

Migration Amendment Regulations 2001 (No. 5) 2001 No. 162

EXPLANATORY STATEMENT

STATUTORY RULES 2001 No. 162

Issued by the Authority of the Minister for Immigration and Multicultural Affairs

Migration Act 1958

Migration Amendment Regulations 2001 (No. 5)

Subsection 504(1) of the *Migration Act 1958* ("the Act") provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the 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 Act.

Details of additional regulation-making powers under the Act are in Attachment A.

The purpose of the Regulations is to effect changes to the *Migration Regulations 1994*, mainly to create new visa classes and subclasses with respect to overseas students.

Specifically, the changes:

- replace the existing three visa subclasses in the Student (Temporary) (Class TU) visa with seven new visa subclasses, to:
 - better manage the varying risk levels of different countries and different education sectors;
 - better target those markets that attract genuine overseas students;
 - enable managed growth in emerging student markets;
 - provide greater transparency in student visa processing; and
 - provide greater consistency in student visa processing onshore and offshore;
 - allow better collection of and reporting on data for the administration of the student visa program;
- codify, in new Schedule 5A, evidentiary requirements that must be met by an applicant seeking to satisfy primary criteria in the new student visa subclasses. The criteria to be met by an applicant in order to demonstrate genuineness in the new subclasses is the same as under the old student visa regime. These criteria deal with English proficiency, financial capacity, and other relevant matters. However, unlike the old student visa regime, where policy dictates how those criteria can be met, the new student visa regime codifies how the criteria are to be met. The codification of those criteria provides for greater objectivity, transparency, certainty and consistency in student visa decision-making;
- enhance the integrity of the Subclass 457 (Business (Long Stay)) visa by ensuring that highly skilled persons are accepted under this subclass by prescribing a minimum skills and salary threshold for business activity nominations, and for the grant of a Subclass 457 visa;

- amend certain provisions relating to gazette notices so that those notices may identify classes of people by reference to the passport they hold rather than the country of which they are a citizen;;
- extend the application of regulation 4.31B, imposing a \$1000 fee for the review by the Refugee Review Tribunal of an RRT-reviewable decision, until 1 July 2003;
- create two new onshore permanent visa classes for recent graduates of Australian educational institutions. Eligibility for the new visas is based on the applicant's educational qualifications, age, skills, English language ability, and, for two of the subclasses, sponsorship by an Australian relative;
- create a new visa class and subclass to enable recent graduates of Australian educational institutions to remain onshore while preparing their applications for new permanent visa classes mentioned above;
- enable an applicant to apply for certain visa classes over the Internet using an interactive computer program approved by the Minister, and made available at an Internet site operated under the authority of the Minister; and
- facilitate electronic communication between the Minister and a visa applicant, and an applicant and the Minister.

Details of the Regulations are set out in Attachment B.

The Regulations commence on 1 July 2001.

ATTACHMENT A

Details of other relevant regulation-making powers are as follows:

- subsections 29(2) and (3) of the Act provide that the regulations may provide a period during which the holder of a visa may travel to, enter, re-enter and remain in Australia;
- subsection 31(1) of the Act provides that there are to be prescribed classes of visas;
- subsection 31(3) of the Act provides that the regulations may prescribe criteria for visas of a specified class;
- subsection 31(4) of the Act 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) of the Act provides that the regulations specify that a visa is a visa of a particular class;
- paragraph 33(2)(a) of the Act provides that a non-citizen is taken to have been granted a special purpose visa if the non citizen has a status prescribed in the Regulations, or is a member of a class of persons that has a status prescribed in the Regulations;
- subsection 40(1) of the Act provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- subsection 41(1) of the Act provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions;
- subsection 41(2) of the Act provides that, without limiting subsection 41(1), the regulations may provide that a visa, or visas of a specified class, are subject to:
 - a condition that the holder of the visa will not, after entering Australia, be entitled to be granted a substantive visa – other than a protection visa or a temporary visa of specified kind – while he or she remains in Australia; or
 - a condition imposing restrictions about the work that may be done in Australia by the holder which may be restrictions on doing any work or work other than specified work or work of a specified kind;
- subsection 41(3) of the Act provides that, in addition to any conditions specified under subsection 41(1), the regulations may, for the purposes of this subsection, permit conditions, which the Minister may specify that a visa is subject to;
- subsection 45B(1) of the Act provides that the regulations prescribe the amount that is the amount of visa application charge, not exceeding the visa application charge limit.
- subsection 45B(2) of the Act provides that the amount prescribed as the visa application charge may be nil;
- subsection 45C(1) of the Act provides that the regulations may prescribe that the visa application charge is payable in instalments, how those instalments are to be calculated, and when those instalments are payable;
- subsection 46(1) of the Act provides that an application is valid if, inter alia, it satisfies the criteria and requirements prescribed under that section;

- subsection 46(3) of the Act 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) of the Act provides that, without limiting subsection 46(3), the regulations may also prescribe:
 - the circumstances that must exist for an application for a visa of a specified class to be a valid application; and
 - how an application for a visa of a specified class must be made; and
 - where an application for a visa of a specified class must be made; and
 - where an applicant must be when an application for a visa of a specified class is made;
- subsection 52(1) of the Act provides that a visa applicant or interested person must communicate with the Minister in the prescribed way;
- subsection 66(1) of the Act provides that when the Minister grants or refuses to grant a visa, he or she is to notify the applicant in the prescribed way;
- subsection 71(1) of the Act provides that evidence of a visa is to be given in a way prescribed for giving the evidence;
- subsection 71(2) of the Act provides that the regulations may provide that the way in which evidence of a visa or a visa of a class is to be given is to depend on the circumstances in which it is given;
- subsection 93(1) of the Act provides that the regulations prescribe a number of points and prescribe qualifications for the purposes of section 93 (determination of applicant's score). Subsection 93(2) provides that, in section 93, prescribed means prescribed by the regulations that are in force at the time the assessment is made;
- paragraph 116(1)(g) 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;
- subsection 168(3) of the Act provides that a person in a prescribed class is not required to comply with section 166 of the Act;
- section 495 of the Act provides that the Minister may approve a form for the purposes of a provision of the Act for which the expression approved form is used;
- subparagraph 504(1)(a)(i) of the Act provides that the Governor-General may make regulations making provision for and in relation to the charging and recovery of fees in respect of any matter under the Act or the regulations, including fees payable in connection with the review of decisions made under the Act or the regulations; and
- subparagraph 504(1)(a)(iii) of the Act provides that the Governor-General may make regulations making provision for and in relation to the way in which fees are to be paid;
- paragraph 504(1)(e) of the Act provides that the Governor-General may make regulations making provision for and in relation to the giving of documents, the lodging of document with, or the service of documents on, the Minister, the Secretary, or any other person or body for the purposes of the Act;

- paragraph 505(a) of the Act provides that regulations for the purpose of prescribing a criterion for visas of a class, may provide that the Minister, when required to decide whether an applicant for a visa of the class satisfies the criteria, is to get a specified person or organisation to give an opinion about a specified matter.

ATTACHMENT B

Details of the Regulations are as follows:

Regulation 1 – Name of Regulations

This regulation provides that these Regulations are the *Migration Amendment Regulations 2001 (No. 5)*.

Regulation 2 – Commencement

This regulation provides that these Regulations commence on 1 July 2001.

Regulation 3 – Amendment of Migration Regulations 1994

This regulation provides that Schedule 1 amends the *Migration Regulations 1994*.

Regulation 4 – Transitional

This regulation sets out transitional provisions.

Most of the amendments made by these Regulations apply only to visa applications made on or after 1 July 2001. This includes the amendments relating to the new Skilled – Independent Overseas Student (Residence) (Class DD), Skilled – Australian-sponsored Overseas Student (Residence) (Class DE) and Graduate – Skilled (Temporary) (Class UQ) visa classes.

The new student regime also applies to visa applications made on or after 1 July 2001, however there is provision for transitional arrangements for student visa applications made before this date.

Amendments to the way in which business activity nominations are made and decided apply only to nominations made on or after 1 July 2001.

Amendments allowing for electronic communication between visa applicants and the Minister apply to outstanding visa applications as well as to visa applications made after commencement of these Regulations.

Schedule 1 – Amendments

Part 1.1 – Amendments of Parts 1, 2 and 4

Item [1] – Regulation 1.03, after definition of *Asia-Pacific forces member*

This item inserts a definition of *assessment level* after the definition of *Asia-Pacific forces member* in regulation 1.03.

“Assessment level” relates to a Subclass 570, 571, 572, 573, 574, 575 or 576 visa. It means the level of assessment (being level 1, 2, 3, 4 or 5) specified for a passport issued by a foreign country, and a particular education sector, under new Division 1.8. “Foreign country” is defined in paragraph 22(1)(f) of the *Acts Interpretation Act 1901* to mean any country (whether or not an independent sovereign state) outside Australia and the external Territories.

Item [2] – Regulation 1.03, after definition of *category B student*

This item inserts a definition of *certificate of enrolment* after the definition of *category B student* in regulation 1.03.

A certificate of enrolment is a paper copy of an electronic confirmation of enrolment sent by an education provider to a student visa applicant. In most circumstances, it will be time of decision criterion for an applicant, who seeks to satisfy the primary criteria, to produce a confirmation of enrolment certificate.

Item [3] – Regulation 1.03, after definition of *custody*

This item inserts definitions of *Defence*, *Defence Minister* and *Defence student* after the definition of *custody* in regulation 1.03.

“Defence” is defined to mean the Department of Defence.

“Defence Minister” is defined to mean the Minister for Defence.

“Defence student” is defined to have the meaning given in new regulation 1.04B.

Item [4] – Regulation 1.03, after definition of *education provider*

This item inserts definitions of *education sector*, *electronic communication*, *electronic confirmation of enrolment* and *ELICOS* after the definition of *education provider* in regulation 1.03.

“Education sector” is defined, in relation to a student visa, to mean the sector listed in paragraphs (a) to (g) of the definition which corresponds to a particular subclass of student visa. Each of the new student visa subclasses relates to a particular education sector. This is the core aspect of the new student visa regime. That is, the student visa regime pre-1 July 2001 is being replaced with a student visa regime with sector-specific student visa subclasses.

“Electronic communication” is defined to have the same meaning as in the *Electronic Transactions Act 1999*. Under that Act *electronic communication* means:

- a communication of information in the form of data, text or images by means of guided and/or unguided electromagnetic energy; or
- a communication of information in the form of speech by means of guided and/or unguided electromagnetic energy, where the speech is processed at its destination by an automated voice recognition system.

“Electronic confirmation of enrolment” is defined to mean confirmation that:

- states that a student visa applicant is enrolled in a registered course; and
- is sent by an education provider to a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia, or an office of a visa application agency that is approved in writing by the Minister for the purpose of receiving applications for a student visa, or any office of Immigration in Australia. This is done through a computer system under the control of the Education Minister (as defined in regulation 1.03).

“ELICOS” is defined to mean an English Language Intensive Course for Overseas Students that is a registered course (as defined in regulation 1.03).

Item [5] – Regulation 1.03, definitions of foreign naval forces member and Foreign Minister

This item is a technical amendment remedying the incorrect alphabetic placement of the definition of *foreign naval forces member* in regulation 1.03, above the definition of *Foreign Minister* in the same regulation.

The new item inverts the order in which the definitions appear, so that the definition of *Foreign Minister* now comes before the definition of *foreign naval forces member*.

Item [6] – Regulation 1.03, after definition of *international air carrier*

This item inserts a definition of an *Internet application* into Regulation 1.03.

An *Internet application* means an application for a visa made using a form approved under paragraph 1.18(2)(b).

The scope of an Internet application is defined by its link with the definition of an approved form paragraph 1.18(2)(b) as amended by these Regulations.

A valid Internet application can only be made on an approved form. Restricting Internet applications to applications made using an approved form, located in an interactive computer program operated under the authority of the Minister, ensures that applications made using computer based communicative technology are made consistently with the Department's technological ability to receive electronic visa applications.

Item [7] – Regulation 1.03, definition of *school-age dependant*

This item amends the definition of *school-age dependant* in regulation 1.03. The maximum age of *school-age dependant* is decreased from 19 to 18.

Item [8] – note at the end

This item inserts a new note of general application into regulation 1.03 providing that the term 'foreign country' is defined in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*. It also renumbers the note immediately preceding the newly inserted note, being a note referring to the definition of an *aged parent*.

The amendment inserting the new note is intended to clarify that the term 'foreign country' whenever used in the Migration Regulations has the meaning provided by the definition in the *Acts Interpretation Act 1901*.

Item [9] – Subregulation 1.04A(1), definition of *AusAID student visa*, paragraph (a)

This item amends paragraph (a) of the definition of *AusAID student visa* in subregulation 1.04A(1).

The amendment makes it clear that an AusAID student visa will mean a Subclass 560 (Student) visa, Subclass 562 (Iranian Postgraduate Student) visa as well as new Subclass 576 (AusAID or Defence Sector) visa that has been granted to a person who, as an applicant, met the requirements of subparagraphs (a)(i) and (a)(ii).

Item [10] - Subregulation 1.04A(1), definition of *AusAID student visa*, subparagraph (a)(ii)

Item [11] - Subregulation 1.04A(1), definition of *cease*

Item [12] - Subregulation 1.04A(1), definition of *equivalent former visa or entry permit*, paragraph (b)

Item [13] - Subparagraph 1.04A(2)(b)(i)

Item [14] - Paragraph 1.04A(3)(a)

Item [15] - Subparagraph 1.04A(3)(b)(i)

Item [16] - Subparagraph 1.04A(3)(c)(i)

These items amend the definitions of several terms used in relation to AusAID students to make it clear that "course of study" means a full-time course of study.

Item [15A] – Subparagraph 1.04A(3)(b)(ii)

This item makes a minor technical amendment to subparagraph 1.04(3)(b)(ii).

The amendment clarifies that a person is an AusAID student if, among other things, he or she is an applicant for a student visa whose applicants shows an intention to undertake a *full-time* course of study or training.

Item [17] – After regulation 1.04A

This item inserts a new regulation 1.04B after regulation 1.04A.

New regulation 1.04B contains a definition of *Defence student*. It is based on the definition of *AusAID student* in subregulation 1.04(3).

Under new regulation 1.04B, a person is a Defence student if he or she:

- has been approved by the Defence Minister (as defined in regulation 1.03) to undertake a full-time course of study or training under a scholarship scheme or training program approved by the Defence Minister; and
- is the holder of a new Subclass 576 (AusAID or Defence Sector) visa granted in circumstances where the person intended to undertake the course of study or training; and
- has not ceased, completed, withdrawn from, or been excluded from:
 - the course of study or training to which the visa relates; or
 - another course approved by the Defence Minister in substitution for that course.

A person is also a Defence student if he or she:

- 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; and
- is an applicant for a student visa whose application shows an intention to undertake the course of study or training.

Item [18] – Paragraph 1.12(2)(b) and (c)

This item amends subregulation 1.12(2) and omits paragraph (c) .

Subregulation 1.12(2) sets out which persons are members of the family unit of an applicant for a student visa.

The omission of paragraph 1.12(2)(c) means that only the following persons are members of the family unit of an applicant for student visa:

- a spouse of the applicant; or
- a dependent child of the applicant, or of that spouse, who is unmarried and has not turned 18.

Consequently, a person who has entered into an agreement to marry the student visa applicant will no longer be a member of family unit of the student visa applicant.

Item [19] – Regulation 1.18

This item substitutes new regulation 1.18.

The content of existing regulation 1.18 is renumbered as subregulation 1.18(1).

New subregulation 1.18(2) sets out that in addition to the traditional paper application form, an approved form for Internet applications is a set of questions in an interactive computer program approved by the Minister for making an application for a visa, that is made available at an Internet site operated under the control of the Minister.

In approving a form under paragraph 1.18(2)(b), the Minister approves both the substance of the form, being the set of questions in the interactive computer program, and the purpose of the form, being for use in making an application for a visa. In addition, subparagraph 1.18(2)(b)(ii) requires the approved form to be made available at an Internet site operated under the authority of the Minister.

Forms approved under paragraph 1.18(2)(b) are specifically designed to enable a person to apply for a visa over the Internet. These forms will provide information to an applicant about the visa they are applying for, provide notes on questions asked in the form, provide a facility for an applicant to pay the appropriate visa application charge on-line, and will contain appropriate systems security measures to protect the privacy of information transmitted.

The introduction of the facility to apply for a visa over the Internet reflects the Government's commitment to ensuring that appropriate Government services are available on-line.

Item [20] – Regulation 1.20B, definitions of *key activity* and *labour market testing*

This item removes the definitions of key activity and labour market testing in regulation 1.20B and introduces a definition of minimum salary level. The removal of the definitions is consequential to amendments made by these Regulations to regulations 1.20G, 1.20H and clause 457.223; which remove key activity as a concept and remove the requirement for labour market testing. The inclusion of a definition of minimum salary level is consequential to the introduction of a requirement for all business activity nominations and for certain Subclass 457 applications, to meet minimum salary and skill levels. The new definition provides for a Gazette Notice to stipulate a level of salary set out in the way specified by the Gazette Notice.

Item [21] – Subregulation 1.20C (1), note

This item provides a consequential amendment to the note after subregulation 1.20C(1) to remove the reference to subclause 457.233(5). Following amendments to clause 457.233, made by these regulations, subclause 457.233(5) will no longer be relevant to pre-qualified business sponsors and standard business sponsors.

Item [22] – Subregulation 1.20D (1)

This item provides an amendment to subregulation 1.20D(1) to remove the formal requirement that written approval or rejection, of an application for approval as a pre-qualified business sponsor or a standard business sponsor, be in the form of an instrument.

Item [23] – Subparagraphs 1.20D(2)(b)(i) and (f)(i)

This item provides an amendment to subparagraphs 1.20D(2)(b)(i) and (f)(i) to remove the reference to subclause 457.233(5). Following the amendments to clause 457.233, made by these regulations, subclause 457.233(5) will no longer be relevant to pre-qualified business sponsors and standard business sponsors.

Item [24] – Subregulation 1.20D (3)

This item provides an amendment to subregulation 1.20D(3) to omit the reference to instrument. This amendment is consequential to the amendment made by these Regulations to subregulation 1.20D(1).

Item [25] – Paragraph 1.20D (4)(a)

This item provides an amendment to paragraph 1.20D(4)(a) consequential to the amendment to subregulation 1.20D(1) removing the requirement for an approval or rejection of an application for an approval as a pre-qualified business sponsor or a standard business sponsor to be in the form of an instrument.

Item [26] – Subparagraph 1.20D (6)(a)(ii)

This item provides an amendment to subparagraph 1.20D(6)(a)(ii) to remove the reference to subclause 457.233(5). Following the amendments to clause 457.233, made by these regulations, subclause 457.233(5) will no longer be relevant to pre-qualified business sponsors and standard business sponsors.

Item [27] – Subregulation 1.20E(1)

This item provides an amendment to subregulation 1.20E(1) to remove the formal requirement that renewal or refusal to renew an approval as a pre-qualified business sponsor or a standard business sponsor be in the form of an instrument.

Item [28] – Paragraph 1.20E(4)(a)

This item provides an amendment to paragraph 1.20E(4)(a) consequential to the change to subregulation 1.20E(1).

Item [29] – Subregulations 1.20G(2), (3) and (4)

This item makes amendments to subregulations 1.20G(2), (3) and (4) and adds new subregulation (5).

The amendments introduce new requirements for minimum skill and salary levels for applications for approval of a nominated business activity.

Subregulation 1.20G(2) is amended to require that the tasks of the activity nominated under regulation 1.20G correspond to the tasks of an occupation specified in a Gazette Notice made under that subregulation.

Existing subregulation 1.20G(2) is renumbered as subregulation 1.20G(3).

Subregulation 1.20G(4) is amended to introduce a new requirement that the nomination must indicate that the individual proposed to be employed will be paid at least the minimum salary level that applies at the time the nomination is made. The new concept of a minimum salary level is to be specified in a Gazette Notice and is intended to ensure that only highly skilled occupations are approved. This replaces the existing requirements for persons to show that the position is a key activity or for labour market testing for nominated business activities that are not key activities.

Subregulation 1.20G(3) is renumbered as new subregulation 1.20G (5).

Item [30] – Regulation 1.20H

This item substitutes a new regulation dealing with the approval of business activities.

New subregulation (1) provides that the Minister must approve a nomination of an activity made under regulation 1.20G if the nomination is made in accordance with regulation 1.20G.

Subregulation (2) provides that the Minister must refuse to approve a nomination if it does not satisfy the requirements of subregulation (1).

New subregulation (3) provides that a decision by the Minister to approve or refuse to approve a nomination must be made in writing.

New subregulations (4) and (5) provide that the Minister must give a copy of the approval or refusal to the person who made the nomination. If the nomination was refused, the rejection must be accompanied by a written statement of reasons for the refusal.

New subregulation (6) sets out when the approval ceases to have effect, being the earliest of:

- at the end of 12 months after the day on which the nomination is approved;
- when a Subclass 457 visa is granted to the individual proposed to be employed in the activity to which the nomination relates;
- in the case of a business activity nominated by a person who is party to a labour agreement - when the agreement ceases to have effect;
- where a business activity is nominated by a person who is approved as a pre-qualified business sponsor or a standard business sponsor - when the approval ceases to have effect;
- where the business activity is nominated by a person to whom paragraph 1.20G(1)(d) refers – when the Minister is satisfied that:
 - the person is not able to comply with the undertakings given by the person in accordance with the application form; or
 - where the Minister ceases to be satisfied that the person would, (apart from not operating a business in Australia), on application, be likely to be approved as a standard business sponsor.

Item [31] – After Division 1.6

This item inserts new Division 1.8 after Division 1.6 of Part 1 of the Regulations. The new Division deals specifically with student visas.

New Division 1.8 contains new regulations 1.40 to 1.44.

New regulation 1.40 - Definitions

New regulation 1.40 sets out the meanings of “eligible passport” and “principal course” for the Division.

Under subregulation 1.40(1), a passport is defined to be an *eligible passport* for new Division 1.8 if it is a valid passport of a kind specified by Gazette Notice under regulation 1.40, and if any conditions for that passport, as specified by Gazette Notice, are satisfied.

Under subregulation 1.40(2), *principal course* is defined in order to clarify that a student may undertake one or more preliminary courses and a principal course. The final course undertaken is the principal course. The principal course is the course that determines which Subclass of visa the applicant is granted.

Therefore, if an applicant wishes to undertake an ELICOS as his or her principal course, and if the applicant is seeking to satisfy the primary criteria in Subclass 570 (Independent ELICOS Sector), then the ELICOS would be considered to be the applicant’s principal course.

There are also circumstances in which an applicant may undertake several courses during the period of their student visa. For example, the applicant may undertake a prerequisite course, followed by the main course of study. In this case, the final course is taken to be the *principal course*.

New regulation 1.40A - Courses for education sectors to be specified by Minister

This new regulation provides for the Minister to specify by Gazette Notice the types of courses that belong to each education sector, except the AusAID and Defence sector. This is to assist in ensuring that the applicant is undertaking a principal course appropriate for the Subclass of visa that he or she is granted. AusAID and Defence Sector is exempted because all that is required is that the AusAID or Defence Minister supports the student undertaking the course (please see clause 576.322).

New regulation 1.41 - Assessment levels to be specified by Minister

New regulation 1.41 provides for the “levels of assessment” to which an applicant for a student visa will be subject.

Under new subregulation 1.41(1), the Minister must specify a level of assessment for a passport issued by a foreign country in relation to Subclass 570, 571, 572, 573, 574, 575 and 576 visas. All applicants for student visas will be subject to an assessment level. The Minister must specify assessment levels by Gazette Notice (see the definition of “foreign country” in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*).

In specifying a level of assessment the Minister must have regard to the matters set out in new subregulation 1.41(2). These matters are:

- the risk posed by applicants who hold passports issued by a foreign country in terms of their genuineness as potential students; and
- the risk of applicants who hold passports issued by a foreign country doing or failing to do things contemplated by the visa.

In considering these risks, the Minister must have regard to one or more of the matters set out in new paragraph 1.41(3)(a). These matters are statistical information prepared by the Secretary in relation to a foreign country, as set out in subparagraphs (i) to (v).

Under paragraph 1.41(3)(b), the Minister must also have regard to any other matters that the Minister considers relevant.

New paragraph 1.41(4)(a) provides that the level of assessment specified for a passport issued by a foreign country must be a number between 1 and 5. Where assessment level 1 is specified for a passport, the holders of that passport pose a very *low* risk. Conversely, where assessment level 5 is specified for a passport, then holders of that passport pose an extremely *high* risk.

Under new paragraph 1.41(4)(b), the level of assessment for a passport issued by a foreign country is not required to be the same for each of the new seven subclasses of student visa, which correspond to the sectors.

New regulation 1.42 - Assessment level of applicant

New regulation 1.42 sets out how an assessment level, to which an applicant will be subject, is to be determined.

Subregulation 1.42(1) provides for the majority of student visa applicants. They will be subject to the assessment level of their eligible passport (see regulation 1.41).

Subregulation 1.42(2) deals with certain transitional issues. An applicant who is the holder of a Subclass 560 or 562 visa and who applies for a further student visa would be granted a Subclass of visa from the new visa scheme. This means the applicant will be subject to the appropriate assessment level. For transitional purposes, subregulation 1.42(2) provides that such applicants will be subject to assessment level 2 only.

Subregulation 1.42(2)(d) specifies that the above applies only to applicants who would otherwise be subject to assessment level 3, 4 or 5 and meet subregulations 1.42(3) and (4). These subregulations effectively provide that for the applicant to benefit from subregulation 1.42(2) and be subject to assessment level 2, the applicant must be either:

- needing to commence one or more of the courses in the package that the student was assessed to be undertaking for the purpose of the student visa; or
- the applicant has completed at least 50% of the principal course for which the student visa held was granted.

New regulation 1.43 - Notification of assessment level

New subregulation 1.43 deals with the situation in which the applicant holds 2 or more eligible passports, issued by different foreign countries, at the time of application. In this situation, the Minister is to select the passport that is to be taken as the applicant's eligible passport for the purposes of determining an assessment level, and notify the applicant of the passport selected and the level of assessment of that passport (see the definition of "foreign country" in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*).

In selecting the passport, the Minister may have regard to factors such as the foreign country of which the applicant is a citizen, the usual residence of the applicant, or any other relevant matter.

New regulation 1.44 - Evidence required

This regulation provides that an applicant for a student visa who is seeking to satisfy the primary criteria for one of the new subclasses of student visas must give evidence in relation to the applicant's:

- English language proficiency;
- financial capacity; and
- other matters

in accordance with the requirements set out in new Schedule 5A, for the assessment level to which the applicant is subject.

Subregulation 1.44(2) relates to certain situations where an applicant seeking to satisfy the primary criteria for Subclass 574 (Masters/Doctorate Sector) will not have to meet English language proficiency requirements. This is because in the Masters/Doctorate Sector, applicants subject to assessment level 3 or 4 will be allowed in certain circumstances to study gazetted courses (as the holder of a Subclass 574 visa) that are not taught in English.

Item [32] – After regulation 2.07AE

This item inserts new regulation 2.07AF after regulation 2.07AE.

New regulation 2.07AF sets out several additional requirements for certain applications for student visas.

New subregulation 2.07AF(1) clarifies that an application for a student visa may be made on behalf of an applicant if it is an application that is made on form 157E under paragraph 1222(1)(a). This applies despite anything in regulation 2.07, which contains general requirements relating to visa applications.

This will allow, for example, an education provider or an agent to make an application for a student visa on form 157E on behalf of a prospective student.

An application on form 157E is an electronic application. The form appears in electronic form on the internet and is lodged electronically over the internet.

As it is difficult to determine where the application was made given its electronic nature and the fact that it can be lodged by someone on behalf of the applicant, new subregulation 2.07AF(2) clarifies that a student visa application that is made on form 157E will be taken to have been made outside Australia. The form is intended to be used by students who are offshore only.

A student visa application made on form 157A or 157E must meet the requirements of new subregulation 2.07AF(3). Such an application must include the name, date of birth, citizenship and relationship to the primary applicant of each person who is a member of the family unit (as defined in subregulation 1.12(2)) of the applicant at the time of the application. This must be done whether or not the person is an applicant, or intending to become an applicant for a student visa.

Under new subregulation 2.07AF(4), an applicant must also inform the Minister of the name of each person who becomes a member of his or her family unit after the time of application and before the grant of a student visa. This must be done in writing and whether or not the person is an applicant or intending to become an applicant for a student visa. It should include the name, date of birth, citizenship and relationship between the person and the primary applicant.

Item [33] – Paragraph 2.08A(1)(a)

This item makes a technical amendment to paragraph 2.08A(1)(a), consequential to the insertion of new subregulation 2.08A(2A) by these Regulations.

Item [34] – After subregulation 2.08A(2)

This item inserts new subregulation 2.08A(2A). It provides that regulation 2.08A does not apply to an application for a Skilled – Independent Overseas Student (Class DD) or Skilled – Australian-sponsored Overseas Student (Class DE) visa. It also preserves the current restriction of the application of regulation 2.08A to applications for a Resolution of Status (Residence) (Class BL) visa.

Regulation 2.08A allows for the addition of spouses and dependent children to permanent visa applications. Applicants added via regulation 2.08A are taken to have made a combined application with the original applicant. Such applicants are not required to meet Schedule 1 requirements, other than requirements regarding the applicant's whereabouts at time of application.

Applications for Class DD and DE visas are excluded from Regulation 2.08A because it is intended that all family members should apply together when applying for these classes. In addition, it is intended that all applicants for these classes meet the Schedule 1 requirements, including requirements regarding the type of visa held and the provision of certain documents with the application.

Item [35] – Regulation 2.08CA, heading

This item makes a technical amendment to the heading to regulation 2.08CA.

Item [36] – After regulation 2.08CA

This item inserts new regulation 2.08CB.

The new regulation gives effect to policy relating to the ability of employers and State or Territory governments to select independent skills migrants for migration through various skilled sponsored categories.

The regulation provides for applicants for a Skilled – Independent Overseas Student (Residence) (Class DD) visa (inserted by these Regulations) to have a "deemed" application for a Subclass 857 (Regional Sponsored Migration Scheme) visa, provided all the requirements of regulation 2.08CB are met. The new regulation mirrors existing regulation 2.08C, which applies in relation to offshore skilled visas.

No first instalment of the visa application charge is payable on the deemed application.

Subregulation 2.08CB(1) provides for the deemed application to have been made where the applicant has been nominated for an appointment by an employer, provided the applicant:

- is less than 45 years of age at the time of the application for the Class DD visa;
- no decision has been made on the Class DD visa application;
- the applicant has been assessed as having a points test score equal to or more than the pool mark for visa Subclass 880 (Skilled – Independent Overseas Student);

- the appointment has been approved under subregulation 5.19(4) (the regional-sponsored migration scheme); and
- the applicant has vocational English and a diploma or higher qualification.

Subregulation 2.08CB(2) provides that where an application is deemed to have been made under subregulation (1), any family members included in the original Class DD application are taken to be included in the deemed application.

Item [37] - Subregulation 2.10(1)

Regulation 2.10 sets out that applications for specified kinds of visas must be made to specific offices located either inside or outside Australia.

This item amends subregulation 2.10(1) by excluding Internet applications from the place of application requirements of regulation 2.10.

This amendment reflects that applications made over the Internet are not made to geographically situated offices, but through a network of computer systems that may not be of fixed geographic location.

Item [38] – Subparagraphs 2.10(1)(b)(iii) and (iv)

This item substitutes new subparagraphs into paragraph 2.10(1)(b). Paragraph 2.10(1)(b) sets out where an onshore application for a student visa must be made.

New subparagraphs 2.10(1)(b)(iii), 2.10(1)(b)(iv), 2.10(1)(b)(v), 2.10(1)(b)(vi) and 2.10(1)(b)(vii) apply to the following student visa applications:

- if the applicant holds a student visa that is subject to condition 8101 (no work rights) and seeks another student visa that is not subject to condition 8101; and
- if the applicant holds a student visa and seeks to satisfy the primary criteria for another student visa; and
- if the application is for a student visa and the applicant holds a Subclass 560, 563, 570, 571, 572, 573, 574, 575 or 576 visa as a member of the family unit of a person who has satisfied the primary criteria and holds one of the above or a Subclass 562 visa, and
- if the applicant does not hold a student visa and seeks a student visa and is subject to assessment level 1 or 2, and
- if the applicant does not hold a student visa, and the applicant seeks to satisfy the secondary criteria as a member of the family unit of a person who is subject to assessment level 1 or 2.

The applications listed above must be made:

- at any office of Immigration in Australia; or
- at the educational institution where the applicant is enrolled; or
- if the applicant holds a Subclass 560, 563, 570, 571, 572, 573, 574, 575 or 576 visa as a member of the family unit of a person who has satisfied the primary criteria and holds one of the above or a subclass 562 visa, or if the applicant does not hold a student visa, and the applicant

seeks to satisfy the secondary criteria as a member of the family unit of a person who is subject to assessment level 1 or 2– at the education institution where the person is enrolled.

A visa application can only be made at an education institution if the institution is approved in writing by the Minister for the purpose of receiving applications of that kind.

New subparagraph 2.10(1)(b)(viii) provides that in any other case, subject to regulation 2.09 and subregulation (3), the application is to be made at any office of Immigration in Australia.

Item [39] - After subregulation 2.10(4)

The item inserts a note at the end of regulation 2.10.

The new note directs attention to Schedule 1 of the Regulations where the requirements pertaining to the place of an applicant at the time of making an Internet application are set out.

Item [40] - After regulation 2.12J

This item inserts new regulation 2.12JA after regulation 2.12J.

New regulation 2.12JA details the manner of payment of the visa application charge for an Internet application.

Under paragraph 2.12JA(a) an Internet application must be paid by credit card. An Internet application will not be validated until notice of authorisation of the payment has been received from the credit card company.

Item [41] – Subregulation 2.13(5)

This item is a technical amendment, providing that subregulation 2.13(5) is to be read subject to subregulation 2.13(6) inserted by these Regulations.

Item [42] – After subregulation 2.13(5)

This item inserts new subregulations 2.13(6) and (7) into regulation 2.13.

Regulation 2.13 sets out, for the purpose of section 52 of the Act, how an applicant or interested person must communicate with the Minister about a visa application.

Subregulation 2.13(5) provides that a documents accompanying a written communication must be the original or a certified copy of the original.

New subregulation 2.13(6) modifies subregulation 2.13(5) by providing that a document that is required or permitted to be produced in connection with the application, may be in the form of an electronic communication if the document is in a class of documents specified by Gazette Notice as a document that may be sent by electronic communication, or the Minister has permitted the applicant or interested person to send the document by electronic communication.

The intention of subregulation 2.13(6) is to enable the Minister to specify that certain documents in relation to which there exists a low risk of document fraud may be sent to the Minister electronically.

New subregulation 2.13(7) enables the Minister to require the applicant or interested person referred to in subregulation (6), to give the Minister the original of a document that has already been given by electronic communication under subregulation (6).

The reason for subregulation 2.13(7) is to enable the Minister, on receipt of an electronic copy of an original document sent pursuant to subregulation 2.13(6) that appears to be fraudulent or in some way flawed, to request the applicant to provide the original paper version of the document, as they ordinarily would have to under subregulation 2.13(5).

Item [43] – Subparagraph 2.16(1)(a)(ii)

Regulation 2.16 sets out, for the purposes of subsection 66(1) of the Act, how the Minister is to notify an applicant of a decision to grant or refuse a visa.

Currently subparagraph 2.16(1)(a)(ii) provides that if no evidence of the visa need be given to an applicant, the Minister may tell the applicant orally that the visa has been granted.

This item amends subparagraph 2.16(1)(a)(ii) by providing that if no evidence of the visa need be given, the Minister may

- notify the applicant in writing, by means of electronic communication to the last address given by the applicant to the Minister for electronic communication, that the visa has been granted; or
- give the applicant evidence of the visa.

The amendment also retains the facility on the part of the Minister to tell the applicant orally that the visa has been granted.

The reason for the amendment is to allow the Minister to notify a visa applicant by electronic communication of a decision is to grant the visa when no evidence of a visa grant need be given.

This amendment also gives the Minister the option of giving the applicant evidence of the visa in certain circumstances, even where no evidence need be given. These may include circumstances where an applicant requests evidence of his or her visa to clarify for a third party their immigration status in Australia.

Item [44] - After paragraph 2.16(1)(c)

This item inserts new paragraph 2.16(1)(ca) into subregulation 2.16(1) providing that the Minister may notify an applicant of a decision to grant or refuse a visa by notifying the applicant in writing by means of electronic communication to the last address given to the Minister for electronic communication.

The amendment allows the Minister to generally provide notification of the grant or refusal of a visa by electronic means. The amendment is intended to give effect to the Government's commitment to facilitating electronic transactions between Commonwealth agencies and members of the community.

Item [45] – After regulation 2.16

This item inserts a new regulation setting out the time of receipt of a notification of a decision to grant or refuse a visa sent by means of electronic communication under regulation 2.16.

The item provides that the time of receipt of an electronic communication is the end of the day on which the electronic communication is transmitted.

Certainty in respect of the time of receipt of notification is important because of the effect of a visa application on a person's immigration status and access to merits review.

Item [46] – Subregulations 2.18(2), (2A) and (3)

Regulation 2.18 permits the holder of a resident return visa evidenced in a passport, where either the visa label or the passport are no longer presentable for travel purposes, to apply for re-evidencing of that visa.

This item substitutes subregulation 2.18(2) providing that if an application is an Internet application it must be made in accordance with approved form 1085E, the applicant must be in Australia at the time of the application, and the fee payable on the application is \$60.

A reference to relict form 786 is omitted from subregulation 2.18(2).

The fee imposed on an Internet application is the same as the fee currently imposed on an application for a resident return visa made inside Australia.

Substituted subregulation 2.18(2A) preserves arrangements currently set out in subregulations (2) and (2A) in respect of re-evidencing applications where the applicant is in Australia and the application is not an Internet application.

Substituted subregulation 2.18(3) provides that if an application is not an Internet application, and the applicant is not in Australia at the time of the application, the application must be in accordance with approved form 1085, and the fee payable is \$70.

Item [47]– Paragraph 2.21B(1)(a)

Regulation 2.21B relates to the grant of Bridging A, Bridging C, and Bridging E visas without application in certain circumstances.

Currently paragraph 2.21B(1)(a) refers to a valid application for a visa on form 157P or form 601. Form 601 is the approved form on which an application for a Long Stay (Visitor) (Class TN) visa must be made.

This item amends paragraph 2.21B(1)(a) by including in the paragraph a reference to approved forms 601E and 1182.

Form 601E is the form approved for the making of an Internet application for the Long Stay (Visitor) (Class TN) visa, a facility introduced by these Regulations.

Form 1182 is the form approved for making an application for a Graduate - Skilled (Temporary) (Class UQ) visa, a visa class also introduced by these Regulations.

The effect of the amendment is to ensure that where an applicant makes a valid Internet application for a Class TN visa, or a valid application for a Class UQ visa, the Minister may grant that person a Bridging A (Class WA) visa where those applications are not decided immediately. The applicant must still meet the time of application and time of decision criteria for that visa, and the circumstances applicable to the grant must exist in relation to the applicant.

Item [48] – Subregulation 2.22(2)

Subregulation 2.22(1) provides that a non-citizen in Australia is automatically taken to have applied for a Bridging D (Class WD) visa if they apply for a substantive visa other than by personal attendance at a DIMA office, but the application is invalid.

Subregulation 2.22(2) sets out applications, or purported applications, to which subregulation 2.22(1) does not apply. Currently subregulation 2.22(1) does not apply to an oral application or an oral communication that purports to be an oral application.

This item amends subregulation 2.22(2) by extending the exclusion to Internet applications and electronic communications that purport to be Internet applications. It is not intended that an application for a Bridging D (Class WD) visa be deemed when a non-citizen makes an invalid Internet application.

The item also extends the exclusion to purported applications for a:

- Graduate – Skilled (Temporary) (Class UQ) visa;
- Skilled – Independent Overseas Student (Residence)(Class DD) visa; and
- Skilled – Australian sponsored Overseas Student (Class DE) visa.

It is not intended that an application for a Bridging D (Class WD) visa be deemed to have been made when a non-citizen makes an invalid application for one of these visa classes other than in person.

The Schedule 1 requirements for making a valid Class UQ, DD or DE application are restricted so that persons without the necessary qualifications and skills for the grant of the visa cannot delay their departure from Australia on completion of their studies by making a valid application.

The exclusion of purported applications from regulation 2.22 is consistent with these Schedule 1 restrictions.

Item [49] – Paragraph 2.25A(1)(b)

Paragraph 2.25A(1)(b) currently refers to an application for a permanent visa made from a country that is a country specified by gazette notice for the purposes of the paragraph.

This item omits the words “that is a country” from paragraph 2.25A(1)(b), substituting the words “whether Australia or a foreign country”.

Foreign country is defined in paragraph 22(2)(f) of the *Acts Interpretation Act 1901* to mean any country (whether or not an independent sovereign state) outside Australia and the external Territories.

The reason for the amendment is to clarify that a gazette notice made under paragraph 2.25A(1)(b) may specify a country that is not also an independent sovereign state.

