

EXPLANATORY STATEMENT

Select Legislative Instrument 2016 No.

Issued by the Minister for Immigration and Border Protection

Migration Amendment (Temporary Activity Visas) Regulation 2016

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 of the Act in Attachment A.

The *Migration Amendment (Temporary Activity Visas) Regulation 2016* (the Regulation) amends the *Migration Regulations 1994* (the Migration Regulations) to progress the Government's visa simplification and deregulation and digital transformation agendas by reforming temporary visas that permit various types of work and activity in Australia (entertainers, occupational trainees, religious workers, researchers, elite sportspeople, and a number of other specialised categories). The Regulation reduces the overall number of visa subclasses by three, streamlines the requirements for sponsorship, nomination, visa application and grant and provides for online applications.

In particular, the Regulation repeals five visas and creates two new visas. The new visas cover all of the cohorts who were covered by the repealed visas. The Regulation introduces a new Subclass 407 (Training) visa and a Subclass 408 (Temporary Activity) visa to replace the following temporary activity visas:

- Subclass 401 (Temporary Work (Long Stay Activity)) visa;
- Subclass 402 (Training and Research) visa;
- Subclass 416 (Special Program) visa;
- Subclass 420 (Temporary Work (Entertainment)) visa; and
- Subclass 488 (Superyacht Crew) visa.

The Regulation also makes minor amendments to the Subclass 400 Temporary Work (Short Stay Activity) visa and the Subclass 403 Temporary Work (International Relations) visa.

The Regulation creates a new class of sponsor for these visas, called the 'temporary activities sponsor'. This class of sponsor replaces six classes of sponsors:

- professional development sponsor;
- special program sponsor;
- superyacht crew sponsor;
- long stay activity sponsor;
- training and research sponsor; and
- entertainment sponsor.

The Regulation also removes most requirements for sponsors to complete an additional nomination process in relation to sponsored visa applicants. This streamlines the sponsorship process and removes red tape. The nomination requirement is retained in relation to occupational trainees (Subclass 407) where three stage processing (sponsorship, nomination and visa) is considered necessary to ensure the integrity of the programme. Further, retaining nominations is beneficial for visa holders in this cohort as it enables movement between sponsors without the additional burden of a visa application.

The Regulation also introduces a uniform and flat pricing structure (visa application charges). These changes apply to the new Subclass 407 and Subclass 408 visas, and the existing Subclass 400 and Subclass 403 visas. This pricing structure balances an increase for the purely economic Subclass 400 visa with a reduction for other visas which are predominantly social or cultural in nature. For many visa applicants, the visa application charges have been reduced. These changes introduce greater equity and fairness into the visa pricing structure.

The Regulation also gives effect to the Government's Digital Transformation agenda and the aim for a simpler, clearer, faster public service by providing for online applications for all visa applicants, their sponsors and their nominators in relation to these visas. The online lodgement system commences at the same time as the Regulation and will lead to significant benefits for clients, and also generate efficiencies and savings for the Department of Immigration and Border Protection (the Department).

Schedule 2 to the Regulation amends the visa application charge (VAC) for the recently introduced Entrepreneur stream in the Subclass 888 (Business Innovation and Investment (Permanent)) visa.

In particular, the Regulation corrects the arrangements relating to the first instalment of the VAC for an application for a Subclass 888 (Business Innovation and Investment (Permanent)) visa. It repeals specific provisions that applied to applicants seeking to satisfy the criteria for the Entrepreneur stream of the Subclass 888 visa, with the effect that those applicants only need to pay the lower amount of VAC applicable to all other applicants for a Subclass 888 visa, as intended. Although no persons are yet eligible to apply for this permanent visa (and therefore no one has been disadvantaged by the higher VAC), the Regulation ensures the lower and correct VAC applies in the future when persons will be eligible to apply for the visa.

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 the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. Copies of the Statements are 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 proposed Regulation may be exercised.

The Office of Best Practice Regulation (the OBPR) has been consulted. OBPR advised that Regulation Impact Statements are not required. The regulation changes are expected to have only minor impacts on business. The OBPR consultation references are 19898 (Schedule 1) and 20000 (Schedule 2).

In relation to Schedule 1, the Department consulted extensively in developing the new visa framework. In September 2014, the Department issued a discussion paper and received 68 submissions. The submissions were considered in the formulation of a proposed framework that was released for consultation in December 2014. Responses were received from 71 industry stakeholders. In April 2015, the Department again sought stakeholder views by conducting a survey and received 1177 responses. The responses were considered by the Department in formulating the final framework.

Parallel to this review, the Department and the Ministry for the Arts undertook a joint review of the Subclass 420 Temporary Work (Entertainment) visa and released a discussion paper on 12 January 2015. The discussion paper canvassed a range of deregulation opportunities and proposed changes to longstanding VAC concessions. Sixty-three key stakeholders, including unions, entertainment bodies, current sponsors, relevant government agencies and migration agents were advised of the review. The Department subsequently met with a number of stakeholders to discuss their comments about the deregulation options.

Most recently, public information sessions on the temporary activity visas were conducted in Perth, Melbourne, Brisbane and Sydney from 23 to 30 September 2016.

In relation to Schedule 2, no consultations were necessary as the amendment is correcting an inadvertent administrative error in drafting the VAC for the Subclass 888 visa.

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

The Regulation commences on 19 November 2016.

Authority: Subsection 504(1) of the
Migration Act 1958

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 31(1) of the Act, which provides that there are to be prescribed classes of visas;
- subsection 31(3) of the Act, which provides that 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 or 38A);
- subsection 31(5) of the Act, which provides that the Migration Regulations may specify that a visa is a visa of a particular class;
- subsection 40(1) of the Act, which provides that the Migration 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 Migration Regulations may provide that visas, or visas of a specified class, are subject to specified conditions;
- subsection 41(2) of the Act, which provides that, without limiting subsection 41(1), the Migration Regulations may provide that a visa, or visas of a specified class, are subject to:
 - a condition that, despite anything else in the Act, the holder of the visa will not, after entering Australia, be entitled to be granted a substantive visa (other than a protection visa or a temporary visa of a specified kind), while he or she remains in Australia; or
 - a condition imposing restrictions on doing any work, work other than specified work or work of a specified kind.
- subsection 45(1) of the Act, which provides that, subject to this Act and the Migration Regulations, a non-citizen who wants a visa must apply for a visa of a particular class;
- 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 Migration Regulations may:
 - provide that visa application charges may be payable in instalments; and
 - specify how those instalments are to be calculated; and
 - specify when instalments are payable;
- subsection 45C(2) of the Act, which provides in part that the Migration Regulations may also:
 - make provision for and in relation to:
 - the way, including the currency, in which visa application charge is to be paid; or
 - working out how much visa application charge is to be paid; or
 - the time when the visa application charge is to be paid; or
 - the persons who may be paid the visa application charge on behalf of the Commonwealth;
- section 140A of the Act, which provides that Division 3A of Part 2 of the Act applies to visas of a prescribed kind;
- subsection 140E(1) of the Act, which provides that the Minister must approve a person as a sponsor in relation to one or more classes prescribed for the purpose of subsection 140E(2) if prescribed criteria are satisfied;
- subsection 140E(2) of the Act, which provides that the regulations must prescribe classes in relation to which a person may be approved as a sponsor;
- subsection 140E(3) of the Act, which provides that different criteria may be prescribed for:
 - different kinds of visa (however described); and
 - different classes in relation to which a person may be approved as a sponsor; and
 - different classes of person within a class in relation to which a person may be approved as a sponsor;
- subsection 140F(1) of the Act, which provides that the Migration Regulations may establish a process for the Minister to approve a person as a sponsor;
- subsection 140F(2) of the Act, which provides that different processes may be prescribed for:
 - different kinds of visa (however described); and
 - different classes in relation to which a person may be approved as a sponsor;

- subsection 140G(1) of the Act, which provides that an approval as a sponsor may be on terms specified in the approval;
- subsection 140G(2) of the Act, which provides that the terms must be of a kind prescribed by the Migration Regulations;
- subsection 140G(3) of the Act, which provides that an actual term may be prescribed by the Migration Regulations;
- subsection 140G(4) of the Act, which provides that different kinds of terms may be prescribed for:
 - different kinds of visa (however described); and
 - different classes in relation to which a person may be approved as a sponsor;
- subsection 140GA(1) of the Act, which provides that the regulations may establish a process for the Minister to vary a term of a person’s approval as a sponsor;
- subsection 140GA(2) of the Act, which provides that the Minister must vary a term specified in an approval if:
 - the term is of a kind prescribed by the Migration Regulations for the purposes of this paragraph; and
 - prescribed criteria are satisfied;
- subsection 140GA(3) of the Act, which provides that different processes and different criteria may be prescribed for:
 - different kinds of visa (however described); and
 - different kinds of terms; and
 - different classes in relation to which a person may be approved as a sponsor;
- subsection 140GB(1) of the Act, which provides that an approved sponsor may nominate:
 - an applicant, or proposed applicant, for a visa of a prescribed kind (however described), in relation to:
 - the applicant or proposed applicant’s proposed occupation; or
 - the program to be undertaken by the applicant or proposed applicant; or
 - the activity to be carried out by the applicant or proposed applicant; or
 - a proposed occupation, program or activity;
- subsection 140GB(2) of the Act, which provides that the Minister must approve an approved sponsor’s nomination if prescribed criteria are satisfied;

- subsection 140GB(3) of the Act, which provides that the Migration Regulations may establish a process for the Minister to approve an approved sponsor's nomination.
- subsection 140GB(4) of the Act, which provides that different criteria and different processes may be prescribed for:
 - different kinds of visa (however described); and
 - different classes in relation to which a person may be approved as a sponsor.
- subsection 140H(1) of the Act, which provides that a person who is or was an approved sponsor must satisfy the sponsorship obligations prescribed by the Migration Regulations;
- subsection 140H(4) of the Act, which provides that the Migration Regulations may require a person to satisfy sponsorship obligations in respect of each visa holder sponsored by the person or generally;
- subsection 140H(5) of the Act, which provides that sponsorship obligations must be satisfied in the manner (if any) and within the period (if any) prescribed by the Migration Regulations; and
- subsection 140H(6) of the Act, which provides that different kinds of sponsorship obligations may be prescribed for:
 - different kinds of visa (however described); and
 - different classes in relation to which a person may be, or may have been, approved as a sponsor.

Statement of Compatibility with Human Rights

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

Migration Amendment (Temporary Activity Visas) Regulation 2016

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

Schedule 1 – General Amendments

Overview of Schedule 1

The Australian Government is seeking to simplify and streamline temporary work visas. This legislative instrument furthers that agenda. The number of visa subclasses will be reduced, in net terms, by three. In addition, the legislative instrument simplifies arrangements for sponsorship of visa applicants. Six classes of sponsor are replaced by one new class of sponsor.

The legislative instrument repeals five temporary work visa subclasses, and amends the *Migration Regulations 1994* (the Migration Regulations) to create two new temporary work visa subclasses as indicated below.

The amendments are primarily to:

- Part 2A of the Migration Regulations in regards to sponsorship and nomination requirements; and
- Schedules 1 and 2 of the Migration Regulations in regards to visa application and assessment requirements.

There are further minor and consequential changes to other parts of the Migration Regulations to support the introduction of the Subclass 407 (Training) visa and the Subclass 408 (Temporary Activity) visa. There are also minor changes to the existing Subclass 403 (Temporary Work (International Relations)) visa and the Subclass 400 (Temporary Work (Short Stay Activity) visa.

These amendments are achieved with only minor changes to existing policy settings. The service to clients is enhanced by the availability of online visa application lodgement for the new visas and related sponsorship and nomination applications. Changes have also been made to the visa pricing structure.

Calculation of Visa Application Charge

The rationalisation of the visa structure, including the creation of two new visas and the relocation of streams in existing visas, such as the relocation of the Invited Participant stream from Subclass 400 into the new Subclass 408 (Temporary Activity) visa, and the differing Visa Application Charges (VACs) that previously existed in relation to these streams, has required a reassessment of the temporary activity visa framework pricing structure.

The policy objective in relation to this reassessment was to increase fairness and equity across different cohorts while supporting Australia to be competitive in the international market. A uniform and flat VAC structure at a price point of \$275 for primary applicants meets these objectives and is a desirable policy outcome as it removes price from being a determining factor for visa applicants and ensures an equitable price point for all applicants in this visa framework. In calculating the price point for the VAC, the Government also considered the potential effects that changes to longstanding VAC concessions might have on users of this visa framework. Family members over the age of 18 also pay \$275. Family members who are under 18 pay \$70. These charges represent the lowest possible uniform and flat VAC structure that would not have an adverse effect on the Budget.

The Subclass 407 (Training) visa

The amendments to the Migration Regulations:

- repeal the existing Training and Research (Subclass 402) visa;
- establish a new class of ‘temporary activities sponsor’ which replaces the training and research sponsor class and the professional development sponsor class (as well as the sponsor classes noted below in relation to Subclass 408); and
- establish a new visa subclass, Subclass 407 (Training), for visa applicants who enter Australia to undertake occupational training for up to two years. The new visa and related nomination requirements include strengthened integrity measures to ensure that the visa is used only for genuine occupational training which does not adversely impact the Australian labour market. The new visa is less expensive than the Subclass 402 visa. The visa application charge for primary applicants has been reduced from \$380 to \$275.

