

## **EXPLANATORY STATEMENT**

Issued by the Minister for Immigration and Border Protection

*Australian Citizenship Act 2007*

*Migration Act 1958*

*Migration Legislation Amendment (2016 Measures No. 2) Regulation 2016*

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

The *Australian Citizenship Act 2007* (the Citizenship Act) sets out how you become an Australian citizen, the circumstances in which you may cease to be a citizen and some other matters related to citizenship.

Subsection 504(1) of the Migration Act and section 54 of the Citizenship Act (the Principal Acts) in effect provide that the Governor-General may make regulations prescribing matters required or permitted by the relevant Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Principal Acts.

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

The purpose of the *Migration Legislation Amendment (2016 Measures No.2) Regulation 2016* (the proposed Regulation) is to amend the *Migration Regulations 1994* (the Migration Regulations) and the *Australian Citizenship Regulations 2007* (the Citizenship Regulations) to strengthen and update immigration and citizenship policy, and to transition foreign nationals who are lawfully on Norfolk Island to appropriate Australian visas that are comparable to their entry permit or residence status on Norfolk Island.

In particular, the Regulation amends the Migration Regulations to:

- provide a pathway to permanent residence for those non-citizens ordinarily resident on Norfolk Island prior to 1 July 2016. This would be a one-off arrangement for existing permit holders as at 30 June 2016 and would not apply to new arrivals on Norfolk Island after this date. Currently, Commonwealth immigration law does not extend to Norfolk Island and the *Immigration Act 1980* (NI) and the *Immigration Regulations 1984* (NI) govern immigration arrangements for the Territory. On 1 July 2016, these Norfolk Island Immigration laws will be repealed, and the Migration Act will be extended to apply to Norfolk Island. On that date, all non-citizens who hold a permit under Norfolk Island Immigration legislation will be “deemed” to hold comparable Australian visas under the Migration Act by way of a transitional rule made under the *Norfolk Island Legislation Amendment Act 2015*. This Regulation would complement the arrangements in the transitional rule. This would be achieved by making amendments to the Migration Regulations to:
  - create an alternative set of criteria for the grant of a Subclass 159 (Provisional

Resident Return) visa and Subclass 808 (Confirmatory (Residence)) visa in Schedule 2 to the Migration Regulations for the Norfolk Island cohort; and

- extend the period that the Subclass 159 visa is in effect for this cohort. This will enable holders of this visa to meet the necessary period of residency to be eligible for grant of a Subclass 808 (Confirmatory (Residence)) visa, which is a permanent visa.

The Regulation amends the Citizenship Regulations to:

- allow citizenship application fees, and refund of citizenship application fees where appropriate, to be paid in foreign currencies and in foreign countries;
- ensure that subregulation 12A(7) accurately refers to the correct Instruments made under regulation 5.36 of the *Migration Regulations 1994*; and
- ensure that applicants are only refunded an amount equivalent to the test component charged at the time they applied for citizenship.

Statements of Compatibility with Human Rights have been completed for the Regulation, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment of the Statements is that the measures in the Regulation are compatible with Australia's human rights obligations. Copies of the Statements are at [Attachment B](#).

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

The Office of Best Practice Regulation (the OBPR) has been consulted and advises the following:

- for Schedule 1, no further Risk Impact Statement is required, noting that it was assessed as part of the Norfolk Island governance reforms RIS. The OBPR references are 17310 and 19860;
- for Schedule 2 item 1, the changes have a minor regulatory impact on business or the not-for-profit sector. The OBPR reference is 19704; and
- for Schedule 2 item 2, the changes are minor and machinery in nature. The OBPR reference is 19896.

The Department is represented on the whole-of-government Norfolk Island Reform Taskforce chaired by the Department of Infrastructure and Regional Development, lead agency for the Norfolk Island governance reforms. Additional consultations have been undertaken with:

- the Department of Social Services regarding intended changes to the visa transition model, and possible implications on access to certain government benefits;
- the Attorney-General's Department regarding transitional arrangements for adopted children residing on Norfolk Island;
- the Department of Employment in relation to Norfolk Island employers' access to the Seasonal Worker Programme; and

- the Department of Health regarding foreign nationals' access to health insurance and Medicare.

The Department has also consulted closely with the Administrator of Norfolk Island and Norfolk Island Immigration throughout the development of the visa transition model. Consultation and communication activities have also been undertaken with the Norfolk Island community throughout this process regarding the visa transition model and implications for local businesses.

No further consultation was necessary for the amendments at Schedule 2 as these amendments are of a minor and machinery nature and does not substantially alter existing arrangements.

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

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

The Regulation commences on 1 July 2016.

Authority: Section 504(1) of the *Migration Act 1958*  
Section 54 of the *Australian Citizenship Act 2007*

**AUTHORISING PROVISIONS**

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provides that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing all matters which by the Migration Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the Migration Act.

In addition, the following provision of the Migration Act may apply:

- subsection 31(3), which provides that the *Migration Regulations 1994* (the Migration Regulations) may prescribe criteria for a visa or visas of a specified class (which, without limiting the generality of this subsection, may be a class provided for by section 32, 36, 37, 37A or 38B but not by section 33, 34, 35, 38 and 38A);
- subsection 40(1), which provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- subsection 41 (1), which provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions;
- subsection 41(2), which provides that, without limiting subsection 41(1), the regulations may provide that a visa, or visas of specified class, are subject to:
  - a condition that, despite anything else in this Act, the holder of the visa will not, after entering Australia, be entitled to be granted a substantive visa (other than a protection visa, or a temporary visa of a specified kind) while he or she remains in Australia; or
  - a condition imposing restrictions about the work that may be done in Australia by the holder, which, without limiting the generality of this paragraph, may be restrictions on doing:
    - any work; or
    - work other than specified work; or
    - work of a specified kind.
- subsection 41(3), which provides that, in addition to any conditions specified under subsection 41(1), or in subsection 41(2B), the Minister may specify that a visa is subject to such conditions as permitted by the regulations for the purposes of this subsection.
- subsection 46(1), which relevantly provides that, subject to subsections 46(1A), (2) and (2A), an application for a visa is valid if, and only if:
  - it is for a visa of a class specified in the application; and
  - it satisfies the criteria and requirements prescribed under this section; and

