EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 33

Issued by the Minister for Immigration and Citizenship

Migration Act 1958

Migration Legislation Amendment Regulation 2013 (No. 1)

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 Regulation is to amend the *Migration Regulations 1994* (the Principal Regulations) and the *Migration Agents Regulations 1998* (the Migration Agents Regulations) to strengthen and improve immigration policy. In particular, the Regulation:

- amends the Principal Regulations to provide for a biennial increase in fees for an application for review of a decision by the Migration Review Tribunal ('MRT') and the Refugee Review Tribunal ('RRT') (collectively 'the Tribunals') as well as providing for the formula by which such increases are calculated;

- amends the Principal Regulations to introduce new post-study work arrangements for graduates of an Australian Bachelor degree, Bachelor degree with Honours, Masters by Coursework, Masters (Extended), Masters by Research or Doctoral degree. Successful applicants under the new arrangements are granted a Subclass 485 (Temporary Graduate) visa with the length of time that the visa is in effect contingent on the level of qualification obtained by the applicant:

    - Bachelor, Bachelor with Honours, Masters by Coursework or Masters (Extended) degree – 2 years
    - Masters by Research – 3 years
    - Doctoral degree – 4 years;

- amends the Principal Regulations to implement recommendation 25 and to support the implementation of recommendation 24 of the independent *Strategic Review of the Student Visa Program*, conducted by the Hon. Michael Knight AO ('the Knight Review');

    - Recommendation 25 suggested removing the mandatory cancellation requirement applicable to Student (Temporary) (Class TU) visas relating to unsatisfactory attendance, unsatisfactory progress and working in excess of the hours allowed. As a result, it would provide the Minister with the discretion to consider the circumstances of the student and to decide if cancellation is warranted based on the merits of the case put forward.

- The proposed Regulations is associated with the commencement of Schedule 1 to the *Migration Legislation Amendment (Student Visas) Act 2012* which would implement recommendation 24 of the Knight Review. Recommendation 24 suggested abolishing the system of automatic cancellation of student visas. To implement this recommendation, amendments were made to the Act and the *Education Services for Overseas Students Act 2000*;

- amends the Principal Regulations to make technical amendments to correct a drafting error in amendments to subclause 202.222(2) of Schedule 2 to the Principal Regulations, made by the *Migration Amendment Regulation 2012 (No. 5)*;

- amends the Principal Regulations to:

  - align the Tribunals' procedures for the lodgement of review applications;
  - remove redundant provisions relating to the Tribunals currently in the Principal Regulations; and
  - align the prescribed time periods given to review applicants to attend hearings or to provide comments or additional information to the Tribunals;

- amend the *Migration Agents Regulations 1998* to:

  - implement changes to allow the Minister, rather than the Migration Agents Registration Authority, to specify and clarify the requirements for continuing professional development ('CPD') that registered migration agents are required to undertake in order to be re-registered as migration agents; and
  - increase the knowledge and quality across the industry by broadening the range of activities that may be approved for CPD activities as highlighted in the *2007-08 Review of Statutory Self-Regulation of the Migration Advice Profession*.

A Statement of Compatibility with Human Rights has been completed for the Regulation, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement's overall assessment is that the Regulation is compatible with human rights because it advances the protection of human rights and, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate. A copy of the Statement is at Attachment B.

Details of the Regulation are set out in Attachment C.

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

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments made by the Regulation and advises that the regulation is not likely to have a direct effect, or substantial indirect effect, on business and is not likely to restrict competition. The OBPR consultation references are:

- 12653 (Schedule 1);

- 2012/14502 (Schedule 2);
- 12851 (Schedule 3);
- 12604 (Schedule 4); and
- 14082 (Schedule 5).

In relation to the amendments made by Schedule 1 to the Regulation, the Department of Immigration and Citizenship ('the Department') has also consulted with the Department of Finance and Deregulation and the Attorney General's Department as part of central agency comments on proposed budget measures. This is because the fee changes and indexation for the Tribunals were introduced as part of the government's budget decisions in the 2010-11 financial year to offset increased appropriations to the Tribunals. The Tribunals have also been consulted throughout the legislative change process. Because this measure is a budget measure, it was not appropriate to consult more widely.

In relation to the amendments made in items 1-5, and items 8-22, of Schedule 2 to the Regulation, the Department has engaged with key stakeholders from various government agencies and representatives from the education sector in the formulation of these amendments.

The Department consulted the Department of Industry, Innovation, Science, Research and Tertiary Education ('DIISRTE') with regard to the key policy settings for the post-study work arrangements. Further consultations were held with DIISRTE regarding the list of qualifications eligible for the new post study work arrangements and the inclusion of education providers in a proposed legislative instrument.

There have also been ongoing consultations with state governments, federal government agencies and peak industry bodies through the Education Visa Consultative Committee ('EVCC'). The EVCC was established in response to the Knight Review to act as the primary means of regular two way communication between stakeholders in the international education sector and the Department. The EVCC has facilitated discussion between a number of stakeholders regarding the key policy settings and implementation of the new post-study work arrangements. Members of the EVCC have expressed an ongoing interest in the Post-Study Work arrangements and the Department has consistently provided updates to its members.

The members of the EVCC are the Department of Immigration and Citizenship, DIISRTE, the Australian Trade Commission, all state and territory governments, the Australian Council for Private Education and Training, Australian Council of Trade Unions, Australian Government Schools International, the Business Council of Australia, Council of International Students Australia, Council of Private Higher Education, English Australia, the International Education Association Australia, Independent Schools Council of Australia, TAFE Directors Australia and Universities Australia.

In relation to the amendments made in items 6 and 7 of Schedule 2 to the Regulation, consultation was unnecessary because the amendments are minor in nature and do not substantially alter existing arrangements.

In relation to the amendments made by Schedule 3 to the Regulation, the Department has consulted with EVCC (including the Australian Council of Private Education and Training), Austrade, Australian Council of Trade Unions, Australian Government Schools International, Business Council of Australia, Council of Private Higher Education Inc, English Australia, International Education Association of Australia, Independent Schools Association of Australia, TAFE Directors Australia and Universities Australia, State and Territory governments from ACT, NSW, SA, TAS, VIC and WA) and DIISRTE.

In relation to the amendments made by Schedule 4 to the Regulation, these amendments are administrative in nature and seek to create consistency in provisions relating to the Tribunals' procedures. The Department consulted closely with the Tribunals throughout the process of bringing these amendments about and the Tribunals supported the proposed amendments. The Department also undertook consultation with the Administrative Law Unit of the Attorney-General's Department so as to ascertain whether these changes are likely to impinge upon procedural fairness and/or are inconsistent with the principles outlined in the 'Australian Administrative Law Policy Guide'. The Administrative Law Unit of the Attorney-General's Department did not assess the amendments as likely to have any adverse impact on procedural fairness.

In relation to the amendments made by Schedule 5 to the Regulation, the Department has consulted with the Office of the Migration Agents Registration Authority (Office of the MARA) and it was agreed the identified changes will provide greater clarity of Continuing Professional Development ('CPD') requirements for registered migration agents and will increase the knowledge and quality across the industry. The Office of the MARA has conducted two surveys to collect feedback from registered migration agents about CPD activities and the CPD framework. The 2010 survey is called "DeakinPrime CPD Review Report" and the 2012 survey is called "Office of the MARA Registered Migration Agents Continuing Professional Development Survey Report". The Office of the MARA also held a CPD providers workshop in October 2010 involving all approved CPD providers to collect feedback from providers about the CPD framework. The Office of the MARA has also consulted with the Office of the MARA Advisory Board, the Migration Institute of Australia, Migration Alliance, approved CPD providers and the Migration Agents Registration Advisory Committee ('MAREAC') on the implementation of the practice ready program as a mandatory CPD activity.

The Regulation is 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.

In addition, the following provisions may apply:

- subsection 5(1) of the Act, which provides that the term "prescribed" means prescribed by the regulations;

- subsection 29(2) of the Act, which provides that, without limiting subsection 29(1) of the Act, 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; and
    - if, and only if, the holder travels to and enters during that period, remain in Australia during a prescribed or specified period or indefinitely;

- subsection 31(1) of the Act, which provides that there are to be prescribed classes of visa;

- subsection 31(3) of the Act, 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 by sections 32, 36, 37, 37A or 38B but not by sections 33, 34, 35, 38 or 38A of the Act);

- subsection 31(4) of the Act, which provides that the regulations may prescribe whether visas of a class are visas to travel and enter Australia, or to remain in Australia, or both;

- subsection 31(5) of the Act, 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 39(1) of the Act, which provides that, in spite of section 14 of the *Acts Interpretation Act 1901*, a prescribed criterion for visas of a class, other than protection visas, may be the criterion that the grant of the visa would not cause the number of visas of that class granted in a particular financial year to exceed whatever number is fixed by the Minister, by legislative instrument, as the maximum number of such visas that may be granted in that year (however the criterion is expressed);

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

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

- subsection 41(3) of the Act, which provides that, in addition to any conditions specified under subsection 41(1), the Minister may specify that a visa is subject to such conditions as are prescribed by the regulations for the purposes of subsection 41(3);

- subsection 45B(1) of the Act, which provides that the amount of visa application charge is the amount, not exceeding the visa application charge limit, prescribed in relation to the application;

- subsection 45C(1) of the Act, which provides that the regulations may:

    - provide that the visa application charge may be payable in instalments; and
    - specify how those instalments are to be calculated; and
    - specify when the instalments are payable;

- subparagraph 45C(2)(a)(iv) of the Act, which relevantly provides that the regulations may also:

    - make provision for and in relation to:

        - the time when visa application charge is to be paid; or

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

- subsection 46(4) of the Act, which provides that, without limiting subsection 46(3), the regulations may also prescribe:

    - the circumstances that must exist for an application for a visa of a specified class to be a valid application; and
    - how an application for a visa of a specified class must be made; and
    - where an application for a visa of a specified class must be made; and
    - where an applicant must be when an application for a visa of a specified class is made;

- paragraph 65(1)(a) of the Act, which relevantly provides that, after considering a valid application for a visa, the Minister:

    - if satisfied that:

        - the health criteria for it (if any) have been satisfied; and
        - the other criteria for it prescribed by this Act or the regulations have been satisfied; and

      is to grant the visa; or

    - if not satisfied, is to refuse to grant the visa;

- subsection 116(3) of the Act, which provides that, if the Minister may cancel a visa under subsection 116(1), the Minister must do so if there exist prescribed circumstances in which a visa must be cancelled;

- section 290A of the Act, which provides that, if the applicant has been registered at some time in the 12 months before making the application, he or she must not be registered if the Migration Agents Registration Authority (the Authority) is satisfied that the applicant has not met, within the prescribed period, the requirements prescribed by the regulations for continuing professional development of registered migration agents;

- subsection 316(1) of the Act, which provides that the function of the Authority are:

    - to deal with registration applications in accordance with Part 3 of the Act; and
    - to monitor the conduct of registered migration agents in their provision of immigration assistance and of lawyers in their provision of immigration legal assistance; and
    - to investigate complaints in relation to the provision of immigration assistance by registered migration agents; and
    - to take appropriate disciplinary action against registered migration agents or former registered migration agents; and
    - to investigate complaints about lawyers in relation to their provision of immigration legal assistance, for the purpose of referring appropriate cases to professional associations for possible disciplinary action; and
    - to inform the appropriate prosecuting authorities about apparent offences against Part 3 or Part 4 of the Act; and
    - to monitor the adequacy of any Code of Conduct; and
    - such other functions as are conferred on the Authority by Part 3 of the Act;

- section 317 of the Act, which provides that the Authority has power to do all things necessarily or conveniently done for, or in connection with, the performance of its functions;

- subsection 320(1) of the Act, which provides that the Minister may delegate any of the Authority's powers or functions under Part 3 of the Act to a person in the Department who is appointed or engaged under the *Public Service Act 1999*, for any period when the Institute is not appointed under section 315;

- subsection 320(2) of the Act, which provides that a delegation must be in writing signed by the Minister;

- subsection 320(3) of the Act, which provides that, if the Minister delegates a power or function of the Authority, the Minister may disclose to the delegate personal information to help the delegate exercise the power or perform the function;

- paragraph 347(1)(c) of the Act, which provides that an application for review of an MRT-reviewable decision must be accompanied by the prescribed fee (if any);

- subsection 359B(2) of the Act, which provides that, if the invitation is to give information, or comments or a response otherwise than at an interview, the information, or the comments or the response are to be given within a period specified in the invitation, being a prescribed period or, if no period is prescribed, a reasonable period;

- subsection 359B(3) of the Act, which provides that, if the invitation is to give information, or comments or a response at an interview, the interview is to take place:

    - at the place specified in the invitation; and
    - at a time specified in the invitation, being a time within a prescribed period or, if no period is prescribed, a reasonable period;

- subsection 359B(4) of the Act, which provides that, if a person is to respond to an invitation within a prescribed period, the Tribunal may extend that period for a prescribed further period, and then the response is to be made within the extended period;

- subsection 359B(5) of the Act, which provides that, if a person is to respond to an invitation at an interview at a time within a prescribed period, the Tribunal may change that time to:

    - a later time within that period; or
    - a time within that period as extended by the Tribunal for a prescribed further period;

  and then the response is to be made at an interview at the new time;

- subsection 360A(4) of the Act, which provides that the period of notice given must be at least the prescribed period or, if no period is prescribed, a reasonable period;

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

- subsection 424B(2) of the Act, which provides that, if the invitation is to give information, or comments or a response otherwise than at an interview, the information, or comments or the response are to be given within a period specified in the invitation, being a prescribed period or, if no period is prescribed, a reasonable period;

- subsection 424B(3) of the Act, which provides that, if the invitation is to give information, or comments or a response at an interview, the interview is to take place:

    - at the place specified in the invitation; and
    - at a time specified in the invitation, being a time within a prescribed period or, if no period is prescribed, a reasonable period;

- subsection 424B(4) of the Act, which provides that, if a person is to respond to an invitation within a prescribed period, the Tribunal may extend that period for a prescribed further period, and then the response is to be made within the extended period;

- subsection 424B(5) of the Act, which provides that, if a person is to respond to an invitation at an interview at a time within a prescribed period, the Tribunal may change that time to:

    - a later time within that period; or
    - a time within that period as extended by the Tribunal for a prescribed further period;

  and then the response is to be made at an interview at the new time;

- subsection 425A(3) of the Act, which provides that the period of notice given must be at least the prescribed period or, if no period is prescribed, a reasonable period;

- subsection 504(2) of the Act, which provides that section 14 of the *Legislative Instruments Act 2003* does not prevent, and has not prevented, regulations whose operation depends on a country or other matter being specified or certified by the Minister in an instrument in writing made under the regulations after the taking effect of the regulations.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

- **Schedule 1 – Amendments relating to Tribunal fees**

Overview of the amendments

The Migration Review Tribunal ('MRT') and Refugee Review Tribunal ('RRT') are statutory bodies that provide independent merits review of visa decisions made by the Department of Immigration and Citizenship ('DIAC'). These amendments are to index the fees payable by applicants for merits reviews to be conducted by the MRT and the RRT.

It is proposed that sub-regulations are created after existing regulation 4.13 and regulation 4.31B of the *Migration Regulations 1994* (the Principal Regulations) to provide that the fees for making applications to the MRT and RRT be automatically indexed every two years on 1 July, based on the Consumer Price Index published by the Australian Bureau of Statistics in the financial-quarter prior to the indexation occurring.

Human rights implications

The proposed amendments have been assessed against the seven core international human rights treaties and have been found to pose no human rights issues.

Conclusion

This Schedule is compatible with human rights.

- **Items 1 – 5 and items 8 – 22 of Schedule 2 – Amendments relating to post-study work arrangements and other matters**

Overview of the amendments

These amendments would introduce extended post-study work arrangements as a new stream of the Subclass 485 visa in the Principal Regulations.

Under the new arrangements, graduates who have completed a Bachelor degree or Masters by coursework degree in Australia will be eligible to apply for a two year post-study work visa. Graduates who have completed a Masters by research degree or a Doctoral degree in Australia will be eligible to apply for a post-study work visa for three or four years respectively. Visa length will be determined in a legislative instrument.

Human rights implications

Right to work and rights in work

The amendment grants permission to graduates on temporary visas to work but does not guarantee them employment.

Australia has the sovereign power to grant such permission, but is not obliged to do so. Whilst the UN Committee on Economic Social and Cultural Rights (ICESCR) has stated that the 'right to work' in Article 6 of the ICESCR obliges States parties to assure individuals their right to freely chose or accept work, this obligation does not extend to temporary visa holders or those in Australia on a temporary basis.

If permitted to work, however, workers who are not citizens or permanent residents of Australia are still entitled to basic rights and protections in the workplace. All workers in Australia are protected by Australian workplace laws, regardless of their visa class and residence status.

Conclusion

These items are compatible with human rights as they do not engage any human rights obligations.

- **Items 6 – 7 of Schedule 2 – Amendments relating to post-study work arrangements and other matters**

Overview of the amendments

Schedule 2 contains two technical amendments to the Principal Regulations.

Subclause 202.222(2) in Schedule 2 to the Principal Regulations sets out a number of factors to which the Minister is to have regard in being satisfied that there are compelling reasons for giving special consideration to granting an applicant a permanent visa.

Currently, subclause 202.222(2) refers to 'persecution'.

Subclause 202.222(2) was inserted into the Principal Regulations by item 12 of the *Migration Amendment Regulation 2012 (No. 5)*, which substituted clause 202.222, as it then was, with new subclauses 202.222(1) and 202.222(2).

New subclause 202.222(2) was to retain the wording of previous clause 202.222, but when subclause 202.222(2) was made, the word 'discrimination' was inadvertently omitted and the word 'persecution' substituted in its place.

The amendments to subclause 202.222(2) correct this error by omitting references to 'persecution' in subclause 202.222(2) and substituting those references with 'discrimination' in criteria to be satisfied at time of decision for a Subclass 202 (Global Special Humanitarian) visa.

The amendments to subclause 202.222(2) are accompanied by an amendment to Schedule 13 to the Principal Regulations.

The amendments to Schedule 13 mean that references to 'persecution' are substituted with 'discrimination' in relation to an application for a visa made, but not finally determined, before 23 March 2013, or an application made on or after 23 March 2013.

Human rights implications

As the proposed amendments are technical amendments and seek only to restore the original policy intention behind subclause 202.222(2), the proposed amendments do not engage the seven core human rights treaties or the rights articulated thereunder.

