EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 202

Issued by the Minister for Immigration and Citizenship

Migration Act 1958

Migration Amendment Regulations 2009 (No. 9)

Subsection 504(1) of the *Migration Act 1958* (the 'Act') provides, in part, 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.

In addition, regulations may be made pursuant to the provisions listed in Attachment A.

The purpose of the Regulations is to amend the *Migration Regulations 1994* (the 'Principal Regulations') in relation to Subclass 457 (Business (Long Stay)) visas, create the new Subclass 406 (Government Agreement) visa and repeal the Subclass 418 (Educational) visa.

In particular the Regulations amend the Principal Regulations to align Subclass 457 (Business (Long Stay)) visas with the new sponsorship framework at Division 3A of Part 2 of the Act and new Part 2A of the Principal Regulations. These amendments complement amendments to the Act made by the *Migration Legislation Amendment (Worker Protection) Act 2008* and amendments to the Principal Regulations made by the *Migration Amendment Regulations 2009 (No. 5)*. The Regulations also create the new Subclass 406 (Government Agreement) visa which will allow non-citizens to enter Australia in two circumstances: in accordance with the terms of an agreement between a government in Australia and the government of a foreign country, or to direct the national operations of prescribed organisations in Australia.

Details of the Regulations are set out in the Attachment B.

The Regulations commence on 14 September 2009.

In relation to the amendments made by Schedule 1, the Office of Best Practice Regulation's Best Practice Regulation Preliminary Assessment was used to determine that there will be low compliance cost on business and low other impacts on individuals and business or the economy.

In relation to the amendments made by Schedule 2, the Office of Best Practice Regulation's Best Practice Regulation Preliminary Assessment was used to determine that there will be no compliance cost on business and no other impacts on individuals and business or the economy.

The Department of Education, Employment and Workplace Relations, the Department of Foreign Affairs and Trade, the Department of Treasury and the Skilled Migration Consultative Panel have been consulted in relation to the amendments made by Schedule 1.

The Department of Foreign Affairs and Trade and the Department of Education, Employment and Workplace Relations have been consulted in relation to the creation of the Subclass 406 (Government Agreement) visa.

In relation to Schedules 1 and 2, no other consultations were required except for the consultations above.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

ATTACHMENT A

Subsection 504(1) of the *Migration Act 1958* (the 'Act') provides, in part, 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.

Subsection 5(1) of the Act provides, amongst other things, that "prescribed" means prescribed by the regulations.

In addition to subsection 504(1), the following provisions of the Act may apply:

- section 29, in particular:
    - subsection 29(2), which provides that a visa to travel to, enter and remain in Australia may be one to travel to and enter Australia during a prescribed or specified period;
    - subsection 29(3), which provides generally that a visa to travel to, enter and remain in Australia may be one to travel to and enter Australia during a prescribed or specified period. If the visa holder travels to and enters Australia during that period, the visa holder may remain in Australia during a prescribed or specified period or indefinitely, and if the visa holder leaves Australia during a prescribed or specified period, the visa holder may travel to and re-enter Australia during a prescribed or specified period;
- section 31, in particular:
    - subsection 31(1), which provides that the regulations prescribe classes of visas;
    - subsection 31(3), which provides that the regulations may prescribe criteria for a visa or visas of a specified class (which, without limiting the generality of this subsection, may be a class provided for by sections 32, 36, 37, or 37A but not by section 33, 34, 35 or 38 of the Act);
    - subsection 31(4), which provides that the regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia or both;
    - subsection 31(5), which provides that a visa is a visa of a particular class if the Act or the regulations specify that it is a visa of that class;
- subsection 40(1), which provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;

- subsection 40(2), which provides that without limiting subsection 40(1), the circumstances may be, or may include, that, when the person is granted the visa, the person:
    - is outside Australia; or
    - is in immigration clearance; or
    - has been refused immigration clearance and has not subsequently been immigration cleared; or
    - is in the migration zone and, on last entering Australia, was immigration cleared or bypassed immigration clearance and had not subsequently been immigration cleared;
- subsection 41(1), which provides that regulations may provide that visas, or visas of a specified class, are subject to specified conditions;
- paragraph 41(2)(b), which provides that the regulations may provide that a visa, or visas of a specified class, are subject to a condition imposing restrictions about the work that may be done in Australia by the visa holder;
- subsection 45A, which provides that a non-citizen who makes an application for a visa is liable to pay a visa application charge if, assuming the charge were paid, the application would be a valid visa application;
- subsection 45B(1), which provides that the regulations may prescribe the amount that is the amount of a visa application charge, not exceeding the visa application charge limit;
- subsection 45B(2), which provides that the amount of visa application charge prescribed in relation to an application may be nil;
- section 46, which provides when an application for a visa is a valid application, and in particular:
    - subsection 46(1), which provides that an application for a visa is valid if and only if it is for a visa of a class specified in the application, it satisfies the criteria and requirements prescribed under section 46, any visa application charge that the regulations require to be paid at the time when the application is made has been paid, any fees payable in respect of the application under the regulations have been paid, and the application is not prevented by section 48, 48A, 91E, 91K, 91P, 161, 164D, 195 or 501E of the Migration Act.
    - subsection 46(2), which provides that the regulations may provide that an application for a visa is valid if it is an application for a visa of a class prescribed for the purposes of this subsection, and under the regulations, the application is taken to have been validly made;

- subsection 46(3), which provides that the regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application;

- subsection 46(4), which provides that the regulations may prescribe, without limiting subsection 46(3): the circumstances that must exist for an application for a visa of a specified class to be a valid application, how an application for a visa of a specified class must be made, 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.

ATTACHMENT B

Details of the *Migration Amendment Regulations 2009 (No. 9)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Migration Amendment Regulations 2009 (No. 9).*

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on 14 September 2009.

Regulation 3 – Amendment of *Migration Regulations 1994*

Subregulation 3(1) provides that the *Migration Regulations 1994* (the 'Principal Regulations') are amended as set out in Schedule 1.

Subregulation 3(2) provides that the amendments made by items [1] to [7] of Schedule 1 apply in relation to an application for a visa made, but not finally determined (within the meaning of subsection 5(9) of the *Migration Act 1958* (the 'Act')), before 14 September 2009, or made on or after 14 September 2009.

Subregulation 3(3) provides that the amendments made by items [9] to [11] of Schedule 1 apply in relation to an application for a visa made on or after 14 September 2009.

Subregulation 3(4) provides that the amendments made by items [12] to [13] of Schedule 1 apply in relation to an application for a visa made, but not finally determined (within the meaning of subsection 5(9) of the Act), before 14 September 2009, or made on or after 14 September 2009.

Subregulation 3(5) provides that the amendment made by item [14] of Schedule 1 applies in relation to an application for a visa made on or after 14 September 2009.

Subregulation 3(6) provides that the amendments made by items [15] to [37] of Schedule 1 apply in relation to an application for a visa made, but not finally determined (within the meaning of subsection 5(9) of the Act), before 14 September 2009, or made on or after 14 September 2009.

Regulation 4 – Amendment of *Migration Regulations 1994*

Subregulation 4(1) provides that the Principal Regulations are amended as set out in Schedule 2.

Subregulation 4(2) provides that the amendments made by Schedule 2 apply in relation to an application for an Educational (Temporary) (Class TH) visa made on or after 14 September 2009.

Schedule 1 – Amendments relating to the Subclass 457 (Business (Long Stay)) visa

Item [1] – Sub-subparagraph 1.08(c)(i)(C)

This item omits "visa; or" in sub-subparagraph 1.08(c)(i)(C) in Division 1.2 of Part 1 of the Principal Regulations and inserts "visa; and".

This is a technical amendment which is consequential to the amendment to remove sub-subparagraph 1.08(c)(i)(D) in item [2] of this Schedule.

Item [2] – Sub-subparagraph 1.08(c)(i)(D)

This item omits sub-subparagraph 1.08(c)(i)(D) in Division 1.2 of Part 1 of the Principal Regulations.

Regulation 1.08 defines "compelling need to work". Applicants for certain Bridging visas will satisfy criteria for the grant of those visas if, among other things, they have a compelling need to work.

Current sub-subparagraph 1.08(c)(i)(D) provides that a non-citizen will have a compelling need to work if they are an applicant for a Temporary Business Entry (Class UC) visa who seeks a visa to remain in Australia for a period, or periods, of three months or more. New paragraph 1.08(d), inserted by item [4] of this Schedule, provides for when an applicant for a Temporary Business Entry (Class UC) visa will have a compelling need to work. Consequently, it is necessary to remove sub-subparagraph 1.08(c)(i)(D).

Item [3] – Subparagraph 1.08(c)(iii)

This item omits "that visa" in subparagraph 1.08(c)(iii) in Division 1.2 of Part 1 of the Principal Regulations and inserts "that visa; or".

This is a technical amendment made to facilitate the insertion of new paragraph 1.08(d), made by item [4] of this Schedule.

Item [4] – After paragraph 1.08(c)

This item inserts new paragraph 1.08(d) in Division 1.2 of Part 1 of the Principal Regulations.

New paragraph 1.08(d) provides that an applicant for a Temporary Business Entry (Class UC) visa will have a compelling need to work if they:

- seek to satisfy the criteria for grant of a Subclass 457 (Business (Long Stay)) visa; and
- are identified in an approved nomination of an occupation made by a standard business sponsor, former standard business sponsor or party to a labour agreement who is specified in the visa application; and
- appear to the Minister, on the basis of the application, to satisfy the criteria for grant of the visa.

Current sub-subparagraph 1.08(c)(i)(D) provides for when an applicant for a Temporary Business Entry (Class UC) visa will have a compelling need to work. There are two changes

made to the substance of sub-subparagraph 1.08(c)(i)(D) through new paragraph 1.08(d). Firstly, applicants must seek to satisfy the criteria for grant of a Subclass 457 (Business (Long Stay)) visa rather than seeking to remain in Australia for a period, or periods, of three months or more. The amendments made by items [33] and [34] of this Schedule mean that there will no longer be a minimum period of stay in Australia for a Subclass 457 visa holder. Consequently, it will no longer be possible to distinguish between Subclass 457 visas and Subclass 456 (Business (Short Stay) visas, which is also a visa in Class UC on the basis of the period of stay in Australia.

The second change made by this item is that applicants no longer need to be sponsored by an employer. This omission avoids confusion with the use of sponsorship in Division 1.4 of Part 1 of the Principal Regulations which does not relate to a person being sponsored under new Part 2A of the Principal Regulations. Rather, applicants will need to be the subject of an approved nomination made by a standard business sponsor, former standard business sponsor or party to a labour agreement who is specified in the visa application.