- subject to the Migration Regulations providing otherwise, any visa application charge that the Migration Regulations require to be paid at the time when the application is made, has been paid; and
  - any fees payable in respect of it under the Migration Regulations have been paid; and
  - it is not prevented by section 48 (visa refused or cancelled earlier), 48A (protection visa), 91E (CPA and safe third countries), 91K (temporary safe haven visa), 91P (non-citizens with access to protection from third countries), 161 (criminal justice), 164D (enforcement visa), 195 (detainees) or 501E (visa refused or cancelled on character grounds);
- paragraph 46(2)(b), which provides that, subject to subsection 46(2A), an application for a visa is valid if under the Migration Regulations, the application referred to in paragraph 46(2)(a) is taken to have been validly made;
  - section 505, which provides that, to avoid doubt, regulations for the purpose of prescribing a criterion for visas of a class may provide that the Minister, when required to decide whether an applicant for a visa of the class satisfies the criterion:
    - is to get a specified person or organisation, or a person or organisation in a specified class, to:
      - give an opinion on a specified matter; or
      - make an assessment of a specified matter; or
      - make a finding about a specified matter; or
      - make a decision about a specified matter; and
    - is:
      - to have regard to that opinion, assessment, finding or decision in; or
      - to take that opinion, assessment, finding or decision to be correct for the purposes of;
- deciding whether the applicant satisfies the criterion.

Section 54 of the *Australian Citizenship Act 2007* (the Citizenship Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Citizenship Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Citizenship Act.

In addition, regulations may be made pursuant to the following provisions:

- paragraph 46(1)(d) of the Citizenship Act, which provides that an application under a provision of that Act must be accompanied by the fee (if any) prescribed by the regulations; and
- subsection 46(3) of the Citizenship Act, which provides that the regulations may make provision for and in relation to the remission, refund or waiver of any fees of a kind referred to in paragraph 46(1)(d) of the Citizenship Act.

**ATTACHMENT B****Statement of Compatibility with Human Rights**

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

***Migration Legislation Amendment (2016 Measures No. 2) Regulation 2016***

This Disallowable 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 – Norfolk Island transitional migration amendments****Overview of Schedule 1 of the Legislative Instrument**

From 1 July 2016 the Australian Government will commence delivering essential national functions on Norfolk Island. Responsibility for administering immigration and other border functions will transfer from the Norfolk Island Administration to the Department of Immigration and Border Protection.

Norfolk Island currently regulates its own immigration through the *Immigration Act 1980* (NI). On 1 July 2016, this will be repealed and the *Migration Act 1958* (the Migration Act) will be extended to include Norfolk Island in the Australian migration zone.

The objective of this legislative instrument is to provide one part of the necessary regulatory amendments required to put in place arrangements to facilitate the transition of Norfolk Island permit holders and foreign national residents to the Australian visa regime as of 1 July 2016.

The changes are also designed to ensure that foreign national permit holders and permanent residents on Norfolk Island, and the island's economy, are not disadvantaged by a change in the immigration status of foreign nationals as a result of the governance reforms; this by way of providing comparable rights and benefits to affected Norfolk Island foreign national residents that they are currently afforded.

This regulation achieves one aspect of the transition by modifying aspects of relevant visa subclasses to ensure that each group of persons affected retain a similar migration status and preserve any existing pathways to permanent residence. A pathway to permanent residence will also be provided to persons affected by the changes to the *Immigration Act 1980* (NI) in October 2014, which precludes foreign nationals, who arrived on Norfolk Island after 3 October 2014, from gaining permanent residence on Norfolk Island unless they also hold an Australian permanent visa.

This regulation will achieve this by providing the following:

- Foreign nationals who hold permanent residency under the *Immigration Act 1980* (NI) will be deemed to hold a comparable permanent Australian visa (a Subclass 808 (Confirmatory Residence) visa)
- Foreign nationals (other than New Zealand citizens) who hold temporary resident status, that is, a Temporary Entry Permit or General Entry Permit will be deemed to hold a temporary Australian visa (a Subclass 159 (Provisional Resident Return) visa)
- New Zealand citizens who hold a temporary Unrestricted Entry Permit will transition onto a Subclass 444 (Special Category) visa.

- After meeting the residence requirement of five out of seven years on Norfolk Island, Subclass 159 and Subclass 444 visa holders will be eligible to apply for a permanent Subclass 808 (Confirmatory (Residence)) visa. The time frame for the residence requirement matches the five out of seven years residence requirement for permanent residency on the island under the current *Immigration Act 1980* (NI).

### **Human rights implications**

The human rights implications (including the right to work) relevant to the Norfolk Island reform were addressed as part of the *Norfolk Island Legislative Amendment Act 2015*. However, included within the Subclass 159 (Provisional Resident Return) visa that will be deemed to be held by holders of Temporary Entry Permits or General Entry Permits, there will be a condition for these persons that the holder can work only on Norfolk Island. As such this condition engages the right to work under articles 6 and 4 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

#### *Article 6 and Article 4 of the ICESCR*

Article 6 of ICESCR provides that:

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

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

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

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

The authority from the Australian Government granting work rights and conditions or limitations placed on temporary non-citizens in respect of those work rights is lawful as a matter of domestic law and serves the dual objectives of maintaining the integrity of the migration programme and ensuring that affected persons are not disadvantaged by a change in the immigration status of foreign nationals as a result of the governance reforms. By ensuring that the rationale for the original issuing of the Temporary Entry Permit or General Entry Permit is maintained will also ensure the services performed by these permit holders will continue to benefit the Norfolk Island community. As such, the proposed amendments are justified in accordance with Article 4 of ICESCR. The condition for these persons that the holder can work only on Norfolk Island does not impact their movement within Australia unrelated to work and does not prevent their ability to apply for other visa subclasses, if eligible.

## **Conclusion**

Schedule 1 of this Disallowable Legislative Instrument is compatible with human rights as to the extent that it engages the right to work, any limitations are reasonable, necessary and proportionate.