Conclusion

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

- **Schedule 3 – Amendments relating to cancellation of student visas**

Overview of the amendments

The amendments seek to repeal regulation 2.43(2)(b) of the Principal Regulations to cease the mandatory cancellation regime for the Student Visa Program. This responds to recommendation 25 of the *Strategic Review of the Student Visa Program 2011* conducted by the Hon Michael Knight AO. Recommendation 25 suggests that *"The mandatory cancellation requirement for unsatisfactory attendance, unsatisfactory progress and working in excess of the hours allowed should be removed, giving the Department of Immigration and Citizenship (DIAC) officers the discretion to determine cancellation in particular cases on their merits".*

Student visa holders are subject to a number of visa conditions, a breach of which may result in visa cancellation. Cancellation is generally discretionary, except for breaches of condition 8202, condition 8104 and condition 8105 contained in Schedule 8 to the Principal Regulations. Condition 8202 requires visa holders to maintain enrolment as well as satisfactory course progress and attendance. Condition 8104 and condition 8105 apply to Student visa secondary and primary applicants respectively and impose limits on the amount of work that the holder can undertake while in Australia. Generally speaking, the limit is 40 hours per fortnight while a course is in session.

Currently, where an alleged breach of condition 8104 and condition 8105 is reported to DIAC, paragraph 2.43(2)(b) requires that the visa must be cancelled if the breach is found to have occurred. In relation to a breach of condition 8202 cancellation must occur if the breach is found to have occurred and is not due to exceptional circumstances beyond the visa holder's control.

The amendments seek to repeal paragraph 2.43(2)(b) so that breaches of these conditions no longer result in mandatory cancellation, but are treated under the existing discretionary provisions of section 116 of the *Migration Act 1958* (The Act) that provide that a visa may be cancelled on certain grounds. This will enable decision makers to take the circumstances of the student into account before deciding whether cancellation is warranted. This will provide greater fairness to Student visa holders.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

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

- **Schedule 4 – Amendments relating to Tribunals**

Overview of the amendments

To align the MRT and the RRT procedures, DIAC proposes to amend the Principal Regulations, to:

- Align lodgment provisions
- Align prescribed periods
- Remove redundant provisions

Human rights implications

These amendments do not engage any of the applicable rights or freedoms.

Conclusion

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

- **Schedule 5 – Amendment of the Migration Agents Regulations 1998**

Overview of the amendments

Schedule 1 to the *Migration Agents Regulations 1998* ('the Migration Agents Regulations') specifies the Continuing Professional Development ('CPD') requirements that registered migration agents must undertake to be eligible for repeat registration.

DIAC and the Office of the Migration Agents Registration Authority ('the MARA') are seeking to amend the Migration Agents Regulations to:

- have the Minister, and not the MARA, specify approved CPD activities and the associated framework;
- remove the distinction between core and elective activities (which has no practical effect);
- allow the MARA to accept CPD activities in support of an application for repeat registration completed after the application has been lodged but before it has been finalised by the Authority;
- clarify the types of activities available to agents;
- streamline the record keeping requirements;
- increase the number of points that can be specified by MARA as mandatory or assessable; and
- provide a mechanism for evaluating CPD providers and ensure that those providers meet agreed levels of standards for delivering CPD activities.

These amendments have been identified in order to provide greater clarity of the CPD requirements for registered migration agents as well as a basis to increase the knowledge and quality across the industry.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

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

ATTACHMENT C

Details of the *Migration Legislation Amendment Regulation 2013 (No. 1)*

Section 1 – Name of Regulation

This section provides that this regulation is the *Migration Legislation Amendment Regulation 2013 (No. 1)*.

Section 2 – Commencement

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

The table sets out the commencement dates for the provisions in this regulation as follows:

- Sections 1 to 4 and anything in this regulation not elsewhere covered by the table commence on 23 March 2013;
- Schedules 1 and 2 in this regulation commence on 23 March 2013;
- Schedule 3 commences on 13 April 2013;
- Schedule 4 commences on 1 July 2013; and
- Schedules 5 and 6 commences on 23 March 2013.

The note after subsection 2(1) provides that this table relates only to the provisions of this regulation as originally made and that it will not be amended to deal with any later amendments of this regulation.

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

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

Section 3 – Authority

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

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

Section 4 – Schedule(s)

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

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

Schedule 1 – Amendments relating to Tribunal fees

Item 1 – At the end of subregulation 4.13(1) and item 3 – At the end of paragraph 4.31B(1)(c)

Item 1 and item 3 are mirror provisions and, respectively, add a note after subregulation 4.13(1) of Division 4.1 of Part 4 of the Principal Regulations and after paragraph 4.31B(1)(c) of Division 4.2 of Part 4 of the Principal Regulations.

These notes provide that the fee in subregulation 4.13(1) and paragraph 4.31B(1)(c), respectively, is subject to increase under regulation 4.13A and regulation 4.31BA, respectively.

The amendments make clear that the fees in subregulation 4.13(1) and paragraph 4.31B(1)(c) are subject to increase in accordance with the formula under regulation 4.13B and regulation 4.31BB.

Item 2 – After regulation 4.13 and item 4 – After regulation 4.31B

Items 2 and 4 are mirror provisions which provide for the means by which the prescribed fee for an application for review to the Migration Review Tribunal ('MRT') and the Refugee Review Tribunal ('RRT') (collectively 'the Tribunals') are respectively increased on each biennial anniversary of 1 July 2011.

Item 2 inserts regulation 4.13A and regulation 4.13B into Division 4.1 of Part 4 of the *Migration Regulations 1994* ('the Principal Regulations'). These regulations provide for the fee for an application for review of a decision by the MRT to be increased on each biennial anniversary of 1 July 2011 and the mechanism by which the increase is calculated.

Item 4 inserts regulation 4.31BA and regulation 4.31BB into Division 4.2 of Part 4 of the Principal Regulations. These regulations provide for the fee for review of a decision by the RRT to be increased on each biennial anniversary of 1 July 2011 and the mechanism by which the increase is calculated.

Current provisions

The prescribed fee for an application for review of a decision by the Tribunals is located in subregulation 4.13(1) for the MRT, and regulation 4.31B for the RRT.

Subregulation 4.13(1) provides that, subject to regulation 4.13, the fee for an application for review of a decision by the MRT is $1,540. Other subregulations in regulation 4.13 provide for the fee to be paid only once for combined applications and, for cases of financial hardship, for the fee to be 50% of the fee mentioned in subregulation 4.13(1).

Paragraph 4.31B(1)(c) provides that the fee for review by the RRT of an RRT-reviewable decision is, if the application for review was made on or after 1 July 2011, $1,540.

Other subregulations in regulation 4.31B provide for when the fee in subregulation 4.31B is not payable, including, for example, where the RRT determines that applicant is a person to whom Australia owes protection obligations under the Refugees Convention.

Regulation 4.13A and regulation 4.31BA

Regulation 4.13A and regulation 4.31BA provide that, despite any other provision of the Principal Regulations, the fee prescribed by subregulation 4.13(1) and paragraph 4.31B(1)(c), respectively, is increased in accordance with regulation 4.13B and regulation 4.31BB, respectively, on each biennial anniversary of 1 July 2011.

The effect of these provisions is to provide for the fee for review applications to be increased on each biennial anniversary of 1 July 2011. A similar mechanism currently operates for applications for review to the Administrative Appeals Tribunal ('AAT') (see regulation 19A of the *Administrative Appeals Tribunal Regulations 1976*).

Prior to 1 July 2011, the MRT application fee had not been revised since its creation in 1999, and the RRT application fee had not been revised since 2003. Over time, the Tribunals' caseloads have increased in size and complexity, which has placed greater pressure on the operating costs of the Tribunals. In response to this issue, the Government announced, as part of the Budget measures for the 2011-12 financial year, an ongoing biennial adjustment in fees in line with changes in the Consumer Price Index. The amendments implement the fees increase mechanism in accordance with the Government's decision. While application fees do not directly fund the Tribunals' operations, appropriate fee increases would offset increased appropriations to the Tribunals to meet growing costs.

The amendments are also consistent with the fee indexation mechanism in the *Administrative Appeals Tribunal Regulations 1976*.

The Department intends that the existing provisions regarding fee waivers and refunds under regulation 4.13, regulation 4.14 and regulation 4.31C would continue to apply under the amendments. As occurs currently, the Department would also intend for any refunds of Tribunal application fees to be calculated based on the fees paid, or liable to be paid, at the time the application was lodged with the MRT or the RRT.

Regulation 4.13B and regulation 4.31BB

Subregulation 4.13B(1) and subregulation 4.31BB(1) provide that if, in a relevant period, the latest CPI number is greater than the earlier CPI number, a fee is taken to increase, on 1 July immediately following the end of the period, in accordance with the formula:

$$\frac{\text{Fee x Latest CPI number}}{\text{Earlier CPI number}}$$

where:
earlier CPI number is the CPI number for the last March quarter before the beginning of the relevant period.
latest CPI number is the CPI number for the last March quarter before the end of the relevant period.

The effect of this amendment is to provide the formula for calculating the fee increases provided for in regulation 4.13A and regulation 4.31BA.

As examples of how the increases are calculated: at the end of the 2 year period commencing 1 July 2011, each of the existing fees is multiplied by the CPI number for the March quarter 2013 and divided by the CPI number for the March quarter 2011. The fees are only increased if the CPI number for the March quarter 2013 is greater than that for the March quarter 2011. Similarly, at the end of the 2 year period commencing on 1 July 2013, each of the existing fees will be multiplied by the CPI number for the March quarter 2015 and divided by the CPI number for the March quarter 2013. Again, the fees will only be increased if the CPI number for the March quarter 2015 is greater than that for the March quarter 2013.

Subregulation 4.13B(2) and subregulation 4.31BB(2) provide that if, apart from this subregulation, the amount of a fee increased under subregulation (1) is to be an amount of dollars and cents, the amount is to be rounded to the nearest whole dollar and, if the amount to be rounded is 50 cents, rounded down.

The effect of this amendment is to provide for the appropriate rounding of the increased fees to the nearest whole dollar, so as to ensure any fee payable is a whole dollar amount. This has the effect of avoiding any unnecessary complexity brought about by requiring a fee to be paid which is not a whole dollar amount.

Subregulation 4.13B(3) and subregulation 4.31BB(3) provide that, relevantly, subject to subregulation 4.13B(4) and subregulation 4.31BB(4), if at any time, whether before or after the commencement of this regulation, the Australian Statistician publishes for a particular March quarter a CPI number in substitution for an index number previously published by the Australian Statistician for that quarter, the publication of the later index number is to be disregarded for the purposes of this regulation.

The effect of this amendment is to ensure that once the fees have been increased biennially in accordance with officially published CPI numbers, any alteration in the

CPI numbers does not necessitate an alteration in the increased fees during that two year period.

Subregulation 4.13B(4) and subregulation 4.31BB(4) provide that if, at any time, whether before or after the commencement of this regulation, the Australian Statistician changes the reference base for the Consumer Price Index, then, for the purposes of the application of this regulation after the change is made, regard must be had only to numbers published in terms of the new reference base.

The effect of this amendment is to provide that if the Australian Statistician changes the reference base for the CPI, then the new reference base is adopted for the purposes of regulation 4.13B and regulation 4.31BB respectively.

Subregulation 4.13B(5) and subregulation 4.31BB(5) provide that, in regulation 4.13B and regulation 4.31BB respectively:

> ***CPI number*** means the All Groups Consumer Price Index number (being the weighted average of the 8 Australian capital cities) published by the Australian Statistician.
>
> ***fee*** means:
>
> - a fee prescribed by subregulation 4.13(1) (for the MRT), or by paragraph 4.31B(1)(c) (for the RRT); or
> - the fee in force at the end of the relevant period if regulation 4.13A (for the MRT) or regulation 4.31BA (for the RRT) applies.
>
> ***relevant period*** means any of the following periods:
>
> - the 2 year period commencing on 1 July 2011;
> - after that period — each 2 year period commencing on a biennial anniversary of 1 July 2011.

The effect of this amendment is to define the terms necessary to calculate the fee increase.

The purpose of the amendments in item 2 and item 4, namely regulation 4.13A and regulation 4.13B for the MRT, and regulation 4.31BA and regulation 4.31BB for the RRT, is to increase the prescribed fees for an application for review to the MRT or the RRT automatically every 2 years from 1 July 2011 if the formula in new regulation 4.13A and new regulation 4.31BA results in an increase.

Schedule 2 – Amendments relating to post-study work arrangements and other matters

Item 1 – Regulation 1.03 (definition of *registered course*)

This item amends the definition of *registered course* in regulation 1.03 of the Principal Regulations, by omitting the reference to ‘section 9’ of the *Education*

Services for Overseas Students Act 2000 ("the ESOS Act") and substituting it with 'Division 3 of Part 2' of the ESOS Act.

Previously, the term *registered course* in regulation 1.03 of the Principal Regulations was defined as 'a course of education or training provided by an institution, body or person that is registered, under section 9 of the ESOS Act, to provide the course to overseas students.'

The purpose of this amendment is to ensure that the definition of *registered course* correctly references the amended ESOS Act. Section 9 of the ESOS Act was repealed by the *Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012.* Section 9 has been replaced by Division 3 of Part 2, which provides for the registration of approved providers and so the reference in the definition of *registered course* to that provision has been corrected.

Items 2, 3 and 4 – Sub-sub-subparagraph 1136(2)(a)(i)(F)(II), subparagraph 1136(5)(a)(ii), and sub-subparagraph 1136(7)(a)(vi)(B) of Schedule 1

This amendment omits references to the previous Subclass 485 (Skilled – Graduate) visa and substitutes references to the Subclass 485 (Temporary Graduate) visa, in the provisions listed below. These provisions are in Item 1136 in Schedule 1 to the Principal Regulations, which provides for the visa validity requirements for the Skilled (Residence)(Class VB) visa.

Item	Provision
2	Sub-sub-subparagraph 1136(2)(a)(i)(F)(II)
3	Subparagraph 1136(5)(a)(ii)
4	Sub-subparagraph 1136(7)(a)(vi)(B)

The purpose of this amendment is to consequentially amend references to the Subclass 485 visa to reflect the change to the name of the visa.

Item 5 – Item 1229 of Schedule 1

This item repeals and substitutes item 1229 in Schedule 1 to the Principal Regulations.

Item 1229 largely replicates previous item 1229 but inserts new provisions relating to the restructure and renaming of the Subclass 485 (Temporary Graduate) visa and the introduction of the Graduate Work stream and the Post-Study work stream under this visa subclass. The name of the visa to which item 1229 relates continues to be Skilled (Provisional) (Class VC).

Subitem 1229(1)

Subitem 1229(1) provides that an application for a Skilled (Provisional) (Class VC) visa must be made on the form or forms specified by the Minister in an instrument in writing for subitem 1229(1).

Previously, subitem 1229(1) prescribed form 1276 or form 1276 (Internet) as the approved application form for this visa class.

The purpose of this amendment is to allow the Minister to specify in an instrument the approved application forms for a Skilled (Provisional) (Class VC) visa. It is intended that new form 1409 (for paper applications) and form 1276 (Internet) will be specified, until form 1276 (Internet) becomes redundant, and ceases to be specified at an as yet undetermined time in the future. When this occurs, form 1276 (internet) will be replaced with another form number. The Department will publicly communicate that change when it occurs.

Subitem 1229(2)

Subitem 1229(2) lists, in table form, the visa application charge required to be paid in order to make a valid application for a Skilled (Provisional) (Class VC) visa.

Subitem 1229(2) largely replicates previous subitem 1229(2), including the amount of the Visa Application Charge ('VAC') to be paid by each applicant. The only differences are that the information is now prescribed in table format and the previous reference to the Subclass 485 (Skilled – Graduate) visa has been omitted and substituted with a reference to the Subclass 485 (Temporary Graduate) visa.

The purpose of this amendment is to consequentially amend the reference to the Subclass 485 visa to reflect the change to the name of the visa and to present the information for subitem 1229(2) in a more readable tabular format.

Subitem 1229(3)

Previously, subitem 1229(3) specified where and how a valid visa application must be made.

Subitem 1229(3) largely replicates previous subitem 1229(3), with the addition of amendments which reflect the introduction of the two visa streams under the Subclass 485 visa.

Under these amendments, the Subclass 485 visa has been restructured to create two visa streams. One stream, the Graduate Work stream, reflects the previous criteria for the grant of a Subclass 485 visa. The other stream, the Post-Study work stream, is a new stream. This reflects the format adopted under the Visa Simplification and Deregulation (VSD) program to set out streams within visas in order to reduce the number of visa subclasses.

This item repeals the previous paragraphs and substitutes with the paragraphs listed in the table below. The purpose of this amendment is to amend the numbering of these

paragraphs only. The requirements listed in these paragraphs and the order in which they are set out remain unchanged.

Previous paragraphs		**Substituted paragraphs**
1229(3)(aaa)	→	1229(3)(a)
1229(3)(aab)	→	1229(3)(b)
1229(3)(a)	→	1229(3)(c)
1229(3)(aa)	→	1229(3)(d)
1229(3)(ab)	→	1229(3)(e)
1229(3)(b)	→	1229(3)(f)
1229(3)(c)	→	1229(3)(g)
1229(3)(d)	→	1229(3)(h)
1229(3)(da)	→	1229(3)(i)

This item inserts paragraph 1229(3)(j), which provides that an applicant seeking to satisfy the primary criteria for the grant of a Subclass 485 (Temporary Graduate) visa must nominate only one stream to which the application relates. This means that an applicant seeking to satisfy the primary criteria is required to specify whether they are applying for the Graduate Work stream or the Post-Study Work stream.

The purpose of this amendment is to ensure that applicants are assessed against the criteria specific to the stream they have selected and not against the criteria for the alternate stream.

This item inserts paragraph 1229(3)(k), which provides that an applicant seeking to satisfy the primary criteria for the grant of a Subclass 485 visa in the Graduate Work stream must nominate a skilled occupation for the applicant that is specified by the Minister in an instrument in writing for paragraph 1229(3)(k). The term *skilled occupation* is defined in regulation 1.15I in Division 1.2 of Part 1 of the Principal Regulations.

Paragraph 1229(3)(k) largely replicates previous subparagraph 1229(4)(b)(ii), which provided that all applicants for a Subclass 485 visa must nominate a skilled occupation for the applicant that is specified by the Minister in an instrument in writing for this subparagraph. Paragraph 1229(3)(k) provides that only applicants for the Graduate Work stream must meet this requirement.

The purpose of this amendment is to reflect the changes to the Subclass 485 (Temporary Graduate) visa and make it clear that only the Graduate Work stream has a criterion relating to the applicant's skills. Applicants seeking to satisfy the Post-Study Work stream are not required to nominate a skilled occupation.

This item inserts paragraph 1229(3)(l), which provides that an applicant seeking to satisfy the primary criteria for the grant of a Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream must hold, or have held, a Student (Temporary) (Class TU) visa that was granted on the basis of an application made on or after 5 November 2011, and is or was the first Student (Temporary) (Class TU) visa that the applicant holds or had held.

An applicant seeking to satisfy the primary criteria for the grant of a Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream is required to hold or have held a Student (Temporary) (Class TU) visa that was granted on the basis of an application made on or after 5 November 2011. This date refers to the introduction into student visas of the Genuine Temporary Entrant (GTE) criterion. The GTE criterion requires that the Minister has no reason to believe that the applicant is not a genuine student.

The purpose of this item is to ensure that the new post-study work arrangements are only available to international students who have been assessed against the refined integrity tools introduced in support of the GTE criterion on 5 November 2011.