The item also inserts a note clarifying that the term ‘foreign country’ has the meaning provided by the definition in the *Acts Interpretation Act 1901*.

Item [50] – After paragraph 2.25A(1)(b)

This item inserts a note that refers to the definition of “foreign country” in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*. The amendment makes it clear that a reference to “foreign country” in these amendments has the meaning as set out in the *Acts Interpretation Act 1901*.

Item [51] – Regulation 2.26A, heading

This item changes the heading of regulation 2.26A to reflect, in a simpler way, the visa classes covered by that regulation.

Regulation 2.26A prescribes how points are to be allocated on the points test set out in Schedule 6A of the Regulations, and defines certain terms used in that Schedule. It applies to the following visa classes:

- Skilled – Australian-sponsored (Migrant) (Class BQ);
- Skilled – Independent (Migrant) (Class BN); and
- Skilled – New Zealand Citizen (Residence) (Class DB).

On commencement of these Regulations, regulation 2.26A also will prescribe how points are to be allocated for the new Skilled – Independent Overseas Student (Residence) (Class DD) and Skilled – Australian-sponsored Overseas Student (Residence) (Class DE) visa classes.

To avoid the heading becoming too long, the visa classes covered by the regulation are collectively referred to in the heading as skilled permanent visas.

Item [52] – Subregulations 2.26A(1) and (2)

This item substitutes new subregulations (1) and (2).

Subregulation (1) is amended to include a reference to the new Skilled – Independent Overseas Student (Residence) (Class DD) and Skilled – Australian-sponsored Overseas Student (Residence) (Class DE) visa classes. This will have the effect that regulation 2.26A will apply to applications for visas of those classes, by prescribing how points are to be allocated on the points test contained in Schedule 6A to such applications, and by defining terms used in that Schedule.

Subregulation (2) is amended to include a reference to Subclasses 880 (Skilled – Independent Overseas Student) and 881 (Skilled – Australian-sponsored Overseas Student). Subregulation (2) prescribes which qualifications specified in Schedule 6A apply to applicants for these Subclasses.

Item [53] – Regulation 2.27A, heading

This item changes the heading of regulation 2.27A to reflect, in a simpler way, the visa classes covered by that regulation.

Regulation 2.27A allows certain qualifications of the primary applicant's spouse to be used when assessing the applicant's score on the points test. The regulation applies to points tested visa subclasses where there is a sponsor. It applies to the Skilled – Australian-sponsored (Migrant) (Class BQ) and Skilled – New Zealand Citizen (Residence) (Class DB) visa classes.

On commencement of these Regulations, regulation 2.27A will apply also to the new Skilled – Australian-sponsored Overseas Student (Residence) (Class DE) visa class.

To avoid the heading becoming too long, the visa classes to be covered by the regulation are collectively referred to in the heading as skilled permanent visas.

Item [54] – Paragraph 2.27A(1)(a)

This item amends paragraph 2.27A(1)(a) by inserting a reference to persons applying for a Skilled – Australian-sponsored Overseas Student (Residence) (Class DE) visa.

This will ensure that persons applying for this new class of visa (inserted by these Regulations) will be able to use regulation 2.27A in meeting the criteria for a Subclass 881 (Skilled – Australian-sponsored Overseas Student) visa. Regulation 2.27A allows certain qualifications of the applicant’s spouse to be considered when assessing the applicant’s score on the points test.

Item [55] – Paragraph 2.27B(1)(c)

This item amends paragraph 2.27B(1)(c) to expand the operation of regulation 2.27B to applications for the new Skilled – Independent Overseas Student (Residence) (Class DD) and Skilled – Australian-sponsored Overseas Student (Residence)(Class DE) visa classes.

Regulation 2.27B applies to visa classes where the applicant is required to nominate their occupation and undergo skills assessment for that occupation, when making the application. It enables the Minister to invite the applicant to nominate a second occupation, where it appears on the basis of the person’s educational qualifications and work history that it would be appropriate for the applicant to be assessed for a different occupation.

Item [56] – Paragraph 2.40(1)(n)

Paragraph 2.40(1)(n) currently refers to transit passengers who are citizens of a country specified in a gazette notice for the purpose of the paragraph, as a class of person having a prescribed status under paragraph 33(2)(a) of the Act.

This item substitutes paragraph 2.40(1)(n) with a new paragraph prescribing transit passengers who belong to a class of persons specified in a gazette notice made for the purposes of the paragraph, as a class of person having a prescribed status under paragraph 33(2)(a) of the Act.

The reason for the amendment is to ensure that a gazette notice made under paragraph 2.40(1)(n) may specify a class of persons as having a prescribed status, being a class of persons from a country falling within the definition of a foreign country in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*.

The item also inserts a note clarifying that the term ‘foreign country’ has the meaning provided by the definition in the *Acts Interpretation Act 1901*.

Item [57] – Paragraph 2.43(1)(e)

Paragraph 2.43(1)(e) currently sets out a ground of cancellation applicable to the holder of an Electronic Travel Authority (Class UD) visa who is under the age of 18 years.

The ground is that both the law of the visa holder’s home country did not permit the removal of the visa holder, and at least one of the people who could determine where the additional applicant will live did not consent to the grant of the visa; or the grant of the visa was inconsistent with an Australian child order in force in relation to the visa holder.

This item amends paragraph 2.43(1)(e) by bringing the Long Stay (Visitor) (Class TN) visa granted pursuant to an Internet application within the scope of the paragraph.

Public interest criteria 4017 provides that the Minister [must be] satisfied of 1 of the following; that the law of the home country permits the removal of the applicant; that each person who can lawfully determine where the applicant is to live consents to the grant of the visa; and that the grant of the visa would be consistent with any Australian child order in force in relation to the applicant.

Public interest criteria 4017 contains matters that are not amenable to processing by a computer program. It is not possible therefore, to include this public interest criteria in new clause 686.212 setting out the time of application criteria for an Internet application.

The intended effect of the amendment is to ensure that the substance of public interest criteria 4017 becomes a grounds for cancellation of a Long Stay (Visitor) (Class TN) visa granted on the basis of an Internet application meeting the requirements of clause 686.212, if these matters are found to exist after the grant of the visa.

Item [58] – Paragraph 2.43(1)(f)

Paragraph 2.43(1)(f) sets out a ground of cancellation applicable to the holder of an Electronic Travel Authority (Class UD) visa who is under the age of 18 years and who is not accompanied by his or her parent or guardian.

The ground is that the holder of that visa does not have adequate funds, or adequate arrangements have not been made, for the holder's maintenance, support and general welfare during the holder's proposed visit in Australia.

This item amends paragraph 2.43(1)(f) by bringing a Long Stay (Visitor) (Class TN) visa granted pursuant to an Internet application within the scope of the paragraph.

Public interest criteria 4012 relates to an applicant who has not turned 18 [and whose intended stay in Australia will not be in the company of either or both of his or her parents or guardians, and whose application expresses an intention to visit or stay with a person who is not a relative of the applicant, and who is not a member of an organised tour], and provides that an undertaking to provide accommodation and to be responsible for the support of the applicant during the applicant's stay in Australia [must be] given to the Minister by a person who, in the opinion of the Minister, is of good character.

Public interest criteria 4012 contains matters that are not amenable to processing by a computer program. It is not possible therefore, to include these public interest criteria in new clause 686.212 setting out the time of application criteria for an Internet application.

The intended effect of the amendment made by this item is to ensure that the substance of public interest criteria 4012 becomes grounds for cancellation of a Long Stay (Visitor) (Class TN) visa granted on the basis of an Internet application meeting the requirements of clause 686.212, if these matters are found to exist after the grant of the visa.

Item [59] – Subregulation 4.31B(5)

Subregulation 4.31B(1) provides that the fee for the review by the Refugee Review Tribunal of an RRT-reviewable decision is \$1000.

Subregulation 4.31B(5) is a sunset clause restricting the operation of the regulation to the review of a RRT-reviewable decision where the application for review was made on or after 1 July 1997 and before 1 July 2001.

This item amends subregulation 4.31B(5) by extending the application of the regulation to the review of an RRT-reviewable decision where the application for review made on or after 1 July 1997 and before 1 July 2003.

The effect of the amendment is to extend the operation of the regulation for a further two years.

The amendment preserves the operation of the regulation in all other respects.

Part 1.2 – Amendments of Schedule 1

Item [60] – Subparagraph 1114A(2)(a)(i)

This item amends subparagraph 1114A(2)(a)(i).

Item 1114A of Schedule 1 to the Regulations prescribes the visa application charge, application form, and other matters required for making a valid application for an Employer Nomination (Residence) (Class BW) visa.

Regulation 2.08CB (inserted by these Regulations) deems certain applicants for a Skilled – Independent Overseas Student (Residence) (Class DD) visa to have made an application for a Employer Nomination (Residence) (Class BW) visa.

The amendment made by this item provides that no first instalment of the visa application charge is payable on the deemed application.

Item [61] – Subitem 1128(1)

This item inserts the requirement to use approved form 1085E to make an Internet application for a Return (Residence) (Class BB) visa.

The subitem retains the requirement to use form 1085 in any other case (unless the application is an oral application in accordance with subparagraph (3)(a)(iii), in which case no form is required).

Item [62] – Subitem 1128(3)

This item substitutes subitem 1128(3) retaining the current place of application requirements in respect of applications for a Return (Residence) (Class BB) visa that are not Internet applications, and providing that for Internet applications, the applicant must be in Australia but not in immigration clearance.

The requirement that an applicant be in Australia to make a valid Internet application for a Return (Residence) (Class BB) visa reflects that applications made over the Internet are not made to a place, but through a network of computer systems.

Item [63] – After item 1128B

This item inserts item 1128BA into Schedule 1.

Item 1128BA establishes the Skilled – Australian-sponsored Overseas Student (Residence) (Class DE) visa class.

This is a permanent visa class available onshore to persons who have recently completed the requirements for a trade qualification, diploma or higher qualification from an Australian educational institution, and their family members.

The new class contains two subclasses: Subclass 881 (Skilled – Australian-sponsored Overseas Student) and Subclass 882 (Skilled – Designated Area-sponsored Overseas Student).

The requirements for obtaining a visa of these subclasses are similar to those for offshore applicants seeking to meet the criteria for a Subclass 138 (Skilled – Australian-sponsored) or Subclass 139 (Skilled – Designated Area-sponsored) visa, with certain exceptions.

The new visa class will ensure that overseas students who have recently completed qualifications at Australian institutions will not be required to leave Australia in order to obtain a permanent visa on the basis of their skills.

The primary applicant must have an Australian relative sponsor, and either the primary applicant or the primary applicant's spouse must meet certain requirements relating to age, English language ability, educational qualifications and employment skills.

Subitem 1128BA(1) provides that the approved form for making an application for Class DE is form 47SK.

Subitem 1128BA(2) provides that there is a first instalment visa application charge payable of \$1,670. No second instalment is payable.

Subitem 1128BA(3) prescribes other requirements to be met when making an application. These are as follows:

- the application must be made in Australia, but not in immigration clearance;
- all applicants must be in Australia, but not in immigration clearance, at time of application;
- each applicant must submit satisfactory evidence that he or she has, in the 3 months before making the application, undergone a medical examination carried out by a Medical Officer of the Commonwealth, or a medical practitioner approved by the Minister or employed by an organisation approved by the Minister;
- each applicant must submit satisfactory evidence that, in the 12 months before making the application, the Australian Federal Police have completed a check of criminal records in relation to the applicant;
- all applicants must hold a Bridging A or Bridging B visa granted on the basis of a valid application for a Graduate – Skilled (Temporary)(Class UQ) visa (or on the basis of an application for judicial review of a refusal of such an application), or a substantive visa other than:
 - a Subclass 560 (Student) visa:
 - granted to a primary applicant undertaking a registered English language course or other non-award course, or to the family unit member of such a person;
 - granted to a primary applicant undertaking a course paid for wholly or in part by the Commonwealth, a State or Territory government, the government of a foreign country, or a multilateral agency, or to the family unit member of such a person; or
 - granted to a primary applicant undertaking a course under a scholarship scheme or training program approved by the AusAID or Defence Minister, or to the family unit member of such a person; or
 - a Subclass 562 (Iranian Postgraduate Student), 563 (Iranian Postgraduate Student Dependant), 572 (Vocational Education and Training Sector), 573 (Higher Education Sector) or 574 (Masters and Doctorate Sector) visa granted to the applicant in the situation set out in the second or third dash points above; or
 - a Subclass 570 (Independent ELICOS Sector), 571 (Schools Sector), 575 (Non-Award Foundation/Other Sector), or 576 (AusAID or Defence Sector) visa;

- if the applicant does not, at time of application, hold a subclass 560, 562, 563, 572, 573 or 574 visa that meets the requirements of the dot point immediately above, the applicant must have been the holder of such a visa at some time in the 6 months before making the application;
- the applicant must not have been an unlawful non-citizen at any time of the 6 months before making the application;
- the application must be made by posting the application to a post office box address approved in writing by the Minister;
- the primary applicant, or that person's spouse, must have completed, not more than 6 months before making the application, a degree, diploma or trade qualification for award by an Australian educational institution as a result of at least 1 year of full-time study (for which all instruction was in English) in Australia at that institution while present in Australia (this person is referred to below as 'the former overseas student');
- the former overseas student must be aged under 45 at time of application;
- the former overseas student must nominate a skilled occupation, and if the applicant is seeking to meet the criteria for the grant of a Subclass 881 (Skilled – Australian-sponsored Overseas Student) visa, it must be an occupation for which at least 50 points are specified by Gazette Notice as available;
- the application must be accompanied by satisfactory evidence that the former overseas student's skills have been assessed by a relevant assessing authority as suitable for the nominated occupation;
- the applicant must be sponsored by an Australian citizen, Australian permanent resident, or eligible New Zealand citizen, who is aged 18 or over, and in respect of whom the primary applicant has the following relationship:
 - parent;
 - child, adoptive child, or step-child (but not a dependent child of the sponsor);
 - brother, sister, adoptive brother or sister, step-brother or step-sister;
 - nephew, niece, adoptive nephew or niece, step-nephew or step-niece; or
 - if the applicant is seeking to meet the criteria for the grant of a Subclass 882 (Skilled – Designated Area-sponsored Overseas Student) visa – grandchild or cousin;
- if the applicant is seeking to meet the criteria for the grant of a Subclass 882 (Skilled – Designated Area-sponsored Overseas Student) visa – the sponsor must reside in a designated area (specified by Gazette Notice), and have been resident in one or other of the designated areas throughout the 12 months immediately before DIMA receives the sponsorship (except for short absences for purposes of business or recreation);
- the application must be accompanied by an assurance of support covering the applicant; and must include:
 - satisfactory evidence that the person giving the assurance (the supporting person) is an Australian citizen, Australian permanent resident or eligible New Zealand citizen;

- certified copies of tax assessment notices for the 2 years immediately before applying, relating to the supporting person; and
- satisfactory evidence of the supporting person's current employment;
- if the applicant is, or has ever been, the holder of an AusAID student visa or a Subclass 560, 562, 563, 570, 571, 572, 573, 574, or 575 visa granted to the applicant in respect of a course for which the applicant is or was provided financial support by the Commonwealth, a State or Territory government, the government of a foreign country, or a multilateral agency:
 - the course of study of training for which the visa was granted was for less than 12 months; or
 - the applicant has spent at least 2 years outside Australia since ceasing or completing, or withdrawing or being excluded from the course or another course approved in substitution for that course; and
- an application by a person claiming to be the member of the family unit of another person who is an applicant for a Class DE visa may be made at the same time and place as, and combined with, the application by that other person.

This places a substantial number of requirements in Schedule 1 rather than Schedule 2. This is because, unlike most other points tested skilled visas, this is an onshore (residence) visa. Once an applicant has made a valid application, he or she can remain in Australia until the application is decided, and, if unsuccessful, until the completion of any merits review process. The Schedule 1 requirements are restricted so that persons without the necessary qualifications and skills for the grant of visa cannot delay their departure from Australia on completion of their studies by making a valid application.

Subitem 1128BA(4) provides that the following visa subclasses are included in this class:

Subclass 881 (Skilled – Australian-sponsored Overseas Student); and

Subclass 882 (Skilled – Designated Area-sponsored Overseas Student).

Item [64] – After item 1128C

This item inserts item 1128CA into Schedule 1.

Item 1128CA establishes the Skilled – Independent Overseas Student (Residence) (Class DD) visa class.

This is a permanent visa class available onshore to persons who have recently completed the requirements for a trade qualification, diploma or higher qualification from an Australian educational institution, and their family members.

The new class contains one subclass: Subclass 880 (Skilled - Independent Overseas Student).

The requirements for obtaining a visa of this subclass are similar to those for applicants applying offshore for a Subclass 136 (Skilled – Independent) visa, with certain exceptions. The new visa class will ensure that overseas students who have recently completed qualifications at Australian institutions will not be required to leave Australia in order to obtain a permanent visa on the basis of their skills.

Subclass 880 is points tested, and primary applicants must meet certain requirements relating to age, English language ability, educational qualifications and employment skills.

Subitem 1128CA(1) provides that the approved form for making an application for Class DD is form 47SK.

Subitem 1128CA(2) provides that there is a first instalment visa application charge payable of \$1,670. No second instalment is payable.

Subitem 1128CA(3) prescribes other requirements to be met when making an application. These are as follows:

- the application must be made in Australia, but not in immigration clearance;
- all applicants must be in Australia, but not in immigration clearance, at time of application;
- the application must be made by posting the application to a post office box address approved in writing by the Minister;
- each applicant must submit satisfactory evidence that, in the 3 months before making the application, he or she has undergone a medical examination carried out by a Medical Officer of the Commonwealth, or a medical practitioner approved by the Minister or employed by an organisation approved by the Minister;
- each applicant must submit satisfactory evidence that, in the 12 months before making the application, the Australian Federal Police have completed a check of criminal records in relation to the applicant;
- all applicants must hold a Bridging A or Bridging B visa granted on the basis of a valid application for a Graduate – Skilled (Temporary)(Class UQ) visa (or on the basis of an application for judicial review of a refusal of such an application), or a substantive visa other than:
 - a Subclass 560 (Student) visa:
 - granted to a primary applicant undertaking a registered English language course or other non-award course, or to the family unit member of such a person;
 - granted to a primary applicant undertaking a course paid for wholly or in part by the Commonwealth, a State or Territory government, the government of a foreign country, or a multilateral agency, or to the family unit member of such a person; or
 - granted to a primary applicant undertaking a course under a scholarship scheme or training program approved by the AusAID or Defence Minister, or to the family unit member of such a person; or
 - a Subclass 562 (Iranian Postgraduate Student), 563 (Iranian Postgraduate Student Dependant), 572 (Vocational Education and Training Sector), 573 (Higher Education Sector) or 574 (Masters and Doctorate Sector) visa granted to the applicant in the situation set out in the second or third dash points above; or
 - a Subclass 570 (Independent ELICOS Sector), 571 (Schools Sector), 575 (Non-Award Foundation/Other Sector), or 576 (AusAID or Defence Sector) visa;

- if the applicant does not, at time of application, hold a subclass 560, 562, 563, 572, 573 or 574 visa that meets the requirements of the dot point immediately above, the applicant must have been the holder of such a visa at some time in the 6 months before making the application;
- applicant must not have been an unlawful non-citizen at any time in the 6 months before making the application;
- the primary applicant must be aged under 45;
- the primary applicant must nominate a skilled occupation for which 60 points are specified by Gazette Notice as available, unless the primary applicant has completed requirements for the award of a Doctorate of Philosophy qualification (for which all instruction was in English) by an Australian educational institution as the result of at least one year of full-time study at that institution while present in Australia, in which case the applicant may nominate a 50 point occupation;
- the application must be accompanied by satisfactory evidence that a relevant assessing authority has assessed the primary applicant's skills as suitable for his or her nominated skilled occupation; and
- the application must be accompanied by satisfactory evidence that the primary applicant has, in the 6 months before making the application, completed requirements for the award by an Australian educational institution of a diploma, degree or trade qualification (for which all instruction was in English) as a result of at least one year of full-time study at that institution while present in Australia;
- if the applicant is, or has ever been, the holder of an AusAID student visa or a Subclass 560, 562, 563, 570, 571, 572, 573, 574, or 575 visa granted to the applicant in respect of a course for which the applicant is or was provided financial support by the Commonwealth, a State or Territory government, a foreign government, or a multilateral agency:
 - the course of study of training for which the visa was granted was for less than 12 months; or
 - the applicant has spent at least 2 years outside Australia since ceasing or completing, or withdrawing or being excluded from the course or another course approved in substitution for that course; and
- an application by a person claiming to be the member of the family unit of another person who is an applicant for a Class DD visa may be made at the same time and place as, and combined with, the application by that other person.

This places a substantial number of requirements in Schedule 1 rather than Schedule 2. This is because, unlike most other points tested visas, this is an onshore (residence) visa. Once an applicant has made a valid application, he or she can remain in Australia until the application is decided, and, if unsuccessful, until the completion of any merits review process. The Schedule 1 requirements are restricted so that persons without the necessary qualifications and skills for the grant of visa cannot delay their departure from Australia on completion of their studies by making a valid application.

Subitem 1128CA(4) provides that the following visa subclass is included in this class:

Subclass 880 (Skilled – Independent Overseas Student).

Item [65] – After Item 1212

This item inserts item 1212A into Schedule 1.

Item 1212A establishes the Graduate - Skilled (Temporary) (Class UQ) visa class.

This is a temporary visa class available onshore to persons who have recently completed the requirements for a trade qualification, diploma or higher qualification from an Australian educational institution, and who intend to make a valid application for a Skilled – Independent Overseas Student (Residence) (Class DD) or Skilled – Australian-sponsored Overseas Student (Residence) (Class DE) visa.

The new class contains one subclass: Subclass 497 (Graduate – Skilled).

The new visa class will ensure that overseas students intending to apply for a Class DD or DE visa can maintain their lawful status in Australia while obtaining the documentation necessary for making a valid application for the permanent visa.

All applicants must intend to make a valid application for a Class DD or DE application, and must hold a substantive visa at time of application (other than certain excluded visas). All applicants must hold, or have held at some time in the last 6 months, a student visa (other than certain excluded student visas).

The primary applicant must have completed the requirements for the award of a degree, diploma or trade qualification by an Australian educational institution, as a result of at least one year of full time study in Australia, not more than 6 months before making the application.

Subitem 1212A(1) provides that the approved form for making an application for Class UQ is form 1182.

Subitem 1212A(2) provides that there is a first instalment visa application charge payable of \$155. No second instalment is payable.

Subitem 1212A(3) prescribes other requirements to be met when making an application. These are as follows:

- the application must be made in Australia, but not in immigration clearance;
- all applicants must be in Australia, but not in immigration clearance, at time of application;
- all applicants must state an intention to make a valid application for a Skilled – Independent Overseas Student (Class DD) or Skilled – Australian-sponsored Overseas Student (Class DE) visa;
- all applicants must hold a substantive visa at time of application, other than:
 - a Subclass 560 (Student), 562 (Iranian Postgraduate Student), 563 (Iranian Postgraduate Student Dependant), 572 (Vocational Education and Training Sector), 573 (Higher Education Sector) or 574 (Masters and Doctorate Sector) visa;
 - granted to a primary applicant undertaking a registered English language course or other non-award course, or to the family unit member of such a person;
 - granted to a primary applicant undertaking a course paid for wholly or in part by the Commonwealth, a State or Territory government, the government of a foreign country, or a multilateral agency, or to the family unit member of such a person; or

- granted to a primary applicant undertaking a course under a scholarship scheme or training program approved by the AusAID or Defence Minister, or to the family unit member of such a person; or
- a Subclass 570 (Independent ELICOS Sector), 571 (Schools Sector), 575 (Non-Award Foundation/Other Sector), 576 (AusAID or Defence Sector) or 497 (Graduate – Skilled) visa;
- if the substantive visa held by the applicant at time of application is not a Subclass 560, 562, 563, 572, 573 or 574 visa of the kind required by the dot point immediately above, the applicant must have been, at some time in the 6 months before making the application, the holder of a visa of that kind;
- the applicant must not have been an unlawful non-citizen at any time in the 6 months before making the application;
- the primary applicant must be less than 45 years of age;
- the primary applicant’s application must be accompanied by satisfactory evidence that primary applicant has completed, not more than 6 months before making the application, a degree, diploma or trade qualification, for award by an Australian educational institution as a result of at least 1 year of full-time study at that institution while physically present in Australia (all instruction for the course must have been in English);
- the primary applicant must nominate a skilled occupation from the list of skilled occupations specified by Gazette Notice made under the regulation 1.03 definition of “skilled occupation”;
- the primary applicant must hold or have completed, a degree, diploma or trade qualification that is appropriate for the nominated occupation;
- the primary applicant’s application must be accompanied by satisfactory evidence that the primary applicant has applied to a relevant assessing authority for an assessment of the suitability of his or her skills for the nominated skilled occupation;
- the application must be made by posting the application to a post office box address specified by instrument in writing by the Minister;
- if the applicant is, or has ever been, the holder of an AusAID student visa or a Subclass 560, 562, 563, 570, 571, 572, 573, 574, or 575 visa granted to the applicant in respect of a course for which the applicant was provided financial support by the Commonwealth, a State or Territory government, the government of a foreign country, or a multilateral agency:
 - the course of study of training for which the visa was granted was for less than 12 months; or
 - the applicant has spent at least 2 years outside Australia since ceasing or completing, or withdrawing or being excluded from, the course or another course approved in substitution for that course; and
- an application by a person claiming to be the member of the family unit of another person who is an applicant for a Class UQ visa may be made at the same time and place as, and combined with, the application by that other person.

The Schedule 1 requirements are restricted so that persons without the qualifications and skills necessary for making a valid application for a Class DD or DE visa cannot delay their departure from Australia on completion of their studies by making a valid application for a Class UQ visa.

Subitem 1212A(4) provides that the following visa subclass is included in this class:

- Subclass 497 (Graduate - Skilled).

Item [66] – Subitem 1214(1)

Subitem 1214(1) sets out the forms that must be used in making an application for a Long Stay (Visitor) (Class TN) visa.

This item amends paragraph 1214(1)(a) by removing the reference to form 48L as a required form for making an application (other than an Internet application) outside Australia. This amendment is technical, reflecting the withdrawal from use of form 48L. The paragraph retains the reference to forms 48 and 48R.

Current requirements relating to non-Internet applications in paragraph 1214(1)(b) are retained unchanged.

The item also inserts new paragraph 1214(1)(c) into subitem 1214(1).

Paragraph 1214(1)(c) requires that form 601E be used to make an Internet application for a Long Stay (Visitor) (Class TN) visa.

Item [67] – Subitem 1214(3)

This item amends subitem 1214(3) by setting out that an Internet application for a Long Stay (Visitor)(Class TN) visa may be made by an applicant if the applicant is in Australia (but not in immigration clearance), and is the holder of either a Subclass 676 (Tourist (Short Stay)) visa, or a Subclass 976 (Electronic Travel Authority (Visitor)) visa.

The item also restructures the format of subitem 1214(3) without making substantive amendments to matters contained therein.

Item [68] – Subparagraph 1218(1)(a)(ii)

This item amends subparagraph 1218(1)(a)(ii) to allow form 48N to be used as an approved form for an application for a Short Stay (Visitor) (Class TR) visa.

Item [69] – Paragraphs 1222(1)(a) and (b)

This item substitutes new paragraphs (a) to (d) into subitem 1222(1). Subitem 1222(1) sets out the forms on which certain types of student visa applications must be made.

Forms 157Y and 157W are being replaced with form 157A. Form 157S, which is used by Norwegian and Swedish nationals only, is being abolished. In essence, it is being replaced with form 157E. Form 157E will be gazetted for use by students from particular foreign countries and for particular subclasses.

New paragraph 1222(1)(a) provides that new form 157E or 157A must be used by an applicant who:

- is outside Australia;

- seeks to satisfy the primary criteria; and
- is included in a class of persons specified in a Gazette Notice.

New paragraph 1222(1)(b) provides that form 157P must be used if a visa application is made *in* Australia by an applicant who:

- holds a student visa that is subject to condition 8101; and
- seeks a student visa that is in the same education sector and not subject to condition 8101.

New paragraph 1222(1)(c) provides that form 157C must be used if a visa application is made *in* Australia by an applicant who:

- holds a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa that is subject to condition 8206 (no change of education provider); and
- seeks a student visa that is not subject to condition 8206.

New paragraph 1222(1)(d) provides that an application (made in or outside Australia), which is not covered by one of the new paragraphs above, must be made on new form 157A.

Item [70] – Sub-subparagraph 1222(2)(a)(i)(B)

This item omits sub-subparagraph 1222(2)(a)(i)(B) as there is no longer such a thing as an “assisted student”.

Item [71] – Sub-subparagraph 1222(2)(a)(i)(E)

This item substitutes new sub-subparagraphs 1222(2)(a)(i)(E), 1222(2)(a)(i)(F) and 1222(2)(a)(i)(G). Paragraph 1222(2)(a) sets out the first instalment of the visa application charge that is payable at the time of application.

New sub-subparagraph 1222(2)(a)(i)(E) clarifies that “AusAID student visa” has the meaning given to it by regulation 1.04A.

New sub-subparagraphs 1222(2)(a)(i)(F) and 1222(2)(a)(i)(G) mirror sub-subparagraphs 1222(2)(a)(i)(D) and 1222(2)(a)(i)(E) (in existence prior to 1 July 2001), which apply to an AusAID student and a member of the family unit of an AusAID student.

Under new sub-subparagraphs 1222(2)(a)(i)(F) and 1222(2)(a)(i)(G), the first instalment of the visa application charge is nil for an applicant who is:

- a Defence student to whom regulation 1.04B applies; or
- a member of the family unit of a Defence student who has not, since becoming a Defence student, applied for a visa other than a student visa.

Item [72] – Paragraph 1222(3)(c)

This item amends paragraph 1222(3)(c) to clarify its meaning and operation.

New paragraph 1222(3)(c) applies to circumstances in which the applicant seeks to satisfy the primary criteria and the application is made on form 157A, 157C or 157E. The application is to be accompanied by satisfactory evidence that:

- the applicant is enrolled in a registered full-time course of study or training of a type that has been gazetted under regulation 1.40A. The provider of this course must not be a suspended education provider; or
- the applicant has been offered a place in a registered full-time course of study or training of a type that has been gazetted under regulation 1.40A. The provider of this course must not be a suspended education provider; or
- if the applicant is an AusAID student who meets the requirements of subparagraph 1.04A (3)(b)(ii), a Defence student who meets the requirements of subparagraph 1.04B (b)(ii), or an exchange student - the applicant is enrolled or intends to enrol in a full-time course of study or training. The provider of this course must not be a suspended education provider; or
- if the applicant is a holder of a Subclass 560, 562 or 574 visa and satisfies the Minister that in connection with a full-time registered course of study or with a matter arising from the course, the relevant education institution requires the applicant to remain in Australia during the marking of a post-graduate thesis, then the applicant does not have to provide any evidence of enrolment or offer of a place.

A suspended education provider refers to an education provider suspended by the Minister for Immigration and Multicultural Affairs under section 97 of the *Education Services for Overseas Students Act 2000*.

New paragraph 1222(3)(d) clarifies that a person claiming to be a member of the primary applicant's family may combine his or her application and make it at the same time and place as the application of the primary applicant or the application of any other member of the family of the primary applicant.

New paragraph 1222(3)(e) provides that a person claiming to be a member of the family unit of the primary applicant must be included by the primary applicant in the application, or in the information required under subregulation 2.07AF (3) or (4). If the applicant became a member of the family unit after the decision to grant the student visa to the primary applicant was made, this does not apply.

Item [73] – Subitem 1222(4)

This item substitutes new subitem (4) into item 1222. New subitem 1222(4) lists the new visa subclasses in the Student (Temporary) (Class TU) visa class. These visa subclasses are:

- 570 – Independent ELICOS Sector;
- 571 – Schools Sector;
- 572 – Vocational Education and Training Sector;
- 573 – Higher Education Sector;
- 574 – Masters and Doctorate Sector;
- 575 – Non-Award Foundation/Other Sector; and

- 576 – AusAID or Defence Sector.

Item [74] – Subitem 1301(1)

This item makes a technical amendment to subitem 1301(1), which sets out the forms on which an application for a Bridging A (Class WA) visa (“Bridging A visa”) must be made. The effect of the amendment is that an application for a Bridging A visa must be made on new form 157A or 157C.

Item [75] – Subitem 1303(1)

This item makes a technical amendment to subitem 1303(1), which sets out the forms on which an application for a Bridging C (Class WC) visa (“Bridging C visa”) must be made. The effect of the amendment is that an application for a Bridging C visa must be made on new form 157A.

Item [76] – Subitem 1305(1)

This item makes a technical amendment to subitem 1305(1), which sets out the forms on which applications for a Bridging E (Class WE) visa (“Bridging E visa”) must be made. The effect of the amendment is that an application for a Bridging E visa must be made on new form 157A.

Part 1.3 – Amendments of Schedule 2

Item [77] – After subclause 010.611(3)

This item adds new subclause (3A) to clause 010.611.

New subclause (3A) applies to a Bridging A visa granted to a non-citizen on the basis of a valid application for, or an application for judicial review of a decision refusing an application for, a visa of one of the following classes:

- Graduate – Skilled (Temporary) (Class UQ);
- Skilled – Independent Overseas Student (Class DD); or
- Skilled – Australian-sponsored Overseas Student (Class DE).

The effect of the amendment is that a Bridging A visa granted to a non-citizen in such a case is subject only to mandatory condition 8501. This condition provides that the visa holder must maintain adequate arrangements for health insurance while in Australia. Bridging visas granted to Class UQ, DD and DE applicants will not be subject to any work restrictions.

Item [78] – After clause 020.221

This item inserts new clause 020.222.

New clause 020.222 applies to Bridging B visa applicants who have made a valid application for a Graduate – Skilled (Temporary) (Class UQ) visa, or whose Class UQ application is the subject of judicial review.

It makes it a time of decision criterion the applicant is required to travel overseas because of the serious illness or recent death overseas of a close relative of the applicant; or because the applicant’s Australian employer requires the applicant to travel in the course of the applicant’s employment. Regulation 1.03 defines “close relative” to mean the applicant’s spouse, child, adopted child, step-child, parent, step-parent, brother, sister, step-brother or step-sister.

This requirement is intended to ensure that Bridging B visas are granted to Class UQ applicants only where there is a compelling or compassionate need for the applicant to travel overseas. It is generally expected that Class UQ applicants will remain in Australia while their applications are being processed.

Item [79] – After subclause 020.611(3)

This item adds new subclause (3A) to clause 020.611.

New subclause (3A) applies to a Bridging B visa granted to a non-citizen on the basis of a valid application for, or an application for judicial review of a decision refusing an application for, a visa of one of the following classes:

- Graduate – Skilled (Temporary) (Class UQ);
- Skilled – Independent Overseas Student (Class DD); or
- Skilled – Australian-sponsored Overseas Student (Class DE).

The effect of the amendment is that a Bridging B visa granted to a non-citizen in such a case is subject only to mandatory condition 8501. This condition provides that the visa holder must maintain adequate arrangements for health insurance while in Australia. Bridging B visas granted to Class UQ, DD and DE applicants will not be subject to any work restrictions.

Item [80] – Paragraph 155.511(b)

Clause 155.511 sets out when a Subclass 155 (Five Year Resident Return) visa is in effect.

This item substitutes paragraph 155.511(b) with a new paragraph providing that if a visa is granted pursuant to an Internet application meeting the requirements of clause 155.211 and subclause 155.212(2), it is in effect for a period of five years from the date of the grant.

The item also renumbers current paragraph 155.511(b) which applies to a visa granted in respect of an application other than an Internet application. The paragraph is renumbered without amendment as paragraph 155.511(c).

Item [81] – Clause 155.711

Subclause 155.711 provides that evidence of the grant of a Subclass 155 (Five Year Resident Return) visa is by way of visa label affixed to a valid passport.

This item substitutes subclause 155.711 providing that no evidence of the grant of a visa need be given.

The amendment removes the obligation to give physical evidence of the grant of a visa both in respect of successful Internet applications and applications made other than by way of the Internet.

In practice evidence of a visa grant may still be given.

This amendment supports the Internet application facility by removing the obligation on a successful Internet applicant to physically present their passport to an immigration office for visa evidencing.

Item [82] – Clause 157.711

Clause 157.711 provides that evidence of the grant of a Subclass 157 (Three Month Resident Return) visa is by way of visa label affixed to a valid passport.

This item substitutes subclause 157.711 providing that no evidence of the grant of a visa need be given.

The amendment removes the obligation to give physical evidence of the grant of a visa both in respect of successful Internet application and applications made other than by way of the Internet.

In practice evidence of a visa grant may still be given.

This amendment supports the Internet application facility by removing the obligation on a successful Internet applicant to physically present their passport to an immigration office for visa evidencing.

Item [83] – Paragraph 417.214(b)

This item makes a technical amendment to paragraph 417.214(b), consequential to the amendment made by item 2417.2 below to clause 417.215.

Paragraph 417.214(b) currently provides that an applicant for a Subclass 417 (Working Holiday) visa must be a citizen of a country specified by a gazette notice mentioned in paragraph 417.215(a) or (b).

Clause 417.215 is amended so that the gazette notices made under that clause will refer to kinds of passports, rather than to countries.

Paragraph 417.214(b) is therefore amended to require that an applicant be the holder of a passport of a kind specified in a gazette notice made under clause 417.215.

Item [84] – Clause 417.215

Clause 417.215 details where an application for a Subclass 417 (Working Holiday) visa must be made.

Paragraph 417.215(a) currently requires that an application for a Subclass 417 visa is made, if the applicant is a citizen of a country specified by gazette notice for the purpose of the paragraph - in any country except Australia. Paragraph (b) requires that the application is made, if the applicant is a citizen of a country specified by a gazette notice for the purpose of the paragraph - in the country of which the applicant is a citizen.

This item substitutes clause 417.215 with a new clause detailing where an application for a Subclass 417 visa must be made.

Paragraph 417.215(a) provides that if the applicant is a person holding a valid passport of a kind specified by gazette notice for the purpose of the paragraph, he or she may make the application in any foreign country.

Paragraph 417.215(b) provides that if the applicant is a person holding a valid passport of a kind specified in a gazette notice for the purpose of the paragraph, he or she must make the application in the foreign country specified in the gazette notice in relation to the kind of passport held by that person.

The amendment will ensure that gazette notices may be made setting out where the holder of a specified passport issued by a foreign country as defined in the *Acts Interpretation Act 1901*, is required to apply for a Subclass 417 visa.

The item also inserts a note clarifying that the term 'foreign country' has the meaning provided by the definition in the *Acts Interpretation Act 1901*.

Item [85] – After paragraph 418.211(4)(c)

This item adds new paragraph 418.211(4)(ca).

The amendment provides that a holder of a Subclass 497 (Graduate – Skilled) visa is eligible for the grant of a Subclass 418 (Educational) visa.

Item [86] – Subparagraph 418.211(d)(i)

This item amends subparagraph 418.211(d)(i) to add a reference to new paragraph 418.211(ca).

The amendment has the effect that persons who do not hold a substantive visa, but whose last substantive visa was a Subclass 497 (Graduate – Skilled) visa will be eligible for the grant of a Subclass 418 (Educational) visa provided they meet certain Schedule 3 criteria.

Item [87] – Subparagraph 418.230(a)(iii)

This item makes a technical amendment at the end of subparagraph 418.230(a)(iii), consequential to the insertion of new subparagraph 418.230(a)(iv) by these Regulations.

Item [88] – After subparagraph 418.230(a)(iii)

This item adds new subparagraph 418.230(a)(iv).

The new subparagraph adds Subclass 497 (Graduate – Skilled) to the list of visas in paragraph 418.230(a). Persons holding visas listed in paragraph (a) are required to be sponsored by an institution, college or school for the grant of a 418 (Educational) visa, if the grant of the visa would allow the applicant a total period of stay of more than 3 months.

Item [89] – Subparagraph 427.222(b)(iii)

This item makes a technical amendment to subparagraph 427.222(b)(iii) which refers to subclause 457.223(6). The reference to subclause 457.223(6) is replaced with a reference to subclause 457.223(5). This is consequential to the changes made to clause 457.223 by these Regulations.

Item [90] – Clause 442.611

This item amends clause 442.611 so that visa condition 8202 will no longer be imposed on a visa granted to an applicant who satisfies the primary criteria for a Subclass 442 (Occupational Trainee) visa. This amendment is necessary because condition 8202 no longer applies in relation to Subclass 442.

Item [91] – Subclause 457.111(1), definition of *key activity*

This item makes a technical amendment to clause 457.111 to remove the definition of key activity which is no longer relevant to Part 457.

Item [92] – After subparagraph 457.211(c)

This item adds new paragraph 457.211(ca).

The amendment provides that a holder of a Subclass 497 (Graduate – Skilled) visa is eligible for the grant of a Subclass 457 (Business (Long Stay)) visa.

Item [93] – Subparagraph 457.211(d)(i)

This item amends subparagraph 457.211(d)(i) to add a reference to new paragraph 457.211(ca).

