work rights. Since 2008, all student visas have had a condition allowing work for specified hours and the forms are now redundant as no holder of a student visa is required to apply for permission to work. The amendment also replaces references to student visas of the subclasses repealed by item 32 of this Schedule, above, with a reference to a Student (Temporary)(Class TU) visa. This allows relevant holders of a student visa with this condition to apply for a further student visa, as intended, after the repeal of the subclasses previously mentioned in the condition.

Item 50 – Subclauses 8537(1) and (2) and 8538(1) of Schedule 8

This amendment omits references to “580” in subclauses 8537(1) and (2) and 8538(1) of Schedule 8 (Visa conditions) to the Migration Regulations, and substitutes references to “590”.

Clauses 8537 and 8538 specify conditions 8537 and 8538, respectively, that must be imposed on a Subclass 590 (Student Guardian) visa granted to an applicant who satisfies the primary criteria (see subclause 590.611(2), inserted by item 32 of this Schedule, above). The conditions relate to obligations of a Subclass 590 (Student Guardian) visa holder to the nominating student. This amendment updates references in the condition to the new Subclass 590 (Student Guardian) visa following the repeal of the previous Subclass 580 (Student Guardian) visa by item 32 of this Schedule, above.

Schedule 5 – Application and transitional provisions

Migration Regulations 1994

Item 1 – Schedule 13

This item amends Schedule 13 to the Migration Regulations to insert Part 54 titled *Amendments made by the Migration Legislation Amendment (2016 Measures No. 1) Regulation 2016*. Schedule 13 is the repository for application and transitional provisions relating to amendments to the Migration Regulations.

The purpose of Part 54 of Schedule 13 is to set out the application and transitional provisions for the amendments made by the Regulation.

Clause 5401 in Part 54 deals with the amendments made by Schedule 1 of the Regulation – Discriminatory recruitment practices.

Subclause 5401(1) provides that the amendment made by item 1 of Schedule 1, which inserts a definition of discriminatory recruitment practice, applies on and after 19 April 2016.

Subclause 5401(2) provides that the new criteria for approval as a standard business sponsor, or for variation of a term of approval as a standard business sponsor, apply to applications made, but not finally determined, before 19 April 2016, and to applications made on or after 19 April 2016. Accordingly, while the instrument is not strictly retrospective, it does prescribe rules for the future based on antecedent facts (that is, the existence of an earlier application for approval as a standard business sponsor). As a consequence, a person whose application for approval as a standard business sponsor was made before 19 April 2016 is now subject to criteria for the grant of the visa that did not apply at the time of their application. It is noted that the Senate Standing Committee on Regulations and Ordinances usually assesses such cases against the requirement to ensure that instruments of delegated legislation do not unduly trespass on personal rights and liberties (scrutiny principle 23(3)(b)). The reason why there is no undue trespass by this instrument is that the amendments are important integrity measures, designed to reinforce the purpose of the Subclass 457 programme, which is to deal with genuine skills shortages in the Australian labour market. In addition, the only new requirement is that the applicant must declare in writing that he or she will not engage in discriminatory recruitment practices. The requirement to make that declaration does not impose any practical disadvantage on applicants.

Subclause 5401(3) provides that the new sponsorship obligation in regulation 2.87C, requiring sponsors not to engage in discriminatory recruitment practices, applies in relation to discriminatory recruitment practices engaged in on or after 19 April 2016 by a standard business sponsor or a former standard business sponsor. The immediate application of the new obligation to all sponsors on 19 April 2016 does not have any retrospective effect. It will only apply to recruitment activity from that date. In regard to scrutiny principle 23(3)(b) outlined above, the reason why this obligation is applied to persons who became sponsors before the commencement date of 19 April 2016 is that it is an important integrity measure to ensure that sponsors do not engage in improper use of the Subclass 457 programme and so that the programme achieves its objective of addressing genuine labour market shortages. It is

acknowledged that this will disrupt the future working of business models of some sponsors who, for example, are making no effort to source Australian workers and are relying exclusively on workers obtained under the Subclass 457 programme. The government considers that the immediate application of the new sponsorship obligation is reasonable and fair given the importance of maintaining the integrity of the Subclass 457 programme.

The clause is expressed to apply to discriminatory recruitment practices on or after 19 April 2016 by standard business sponsors and former standard business sponsors. This reflects the drafting of regulation 2.87C, inserted by item 4 in Schedule 1 to the Regulation. This drafting is necessary to ensure that the Minister can take enforcement action (for example, seeking a civil penalty) against persons who have ceased to be standard business sponsors, but the enforcement action can only relate to discriminatory recruitment practices which occurred while the person was a standard business sponsor on or after 19 April 2016. This is made clear in subregulation 2.87C(2) which provides that the person must not engage in, or have engaged in, discriminatory recruitment practices during the period of the person's approval as a sponsor. The position is reinforced by subregulation 2.87C(3) which provides that the obligation not to engage in discriminatory recruitment practices starts to apply on the day the person is, or was, approved as a standard business sponsor, and ends when the person ceases, or ceased, to be a standard business sponsor.

Clause 5402 in Part 54 deals with the amendments made by Schedule 2 of the Regulation – Processing of Subclass 457 Visas

Subclause 5402(1) provides that the amendment made by item 1 of Schedule 2 of the Regulation, which changes the requirements in item 1223A of Schedule 1 of the Migration Regulations for making a valid application for a Subclass 457 visa, applies in relation to an application for a visa made on or after 19 April 2016.

Subclause 5402(2) provides that the amendments made by items 2 to 4 of Schedule 2 of the Regulation, removing an English language criterion from Subclass 457 in Schedule 2 of the Migration Regulations, apply in relation to visa applications made, but not finally determined, before 19 April 2016, and to visa applications made on or after 19 April 2016. In regard to scrutiny principle 23(3)(b) outlined above, the reason why the amendments are applied to applications made, but not finally determined, before the commencement day is that the amendments are removing 'red tape' and are beneficial to applicants.

The purpose and effect of clause 5403 is to clarify the applications to which the amendment made by Item 1 of Schedule 3 to the Regulation applies.

Clause 5403 provides that the amendment of the Regulations made by Item 1 of Schedule 3 to the Regulation applies in relation to an application for a visa made, but not finally determined, before 19 April 2016, and to an application made on or after 19 April 2016.