This item inserts paragraph 1229(3)(m) which provides that an applicant seeking to satisfy the primary criteria for the grant of a Subclass 485 (Temporary Graduate) visa to meet the requirements of subitem 1229(4). Subitem 1229(4) provides for visa and age requirements to be met by an applicant.

The purpose of this item is to require an applicant seeking to satisfy the primary criteria for the grant of a Subclass 485 (Temporary Graduate) visa to meet the requirement in subitem 1229(4).

This item inserts paragraph 1229(3)(n), which provides that an applicant seeking to satisfy the primary criteria for the grant of a Subclass 487 (Skilled – Regional Sponsored) visa must also meet the requirements of subitem 1229(4), 1229(5), 1229(6), 1229(7) or 1229(9).

Paragraph 1229(3)(n) substantially replicates previous paragraph 1229(3)(e), but adds, for the sake of clarity, that it only applies to applicants for the grant of a Subclass 487 (Skilled – Regional Sponsored) visa.

Subitem 1229(5), 1229(6), 1229(7) and 1229(9) provide for visa and age requirements for applications for a subclass 487 (Skilled – Regional Sponsored) visa.

Subitem 1229(3A) and subitem 1229(3B) largely replicate the previous subitem 1229(3A) and subitem 1229(3B) except that the new subitems apply to applicants seeking to satisfy the primary criteria for the grant of a Subclass 487 (Skilled Regional) visa. This is consistent with the requirement in new subitem 1229(3)(i). Previously, subitem 1229(3A) and subitem 12293(3B) provided for nomination and sponsorship requirements.

Subitem 1229(4)

Subitem 1229(4) provides for the following requirements to be met:

- the applicant must hold a visa of a type set out in paragraph 1229(4)(a) or the applicant must have been taken to have been notified by the Migration Review Tribunal ('the MRT') that the MRT has set aside and submitted the Minister's decision not to revoke the cancellation of the applications eligible student visa not more than 28 days before the day on which the application is made; and

- the applicant seeking to satisfy the primary criteria for the grant of the visa must be less than 50.

Subitem 1229(4) largely replicates previous subitem 1229(4) except for the previous requirement in subparagraph 1229(4)(b)(ii) that an applicant seeking to satisfy the primary criteria must nominate a skilled occupation for the applicant that is specified by the Minister in an instrument in writing for previous subparagraph 1229(4)(b)(ii). This requirement has been inserted in paragraph 1229(3)(k) instead because subitem 1229(4) applies to either stream in the Subclass 485 visa and the requirements in previous subparagraph 1229(4)(b)(ii) only applies to applications for the graduate work stream.

Subitems 1229(5), 1229(6), 1229(7) and 1229(9)

Subitems 1229(5), 1229(6), 1229(7) and 1229(9) replicate previous subitems 1229(5), 1229(6), 1229(7) and 1229(9), with the exception of the following minor amendments:

- A statement inserted at the beginning of each subitem to clarify that they only apply to applicants for a Subclass 487 (Skilled — Regional Sponsored) visa. This is consistent with the requirements in paragraph 1229(3)(n).

- A reference to the repealed Subclass 485 (Skilled — Graduate) visa in subparagraph 1229(5)(a)(ii) has been repealed and substituted with a reference to the Subclass 485 (Temporary Graduate) visa. This amendment is consequential to the change in the name of the Subclass 485 visa.

Subitem 1229(10)

Subitem 1229(10) lists the subclasses for the Skilled (Provisional) (Class VC) visa.

This subitem largely replicates previous subitem 1229(10). Previously, subitem 1229(10) listed Subclass 485 (Skilled — Graduate) and Subclass 487 (Skilled — Regional Sponsored) as the subclasses within the skilled (Provisional) (Class VC) visa.

Item 1229(10) omits the reference to Subclass 485 (Skilled — Graduate) and substitutes with a reference to Subclass 485 (Temporary Graduate).

The purpose of this amendment is to replicate previous subitem 1229(10) and to reflect the new name for Subclass 485 visa.

Items 6 and 7 - paragraph 202.222(2)(a) and paragraph 202.222(2)(c) of Schedule 2

These items omit the word ‘persecution’ and substitute it with ‘discrimination’ in paragraph 202.222(2)(a) and 202.222(2)(c) of Schedule 2 to the Regulations.

The purpose of these proposed amendments is to restore references to ‘discrimination’ in paragraph 202.222(2)(a) and 202.222(2)(c), which were inadvertently omitted and substituted with ‘persecution’ by the *Migration Amendment Regulation 2012 (No. 5)* from 28 September 2012. The consequence of that omission was that applicants required to satisfy subclause 202.222(2) were required to meet the ‘persecution’ threshold, which has a higher threshold than the original and intended ‘discrimination’ threshold. This amendment restores the original threshold and intention.

Items 8, 10 – 22 - paragraph 476.211(b), paragraph 487.212(3)(b), subparagraph 572.211(2)(d)(iia), sub-subparagraph 572.227(c)(iii)(BA), subparagraph 572.312(2)(d)(iia), subparagraph 573.211 (2)(d)(iia), sub-subparagraph 573.227(c)(iii)(BA), subparagraph 573.312(2)(d)(iia), subparagraph 574.211(2)(d)(iia), sub-subparagraph 574.227(c)(iii)(BA), subparagraph 574.312(2)(d)(iia), paragraph 855.213(4)(f), paragraph 885.211(3)(b), paragraph 886.211(3)(b) of Schedule 2

This amendment omits the references to the previous Subclass 485 (Skilled – Graduate) visa and substitutes with references to the Subclass 485 (Temporary Graduate) visa in the items, provisions and visa subclasses listed below:

Item	**Provision**	**Subclass**
8	476.211(b)	Subclass 476 (Skilled – Recognised Graduate) visa
10	487.212(3)(b)	Subclass 487 (Skilled - Regional Sponsored) visa
11	572.211(2)(d)(iia)	Subclass 572 (Vocational Education and Training Sector) visa
12	572.227(c)(iii)(BA)	Subclass 572 (Vocational Education and Training Sector) visa
13	572.312(2)(d)(iia)	Subclass 572 (Vocational Education and Training Sector) visa
14	573.211(2)(d)(iia)	Subclass 573 (Higher Education Sector) visa
15	573.227(c)(iii)(BA)	Subclass 573 (Higher Education Sector) visa
16	573.312(2)(d)(iia)	Subclass 573 (Higher Education Sector) visa
17	574.211(2)(d)(iia)	Subclass 574 (Postgraduate Research Sector) visa
18	574.227(c)(iii)(BA)	Subclass 574 (Postgraduate Research Sector) visa
19	574.312(2)(d)(iia)	Subclass 574 (Postgraduate Research Sector) visa
20	855.212(4)(f)	Subclass 855 (Labour Agreement) visa
21	885.211(3)(b)	Subclass 885 (Skilled – Independent) visa
22	886.211(3)(b)	Subclass 886 (Skilled – Sponsored) visa

The purpose of this amendment is to consequentially amend references to the Subclass 485 visa in the criteria for other visa subclasses to reflect the change to the name of the visa.

Item 9 – Part 485 of Schedule 2

This item repeals and substitutes Part 485 of Schedule 2.

This item restructures the previous Subclass 485 visa into the format adopted under the Department's VSD program and introduces two streams, a 'Graduate Work stream' formed from the previous provisions, which requires an assessment of the applicants skills and the new a 'Post-Study Work stream' which does not require an assessment of the applicants skills.

The visa subclass has been renamed the 'Subclass 485 (Temporary Graduate) visa.

Division 485.1 – Interpretation

Previously, clause 485.111, including notes, defined a number of terms relevant to the Subclass 485 visa. Clause 485.111 entirely replicates those definitions, including notes.

Division 485.2 – Primary criteria

Division 485.2 provides for the primary criteria for the grant of a Subclass 485 (Temporary Graduate) visa.

Previously, division 485.2 was divided into subdivision 485.21, which provided for the primary criteria to be satisfied at the time of application, and subdivision 485.22, which provided for the primary criteria to be satisfied at the time of decision.

Division 485.2 has been restructured to reflect the format adopted by the Department's VSD program. This format more clearly allows applicants to apply for distinct streams within visa subclasses. Division 485.2 has been divided into subdivision 485.21, which provides for the common criteria that each primary applicant must satisfy, subdivision 485.22, which provides for the primary criteria for the Graduate Work stream and subdivision 485.23, which provides for the primary criteria for the new Post-Study Work stream.

All of the criteria are required to be satisfied at the time of decision unless an individual criterion provides that it must have been satisfied at the time the application was made.

The purpose of this amendment is to introduce the Post-Study Work stream into the Subclass 485 visa and to amend the Subclass 485 visa consistent with the Department's VSD program, the purpose for which is to simplify and deregulate visa subclasses.

Previously, the note under Division 485.2 provided that the primary criteria must be satisfied by at least one applicant and that other applicants who are members of the family unit of the applicant who satisfies the primary criteria need satisfy only the secondary criteria.

The note under Division 485.2 provides:

- The primary criteria for the grant of a Subclass 485 visa include criteria set out in streams.

- If an applicant applies for a Subclass 485 visa in the Graduate Work stream, the criteria in subdivisions 485.21 and 485.22 are the primary criteria for the grant of the visa.

- If an applicant applies for a Subclass 485 visa in the Post-Study Work stream, the criteria in subdivisions 485.21 and 485.23 are the primary criteria.

- The primary criteria must be satisfied by at least one member of a family unit.

- The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

- All criteria must be satisfied at the time a decision is made on the application, unless otherwise stated.

The note replicates the previous note but adds guidance about how the new structure and the criteria in Division 485.2 operate. The purpose of the note is to provide guidance to the reader about how the criteria are to be interpreted.

Subdivision 485.21 – Common Criteria

Subdivision 485.21 introduces common primary criteria for both the 'Graduate Work stream' and the 'Post-Study Work stream'. It largely replicates previous subdivision 485.21 and previous subdivision 485.22, except for those criteria exclusive to the Graduate Work stream.

A note has been inserted into subdivision 485.21, which provides that the common criteria under 485.21 are for all applicants seeking to satisfy the primary criteria for the grant of a Subclass 485 visa.

The purpose of the note is to make it explicit that all applicants seeking to satisfy the primary criteria for the grant of the Subclass 485 visa must satisfy the common criteria.

Clause 485.211 largely replicates previous clause 485.212, except that the criterion in previous clause 485.212 must be satisfied at the time of application whereas the criterion in clause 485.211 must be satisfied at the time of decision. This is consistent with the Department's VSD program, which requires, where possible, criteria to be assessed at time of decision.

This amendment does not alter the criterion that the applicant has not previously held a Subclass 476 (Skilled Recognised Graduate) or a Subclass 485 that was granted on the basis that the applicant satisfied the primary criteria for the grant of the visa.

Clause 485.212 substantially replicates subclause 485.215. Previously, clause 485.215 provided that the applicant has competent English.

Clause 485.212 provides that, when the application was made, it was accompanied by evidence that the applicant had competent English. The term *competent English* is defined in regulation 1.15C in Division 1.2 of Part 1 of the Principal Regulations.

Previously, clause 485.215 was a criterion that the applicant had to satisfy at the time they apply for a subclass 485 visa. Clause 485.212 retains that by inserting the phrase 'When the application was made'.

A further difference is that clause 485.212 requires that the visa application must include evidence that the applicant has competent English whereas previous clause 485.215 only required that the applicant has competent English. The requirement to provide evidence reflects the practical reality that applicants should provide evidence to support their claim to satisfy a criterion. The amendment explicitly provides for that practical reality.

Clause 485.213 replicates previous clause 485.216, which provided that the application is accompanied by evidence that the applicant and each person included in the application who is at least 16 has applied for an Australian Federal Police check during the 12 months immediately before the day when the application is made.

Clause 485.213 provides that, when an application was made, it was accompanied by evidence that the applicant and each person included in the application who is at least 16 had applied for Australian Federal Police check during the 12 months immediately before the day when the application is made.

Clause 485.213 also retains the time of application element in previous clause 485.216 by inserting the phrase, 'When the application was made'.

Clause 485.214 replicates previous clause 485.217, which provided that an application is accompanied by evidence that both the applicant and each person included in the application has made arrangements to undergo a medical examination for the purposes of the application.

Clause 485.214 also retains the time of application element in previous clause 485.216 by inserting the phrase 'when the application was made'.

This item inserts new clause 485.215 which provides that:

- when the application was made, it was accompanied by evidence that the applicant had adequate arrangements in Australia for health insurance; and

- the applicant has had adequate arrangements in Australia for health insurance since the time the application was made.

This clause requires applicants to have adequate arrangements for health insurance in Australia at the time they apply for a visa and to maintain adequate arrangements until the time the visa application is decided.

The purpose of this amendment is to ensure that applicants for a Subclass 485 visa have adequate health insurance arrangements in Australia while their visa application is being decided. Non-citizens who hold such arrangements represent less of a cost to the Australian health system if they access services that are covered by their health insurance arrangements.

This amendment is complemented by the requirement in clause 485.611, which provides that condition 8501 is attached to the visa. Condition 8501 provides that the holder of the visa must maintain adequate arrangements for health insurance while the holder is in Australia.

Clause 485.216 provides for the public interest criteria that the applicant must satisfy.

Subclause 485.216(1) replicates previous paragraph 485.224(a), which provided that the applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4020 and 4021.

The public interest criteria are set out in Schedule 4 to the Principal Regulations and they relate to matters reflecting the general public interest. They include interests such as health, character, national security and Australia's foreign policy interests.

Subclause 485.216(2) replicates previous subclause 485.224(b), which provided that if the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019. Public interest criteria 4019 relates to the applicant signing a vales statement.

Subclause 485.216(3) replicates previous paragraph 485.226(d), which provided that each member of the family unit of the applicant who is also an applicant for a Subclass 485 visa satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, and 4020.

Subclause 485.216(4) replicates previous subclause 485.226(da), which provided that each member of the family unit of the applicant who is also an applicant for a Subclass 485 visa and had turned 18 at the time of application satisfies public interest criteria 4019.

Subclause 485.216(5) largely replicates previous subclause 485.227, which provided that, if a person (the additional applicant) is a member of the family unit of the applicant, is less than 18 and made a combined application with the applicant public interest criteria 4015 and public interest criteria 4016 are satisfied for the additional applicant.

Subclause 485.216(5) provides that each member of the family unit of the applicant who is an applicant for a Subclass 485 visa, has not turned 18 and made a combined application with the applicant satisfies public interest criteria 4015 and public interest criteria 4016.

This item inserts clause 485.217, which provides for the Special Return Criteria that the applicant must satisfy.

Special Return Criteria are set out in Schedule 5 to the Principal Regulations. These criteria apply to non-citizens who were previously in Australia but who were deported or removed from Australia. Depending on the circumstances of the applicant's departure from Australia, Special Return Criteria operate to prevent them being granted a further visa either permanently or for a period of time.

Subclause 485.217(1) replicates previous clause 485.225, which provided that the applicant must satisfy special return criteria 5001, 5002 and 5010.

Subclause 485.217(2) replicates previous subclause 485.226(2), which provided that each member of the family unit of the applicant, who is also an applicant for a Subclass 485 visa and has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.

The purpose of this amendment is that the applicant and each member of the family unit who has previously been Australia must satisfy certain special return criteria.

Clause 485.218 replicates previous clause 485.228. Clause 485.218 provides that the grant of the visa will not result in either:

- the number of Subclass 485 visas granted in a financial year exceeding the maximum number of Subclass 485 visas, as determined by the Minister in an instrument in writing for this paragraph, that may be granted in that financial year; or

- the number of visas of particular classes (including Subclass 485) granted in a financial year exceeding the maximum number of visas of those classes, as determined by the Minister in an instrument in writing for this paragraph, that may be granted in that financial year.

Subdivision 485.22 – Criteria for Graduate Work stream

Substituted subdivision 485.22 provides for the primary criteria for the Graduate Work stream.

The note under the substituted subdivision 485.22 provides that these criteria are only for applicants who are seeking to satisfy the primary criteria for a Subclass 485 visa in the Graduate work stream.

The purpose of this new subdivision is to provide for the primary criteria for the grant of a Subclass 485 visa in the Graduate Work stream.

Clause 485.221 replicates previous paragraph 485.213(a) and requires that the applicant satisfied the Australian Study Requirement in the period of six months immediately before the day the application was made. The term *Australian Study Requirement* is defined in regulation 1.15F in Division 1.2 of Part 1 of the Principal Regulations.

Clause 485.222 replicates previous subclause 485.213(b) and requires that each degree, diploma or trade qualification used to satisfy the Australian study requirement is closely related to the applicant's nominated skilled occupation.

The purpose of clauses 485.221 and 485.222 is replicate in the new Graduate Work stream the criteria in previous clause 485.213.

Clause 485.223 largely replicates the previous clause 485.214, which provided that the Minister is satisfied that the applicant has applied for an assessment of the applicant's skills for the nominated skilled occupation by a relevant assessing authority. The term *Relevant Assessing Authority* is defined in regulation 2.26B of Division 2.6 of Part 2 of the Principal Regulations.

Clause 485.223 provides that, when an application was made, it was accompanied by evidence that the applicant had applied for an assessment of the applicant's skills for the nominated skilled occupation by a relevant assessing authority.

Clause 485.223 retains the time of application element in previous clause 485.214 and also reflects the practical reality of providing evidence that the applicant has applied for an assessment of the applicant's skills for the nominated skilled occupation by a relevant assessing authority.

Clause 485.224 replicates the previous clause 485.221, but with a minor textual variation of no substance and provides that:

- The skills of the applicant for the applicant's nominated skilled occupation have been assessed by the relevant assessing authority as suitable for that occupation.

- If the applicant's skills were assessed on the basis of a qualification obtained in Australia while the applicant was the holder of a student visa, the qualification was obtained as a result of studying a registered course.

Subdivision 485.23 – Criteria for Post Study Work stream

Subdivision 485.23 provides for the primary criteria for the Post-Study Work stream.

The note under subdivision 485.23 provides that these criteria are only for applicants who are seeking to satisfy the primary criteria for a Subclass 485 visa in the Post-Study Work stream.

The purpose of this new subdivision is to introduce a new stream into the Subclass 485 visa that does not require the applicant to have particular skills.

Clause 485.231 provides that:

- The applicant holds a qualification of a kind or qualifications of a kind specified by the Minister in an instrument in writing;

- That the qualification was conferred or awarded by an educational institution specified by the Minister in an instrument in writing for subclause 485.231(2); and

- That the applicant's study for the qualification satisfied the Australian study requirement in the period of six months ending immediately before the day the application was made.

The purpose of this amendment is to ensure that only students who studied at eligible educational institutions and at a specified academic level, derived from the Australia Qualification Framework, are eligible for the grant of a Subclass 485 (Temporary Graduate) visa in the Post-Study Work stream. The intention is that the qualifications will be a Bachelor degree, Bachelor degree with Honours, Masters by Coursework, Masters (Extended), Masters by Research or Doctoral degree from an eligible Australian educational institution. .