The amendment has the effect that persons who do not hold a substantive visa, but whose last substantive visa was a Subclass 497 (Graduate – Skilled) visa will be eligible for the grant of a Subclass 457 (Business (Long Stay)) visa provided they meet certain Schedule 3 criteria.

Item [94] – Subclause 457.223(1)

This item provides an amendment to subparagraph 427.223(1) which refers to subclause 457.223(6). The reference to subclause 457.223(6) is removed. This is consequential to the omission of that subclause by these Regulations.

Item [95] – Subclauses 457.223(4), (5) and (6)

New subclause (4) applies to applicants to be employed by pre-qualified business sponsors and standard business sponsors. New paragraph (4)(a) replaces existing paragraph (4)(a) and removes the concepts of key and non-key activities from the requirements for a Subclass 457 visa. The concepts of key activity and labour market testing are to be replaced with a requirement for the business activity nomination to meet certain skills and salary threshold requirements.

New paragraph (4)(b) is the same as existing paragraph 4(c).

New paragraph (4)(c) is the same as existing paragraph 4(d) except that it specifies that the nomination must be in accordance with form 1068.

New paragraph (4)(d) is the same as existing paragraph 4(f).

New paragraph (4)(e) is the same as existing paragraph 4(e).

New paragraph (4)(f) introduces a new requirement that the Minister must be satisfied that the applicant will be paid at the level specified in the nomination, and that level must be at least the minimum salary level that applied at the time the nomination was made. This minimum salary level is specified by Gazette Notice. This amendment is intended to ensure that subclass 457 visas are granted only in respect of highly skilled workers.

New paragraph (4)(g) is the same as existing paragraph (5)(f).

New subclause (5) applies to applicants to be employed in Australia by person a who does not operate a business activity in Australia.

New paragraph (5)(a) is the same as existing paragraph 6(a).

New paragraph (5)(b) is the same as existing paragraph 6(b).

New paragraph (5)(c) adds the requirement that the nomination must be in accordance with approved form 1068.

New paragraph (5)(d) is the same as existing paragraph 6(c).

New paragraph (5)(d) is the same as existing paragraph 6(d).

New paragraph (5)(e) is the same as existing paragraph 6(da).

New paragraph (5)(f) is the same as existing paragraph (6)(e) except that it removes the reference to non-key activities. The concepts of key activity and labour market testing are replaced with a requirement for the business activity nomination to meet certain skills and salary threshold requirements.

New paragraph (5)(g) introduces a new requirement that the Minister must be satisfied that the applicant will be paid at the level specified in the nomination, and that level must be at least the minimum salary level that applied at the time the nomination was made. This minimum salary level is specified by Gazette Notice. This amendment is intended to ensure that subclass 457 visas are granted only in respect of highly skilled workers.

New paragraph (5)(h) is the same as existing paragraph 6(f).

Item [96] – After Part 461

This item inserts new Part 497, creating the new visa Subclass 497 (Graduate - Skilled).

This is a temporary visa, available onshore to recent graduates of Australian educational institutions who intend to apply for a permanent Skilled – Independent Overseas Student (Residence) (Class DD) or Skilled – Australian-sponsored Overseas Student (Residence) (Class DE) visa. Only those persons who are likely to be able to meet the Schedule 1 requirements for making a valid Class DD or DE application are eligible for the visa.

The visa is intended to maintain the lawful status of such persons until they are able to make a valid Class DD or DE application. Persons are to be entitled to hold only one Subclass 497 visa. The visa will be granted for a stay of 6 months or less.

The only time of application criterion applying to primary applicants is the requirement that the applicant has complied substantially with any conditions to which the visa held by the applicant is subject.

Primary applicants must meet the following time of decision criteria:

- the Minister is satisfied that the applicant intends to comply with any conditions to which the visa is subject;
- the applicant meets certain public interest criteria relating to health and character;
- the Minister is satisfied that the applicant's expressed intention to make an valid application for a Class DD or DE visa is genuine; and
- there is no evidence that the applicant will not be able to make a valid application for a Class DD or DE application.

Secondary applicants must, at time of application, be a member of the family unit of a person who satisfies the primary time of application criteria for Subclass 497, and must have made a

combined application with that person. It is a requirement that a decision has not yet been made whether to grant a Subclass 497 visa to the primary applicant.

At time of decision, secondary applicants must continue to be the member of the family unit of a person who, having satisfied primary criteria, is the holder of a Subclass 497 visa. They must also meet certain public interest criteria relating to health and character.

All applicants must be in Australia at time of grant.

This is a temporary visa, permitting the holder to travel to, enter and remain in Australia for a period (not longer than 6 months after the date of visa grant) determined by the Minister.

All Subclass 497 visas are to be granted subject to condition 8501 (holder must maintain adequate arrangements for health insurance while in Australia). Visas granted to secondary applicants are also to be subject to condition 8522 (holder must leave Australia not later than the time of departure of the person who satisfied primary criteria and of whose family unit the holder is a member).

The visa is to be evidenced by a visa label affixed to a valid passport.

Item [97] – Parts 560, 562 and 563

This item substitutes the seven new visa subclasses contained in the Student (Temporary) (Class TU) visa class (see item 1222.5). They replace the three existing student visa subclasses – Subclass 560 (Student), Subclass 562 (Iranian Postgraduate Student) and Subclass 563 (Iranian Postgraduate Student Dependent).

The new student visa subclasses represent an education sector and are:

- 570 – Independent ELICOS Sector;
- 571 – Schools Sector;
- 572 – Vocational Education and Training Sector;
- 573 – Higher Education Sector;
- 574 – Masters and Doctorate Sector;
- 575 – Non-Award Foundation/Other Sector; and
- 576 – AusAID or Defence Sector.

These new visa subclasses will:

- allow for the better management of the varying risk levels of different countries and different education sectors;
- better target those markets that attract genuine overseas students;
- enable managed growth in emerging student markets;
- provide greater transparency in student visa processing;
- provide greater consistency in student visa processing onshore and offshore;

- allow for the better collection of, and reporting on, data for the administration of the student visa program; and
- incorporate the Iranian student visa caseload into the mainstream student visa program.

The new student visa subclasses largely mirror Subclass 560 (Student) with some modifications that give effect to the new scheme. The key provisions of each of the new student visa subclasses are noted below.

Subclass 570 – Independent ELICOS Sector

Division 570.2 Primary Criteria

The primary criteria must be satisfied by at least one member of the family unit (“the primary applicant”). The other members of the family unit who are applicants for a visa of this subclass need only satisfy the secondary criteria (“the secondary applicant”).

The primary criteria to be satisfied at the time of application mirror those of the Subclass 560 (Student) visa except for the following:

Iranian students

There is no longer any need to specify separate criteria for Iranian students because they are being incorporated into the new visa scheme.

AusAID students and exchange students

There is no longer any need to specify separate criteria for AusAID or secondary exchange students. This is because under the new visa scheme AusAID students are to be granted Subclass 576 (AusAID or Defence Sector) visas and secondary exchange students are to be granted Subclass 571 (Schools Sector) visas.

Clause 560.112

An equivalent to this clause is not required because clause 560.112 refers to visas and entry permits that are no longer in existence.

New subclause 570.211(3)

The requirements of new subclause 570.211(3) are the same as those in subclause 560.212(3) except that:

- the last substantive visa held by the applicant must be:
 - a student visa; or
 - a special purpose visa; or
 - a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; or
 - a Diplomatic (Temporary) (Class TF) visa; and
- the application must be made within 28 days (or within a period specified by Gazette Notice) after that last substantive visa ceased to be in effect.

New subclause 570.211(4)

The purpose of new subclause 570.211(4) is the same as for subclause 560.212(4). It allows a person who holds a Subclass 560, 562 or 570 visa that is subject to condition 8101 to apply for a Subclass 570 visa that is *not* subject to condition 8101. The requirements that such an applicant must meet are the same as those in subclause 560.212(4).

New subclause 570.211(5)

The purpose of new subclause 570.211(5) is the same as for subclause 560.212(5). It allows a person who holds a Subclass 560, 562 or 570 visa that is subject to condition 8206 to apply for a Subclass 570 visa that is *not* subject to condition 8206.

The requirements that such an applicant must meet are the same as those in subclause 560.212(5) except in one respect.

New paragraph 570.211(5)(c) requires an applicant to produce evidence of an offer of a place with an education provider of an ELICOS that is not the education provider of the ELICOS to which the visa held relates.

This will ensure that an applicant cannot enrol with a new education provider when his or her visa is subject to condition 8206 without meeting the exceptional circumstances test in new paragraph 570.211(5)(d).

New subclause 570.211(6)

New subclause 570.211(6) will ensure that a person who holds a Subclass 571, 572, 573, 574, 575 or 576 that is subject to condition 8206 cannot change education provider contrary to condition 8206 or avoid the exceptional circumstances test by applying for a Subclass 570 visa.

New clause 570.212

The purpose of new clause 570.212 is the same as existing clause 560.213. This clause seeks to ensure that the conditions to which the current visa held is subject, or previous visa held was subject, have been complied with.

The primary criteria to be satisfied at the time of decision mirror those of Subclass 560 (Student), except for the following:

Iranian students

Again, there is no longer any need to specify separate criteria for Iranian students because they are being incorporated into the new visa scheme.

AusAID students and exchange students

There is no longer any need to specify separate criteria for AusAID or secondary exchange students. This is because under the new visa scheme AusAID students are to be granted Subclass 576 (AusAID or Defence Sector) visas and secondary exchange students are to be granted Subclass 571 (Schools Sector) visas.

New clause 570.221

New clause 570.221 mirrors clause 560.220. The new clause sets out certain criteria that must be satisfied at the time of decision. Under subclause 570.221(1), the applicant must either meet

the requirements of clauses 570.222 to 570.231, or must have met the requirements in subclauses 570.211 (4) or (5) at the time of application.

If the requirements in subclauses 570.211 (4) or (5) at the time of application were met, the applicant must continue to meet those requirements and, in addition:

- the Minister must have no reason to believe that the applicant is not a genuine student; or
- the applicant can satisfy the criteria in clauses 570.223 to 570.231 in the case of 570.211 (4), or 570.222 to 570.231 in the case of 570.211 (5).

New clause 570.222

The purpose of new subclause 570.222 is to ensure that an applicant provides evidence that he or she is enrolled, by producing a certificate of enrolment, in a full-time ELICOS with an education provider.

New subclause 570.222(1) exempts applicants who applied on Form 157E from providing a certificate of enrolment. Students applying on Form 157E provide only a code on their electronic application.

New subclause 570.222(3) therefore requires that an applicant applying on Form 157E only has to provide evidence of enrolment with an education provider that is not a suspended education provider.

The purpose of new subclause 570.222(2) is to ensure that an applicant may still meet the criteria where there is an electronic transmission failure and the applicant cannot wait for the failure to be rectified.

Clause 560.222 is being omitted in its entirety. Paragraph 560.222(a) required evidence of confirmation of enrolment. Paragraph 560.222(b) provided an exception for exchange students, AusAID students and subsidised students approved by the Minister for Education, Training and Youth Affairs. AusAID students are being assessed under Subclass 576, exchange students under Subclass 571 and subsidised students were part of an old scheme that no longer exists.

The students catered for in sub-subparagraph 560.222(c)(ii)(A) are being assessed under 574.222(3).

New clause 570.223

New clause 570.223 mirrors clause 560.224 except that:

- new paragraph 570.223(1)(a) refers to the evidential requirements of new Schedule 5A; and
- there is no longer a need to provide an exception from the requirements of new subclause 570.223(1) for an applicant who is a Burmese citizen. This reflects that the treatment of foreign countries will be incorporated into the mainstream student visa program.

New clause 570.224

New clause 570.224 mirrors clause 560.225 except that an applicant who is applying outside Australia and who has previously been in Australia is also required to satisfy special return criteria 5010.

The purpose of this amendment is to facilitate agreements between a foreign country, AusAID and an applicant, where the applicant has agreed to return to work in a foreign country, after the student visa ceases, in return for financial support.

Clause 560.228

An equivalent to this clause is not required. Under clause 560.228 an applicant is effectively precluded from alternating between student and student dependant status indefinitely.

However, new paragraph 570.616(1)(c) imposes condition 8201 upon an applicant who satisfies the secondary criteria and who has turned 18 years of age. This effectively ensures that an applicant, who is over the age of 18 and who wishes to undertake a period of study greater than three months, must satisfy the primary criteria for a student visa.

The effect of new paragraph 570.616(1)(c) is that clause 560.228 is redundant.

Clause 560.229

Clause 560.229 is being omitted in its entirety. This clause was intended to reduce the opportunity for a non-government sponsored student from a non-gazetted country to extend his or her stay in Australia indefinitely by undertaking a series of short courses.

This problem will now be addressed by replacing non-gazetted countries with assessment levels 3, 4 and 5. Applicants subject to these assessment levels will have a "no further stay" condition imposed where they undertake a course of study of 10 months duration or less.

New clause 570.227

New clause 570.227 mirrors clause 560.230 except for new paragraph 570.227(b). As a "gazetted country" is no longer relevant in the new visa scheme, new paragraph 570.227(b) refers to an applicant who is subject to assessment level 3, 4 or 5. This is the equivalent of an applicant from a non-gazetted country.

New clause 570.229

New clause 570.229 covers cases in which the application is made in Australia and the applicant is subject to assessment level 3, 4 or 5. The period or periods of ELICOS that the applicant is seeking to undertake, together with the period or periods of any previous ELICOS taken as the holder of a subclass 570 visa, must not exceed the maximum period as specified in the relevant provisions of Schedule 5A.

New clause 570.230

New clause 570.230 ensures that an applicant, who has the financial support of either the Commonwealth or the government of a foreign country in relation to a student visa, also has the approval of that supporting government to remain in Australia and undertake an ELICOS.

New clause 570.231

New clause 570.231 sets as a requirement that the applicant must hold a passport of a kind specified in a Gazette Notice made under regulation 1.40.

Division 570.3 - Secondary criteria

The secondary criteria to be satisfied at the time of application mirror those of the Subclass 560 (Student) visa except for the following:

New clause 570.314

New clause 570.314 provides for the circumstance where the applicant was not declared as a member of the family unit in the primary applicant's student visa application. Where this is the case, the applicant must give evidence to the Minister that the applicant became a member of the family unit after the decision to grant the Subclass 570 visa to the primary applicant was made.

New clause 570.315

New clause 570.315 provides that an applicant must not be an exchange student. This is because an exchange student must apply for a student visa by seeking to satisfy the primary criteria of Subclass 571 (Schools Sector).

The secondary criteria to be satisfied at the time of decision mirror those of the Subclass 560 (Student) visa except for the following:

New Clause 570.322

New clause 570.322 reflects and combines clauses 560.321 and 560.327 with amendments to make the provision simpler and easier for the reader.

New Clause 570.325

New clause 570.325 mirrors subparagraph 560.322(a)(ii) except that an applicant will also be required to satisfy special return criteria 5010.

New Clause 570.326

New clause 570.326 mirrors clause 560.324 except for:

- minor technical amendments to ensure consistency with other provisions;
- paragraph 570.326(b) which requires the Minister to be satisfied that the member of the family unit, who satisfied the primary criteria and is the holder of a Subclass 560, 562 or 570 visa, has adequate means to support himself or herself and the members of his or her family unit during the period of the applicant's intended stay in Australia; and
- the equivalent of subregulation 560.324(2) has not been included. Subclause 560.324(2) related to the Burmese citizen requirements in 560.224 (4) & (5).

New clause 570.328

New clause 570.328 mirrors clause 560.326, except that it does not deal with certain March 1992 visa applications, as they are now irrelevant.

New clause 570.329

New clause 570.329 mirrors clause 560.328 except that a technical amendment has been made to clarify that "member of the family unit" (as defined in subregulation 1.12(2)) does not include the person satisfying the primary criteria. This makes the provision easier to read and conforms with other provisions in the *Migration Regulations 1994*.

New clause 570.330

New clause 570.330 requires the applicant to give evidence that there are sufficient funds to meet the travel costs for the applicant to and from Australia if the applicant is not in Australia, or only from Australia if the applicant is in Australia.

New clause 570.331

New clause 570.331 mirrors clause 560.329.

Division 570.6 -Conditions

New clause 570.611

The conditions imposed on a visa granted to an applicant who satisfies the primary criteria mirror those in clause 560.611 except that:

- there is no longer any need to have an exception to the imposition of condition 8517 in relation to certain March 1992 visa applications. This is because those applications are now irrelevant; and
- under new paragraph 570.611(1)(e) either or both conditions 8303 and 8535 may be imposed on a visa. Condition 8303 has always been a discretionary visa condition and new paragraph 570.611(1)(e) puts this beyond doubt. New condition 8535 is a new “no further stay” condition.

New clause 570.613

Under new subclause 570.613(1), new condition 8534 is a mandatory visa condition if the applicant, who satisfies the primary criteria, is subject to assessment levels 3, 4 or 5 and is seeking to undertake a course of study of 10 months duration or less.

New subclause 570.613(2) provides that if the applicant is a member of the family unit of the above primary applicant described above, then new condition 8534 is a mandatory visa condition.

New clause 570.614

Under new clause 570.614, new condition 8534 is a discretionary visa condition if the applicant, who satisfies the primary criteria, is subject to assessment level 1 or 2 and is seeking to undertake a course of study of 10 months duration or less.

New subclause 570.614(2) provides that if the applicant is a member of the family unit of the primary applicant described above, then new condition 8534 may be imposed.

New clause 570.615

Under new clause 570.615, new condition 8534 is a discretionary visa condition if the applicant, who satisfies the primary criteria, is subject to any assessment level and is seeking to undertake a course of study of more than 10 months duration.

New subclause 570.615(2) provides that if the applicant is a member of the family unit of the above primary applicant described above, then new condition 8534 may be imposed.

New clause 570.616

The conditions imposed on a visa granted to an applicant who satisfies the secondary criteria mirror those in clause 560.613 except that:

- new clause 570.616 has been drafted in simpler and clearer terms;
- condition 8101 (no work while in Australia) is no longer applicable in this clause, as it is provided for in new paragraph 570.611(1)(b);
- condition 8104 (up to 20 hours of work only while in Australia) is no longer applicable, as it is provided for in new clause 570.617;
- condition 8533 is no longer a mandatory condition as it does not apply to an applicant who satisfies the secondary criteria; and
- under new paragraph 570.611(1)(e), there are two additional discretionary visa conditions – 8523 and 8535. Previously, condition 8523 had been erroneously omitted as discretionary visa condition. New condition 8535 is a new “no further stay” condition; and
- new subclause 570.616 (2) specifies when condition 8201 should not be imposed on an applicant who has turned 18 if they hold or held a student or student dependant visa.

Division 570.7 - Way of giving evidence

New clause 570.711 applies where the student visa application was made on new form 157E. In such a case, no evidence needs to be given of the granted visa. New clause 570.712, which mirrors clause 560.711, applies in all other cases.

Subclass 571 – Schools Sector

Division 571.1 - Interpretation

New Division 571.1

Unlike clause 560.111, new clause 571.111 does not refer to a definition of “gazetted country”. This is because the new scheme does not refer to gazetted countries.

However, new clause 571.111 inserts a definition of “course of study”. Except for secondary exchange students, a course of study is a full-time registered course of study.

New paragraph 571.111(a) provides an exception for exchange students because an exchange student is not required to undertake a registered course.

Division 571.2 - Primary criteria

The primary criteria must be satisfied by at least one member of the family unit (“the primary applicant”). The other members of the family unit who are applicants for a visa of this subclass need only satisfy the secondary criteria (“the secondary applicant”).

The primary criteria to be satisfied at the time of application mirror those of the Subclass 560 (Student) visa except for the following:

Iranian students

There is no longer any need to specify separate criteria for Iranian students because they are being incorporated into the new visa scheme.

AusAID students

There is no longer any need to specify separate criteria for AusAID student. This is because under the new visa scheme AusAID students are being granted Subclass 576 (AusAID or Defence Sector) visas.

Clause 560.112

An equivalent to this clause is not required because clause 560.112 refers to visas and entry permits that are no longer in existence.

New subclause 571.211(3)

The requirements of new subclause 571.211(3) are the same as those in subclause 560.212(3), except that:

- the last substantive visa held by the applicant must be:
 - a student visa; or
 - a special purpose visa; or
 - a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; or
 - a Diplomatic (Temporary) (Class TF) visa; and
- the application must be made within 28 days (or within a period specified by Gazette Notice) after that last substantive visa ceased to be in effect.

New subclause 571.211(4)

The purpose of new subclause 571.211(4) is the same as for subclause 560.212(4). It allows a person who holds a Subclass 560, 562 or 571 visa that is subject to condition 8101 to apply for a Subclass 571 visa that is *not* subject to condition 8101. The requirements that such an applicant must meet are the same as those in subclause 560.212(4).

New subclause 571.211(5)

The purpose of new subclause 571.211(5) is the same as for subclause 560.212(5). It allows a person who holds a Subclass 560, 562 or 571 visa that is subject to condition 8206 to apply for a Subclass 571 visa that is *not* subject to condition 8206.

The requirements that such an applicant must meet are the same as those in subclause 560.212(5) except in two respects.

If the applicant is not an exchange student, new paragraph 571.211(5)(c) requires an applicant to produce evidence of an offer of a place with an education provider of a course of study that is not the education provider of the course of study for which the visa held relates.

This ensures that an applicant cannot enrol with a new education provider when his or her visa is subject to condition 8206 without meeting the exceptional circumstances test in new paragraph 571.211(5)(d).

New paragraph 571.211(5)(c) provides an exception for an exchange student from providing evidence of an offer of a place with the new education provider because an exchange student

may not receive an offer of a place. In addition, exchange students are not required to undertake registered courses, and usually the AASES form is sufficient to prove that the applicant will be undertaking study as an exchange student in Australia.

New subclause 571.211(6)

New subclause 571.211(6) ensures that a person who holds a Subclass 570, 572, 573, 575 or 576 visa that is subject to condition 8206 cannot change education provider contrary to condition 8206 or avoid the exceptional circumstances test by applying for a Subclass 571 visa.

New clause 571.212

The purpose of new clause 571.212 is the same as for clause 560.213. This clause seeks to ensure that the conditions to which the current visa held is subject, or to which the previous visa held was subject, have been complied with.

The primary criteria to be satisfied at the time of decision mirror those of the Subclass 560 (Student) visa except for the following:

Iranian students

Again, there is no longer any need to specify separate criteria for Iranian students because they are being incorporated into the new visa scheme.

AusAID students

There is no longer any need to specify separate criteria for AusAID students. This is because under the new visa scheme AusAID students are to be granted Subclass 576 (AusAID or Defence Sector) visas.

Clause 560.112

An equivalent to this clause is not required, as clause 560.112 refers to visas and entry permits which are no longer in existence.

New clause 571.221

New clause 571.221 substantially mirrors clause 560.220. The clause refers to the criteria that must be satisfied at the time of decision. The applicant must meet the requirements in clauses 571.222 to 571.231, unless the applicant met the requirements of subclauses 571.211(4) or (5) at the time of application.

If the requirements in subclauses 571.211(4) or (5) were met at the time of application, the applicant must continue to meet those requirements and, in addition:

- the Minister must have no reason to believe that the applicant is not a genuine student; or
- the applicant must satisfy the criteria in clauses 571.223 to 571.231 in the case of subclause 571.211(4) or clauses 571.222 to 571.231 in the case of subclause 571.211(5).

New subparagraphs 571.221(2)(b)(i) and 571.221(3)(b)(i) differ from the equivalent provisions in 560.220 to reflect that an applicant who is satisfying subclause 571.211(4) or (5) may previously have held a Subclass 560 or 562 visa and therefore could not *continue* to satisfy the criteria mentioned in 571.222 to 571.230.

The criteria in clauses 571.222 to 571.230 are primarily intended to elicit the genuineness of the student. Hence, the new subparagraphs require that the Minister have no reason to believe the applicant is not a genuine student.

New clause 571.222

The purpose of new subclause 571.222 is to ensure that an applicant provides evidence that he or she is enrolled, by producing a certificate of enrolment, in a full-time course of study with an education provider that is not a suspended education provider.

New paragraphs 571.222(1)(b) and (c) exempt applicants who applied on Form 157E and exchange students from providing a certificate of enrolment. Exchange students do not always receive a certificate of enrolment and students applying on Form 157E provide only a confirmation of enrolment code in their electronic application.

New subclauses 571.222(3) and (4) therefore require that applicants applying on Form 157E and exchange students provide only evidence of enrolment with an education provider that is not a suspended education provider.

The purpose of new subclause 571.222(2) is intended to ensure that an applicant may still meet the criteria where there is an electronic transmission failure and the applicant cannot wait for the failure to be rectified.

Clause 560.222 is being omitted in its entirety. Paragraph 560.222(a) required evidence of confirmation of enrolment. Paragraph 560.222(b) provided an exception for exchange students, AusAID students and subsidised students approved by the Minister for Education, Training and Youth Affairs. AusAID students are being assessed under Subclass 576, exchange students under Subclass 571 and subsidised students were part of an old scheme that no longer exists.

The students catered for in sub-subparagraph 560.222(c)(ii)(A) are being assessed under 574.222(3).

New clause 571.223

New clause 571.223 mirrors clause 560.224 except that:

- new paragraph 571.223(1)(a) refers to the evidential requirements of new Schedule 5A; and
- there is no longer a need to refer specifically to an applicant who is a Burmese citizen. This reflects that the treatment of foreign countries will be incorporated into the mainstream student visa program.

New clause 571.224

New clause 571.224 mirrors clause 560.225 except that an applicant who is applying outside Australia and who has previously been in Australia will also be required to satisfy special return criteria 5010.

The purpose of this amendment is to facilitate agreements between a foreign country or AusAID and an applicant, where the applicant has agreed to return to work in a foreign country after the student visa ceases, in return for financial support for the student visa.

Clause 560.228

An equivalent to this clause is not required. Under clause 560.228 an applicant is effectively precluded from alternating between student and student dependant status indefinitely.

However, new paragraph 571.613(1)(c) imposes condition 8201 upon an applicant who satisfies the secondary criteria and who has turned 18 years of age. This effectively ensures that an applicant, who is over the age of 18 and who wishes to undertake a period of study greater than three months, must satisfy the primary criteria for a student visa.

The effect of new paragraph 571.613(1)(c) is that clause 560.228 is redundant.

Clause 560.229

Clause 560.229 reduces the opportunity for a non-government sponsored student from a non-gazetted country to extend his or her stay in Australia indefinitely by undertaking a series of short courses.

However, this problem is addressed by replacing non-gazetted countries with assessment levels 3, 4 and 5. New paragraphs 5A309(1)(a) and 5A306(1)(a) effectively require an applicant in assessment level 3 or 4 to undertake a principal course of at least 16 months. New Schedule 5A requirements provide that an applicant in assessment level 5 must give evidence that he or she will undertake a principal course of at least 2 years duration.

In addition new paragraph 571.611(1)(e) imposes a "no further stay" condition upon Subclass 571 visas in all assessment levels on a discretionary basis.

New clause 571.227

New clause 571.227 mirrors clause 560.230 except for new paragraph 571.227(b). As a "gazetted country" is no longer relevant in the new visa scheme, new paragraph 571.227(b) refers to an applicant who is subject to assessment level 3, 4 or 5. This is the equivalent of an applicant from a non-gazetted country.

New clause 571.229

New clause 571.229 ensures that an applicant, who has the financial support of either the Commonwealth or the government of a foreign country in relation to a student visa, also has the approval of that supporting government to remain in Australia and undertake a further course of study.

New clause 571.230

New clause 571.230 requires an applicant to hold a passport at time of decision. This is so that the applicant can therefore be subject to the assessment level listed in the Gazette Notice for that kind of passport.

Division 571.3 - Secondary criteria

The secondary criteria to be satisfied at the time of application mirror those of Subclass 560 (Student), except for the following:

New clause 571.311

New clause 571.311 mirrors clause 560.311 except that it provides that if the application is made outside Australia, the applicant must be a member of the family unit of a:

- person who is the holder of a Subclass 560 or 562 visa; or
- a person who satisfies or has satisfied the primary criteria in Subdivision 571.21 (which sets out criteria to be satisfied at time of application).

New clause 571.314

New clause 571.314 provides for the circumstance where the applicant was not declared as a member of the family unit in the primary applicant's student visa application. Where this is the case, the applicant must give evidence to the Minister that the applicant became a member of the family unit after the decision to grant the Subclass 571 visa to the primary applicant was made.

The secondary criteria to be satisfied at the time of decision mirror those of the Subclass 560 (Student) visa except for the following:

New Clause 571.322

New clause 571.322 reflects and combines clauses 560.321 and 560.327 with amendments to make the provision simpler and easier for the reader.

New Clause 571.325

New clause 571.325 mirrors clause 560.322(a)(ii), except that an applicant will also be required to satisfy special return criteria 5010.

New Clause 571.326

New clause 571.326 mirrors clause 560.324 except for:

- minor technical amendments to ensure consistency with other provisions;
- paragraph 571.326(b), which requires the Minister to be satisfied that the primary person mentioned in 571.322 has adequate means to support himself or herself and the members of his or her family unit during the period of the applicant's intended stay in Australia; and
- an equivalent of subregulation 560.324(2) is not required, as this relates to the Burmese citizen requirements in subclauses 560.224 (4) and (5).

New clause 571.328

New clause 571.328 mirrors clause 560.326 except that it no longer deals with certain March 1992 visa applications, as they are now irrelevant.

New clause 571.329

New clause 571.329 mirrors clause 560.328 except that a technical amendment has been made to reflect that "member of the family unit" (as defined in subregulation 1.12(2)) does not include the person satisfying the primary criteria. This makes the provision easier to read and conforms to other provisions in the *Migration Regulations 1994*.

New clause 571.330

New clause 571.330 ensures that any secondary applicant, who applies for a student visa after the primary applicant has been granted the student visa, has to give evidence that there are sufficient funds to meet travel costs.

Division 571.6 - Conditions

New clause 571.611

The conditions imposed on a visa granted to an applicant who satisfies the primary criteria mirror those in clause 560.611 except that:

- there is no longer any need to have an exception to the imposition of condition 8517 in relation to certain March 1992 visa applications. This is because those applications are now irrelevant; and
- under new paragraph 571.611(1)(e) any one or more of conditions 8303, 8523, 8534 and 8535 may be imposed on a discretionary basis on a Subclass 571 visa. Condition 8303 has always been a discretionary visa condition and new paragraph 571.611(1)(e) puts this beyond doubt. New conditions 8534 and 8535 are new "no further stay" conditions.

New clause 571.613

New clause 571.613 imposes conditions on a visa granted to an applicant who satisfies the secondary criteria and mirrors those in clause 560.613 except that:

- new clause 571.613 has been drafted in simpler and clearer terms;
- condition 8101 (no work while in Australia) is no longer applicable, as it is provided for in new paragraph 571.611(1)(b);
- condition 8104 (up to 20 hours of work only while in Australia) is no longer applicable, as it is provided for in new clause 571.614;
- condition 8533 is no longer a mandatory condition as it does not in fact apply to an applicant who satisfies the secondary criteria; and
- under new paragraph 571.613(1)(d), there are two additional discretionary visa conditions – 8534 and 8535; and
- new subclause 571.613 (2) specifies when condition 8201 should not be imposed on an applicant who has turned 18 if they hold or held a student or student dependant visa.

Division 571.7 - Way of giving evidence

New clause 571.711 applies where the student visa application was made on new form 157E. In such a case, no evidence needs to be given of the granted visa.

New clause 571.712, which mirrors clause 560.711, applies in all other cases.

Subclass 572 – Vocational Education and Training Sector

Division 572.1 - Interpretation

New Division 572.1

Unlike clause 560.111, new clause 572.111 does not refer to a definition of “gazetted country”. This is because the new scheme does not refer to gazetted countries.

However, new clause 572.111 inserts a definition of “course of study” to mean a full-time registered course of study.

Division 572.2 - Primary criteria

The primary criteria must be satisfied by at least one member of the family unit (“the primary applicant”). The other members of the family unit who are applicants for a visa of this subclass need only satisfy the secondary criteria (“the secondary applicant”).

The primary criteria to be satisfied at the time of application mirror those of Subclass 560 (Student) except for the following:

Iranian students

There is no longer any need to specify separate criteria for Iranian students because they are being incorporated into the new visa scheme.

AusAID and exchange students

There is no longer any need to specify separate criteria for AusAID or exchange students. This is because under the new visa scheme AusAID and exchange students are to be granted a Subclass 576 (AusAID or Defence Sector) or a Subclass 571 (Schools Sector) visa.

Clause 560.112

An equivalent to this clause is not required because clause 560.112 refers to visas and entry permits that are no longer in existence.

New subclause 572.211(2)

The requirements of new subclause 572.211(2) are the same as those in subclause 560.212(1A) except that it allows for the applicant to meet the criteria of the subclause if the applicant is the holder of a Subclass 497 (Graduate – Skilled) visa.

New subclause 572.211(3)

The requirements of new subclause 572.211(3) are the same as those in subclause 560.212(3) except that:

- the last substantive visa held by the applicant must be:
 - a student visa; or
 - a special purpose visa; or
 - a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; or
 - a Diplomatic (Temporary) (Class TF) visa; or
 - a Subclass 497 (Graduate –Skilled) visa; and

- the application must be made within 28 days (or within a period specified by Gazette Notice) after that last substantive visa ceased to be in effect. In addition, the applicant must satisfy Schedule 3 criterion 3005.

New subclause 572.211(4)

The purpose of new subclause 572.211(4) is the same as for subclause 560.212(4). It allows a person who holds a Subclass 560, 562 or 572 visa that is subject to condition 8101 to apply for a Subclass 572 visa that is *not* subject to condition 8101. The requirements that such an applicant must meet are the same as those in subclause 560.212(4).

New subclause 572.211(5)

The purpose of new subclause 572.211(5) is the same as for subclause 560.212(5). It allows a person who holds a Subclass 560, 562 or 572 visa that is subject to condition 8206 to apply for a Subclass 572 visa that is *not* subject to condition 8206.

The requirements that such an applicant must meet are the same as those in subclause 560.212(5) except in one respect.

New paragraph 572.211(5)(c) requires an applicant to produce evidence of an offer of a place with an education provider of a course of study that is not the education provider of the course of study for which the visa held relates.

This will ensure that an applicant cannot enrol with a new education provider when his or her visa is subject to condition 8206 without meeting the exceptional circumstances test in new paragraph 572.211(5)(d).

New subclause 572.211(6)

New subclause 572.211(6) ensures that a person who holds a Subclass 570, 571, 573, 574, 575 or 576 visa that is subject to condition 8206 cannot change education provider contrary to condition 8206, or avoid the exceptional circumstances test by applying for a Subclass 572 visa.

New clause 572.212

The purpose of new clause 572.212 is the same as for clause 560.213. This clause seeks to ensure that the conditions to which the current visa held is subject, or to which the previous visa held was subject, have been complied with.

The primary criteria to be satisfied at the time of decision mirror those of Subclass 560 (Student) except for the following:

Iranian students

Again, there is no longer any need to specify separate criteria for Iranian students because they are being incorporated into the new visa scheme.

AusAID and exchange students

There is no longer any need to specify separate criteria for AusAID and exchange students. This is because under the new visa scheme AusAID and exchange students are to be granted a Subclass 576 (AusAID or Defence Sector) or Subclass 571 (Schools Sector) visa.

New clause 572.221

New clause 572.221 substantially mirrors clause 560.220. The clause sets out the criteria to be satisfied at the time of decision. The applicant must satisfy either the requirements at clauses 572.222 to 572.230, unless the applicant met the criteria in subclauses 572.211 (4) or (5) at the time of application.

If the requirements in subclauses 572.211 (4) or (5) were met at the time of application, the applicant must continue to meet those requirements and in addition:

- the Minister must have no reason to believe that the applicant is not a genuine student; or
- the applicant must satisfy the criteria in clauses 572.223 to 572.230 in the case of subclause 572.211(4) or clauses 572.222 to 572.230 in the case of subclause 572.211(5).

The criteria in 572.222 to 572.230 is primarily intended to elicit the genuineness of the student. New subparagraphs 572.221(2)(b)(i) and 572.221(3)(b)(i) therefore require that the Minister have no reason to believe the applicant is not a genuine student.

This reflects that an applicant satisfying subclause 572.211(4) or (5) may previously have held a Subclass 560 or 562 visa and cannot *continue* to satisfy the criteria mentioned in 572.222 to 572.230.

New clause 572.222

The purpose of new subclause 572.222 is to ensure that an applicant provides evidence that he or she is enrolled, by producing a certificate of enrolment, in a full-time course of study or training that is not a suspended education provider.

New subclause 572.222(1) exempts applicants who applied on Form 157E from providing a certificate of enrolment. Students applying on Form 157E provide only a confirmation of enrolment code on their electronic application.

New subclause 572.222(3) therefore requires that an applicant applying on Form 157E only has to provide evidence of enrolment with an education provider that is not a suspended education provider.

The purpose of new subclause 572.222(2) is to ensure that an applicant may still meet the criteria where there is an electronic transmission failure and the applicant cannot wait for the failure to be rectified.

Clause 560.222 is being omitted in its entirety. Paragraph 560.222(a) required evidence of confirmation of enrolment. Paragraph 560.222(b) provided an exception for exchange students, AusAID students and subsidised students approved by the Minister for Education, Training and Youth Affairs. AusAID students are being assessed under Subclass 576, exchange students under Subclass 571 and subsidised students were part of an old scheme that no longer exists.

The students catered for in sub-subparagraph 560.222(c)(ii)(A) are being assessed under 574.222(3).

New clause 572.223

New clause 572.223 mirrors clause 560.224 except that:

- new paragraph 572.223(1)(a) refers to the evidential requirements of new Schedule 5A; and

- there is no longer a need to make provision for an applicant who is a Burmese citizen. This reflects that the treatment of foreign countries is incorporated in the mainstream visa program.

New clause 572.224

New clause 572.224 mirrors clause 560.225 except that an applicant who is applying outside Australia and who has previously been in Australia will also be required to satisfy special return criteria 5010.

The purpose of this amendment is to facilitate any agreements between a foreign country, AusAID and an applicant, where the applicant has agreed to return and work in a foreign country after the student visa ceases in return for financial support for the course of study.

Clause 560.228

There is no requirement for an equivalent provision to clause 560.228.

Under clause 560.228 an applicant is effectively precluded from alternating between student and student dependant status indefinitely.

New paragraph 572.616(1)(c) addresses this problem by imposing condition 8201 upon an applicant who satisfies the secondary criteria and who has turned 18 years of age. This ensures that an applicant, who is over the age of 18 and who wishes to undertake a period of study greater than three months, must satisfy the primary criteria for the grant of a student visa.

The effect of new paragraph 572.616(1)(c) is that clause 560.228 is redundant.

Clause 560.229

There is no requirement for an equivalent provision to clause 560.229. Clause 560.229 reduces the opportunity for a non-government sponsored student from a non-gazetted country to extend his or her stay in Australia indefinitely by undertaking a series of short courses.

This problem will now be addressed by replacing non-gazetted countries with assessment levels 3, 4 and 5. Applicants subject to these assessment levels will have a "no further stay" condition imposed where they undertake a course of study of 10 months duration or less.

New clause 572.227

New clause 572.227 mirrors clause 560.230 except for:

- new paragraph 572.227(b). As a "gazetted country" is no longer relevant in the new visa scheme, new paragraph 572.227(b) refers to an applicant who is subject to assessment level 3, 4 or 5. This is the equivalent of an applicant from a non-gazetted country; and
- the addition of a reference to new Subclass 497 (Graduate-Skilled) in new sub-paragraph 572.227(c)(iii)(C). This allows holders and former holders of the Subclass 497 (Graduate – Skilled) visa to apply for a Subclass 572 (Vocational Education and Training) visa.

New clause 572.229

New clause 572.229 ensures that an applicant, who has the financial support of either the Commonwealth or the government of a foreign country in relation to the student visa held, also has the approval of that supporting government to remain in Australia and undertake a further course of study.

New clause 572.230

New clause 572.230 provides that an applicant must hold a passport at time of decision so that the applicant can be assessed as being subject to the assessment level listed in the Gazette Notice for that passport.

Division 572.3 - Secondary criteria

The secondary criteria to be satisfied at the time of application mirror those of the Subclass 560 (Student) visa except for the following:

New clause 572.311

New clause 572.311 mirrors clause 560.311 except that it provides that the applicant must be a member of the family unit of a:

- person who is the holder of a Subclass 560 or 562 visa; or
- a person who satisfies or has satisfied Subdivision 572.21 (which relates to the criteria that must be satisfied at time of application by an applicant seeking to satisfy primary criteria).

New clause 572.312

New clause 572.312 mirrors subclause 560.212(1A) except that subparagraph 572.312(2)(d)(iii) provides that an applicant meets the criteria of the subclause if the applicant is the holder of a Subclass 497 (Graduate – Skilled) visa.

New clause 572.314

New clause 572.314 provides for the circumstance where the applicant was not declared as a member of the family unit in the primary applicant's application. Where this is the case, the applicant must give evidence to the Minister that the applicant became a member of the family unit after the decision to grant the Subclass 572 visa to the primary applicant was made.

New clause 572.315

New clause 572.315 provides that an applicant must not be an exchange student. This is to ensure that an exchange student applies for a Subclass 571 (Schools Sector) visa as a primary applicant.