## **Schedule 2 item 1 – Australian citizenship: amendments – foreign currencies and countries**

### **Overview of Schedule 2 item 1 of the Legislative Instrument**

Regulation 12A of the *Australian Citizenship Regulations 2007* (the Citizenship Regulations) provides for, among other things, which foreign currencies and countries a citizenship application fee may be paid and how the exchange rate is to be calculated.

The acceptable foreign currencies and countries are set out in legislative instruments made under regulations 5.36(1) and (1A) of the *Migration Regulations 1994* (Migration Regulations). In order to facilitate the lawful collection (and refund where appropriate) of citizenship application fees in foreign currencies, the Citizenship Regulations incorporate by reference instruments made under the Migration Regulations in relation to foreign currencies, countries and exchange rates.

The relevant instruments, *Places and Currencies for Paying of Fees and Payment of Visa Application Charges and Fees in Foreign Currencies*, are updated in January and July each year and are given a new instrument number each time.

Consequently, to ensure that citizenship application fees can continue to be paid in foreign currencies and countries, sub-regulation 12A(7) of the Citizenship Regulations must be amended to specify the updated instrument numbers.

The updating of the instrument numbers is the only change and is merely technical in nature. There is no change to the substantive content of the Citizenship Regulations.

### **Human rights implications**

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

## **Conclusion**

Schedule 2 item 1 of this Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.



## **Schedule 2 item 2 – Australian citizenship: amendments – refund for citizenship test**

### **Overview of Schedule 2 item 2 the Disallowable Legislative Instrument**

This Disallowable Legislative Instrument amends subregulations 13(5) and 13(5A) of the Citizenship Regulations to reduce the amount of money that the Minister of Immigration and Border Protection may refund to persons who have not satisfied criteria in subsection 21(2) of the *Australian Citizenship Act 2007* (Citizenship Act), because such persons did not sit the citizenship test, from an amount of \$130 to \$105.

Regulation 13 of the Citizenship Regulations sets out circumstances relating to the refund of fees payable for citizenship applications (refundable amounts).

Currently, subregulation 13(5) provides for the refund of \$130 where a person:

- a) made an application under section 21 of the Citizenship Act; and
- b) claimed eligibility in that application on the basis of the criteria in subsection 21(2) of the Citizenship Act; and
- c) paid the amount specified in item 14A or 15B of Schedule 3 of the Citizenship Regulations; and
- d) does not satisfy the criteria in subsection 21(2) of the Citizenship Act because he or she did not sit a test as described in paragraph 21(2A)(a) of the Citizenship Act.

The current refundable amount of \$130, as specified by paragraph 13(5)(d) represents the difference between the previous standard fee of \$260 for a citizenship application where a person is required to sit a citizenship test, and the previous standard fee of \$130 for a citizenship application where a person is not required to sit a citizenship test.

The proposed refundable amount of \$105 is reflective of an increase in the price of standard citizenship application fees. As of 1 January 2016, the standard fee of \$285 applied to a citizenship application for persons required to sit a citizenship test. Additionally, the standard fee of \$180 applied for applications where persons did not require a citizenship test. The refundable amount of \$105 is reflective of the difference between \$285 and \$180.

### **Human rights implications**

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

### **Conclusion**

Schedule 2 item 2 of this Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon. Peter Dutton MP**

**Minister for Immigration and Border Protection**

**ATTACHMENT C****Details of the Migration Legislation Amendment (2016 Measures No. 2) Regulation 2016****Section 1 – Name**

This section provides that the title of the Regulation is the *Migration Legislation Amendment (2016 Measures No. 2) Regulation 2016*.

**Section 2 – Commencement**

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

The table states that the whole of the instrument commences on 1 July 2016.

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

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

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

**Section 3 – Authority**

This section provides that the Regulation is made under the *Migration Act 1958* (the Migration Act) and the *Australian Citizenship Act 2007* (the Citizenship Act).

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

**Section 4 – Schedules**

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

The effect of this section is that the *Migration Regulations 1994* (the Migration Regulations) and the *Australian Citizenship Regulations 2007* (the Citizenship Regulations) are amended as set out in the applicable items in Schedule 1 to the Regulation.

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

## **Schedule 1 – Norfolk Island transitional migration amendments**

### **Item 1 – Regulation 2.06**

Regulation 2.06 specifies classes of non-citizens who may travel to Australia without a visa, pursuant to subsection 42(3) of the Migration Act. This item repeals and remakes the regulation. The new regulation no longer contains the reference to a certain kind of passport that is endorsed with an authority to reside indefinitely on Norfolk Island. This is because from 1 July 2016, Norfolk Island will be integrated into the Australian migration zone and the *Immigration Act 1980* (Norfolk Island) will no longer apply. Therefore, anyone living on Norfolk Island will need to:

- be an Australian citizen; or
- hold a visa under the Migration Act.

Those who previously had a passport endorsed with an authority to reside indefinitely on Norfolk Island will be transitioned to an equivalent status under the Migration Act on 1 July 2016. Passports will no longer be endorsed with an authority to reside indefinitely on Norfolk Island. In order to travel from Norfolk Island to anywhere else in Australia, there will be no need to demonstrate evidence of Australian citizenship or of holding a visa. However, residents of Norfolk Island *will* need to demonstrate evidence of Australian citizenship or of holding a visa when travelling to Australia from another country.

### **Item 2 – At the end of paragraph 2.07AB(2)(a)**

This item contains a technical amendment to correct an existing error in the Migration Regulations.

### **Item 3 – Paragraph 2.07AB(2)(b)**

This item, similar to the amendment of regulation 2.06 mentioned above, is also necessary as a consequence of the cessation of Norfolk Island's *Immigration Act 1980* and the extension of the Migration Act to Norfolk Island from 1 July 2016. Therefore, the existence of a passport endorsed with an authority to reside indefinitely on Norfolk Island will not have to be taken into consideration in the context of an application for an Electronic Travel Authority (Class UD) visa.