Division 485.3 – Secondary Criteria

Division 485.3 provides for the secondary criteria that apply to applicants who are members of the family unit of a person who satisfies the primary criteria. Division 485.3 removes the distinction in the previous division 485.3 which distinguished between criteria that must be satisfied at the time of the application and those that must be satisfied at the time of decisions. All criteria in division 485.3 have to be satisfied at the time of decision.

Clause 485.311 replicates previous clause 485.311, but with a minor textual variation of no substance and provides that:

- The applicant:
    - is a member of the family unit of a person who holds a Subclass 485 visa granted on the basis of satisfying the primary criteria for the grant of the visa, and made a combined application with that person; or
    - is a member of the family unit of a person who holds a Skilled (Provisional) (Class VC) visa on the basis of satisfying the primary criteria for the grant of a Subclass 485 visa.

This item inserts clause 485.312 which provides that:

- When the application was made, it was accompanied by evidence that the applicant had adequate arrangements in Australia for health insurance.
- The applicant has had adequate arrangements in Australia for health insurance since the time the application was made.

The effect of this clause is to require applicants to have adequate arrangements for health insurance in Australia at the time they apply for a visa and to maintain adequate arrangements until the time the visa application is decided.

The purpose of this amendment is to ensure that applicants for a Subclass 485 visa have adequate health insurance arrangements in Australia while their visa application is being decided. Non-citizens who hold such arrangements represent less of a cost to the Australian health system if they access services that are covered by their health insurance arrangements.

This amendment is complemented by the requirement in clause 485.611, which provides that condition 8501 is attached to the visa. Condition 8501 provides that the holder of the visa must maintain adequate arrangements for health insurance while the holder is in Australia.

Clause 485.313 provides for the public interest criteria that the applicant must satisfy.

Subclause 485.313(1) replicates previous subclause 485.322(a), which provided that the applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4020 and 4021.

Subclause 485.313(2) replicates previous subclause 485.322(b), which provided that, if the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.

Subclause 485.313(3) replicates previous clause 485.324, which provided that, if the applicant has not turned 18, the applicant satisfies public interest criteria 4017 and public interest criteria 4018.

Subclause 485.314 replicates previous subclause 485.324, which provided that, if that applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

Division 485.4 – Circumstances applicable to grant

Division 485.4 specifies the circumstances applicable to the grant of the Subclass 485 (Temporary Graduate) visa.

Clause 485.411 replicates the previous clause 485.411 but with a minor textual variation of no substance and provides that:

- The applicant who satisfies the primary criteria for the grant of the visa must be in Australia when the visa is granted.
- Each applicant who made a combined application with the applicant who satisfies the primary criteria for the grant of the visa must be in Australia when the visa is granted.
- In any other case, the applicant may be in or outside Australia when the visa is granted.

Division 485.5 – When visa is in effect

Division 485.5 provides for when a Subclass 485 (Temporary Graduate) visa is in effect.

Clause 485.511 replicates the previous clause 485.511, which provided 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.

Division 485.6 – Conditions

Division 485.6 specifies the conditions that are, or which may be, imposed on the grant of a Subclass 485 (Temporary Graduate) visa.

Clause 485.611 provides that condition 8501 must be imposed. Condition 8501 provides that visa holder must maintain adequate arrangements for health insurance while the holder is in Australia.

Previously, clause 485.611 provided that condition 8501 may be imposed. The effect of the new provision is that the Minister (or his or her delegate) no longer has discretion about whether or not condition 8501 should be imposed.

The purpose of this amendment is to require all subclass 485 visa holders to maintain adequate health insurance arrangements for the duration of their stay in Australia. Non-citizens who hold such arrangements represent less of a cost to the Australian health system if they access services that are covered by their health insurance arrangements. This amendment complements clause 485.215 and clause 485.312.

Clause 485.612 replicates the previous clause 485.612, which provided that, if the applicant is outside Australia when the visa is granted, first entry must be made before a date specified by the Minister for the purpose and condition 8515 may be imposed. Condition 8515 provides that the holder of the visa must not marry or enter into a de facto relationship before entering Australia.

Schedule 3 – Amendments relating to cancellation of student visas

Item 1 – Paragraph 2.43(2)(aa)

This item omits "; and" in paragraph 2.43(2)(aa) of Division 2.9 of Part 2 of the Principal Regulations and inserts ".".

This amendment is a consequential amendment to the repeal of paragraph 2.43(b).

Item 2 – Paragraph 2.43(2)(b)

This item repeals paragraph 2.43(2)(b) of Division 2.9 of Part 2 of the Principal Regulations.

Student (Temporary) (Class TU) visas are subject to a number of visa conditions, including visa condition 8202, which relates to unsatisfactory course progress and attendance, and visa conditions 8104 and 8105, which relate to the number of hours of work the holder of the visa is permitted to undertake while they hold the visa.

Section 116 of the Act provides the power for the Minister to cancel a visa and sets out a number of grounds for cancelling a visa. Relevantly, paragraph 116(1)(b) provides that the Minister may cancel a visa if he or she is satisfied that its holder has not complied with a condition of the visa.

Subsection 116(3) of the Act provides that, if the Minister may cancel a visa under subsection 116(1), the Minister must do so if there exists prescribed circumstances in which a visa must be cancelled. This is referred to as 'mandatory cancellation'.

Subregulation 2.43(2) sets out the prescribed circumstances in which the Minister must cancel a visa for the purposes of subsection 116(3) of the Act. Paragraph 2.43(2)(b) provides that the Minister must cancel a Student (Temporary) (Class TU) visa if:

- the Minister is satisfied that the visa holder has not complied with conditions 8104 or 8105 (if the condition applies to the visa); or

- the Minister is satisfied that the visa holder has not complied with condition 8202 and the non-compliance was not due to exceptional circumstances beyond the visa holder's control.

The purpose of the amendment is to remove the requirement for the mandatory cancellation of a Student (Temporary) (Class TU) visa in these circumstances.

The effect of the amendment is that the Minister will no longer be required to cancel a Student (Temporary) (Class TU) visa if the holder does not comply with conditions 8104 or 8105 or does not comply with condition 8202 and the non-compliance was not due to exceptional circumstances beyond the visa holder's control.

Upon commencement of this amendment, if the Minister is satisfied that a student visa holder has not complied with these conditions, the Minister will consider the cancellation of the student visa on a discretionary basis under subsection 116(1) of the Act (or in certain circumstances section 128 of the Act). Section 128 of the Act provides for discretionary cancellation of a visa if there exists a ground to do so under section 116 where the visa holder is outside of Australia. This provides the Minister with the discretion to consider the circumstances of the student and to decide if cancellation is warranted based on the merits of the case put forward.

Schedule 4 – Amendments relating to Tribunals

Item 1 – Subregulations 4.10(4), (5) and (6)

This item repeals subregulations 4.10(4), 4.10(5) and 4.10(6) of Division 4.1 of Part 4 of the Principal Regulations.

Previous provisions

Regulation 4.10 provides for the time for lodgement of applications with the Migration Review Tribunal ('MRT').

Previously, subregulation 4.10(4) provided that an application for review of a decision reviewable by the MRT must set out certain things such as the name and address of the applicant for review, a brief statement of the capacity in which the applicant applies for review and details of the decision to which the application relates.

Previously, subregulation 4.10(5) provided that an application that is sent to the MRT by post is taken to be given to the MRT at the time it is received at a registry of the MRT.

Previously, subregulation 4.10(6) provided that an application that is sent to the MRT by fax or other electronic means is taken to be given to the MRT at the time the fax or transmission is received at a registry of the MRT.

Repealed provision – subregulation 4.10(4)

Subregulation 4.10(4) is repealed because all applications to the MRT must be made on an approved form in accordance with paragraph 347(1)(a) of the Migration Act ('the Act'). As the approved form already asks for the information in subregulation 4.10(4), that subregulation was redundant in practice and is repealed.

Repealed provisions – subregulation 4.10(5) and subregulation 4.10(6)

Subregulations 4.10(5) and 4.10(6) are repealed as the information related to when an application is taken to have been received by the MRT is provided for in regulation 4.11. As regulation 4.11 provides for when applications are taken to have been received, these subregulations are redundant and are repealed.

Item 2 – Regulation 4.11

This amendment repeals and substitutes regulation 4.11 of Division 4.1 of Part 4 of the Principal Regulations.

The amendments in regulation 4.11 align the MRT application procedure with the Refugee Review Tribunal ('RRT') application procedure under new regulation 4.31AA. The purpose of the alignment is to implement the Government's policy to align the MRT and the RRT's (collectively 'the Tribunals') procedures. This is driven by the Government's policy of increasing the efficiencies of the operations of the Tribunals through simplifying the application procedures and aligning the legislative provisions for the Tribunals.

Previous provisions

Previously, regulation 4.11 provided that an application for review by the MRT must be given to the MRT by the following means:

- at a registry of the MRT:
    - by posting it to that registry; or
    - by leaving it at that registry in a box designated for receiving applications; or
    - by leaving it with an officer of the MRT at that registry; or
    - by sending it to that registry by fax; or
    - by transmitting it to that registry by other electronic means specified in a direction given by the Principal Member under section 353A of the Act; or

- for an applicant who is in immigration detention, in addition to the means set out above, by giving it to an officer of Immigration at a detention centre, or at an office occupied by an officer of Immigration at an airport, at least 1 working day before the expiry of the period in which the application for review must be given to the MRT under regulation 4.10.

Subregulation 4.11(1)

Subregulation 4.11(1) provides that an application for review by the MRT must be given to the MRT by:

- leaving it with an officer of the MRT at a registry of the MRT, or with a person specified in a direction given by the Principal Member under section 353A of the Act; or
- sending the application by pre-paid post to a registry of the MRT; or
- having the application delivered by post, or by hand, to an address specified in a direction given by the Principal Member under section 353A of the Act; or
- faxing the application to a fax number specified in a direction given by the Principal Member under section 353A of the Act; or
- transmitting it to a registry of the MRT by other electronic means specified in a direction given by the Principal Member under section 353A of the Act.

Section 353A of the Act relevantly provides that the Principal Member may, in writing, give directions, not inconsistent with the Act or the Principal Regulations, as to the operation of the MRT and the conduct of reviews by the MRT.

This amendment substantially replicates four of the current methods of lodging an application for review with the MRT and allows the Principal Member to specify, in a direction under section 353A of the Act, alternative lodgement addresses, persons or fax numbers, to receive applications. This amendment also introduces a new method of lodgement by allowing an application to be delivered, by hand or by post, to a person, or address, specified in a direction given by the Principal Member under section 353A of the Act.

The purpose of providing additional means by which an application for review can be lodged with the MRT is to provide greater flexibility to the MRT in receiving applications and to provide review applicants with greater convenience in lodging their applications. As the MRT does not have registries in every capital city in Australia, by allowing an application to be lodged with a person or at an address specified in a direction given by the Principal Member under section 353A of the Act, it allows the MRT to accept applications at locations where the MRT does not have a registry.

This amendment also removes lodgement methods that are not used in practice, specifically the following lodgement methods:

- leaving it at the MRT registry in a box designated for the lodgement of such applications; and
- for applicants in detention, by giving it to an officer of Immigration at a detention centre or at an office occupied by an officer of Immigration at an airport.

Given the additional lodgement methods under the amendments, and the fact that MRT registries are located in a building without after-hours access, the lodgement method of leaving it at the MRT registry in a box designated for the lodgement of such applications is impractical. Accordingly, this method of lodgement is removed.

There are no current occurrences of application lodgements at airports and it is rare for applicants in detention to lodge an application for an MRT-reviewable decision to an Immigration officer at a detention centre. As such, these methods of lodgement are removed. Applicants in detention is still be able to lodge an application for review by other means under proposed regulation 4.11, including by faxing the application to the relevant fax number. In addition, the flexibility provided by the Principal Member's directions given under section 353A of the Act allows for officers at an airport or a detention centre to become persons specified for receiving applications for review, if such a need were identified.

Subregulation 4.11(2) to subregulation 4.11(5)

This amendment provides for when applications given to the MRT are taken to be received.

Subregulation 4.11(2) provides that an application given to the MRT by leaving it with an officer of the MRT at a registry of the MRT, or with a person specified in a direction given by the Principal Member under section 353A of the Act, or by sending the application by pre-paid post to a registry of the MRT, is taken to have been received by the MRT at the time the MRT receives it.

Subregulation 4.11(3) provides that an application given to the MRT by having the application delivered by post, or by hand, to an address specified in a direction given by the Principal Member under section 353A of the Act is taken to have been received by the MRT at the time it is received at the relevant address.

Subregulation 4.11(4) provides that an application given to the MRT by faxing the application to a fax number specified in a direction given by the Principal Member under section 353A of the Act is taken to have been received by the MRT at the time it is received at the relevant fax number.

Subregulation 4.11(5) provides that an application given to the MRT by transmitting it to a registry of the MRT by other electronic means specified in a direction given by the Principal Member under section 353A of the Act is taken to have been received by the MRT at the time the MRT receives it.

The purpose and effect of these subregulations is to provide for when applications to the MRT are taken to have been received.

<u>Items 3, 4, 5, 6 and 7 – Subregulation 4.17(2) to (5), subregulation 4.18(2) to (5), subregulation 4.18A(2) to (5), subregulation 4.18B(2) to (5) and regulation 4.21</u>

These items repeal and substitute the following provisions of Division 4.1 of Part 4 of the Principal Regulations:

- subregulation 4.17(2), subregulation 4.17(3) and subregulation 4.17(4);
- subregulation 4.18(2) and subregulation 4.18(3);
- subregulation 4.18A(2), subregulation 4.18A(3) and subregulation 4.18A(4);
- subregulation 4.18B(2), subregulation 4.18B(3) and subregulation 4.18B(4); and
- regulation 4.21.

Item 4 also inserts a new subregulation 4.18(4) of Division 4.1 of Part 4 of the Principal Regulations.

These items also repeal the following subregulations of Division 4.1 of Part 4 of the Principal Regulations:

- subregulation 4.17(5);
- subregulation 4.18(5) (not including the notes);
- subregulation 4.18A(5); and
- subregulation 4.18B(5) (not including the notes).

The MRT is given jurisdiction under the Act to review certain decisions, known as MRT-reviewable decisions, made under the Act. Part 5 of the Act provides for the review of decisions by the MRT. Section 359B and section 360A in Division 5 of Part 5 of the Act provide for certain elements of the conduct of merits review. Division 5 (entitled 'Conduct of review') is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the matters it deals with.

In conducting the review, the MRT can invite a person to give information that the MRT considers to be relevant. The MRT can also invite a review applicant to give comment on, or respond to information, that the MRT considers is the reason, or part of the reasons, for affirming the decision that is under review. In most cases, the MRT must also invite the applicant to appear before it to give evidence and present arguments relating to the issues arising in relation to the decision under review.

If a person is invited to give information, comments or a response by the MRT, then they can be invited to do so at an interview or otherwise than at an interview. The Principal Regulations prescribe the time periods by which a person must give the information, comments or a response, to the MRT and the time period by which the MRT can extend the prescribed period to give information, comments or a response.

Similarly, if a person is invited to appear before the MRT, then the period of notice given to the person must be at least the period prescribed under the regulations.

Previously, regulation 4.17, regulation 4.18A and regulation 4.18B of the Principal Regulations prescribed time periods for the following cohorts of MRT applicants:

- applicants who are detainees;
- applicants who are not detainees and who are seeking review of a decision to cancel, or a decision not to revoke the cancellation of, a visa; and
- applicants who are not detainees and who are seeking review of a decision other than a decision to cancel, or a decision not to revoke the cancellation of, a visa.

Previously, regulation 4.18 only had two cohorts – detainees and non-detainees.

The amendments in these items split the previous cohort of applicants who are detainees into two cohorts. The amendment creates a distinction between detainees seeking review of a decision under subsection 338(4) of the Act, and detainees seeking review of a decision not covered by subsection 338(4) of the Act.

Subsection 338(4) of the Act provides that an MRT-reviewable decision is:

- a decision to refuse to grant a bridging visa to a non-citizen who is in immigration detention because of that refusal; or
- a decision to cancel a bridging visa held by a non-citizen who is in immigration detention because of that cancellation

It is necessary to draw this distinction because, for applicants in detention who are seeking review of a decision under subsection 338(4) of the Act, the MRT is required by subsection 367(1) of the Act and regulation 4.27 to make its decision on review, and notify the applicant of the decision, within 7 working days of receiving the review application. This requirement does not apply to applicants in detention who are not seeking review of a decision under subsection 338(4) of the Act.

As such, to ensure that the MRT can make its decision on review, and notify the applicant of its decision, within 7 working days of receiving the review application, it is necessary to provide applicants in detention seeking review of a decision under subsection 338(4) of the Act with 2 working days to provide comments or additional information. Other applicants in detention who are not seeking review of a decision under subsection 338(4) of the Act are given 7 days.

In addition, the amendments in item 3, item 5 and item 6 remove the previous distinction between different types of applicants who are not detainees, so that there is just one cohort of applicants who are not detainees. The amendment to remove this distinction is consistent with the Government's policy to align the Tribunals' procedures, as there is no such distinction in the corresponding RRT provisions.

The amendments for item 3 to item 7 is to align the MRT time period provisions with the corresponding RRT time period provisions, in accordance with the Government's

policy to align the Tribunals' procedures. While the alignment results in reduced time periods for certain applicants, given the MRT's ability to extend the prescribed time periods to give information, comments or a response, it should not adversely impact applicants.

Item 3 – Subregulation 4.17(2) to (5)

This item repeals and substitutes subregulation 4.17(2), 4.17(3) and 4.17(4). This item also repeals current subregulation 4.17(5).

Previous provisions

Subsection 359B(2) of the Act provides that, if a person is invited to provide comments, information or a response to information otherwise than at an interview, then the comments, information or response must be given within a period specified in the invitation, being a prescribed period or, if no period is prescribed, a reasonable period.

Previously, regulation 4.17 provided for the periods prescribed under subsection 359B(2) of the Act for the following cohorts of applicants:

- subregulation 4.17(2) and subregulation 4.17(5) provided for the prescribed time period for detainees, which was either 2 working days, up to 7 working days or as otherwise extended, depending on whether or not the application for review was seeking review of a decision under subsection 338(4) of the Act and whether or not it was extended;

- subregulation 4.17(3) provided for the prescribed time period for applicants who were not detainees and who were seeking review of a decision to cancel, or a decision not to revoke the cancellation of, a visa. This time period was 5 working days; and

- subregulation 4.17(4) provided for the prescribed time period for applicants who were not detainees and were seeking review of any other application which did not fall under subregulation 4.17(2), subregulation 4.17(3) or subregulation 4.17(5). This time period was 28 days.