The secondary criteria to be satisfied at the time of decision mirror those of the Subclass 560 (Student) visa except for the following:

New Clause 572.322

New clause 572.322 reflects and combines clauses 560.321 and 560.327 with amendments to make the provision simpler and easier for the reader.

New Clause 572.325

New clause 572.325 mirrors subparagraph 560.322(a)(ii) except that an applicant will also be required to satisfy special return criteria 5010.

New Clause 572.326

New clause 572.326 mirrors clause 560.324 except for:

- minor technical amendments to ensure consistency with other provisions;
- paragraph 572.326(b), which requires the Minister to be satisfied that the primary person mentioned in 572.322 has adequate means to support himself or herself and the members of his or her family unit during the period of the applicant's intended stay in Australia; and
- no equivalent provision to subclause 560.324(2). This subclause relates to the Burmese citizen requirements in subclauses 560.224(4) and (5).

New clause 572.328

New clause 572.328 mirrors clause 560.326 except that it no longer deals with certain March 1992 visa applications, as they are now irrelevant.

New clause 572.329

New clause 572.329 mirrors clause 560.328 except that a technical amendment has been made to reflect that "member of the family unit" (as defined in subregulation 1.12(2)) does not include the person satisfying the primary criteria. This makes the provision easier to read and conforms to other provisions in the *Migration Regulations 1994*.

New clause 572.330

New clause 572.330 ensures that any secondary applicant, who applies for a student visa after the primary applicant has been granted the student visa, has to give evidence that there are sufficient funds to meet travel costs.

Division 572.6 - Conditions

New clause 572.611

The conditions imposed on a visa granted to an applicant who satisfies the primary criteria mirror those in clause 560.611 except that:

- there is no longer any need to have an exception to the imposition of condition 8517 in relation to certain March 1992 visa applications. This is because those applications are now irrelevant; and
- under new paragraph 572.611(1)(e) any one or more of conditions 8303, 8523 and 8535 may be imposed on a discretionary basis on a Subclass 572 visa. Condition 8303 has always been a discretionary visa condition and new paragraph 572.611(1)(e) puts this beyond doubt.

New clause 572.613

Under new subclause 572.613(1), new condition 8534 is a mandatory visa condition if the applicant, who satisfies the primary criteria, is subject to assessment levels 3, 4 or 5 and is seeking to undertake a course of study of 10 months duration or less.

New subclause 572.613(2) provides that if the applicant is a member of the family unit of the primary applicant described above, then new condition 8534 is imposed in the same manner.

New clause 572.614

Under new clause 572.614, new condition 8534 is a discretionary visa condition if the applicant, who satisfies the primary criteria, is subject to assessment level 1 or 2 and is seeking to undertake a course of study of 10 months duration or less.

New subclause 572.614(2) provides that if the applicant is a member of the family unit of the primary applicant described above, then new condition 8534 is imposed in the same manner.

New clause 572.615

Under new clause 572.615, new condition 8534 is a discretionary visa condition if the applicant, who satisfies the primary criteria, is subject to any assessment level and is seeking to undertake a course of study of more than 10 months duration.

New subclause 572.615(2) provides that if the applicant is a member of the family unit of the primary applicant described above, then new condition 8534 is imposed in the same manner.

New clause 572.616

New clause 572.616 imposes conditions on a visa granted to an applicant who satisfies the secondary criteria and mirrors those in clause 560.613 except that:

- new clause 572.616 has been drafted in simpler and clearer terms;
- condition 8101 (no work while in Australia) is no longer applicable, as it is provided for in new paragraph 572.611(1)(b);
- condition 8104 (up to 20 hours of work only while in Australia) is no longer applicable, as it is provided for in new clause 572.617;
- condition 8533 is no longer a mandatory condition as it does not apply to an applicant who satisfies the secondary criteria; and
- under new paragraph 572.616(1)(d), there is an additional discretionary visa condition – 8535.

Division 572.7 - Way of giving evidence

New clause 572.711 applies where the student visa application was made on new form 157E. In such a case, no evidence needs to be given of the granted visa.

New clause 572.712, which mirrors clause 560.711, applies in all other cases.

Subclass 573 – Higher Education Sector

Division 573.1 - Interpretation

New Division 573.1

Unlike clause 560.111, new clause 573.111 does not refer to a definition of “gazetted country”. This is because the new scheme does not refer to gazetted countries.

However, new clause 573.111 inserts a definition of “course of study” to mean a full-time registered course of study.

Division 573.2 - Primary criteria

The primary criteria must be satisfied by at least one member of the family unit ("the primary applicant"). The other members of the family unit who are applicants for a visa of this subclass need only satisfy the secondary criteria ("the secondary applicant").

The primary criteria to be satisfied at the time of application mirror those of the Subclass 560 (Student) visa except for the following:

Iranian students

There is no longer any need to specify separate criteria for Iranian students because they will be incorporated into the new visa scheme.

AusAID students

There is no longer any need to specify separate criteria for AusAID or exchange students. This is because under the new visa scheme AusAID and exchange students will be granted a Subclass 576 (AusAID or Defence Sector) or a Subclass 571 (Schools Sector) visa.

Clause 560.112

An equivalent to this clause is not required because clause 560.112 refers to visas and entry permits that are no longer in existence.

New subclause 573.211(2)

The requirements of new subclause 573.211(2) are the same as those in subclause 560.212(1A) except that it allows for the applicant to meet the criteria of the subclause if the applicant is the holder of a Subclass 497 (Graduate – Skilled) visa.

New subclause 573.211(3)

The requirements of new subclause 573.211(3) are the same as those in subclause 560.212(3) except that:

- the last substantive visa held by the applicant must be:
 - a student visa; or
 - a special purpose visa; or
 - a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; or
 - a Diplomatic (Temporary) (Class TF) visa; or
 - a Subclass 497 (Graduate –Skilled) visa; and
- the application must be made within 28 days (or within a period specified by Gazette Notice) after that last substantive visa ceased to be in effect. In addition, the applicant must satisfy Schedule 3 criterion 3005.

New subclause 573.211(4)

The purpose of new subclause 573.211(4) is the same as subclause 560.212(4). It allows a person who holds a Subclass 560, 562 or 573 visa that is subject to condition 8101 to apply for a

Subclass 573 visa that is *not* subject to condition 8101. The applicant must give evidence that they have commenced the course of study or training for which the visa held was granted.

New subclause 573.211(5)

The purpose of new subclause 573.211(5) is the same as subclause 560.212(5). It allows a person who holds a Subclass 560, 562 or 573 visa that is subject to condition 8206 to apply for a Subclass 573 visa that is *not* subject to condition 8206.

The requirements that such an applicant must meet are the same as those in subclause 560.212(5) except in the following provisions.

New paragraph 573.211(5)(c) requires an applicant to produce evidence of an offer of a place with an education provider of a course of study that is not the education provider of the course of study for which the visa held relates.

This subclause ensures that an applicant cannot enrol with a new education provider when his or her visa is subject to condition 8206 without meeting the exceptional circumstances test in new paragraph 573.211(5)(d).

New subclause 573.211(6)

New subclause 573.211(6) will ensure that a person who holds a Subclass 570, 571, 572, 574, 575 or 576 visa that is subject to condition 8206 cannot change education provider contrary to condition 8206 or avoid the exceptional circumstances test by applying for a Subclass 573 visa.

New clause 573.212

The purpose of new clause 573.212 is the same as clause 560.213. This clause seeks to ensure that the conditions attached to the current or previous visa held have been complied with.

The primary criteria to be satisfied at the time of decision mirror those of the Subclass 560 (Student) visa except for the following:

Iranian students

Again, there is no longer any need to specify separate criteria for Iranian students because they will be incorporated into the new visa scheme.

AusAID and exchange students

There is no longer any need to specify separate criteria for AusAID and exchange students. This is because under the new visa scheme AusAID and exchange students will be granted a Subclass 576 (AusAID or Defence Sector) or Subclass 571 (Schools Sector) visa.

New clause 573.221

New clause 573.221 substantially mirrors clause 560.220. The clause sets out the criteria to be satisfied at the time of decision. The applicant must satisfy either the requirements at clauses 573.222 to 573.230, unless the applicant met the criteria in subclauses 573.211 (4) or (5) at the time of application.

If the requirements in subclauses 573.211 (4) or (5) at the time of application are met, the applicant must continue to meet those requirements and in addition:

- the Minister must have no reason to believe that the applicant is not a genuine student; or
- the applicant must satisfy the criteria in clauses 573.223 to 573.230 in the case of 573.211 (4) or 573.222 to 573.230 in the case of 573.211 (5).

The criteria in 573.222 to 573.230 is primarily intended to elicit the genuineness of the student. New subparagraphs 573.221(2)(b)(i) and 573.221(3)(b)(i) therefore require that the Minister have no reason to believe the applicant is not a genuine student.

This reflects that an applicant satisfying subclause 573.211(4) or (5) may previously have held a Subclass 560 or 562 visa and cannot *continue* to satisfy the criteria mentioned in 573.222 to 573.230.

New clause 573.222

The purpose of new subclause 573.222 is to ensure that an applicant provides evidence that he or she is enrolled, by producing a certificate of enrolment, in a full-time course of study or training with an education provider that is not a suspended education provider.

New subclause 573.222(1) exempts applicants who applied on Form 157E from providing a certificate of enrolment. Students applying on Form 157E provide only a confirmation of enrolment code on their electronic application.

New subclause 573.222(3) therefore requires that an applicant applying on Form 157E only has to provide evidence of enrolment with an education provider that is not a suspended education provider.

The purpose of new subclause 573.222(2) is to ensure that an applicant may still meet the criteria where there is an electronic transmission failure and the applicant cannot wait for the failure to be rectified.

Clause 560.222 is being omitted in its entirety. Paragraph 560.222(a) required evidence of confirmation of enrolment. Paragraph 560.222(b) provided an exception for exchange students, AusAID students and subsidised students approved by the Minister for Education, Training and Youth Affairs. AusAID students are being assessed under Subclass 576, exchange students under Subclass 571 and subsidised students were part of an old scheme that no longer exists.

The students catered for in sub-subparagraph 560.222(c)(ii)(A) are being assessed under 574.222(3).

New clause 573.223

New clause 573.223 mirrors clause 560.224 except that:

- new paragraph 573.223(a) refers to the evidential requirements of new Schedule 5A; and
- there is no longer a need to provide an exception from the requirements of new subclause 573.223 for an applicant who is a Burmese citizen. This reflects that the treatment of foreign countries is being incorporated into the mainstream student visa program.

New clause 573.224

New clause 573.224 mirrors clause 560.225 except that an applicant who is applying outside Australia and who has previously been in Australia will also be required to satisfy special return criteria 5010.

The purpose of this amendment is to facilitate any agreements between a foreign country, AusAID and an applicant, where the applicant has agreed to return and work in a foreign country after the student visa ceases in return for financial support for the student visa.

Clause 560.228

Clause 560.228 is being omitted in its entirety.

Under clause 560.228 an applicant is effectively precluded from alternating between student and student dependant status indefinitely.

New paragraph 573.616(1)(c) addresses this problem by imposing condition 8201 upon an applicant who satisfies the secondary criteria and who has turned 18 years of age. This ensures that an applicant, who is over the age of 18 and who wishes to undertake a period of study greater than three months, must satisfy the primary criteria for the grant of a student visa.

The effect of new paragraph 573.616(1)(c) is that clause 560.228 is redundant.

Clause 560.229

Clause 560.229 is being omitted in its entirety. This clause reduces the opportunity for a non-government sponsored student from a non-gazetted country to extend his or her stay in Australia indefinitely by undertaking a series of short courses.

This problem will now be addressed by replacing non-gazetted countries with assessment levels 3, 4 and 5. Applicants subject to these assessment levels will have a "no further stay" condition imposed where they undertake a course of study of 10 months duration or less.

New clause 573.227

New clause 573.227 mirrors clause 560.230 except for:

- new paragraph 573.227(b). As a "gazetted country" is no longer relevant in the new visa scheme, new paragraph 573.227(b) refers to an applicant who is subject to assessment level 3, 4 or 5. This is the equivalent of an applicant from a non-gazetted country; and
- the addition of Subclass 497 (Graduate-Skilled) visa in new sub-subparagraph 573.227(c)(iii)(C). This allows holders and former holders of the Subclass 497 (Graduate – Skilled) visa to apply for a Subclass 573 (Higher Education Sector) visa.

New clause 573.229

New clause 573.229 ensures that an applicant, who has the financial support of either the Commonwealth or the government of a foreign country in relation to the student visa held, also has the approval of that supporting government to remain in Australia and undertake a further course of study.

New clause 573.230

New clause 573.230 ensures that an applicant holds a passport at time of decision and can therefore be subject to the assessment level listed in the Gazette Notice for that passport.

Division 573.3 - Secondary criteria

The secondary criteria to be satisfied at the time of application mirror those of the Subclass 560 (Student) visa except for the following:

New clause 573.311

New clause 573.311 mirrors clause 560.311 except that it provides that the applicant must be a member of the family unit of a:

- person who is the holder of a Subclass 560 or 562 visa; or
- a person who satisfies or has satisfied the primary criteria in subdivision 573.21 at time of application.

New clause 573.312

New clause 573.312 mirrors clause 560.212(1A) except that new subparagraph 573.312(2)(d)(iii) provides that an applicant meets the criteria of the subclause if the applicant is the holder of a Subclass 497 (Graduate – Skilled) visa.

New clause 573.314

New clause 573.314 provides for the circumstance where the applicant was not declared as a member of the family unit in the primary applicant's application. Where this is the case, the applicant must give evidence to the Minister that the applicant became a member of the family unit after the decision to grant the Subclass 573 visa to the primary applicant was made.

The secondary criteria to be satisfied at the time of decision mirror those of the Subclass 560 (Student) visa except for the following:

New Clause 573.322

New clause 573.322 reflects and combines clauses 560.321 and 560.327 with amendments to make the provision simpler and easier for the reader.

New Clause 573.325

New clause 573.325 mirrors clause 560.322 (a) (ii) except that an applicant will also be required to satisfy special return criteria 5010.

New Clause 573.326

New clause 573.326 mirrors clause 560.324 except for:

- minor technical amendments to ensure consistency with other provisions; and
- paragraph 573.326(b) which requires the Minister to be satisfied that the primary person mentioned in 573.322 has adequate means to support himself or herself and the members of his or her family unit during the period of the applicant's intended stay in Australia.
- Subregulation 560.324 (2) is being omitted. This related to the Burmese citizen requirements in 560.224 (4) & (5).

New clause 573.328

New clause 573.328 mirrors clause 560.326 except that it no longer deals with certain March 1992 visa applications, as they are now irrelevant.

New clause 573.329

New clause 573.329 mirrors clause 560.328 except that a technical amendment has been made to reflect that "member of the family unit" (as defined in subregulation 1.12(2)) does not include the person satisfying the primary criteria. This makes the provision easier to read and conforms to other provisions in the *Migration Regulations 1994*.

New clause 573.330

New clause 573.330 ensures that any secondary applicant, who applies for a student visa after the primary applicant has been granted the student visa, has to give evidence that there are sufficient funds to meet travel costs.

New clause 573.331

New clause 573.331 provides that if the applicant has not turned 18, public interest criteria 4017 and 4018 have been satisfied.

Division 573.6 - Conditions

New clause 573.611

The conditions imposed on a visa granted to an applicant who satisfies the primary criteria mirror those in clause 560.611 except that:

- there is no longer any need to have an exception to the imposition of condition 8517 in relation to certain March 1992 visa applications. This is because those applications are now irrelevant; and
- new paragraph 573.611(1)(d) imposes condition 8203 upon an applicant who is a citizen of Iran; and
- under new paragraph 573.611(1)(e) any one or more of conditions 8303, 8523 and 8535 may be imposed on a discretionary basis on a Subclass 573 visa. Condition 8303 has always been a discretionary visa condition and new paragraph 573.611(1)(e) puts this beyond doubt. Condition 8535 is a new "no further stay" condition.

New clause 573.613

Under new subclause 573.613(1), new condition 8534 is a mandatory visa condition if the applicant, who satisfies the primary criteria, is subject to assessment levels 3, 4 or 5 and is seeking to undertake a course of study of 10 months duration or less.

New subclause 573.613(2) provides that if the applicant is a member of the family unit of the primary applicant described above, then new condition 8534 is imposed in the same manner.

New clause 572.614

Under new clause 573.614, new condition 8534 is a discretionary visa condition if the applicant, who satisfies the primary criteria, is subject to assessment level 1 or 2 and is seeking to undertake a course of study of 10 months duration or less.

New subclause 573.614(2) provides that if the applicant is a member of the family unit of the primary applicant described above, then new condition 8534 is imposed in the same manner.

New clause 573.615

Under new clause 573.615, new condition 8534 is a discretionary visa condition if the applicant, who satisfies the primary criteria, is subject to any assessment level and is seeking to undertake a course of study of more than 10 months duration.

New subclause 573.615(2) provides that if the applicant is a member of the family unit of the primary applicant described above, then new condition 8534 is imposed in the same manner.

New clause 573.616

New clause 573.616 imposes conditions on a visa granted to an applicant who satisfies the secondary criteria and mirrors those in clause 560.613 except that:

- new clause 573.616 has been drafted in simpler and clearer terms;
- condition 8101 (no work while in Australia) is no longer applicable, given provision in new 573.611 (1) (b);
- condition 8104 (up to 20 hours of work only while in Australia) is no longer applicable, given provision in new 573.617;
- condition 8533 is no longer a mandatory condition as it does not in fact apply to an applicant who satisfies the secondary criteria;
- under new paragraph 573.616(1)(d), there is an additional discretionary visa condition – 8535; and
- new subclause 573.616 (2) specifies when condition 8201 should not be imposed on an applicant who has turned 18 if they hold or held a student or student dependant visa.

Division 573.7 - Way of giving evidence

New clause 573.711 applies where the student visa application was made on new form 157E. In such a case, no evidence needs to be given of the granted visa.

New clause 573.712, which mirrors clause 560.711, applies in all other cases.

Subclass 574 – Masters and Doctorate Sector

Division 574.1 - Interpretation

New Division 574.1

Unlike clause 560.111, new clause 574.111 does not refer to a definition of “gazetted country”. This is because the new scheme does not refer to gazetted countries.

However, new clause 574.111 inserts a definition of “course of study” to mean a full-time registered course of study.

Division 574.2 - Primary criteria

The primary criteria must be satisfied by at least one member of the family unit ("the primary applicant"). The other members of the family unit who are applicants for a visa of this subclass need only satisfy the secondary criteria ("the secondary applicant").

The primary criteria to be satisfied at the time of application mirror those of the Subclass 560 (Student) visa except for the following:

Iranian students

There is no longer any need to specify separate criteria for Iranian students because they will be incorporated into the new visa scheme.

AusAID and exchange students

There is no longer any need to specify separate criteria for AusAID or exchange students. This is because under the new visa scheme AusAID and exchange students will be granted a Subclass 576 (AusAID or Defence Sector) or a Subclass 571 (Schools Sector) visa.

Clause 560.112

An equivalent to this clause is not required because clause 560.112 refers to visas and entry permits that are no longer in existence

New subclause 574.211(2)

The requirements of new subclause 574.211(2) are the same as those in subclause 560.212(1A) except that it allows for the applicant to meet the criteria of the subclause if the applicant is the holder of a Subclass 497 (Graduate – Skilled) visa.

New subclause 574.211(3)

The requirements of new subclause 574.211(3) are the same as those in subclause 560.212(3) except that:

- the last substantive visa held by the applicant must be:
 - a student visa; or
 - a special purpose visa; or
 - a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; or
 - a Diplomatic (Temporary) (Class TF) visa; or
 - a Subclass 497 (Graduate –Skilled) visa; and
- the application must be made within 28 days (or within a period specified by Gazette Notice) after that last substantive visa ceased to be in effect. In addition, the applicant must satisfy Schedule 3 criterion 3005.

New subclause 574.211(4)

The purpose of new subclause 574.211(4) is the same as subclause 560.212(4). It allows a person who holds a Subclass 560, 562 or 574 visa that is subject to condition 8101 to apply for a

Subclass 574 visa that is *not* subject to condition 8101. The requirements that such an applicant must meet are the same as those in subclause 560.212(4).

New subclause 574.211(5)

The purpose of new subclause 574.211(5) is the same as subclause 560.212(5). It allows a person who holds a Subclass 560, 562 or 574 visa that is subject to condition 8206 to apply for a Subclass 574 visa that is *not* subject to condition 8206.

The requirements that such an applicant must meet are the same as those in subclause 560.212(5) except in the following provisions.

New paragraph 574.211(5)(c) requires an applicant to produce evidence of an offer of a place with an education provider of a course of study that is not the education provider of the course of study for which the visa held relates.

This will ensure that an applicant cannot enrol with a new education provider when his or her visa is subject to condition 8206 without meeting the exceptional circumstances test in new paragraph 574.211(5)(d).

New subclause 574.211(6)

New subclause 574.211(6) will ensure that a person who holds a Subclass 570, 571, 572, 573, 575 or 576 visa that is subject to condition 8206 cannot change education provider contrary to condition 8206 or avoid the exceptional circumstances test by applying for a Subclass 574 visa.

New clause 574.212

The purpose of new clause 574.212 is the same as for clause 560.213. This clause seeks to ensure that the conditions to which the current visa held is subject, or to which the previous visa held was subject, have been complied with.

The primary criteria to be satisfied at the time of decision mirror those of the Subclass 560 (Student) visa except for the following:

Iranian students

Again, there is no longer any need to specify separate criteria for Iranian students because they will be incorporated into the new visa scheme.

AusAID and exchange students

There is no longer any need to specify separate criteria for AusAID and exchange students. This is because under the new visa scheme AusAID and exchange students will be granted a Subclass 576 (AusAID or Defence Sector) or Subclass 571 (Schools Sector) visa.

New clause 574.221

New clause 574.221 substantially mirrors clause 560.220. The clause sets out the criteria to be satisfied at the time of decision. The applicant must satisfy either the requirements at clauses 574.222 to 574.230, unless the applicant met the criteria in subclauses 574.211 (4) or (5) at the time of application.

If the requirements in subclauses 574.211 (4) or (5) at the time of application are met, the applicant must continue to meet those requirements and in addition:

- the Minister must have no reason to believe that the applicant is not a genuine student; or
- the applicant must satisfy the criteria in clauses 574.223 to 574.230 in the case of 574.211 (4) or 574.222 to 574.230 in the case of 574.211 (5).

The criteria in 574.222 to 574.230 is primarily intended to elicit the genuineness of the student. New subparagraphs 574.222(2)(b)(i) and 574.222(3)(b)(i) therefore require that the Minister have no reason to believe the applicant is not a genuine student.

This reflects that an applicant satisfying subclause 574.211(4) or (5) may previously have held a Subclass 560 or 562 visa and cannot *continue* to satisfy the criteria mentioned in 574.222 to 574.230.

New clause 574.222

The purpose of new subclause 574.222 is to ensure that an applicant provides evidence that he or she is enrolled, by producing a certificate of enrolment, in a full-time course of study or training with an education provider that has not been suspended by the Minister for Immigration and Multicultural Affairs.

New subclause 574.222(1) exempts applicants who applied on Form 157E from providing a certificate of enrolment. Students applying on Form 157E provide only a confirmation of enrolment code on their electronic application.

New subclause 574.222 (4) therefore requires that an applicant applying on Form 157E provide only evidence of enrolment with an education provider that has not been suspended by the Minister for Immigration and Multicultural Affairs.

The purpose of new subclause 574.222 (2) is to ensure that an applicant may still meet the criteria where there is an electronic transmission failure and the applicant cannot wait for the failure to be rectified.

New subclause 574.222(3) allows a holder of a Subclass 560, 562 or 574 visa, who needs a further student visa to remain in Australia during the marking of a post-graduate thesis, to be able to satisfy the criteria.

Clause 560.222 is being omitted in its entirety. Paragraph 560.222(a) required evidence of confirmation of enrolment. Paragraph 560.222(b) provided an exception for exchange students, AusAID students and subsidised students approved by the Minister for Education, Training and Youth Affairs. AusAID students are being assessed under Subclass 576, exchange students under Subclass 571 and subsidised students were part of an old scheme that no longer exists.

The students catered for in sub-subparagraph 560.222(c)(ii)(A) are being assessed under subclause 574.222(3).

New clause 574.223

New clause 574.223 mirrors clause 560.224 except that:

- new paragraph 574.223(1)(a) refers to the evidential requirements of new Schedule 5A; and
- there is no longer a need to provide an exception from the requirements of new subclause 574.223(1) for an applicant who is a Burmese citizen. This reflects that the treatment of foreign countries is incorporated in the mainstream student visa program.

New clause 574.224

New clause 574.224 mirrors clause 560.225 except that an applicant who is applying outside Australia and who has previously been in Australia will also be required to satisfy special return criteria 5010.

The purpose of this amendment is to facilitate any agreements between a foreign country, AusAID and an applicant, where the applicant has agreed to return and work in a foreign country after the student visa ceases in return for financial support for the student visa.

Clause 560.228

Clause 560.228 is being omitted in its entirety.

Under clause 560.228 an applicant is effectively precluded from alternating between student and student dependant status indefinitely.

New paragraph 574.616(1)(c) addresses this problem by imposing condition 8201 upon an applicant who satisfies the secondary criteria and who has turned 18 years of age. This ensures that an applicant, who is over the age of 18 and who wishes to undertake a period of study greater than three months, must satisfy the primary criteria for the grant of a student visa.

The effect of new paragraph 574.616(1)(c) is that clause 560.228 is redundant.

Clause 560.229

Clause 560.229 is being omitted in its entirety. This clause reduces the opportunity for a non-government sponsored student from a non-gazetted country to extend his or her stay in Australia indefinitely by undertaking a series of short courses.

This problem will now be addressed by replacing non-gazetted countries with assessment levels 3, 4 and 5. Applicants subject to these assessment levels will have a "no further stay" condition imposed where they undertake a course of study of 10 months duration or less.

New clause 574.227

New clause 574.227 mirrors clause 560.230 except for:

- new paragraph 574.227(b). As a "gazetted country" is no longer relevant in the new visa scheme, new paragraph 574.227(b) refers to an applicant who is subject to assessment level 3, 4 or 5. This is the equivalent of an applicant from a non-gazetted country; and
- the addition of new Subclass 497 (Graduate-Skilled) visa in new sub-subparagraph 574.227(c)(iii)(C). This allows holders and former holders of the Subclass 497 (Graduate – Skilled) visa to apply for a Subclass 574 (Higher Education Sector) visa.

New clause 574.229

New clause 574.229 ensures that an applicant, who has the financial support of either the Commonwealth or the government of a foreign country in relation to the student visa held, also has the approval of that supporting government to remain in Australia and undertake a further course of study.

New clause 574.230

New clause 574.230 ensures that an applicant holds a passport at time of decision and can therefore be subject to the assessment level listed in the Gazette Notice for that passport.

Division 574.3 - Secondary criteria

The secondary criteria to be satisfied at the time of application mirror those of the Subclass 560 (Student) visa except for the following:

New clause 574.311

New clause 574.311 mirrors clause 560.311 except that it provides that the applicant must be a member of the family unit of a:

- person who is the holder of a Subclass 560 or 562 visa; or
- a person who satisfies or has satisfied the primary criteria at time of application.

New clause 574.312

New clause 574.312 mirrors clause 560.212(1A) except that new subparagraph 574.312(2)(d)(iii) provides that an applicant meets the criteria of the subclause if the applicant is the holder of a Subclass 497 (Graduate – Skilled) visa.

New clause 574.314

New clause 574.314 provides for the circumstance where the applicant was not declared as a member of the family unit in the primary applicant's application. Where this is the case, the applicant must give evidence to the Minister that the applicant became a member of the family unit after the decision to grant the Subclass 574 visa to the primary applicant was made.

The secondary criteria to be satisfied at the time of decision mirror those of the Subclass 560 (Student) visa except for the following:

New Clause 574.322

New clause 574.322 reflects and combines clauses 560.321 and 560.327 with amendments to make the provision simpler and easier for the reader.

New Clause 574.325

New clause 574.325 mirrors clause 560.322 (a) (ii) except that an applicant will also be required to satisfy special return criteria 5010.

New Clause 574.326

New clause 574.326 mirrors clause 560.324 except for:

- minor technical amendments to ensure consistency with other provisions; and
- paragraph 574.326(b) which requires the Minister to be satisfied that the primary person mentioned in 574.322 has adequate means to support himself or herself and the members of his or her family unit during the period of the applicant's intended stay in Australia.
- Subregulation 560.324 (2) is being omitted. This related to the Burmese citizen requirements in 560.224 (4) & (5).

New clause 574.328

New clause 574.328 mirrors clause 560.326 except that it no longer deals with certain March 1992 visa applications, as they are now irrelevant.

New clause 574.329

New clause 574.329 mirrors clause 560.328 except that a technical amendment has been made to reflect that "member of the family unit" (as defined in subregulation 1.12(2)) does not include the person satisfying the primary criteria. This makes the provision easier to read and conforms to other provisions in the *Migration Regulations 1994*.

New clause 574.330

New clause 574.330 ensures that any secondary applicant, who applies for a student visa after the primary applicant has been granted the student visa, has to give evidence that there are sufficient funds to meet travel costs.

Division 574.6 – Conditions

New clause 574.611

The conditions imposed on a visa granted to an applicant who satisfies the primary criteria mirror those in clause 560.611 except that:

- there is no longer any need to have an exception to the imposition of condition 8517 in relation to certain March 1992 visa applications. This is because those applications are now irrelevant; and
- new paragraph 574.611(1)(d) imposes condition 8203 upon an applicant who is a citizen of Iran; and
- under new paragraph 574.611(1)(e) any one or more of conditions 8303, 8523 and 8535 may be imposed on a discretionary basis on a Subclass 574 visa. Condition 8303 has always been a discretionary visa condition and new paragraph 574.611(1)(e) puts this beyond doubt.

New clause 574.613

Under new subclause 574.613(1), new condition 8534 is a mandatory visa condition if the applicant, who satisfies the primary criteria, is subject to assessment levels 3, 4 or 5 and is seeking to undertake a course of study of 10 months duration or less.

New subclause 574.613(2) provides that if the applicant is a member of the family unit of the primary applicant described above, then new condition 8534 is imposed in the same manner.

New clause 574.614

Under new clause 574.614, new condition 8534 is a discretionary visa condition if the applicant, who satisfies the primary criteria, is subject to assessment level 1 or 2 and is seeking to undertake a course of study of 10 months duration or less.

New subclause 574.614(2) provides that if the applicant is a member of the family unit of the primary applicant described above, then new condition 8534 is imposed in the same manner.

New clause 574.615

Under new clause 574.615, new condition 8534 is a discretionary visa condition if the applicant, who satisfies the primary criteria, is subject to any assessment level and is seeking to undertake a course of study of more than 10 months duration.

New subclause 574.615(2) provides that if the applicant is a member of the family unit of the primary applicant described above, then new condition 8534 is imposed in the same manner.

New clause 574.616

New clause 574.616 imposes conditions on a visa granted to an applicant who satisfies the secondary criteria and mirrors those in clause 560.613 except that:

- new clause 574.616 has been drafted in simpler and clearer terms;
- condition 8101 (no work while in Australia) is no longer applicable, given provision in new 574.611(1)(b);
- condition 8104 (up to 20 hours of work only while in Australia) is no longer applicable, given provision in new 574.617. This is because secondary applicants in this subclass have unlimited work rights and therefore do not get 8104 imposed;
- condition 8533 is no longer a mandatory condition as it does not in fact apply to an applicant who satisfies the secondary criteria;
- under new paragraph 574.616(1)(d), there is an additional discretionary visa condition - 8535; and
- new subclause 573.616 (2) specifies when condition 8201 should not be imposed on an applicant who has turned 18 if they hold or held a student or student dependant visa.

Division 574.7 Way of giving evidence

New clause 574.711 applies where the student visa application was made on new form 157E. In such a case, no evidence needs to be given of the granted visa.

New clause 574.712, which mirrors clause 560.711, applies in all other cases.

Subclass 575 – Non Award Foundation/Other Sector

Division 575.1 - Interpretation

New Division 575.1

Unlike clause 560.111, new clause 575.111 does not refer to a definition of "gazetted country". This is because the new scheme does not refer to gazetted countries.

However, new clause 575.111 inserts a definition of "course of study" to mean a full-time registered course of study.

"Non-award course" as used in this division is defined in regulation 1.03.

Division 575.2 - Primary criteria

The primary criteria must be satisfied by at least one member of the family unit ("the primary applicant"). The other members of the family unit who are applicants for a visa of this subclass need only satisfy the secondary criteria ("the secondary applicant").

The primary criteria to be satisfied at the time of application mirror those of the Subclass 560 (Student) visa except for the following:

Iranian students

There is no longer any need to specify separate criteria for Iranian students because they will be incorporated into the new visa scheme.

AusAID and exchange students

There is no longer any need to specify separate criteria for AusAID or exchange students. This is because under the new visa scheme AusAID and exchange students will be granted a Subclass 576 (AusAID or Defence Sector) or a Subclass 571 (Schools Sector) visa.

Clause 560.112

An equivalent to this clause is not required because clause 560.112 refers to visas and entry permits that are no longer in existence.

New subclause 575.211(3)

The requirements of new subclause 575.211(3) are the same as those in subclause 560.212(3) except that:

- the last substantive visa held by the applicant must be:
 - a student visa; or
 - a special purpose visa; or
 - a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; or
 - a Diplomatic (Temporary) (Class TF) visa; and
- the application must be made within 28 days (or within a period specified by Gazette Notice) after that last substantive visa ceased to be in effect.

New subclause 575.211(4)

The purpose of new subclause 575.211(4) is the same as subclause 560.212(4). It allows a person who holds a Subclass 560, 562 or 575 visa that is subject to condition 8101 to apply for a Subclass 575 visa that is *not* subject to condition 8101. The requirements that such an applicant must meet are the same as those in subclause 560.212(4).

New subclause 575.211(5)

The purpose of new subclause 575.211(5) is the same as subclause 560.212(5). It allows a person who holds a Subclass 560, 562 or 575 visa that is subject to condition 8206 to apply for a Subclass 575 visa that is *not* subject to condition 8206.

The requirements that such an applicant must meet are the same as those in subclause 560.212(5) except in one respect.

New paragraph 575.211(5)(c) requires an applicant to produce evidence of an offer of a place with an education provider of a course of study that is not the education provider of the course of study for which the visa held relates.

This will ensure that an applicant cannot enrol with a new education provider when his or her visa is subject to condition 8206 without meeting the exceptional circumstances test in new paragraph 575.211(5)(d).

New subclause 575.211(6)

New subclause 575.211(6) will ensure that a person who holds a Subclass 570, 571, 572, 573, 574 or 576 visa that is subject to condition 8206 cannot change education provider contrary to condition 8206 or avoid the exceptional circumstances test by applying for a Subclass 575 visa.

New clause 575.212

The purpose of new clause 575.212 is the same as clause 560.213. This clause seeks to ensure that the conditions to which the current or previous visa held have been complied with.

The primary criteria to be satisfied at the time of decision mirror those of the Subclass 560 (Student) visa except for the following:

Iranian students

Again, there is no longer any need to specify separate criteria for Iranian students because they will be incorporated into the new visa scheme.

AusAID and exchange students

There is no longer any need to specify separate criteria for AusAID or exchange students. This is because under the new visa scheme AusAID and exchange students will be granted a Subclass 576 (AusAID or Defence Sector) or Subclass 571 (Schools Sector) visa.

New clause 575.221

New clause 575.221 substantially mirrors clause 560.220. The clause sets out the criteria to be satisfied at the time of decision. The applicant must satisfy either the requirements at clauses 575.222 to 575.231, unless the applicant met the criteria in subclauses 575.211 (4) or (5) at the time of application.

If the requirements in subclauses 575.211 (4) or (5) at the time of application are met, the applicant must continue to meet those requirements and in addition:

- the Minister must have no reason to believe that the applicant is not a genuine student; or
- the applicant must satisfy the criteria in clauses 575.223 to 575.231 in the case of 575.211 (4) or 575.222 to 575.231 in the case of 575.211(5).

The criteria in 575.222 to 575.230 is primarily intended to elicit the genuineness of the student. New subparagraphs 575.221(2)(b)(i) and 575.221(3)(b)(i) therefore require that the Minister have no reason to believe the applicant is not a genuine student.

This reflects that an applicant satisfying subclause 575.211(4) or (5) may previously have held a Subclass 560 or 562 visa and cannot *continue* to satisfy the criteria mentioned in 575.222 to 575.230.

New clause 575.222

The purpose of new subclause 575.222 is to ensure that an applicant provides evidence that he or she is enrolled, by producing a certificate of enrolment, in a full-time course with an education provider that has not been suspended by the Minister for Immigration and Multicultural Affairs.

New subclause 575.222(1) exempts applicants who applied on Form 157E from providing a certificate of enrolment. Students applying on Form 157E provide only a confirmation of enrolment code on their electronic application.

New subclause 575.222 (3) therefore requires that an applicant applying on Form 157E provide only evidence of enrolment with an education provider that has not been suspended by the Minister for Immigration and Multicultural Affairs.

The purpose of new subclause 575.222 (2) is to ensure that an applicant may still meet the criteria where there is an electronic transmission failure and the applicant cannot wait for the failure to be rectified.

Clause 560.222 is being omitted in its entirety. Paragraph 560.222(a) required evidence of confirmation of enrolment. Paragraph 560.222(b) provided an exception for exchange students, AusAID students and subsidised students approved by the Minister for Education, Training and Youth Affairs. AusAID students are being assessed under Subclass 576, exchange students under Subclass 571 and subsidised students were part of an old scheme that no longer exists.

The students catered for in sub-subparagraph 560.222(c)(ii)(A) are being assessed under subclause 574.222(3).

New clause 575.223

New clause 575.223 mirrors clause 560.224 except that:

- new paragraph 575.223(a) refers to the evidential requirements of new Schedule 5A; and
- there is no longer a need to provide an exception from the requirements of new subclause 575.223(1) for an applicant who is a Burmese citizen. This reflects that the treatment of foreign countries is incorporated into the mainstream student visa program.

New clause 575.224

New clause 575.224 mirrors clause 560.225 except that an applicant who is applying outside Australia and who has previously been in Australia will also be required to satisfy special return criteria 5010.

The purpose of this amendment is to facilitate any agreements between a foreign country, AusAID and an applicant, where the applicant has agreed to return and work in a foreign country after the student visa ceases in return for financial support for the student visa.

Clause 560.228

Clause 560.228 is being omitted in its entirety.

Under clause 560.228 an applicant is effectively precluded from alternating between student and student dependant status indefinitely.

New paragraph 575.616(1)(c) addresses this problem by imposing condition 8201 upon an applicant who satisfies the secondary criteria and who has turned 18 years of age. This ensures that an applicant, who is over the age of 18 and who wishes to undertake a period of study greater than three months, must satisfy the primary criteria for the grant of a student visa.

The effect of new paragraph 575.613(1)(c) is that clause 560.228 is redundant.

Clause 560.229

Clause 560.229 is being omitted in its entirety. This clause reduces the opportunity for a non-government sponsored student from a non-gazetted country to extend his or her stay in Australia indefinitely by undertaking a series of short courses.

This problem will now be addressed by replacing non-gazetted countries with assessment levels 3, 4 and 5. Applicants subject to these assessment levels will have a "no further stay" condition imposed where they undertake a course of study of 10 months duration or less.

New clause 575.227

New clause 575.227 mirrors clause 560.230 except for:

- new paragraph 575.227(b). As a "gazetted country" is no longer relevant in the new visa scheme, new paragraph 575.227(b) refers to an applicant who is subject to assessment level 3, 4 or 5. This is the equivalent of an applicant from a non-gazetted country.

New clause 575.229

New clause 575.229 ensures that an applicant, who has the financial support of either the Commonwealth or the government of a foreign country in relation to the student visa held, also has the approval of that supporting government to remain in Australia and undertake a further course of study.

New clause 575.230

New clause 575.230 ensures that an applicant holds a passport at time of decision and can therefore be subject to the assessment level listed in the Gazette Notice for that passport.

Division 575.3 - Secondary criteria

The secondary criteria to be satisfied at the time of application mirror those of the Subclass 560 (Student) visa except for the following:

New clause 575.311

New clause 575.311 mirrors clause 560.311 except that it provides that the applicant must be a member of the family unit of a:

- person who is the holder of a Subclass 560 or 562 visa; or
- a person who satisfies or has satisfied the primary criteria at time of application.

New clause 575.314

New clause 575.314 provides for the circumstance where the applicant was not declared as a member of the family unit in the primary applicant's application. Where this is the case, the applicant must give evidence to the Minister that the applicant became a member of the family unit after the decision to grant the Subclass 575 visa to the primary applicant was made.

New clause 575.315

New clause 575.315 provides that an applicant must not be an exchange student. This is to ensure that an exchange student applies for a Subclass 571 (Schools Sector) visa as a primary applicant.

The secondary criteria to be satisfied at the time of decision mirror those of the Subclass 560 (Student) visa except for the following:

New Clause 574.322

New clause 574.322 reflects and combines clauses 560.321 and 560.327 with amendments to make the provision simpler and easier for the reader.