### **Item 4 – Subregulation 2.16(2C)**

This item repeals subregulation 2.16(2C), consequential to the repeal of Part 834 of Schedule 2

### **Item 5 – Subparagraph 3.01(4)(g)(ii)**

This item omits the reference to a Permanent Resident of Norfolk Island visa in subparagraph 3.01(4)(g)(ii), consequential to the repeal of Part 834 of Schedule 2 by item 37. Part 834 of Schedule 2 to the Migration Regulations contains Subclass 834 (Permanent Resident of Norfolk Island).

Item 6 - Paragraph 3.03(3)(c)

This item repeals paragraph 3.03(3)(c), which refers to a right of permanent residence on Norfolk Island. This is a status provided under the Immigration Act 1980 (NI). From 1 July 2016 the Immigration Act 1980 (NI) will be repealed and the Migration Act will apply to Norfolk Island. A person who resides on Norfolk Island from 1 July 2016 will either need to be an Australian citizen or will need to have a relevant visa status under the Migration Act.

Item 7 - Subparagraph 1111(2)(a)(i) of Schedule 1Item 8 - Sub-subparagraphs 1111(2)(a)(i)(A) and (B) of Schedule 1

These items contain technical amendments, consequential to the insertion of subitem 1111(2A) by item 9.

The items reconfigure existing provisions as a consequence of the addition of new provisions relating to the Norfolk Island cohort in item 9.

Item 9 - After subitem 1111(2) of Schedule 1

This item reconfigures existing provisions and inserts them in new subitem 1111(2A). The item also provides for the Norfolk Island cohort. The first instalment of the visa application charge for any of the applicants mentioned in new subitem 1111(2A) is set out in a table at the end of subitem 1111(2A). The second instalment of the visa application charge is not relevant to the Norfolk Island cohort.

Subitem 1111(2A) is also important as a descriptor of various groups within the Norfolk Island cohort. It is referred to, as a descriptor, in new subitem 1111(3A), and new subclauses 808.213(1) and 808.223(1).

Item 10 - Subitem 1111(3) of Schedule 1

Subitem 1111(3) provides for the “other” requirements for the making of an application for a Confirmatory (Residence) (Class AK) visa, such as where the application may be made, where the applicant must be at time of application, and whether a combined application can be made.

This item contains a technical amendment as a consequence of the insertion of subitem 1111(3A) by item 11, below. The amendment clearly delineates the alternative criteria for the Norfolk Island cohort from the original criteria.

Item 11 - After subitem 1111(3) of Schedule 1

This item inserts new subitem 1111(3A), which specifically provides for the “other” requirements for the making of an application for a Confirmatory (Residence) (Class AK) visa for the Norfolk Island cohort. “Other” requirements include where the application may be made, where the applicant must be at time of application, and whether a combined application can be made.

Item 12 - Item 1123 of Schedule 1

The Norfolk Island Permanent Resident (Residence) (Class AW) visa class is contained in item 1123 in Part 1 of Schedule 1 to the Migration Regulations.

This visa class contains only one subclass, namely, Subclass 834 (Permanent Resident of Norfolk Island), which is also being repealed (see item 37). On 1 July 2016 a person who held a Subclass 834 visa immediately before the final transition time of 1 July 2016 will be taken to have been granted a Subclass 808 (Confirmatory (Residence)) visa under the Migration Act, with effect from 1 July 2016. This will occur by virtue of a transitional rule made under the *Norfolk Island Legislation Amendment Act 2015*.

#### Item 13 - Subitem 1216(3) of Schedule 1

Subitem 1216(3) provides for the “other” requirements for the making of an application for a Resident Return (Temporary) (Class TP) visa, such as where the application may be made, where the applicant must be at time of application, and whether a combined application can be made.

This item contains a technical amendment as a consequence of the insertion of subitems 1216(3A) and (3B) by item 14, below. The amendment clearly delineates the alternative criteria for the Norfolk Island cohort from the original criteria.

#### Item 14 - After subitem 1216(3) of Schedule 1

This item inserts new subitems 1216(3A) and (3B).

Subitem 1216(3A) is a descriptor of certain groups within the Norfolk Island cohort and is referred to in new subitem 1216(3B) for the “other” requirements for the making of a valid visa application.

Subitem 1216(3A) is also referred to, as a descriptor of certain groups within the Norfolk Island cohort, in new subclauses 159.214(1) and 159.223(1).

Subitem 1216(3B) specifically provides for the “other” requirements for the making of an application for a Resident Return (Temporary) (Class TP) visa for the Norfolk Island cohort. “Other” requirements include where the application may be made, where the applicant must be at time of application, and whether a combined application can be made.

#### Item 15 - Division 159.2 of Schedule 2 (note to Division heading)

This item repeals the note under the heading of Division 159.2, because new secondary criteria are being inserted by item 20.

#### Item 16 - Before clause 159.211 of Schedule 2

This item inserts new clause 159.211A before clause 159.211 of Schedule 2 to the Migration Regulations. The new clause clearly identifies alternative criteria for:

- existing criteria; and
- the Norfolk Island cohort.

Item 17 - At the end of Subdivision 159.21 of Schedule 2

This item adds new clause 159.214, which imposes a cut-off date for applications. This new clause sets the date of 1 July 2017 as the date by which an application must be made for a Resident Return (Temporary) (Class TP) visa, where the applicant is seeking to satisfy the criteria for grant of a Subclass 159 (Provisional Resident Return) visa. This cut-off date is relevant only to the Norfolk Island cohort mentioned in subitem 1216(3A), which includes the following groups:

- Those who held a temporary entry permit (TEP) or a general entry permit (GEP) on 30 June 2016 under the *Immigration Act 1980* (NI) (which will be repealed on 1 July 2016). This group of people will be “deemed” the grant of a Subclass 159 (Provisional Resident Return) visa on 1 July 2016 by virtue of a transitional rule made under the *Norfolk Island Legislation Amendment Act 2015*. That Subclass 159 visa will cease on 1 July 2017.
- A person who was born outside Norfolk Island on or before 30 June 2016, where that person did not hold a TEP or GEP but a parent of theirs (other than an adoptive parent) did hold a TEP or GEP on that date, and where the person was a dependent child of the parent on 30 June 2016.
- A secondary applicant. This will only apply in relation to a baby born in Australia on or after 1 July 2017 where the baby is a secondary applicant, and included in a combined application, with a parent.