While the provision is not strictly retrospective, it does prescribe rules for the future based on antecedent facts (the existence of an undecided visa application). An applicant who made a visa application before the amendment will now be subject to a different criterion at the time the decision is made. It is noted and understood that the Senate Standing Committee on Regulations and Ordinances assesses such cases against the requirement to ensure that instruments of delegated legislation do not unduly trespass on personal rights and liberties. The reason why there is no undue trespass by this instrument is that the amendment is

intended to return the regulations to the intended position as it existed in relation to the time of decision criteria as they existed before the drafting error which inadvertently removed the words “persons such as” in 2013. It is appropriate to apply the law as it was intended to apply to these applicants, while not disadvantaging applicants whose applications have been decided.

Clause 5404 in Part 54 deals with the amendments made by Schedule 4 of the Regulation – Student visa simplification.

Subclause 5404(1) provides that the amendments made by Schedule 4, other than items 44, 48 and 49 of the Schedule, apply in relation to an application for a visa that is made on or after 1 July 2016. Subsection 2(1) of the Regulation provides that Schedule 4 commences on 1 July 2016.

Subclause 5404(2) provides that the amendments made by items 44, 48 and 49 of Schedule 4 apply in relation to a visa granted before, on or after 1 July 2016. These amendments are applied to visas granted before the commencement date for the following reasons:

Item 44 amends condition 8517, which requires the visa holder to maintain adequate arrangements for the education of any school-age dependent child of the visa holder where the child is in Australia for more than 3 months as the holder of a student visa granted on the basis of satisfying the secondary criteria. The effect of the amendment is that the condition applies to school-age dependants who hold a new Subclass 500 (Student) visa as secondary applicants, as well as to school-age dependants who hold a visa of one of the repealed student subclasses.

Applying the amendment to visas granted before 1 July 2016 continues the existing obligation of visa holders to maintain adequate arrangements for the education of any school-age dependent child holding a student visa as a secondary applicant, whether the school-age dependent child holds a visa of one of the repealed student visa subclasses granted before the commencement date, or holds a new Subclass 500 (Student) visa.

Item 48 amends condition 8534, which prevents the grant of a further visa to the visa holder in Australia except for a protection visa, a Subclass 485 (Temporary Graduate) visa, or a Subclass 590 (Student Guardian) visa. The effect of the amendment is to remove redundant references from the previous condition 8534, and to update the visas for which holders of a visa subject to condition 8534 may apply.

The condition previously referred to a Subclass 497 (Graduate – Skilled) visa which was repealed in 2012 and can no longer be granted. This reference is replaced by a reference to the equivalent Subclass 485 (Temporary Graduate) visa which is current and can be granted. Similarly, the reference to a Subclass 480 (Student Guardian) visa, which is repealed by item 32 of this Schedule, above, is replaced with a reference to a Subclass 590 (Student Guardian) visa, which can be applied for and granted after the commencement date.

The amendment also removes redundant references to a visa applied for on form 157P or 157P (Internet). These forms were used for an application for a second student visa with permission to work. However, since 2008 all student visas have had a condition permitting specified hours of work, and student visa holders are no longer required to apply for a further

student visa with permission to work, making the reference to a visa applied for on these forms redundant.

The effect of applying these amendments to visas granted before 1 July 2016 is therefore beneficial to holders of visas subject to condition 8534 as it continues to allow them to apply for and be granted a relevant visa after the commencement date, as intended.

Item 49 amends condition 8535, which prevents the grant of a further visa except for a protection visa, or a Student (Temporary)(Class TU) visa that is granted to the holder on the basis of support from the Commonwealth government or a foreign government. That is, the holder may be granted a further student visa if the holder has government support.

The amendment removes redundant references from the condition and updates the references to visas for which the visa holder may apply by replacing references to student visas of the subclasses repealed by item 32 of this Schedule, above, with a reference to a Student (Temporary)(Class TU) visa that is granted to the holder on the basis of support from the Commonwealth government or a foreign government. This allows relevant holders of a student visa with this condition to be granted a further student visa in the specified circumstances. After the commencement date they would not be able to apply for the repealed visas that were previously referred to in the condition, but because of this amendment they will be able to apply for a new Subclass 500 (Student) visa, if they have the support of the Commonwealth or a foreign government. The effect of applying these amendments to visas granted before 1 July 2016 is therefore beneficial to holders of visas with condition 8535 as it allows them to continue to be granted a student visa in certain circumstances, as intended.

The amendment also removes redundant references to a visa applied for on form 157P or 157P (Internet). These forms were used for an application for a second student visa with permission to work. However, since 2008 all student visas have had a condition permitting specified hours of work, and student visa holders are no longer required to apply for a further student visa with permission to work, making the reference to a visa applied for on these forms redundant.

**Deregulation of the student visa programme
and future directions for streamlined visa
processing**

**Final Assessment Regulation Impact Statement
(OBPR ID: 18083)**

**Department of Immigration and Border Protection
10 February 2016**

1. Australia's Student Visa Programme

1.1 Overview

International education is one of Australia's five pillars of economic growth, contributing \$18.2 billion in export income to the economy in 2014–15. The Department of Immigration and Border Protection plays an important role in supporting the sustainability and competitiveness of Australia's international education sector by facilitating the movement of genuine international students wishing to study in Australia, while maintaining strong levels of integrity at Australia's border.

During the 2014–15 programme year, 332,778 student visa applications were lodged by international students seeking to study in Australia. Visas for international students are processed by the Department of Immigration and Border Protection, either under the Assessment Level (AL) framework or streamlined visa processing (SVP) arrangements.

With the current policy guidelines underpinning SVP due to expire in mid-2016, the Department considered it timely to evaluate the arrangements and to explore possible opportunities for enhancement.

1.2 Current regulatory framework

The student visa framework comprises eight visa subclasses (representing eight different education sectors), two external immigration risk frameworks (SVP and the AL framework), as well as a myriad of other regulatory provisions.

Student visa applications are processed either under the SVP arrangements (based on the immigration risk of students associated with a particular education provider) or the AL framework (based on the immigration risk applicable to the student's country of citizenship studying in a particular education sector).

Under SVP, student visa applicants enrolled in an advanced diploma, bachelor, masters or doctoral degree or eligible exchange programme at a participating education provider are generally subject to lower evidentiary requirements, similar to those that apply under AL1, regardless of their country of citizenship. In practice, SVP eligible students generally provide less information to the Department and receive simpler and faster visa processing.