Item [5] – Paragraph 2.12F(3A)(b)

This item omits "paragraph 457.223(4)(ed) or (ee) or (5)(ba)" in paragraph 2.12F(3A)(b) in Division 2.2A in Part 2 of the Principal Regulations and inserts 'paragraph 457.223(4)(aa)'.

Paragraph 2.12F(3A)(b) provides for when the Minister may refund an amount paid by way of the first instalment of the visa application charge in relation to an application for a Temporary Business Entry (Class UC) visa.

This item is contingent on the amendments made by item [20] of this Schedule. Paragraphs 457.223(4)(ee) and (5)(ba) are repealed by that item while the substance of what is currently in paragraph 457.223(4)(ed) will be in paragraph 457.223(4)(aa). The effect of this amendment is that the Minister will be able to refund the first instalment of the visa application charge in relation to an application for a visa if the applicant withdraws the application because the occupation is no longer listed in an instrument in writing as an occupation that a standard business sponsor may nominate.

Item [6] – Sub-subparagraph 2.15(1)(b)(ii)(B)

This item omits sub-subparagraph 2.15(1)(b)(ii)(B) in Division 2.3 of Part 2 of the Principal Regulations.

Section 58 of the Act provides for invitations to give further information or comments as part of the visa application process. Subsection 58(2) provides that if the invitation is to give additional information or comments otherwise than by interview, then the information or comments are to be given within a period specified in the invitation, being a prescribed period. Subregulation 2.15(1) of the Principal Regulations sets out the prescribed period for the purpose of subsection 58(2) of the Act.

The effect of current sub-subparagraph 2.15(1)(b)(ii)(B) is that an applicant for a Temporary Business Entry (Class UC) visa who makes that application outside Australia and seeks to remain in Australia for a period, or periods, of 3 months or less, has 7 days in which to respond to an invitation given under section 58 of the Act, if the invitation is given otherwise than at an interview.

The amendments made by items [33] and [34] of this Schedule mean that there will no longer be a minimum period of stay in Australia for a Subclass 457 (Business (Short Stay) visa holder. Consequently, it will no longer be possible to distinguish between Subclass 457 visas and Subclass 456 (Business (Short Stay) visas, which is also a visa in Class UC, on the basis of period of stay in Australia. Further, as current sub-subparagraph 2.15(1)(b)(ii)(B) only applies to applications made by a person who is in Australia, it can never apply to Subclass 456 visa applicants as applications for these visas must be made outside Australia. Consequently, sub-subparagraph 2.15(1)(b)(ii)(B) can be removed.

Item [7] – Subparagraph 2.15(3)(b)(ii)

This item omits subparagraph 2.15(3)(b)(ii) in Division 2.3 of Part 2 of the Principal Regulations.

Section 58 of the Act provides for invitations to give further information or comments as part of the visa application process. Paragraph 58(3)(b) of the Act provides that if the invitation is to give information or comments at an interview, then the interview is to take place at a time specified in the invitation, being the time within a prescribed period. Subregulation 2.15(3) sets out the prescribed period for the purpose of paragraph 58(3)(b) of the Act.

The effect of current subparagraph 2.15(3)(b)(ii) is that an applicant for a Temporary Business Entry (Class UC) visa who makes that application in Australia and who seeks to remain in Australia for a period, or periods, of three months or less, the prescribed period is seven days after the applicant is notified of the invitation.

The amendments made by items [33] and [34] of this Schedule mean that there will no longer be a minimum period of stay in Australia for a Subclass 457 (Business (Short Stay) visa holder. Consequently, it will no longer be possible to distinguish between Subclass 457 visas and Subclass 456 (Business (Short Stay) visas, which is also a visa in Class UC, on the basis of period of stay in Australia. As a result, subparagraph 2.15(3)(b)(ii) can be removed.

Item [8] – Subregulation 2.43(3), definition of *business sponsor*

This item omits the definition of 'business sponsor' in subregulation 2.43(3) in Division 2.9 of Part 2 of the Principal Regulations.

Subregulation 2.43(3) provides for a definition of certain terms used in regulation 2.43. Amendments made by the *Migration Amendment Regulations 2009 (No.5) Amendment Regulations 2009 (No.)* which were made at the 12 August 2009 Federal Executive Council meeting, remove reference to 'business sponsor' in regulation 2.43. Consequently, it is no longer necessary to have a definition of 'business sponsor' in subregulation 2.43(3).

Item [9] – Schedule 1, item 1223A

This item substitutes item 1223A in Schedule 1 to the Principal Regulations with new item 1223A.

Item 1223A sets out the requirements for making a valid application for a Temporary Business Entry (Class UC) visa. Item 1223A has been substituted to implement a number of changes, each of which is discussed in turn.

Subitem 1223A(1)

Minimum and maximum periods in Australia

Subclass 456 (Business (Short Stay)) visas and Subclass 457 (Business (Long Stay)) visas are visa subclasses within Class UC. The current difference between Subclass 456 and Subclass 457 visas is that the minimum period of stay for a Subclass 457 visa is 3 months while the maximum period of stay for a Subclass 456 visa is 3 months. There are different ways of making a valid application for a Class UC visa depending on the period of time the applicant intends to remain in Australia.

Items [33] and [34] of this Schedule remove the minimum period of stay for Subclass 457 visas. Consequently, it is no longer effective to distinguish between Subclass 456 and Subclass 457 visa in item 1223A on the basis of minimum and maximum periods of stay in Australia. Nevertheless, the intention is to distinguish in item 1223A between applicants for Subclass 456 visas and applicants for Subclass 457 visas.

As a result, where current subitem 1223A(1) refers to 'if the applicant seeks a visa that will permit the applicant to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period, or periods, of three months or less', that has been changed to 'if the applicant seeks to satisfy the criteria for the grant of a Subclass 456 (Business (Short Stay)) visa'. Similarly, where item 1223A refer to 'if the applicant seeks a visa that will permit the applicant to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period, or periods, of more than three months', that has been changed 'if the applicant seeks to satisfy the criteria for the grant of a Subclass 457 (Business (Long Stay)) visa'.

Form

Currently, the form on which an applicant must complete an application for a Class UC visa, depends on the circumstances of the applicant. Applicants seeking to satisfy the criteria for grant of a Subclass 456 visa must complete form 456. Form 1066 and form 1066 (internet) are for applicants seeking to satisfy the criteria for grant of a Subclass 457 visa. An applicant may only use form 1066 (internet) in certain circumstances.

The current arrangements in item 1223A for use of forms will continue, however there will be a new group of applicants who will be able to use form 1066 (internet). New sub-subparagraphs 1223A(1)(b)(iii)(C) and (ba)(iii)(C) provide that an applicant seeking to satisfy the criteria for grant of a Subclass 457 visa will be able to use either form 1066 or form 1066 (internet) if they are making the application for the visa where the person who proposes to nominate an occupation in relation to the applicant, has made an application for approval as a standard business sponsor using Form 1196 (Internet).

Changes in relation to standard business sponsors

This item amends item 1223A to reflect changes made to the approving of a person as a standard business sponsor by the *Migration Amendment Regulations 2009 (No. 5)* which are also to commence on 14 September 2009.

Currently, a standard business sponsor who is operating a business in Australia is described in paragraphs 1223A(1)(b) and (ba) as 'a standard business sponsor who was not approved under regulation 1.20DA'. Regulation 1.20DA will be repealed by the *Migration Amendment*

Regulations 2009 (No. 5). To maintain the distinction between standard business sponsors who are operating a business in Australia and those who are not operating a business in Australia, new paragraphs 1223A(1)(b) and (ba) specifically refer to standard business sponsors operating a business in Australia.

Under regulation 2.75, to be inserted into the Principal Regulations by the *Migration Amendment Regulations 2009 (No. 5)*, a nomination by a standard business sponsor could be in effect for three months after the approval as a standard business sponsor ceases. The policy intention is that where the approval of a standard business sponsor has ceased to have effect but there is still an approved nomination of an occupation in relation to the Class UC applicant, the applicant should still be able to make a valid application for a Class UC visa. Consequently, rather than referring to 'standard business sponsor' this item amends item 1223A to refer to the nomination of an occupation.

Pre-qualified business sponsors

Current sub-subparagraphs 1223A(1)(b)(iii)(A) and 1223A(1)(ba)(iii)(A) refer to a 'pre-qualified business sponsor'. There are no longer any pre-qualified business sponsors and it is no longer possible for someone to become a pre-qualified business sponsor. Consequently, this item amends item 1223A to remove references to 'pre-qualified business sponsors'.

Regional headquarters agreement

Current sub-subparagraphs 1223A(1)(b)(iii)(C) and 1223A(1)(ba)(iii)(C) refer to a 'regional headquarters agreement'. There are no longer any regional headquarters agreements and it is no longer possible for someone to enter into a regional headquarters agreement. Consequently, this item amends item 1223A to remove references to 'regional headquarters agreement'.

Subitem 1223A(2)

Subitem 1223A(2) sets out the visa application charge (VAC) that a person must pay in order to make a valid application for a Temporary Business Entry (Class UC) visa.

This item amends subitem 1223A(2) to make the changes in relation to the minimum and maximum periods of stay in Australia for the same reasons as outlined for subitem 1223A(1). In addition, there are amendments to subparagraph 1223A(2)(a)(i) to make that subparagraph subject to subparagraph 1223A(2)(a)(ix), in addition to the subparagraphs to which it is currently subject. Finally, sub-subparagraphs 1223A(vi)(A) and (B) are amended to make the structure of those sub-subparagraphs consistent.

Subitem 1223A(3)

Subitem 1223A(3) refers to other criteria for making a valid application for a Temporary Business Entry (Class UC) visa.

Paragraphs 1223A(3)(a) and (b)

These paragraphs are amended to change 'an applicant who seeks a visa that will permit the applicant to travel to, enter and remain in Australia for a period, or periods, of three months or less' to 'an applicant who seeks to satisfy the criteria for the grant of a Subclass 456

(Business (Short Stay)) visa' for the same reasons as those outlined for subitem 1223A(1). There are no other amendments to these paragraphs.

Paragraph 1223A(3)(aa)

Paragraph 1223A(3)(aa) is amended to remove reference to paragraph (ab) because paragraph (ab) is repealed.

Paragraph 1223A(3)(ab)

This paragraph is being omitted because it will be repealed from 14 September 2009. Paragraph 1223A(3)(ab) relates to applicants who seek the grant of a Subclass 457 visa either on the basis of developing in Australia a business activity that will be conducted by the applicant as a principal and will be of benefit to Australia or to be employed in Australia in an activity nominated by a person under paragraph 1.20G(1)(d). However, as no separate requirement is needed for a person described in this paragraph, it can be repealed.