In the case of a person who held a TEP or GEP on 30 June 2016, the pathway to permanent residence would generally be as follows:

- “deemed” grant of a Subclass 159 visa on 1 July 2016. This visa will cease to be in effect on 30 June 2017, or on the grant of a second Subclass 159 visa, whichever is earlier;
- the above visa holder has up to one year from grant on 1 July 2016 to make their application for a new Subclass 159 visa. An application for the Subclass 159 visa must be made before 1 July 2017. If granted, this visa will be in effect for 6 years and 6 months after the date of the grant of the visa, or 31 December 2023, whichever is earlier;
- while the above (second) Subclass 159 visa is in effect, the visa holder will be able to apply for a Subclass 808 (Confirmatory (Residence)) visa. In order to be granted that visa, the visa holder will need to meet a residence requirement (amongst other things). If the person has already met the residence requirement at some point during the period of the first (deemed) Subclass 159 visa, then there is no need to apply for a subsequent Subclass 159 visa, as an application can be made at this point for a Subclass 808 visa.

A baby born to a TEP or GEP holder prior to 1 July 2016, as described in the second group, would need to go through the same process, above. However, if a parent of the child is granted a Subclass 808 (Confirmatory (Residence)) visa, then the child would have the option of applying for a Subclass 802 (Child) visa, which is a permanent visa. They would therefore have this option as an alternative to satisfying criteria for a Subclass 808 (Confirmatory (Residence)) visa.

A baby born *in Australia* to a TEP or GEP holder on or after 1 July 2016 will be able to be included in a combined application with their parent(s) for either the second Subclass 159 visa, or for the permanent Subclass 808 visa, and will only have to satisfy secondary criteria (which does not include a residence requirement).

At the time of birth in Australia, section 78 of the Migration Act would apply and, generally, the child would be deemed to hold the same visa as the child's parent(s).

#### Item 18 – Before clause 159.221 of Schedule 2

This item inserts clause 159.221A which provides that to satisfy time of decision (primary) criteria, an applicant must satisfy either:

- clauses 159.221 and 159.222, which are the original Subclass 159 time of decision criteria; or
- clause 159.223, which is the time of decision (primary) criterion relevant to the people in the Norfolk Island cohort seeking to satisfy the criteria for the grant of this visa.

#### Item 19 – At the end of Subdivision 159.22 of Schedule 2

This item adds new clause 159.223, which is the time of decision criterion relevant to the people in the Norfolk Island cohort who are seeking to satisfy criteria for the grant of this visa.

Subclause (1) provides that the clause applies if paragraph 1216(3A)(a) or (b) of Schedule 1 covers the application. Paragraphs 1216(3A)(a) and (b) of Schedule 1 to the Migration Regulations cover the following groups:

- Those who held a temporary entry permit (TEP) or a general entry permit (GEP) on 30 June 2016 under the *Immigration Act 1980* (NI) (which will be repealed on 1 July 2016). This group of people will be “deemed” the grant of a Subclass 159 (Provisional Resident Return) visa on 1 July 2016 by virtue of a transitional rule made under the *Norfolk Island Legislation Amendment Act 2015*. That Subclass 159 visa will cease on 1 July 2017.
- A person who was born outside Norfolk Island on or before 30 June 2016, where that person did not hold a TEP or GEP but a parent of theirs (other than an adoptive parent) did hold a TEP or GEP on that date, and where the person was a dependent child of the parent on 30 June 2016.

Adoptive parents are not included here, because – in relation to newborns – this clause is only intended to cover the transitional situation of a baby born to a TEP or GEP holder, where that baby did not hold a TEP or GEP on 30 June 2016. In the case of an adoption, Australian migration law will apply on and from 1 July 2016.

Subclauses (2) and (3) set out the special return criteria and public interest criteria that an applicant in the groups specified in the dot points above must satisfy.

Subclause (4) sets out additional public interest criteria that an applicant must satisfy where an additional applicant is making a combined application with the applicant. That is, an applicant will *not* satisfy this criterion if the applicant makes a combined application with another applicant who is under the age of 18 and is a member of the family unit of the applicant, and where public interest criterion 4015 and/or public interest criterion 4016 are not satisfied in relation to the additional applicant. For example, if the applicant is the father and the additional applicant is a ten year old daughter, then if the law of the daughter's home country does not permit the removal of the daughter, the father will not be able to satisfy this criterion.

#### Item 20 – Division 159.3 of Schedule 2

This item sets out secondary criteria to be satisfied for the grant of a Subclass 159 visa.

Clause 159.311 specifies that at the time of application:

- the applicant must have been born *in Australia* on or after 1 July 2016. In relation to the Norfolk Island cohort, it is the intention that any child born *outside Australia* to a parent in the Norfolk Island cohort will not be able to take advantage of these amendments and will instead have to apply for an alternative visa;
- the applicant must be a dependent child of another applicant for this visa;
- paragraph 1216(3A)(a) or (b) of Schedule 1 covers the parent applicant's application:
  - this means that the parent applicant must have held a temporary entry permit (TEP) or a general entry permit (GEP) on 30 June 2016 under the *Immigration Act 1980* (NI), or the parent applicant could be a person described in paragraph 1216(3A)(b);
- the applicant made a combined application with the parent applicant. This is a standard requirement for secondary criteria.

Clause 159.321 specifies that at the time of decision, the parent applicant must be granted a Subclass 159 visa on the basis of satisfying clause 159.214, which sets the time limit on applications. Under this clause the applicant seeking to satisfy secondary criteria must also satisfy the range of public interest criteria listed.

#### Item 21 – Before clause 159.411 of Schedule 2

This item inserts new clause 159.411A to clearly delineate the alternative criteria in this division.

#### Item 22 – At the end of Division 159.4 of Schedule 2

This item adds clause 159.412, which must be satisfied by the relevant group within the Norfolk Island cohort. This group may be in or outside Australia when the visa is granted, but not in immigration clearance.