New Clause 575.325

New clause 575.325 mirrors clause 560.322 (a) (ii) except that an applicant will also be required to satisfy special return criteria 5010.

New Clause 575.326

New clause 575.326 mirrors clause 560.324 except for:

- minor technical amendments to ensure consistency with other provisions; and
- paragraph 575.326(b) which requires the Minister to be satisfied that the primary person mentioned in 575.322 has adequate means to support himself or herself and the members of his or her family unit during the period of the applicant's intended stay in Australia.
- Subclause 560.324 (2) is being omitted. This related to the Burmese citizen requirements in 560.224 (4) & (5).

New clause 575.328

New clause 575.328 mirrors clause 560.326 except that it no longer deals with certain March 1992 visa applications, as they are now irrelevant.

New clause 575.329

New clause 575.329 mirrors clause 560.328 except that a technical amendment has been made to reflect that "member of the family unit" (as defined in subregulation 1.12(2)) does not include the person satisfying the primary criteria. This makes the provision easier to read and conforms to other provisions in the *Migration Regulations 1994*.

New clause 575.330

New clause 575.330 ensures that any secondary applicant, who applies for a student visa after the primary applicant has been granted the student visa, has to give evidence that there are sufficient funds to meet travel costs.

Division 575.6 – Conditions

New clause 575.611

The conditions imposed on a visa granted to an applicant who satisfies the primary criteria mirror those in clause 560.611 except that:

- there is no longer any need to have an exception to the imposition of condition 8517 in relation to certain March 1992 visa applications. This is because those applications are now irrelevant; and
- under new paragraph 575.611(1)(e) any one or more of conditions 8303, 8523 and 8535 may be imposed on a discretionary basis on a Subclass 575 visa. Condition 8303 has always been a discretionary visa condition and new paragraph 575.611(1)(e) puts this beyond doubt. Condition 8535 is a new “no further stay condition”.

New clause 575.613

Under new subclause 575.613(1), new condition 8534 is a mandatory visa condition if the applicant, who satisfies the primary criteria, is subject to assessment levels 3, 4 or 5 and is seeking to undertake a course of study of 10 months duration or less.

New subclause 575.613(2) provides that if the applicant is a member of the family unit of the primary applicant described above, then new condition 8534 is imposed in the same manner.

New clause 575.614

Under new clause 575.614, new condition 8534 is a discretionary visa condition if the applicant, who satisfies the primary criteria, is subject to assessment level 1 or 2 and is seeking to undertake a course of study of 10 months duration or less.

New subclause 575.614(2) provides that if the applicant is a member of the family unit of the primary applicant described above, then new condition 8534 is imposed in the same manner.

New clause 575.615

Under new clause 575.615, new condition 8534 (please see item [8534]) is a discretionary visa condition if the applicant, who satisfies the primary criteria, is subject to any assessment level and is seeking to undertake a course of study of more than 10 months duration.

New subclause 575.615(2) provides that if the applicant is a member of the family unit of the above primary applicant described above, then new condition 8534 is imposed in the same manner.

New clause 575.616

New clause 575.616 imposes conditions on a visa granted to an applicant who satisfies the secondary criteria and mirrors those in clause 560.613 except that:

- new clause 575.616 has been drafted in simpler and clearer terms;
- condition 8101 (no work while in Australia) is no longer applicable, given provision in new 575.611 (b);

- condition 8104 (up to 20 hours of work only while in Australia) is no longer applicable, given provision in new 575.617;
- condition 8533 is no longer a mandatory condition as it does not in fact apply to an applicant who satisfies the secondary criteria; and
- under new paragraph 575.613(1)(d), there is an additional discretionary visa condition – 8535
- new subclause 575.616 (2) specifies when condition 8201 should not be imposed on an applicant who has turned 18 if they hold or held a student or student dependant visa

Division 575.7 - Way of giving evidence

New clause 575.711 applies where the student visa application was made on new form 157E. In such a case, no evidence needs to be given of the granted visa.

New clause 575.712, which mirrors clause 560.711, applies in all other cases.

Subclass 576 – AusAID/Defence Sector

Division 576.1 - Interpretation

New Division 576.1

New clause 576.211 does not have a definition of “gazetted country” because the new scheme does not refer to gazetted countries.

New clause 576.211 provides a definition “course of study or training” to mean a full time course of study of study or training approved by the AusAID or Defence Minister. This reflects that a student who is supported by AusAID or Defence does not have to be enrolled in a registered course.

Division 576.2 - Primary criteria

The primary criteria must be satisfied by at least one member of the family unit (“the primary applicant”). The other members of the family unit who are applicants for a visa of this subclass need only satisfy the secondary criteria (“the secondary applicant”).

The primary criteria to be satisfied at the time of application mirror those of the Subclass 560 (Student) visa except:

Iranian students

There is no longer any need to specify separate criteria for Iranian students because they will be incorporated into the new visa scheme.

AusAID and Defence students

The primary criteria in new Subclass 576 only mirrors the primary criteria in Subclass 560 that relates to AusAID students.

In addition, there are equivalent amendments to provide for Defence students.

New subclause 576.211(3)

The requirements of new subclause 576.211(3) are the same as those in subclause 560.212(3) except that:

- the last substantive visa held by the applicant must be:
 - a student visa; or
 - a special purpose visa; or
 - a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; or
 - a Diplomatic (Temporary) (Class TF) visa; and
- the application must be made within 28 days (or within a period specified by Gazette Notice) after that last substantive visa ceased to be in effect.

New subclause 576.211(4)

The purpose of new subclause 576.211(4) is the same as subclause 560.212(4). It allows a person who holds a Subclass 560, 562 or 576 visa that is subject to condition 8101 to apply for a Subclass 576 visa that is *not* subject to condition 8101. The requirements that such an applicant must meet are the same as those in subclause 560.212(4) that relate to AusAID students except that:

- new paragraph 576.211(4)(c) requires that the applicant has commenced a course of study or training. This reflects that an AusAID or Defence student may be undertaking training; and
- new paragraph 576.211(4)(d) requires that the applicant has the support of the AusAID or Defence Minister for the grant of the visa.

New subclause 576.211(5)

The purpose of new subclause 576.211(5) is the same as subclause 560.212(5). It allows a person who holds a Subclass 560 or 562 visa that is subject to condition 8206 to apply for a Subclass 576 visa that is *not* subject to condition 8206.

This is because Subclass 576 holders do not have condition 8206 imposed.

The requirements that such an applicant must meet are the same as those in subclause 560.212(5) that relate to AusAID students, except in one respect.

The effect of new paragraph 576.211(5)(d) is that it is not necessary to provide evidence of enrolment (or an offer of a place) with an education provider of a course of study that is not the education provider of the course of study for which the visa held relates. It is sufficient to show that the applicant has the support of the AusAID or Defence Minister for the change in enrolment.

This will ensure that an applicant cannot enrol with a new education provider when his or her visa is subject to condition 8206 without meeting the exceptional circumstances test in new paragraph 576.211(5)(d).

New clause 576.212

The purpose of new clause 576.212 is the same as clause 560.213. This clause seeks to ensure that the conditions to which the current or previous visa held have been complied with.

The primary criteria to be satisfied at the time of decision mirror those of the Subclass 560 (Student) visa except for the following:

Iranian students

Again, there is no longer any need to specify separate criteria for Iranian students because they will be incorporated into the new visa scheme.

AusAID and Defence students

The secondary criteria in Subclass 576 only mirrors the secondary criteria in Subclass 560 that relates to AusAID students.

In addition, there are equivalent amendments to provide for Defence students.

New clause 576.221

New clause 576.221 substantially mirrors clause 560.220. The clause sets out the criteria to be satisfied at the time of decision. The applicant must satisfy either the requirements at clauses 576.222 to 576.229, unless the applicant met the criteria in subclauses 576.211 (4) or (5) at the time of application.

If the requirements in subclauses 576.211 (4) or (5) at the time of application are met, the applicant must continue to meet those requirements and in addition:

- the Minister must have no reason to believe that the applicant is not a genuine student; or
- the applicant must satisfy the criteria in clauses 576.223 to 576.229 in the case of 576.211 (4) or 576.222 to 576.229 in the case of 576.211(5).

The criteria in 576.222 to 576.230 is primarily intended to elicit the genuineness of the student. New subparagraphs 576.221(2)(b)(i) and 576.221(3)(b)(i) therefore require that the Minister have no reason to believe the applicant is not a genuine student.

This reflects that an applicant satisfying subclause 576.211(4) or (5) may previously have held a Subclass 560 or 562 visa and cannot *continue* to satisfy the criteria mentioned in 576.222 to 576.229.

New clause 576.222

New clause 576.222 mirrors clause 560.224 except that:

- new paragraph 576.223(a) refers to the evidential requirements of new Schedule 5A; and
- there is no longer a need to provide an exception from the requirements of new subclause 576.223(1) for an applicant who is a Burmese citizen. This reflects that the treatment of foreign countries is incorporated into the mainstream student visa program.

New clause 576.223

New clause 576.223 mirrors clause 560.225 except that an applicant who is applying outside Australia and who has previously been in Australia will also be required to satisfy special return criteria 5010.

Clause 560.228

Clause 560.228 is being omitted in its entirety.

Under clause 560.228 an applicant is effectively precluded from alternating between student and student dependant status indefinitely.

New paragraph 576.613(1)(c) addresses this problem by imposing condition 8201 upon an applicant who satisfies the secondary criteria and who has turned 18 years of age. This ensures that an applicant, who is over the age of 18 and who wishes to undertake a period of study greater than three months, must satisfy the primary criteria for the grant of a student visa.

The effect of new paragraph 576.613(1)(c) is that clause 560.228 is redundant.

Clause 560.229

Clause 560.229 is being omitted in its entirety. It is not relevant to this Subclass given that all applicants in this Subclass are undertaking a course of study or training paid for wholly or in part by the Commonwealth Government.

New clause 576.227

New clause 576.227 ensures that the applicant has the approval of the supporting government to remain in Australia and undertake a further course of study or training.

New clause 576.228

New clause 576.228 ensures that an applicant holds a passport at time of decision and can therefore be subject to the assessment level listed in the Gazette Notice for that passport.

New clause 576.229

New clause 576.229 requires that the applicant has the support of the AusAID or Defence Minister for the grant of the visa.

Division 576.3 - Secondary criteria

The secondary criteria to be satisfied at the time of application mirror those of the Subclass 560 (Student) visa except for the following:

New clause 576.311

New clause 576.311 mirrors clause 560.311 except that it provides that the applicant must be a member of the family unit of a:

- person who is the holder of a Subclass 560 or 562 visa; or
- a person who satisfies or has satisfied the primary criteria at time of application.

New clause 576.314

New clause 576.314 provides for the circumstance where the applicant was not declared as a member of the family unit in the primary applicant's application. Where this is the case, the applicant must give evidence to the Minister that the applicant became a member of the family unit after the decision to grant the Subclass 576 visa to the primary applicant was made.

The secondary criteria to be satisfied at the time of decision mirror those of the Subclass 560 (Student) visa except for the following:

New Clause 576.322

New clause 576.322 ensures that the applicant is a member of the family unit of a person who is the holder of a Subclass 560, 562 or 576 visa as the primary person and had the support of the AusAID or Defence Minister for the grant of the visa. This ensures that secondary applicants applying subsequently to their Subclass 560 or 562 primary person can be granted a Subclass 576 visa.

New Clause 576.325

New clause 576.325 mirrors clause 560.322 (a) (ii) except that an applicant will also be required to satisfy special return criteria 5010.

New Clause 576.326

New clause 576.326 mirrors clause 560.324 except for:

- minor technical amendments to ensure consistency with other provisions; and
- paragraph 576.326(b) which requires the Minister to be satisfied that the primary person mentioned in 576.322 has adequate means to support himself or herself and the members of his or her family unit during the period of the applicant's intended stay in Australia.
- Subclause 560.324 (2) is being omitted. This related to the Burmese citizen requirements in 560.224 (4) & (5).

New clause 576.328

New clause 576.328 mirrors clause 560.326 except that it no longer deals with certain March 1992 visa applications, as they are now irrelevant.

New clause 576.329

New clause 576.329 mirrors clause 560.328 except that:

- a technical amendment has been made to reflect that "member of the family unit" (as defined in subregulation 1.12(2)) does not include the person satisfying the primary criteria. This makes the provision easier to read and conforms to other provisions in the *Migration Regulations 1994*; and
- there is no requirement that the applicant have a nomination by the primary applicant on approved form 919. This is because it is sufficient that the applicant is to have the support of the AusAID Minister or the Defence Minister.

New clause 576.330

New clause 576.330 ensures that any secondary applicant, who applies for a student visa after the primary applicant has been granted the student visa, has to give evidence that there are sufficient funds to meet travel costs.

Division 576.6 - Conditions

New clause 576.611

The conditions imposed on a visa granted to an applicant who satisfies the primary criteria mirror those in clause 560.611 except that:

- there is no longer any need to have an exception to the imposition of condition 8517 in relation to certain March 1992 visa applications. This is because those applications are now irrelevant; and
- under new paragraph 576.611(1)(d) any one or more of conditions 8303, 8523, 8534 and 8535 may be imposed on a discretionary basis on a Subclass 576 visa. Condition 8303 has always been a discretionary visa condition and new paragraph 576.611(1)(d) puts this beyond doubt. Condition 8535 is a new "no further stay condition"; and
- new subclause 576.613 (2) specifies when condition 8201 should not be imposed on an applicant who has turned 18 if they hold or held a student or student dependant visa.

New clause 576.616

New clause 576.616 imposes conditions on a visa granted to an applicant who satisfies the secondary criteria and mirrors those in clause 560.613 except that:

- new clause 576.616 has been drafted in simpler and clearer terms;
- condition 8101 (no work while in Australia) is no longer applicable, given provision in new 576.611 (b);
- condition 8104 (up to 20 hours of work only while in Australia) is no longer applicable, given provision in new 576.614;
- condition 8533 is no longer a mandatory condition as it does not in fact apply to an applicant who satisfies the secondary criteria; and
- under new paragraph 576.613(1)(d), there are three additional discretionary visa conditions – 8522, 8534 and 8535.

Item [98] – Division 686.1, note

This item substitutes the note in Division 686.1 of Schedule 2.

The new note directs attention to the definition of the terms *Internet application*, *oral application* and *tourism* in regulation 1.03. The note retains the current reference to there being no interpretation provisions specific to the Part.

Item [99] – Clauses 686.211, 686.212, and 686.213

This item substitutes the above clauses setting out the time of application requirements that an Internet applicant, and an applicant making an application other than by Internet, must satisfy to be eligible for the grant of a Subclass 686 (Tourist Long Stay) visa.

Clause 686.211

In the case of an application other than an Internet application, an applicant must meet the time of application requirements set out in subclauses 686.211(2), (3) and (4). The substantive time of application requirements pertaining to applications other than Internet applications contained in these subclauses are not amended.

Clause 686.212

In the case of an Internet application, substituted 686.212 sets out the time of application requirements to be met by an Internet applicant.

The difference between the time of application requirements applicable to an Internet application, and those applicable to a non-Internet application, reflect the different processing methods adopted in relation to each kind of application.

An Internet application made on a form approved by the Minister for making an Internet application for a Long Stay (Visitor) (Class TN) visa, is processed by a computer program operated under the authority of the Minister. A computer program can appropriately process a valid application against the requirements of new clause 686.212, by running checks against information contained in immigration data bases maintained by the Department.

A non-Internet application for a Long Stay (visitor) (Class TN) visa, made orally or on an approved form, is processed by a departmental employee against the time of application requirements of subclauses 686.211(2), (3) and (4).

The time of application requirements that an Internet application must meet are as follows.

The applicant must:

- satisfy public interest criteria 4002, 4003, 4004, 4005 and 4011 of Schedule 4; and
- state in the application that the applicant seeks to visit Australia, or remain in Australia, as a visitor for tourism purposes, and not for business, work, study, or medical treatment purposes; and
- state in the application that the applicant has adequate funds, or access to adequate funds, for personal support during the period of the visit.

In respect of dot point two and three above, a statement given by an Internet applicant on an approved form is taken to be evidence of the matter stated.

Clause 686.213

Substituted clause 686.213 provides that if an Internet application does not meet the requirements of clause 686.212, the application is assessed against the time of application criteria relevant to a non-Internet application set out in subclauses 686.211(2) and (4). Subclause 686.211(3) relates to applications made outside Australia, and is not relevant to an Internet application that can only be made when the applicant is on-shore.

Subclauses 686.211(2) and (4) are requirements that are not amenable to automated processing by a computer program.

The intention of the amendment is to ensure that an Internet application that initially fails to meet the time of application criteria in clause 686.212, is assessed against the same substantive time of application criteria as an application that is not an Internet application.

Item [100] – Subclause 686.221(1)

This item substitutes subclause 686.221(1).

New subclause 686.221(1) sets out the criteria that must be satisfied by an applicant at the time of decision. The subclause provides that an applicant must meet the requirements of existing subclauses 686.221(2), (3), (4), or new subclauses (5) and (6).

Subclauses 686.221(5) and (6) inserted by these Regulations sets out time of decision criteria specific to Internet applications.

Item [101] – Paragraph 686.221(2)(a)

This item is a technical amendment to paragraph 686.221(2)(a).

The item omits the reference to clause 686.211 in paragraph 686.221(2)(a), replacing it with a reference to subclause 686.211(2).

Item [102] – Paragraph 686.221(2)(b)

This item is a technical amendment to paragraph 686.221(2)(b).

The item omits the reference to clause 686.212 in paragraph 686.221(2)(b), replacing it with a reference to subclause 686.211(3).

Item [103] – Subparagraph 686.221(2)(g)(i)

This item is a technical amendment to subparagraph 686.221(2)(g)(i).

The item omits the reference to paragraph 686.213(b) in subparagraph 686.221(2)(g)(i), replacing it with a reference to paragraph 686.211(4)(b).

Item [104] – After subclause 686.221(4)

Clause 686.221 sets out the criteria that an applicant must meet at the time of decision.

This item inserts new subclauses 686.221(5) and (6) setting out the time of decision criteria for an Internet application that meets the requirements of clauses 686.212 and 686.213 respectively. Time of decision criteria relevant to non-Internet applications are not amended.

In the case of an Internet application that meets the time of application criteria set out in clause 686.212, being criteria against which an Internet application can appropriately be processed by a computer program under the authority of the Minister, the time of decision criteria are that the applicant continues to meet the time of application criteria in clause 686.212.

In the case of an Internet application that fails to meet the time of application criteria in clause 686.212, but that meets the criteria of clause 686.213, being the same time of application criteria applicable to a non-Internet application, the time of decision criteria are that the applicant continues to meet the time of application criteria in clause 686.213, and meets the same time of decision criteria applicable to a non-Internet application, being the criteria set out in subclauses 686.221(2), (3) and (4).

The intention of the amendment is to ensure that an Internet application that initially fails to meet the time of application criteria in clause 686.212, is treated exactly the same, and assessed against the same substantive time of decision criteria as an application that is not an Internet application.

Item [105] – Subclause 686.511(2)

Subclause 686.511(2) sets out when a visa granted in Australia on the basis of an application, other than an oral application, is in effect.

This item amends subclause 686.511(2) by extending the exclusion of oral applications from the effect of subclause 686.511(2), to Internet applications.

A new clause 686.511(4) is inserted by these Regulations setting out when a visa granted in consequence of an Internet application meeting the requirements of clause 686.212, is in effect.

Item [106] – After subclause 686.511(3)

This item inserts new subclause 686.511(4) setting out when a Long Stay (Visitor) (Class TN) visa granted pursuant to an Internet application that meets the requirements of clause 686.212 is in effect.

Such visa is a temporary visa permitting the holder to remain in Australia for up to 6 months from the date of his or her latest entry. If the visa holder leaves Australia during the visa period, he or she may travel to and enter Australia on 1 or more occasions, for a period no longer than 6 months from the date of the entry referred to above, and to remain in Australia for no longer than 6 months from the date of entry referred to above.

The dates referred to in subclause 686.511(4) are fixed and follow on objectively from the date on which the Internet applicant entered Australia as the holder of a subclass 676 or 976 visa.

Item [107] – Division 686.6

This item substitutes clauses 686.611 to 686.614 into Division 686.6. The new clauses set out the conditions that attach to a granted visa.

New clause 686.211 provides that in the case of a Long Stay (Visitor) (Class TN) visa granted as a result of an applicant meeting the requirements of clause 686.212, conditions 8101, 8201, 8205, 8503, 8527 and 8528 apply.

The substance of the current clauses is retained in respect of an applicant who meets the requirements of criteria other than those set out in clause 686.212.

Item [108] – Clause 686.711

Clause 686.711 currently provides that no evidence need be given if the visa is granted on the basis of an oral application.

This item substitutes clause 686.711 setting out that no evidence of a visa grant need be given if the visa is granted on the basis of an oral application or Internet application.

The extension of the exemption to Internet applications provides flexibility to give evidence of the visa, or to not give evidence of the visa.

For example, in the case of visa granted pursuant to the applicant meeting the requirements of subclause 686.212, it may not be appropriate to require a non-citizen who has applied for a visa over the Internet to subsequently attend at a departmental office and submit their passport for visa evidencing.

Item [109] – Paragraph 773.213(2)(zo)

This item amends paragraph 773.213(2)(zo) and adds new paragraphs 773.213(2)(zp) and (zq).

Subsubparagraph 773.213(1)(d)(i)(B) provides for the grant of a Subclass 773 (Border) visa to a person who is the dependent child of a person holding a visa of a class listed in subclause 773.213(2).

This item amends subclause 773.213(2) to add the new Skilled – Independent Overseas Student (Residence) (Class DD) and Skilled – Australian-sponsored Overseas Student (Residence) (Class DE) visa classes to the list of classes in that provision.

Item [110] – Paragraph 773.213(3)(ga)

This item substitutes new paragraph 773.213(3)(ga), to include a reference to the new Graduate - Skilled (Temporary) (Class UQ) visa in subclause 773.213(3). Existing paragraph (ga) becomes paragraph (gb).

A person who, immediately before last leaving Australia, held a visa listed in subclause 773.213(3), or who is a dependent child of the holder of such a visa, is eligible for the grant of a Subclass 773 (Border) visa.

Item [111] – Subparagraph 855.212(4)(c)(i)

This item makes a technical amendment to subparagraph 855.212(4)(c)(i).

Item [112] – Subparagraph 855.212(4)(c)(ii)

This item makes a technical amendment to subparagraph 855.212(4)(c)(ii), consequential to the insertion of new paragraph 855.212(4)(d) by these Regulations.

Item [113] – After paragraph 855.212(4)(c)

This item inserts new paragraph 855.212(4)(d).

The new paragraph provides that a Subclass 497 (Graduate – Skilled) visa is a qualifying visas for the purposes of subclause 855.212(3).

A person who holds a qualifying visa is eligible for the grant of a Subclass 855 (Labour Agreement) visa. A person who does not hold a substantive visa but whose last substantive visa was a qualifying visa is also eligible, provided the person meets certain Schedule 3 criteria.

Item [114] – Subparagraph 856.212(4)(c)(i)

This item makes a technical amendment to subparagraph 856.212(4)(c)(i).

Item [115] – Subparagraph 856.212(4)(c)(ii)

This item makes a technical amendment to subparagraph 856.212(4)(c)(ii), consequential to the insertion of new paragraph 856.212(4)(d) by these Regulations.

Item [116] – After paragraph 856.212(4)(c)

This item inserts new paragraph 856.212(4)(d).

The new paragraph provides that a Subclass 497 (Graduate – Skilled) visa is a qualifying visas for the purposes of subclause 856.212(3).

A person who holds a qualifying visa is eligible for the grant of a Subclass 856 (Employer Nomination Scheme) visa. A person who does not hold a substantive visa but whose last substantive visa was a qualifying visa is also eligible, provided the person meets certain Schedule 3 criteria.

Item [117] – Subparagraph 857.212(4)(c)(i)

This item makes a technical amendment to subparagraph 857.212(4)(c)(i).

Item [118] – Subparagraph 857.212(4)(c)(ii)

This item makes a technical amendment to subparagraph 857.212(4)(c)(ii), consequential to the insertion of new paragraph 857.212(4)(d) by these Regulations.

Item [119] – After paragraph 857.212(4)(c)

This item inserts new paragraph 857.212(4)(d).

The new paragraph provides that a Subclass 497 (Graduate – Skilled) visa is a qualifying visas for the purposes of subclause 857.212(3).

A person who holds a qualifying visa is eligible for the grant of a Subclass 857 (Regional Sponsored Migration Scheme) visa. A person who does not hold a substantive visa but whose last substantive visa was a qualifying visa is also eligible, provided the person meets certain Schedule 3 criteria.

Item [120] – Subparagraph 857.213(b)(i)

This item amends the time of application primary criteria for a Subclass 857 (Regional Sponsored Migration Scheme) visa.

It provides for particular time of application requirements to apply to applicants taken to have made an application under new regulation 2.08CB (inserted by these Regulations).

Regulation 2.08CB provides that certain applicants for a Skilled – Independent Overseas Student (Residence) (Class DD) visa are taken to have made an application for a Employer Nomination (Residence) (Class BW) visa.

The particular requirements are:

- the applicant had not turned 45 at the time of the application for the Skilled – Independent Overseas Student (Residence) (Class DD) visa;
- the applicant has vocational English;
- the applicant has a diploma or higher qualification that is, unless the appointment is exceptional, relevant to that appointment; and

- the applicant is, or is eligible to become, the holder of a license or registration, or a member of a professional body, if it is mandatory in Australia, in respect of work of the kind to be performed under the appointment, that a person be the holder of such a licence, registration or membership.

Item [121] – Sub-subparagraph 857.213(b)(i)(A)

This item makes a technical amendment to sub-subparagraph 857.213(b)(i)(A), consequential to the amendment of subparagraph 857.213(b)(i) above.

Item [122] – After Part 866

This item inserts three new visa subclasses, as follows:

Subclass 880 (Skilled – Independent Overseas Student);

Subclass 881 (Skilled – Australian-sponsored Overseas Student);

Subclass 882 (Skilled – Designated Area-sponsored Overseas Student).

These visa subclasses provide permanent residence for overseas students who are onshore and who have recently completed the requirements for the award of a trade qualification, diploma or degree from an Australian educational institution, and their family members.

Subclass 880 (Skilled – Independent Overseas Student)

This subclass is for independent (unsponsored) applicants.

There are no time of application criteria for primary or secondary applicants for a Subclass 880 visa.

Item 1128CA of Schedule 1 sets out requirements to be met when making a valid application. These include requirements regarding the type of visa held by the applicant at time of application, and requirements as to the primary applicant's age, educational qualifications and employment skills.

Primary applicants must meet the following time of decision criteria:

- if the applicant has been invited to submit an assessment of his or her skills in another occupation under regulation 2.27B, the applicant must provide that assessment;
- the applicant must achieve the qualifying score on the points test in Schedule 6A according to the allocation of points in regulation 2.26A;
- the applicant must have vocational English or higher;
- there must be no evidence that the information given or used in the assessment of the applicant's skills for the nominated skilled occupation is false or misleading;
- the applicant (and members of his or her family in certain cases) must satisfy specified public interest criteria relating to health and character;
- if requested, an assurance of support has been provided and accepted by the Minister; and

- approval of the application would not exceed any cap on the number of Subclass 880 visas that may be granted in a financial year.

At time of decision, the secondary applicant must be a member of the family unit of, and have made a combined application with, a person who has met the primary criteria for the grant of a Subclass 880 visa and who has been granted such a visa.

In addition, secondary applicants must meet certain public interest criteria relating to health and character. If the Minister has requested an assurance of support in relation to the primary applicant, the secondary applicant must also be covered by that assurance, or another assurance acceptable to the Minister.

All applicants must be in Australia when the visa is granted.

This is a permanent visa, and allows the holder to travel to Australia for 5 years from date of grant.

There are no conditions attaching to Subclass 880 visas.

The visa is evidenced by a visa label affixed to a valid passport.

Subclass 881 (Skilled – Australian-sponsored Overseas Student)

Subclass 881 is for applicants sponsored by a family member of the primary applicant. The sponsor must be an Australian citizen or permanent resident, or a person who meets the definition of eligible New Zealand citizen. The primary applicant must achieve the qualifying score on the points test, which takes into account the employment skills, language ability, age, and educational qualifications of the primary applicant or that person's spouse.

Item 1128BA of Schedule 1 to the Regulations sets out requirements for making a valid application, including sponsorship requirements; requirements regarding the age, skills, and educational qualifications of the primary applicant or that person's spouse; and requirements about the type of visa held by applicants at time of application.

It is a time of application criterion for primary applicants that the assurance of support, provided when making the application, has been accepted by the Minister.

Primary applicants must meet the following time of decision criteria:

- the sponsorship provided with the application has been approved by the Minister and is still in force;
- the assurance of support continues to be acceptable to the Minister;
- the applicant must achieve the qualifying score on the points test in Schedule 6A according to the allocation of points in regulation 2.26A;
- if the primary applicant has been invited to submit an assessment of his or her skills in another occupation under regulation 2.27B, he or she must provide that assessment;
- the applicant must have vocational English or higher;
- there must be no evidence that the information given or used in the assessment of the applicant's skills for the nominated skilled occupation is false or misleading;

- the applicant (and members of his or her family in certain cases) must satisfy specified public interest criteria relating to health and character; and
- approval of the application would not exceed any cap on the number of Subclass 881 visas that may be granted in a financial year.

If the primary applicant's spouse is the person who met Schedule 1 requirements relating to educational qualifications, age and skills, then it is the spouse who must meet the requirements in the fourth, fifth and sixth dot points above.

At time of application, a secondary applicant must be a member of the family unit of, and have made a combined application with, a person who satisfies the primary time of application criteria. It is also a requirement for secondary applicants that the assurance of support provided with the application has been accepted by the Minister.

Secondary applicants must meet the following time of decision criteria:

- the applicant must continue to be a member of the primary applicant's family unit, and the primary applicant must be the holder of a Subclass 881 visa;
- the sponsorship provided with the applicant must have been approved by the Minister and still be in force;
- the assurance of support must continue to be acceptable to the Minister; and
- the applicant must meet specified public interest criteria relating to health and character.

All applicants must be in Australia when the visa is granted.

This is a permanent visa, and allows the holder to travel to Australia for 5 years from date of grant.

There are no conditions attaching to Subclass 881 visas.

The visa is evidenced by a visa label affixed to a valid passport.

Subclass 882 (Skilled – Designated Area-sponsored Overseas Student)

Subclass 882 is for applicants sponsored by a family member of the primary applicant. The sponsor must reside in a designated area of Australia and must be an Australian citizen, Australian permanent resident, or eligible New Zealand citizen. The primary applicant, or his or her spouse, must meet certain requirements relating to educational qualifications, age, English language ability and employment skills.

Item 1128BA of Schedule 1 to the Regulations sets out requirements for making a valid application. These include sponsorship requirements; requirements regarding the age, skills, educational qualifications of the primary applicant or that person's spouse; and requirements about the type of visa which must be held by applicants at time of application.

It is a time of application criterion for primary applicants that the assurance of support, provided when making the application, has been accepted by the Minister.

Primary applicants must meet the following time of decision criteria:

- the sponsorship, provided with the application, has been approved by the Minister and is still in force;
- the sponsor still resides in a designated area;
- the assurance of support continues to be acceptable to the Minister;
- if the applicant has been invited to submit an assessment of his or her skills in another occupation under regulation 2.27B, he or she must provide that assessment;
- the applicant must have vocational English, but a specified lesser proficiency in English is acceptable if particular English language training is available where the sponsor lives and the applicant has paid a fee for such training;
- there must be no evidence that the information given or used in the assessment of the applicant's skills in the nominated skilled occupation is false or misleading;
- the applicant (and members of his or her family in certain cases) must satisfy specified public interest criteria relating to health and character; and
- approval of the application would not exceed any cap on the number of Subclass 882 visas that may be granted in a financial year.

If the primary applicant's spouse is the person who met Schedule 1 requirements relating to educational qualifications, age and skills, then it is the spouse who must meet the requirements in the fourth, fifth and sixth dot points above.

A secondary applicant for a Subclass 882 visa must meet the following time of application criteria:

- he or she must be the member of the family unit of, and have made a combined application with, a person who satisfies the primary time of application criteria; and
- the assurance of support, provided with the application, has been accepted by the Minister.

At time of decision, secondary applicants must continue to be a member of the primary applicant's family unit and the primary applicant must be the holder of a Subclass 882 visa. The sponsorship, provided with the application, must have been approved by the Minister. The assurance of support must continue to be acceptable to the Minister, and still be in force. Secondary applicants must also meet specified public interest criteria relating to health and character.

All applicants must be in Australia when the visa is granted.

This is a permanent visa, and allows the holder to travel to Australia for 5 years from date of grant.

There are no conditions attaching to Subclass 882 visas.

The visa is evidenced by a visa label affixed to a valid passport.

Part 1.4 – Amendments of Schedules 4, 5, 8 and 9

Item [123] – Schedule 4, Part 2, item 4055

This item makes a technical amendment as a consequence of the removal of condition 8202 as a condition for Subclass 442 (Occupational Trainee).

Item [124] – Schedule 4, Part 2, after item 4055

This item includes a reference to the new Subclass 497 (Graduate – Skilled) visa (inserted by these Regulations) in Part 2 of Schedule 4.

Item 4013 of Schedule 4 imposes certain requirements on applicants affected by a risk factor listed in that item. Paragraph 4013(2)(b) provides it is a risk factor if an applicant has had a visa of a subclass listed in Part 2 cancelled for reason of breach of a visa condition listed in Part 2 in relation to that subclass.

The condition listed in Part 2 in relation to Subclass 497 is condition 8501.

Item [125] – Schedule 5, subclauses 5010(1) and (2)

This item amends special return criterion 5010 in Schedule 5 to the *Migration Regulations 1994* to clarify which visa applicants will be required to satisfy its requirements.

Unless an applicant meets the requirements of criterion 5010, he or she will be excluded from being granted a student visa for two years.

Under new subclause 5010(1), an applicant must meet the requirements of subclause 5010(3), (4) or (5) if:

- he or she is the holder of an AusAID student visa (as defined in regulation 1.04A); or
- he or she holds a Subclass 560, 562, 563, 570, 571, 572, 573, 574 or 575 visa and has the financial support of a government of a foreign country (see the definition of “foreign country” in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*).

Under new subclause 5010(2), an applicant must also meet the requirements of subclause 5010(3), (4) or (5) if:

- he or she is not the holder of a substantive visa; and
- the last substantive visa he or she held was:
 - an AusAID student visa within the meaning of regulation 1.04A; or
 - another student visa granted to the applicant who was provided with financial support by the government of a foreign country.

Item [126] – Schedule 5, subparagraph 5010(4)(a)(ii)

Under new subparagraph 5010(4)(a)(ii), the applicant meets the requirements of subclause 5010(4) if the applicant has ceased, completed, withdrawn from, or been excluded from another course approved by the AusAID Minister or the government of the foreign country that sponsored the applicant.

Item [127] – Schedule 5, paragraph 5010(5)(a)

Under new subparagraph 5010(5)(a), the applicant will meet the requirements of subclause 5010(5) if the applicant has the support of the AusAID Minister or the government of the foreign country that provided financial support to the applicant.

The addition of a reference to the foreign country that provided financial support to the applicant is intended to give reinforcement to, for example, an agreement that a foreign country may have made with an applicant. Under such an agreement, the foreign country may give an applicant financial support on the basis that the applicant will return to the foreign country and will remain in that foreign country for a certain period after the end of his or her stay in Australia on a student visa.

Item [128] – After Schedule 5

This clause inserts new Schedule 5A into the Regulations. New Schedule 5A sets out the evidentiary requirements that applicants seeking to satisfy the primary criteria of any subclass of student visa must satisfy at time of decision, unless otherwise specified in the Schedule.

Part 1 - Preliminary

Part 1 of new Schedule 5A sets out definitions for the new Schedule.

New clause 5A101 – Definitions

This clause contains definitions for the purposes of new Schedule 5A.

AASES (Acceptance Advice of Secondary Exchange Student) is defined to have the meaning given by clause 5A107.

The definition of ***course fees*** relates to each course that the applicant proposes to undertake, and not just the applicant's principal course of study. The definition also relates to a period of time. Therefore, for example, if funding for course fees needs to be evidenced for the full period, then funding for course fees needs to be evidenced for the full period of stay in Australia. However, in certain circumstances, evidence of funding for course fees only needs to be demonstrated for a shorter "period", such as the first 12 months of stay in Australia.

The definition of ***family applicant*** refers to an applicant for a student visa who is seeking to satisfy the secondary criteria in relation to the person who has satisfied or is seeking to satisfy the primary criteria for a student visa.

The definition of ***financial institution*** refers to certain types of bodies corporate that are governed by the central bank (or its equivalent) of the foreign country in which it operates. A central bank would be the equivalent, in a foreign country, of the Reserve Bank of Australia.

"Foreign country" is defined in paragraph 22(1)(f) of the *Acts Interpretation Act 1901* to mean any country (whether or not an independent sovereign state) outside Australia and the external Territories.

In addition to the other requirements of the definition of "financial institution", the Minister must be satisfied that the body corporate provides effective prudential assurance.

This definition has been inserted because it relates to whether an applicant seeking to satisfy primary criteria has financial capacity, as required by new Schedule 5A, on the basis that a financial institution has lent money to fund the applicant as student.

If the loan only covers part of the applicant's costs (as set out in Schedule 5A), then the applicant still has to prove that he or she has financial capacity in addition to the amount on loan, for the remainder of their costs for the relevant period of time.

The definition of **first 12 months** relates to a period of time for which an applicant must demonstrate financial capacity. It is intended to cover the first 12 months of the applicant's stay in Australia on the student visa. However, if the applicant will be in Australia on the student visa for a lesser period of time, then "first 12 months" is intended to end on the last day of the applicant's proposed stay in Australia on the student visa.

The definition of **full period** relates to the entire period that the applicant seeking to satisfy primary criteria proposes to be in Australia on the student visa (for which they are applying).

Fully-funded is defined to have the meaning given by clause 5A103.

The definition of **initial period** relates to any initial study-free period on the student visa, any prerequisite courses (such as an ELICOS, bridging course or foundation course), plus the first 12 months after the commencement of the principal course.

Living costs is defined to have the meaning given by subclause 5A104(1).

Money deposit is defined to mean a money deposit with a financial institution. This relates to whether a person can demonstrate a savings history to show that they have financial capacity, as required in new Schedule 5A. It is not possible to demonstrate financial capacity, where money deposits are referred to, by presenting cash rather than evidence of a savings history with a financial institution. Cash may be obtained, for example, on a short-term loan from a friend or from an unreputable money-lender.

School costs is defined to have the meaning given by subclause 5A104(2).

The definition of **travel costs** takes into account the costs for travel of the applicant seeking to satisfy primary criteria, and the costs for travel of any applicants seeking to satisfy secondary criteria (in relation to the applicant seeking to satisfy primary criteria). The applicant seeking to satisfy primary criteria is responsible for these costs.

The definition does not include members of the family unit who are not seeking to satisfy the secondary criteria.

The costs referred to are those for any applicants:

- having to travel to Australia and back to their home country if they apply outside Australia for the student visa; or
- having to travel from Australia to their home country if they apply for the student visa in Australia (but not in immigration clearance. This is a Schedule 2 requirement).

Value, of an item of property, is defined to have the meaning given by clause 5A105.

New clause 5A102 – Gazettal of alternatives to the IELTS test

This clause allows the Minister to specify alternative tests to the International English Language Testing System test ("IELTS test") for English language proficiency purposes, for new Schedule 5A. In the Gazette Notice, the Minister will be able to specify:

- the alternative test (eg, the type of test or its name);

- the foreign country or foreign countries in which the test may be taken (see paragraph 22(1)(f) of the *Acts Interpretation Act 1901* for the definition of “foreign country”); and
- the minimum test score that must be achieved in the test.

In some countries, the IELTS test is not available. However, in such countries, a reputable English language proficiency test may be available.

The provision for the Gazette Notice specifying alternative tests to the IELTS test is intended to avoid inconveniencing an applicant by requiring the applicant to travel to a country, other than his or her home country, to sit the IELTS test.

New clause 5A103 – Meaning of *fully funded*

This clause sets out the meaning of ***fully funded*** for new Schedule 5A.

An applicant will be fully funded if all of the costs for the applicant seeking to satisfy the primary criteria (of any subclass of student visa) that arise from the applicant studying in Australia are to be met by:

- a multilateral agency (for example, the Red Cross);
- a government of a foreign country (see the definition of “foreign country” in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*); or
- the Australian Commonwealth Government, or the government of an Australian State or Territory.

Course fees, living costs and travel costs for the applicant alone (that is, not including any living costs or travel costs for the applicant’s family unit members) are the costs that arise from the applicant studying in Australia (see definition of ***course fees*** and ***travel costs*** in clause 5A101, and of ***living costs*** in clause 5A104).

Whether an applicant is “fully-funded” is to be distinguished from whether an applicant has financial capacity under each assessment level in each sector in new Schedule 5A.