The AL framework was introduced in July 2001 and last reviewed in 2013, with a number of reforms implemented from 22 March 2014. Every country across each education sector is assigned an AL based on the calculated immigration risk posed by students from that country studying in that education sector. There are three assessment levels in the student visa programme: AL1 represents the lowest immigration risk and AL3 the highest. The higher the assessment level, the greater the evidentiary requirements that an applicant must meet to be granted a student visa, including financial capacity, English language skills and academic background.

1.3 Intention of Streamlined Visa Processing (SVP)

SVP was first introduced for Australian universities in March 2012 to support the sustainable growth of the international education sector. The SVP arrangements were extended in March 2014 to eligible non-university higher education providers and in November 2014 to eligible education providers, including those offering advanced diploma courses.

The primary objective of the SVP arrangements is to provide eligible students of education providers that meet low immigration risk benchmarks with access to simpler and faster visa processing, while maintaining immigration integrity. In return for these arrangements, participating education providers take on greater responsibility for the immigration outcomes of their students.

Under SVP, participating providers must have strategies in place to manage risks associated with the enrolment of international students, including ensuring students have appropriate levels of English language and sufficient funds to support themselves (and their dependents) while in Australia. Participating SVP providers must continue to meet low immigration risk benchmarks in order to maintain their eligibility.

To be eligible for SVP, education providers must:

- be registered to deliver advanced diploma, bachelor, masters or doctoral degree level courses to international students.
- achieve an AL1 or AL2 immigration risk rating in relation to the immigration outcomes of their prospective and existing international students.
- have at least 100 primary active student visas.
- meet the requirements set out in the guidelines for education provider participation in SVP arrangements (guidelines can be viewed at: <http://www.border.gov.au/Busi/Educ/Stre/Guidelines-for-education-provider-participation-in-streamlined-visa-processing-arrangements>).

The methodology used to determine an education provider's immigration risk rating is based on the approach used in the AL framework and considers a number of factors relating to the visa and immigration compliance outcome of the provider's international students.

1.4 Review of streamlined visa processing arrangements

On 18 November 2014, the Department of Immigration and Border Protection circulated a discussion paper titled *Future directions for streamlined visa processing* to key stakeholders in the international education sector.

Formal submissions were invited in response to a broad range of questions posed in the paper relating to the current SVP arrangements and their future direction. The paper and associated consultation with stakeholders considered possible opportunities for enhancing the SVP arrangements and opportunities to deregulate the current student visa framework. Thirty-two submissions were received.

In December 2014, the Department of Immigration and Border Protection also conducted a survey of SVP providers seeking feedback on what providers saw as the benefits of participating in the arrangements, what additional resourcing was required and how providers managed their responsibilities under the arrangements.

On 16 June 2015, the Australian Government released the *Future directions for streamlined visa processing* report and announced the introduction of a simplified international student visa framework (SSVF) to support Australia's education services sector.

1.5 Status of Regulatory Impact Statements at key decision points

An early assessment RIS informed the Australian Government's decision to adopt the eight recommendations of the *Future directions for streamlined visa processing* report.

2. The Policy Problem

2.1 Description of the Problem

The current student visa framework is complex, comprising eight visa subclasses, two immigration risk frameworks (SVP and the AL framework) and a myriad of other regulatory provisions. This imposes a significant and costly regulatory burden on education providers, students and government.

In 2014–15, 299,540 student visas were granted, with approximately 50 per cent assessed and granted under SVP. The remainder were assessed and granted under the AL framework.

As at November 2015, of the 1080 CRICOS registered providers, 153 are SVP providers (including 42 universities) and 927 education providers receive regular student visa processing under the AL framework.

Market impacts

A statistical evaluation of the SVP arrangements undertaken by the Department in 2015 found that SVP has benefited some providers over others. The key findings were:

- The higher education sector, which has the most access to SVP, has experienced significant growth since SVP was introduced in 2012, which has not been replicated in other education sectors.
- Student visa processing times are significantly lower for SVP students than for those processed under the AL framework.

A detailed overview of the findings can be found on pages 15–16 of the *Future directions for streamlined visa processing* report on the Department's website at:
www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/future-directions.pdf

Integrity outcomes

The Department's statistical evaluation found evidence of some emerging integrity concerns under SVP. The key findings were:

- Some SVP providers reported that they have found it challenging to effectively meet their responsibilities under the arrangements, due in part to targeting by non-genuine applicants and agents.
- The Department's detection of fraud increased for certain SVP students in 2012–14, which could be indicative of non-genuine students purposely targeting certain SVP providers.
- Course hopping has increased under SVP. Course hopping is where students arrive under SVP and then change to a non-SVP course (typically at a lower qualification level) shortly after arrival in Australia. It is of concern as it may be indicative of students providing misleading information to the Department of Immigration and Border Protection and their education provider in order to circumvent the intentions of the SVP arrangements.

A detailed overview of the findings can be found on pages 12–14 of the *Future directions for streamlined visa processing* report on the Department’s website at:
www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/future-directions.pdf

Cost of arrangements to industry

SVP providers have invested significant resources to access and remain eligible for the SVP arrangements. The December 2014 survey indicated that SVP providers have employed (on average) five additional staff to manage their SVP arrangements and based on the survey responses, the annual cost to providers of administering the SVP arrangements is estimated to be approximately \$249,300 per provider.

Survey results also showed that a majority of SVP providers interview more than 75 per cent of their prospective students from higher immigration risk AL3 countries to establish that their students genuinely wish to study in Australia, have the funds to do so and intend to return home after finishing their studies. Many providers also request and assess evidence of a student’s funds, English language ability and academic record, with these documents often verified by the provider.

When calculating the regulatory burden to business, the Department of Immigration and Border Protection considered business activities required by education providers to access and remain eligible in the SVP arrangements. These included: preparing an ‘opt-in’ application package; assessing international student applications; managing education agents; managing educational business partners; monitoring risk outcomes; and managing SVP students following arrival in Australia. These activities attracted higher costs when calculating the ongoing cost and regulatory burden to business and were identified by SVP providers as the most time-consuming activities.

In stakeholder submissions responding to the *Future directions for streamlined visa processing* discussion paper, many stakeholders viewed the additional resources required to administer the arrangements and manage immigration risk as a fair ‘trade-off’ for the advantages gained under SVP, while others considered these responsibilities as onerous and needing reform.

A detailed overview of the findings can be found on pages 14–15 of the *Future directions for streamlined visa processing* report on the Department’s website at:
www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/future-directions.pdf

Conclusion

There was general consensus among international education stakeholders that a new framework that provides streamlining opportunities to all types of education providers, while maintaining high levels of integrity, is required. This was a common theme in stakeholder submissions responding to the *Future directions for streamlined visa processing* discussion paper.