Paragraph 1223A(3)(ad) and (ae)

Technical amendments are made to paragraphs 1223A(3)(ad) and (ae) to make it clear that they will only apply where the applicant holds a Subclass 457 visa granted on the basis that they met the requirements of subclause 457.223(7) as in force immediately before the commencement date of these regulations and they seek to satisfy the criteria for grant of a Subclass 457 visa.

Paragraph 1223A(3)(af)

Paragraph 1223A(3)(af) is amended to change 'seeks a visa that will permit the applicant to travel to, enter and remain in Australia for a period, or periods, of more than three months' to 'an applicant who seeks to satisfy the criteria for the grant of a Subclass 457 (Business (Long Stay)) visa' for the same reasons as those outlined for subitem 1223A(1).

Paragraph 1223A(3)(af) is also amended to remove reference to subclause 457.223(3) as it will no longer be possible for a person to be granted a Subclass 457 visa on the basis of a regional headquarters agreement and no new regional headquarters agreements will be entered into.

Paragraph 1223A(3)(ag)

Paragraph 1223A(3)(ag) is amended to change 'seeks a visa that will permit the applicant to travel to, enter and remain in Australia for a period, or periods, of more than 3 months' to 'an applicant who seeks to satisfy the criteria for the grant of a Subclass 457 (Business (Long Stay)) visa' for the same reasons as those outlined for subitem 1223A(1).

Paragraph 1223A(3)(ag) is also amended to remove reference to subclause 457.223(5) because this subclause is repealed by item [20] of this Schedule. Instead, the same policy intention will be captured by reference to a nomination of an occupation in relation to the applicant which has been made, or proposes to be made, by a person who does not operate a business in Australia.

Paragraph 1223A(3)(c)

This paragraph is amended to change 'an applicant who seeks a visa that will permit the applicant to travel to, enter and remain in Australia for a period, or periods, of more than 3 months' to 'an applicant who seeks to satisfy the criteria for the grant of a Subclass 457 (Business (Long Stay)) visa' for the same reasons as those outlined for subitem 1223A(1). Amendment is also made to clarify that the criteria being described in this paragraph relate to secondary criteria for readability.

Paragraph 1223A(3)(ca)

This paragraph is amended to remove the reference to subclause 457.223(3) of Schedule 2. This subclause is repealed by item [20] of this Schedule.

Paragraph 1223A(3)(ca) is also amended to make it clear that the paragraph cannot be satisfied where the nomination of an occupation in relation to the primary applicant has been made or is proposed to be made by a person who does not operate a business in Australia.

Paragraph 1223A(3)(d)

Paragraph 1223A(3)(d) sets out certain requirements for applicants seeking to satisfy the primary criteria for grant of a Subclass 457 visa on the basis of a standard business sponsorship.

Subparagraph 1223A(3)(d)(i) is amended to remove the requirement that the applicant must specify the employer by whom the applicant proposes to be employed. There are many relationships that may be entered into between an applicant who seeks to satisfy the primary criteria for grant of a Subclass 457 visa and a standard business sponsor which may not be characterised as an employment relationship. To overcome this, new subparagraph 1223A(3)(d)(i) provides that the application must specify the person who has nominated, or proposes to nominate, an occupation in relation to the applicant.

The reference to 'proposed employer' in subparagraph 1223A(3)(d)(ii) is amended in the same manner as for 1223A(3)(d)(i).

The amendments repeal sub-subparagraphs 1223A(3)(d)(ii)(A) as this sub-subparagraph refers to pre-qualified business sponsors. There are no more pre-qualified business sponsors and it is no longer possible for a person to apply to be a pre-qualified business sponsor.

Sub-subparagraph 1223A(3)(d)(ii)(C) is amended to remove reference to pre-qualified business sponsors. In addition, sub- subparagraph 1223A(3)(d)(ii)(C) replaces the reference to regulation 1.20C with regulation 2.61. The *Migration Amendment Regulations 2009 (No. 5)* repeals regulation 1.20C and provides for the process of approval as a standard business sponsor in new regulation 2.61.

New sub-subparagraph 1223A(3)(d)(ii)(D) provides an additional basis for providing evidence for a person who seeks to satisfy the primary criteria for the grant of a Subclass 457 visa on the basis of a standard business sponsorship. It provides that the application may be accompanied by evidence that the person who has nominated, or proposes to nominate the occupation in relation to the applicant, is a person whose approval as a standard business sponsor has ceased to have effect but whose nomination of an occupation in relation to the applicant has been approved under section 140GB of the Act and that approval has no ceased

to have effect under regulation 2.75. Under the new sponsorship framework, as provided for in the *Migration Legislation Amendment (Worker Protection) Act 2008* and the *Migration Amendment Regulations 2009 (No. 5)*, it will be possible for a person's approval as a standard business sponsor to cease prior to their nominated person making a Temporary Business Entry (Class UC) application. This is because under new regulation 2.75, a nomination could be in effect until 3 months after the approval as a standard business sponsor has ceased.

Subparagraph 1223A(3)(d)(iii) is a new subparagraph which requires that the person who has nominated, or proposes to nominate the occupation in relation to the applicant, is not the subject of a bar as a sponsor under either section 140L of the Act as in force immediately prior to 14 September 2009, or section 140M of the Act.

Paragraph 1223A(3)(da)

Paragraph 1223A(3)(da) is a new paragraph.

New paragraph 1223A(3)(da) applies to applicants who seek to satisfy the primary criteria for grant of a Subclass 457 visa on the basis of a labour agreement. Such an application must specify the person who has nominated or proposes to nominate an occupation in relation to the applicant. In addition, if the applicant is outside Australia at the time of making the application, the labour agreement must have been approved in order for the applicant to make a valid application. Alternatively, if the applicant is in Australia at the time of making the application, the labour agreement must either have been approved, or the person who proposes to nominate an occupation in relation to the applicant has made a submission to the Minister to enter into a labour agreement.

Paragraph 1223A(3)(e)

Subparagraph 1223A(3)(e)(ii) is amended to change 'applicant seeks a visa that will permit him or her to remain in Australia for a period, or periods, of 3 months or less' to 'an applicant who seeks to satisfy the criteria for the grant of a Subclass 456 (Business (Short Stay)) visa' for the same reasons as those outlined for subitem 1223A(1). There are no other amendments to paragraph 1223A(3)(e).

Paragraph 1223A(3)(f)

There is no change to paragraph 1223A(3)(f).

Subitem 1223A(4)

There is no change to subitem 1223A(4).

Item [10] – Schedule 2, subparagraph 303.212(a)(ii)

This item substitutes subparagraph 303.212(a)(ii) in Part 303 of Schedule 2 to the Principal Regulations with new subparagraph 303.212(a)(ii).

Clause 303.212 is a criterion that must be satisfied at time of application for persons seeking to satisfy the primary criteria for grant of a Subclass 303 (Emergency (Temporary Visa Applicant) visa.

This item removes the reference to an applicant who seeks a visa to remain in Australia for a period, or periods of more than 3 months. Items [33] and [34] of this Schedule remove the minimum stay period for Subclass 457 visa applicants. Consequently, it is no longer possible to distinguish between Subclass 456 visas and Subclass 457 visas on the period of remaining in Australia. As a result new subparagraph 303.212(a)(ii) refers specifically to applicants who seek to satisfy the criteria for grant of a Subclass 457 visa.

Item [11] – Schedule 2, clause 456.311

This item substitutes clause 456.311 in Part 456 in Schedule 2 to the Principal Regulations with new clause 456.311.

Clause 456.311 is a criterion to be satisfied at time of application by persons seeking to satisfy the secondary criteria for grant of a Subclass 456 (Business (Short Stay)) visa.

This item removes the reference to an applicant who seeks a visa to remain in Australia for a period, or periods of 3 months or less. Items [33] and [34] of this Schedule remove the minimum stay period for Subclass 457 (Business (Long Stay)) visa applicants. Consequently, it is no longer possible to distinguish between Subclass 456 visas and Subclass 457 visas on the period of remaining in Australia. As a result new clause 456.311 refers specifically to applicants who seek to satisfy the criteria for grant of a Subclass 456 visa.

Item [12] – Schedule 2, clause 457.111, including note

This item substitutes clause 457.111 in Part 457 of Schedule 2 to the Principal Regulations, with new clause 457.111.

Clause 457.111 defines a number of terms for the purpose of Part 457. This item repeals each of the terms currently defined in subclause 457.111(1).

It is no longer necessary to define in subclause 457.111(1), 'approved business nomination', 'officer', 'person' or 'pre-qualified business sponsor' as these terms are omitted from Part 457 by other items in this Schedule. In addition, it is not correct to define 'standard business sponsor' in subclause 457.111(1) to have the same meaning as in Division 1.4A. Division 1.4A is repealed by the *Migration Amendment Regulations 2009 (No. 5)* and a new definition of 'standard business sponsor' is inserted into regulation 1.03 by those amendment regulations. The note after subclause 457.111(2) is amended to update this fact.

This item inserts a definition of 'adverse information' in subclause 457.111(1). 'Adverse information' is used in new paragraph 457.223(2)(f), inserted by item [20] of this Schedule. The term is provided the meaning given by subregulation 2.57(3), as inserted by the *Migration Amendment Regulations 2009 (No. 5).*

This item also inserts a definition of 'occupation'. "Occupation" is defined to include an activity that was nominated under regulation 1.20G or 1.20GA as in force immediately prior to 14 September and in relation to which the nomination has not ceased to have effect.

Subclause 457.111(2) is amended to remove all references to the word 'activity'. This is to reflect the fact that it is the business rather than the business activity that must be of benefit to Australia.

The note at the end of subclause 457.111(2) is amended to remove reference to 'Internet application' and 'RHQ agreement' and insert 'standard business sponsor'. Amendment made by other items of this Schedule will mean that 'Internet application' and 'RHQ agreement' are not referenced in Part 457 while 'standard business sponsor' is inserted for the reasons outlined above.

Item [13] – Schedule 2, after subclause 457.111(2)

This item inserts a new subclause 457.111(3) in Part 457 of Schedule 2 to the Principal Regulations.

This item inserts a definition of "associated with" for the purposes of this Part. Paragraph 457.111(3)(a) provides that in this Part, a person is associated with a corporation, partnership, unincorporated association or other entity that has made a nomination in relation to an applicant for a visa in the same way in which, under subregulation 2.57(2), a person is associated with an applicant. Subregulation 2.57(2) as inserted by the *Migration Amendment Regulations 2009 (No. 5)* provides, for the purposes of Part 2A:

(a) a person is ***associated with*** an applicant that is a corporation if the person is an officer of the corporation, a related body corporate or an associated entity; and

(b) a person is ***associated with*** an applicant that is a partnership if the person is a partner of the partnership; and

(c) a person is ***associated with*** an applicant that is an unincorporated association if the person is a member of the association's committee of management; and

(d) a person is ***associated with*** an applicant that is an entity not mentioned in paragraphs (a), (b) and (c) if the person is an officer of the entity.