The Subclass 408 (Temporary Activity) visa

The amendments to the Migration Regulations:

- repeal four existing visas: Subclass 401 Temporary Work (Long Stay Activity), Subclass 416 (Special Program), Subclass 420 ((Temporary Work) (Entertainment)), and Subclass 488 (Superyacht Crew);
- establish a new class of ‘temporary activities sponsor’ which replaces four sponsorship classes: long stay activity sponsor, special program sponsor, entertainment sponsor, and superyacht crew sponsor;
- establish a single visa subclass, Subclass 408 (Temporary Activity), that consolidates the current Schedule 1 and 2 criteria for temporary stay in Australia

by: invited participants in events; sports trainees and elite sportspeople; religious workers; domestic workers employed by senior overseas-based executives; superyacht crew; academic researchers; participants in youth exchange programs, student exchange programs and other cultural programs; persons working on Australian Government endorsed events; and persons working in the entertainment industry. The visa permits stay in Australia for up to two years, except for persons entering in connection with Australian Government endorsed events (such as the Commonwealth Games) where the maximum permitted stay is four years;

- reduce visa related charges. The visa application charge for primary applicants has been reduced from \$380 to \$275. In addition, there is no longer a requirement to nominate each visa applicant, which incurred a fee of \$170 per nomination. The change in visa related costs includes the removal of bulk discount provisions which resulted in lower visa charges for large commercial entertainment ventures. The changes will create a fairer and more equitable pricing structure. Exemptions from visa application charges will continue to be available for persons specified in an instrument made by the Minister. In addition, a reduced visa application charge will be available for persons specified in an instrument made by the Minister;
- remove the requirement for nominations (nominations are additional to the requirements for sponsorship) which applied to Subclass 401 and Subclass 420 visas. This will reduce the regulatory burden and cost on sponsors; and
- remove the requirement for sponsorship for visa applicants who are outside Australia and who seek a stay of up to three months. In those cases, sponsorship is replaced by a simple requirement for a letter of support. This will reduce the regulatory burden and cost on those supporters, as they will no longer be required to become sponsors.

The amended Subclass 403 (Temporary Work (International Relations)) visa

This existing subclass is amended to:

- include a Seasonal Worker Program stream. The programme was previously catered for in the repealed Subclass 416 (Special Program) visa. The location of this cohort within Subclass 403 is consistent with the government to government arrangements which underpin the programme; and
- make other minor changes, including adjustment of the VACs to conform to the new VAC structure

The amended Subclass 400 (Temporary Work (Short Stay Activity)) visa

The existing subclass is amended to:

- remove the Invited Participant stream, which is superseded by the inclusion of this cohort in the new Subclass 408 (Temporary Activity) visa;
- rename the subclass as the *Subclass 400 (Temporary Work (Short Stay Specialist) visa*. This name better reflects the purpose of the visa following the removal of the Invited Participant stream; and

- make other minor changes, including adjustment of the VACs to conform to the new VAC structure

Human rights implications

This legislative Instrument has been considered against each of the seven core international human rights treaties. The legislative instrument positively engages the right to work as provided for in Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) by making these temporary work visas more accessible for applicants and sponsors. This is achieved by the availability of online visa application lodgement, simplified arrangements for sponsorship of visa applicants and a reduction in the level of visa application charges for many applicants.

Conclusion

This legislative instrument is compatible with human rights as it supports the attainment of human rights.

Schedule 2 – Visa application charge for entrepreneur stream

Overview of Schedule 2

Schedule 2 corrects a technical error in the *Migration Regulations 1994* regarding the Visa Application Charge (VAC) for a Subclass 888 visa in the Entrepreneur stream. The instrument amends subitem 1104BA(2) of Schedule 1 to the *Migration Regulations 1994* to remove the specified amounts of the first instalment of the VAC amounts for applications for a Subclass 888 visa in the Entrepreneur stream. It provides that the same amounts of the first instalment of the VAC apply for applications for a Subclass 888 visa in the Entrepreneur stream as for all other applications for a Subclass 888 visa. This change reflects the approved and intended charges for the Subclass 888 visa in the Entrepreneur stream and represents a reduction in the VAC.

Human rights implications

The amendment does not engage any of the applicable rights or freedoms. Rather, lowering the VAC is beneficial to applicants for a Subclass 888 visa in the Entrepreneur stream.

Conclusion

This amendment 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

Details of the proposed *Migration Amendment (Temporary Activity Visas) Regulation 2016*

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Migration Amendment (Temporary Activity Visas) Regulation 2016* (the Amendment Regulation).

Section 2 – Commencement

This section provides that the Amendment Regulation commences on 19 November 2016.

Section 3 – Authority

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

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

Section 4 – Schedule(s)

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

The effect of this section is that the *Migration Regulations 1994* (the Migration Regulations) are amended as set out in the applicable items in Schedule 1 and Schedule 2 to the Amendment Regulation.

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

Schedule 1 – General Amendments

Part 1 – Subclass 408 (Temporary Activity) visa

The new Temporary Activity (Class GG) visa, which contains the Subclass 408 (Temporary Activity) visa, replaces the following visas and streams:

- Invited Participant Stream in the Subclass 400 (Temporary Work (Short Stay Activity) visa);
- Subclass 401 (Temporary Work (Long Stay Activity)) visa;
- Research Stream in the Subclass 402 (Training and Research) visa;
- Subclass 416 (Special Program) visa;
- Subclass 420 (Temporary Work (Entertainment) visa); and
- Subclass 488 (Superyacht Crew) visa.

The new visa consolidates the various visas outlined above into one visa. In addition, this visa also introduces a new pathway for applicants seeking to engage in work directly associated with an Australian government endorsed event. The activities covered by the Subclass 408 visa are as follows:

- participating in events where the applicant is invited by a person or organisation who is directly responsible for, or has a formal role in, preparing for or conducting the event;
- elite sporting activities or training for such an activity;
- religious activity that is predominantly non-profit in nature;
- domestic work for certain senior executives of a foreign government agency or foreign organisation;
- working as a crew of a superyacht;
- observing or participating in an academic research project;
- working in a skilled position under a staff exchange arrangement;
- participating in certain special programs in Australia;
- engaging in work directly associated with an Australian government endorsed event; and
- working in the entertainment industry.

Item 1 – At the end of Part 2 of Schedule 1

New item 1237 sets out the requirements for making a valid application for the Temporary Activity (Class GG) visa. This visa class includes only one subclass: the Subclass 408 (Temporary Activity) visa. Subclass 408 completely replaces four visas (Subclass 401, Subclass 416, Subclass 420, and Subclass 488), and also incorporates part of Subclass 402, which is also repealed. Also, as noted above, Subclass 408 replaces the Invited Participant stream of the Subclass 400 visa. The provisions which repeal subclasses 401, 402, 416, 420 and 488 are contained in Part 5 of Schedule 1 to the Amendment Regulation.

The requirements for making a valid application for a Temporary Activity (Class GG) visa in new item 1237 broadly reflect the current requirements for making a valid application for the repealed visas, with minor changes and clarifications to the policy settings.

New subitem 1237(1) provides that the approved form is the form specified by the Minister in a legislative instrument. This is standard practice throughout the Migration Regulations pursuant to subregulation 2.07(5). The form to be specified in the instrument will be an internet form as all applications for the visa must be made online.

New paragraph 1237(2)(a) provides that the first instalment of the visa application charge (VAC) is \$275 (and \$70 for family members aged less than 18), unless the applicant is:

- in a class of persons specified by the Minister in an instrument in writing, in which case there is a nil VAC (subparagraphs 1237(2)(a)(i) and (ii)); or

- in a class of persons specified by the Minister in an instrument in writing, in which case there is a reduced VAC of \$70 (and \$20 for family members aged less than 18) (subparagraphs 1237(2)(a)(iii)).

The VAC for primary applicants has been reduced from the \$380 that applied to the repealed visas, to \$275. In addition, the removal of the previous visa requirement for nominations represents a saving to sponsors of \$170 for each primary applicant. This change in visa related costs, including the removal of bulk discount provisions which resulted in lower visa charges per person for large commercial entertainment ventures, will create a fairer and more equitable pricing structure. In relation to the exemptions for non-profit organisations, which previously appeared in Schedule 1 in relation to the Subclass 420 Temporary Work (Entertainment) visa, those provisions are not carried forward in the same form into Subclass 408 because they may not meet the requirement for application validity criteria to be framed in objective terms in order for validity to be quickly determined. The assessment of claims in relation to the non-profit exemption from visa application charges required a potentially complex evaluative process by decision-makers and for that reason is incompatible with the purpose of Schedule 1 to the Migration Regulations and a quick assessment of application validity. The non-profit exemption is replaced by an exemption for visa applicants who are sponsored by Charitable Organisations that are registered with the Australian Charities and Not-for-Profits Commission. This exemption will be specified in a legislative instrument to be made by the Minister, which will come into effect at the same time as the Amendment Regulation, on 19 November 2016. This will provide an objective basis for the exemption from visa application charges, and will provide clarity and certainty for visa applicants and sponsoring or supporting organisations.

The nil VAC and reduced VAC provisions also provide flexibility to allow entry at nil or reduced cost in cases where Australia is competing with other countries to attract visa applicants, e.g. for large business meetings, seminars or conventions, and to allow entry at nil or reduced cost where the Minister determines that it is in the public interest to do so.

Paragraph 1237(2)(b) provides that the second instalment of the visa application charge (VAC) is nil.

New subitem 1237(3) sets out the other requirements for making a valid application for a visa of the new Class GG.

Item 1 in the table requires that an application must be made at the place, and in the manner (if any) specified by the Minister in a legislative instrument. This is standard practice throughout the Migration Regulations pursuant to subregulation 2.07(5).

Item 2 in the table provides that an applicant may be in or outside Australia, but not in immigration clearance, when the application is made.

Item 3 in the table imposes a requirement for sponsorship unless the applicant is outside Australia and seeking no more than three months entry, or unless the applicant is seeking to enter or remain in Australia to undertake work directly associated with an Australian Government endorsed event.

The required sponsorship to make a valid application is specified at subitems 1237(4) and 1237(5). The sponsor must be either a ‘temporary activities sponsor’ or one of the five specified ‘legacy’ classes of sponsor, or someone who has applied to be a sponsor but whose application has not yet been decided. If the sponsor is a legacy sponsor, the visa application must be lodged by 18 May 2017. This represents a six month transitional period during which legacy sponsors can sponsor applicants for the new visa. It is anticipated that most legacy sponsors will apply to be approved as a new class of temporary activities sponsor during this period. The requirement imposed by item 3 will be facilitated by the online visa application form, which will not be able to be submitted unless a valid sponsor ID reference number is entered in the appropriate field.

Item 4 in the table provides that, if the applicant holds a substantive visa, it must not be one of the visas specified in the item. This item serves two purposes. The named visas are visas in relation to which holders are generally not permitted to apply for other visas in Australia. Permanent visas are listed to avoid situations where holders of permanent visas apply unnecessarily for a temporary visa. This can occur if the holder of the permanent visa believes that he or she no longer holds a permanent visa or if notification that a permanent visa has been granted by the Department has not yet been received. Item 4 also provides capacity to list temporary visas in an instrument for the same reason. Some temporary visas are more beneficial than the Subclass 408 and it would be unnecessary for the holder of one of those visas to apply for Subclass 408. The background to these legislative changes is that subsection 82(2) of the Migration Act will cause a substantive visa to cease if another substantive visa is granted, even if the second visa is less beneficial. Provisions have also been inserted into Schedule 2 to prevent the grant of a Subclass 408 visa in these situations (clause 408.214).

Item 5 in the table requires an applicant, who is in Australia, to have held a substantive visa, which must not have been one of the named visas. As noted in item 4 above, these are visas in relation to which holders are generally not permitted to apply for other visas in Australia. This provision complements item 4 by covering the situation where the non-citizen held one of the named visas, and the visa expired, and no further substantive visa has been granted.

Item 5 in the table also provides that the application must be made within 28 days after the day when the last substantive visa held by the applicant ceased to be in effect; or, if the last substantive visa was cancelled and the Administrative Appeals Tribunal set aside the cancellation or set aside and substitute the Minister's decision not to revoke the cancellation, 28 days after the day the last substantive visa ceased to be in effect or the day on which the applicant is taken to have been notified of the Tribunal's decision (‘the 28 day rule’). These requirements were previously criteria prescribed in Schedule 2 for the relevant repealed visa subclasses, to be satisfied after a valid application had been made. Moving the 28 day rule to Schedule 1 prevents a valid application from being made (and having to be refused) if an applicant in Australia does not hold a substantive visa and cannot meet this objective requirement.

One result of the move of the 28 day rule to Schedule 1 will be a reduction in the number of futile review applications to the Administrative Appeals Tribunal. It was possible for applicants to seek review of visa refusal decisions based on a failure to meet the 28 day rule, despite the fact that this is an objective requirement and the Tribunal is bound to affirm the refusal decision. The new model is consistent with the need to make efficient use of the

Tribunal's resources. The new model will also prevent non-citizens from incurring the futile expense and wasted time of a review. If a non-citizen disputes the applicability of the 28 day rule, this can be dealt with by judicial review in the Federal Circuit Court, where the question can be examined as a 'jurisdictional fact'. There should be very few such cases, given the objective nature of the rule and the established evidentiary basis for the rule in Departmental and Tribunal systems.