While SVP has brought benefits, stakeholder feedback, together with an evaluation of the arrangements, indicated that SVP is not sustainable in its current form in the long term. This is primarily due to concerns relating to the market impacts and regulatory cost of the arrangements, as well as the challenges faced by education providers in effectively managing their responsibilities under SVP.

3. Why is Government Action Needed?

3.1 Impact of streamlined visa processing

There is a strong case for modifying the current SVP model, based on the results of a statistical evaluation of the arrangements, together with feedback provided by stakeholders in submissions responding to the *Future directions for streamlined visa processing* discussion paper and in response to a survey of SVP providers.

In their submissions, there was general agreement among stakeholders that, despite its benefits, SVP has created market distortion and inequalities due to the reputational and operational advantages gained by SVP providers. Some stakeholders believe that SVP has divided the sector into 'SVP' and 'non-SVP' providers, creating an inaccurate market perception that courses offered by SVP providers are of superior quality. Stakeholders also advised that among some students and education agents, there appears to be an inaccurate perception that SVP represents Australian Government approval of a course or provider.

In addition, there was the view that the current student visa programme, which comprises eight different visa subclasses and two immigration risk assessment frameworks, was confusing for students and added unnecessary complexity.

Currently, the SVP arrangements cater for certain specified courses (advanced diploma, bachelor, masters, doctoral degree or eligible exchange programme) and around 15 per cent of all Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) registered education providers are eligible to participate in the arrangements.

The number of student visa applications processed under the SVP arrangements has been steadily increasing each year and in 2014–15, approximately 50 per cent of student visa applications were processed under SVP.

While SVP has played a role in attracting high quality students, the Department of Immigration and Border Protection has noted that a number of SVP providers have also been targeted by non-genuine students, particularly from higher immigration risk markets, seeking to avoid the greater scrutiny their student visa application would receive under the AL framework. This trend was also evidenced in responses to the education provider survey.

Some SVP providers have found it challenging to meet their SVP responsibilities. The Department is conscious that the removal of providers from SVP would likely have reputational impacts for the providers concerned but also for Australian international education more broadly.

3.2 Impact of no change on industry

Key international education stakeholders have indicated that they do not consider the SVP arrangements to be sustainable in their current form due to issues relating to market distortion, red tape and immigration integrity management. A number of stakeholders also indicated significant concern if the SVP arrangements were to be extended further.

The international education sector has applied significant pressure to address these issues through either changes to the operation of SVP or to devise an appropriate alternative solution. Failure to act

in relation to these matters would most likely jeopardise the future health of Australia's international education sector.

While current SVP arrangements contribute to the efficient processing of student visas, this efficiency would potentially be compromised should further providers enter the arrangements. If not addressed, this could increase visa processing times and compromise integrity outcomes within the student visa programme.

3.3 Key objectives of government action

The intended changes to the student visa programme reflect the Government's commitment to ensuring that visa arrangements continue to support the productivity, competitiveness and sustainability of Australia's international education sector while reducing red tape and advancing the Government's deregulation agenda.

Specifically, the changes seek to address emerging integrity trends in the student visa programme by providing a more targeted approach to and improving immigration integrity management. The improved regulatory arrangements are intended to avoid placing unnecessary burden or cost on education providers. The replacement of SVP with a broader, simpler and fairer framework is designed to reduce market distortion and make the visa application process easier to navigate for genuine students. The Department considers that it is vitally important that any policy change to the student visa programme effectively builds upon and enhances the benefits realised to date.

It is essential that any policy change:

- enhances the competitiveness of our visa system and supports the sustainable growth of Australia's international education sector.
- supports the integrity of Australia's visa programmes and border.
- facilitates the efficient and timely processing of student visa applications.
- reduces red tape for student visa applicants and the international education sector.
- is able to be easily understood by all involved. This includes prospective international students, education providers, agents and departmental officers making decisions on visa applications.

4. The Policy Options

On 16 June 2015, the Government announced the introduction of the simplified student visa framework (SSVF), based on the recommendations contained in the *Future directions for streamlined visa processing* report and on an early assessment Regulation Impact Statement. As part of the process, the Department considered a range of options which are outlined below.

4.1 Retain streamlined visa processing arrangements – status quo option

This option would maintain existing arrangements for the international education industry, making small changes to its operation and at the discretion of Government, may include the further extension of SVP to additional providers and education sectors.

4.2 A simplified student visa framework (SSVF)

This option, agreed by Government in June 2015, involves implementing changes to the number of student visa subclasses and the risk framework applied to the student visa programme.

Currently, there are eight student visa subclasses which represent seven different education sectors and a separate visa product for Student Guardians. This option collapses the seven student sector subclasses into one student visa subclass and retains the Student Guardian (subclass 580) visa. Through a single student visa subclass with core requirements, education providers and prospective student visa applicants will be provided with simplified processing arrangements.

This option also combines the AL framework and SVP arrangements into one framework that will apply to all students. A combined country and provider risk framework will consider the immigration risk associated with both the applicant's education provider and country of citizenship to guide visa evidentiary requirements. This option acknowledges that it is through the inclusion of country risk in the framework that streamlined-type processing could be extended to a greater number of education providers. This model addresses many of the concerns noted by stakeholders and will enable a more nuanced and targeted approach to immigration risk.

Based on the combined risk calculation, a student visa applicant would either generally be able to provide evidence of their English language and financial capacity by declaration or be required to formally provide this evidence to the Department. In practice, students associated with lower immigration risk will generally have lower evidentiary requirements, similar to the current AL1 or SVP arrangements. It is intended that provider and country immigration risk outcomes are reviewed on a six monthly basis with provider and country risk ratings being able to move between levels.

The Genuine Temporary Entrant (GTE) requirement will continue to be the primary integrity safeguard and will apply to all student visa applications. Under the SSVF, decision makers will also maintain discretion to request evidence of financial and English capacity for streamlined-type cases in circumstances where more detailed internal risk analytics indicate that this is appropriate.

This option provides a strong incentive for all education providers to recruit genuine international students and simplifies the student visa framework by establishing a single visa processing model that will apply to all students across all sectors.

Under this option, small business is expected to benefit considerably when compared to the existing model. The SSVF will create a more level playing field for all education providers, including smaller providers who will have greater access to streamlined-type processing. All education providers will also have a legitimate choice as to the degree to which they wish to engage with matters relating to immigration risk.