Paragraph 457.111(3)(b) explains that subregulation 2.57(2) is to be applied as if a reference in subregulation 2.57(2) to an applicant were also a reference to the person who has made the nomination in relation to the applicant for a Subclass 457 visa.

Paragraph 457.311(3)(c) provides that an expression in subregulation 2.57(2) that is defined in subregulation 2.57(1) has the meaning given by subregulation 2.57(1) for the purposes of clause 457.111.

Item [14] – Schedule 2, clauses 457.211 and 457.212

This item substitutes clauses 457.211 and 457.212 in Part 457 of Schedule 2 to the Principal Regulations with new clause 457.211.

Clauses 457.211 and 457.212 are criteria to be satisfied at time of application by persons seeking to satisfy the primary criteria for grant of a Subclass 457 (Business (Long Stay)) visa.

Current clause 457.211 requires that an applicant who is in Australia, must at time of application hold a certain visa, or satisfy certain criteria in Schedule 3 to the Principal Regulations.

New clause 457.211 is not as restrictive as to the visas that an applicant who is in Australia must hold at time of application. An applicant will be able to satisfy clause 457.211 if they hold any substantive visa, other than a Subclass 771 (Transit) visa or a special purpose visa. 'Substantive visa' is defined in regulation 1.03 to mean a visa other than a bridging visa, a criminal justice visa or an enforcement visa.

An applicant who is in Australia who does not hold a substantive visa, will meet the requirements in clause 457.211 if they satisfy Schedule 3 criteria 3003, 3004 and 3005, provided their last substantive visa was not a Subclass 771 visa or a special purpose visa.

This item also omits clause 457.212. Current clause 457.212 prevents, in certain circumstances, an applicant from meeting the criteria at time of application if they are the holder of a Student (Temporary) (Class TU) visa and they are a fully funded student. The amendments made in item [31] of this Schedule provide that this restriction will apply at time of decision. It is not intended that this restriction should also apply at time of application.

Item [15] – Schedule 2, clause 457.221A

This item substitutes clause 457.221A in Part 457 of Schedule 2 to the Principal Regulations with new clause 457.221A.

Clause 457.221A is a criterion to be satisfied at time of decision for persons seeking to satisfy the primary criteria for grant of a Subclass 457 (Business (Long Stay)) visa.

Clause 457.221A applies to applicants who are outside Australia at the time of application, but inside Australia at the time of decision. Current clause 457.221A provides that the applicant must hold a certain visa, or satisfy certain criteria in Schedule 3 to the Principal Regulations.

New clause 457.221A is not as restrictive as to the visas that an applicant must hold. An applicant who was outside Australia at the time of application but inside Australia at the time of decision on the application will be able to satisfy clause 457.221A if they hold any substantive visa, other than a Subclass 771 (Transit) visa or a special purpose visa. 'Substantive visa' is defined in regulation 1.03 to mean a visa other than a bridging visa, a criminal justice visa or an enforcement visa.

An applicant who does not hold a substantive visa at the time of decision on the application will meet the requirements in clause 457.221A if they satisfy Schedule 3 criteria 3003, 3004 and 3005, provided their last substantive visa was not a Subclass 771 visa or a special purpose visa.

Item [16] – Schedule 2, subclause 457.223(1)

This item omits '(3), (4) and (5)' in subclause 457.223(1) in Part 457 of Schedule 2 to the Principal Regulations and inserts '(4)'.

This is a technical amendment contingent on the repeal of subclauses 457.223(3) and (5) by item [20] of this Schedule.

Item [17] – Schedule 2, paragraph 457.223(2)(a)

This item omits 'activity' in subclause 457.223(1) in Part 457 of Schedule 2 to the Principal Regulations and inserts 'occupation'.

Subclause 457.223(2) is a criterion to be satisfied at time of decision for persons seeking to satisfy the primary criteria for grant of a Subclass 457 (Business (Long Stay)) visa. Subclause 457.223(2) is a stream of the Subclass 457 visa for applicants who are nominated by a party to a labour agreement.

Current paragraph 457.223(2)(a) requires that the activity specified in the application is the subject of a labour agreement. 'Activity' is replaced by 'occupation' because under the new sponsorship framework created by the *Migration Legislation Amendment (Worker Protection) Act 2008* and the *Migration Amendment Regulations 2009 (No. 5)*, a party to a labour agreement will nominate an occupation rather than an activity.

Item [18] – Schedule 2, paragraph 457.223(2)(b)

This item substitutes paragraph 457.223(2)(b) in Part 457 of Schedule 2 to the Principal Regulations with new paragraph 457.223(2)(b).

Subclause 457.223(2) is a criterion to be satisfied at time of decision for persons seeking to satisfy the primary criteria for grant of a Subclass 457 (Business (Long Stay)) visa. Subclause 457.223(2) is a stream of the Subclass 457 visa for applicants who are nominated by a party to a labour agreement.

Current paragraph 457.223(2)(b) requires that the activity is the subject of an approved business nomination by a party to a labour agreement.

New paragraph 457.223(2)(b) distinguishes between activities the subject of an approved business nomination as in force immediately before 14 September 2009, and nominations of an occupation under section 140GB of the Act. Until 14 September 2009, the Minister approves a nomination of a business activity under regulation 1.20H. However, from 14 September 2009, regulation 1.20H is repealed by the *Migration Amendment Regulations 2009 (No. 5)* and the Minister will approve nominations of an occupation under section 140GB of the Act, as inserted by the *Migration Legislation Amendment (Worker Protection) Act 2008*.

Where a nomination in relation to the applicant has been approved prior to 14 September 2009, that nomination will continue in effect after 14 September 2009 and the activity the subject of that nomination will be sufficient for the applicant to satisfy paragraph 457.223(2)(b) until the nomination ceases in accordance with current subregulation 1.20H(5). A person will satisfy paragraph 457.223(2)(b) if a nomination of an occupation in relation to the applicant has been approved after 14 September 2009 under section 140GB of the Act and that nomination has not ceased to have effect under regulation 2.75, as inserted by the *Migration Amendment Regulations 2009 (No. 5)*. This item also inserts a note to explain that the definition of occupation in clause 457.111 includes an activity which was the subject of an approved business nomination under regulation 1.20H as in force immediately prior to 14 September 2009.

Item [19] – Schedule 2, paragraph 457.223(2)(d)

This item substitutes paragraph 457.223(2)(d) in Part 457 of Schedule 2 to the Regulations with new paragraphs 457.223(2)(d), (e) and (f).

Subclause 457.223(2) is a criterion to be satisfied at time of decision for persons seeking to satisfy the primary criteria for grant of a Subclass 457 (Business (Long Stay)) visa. Subclause 457.223(2) is a stream of the Subclass 457 visa for applicants who are nominated by a party to a labour agreement.

Current subparagraph 457.223(2)(d)(i) provides that the Minister must be satisfied of the skills and experience of the applicant as being suitable for the performance of the activity.

Current subparagraph 457.223(2)(d)(i) is reworded into new paragraph 457.223(2)(d) to make the provision consistent with paragraph 457.223(4)(e). An applicant will be required to demonstrate, in the manner specified by the Minister, that he or she has skills and experience suitable to perform the occupation only if the Minister so requires. 'Activity' is to be replaced by 'occupation' because under the new sponsorship framework created by the *Migration Legislation Amendment (Worker Protection) Act 2008* and the *Migration Amendment Regulations 2009 (No. 5)*, a party to the labour agreement will nominate an occupation rather than an activity.

Current subparagraph 457.223(2)(d)(ii) provides that the Minister is satisfied that the requirements of the labour agreement have been met in relation to the application. New paragraph 457.223(2)(e) picks up the requirements that are currently in subparagraph 457.223(2)(d)(ii).

Paragraph 457.223(2)(f) is a new paragraph. This paragraph provides that no adverse information is known to immigration about a party to the labour agreement or a person associated with the party to the labour agreement, or alternatively that it is reasonable to disregard such information. A definition of 'adverse information' is inserted into clause 457.111 by item [12] of this Schedule.

Item [20] – Schedule 2, subclauses 457.223(3), (4) and (5), including the subheadings

This item substitutes subclauses 457.223(3), (4) and (5) in Part 457 of Schedule 2 to the Regulations with new subclause 457.223(4).

Subclauses 457.223(3), (4) and (5) are criteria to be satisfied at time of decision for persons seeking to satisfy the primary criteria for grant of a Subclass 457 (Business (Long Stay)) visa.

Subclause 457.223(3)

Subclause 457.223(3) currently creates a stream for Subclass 457 visa applicants who are being sponsored under a regional headquarters (RHQ) agreement. It is no longer possible for a person to be granted a Subclass 457 visa on the basis of a RHQ agreement and no new RHQ agreements will be entered into. Consequently, this item repeals subclause 457.223(3).

Subclause 457.223(4)

Subclause 457.223(4) currently creates a stream for Subclass 457 visa applicants whose proposed standard business sponsor is operating a business in Australia. There are no longer different criteria for the grant of a Subclass 457 visa based on whether the proposed standard business sponsor is operating a business in Australia, or outside Australia. Consequently, the heading to subclause 457.223(4) is changed from 'Sponsorship – Australian business' to 'Standard business sponsorship'.

There are a number of changes to subclause 457.223(4) and each change is discussed in turn.

Nomination

Current paragraph 457.223(4)(a) requires that the activity in which the applicant proposes to be employed in Australia is the subject of an approved business nomination. Under the new sponsorship framework created by the *Migration Legislation Amendment (Worker Protection) Act 2008* and the *Migration Amendment Regulations 2009 (No. 5)*, a standard business sponsor will nominate an occupation rather than an activity. Paragraph 457.223(4)(a) has been amended to make the paragraph consistent with this framework.

New subparagraph 457.223(4)(a)(i) provides for nominations of business activities prior to 14 September 2009. Where a nomination of an activity in relation to the applicant has been approved prior to 14 September 2009, that nomination will continue in effect after 14 September 2009 until it ceases in accordance with current subregulation 1.20H(5). Until that nomination ceases, it can be used for grant of a Subclass 457 visa.

New subparagraph 457.223(4)(a)(ii) provides for nominations of occupations in accordance with the new framework in place from 14 September 2009. An applicant will satisfy subparagraph 457.223(4)(a)(ii) if a nomination of an occupation in relation to the applicant has been approved under section 140GB of the Act, as inserted by the *Migration Legislation Amendment (Worker Protection) Act 2008*, and has not ceased to have effect under regulation 2.75, as inserted by the *Migration Amendment Regulations 2009 (No. 5)*.