Item 6 in the table requires that an applicant seeking to satisfy the primary criteria for a relevant visa must declare in the application whether or not either the applicant, or any person who has made a combined application with the applicant, has engaged in conduct in relation to the application that constitutes a contravention of subsection 245AS(1) of the Migration Act. Subsection 245AS(1) provides that a person contravenes the subsection if the person offers to provide, or provides, a benefit to another person in return for the occurrence of a sponsorship-related event, which would include agreeing to be the visa applicant's sponsor.

New subitems 1237(4) and (5) are discussed above, see subitem 1237(3), item 3.

New subitem 1237(6) provides that an application by a person claiming to be a member of the family unit of a person who is seeking to satisfy the primary criteria for the grant of a Subclass 408 (Temporary Activity) visa may be made at the same time and place as, and combined with, the application by that person. The effect of this provision is that an applicant who is seeking to satisfy the secondary criteria and is making a combined application only has to pay the relevant additional applicant charge of the VAC and not the base application charge as the application will be combined in a way permitted by Schedule 1 (see paragraph 2.12C(4)(a) in Division 2.2A of Part 2 of the Migration Regulations).

New subitem 1237(7) provides that the only subclass in the Temporary Activity (Class GG) visa is Subclass 408 (Temporary Activity).

Item 2 – Before Part 410 of Schedule 2

This item inserts a new Part 408 of Schedule 2 to the Migration Regulations, and contains the new Subclass 408 (Temporary Activity) visa ('Subclass 408 visa').

Division 408.1 – Interpretation

Clause 408.111 sets out the meaning of certain defined terms for the purposes of Part 408. This clause assists with the interpretation of the visa criteria in this Part.

With the exception of three new terms (*adverse supporter information* (see explanations for clause 408.112), *passes the sponsorship test* and *passes the support test*), this clause either substantially replicates the previous meaning of the relevant terms, or provides a signpost to other parts of the Migration Regulations which contain the meaning of these terms. This clause also relocates the definition of *sporting organisation* from subregulation 2.57(1) as it is only used in this Part.

Previously, *net employment benefit* was defined in subregulation 2.57(4) of the Migration Regulations. This amendment relocates this term into clause 408.111 because it is only used in this Part.

The previous definition of this term referred to the conferring of a net employment benefit on Australia. This amendment replicates the effect of the previous definition for this term, but clarifies that the ‘net employment benefit’ refers to a benefit to the Australian entertainment industry from an activity which a person is seeking to carry out in Australia. This is a technical change to clarify the intended meaning of this term.

Passes the sponsorship test

The definition of ***passes the sponsorship test*** identifies the basic conditions under which an approved sponsor can sponsor applicants for the Subclass 408 visa. For all applicants who need to be sponsored, their sponsors are required to pass the sponsorship test. Although a valid application can be lodged on the basis that the applicant has identified a person who has applied for approval to become a sponsor, for the visa to be granted, the applicant must be sponsored by an approved sponsor who passes the sponsorship test.

For a sponsor to pass the sponsorship test in relation to an applicant, they will need to meet both of the following conditions:

- be (and continue to be) an approved sponsor of the applicant. Their agreement to sponsor the applicant must be evidenced in writing; and
- not be the subject of adverse information, including adverse information about an associated person, unless it is reasonable to disregard the information.

‘Adverse information’ is defined in regulation 1.13A of Division 1.2 of Part 1 of the Migration Regulations.

As explained in relation to the Schedule 1 requirements for Subclass 408 (item 1 above), the sponsor must be a ‘temporary activities sponsor’ or, for visa applications made on or before 18 May 2017, a relevant class of legacy sponsor. In general terms, legacy sponsors are only able to provide sponsorship for the same types of activities and visa applicants that they could sponsor prior to 19 November 2016.

As set out in a ‘Note’, the applicant’s sponsor, at the time a decision is made on the visa application, does not have to be the sponsor identified in the visa application. There is flexibility for visa applicants to obtain new sponsors if this is required.

Passes the support test

The definition of ***passes the support test*** identifies the basic conditions under which a person or organisation (‘the supporter’) can support a non-sponsored Subclass 408 visa applicant. Applicants outside Australia, seeking up to three months stay, are not required to obtain a sponsor. It is sufficient that an appropriate person or organisation (which is specified differently for each activity) is supporting the visa applicant. For applicants who do not need to be sponsored, a supporter must pass the support test.

For supporters to pass the support test in relation to an applicant, they will need to meet both of the following conditions:

- on request by the Minister, provide a letter of support which provides comprehensive details of the applicant’s proposed activity in Australia; and

- not be the subject of ‘adverse supporter information’, including information about an associated person, unless it is reasonable to disregard the information.

The support test was created for ease of reference to the conditions under which a person or organisation can support a non-sponsored Subclass 408 visa applicant. As supporters are not required to be approved sponsors, they are not subject to the rules that apply to sponsors in the Act and the Migration Regulations, such as the sponsorship obligations in Division 2.19 of Part 2A of the Migration Regulations. This will streamline visa processes for a large number of short term entrants coming to Australia for cultural or community activities, or for short term employment in specialised fields such as the entertainment industry (e.g., tours by overseas performing artists). However, anyone who seeks entry to Australia for longer than three months, or who applies for the Subclass 408 visa after entry to Australia, will require sponsorship (unless the visa is granted in relation to an Australian Government endorsed event). These arrangements strike an appropriate balance between the integrity and accountability provided by a sponsorship regime, and the objective of streamlining short term entry into Australia. A number of additional checks and balances are built into the visa criteria discussed below.

Clause 408.112 – adverse supporter information

The definition of ***adverse supporter information*** replicates the meaning of ***adverse information*** in regulation 1.13A, but specifically applies to supporters. It was not possible to apply the definition in 1.13A as its application is limited to sponsors and nominators. This is a technical change only. The content of clause 408.112 is the same as regulation 1.13A.

Division 408.2 – Primary criteria

Subdivision 408.21 – Common criteria

Clauses 408.211 to 408.219

All applicants seeking to satisfy the primary criteria are required to meet the common criteria. These criteria include a requirement that the applicant’s activities will not have adverse consequences for the employment or training of Australian citizens or permanent residents. The criteria also require that the applicant genuinely seeks to stay temporarily in Australia for the purpose for which the visa is granted. The applicant is also required to have adequate arrangements for health insurance, adequate means to support himself or herself in Australia, and must satisfy certain public interest criteria and also satisfy certain special return criteria relevant to applicants who have previously been in Australia. A further integrity measure requires that the applicant must not have engaged in any conduct that contravenes the prohibitions in the Migration Act on payments for sponsorship-related events.

Clause 408.214 provides that the applicant must not hold a permanent visa or a temporary visa specified in a legislative instrument. The purpose of this measure is to prevent a Subclass 408 visa being granted to an applicant who already holds a more beneficial visa. This provision mirrors the provision in item 4 of the table at subitem 1237(3) of Schedule 1 (refer to explanation in item 1 above). Whereas the Schedule 1 provision will prevent the holder of a more beneficial visa from applying for a Subclass 408 visa, this clause addresses the situation where the application for the Subclass 408 visa has already been made before the

more beneficial visa is granted. For example, a Subclass 408 visa might be applied for on a particular day, and a permanent visa (e.g. a spouse visa applied for months earlier) might be granted on the following day. In those circumstances the Subclass 408 visa could not be granted. This is to prevent the grant of the Subclass 408 visa unintentionally ceasing the more beneficial visa.

Clause 408.219 requires that the applicant must not be seeking to a visa to work in the entertainment industry unless the applicant satisfies the criteria for the entertainment activity (clause 408.229A) or the criteria for Australian Government endorsed events (clause 408.229). The intention is that an applicant who intends to do work related to entertainment must be assessed and approved under clause 408.229A, which carries over the previous legislative rules applying under the repealed Subclass 420 Temporary Work (Entertainment) visa. The exception for Australian Government endorsed events is intended to allow for the entry of persons working on events in an entertainment capacity, e.g. media or performers associated with the Commonwealth Games.

Clause 408.219A

The purpose and effect of this clause is to require the applicant to meet one of the clauses in Subdivision 408.22.

Subdivision 408.22 – Alternative criteria

The criteria in this Subdivision represent alternative ‘pathways’ to the grant of a Subclass 408 visa. An applicant seeking to satisfy the primary criteria for the grant of a Subclass 408 visa must meet all of the common criteria and one of the alternative criteria in Subdivision 408.22. In general, the alternative criteria are closely modelled on the criteria for the visas which are repealed by the Amendment Regulation, and also incorporate aspects of the nomination and sponsorship approval criteria which applied in relation to those visas. The consolidation of criteria within the Subclass 408 visa is facilitated by the move from paper-based applications to online lodgement, which took effect on the commencement of the Amendment Regulation on 19 November 2016.

An applicant who is seeking to satisfy the primary criteria for Subclass 408 will be assessed against the activity nominated by the applicant in the online application. If required by the facts of a particular case, decision-makers will also consider whether an applicant can satisfy a criterion for an activity other than the activity selected in the online form. The visa can be granted if the applicant satisfies any of the alternative criteria. In practice, however, the activities are all quite different from each other, and it will be rare for an applicant to be eligible to meet a criterion other than the nominated criterion. However, applicants may inadvertently or mistakenly select the wrong activity for their circumstances. The Migration Regulations provide flexibility to allow such errors to be rectified.

Clause 408.221 – Invited Participant in an event

This criterion provides for the grant of a Subclass 408 visa to a person who seeks to enter or remain in Australia to participate in one or more events. The criterion replaces the Invited Participant stream of the Subclass 400 Temporary Work (Short Stay Activity) visa. That stream has been repealed. Whereas a Subclass 400 visa in the Invited Participant stream

could only be granted to a visa applicant outside Australia, Subclass 408 provides greater flexibility. Applicants may be in or outside Australia.

As was the case with Subclass 400, there is no definition of ‘event’. It is intended that this pathway will cater for a wide variety of cultural, community or business purposes, covering festivals, conferences, seminars, etc. Another aspect of the increased flexibility, compared to Subclass 400, is that the invitation can be issued by an individual, in addition to the provision for invitations by organisations. Another change is that the individual or organisation issuing the invitation does not have to be based in Australia. A further change is that visa holders will now be able to receive remuneration for work which is directly related to the event. However, visa holders will be subject to visa condition 8107 which has the effect that the visa holder must not engage in work which is inconsistent with the activity in relation to which the visa was granted. This means that the visa holder can only engage in paid employment if it is part of the event.

To balance the increased flexibility provided to invited participants, a visa granted to a person who satisfies this criterion will be limited to a maximum stay of three months. In addition, all onshore applicants will require sponsorship by a temporary activities sponsor. Applicants outside Australia will require the support of the person or organisation issuing the invitation. In all cases, the sponsor or supporter must be directly responsible for the event(s) or have a formal role in preparing for or conducting the event(s). Further, the person or organisation will have to ‘pass the sponsorship test’ (onshore applicants) or ‘pass the support test’ (offshore applicants), meaning that there must be no adverse information about the sponsor/supporter or an associated person known to the Department of Immigration and Border Protection, unless it is reasonable to disregard that information.

Clause 408.222 – Sports trainee and elite player, coach, instructor or adjudicator

This clause caters for elite level sport. It covers players, coaches, instructors, adjudicators and sports trainees. The visa may be granted for up to two years. These criteria are substantively the same as the criteria for ‘sporting activity’ in the nomination criteria for the repealed Subclass 401 Temporary Work (Long Stay Activity) visa. However, sports trainees were previously covered by the nomination criteria for the repealed Subclass 402 (Training and Research) visa. The visa applicant must be sponsored (for stays of more than three months) or supported (for stays of up to three months) by a sporting organisation that is lawfully operating in Australia. One change from previous criteria is that the sponsor of a sports trainee must not be a sporting club that, as its primary activity, competes in sporting competitions below the Australian national level for the sport (paragraph 408.222(d)). This provision is intended to prevent clubs that primarily compete below the national level from recruiting trainees (e.g. young rugby players from the Pacific region) for the purpose of strengthening the club’s competitiveness in inter-club competitions.

Another change from previous arrangements is that the provisions no longer cater for entry by sporting teams or individuals involved in sporting competitions. There are other visas which cater for these circumstances. Professional sportspeople entering for competitions (e.g. cricket teams, professional tennis players) often use the Highly Specialised Work stream in the Subclass 400 visa. Amateur sportspeople are able to enter on visitor visas.

Visa holders will be subject to visa condition 8107 which has the effect that the visa holder must not engage in work which is inconsistent with the activity in relation to which the visa

was granted. This means that the visa holder can only engage in employment as a player, coach, instructor, adjudicator or sports trainee (as relevant to the particular visa holder).

Clause 408.223 – Religious worker

This clause provides the criteria for non-citizens seeking to enter or remain in Australia as religious workers. The visa may be granted for up to two years. These criteria are substantively the same as the criteria in the Religious Worker stream of the repealed Subclass 401 visa and related nomination criteria. The intention is to allow entry to non-citizens who will be performing religious work for a religious institution. The work must be predominantly non-profit in nature and must directly serve the religious objectives of the religious institution. The visa applicant must be sponsored (for stays of more than three months) or supported (for stays of up to three months) by a religious institution that is lawfully operating in Australia. The visa holder is not permitted to work in Australia other than undertaking the religious work for which the visa was granted.