Possible combined provider and country risk matrix

| | Education provider immigration risk rating | Country immigration risk rating | Possible evidentiary requirements |
|---|--|---------------------------------|--|
| <u>Lower Evidentiary Requirements</u> | One | One, two or three | Generally these students would not be required to provide evidence of their English language or financial capacity to the Department (similar to current SVP and AL1 arrangements) |
| | Two | One or two | |
| | Three | One | |
| <u>Higher Evidentiary Requirements</u> | Two | Three | Generally these students would be required to provide evidence of their English language and financial capacity to Department |
| | Three | Two or three | |
| Genuine Temporary Entrant requirement applies | | | |

| | |
|-----------------------------|--------------------|
| Streamlined-type processing | Regular processing |
|-----------------------------|--------------------|

The two key risks in the student visa programme include:

- the student visa framework failing to support the sustainable growth of Australia's international education sector.
- the risk of immigration integrity being compromised by the grant of visas to non-genuine students.

The simplified student visa framework (SSVF) has been designed to address and mitigate these risks.

The deregulation of the student visa programme, with its key aims of reducing the regulatory burden and market distortion, will occur within a strengthened immigration integrity framework. Under the SSVF, the Department of Immigration and Border Protection will have primary responsibility for managing immigration risk and is best placed to do so.

The combined immigration risk outcomes of the student's education provider and country of citizenship will be used to guide the level of documentation relating to financial capacity and English language proficiency that the student provides with their visa application.

Where a combination of the student's education provider and country of citizenship indicates lower immigration risk the student will have 'streamlined evidentiary requirements' and will not generally be required to provide evidence of financial and English language capacity with their visa application.

An enhanced internal risk framework, including internal risk tiering and analytics will assist in identifying applications that may need additional scrutiny or rigour in checking of genuineness, financial documentation or document verification. Higher risk applicants will be identified and targeted more quickly.

Greater rigour will be added to the immigration risk methodology by including more immigration risk indicators, such as the rate of protection visa lodgements. In addition, the Department will review and update the immigration risk ratings of education providers and countries based on statistical evidence, every six months.

The Genuine Temporary Entrant (GTE) requirement will continue to be the primary integrity safeguard enabling refusal of non-genuine visa applications. The GTE is a subjective test requiring decision makers to consider whether an applicant's individual circumstances support a genuine intention to enter Australia temporarily.

In terms of competition, the SSVF will create a more level playing field for education providers, allowing them to compete on a more equal basis in the international education market. The competition impacts for students will be neutral. Students will benefit from a student visa framework that is easier to understand and navigate.

4.3 Use an Education Provider Risk Framework

This option considers education provider immigration risk exclusively and simplifies the student visa system by replacing the current two-track model (SVP and Assessment Levels) with a single approach. As immigration outcomes can vary by education sector and provider for the same country, a student's country of citizenship is not considered in the framework.

Under this option, education providers would be allocated a rating of low, medium or high, based on their individual immigration outcomes for the previous 12 months. The option would reward each education provider that has recruited genuine students and support them to successfully complete their studies while complying with all their visa requirements, irrespective of the students' country of citizenship or the education sector of the provider.

The higher the risk rating, the greater the scrutiny and evidentiary documents required. For example, an education provider rating of low would be treated similarly to the current SVP or AL1 arrangements, and a rating of high would generally be required to provide a higher level of evidence for English language proficiency and financial capacity. Under this model, only low risk or AL1 education providers would have access to streamlined-type processing.

A provider's status would be reviewed on a six-monthly or on an annual basis with providers moving between levels based on their performance over the previous 12 months.

This option considers that there are genuine students from all countries and education providers are able to implement measures to ensure positive immigration outcomes for their entire student cohort.

This option would increase risk as only a certain group of providers would have access to streamlined evidentiary requirements for their students, potentially creating further market distortion and immigration integrity issues, as non-genuine students would target these providers. Lower immigration risk cases would be unnecessarily scrutinised.

The incorporation of country risk would strengthen immigration integrity by ensuring that only students enrolled in the lowest immigration risk providers in higher risk markets were able to apply for their visa with lower financial and English language evidentiary requirements.

Possible education provider risk framework¹

| Education Provider Visa Risk Ratings (Based on student cohort immigration risk) | | DIBP Visa Assessment Requirements (Determined by DIBP) | |
|--|---|---|---|
| Low | Education provider's student cohort from previous 12 months achieved an immigration risk rating score equal to an AL1 | Level 1 | Must satisfy provider's English language, academic requirements and test of financial status |
| Medium | Education provider's student cohort from previous 12 months achieved an immigration risk rating score equal to an AL2 | Level 2 | Must satisfy provider's English language requirements, formal evidence required on academic status as well as 12 months' financial evidence |
| High | Education provider's student cohort from previous 12 months achieved an immigration risk rating score equal to an AL3 | Level 3 | Formal evidence required on English language and academic status as well as 12 months' financial evidence |
| Genuine Temporary Entrant requirement applies | | | |

4.4. Use the International Education Risk Framework proposed by the International Education Association of Australia

This option considers the International Education Risk Framework (IERF) proposed by the International Education Association of Australia (IEAA) to Government in early 2014.

This option sought to integrate immigration risk (calculated by the Department of Immigration and Border Protection), provider risk (calculated by the regulators) and consumer protection of students (calculated by the Tuition Protection Service) into one integrated risk model (the IERF).

Based on the combined risk score, the IERF assigns a risk rating to each individual international education provider of low (1), medium (2) or high (3) and provides a default provision for the school sector and newly registered providers. Risk ratings would be initially reviewed every six months and then annually.

Under this option, low risk providers would probably be afforded faster, more efficient visa processing outcomes that require less administrative burden. Medium risk providers are afforded moderate visa processing time and efficiency. High risk providers are scrutinised more closely with the highest levels of administration to visa processing. This option considers that country and sector risk (namely the current AL framework settings) could be incorporated after the IERF rating is applied.

This option requires close collaboration of a number of bodies including the Department of Immigration and Border Protection, the Department of Education and Training, the Tuition Protection Service and national and state regulators.

¹ Source: Submission: Future Directions for Streamlined Visa Processing, Australian Trade Commission (AUSTRADE), December 2014.