'Occupation' is defined in new clause 457.111, as amended by item [12] of this Schedule. The note after paragraph 457.223(4)(a) makes it clear that the definition includes activities mentioned in subparagraph 457.223(4)(a)(i).

This item repeals current paragraphs 457.223(4)(b) and (i) as these two paragraphs refer to standard business sponsors, the substance of which is covered by new paragraph 457.223(4)(a).

Paragraph 457.223(4)(aa) is a new paragraph and requires the nominated occupation to be specified in an instrument in writing made for paragraph 2.72(10)(a) of the *Migration Amendment Regulation 2009 (No.5)* that is in effect. Essentially, paragraph 457.223(4)(aa) picks up the requirements provided for currently by paragraphs 457.223(4)(ed) and (ee), which are being repealed from 14 September 2009.

Restriction for on-hire industry

New paragraph 457.111(4)(ba) broadly retains what is in current paragraph 457.111(4)(ba) with some exceptions.

Current paragraph 457.223(4)(ba) prevents the grant of a Subclass 457 visa where the activity in which the visa applicant proposes to be employed in Australia is an activity that involves a position that would be supplied to another unrelated business. The current exception to this restriction is where the nomination was approved before 1 October 2007.

New paragraph 457.223(4)(ba) still prevents the grant of a Subclass 457 visa where the visa applicant proposes to be employed in a position that would be supplied to another unrelated business. However, the exception for the nomination being approved before 1 October 2007 has been removed. This is because under current regulation 1.20H, the approval of a nomination ceases to have effect at the end of 12 months after the day on which the

nomination is approved. Therefore it is no longer necessary to keep the exception for a nomination approved before 1 October 2007 as the approval of such a nomination will have ceased.

In addition, two new exceptions have been inserted for the restrictions on the on-hire industry. New subparagraph 457.223(4)(ba)(iii) provides that the restriction does not apply if the occupation is undertaken in a position with a business or an associated entity of the person who made the approved nomination. New subparagraph 457.223(4)(ba)(iv) provides that the restriction does not apply if the occupation is specified by the Minister is an instrument in writing.

Genuine intention and genuine position

New paragraph 457.223(d) replaces current paragraphs 457.223(4)(d) and 457.223(h).

Current paragraph 457.223(4)(d) requires the applicant to have the personal attributes and employment background relevant to and consistent with the nature of the activity to be performed. It is difficult for decision makers to make an informed assessment about such attributes and background. Consequently, new paragraph 457.223(4)(d)(i) requires the applicant to satisfy the Minister that his or her intention to perform the occupation is genuine.

Current paragraph 457.223(4)(h) requires that, where the sponsor is a standard business sponsor, the Minister is satisfied that the position to be filled by the applicant has not been created only for the purposes of securing the entry of the applicant to Australia. New paragraph 457.223(4)(d)(ii) seeks to retain this policy intention by requiring the Minister to be satisfied that the position associated with the nominated occupation is genuine.

Demonstrating skills

Current paragraph 457.223(4)(e) allows the Minister to request that an applicant demonstrate that they have the skills necessary to perform the activity. New paragraph 457.223(4)(e) is in similar terms with the exception of replacing ‘activity’ with ‘occupation’. This is to take account of the fact that under the new sponsorship framework created by the *Migration Legislation Amendment (Worker Protection) Act 2008* and the *Migration Amendment Regulations 2009 (No. 5)*, a standard business sponsor will nominate an occupation rather than an activity.

In addition, new paragraph 457.223(4)(e) also clarifies that the demonstration of skills by the applicant must be made in a manner specified by the Minister.

English language proficiency

Current paragraphs 457.223(4)(ea), (eb) and (ec) relate to the English language proficiency required for the grant of a Subclass 457 visa. New paragraphs 457.223(4)(ea), (eb) and (ec) retain the English language requirements, but with some modifications based on changes to policy and the legislative framework.

The reference to ‘activity’ in subparagraph 457.223(4)(ea)(i) has been replaced with ‘occupation’. This is to take account of the fact that under the new sponsorship framework created by the *Migration Legislation Amendment (Worker Protection) Act 2008* and the *Migration Amendment Regulations 2009 (No. 5)*, a standard business sponsor will nominate an occupation rather than an activity.

Current paragraph 457.223(4)(ea) requires the applicant to achieve an IELTS test *average* band score of more that 5 based on the 4 test components of speaking, reading, writing and listening, whilst the current paragraph 457.223(4)(eb) requires the applicant to achieve an IELTS test *average* band score of at least 5 based on the 4 test components of speaking, reading, writing and listening. Both of these paragraphs have been amended so that the applicant must have an IELTS test score of either more than 5 or at least 5 (depending on which of paragraph 457.223(4)(ea) or 457.223(4)(eb) applies) in *each* of the 4 test components.

We propose to specify that evidence of English language proficiency needs to be in a manner specified by the Minister. These amendments are made through changes to 457.223(4)(ec).

Nominated occupation on Gazette Notice

Current paragraph 457.223(4)(ed) requires the nominated activity to correspond to the tasks of an occupation specified in a Gazette Notice for subregulation 1.20G(2) that is in effect at the time at which the application is decided. The substance of current paragraph 457.223(4)(ed) has been incorporated into new paragraph 457.223(4)(aa), taking into account the new the new sponsorship framework created by the *Migration Legislation Amendment (Worker Protection) Act 2008* and the *Migration Amendment Regulations 2009 (No. 5)*.

New paragraph 457.223(4)(aa) requires that the nominated occupation under the new framework is specified in an instrument in writing for paragraph 2.72(10)(a) of the Regulations. This ensures that only applicants who have a particular skilled occupation are able to be granted a Subclass 457 visa.

Nominated occupation on Gazette Notice for regional area

Current paragraph 457.223(4)(ee) refers to a nomination made under a regulation specifically about regional concessions. This regulation will be repealed by the *Migration Amendment Regulations 2009 (No. 5)* and no new regulations relating to regional concessions will be made. It will no longer be possible for a nomination to be made under a regulation about regional concessions. Consequently, paragraph 457.223(4)(ee) can be repealed.

Minimum salary level

Current paragraphs 457.223(4)(f) and (g) require the Minister to be satisfied that the applicant will be paid the salary at the level specified in the nomination and that level is at least the minimum salary level that applied at the time of making a decision on the visa application. Under the *Migration Legislation Amendment (Worker Protection) Act 2008*, the requirement to pay a salary of a particular amount will now be in a sponsorship obligation.

As the sponsorship obligations under the new legislative framework will apply automatically to sponsors, it is not necessary for an assessment to be made at the time of making a decision on the visa application relating to the visa applicant's terms and conditions of employment. Consequently, paragraphs 457.223(4)(f) and (g) can be repealed.

Position not created to secure entry

Current paragraph 457.223(4)(h) requires the Minister to be satisfied that the position has not been created only for the purpose of securing the entry of the applicant. The same policy

intention is now picked up by the new paragraph 457.223(4)(d)(ii), so paragraph 457.223(4)(h) can be repealed.

Adverse information

Current paragraph 457.223(4)(j) contains the criterion that there is nothing adverse known to Immigration about the business background of the visa applicant's standard business sponsor, an officer or other senior or responsible person of the sponsor or any individual who is a member of a partnership or unincorporated association that is 1 of the entities that constitute the approved sponsor.

Current paragraph 457.223(4)(k) contains the criterion that the visa applicant's proposed standard business sponsor, an officer or other senior or responsible person of the sponsor or any individual who is a member of a partnership or unincorporated association that is 1 of the entities that constitute the approved sponsor is not the subject of an investigation or subject to legal action for an alleged breach of an undertaking or an alleged breach of a law of the Commonwealth or a State or a Territory.

This criterion will be defined in subregulation 2.57(3), as inserted by the *Migration Amendment Regulations 2009 (No. 5)*. Consequently, for the purpose of consistency across the Regulations, a new paragraph 457.223(4)(f) is inserted to provide that there is no adverse information known about a person who made the approved nomination mentioned in paragraph 457.223(4)(a), or a person associated with the person who made the approved nomination mentioned in paragraph 457.223(4)(a), or alternatively that it is reasonable to disregard such information. A definition of 'adverse information' is inserted into clause 457.111 by item [12] of this Schedule. Therefore, as new paragraph 457.223(4)(f) replaces what is in current paragraphs 457.223(4)(j) and (k), these paragraphs are repealed.

Subclause 457.223(5)

Current subclause 457.223(5) creates a stream for Subclass 457 visa applicants who are nominated by an overseas business. The amendments made by this item mean there will no longer be a difference in the criteria for an applicant nominated by an Australian business and those who are nominated by an overseas business. Consequently, it is possible to repeal subclause 457.223(5).

Item [21] – Schedule 2, paragraph 457.223(6)(a)

This item omits 'activity' in paragraph 457.223(6)(a) in Part 457 of Schedule 2 to the Principal Regulations and inserts 'occupation'.

Subclause 457.223(6) is a criterion to be satisfied at time of decision for persons seeking to satisfy the primary criteria for grant of a Subclass 457 (Business (Long Stay)) visa. It establishes an exemption to the English language requirement in the standard business sponsorship - Australian business and the standard business sponsorship - overseas business streams of Subclass 457 visas, based on the proposed salary of the visa applicant.

Paragraph 457.223(6)(a) is amended to replace 'activity' with 'occupation' because under the new sponsorship framework created by the *Migration Legislation Amendment (Worker Protection) Act 2008* and the *Migration Amendment Regulations 2009 (No. 5)*, an occupation will be nominated rather than an activity.

Item [22] – Schedule 2, subclause 457.223(7)

This item omits subclause 457.223(7) in Part 457 of Schedule 2 to the Principal Regulations.

Current subclause 457.223(7) is a criterion to be satisfied at time of decision for persons seeking to satisfy the primary criteria for grant of a Subclass 457 (Business (Long Stay)) visa. It creates a stream for Subclass 457 visa applicants who will conduct a business in Australia as a principal. This is referred to as the independent executive stream.

An applicant cannot currently satisfy the criteria for grant of a Subclass 457 visa by meeting the requirements in subclause 457.223(7). This is because subclause 457.223(1) requires that an applicant will satisfy the time of decision criteria if they meet the requirements in specified subclauses. Subclause 457.223(7) is not referenced in subclause 457.223(1). It is therefore redundant and can be repealed.

Item [23] – Schedule 2, sub-subparagraph 457.223(7A)(a)(i)(A)

This item inserts 'as in force immediately before 14 September 2009' after 'subclause (7)' in sub-subparagraph 457.223(7A)(a)(i)(A) of Part 457 in Schedule 2 to the Principal Regulations.