Clause 408.224 – Domestic worker

This clause provides criteria for non-citizens seeking to enter or remain in Australia as domestic workers for a defined cohort of senior executives. The visa may be granted for up to two years. These criteria are substantively the same as the criteria in the repealed Domestic Worker (Executive) stream of the Subclass 401 visa and the related sponsorship and nomination criteria. For example, clause 408.224 would cover a nanny in the executive's household. This visa assists in ensuring Australia's competitiveness as a destination for senior executives who may not otherwise be prepared to relocate to Australia if it involved disrupting established care arrangements for children. A maximum of three overseas based domestic staff may be employed at any time, and there must be evidence that a suitable person cannot be found in Australia to perform the duties, unless there are compelling reasons for employing the applicant. In addition, a further criterion provides that the Minister must be satisfied that the applicant is to be employed in Australia in accordance with the standards for wages and working conditions provided for under relevant Australian legislation and awards. The visa applicant must be sponsored (for stays of more than three months) or supported (for stays of up to three months) by the organisation which employs the senior executive. The visa holder is not permitted to work in Australia other than as a domestic worker for the specified executive.

Clause 408.225 – Superyacht crew

This clause provides for non-citizens seeking to enter or remain in Australia to work as superyacht crew. These criteria are substantively the same as the criteria for the repealed Subclass 488 (Superyacht Crew) visa. The visa may be granted for up to two years. There is a definition of "superyacht" in Regulation 1.03, in Division 1.2 of Part 1 of the Migration Regulations. A superyacht is defined as a sailing ship or motor vessel of a kind that is specified by the Minister under regulation 1.15G to be a superyacht. Regulation 1.15G provides that the Minister may, by instrument in writing, specify that a sailing ship or motor vessel of a particular kind is a superyacht. The relevant instrument (F2009LO1302) provides that a superyacht is any high value luxury sailing ship or motor vessel which is: (a) 24 metres or longer in length; and (b) not carrying cargo; and (c) used for sport or pleasure. This category does not cover commercial cruise ships. The visa applicant must be sponsored (for stays of more than three months) or supported (for stays of up to three months) by the captain

or owner of the superyacht, or by the organisation which operates the superyacht. The visa holder is not permitted to work in Australia other than as a member of the superyacht crew.

Clause 408.226 – Research and Research (student)

This clause provides for non-citizens seeking to enter or remain in Australia to engage in research at an Australian tertiary or research institution. The visa may be granted for up to two years. The criteria for academics are substantively the same as the criteria for the repealed Research stream of the Subclass 402 (Training and Research) visa. The criteria for recent graduates are substantively the same as the criteria for the repealed Occupational Trainee stream of the Subclass 402 visa and related nomination criteria for occupational training for capacity building overseas.

The key change for academics is the removal of restrictions on the receipt of salary, scholarships and allowances. The capacity to restrict recent graduates from receiving salary, which was a discretionary visa condition in the repealed legislation, has also been removed. However, visa holders must not engage in work which is inconsistent with the activity in relation to which the visa was granted. This means that paid employment is only permissible if it is part of the research activity.

The visa applicant must be sponsored (for stays of more than three months) or supported (for stays of up to three months) by an Australian tertiary or research institution.

Clause 408.227 – Staff Exchange

This clause provides for non-citizens seeking to enter or remain in Australia to participate in a staff exchange arrangement. The visa may be granted for up to two years. The criteria are substantively the same as the criteria for the repealed Exchange stream of the Subclass 401 visa and related nomination criteria.

The visa applicant must be sponsored (for stays of more than three months) or supported (for stays of up to three months) by an Australian organisation or government agency or a foreign government agency. The visa holder is only permitted to work in the position which is the subject of the staff exchange.

Clause 408.228 – Special Programs

This clause provides for non-citizens seeking to enter or remain in Australia to participate in youth exchange programs, school to school student interchange, school language assistant programs, and other programs which have the objective of cultural enrichment or community benefit. The visa may be granted for up to two years. The criteria are substantively the same as the criteria for part of the repealed Subclass 416 (Special Program) visa.

The repealed Subclass 416 visa covered two cohorts of applicants:

- Non-citizens who seek to participate in an approved special program of the type noted above; and
- Non-citizens who seek to participate in a special program of seasonal work.

Applicants who seek to participate in seasonal work arrangements will now apply for the new Seasonal Worker program stream in the Subclass 403 (Temporary Work (International Relations)) visa (refer to Part 3 of the Amendment Regulation).

The visa applicant must be sponsored (for stays of more than three months) or supported (for stays of up to three months) by an Australian organisation or a government agency. Unless the program is a youth exchange program, the Australian organisation must be community based and not-for-profit. Visa holders are only permitted to undertake work which is consistent with the approved program, e.g. a School Language Assistant is not permitted to undertake work other than as a school language assistant in the sponsoring school.

Clause 408.229 – Australian Government endorsed event

This clause sets out the criteria for applicants who seek to undertake work directly associated with an Australian Government endorsed event. This is a new visa pathway which has no equivalent in the repealed visas. The event and the relevant classes of eligible visa applicants are to be specified by the Minister in a legislative instrument. This will provide the Minister with the flexibility to specify, over time, events that are appropriate in the circumstances. It is envisaged that only a limited number of major events will be approved, e.g. the Commonwealth Games. Visas granted on the basis of this criterion may be granted for up to four years. This is intended to facilitate work associated with the organisation and staging of major events which involve long lead times. Visa holders will only be able to undertake work which is directly associated with the event.

Visa applicants covered by these arrangements do not require a sponsor or supporter. This requirement will be subsumed by the administrative agreements between the government and event organisers, which will be concluded prior to eligible classes of visa applicant being listed in the legislative instrument.

Clause 408.229A – Entertainment-related activities

This clause sets out the criteria for non-citizens seeking to enter or remain in Australia for entertainment-related activity. The criteria are substantively the same as the criteria in the repealed Subclass 420 (Temporary Work (Entertainment)) visa and related nomination and sponsorship criteria. The visa may be granted for up to two years. Permission to work is limited to the entertainment activity in relation to which the visa was approved. The visa applicant must be sponsored by an eligible sponsor (subclause 408.229A(9)) for stays of more than three months, or supported by an eligible supporter (subclause 408.229A(10)) for stays of up to three months.

The structure of the provisions identifying eligible visa applicants reflects the structure of the criteria in the nomination criteria for the repealed Subclass 420. These criteria have been in existence for many years:

- Subclause 408.229A(2) – performing in film or television productions subsidised by government;
- Subclause 408.229A(3) – performing in film or television productions not subsidised by government;

- Subclause 408.229A(4) – performing in productions not related to film or television;
- Subclause 408.229A(5) – production roles other than as a performer
- Subclause 408.229A(6) – support staff for profit;
- Subclause 408.229A(7) – non-profit engagements;
- Subclause 408.229A(8) – documentary program or commercial for overseas market

The only substantive change from previous criteria is in relation to the category of ‘documentary program or commercial for overseas market’. Subclause 408.229A(8) does not carry across the previous criterion which required that “*there is no suitable person in Australia who is capable of doing, and available to do, the occupation or activity in which the visa applicant will be engaged*” or the criterion which required that “*the occupation or activity in which the visa applicant will be engaged would not be contrary to the interests of Australia.*” The omission of these criteria does not reflect a change in policy. The policy is adequately covered by, respectively, the common criterion dealing with no adverse consequences for employment (clause 408.211) and the public interest criteria (clause 408.216).

Division 408.3 – Secondary criteria

This Division sets out the requirements to be met by an applicant who is seeking to meet the secondary criteria for the grant of a Subclass 408 visa on the basis of being a member of the family unit of a person who satisfies the primary criteria for the grant of a Subclass 408 visa. An applicant may also meet the secondary criteria if they are the member of the family unit of a person who holds a Subclass 401 visa, a Subclass 402 visa in the Research stream, a Subclass 416 visa (other than a visa granted as part of the seasonal worker programme), a Subclass 420 visa, or a Subclass 488 visa, on the basis of satisfying the primary criteria. The inclusion of these repealed visas provides a pathway for family members to join the visa holder in Australia. Without the creation of this pathway within Subclass 408, the repeal of the identified visas would have the result that there would be no pathway for subsequent entry by family members.

Secondary applicants are required to meet certain public interest criteria and special return criteria, as well as other requirements as prescribed. In particular, the approved sponsor of the primary applicant must have agreed to be the approved sponsor of the secondary applicant.

Division 408.4 – Circumstances applicable to grant

Clause 408.411 provides that the applicant may be in or outside Australia at the time of grant, but not in immigration clearance. Previously, the repealed visas generally provided that if the application was made in Australia, the applicant must be in Australia when the visa is granted, and if the application was made outside Australia, the applicant must be outside Australia when the visa is granted. The increased flexibility provided by clause 408.411 is a result of the continuing move to an online application environment as part of the government’s digital transformation agenda.

Division 408.5 - When visa is in effect

This Division provides that the visa is a temporary visa, and sets out when the applicant is permitted to travel to, enter and remain in Australia.

Clause 408.511 provides a maximum visa period for primary and secondary applicants. Consistent with the provisions in the repealed visas, this clause provides for visa holders to travel to, enter, and remain in Australia during the visa period. The visa period will be specified by the Minister and can vary between applicants.

Depending on the circumstances of the applicant, the visa period must not exceed 3 months, 2 years or 4 years. The circumstances are as follows:

- 3 months – Offshore applicants who state they are entering for 3 months or less and any applicant (onshore and offshore) who meets the requirements of clause 408.221 (Invited participant in an event);
- 4 years – applicants who meet the requirements in clause 408.229 (Australian Government endorsed events); and
- 2 years – any other applicants who do not fall in the above 2 categories.

All secondary applicants' visas will cease on the same day as the primary applicant's visa.

Subclause 408.511(1) provides for the visa period of applicants outside of Australia at the time of grant and subclause 408.511(2) provides for the visa period of applicants in Australia at the time of grant.

Division 408.6 - Conditions

This Division sets out the Schedule 8 conditions which must, or may, be attached to the visa depending on whether the applicant has satisfied the primary or secondary criteria.

Clauses 408.611 and 408.612 set out the mandatory and discretionary visa conditions for primary and secondary visa applicants.

For primary applicants, conditions 8107 and 8303 must be imposed. Condition 8107 limits the visa holder's permission to work in Australia to the activity or employment for which the visa was granted. Condition 8303 prohibits the visa holder from becoming involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community.

In addition, for primary applicants whose visa was granted on the basis of meeting the criteria in clause 408.229A (entertainment), condition 8109 must be imposed. This condition ensures that the applicant does not depart from the scheduled entertainment activities for which the visa was granted without prior permission from the Secretary of the Department of Immigration and Border Protection.

For secondary applicants, condition 8303 must be imposed and certain other conditions are discretionary.

Part 2 – Subclass 407 (Training) visa

New Part 407 sets out the criteria and other provisions in relation to a Subclass 407 (Training) visa. The new Subclass 407 replaces the Subclass 402 (Training and Research) visa which is repealed by items [46] and [47] of this Schedule. Many of the criteria for the new Subclass 407 visa are consistent with the criteria for the repealed visa. The major change

is that the research component of Subclass 402 has been moved to Subclass 408 (see item 408.226, which is inserted by item 2 above). A new visa subclass was created, rather than amending the old subclass, in order to facilitate the move to online lodgement of visa applications, and to reinforce to users of this visa that strengthened integrity measures will apply to deter potential misuse of the visa.

Item 3 – At the end of Part 2 of Schedule 1

New item 1238 sets out the requirements for making a valid application for the Training (Class GF) visa. This visa class includes only one subclass: the Subclass 407 (Training) visa. The Subclass 407 visa replaces the Subclass 402 visa, as noted above.

The requirements for making a valid application for a Training (Class GF) visa in new item 1238 broadly reflect the current requirements for making a valid application for the repealed Subclass 402 visa, with minor changes and clarifications to the policy settings.

New subitem 1238(1) provides that the approved form is the form specified by the Minister in a legislative instrument. This is standard practice throughout the Migration Regulations pursuant to subregulation 2.07(5). The form to be specified in the instrument will be an internet form as all applications for the visa must be made online.

New paragraph 1238(2)(a) provides that the first instalment of the visa application charge (VAC) is \$275 (and \$70 for family members aged less than 18).

Paragraph 1238(2)(b) provides that the second instalment of the visa application charge (VAC) is nil.

New subitem 1237(3) sets out the other requirements for making a valid application for a visa of the new Class GF.

Item 1 in the table requires that an application must be made at the place, and in the manner (if any) specified by the Minister in a legislative instrument. This is standard practice throughout the Migration Regulations pursuant to subregulation 2.07(5).

Item 2 in the table provides that an applicant may be in or outside Australia, but not in immigration clearance, when the application is made.

Item 3 in the table imposes a requirement for the application to specify the person who has agreed to be the applicant's approved sponsor.

Item 4 in the table provides that the specified sponsor must be either a 'temporary activities sponsor' or one of two specified 'legacy' classes of sponsor, or someone who has applied to be a sponsor but whose application has not yet been decided. If the sponsor is a legacy sponsor, the visa application must be lodged by 18 May 2017. This represents a six month transitional period during which legacy sponsors can sponsor applicants for the new visa. It is anticipated that most legacy sponsors will apply for the new class of temporary activities sponsor during this period.

Item 5 in the table provides that, if the specified sponsor is not a Commonwealth agency, there must be a nomination of a program of occupational training that has been approved by the Department, or that has been lodged with the Department and not yet decided. The requirement imposed by item 5 will be facilitated by the online visa application, which will not be able to be submitted unless a valid nomination ID reference number is entered in the appropriate field.