Proposed International Education Risk Framework²

| International Education Risk Framework | | Immigration Risk | | Consumer Protection | | Provider Risk | |
|--|-------|------------------|-------|---------------------|-------|----------------------|-------|
| Level | Score | DIBP | Score | TPS | Score | ASQA, TEQSA, Schools | Score |
| 1 | 4 | AL1 | 1 | 0 – 1.9 | 1 | Low | 1 |
| 2 | 5 - 7 | AL2 | 2 | 2.0 – 3.9 | 2 | Med. | 2 |
| 3 | >7 | AL3 | 6 | 4.0 + | 3 | High | 3 |

Projected Outcomes

- IERF 1:** AL1 (low immigration risk) + low consumer and provider
 AL1 (low immigration risk) + low consumer + medium provider risk (or vice-versa)
 AL2 (medium immigration risk) + low consumer and provider risk
- IERF 2:** AL1 (low immigration risk) + medium/high consumer and provider risk
 AL2 (medium immigration risk) + low/medium consumer and provider risk
- IERF 3:** AL2 (medium immigration risk) + high consumer and provider risk
 AL3 (high immigration risk) + high consumer and provider risk

5. Likely Benefits of Each Option

5.1 Retain streamlined visa processing arrangements – status quo option

Maintaining the status quo would assist stakeholders who understand and are familiar with the processes currently in place. With no change to current arrangements, there would be no need to inform the education industry and train internal and external stakeholders in any new arrangements.

However maintaining the status quo would maintain existing issues such as market distortion and red tape. It is also possible that integrity challenges would increase which would place additional strain on education providers and the education industry, and may impact on the reputation of Australia as a destination of choice for high quality international education.

The 2014 Department of Immigration and Border Protection survey results of SVP providers have been used to inform the calculation of the annual cost to providers of administering the SVP arrangements. Based on the response to the survey, the annual cost is estimated to be approximately \$249,300 per provider, or \$38.14 million in total for the 153 providers currently participating in the SVP arrangements (as at 1 November 2015).

5.2 A simplified student visa framework (SSVF)

Under the current structure, a student is granted one of seven different visa classes. The intention to reduce to a single subclass with core visa requirements would remove unnecessary complexity and provide greater flexibility. A less complex visa regime would help Australia to remain an internationally competitive market for international students.

A combined country and provider immigration risk framework was largely endorsed by stakeholders as a preferred alternative model, as it would extend the benefits of streamlined processing to all CRICOS registered providers and all courses across all education sectors, including smaller providers. This would significantly address some of the current market distortion issues faced by small education providers and enhance their competitiveness.

² Source: International Education Risk Framework: Proposal for a new student visa processing regime, International Education Association of Australia, April 2014.

Other possible benefits of this model cited by stakeholders include faster visa processing for a potentially greater number of students; reduced regulation and complexity; and rewarding providers for recruiting genuine students.

This option would in effect combine SVP and the AL framework into one combined country/provider risk framework. Under this framework, all providers would have access to streamlined-type processing, however depending on their risk rating they may only have this for certain countries.

This option would significantly address market distortion (by removing the concept of a 'SVP provider' and the 'haves' and 'have nots') while still providing benefits to providers that recruit genuine students. Under this option, the concept of a 'SVP provider' would not exist, and the Department would expect targeting of providers by non-genuine students to decrease, therefore reducing some of the burdens on education providers.

For many education providers, an additional investment would not be needed in order for them to be able to maintain a low immigration risk rating. On the other hand, there would be some education providers that would need to put in place additional strategies, for example, interviewing prospective students, if they wished to achieve or maintain a low immigration risk rating.

Certain time-consuming responsibilities required by business would be removed under this option with education providers no longer needing to formally submit an application to participate in SVP and removal of the requirement to formally nominate and manage educational business partners. All providers would be included under the model and would have access to streamlined-type processing for at least some markets without the need to opt in or out, or nominate educational business partners to access SVP arrangements for packaged courses.

This option would benefit business across the board, including small education providers. It is envisaged that reduced administrative, evidentiary and reporting requirements proposed under this option would significantly reduce the burden and cost for business. In calculating the regulatory burden and cost to business under this option, it was considered that certain activities undertaken by SVP providers would no longer be required, for example, the opt-in application process and updates to educational business partners.

It is envisaged that other business activities, for example, increased scrutiny of prospective student visa applicants and managing agents and business partners would continue to be undertaken by education providers, however at a reduced rate due to factors such as decreased targeting of certain providers by non-genuine students.

This option is also likely to reduce the burden for prospective student visa applicants with (based on internal modelling) up to 15 per cent more³ prospective student visa applicants being able to access streamlined-type processing arrangements, reducing the time taken to prepare a student visa application and providing these prospective students with quicker and simpler visa processing arrangements.

In calculating the reduced burden for prospective students, the Department has estimated a one-hour saving in preparing a visa application with reduced evidentiary requirements. However, some education providers would continue to request a higher level of evidentiary documentation to ensure they continue to enrol genuine students. The total regulatory saving to individuals is estimated to be \$0.33m.

³ Based on a comparison against students that are currently assessed under either SVP or AL1 provisions (2013-14 data).

Implementation of this option would assist Australia's reputation as a destination of choice for international study, ensure that Australia remains competitive in the international education market and provide a level playing field for all education providers.

All regulation costings have been approved by the Office of Best Practice Regulation.

Regulatory Burden and Cost Offset (RBCO) Estimate Table – Simplification of student visa subclasses and combined provider/country risk framework

Average annual regulatory costs (from Business as usual)

| Change in costs (\$m) | Business | Community Organisations | Individuals | Total change in costs |
|-----------------------|-----------|-------------------------|-------------|-----------------------|
| Total, by Sector | -\$23.801 | \$0 | -\$0.334 | -\$24.135 |

| Cost offset (\$m) | Business | Community Organisations | Individuals | Total, by source |
|-------------------|----------|-------------------------|-------------|------------------|
| Agency | \$ | \$ | \$ | \$ |
| Within portfolio | \$ | \$ | \$ | \$ |
| Outside portfolio | \$ | \$ | \$ | \$ |
| Total by Sector | \$ | \$ | \$ | \$ |

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) = -\$24.135

5.3 Use an Education Provider Risk Framework

This option proposed to simplify the student visa system by replacing the current two-track model with a single approach that would establish a single set of rules that would contribute to a more efficient and understandable student visa system.

This option encourages greater responsibility for immigration outcomes by rewarding education providers that achieve consistently positive outcomes with access to streamlined-type processing arrangements through reduced evidentiary requirements. This option also proposes a mechanism to apply stricter requirements to non-performing providers or those too small for the Department of Immigration and Border Protection to apply statistical analysis with certainty (for example, small providers with less than 100 students).