Subclause 457.223(7A) is a criterion to be satisfied at time of decision for persons seeking to satisfy the primary criteria for grant of a Subclass 457 (Business (Long Stay)) visa. It provides that a person who holds a Subclass 457 visa granted on the basis that they met the requirements in subclause 457.223(7) (independent executive) to be granted a further Subclass 457 visa as an independent executive (independent executive further application onshore).

Item [22] of this Schedule repeals subclause 457.223(7). Consequently, it will only be possible to meet the requirements in subclause 457.223(7) as in force immediately before that subclause is repealed on 14 September 2009.

Item [24] – Schedule 2, sub-subparagraph 457.223(7A)(a)(i)(B)

This item inserts 'as in force immediately before 14 September 2009' after 'subclause (7)' in sub-subparagraph 457.223(7A)(a)(i)(B) of Part 457 in Schedule 2 to the Principal Regulations.

Subclause 457.223(7A) is a criterion to be satisfied at time of decision for persons seeking to satisfy the primary criteria for grant of a Subclass 457 (Business (Long Stay)) visa. It provides that a person who holds a Subclass 457 visa granted on the basis that they met the requirements in subclause 457.223(7) (independent executive) to be granted a further Subclass 457 visa as an independent executive (independent executive further application onshore).

Item [22] of this Schedule repeals subclause 457.223(7). Consequently, it will only be possible to meet the requirements in subclause 457.223(7) as in force immediately before that subclause is repealed on 14 September 2009.

Item [25] – Schedule 2, subparagraph 457.223(7A)(c)(iii)

This item substitutes subparagraph 457.223(7A)(c)(iii) in Part 457 of Schedule 2 to the Principal Regulations with new subparagraph 457.223(7A)(c)(iii).

Subclause 457.223(7A) is a criterion to be satisfied at time of decision for persons seeking to satisfy the primary criteria for grant of a Subclass 457 (Business (Long Stay)) visa. It provides that a person who holds a Subclass 457 visa granted on the basis that they met the requirements in subclause 457.223(7) (independent executive) to be granted a further Subclass 457 visa as an independent executive (independent executive further application onshore).

Current subparagraph 457.223(7A)(c)(iii) requires that there is nothing adverse known to Immigration about the applicant's business background

This criterion is now defined in subregulation 2.57(3), as inserted by the *Migration Amendment Regulations 2009 (No. 5)*. Consequently, sub-subparagraph 457.223(7A)(c)(iii) is amended to create consistency across the Regulations in relation to adverse information. A definition of 'adverse information' is inserted into clause 457.111 by item [12] of this Schedule.

Item [26] – Schedule 2, paragraph 457.223(10)(a)

This item omits 'activity' in paragraph 457.223(10)(a) in Part 457 of Schedule 2 to the Principal Regulations and inserts 'occupation'.

Subclause 457.223(10) is a criterion to be satisfied at time of decision for persons seeking to satisfy the primary criteria for grant of a Subclass 457 (Business (Long Stay)) visa. Subclause 457.223(10) creates a stream for Subclass 457 visa applicants who are the subject of an Invest Australia Supported Skills (IASS) agreement.

Paragraph 457.223(10)(a) is amended to replace 'activity' with 'occupation' because under the new sponsorship framework created by the *Migration Legislation Amendment (Worker Protection) Act 2008* and the *Migration Amendment Regulations 2009 (No. 5)*, a party to the labour agreement will nominate an occupation rather than an activity.

Item [27] – Schedule 2, paragraphs 457.223(10)(b) and (c)

This item substitutes paragraphs 457.223(10)(b) and (c) in Part 457 of Schedule 2 to the Principal Regulations with new paragraph 457.223(10)(c).

Subclause 457.223(10) is a criterion to be satisfied at time of decision for persons seeking to satisfy the primary criteria for grant of a Subclass 457 (Business (Long Stay)) visa. Subclause 457.223(10) creates a stream for Subclass 457 visa applicants who are the subject of an IASS agreement.

Current paragraph 457.223(10)(b) refers to an 'approved business nomination'. Under new section 140GB of the Act, as inserted by the *Migration Legislation Amendment (Worker Protection) Act 2008*, a party to an IASS agreement will not be able to make a nomination because they are not an approved sponsor (within the meaning of subsection 5(1) of the Act). Consequently, paragraph 457.223(10)(b) is redundant and can be removed.

Current paragraph 457.223(10)(c) refers to the applicant being nominated by the business mentioned in paragraph (b). New paragraph 457.223(10)(c) reflects the fact that paragraph (b) is repealed. It provides that a party to the IASS agreement has agreed in writing to be the sponsor of the visa applicant.

Item [28] – Schedule 2, subclause 457.223(11)

This item omits 'subclauses (4) and (5)' in Part 457 of Schedule 2 to the Principal Regulations and inserts 'subclause (4)'.

This is a technical amendment to reflect the fact that item [20] of this Schedule repeals subclause 457.223(5).

Item [29] – Schedule 2, clause 457.223A

This item substitutes clause 457.223A in Part 457 of Schedule 2 to the Principal Regulations, with new clauses 457.223B and 457.223C.

Clause 457.223A contains a waiver provision to allow for the grant of a Subclass 457 visa where paragraphs 457.223(4)(j), 457.223(4)(k), 457.223(5)(k) or 457.223(5)(l) would otherwise prevent the grant of a visa. Item [20] of this Schedule repeals each of these paragraphs. Therefore, clause 457.223A can also be repealed.

New clause 457.223B is a new criterion to be satisfied at time of decision for all applicants seeking to satisfy the primary criteria for grant of a Subclass 457 visa. It provides that the applicant must give to the Minister evidence of adequate arrangements for health insurance during the period the applicant's intended stay in Australia. This requirement does not apply to persons who have met the requirements in subclause 457.223(8) (service sellers) or 457.223(9) (persons accorded certain privileges and immunities).

New clause 457.223C is a new criterion to be satisfied at time of decision for all applicants seeking to satisfy the primary criteria for grant of a Subclass 457 visa. This clause is applicable to applicants whose nominated occupation is a medical practitioner. Such applicants must have their qualifications recognised by the relevant authority in Australia for the registration of medical practitioners as entitling the applicant to practise as a medical practitioner.

Item [30] – Schedule 2, subclause 457.226(1)

This item substitutes subclause 457.226(1) in Part 457 of Schedule 2 to the Principal Regulations with new subclause 457.226(1).

Clause 457.226 is a criterion to be satisfied at time of decision for persons seeking to satisfy the primary criteria for grant of a Subclass 457 (Business (Long Stay)) visa. Clause 457.226 creates a restriction on granting a Subclass 457 visa where the applicant has been an AusAID student or an AusAID recipient.

New clause 457.226 retains the substance of current clause 457.226 but removes the exceptions for the RHQ agreement stream and the IASS agreement stream. RHQ agreement stream is repealed by item [20] of this Schedule, and the exception based on an IASS agreement stream is removed due to a change in policy.

Item [31] – Schedule 2, after clause 457.226

This item inserts new clause 457.226A in Part 457 of Schedule 2 to the Principal Regulations.

This item broadly retains what it is in current clause 457.212 in a new clause 457.226A. That is, this criterion must now be satisfied at time of decision on the Subclass 457 (Business (Long Stay) visa, rather than at time application.

Item [32] – Schedule 2, clauses 457.324, 457.324A, 457.324B and 457.324C

This item substitutes clauses 457.324, 457.324A, 457.324B and 457.324C in Part 457 of Schedule 2 to the Principal Regulations with new clauses 457.324, 457.324B and 457.324D.

Clauses 457.324, 457.324A, 457.324B and 457.324C are criteria to be satisfied at time of decision for persons seeking to satisfy the secondary criteria for a Subclass 457 (Business (Long Stay)) visa.

Current clause 457.324 provides that the applicant is included in any nomination that is required in respect of the primary applicant in accordance with approved form 1068, 1196 or 1196 (Internet). New subclause 457.324(1) retains what it in current clause 457.324 but removes reference to form 1068, which no longer exists, and replaces form 1196 with 1196N.

New subclause 457.324(2) is a new requirement which creates an alternative way of satisfying clause 457.324 to being included in a nomination form. There may be some instances where a person who seeks to satisfy the secondary criteria does not apply for a visa at the same time as the person who has satisfied the primary criteria and therefore they will not be included in a nomination in accordance with the approved form. As a result, new subclause 457.324(2) provides that it will be sufficient that the standard business sponsor, former standard business sponsor, party to the labour agreement or former party to the labour agreement, who has the most recent approved nomination in relation to the primary applicant under either section 140GB of the Act or regulation 1.20H as in force immediately before 14 September 2009, has agreed in writing that the applicant may be a secondary sponsored person in relation to the standard business sponsor, former standard business sponsor, party to the labour agreement or former party to the labour agreement.

Current paragraph 457.324B(a) prevents the grant of a Subclass 457 visa where there is adverse information known to Immigration about the business background of the sponsor, an officer or other senior or responsible person of the sponsor or any individual who is a member of a partnership or unincorporated association that is 1 of the entities that constitute the approved sponsor.

Current paragraphs 457.324B(b), 457.324B(c) and 457.324B(d) prevent the grant of a Subclass 457 visa where the sponsor, officer or other senior responsible person or member of a partnership or unincorporated association is under investigation or subject to legal action in relation to an alleged breach of an undertaking or an alleged breach of a law of the Commonwealth or a State or Territory.

New clause 457.324B provides that there is no adverse information known about person who made the approved nomination mentioned in paragraph 457.223(2)(b) or 457.223(4)(a) or a person associated with the person who made the approved nomination mentioned in paragraph 457.223(2)(b) or 457.223(4)(a). This will ensure that the criterion is captured by

the new definition of 'adverse information' in clause 457.111, as inserted by item [12] of this Schedule.

Current clause 457.324C allows the Minister to waive any of the requirements of clause 457.324B if he or she considers it reasonably appropriate to do so. This waiver has been incorporated into new clause 457.324B. Consequently, clause 457.324C can be repealed.

New clause 457.324D is a new criterion to be satisfied at time of decision for all applicants seeking to satisfy the secondary criteria for grant of a Subclass 457 visa. It provides that the applicant must give to the Minister evidence of adequate arrangements for health insurance during the period of the applicant's intended stay in Australia. However, this requirement does not apply to applicants who seek to satisfy the secondary criteria on the basis of being members of the family unit of primary applicants who have satisfied the criteria in subclause 457.223(8) (service sellers) or 457.223(9) (persons accorded certain privileges and immunities).

Item [33] – Schedule 2, paragraph 457.511(a)

This item omits 'more than 3 months, but not more than 4 years' in paragraph 457.511(1)(a) of Part 457 of Schedule 2 to the Principal Regulations and inserts 'not more than 4 years'.