Item 6 in the table provides that, if the applicant holds a substantive visa, it must not be one of the visas specified in the item. This item serves two purposes. The named visas are visas in relation to which holders are generally not permitted to apply for other visas in Australia. Permanent visas are listed to avoid situations where holders of permanent visas apply unnecessarily for a temporary visa. This can occur if the holder of the permanent visa believes that he or she no longer holds a permanent visa or if notification that a permanent visa has been granted by the Department has not yet been received. Item 6 also provides capacity to list temporary visas in an instrument for the same reason. Some temporary visas are more beneficial than the Subclass 407 and it would be unnecessary for the holder of one of those visas to apply for Subclass 407. The background to these legislative changes is that subsection 82(2) of the Migration Act will cause a substantive visa to cease if another substantive visa is granted, even if the second visa is less beneficial. Provisions have also been inserted into Schedule 2 to prevent the grant of a Subclass 407 visa in these situations (clause 407.218).

Item 7 in the table requires an applicant, who is in Australia, to have held a substantive visa, which must not have been one of the named visas. As noted in item 6, these are visas in relation to which holders are generally not permitted to apply for other visas in Australia. This provision complements item 6 by covering the situation where the non-citizen held one of the named visas, and the visa expired, and no further substantive visa has been granted.

Item 7 in the table also provides that the application must be made within 28 days after the day when the last substantive visa held by the applicant ceased to be in effect; or, if the last substantive visa was cancelled and the Administrative Appeals Tribunal set aside the cancellation or set aside and substitute the Minister's decision not to revoke the cancellation, 28 days after the day the last substantive visa ceased to be in effect or the day on which the applicant is taken to have been notified of the Tribunal's decision ('the 28 day rule'). These requirements were previously criteria prescribed in Schedule 2 for the relevant repealed visa subclasses, to be satisfied after a valid application had been made. Moving the 28 day rule to Schedule 1 prevents a valid application from being made (and having to be refused) if an applicant in Australia does not hold a substantive visa and cannot meet this objective requirement.

One result of the move of the 28 day rule to Schedule 1 will be a reduction in the number of futile review applications to the Administrative Appeals Tribunal. It was possible for applicants to seek review of visa refusal decisions based on a failure to meet the 28 day rule, despite the fact that this is an objective requirement and the Tribunal is bound to affirm the refusal decision. The new model is consistent with the need to make efficient use of the Tribunal's resources. The new model will also prevent non-citizens from incurring the futile expense and wasted time of a review. If a non-citizen disputes the applicability of the 28 day rule, this can be dealt with by judicial review in the Federal Circuit Court, where the question can be examined as a 'jurisdictional fact'. There should be very few such cases, given the

objective nature of the rule and the established evidentiary basis for the rule in Departmental and Tribunal systems.

Item 8 in the table requires that an applicant seeking to satisfy the primary criteria for a relevant visa must declare in the application whether or not either the applicant, or any person who has made a combined application with the applicant, has engaged in conduct in relation to the application that constitutes a contravention of subsection 245AS(1) of the Migration Act. Subsection 245AS(1) provides that a person contravenes the subsection if the person offers to provide, or provides, a benefit to another person in return for the occurrence of a sponsorship-related event, which would include agreeing to be the visa applicant's sponsor.

New subitem 1238(4) provides that an application by a person claiming to be a member of the family unit of a person who is seeking to satisfy the primary criteria for the grant of a Subclass 408 (Temporary Activity) visa may be made at the same time and place as, and combined with, the application by that person. The effect of this provision is that an applicant who is seeking to satisfy the secondary criteria and is making a combined application only has to pay the relevant additional applicant charge of the VAC and not the base application charge as the application will be combined in a way permitted by Schedule 1 (see paragraph 2.12C(4)(a) in Division 2.2A of Part 2 of the Migration Regulations).

New subitem 1238(5) provides that the only subclass in the Training (Class GF) visa is Subclass 407 (Training).

Item 4 – After Part 405 of Schedule 2

Applicants seeking to satisfy the primary criteria for a Subclass 407 visa are required to satisfy a number of common criteria and also be nominated in relation to a program of occupational training by an approved sponsor. Applicants who are members of the family unit of an applicant who satisfies the primary criteria need satisfy only the secondary criteria.

The Subclass 407 visa also provides a visa pathway for members of the family unit of a person who holds a Subclass 402 visa on the basis of satisfying the primary criteria. This is consequential to the repeal of that visa on 19 November 2016.

Details of the provisions of new Subclass 407 (Training) are as follows:

Division 407.1 - Interpretation

There are no interpretation provisions specific to this Part.

Division 407.2 - Primary criteria

This Division sets out the criteria to be satisfied by a person seeking to satisfy the primary criteria for the grant of a Subclass 407 visa. The note provides that the primary criteria must be satisfied by at least one member of the family unit. The note also provides that all criteria must be satisfied at the time a decision is made on the application.

Clauses 407.211 to 407.219C

The primary criteria include a requirement that the applicant has turned 18 unless there are exceptional circumstances for the grant of the visa, and the applicant must have functional English. Other criteria require that the applicant's activities in Australia will not have adverse consequences for the employment or training of Australian citizens or permanent residents. The criteria also require that the applicant genuinely seeks to stay temporarily in Australia for the purpose for which the visa is granted. The applicant is also required to have health insurance and adequate means to support himself or herself in Australia, satisfy certain public interest criteria, and satisfy certain special return criteria relevant to applicants who have previously been in Australia. A further integrity measure requires that the applicant must not have engaged in any conduct that contravenes the prohibitions in the Migration Act on payments for sponsorship-related events.

Clause 407.213 requires the applicant to be sponsored by an approved sponsor who is a temporary activities sponsor or, for visa applications lodged until 18 May 2017, a training and research sponsor or a professional development sponsor. This represents a six month transitional period during which legacy sponsors can sponsor applicants for the new visa.

Clause 407.214 provides that if the approved sponsor is not a Commonwealth agency, the applicant must be identified in a nomination of an occupation, a program or an activity approved under section 140GB of the Act. The nomination must meet the criteria in regulation 2.72A, as amended by this Schedule (item 124).

Clause 407.218 provides that the applicant must not hold a permanent visa or a temporary visa specified in a legislative instrument. The purpose of this measure is to prevent a Subclass 407 visa being granted to an applicant who already holds a more beneficial visa. This provision mirrors the provision in item 6 of the table at subitem 1238(3) of Schedule 1 (item 3 above). Whereas the Schedule 1 provision will prevent the holder of a more beneficial visa from applying for a Subclass 407 visa, this clause addresses the situation where the application for the Subclass 407 visa has already been made before the more beneficial visa is granted. For example, a Subclass 407 visa might be applied for on a particular day, and a permanent visa (applied for months earlier) might be granted on the following day.

Division 407.3 - Secondary criteria

This Division sets out the requirements to be met by an applicant who is seeking to meet the secondary criteria for the grant of a Subclass 407 visa on the basis of being a member of the family unit of a person who satisfies the primary criteria for the grant of a Subclass 407 visa. A person may also meet the secondary criteria if they are the member of the family unit of a person who holds a Subclass 402 visa on the basis of satisfying the primary criteria.

Secondary applicants are required to meet certain public interest criteria and special return criteria, as well as other requirements as prescribed. In particular, the approved sponsor of the primary applicant must have agreed to be the approved sponsor of the secondary applicant.

Division 407.4 - Circumstances applicable to grant

Clause 407.411 provides that the applicant may be in or outside Australia at the time of grant, but not in immigration clearance. This is consistent with the repealed Subclass 402 visa, but provides more flexibility for applicants entering for professional development, who were previously required to be outside Australia at time of grant.

Division 407.5 - When visa is in effect

This Division provides that the visa is a temporary visa, and sets out when the applicant is permitted to travel to, enter and remain in Australia. For applicants outside Australia the visa permits entry within a specified period and, if entry is made during that period, permits stay for a specified period commencing on the date of entry. The maximum period of stay is two years. If the visa is granted to an applicant in Australia, the visa is permission to remain for a specified period commencing on the date of grant. The maximum period of stay is two years. In either case, the visa holder can travel in and out of Australia during the permitted period of stay.

Division 407.6 - Conditions

This Division sets out the Schedule 8 conditions which must, or may, be attached to the visa depending on whether the applicant has satisfied the primary or secondary criteria.

Part 3 – Subclass 403 Temporary Work (International Relations) visa

This part makes a number of amendments to the Subclass 403 Temporary Work (International Relations) visa. Subclass 403 incorporates streams for applicants covered by an international government agreement; applicants who are to be employed as representatives of certain foreign government agencies or as foreign language teachers in Australian schools; applicants who undertake domestic duties in the households of holders of diplomatic visas; and applicants accorded privileges and immunities.

The main amendment made by the Amendment Regulation is the creation of an additional stream to cater for the seasonal worker programme. The seasonal worker programme was established in 2008 within the Subclass 416 (Special Program) visa to allow for the entry and temporary stay in Australia of persons invited to undertake seasonal work in Australia in accordance with an approved program. The Subclass 416 visa is repealed by the Amendment Regulation (items 48 and 49), as part of the consolidation of several visas. It was decided to relocate the provisions relating to the seasonal worker programme to Subclass 403 because this programme implements arrangements between Australia and regional governments. The Seasonal Worker Programme contributes to the economic development of participating countries by providing access to work opportunities in the Australian agriculture and accommodation industries. The Seasonal Worker Programme offers seasonal labour in selected industries to Australian employers who cannot source local labour. Participating countries include Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu and Vanuatu.

Item 5 – Regulation 1.03

This item inserts a definition of ‘program of seasonal work’ in regulation 1.03 of Division 1.2 of Part 1 of the Migration Regulations. The definition reflects existing administrative arrangements under which the relevant Commonwealth Department (currently the Department of Employment) approves the arrangements for seasonal work. That approval must be obtained before a visa can be granted by the Department of Immigration and Border Protection.

Item 6 – Regulation 1.03 (definition of *special program of seasonal work*)

This item repeals a redundant definition which related to the repealed Subclass 416 (Special Program) visa.

Item 7 – Paragraph 1234(2)(a) of Schedule 1

This item replaces paragraph 1234(2)(a) of Schedule 1 to the Migration Regulations to prescribe new visa application charges (VACs) for the Subclass 403 visa. The exemptions from payment of the VAC which previously applied will continue to apply under the amended provision. However, all of the classes of person entitled to a ‘nil’ VAC will be specified in a legislative instrument made by the Minister and dependent applicants whose application is combined with these classes of person will also be entitled to a ‘nil’ VAC.

For applicants who are required to pay a VAC, the level of the VAC has been adjusted to conform with the new VAC structure applying to the Subclass 400, Subclass 403, Subclass 407 and Subclass 408 visas. The visa application charge for primary applicants has been reduced from \$380 to \$275. Some additional applicants (family members) who previously paid no VAC will now pay \$275 (applicants who are at least 18) and \$70 (applicants who are less than 18).

Items 8 – 10

The effect of these amendments is to maintain the existing position in relation to the programme for seasonal workers, that visa applicants must be outside Australia when the visa is granted, cannot bring a family member to Australia, and must be sponsored by an appropriate sponsor. Under the new sponsorship framework created by the Amendment Regulation, the sponsor will be a ‘temporary activities sponsor’. Approved sponsors in the closed class of ‘special program sponsor’ will be able to sponsor seasonal workers for the purpose of visa applications lodged on or before 18 May 2017. This is consistent with the transitional arrangements for all ‘legacy’ sponsor classes.

The amendments also insert a new paragraph 1234(3)(cb) which has the effect that an application for a Subclass 403 visa cannot be made by a person who holds a permanent visa. This amendment is consistent with other provisions being inserted by the Amendment Regulation which have the objective of preventing inadvertent and unnecessary applications for temporary visas by non-citizens who hold permanent visas.

Items 11 – 12

These items make consequential amendments and repeal a redundant reference to a repealed visa.

Items 13 – At the end of Division 403.2 of Schedule 2

This item inserts a new stream in the Subclass 403 Temporary Work (International Relations) visa. These criteria are only for applicants being assessed against the primary criteria for a Subclass 403 visa in the Seasonal Worker Program stream. The criteria are substantively the same as the criteria for seasonal workers in the repealed Subclass 416 (Special Program) visa. The main requirement is that the applicant is sponsored by an approved sponsor who is conducting a programme of seasonal work which has been approved by the Secretary of a Commonwealth Department (see the definition of ‘program of seasonal work’ at item 5 above). The visa applicant must also meet the ‘common criteria’ for the Subclass 403 visa set out in Division 403.21 of Schedule 2 to the Migration Regulations. These criteria require health insurance, a genuine intention to remain temporarily in Australia for the purpose of seasonal work, access to adequate means of support, and satisfaction of a number of other public interest criteria.

Items 14 to 21

These items make a number of technical amendments which are consequential to previous items in this Part of the Amendment Regulation.