#### Item 23 – Clause 159.511 of Schedule 2

This item contains a technical amendment to separate the Norfolk Island cohort from those who satisfy other criteria for the grant of this Subclass of visa.

#### Item 24 – At the end of Division 159.5 of Schedule 2

This item inserts new clause 159.512, which specifies when the visa will be in effect for the Norfolk Island cohort.



The reason that the date of 31 December 2023 is specified in paragraph (1)(b) is because this is the time by which holders of a Subclass 159 visa must have completed the residence requirement contained in the criteria for grant of a Subclass 808 visa of “5 years in the period of 7 years”. The cessation date includes an additional six months in order to provide sufficient time to lodge an application, for those who only complete their five years at the end of the seven year period.

After 31 December 2023, all people who would seek to gain residence in Australia by virtue of a connection to Norfolk Island must apply under standard migration arrangements.

#### Item 25 – Clause 159.611 of Schedule 2

This item contains a technical amendment to separate the Norfolk Island cohort from those who satisfy other criteria for the grant of this Subclass of visa.

#### Item 26 – At the end of Division 159.6 of Schedule 2

This item has the effect that for the Norfolk Island cohort, condition 8549 must be imposed on the visa.

#### Item 27 – Paragraph 773.213(2)(ze) of Schedule 2

This item contains a technical amendment as a consequence of the repeal of the Norfolk Island Permanent Resident (Residence) (Class AW) visa class by item 12.

#### Item 28 – Division 808.2 of Schedule 2 (note to Division heading)

This item repeals the note under the heading of Division 808.2, because new secondary criteria are being inserted by item 33.

#### Item 29 – Before clause 808.211 of Schedule 2

This item inserts new clause 808.211A before clause 808.211 of Schedule 2 to the Migration Regulations. The new clause clearly identifies alternative criteria for:

- existing criteria; and
- the Norfolk Island cohort.

#### Item 30 – At the end of Subdivision 808.21 of Schedule 2

This item adds new clause 808.213, which imposes:

- a cut-off date for applications; and
- a residence requirement.

This new clause sets the date of 1 January 2024 (see subclause 808.213(2)) as the date by which an application must be made for a Confirmatory (Residence) (Class AK) visa, where the applicant is seeking to satisfy the criteria for grant of a Subclass 808 (Confirmatory (Residence)) visa. The cut-off date and residence requirement is relevant only to the groups in the Norfolk Island cohort mentioned in paragraph 1111(2A)(b), (c), or (d), where their visa application was made on the basis of being part of such a group. The groups are:

- those who held a temporary entry permit (TEP), a general entry permit (GEP), or an unrestricted entry permit (a UEP) on 30 June 2016 under the *Immigration Act 1980* (NI) (which will be repealed on 1 July 2016).

- The TEP and GEP holders on 1 July 2016 will have been “deemed” the grant of a Subclass 159 (Provisional Resident Return) visa by virtue of a transitional rule made under the *Norfolk Island Legislation Amendment Act 2015*. The UEP holders will have been deemed the grant of a Subclass 444 (Special Category) visa on 1 July 2016 by the same transitional rule. After this, and depending on circumstances, the Subclass 159 visa holders may decide to apply for a subsequent Subclass 159 visa, or they may have completed their residence requirement and may decide to apply for a Subclass 808 visa. The Subclass 444 visa holders may apply for a Subclass 808 visa if they have completed their residence requirement;
- New Zealanders who were not in Norfolk Island on 30 June 2016 (and therefore were incapable of holding a UEP at that point in time), but who have at some time before 30 June 2016 held a UEP, and who at the time of holding the UEP were considered to be ordinarily resident in Norfolk Island.
  - “Ordinarily resident” is a term used in the *Immigration Act 1980 (NI)*, and records of the Administration will provide evidence of those UEP holders who were “ordinarily resident” in Norfolk Island. In order to complete their residence requirement, a former UEP holder who was “ordinarily resident” in Norfolk Island will need to reside in Norfolk Island as the holder of a Subclass 444 (Special Category) visa. Once they have completed the residence requirement, they may apply for a Subclass 808 visa;
- a person who was born outside Norfolk Island on or before 30 June 2016, where that person on 30 June 2016 did not hold a TEP, GEP or UEP, but a parent of theirs (other than an adoptive parent) did hold a TEP, GEP or UEP on that date, or the parent was a New Zealander as described above. In this instance the child must have been a dependent child of the parent on 30 June 2016.

The residence requirement is imposed by subclauses 808.213(3) and (4). The residence requirement referred to in both subclause 808.213(3) and paragraph 808.214(a) is replicating, to the extent possible, a residence requirement contained in section 29 of the *Immigration Act 1980 (NI)* which specified who could make an application to be declared to be a resident of Norfolk Island. One of the requirements (amongst others) was that the person had to have been ordinarily resident in Norfolk Island, and also needed to have been so resident for a period of at least 5 years during the period of 7 years immediately preceding the making of the application.

The residence requirement referred to in both subclause 808.213(3) and paragraph 808.213(4)(b) is to cover the situation where a dependent child of a person who is ordinarily resident in Norfolk Island who is under the age of 25 needs to study elsewhere in Australia (other than Norfolk Island). Study options on Norfolk Island are presently limited. Therefore, it is the intention that someone who would ordinarily be resident on Norfolk Island should not be adversely affected by the resident requirement where they have to be absent from Norfolk Island to study elsewhere in Australia. As such, their time spent studying elsewhere in Australia (while they are under the age of 25 and a dependent child of a person ordinarily resident in Norfolk Island) will count toward the residence requirement.

In line with existing arrangements for foreign national students in Australia, standard limitations on study are imposed, such as the hours of work that may be undertaken while studying.

### Item 31 – Before clause 808.221 of Schedule 2

This item inserts clause 808.221A which provides that to satisfy time of decision (primary) criteria, an applicant must satisfy either:

- clauses 808.221 and 808.222, which are the original Subclass 808 time of decision criteria; or
- clause 808.223, which is the time of decision (primary) criterion relevant to the people in the Norfolk Island cohort seeking to satisfy the criteria for the grant of this visa.