Clause 457.511 provides for when a Subclass 457 (Business (Long Stay)) visa is in effect. Paragraph 457.511(a) provides that for a visa holder who is in Australia at time of grant, the Subclass 457 visa permits the holder to remain in Australia for a period of more than 3 months, but not more than 4 years, from the date of grant.

New paragraph 457.511(a) removes the minimum period of 3 months stay in Australia. The maximum period of stay in Australia will continue to be 4 years.

Item [34] – Schedule 2, paragraph 457.511(b)

This item omits 'more than 3 months, but not more than 4 years' in paragraph 457.511(1)(b) of Part 457 of Schedule 2 to the Principal Regulations and inserts 'not more than 4 years'.

Clause 457.511 provides for when a Subclass 457 (Business (Long Stay)) visa is in effect. Paragraph 457.511(b) provides that for a visa holder who is outside Australia at time of grant, the Subclass 457 visa permits the holder to remain in Australia for a period of more than 3 months, but not more than 4 years, from the date of grant.

New paragraph 457.511(b) removes the minimum period of 3 months stay in Australia. The maximum period of stay in Australia will continue to be 4 years.

Item [35] – Schedule 2, after paragraph 457.511(c)

This item inserts new paragraph 457.511(ca) in Part 457 of Schedule 2 to the Principal Regulations.

Clause 457.511 provides for when a Subclass 457 (Business (Long Stay)) visa is in effect.

New paragraph 457.511(ca) applies to Subclass 457 visa holders who were granted that visa on the basis of meeting the requirements in subclause 457.223(2), that is, on the basis of a labour agreement. Such visa holders will be permitted to remain in Australia until the end of

the period specified for the visa mentioned in the labour agreement, or if no period is specified in the labour agreement, the date on which the labour agreement ceases.

Item [36] – Schedule 2, subparagraph 457.511(d)(i)

This item omits '(b) or (c)' in subparagraph 457.511(d)(i) in Part 457 of Schedule 2 to the Principal Regulations and inserts '(b), (c) or (ca)'.

Paragraph 457.511(d) provides the visa in effect period for a Subclass 457 (Business (Long Stay)) visa holder whose visa was granted in the circumstances described in subregulation 1.12(10). Subparagraph 457.511(d)(i) refers to a holder to whom paragraph (a), (b) or (c) would apply. As a result of the insertion of new paragraph 457.511(ca) by item [35], this paragraph is added to subparagraph 457.511(d)(i).

Item [37] – Schedule 2, Division 457.6

This item substitutes Division 457.6 in Part 457 of Schedule 2 to the Principal Regulations with new Division 457.6.

Division 457.6 provides for the mandatory and discretionary conditions that may be attached to a Subclass 457 (Business (Long Stay)) visa.

The substance of new subclause 457.611(1) is new. It provides that condition 8501 must be attached to the visa, other than for an applicant who has met the requirements for subclause 457.223(8) (service sellers) or subclause 457.223(9) (persons accorded certain privileges and immunities), and members of their family unit who have satisfied the secondary criteria for visa grant. Condition 8501 requires that the holder maintain adequate arrangements for health insurance while the holder is in Australia.

New subclause 457.611(2) retains what is currently in subclause 457.611(1).

New subclause 457.611(3) retains what is currently in subclause 457.611(2) with the exception of removing conditions 8106 and 8301. Condition 8106 provides that the holder must engage in work in Australia only if the work is relevant to the conduct of the business, or performance of the tasks, specified in the visa application. Condition 8301 provides that after entry to Australia, the holder must satisfy relevant public interest criteria before the visa ceases. It is no longer a requirement that these conditions can be imposed on the grant of a Subclass 457 visa.

Schedule 2 – Amendments relating to new Subclass 406 (Government Agreement) visa

Item [1] – Sub-subparagraph 1.08(c)(i)(B)

This item omits sub-subparagraph 1.08(c)(i)(B) from Division 1.2 of Part 1 of the Principal Regulations.

Sub-subparagraph 1.08(c)(i)(B) provides that a non-citizen has a compelling need to work if and only if he or she is an applicant for an Educational (Temporary) (Class TH) visa who appears to the Minister, on the basis of information contained in the application, to satisfy the criteria for the grant of a Subclass 418 (Educational) visa.

The omission of sub-subparagraph 1.08(c)(i)(B) is consequential to the repeal of the Subclass 418 (Educational) visa.

Item [2] – Schedule 1, after subparagraph 1208(2)(a)(i)

This item inserts new subparagraph 1208(2)(a)(ia) after subparagraph 1208(2)(a)(i) in Item 1208 of Part 2 of Schedule 1 to the Principal Regulations.

New subparagraph 1208(2)(a)(ia) provides that in the case of an applicant who is seeking to satisfy the criteria for the grant of a Subclass 406 (Government Agreement) visa, and is an applicant of a kind specified by the Minister in an instrument in writing for this sub-subparagraph, the first instalment of the visa application charge is nil.

Applicants who do not meet the requirements of 1208(2)(a)(ia) may have to pay the first instalment of the visa application charge. The effect of current subparagraph 1208(2)(a)(ii) provides that applicants who are not of a kind specified by the Minister in an instrument in writing must pay $260 for the first instalment of the visa application charge.

Item [3] – Schedule 1, subitem 1208(4)

This item substitutes new subitem 1208(4) in Item 1208 of Part 2 of Schedule 1 to the Principal Regulations.

Current subitem 1208(4) provides that the Educational (Temporary)(Class TH) visa contains four subclasses, being Subclass 415 (Foreign Government Agency), Subclass 418 (Educational), Subclass 419 (Visiting Academic) and 442 (Occupational Trainee) visas.

New subitem 1208(4) provides that the Educational (Temporary)(Class TH) visa contains four subclasses, being subclass 406 (Government Agreement), Subclass 415 (Foreign Government Agency), Subclass 419 (Visiting Academic) and Subclass 442 (Occupational Trainee) visas. The effect of this item is to remove Subclass 418 (Educational) visas from the Educational (Temporary)(Class TH) visa and insert new Subclass 406 (Government Agreement) visas. This item is consequential to the repeal of the Subclass 418 (Educational) visa and the creation of the new Subclass 406 (Government Agreement) visa.

Item [4] – Schedule 2, after Part 405

This item inserts Part 406 in Schedule 2 to the Principal Regulations. This has the effect of creating the Subclass 406 (Government Agreement) visa.

The new Part sets out the criteria to be satisfied for the grant of a Subclass 406 (Government Agreement) visa, circumstances applicable to grant, when the visa is in effect, conditions to be imposed on the visa and the way of giving evidence for the visa.

Interpretation

New Division 406.1 sets out the definitions for terms relevant to the Subclass 406 (Government Agreement) visa.

New clause 406.111 defines three terms relevant to the new Subclass 406 (Government Agreement) visa. “Australian signatory” means a department or agency of the Commonwealth or a State or Territory that is a signatory to the relevant agreement. “Foreign

signatory" means a government, of a foreign country, that is a signatory to the relevant agreement. "Relevant agreement" means a written agreement that satisfies the requirements of new paragraphs (a) to (d). Paragraph (a) provides that the written agreement must be in effect. Paragraph (b) provides that the written agreement is between a department or agency of the Commonwealth or a State or Territory, and a government of a foreign country. Paragraph (c) provides that the written agreement is at least partly for the purpose of facilitating the temporary entry of people to Australia. Paragraph (d) provides that the written agreement is not an agreement or arrangement, or a type of agreement or arrangement, that is specified by the Minister in an instrument in writing for this paragraph.

The purpose of paragraph (d) is to allow the Minister to exclude from the new Subclass 406 (Government Agreement) visa regime, certain agreements that are relevant to other visa classes or subclasses. This will prevent applicants for other visa classes from circumventing the requirements of those visas by applying for a Subclass 406 (Government Agreement) visa.

Primary criteria

New Division 406.2 sets out the primary criteria for the grant of a Subclass 406 (Government Agreement) visa.

The note immediately after the heading of new Division 406.2 explains that the primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

Criteria to be satisfied at time of application

The note immediately after the heading of new Subdivision 406.21 explains that there are no criteria for an applicant to satisfy at the time of application if the application is made outside Australia.

New Subdivision 406.21 contains the criteria to be satisfied at time of application, being clause 406.211. Clause 406.211 provides that if the application is made in the migration zone, the applicant must satisfy the requirements of either paragraph 406.211(a) or (b). "Migration zone" is defined in section 5 of the *Migration Act 1958* (the 'Act'). Paragraph 406.211(a) requires the applicant to hold a substantive visa other than one of the following visas: a Subclass 426 (Domestic Worker (Temporary) – Diplomatic or Consular) visa; a Subclass 771 (Transit) visa; a Subclass 995 (Diplomatic (Temporary)) visa; or a special purpose visa. "Special purpose visa" is provided for in section 33 of the Act and "substantive visa" is defined in section 5 of the Act. Paragraph 406.211(b) requires that all of the following are satisfied: the applicant does not hold a substantive visa; the applicant's last held substantive visa was not a visa mentioned in paragraph 406.211(a); and the applicant satisfies criteria 3002, 3003, 3004 and 3005 contained in Schedule 3 to the Principal Regulations. Criteria 3002, 3003 and 3005 are criteria applicable to unlawful non-citizens and certain holders of bridging visas. Holders of these visas, and applicants whose last substantive visa was one of these visas, should not be eligible for the grant of a Subclass 406 visa if they apply onshore. These visas are generally granted for particular purposes and it is not appropriate to allow holders to transfer to other visas onshore. Holders of these visas can still apply for the Subclass 406 visa offshore.

Criteria to be satisfied at time of decision

New Subdivision 406.22 contains criteria to be satisfied at the time of decision, being clauses 406.221 to 406.234. Clause 406.221 provides that the Minister is satisfied that the applicant will be engaged in work or an activity in Australia in accordance with the terms and conditions of a relevant agreement; or will direct the national operations in Australia of one of the following: the British Council, the Alliance Francaise, the Goethe Institut or the Istituto Italiano di Cultura. "Relevant agreement" is defined in new clause 406.111.

Subclause 406.222(1) provides that if paragraph 406.221(a) applies to the applicant, the criteria in subclauses 406.222(2) and (3) must be satisfied. Subclause 406.222(2) provides that the Minister is satisfied of paragraphs 406.222(2)(a) to (c). Paragraph 406.222(2)(a) is that the applicant meets the requirements of the relevant agreement. Paragraph 406.222(2)(b) is that an Australian signatory agrees to the applicant's stay in Australia. Paragraph 406.222(2)(c) is that the foreign signatory agrees to the applicant's stay in Australia. "Relevant agreement", "Australian signatory" and "foreign signatory" are defined in new clause 406.111.