Subregulation 4.17(2) and subregulation 4.17(3)

Subregulation 4.17(2) provides that, if the invitation relates to an application for review of a decision that applies to a detainee seeking review of a decision under subsection 338(4) of the Act, the prescribed period for giving the information or comments commences when the detainee receives the invitation and ends at the end of two working days after the day the detainee receives the information. However, if the detainee agrees, in writing, to a shorter period of not less than one working day, then the prescribed period ends at the end of that shorter period of time.

Subregulation 4.17(3) provides that, if the invitation relates to an application for review of a decision that applies to a detainee who is not seeking review of a decision

under subsection 338(4) of the Act, the prescribed period for giving the information or comments commences when the detainee receives the invitation and ends at the end of seven days after the day the detainee receives the invitation. This is an increase from the 2 working days currently applicable to all detainees. However, if the detainee agrees, in writing, to a shorter period of not less than one working day, then the prescribed period ends at the end of that shorter period of time.

The effect of subregulation 4.17(2) and subregulation 4.17(3) is to distinguish between the prescribed time periods for giving comment or additional information other than at an interview given to applicants in detention seeking review of a decision under subsection 338(4) of the Act, and applicants in detention seeking review of a decision other than under subsection 338(4) of the Act.

Under this amendment, applicants in detention who are seeking review of a decision under subsection 338(4) of the Act are given a period of 2 working days to provide information or comments so that the MRT can meet the requirements of subsection 367(1) of the Act and regulation 4.27. However, this requirement does not apply in relation to applicants in detention who are not seeking review of a decision under subsection 338(4) of the Act, this amendment provides those applicants with 7 days to provide information or comments.

Subregulation 4.17(2) and subregulation 4.17(3) also allow for the prescribed periods under these provisions to be shortened to a period of not less than one working day where the person agrees in writing to a shorter period. Previously, although applicants could provide comments, information or a response at any time within the prescribed period, the MRT would, in practice, wait for the prescribed period to pass before making its decision. As a result, in instances where the applicant had already provided comments, information or a response, they were required to wait for the prescribed period to pass. This amendment allows applicants to agree to a shorter time period for response and provides the MRT with greater flexibility for the management of its caseloads and ensures that applicants are not required to wait unnecessarily for a decision if they do not wish to.

Subregulation 4.17(4)

Subregulation 4.17(4) provides that, if the invitation to comment or provide additional information relates to any other application for review of a decision, the prescribed period for giving the information or comments commences when the person receives the invitation and ends at the end of 14 days after the day they receive the invitation. However, if the person agrees, in writing, to a shorter period of not less than one working day, then the prescribed period ends at the end of that shorter period of time.

The effect of subregulation 4.17(4) is to remove the distinction between the prescribed period for giving comments or information for applicants seeking review of a decision to cancel, or a decision not to revoke the cancellation of, a visa and any other applicants that are not in detention. This means that all applicants who are not in detention are given 14 days to provide comments or additional information.

This amendment increases the prescribed time period for applicants who are not in detention seeking review of a decision to cancel, or a decision not to revoke the cancellation of, a visa from 5 working days to 14 days. This amendment also decreases the prescribed time period for applicants who are not in detention and who are seeking review of any other decisions from 28 days to 14 days.

The amendments in subregulation 4.17(4) allow for the prescribed periods under this provision to be shortened to a period of not less than one working day, where the person agrees in writing to a shorter period.

In addition, the amendments align the MRT time period provisions with the corresponding RRT time period provisions, in accordance with the Government's policy to align the Tribunals' procedures and to increase the operational efficiencies of the Tribunals.

Repealed subregulation 4.17(5)

This amendment repeals previous subregulation 4.17(5). Previous subregulation 4.17(5) provided that, however, if the prescribed period mentioned in subregulation (2) would end before the end of a period prescribed in regulation 4.27, or a period last extended under subsection 367(2) of the Act, the prescribed period:

- starts when the invitation is received; and
- ends at the end of the period prescribed in regulation 4.27 or extended under subsection 367(2).

Subsection 367(1) of the Act provides that, subject to subsection (2), if the application is for review of an MRT-reviewable decision covered by subsection 338(4), the Tribunal must make its decision on review, and notify the applicant of the decision, within the prescribed period.

Subsection 367(2) of the Act provides that the Tribunal may, with the agreement of the applicant, extend the period in subsection (1) for the purposes of a particular application.

Regulation 4.27 provides that, for subsection 367(1) of the Act, the prescribed period starts when the application for review is received by the Tribunal and ends at the end of 7 working days after the day on which the application is received.

Subregulation 4.17(5) had the effect of amending the period prescribed under previous subregulation 4.17(2). This was necessary given the lack of distinction in previous subregulation 4.17(2) between detainees seeking merits review under subsection 338(4) of the Act and detainees seeking merits review on other grounds. Given that a distinction is to be drawn between these two cohorts, it is no longer necessary to provide a means of reflecting in section 367 of the Act in those prescribed time periods the requirement. For that reason, subregulation 4.17(5) is redundant and is repealed.

Item 4 – subregulation 4.18(2) to (5)

This item repeals and substitutes subregulation 4.18(2) and subregulation 4.18(3), inserts a new subregulation 4.18(4) and repeals current subregulation 4.18(5) (not including the notes).

Previous provisions

Subsection 359B(3) of the Act provides that, if a person is invited to give information, comments, or a response to information at an interview, the interview is to take place:

- at the place specified in the invitation; and
- at a time specified in the invitation, being a time within a prescribed period or, if not period is prescribed, a reasonable period.

Previously, regulation 4.18 provided for the periods prescribed under subsection 359B(3) of the Act for the following cohorts of applicants:

- subregulation 4.18(2) and subregulation 4.18(5) provided for the prescribed time period for detainees, which was either 2 working days, up to 7 working days or as otherwise extended, depending on whether or not the application for review was seeking review of a decision under subsection 338(4) of the Act and whether or not it was extended; and
- subregulation 4.18(3) provided for the prescribed time period for all applicants who are not detainees, which was 5 working days. If the person agreed in writing, this time period could be reduced to not less than 1 working day.

Subregulation 4.18(2) and subregulation 4.18(3)

Subregulation 4.18(2) provides that, if the invitation relates to an application for review of a decision that applies to a detainee seeking review of a decision under subsection 338(4) of the Act, the prescribed period for giving the information or comments commences when the detainee receives the invitation and ends at the end of two working days after the day the detainee receives the invitation.

Subregulation 4.18(3) provides that, if an invitation relates to an application for review of a decision that applies to a detainee who is not seeking review of a decision under subsection 338(4) of the Act, the prescribed period for giving the information or comments commences when the detainee receives the invitation and ends at the end of 14 days after the day the detainee receives the invitation.

The effect of subregulation 4.18(2) and subregulation 4.18(3) is to distinguish between the prescribed time periods for giving comment or additional information at an interview given to applicants in detention seeking review of a decision under subsection 338(4) of the Act, and applicants in detention seeking review of a decision other than under subsection 338(4) of the Act.

Under this amendment, applicants in detention who are seeking review of a decision under subsection 338(4) of the Act are given a period of 2 working days to provide information or comments so that the MRT can meet the requirements of subsection 367(1) of the Act and regulation 4.27. However, as the MRT does not have this requirement in relation to applicants in detention who are not seeking review of a decision under subsection 338(4) of the Act, this amendment provides those applicants with 14 days to provide information or comments.

Subregulation 4.18(3) does not include the ability for applicants to agree, in writing, to a shorter prescribed period for giving information or comments. In instances where the applicant is invited to give information or comments at an interview, as subsection 359B(3) of the Act requires the interview to take place within the period prescribed under regulation 4.18, applicants are already able to provide comments or information at an interview at any time within the prescribed period. As such, there is no practical need for the Principal Regulations to allow applicants to be able to agree, in writing, to a shorter period to give information or comments.

Subregulation 4.18(4)

Subregulation 4.18(4) provides that, if an invitation relates to any other application for review of a decision, the prescribed period for giving the information or comments commences when the person receives the invitation and ends at the end of 28 days after the day the person receives the invitation.

Subregulation 4.18(4) substantially replicates previous subregulation 4.18(3) except that the time period within which an interview must be held is increased from 5 working days to 28 days. This aligns the MRT time period provisions with the corresponding RRT time period provisions, in accordance with the Government's policy to align the Tribunals' procedures.

Repealed subregulation 4.18(5)

This amendment repeals previous subregulation 4.18(5) (not including the notes). Previous subregulation 4.18(5) provided that, however, if the prescribed period mentioned in subregulation (2) would end before the end of a period prescribed in regulation 4.27, or a period last extended under subsection 367(2) of the Act, the prescribed period:

- starts when the invitation is received; and

- ends at the end of the period prescribed in regulation 4.27 or extended under subsection 367(2).

Previous subregulation 4.18(5) had the effect of amending the period prescribed under previous subregulation 4.18(2). This was necessary given the lack of distinction in previous subregulation 4.18(2) between detainees seeking merits review under subsection 338(4) of the Act and detainees seeking merits review on other grounds. Given that a distinction is drawn between these two cohorts, it is no longer necessary to provide a means of reflecting in section 367 of the Act in those prescribed time

periods the requirement. For that reason, subregulation 4.18(5) is redundant and is repealed.

Item 5 – subregulation 4.18A(2) to (5)

This item repeals and substitutes subregulation 4.18A(2), 4.18A(3) and 4.18A(4). This item also repeals subregulation 4.18A(5).

Previous provisions

Subsection 359B(4) of the Act provides that if a person is to respond to an invitation within a prescribed period, the MRT may extend that period for a prescribed further period, and then the response is to be made within the extended period.

The prescribed periods under regulation 4.17 within which an applicant for review, who has been invited to give comment or give additional information other than at an interview, can be extended by the MRT for a further period prescribed under regulation 4.18A of the Principal Regulations. Previously, regulation 4.18A provided the prescribed extended time period for the following cohorts of applicants:

- subregulation 4.18A(2) and subregulation 4.18A(5) provided for the prescribed time period for detainees, which was either 2 working days, up to 7 working days or as otherwise extended, depending on whether or not the application for review was seeking review of a decision under subsection 338(4) of the Act and whether or not it was extended;

- subregulation 4.18A(3) provided for the prescribed extended time period for applicants who were not detainees who were seeking review of a decision to cancel, or a decision not to revoke the cancellation of, a visa. This time period was 5 working days; and

- subregulation 4.18A(4) provided for the prescribed extended time period for applicants who were not detainees and were seeking review of any other application which did not fall under subregulation 4.18A(2), subregulation 4.18A(3) or subregulation 4.18A(5). This time period was 28 days.

Subregulation 4.18A(2) and subregulation 4.18A(3)

Subregulation 4.18A(2) provides that, if the invitation relates to an application for review of a decision that applies to a detainee seeking review of a decision under subsection 338(4) of the Act, the period by which the MRT may extend the prescribed period commences when the detainee receives notice of the extended period and ends at the end of two working days after the day they receive the notice. However, if the detainee agrees, in writing, to a shorter period of not less than one working day, then the prescribed period ends at the end of that shorter period of time.

Subregulation 4.18A(3) provides that, if the invitation relates to an application for review of a decision that applies to a detainee who is not seeking review of a decision under subsection 338(4) of the Act, the period by which the MRT may extend the

prescribed period commences when the detainee receives the notice of the extended period and ends at the end of 14 days after the day they receive the notice. However, if the detainee agrees, in writing, to a shorter period of not less than one working day, then the prescribed period ends at the end of that shorter period of time.

The effect of subregulation 4.18A(2) and subregulation 4.18A(3) is that they distinguish between the prescribed further time periods for giving comment or additional information other at an interview given to applicants in detention seeking review of a decision under subsection 338(4) of the Act, and applicants in detention seeking review of a decision not covered by subsection 338(4) of the Act. This amendment allows the MRT to extend the time period to provide comments or additional information for applicants in detention who are not seeking review of a decision under subsection 338(4) of the Act by 14 days rather than 2 working days. This amendment continues to allow the MRT to extend the time period to provide comments or additional information for applicants in detention seeking review of a decision under subsection 338(4) of the Act by 2 working days.

Subregulation 4.18A(4)

Subregulation 4.18A(4) provides that, if an invitation relates to any other application for review of a decision, the period by which the MRT may extend the prescribed period commences when the person receives the notice of the extended period and ends at the end of 14 days after the day they receive the notice. However, if the person agrees, in writing, to a shorter period of not less than one working day, then the prescribed period ends at the end of that shorter period of time.

The effect of subregulation 4.18A(4) is that it removes the distinction between the prescribed extended period for giving comments or information for applicants seeking review of a decision to cancel, or a decision not to revoke the cancellation of, a visa and any other applicants that are not in detention. This means that the MRT may extend the prescribed period for all applicants who are not in detention to provide comments or additional information by 14 days.

This amendment increases the prescribed extended period for applicants who are not in detention seeking review of a decision to cancel, or a decision not to revoke the cancellation of, a visa from 5 working days to 14 days. This amendment also decreases the prescribed extended period for applicants who are not in detention seeking review of any other decision from 28 days to 14 days.

The amendments in subregulation 4.18A(2), 4.18A(3) and 4.18A(4) also allow for the extended prescribed periods under regulation 4.18A to be shortened to a period of not less than one working day, where the person agrees in writing to a shorter period. The purpose of these amendments is to provide the MRT with greater flexibility for the management of its caseloads and to ensure that applicants are not required to wait unnecessarily for the prescribed time period to pass.

Repealed subregulation 4.18A(5)

This amendment repeals subregulation 4.18A(5). Subregulation 4.18A(5) provided that, however, if the prescribed period mentioned in subregulation (2) would end before the end of a period prescribed in regulation 4.27, or a period last extended under subsection 367(2) of the Act, the prescribed period:

- starts when the invitation is received; and

- ends at the end of the period prescribed in regulation 4.27 or extended under subsection 367(2).

Previous subregulation 4.18A(5) had the effect of amending the period prescribed under previous subregulation 4.18A(2). This was necessary given the lack of distinction in previous subregulation 4.18A(2) between detainees seeking merits review under subsection 338(4) of the Act and detainees seeking merits review on other grounds. Given that a distinction is drawn between these two cohorts, it is no longer necessary to provide a means of reflecting in section 367 of the Act in those prescribed time periods the requirement. For that reason, subregulation 4.18A(5) is redundant and is repealed.

Item 6 – subregulations 4.18B(2) to (5)

This item repeals and substitutes subregulations 4.18B(2), 4.18B(3) and 4.18B(4). This item also repeals subregulation 4.18B(5) (not including the notes).

Previous provisions

Subsection 359B(5)(b) of the Act relevantly provides that if a person is to respond to an invitation at an interview at a time within a prescribed period, the MRT may change that time to a time within that period as extended by the MRT for a prescribed further period. The response is to be made at an interview at the new time.

The prescribed periods under regulation 4.18 within which an applicant for review, who has been invited to give comment or give additional information other than at an interview, can be extended by the MRT for a further period prescribed under regulation 4.18B of the Principal Regulations. Previously, regulation 4.18B provided the prescribed extended time period for the following cohorts of applicants:

- subregulation 4.18B(2) and subregulation 4.18B(5) provided for the prescribed time period for detainees, which was either 2 working days, up to 7 working days or as otherwise extended, depending on whether or not the application for review was seeking review of a decision under subsection 338(4) of the Act and whether or not it was extended;

- subregulation 4.18B(3) provided for the prescribed extended time period for applicants who were not detainees and were seeking review of a decision to cancel, or a decision not to revoke the cancellation of, a visa. This time period was 5 working day; and

- subregulation 4.18B(4) provided for the prescribed extended time period for applicants who were not detainees and were seeking review of any other application which did not fall under subregulation 4.18B(2), subregulation 4.18B(3) or subregulation 4.18B(5). This time period was 14 days.

Subregulation 4.18B(2) and subregulation 4.18B(3)

Subregulation 4.18B(2) provides that, if such an invitation relates to an application for review of a decision that applies to a person in immigration detention who is seeking review under subsection 338(4) of the Act, which relates to a decision to refuse to grant to or to cancel a bridging visa of a person who is in detention because of the bridging visa refusal or cancellation, the period by which the MRT may extend the prescribed period commences when the detainee receives notice of the extended period and ends at the end of two working days after the day they receive the notice.

Substituted subregulation 4.18B(3) provides that, if the invitation relates to an application for review of a decision that applies to a detainee who is not seeking review of a decision under subsection 338(4) of the Act, the period by which the MRT may extend the prescribed period commences when the detainee receives notice of the extended period and ends at the end of 14 days after the day the detainee receives notice of the extended period.

The effect of subregulation 4.18B(2) and subregulation 4.18B(3) is to distinguish between the prescribed further time periods for giving comment or additional information at an interview given to applicants in detention seeking review of a decision under subsection 338(4) of the Act, and applicants in detention seeking review of a decision not covered by subsection 338(4) of the Act. This amendment allows the MRT to increase the time period to provide comments or additional information for applicants in detention who are not seeking review of a decision under subsection 338(4) of the Act by 14 days rather than 2 working days. This amendment continues to allow the MRT to extend the time period to provide comments or additional information for applicants in detention seeking review of a decision under subsection 338(4) of the Act by 2 working days.

Subregulation 4.18B(4)

Subregulation 4.18B(4) provides that, if the invitation relates to any other application for review of a decision, the period by which the MRT may extend the prescribed period commences when the person receives notice of the extended period and ends at the end of 14 days after the day the person receives notice of the extended period.

The effect of the substituted subregulation 4.18B(4) is that it removes the distinction between the prescribed further period for giving comments or information for applicants seeking review of a decision to cancel, or a decision not to revoke the cancellation of, a visa and any other applicants that are not in detention. This means that all applicants who are not in detention are given 14 days to provide comments or additional information.

Repealed subregulation 4.18B(5)

This amendment repeals subregulation 4.18B(5) (not including the notes). Subregulation 4.18B(5) provided that, however, if the prescribed period mentioned in subregulation (2) would end before the end of a period prescribed in regulation 4.27, or a period last extended under subsection 367(2) of the Act, the prescribed period:

- starts when the invitation is received; and
- ends at the end of the period prescribed in regulation 4.27 or extended under subsection 367(2).

Previous subregulation 4.18B(5) had the effect of amending the period prescribed under previous subregulation 4.18B(2). This was necessary given the lack of distinction in previous subregulation 4.18B(2) between detainees seeking merits review under subsection 338(4) of the Act and detainees seeking merits review on other grounds. Given that a distinction is drawn between these two cohorts, it is no longer necessary to provide a means of reflecting in section 367 of the Act in those prescribed time periods the requirement. For that reason, subregulation 4.18B(5) is redundant and is repealed.

Item 7 – Regulation 4.21

This item repeals and substitutes regulation 4.21.

Previous provisions

Subsection 360A(1) provides that if the applicant is invited to appear before the MRT, the MRT must give the applicant notice of the day on which, and the time and place at which, the applicant is scheduled to appear. Subsection 360A(4) of the Act relevantly provides that the period of notice given must be at least the prescribed period or, if no period is prescribed, a reasonable period.

Regulation 4.21 previously prescribed this period of notice for applicants who are detainees as 2 working days after the applicant receives the notice to appear and, for applicants who are not detainees, as either 7 days after the day on which notice is received or if the applicant agrees in writing, at the end of a shorter period that is not less than 1 working day.