### Item 32 – At the end of Subdivision 808.22 of Schedule 2

This item adds new clause 808.223, which is the time of decision criterion relevant to the people in the Norfolk Island cohort who are seeking to satisfy criteria for the grant of this visa.

Subclause (1) provides that the clause applies if paragraph 1111(2A)(b), (c) or (d) of Schedule 1 covers the application. Paragraphs 1111(2A)(b), (c) and (d) of Schedule 1 to the Migration Regulations cover the following groups:

- those who held a TEP, a GEP, or a UEP on 30 June 2016 under the *Immigration Act 1980* (NI) (which will be repealed on 1 July 2016);
- New Zealanders who were not in Norfolk Island on 30 June 2016 (and therefore were incapable of holding a UEP at that point in time), but who have at some time before 30 June 2016 held a UEP, and who at the time of holding the UEP were considered to be ordinarily resident in Norfolk Island.
  - “Ordinarily resident” is a term used in the *Immigration Act 1980* (NI), and records of the Administration will provide evidence of those UEP holders who were “ordinarily resident” in Norfolk Island;
- a person who was born outside Norfolk Island on or before 30 June 2016, where that person on 30 June 2016 did not hold a TEP, GEP or UEP, but a parent of theirs (other than an adoptive parent) did hold a TEP, GEP or UEP on that date, or the parent was a New Zealander as described above. In this instance the child must have been a dependent child of the parent on 30 June 2016.

Subclauses (2) and (3) set out the special return criteria and public interest criteria that an applicant in the groups specified in the dot points above must satisfy.

Subclause (4) sets out additional public interest criteria that an applicant must satisfy where an additional applicant is making a combined application with the applicant. That is, an applicant will *not* satisfy this criterion if the applicant makes a combined application with another applicant who is under the age of 18 and is a member of the family unit of the applicant, and where public interest criterion 4015 and/or public interest criterion 4016 are not satisfied in relation to the additional applicant. For example, if the applicant is the father and the additional applicant is a ten year old daughter, then if the law of the daughter’s home country does not permit the removal of the daughter, the father will not be able to satisfy this criterion.

### Item 33 – Division 808.3 of Schedule 2

This item sets out secondary criteria to be satisfied for the grant of a Subclass 808 visa.

Clause 808.311 specifies that at the time of application, the following requirements are met:

- the applicant must have been born *in Australia* on or after 1 July 2016. In relation to the Norfolk Island cohort, it is the intention that any child born *outside Australia* on or after 1 July 2016 to a parent in the Norfolk Island cohort will not be able to take advantage of these amendments and will instead have to apply for an alternative visa;
- the applicant must be a dependent child of another applicant for this visa;
- paragraph 1111(2A)(b), (c) or (d) of Schedule 1 covers the parent's application:
  - this means that the parent must have held a TEP, a GEP or a UEP on 30 June 2016 under the *Immigration Act 1980* (NI); or
  - the parent made the application on the basis that he or she is a New Zealander who was not in Norfolk Island on 30 June 2016 (and therefore was incapable of holding a UEP at that point in time), but who had at some time before 30 June 2016 held a UEP, and who at the time of holding the UEP was considered to be ordinarily resident in Norfolk Island; or
  - the parent is as described in paragraph 1111(2A)(d);
- the applicant made a combined application with the parent applicant. This is a standard requirement for secondary criteria.

Clause 808.321 specifies that at the time of decision, the parent applicant mentioned in paragraph 808.311(b) must be granted a Subclass 808 visa on the basis of satisfying clause 808.213, which sets the time limit on applications and also imposes the residence requirement. Under this clause the applicant seeking to satisfy secondary criteria must also satisfy the range of public interest criteria listed.

#### Item 34 – Before clause 808.411 of Schedule 2

This item inserts new clause 808.411A to clearly delineate the alternative criteria in this division.

#### Item 35 – At the end of Division 808.4 of Schedule 2

This item adds clause 808.412, which must be satisfied by the relevant group within the Norfolk Island cohort. This group may be in or outside Australia when the visa is granted, but not in immigration clearance.

#### Item 36 – At the end of Division 808.5 of Schedule 2

This item inserts new clause 808.513, which specifies when the visa will be in effect for the Norfolk Island cohort.

Clause 808.513 makes it clear that a visa granted on the basis of satisfying the primary criteria for a Subclass 808 visa (where the person is part of the Norfolk Island cohort) is a permanent visa which permits the holder to travel to and enter Australia for 5 years from the date of grant. That is, whilst the visa holder remains in Australia, the visa is a permanent visa. However, the ability to travel on this visa will only last for 5 years. This is standard, and other visa options are available for a person who wishes to travel after this period of 5 years.

For someone who satisfies the secondary criteria, the visa is a permanent visa and the travel facility is linked to the travel facility on the parent applicant's visa.

Item 37 – Part 834 of Schedule 2

This item repeals Part 834 of Schedule 2 to the Migration Regulations. Part 834 contains Subclass 834 (Permanent Resident of Norfolk Island). Anyone who holds a Subclass 834 visa on 30 June 2016 will be “deemed” to hold a Subclass 808 (Confirmatory (Residence)) visa on 1 July 2016 by virtue of a transitional rule made under the *Norfolk Island Legislation Amendment Act 2015*.

Item 38 – Clause 8549 of Schedule 8

This item contains a technical amendment reconfiguring clause 8549 of Schedule 8 to the Migration Regulations as a consequence of the amendment to clause 8549 by item 39 below, making provision for the Norfolk Island cohort.

Item 39 – At the end of clause 8549 of Schedule 8

Condition 8549 is imposed upon the Norfolk Island cohort in relation to Subclass 159 (Provisional Resident Return) visas by new clause 159.612. The condition is important in respect of the residence requirement for Subclass 808 (Confirmatory (Residence)).

This item reconfigures clause 8549, and adds to that condition in respect of the Norfolk Island cohort.

The head of subclause 8549(2) specifies that those in the Norfolk Island cohort must, while in Australia, live, study and work only in Norfolk Island, unless they are in the situation outlined in paragraphs (a) to (d).