“Fully-funded” relates to the evidentiary requirements for English language proficiency and, in particular, the International English Language Testing System (“IELTS”). If an applicant is fully-funded, then that applicant does not have to satisfy IELTS requirements.

If funding is not provided for members of the family unit of the applicant seeking to satisfy primary criteria, then this still does not have the effect of requiring the applicant to satisfy IELTS requirements.

New clause 5A104 – Meaning of *living costs* and *school costs*

Living costs is defined in subclause 5A104(1) in relation to the costs that would objectively be incurred by a person in normal day-to-day circumstances (for example, food, rent, etc) for a year. Living costs are to be calculated at a figure of \$12,000 per year for the applicant seeking to satisfy the primary criteria.

If the applicant seeking to satisfy primary criteria has a spouse or any dependent children, costs are also calculated for those people, based on a percentage of the \$12,000 figure. Costs for a spouse and any dependent children are to be calculated regardless of whether those members of

the family unit are applicants themselves, whether they are in Australia, or whether they intend to travel to Australia.

Subclause 5A104(2) sets out the meaning of ***school costs*** for new Schedule 5A. School costs are to be calculated at a figure of \$8,000 per year for any child who is a school-age dependant at the time.

The applicant seeking to satisfy primary criteria is responsible for giving appropriate evidence that he or she has the funding to cover school costs.

As for living costs, evidence of financial capacity for school costs must be shown for any school-age dependants (see definition in regulation 1.03), regardless of whether:

- those children are applicants themselves (that is, whether they are applicants seeking to satisfy secondary criteria); or
- they are already in Australia; or
- they intend to travel to Australia.

This is because an applicant seeking to satisfy primary criteria who has school-age dependants is considered to have financial responsibilities toward those members of the family unit. Therefore, the applicant must be able to demonstrate financial capacity in relation to the school-age dependants, regardless of whether they will come to Australia on a student visa (having satisfied the secondary criteria).

In addition, if a member of the family unit is not yet a "school-age dependant" (as defined in regulation 1.03), but will become one during the life of the applicant's proposed student visa, the calculation of any school costs will include that child's school costs for the period of time during which the child will be a school-age dependant.

Therefore, if an applicant seeking to satisfy primary criteria has a child aged two years at the time of application, and the applicant's proposed length of study (and therefore length of visa) is 5 years, then school costs will have to be demonstrated for the two year old for a period of 2 years only. This is because no school costs have to be shown whilst the child is aged 2, 3 or 4, however they do have to be demonstrated for the last two years of the 5-year visa, at which time the child will be 5 years or older.

New clause 5A105 – Assessing the value of an item of property

This clause relates to financial capacity requirements, where an applicant may sometimes show evidence of having financial capacity by virtue of giving evidence of the value of an item of property. Depending on the requirements of the assessment level and the sector, the property may be the applicant's own property, or it may belong to someone providing funding for the applicant.

If the value of an item of property is permitted by new Schedule 5A to be used as evidence of financial capacity, the valuation must be performed by someone who the Minister is satisfied is qualified to make the assessment.

New clause 5A106 – Satisfying a proposed education provider about English language proficiency

This clause provides that where there is a requirement in new Schedule 5A for an applicant to give evidence that he or she has a level of English language proficiency that satisfies his or her proposed education provider, then the applicant must give certain evidence. The evidence must

show that the proposed education provider or education providers of all of the courses that the applicant will undertake is, or are, satisfied that the applicant has the level of English language proficiency that is necessary to undertake the course or courses.

New clause 5A107 – Exchange student must give AASES

This clause relates to secondary exchange students and is therefore only relevant to the evidentiary requirements for an applicant seeking to satisfy primary criteria in the Schools Sector (see new Subclass 571 and Part 3 of new Schedule 5A. For definition of “exchange student”, see regulation 1.03 of the Regulations).

If the applicant is an exchange student, the applicant must provide the Acceptance Advice of Secondary Exchange Student form, which has been filled in correctly and therefore contains:

- a declaration made by the applicant’s exchange organisation accepting the student (as set out in the form); and
- a declaration made by the applicant’s parents or legal guardian who “stands in the shoes of” the applicant’s parent or parents agreeing to the exchange (as set out in the form). The definition of “custody” in regulation 1.03 of the Regulations is intended to cover such a “legal guardian”.

New clause 5A108 – Applicant must show enrolment or offer of place

This clause provides that if the applicant is not:

- an exchange student (see definition of “exchange student” in regulation 1.03 of the Regulations); or
- a person seeking to satisfy primary criteria in Subclass 576 (AusAID or Defence Sector); or
- a person who made his or her application on Form 157E;

then the applicant must provide either a certificate of enrolment, or an offer of place, for each course that the applicant will undertake whilst the holder of the student visa.

This means that the minimum requirement under this clause is that the applicant described above must provide an offer of place for each of the courses that the applicant will undertake whilst the holder of the student visa.

New clause 5A109 – Requirement to give declaration

This clause provides that if the applicant is under the age of 18 years and if the applicant is required to give a declaration under this Schedule, then the requirement is to be read as a requirement for the parent or “legal guardian” (see definition of “custody” in regulation 1.03 of the Regulations) of the applicant to give the declaration on the applicant’s behalf.

Part 2 – Subclass 570 (Independent ELICOS Sector)

Part 2 of new Schedule 5A sets out the evidential requirements for assessment levels 1 to 5 for Subclass 570 (Independent ELICOS Sector) of Schedule 2 to the Regulations. The assessment levels are set out in reverse order (ie, 5 down to 1) as the assessment level with the highest evidentiary requirements is specified first.

Division 1 – Requirements for assessment level 5

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 570 (Independent ELICOS Sector) who are subject to assessment level 5.

New clause 5A201 – English language proficiency

This provision requires that an applicant must give evidence that he or she has achieved a minimum Overall Band Score of 7.0 in an IELTS test (see definition of "IELTS test" in regulation 1.03 of the Regulations) that was taken less than 2 years before the visa application was made.

Applicants subject to assessment level 5 are required to have a higher standard of English language proficiency than applicants subject to other assessment levels. This is to ensure that applicants are genuine applicants for student visas and to maintain the integrity of the student visa program.

The IELTS test is designed to assess the language ability of candidates who need to study or work where English is used as the language of communication.

The IELTS test is readily available at test centres around the world (including Australia) that arrange test administration according to local demand. Under the new students regime, potential students would sit the test to gauge their English proficiency before applying for a student visa.

The IELTS test comprises several modules. The four test components are speaking, reading, writing and listening.

New clause 5A202 – Financial capacity

Clause 5A202 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding for:

- the applicant's course fees for the duration of the applicant's period of stay in Australia (see definition of "course fees" in clause 5A101);
- living costs for the duration of the applicant's period of stay in Australia (see definition of "living costs" in clause 5A104);
- school costs for members of the applicant's family unit, for the period of the applicant's stay in Australia (see definition of "school costs" in clause 5A104); and
- travel costs (see definition of "travel costs" in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether there are members of the applicant's family unit. Further to this, school costs only apply where any of those people are school-age dependants (see definition of "school-age dependant" in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not. The applicant must provide evidence that he or she has living costs for the entire duration of the applicant's proposed stay in Australia as the holder of the student visa.

Similarly, the applicant must prove that he or she has school costs, also defined in new clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not. The applicant must provide evidence that he or she has school costs for the entire duration of the applicant's proposed stay in Australia as the holder of the student visa.

Under paragraph (c), the applicant must give evidence that he or she has held funding for the above costs for at least 5 consecutive years prior to the application being made. The funding must have been held by way of money deposits, rather than by way of cash (see definition of "money deposit" in clause 5A101).

In addition, under paragraph (d), the evidence that the applicant gives of his or her income must demonstrate that the applicant's income stream has been consistent with the level of funding that they are required to have.

Therefore, for example, if the applicant's income is low but the funding available to the applicant is quite high, it may be evident that the applicant could not have obtained the funding for his or her proposed stay in Australia from his or her income. The applicant may have obtained his or her funding via an unscrupulous method, and this relates to whether the applicant intends to be a genuine student.

New clause 5A203 – Other requirements

This clause sets out other requirements, in relation to which the applicant must give evidence. The requirements in this clause are unique to this sector. That is, because the principal course must be an independent ELICOS, the applicant will not be able to undertake any "prerequisite ELICOS" before commencing the principal course.

Therefore, the evidence required by this clause relates to:

- the length of the applicant's proposed principal course;
- the standard of the applicant's educational qualifications in relation to the proposed principal course; and
- the suitability of the proposed course for the applicant's employment.

As assessment level 5 is considered to be an extremely high risk level, these requirements relate to whether applicant intends to be a genuine student in Australia.

Division 2 – Requirements for assessment level 4

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 570 (Independent ELICOS Sector) who are subject to assessment level 4.

New clause 5A204 – English language proficiency

Applicants subject to assessment level 4 are required to have a high standard of English language proficiency. This is to:

- ensure that applicants subject to assessment level 4 are genuine applicants for student visas; and
- maintain the integrity of the student visa program.

Clause 5A204 requires an applicant to give evidence of one of the following:

- that the applicant achieved, in an IELTS test (see definition of “IELTS test” in regulation 1.03 of the Regulations) taken less than 2 years before the application was made, an Overall Band Score of at least 5.0;
- that the applicant is fully funded and has a level of English language proficiency that satisfies his or her proposed education provider (see definition of “fully funded” in clause 5A103);
- that the applicant was in Australia at the time of making the student visa application and has – less than 2 years before the application was made:
 - successfully completed a Senior Secondary Certificate of Education in Australia. Those studies must have been conducted in the English language; or
 - whilst the holder of a student visa, studied towards a qualification from the Australian Qualifications Framework at the Certificate IV level or higher that was conducted in the English language;
- that the applicant achieved, less than 2 years before the application was made, the required score in a test specified by the Minister in a Gazette Notice as an alternative test to the IELTS test, pursuant to clause 5A102. These tests are available in limited circumstances (see explanation for clause 5A102).

The IELTS test is designed to assess the language ability of candidates who need to study or work where English is used as the language of communication.

The IELTS test is readily available at test centres around the world (including Australia) that arrange test administration according to local demand. Under the new students regime, potential students sit the test to gauge their English proficiency before applying for a student visa.

The IELTS test comprises several modules. The four test components are speaking, reading, writing and listening.

New clause 5A205 – Financial capacity

Clause 5A205 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding from an acceptable source (see definition of “funds from an acceptable source” in subclause 5A205(2)) for the following:

- the applicant’s course fees for the duration of the applicant’s period of stay in Australia (see definition of “course fees” in clause 5A101);
- living costs for the duration of the applicant’s period of stay in Australia (see definition of “living costs” in clause 5A104);
- school costs for members of the applicant’s family unit, for the period of the applicant’s stay in Australia (see definition of “school costs” in clause 5A104); and
- travel costs (see definition of “travel costs” in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether the applicant has any family unit members. Further to this, school costs only apply where any of those people are school-age dependants (see definition of “school-age dependant” in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not.

Similarly, the applicant must prove that he or she has school costs, also defined in new clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not.

Further to the above, under paragraph 5A205(1)(c), the evidence that the applicant gives of his or her funding must demonstrate that the income stream of the person providing the funding (including if the applicant provides the funding) has been consistent with the level of funding being provided by that person.

Therefore, for example, if the applicant is relying on his or her father’s income, and the father’s income has been low, it may be evident that the father could not have obtained the funding from his income. This goes to whether the applicant intends to be a genuine student.

The definition of **acceptable individual** in subclause 5A205(2) sets out which people are “acceptable individuals” for clause 5A205. An “acceptable individual” is one or more of any of the following people:

- the applicant;
- the applicant’s spouse;
- one or both of the applicant’s parents; or
- one or both of the applicant’s grandparents.

“Acceptable individual” is subsequently referred to in the definition of “funds from an acceptable source” in subclause 5A205(2).

The definition of **funds from an acceptable source** in subclause 5A205(2) sets out the types of funding in relation to which evidence can be given to satisfy financial capacity for assessment level 4 in this sector.

Under paragraph (a) of the definition of “funds from an acceptable source”, if an applicant is giving evidence of financial capacity by way of money deposits, the applicant must give evidence that he or she, or another acceptable individual, has held the money deposits for at least 6 consecutive months prior to the application being made.

Other “funds from an acceptable source” for clause 5A205 are:

- financial support from the government of a foreign country (see the definition of “foreign country” in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*);
- financial support from the Australian Commonwealth Government, or the government of an Australian State or Territory;

- financial support from a multilateral agency (such as the Red Cross).

As assessment level 4 is a very high risk assessment level, evidence of non-monetary funding relating to property (such as the presentation of valuations of property) is not permissible.

New clause 5A206 – Other requirements

This clause sets out other requirements, in relation to which the applicant must give evidence. The requirements in this clause are unique to this sector. That is, because the principal course must be an independent ELICOS, the applicant will not be able to undertake any “prerequisite ELICOS” before commencing the principal course.

Therefore, the evidence required by this clause relates to:

- the length of the applicant’s proposed principal course;
- the standard of the applicant’s educational qualifications in relation to the proposed principal course; and
- the suitability of the proposed course for the applicant’s employment.

As assessment level 4 is considered to be a very high risk level, these requirements relate to whether applicant intends to be a genuine student in Australia.

Division 3 – Requirements for assessment level 3

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 570 (Independent ELICOS Sector) who are subject to assessment level 3.

New clause 5A207 – English language proficiency

Applicants subject to assessment level 3 are not required to have as high a standard of English language proficiency as is required in relation to assessment levels 4 and 5 in this sector.

Therefore, in recognition of the lower level of risk and the type of principal course that is to be undertaken, the applicant only has to give evidence that he or she has a level of English language proficiency that satisfies his or her proposed education provider.

New clause 5A208 – Financial capacity

Clause 5A208 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding from an acceptable source (see definition of “funds from an acceptable source” in subclause 5A208(2)) for the following:

- the applicant’s course fees for the duration of the applicant’s period of stay in Australia (see definition of “course fees” in clause 5A101);
- living costs for the duration of the applicant’s period of stay in Australia (see definition of “living costs” in clause 5A104);

- school costs for members of the applicant's family unit, for the period of the applicant's stay in Australia (see definition of "school costs" in clause 5A104); and
- travel costs (see definition of "travel costs" in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether the applicant has any family unit members. Further to this, school costs only apply where any of those people are school-age dependants (see definition of "school-age dependant" in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not.

Similarly, the applicant must prove that he or she has school costs, also defined in new clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not.

Further to the above, under paragraph 5A208(1)(c), the evidence that the applicant gives of his or her funding must demonstrate that the income stream of the person providing the funding (including if the applicant provides the funding) has been consistent with the level of funding being provided by that person.

Therefore, for example, if the applicant is relying on his or her father's income, and the father's income has been low, it may be evident that the father could not have obtained the funding from his income. This goes to whether the applicant intends to be a genuine student.

The definition of **acceptable individual** in subclause 5A208(2) sets out which people are "acceptable individuals" for clause 5A208. An "acceptable individual" is one or more of any of the following people:

- the applicant;
- the applicant's spouse;
- one or both of the applicant's parents; or
- one or both of the applicant's grandparents.

"Acceptable individual" is subsequently referred to in the definition of "funds from an acceptable source", in subclause 5A208(2).

The definition of **funds from an acceptable source** in subclause 5A208(2) sets out the types of funding in relation to which evidence can be given to satisfy financial capacity for assessment level 3 in this sector.

Acceptable sources of funding for clause 5A208 are:

- a money deposit held by an acceptable individual;
- a loan from the government of the applicant's home country (see definition of "home country" in regulation 1.03 of the Regulations);

- financial support from the government of a foreign country (see the definition of “foreign country” in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*);
- financial support from the Australian Commonwealth Government, or the government of an Australian State or Territory;
- financial support from a multilateral agency (such as the Red Cross).

Evidence of non-monetary funding relating to property (such as the presentation of valuations of property) is not permissible in this assessment level in this sector.

New clause 5A209 – Other requirements

This clause sets out other requirements in relation to which the applicant must give evidence. The requirements in this clause are unique to this sector. That is, because the principal course must be an independent ELICOS, the applicant will not be able to undertake any “prerequisite ELICOS” before commencing the principal course.

Therefore, the evidence required by this clause relates to:

- any previous schooling, training or study that the applicant has undertaken; and
- the length of the applicant’s proposed principal course;

Division 4 – Requirements for assessment level 2

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 570 (Independent ELICOS Sector) who are subject to assessment level 2.

New clause 5A210 – English language proficiency

Applicants subject to assessment level 2 are also not required to have as high a standard of English language proficiency as is required in relation to assessment levels 4 and 5 in this sector.

Therefore, in recognition of the lower level of risk and the type of principal course that is to be undertaken, the applicant only has to give evidence that he or she has a level of English language proficiency that satisfies his or her proposed education provider.

New clause 5A211 – Financial capacity

Clause 5A211 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding from an acceptable source (see definition of “funds from an acceptable source” in subclause 5A211(2)) for the following:

- course fees for the first 12 months of the applicant’s stay in Australia (see definitions of “course fees” and “first 12 months” in clause 5A101);
- living costs for the first 12 months of the applicant’s stay in Australia (see definition of “living costs” in clause 5A104);

- school costs for school-age dependants, for the first 12 months of the applicant's stay in Australia (see definition of "school costs" in clause 5A104); and
- travel costs (see definition of "travel costs" in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether the applicant has any family unit members. Further to this, school costs only apply where any of those people are school-age dependants (see definition of "school-age dependant" in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not.

Similarly, the applicant must prove that he or she has school costs, also defined in clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not.

In addition to the above, paragraph 5A211(1)(c) requires the applicant to provide a declaration stating that he or she has access to sufficient funds to meet the course fees, living costs and school costs for the remainder of the applicant's expected stay in Australia.

The definition of "funds from an acceptable source" in subclause 5A211(2) sets out the types of funding in relation to which evidence can be given to satisfy financial capacity for assessment level 2 in this sector. The types of funding include:

- a money deposit or the value of an item of property held either by the applicant or by a person providing funding to the applicant (see definition of "money deposit" in clause 5A101 and definition of "value of an item of property" in clause 5A104);
- a loan from a financial institution;
- a loan to the applicant from the government of the applicant's home country (see definition of "home country" in regulation 1.03 of the Regulations);
- financial support from the applicant's proposed education provider;
- financial support from the Australian Commonwealth Government, or the government of an Australian State or Territory;
- financial support from the government of a foreign country (see the definition of "foreign country" in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*);
- financial support from a business. This is intended to encompass corporations and other registered businesses, regardless of whether they operate outside the country in which they are based, and regardless of the applicant's role in relation to the business; or
- financial support from a multilateral agency (such as the Red Cross).

As assessment level 2 in this sector is a lower risk assessment level, evidence of certain non-monetary funding (such as the presentation of valuations of property) *is* permissible.

In addition, unlike more stringent assessment levels in this sector, funding only has to be demonstrated for the first 12 months of the applicant's stay in Australia, with the exception of the declaration, which relates to the remainder of the applicant's expected stay in Australia.

New clause 5A212 – Other requirements

In recognition of the lower level of risk posed by this assessment level in this sector, the applicant is only required by this clause to provide evidence of the applicant's previous schooling, training or other study.

Division 5 – Requirements for assessment level 1

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 570 (Independent ELICOS Sector) who are subject to assessment level 1.

New clause 5A213 – English language proficiency

Applicants subject to assessment level 1 are also not required to have as high a standard of English language proficiency as is required in relation to assessment levels 4 and 5 in this sector.

Therefore, in recognition of the lower level of risk and the type of principal course that is to be undertaken, the applicant only has to give evidence that he or she has a level of English language proficiency that satisfies his or her proposed education provider.

New clause 5A214 – Financial Capacity

In recognition that assessment level 1 in this sector is a low risk assessment level, under this clause applicants are only required to give evidence of financial capacity by way of a declaration. The declaration must state that the applicant has access to funds that are sufficient to meet:

- course fees for the full period (see definitions of "course fees" and "full period" in clause 5A101);
- living costs for the full period (see definition of "living costs" in clause 5A104);
- school costs for school-age dependants for the full period (see definition of "school costs" in clause 5A104, and definition of "school-age dependant" in regulation 1.03 of the Regulations); and
- travel costs (see definition of "travel costs" in clause 5A101).

In recognition of their low risk, there are no "other requirements" in this Schedule for applicants subject to assessment level 1 in this sector.

Part 3 – Subclass 571 (Schools Sector)

Part 3 of new Schedule 5A sets out the evidential requirements for assessment levels 1 to 5 for Subclass 571 (Schools Sector) of Schedule 2 to the Regulations. The assessment levels are set out in reverse order (ie, 5 down to 1) as the assessment level with the highest evidentiary requirements is specified first.

Division 1 – Requirements for assessment level 5

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 571 (Schools Sector) who are subject to assessment level 5.

New clause 5A301 – English language proficiency

Subclause 5A301(1) requires applicants who are not exchange students to give evidence that they have achieved a minimum Overall Band Score of 7.0 in an IELTS test (see definition of “IELTS test” in regulation 1.03 of the Regulations) that was taken less than 2 years before the visa application was made.

Applicants subject to assessment level 5 are required to have a higher standard of English language proficiency than applicants subject to other assessment levels. This is to ensure that applicants are genuine applicants for student visas and also to maintain the integrity of the student visa program.

The IELTS test is designed to assess the language ability of candidates who need to study or work where English is used as the language of communication.

The IELTS test is readily available at test centres around the world (including Australia) that arrange test administration according to local demand. Under the new students regime, potential students would sit the test to gauge their English proficiency before applying for a student visa.

The IELTS test comprises several modules. The four test components are speaking, reading, writing and listening.

Subclause 5A301(2) requires applicants who are exchange students to show evidence that they have a level of English language proficiency that satisfies their proposed education provider.

New clause 5A302 – Financial capacity

Clause 5A302 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding for:

- the applicant’s course fees for the full period of the applicant’s period of stay in Australia (see definition of “course fees” in clause 5A101);
- living costs for the full period of the applicant’s period of stay in Australia (see definition of “living costs” in clause 5A104);
- school costs for members of the applicant’s family unit, for the full period of the applicant’s stay in Australia (see definition of “school costs” in clause 5A104);
- a further \$12, 000, which is intended to cover one year’s further course costs after the end of the visa (as most student visa holders who undertake schooling will apply for further stay for study at the end of their visa);
- living costs and school costs for the period of 12 months following the full period; and
- travel costs (see definition of “travel costs” in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether there are members of the applicant’s family unit. Further to this, school costs only apply where any of those people are school-age dependants (see definition of “school-age dependant” in regulation

1.03 of the Regulations), regardless of whether the school-age dependants are also applicants or not.

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not.

Under paragraph (e), the applicant must give evidence that he or she has held funding for the above costs for at least 5 consecutive years prior to the application being made. The funding must have been held by way of money deposits, rather than by way of cash (see definition of "money deposit" in clause 5A101).

In addition, under paragraph (f), the evidence that the applicant gives of his or her income must demonstrate that the applicant's income stream has been consistent with the level of funding that he or she is required to have.

Therefore, for example, if the applicant's income is low but the funding available to the applicant is quite high, it may be evident that the applicant could not have obtained the funding for his or her proposed stay in Australia from his or her income. The applicant may have obtained his or her funding via an unscrupulous method, and this relates to whether the applicant intends to be a genuine student.

New clause 5A303 – Other requirements

This clause requires that if the applicant is not an exchange student, he or she must give evidence that:

- he or she will undertake schooling in Australia at the secondary level for at least 2 years;
- he or she has successfully completed secondary schooling to at least the year 9 level or its equivalent;
- the principal course will assist the applicant in his or her home country in relation to improving the applicant's employment situation; and
- at the time of application the applicant was under 18 years of age.

These requirements recognise that applicants subject to assessment level 5 in this sector are considered to pose an extreme level of risk.

If the applicant is an exchange student, the applicant is required to comply with the provisions of clause 5A107. This clause requires an exchange student to show declarations made by his or her exchange organisation accepting the student, and the applicant's parents or the person or persons who have custody of the applicant agreeing to the exchange. These declarations must be on an Acceptance Advice of Secondary Exchange Student (AASES) form from the relevant State or Territory education authority.

These requirements go towards demonstrating the genuineness of the applicant's intention to study in Australia.

Division 2 – Requirements for assessment level 4

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 571 (Schools Sector) who are subject to assessment level 4.

New clause 5A304 – English language proficiency

Applicants subject to assessment level 4 are required to have a high standard of English language proficiency. This is to:

- ensure that applicants subject to assessment level 4 are genuine applicants for student visas; and
- maintain the integrity of the student visa program.

Subregulation 5A304(1) requires an applicant to give evidence that he or she has a level of English language proficiency that satisfies his or her proposed education provider.

However, if the applicant is not an exchange student and must undertake an ELICOS before commencing his or her principal course in order to satisfy the English language proficiency requirements of the education provider, an additional requirement is imposed. The applicant must give evidence that the ELICOS or other English language bridging course will have a duration of no more than 30 weeks.

New clause 5A305 – Financial capacity

Clause 5A305 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

If the applicant is not an exchange student, the applicant must prove that he or she has funding from an acceptable source (see definition of "funds from an acceptable source" in subclause 5A305(2)) for the following:

- the applicant's course fees for the full period of the applicant's period of stay in Australia (see definition of "course fees" in clause 5A101);
- living costs for the full period of the applicant's period of stay in Australia (see definition of "living costs" in clause 5A104);
- school costs for members of the applicant's family unit, for the full period of the applicant's stay in Australia (see definition of "school costs" in clause 5A104);
- a further \$12, 000 from an acceptable source, which is intended to cover one year's further course costs after the end of the visa (as most student visa holders who undertake schooling will apply for further stay for study at the end of their visa);
- living costs and school costs for the period of 12 months following the full period; and
- travel costs (see definition of "travel costs" in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether the applicant has any family unit members, regardless of whether the members of the family unit are also applicants or not. Further to this, school costs only apply where any of those people are school-age dependants, regardless of whether the school-age dependants are also applicants or not (see definition of "school-age dependant" in regulation 1.03 of the Regulations).

Further to the above, under paragraph 5A305(1)(e), the evidence that the applicant gives of his or her funding must demonstrate that the income stream of the person providing the funding

(including if the applicant provides the funding) has been consistent with the level of funding being provided by that person.

Therefore, for example, if the applicant is relying on his or her father's income, and the father's income has been low, it may be evident that the father could not have obtained the funding from his income. This goes to whether the applicant intends to be a genuine student.

The definition of **acceptable individual** in subclause 5A305(2) sets out exactly which people are "acceptable individuals" for clause 5A305. An "acceptable individual" is one or more of any of the following people:

- the applicant;
- the applicant's spouse;
- one or both of the applicant's parents; or
- one or both of the applicant's grandparents.

"Acceptable individual" is subsequently referred to in the definition of "funds from an acceptable source" in subclause 5A305(2).

The definition of **funds from an acceptable source** in subclause 5A305(2) sets out the types of funding in relation to which evidence can be given to satisfy financial capacity for assessment level 4 in this sector.

Under paragraph (a) of the definition of "funds from an acceptable source", if an applicant is giving evidence of financial capacity by way of money deposits, the applicant must give evidence that he or she, or another acceptable individual, has held the money deposits for at least 6 consecutive months prior to the application being made.

Other "funds from an acceptable source" for clause 5A305 are:

- a loan from a financial institution;
- a loan to the applicant from the government of the applicant's home country (see definition of "home country" in regulation 1.03 of the Regulations);
- financial support from the applicant's proposed education provider;
- financial support from the Australian Commonwealth Government, or the government of an Australian State or Territory;
- financial support from the government of a foreign country (see the definition of "foreign country" in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*); or
- financial support from a multilateral agency (such as the Red Cross).

As assessment level 4 is a very high risk assessment level, evidence of non-monetary funding relating to property (such as the presentation of valuations of property) is not permissible.

New clause 5A306 – Other requirements

If the applicant is not an exchange student, the applicant must give evidence that all of the following apply:

- the principal course will be of no less than 16 months duration, or the applicant has undertaken a secondary school course outside Australia of at least 2 years duration with an Australian curriculum and conducted in English by an Australian provider with Australian teaching staff;
- the applicant has successfully completed secondary schooling to year 9 level or its equivalent; and
- at the time of making the application, the applicant was under the age of 18.

These requirements go towards demonstrating the genuineness of the applicant's intention to study in Australia.

Division 3 – Requirements for assessment level 3

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 571 (Schools Sector) who are subject to assessment level 3.

New clause 5A307 – English language proficiency

Applicants subject to assessment level 3 in this sector are required to have a high standard of English language proficiency. This is to:

- ensure that applicants subject to assessment level 3 are genuine applicants for student visas; and
- maintain the integrity of the student visa program.

Subclause 5A307(1) requires an applicant to give evidence that he or she has a level of English language proficiency that satisfies his or her proposed education provider.

However, under subclause 5A307(2), if the applicant is not an exchange student and must undertake an ELICOS before commencing his or her principal course in order to satisfy the English language proficiency requirements of the education provider, an additional requirement is imposed. The applicant must give evidence that the ELICOS or other English language bridging course will have a duration of no more than 40 weeks.

New clause 5A308 – Financial capacity

Clause 5A308 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

If the applicant is not an exchange student, the applicant must give evidence that he or she has funds from an acceptable source (see definition of "funds from an acceptable source" in subclause 5A308(2)) for the following:

- the applicant's fees for all courses for the full period of the applicant's stay in Australia (see definition of "course fees" in clause 5A101);
- living costs for the full period of the applicant's stay in Australia (see definition of "living costs" in clause 5A104);

- school costs for school-age dependants, for the duration of the applicant's stay in Australia (see definition of "school costs" in clause 5A104); and
- travel costs (see definition of "travel costs" in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether the applicant has any family unit members. Further to this, school costs only apply where any of those people are school-age dependants (see definition of "school-age dependant" in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not.

Similarly, the applicant must prove that he or she can meet school costs, also defined in new clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not.

Further to the above, under paragraph 5A308(1)(c), the evidence that the applicant gives of his or her funding must demonstrate that the income stream of the person providing the funding (including if the applicant provides the funding) has been consistent with the level of funding being provided by that person.

Therefore, for example, if the applicant is relying on a friend's income, and the friend's income has been low, it may be evident that the friend could not have obtained the funding from his or her income. This goes to whether the applicant intends to be a genuine student.

The definition of ***funds from an acceptable source*** in subclause 5A308(2) sets out the types of funding in relation to which evidence can be given to satisfy financial capacity for assessment level 3 in this sector.

Under paragraph (a) of the definition of "funds from an acceptable source", if an applicant is giving evidence of financial capacity by way of money deposits or the value of an item of property, the applicant must give evidence that he or she, or the individual providing funding to him or her, has held that source of funds for at least 3 consecutive months prior to the application being made.

Other "funds from an acceptable source" for clause 5A308 are:

- a loan from a financial institution;
- a loan to the applicant from the government of the applicant's home country (see definition of "home country" in regulation 1.03 of the Regulations);
- financial support from the applicant's proposed education provider;
- financial support from the Australian Commonwealth Government, or the government of an Australian State or Territory;
- financial support from the government of a foreign country (see the definition of "foreign country" in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*); or
- financial support from a multilateral agency (such as the Red Cross).

New clause 5A309 – Other requirements

If the applicant is not an exchange student, the applicant must give evidence that all of the following apply:

- the principal course will be of no less than 16 months duration, or the applicant has undertaken a secondary school course outside Australia of at least 2 years duration with an Australian curriculum and conducted in English by an Australian provider with Australian teaching staff;
- the applicant has successfully completed secondary schooling to year 6 level or its equivalent; and
- at the time of making the application, the applicant was under the age of 18.

These requirements go towards demonstrating the genuineness of the applicant's intention to study in Australia.

Division 4 – Requirements for assessment level 2

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 571 (Schools Sector) who are subject to assessment level 2.

New clause 5A310 – English language proficiency

In recognition of the lower risk associated with applicants subject to assessment level 2 in this sector, under clause 5A310 applicants are not subject to the more stringent English language proficiency requirements of assessment levels 3, 4 and 5 in this sector.

Therefore, an applicant under this clause only needs to give evidence that he or she has a level of English language proficiency that satisfies his or her proposed education provider.

New clause 5A311 – Financial capacity

Clause 5A311 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

If the applicant is not an exchange student, the applicant must prove that he or she has funding from an acceptable source (see definition of "funds from an acceptable source" in subclause 5A311(2)) for the following:

- course fees for the first 12 months of the applicant's stay in Australia (see definition of "course fees" and "first 12 months" in clause 5A101);
- living costs for the first 12 months of the applicant's stay in Australia (see definition of "living costs" in clause 5A104);
- school costs for school-age dependants, for the first 12 months of the applicant's stay in Australia (see definition of "school costs" in clause 5A104); and
- travel costs (see definition of "travel costs" in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether the applicant has any family unit members. Further to this, school costs only apply where any of those people are school-age dependants (see definition of "school-age dependant" in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not.

Similarly, the applicant must prove that he or she can meet school costs, also defined in clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not.

In addition to the above, paragraph 5A311(1)(c) requires the applicant to provide a declaration stating that he or she has access to sufficient funds to meet the course fees, living costs and school costs for the remainder of the applicant's expected stay in Australia.

In this clause, there are no limits on who may provide funding for the applicant by way of money deposits or the value of an item of property, for the purposes of meeting financial capacity requirements.

The definition of funds from an acceptable source in subclause 5A311(2) sets out the types of funding in relation to which evidence can be given to satisfy financial capacity for assessment level 2 in this sector. The types of funding include:

- a money deposit or the value of an item of property held either by the applicant or by a person providing support to the applicant (see definition of "money deposit" in clause 5A101 and definition of "value of an item of property" in clause 5A105);
- a loan from a financial institution;
- a loan to the applicant from the government of the applicant's home country (see definition of "home country" in regulation 1.03 of the Regulations);
- financial support from the applicant's proposed education provider;
- financial support from the Australian Commonwealth Government, or the government of an Australian State or Territory;
- financial support from the government of a foreign country (see the definition of "foreign country" in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*);
- financial support from a business. This is intended to encompass corporations and other registered businesses, regardless of whether they operate outside the country in which they are based, and regardless of the applicant's role in relation to the business; or
- financial support from a multilateral agency (such as the Red Cross).

As assessment level 2 in this sector is a lower risk assessment level, evidence of certain non-monetary funding (such as the presentation of valuations of property) *is* permissible.

In addition, unlike more stringent assessment levels in this sector, funding only has to be demonstrated for the first 12 months of the applicant's stay in Australia, with the exception of the declaration, which relates to the remainder of the applicant's expected stay in Australia.

New clause 5A312 – Other requirements

This clause requires those applicants who are not exchange students to give evidence that, at the time of making the application, they were at least 6 years old, and to give evidence of their previous schooling, training or other study.

Division 5 – Requirements for assessment level 1

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 571 (Schools Sector) who are subject to assessment level 1.

New clause 5A313 – English language proficiency

As applicants subject to assessment level 1 in this sector are considered to pose a low risk, such applicants under this clause are only required to give evidence that they have a level of English language proficiency that satisfies their proposed education provider.

New clause 5A314 – Financial Capacity

In recognition that assessment level 1 in this sector is a low risk assessment level, under this clause applicants are only required to give evidence of financial capacity by way of a declaration. The declaration must state that the applicant has access to funds that are sufficient to meet:

- course fees for the full period (see definitions of “course fees” and “full period” in clause 5A101);
- living costs for the full period (see definition of “living costs” in clause 5A104);
- school costs for school-age dependants for the full period (see definition of “school costs” in clause 5A104, and definition of “school-age dependant” in regulation 1.03 of the Regulations); and
- travel costs (see definition of “travel costs” in clause 5A101).

New clause 5A315 – Other requirements

As applicants subject to assessment level 1 in this sector are considered to pose a low risk, applicants under this clause who are not exchange students are only required to give evidence that, at the time of making the application, they were at least 6 years old, and to give evidence of their previous schooling, training or other study.

Part 4 – Subclass 572 (Vocational Education and Training Sector)

Part 4 of new Schedule 5A sets out the evidential requirements for assessment levels 1 to 5 for Subclass 572 (Vocational Education and Training Sector) of Schedule 2 to the Regulations. The assessment levels are set out in reverse order (ie, 5 down to 1) as the assessment level with the highest evidentiary requirements is specified first.

Division 1 – Requirements for assessment level 5

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 572 (Vocational Education and Training Sector) who are subject to assessment level 5.

New clause 5A401 – English language proficiency

This provision requires that an applicant must give evidence that they have achieved a minimum Overall Band Score of 7.0 in an IELTS test (see definition in regulation 1.03 of the Regulations) that was taken less than 2 years before the visa application was made.

Applicants subject to assessment level 5 are required to have a higher standard of English language proficiency than applicants subject to other assessment levels. This is to ensure that applicants are genuine applicants for student visas and also to maintain the integrity of the student visa program.

The IELTS test is designed to assess the language ability of candidates who need to study or work where English is used as the language of communication.

The IELTS test is readily available at test centres around the world (including Australia) that arrange test administration according to local demand. Under the new students regime, potential students would sit the test to gauge their English proficiency before applying for a student visa.

The IELTS test comprises several modules. The four test components are speaking, reading, writing and listening.

New clause 5A402 – Financial capacity

Clause 5A402 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding for:

- the applicant's course fees for the full period of the applicant's period of stay in Australia (see definition of "course fees" in clause 5A101);
- living costs for the full period of the applicant's period of stay in Australia (see definition of "living costs" in clause 5A104);
- school costs for members of the applicant's family unit, for the full period of the applicant's stay in Australia (see definition of "school costs" in clause 5A104); and
- travel costs (see definition of "travel costs" in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether there are members of the applicant's family unit. Further to this, school costs only apply where any of those people are school-age dependants (see definition of "school-age dependant" in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not. The applicant must provide evidence that he or she has living costs for the entire duration of the applicant's proposed stay in Australia as the holder of the student visa.

Similarly, the applicant must prove that he or she can meet school costs, also defined in new clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not. The applicant must provide evidence that he or she has

school costs for the entire duration of the applicant's proposed stay in Australia as the holder of the student visa.

Under paragraph (c), the applicant must give evidence that he or she has held funding for the above costs for at least 5 consecutive years prior to the application being made. The funding must have been held by way of money deposits, rather than by way of cash (see definition of "money deposit" in clause 5A101).

In addition, under paragraph (d), the evidence that the applicant gives of his or her income must demonstrate that the applicant's income stream has been consistent with the level of funding that he or she is required to have.

Therefore, for example, if the applicant's income is low but the funding available to the applicant is quite high, it may be evident that the applicant could not have obtained the funding for his or her proposed stay in Australia from his or her income. The applicant may have obtained his or her funding via an unscrupulous method, and this relates to whether the applicant intends to be a genuine student.

New clause 5A403 – Other requirements

This clause:

- recognises that if a person is to undertake vocational education and training, they must have completed secondary schooling to the year 12 level or its equivalent; and
- requires that the applicant is:
 - enrolled in a vocational education and training course at the diploma level or advanced diploma level; or
 - enrolled in a course that is a prerequisite to a vocational education and training course and a vocational education and training course at the diploma level or higher; or
 - enrolled in a course that is a prerequisite to a vocational education and training course and has an offer of a place in a vocational education and training course at the diploma level or higher.
- requires the applicant to give evidence that the principal course to be undertaken will assist the applicant's employment situation.

These requirements go towards demonstrating the genuineness of the applicant's intention to study in Australia.

Division 2 – Requirements for assessment level 4

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 572 (Vocational Education and Training Sector) who are subject to assessment level 4.

New clause 5A404 – English language proficiency

Applicants subject to assessment level 4 are required to have a high standard of English language proficiency. This is to:

- ensure that applicants subject to assessment level 4 are genuine applicants for student visas; and
- maintain the integrity of the student visa program.

Clause 5A404 requires an applicant to give evidence that he or she:

- will not undertake an English Language Intensive Course for Overseas Students (“ELICOS”) before commencing their principal course. ELICOS programs are designed for overseas students with the aim of instructing English. The length of the courses may vary but are typically conducted in blocks of ten weeks. In this situation, the applicant must show evidence that he or she achieved a minimum Overall Band Score of 5.5 in an IELTS test (see definition of “IELTS test” in regulation 1.03 of the Regulations) that was taken less than 2 years before the visa application was made; or
- will undertake an ELICOS of no longer than 20 weeks duration before commencing his or her principal course. In this situation, the applicant must show evidence that he or she achieved a minimum Overall Band Score of 5.0 in an IELTS test that was taken less than 2 years before the visa application was made; or
- is fully-funded and has a level of English language proficiency that satisfies his or her proposed education provider. In addition, if the applicant will undertake an ELICOS before commencing the principal course, the applicant must not undertake an ELICOS that is longer in duration than 20 weeks. If the applicant needs to undertake an ELICOS for a longer period than 20 weeks, then they will not satisfy paragraph 5A404(c); or
- was in Australia at the time of making the student visa application and has – less than 2 years before the application was made:
 - successfully completed a Senior Secondary Certificate of Education in Australia. Those studies must have been conducted in the English language; or
 - whilst the holder of a student visa, studied towards a qualification from the Australian Qualifications Framework at the Certificate IV level or higher that was conducted in the English language; or
 - achieved, less than 2 years before the application was made, the required score in a test specified by the Minister in a Gazette Notice as an alternative test to the IELTS test, pursuant to clause 5A102. These tests are available in limited circumstances (see explanation for clause 5A102).