Through consideration of education provider immigration risk exclusively, this option provides a framework which extends streamlined-type processing to all education providers able to achieve an AL1 immigration risk rating. All other providers (including small providers) would be considered under AL framework-type arrangements where additional evidence would be required.

The Department of Immigration and Border Protection acknowledges that it is through the inclusion of country risk in the framework that streamlined-type processing could be extended to a greater number of education providers. Under the education provider risk framework, (based on internal modelling) approximately 15 per cent less⁴ prospective students would be able to access streamlined-type processing when compared to the status quo.

Education provider immigration risk data for 2014 indicates that many current participating SVP providers (including providers who recruit significant numbers of international students) would not be eligible to access streamlined-type processing arrangements under this option as they did not meet the immigration benchmark of AL1.

In calculating the regulatory burden to business, the Department considered that this option would also remove the administrative burden for providers eligible to participate in the SVP arrangements while some providers would continue the same business activities as outlined in part 5.2.

It is estimated that under this option, these activities would also reduce, however at a lower rate than at Option 2 as it is expected that certain education providers would be heavily targeted by non-genuine students. The total regulatory saving to business is estimated to be \$12.17 million.

In calculating the reduced burden for prospective students, the Department has estimated a one-hour saving in preparing a visa application with reduced evidentiary requirements. Some education providers, however, would continue to request a higher level of evidentiary documentation to ensure they continue to enrol genuine students. The total regulatory saving to individuals is estimated to be \$0.07 million.

Regulatory Burden and Cost Offset (*RBCO*) Estimate Table – Education Provider Risk Framework

Average annual regulatory costs (from Business as usual)

| Change in costs (\$m) | Business | Community Organisations | Individuals | Total change in costs |
|-----------------------|----------|-------------------------|-------------|-----------------------|
| Total, by Sector | -\$12.17 | \$0 | -\$0.07 | -\$12.24 |

| Cost offset (\$m) | Business | Community Organisations | Individuals | Total, by source |
|-------------------|----------|-------------------------|-------------|------------------|
| Agency | \$ | \$ | \$ | \$ |
| Within portfolio | \$ | \$ | \$ | \$ |
| Outside portfolio | \$ | \$ | \$ | \$ |
| Total by Sector | \$ | \$ | \$ | \$ |

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) = -\$12.24

⁴ Based on a comparison against students that are currently assessed under either SVP or AL1 provisions.

5.4 Use the International Education Risk Framework (IERF) proposed by the International Education Association of Australia

Some stakeholders have indicated they would prefer to see educational quality and consumer protection risk indicators included alongside immigration risk, as outlined in this option.

The option looks beyond immigration risk only and proposes to reward providers who present low risk to the education industry. Education providers with higher risk ratings would be encouraged to improve their recruitment processes or be faced with their prospective students having to provide greater evidentiary requirements, subject to closer scrutiny and slower processing timeframes.

The Department of Immigration and Border Protection recognises that within Australia's overarching international education framework there are already mechanisms in place that consider an education provider's business risk (the Tuition Protection Scheme), the delivery of education (regulation by the Australian Skills Quality Authority (ASQA) and the Tertiary Education Quality Standards Agency (TEQSA)) and immigration risk (the student visa programme).

For the framework to operate effectively, each of these components must be focused on the individual and specific risks that they are seeking to address. On this basis, it is the view of the Department of Immigration and Border Protection that the student visa programme must be focused on immigration risk.

The Department considers that if the regulator has deemed a provider to be of sufficient quality to offer education to international students then it is not the role of the Department to second guess or impose additional quality related regulation for visa purposes, particularly when it does not directly correlate to immigration risk and the Department has no legal basis to do so.

This option required consideration of a combination of frameworks, each with differing risk rating systems which focus on different aspects of international education – provider operations, academic standards and immigration outcomes.

The Department of Immigration and Border Protection is unable to reliably estimate the regulatory burden for this option due to the complexity of accurately predicting how the combination risk framework would impact on business and individuals. The Department has considered that the change in costs would be similar to the Education Provider Risk Framework outlined in part 5.3, however notes there is potential for the regulatory burden to significantly increase for this option as it is likely that education providers would be required to put in place additional resources in relation to education quality and business risk. For this reason, and as shown in the table below, regulatory savings are likely to be less than for options 2 and 3.

Regulatory Burden and Cost Offset (RBCO) Estimate Table – International Education Risk Framework

Average annual regulatory costs (from Business as usual)

| Change in costs (\$m) | Business | Community Organisations | Individuals | Total change in costs |
|-----------------------|----------|-------------------------|-------------|-----------------------|
| Total, by Sector | -\$11.52 | \$0 | -\$0.07 | -\$11.59 |

| Cost offset (\$m) | Business | Community Organisations | Individuals | Total, by source |
|-------------------|----------|-------------------------|-------------|------------------|
| Agency | \$ | \$ | \$ | \$ |
| Within portfolio | \$ | \$ | \$ | \$ |
| Outside portfolio | \$ | \$ | \$ | \$ |
| Total by Sector | \$ | \$ | \$ | \$ |

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) = -\$11.59

6. Consultation

6.1 History of Consultations

On 18 November 2014, a discussion paper titled *Future directions for streamlined visa processing* was circulated to Education Visa Consultative Committee (EVCC) members, education peak bodies, education regulators, state and territory governments and relevant Commonwealth agencies. Formal submissions were invited in response to a broad range of questions posed in the paper concerning the current SVP arrangements and their future direction. Thirty-two submissions were received.

On 12 December 2014, issues raised in the discussion paper were discussed at the EVCC meeting. In addition, several EVCC member organisations met with the Department of Immigration and Border Protection individually during the initial consultation period.

In December 2014, the Department of Immigration and Border Protection conducted a survey of SVP providers seeking feedback on what providers saw as the benefits of participating in the arrangements, what additional resourcing was required and how providers managed their responsibilities under the arrangements.

A workshop for internal stakeholders on the future directions for SVP and the student visa programme was held on 18 September 2014, with a series of subsequent meetings held in late 2014 and early 2015.

6.2 Stakeholder views

Stakeholder views are outlined in detail in the *Future directions for streamlined visa processing report* at: www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/future-directions.pdf

Stakeholders were consulted through the EVCC and included international education peak bodies, state and territory governments, relevant Commonwealth government agencies, industry regulators such as ASQA and TEQSA and some education providers.