Item 22 – Clauses 403.411 and 403.412 of Schedule 2

This item repeals clauses 403.411 and 403.412 of Schedule 2 to the Migration Regulations and substitutes a new clause 403.411. The new clause provides increased flexibility in relation to the location of visa applicants when the visa is granted. Previously, applicants who were to be granted Subclass 403 visas in the Government Agreement stream, Foreign Government Agency stream, or Privileges and Immunities stream were required to be outside Australia at time of grant if the visa application was made outside Australia. This restriction is no longer necessary and those applicants and their family members can now be inside or outside Australia at time of grant, regardless of where the visa application was made. The requirements for other applicants remain the same. Applicants for Subclass 403 visas in the Domestic Worker stream must be outside Australia at time of grant if they were outside Australia when the visa application was made, and they must be in Australia at the time of grant if they were in Australia when the visa application was made. Applicants for the Seasonal Worker Program stream can only apply for the visa if they are outside Australia (see item 8 of the Amendment Regulation), and they must be outside Australia when the visa is granted.

Item 23 – Division 403.6 of Schedule 2

This item repeals Division 403.6 of Schedule 2 to the Migration Regulations and substitutes a new Division 403.6. Division 403.6 sets out the visas conditions which may or must be imposed on Subclass 403 visas. The conditions vary between streams and according to whether the applicant is a primary applicant or secondary applicant (family member). The Division has been restructured to accommodate the new Seasonal Worker Program stream. The visa conditions for the new stream are substantively the same as the visa conditions imposed on seasonal workers in the repealed Subclass 416 (Special Program) visa.

Part 4 – Subclass 400 Temporary Work (Short Stay Specialist) visa

Part 4 of Schedule 1 to the Amendment Regulation makes a number of changes to the Subclass 400 Temporary Work (Short Stay Activity) visa. The changes are:

- Alteration of the name of the visa, which becomes the Subclass 400 Temporary Work (Short Stay Specialist) visa. The new name is a more accurate description of the purpose of the visa following the amendments made by the Amendment Regulation. The Amendment Regulation repeals the Invited Participant stream. The remaining streams in the Subclass 400 visa – the Highly Specialised Work stream and the Australia’s Interest stream – cater for short term skilled work assignments. The broader category of invited participants in events is now catered for in the new Subclass 408 visa (clause 408.221);
- Adjustments to the visa application charges (VACs). The VACs for the Subclass 400 visa have increased to bring them into line with the flat VAC structure which now applies to Subclass 400, Subclass 403, Subclass 407 and Subclass 408. Subparagraph 1231(2)(a)(v) now provides that the first instalment of the VAC is \$275 (up from \$175) for primary applicants, \$275 (up from \$90) for family members who are at least 18, and \$70 (up from \$45) for family members aged less than 18. The provisions providing for ‘nil’ VAC have been retained for representatives of foreign governments and their family members, and for persons listed in a legislative instrument made by the Minister;
- Amendments relating to a visa criterion, which requires that the applicant not be intending to study in Australia. The criterion now only applies to the Highly Specialised Work stream (including family members of the primary visa applicant). The criterion no longer applies to applicants for the Australia’s Interest stream or applicants’ family members. This change is intended to provide greater flexibility to cater for the wide variety of applicants who are granted visas in this stream;
- Amendments to provide greater flexibility to decision-makers to control the timing of entry to Australia by holders of Subclass 400. Previously, the visa holder was required to travel to and enter Australia within 6 months of the grant of the visa. The effect of the amendment is that decision-makers can now specify a lesser period in appropriate cases.

Part 5 – Repeals of visa classes

Part 5 provides for the repeal of the visa classes and subclasses (legacy visas) which are replaced by the new Subclass 407 (Training) and Subclass 408 (Temporary Activity) visas. The repeals do not affect current holders of the legacy visas or applicants for those visas. Applications made prior to 19 November 2016 are processed under the law as in force at that time. This is covered by the application provisions set out at item 199 of the Amendment Regulation.

The classes and subclasses repealed by Part 5 are as follows:

- Special Program (Temporary) (Class TE) – item 1205 in Schedule 1 to the Migration Regulations; Subclass 416 (Special Program) in Schedule 2 to the Migration Regulations;
- Superyacht Crew (Temporary) (Class UW) – item 1227A in Schedule 1; Subclass 488 (Superyacht Crew) in Schedule 2
- Temporary Work (Long Stay Activity) (Class GB) – item 1232 in Schedule 1; Subclass 401 (Temporary Work (long Stay Activity)) in Schedule 2;
- Training and Research (Class GC) – item 1233 in Schedule 1; Subclass 402 (Training and Research) in Schedule 2;
- Temporary Work (Entertainment) (Class GE) – item 1235 in Schedule 1; Subclass 420 Temporary Work (Entertainment) in Schedule 2.

Part 5 of the Amendment Regulation also provides for the repeal of redundant references to the Subclass 426 (Domestic Worker (Temporary) – Diplomatic or Consular) visa which was repealed on 24 November 2012 (see items 53 – 62).

Part 6 – Other amendments

Items 65, 67 – 68, 70, 72, 74 and 79

These items repeal redundant definitions.

Items 66, 69, 71, 73, 75 and 78

These items amend the definitions of various classes of sponsor in regulation 1.03 of Division 1.2 of Part 1 of the Migration Regulations. The effect of the amendment is to close six classes of sponsor to new applicants (long stay activity sponsor, professional development sponsor, special program sponsor, superyacht crew sponsor, entertainment sponsor and training and research sponsor). The amendment makes it clear that references to those classes of sponsor in the Migration Regulations are references to sponsors approved on the basis of applications made before 19 November 2016.

Item 76 – Regulation 1.03

This item inserts a definition of ‘temporary activities sponsor’ into regulation 1.03 of Division 1.2 of Part 1 of the Migration Regulations. Temporary activities sponsors are a new class of sponsor, replacing the classes of sponsor listed in the previous item.

Item 77 - Regulation 1.03 (definition of *temporary work sponsor*)

This item repeals the definition of ‘temporary work sponsor’ in regulation 1.03 of Division 1.2 of Part 1 of the Migration Regulations, and substitutes a new definition. The term ‘temporary work sponsor’ is a shorthand term to refer to various classes of sponsor. The

definition has been updated to omit redundant references. The definition now includes only the classes of sponsor which closed to new applications as of 19 November 2016.

Item 80 – After paragraph 1.20(4)(gc)

This item amends subregulation 1.20(4) of Division 1.4 of Part 1 of the Migration Regulations to insert references to Subclass 407 (Training) visa and the Subclass 408 (Temporary Activity) visa. The effect of the amendment is that those visas are not subject to the sponsorship regime established by the Migration Regulations. This is because the visas are subject to a different sponsorship regime, as set out in Division 3A of Part 2 of the Migration Act.

Item 81 – At the end of subregulation 2.12F(2)

This item amends subregulation 2.12F(2) of Division 2.2A of Part 2 of the Migration Regulations to allow a refund of the visa application charge to be made to an applicant for a Subclass 408 (Temporary Activity) visa who withdraws the application because the application is not supported by an approved sponsor.

Item 82 - Before paragraph 2.12F(2B)(d)

This item amends subregulation 2.12F(2B) of Division 2.2A of Part 2 of the Migration Regulations to allow a refund of the visa application charge to be made to an applicant for a Subclass 407 (Training) visa who withdraws the application because there was not an approved nomination that identified the applicant. The item also omits references to visa subclasses which were repealed on 19 November 2016.

Item 83 - Subparagraph 2.43(1)(ia)(id)

This item amends subregulation 2.43(1) of Division 2.9 of Part 2 of the Migration Regulations to allow Subclass 407 (Training) visas and Subclass 408 (Temporary Activity) visas to be cancelled under section 116 of the Migration Act on the ground that, despite the grant of the visa, the Minister is satisfied that the visa holder did not have at the time of grant of the visa, or has ceased to have, a genuine intention to stay temporarily in Australia to carry out the relevant work or activity. The item also omits a redundant reference to a repealed visa.

Items 84, 86 and 88

These items omit redundant references to repealed visas from subregulation 2.43(1) of Division 2.9 of Part 2 of the Migration Regulations.

Item 85 - Subparagraph 2.43(1)(lc)(ib)

This item amends subregulation 2.43(1) of Division 2.9 of Part 2 of the Migration Regulations to allow Subclass 407 (Training) visas and Subclass 408 (Temporary Activity) visas to be cancelled under section 116 of the Migration Act on the ground that the sponsor's approval to be a sponsor has been cancelled, or the sponsor has been barred, under section 140M of the Migration Act. The amendment also allows Subclass 407 visa to be cancelled on

the ground that a criterion for the approval of the latest nomination of the visa holder is no longer met. The item also omits a redundant reference to a repealed visa.

Item 87 - Subparagraph 2.43(1)(ld)(ib)

This item amends subregulation 2.43(1) of Division 2.9 of Part 2 of the Migration Regulations to allow Subclass 407 (Training) visas held by family members of the principal visa holder to be cancelled under section 116 of the Migration Act on the ground that the sponsor has not included the family members in the most recent nomination of the principal visa holder. The item also omits a redundant reference to a repealed visa.

Item 89 - Subparagraphs 2.43(1)(le)(ii) and (iii)

This item amends subregulation 2.43(1) of Division 2.9 of Part 2 of the Migration Regulations to allow Subclass 408 (Temporary Activity) visas held by religious workers and domestic workers to be cancelled under section 116 of the Migration Act on the ground that the sponsor has paid the return travel costs of the visa holder in accordance with applicable sponsorship obligations.

Item 90 - Paragraphs 2.56(ab) and (b)

This item amends regulation 2.56 of Division 2.11 of Part 2A of the Migration Regulations to provide that the Subclass 407 (Training) visa, the Subclass 408 (Temporary Activity) visa, and the Subclass 403 Temporary Work (International Relations) visa (Seasonal Worker program stream) are visas to which the sponsorship regime in Division 2A of Part 2 of the Migration Act is applicable. The item also omits redundant references to repealed visas.

Item 91 - Paragraphs 2.56(d), (f), (g), (h), (i), (j) and (l)

This item amends regulation 2.56 of Division 2.11 of Part 2A of the Migration Regulations to omit redundant references to repealed visas.

Item 92 - Subregulation 2.57(4)

This item omits subregulation 2.57(4) of Division 2.11 of Part 2A of the Migration Regulations. The subregulation sets out the meaning of 'net employment benefit'. Following the amendments made by the Amendment Regulation, that concept is only relevant to the Subclass 408 (Temporary Activity) visa, and the definition has therefore been moved to clause 408.111 of Schedule 2 of the Migration Regulations.

Item 93 - Paragraphs 2.58(b) to (n)

This item omits references to six classes of sponsor in regulation 2.58 in Division 2.12 of Part 2A of the Migration Regulations, and inserts a reference to the new class of 'temporary activities sponsor'. The omitted classes of sponsor closed to new applications for approval as a sponsor as of 19 November 2016. The omitted classes of sponsor are: professional development sponsor, special program sponsor, entertainment sponsor, superyacht crew sponsor, long stay activity sponsor, and training and research sponsor.

Regulation 2.58 prescribes the classes of sponsor in relation to which a person may be approved as a sponsor for the purpose of the sponsorship regime established by Division 3A of Part 2 of the Migration Act. There are now only two classes: standard business sponsors, for sponsorship in relation to Subclass 457; and temporary activities sponsors, for sponsorship in relation to Subclass 403 (Seasonal Worker Program stream), Subclass 407 (Training) and Subclass 408 (Temporary Activity).

Item 94 – Regulations 2.60 and 2.60A

This item repeals regulation 2.60 and 2.60A from Division 2.13 of Part 2A of the Migration Regulations, and substitutes new regulation 2.60. The repealed regulations provided the criteria for approval as a professional development sponsor and a special program sponsor. These classes of sponsor closed to new applications as of 19 November 2016. A transitional provision saves the Migration Regulations for the purpose of applications made before that date.

The new regulation 2.60 sets out the criteria for approval as a temporary activities sponsor. The criteria for approval as a temporary activities sponsor reflect the permission given to temporary activities sponsors to sponsor a wide variety of visa applicants across three subclasses - the Subclass 407 (Training) visa, the Subclass 408 (Temporary Activity) visa, and the Subclass 403 Temporary Work (International Relations) visa (Seasonal Worker program stream). A wide variety of organisations can become temporary activities sponsors, including Australian organisations, religious institutions, sporting organisations, and foreign organisations. Apart from the specialised category of owners/captains of superyachts, individuals are not eligible to be temporary activities sponsors. The sponsor must be a lawfully operating organisation or a government agency. These eligibility criteria are the same as previous eligibility criteria across the six specialised classes of sponsor which are replaced by the temporary activities sponsor.

There are limitations on eligibility for visas based on sponsorship by a temporary activities sponsor, which reflect the settings in the previous legislation in relation to sponsorship by the specialised classes of sponsor. These criteria now apply as criteria in Schedule 2 of the Migration Regulations for the grant of the visas, rather than as criteria for approval as the relevant class of sponsor. For example, a religious worker applying for a Subclass 408 (Temporary Activity) visa can be sponsored by a temporary activities sponsor, but the criteria for the grant of the visa require the temporary activities sponsor to be a religious institution (clause 408.223 in Schedule 2 of the Migration Regulations).

The criteria for approval as a temporary activities sponsor also carry over previous provisions allowing refusal of an application to be approved as a temporary activities sponsor if the Department has ‘adverse information’ about the applicant for approval or an associated person. There is a definition of associated persons at regulation 1.13B in Division 1.2 of Part 1 of the Migration Regulations. Adverse information, as defined in regulation 1.13A in Division 1.2 of Part 1 of the Migration Regulations, is any adverse information relevant to a person’s suitability to be a temporary activities sponsor. This allows the Department to consider a wide range of matters in relation to the past conduct and likely future conduct of the applicant, including whether the applicant is likely to exploit sponsored visa holders or use those visa holders to meet labour requirements which are outside the intended scope of the visas.