The IELTS test is designed to assess the language ability of candidates who need to study or work where English is used as the language of communication.

The IELTS test is readily available at test centres around the world (including Australia) that arrange test administration according to local demand. Under the new students regime, potential students sit the test to gauge their English proficiency before applying for a student visa.

The IELTS test comprises several modules. The four test components are speaking, reading, writing and listening.

New clause 5A405 – Financial capacity

Clause 5A405 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity

requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding from an acceptable source (see definition of "funds from an acceptable source" in subclause 5A405(2)) for the following:

- the applicant's fees for all courses for the full period of the applicant's stay in Australia (see definition of "course fees" in clause 5A101);
- living costs for the full period of the applicant's stay in Australia (see definition of "living costs" in clause 5A104);
- school costs for school-age dependants for the full period of the applicant's stay in Australia (see definition of "school costs" in clause 5A104); and
- travel costs (see definition of "travel costs" in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether the applicant has any family unit members. Further to this, school costs only apply where any of those people are school-age dependants (see definition of "school-age dependant" in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not.

Similarly, the applicant must prove that he or she can meet school costs, also defined in new clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not.

Further to the above, under paragraph 5A405(1)(c), the evidence that the applicant gives of his or her funding must demonstrate that the income stream of the person providing the funding (including if the applicant provides the funding) has been consistent with the level of funding being provided by that person.

Therefore, for example, if the applicant is relying on his or her father's income, and the father's income has been low, it may be evident that the father could not have obtained the funding from his income. This goes to whether the applicant intends to be a genuine student.

The definition of **acceptable individual** in subclause 5A405(2) sets out exactly which people are "acceptable individuals" for clause 5A405. An "acceptable individual" is one or more of any of the following people:

- the applicant;
- the applicant's spouse;
- one or both of the applicant's parents; or
- one or both of the applicant's grandparents.

"Acceptable individual" is subsequently referred to in the definition of "funds from an acceptable source" in subclause 5A405(2).

The definition of ***funds from an acceptable source*** in subclause 5A405(2) sets out the types of funding in relation to which evidence can be given to satisfy financial capacity for assessment level 4 in this sector.

Under paragraph (a) of the definition of “funds from an acceptable source”, if an applicant is giving evidence of financial capacity by way of money deposits, the applicant must give evidence that he or she, or another acceptable individual, has held the money deposits for at least 6 consecutive months prior to the application being made.

Under paragraph (b), other “funds from an acceptable source” for clause 5A405 are:

- financial support from the applicant’s proposed education provider;
- financial support from the Australian Commonwealth Government, or the government of an Australian State or Territory;
- financial support from the government of a foreign country (see the definition of “foreign country” in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*);
- financial support from a corporation that conducts commercial activities outside the country in which it is based and employs the applicant in a role in relation to which the applicant’s principal course is of direct relevance; or
- financial support from a multilateral agency (such as the Red Cross).

As assessment level 4 is a very high risk assessment level, evidence of non-monetary funding relating to property (such as the presentation of valuations of property) is not permissible.

New clause 5A406 – Other requirements

The applicant must demonstrate the successful completion of secondary schooling to year 12 level or its equivalent.

Paragraph (1)(b) also requires that the applicant is:

- enrolled in a vocational education and training course at the diploma level or advanced diploma level; or
- enrolled in a course that is a prerequisite to a vocational education and training course and a vocational education and training course at the diploma level or advanced diploma level; or
- enrolled in a course that is a prerequisite to a vocational education and training course and has an offer of a place in a vocational education and training course at the diploma level or advanced diploma level.

Paragraph (1)(c) requires the applicant to give evidence that the principal course will assist the applicant to:

- enhance the development of the applicant’s career; or
- obtain employment; or
- improve their prospects of promotion or of obtaining other employment.

These requirements go towards demonstrating the genuineness of the applicant's intention to study in Australia.

Division 3 – Requirements for assessment level 3

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 572 (Vocational Education and Training Sector) who are subject to assessment level 3.

New clause 5A407 – English language proficiency

Applicants subject to assessment level 3 are required to have a high standard of English language proficiency. This is to:

- ensure that applicants subject to assessment level 3 are genuine applicants for student visas; and
- maintain the integrity of the student visa program.

Clause 5A407 requires an applicant to give evidence that he or she:

- will not undertake an ELICOS before commencing the primary course. ELICOS programs are designed for overseas students with the aim of instructing English. The length of the courses may vary but are typically conducted in blocks of ten weeks. In this situation, the applicant must show evidence that he or she achieved a minimum Overall Band Score of 5.5 in an IELTS test (see definition of "IELTS test" in regulation 1.03 of the Regulations) that was taken less than 2 years before the visa application was made; or
- will undertake an ELICOS of no longer than 30 weeks duration before commencing the principal course. In this situation, the applicant must show evidence that he or she achieved a minimum Overall Band Score of 4.5 in an IELTS test that was taken less than 2 years before the visa application was made. If the applicant needs to undertake an ELICOS for a longer period than 30 weeks, then the applicant will not satisfy paragraph 5A407(b); or
- is fully-funded and has a level of English language proficiency that satisfies his or her proposed education provider. In addition, if the applicant will undertake an ELICOS before commencing the principal course, the applicant must not undertake an ELICOS that is longer in duration than 30 weeks. If the applicant needs to undertake an ELICOS for a longer period than 30 weeks, then the applicant will not satisfy paragraph 5A407(c); or
- was in Australia at the time of making the student visa application and has – less than 2 years before the application was made:
 - successfully completed a Senior Secondary Certificate of Education in Australia. Those studies must have been conducted in the English language; or
 - whilst the holder of a student visa, studied towards a qualification from the Australian Qualifications Framework at the Certificate IV level or higher that was conducted in the English language; or
- achieved, less than 2 years before the application was made, the required score in a test specified by the Minister in a Gazette Notice as an alternative test to the IELTS test, pursuant to clause 5A102. These tests are available in limited circumstances (see explanation for clause 5A102).

The IELTS test is designed to assess the language ability of candidates who need to study or work where English is used as the language of communication.

The IELTS test is readily available at test centres around the world (including Australia) that arrange test administration according to local demand. Under the new students regime, potential students sit the test to gauge their English proficiency before applying for a student visa.

The IELTS test comprises several modules. The four test components are speaking, reading, writing and listening.

New clause 5A408 – Financial capacity

Clause 5A408 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding from an acceptable source (see definition of "funds from an acceptable source" in subclause 5A408(2)) for the following:

- the applicant's fees for all courses for the full period of the applicants stay in Australia (see definition of "course fees" in clause 5A101);
- living costs for the full period of the applicant's stay in Australia (see definition of "living costs" in clause 5A104);
- school costs for the full period of the applicant's stay in Australia for school-age dependants (see definition of "school costs" in clause 5A104); and
- travel costs (see definition of "travel costs" in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether the applicant has any family unit members. Further to this, school costs only apply where any of those people are school-age dependants (see definition of "school-age dependant" in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not.

Similarly, the applicant must prove that he or she can meet school costs, also defined in clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not.

Further to the above, under paragraph 5A408(1)(c), the evidence that the applicant gives of his or her funding must demonstrate that the income stream of the person providing the funding (including if the applicant provides the funding) has been consistent with the level of funding being provided by that person.

Therefore, for example, if the applicant is relying on his or her father's income, and the father's income has been low, it may be evident that the father could not have obtained the funding from his income. This goes to whether the applicant intends to be a genuine student.

The definition of **acceptable individual** in subclause 5A408(2) sets out exactly which people are “acceptable individuals” for clause 5A408. An “acceptable individual” is one or more of any of the following people:

- the applicant;
- the applicant’s spouse;
- one or both of the applicant’s parents; or
- one or both of the applicant’s grandparents.

“Acceptable individual” is subsequently referred to in the definition of “funds from an acceptable source”.

The definition of **funds from an acceptable source** in subclause 5A408(2) sets out the types of funding in relation to which evidence can be given to satisfy financial capacity for assessment level 3 in this sector. The types of funding include:

- a money deposit (see definition of “money deposit” in clause 5A101) held by the applicant or by an acceptable individual who is providing support to the applicant. The money deposit must have been held for at least 6 consecutive months before the application was made;
- financial support from the applicant’s proposed education provider;
- financial support from the Australian Commonwealth Government, or the government of an Australian State or Territory;
- financial support from the government of a foreign country (see the definition of “foreign country” in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*);
- financial support from a corporation that conducts commercial activities outside the country in which it is based and employs the applicant in a role in relation to which the applicant’s principal course is of direct relevance; or
- financial support from a multilateral agency (such as the Red Cross).

New clause 5A409 – Other requirements

Under paragraph 5A409(a), the applicant must give evidence that he or she has completed secondary schooling to the year 11 level or its equivalent.

Paragraph (b) also requires that the applicant is:

- enrolled in a vocational education and training course; or
- enrolled in a course that is a prerequisite to a vocational education and training course and a vocational education and training course; or
- enrolled in a course that is a prerequisite to a vocational education and training course and has an offer of a place in a vocational education and training course.

Paragraph (c) requires the applicant to give evidence that the principal course will:

- enhance the development of the applicant’s career;

- assist the applicant to obtain employment; or
- assist the applicant to improve his or her prospects of promotion or of obtaining other employment.

These requirements go towards demonstrating the genuineness of the applicant's intention to study in Australia.

Division 4 – Requirements for assessment level 2

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 572 (Vocational Education and Training Sector) who are subject to assessment level 2.

New clause 5A410 – English language proficiency

In recognition of the lower risk associated with applicants subject to assessment level 2 in this sector, under clause 5A410 applicants are not subject to the more stringent English language proficiency requirements of assessment levels 3, 4 and 5 in this sector.

Such an applicant must give evidence that he or she has a level of English language proficiency that satisfies his or her proposed education provider.

New clause 5A411 – Financial capacity

Clause 5A411 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding from an acceptable source (see definition of "funds from an acceptable source" in subclause 5A411(2)) for the following:

- course fees for the first 12 months of the applicant's stay in Australia. This could include, for example, an ELICOS and part of the principal course (see definitions of "course fees" and "first 12 months" in clause 5A101);
- living costs for the first 12 months of the applicant's stay in Australia (see definition of "living costs" in clause 5A104);
- school costs for school-age dependants, for the first 12 months of the applicant's stay in Australia (see definition of "school costs" in clause 5A104); and
- travel costs (see definition of "travel costs" in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether the applicant has any family unit members. Further to this, school costs only apply where any of those people are school-age dependants (see definition of "school-age dependant" in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not.

Similarly, the applicant must prove that he or she can meet school costs, also defined in clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not.

In addition to the above, paragraph 5A411(1)(c) requires the applicant to provide a declaration stating that he or she has access to sufficient funds to meet the course fees, living costs and school costs for the remainder of the applicant's expected stay in Australia.

Further to the above, under paragraph 5A411(1)(d), the evidence that the applicant gives of his or her funding must demonstrate that the income stream of the person providing the funding is consistent with the level of funding being provided by that person.

Therefore, for example, if the applicant is relying on a friend's income, and the friend's income is low, it may be evident that the friend could not have obtained the funding from his or her income. This relates to whether the applicant intends to be a genuine student.

In this clause, there are no limits on who may provide funding for the applicant by way of money deposits or the value of an item of property, for the purposes of meeting financial capacity requirements.

The definition of "funds from an acceptable source" in subclause 5A411(2) sets out the types of funding in relation to which evidence can be given to satisfy financial capacity for assessment level 2 in this sector. The types of funding include:

- a money deposit or the value of an item of property held either by the applicant or by a person providing support to the applicant (see definition of "money deposit" in clause 5A101 and definition of "value of an item of property" in clause 5A105);
- a loan from a financial institution;
- a loan to the applicant from the government of the applicant's home country (see definition of "home country" in regulation 1.03 of the Regulations);
- financial support from the applicant's proposed education provider;
- financial support from the Australian Commonwealth Government, or the government of an Australian State or Territory;
- financial support from the government of a foreign country (see the definition of "foreign country" in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*);
- financial support from a business. This is intended to encompass corporations and other registered businesses, regardless of whether they operate outside the country in which they are based, and regardless of the applicant's role in relation to the business; or
- financial support from a multilateral agency (such as the Red Cross).

As assessment level 2 in this sector is a lower risk assessment level, evidence of certain non-monetary funding (such as the presentation of valuations of property) *is* permissible.

In addition, unlike more stringent assessment levels in this sector, funding only has to be demonstrated for the first 12 months of the applicant's stay in Australia, with the exception of the declaration, which relates to the remainder of the applicant's expected stay in Australia.

Division 5 – Requirements for assessment level 1

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 572 (Vocational Education and Training Sector) that are subject to assessment level 1.

New clause 5A412 – English language proficiency

As for assessment level 2, in recognition of the lower risk associated with applicants subject to assessment level 1 in this sector, under clause 5A412 applicants are not subject to the more stringent English language proficiency requirements of assessment levels 3, 4 and 5 in this sector.

Under this clause, an applicant must give evidence that he or she has a level of English language proficiency that satisfies his or her proposed education provider.

New clause 5A413 – Financial Capacity

In recognition that assessment level 1 in this sector is a low risk assessment level, under this clause applicants are only required to give evidence of financial capacity by way of a declaration. The declaration must state that the applicant has access to funds that are sufficient to meet:

- course fees for the full period (see definitions of “course fees” and “full period” in clause 5A101);
- living costs for the full period (see definition of “living costs” in clause 5A104);
- school costs for school-age dependants for the full period (see definition of “school costs” in clause 5A104, and definition of “school-age dependant” in regulation 1.03 of the Regulations); and
- travel costs (see definition of “travel costs” in clause 5A101).

Part 5 – Subclass 573 (Higher Education Sector)

Part 5 of new Schedule 5A sets out the evidential requirements for assessment levels 1 to 5 for Subclass 573 (Higher Education Sector) of Schedule 2 to the Regulations. The assessment levels are set out in reverse order (ie, 5 down to 1) as the assessment level with the highest evidentiary requirements is specified first.

Division 1 – Requirements for assessment level 5

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 573 (Higher Education Sector) who are subject to assessment level 5.

New clause 5A501 – English language proficiency

This provision requires that an applicant must give evidence that they have achieved a minimum Overall Band Score of 7.0 in an IELTS test (see definition in regulation 1.03 of the Regulations) that was taken less than 2 years before the visa application was made.

Applicants subject to assessment level 5 are required to have a higher standard of English language proficiency than applicants subject to other assessment levels. This is to ensure that applicants are genuine applicants for student visas and also to maintain the integrity of the student visa program.

The IELTS test is designed to assess the language ability of candidates who need to study or work where English is used as the language of communication.

The IELTS test is readily available at test centres around the world (including Australia) that arrange test administration according to local demand. Under the new students regime, potential students would sit the test to gauge their English proficiency before applying for a student visa.

The IELTS test comprises several modules. The four test components are speaking, reading, writing and listening.

New clause 5A502 – Financial capacity

Clause 5A502 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding for:

- the applicant's course fees for the full period of the applicant's period of stay in Australia (see definition of "course fees" in clause 5A101);
- living costs for the full period of the applicant's period of stay in Australia (see definition of "living costs" in clause 5A104);
- school costs for members of the applicant's family unit, for the full period of the applicant's stay in Australia (see definition of "school costs" in clause 5A104); and
- travel costs (see definition of "travel costs" in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether there are members of the applicant's family unit. Further to this, school costs only apply where any of those people are school-age dependants (see definition of "school-age dependant" in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not. The applicant must provide evidence that he or she has living costs for the entire duration of the applicant's proposed stay in Australia as the holder of the student visa.

Similarly, the applicant must prove that he or she can meet school costs, also defined in new clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not. The applicant must provide evidence that he or she has school costs for the entire duration of the applicant's proposed stay in Australia as the holder of the student visa.

Under paragraph (c), the applicant must give evidence that he or she has held funding for the above costs for at least 5 consecutive years prior to the application being made. The funding must have been held by way of money deposits, rather than by way of cash (see definition of "money deposit" in clause 5A101).

In addition, under paragraph (d), the evidence that the applicant gives of his or her income must demonstrate that the applicant's income stream has been consistent with the level of funding that he or she is required to have.

Therefore, for example, if the applicant's income is low but the funding available to the applicant is quite high, it may be evident that the applicant could not have obtained the funding for his or her proposed stay in Australia from his or her income. The applicant may have obtained his or her funding via an unscrupulous method, and this relates to whether the applicant intends to be a genuine student.

New clause 5A503 – Other requirements

This clause:

- recognises that if a person is to undertake a course in the higher education sector, they must have completed secondary schooling to the year 12 level or its equivalent.; and
- requires the applicant to give evidence that the principal course to be undertaken will assist the applicant to:
 - obtain employment; or
 - improve their prospects of promotion or of obtaining other employment; or
 - perform the functions of the applicant's current position in his or her home country.

These requirements go towards demonstrating the genuineness of the applicant's intention to study in Australia.

Division 2 – Requirements for assessment level 4

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 573 (Higher Education Sector) who are subject to assessment level 4.

New clause 5A504 – English language proficiency

Applicants subject to assessment level 4 are required to have a high standard of English language proficiency. This is to:

- ensure that applicants subject to assessment level 4 are genuine applicants for student visas; and
- maintain the integrity of the student visa program.

Clause 5A504 requires an applicant to give evidence that he or she:

- will not undertake an English Language Intensive Course for Overseas Students ("ELICOS") before commencing their principal course. ELICOS programs are designed for overseas students with the aim of instructing English. The length of the courses may vary but are typically conducted in blocks of ten weeks. In this situation, the applicant must show evidence that he or she achieved a minimum Overall Band Score of 6.0 in an IELTS test (see definition of "IELTS test" in regulation 1.03 of the Regulations) that was taken less than 2 years before the visa application was made; or

- will undertake an ELICOS of no longer than 30 weeks duration before commencing their higher education course. In this situation, the applicant must show evidence that he or she achieved a minimum Overall Band Score of 5.0 in an IELTS test that was taken less than 2 years before the visa application was made; or
- is fully-funded and has a level of English language proficiency that satisfies his or her proposed education provider. In addition, if the applicant will undertake an ELICOS before commencing the principal course, the applicant must not undertake an ELICOS that is longer in duration than 30 weeks. If the applicant needs to undertake an ELICOS for a longer period than 30 weeks, then they will not satisfy paragraph 5A504(c); or
- was in Australia at the time of making the student visa application and has – less than 2 years before the application was made:
 - successfully completed a Senior Secondary Certificate of Education in Australia. Those studies must have been conducted in the English language; or
 - whilst the holder of a student visa, studied towards a qualification from the Australian Qualifications Framework at the Certificate IV level or higher that was conducted in the English language; or
 - achieved, less than 2 years before the application was made, the required score in a test specified by the Minister in a Gazette Notice as an alternative test to the IELTS test, pursuant to clause 5A102. These tests are available in limited circumstances (see explanation for clause 5A102).

The IELTS test is designed to assess the language ability of candidates who need to study or work where English is used as the language of communication.

The IELTS test is readily available at test centres around the world (including Australia) that arrange test administration according to local demand. Under the new students regime, potential students sit the test to gauge their English proficiency before applying for a student visa.

The IELTS test comprises several modules. The four test components are speaking, reading, writing and listening.

New clause 5A505 – Financial capacity

Clause 5A505 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding from an acceptable source (see definition of “funds from an acceptable source” in subclause 5A505(2)) for the following:

- the applicant’s fees for all courses for the full period of the applicants stay in Australia (see definition of “course fees” in clause 5A101);
- living costs for the full period of the applicant’s stay in Australia (see definition of “living costs” in clause 5A104);
- school costs for school-age dependants for the full period of the applicant’s stay in Australia (see definition of “school costs” in clause 5A104); and

- travel costs (see definition of “travel costs” in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether the applicant has any family unit members. Further to this, school costs only apply where any of those people are school-age dependants (see definition of “school-age dependant” in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not.

Similarly, the applicant must prove that he or she can meet school costs, also defined in new clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not.

Further to the above, under paragraph 5A505(1)(c), the evidence that the applicant gives of his or her funding must demonstrate that the income stream of the person providing the funding (including if the applicant provides the funding) has been consistent with the level of funding being provided by that person.

Therefore, for example, if the applicant is relying on his or her father’s income, and the father’s income has been low, it may be evident that the father could not have obtained the funding from his income. This goes to whether the applicant intends to be a genuine student.

The definition of **acceptable individual** in subclause 5A505(2) sets out exactly which people are “acceptable individuals” for clause 5A505. An “acceptable individual” is one or more of any of the following people:

- the applicant;
- the applicant’s spouse;
- one or both of the applicant’s parents; or
- one or both of the applicant’s grandparents.

“Acceptable individual” is subsequently referred to in the definition of “funds from an acceptable source” in subclause 5A505(2).

The definition of **funds from an acceptable source** in subclause 5A505(2) sets out the types of funding in relation to which evidence can be given to satisfy financial capacity for assessment level 4 in this sector.

Under paragraph (a) of the definition of “funds from an acceptable source”, if an applicant is giving evidence of financial capacity by way of money deposits, the applicant must give evidence that he or she, or another acceptable individual, has held the money deposits for at least 6 consecutive months prior to the application being made.

Other “funds from an acceptable source” for clause 5A505 are:

- a loan from a financial institution, as defined in clause 5A101;
- a loan to the applicant from the government of the applicant’s home country (see definition of “home country” in regulation 1.03 of the Regulations);

- financial support from the applicant’s proposed education provider;
- financial support from the Australian Commonwealth Government, or the government of an Australian State or Territory;
- financial support from the government of a foreign country (see the definition of “foreign country” in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*);
- financial support from a corporation that conducts commercial activities outside the country in which it is based and employs the applicant in a role in relation to which the applicant’s principal course is of direct relevance; or
- financial support from a multilateral agency (such as the Red Cross).

As assessment level 4 is a very high risk assessment level, evidence of non-monetary funding relating to property (such as the presentation of valuations of property) is not permissible.

New clause 5A506 – Other requirements

This clause recognises that if a person is to undertake a higher education course, the person must have completed the usual prerequisite requirement for such a course – that is, secondary schooling to year 12 level or its equivalent.

Division 3 – Requirements for assessment level 3

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 573 (Higher Education Sector) who are subject to assessment level 3.

New clause 5A507 – English language proficiency

Clause 5A507 requires an applicant to give evidence that he or she:

- will not undertake an ELICOS before commencing the primary course. ELICOS programs are designed for overseas students with the aim of instructing English. The length of the courses may vary but are typically conducted in blocks of ten weeks. In this situation, the applicant must show evidence that he or she achieved a minimum Overall Band Score of 6.0 in an IELTS test (see definition of “IELTS test” in regulation 1.03 of the Regulations) that was taken less than 2 years before the visa application was made; or
- will undertake an ELICOS of no longer than 30 weeks duration before commencing the principal course. In this situation, the applicant must show evidence that he or she achieved a minimum Overall Band Score of 5.0 in an IELTS test that was taken less than 2 years before the visa application was made. If the applicant needs to undertake an ELICOS for a longer period than 30 weeks, then the applicant will not satisfy paragraph 5A507(b); or
- is fully-funded and has a level of English language proficiency that satisfies his or her proposed education provider. In addition, if the applicant will undertake an ELICOS before commencing the principal course, the applicant must not undertake an ELICOS that is longer in duration than 30 weeks. If the applicant needs to undertake an ELICOS for a longer period than 30 weeks, then the applicant will not satisfy paragraph 5A507(c); or
- was in Australia at the time of making the student visa application and has – less than 2 years before the application was made:

- successfully completed a Senior Secondary Certificate of Education in Australia. Those studies must have been conducted in the English language; or
- whilst the holder of a student visa, studied towards a qualification from the Australian Qualifications Framework at the Certificate IV level or higher that was conducted in the English language; or
- achieved, less than 2 years before the application was made, the required score in a test specified by the Minister in a Gazette Notice as an alternative test to the IELTS test, pursuant to clause 5A102. These tests are available in limited circumstances (see explanation for clause 5A102).

The IELTS test is designed to assess the language ability of candidates who need to study or work where English is used as the language of communication.

The IELTS test is readily available at test centres around the world (including Australia) that arrange test administration according to local demand. Under the new students regime, potential students sit the test to gauge their English proficiency before applying for a student visa.

The IELTS test comprises several modules. The four test components are speaking, reading, writing and listening.

New clause 5A508 – Financial capacity

Clause 5A508 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding from an acceptable source (see definition of “funds from an acceptable source” in subclause 5A508(2)) for the following:

- the applicant’s fees for all courses for the full period of the applicant’s stay in Australia (see definition of “course fees” in clause 5A101);
- living costs for the full period of the applicant’s stay in Australia (see definition of “living costs” in clause 5A104);
- school costs for school-age dependants for the full period of the applicant’s stay in Australia (see definition of “school costs” in clause 5A104); and
- travel costs (see definition of “travel costs” in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether the applicant has any family unit members. Further to this, school costs only apply where any of those people are school-age dependants (see definition of “school-age dependant” in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not.

Similarly, the applicant must prove that he or she can meet school costs, also defined in clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not.

Further to the above, under paragraph 5A508(1)(c) the evidence that the applicant gives of his or her funding must demonstrate that the income stream of the person providing the funding has been consistent with the level of funding being provided by that person.

In this clause, there are no limits on who may provide funding for the applicant by way of money deposits for the purposes of meeting financial capacity requirements.

The definition of ***funds from an acceptable source*** in subclause 5A508(2) sets out the types of funding in relation to which evidence can be given to satisfy financial capacity for assessment level 3 in this sector. The types of funding include:

- a money deposit (see definition of "money deposit" in clause 5A101) held by the applicant or by a person who is providing support to the applicant. The money deposit must have been held for at least 3 consecutive months prior to when the application was made;
- a loan from a financial institution;
- a loan to the applicant from the government of the applicant's home country (see definition of "home country" in regulation 1.03 of the Regulations);
- financial support from the applicant's proposed education provider;
- financial support from the Australian Commonwealth Government, or the government of an Australian State or Territory;
- financial support from the government of a foreign country (see the definition of "foreign country" in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*);
- financial support from a corporation that conducts commercial activities outside the country in which it is based and employs the applicant in a role in relation to which the applicant's principal course is of direct relevance; or
- financial support from a multilateral agency (such as the Red Cross).

New clause 5A509 – Other requirements

The applicant must give evidence that they have completed secondary schooling to the year 12 level or its equivalent. The applicant must therefore give evidence of the completion of the prerequisite requirement.

Alternatively, the applicant may provide a certificate of enrolment for a foundation course that is to be undertaken prior to the principal course, and evidence that the applicant has successfully completed secondary schooling to year 11 level or its equivalent.

Division 4 – Requirements for assessment level 2

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 573 (Higher Education Sector) who are subject to assessment level 2.

New clause 5A510 – English language proficiency

In recognition of the lower risk associated with applicants subject to assessment level 2 in this sector, under clause 5A510 applicants are not subject to the more stringent English language proficiency requirements of assessment levels 3, 4 and 5 in this sector.

Under this clause, an applicant must give evidence that he or she has a level of English language proficiency that satisfies his or her proposed education provider.

New clause 5A511 – Financial capacity

Clause 5A511 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding from an acceptable source (see definition of “funds from an acceptable source” in subclause 5A511(2)) for the following:

- course fees for the first 12 months of the applicant’s stay in Australia. This could include, for example, an ELICOS and part of the principal course (see definitions of “course fees” and “first 12 months” in clause 5A101);
- living costs for the first 12 months of the applicant’s stay in Australia (see definition of “living costs” in clause 5A104);
- school costs for school-age dependants for the first 12 months of the applicant’s stay in Australia (see definition of “school costs” in clause 5A104); and
- travel costs (see definition of “travel costs” in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether the applicant has any family unit members. Further to this, school costs only apply where any of those people are school-age dependants (see definition of “school-age dependant” in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not.

Similarly, the applicant must prove that he or she can meet school costs, also defined in clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not.

In addition to the above, paragraph 5A511(1)(c) requires the applicant to provide a declaration stating that he or she has access to sufficient funds to meet the course fees, living costs and school costs for the remainder of the applicant’s expected stay in Australia.

Further to the above, under paragraph 5A511(1)(d), the evidence that the applicant gives of his or her funding must demonstrate that the income stream of the person providing the funding is consistent with the level of funding being provided by that person.

Therefore, for example, if the applicant is relying on a friend’s income, and the friend’s income is low, it may be evident that the friend could not have obtained the funding from his or her income. This relates to whether the applicant intends to be a genuine student.

In this clause, there are no limits on who may provide funding for the applicant by way of money deposits for the purposes of meeting financial capacity requirements.

The definition of funds from an acceptable source in subclause 5A511(2) sets out the types of funding in relation to which evidence can be given to satisfy financial capacity for assessment level 2 in this sector. The types of funding include:

- a money deposit or the value of an item of property held either by the applicant or by a person providing support to the applicant (see definition of "money deposit" in clause 5A101 and definition of "value of an item of property" in clause 5A105);
- a loan from a financial institution;
- a loan to the applicant from the government of the applicant's home country (see definition of "home country" in regulation 1.03 of the Regulations);
- financial support from the applicant's proposed education provider;
- financial support from the Australian Commonwealth Government, or the government of an Australian State or Territory;
- financial support from the government of a foreign country (see the definition of "foreign country" in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*);
- financial support from a business. This is intended to encompass corporations and other registered businesses, regardless of whether they operate outside the country in which they are based, and regardless of the applicant's role in relation to the business; or
- financial support from a multilateral agency (such as the Red Cross).

As assessment level 2 in this sector is a lower risk assessment level, evidence of certain non-monetary funding (such as the presentation of valuations of property) *is* permissible.

In addition, unlike more stringent assessment levels in this sector, funding only has to be demonstrated for the first 12 months of the applicant's stay in Australia, with the exception of the declaration, which relates to the remainder of the applicant's expected stay in Australia.

New clause 5A512 – Other requirements

In recognition that assessment level 2 in this sector is a low risk assessment level, under this clause an applicant is only required to give evidence that he or she has the educational qualifications required by the applicant's proposed education provider.

Division 5 – Requirements for assessment level 1

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 573 (Higher Education Sector) who are subject to assessment level 1.

New clause 5A513 – English language proficiency

As for assessment level 2, in recognition of the lower risk associated with applicants subject to assessment level 1 in this sector, under clause 5A513 applicants are not subject to the more stringent English language proficiency requirements of assessment levels 3, 4 and 5 in this sector.

Under this clause, an applicant must give evidence that he or she has a level of English language proficiency that satisfies his or her proposed education provider.

New clause 5A514 – Financial Capacity

In recognition that assessment level 1 in this sector is a low risk assessment level, under this clause applicants are only required to give evidence of financial capacity by way of a declaration. The declaration must state that the applicant has access to funds that are sufficient to meet:

- course fees for the full period (see definitions of “course fees” and “full period” in clause 5A101);
- living costs for the full period (see definition of “living costs” in clause 5A104);
- school costs for school-age dependants for the full period (see definition of “school costs” in clause 5A104, and definition of “school-age dependant” in regulation 1.03 of the Regulations); and
- travel costs (see definition of “travel costs” in clause 5A101).

New clause 5A515 – Other requirements

In recognition that assessment level 1 in this sector is a low risk assessment level, under this clause an applicant is only required to give evidence that he or she has the educational qualifications required by the applicant’s proposed education provider.

Part 6 – Subclass 574 (Masters/Doctorate Sector)

Part 6 of new Schedule 5A sets out the evidential requirements for assessment levels 1 to 5 for Subclass 574 (Masters/Doctorate Sector) of Schedule 2 to the Regulations. The assessment levels are set out in reverse order (ie, 5 down to 1) as the assessment level with the highest evidentiary requirements is specified first.

Division 1 – Requirements for assessment level 5

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 574 (Masters/Doctorate Sector) who are subject to assessment level 5.

New clause 5A601 – English language proficiency

This provision requires that an applicant must give evidence that they have achieved a minimum Overall Band Score of 7.0 in an IELTS test (see definition in regulation 1.03 of the Regulations) that was taken less than 2 years before the visa application was made.

Applicants subject to assessment level 5 are required to have a higher standard of English language proficiency than applicants subject to other assessment levels. This is to ensure that applicants are genuine applicants for student visas and to maintain the integrity of the student visa program.

The IELTS test is designed to assess the language ability of candidates who need to study or work where English is used as the language of communication.

The IELTS test is readily available at test centres around the world (including Australia) that arrange test administration according to local demand. Under the new students regime, potential students would sit the test to gauge their English proficiency before applying for a student visa.

The IELTS test comprises several modules. The four test components are speaking, reading, writing and listening.

New clause 5A602 – Financial capacity

Clause 5A602 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding for:

- the applicant's course fees for the duration of the applicant's period of stay in Australia (see definition of "course fees" in clause 5A101);
- living costs for the duration of the applicant's period of stay in Australia (see definition of "living costs" in clause 5A104);
- school costs for members of the applicant's family unit, for the period of the applicant's stay in Australia (see definition of "school costs" in clause 5A104); and
- travel costs (see definition of "travel costs" in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether there are members of the applicant's family unit. Further to this, school costs only apply where any of those people are school-age dependants (see definition of "school-age dependant" in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not. The applicant must provide evidence that he or she has living costs for the duration of the applicant's proposed stay in Australia as the holder of the student visa.

Similarly, the applicant must prove that he or she has school costs, also defined in new clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not. The applicant must provide evidence that he or she has school costs for the duration of the applicant's proposed stay in Australia as the holder of the student visa.

Under paragraph (c), the applicant must give evidence that he or she has held funding for the above costs for at least 5 consecutive years prior to the application being made. The funding must have been held by way of money deposits, rather than by way of cash (see definition of "money deposit" in clause 5A101).

In addition, under paragraph (d), the evidence that the applicant gives of his or her income must demonstrate that the applicant's income stream has been consistent with the level of funding that he or she is required to have.

Therefore, for example, if the applicant's income is low but the funding available to the applicant is quite high, it may be evident that the applicant could not have obtained the funding for his or her proposed stay in Australia from his or her income. The applicant may have obtained his or her funding via an unscrupulous method, and this relates to whether the applicant intends to be a genuine student.

New clause 5A603 – Other requirements

This clause:

- recognises that if a person is to undertake a Masters or Doctorate degree, the person must have completed the usual prerequisite requirement for such a degree – that is, an undergraduate degree or its equivalent. The applicant must therefore give evidence of the completion of the prerequisite requirement (for example, by way of an academic transcript showing completion of the prerequisite course); and
- provides that the applicant must give evidence that the applicant’s proposed course of study will be beneficial to the applicant’s employment in his or her home country, as described in subparagraphs (i) to (iii). As assessment level 5 is considered to be an extremely high risk level, this requirement goes toward demonstrating the applicant’s intention to be a genuine student in Australia.

Division 2 – Requirements for assessment level 4

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 574 (Masters/Doctorate Sector) who are subject to assessment level 4.

New clause 5A604 – English language proficiency

Applicants subject to assessment level 4 are required to have a high standard of English language proficiency. This is to:

- ensure that applicants subject to assessment level 4 are genuine applicants for student visas; and
- maintain the integrity of the student visa program.

Under subclause 5A604(1), an applicant does not need to provide evidence of English language proficiency if the applicant:

- made their application outside Australia;
- provides a certificate of enrolment in a gazetted course; and
- will not undertake any other course before commencing the gazetted course.

The above is an exception to English language proficiency requirements because gazetted courses are courses which will be taught in a non-English language.

This exception is only available in the Masters/Doctorate Sector, and not in assessment level 5. In assessment levels 2 and 1, it is not actually an “exception”, as the English language proficiency requirements in those assessment levels only require an applicant to have the level of English language proficiency required by his or her proposed education provider. An education provider who is teaching a course in a non-English language will therefore not require any level of English language proficiency. Therefore, there is no reference to a “gazetted course” in assessment levels 2 and 1 in this sector.

Under subclause 5A604(2), an applicant must give evidence that he or she:

- will not undertake an English Language Intensive Course for Overseas Students (“ELICOS”) before commencing the Masters or Doctorate course. ELICOS programs are designed for

overseas students with the aim of instructing English. The length of the courses may vary but are typically conducted in blocks of ten weeks. In this situation, the applicant must show evidence that he or she achieved a minimum Overall Band Score of 6.0 in an IELTS test (see definition of "IELTS test" in regulation 1.03 of the Regulations) that was taken less than 2 years before the visa application was made; or

- will undertake an ELICOS of no longer than 30 weeks duration before commencing the Masters or Doctorate course. In this situation, the applicant must show evidence that he or she achieved a minimum Overall Band Score of 5.0 in an IELTS test that was taken less than 2 years before the visa application was made. If the applicant needs to undertake an ELICOS for a longer period than 30 weeks, then they will not satisfy paragraph 5A604(2)(b); or
- is fully-funded and has a level of English language proficiency that satisfies his or her proposed education provider. In addition, if the applicant will undertake an ELICOS before commencing the principal course, the applicant must not undertake an ELICOS that is longer in duration than 30 weeks. If the applicant needs to undertake an ELICOS for a longer period than 30 weeks, then they will not satisfy paragraph 5A604(2)(c); or
- was in Australia at the time of making the student visa application and has – less than 2 years before the application was made:
 - successfully completed a Senior Secondary Certificate of Education in Australia. Those studies must have been conducted in the English language; or
 - whilst the holder of a student visa, studied towards a qualification from the Australian Qualifications Framework at the Certificate IV level or higher that was conducted in the English language; or
- achieved, less than 2 years before the application was made, the required score in a test specified by the Minister in a Gazette Notice as an alternative test to the IELTS test, pursuant to clause 5A102. These tests are available in limited circumstances (see explanation for clause 5A102).

The IELTS test is designed to assess the language ability of candidates who need to study or work where English is used as the language of communication.

The IELTS test is readily available at test centres around the world (including Australia) that arrange test administration according to local demand. Under the new students regime, potential students sit the test to gauge their English proficiency before applying for a student visa.

The IELTS test comprises several modules. The four test components are speaking, reading, writing and listening.

New clause 5A605 – Financial capacity

Clause 5A605 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding from an acceptable source (see definition of "funds from an acceptable source" in subclause 5A605(2)) for the following:

- if applicable, the fees for all courses that are a prerequisite requirement for the applicant's principal course (see definition of "course fees" in clause 5A101);

- the applicant's course fees for a period of 12 months after the expected commencement of the applicant's principal course of study, or for the duration of the applicant's expected stay in Australia, whichever is the shorter period (see definition of "course fees" in clause 5A101);
- living costs for the duration of the applicant's prerequisite course or courses, and for a period of 12 months after the expected commencement of the applicant's principal course of study, or for the duration of the applicant's expected stay in Australia, whichever is the shorter period (see definition of "living costs" in clause 5A104);
- school costs for school-age dependants, for the duration of the applicant's prerequisite course or courses, and for a period of 12 months after the expected commencement of the applicant's principal course of study, or for the duration of the applicant's expected stay in Australia, whichever is the shorter period (see definition of "school costs" in clause 5A104); and
- travel costs (see definition of "travel costs" in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether the applicant has any family unit members. Further to this, school costs only apply where any of those people are school-age dependants (see definition of "school-age dependant" in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not.

Similarly, the applicant must prove that he or she has school costs, also defined in new clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not.

In addition to the above, paragraph 5A605(c) requires the applicant to provide a declaration stating that he or she has access to sufficient funds from an acceptable source (see definition of "funds from an acceptable source" in subclause 5A605(2)) to meet the course fees, living costs and school costs for the remainder of the applicant's expected stay in Australia.

Further to the above, under paragraph 5A605(1)(d), the evidence that the applicant gives of his or her funding must demonstrate that the income stream of the person providing the funding (including if the applicant provides the funding) has been consistent with the level of funding being provided by that person.

Therefore, for example, if the applicant is relying on his or her father's income, and the father's income has been low, it may be evident that the father could not have obtained the funding from his income. This goes to whether the applicant intends to be a genuine student.

The definition of **acceptable individual** in subclause 5A605(2) sets out which people are "acceptable individuals" for clause 5A605. An "acceptable individual" is one or more of any of the following people:

- the applicant;
- the applicant's spouse;
- one or both of the applicant's parents; or
- one or both of the applicant's grandparents.

“Acceptable individual” is subsequently referred to in the definition of “funds from an acceptable source” in subclause 5A605(2).

The definition of ***funds from an acceptable source*** in subclause 5A605(2) sets out the types of funding in relation to which evidence can be given to satisfy financial capacity for assessment level 4 in this sector.

Under paragraph (a) of the definition of “funds from an acceptable source”, if an applicant is giving evidence of financial capacity by way of money deposits, the applicant must give evidence that he or she, or another acceptable individual, has held the money deposits for at least 6 consecutive months prior to the application being made.