Previously, note 1 in regulation 4.21 provided that if the MRT gives a person a document by a method specified in section 379A of the Act, the person is taken to have received the document at the time specified in section 379C of the Act in respect of the method.

Section 379A of the Act provides for the methods by which the MRT gives documents to a person other than the Secretary. Section 379C of the Act provides for when a person other than the Secretary is taken to have received a document from the MRT.

Previously, note 2 in regulation 4.21 provided that a document given to a person in immigration detention is given in the manner specified in regulation 5.02. Regulation 5.02 provides for the service of a document on a person in immigration detention.

Subregulation 4.21(1)

Subregulation 4.21(1) provides that, for subsection 360A(4) of the Act, regulation 4.21 sets out the prescribed period of notice of the day on which, and the time and place at which, an applicant is scheduled to appear before the MRT in response to an invitation.

Subregulation 4.21(1) is a new provision and makes it clear that regulation 4.21 sets out the time periods prescribed under subsection 360A(4) that must be provided if the applicant is invited to appear before the MRT.

Subregulation 4.21(2)

Subregulation 4.21(2) provides that, if the invitation relates to an application for review of a decision that applies to a detainee seeking review of a decision under subsection 338(4) of the Act, the period of notice:

- commences when the detainee receives notice of the invitation to appear before the Tribunal; and

- ends at the end of:

    - 2 working days after the day the detainee receives notice of the invitation to appear before the Tribunal; or
    - if the detainee agrees, in writing, to a shorter period of not less than one working day—the shorter period.

Subregulation 4.21(2) substantially mirrors previous paragraph 4.21(a), but differs in that it adds that it applies only to a detainee seeking review of a decision under subsection 338(4) of the Act and it also allows for the prescribed period to be reduced if the detainee agrees, in writing, to a shorter period not less than 1 working day.

Subregulation 4.21(3)

Subregulation 4.21(3) provides that, if the invitation relates to an application for review of a decision that applies to a detainee who is not seeking review of a decision under subsection 338(4) of the Act, the period of notice:

- commences when the detainee receives notice of the invitation to appear before the Tribunal; and

- ends at the end of:

    - 7 days after the day the detainee receives notice of the invitation to appear before the Tribunal; or

- if the detainee agrees, in writing, to a shorter period of not less than one working day—the shorter period.

Subregulation 4.21(3) substantially mirrors current paragraph 4.21(a), but differs in that it applies only to a detainee not seeking review of a decision under subsection 338(4) of the Act and extends the period of notice to appear before the MRT from 2 working days under previous paragraph 4.21(a) to 7 days. It also allows for the prescribed period to be reduced if the detainee agrees, in writing, to a shorter period not less than 1 working day.

Subregulation 4.21(4)

Subregulation 4.21(4) provides that, if the invitation relates to any other application for review of a decision, the period of notice:

- commences when the person receives notice of the invitation to appear before the Tribunal; and

- ends at the end of:

  - 14 days after the day the person receives notice of the invitation to appear before the Tribunal; or
  - if the person agrees, in writing, to a shorter period of not less than one working day—the shorter period.

The effect of substituted subregulation 4.21(4) is that it increases the time period for notice currently given to applicants who are not detainees to appear before the MRT from 7 working days to 14 days.

Note 1 and note 2

Note 1 and note 2 replicate the previous note 1 and note 2 and this substitution is a technical amendment made to transfer the previous note 1 and note 2 into subregulation 4.21.

<u>Item 8 and item 15 – Regulation 4.27A and Regulation 4.35E</u>

These items repeal regulation 4.27A of Division 4.1, and regulation 4.35E of Division 4.2, of Part 4 of the Principal Regulations.

Previously, regulation 4.27A and regulation 4.35E provided for the prescribed period within which the MRT and the RRT, respectively, must give the review applicant and the Secretary of the Department written notice of the day on which, and the time and place at which, the Tribunal's decision is to be handed down.

These regulations were made under subsection 368A(3) of the Act and subsection 430A(3) of the Act, respectively, as they provided prior to 27 October 2008. On 27 October 2008, section 368A and section 430A were amended to remove the provisions under which the MRT and the RRT handed down decisions and subsection

368A(3) and subsection 430A(3) were amended to no longer provide for prescribed periods for the handing down of decisions. As a result, regulation 4.27A and regulation 4.35E are redundant and are repealed.

Item 9 – Regulation 4.31

This item repeals and substitutes regulation 4.31 of Division 4.2 of Part 4 of the Principal Regulations. This item also inserts regulation 4.31AA into Division 4.2.

The RRT is given jurisdiction under the Act to review certain decisions, known as RRT-reviewable decisions, made under the Act, including some decisions made about protection visas.

Previous provisions

Paragraph 412(1)(b) of Division 2 of Part 7 of the Act relevantly provides that an application for review of an RRT-reviewable decision must be given to the RRT within the time period prescribed under the regulations, being a period ending not later than 28 days after the notification of the decision.

Regulation 4.31 sets out the time period prescribed under paragraph 412(1)(b) of the Act.

Previously, subregulation 4.31(1) provided that, for the purposes of paragraph 412(1)(b) of the Act, each period stated in subregulation (2) is prescribed as the period within which an application for review of an RRT-reviewable decision to which the period applies must be given to the RRT.

Previously, subregulation 4.31(2) provided that a period mentioned in subregulation (1) commences on the day on which the applicant is notified of the decision to which the application relates, and ends at the end of:

- in the case of an application given to the RRT by or for an applicant in immigration detention on that day — 7 working days (beginning with the first working day that occurs on or after that day); or

- in any other case — 28 days.

Previously, the note after subregulation 4.31(2) provided that, if the Minister gives a person a document by a method specified in section 494B of the Act, the person is taken to have received the document at the time specified in section 494C of the Act in respect of the method.

Section 494B of the Act provides for the methods by which the Minister gives documents to a person. Section 494C of the Act provides for when a person is taken to have received a document from the Minister.

Previously, subregulation 4.31(3) provided that an application for review by the RRT must be lodged at a registry of the RRT by the following means:

- by posting the application to that registry; or
- by leaving it at that registry in a box designated for the lodgement of such applications; or
- by leaving it with a person employed at that registry and authorised to receive such documents; or
- by means of electronic facsimile transmission to that registry.

Previously, subregulation 4.31(4) provided that an application posted to the registry or transmitted by means of electronic facsimile transmission to that registry is not to be taken to have been lodged until it is received at a registry of the RRT.

Regulation 4.31

Subregulation 4.31(1) provides that, for paragraph 412(1)(b) of the Act, the period in which an application for review of an RRT-reviewable decision must be given to the RRT by or for an applicant who is in immigration detention on that day:

- commences on the day the applicant is notified of the decision to which the application relates; and
- ends:
    - if that day is a working day—at the end of 7 working days commencing on that day; or
    - if that day is not a working day—at the end of 7 working days commencing on the next working day.

Subregulation 4.31(2) provides that, for paragraph 412(1)(b) of the Act, the period in which an application for review of an RRT-reviewable decision must be given to the RRT by or for an applicant who is not in immigration detention on that day:

- commences on the day the applicant is notified of the decision to which the application relates; and
- ends at the end of 28 days commencing on that day.

The note at the end of regulation 4.31 provides that, if the Minister gives a person a document by a method specified in section 494B of the Act, the person is taken to have received the document at the time specified in section 494C of the Act in respect of the method.

Regulation 4.31 substantially replicates the effect of previous subregulation 4.31(1) and previous subregulation 4.31(2) and continues to provide for the timeframes within which an application for review to the RRT must be given to the RRT.

This amendment repeals the previous subregulation 4.31(3) and the previous subregulation 4.31(4) as the information contained in those provisions is moved to regulation 4.31AA.

This amendment provides greater certainty about when an application that is given to the RRT is taken to have been received. These amendments also provide greater legislative clarity by having one single provision (regulation 4.31) dealing with the timeframes for when a person must give an application to the RRT and one single provision (regulation 4.31AA) dealing with the giving of an application to the RRT.

Regulation 4.31AA

Subregulation 4.31AA(1) substantially mirrors three of the lodgement methods in previous subregulation 4.31(3), removes one lodgement method that is redundant in practice and adds two new lodgement methods.

Previously, subregulation 4.31(3) provided that, subject to regulation 4.31, an application must be lodged at a registry of the Tribunal:

- by posting the application to that registry; or
- by leaving it at that registry in a box designated for the lodgment of such applications; or
- by leaving it with a person employed at that registry and authorised to receive such documents; or
- by means of electronic facsimile transmission to that registry.

Subregulation 4.31AA(1) provides that an application for review by the RRT must be given to the RRT by:

- leaving it with an officer of the RRT at a registry of the RRT, or with a person specified in a direction given by the Principal Member under section 420A of the Act; or
- sending it by pre-paid post to a registry of the RRT; or
- having it delivered by post, or by hand, to an address specified in a direction given by the Principal Member under section 420A of the Act; or
- faxing it to a fax number specified in a direction given by the Principal Member under section 420A of the Act; or
- transmitting it to a registry of the RRT by other electronic means specified in a direction given by the Principal Member under section 420A of the Act.

Section 420A of the Act relevantly provides that the Principal Member may, in writing, give directions, not inconsistent with the Act or regulations as to the operation of the RRT and the conduct of reviews by the RRT.

Subregulation 4.31AA(1) substantially replicates three of the previous methods of lodging an application for review with the MRT by allowing applications to be lodged by post, in person, and by fax. Under the amendments, the Principal Member is able to specify alternative lodgement addresses or persons to receive applications in a direction under section 420A of the Act. This amendment also introduces a new method of lodgement by allowing an application to be transmitted to a registry of the RRT by other electronic means specified in a direction given by the Principal Member under section 420A of the Act.

The purpose of providing additional means by which an application for review can be lodged with the RRT is to provide greater flexibility to the RRT in receiving applications and providing review applicants with greater convenience to lodge their applications. As the RRT does not have registries in every capital city in Australia, by allowing an application to be lodged with a person or at an address specified in a direction given by the Principal Member under section 420A of the Act, it will allow the RRT to accept applications at locations where the RRT does not have a registry.

New subregulation 4.31AA(1) also removes a lodgement method that is not used in practice. Specifically, this amendment removes the method of lodging an application by leaving it at the RRT registry in a box designated for the lodgement of such applications.

Given the additional lodgement methods under the amendments, and the fact that RRT registries are located in a building without after-hours access, the lodgement method of leaving it at the RRT registry in a box designated for the lodgement of such applications is impractical. Accordingly, this method of lodgement is removed.

Subregulation 4.31AA(2) provides that an application given to the RRT by leaving it with an officer of the RRT at a registry of the RRT, or with a person specified in a direction given by the Principal Member under section 420A of the Act, or by sending the application by pre-paid post to a registry of the RRT, is taken to have been received by the RRT at the time the RRT receives it.

Subregulation 4.31AA(3) provides that an application given to the RRT by having the application delivered by post, or by hand, to an address specified in a direction given by the Principal Member under section 420A of the Act is taken to have been received by the RRT at the time it is received at the relevant address.

Subregulation 4.31AA(4) provides that an application given to the RRT by faxing the application to a fax number specified in a direction given by the Principal Member under section 420A of the Act is taken to have been received by the RRT at the time it is received at the relevant fax number.

Subregulation 4.31AA(5) provides that an application given to the RRT by transmitting it to a registry of the RRT by other electronic means specified in a direction given by the Principal Member under section 420A of the Act is taken to have been received by the RRT at the time the RRT receives it.

The purpose of these amendments is to provide clarity about when applications given to the RRT are taken to have been received.

Regulation 4.31AA mirrors regulation 4.11, about giving applications to the MRT, in accordance with the Government's policy to align the Tribunals' procedures.

Item 10 – Regulation 4.32

This item repeals regulation 4.32 of Division 4.2 of Part 4 of the Principal Regulations.

Previously, regulation 4.32 provided for how a person in immigration detention may lodge an application for review of an RRT-reviewable decision with the RRT.

Previously, regulation 4.32 provided that:

- This regulation applies in the case of an application for review of an RRT-reviewable decision that is lodged by or for a person who is in immigration detention.

- The person lodging it must give notice in writing, in accordance with subregulation (3), to an officer of Immigration appointed by the Secretary to be a detention review officer in the relevant State or Territory.

- The notice must:

    - be given to the officer on the day on which the application is lodged; and
    - state:

        - the nature of the application and the name of the person in respect of whom it was lodged; and
        - the registry at which it was lodged; and
        - if the applicant is assisted by an agent (whether or not a registered agent within the meaning of Part 3 of the Act), the agent's name and address; and
        - the manner in which the application has been lodged (being a manner specified in subregulation 4.31(3)).

- Failure to comply with this regulation does not affect the validity of an application.

The purpose of the amendment is to remove a provision which is redundant in practice. The RRT is required by section 418 of the Act to notify the Department of all review application lodgements. As the RRT is already notifying the Department of review applications, regulation 4.32 is redundant because there is no practical need for an applicant in immigration detention to notify the Department that they have lodged an application for review. In addition, for people who are in immigration detention but who reside outside of an immigration detention facility, the requirement under

regulation 4.32 may provide a practical barrier to such persons if they wish to apply for review with the RRT.

It is also the purpose of the amendment to implement the Government's policy of aligning the Tribunals' procedures. This purpose will be achieved by the repeal of this provision as there is no equivalent provision for the MRT.

Items 11, 12, 13 and 14 – regulation 4.35, subregulations 4.35B(2) and (3), subregulation 4.35C(2) and regulation 4.35D

These items repeal and substitute the following provisions of Division 4.2 of Part 4 of the Principal Regulations:

- Subregulation 4.35;
- Subregulation 4.35B(2);
- Subregulation 4.35C(2) (not including the notes); and
- Subregulation 4.35D.

Item 12 also repeals subregulation 4.35B(3) of Division 4.2 of Part 4 of the Principal Regulations.

The RRT is given jurisdiction under the Act to review certain decisions, known as RRT-reviewable decisions, made under the Act. Part 7 of the Act provides for the review of decisions by the RRT. Section 424B and section 425A in Division 4 of Part 7 of the Act provide for certain elements of the conduct of merits review. Division 4 (entitled 'Conduct of review') is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the matters it deals with.

The amendments in these items align the RRT time period provisions for invitations to give information, comments or a response, and for notices to appear before the RRT, with the corresponding MRT time period provisions, in accordance with the Government's policy to align the Tribunals' procedures. While the alignment results in reduced time periods for certain applicants, given the RRT's ability to extend the prescribed time periods to give information, comments or a response, it should not adversely impact applicants.

Item 11 – Regulation 4.35

This item repeals and substitutes regulation 4.35.

Previous provisions

Subsection 424B(2) of the Act provides that, if a person is invited to give information, or to comment on or respond to information, other than at an interview, the information, or comments or the response are to be given within a period specified in

the invitation, being a prescribed period or, if no period is prescribed, a reasonable period.

Previously, subregulation 4.35(1) provided that regulation 4.35 applies, for subsection 424B(2) of the Act, if a person is invited to give additional information, or to comment on information, other than at an interview.

Previously, subregulation 4.35(2) provided that, if:

- the invitation relates to an application for review of a decision that applies to a detainee; and

- the information or comment to which the invitation relates is to be provided from a place in Australia;

the prescribed period for giving the information or comments starts when the person receives the invitation and ends at the end of 7 days after the day on which the invitation is received.

Previously, subregulation 4.35(3) provided that, if:

- the invitation relates to an application for review of a decision that does not apply to a detainee; and

- the information or comment to which the invitation relates is to be provided from a place in Australia;

the prescribed period for giving the information or comments starts when the person receives the invitation and ends at the end of 14 days after the day on which the invitation is received.

Previously, subregulation 4.35(4) provided that, if:

- the invitation relates to an application for review of a decision that applies to a detainee; and

- the information or comment to which the invitation relates is to be provided from a place that is not in Australia;

the prescribed period for giving the information or comments starts when the person receives the invitation and ends at the end of 28 days after the day on which the invitation is received.

Previously, subregulation 4.35(5) provided that, if:

- the invitation relates to an application for review of a decision that applies to a person who is not a detainee; and

- the information or comment to which the invitation relates is to be provided from a place that is not in Australia;

the prescribed period for giving the information or comments starts when the person receives the invitation and ends at the end of 28 days after the day on which the invitation is received.

Previously, subregulation 4.35(6) provided that a response to the invitation is taken to be given to the RRT when a registry of the RRT receives the response.

Previously, note 1 at the end of regulation 4.35 provided that, if the RRT gives a person a document by a method specified in section 441A of the Act, the person is taken to have received the document at the time specified in section 441C of the Act in respect of the method.

Section 441A of the Act provides for the methods by which the RRT gives documents to a person other than the Secretary. Section 441C of the Act provides for when a person other than the Secretary is taken to have received a document from the RRT.

Previously, note 2 at the end of regulation 4.35 provided that a document given to a person in immigration detention is given in the manner specified in regulation 5.02. Regulation 5.02 provides for the service of a document on a person in immigration detention.

Subregulation 4.35(1)

Subregulation 4.35(1) provides that regulation 4.35 applies, for subsection 424B(2) of the Act, if a person is invited to give additional information, or to comment on information, other than at an interview.

This amendment replicates the wording and effect of the current subregulation 4.35(1).

Subregulation 4.35(2) and subregulation 4.35(3)

Subregulation 4.35(2) provides that, if the invitation relates to an application for review of a decision that applies to a detainee, the prescribed period for giving the information or comments:

- commences when the detainee receives the invitation; and
- ends at the end of:
    - 7 days after the day the detainee receives the invitation; or
    - if the detainee agrees, in writing, to a shorter period of not less than one working day—the shorter period.

Subregulation 4.35(3) provides that if the invitation relates to any other application for review of a decision, the prescribed period for giving the information, comments or response:

- commences when the person receives the invitation; and
- ends at the end of:
    - 14 days after the day the person receives the invitation; or
    - if the person agrees, in writing, to a shorter period of not less than one working day—the shorter period.

This amendment removes the distinction between the time periods for providing comments or additional information given for information provided from a place in Australia and the time period given for information provided from a place outside Australia. The effect of this change is to prescribe the same period of time for giving information or comments regardless of whether the information is provided from a place in Australia or from a place outside Australia, but to maintain a distinction between people who are detainees and people who are not detainees. This amendment reduces the prescribed time period for detainees from 7 days or 28 days to 7 days and, for applicants who are not detainees, from 14 days or 28 days to 14 days.

The purpose of this amendment is to reflect that, given the convenience and accessibility of modern electronic communication, it is unnecessary to have different time periods for information provided from a place in Australia and information provided from a place outside Australia. As a result, the reduced time period should not adversely impact applicants. In addition, it is often difficult for the RRT to determine whether the information is provided from a place in Australia, or from a place outside Australia. As such, to reduce the risk of error in determining what the relevant time period is, and to increase the operational efficiency of the RRT, it is necessary to remove the distinction between the time period where the information is provided from a place in Australia and where the information is provided from a place outside Australia.