Item 95 - Regulations 2.60D to 2.60M

This item repeals regulations 2.60D to 2.60M from Division 2.13 of Part 2A of the Migration Regulations. The repealed regulations provided the criteria for approval of the following classes of sponsor which closed to new applications as of 19 November 2016: special program sponsor, entertainment sponsor, superyacht crew sponsor, long stay activity sponsor, and training and research sponsor. A transitional provision saves the Migration Regulations for the purpose of applications made before that date.

Items 96 and 98

These items make technical amendments (consequential to items 94 and 95) to regulation 2.60S in Division 2.13 of Part 2A of the Migration Regulations.

Items 97 and 99

These items amend regulation 2.60S in Division 2.13 of Part 2A of the Migration Regulations to bring the Subclass 403 Temporary Work (International Relations) visa and the Subclass 408 Temporary Activity visa within the scope of a criterion which requires that applicants for approval as a standard business sponsor or a temporary activities sponsor must not have transferred recruitment costs to the applicant or any other person.

Item 100 – Subregulation 2.61(2)

This item repeals redundant subregulation 2.61(2) in Division 2.14 of Part 2A of the Migration Regulations. The subregulation set out the requirements, including the forms and fees, for applying for approval as a sponsor in classes of sponsor which were closed to new applications as of 19 November 2016.

Items 101 and 102

These items include a reference to temporary activities sponsors in subregulations 2.61(3A) and 2.61(3B) in Division 2.14 of Part 2A of the Migration Regulations. The effect of these amendments is to authorise the Minister to set out the process for applying for approval as a temporary activities sponsor, including the form and fee, in an instrument in writing. This approach has been adopted because it provides increased flexibility when it is necessary to amend form numbers or fees. The amendments simply add the temporary activities sponsors to subregulations which authorise the Minister to make instruments in relation to these matters for the purpose of applications for approval as a standard business sponsor. Those provisions have been in place since 2012. It is considered appropriate to locate the fees in an instrument on the basis that the instruments under regulation 2.61 are legislative instruments for the purpose of the *Legislation Act 2003* and are disallowable by Parliament. The exemptions from disallowance which apply to most instruments made under the Migration Regulations do not apply to instruments made under Part 2A (see item 20 in the table at regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

Item 103 - Subregulations 2.61(4) to (6)

This item repeals redundant subregulations 2.61(4) – 2.61(6) in Division 2.14 of Part 2A of the Migration Regulations. The subregulations set out additional aspects of the process for applying for approval as a sponsor in the classes of sponsor which were closed to new applications as of 19 November 2016.

Item 104 – Subregulation 2.62(2)

This item amends regulation 2.62 in Division 2.14 of Part 2A of the Migration Regulations to allow the Minister to notify an applicant of a decision via the internet in cases where the application for approval as a temporary activities sponsor was made via the internet.

Items 105 and 106

These items substitute a new heading to regulation 2.63 in Division 2.14 of Part 2A of the Migration Regulations to include a reference to temporary activities sponsors, and to include a reference to temporary activities sponsors in regulation 2.63. The effect of this amendment is that the duration of approval as a temporary activities sponsor is a term of approval which can be varied by the Minister. This means that, as with the existing sponsor classes, a temporary activities sponsor does not need to make a further application to be a temporary activities sponsor. Provided that relevant criteria are met, the term of approval can be extended from time to time. One of the advantages of being a temporary activities sponsor, as compared to the existing classes of sponsor, is that approval as a temporary activities sponsor will, under Departmental policy, be granted for up to five years, which is consistent with the other remaining class of sponsor (standard business sponsorship). The classes of sponsor which are closed to new applications as of 19 November 2016 (professional development sponsor, special program sponsor, entertainment sponsor, superyacht crew sponsor, long stay activity sponsor, and training and research sponsor) are only approved for up to three years.

Item 107 – Paragraph 2.65(b)

This item amends regulation 2.65 in Division 2.16 of Part 2A of the Migration Regulations which specifies the classes of sponsor who can apply for variation of the duration of their approval as a sponsor. This is akin to a renewal of the sponsorship. The amendment omits reference to temporary work sponsors and inserts a reference to the new class of temporary activities sponsor. The term ‘temporary work sponsor’ is defined in regulation 1.03. It is a shorthand term to refer to various classes of sponsor which closed to new applications as of 19 November 2016. It is not possible, as of 19 November 2016, to apply to become a temporary work sponsor or to apply for variation of the duration of the approval as a temporary work sponsor.

Item 108 – Regulation 2.65 (note)

This item repeals the note under regulation 2.65 in Division 2.16 of Part 2A of the Migration Regulations and inserts a new note to explain the effect of the changes made by the item immediately above.

Items 109 – 111

These items amend regulation 2.66 in Division 2.16 of Part 2A of the Migration Regulations. Regulation 2.66 sets out the process for applying for variation of the duration of approval as a standard business sponsor. The effect of the amendments is that the process for applying for variation of the duration of approval as a temporary activities sponsor will be the same as the process for standard business sponsors. As noted above in relation to the process for applying for sponsorship (items 101 - 102), it was considered to be acceptable to provide for the process, including the fee, to be specified in an instrument in writing, on the basis that these instruments are subject to disallowance by the Parliament in accordance with the *Legislation Act 2003*.

Item 112 – Regulation 2.66A

This item repeals regulation 2.66A in Division 2.16 of Part 2A of the Migration Regulations. Regulation 2.66A provided for a process to vary the duration of the approval as a temporary work sponsor. As noted above (item 107), the ‘temporary work sponsor’ is a shorthand term to refer to various classes of sponsor which closed to new applications as of 19 November 2016. It is no longer possible, as of that date, to apply for variation of the duration of the approval as a temporary work sponsor.

Item 113 – Regulation 2.67

This item amends regulation 2.67 in Division 2.16 of Part 2A of the Migration Regulations to include a reference to temporary activities sponsors. The effect of the amendment is to permit the duration of an approval as a temporary activities sponsor to be varied. Variation of this term of approval is the means by which approval as a sponsor is renewed for a further period of time.

Items 114 – 115

These items make a technical amendment to regulation 2.68 in Division 2.16 of Part 2A of the Migration Regulations, and add a note, to provide greater clarity.

Item 116 - Regulation 2.68A

This item repeals regulation 2.68A in Division 2.16 of Part 2A of the Migration Regulations and substitutes a new regulation 2.68A. The repealed regulation set out the criteria for variation of the duration of approval as a temporary work sponsor. The sponsor classes covered by the definition of temporary work sponsor were closed to new applications as of 19 November 2016 and applications for variation of the duration of approval were also closed as of that date. A transitional provision preserves the repealed regulation for the purpose of applications for variation of the duration of approval which were made before 19 November 2016.

The new regulation 2.68A sets out the criteria for the variation of the duration of approval as a temporary activities sponsor. The criteria for variation of the term of approval mirror the approval process. The criteria are that the person has applied for the variation in accordance with the process referred to in regulation 2.61 and the person satisfies the criterion for

approval as a temporary activities sponsor set out in regulation 2.60. However, the person must also meet the criterion at regulation 2.68J, noted below at item 106.

Items 117 and 119

These items make technical amendments to subregulations 2.68J(2) and (3) in Division 2.16 of Part 2A of the Migration Regulations.

Items 118 and 120

These items amend regulation 2.68J in Division 2.16 of Part 2A of the Migration Regulations to bring the Subclass 403 Temporary Work (International Relations) visa and the Subclass 408 Temporary Activity visa within the scope of a criterion which requires that applicants for variation of the duration of approval as a standard business sponsor or a temporary activities sponsor must not have transferred recruitment costs to the applicant or any other person. Regulation 2.68J mirrors regulation 2.60S which applies to the initial application to become a standard business sponsor or a temporary activities sponsor.

Item 121 – Subregulation 2.69(2)

This item amends regulation 2.69 in Division 2.16 of Part 2A of the Migration Regulations to allow the Minister to notify an applicant of a decision via the internet in cases where the application for variation of the duration of approval as a temporary activities sponsor was made via the internet.

Items 122 - 123

These items amend regulation 2.70 in Division 2.17 of Part 2A of the Migration Regulations to omit a redundant reference, and to include a reference to temporary activities sponsors. The effect of the amendment is that temporary activities sponsors are brought within the ambit of Division 2.17 of Part 2A of the Migration Regulations. Division 2.17 of the Migration Regulations supports the regime in the Migration Act providing for approved sponsors to nominate visa applicants, proposed visa applicants, and holders of specified temporary visas, in relation to occupations, programmes or activities. Not all sponsored visas require a nomination in addition to sponsorship. This is an extra layer of regulation that the Government decided to remove from some cohorts of visa applicants. This is reflected in the fact that none of the cohorts in the new Subclass 408 (Temporary Activity) visa require nomination. However, a requirement for nomination has been retained in the Subclass 407 (Training) visa in order to maintain strong integrity controls around that visa, regarded as necessary because the visa it replaces, the Subclass 402 Temporary Work (Training and Research) visa has been used inappropriately by some sponsors. As a nomination requirement is included in Subclass 407, it is necessary to bring temporary activities sponsors within the ambit of Division 2.17. This Division will only be relevant to temporary activities sponsors who are sponsoring applicants or proposed applicants for Subclass 407, or who are sponsoring holders of that visa. If the temporary activities sponsor is a Commonwealth agency, the nomination requirement in Subclass 407 does not apply.

Item 124 – Regulations 2.72A to 2.72J

This item repeals regulations 2.72A to 2.72J in Division 2.17 of Part 2A of the Migration Regulations and substitutes new regulations 2.72A and 2.72B. The repealed regulations provided the criteria for approval of nominations for various repealed visas, some of which were repealed in 2012 and others of which were repealed by this Amendment Regulation on 19 November 2016: Subclass 401 (Temporary Work (Long Stay Activity)) visa, Subclass 402 (Training and Research) visa, and Subclass 420 (Temporary Work (Entertainment)) visa. A transitional provision preserves the operation of the repealed provisions for the purpose of assessing nominations for Subclass 401, Subclass 402, and Subclass 420 which were made prior to 19 November 2016.

The new regulation 2.72A sets out the criteria for approval of nominations of a program of occupational training in relation to a holder of, or an applicant or a proposed applicant, for a Subclass 407 (Training) visa. Unless the sponsor is a Commonwealth agency, it is a requirement that primary visa applicants for the Subclass 407 visa must be identified in an approved nomination (clause 407.214 of Schedule 2 of the Migration Regulations). The sponsor must be a temporary activities sponsor or, for nominations made by 18 May 2017, a training and research sponsor or a professional development sponsor. The cut-off date of 18 May 2017 represents a six month transitional period from the commencement of the Amendment Regulation on 19 November 2016, during which sponsors in the classes being closed on 19 November can sponsor and nominate applicants for the new Subclass 407 visa.

The criteria for approval of a nomination of a programme of occupational training comprise a number of criteria which apply to every nomination, and then five alternative criteria, only one of which needs to be satisfied. The criteria which must be met by all nomination are as follows:

- The nomination must be made by a sponsor as noted above, in accordance with the required process (subregulations 2.72A(3) and (4));
- The Minister must be satisfied that the nominee will participate in the nominated program. This will allow the refusal of the nomination if the visa applicant is assessed as not having a genuine intention to participate (subregulation 2.72A(5));
- Family members holding the same visa must generally be included in the nomination (subregulations 2.72A(6) and (7));
- Details of proposed employers and the location of work must be provided (subregulations 2.72A(8) and (9)). There are limited circumstances in which there will be more than one employer. In most cases the sponsor must also be the employer. The Amendment Regulation introduces new restrictions on the outsourcing of the occupational training to third parties (see subregulation 2.72A(12) below);
- The sponsor must declare any conduct in relation to the nomination which contravenes subsection 245AR(1) of the Migration Act (subregulation 2.72A(10)). That section makes it a criminal offence to ask for or receive a payment in return for making a nomination;
- The Minister must be satisfied that there is no adverse information about the sponsor or a person associated with a sponsor, or that it is reasonable to disregard that information (subregulations 2.72A(11)). There is a definition of associated persons at regulation 1.13B in Division 1.2 of Part 1 of the Migration Regulations. Adverse information, as defined in regulation 1.13A in Division 1.2 of Part 1 of the Migration

Regulations, is any adverse information relevant to a person's suitability to be a nominator. This allows the Department to consider a wide range of matters in relation to the past conduct and likely future conduct of the applicant, including whether the applicant is likely to exploit sponsored visa holders or use those visa holders to meet labour requirements which are outside the intended scope of the visas;

- The Minister must be satisfied that the occupational training will be provided directly by the sponsor, except in cases where the sponsor is supported by a Commonwealth agency, or the sponsor is specified in a legislative instrument, or the occupational training will be provided in circumstances specified in a legislative instrument (subregulations 2.72A(12)). Sponsors may also be specified in the legislative instrument as a class. They do not have to be individually listed (see subsection 13(3) of the *Legislation Act 2003*). The restrictions on the provision of third party training are an important new integrity measure to prevent Subclass 407 being used by sponsors who are operating as, in effect, labour hire firms. In some cases, the primary objective of the sponsor and the third party employer/trainer is to provide labour to those businesses, with the training being used as a pretext for the supply of labour to that business. This improper use of occupational training has been an issue with the Subclass 402 (Training and Research) visa, which closes to new applications as of 19 November 2016 and is replaced by the Subclass 407 (Training) visa;
- Related to the previous point, the Minister must be satisfied that the sponsor does not engage in, or intend to engage in, activities that will have adverse consequences for employment or training opportunities, or conditions of employment, for Australian citizens or Australian permanent residents. Further the Minister must be satisfied that the nominated program is offered as a genuine training opportunity (subregulations 2.72A(13) and (16)). This criterion will allow the Department to consider the 'business model' of the sponsor to ensure that the sponsor is genuinely engaged in occupational training and will not use the Subclass 407 visa for the purpose of introducing additional labour into the Australian labour market;
- The Minister must be satisfied that the nominee has functional English. Functional English can be demonstrated in a number of ways, as set out in regulation 5.17 of the Migration Regulations.