Other “funds from an acceptable source” for clause 5A605 are:

- a loan from a financial institution (see definition of “financial institution” in clause 5A101);
- a loan to the applicant from the government of the applicant’s home country (see definition of “home country” in regulation 1.03 of the Regulations);
- financial support from the applicant’s proposed education provider;
- financial support from the Australian Commonwealth Government, or the government of an Australian State or Territory;
- financial support from the government of a foreign country (see the definition of “foreign country” in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*);
- financial support from a corporation that conducts commercial activities outside the country in which it is based and employs the applicant in a role in relation to which the applicant’s principal course is of direct relevance; or
- financial support from a multilateral agency (such as the Red Cross).

As assessment level 4 is a very high risk assessment level, evidence of non-monetary funding relating to property (such as the presentation of valuations of property) is not permissible.

New clause 5A606 – Other requirements

This clause recognises that if a person is to undertake a Masters or Doctorate degree, the person must have completed the usual prerequisite requirement for such a degree – that is, an undergraduate degree or its equivalent. The applicant must therefore give evidence of the completion of the prerequisite requirement (for example, by way of an academic transcript showing completion of the prerequisite course).

Division 3 – Requirements for assessment level 3

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 574 (Masters/Doctorate Sector) who are subject to assessment level 3.

New clause 5A607 – English language proficiency

Applicants subject to assessment level 3 are required to have a high standard of English language proficiency. This is to:

- ensure that applicants subject to assessment level 3 are genuine applicants for student visas; and
- maintain the integrity of the student visa program.

Under subclause 5A607(1), an applicant does not need to provide evidence of English language proficiency if the applicant:

- made their application outside Australia;
- provides a certificate of enrolment in a gazetted course; and
- will not undertake any other course before commencing the gazetted course.

The above is an exception to English language proficiency requirements because gazetted courses are courses which will be taught in a non-English language.

This exception is only available in the Masters/Doctorate Sector, and not in assessment level 5. In assessment levels 2 and 1, it is not actually an "exception", as the English language proficiency requirements in those assessment levels only require an applicant to have the level of English language proficiency required by his or her proposed education provider. An education provider who is teaching a course in a non-English language will therefore not require any level of English language proficiency. Therefore, there is no reference to a "gazetted course" in assessment levels 2 and 1 in this sector.

Under subclause 5A607(2), an applicant must give evidence that he or she:

- will not undertake an ELICOS before commencing the Masters or Doctorate course. ELICOS programs are designed for overseas students with the aim of instructing English. The length of the courses may vary but are typically conducted in blocks of ten weeks. In this situation, the applicant must show evidence that he or she achieved a minimum Overall Band Score of 6.0 in an IELTS test (see definition of "IELTS test" in regulation 1.03 of the Regulations) that was taken less than 2 years before the visa application was made; or
- will undertake an ELICOS of no longer than 30 weeks duration before commencing the Masters or Doctorate course. In this situation, the applicant must show evidence that he or she achieved a minimum Overall Band Score of 5.0 in an IELTS test that was taken less than 2 years before the visa application was made. If the applicant needs to undertake an ELICOS for a longer period than 30 weeks, then the applicant will not satisfy paragraph 5A607(2)(b); or
- is fully-funded and has a level of English language proficiency that satisfies his or her proposed education provider. In addition, if the applicant will undertake an ELICOS before commencing the principal course, the applicant must not undertake an ELICOS that is longer in duration than 30 weeks. If the applicant needs to undertake an ELICOS for a longer period than 30 weeks, then the applicant will not satisfy paragraph 5A607(2)(c); or
- was in Australia at the time of making the student visa application and has – less than 2 years before the application was made:
 - successfully completed a Senior Secondary Certificate of Education in Australia. Those studies must have been conducted in the English language; or
 - whilst the holder of a student visa, studied towards a qualification from the Australian Qualifications Framework at the Certificate IV level or higher that was conducted in the English language; or

- achieved, less than 2 years before the application was made, the required score in a test specified by the Minister in a Gazette Notice as an alternative test to the IELTS test, pursuant to clause 5A102. These tests are available in limited circumstances (see explanation for clause 5A102).

The IELTS test is designed to assess the language ability of candidates who need to study or work where English is used as the language of communication.

The IELTS test is readily available at test centres around the world (including Australia) that arrange test administration according to local demand. Under the new students regime, potential students sit the test to gauge their English proficiency before applying for a student visa.

The IELTS test comprises several modules. The four test components are speaking, reading, writing and listening.

New clause 5A608 – Financial capacity

Clause 5A608 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding from an acceptable source (see definition of “funds from an acceptable source” in subclause 5A608(2)) for the following:

- if applicable, the fees for all courses that are a prerequisite requirement for the applicant’s principal course (see definition of “course fees” in clause 5A101);
- the applicant’s course fees for a period of 12 months after the expected commencement of the applicant’s principal course of study, or for the duration of the applicant’s expected stay in Australia, whichever is the shorter period (see definition of “course fees” in clause 5A101);
- living costs for the duration of the applicant’s prerequisite course or courses, and for a period of 12 months after the expected commencement of the applicant’s principal course of study, or for the duration of the applicant’s expected stay in Australia, whichever is the shorter period (see definition of “living costs” in clause 5A104);
- school costs for school-age dependants, for the duration of the applicant’s prerequisite course or courses, and for a period of 12 months after the expected commencement of the applicant’s principal course of study, or for the duration of the applicant’s expected stay in Australia, whichever is the shorter period (see definition of “school costs” in clause 5A104); and
- travel costs (see definition of “travel costs” in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether the applicant has any family unit members. Further to this, school costs only apply where any of those people are school-age dependants (see definition of “school-age dependant” in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not.

Similarly, the applicant must prove that he or she has school costs, also defined in clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not.

In addition to the above, paragraph 5A608(1)(c) requires the applicant to provide a declaration stating that he or she has access to sufficient funds from an acceptable source (see definition of "funds from an acceptable source" in subclause 5A608(2)) to meet the course fees, living costs and school costs for the remainder of the applicant's expected stay in Australia.

Further to the above, under paragraph 5A608(1)(d), the evidence that the applicant gives of his or her funding must demonstrate that the income stream of the person providing the funding is consistent with the level of funding being provided by that person.

Therefore, for example, if the applicant is relying on a friend's income, and the friend's income is low, it may be evident that the friend could not have obtained the funding from his or her income. This relates to whether the applicant intends to be a genuine student.

In this clause, there are no limits on who may provide funding for the applicant by way of money deposits for the purposes of meeting financial capacity requirements.

The definition of ***funds from an acceptable source*** in subclause 5A608(2) sets out the types of funding in relation to which evidence can be given to satisfy financial capacity for assessment level 3 in this sector. The types of funding include:

- a money deposit (see definition of "money deposit" in clause 5A101) or the value of an item of property (see definition of "value of an item of property" in clause 5A105) held by the applicant or by a person who is providing support to the applicant;
- a loan from a financial institution (see definition of "financial institution" in clause 5A101);
- a loan to the applicant from the government of the applicant's home country (see definition of "home country" in regulation 1.03 of the Regulations);
- financial support from the applicant's proposed education provider;
- financial support from the Australian Commonwealth Government, or the government of an Australian State or Territory;
- financial support from the government of a foreign country (see the definition of "foreign country" in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*);
- financial support from a corporation that conducts commercial activities outside the country in which it is based and employs the applicant in a role in relation to which the applicant's principal course is of direct relevance; or
- financial support from a multilateral agency (such as the Red Cross).

As assessment level 3 in Subclass 574 is a lower risk assessment level than assessment level 4 or 5, evidence of certain non-monetary funding (such as the presentation of valuations of property) *is* permissible.

New clause 5A609 – Other requirements

This clause recognises that if a person is to undertake a Masters or Doctorate degree, the person must have completed the usual prerequisite requirement for such a degree – that is, an

undergraduate degree or its equivalent. The applicant must therefore give evidence of the completion of the prerequisite requirement (for example, by way of an academic transcript showing completion of the prerequisite course).

Division 4 – Requirements for assessment level 2

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 574 (Masters/Doctorate Sector) who are subject to assessment level 2.

New clause 5A610 – English language proficiency

In recognition of the lower risk associated with applicants subject to assessment level 2 in this sector, under clause 5A610 applicants are not subject to the more stringent English language proficiency requirements of assessment levels 3, 4 and 5 in this sector.

Consequently, an applicant who is subject to assessment level 2 in this sector is only required to give evidence that he or she has a level of English language proficiency that satisfies his or her proposed education provider.

New clause 5A611 – Financial capacity

Clause 5A611 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding from an acceptable source (see definition of “funds from an acceptable source” in subclause 5A611(2)) for the following:

- course fees for the first 12 months of the applicant’s stay in Australia. This could include, for example, an ELICOS and part of the principal course (see definitions of “course fees” and “first 12 months” in clause 5A101);
- living costs for the first 12 months of the applicant’s stay in Australia (see definition of “living costs” in clause 5A104);
- school costs for school-age dependants, for the first 12 months of the applicant’s stay in Australia (see definition of “school costs” in clause 5A104); and
- travel costs (see definition of “travel costs” in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether the applicant has any family unit members. Further to this, school costs only apply where any of those people are school-age dependants (see definition of “school-age dependant” in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not.

Similarly, the applicant must prove that he or she has school costs, also defined in clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not.

In addition to the above, paragraph 5A611(1)(c) requires the applicant to provide a declaration stating that he or she has access to sufficient funds to meet the the course fees, living costs and school costs for the remainder of the applicant's expected stay in Australia.

Further to the above, under paragraph 5A611(1)(d), the evidence that the applicant gives of his or her funding must demonstrate that the income stream of the person providing the funding is consistent with the level of funding being provided by that person.

Therefore, for example, if the applicant is relying on a friend's income, and the friend's income is low, it may be evident that the friend could not have obtained the funding from his or her income. This relates to whether the applicant intends to be a genuine student.

In this clause, there are no limits on who may provide funding for the applicant by way of money deposits for the purposes of meeting financial capacity requirements.

The definition of "funds from an acceptable source" in subclause 5A611(2) sets out the types of funding in relation to which evidence can be given to satisfy financial capacity for assessment level 2 in this sector. The types of funding include:

- a money deposit or the value of an item of property held either by the applicant or by a person providing funding to the applicant (see definition of "money deposit" in clause 5A101 and definition of "value of an item of property" in clause 5A105);
- a loan from a financial institution (see definition of "financial institution" in clause 5A101);
- a loan to the applicant from the government of the applicant's home country (see definition of "home country" in regulation 1.03 of the Regulations);
- financial support from the applicant's proposed education provider;
- financial support from the Australian Commonwealth Government, or the government of an Australian State or Territory;
- financial support from the government of a foreign country (see the definition of "foreign country" in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*);
- financial support from a business. This is intended to encompass corporations and other registered businesses, regardless of whether they operate outside the country in which they are based, and regardless of the applicant's role in relation to the business; or
- financial support from a multilateral agency (such as the Red Cross).

As assessment level 2 in this sector is a lower risk assessment level, evidence of certain non-monetary funding (such as the presentation of valuations of property) *is* permissible.

In addition, unlike more stringent assessment levels in this sector, funding only has to be demonstrated for the first 12 months of the applicant's stay in Australia, with the exception of the declaration, which relates to the remainder of the applicant's expected stay in Australia.

New clause 5A612 – Other requirements

This clause recognises that if a person is to undertake a Masters or Doctorate degree, the person must have completed the usual prerequisite requirement for such a degree – that is, an undergraduate degree or its equivalent. The applicant must therefore give evidence of the

completion of the prerequisite requirement (for example, by way of an academic transcript showing completion of the prerequisite course).

Division 5 – Requirements for assessment level 1

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 574 (Masters/Doctorate Sector) who are subject to assessment level 1.

New clause 5A613 – English language proficiency

As for assessment level 2, in recognition of the lower risk associated with applicants subject to assessment level 1 in this sector, under clause 5A613 applicants are not subject to the more stringent English language proficiency requirements of assessment levels 3, 4 and 5 in this sector.

Consequently, an applicant who is subject to assessment level 1 in this sector is only required to give evidence that he or she has a level of English language proficiency that satisfies his or her proposed education provider.

New clause 5A614 – Financial Capacity

In recognition that assessment level 1 in this sector is a low risk assessment level, under this clause applicants are only required to give evidence of financial capacity by way of a declaration. The declaration must state that the applicant has access to funds that are sufficient to meet:

- course fees for the full period (see definitions of “course fees” and “full period” in clause 5A101);
- living costs for the full period (see definition of “living costs” in clause 5A104);
- school costs for school-age dependants for the full period (see definition of “school costs” in clause 5A104, and definition of “school-age dependant” in regulation 1.03 of the Regulations); and
- travel costs (see definition of “travel costs” in clause 5A101).

New clause 5A615 – Other requirements

In recognition that assessment level 1 in this sector is a low risk assessment level, under this clause an applicant is only required to give evidence that he or she has the educational qualifications required by the applicant’s proposed education provider.

Part 7 – Subclass 575 (Non-Award Foundation Studies/Other Sector)

Part 7 of new Schedule 5A sets out the evidential requirements for assessment levels 1 to 5 for Subclass 575 (Non-Award Foundation Studies/Other Sector) of Schedule 2 to the Regulations. The assessment levels are set out in reverse order (ie, 5 down to 1) as the assessment level with the highest evidentiary requirements is specified first.

Division 1 – Requirements for assessment level 5

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 575 (Non-Award Foundation Studies/Other Sector) who are subject to assessment level 5.

New clause 5A701 – English language proficiency

This clause requires that an applicant must give evidence that he or she has achieved a minimum Overall Band Score of 7.0 in an IELTS test (see definition in regulation 1.03) that was taken less than 2 years before the visa application was made.

Applicants subject to assessment level 5 are required to have a higher standard of English language proficiency than applicants subject to other assessment levels. This is to ensure that applicants are genuine applicants for student visas and to maintain the integrity of the student visa program.

The IELTS test is designed to assess the language ability of candidates who need to study or work where English is used as the language of communication.

The IELTS test is readily available at test centres around the world (including Australia) that arrange test administration according to local demand. Under the new students regime, potential students would sit the test to gauge their English proficiency before applying for a student visa.

The IELTS test comprises several modules. The four test components are speaking, reading, writing and listening.

New clause 5A702 – Financial capacity

Clause 5A702 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding for:

- course fees for the duration of the applicant's period of stay in Australia (see definition of "course fees" in clause 5A101);
- living costs for the duration of the applicant's period of stay in Australia (see definition of "living costs" in clause 5A104);
- school costs for members of the applicant's family unit, for the duration of the applicant's stay in Australia (see definition of "school costs" in clause 5A104); and
- travel costs (see definition of "travel costs" in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether there are members of the applicant's family unit. Further to this, school costs only apply where any of those people are school-age dependants (see definition of "school-age dependant" in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not. The applicant must provide evidence that he or she has living costs for the entire duration of the applicant's proposed stay in Australia as the holder of the student visa.

Similarly, the applicant must prove that he or she can meet school costs, also defined in new clause 5A104, in relation to any school-age dependants, regardless of whether the school-age

dependants are also applicants or not. The applicant must provide evidence that he or she has school costs for the entire duration of the applicant's proposed stay in Australia as the holder of the student visa.

Under paragraph (c), the applicant must give evidence that he or she has held funding for the above costs for at least 5 consecutive years prior to the application being made. The funding must have been held by way of money deposits, rather than by way of cash (see definition of "money deposit" in clause 5A101).

In addition, under paragraph (d), the evidence that the applicant gives of his or her income must demonstrate that the applicant's income stream has been consistent with the level of funding that he or she is required to have.

Therefore, for example, if the applicant's income is low but the funding available to the applicant is quite high, it may be evident that the applicant could not have obtained the funding for his or her proposed stay in Australia from his or her income. The applicant may have obtained his or her funding via an unscrupulous method, and this relates to whether the applicant intends to be a genuine student.

New clause 5A703 – Other requirements

An applicant subject to assessment level 5 in this sector must also meet other requirements. The applicant must:

- give evidence that he or she has successfully completed secondary schooling to the year 12 or equivalent level; and
- provide a certificate of enrolment in the principal course (despite paragraph 5A108(a) which only requires, as a minimum, an offer of place); and
- give evidence that the principal course to be undertaken will assist the applicant to further his or her employment prospects in his or her home country, as set out in subparagraphs (c)(i) to (c)(iii) (see definition of "home country" in regulation 1.03 of the Regulations).

These requirements go towards demonstrating the genuineness of the applicant's intention to study in Australia.

Division 2 – Requirements for assessment level 4

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 575 (Non-Award Foundation Studies/Other Sector) who are subject to assessment level 4.

New clause 5A704 – English language proficiency

Under clause 5A704, an applicant must give evidence that he or she:

- will not undertake an ELICOS before commencing his or her principal course. ELICOS programs are designed for overseas students with the aim of instructing English. The length of the courses may vary but are typically conducted in blocks of ten weeks. In this situation, the applicant must show evidence that he or she achieved a minimum Overall Band Score of at least 5.5 in an IELTS test (see definition of "IELTS test" in regulation 1.03 of the Regulations) that was taken less than 2 years before the visa application was made; or

- will undertake an ELICOS of no longer than 20 weeks duration before commencing the principal course. In this situation, the applicant must show evidence that he or she achieved a minimum Overall Band Score of 5.0 in an IELTS test that was taken less than 2 years before the visa application was made. If the applicant needs to undertake an ELICOS for a longer period than 20 weeks, then the applicant will not satisfy paragraph 5A704(b); or
- is fully-funded and has a level of English language proficiency that satisfies his or her proposed education provider. In addition, if the applicant will undertake an ELICOS before commencing the principal course, the applicant must not undertake an ELICOS that is longer in duration than 20 weeks. If the applicant needs to undertake an ELICOS for a longer period than 20 weeks, then the applicant will not satisfy paragraph 5A704(c); or
- was in Australia at the time of making the student visa application and has – less than 2 years before the application was made:
 - successfully completed a Senior Secondary Certificate of Education in Australia. Those studies must have been conducted in the English language; or
 - whilst the holder of a student visa, studied towards a qualification from the Australian Qualifications Framework at the Certificate IV level or higher that was conducted in the English language; or
 - achieved, less than 2 years before the application was made, the required score in a test specified by the Minister in a Gazette Notice as an alternative test to the IELTS test, pursuant to clause 5A102. These tests are available in limited circumstances (see explanation for clause 5A102).

The IELTS test is designed to assess the language ability of candidates who need to study or work where English is used as the language of communication.

The IELTS test is readily available at test centres around the world (including Australia) that arrange test administration according to local demand. Under the new students regime, potential students sit the test to gauge their English proficiency before applying for a student visa.

The IELTS test comprises several modules. The four test components are speaking, reading, writing and listening.

New clause 5A705 – Financial capacity

Clause 5A705 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding from an acceptable source (see definition of “funds from an acceptable source” in subclause 5A705(2)) for the following:

- the applicant’s course fees for the full period of the applicant’s stay in Australia (see definitions of “course fees” and “full period” in clause 5A101);
- living costs for the full period of the applicant’s stay in Australia (see definition of “living costs” in clause 5A104);
- school costs for school-age dependants, for the full period of the applicant’s stay in Australia (see definition of “school costs” in clause 5A104); and

- travel costs (see definition of “travel costs” in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether the applicant has any family unit members. Further to this, school costs only apply where any of those people are school-age dependants (see definition of “school-age dependant” in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not.

Similarly, the applicant must prove that he or she can meet school costs, also defined in new clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not.

The applicant must also show evidence that the regular income of the individual (including themselves) providing funds for the above to the applicant, was sufficient to accumulate the level of funding being provided by that individual.

The definition of **acceptable individual** in subclause 5A705(2) sets out which people are “acceptable individuals” for clause 5A705. An “acceptable individual” is one or more of any of the following people:

- the applicant;
- the applicant’s spouse;
- one or both of the applicant’s parents; or
- one or both of the applicant’s grandparents.

“Acceptable individual” is subsequently referred to in the definition of “funds from an acceptable source” in subclause 5A705(2).

The definition of **funds from an acceptable source** in subclause 5A705(2) sets out the types of funding in relation to which evidence can be given to satisfy financial capacity for assessment level 4 in this sector.

Under paragraph (a) of the definition of “funds from an acceptable source”, if an applicant is giving evidence of financial capacity by way of a money deposit, the applicant must give evidence that he or she, or another acceptable individual, has held the money deposit for at least 6 consecutive months prior to the application being made.

Other “funds from an acceptable source” for clause 5A705 are:

- financial support from the applicant’s proposed education provider;
- financial support from the Australian Commonwealth Government, or the government of an Australian State or Territory;
- financial support from the government of a foreign country (see the definition of “foreign country” in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*); or
- financial support from a multilateral agency (such as the Red Cross).

As assessment level 4 is a very high risk assessment level, evidence of non-monetary funding relating to property (such as the presentation of valuations of property) is not permissible.

New clause 5A706 – Other requirements

An applicant subject to assessment level 4 in this sector must also meet other requirements. The applicant must:

- give evidence that he or she has successfully completed secondary schooling to the year 12 or equivalent level; and
- give evidence that the principal course to be undertaken will assist the applicant to further his or her employment prospects in his or home country, as set out in subparagraphs (b)(i) to (b)(iii) (see definition of "home country" in regulation 1.03 of the Regulations).

These requirements go towards demonstrating the genuineness of the applicant's intention to study in Australia.

Division 3 – Requirements for assessment level 3

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 575 (Non-Award Foundation Studies/Other Sector) who are subject to assessment level 3.

New clause 5A707 – English language proficiency

Under clause 5A707, an applicant must give evidence that he or she:

- will not undertake an ELICOS before commencing his or her principal course. ELICOS programs are designed for overseas students with the aim of instructing English. The length of the courses may vary but are typically conducted in blocks of ten weeks. In this situation, the applicant must show evidence that he or she achieved a minimum Overall Band Score of at least 5.5 in an IELTS test (see definition of "IELTS test" in regulation 1.03 of the Regulations) that was taken less than 2 years before the visa application was made; or
- will undertake an ELICOS of no longer than 30 weeks duration before commencing the principal course. In this situation, the applicant must show evidence that he or she achieved a minimum Overall Band Score of 4.5 in an IELTS test that was taken less than 2 years before the visa application was made. If the applicant needs to undertake an ELICOS for a longer period than 30 weeks, then the applicant will not satisfy paragraph 5A707(b); or
- is fully-funded and has a level of English language proficiency that satisfies his or her proposed education provider. In addition, if the applicant will undertake an ELICOS before commencing the principal course, the applicant must not undertake an ELICOS that is longer in duration than 30 weeks. If the applicant needs to undertake an ELICOS for a longer period than 30 weeks, then the applicant will not satisfy paragraph 5A707(c); or
- was in Australia at the time of making the student visa application and has – less than 2 years before the application was made:
 - successfully completed a Senior Secondary Certificate of Education in Australia. Those studies must have been conducted in the English language; or

- whilst the holder of a student visa, studied towards a qualification from the Australian Qualifications Framework at the Certificate IV level or higher that was conducted in the English language; or

- achieved, less than 2 years before the application was made, the required score in a test specified by the Minister in a Gazette Notice as an alternative test to the IELTS test, pursuant to clause 5A102. These tests are available in limited circumstances (see explanation for clause 5A102).

The IELTS test is designed to assess the language ability of candidates who need to study or work where English is used as the language of communication.

The IELTS test is readily available at test centres around the world (including Australia) that arrange test administration according to local demand. Under the new students regime, potential students sit the test to gauge their English proficiency before applying for a student visa.

The IELTS test comprises several modules. The four test components are speaking, reading, writing and listening.

New clause 5A708 – Financial capacity

Clause 5A708 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding from an acceptable source (see definition of “funds from an acceptable source” in subclause 5A708(2)) for the following:

- the applicant’s course fees for the full period of the applicant’s stay in Australia (see definitions of “course fees” and “full period” in clause 5A101);
- living costs for the full period of the applicant’s stay in Australia (see definition of “living costs” in clause 5A104);
- school costs for school-age dependants, for the full period of the applicant’s stay in Australia (see definition of “school costs” in clause 5A104); and
- travel costs (see definition of “travel costs” in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether the applicant has any family unit members. Further to this, school costs only apply where any of those people are school-age dependants (see definition of “school-age dependant” in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not.

Similarly, the applicant must prove that he or she can meet school costs, also defined in new clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not.

The applicant must also show evidence that the regular income of the individual (including themselves) providing funds for the above to the applicant, was sufficient to accumulate the level of funding being provided by that individual.

The definition of **acceptable individual** in subclause 5A708(2) sets out exactly which people are "acceptable individuals" for clause 5A708. An "acceptable individual" is one or more of any of the following people:

- the applicant;
- the applicant's spouse;
- one or both of the applicant's parents; or
- one or both of the applicant's grandparents.

"Acceptable individual" is subsequently referred to in the definition of "funds from an acceptable source" in subclause 5A708(2).

The definition of **funds from an acceptable source** in subclause 5A708(2) sets out the types of funding in relation to which evidence can be given to satisfy financial capacity for assessment level 3 in this sector.

Under paragraph (a) of the definition of "funds from an acceptable source", if an applicant is giving evidence of financial capacity by way of money deposits, the applicant must give evidence that he or she, or another acceptable individual, has held the money deposits for at least 6 consecutive months prior to the application being made.

Under paragraph (b) of the definition of "funds from an acceptable source", the applicant may give evidence of financial support from:

- the applicant's proposed education provider; or
- the Australian Commonwealth Government, or the government of an Australian State or Territory; or
- the government of a foreign country (see the definition of "foreign country" in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*); or
- a multilateral agency (such as the Red Cross).

New clause 5A709 – Other requirements

An applicant subject to assessment level 3 in this sector must also meet other requirements. The applicant must:

- give evidence that he or she has successfully completed secondary schooling to the year 11 or equivalent level; and
- give evidence that the principal course to be undertaken will assist the applicant to further his or her employment prospects in his or home country, as set out in subparagraphs (b)(i) to (b)(iii) (see definition of "home country" in regulation 1.03 of the Regulations).

Division 4 – Requirements for assessment level 2

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 575 (Non-Award Foundation Studies/Other Sector) who are subject to assessment level 2.

New clause 5A710 – English language proficiency

This clause requires that the applicant give evidence that they have a level of English language proficiency that satisfies their proposed education provider. This may be in the form of a letter or similar document from the education provider.

New clause 5A711 –Financial capacity

Clause 5A711 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding from an acceptable source (see definition of “funds from an acceptable source” in subclause 5A711(2)) for the following:

- the applicant’s course fees for the first 12 months of the applicant’s stay in Australia (see definition of “course fees” and “first 12 months” in clause 5A101);
- living costs for the first 12 months of the applicant’s stay in Australia (see definition of “living costs” in clause 5A104);
- school costs for school-age dependants, for the first 12 months of the applicant’s stay in Australia (see definition of “school costs” in clause 5A104); and
- travel costs (see definition of “travel costs” in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether the applicant has any family unit members. Further to this, school costs only apply where any of those people are school-age dependants (see definition of “school-age dependant” in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not.

Similarly, the applicant must prove that he or she can meet school costs, also defined in new clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not.

Under paragraph 5A711(c), the applicant must make a declaration that he or she has access to funds from an acceptable source that are sufficient to meet course fees, living costs and school costs for the remainder of the applicant’s expected stay in Australia.

The applicant must also show evidence that the regular income of the individual providing funds for the above to the applicant (including if the applicant provides the funding himself or herself), was sufficient to accumulate the level of funding being provided by that individual.

The definition of ***funds from an acceptable source*** in subclause 5A711(2) sets out the types of funding in relation to which evidence can be given to satisfy financial capacity for assessment level 2 in this sector.

Under paragraph (a) of the definition of “funds from an acceptable source”, an applicant may give evidence of financial capacity by way of money deposits or the value of an item of property (see definition of “value” in relation to an item of property in clause 5A105) held by the applicant or by a person providing support to the applicant.

Other “funds from an acceptable source” for clause 5A711 are:

- a loan from a financial institution (see definition of “financial institution” in clause 5A101);
- a loan from the government of the applicant’s home country (see definition of “home country” in regulation 1.03 of the Regulations);
- financial support from the applicant’s proposed education provider;
- financial support from the Australian Commonwealth Government, or the government of an Australian State or Territory;
- financial support from the government of a foreign country (see the definition of “foreign country” in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*); or
- financial support from a multilateral agency (such as the Red Cross).

Division 5 – Requirements for assessment level 1

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 575 (Non-Award Foundation Studies/Other Sector) who are subject to assessment level 1.

New clause 5A712 – English language proficiency

In recognition of the lower risk associated with applicants subject to assessment level 1 in this sector, an applicant under this clause is only required to give evidence that he or she has a level of English language proficiency that satisfies his or her proposed education provider. This may be evidenced by way of a letter or similar document from the proposed education provider.

New clause 5A713 – Financial capacity

In recognition that assessment level 1 in this sector is a low risk assessment level, under this clause applicants are only required to give evidence of financial capacity by way of a declaration. The declaration must state that the applicant has access to funds that are sufficient to meet:

- course fees for the full period (see definitions of “course fees” and “full period” in clause 5A101);
- living costs for the full period (see definition of “living costs” in clause 5A104);
- school costs for school-age dependants for the full period (see definition of “school costs” in clause 5A104, and definition of “school-age dependant” in regulation 1.03 of the Regulations); and
- travel costs (see definition of “travel costs” in clause 5A101).

Part 8 – Subclass 576 (AusAID or Defence Sector)

Part 8 of new Schedule 5A sets out the evidential requirements for assessment levels 5 and 2 for Subclass 576 (AusAID or Defence Sector) of Schedule 2 to the Regulations. There are only two assessment levels. This recognises that in some rare instances there may be a risk associated with some applicants, yet in most cases applicants in this sector pose only a moderate to low risk.

Division 1 – Requirements for assessment level 5

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 576 (AusAID or Defence Sector) who are subject to assessment level 5.

New clause 5A801 – English language proficiency

This provision requires that an applicant must give evidence that they have achieved a minimum Overall Band Score of 7.0 in an IELTS test (see definition in regulation 1.03 of the Regulations) that was taken less than 2 years before the visa application was made.

Applicants subject to assessment level 5 are required to have a higher standard of English language proficiency than applicants subject to other assessment levels. This is to ensure that applicants are genuine applicants for student visas and to maintain the integrity of the student visa program.

The IELTS test is designed to assess the language ability of candidates who need to study or work where English is used as the language of communication.

The IELTS test is readily available at test centres around the world (including Australia) that arrange test administration according to local demand. Under the new students regime, potential students sit the test to gauge their English proficiency before applying for a student visa.

The IELTS test comprises several modules. The four test components are speaking, reading, writing and listening.

New clause 5A802 – Financial capacity

Clause 5A802 sets out the evidence that the applicant must demonstrate in order to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding for:

- the applicant's course fees for the duration of the applicant's period of stay in Australia (see definition of "course fees" in clause 5A101);
- living costs for the duration of the applicant's period of stay in Australia (see definition of "living costs" in clause 5A104);
- school costs for members of the applicant's family unit, for the period of the applicant's stay in Australia (see definition of "school costs" in clause 5A104); and
- travel costs (see definition of "travel costs" in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether there are members of the applicant's family unit. Further to this, school costs only apply where any of those people are school-age dependants (see definition of "school-age dependant" in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not. The applicant must provide evidence that he or she has living costs for the entire duration of the applicant's proposed stay in Australia as the holder of the student visa.

Similarly, the applicant must prove that he or she has school costs, also defined in new clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not. The applicant must provide evidence that he or she has school costs for the entire duration of the applicant's proposed stay in Australia as the holder of the student visa.

Under paragraph (c), the applicant must give evidence that he or she has held funding for the above costs for at least 5 consecutive years prior to the application being made. The funding must have been held by way of money deposits, rather than by way of cash (see definition of "money deposit" in clause 5A101).

In addition, under paragraph (d), the evidence that the applicant gives of his or her income must demonstrate that the applicant's income stream has been consistent with the level of funding that he or she is required to have.

Therefore, for example, if the applicant's income is low but the funding available to the applicant is quite high, it may be evident that the applicant could not have obtained the funding for his or her proposed stay in Australia from his or her income. The applicant may have obtained his or her funding via an unscrupulous method, and this relates to whether the applicant intends to be a genuine student.

New clause 5A803 – Other requirements

Under this clause, the applicant must give evidence that they have the support of the AusAID Minister or of the Defence Minister. In addition, the applicant must give evidence of the duration of the applicant's proposed study or training in Australia. This would usually be done by way of documentation from AusAID or the Department of Defence.

Division 2 – Requirements for assessment level 2

This Division sets out the evidentiary requirements for applicants seeking to satisfy the primary criteria of Subclass 576 (AusAID or Defence Sector) who are subject to assessment level 2.

New clause 5A804 – English language proficiency

In recognition of the lower risk associated with applicants subject to assessment level 2 in this sector, under clause 5A804 applicants are not subject to the more stringent English language proficiency requirements of assessment level 5 in this sector.

Consequently, under clause 5A804 the applicant is only required to give evidence that they have a level of English language proficiency that satisfies their proposed education provider or training organisation.

In this assessment level in this sector, it may be sufficient to give evidence of the above by providing a letter from AusAID or the Department of Defence.

In contrast to assessment level 2 in other sectors, this clause refers to any:

- proposed education provider; or
- proposed training organisation.

The reason that a reference to a proposed training organisation has been included is because a Subclass 576 visa holder (who has the support of the AusAID Minister or of the Defence Minister) is able to undertake a different course structure in comparison to the rest of the student visa program. In certain circumstances, a Subclass 576 (AusAID or Defence Sector) visa holder may undertake training rather than course-work.

New clause 5A805 – Financial capacity

The effect of subclause 5A805(1) is that the applicant must give evidence that he or she has the support of the AusAID Minister or of the Defence Minister. Although the provision refers to the possibility that the applicant has the support of the AusAID Minister or of the Defence Minister, it should be noted that it is a requirement in Subclass 576 (AusAID or Defence Sector) that the applicant must have the support of the AusAID Minister or the Defence Minister.

The effect of subclause 5A805(1) being subject to subclause 5A805(2) is that an applicant will only have to show evidence that he or she has the support of the AusAID Minister or the Defence Minister, *unless* the applicant is required – in writing – under subclause (2) to give evidence of further financial capacity, as set out in that subclause.

Subclause 5A805(2) sets out the evidence that the applicant must demonstrate, if he or she is requested to in writing by the Minister. The evidential requirements are intended to require the applicant to prove that he or she has the financial capacity for study and stay in Australia. The financial capacity requirements also address the issue of whether the applicant will have financial capacity in respect of financial responsibilities to family unit members.

The applicant must prove that he or she has funding from an acceptable source (see definition of “funds from an acceptable source” in subclause 5A805(2)) for the following:

- course fees for the first 12 months of the applicant’s stay in Australia. This could include any combination of a course or training that the applicant will undertake in that period of time (see definition of “course fees” and “first 12 months” in clause 5A101);
- living costs for the first 12 months of the applicant’s stay in Australia (see definition of “living costs” in clause 5A104);
- school costs for school-age dependants, for the first 12 months of the applicant’s stay in Australia (see definition of “school costs” in clause 5A104); and
- travel costs (see definition of “travel costs” in clause 5A101).

In particular, living costs and school costs are determined on the basis of whether the applicant has any family unit members. Further to this, school costs only apply where any of those people are school-age dependants (see definition of “school-age dependant” in regulation 1.03 of the Regulations).

Where there are members of the family unit of the applicant (see subregulation 1.12(2) of the Regulations), the applicant must prove that he or she has living costs, as defined in clause 5A104, in relation to both himself or herself and any members of the family unit, regardless of whether the members of the family unit are also applicants or not.

Similarly, the applicant must prove that he or she has school costs, also defined in clause 5A104, in relation to any school-age dependants, regardless of whether the school-age dependants are also applicants or not.

In addition to the above, paragraph 5A805(2)(c) requires the applicant to provide a declaration stating that he or she has access to sufficient funds to meet the the course fees, living costs and school costs for the remainder of the applicant's expected stay in Australia.

Further to the above, under paragraph 5A805(2)(d), the evidence that the applicant gives of his or her funding must demonstrate that the income stream of the person providing the funding was consistent with the level of funding being provided by that person.

Therefore, for example, if the applicant is relying on a friend's income, and the friend's income is low, it may be evident that the friend could not have obtained the funding from his or her income. This relates to whether the applicant intends to be a genuine student.

In this clause, there are no limits on who may provide funding for the applicant by way of money deposits or the value of an item of property, for the purposes of meeting financial capacity requirements.

The definition of ***funds from an acceptable source*** in subclause 5A805(3) sets out the allowable funding in relation to which evidence can be given to satisfy financial capacity for assessment level 2 in this sector. Evidence may be given of:

- a money deposit or the value of an item of property held either by the applicant or by a person providing funding to the applicant (see definition of "money deposit" in clause 5A101 and definition of "value", in relation to an item of property, in clause 5A105);
- a loan from a financial institution (see definition of "financial institution" in clause 5A101);
- a loan to the applicant from the government of the applicant's home country (see definition of "home country" in regulation 1.03 of the Regulations);
- financial support from the government of a foreign country (see the definition of "foreign country" in paragraph 22(1)(f) of the *Acts Interpretation Act 1901*);
- financial support from the Australian Commonwealth Government, or the government of an Australian State or Territory;
- financial support from a business. This is intended to encompass corporations and other registered businesses, regardless of whether they operate outside the country in which they are based, and regardless of the applicant's role in relation to the business;
- financial support from a multilateral agency (such as the Red Cross); or
- support from the AusAID Minister or the Defence Minister.

If, for example, the applicant shows that he or she has partial support from the AusAID Minister or the Defence Minister which will fulfil financial capacity requirements for 6 months, he or she

will still have to show financial capacity for the remainder of the 12 month period by virtue of any combination of the dot points listed above.

As assessment level 2 in this sector is a lower risk assessment level, evidence of certain non-monetary funding (such as the presentation of valuations of property) *is* permissible.

In addition, unlike assessment level 5 in this sector, if evidence of financial capacity is required under subclause 5A805(2), funding only has to be demonstrated for the first 12 months of the applicant's stay in Australia, with the exception of the declaration, which relates to the remainder of the applicant's expected stay in Australia.

New clause 5A806 – Other requirements

Under this clause, the applicant must give evidence that they have the support of the AusAID Minister or of the Defence Minister. In addition, the applicant must give evidence of the duration of the applicant's proposed study or training in Australia. This would usually be done by way of documentation from AusAID or the Department of Defence.

Item [129] – Schedule 8, subclause 8202(1)

Item [130] – Schedule 8, paragraph 8202(2)(b)

Item [131] – Schedule 8, subclause 8202(4)

These items amend student visa condition 8202. They make technical amendments to that condition, consequential to the introduction of the new student visa regime.

Item [132] – Schedule 8, after subclause 8206(2)

This item amends student visa condition 8206. The amendments provide for where a visa holder is undertaking a course in the Masters/Doctorate sector that is taught in a non-English language. In such an instance, condition 8206 will not allow the visa holder to change his or her enrolment. If the visa holder does change his or her enrolment, the visa holder will have breached the conditions of his or her visa and, as a result, his or her visa may be subject to cancellation.

Item [133] – Schedule 8, clause 8517

This item amends condition 8517 in Schedule 8 of the *Migration Regulations 1994* to include a reference to the seven new subclasses.

Item [134] – Schedule 8, clause 8523

This item replaces condition 8523 in Schedule 8 to the *Migration Regulations 1994* with new condition 8523.

As a consequence of the amendment, condition 8523 no longer requires a person intending to marry the visa holder to leave Australia not later than 3 months after entering Australia. This is consistent with the omission of paragraph 1.12(2)(c), as a person who has entered into an agreement to marry the student visa holder is no longer considered to be a member of the family unit of the student visa holder.

Item [135] – Schedule 8, after clause 8533

This item inserts two new conditions in Schedule 8 of the *Migration Regulations 1994*

New condition 8534 provides that the visa holder cannot be granted a further substantive visa, except where the visa holder satisfies the criteria for grant of:

- a protection visa; or
- a student visa where the application was made on Form 157P (this is to allow student visa holders to apply for a further student visa without condition 8101 attached); or
- a Subclass 497 (Graduate – Skilled) visa,

while the holder remains in Australia.

New condition 8535 provides that the visa holder cannot be granted a further substantive visa, except where the visa holder satisfies the criteria for grant of:

- a protection visa; or
- a student visa where the application was made on Form 157P (this is to allow student visa holders to apply for a further student visa without condition 8101 attached); or
- a student visa where the applicant satisfies the criterion in clause 570.230, 571.229, 572.229, 573.229, 574.229, 575.229 or 576.227 of Schedule 2,

while the holder remains in Australia.

Item [136] – Schedule 9, Part 2, paragraph 1 (a)

Part 2 of Schedule 9 of the Regulations refers to persons not required to give certain evidence of identity on entering Australia under section 166 of the Act.

Paragraph 1(a) of Part 2 of Schedule 9 currently refers to transit passengers who are citizens of a country specified in a gazette notice for the purpose of paragraph 2.40(1)(n) of the Regulations.

This item substitutes paragraph 1(a) of Part 2 of Schedule 9.

New paragraph 1(a) refers to transit passengers who belong to a class of person specified in a gazette notice for the purposes of paragraph 2.40(1)(n) of the Regulations.

The amendment is consequential to the amendment made by these Regulations to paragraph 2.40(1)(n).