In addition, the RRT is required under section 414A of the Act to review an RRT-reviewable decision which was validly made under section 412 of the Act or which was remitted by any court to the RRT for reconsideration, within 90 days starting on the day on which the Secretary gave the Registrar the relevant documents required by the Act. By reducing the prescribed time periods for providing comments or additional information, this amendment allows the RRT to better meet the requirements under section 414A of the Act.

The amendments in subregulation 4.35(2) and subregulation 4.35(3) also allow for the prescribed time periods under subregulation 4.35(2) and subregulation 4.35(3) to be shortened to a period of not less than one working day, where the person agrees in writing to a shorter period. This amendment ensures that applicants are not required to wait unnecessarily after they have provided a response and it also provides the RRT with greater flexibility to manage its caseloads.

Subregulation 4.35(4)

Subregulation 4.35(4) provides that a response to the invitation is taken to be given to the RRT when a registry of the RRT receives the response.

This amendment replicates the wording of previous subregulation 4.35(6) and the purpose of the provision is to provide certainty about when a response to an invitation to provide information or comments is received by the RRT.

Note 1 and note 2, regulation 4.35

Note 1 and note 2 replicate the wording of the previous note 1 and previous note 2 in regulation 4.35. This is a technical amendment made to transfer the previous notes into subregulation 4.35.

Item 12 – Subregulations 4.35B(2) and (3)

This item repeals and substitutes subregulation 4.35B(2). This item also repeals subregulation 4.35B(3).

Previous provisions

Subsection 424B(4) of the Act provides that, if a person is to respond to an invitation within a prescribed period, the RRT may extend that period for a prescribed further period, and then the response is to be made within the extended period.

Previously, subregulation 4.35B(2) provided that, if the information or comment to which the invitation relates is to be provided from a place in Australia, the period by which the RRT may extend the prescribed period starts when the person receives notice of the extended period and ends at the end of 28 days after the day on which the notice is received.

Previously, subregulation 4.35B(3) provided that, if the information or comment to which the invitation relates is to be provided from a place that is not in Australia, the period by which the RRT may extend the prescribed period starts when the person receives notice of the extended period and ends at the end of 70 days after the day on which the notice is received.

Subregulation 4.35B(2)

Subregulation 4.35B(2) provides that the period by which the RRT may extend the prescribed period:

- commences when the person receives notice of the extended period; and
- ends at the end of:
    - 14 days after the day the person receives notice of the extended period; or

- if the person agrees, in writing, to a shorter period of not less than one working day—the shorter period.

This amendment removes the distinction between the time period for providing comments or additional information given for information provided from a place in Australia and the time period given for information provided from a place outside Australia. The effect of this change is to prescribe the same extended time period of time for giving information or comments regardless of whether the information is provided from a place in Australia or from a place outside Australia. This amendment reduces the prescribed time period for applicants from 28 days or 70 days to 14 days.

The purpose of this amendment is to reflect that, given the convenience and accessibility of modern electronic communication, it is unnecessary to have different time periods for information provided from a place in Australia and information provided from a place outside Australia. The proposed amendments should not adversely impact clients. In addition, it is often difficult for the RRT to determine whether the information is provided from a place in Australia, or from a place outside Australia. As such, to reduce the risk of error in determining what the relevant time period is, and to increase the operational efficiency of the RRT, it is necessary to remove the distinction between the time period where the information is provided from a place in Australia and where the information is provided from a place outside Australia.

In addition, the RRT is required under section 414A of the Act to review an RRT-reviewable decision which was validly made under section 412 of the Act or which was remitted by any court to the RRT for reconsideration, within 90 days starting on the day on which the Secretary gave the Registrar the relevant documents required by the Act. By reducing the prescribed time periods for providing comments or additional information, this amendment allows the RRT to better meet the requirements under section 414A of the Act.

The amendment in subregulation 4.35B(2) allows for the prescribed time period to be shortened to a period of not less than one working day, where the person agrees in writing to a shorter period. This amendment ensures that applicants are not required to wait unnecessarily after they have provided a response and it provides the RRT with greater flexibility to manage its caseloads.

Repealed subregulation 4.35B(3)

As the distinction between the time periods is removed, this amendment also repeals subregulation 4.35B(3) as it is redundant.

Item 13 – Subregulation 4.35C(2)

This item repeals and substitutes subregulation 4.35C(2). The notes in the subregulation are not be repealed.

Previous provisions

Paragraph 424B(5)(b) of the Act provides that, if a person is to respond to an invitation at an interview at a time within a prescribed period, the RRT may change that time to:

- a later time within that period; or
- a time within that period as extended by the RRT for a prescribed further period;

and then the response is to be made at an interview at the new time.

Previously, subregulation 4.35C(2) provided that the period by which the RRT may extend the prescribed period starts when the person receives notice of the extended period and ends at the end of 28 days after the day on which the notice is received.

Subregulation 4.35C(2), not including the notes

Subregulation 4.35C(2) provides that the period by which the RRT may extend the prescribed period:

- commences when the person receives notice of the extended period; and
- ends at the end of 14 days after the day the person receives notice of the extended period.

This amendment reduces the period by which the RRT may extend the prescribed period from 28 days to 14 days after the day on which the notice is received. The reduced time period is necessary because the RRT is required under section 414A of the Act to review an RRT-reviewable decision which was validly made under section 412 of the Act or which was remitted by any court to the RRT for reconsideration, within 90 days starting on the day on which the Secretary gave the Registrar the relevant documents required by the Act. By reducing the prescribed time periods for providing comments or additional information, this amendment allows the RRT to better meet its obligations under section 414A of the Act.

Item 14 – Regulation 4.35D

This item repeals and substitutes regulation 4.35D.

Previous provisions

Subsection 425A(1) of the Act provides that, if an applicant is invited to appear before the RRT, the RRT must give the applicant notice of the day on which, and the time and place at which, the applicant is scheduled to appear. Subsection 425A(3) relevantly provides that the period of notice given must be at least the prescribed period.

Previously, regulation 4.35D provided that, for subsection 425A(3) of the Act, the prescribed period:

- if the applicant is a detainee – starts when the applicant receives notice of the invitation to appear before the RRT and ends at the end of 7 days after the day on which the notice is received; or

- in any other case – starts when the applicant receives notice of the invitation to appear before the RRT and ends at the end of 14 days after the day on which the notice is received.

Previously, note 1 at the end of regulation 4.35D provided that, if the RRT gives a person a document by a method specified in section 441A of the Act, the person is taken to have received the document at the time specified in section 441C of the Act in respect of the method.

Previously, note 2 at the end of regulation 4.35D provided that a document given to a person in immigration detention is given in the manner specified in regulation 5.02.

Subregulation 4.35D(1)

Subregulation 4.35D(1) provides that, for subsection 425A(3) of the Act, regulation 4.35D sets out the prescribed period of notice of the day on which, and the time and place at which, an applicant is scheduled to appear before the RRT in response to an invitation.

Subregulation 4.35D(1) is a new provision and makes it clear that regulation 4.35D sets out the time period that must be provided if the applicant is invited to appear before the RRT.

Subregulation 4.35D(2) and subregulation 4.35D(3)

Subregulation 4.35D(2) provides that, if the invitation relates to an application for review of a decision that applies to a detainee, the period of notice:

- commences when the detainee receives notice of the invitation to appear before the Tribunal; and

- ends at the end of:

    - 7 days after the day the detainee receives notice of the invitation to appear before the Tribunal; or
    - if the detainee agrees, in writing, to a shorter period of not less than one working day—the shorter period.

Subregulation 4.35D(3) provides that, if the invitation relates to any other application for review of a decision, the period of notice:

- commences when the person receives notice of the invitation to appear before the Tribunal; and

- ends at the end of:

    - 14 days after the day the person receives notice of the invitation to appear before the Tribunal; or
    - if the person agrees, in writing, to a shorter period of not less than one working day—the shorter period.

The effect of subregulation 4.35D(2) and subregulation 4.35D(3) is that they retain the length of the prescribed time period under previous regulation 4.35D, but allow for these prescribed periods to be shortened to a period of not less than one working day if the person agrees in writing to a shorter period. This means that, both for applicants in detention and applicants who are not in detention, they can agree to a shorter time period of notice to appear before the RRT of not less than 1 working day.

The purpose of this amendment is to allow applicants to request a shorter period of notice to appear before the RRT and to also provide the RRT with greater flexibility for the management of its caseloads.

Note 1 and note 2

Note 1 and note 2 replicates the previous note 1 and note 2, in regulation 4.35D. This is a technical amendment made to transfer the previous note 1 and note 2 into subregulation 4.35D.

Schedule 5 – Amendment of the Migration Agents Regulations 1998

Item 1 – Subregulation 3(1) (definition of *approved activity*)

This item repeals and substitutes the definition of *approved activity* in subregulation 3(1) of Part 1 of the *Migration Agents Regulations 1998* ('Migration Agents Regulations').

The previous definition of *approved activity* provided that, in relation to the continuing professional development of registered migration agents, it meant an activity specified by the Migration Agents Registration Authority (Authority) under clause 3 of Schedule 1 to the Migration Agents Regulations.

The definition provides that an approved activity is an activity approved by the Minister under subregulation 9E(1).

The purpose of the amendment is to reflect that, under subregulation 9E(1), it is the Minister rather than the Authority who approves activities for the purposes of the Continuing Professional Development ('CPD') of registered migration agents.

Under section 290A of the Act, an applicant for re-registration as a migration agent must not be registered if the Authority is satisfied that the applicant has not met,

within the prescribed period, the requirements prescribed by the regulations for the continuing professional development of registered migration agents.

The purpose of continuing professional development for registered migration agents is to ensure that the level of professionalism and knowledge is improved and enhanced on an on-going basis. Migration legislation is complex and dynamic which is why all registered migration agents are required to complete CPD.

Item 2 – Subregulation 3(1)

This item inserts a definition of *approved provider* into subregulation 3(1).

The definition provides that an *approved provider* is a person approved by the Minister under subregulation 9H(1).

The purpose of this amendment is to reflect that, under subregulation 9H(1), the Minister may approve a person as an 'approved provider' that may provide approved activities for CPD purposes for registered migration agents.

Item 3 – Subregulation 3(1)

This item inserts a definition of *suitable mentoring arrangement* into subregulation 3(1).

The definition provides that a *suitable mentoring arrangement* means an arrangement between two registered migration agents under which one of the agents provides mentoring to the other agent about practice as a registered migration agent.

The purpose of this amendment is to encourage the formation of structured support relationships between more experienced migration agents and less experienced migration agents in their first five years of practice. Under regulation 9E, participation in a suitable mentoring arrangement is an activity that may be approved as an approved activity.

Item 4 – Subregulation 3(1)

This item inserts a definition of *voluntary organisation* into subregulation 3(1).

The definition provides that *voluntary organisation* means an organisation that provides immigration assistance without charging a fee. The note to the definition provides that examples of voluntary organisations are a non-profit immigration advice organisation, a migrant resource centre and an ethnic community organisation.

Under subregulation 9E(4), the provision of immigration assistance without charge for a voluntary organisation is an activity that may be approved as an approved activity in relation to the CPD of registered migration agents.

The purpose of this amendment is to ensure that the definition will not encapsulate groups beyond charities. For example, non-charitable organisations that have a small

section dedicated to providing 'not-for-profit' assistance or an agent who occasionally provides voluntary assistance are not intended to be included in the definition of 'voluntary organisation'.

Item 5 – Regulation 6A

This item repeals Regulation 6A of Part 3 of the Migration Agents Regulations.

Previously, regulation 6A provided for the assessment of activities by the Authority and for the charging of fees to do so.

Regulation 9E provides the Minister with the power to approve activities for CPD purposes and regulation 9F provides for the charging of fees and regulation 9G provides for the factors that Minister may take into account in deciding whether or not to approve an activity. Because of these regulations, regulation 6A is redundant and is repealed.

Item 6 – After Part 3

This item inserts Part 3A and Part 3B into the Migration Agents Regulations.

Part 3A includes regulations 9E, 9F and 9G, and provides for the Minister to approve or revoke an activity as an approved activity for CPD, charge a fee for performing the assessment of an activity and take into account certain factors when deciding whether or not to approve an activity.

Part 3B includes regulations 9H, 9J, 9K and 9L which provides for the Minister to approve or revoke a person as an approved provider, charge a fee for performing the assessment of a person and take into account certain factors when deciding whether or not to approve the person as an approved provider.

The purpose of this amendment is to relocate process-related provisions from Schedule 1 to the body of the Migration Agents Regulations so that the provisions in Schedule 1 focus more clearly on the requirements for approving activities and providers rather than the mechanism for doing so. This amendment collects the approval processes for activities into Part 3A and the approval processes for providers in Part 3B.

Part 3A

This item inserts Part 3A to provide for the activity approval process.

Regulation 9E 'General'

This item inserts subregulation 9E(1),which provides the Minister with the power to approve or revoke an activity as an approved activity.

Previously, clause 3(1) of Schedule 1 to the Migration Agents Regulations provided that the Authority may specify approved activities by notice published on its website.

This amendment is omitted with the relocation of process-related provisions from Schedule 1 to the body of the Migration Agents Regulations so that the provisions in Schedule 1 focus more clearly on the requirements for approving activities and providers rather than the mechanism for doing so. The amendment makes explicit the Minister's ability to revoke an approval of an activity.

The purpose of this amendment is to provide the Minister rather than the Authority with the power to approve or to revoke an approval of an activity as an approved activity for the purposes of CPD of registered migration agents.

This item inserts subregulation 9E(2), which provides the Minister with the power to consider approving an activity at the request of the provider or on the Minister's initiative.

The purpose of this amendment is to provide that the Minister may consider approving an activity at the request of an approved provider or on the initiative of the Minister.

This item inserts subregulation 9E(3), which provides that an activity must relate specifically to one or more of the following:

- the *Migration Act 1958*;
- the *Migration Regulations 1994*; or
- other legislation relating to migration procedure; or
- portfolio policies and procedures; or
- the application of the above four dot points to a registered migration agent's practice; or
- a topic of a legal or business nature that is relevant to a registered migration agent's practice as a registered migration agent.

This amendment replicates provisions in repealed clause 7 and clause 9 of Schedule 1.

The purpose of this amendment is to relocate process-related processes from Schedule 1 to focus more clearly on the requirements for approving activities. The purpose is also to reflect the proposed removal of the concepts of 'core activity' and 'elective activity' and to provide more generally that approved activities must relate to any of the matters mentioned in subregulation 9E(3). The policy intention for removing the concepts of 'core activity' and 'elective activity' is to support the broadening the types of activities available to agents to take advantage of new education delivery methods as well as to implement a framework to support new agents entering the industry.

This item inserts subregulation 9E(4) which provides for a range of activities that may be approved under subregulation 9E(1) as approved activities. The range of activities broadly includes programs of education, distance learning, attendance at a seminar, authorship and publication of work, providing immigration assistance without charge,

participating in a suitable mentoring arrangement and any other activity specified by the Minister in an instrument in writing for the purpose of meeting CPD requirements.

This item inserts a note after paragraph 9E(4)(b), and provides that examples for distance learning includes participation in a web-based seminar, watching live streaming or a recorded event and participating in video conferencing.

The purpose of this amendment is to broaden the types of activities available to include both activities provided for in clause 6 in Schedule 1 as well as new education delivery methods. This will implement a framework to support new migration agents entering the industry. The list of approved activities listed under subregulation 9E(4) is indicative only and is not meant to be exhaustive.

This item also inserts subregulation 9E(5), which provides that, if a registered migration agent commenced an approved activity before the approval of the activity is revoked, the revocation is taken not to apply in relation to the registered migration agent.

The purpose of this proposed subregulation is to ensure that registered migration agents in the process of completing an approved activity are not disadvantaged, should the approval of an activity be revoked.

Regulation 9F 'Assessment before decision'

This item inserts subregulation 9F(1) , which provides that, if the Minister:

- considers approving an activity at the request at the request of the provider of the Activity; and

- assesses the activity;

the Minister may charge the provider a fee, specified by the Minister in an instrument in writing for this subregulation, for performing the assessment

This item inserts subregulation 9F(2) which provides that, if the Minister:

- considers approving the activity otherwise than at the request of the provider of the Activity; and

- assesses the activity; and

- specifies the activity as an approved activity;

the Minister may charge the provider a fee, specified by the Minister in an instrument in writing for this subregulation, for performing the assessment.

Regulation 9F substantially replicated previous regulation 6A, including the ability to charge a fee for assessing an activity. A difference is that the fee in previous subregulation 6A(4) is $99 but the amount of the fees under regulation 9F is set by the Minister in writing. Fees charged under regulation 9F are fees for service and so reflects the cost of considering, assessing and (where relevant) specifying activities.

The purpose of this amendment is to provide that the Minister may charge a fee for performing the assessment of an activity.

Regulation 9G 'Decision'

This item inserts subregulation 9G(1), which provides that, in deciding whether or not to approve an activity, the Minister may take the following into account any or all of the following factors:

- whether he or she is satisfied that:
    - the activity will help improve the professionalism of each participant in the approved activity as a registered migration agent, including the participant's knowledge of migration procedures, professional ethics and relevant skills; and
    - the provider of the activity has a way of ensuring that the activity will achieve the outcome to improve the professionalism of each participant in the approved activity; and
    - the delivery of the activity is focussed on the achievement of the outcome of improving the professionalism of each participant in the approved activity;

- whether the activity will meet the requirements for registration to practise in another profession, including:
    - mandatory continuing legal education for legal practitioners; or
    - continuing professional education for accountants;

- whether the provider of the activity has agreed, in writing, to comply with standards for the provision of professional development activities approved by the Minister by instrument in writing for paragraph 9G(1)(c);

- whether the provider of the activity has complied with the requirement to give information in relation to other activities; and

- the character and reputation, or a doubt about the character and reputation, of a person connected with the activity.

Subregulation 9G(1) substantially replicates the factors in previous subclause 3A(1) and clause 5 in Schedule 1 that may be taken into account when the Authority decides whether or not to specify an activity. The additional factor that is included in subregulation 9G(1) is whether or not the provider of the activity has agreed, in writing, to comply with the *CPD Approved Provider Standard Conditions*.

This item inserts a note after proposed paragraph 9G(1)(c) and provides that, when subclause 9G(1)(c) commenced, the standards for the provision of professional development were set out in the document known as *CPD Approved Provider Standard Conditions* published by the Authority. The purpose of setting standard of professional development activities is to set out the minimum standards for the

provision of nationally consistent, high quality CPD activities for registered migration agents.

The purpose of this amendment is to provide for the factors that the Minister may take into account when deciding whether or not to approve an activity.

This item inserts subregulation 9G(2), which provides that, without limiting subregulation 9G(1), the following persons are taken to be connected with an activity:

- a person who conducts, produces, writes or presents material for it;
- a person concerned in the management of a company or a body of persons that conducts, produces, writes or presents material for it;
- a person who has been appointed as a consultant to advise a person mentioned in the above two dot points about the activity.