In their feedback, stakeholders recognised that SVP has played an important role in stimulating growth in the number of international students seeking to study in Australia and has contributed to reduced visa processing times. Stakeholders also noted improvements in student progression rates and indicated that SVP was a catalyst for providers to take effective action to mitigate immigration risk and ensure their commencing students were genuine. However, most stakeholders identified that SVP is not sustainable in the long term, due to:

- Unintended market impacts through the division of the international education sector into SVP 'haves' and 'have nots'. This has resulted in a perception in some foreign countries that non-SVP providers are of inferior educational quality and in some students seeking enrolment with an education provider solely because of their SVP status.
- High levels of red tape and regulatory costs involved in being a SVP provider.
- Challenges faced in effectively managing immigration risk, with approximately 60 per cent of universities indicating that they had been more heavily targeted by non-genuine students as a result of perceptions that SVP is an easier visa pathway.
- Stakeholders also indicated that the current student visa programme, where providers have different application requirements, was confusing for students and added unnecessary complexity to the visa application process.

The Department considered this feedback and together with the results of an evaluation of the SVP arrangements, developed the eight recommendations contained in the *Future directions for streamlined visa processing report*, including the combined country and provider immigration risk model.

Option 3 (Education Provider Risk Framework) and Option 4 (International Education Risk Framework) were put forward by stakeholders as part the stakeholder consultations and were considered as part of the policy development process. However, the SSVF is considered to be the superior option as it more adequately and effectively addresses the deficiencies of SVP raised by stakeholders in the consultation process (for a more detailed explanation, see 'What is the Best Option' in section 7).

Following the Government's announcement of the SSVF on 16 June 2015, several international education peak bodies issued media releases welcoming the announcement as a positive step for the international education sector in Australia.

For example, in a media release dated 17 June 2015, the International Education Association of Australia (IEAA) stated: "Any new visa framework that removes the complexity of our current system is welcome. While SVP has been beneficial, it is unsustainable in the long term. It has created a dichotomy between the 'haves and have not' providers and has a high administration cost."

Similar sentiments were echoed in media releases issued by Universities Australia, English Australia and the Australian Council of Private Education and Training.

Policy settings for the SSVF were agreed by a working group comprising representatives of the EVCC, including peak international education industry bodies and relevant commonwealth and state and territory government agencies.

Costings and regulatory savings for policy options were generally discussed as part of the stakeholder consultations. As regulatory savings for the SSVF are almost double those of options 3 and 4, no objections from stakeholders were received.

6.3 Further Consultations

The Department of Immigration and Border Protection has undertaken further consultation on intended changes within the student visa programme with key industry and Government stakeholders, following the announcement of a simplified student visa framework by Government on 16 June 2015.

The Department established a working group in mid-2015, comprising peak bodies and relevant Commonwealth and state government agencies drawn from the EVCC. The group met three times in July and August 2015 and played a key role in developing policy settings to support implementation of the recommendations of the *Future directions for streamlined visa processing* report, which include introduction of a simplified student visa framework and a reduction in the number of student visa subclasses from eight to two.

To support education providers, the Department intends to conduct briefing sessions on a regular basis on a range of issues, including emerging trends in key overseas markets, managing immigration risk and the impact and timings of any changes to the student visa processing arrangements.

The Department conducted a series of roadshows in key Australian capital cities during July 2015 which focused on Government announced changes to the student visa programme. The Department intends to conduct a second series of roadshows during 2016 within Australia and key overseas student processing locations to focus on intended legislative and processing changes from mid-2016.

The Department intends to continue to consult with stakeholders through the EVCC.

7. What is the Best Option

7.1 Best Option

The Department considered four possible options as part of the consultation process. These included retaining the status quo; a combined country and provider immigration risk model; the education provider risk framework; and the IERF.

The Department considers that retaining the status quo (option 1) is not a feasible option, as stakeholder feedback and the Department's evaluation of the SVP arrangements indicate that SVP is not sustainable in the long-term. This is due to concerns relating to market impacts and the regulatory costs of the arrangements, as well as the challenges faced by education providers in effectively managing their responsibilities under SVP.

Option 3 (the Education Provider Risk Framework) is not considered to be the best option, as under this model, only providers with an AL1 risk rating would be able to gain access to streamlined-type processing, potentially creating further market distortion. Consequently, a lower proportion of the

student visa caseload would be eligible for streamlined-type processing. Option 3 would result in less regulatory savings, due to the higher administration costs involved in implementing it and would consequently not achieve a net benefit.

Similarly, Option 4 (the IERF) is not considered to be the best option due to its potential to significantly increase market distortion by creating a group of providers with superior market power compared to other providers. The proposed incorporation of risks related to the delivery of education and business risk into the visa framework would result in a highly complex regulatory framework, double regulation of these factors, potential legal implications and a likely dilution of the effectiveness of the visa programme. Option 4 would result in less regulatory savings, due to the higher administration costs involved in implementing it and would consequently not achieve a net benefit.

In light of considerations in Section 5 and stakeholder feedback, Option 2: a simplified student visa framework (SSVF) is the best option. Option 2 is also the best option based on the Department's analysis of costs and benefits associated with each option.

This option advocates gradually expanding and modifying the current streamlined-type arrangements in a way that does not compromise immigration integrity or increase the regulatory burden on business. It requires changes to the current operation of the SVP arrangements and a more nuanced approach to risk, for example, by considering country immigration risk in addition to an education provider's immigration risk.

This option will create genuine streamlining opportunities for all education providers across all education sectors and meet Government objectives by reducing red tape, creating a level playing field for all providers and better conditions for small business.

The SSVF will support better management of immigration risk through a more flexible use of internal risk analytics, enabling the Department to more quickly identify which applications need further scrutiny.

The Productivity Commission, in its November 2015 research report titled, *Barriers to Service Exports*, stated that "In the Commission's view, the broad design of the SSVF – a single risk framework applied across all education providers, with DIBP having primary responsibility for managing immigration risk – is a major improvement on current student visa arrangements and should be progressed" as it "is more consistent with good regulatory practice than the current SVP..." (page 208).

Option 2 was accepted and announced by Government on 16 June 2015.

8. Implementation and Evaluation

The Department has a detailed implementation plan, including risk management strategies, and a communications plan in place to assist in delivering Option 2.

The Department will continue to work closely with internal and external stakeholders in the lead up to implementation in mid-2016. A SES level internal steering committee has been established to monitor the effective implementation of the new framework.