Subclause 406.222(3) provides that if the foreign signatory is not the national government, then the Minister must be satisfied that the national government of the foreign country does not oppose the applicant's stay in Australia if the foreign signatory is not the national government of the relevant foreign country.

Clause 406.223 provides that if paragraph 406.221(a) applies to the applicant, the Minister may require the applicant to provide the document prescribed in paragraph 406.223(a) or (b). Paragraph 406.223(a) prescribes a copy of the relevant agreement written in English. Paragraph 406.223(b) prescribes a letter from the Australian signatory stating that the Australian signatory is satisfied that: the applicant is to be employed or engaged in Australia in accordance with the standards for wages and working conditions provided for under relevant Australian legislation and awards; and the applicant has complied with any licensing, registration or equivalent requirements associated with the applicant's employment or engagement.

Clause 406.224 provides that if paragraph 406.221(b) applies to the applicant, the applicant gives to the Minister a statement supporting the application from the Foreign Ministry of the relevant foreign government.

Clause 406.225 provides that the Minister is satisfied that the employment or engagement of the applicant would be of benefit to Australia.

Clause 406.226 provides that the Minister is satisfied that the applicant genuinely intends to stay temporarily in Australia to engage in the work or activity mentioned in clause 406.221.

Clause 406.227 provides that the Minister, taking into account the applicant's work rights during the period of the applicant's stay in Australia, is satisfied that the applicant has adequate means to support himself or herself, or has access to adequate means to support himself or herself.

Clause 406.228 provides that the Minister is satisfied that the applicant has made adequate arrangements in Australia for health insurance during the period of the applicant's stay in Australia.

Clause 406.229 provides that if the application is made in the migration zone, the applicant has substantially complied with the conditions that apply or applied to the last substantive visa (if any) held by the applicant and any subsequent bridging visa held by the applicant. "Migration zone" is defined in section 5 of the Act. Clause 406.229 includes the possibility that an applicant may not have previously held a substantive visa even if the application is made in the migration zone.

Clause 406.230 provides that if the application is made outside Australia and the applicant has previously been in Australia, the applicant must satisfy special return criteria 5001 and 5002 contained in Schedule 5 to the Principal Regulations. Special return criteria 5001 relates to people who have been deported from Australia or whose visas have been cancelled in certain circumstances. Special return criteria 5002 relates to people who have been removed from Australia.

Clause 406.231 provides that the applicant must satisfy the requirements of paragraphs 406.231(a) to (c). Paragraph 406.231(a) requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013, and 4014. Paragraph 406.231(b) requires applicants who have not turned 18 years of age to satisfy public interest criteria 4012, 4017 and 4018. Paragraph 406.231(c) requires applicants who had turned 18 years of age at the time of application to satisfy public interest criterion 4019. Schedule 4 to the Principal Regulations contains public interest criteria and related provisions.

Clause 406.232 provides that the Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted. New Division 406.6 sets out the conditions which apply to a Subclass 406 (Government Agreement) visa.

Subclause 406.233(1) provides that if the applicant is an AusAID student or an AusAID recipient, the applicant must have the support of the AusAID Minister for the grant of the visa. Current regulation 1.04A of the Principal Regulations provides when a person is an "AusAID student" or an "AusAID recipient".

Subclause 406.233(2) provides that the Minister may waive the requirement in subclause 406.233(1) if the Minister is satisfied that, in the particular case, waiver is justified by compelling circumstances that affect the interests of Australia, or compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

Clause 406.234 provides that the Minister is satisfied that the applicant meets the requirements of paragraph 406.234(a) or (b). Paragraph 406.234(a) requires that the applicant is the holder of a valid passport that was issued to the applicant by an official source and is in the form issued by the official source. Paragraph 406.234(b) requires that it would be unreasonable to require the applicant to be the holder of a passport. "Passport" is defined in section 5 of the Act.

Secondary Criteria

New Division 406.3 sets out the secondary criteria for the grant of a Subclass 406 (Government Agreement) visa.

The note immediately after the heading of new Division 406.3 explains that the secondary criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

Criteria to be satisfied at time of application

New Subdivision 406.31 contains secondary criteria to be satisfied at the time of application, being clauses 406.311 and 406.312. Clause 406.311 provides that the applicant is a member of a family unit of a person who has applied for a Subclass 406 (Government Agreement) visa. Current regulation 1.12 of the Principal Regulations provides the circumstances in which a person is a member of the family unit.

Subclause 406.312 provides that if the application is made outside Australia and is made separately from that of the person satisfying the primary criteria, the requirements of paragraphs 406.312(a) and (b) must be satisfied. Paragraph 406.312(a) requires that the person satisfying the primary criteria is, or is expected soon to be, in Australia. Paragraph 406.312(b) requires that the secondary applicant intends to stay temporarily in Australia as a member of that family unit. The purpose of this amendment is to ensure that only members of the family unit can accompany persons who satisfy the primary criteria for the grant of a Subclass 406 (Government Agreement) visa to Australia.

Criteria to be satisfied at time of decision

New Subdivision 406.32 contains secondary criteria to be satisfied at the time of decision, being clauses 406.321 to 406.330. Clause 406.321 provides that the secondary applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 406 (Government Agreement) visa.

Clause 406.322 provides that if paragraph 406.221(a) applies to the person satisfying the primary criteria, the Minister is satisfied that the requirements of paragraphs 406.322(a) and (b) are satisfied. Paragraph 406.322(a) requires that the relevant agreement permits the secondary applicant to enter Australia as a member of the family unit of the person satisfying the primary criteria. Paragraph 406.322(b) requires that an Australian signatory has agreed to the secondary applicant's stay in Australia.

Clause 406.323 provides that the Minister must be satisfied that the secondary applicant meets the requirements of the terms and conditions of the relevant agreement if the circumstances in paragraphs 406.323(a) and (b) exist. Paragraph 406.323(a) is that paragraph 406.221(a) applies to the person satisfying the primary criteria. Paragraph 406.323(b) is that the relevant agreement contains terms and conditions that apply to a member of the family unit of the person satisfying the primary criteria.

Clause 406.324 provides that the Minister, taking into account the secondary applicant's work rights during the period of the secondary applicant's stay in Australia, is satisfied that the secondary applicant has adequate means to support himself or herself, or has access to adequate means to support himself or herself.

Clause 406.325 provides that the secondary applicant must satisfy the requirements of paragraphs 406.325(a) to (c). Paragraph 406.325(a) requires the secondary applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013, and 4014. Paragraph 406.325(b) requires secondary applicants who have not turned 18 years of age to satisfy public interest criteria 4012, 4017 and 4018. Paragraph 406.325(c) requires secondary applicants who had turned 18 years of age at the time of application to satisfy public interest criterion 4019. Schedule 4 to the Principal Regulations contains public interest criteria and related provisions.

Clause 406.326 provides that the Minister is satisfied that the secondary applicant has made adequate arrangements in Australia for health insurance during the period of the secondary applicant's stay in Australia.

Clause 406.327 provides that if the application is made outside Australia and the secondary applicant has previously been in Australia, the secondary applicant satisfies special return criteria 5001 and 5002 contained in Schedule 5 to the Principal Regulations.

Clause 406.328 provides that if the application is made in the migration zone, the secondary applicant has substantially complied with the conditions that apply or applied to the last substantive visa (if any) held by the secondary applicant and any subsequent bridging visa held by the secondary applicant. Clause 406.328 includes the possibility that a secondary applicant may not have previously held a substantive visa even if the application is made in the migration zone.

Subclause 406.329(1) provides that if the secondary applicant is an AusAID student or an AusAID recipient, the secondary applicant must have the support of the AusAID Minister for the grant of the visa.

Subclause 406.329(2) provides that the Minister may waive the requirement in subclause 406.329(1) if the Minister is satisfied that, in the particular case, waiver is justified by compelling circumstances that affect the interests of Australia, or compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

Clause 406.330 provides that the Minister must be satisfied that the secondary applicant meets the requirements of paragraph 406.330(a) or (b). Paragraph 406.330(a) requires that the secondary applicant is the holder of a valid passport that was issued to the secondary applicant by an official source and is in the form issued by the official source. Paragraph 406.330(b) requires that it would be unreasonable to require the secondary applicant to be the holder of a passport. "Passport" is defined in section 5 of the Act.

Circumstances applicable to grant

New Division 406.4 sets out the circumstances applicable to the grant of a Subclass 406 (Government Agreement) visa.

Clause 406.411 provides that if the application is made in the migration zone, the applicant must be in the migration zone at the time of grant.

Clause 406.412 provides that if the application is made outside Australia, the applicant must be outside Australia at the time of grant.

When visa is in effect

New Division 406.5 sets out when a Subclass 406 (Government Agreement) visa is in effect.

Clause 406.511 provides that the visa is a temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister for the purpose.

Conditions

New Division 406.6 sets out the conditions which apply to a Subclass 406 (Government Agreement) visa. Schedule 8 to the Principal Regulations sets out the visa conditions which may be imposed on a visa.

Clause 406.611 provides that if the applicant meets the primary criteria, condition 8107 must be imposed. Condition 8107 contains requirements relating to the visa holder's employment, or the activity to be engaged in by the visa holder, while in Australia.

Clause 406.612 provides that if the applicant meets the primary or secondary criteria, conditions 8501 and 8516 must be imposed. Condition 8501 requires the visa holder to maintain adequate arrangements for health insurance while in Australia, and condition 8516 requires the visa holder to continue to satisfy the primary or secondary criteria (whichever is applicable) for the visa.

Clause 406.613 provides that if the applicant meets the primary or secondary criteria, any 1 or more of the listed conditions may be imposed: 8101, 8102, 8103, 8106, 8109, 8111, 8203, 8301, 8303, 8502, 8503, 8522, 8525 and 8526.

Way of giving evidence

New Division 406.7 sets out the way of giving evidence of the grant of a Subclass 406 (Government Agreement) visa.

Clause 406.711 provides that no evidence need be given.

Clause 406.712 provides that if evidence is given, it is to be given by a label affixed to a valid passport.

Item [5] – Schedule 2, Part 418

This item omits Part 418 of Schedule 2 to the Principal Regulations. The effect of this is to repeal the Subclass 418 (Educational) visa.

Since 1 July 2001, the list of gazetted occupations for the Subclass 457 (Business (Long Stay)) visa has included those previously covered by the Subclass 418 (Educational) visa. Non-citizens who are eligible for the Subclass 418 visa may also be eligible for the Subclass 457 (Business (Long Stay)) visa. Since that time, the Subclass 418 (Educational) visa has been effectively redundant and the number of applications has been steadily declining. For this reason, the Subclass 418 visa is being repealed.