Paragraphs 8549(2)(a) to (d) describe a discrete group within the Norfolk Island cohort. As study options on Norfolk Island are presently limited, it is the intention that someone who would ordinarily be resident on Norfolk Island should not be adversely affected by:

- the residence requirement in Subclass 808 criteria; or
- the condition 8549 requirement to live, study and work only in Norfolk Island whilst holding a Subclass 159 visa

where they have to be absent from Norfolk Island to study elsewhere in Australia. As such, their time spent studying elsewhere in Australia will satisfy the requirements of condition 8549 while they are under the age of 25, a dependent child of a person ordinarily resident in Norfolk Island, living elsewhere for the purpose of study and meeting condition 8105 requirements relating to work.

Condition 8105 is not imposed for this discrete group. However, the particular requirement which relates to students engaging in work imposes standard limitations on study, such as the hours of work that may be undertaken while studying. The imposition of these requirements is in line with existing arrangements for foreign national students in Australia.

**Schedule 2 – Australian citizenship: amendments**Item 1 – Subregulation 12A(7)

This item substitutes the previous definitions of “conversion instrument” and “places and currencies instrument” in subregulation 12A(7) of the Citizenship Regulations.

*New definition of “conversion instrument”*

This item provides that “conversion instrument” means the instrument titled *Payment of Visa Application Charges and Fees in Foreign Currencies* (IMMI 16/35), that commenced on 1 July 2016.

The definition of “conversion instrument” is relevant to provisions in the Citizenship Regulations which allow a person who makes an application under the Citizenship Act to pay the prescribed fee in a foreign currency specified in the conversion instrument.

This item replaces a reference to the previous instrument in the definition of “conversion instrument” with a reference to an instrument that is made under subregulation 5.36(1A) of the *Migration Regulations 1994* (the Migration Regulations). This instrument commenced on 1 July 2016 and sets out visa application charge and fee amounts in foreign currencies which correspond to amounts payable in Australian dollars. If the amount of the application fee is mentioned in the conversion instrument, then payment can be made in the corresponding amount in the foreign currency.

By referring to the current instrument made under subregulation 5.36(1A) of the Migration Regulations, application fees and refunds made under the Citizenship Act can continue to be paid in foreign currencies. This amendment reduces hardship for clients making applications at overseas posts.

Due to the operation of section 14 of the *Legislation Act 2003*, it is not possible to incorporate by reference the instrument made under subregulation 5.36(1A) of the Migration Regulations as in force from time to time. Rather, the current instrument needs to be incorporated by reference at the time of commencement of the Regulation.

Instruments made under the Migration Regulations are incorporated in the Citizenship Regulations because the Citizenship Act does not currently permit the Minister for Immigration and Border Protection to make instruments under the Citizenship Regulations.

*New definition of “places and currencies instrument”*

This item provides that “places and currencies instrument” means the instrument titled *Places and Currencies for Paying of Fees* (IMMI 16/36), that commenced on 1 July 2016.

The definition of “places and currencies instrument” is relevant to provisions in the Citizenship Regulations which allow a person who makes an application under the Citizenship Act to pay the prescribed fee in a foreign country and a foreign currency specified in the “places and currencies instrument.”

This item replaces a reference to the previous instrument in the definition of “places and currencies instrument” with a reference to an instrument that is made under subregulation 5.36(1) of the Migration Regulations. This instrument commences on 1 July 2016 and sets out the places and currencies for paying fees.

By referring to the current instrument made under subregulation 5.36(1) of the Migration Regulations, application fees and refunds made under the Citizenship Act can continue to be paid in foreign countries and foreign currencies. This amendment reduces hardship for clients making applications at overseas posts.

Due to the operation of section 14 of the *Legislation Act 2003*, it is not possible to incorporate by reference the instrument made under subregulation 5.36(1) of the Migration Regulations as in force from time to time. Rather, the current instrument needs to be incorporated by reference at the time of commencement of the Regulation.

Instruments made under the Migration Regulations are incorporated in the Citizenship Regulations because the Citizenship Act does not currently permit the Minister for Immigration and Border Protection to make instruments under the Citizenship Regulations.

#### Item 2 – Subregulations 13(5) and (5A)

This item substitutes each instance of \$130 in subregulations 13(5) and 13(5A) of the Citizenship Regulations with \$105.

Table Item 14A of Schedule 3 of the Citizenship Regulations relates to fees for both an application under section 21 of the Citizenship Act and a test under subsection 21(2A) of the Citizenship Act based on the criteria under subsection 21(2) of the Citizenship Act.

Table Item 15 of Schedule 3 of the Citizenship Regulations relates to fees for an application under section 21 of the Citizenship Act, without the test component. The fee for the test component under subsection 21(2A) of the Citizenship Act can therefore be calculated as the difference in the table Item 14A of Schedule 3 fee of \$285 and the table Item 15 of Schedule 3 fee of \$180.

From 1 January 2016 the test component of an application for citizenship by conferral (general eligibility) is \$105. This means the \$130 refund provided by subregulation 13(5) of the Citizenship Regulations provides for a refund that is \$25 higher than the amount paid by an applicant, as the current fee difference is \$105.

The effect of the amendment is that the Minister may refund \$105 of the fee payable under section 46 of the Citizenship Act.

The purpose of the amendment is to ensure that applicants are only refunded an amount equivalent to the test component charged at the time they applied for citizenship.

### **Schedule 3 – Australian citizenship: transitional and application**

#### Item 1 – Part 4

This item amends Part 4 of the Citizenship Regulations to insert regulation 30 entitled ‘Amendments made by the *Migration Legislation Amendment (2016 Measures No. 2) Regulation 2016*’.

Regulation 30 of Part 4 provides that the amendments to the Citizenship Regulations made by Schedule 1 to the Regulation apply in relation to an application made under the Citizenship Act on or after 1 July 2016.

A note clarifies that Schedule 2 to the Regulation commences 1 July 2016.

The effect and purpose of the item is to clarify to whom and when the regulation amendments apply.