Subregulation 9G(2) replicated previous subclause 3A(2) in Schedule 1. One of the factors under subregulation 9G(1) that the Minister may take into account when deciding whether or not to approve an activity is the character and reputation, or a doubt about the character and reputation, of a person connected with the activity.

The purpose of this amendment is to provide for who is a person taken to be connected with an activity.

This item inserts subregulation 9G(3), which provides that, if the Minister approves an activity under paragraph 9E(1)(a):

- the Authority must include the activity in a publicly available list of approved activities maintained on the Authority's website; and
- the list must include:
    - the name of the activity; and
    - the number of points for the activity; and
    - the provider (if any) of the activity; and
- the list may set requirements for completion of the activity.

This item inserts note 1 after the proposed subregulation 9G(3) which provides that paper copies of the list will be made available from the Authority on request.

This item inserts note 2 after the proposed subregulation 9G(3) which provides that the examples of the requirements for completion of the activity are:

- a minimum mark for an examination; and

- a requirement that the quality of a presentation be certified by qualified persons; and

- journals in which a publication must appears; and

- a requirement that the quality of a presentation be assessed in a particular way; and

- a requirement dealing with work for an activity undertaken jointly with another person.

The purpose of this amendment is to retain transparency about which activities have been approved by the Minister. The publication of the publicly available list under subregulation 9G(3) is not the mechanism that makes an activity an approved activity as it was previously the case under subclause 3(1) where the Authority specifies approved activities by notice published on the website. The Minister will approve activities under subregulation 9E(1). It is intended that the Department of Immigration and Citizenship, on its own initiative, will regularly update the Minister and the general public once or twice a year in report format.

This item inserts subregulation 9G(4), which provides that, if the Minister considers approving an activity as an approved activity at the request of the provider of the activity or the Authority and decides not to approve the activity, the Minister must notify both the provider and the Authority of the decision not to approve the activity as soon as practicable.

The purpose of this amendment is to ensure that the Authority and the approved provider are notified as soon as practicable of a decision by the Minister to not approve the activity.

Part 3B

This item inserts Part 3B to provide for the provider approval process.

Part 3B includes regulations 9H, 9J, 9K and 9L, and will provide for the Minister to approve or revoke an approval of a person as an approved provider of an approved activity, to charge a person a fee for assessing the person, to take into account certain factors when deciding whether or not to approve a provider and to impose conditions on a person's approval as an approved provider.

Regulation 9H 'General'

This item inserts subregulation 9H(1), which provides that the Minister may approve a person as an approved provider and may revoke the approval of a person if the person fails to comply with the conditions to which the person's approval is subject.

This item also inserts a note after proposed subregulation 9H(1) which provides that a 'person' includes an individual and other persons such as a business entity.

The purpose of this amendment is to provide the Minister with the power to approve a person as an approved provider and to revoke that approval if the person fails to comply with a condition to which the approval is subject. Regulation 9L provides for conditions to be attached to a person's approval as a provider.

This item inserts subregulation 9H(2) which provides that the Minister may consider approving a person as an approved provider only on application by the person.

The purpose of this amendment is to provide that the Minister may consider approving a person as an approved provider and that the Minister may only do so when a person applies for approval.

Regulation 9J 'Assessment before decision'

This item inserts regulation 9J which provides that, if the Minister considers approving a person as an approved provider and assesses the person, the Minister may charge the person a fee, specified by the Minister in an instrument in writing for this regulation, for performing the assessment.

This is a fee imposed to cover the cost of the Minister considering and assessing whether or not a person should be an approved provider. The fee is set by the Minister in an instrument in writing and is a fee for service and so reflects the cost of considering and assessing applications for approval as an approved provider.

The purpose of this amendment is to permit the Minister to charge a fee for assessing the person for approval as an approved provider.

Regulation 9K 'Decision'

This item inserts subregulation 9K(1), which provides that the Minister may take into account any or all of the following factors when deciding whether or not to approve a person as an approved provider:

- whether he or she is satisfied that:
    - the person has a way of ensuring that the approved activity will help improve the professionalism of each participant in the approved activity as a registered migration agent, including the participant's knowledge of migration procedures, professional ethics and relevant skills; and
    - the person's delivery of the approved activity will be focussed on the achievement of the outcome of improving the professionalism of each participant as a registered migration agent;
- whether the person is qualified by practical experience or academic qualifications in the subject matter of the approved activity;
- whether the person has agreed, in writing, to comply with standards for the provision of professional development activities approved by the Minister by instrument in writing for this paragraph;

- if the person has previously been whether the person complied with the requirement to give information in relation to other activities;

- the character and reputation, or a doubt about the character and reputation, of:
    - the person; and
    - a person connected with the person in the conduct of an approved activity.

This item inserts a note in proposed subregulation 9K(1) which provides that, when paragraph 9K(1)(c) commenced, the standards for the provision of professional development were set out in the document known as *CPD Approved Provider Standard Conditions* published by the Authority. The purpose of setting standard of professional development activities is to set out the minimum standards for the provision of nationally consistent, high quality CPD activities for registered migration agents.

The purpose of this amendment is to list the factors that the Minister may take into account when deciding whether or not to approve a person as an approved provider.

This item inserts subregulation 9K(2), which provides that the following persons are taken to be connected with a person in the conduct of an approved activity:

- a person who conducts, produces, writes or presents material for it;

- a person concerned in the management of a company or a body of persons that conducts, produces, writes or presents material for it;

- a person who has been appointed as a consultant to advise a person mentioned in the above two dot points about the activity.

Subregulation 9K(2) provides for who is a person taken to be connected with an activity. One of the factors under subregulation 9K(1) that the Minister may take into account when deciding whether or not to approve a person as an approved provider is the character and reputation, or a doubt about the character and reputation, of a person connected with the activity.

The purpose of this amendment is to provide for who is a person taken to be connected with an activity.

This item inserts subregulation 9K(3), which provides that, if the Minister approves a person as an approved provider, the Authority must include the person's name in a publically available list of approved providers maintained on the Authority's website.

The purpose of this amendment is to retain transparency about who has been approved as an approved provider. The publication of the publicly available list of approved activities under subregulation 9E(3) and the requirement to include the person's name in a publically available list under subregulation 9K(3) will not be the mechanism that approves a person as an approved provider. The Minister may approve a person as an

approved provider under paragraph 9H(1)(a). It is intended that the Department of Immigration and Citizenship, on its own initiative, will regularly update the Minister and the general public once or twice a year in a report format.

This item inserts subregulation 9K(4), which provides that, if the Minister decides not to approve a person as an approved provider, the Minister must notify the person and the Authority of the decision as soon as practicable.

The purpose of this amendment is to ensure that the Authority and the approved provider are notified as soon as practicable of a decision by the Minister to not to approve the person.

Proposed regulation 9L 'Conditions of approval'

This item inserts regulation 9L which provides that the approval of a person as an approved provider is subject to the person's compliance with:

- the standards for the provision of professional development activities approved by the Minister by instrument in writing for paragraph 9G(1)(c); and

- any other conditions specified by the Minister in the approval.

This item inserts a note after subregulation 9L which provides that, at the time these amendments commence, the standards for the provision of professional development were set out in the document known as *CPD Approved Provider Standard Conditions* published by the Authority. The purpose of setting standard of professional development activities is to set out the minimum standards for the provision of nationally consistent, high quality CPD activities for registered migration agents.

The purpose of this amendment is to ensure that an approved provider adheres to professional standards approved by the Minister in an instrument in writing for paragraph 9G(1)(c) and any other conditions specified by the Minister in the approval. Examples of other conditions that may be included in a person's approval regulation 9L as an approved provider could include conducting the activity within a specified period and reporting the attendance within a specified period.

Item 7 – Clause 1 of Schedule 1

This item repeals and substitute clause 1 of Schedule 1 to the Migration Agents Regulations.

Previously, clause 1 provided that a registered migration agent must, in the 12 months immediately before the date on which the agent applies for repeat registration, complete approved activities that have a value of at least 10 points.

Subclause 1(1) provides that a registered migration agent must, in the 12 months immediately before the day the agent applies for repeat registration, complete approved activities that have a value of at least 10 points.

Subclause 1(2) provides that, however, if:

- a registered migration agent applies for repeat registration on a day (the *application day*); and

- the agent did not complete approved activities that have a value of at least 10 points in the 12 months immediately before the application day; and

- no later than 3 months after the application day, but before the Authority makes a decision on the application, the agent completes approved activities of a value sufficient to produce at least 10 points when added to the agent's points for the 12 months immediately before the application day; and

- the Authority is satisfied that the agent did not complete the approved activities before the application day because of exceptional circumstances beyond the agent's control;

the agent is taken to have met the requirements of clause 1.

Under subclause 1(1), a registered migration agent will be required to complete approved activities that have a value of at least 10 point in the 12 months immediately before the day the agent applies for repeat registration. Subclause 1(2) provides that a registered migration agent may still meet the CPD requirement if they had completed approved activities to a total value of 10 points up to 3 months after applying for repeat registration. Previously, a registered migration agent only has 12 months prior to application to complete CPD. This allows them extra time to complete their CPD.

The purpose of this amendment is to provide for the time within which approved activities must be completed and for the value of points of completed approved activities that an applicant for repeat registration must complete. Completion of these activities within the time prescribed is necessary for an applicant to comply with the CPD requirement in section 290A of the Act and regulation 6 of the Migration Agent Regulations.

Item 8 – Clause 2 and 3 of Schedule 1

This item repeals clause 2 and clause 3.

Previously, clause 2 provided that at least 6 of the 10 points must relate to completion of core activities.

Previously, clause 3 provided that the Authority may specify approved activities by notice published on the Authority's website and that the notice may include certain information in relation to the activity and may set requirements for completion of the activity.

Regulation 9E provides the Minister with the power to approve activities and the regulation 9G requires the Authority to publish those approvals and so clause 2 and clause 3 are redundant and are repealed.

Item 9 – Clause 6 and 7 of Schedule 1

This item repeals clause 6 and clause 7.

Previously, clause 6 provided for the activities that may be included as approved activities. As these activities were included in subregulation 9E(4), clause 6 is redundant and is repealed.

Previously, clause 7 provided that a core activity must relate specifically to the

- *Migration Act 1958*; or
- the *Migration Regulations 1994*; or
- other legislation relating to migration procedures; or
- portfolio policies and procedures; or
- the application of points above to the registered migration agent's practice.

As these activities are now provided for in subregulation 9E(3), this clause is redundant and is repealed. This is also consistent with the removal of the concepts of 'core activity' and 'elective activity'.

Item 10 – Clause 7A of Schedule 1

This item omits from clause 7A the words "The Authority may declare that specified activities up to the value of 4 points are mandatory for:" and inserts the words "The Minister may, by instrument in writing, declare that specified activities, up to the value specified by the Minister by instrument in writing for this clause, are mandatory for:"

Previously, clause 7A provided for the Authority to declare that specified activities up to the value of 4 points are mandatory for certain registered migration agents.

The amendment means that it will be the Minister, rather than the Authority, who could specify the mandatory activities. This is consistent with subregulation 9E(1), which give the Minister, rather than the Authority, the power to approve activities.

In addition, under clause 7A, the Minister will also be able to specify the value of points up to which the activity will be mandatory.

The purpose of this amendment is to reflect that it will be the Minister, rather that the Authority, who has the power to specify what activities are mandatory and also to give the Minister the flexibility to change the value of the points for CPD activities when necessary. The policy intention is to support the broadening of the types of activities available to agents to take advantage of new education delivery methods as well as to implement a framework to support new agents entering the industry.

Item 11 – Clause 7B of Schedule 1

This item repeals and substitutes clause 7B.

Previously, clause 7B provided that the Authority may declare that activities up to the value of 7 points undertaken by a registered migration agent in any year of registration must be assessable.

Clause 7B provides that the Minister may, by an instrument in writing, declare that specified activities, up to the value specified by the Minister by instrument in writing for this clause, are assessable for:

- certain registered migration agents in a particular year of registration; or
- all registered migration agents in any year of registration.

The purpose of this amendment is to give the Minister, rather than the Authority, the power to declare that activities specified by the Minister up to a value specified in an instrument in writing are assessable for certain registered migration agents or all registered migration agents. The amendment also clarifies that the Minister may make approved activities up to a certain value mandatory for certain registered migration agents in a particular year of registration as well as for all registered migration agents in a particular year of registration. The amendment provides the Minister with the ability to specify in an instrument in writing the total value of points that are assessable for those Registered Migration Agents.

Item 12 – Clause 8 to 10 of Schedule 1

This item repeals clauses 8, 9 and 10.

Previously, clause 8 provided that a core activity may include passing an examination that demonstrates competency as a registered migration agent.

Previously, clause 9 provided that an elective activity is an activity that relates to a topic of a legal or business nature that is relevant to a registered migration agent's practice as a registered migration agent.

Previously , clause 10 provided that an elective may include providing immigration assistance without charge for a voluntary organisation, for example, a non-profit immigration advice organisation, a migrant resource centre or an ethnic community organisation.

Previous clauses 8, 9 and 10 are repealed because the activities they set out were moved to subregulation 9E(3) and paragraph 9E(4)(g). Because the activities such as in those clauses were included in regulation 9E, the clauses were redundant and are omitted. This is consistent with the removal of the concepts of 'core activity' and 'elective activity'.

Item 13 – Clause 11 of Schedule 1

This item repeals and substitutes clause 11.

Previously, clause 11 provided that, if a registered migration agent who claims the activity of providing immigration assistance without charge for a voluntary organisation must comply with certain conditions.

Clause 11 provides that a registered migration agent who claims an activity under paragraph 9E(4)(g) in relation to a voluntary organisation that is an approved provider must:

- undertake the activity outside the agent's normal employment; and
- obtain a statement by a person in the voluntary organisation:
    - stating that the work relating to the activity has been completed; and
    - setting out the number of hours worked; and
- show the statement to the Authority on request.

Clause 11 substantially replicated previous clause 11 that reflects the omission of clause 10 and incorporation into paragraph 9E(4)(g) of the activity in previous clause 10.

Item 14 – At the end of Part 5, Division 2

This item inserts regulation 13 in Division 2 in Part 5.

Regulation 13 provides that the amendments of the Principal Regulations made by Schedule 5 to the *Migration Legislation Amendment Regulation 2013 (No. 1)* apply in relation to an application for repeat registration made on or after 23 March 2013.

The purpose of this amendment is to make it clear to whom the amendments made by Schedule 5 to the Regulation apply.

Schedule 6 – Amendments relating to transitional arrangements

Item 1 – At the end of Schedule 13

This item inserts a new Part 13 into Schedule 13 to the Principal Regulations to deal with transitional arrangements in respect of amendments that is made by this Regulation.

The heading of new Part 13 is 'Amendments made by *Migration Legislation Amendment Regulation 2013 (No. 1).*'

Clause 1301 – Operation of Schedule 1

This item inserts a new Clause 1301 into Part 13 of Schedule 13 to the Principal Regulations.

Subclause 1301(1) provides that the amendments of the Principal Regulations made by items 1 and 2 of Schedule 1 to the *Migration Legislation Amendment Regulation 2013 (No. 1)* apply in relation to an application for review to the Migration Review Tribunal made on or after 1 July 2013.

Subclause 1301(2) provides that the amendments of the Principal Regulations made by items 3 and 4 of Schedule 1 to the *Migration Legislation Amendment Regulation 2013 (No. 1)* apply in relation to an application for review to the Refugee Review Tribunal made on or after 1 July 2013.

The effect and purpose of these amendments is to provide for which applications to the Tribunals these changes apply to. The commencement date of 1 July 2013 reflects the Government's intention that any increases to the fees for seeking review should take place every two years after 1 July 2011.

Clause 1302 – Operation of Schedule 2

Subclause 1302(1) provides that the amendments of the Principal Regulations made by items 1 to 5 and 8 to 22 of Schedule 2 to the *Migration Legislation Amendment Regulation 2013 (No. 1)* apply in relation to an application for a visa made on or after 23 March 2013.

Subclause 1302(2) provides that the amendment of the Principal Regulations made by items 6 and 7 of Schedule 2 to the *Migration Legislation Amendment Regulation 2013 (No. 1)* apply in relation to an application for a visa:

- made, but not finally determined, before 23 March 2013; or
- made on or after 23 March 2013.

Clause 1303 – Operation of Schedule 3

Subclause 1303(1) provides that the repeal of subparagraph 2.43(2)(b)(i) made by item 2 of Schedule 3 to the *Migration Legislation Amendment Regulation 2013 (No.1)* does not apply in relation to a person who:

- holds a student visa; and
- was sent a notice of proposed cancellation of the visa under section 119 of the Act for non-compliance with visa condition 8104 or 8105 before 13 April 2013.

Subclause 1303(2) provides that the repeal of subparagraph 2.43(2)(b)(ii) made by item 2 of Schedule 3 to the *Migration Legislation Amendment Regulation 2013 (No.1)*

does not apply in relation to a person who:

- holds a student visa; and
- was sent:
    - a notice of proposed cancellation of the visa under section 119 of the Act for non-compliance with visa condition 8202 before 13 April 2013; or
    - a notice under section 20 of the *Education Services for Overseas Students Act 2000* for non-compliance with visa condition 8202 in relation to the visa.

The term *student visa* is defined in regulation 1.03 of the Principal Regulations.

Section 119 of the Act provides that whether the visa holder is in Australia or not, if the Minister is considering the cancellation of a visa under section 116, the visa holder must be sent a notice. That notice must give particulars of those grounds and inviting the visa holder to show that those grounds do not exist or there is a reason why the visa should not be cancelled.

The purpose of clause 1303 is to make clear which student visa holders the amendments apply to, and those who continues to be subject to mandatory cancellation under current subparagraph 2.43(2)(b)(i) and subparagraph 2.43(2)(b)(ii) upon the commencement of these amendments.

Clause 1304 – Operation of Schedule 4

Subclause 1304(1) in Part 11 provides that the amendments of the Principal Regulations made by Schedule 4 to the *Migration Legislation Amendment Regulation 2013 (No. 1)* apply in relation to an application to the MRT or the RRT if the decision to which the application relates is made on or after 1 July 2013.

Subclause 1304(2) provides that, if an application to the MRT or the RRT was made before 1 July 2013 and, on or after 1 July 2013, the MRT or the RRT issue a notice to appear, or an invitation to provide comments or information, in relation to the application, the amendments of the Principal Regulations made by Schedule 4 to the *Migration Legislation Amendment Regulation 2013 (No. 1)* also apply in relation to the issue of the notice or invitation.

Subclause 1304(3) provides that, if an application to the MRT or the RRT was made before 1 July 2013 and, on or after 1 July 2013, the MRT or the RRT extends a period of time in relation to the application, the amendments of the Principal Regulations made by Schedule 4 to the *Migration Legislation Amendment Regulation 2013 (No. 1)* also apply in relation to the extension of time.

The purpose of this amendment is to clarify to whom the amendments in this Regulation apply.