The five alternative sets of specific criteria, only one of which must be satisfied, reflect the criteria which previously applied to nominations in relation to the Occupational Trainee stream of the Subclass 402 (Training and Research) visa and the criteria which applied to the Professional Development stream of Subclass 402. The criteria cover the following categories of occupational training:

- Workplace based occupational training required to obtain a registration, membership or licence required to be employed in an occupation in Australia or the home country (subregulation 2.72B(2));
- Workplace occupational training to enhance skills in an occupation specified by the Minister in a legislative instrument (subregulation 2.72B(3));
- Workplace occupational training to obtain a qualification from a foreign educational institution (subregulation 2.72B(4));
- Workplace occupational training for a nominee supported by his or her government (subregulation 2.72B(5));and

- Professional development for overseas managers and professionals (subregulation 2.72B(6)). This category simplifies the process for professional development by removing the previous requirement, which existed under the repealed Subclass 402 visa, for a professional development agreement between a professional development sponsor and the nominee's overseas employer. However, the nature of the permitted training has not changed. The primary form of the training must be face-to-face teaching in a classroom or similar environment (subregulation 2.72B(6)).

Items 125 - 126

These items repeal regulations 2.73A, 2.73B, and 2.73C in Division 2.17 of Part 2A of the Migration Regulations. Those regulations dealt with the process for making a nomination for the purposes of various repealed visa subclasses, including the subclasses being repealed by this Amendment Regulation.

Item 125 also substitutes a new regulation 2.73A which sets out the process for nominating a program of occupational training in relation to a holder of, or an applicant or proposed applicant for, a Subclass 407 (Training) visa. The regulation authorises the specification of a process in a legislative instrument, which may specify the form, fee, and other matters such as the address to which the nomination must be sent. The specification of the form and fee in a legislative instrument provides greater flexibility to adjust these from time to time. It is considered appropriate to locate the fees in an instrument on the basis that the instruments under regulation 2.73 and new regulation 2.73A are legislative instruments for the purpose of the *Legislation Act 2003* and are disallowable by Parliament.

Item 127 – Subregulation 2.74(2)

This item amends regulation 2.74 in Division 2.17 of Part 2A of the Migration Regulations to allow the Minister to notify an applicant of a decision via the internet in cases where the nomination was made via the internet.

Items 128 to 130

These items amend regulation 2.75A in Division 2.17 of Part 2A of the Migration Regulations to provide that an approved nomination of a program of occupational training is valid for a period specified in the regulation. The maximum length of time that an approved nomination is valid is 12 months. The amendments also repeal references to nominations in relation to various repealed visas, some of which were repealed in 2012 and others of which were repealed by this Amendment Regulation on 19 November 2016: Subclass 401 (Temporary Work (Long Stay Activity)) visa, Subclass 402 (Training and Research) visa, and Subclass 420 (Temporary Work (Entertainment)) visa.

Items 131 to 147

These items amend regulations 2.80 and 2.80A in Division 2.19 of Part 2A of the Migration Regulations. Regulation 2.80 deals with the obligations of sponsors to pay travel costs to enable certain sponsored persons to leave Australia. Regulation 2.80A deals with the obligations of sponsors to pay travel costs in relation to domestic workers. The effect of the amendments is to apply the existing rules to the same cohorts of persons who were previously

covered but who hold the new Subclass 408 (Temporary Activity) visa. The existing obligations of sponsors, in relation to holders of the visas repealed by this Amendment Regulation, will continue to apply.

Item 148 - Subparagraph 2.82(2)(a)(iii)

This item amends regulation 2.82 in Division 2.19 of Part 2A of the Migration Regulations. Regulation 2.82 deals with the obligations of sponsors to keep various records in relation to sponsored persons. The effect of the amendment is to apply those obligations to the new class of sponsor – the temporary activities sponsor – created by this Amendment Regulation.

Items 149 - 160

These items amend regulation 2.84 in Division 2.19 of Part 2A of the Migration Regulations. Regulation 2.84 deals with the obligations of sponsors to provide information to the Department of Immigration and Border Protection when certain events occur. The effect of the amendments is to omit redundant provisions and to insert new provisions to apply the existing rules to the new class of sponsor – the temporary activities sponsor – created by this Amendment Regulation. The amendments also cover the situation where sponsors in closed classes of sponsor are sponsoring visa applicants in relation to the new Subclass 408 (Temporary Activity) visa or the Subclass 407 (Training) visa, which is permissible in relation to visa applications made on or before 18 May 2017. The amendments maintain the existing rules in relation to reporting obligations in those cases. None of the amendments affect the obligations of sponsors in relation to holders of the visas repealed by this Amendment Regulation. Those obligations will continue to apply, including in cases where the repealed visas are granted after the commencement of the Amendment Regulation.

Items 161 - 166

These items amend regulation 2.85 in Division 2.19 of Part 2A of the Migration Regulations. Regulation 2.85 deals with the obligations of sponsors to secure an offer of a reasonable standard of accommodation for specified sponsored persons. The amendments made by these items maintain the existing position in relation to persons who come to Australia to undertake volunteer roles in religious work, sport, entertainment, and special programs such as youth exchange programs. To ensure that the sponsored person is not destitute and is not forced to work in Australia, it is an obligation for the sponsor to secure an offer of a reasonable standard of accommodation. The effect of the amendments is to apply the existing rules to sponsors of the new Subclass 408 (Temporary Activity) visa, which caters for religious work, sport, entertainment, and special programs. The obligations will apply to temporary activities sponsors who sponsor these volunteers. The obligations will also apply to any of the sponsors in the closed sponsor classes who sponsor volunteers in relation to Subclass 408, which is permissible in relation to visa applications made on or before 18 May 2017.

Item 167 – After regulation 2.86

This item inserts new regulation 2.86A in Division 2.19 of Part 2A of the Migration Regulations. The new regulation imposes an obligation on sponsors of Subclass 408 (Temporary Activity) visas to ensure that the primary sponsored person works or participates in the activity in relation to which the visa was granted.

The new regulation mirrors existing regulation 2.86 which imposes an equivalent obligation on sponsors in relation to visa holders who are nominated by a sponsor. One of the deregulation measures introduced by this Amendment Regulation is the removal of the requirement for nomination in relation to all cohorts of visa applicants who are now covered by the Subclass 408 visa. This created a gap in the sponsorship obligations framework which is addressed by new regulation 2.86A.

Regulation 2.86A is intended to ensure that sponsors take responsibility for ensuring that the sponsored non-citizen undertakes the activity in relation to which the visa was granted. For example, a sponsor would fail to comply with this obligation if a visa was granted for the purpose of religious work, and the visa holder was being used in some other capacity such as an employee of a business. The obligation on the sponsor begins to apply on the day that the visa is granted and continues until the applicant obtains a new sponsor, or obtains a different substantive visa, or leaves Australia with no permission to return.

Items 168 - 170

These items amend regulation 2.87 in Division 2.19 of Part 2A of the Migration Regulations. Regulation 2.87 imposes an obligation on approved sponsors, and persons who were approved sponsors, not to take any action to recover, transfer or take certain actions that would result in another person paying for certain costs.

The amendments insert references to the visas which require sponsorship as a result of the amendments made by this Amendment Regulation – the new Subclass 407 (Training) visa, the new Subclass 408 (Temporary Activity) visa, and the existing Subclass 403 (Temporary Work (International Relations)) visa. The Subclass 403 visa is included because there is a new stream within that visa – the Seasonal Worker Program stream – which requires sponsorship. The seasonal worker programme was previously covered by the Subclass 416 (Special Program) visa which is repealed by this Amendment Regulation.

To satisfy the obligation a person must not attempt to transfer to another person, or recover or seek to recover from another person, all or part of the following costs:

- the costs that relate specifically to the recruitment of the visa holder, including migration agent costs; and
- the costs, including migration agent costs, associated with becoming an approved sponsor, being an approved sponsor, or being a former approved sponsor.

The amendments also impose an obligation on temporary activities sponsors of Subclass 408 visa holders who are religious workers (who satisfied clause 408.223 in Schedule 2 of the Migration Regulations) or domestic workers (who satisfied clause 408.224 in Schedule 2 of the Migration Regulations). The obligation provides that the sponsor must not recover or seek to recover any expenditure in Australia by the sponsor in relation to financial support of the sponsored person or a sponsored family member of the person. These obligations mirror the obligations imposed on long stay activity sponsors who sponsored religious workers and domestic workers under the Subclass 401 (Temporary Work (Long Stay Activity)) visa which is repealed by this Amendment Regulation.

Item 171 – Regulation 2.87A

This item repeals regulation 2.87A in Division 2.19 of Part 2A of the Migration Regulations. The regulation imposed an obligation on sponsors or former sponsors involved in staff exchange arrangements to make the same or equivalent position available to exchange participants on their return to Australia. The obligation was imposed on long stay activity sponsors in relation to staff exchange arrangements provided for under the Subclass 401 (Temporary Work (Long Stay Activity)) visa. The obligation ensured that if the sponsor did not arrange for the position to be made available to the Australian participant, a civil penalty may be imposed or administrative action taken.

From 19 November 2016, the visa covering staff exchange arrangements will be the Subclass 408 (Temporary Activity) visa, with sponsorship by a temporary activities sponsor. It was decided that there was no requirement for a sponsor obligation equivalent to regulation 2.87A because it represents an unnecessary regulatory interference with normal employer-employee relationships. As a deregulation measure, it was decided not to replicate this sponsorship obligation for the new visa.

Item 172 - At the end of subregulation 2.89(1)

This item amends subregulation 2.89(1) in Division 2.20 of Part 2A of the Migration Regulations, to provide that the regulation applies to the new sponsor class of ‘temporary activities sponsor’. The regulation applies to all existing sponsors, i.e. standard business sponsors, professional development sponsors and temporary work sponsors. The regulation also applies to persons who were approved sponsors. Regulation 2.89 prescribes, for the purposes of subparagraph 140L(1)(a)(i) of the Act, a circumstance in relation to failure to satisfy a sponsorship obligation. This allows the Minister to cancel approval of a sponsor, or bar an approved sponsor from sponsoring more people or applying for further approval as a sponsor, where the sponsor fails to satisfy a sponsorship obligation.

Item 173 - At the end of subregulations 2.90(1) and 2.91(1)

This item amends regulation 2.90 and regulation 2.91 in Division 2.20 of Part 2A of the Migration Regulations to include references to ‘temporary activities sponsors’. Regulation 2.90 allows the Minister to cancel approval of a sponsor, or bar an approved sponsor from sponsoring more people or applying for further approval as a sponsor, if the Minister is satisfied that the sponsor has provided false or misleading information to the Department of Immigration and Border Protection or to the Administrative Appeals Tribunal. Regulation 2.91 allows the Minister to cancel approval of a sponsor, or bar an approved sponsor from sponsoring more people or applying for further approval as a sponsor, if the Minister is satisfied that the person no longer satisfies the criteria for approval as a sponsor, or no longer satisfies the criteria for approval of a variation.

Item 174 – Paragraph 2.91(2)(b)

This item is consequential to the previous item.

Items 175 to 181

These items amend regulation 2.92 in Division 2.20 of Part 2A of the Migration Regulations. The objective of regulation 2.92 is to allow the Minister to cancel approval of a sponsor, or bar an approved sponsor from sponsoring more people or applying for further approval as a sponsor, where the sponsor has been found to have contravened a Commonwealth, State or Territory law.

Subregulation 2.92(1) is amended to include a reference to the new sponsor class of ‘temporary activities sponsors’ and to bring them within the scope of the regulation. Subregulation 2.92(1) is also amended to remove the words “in relation to a primary sponsored person” from the references to standard business sponsors and temporary work sponsors. This amendment clarifies regulation 2.92 to make it clear that the circumstances in which a sponsor may be barred, or a sponsor’s approval cancelled, include findings by a court or a competent authority that the sponsor has breached any Commonwealth, State or Territory law. The amendment makes it clear that the regulation covers breaches of laws involving persons other than the primary sponsored person. For example, the regulation would apply if the sponsor was found to have requested a payment from a family member of the primary sponsored person, or from a third party, in contravention of section 245AR of the Act.

These items also make consequential technical changes to regulation 2.92.

Items 182 and 183

These amendments apply regulation 2.93, in Division 2.20 of Part 2A of the Migration Regulations, to ‘temporary activities sponsors’ who sponsor youth exchanges programmes and other programmes conducted for a cultural or community purpose, as provided for in the criteria for the new Subclass 408 (Temporary Activity visa, at clauses 408.228(2) (youth exchange programmes) and clause 408.228(5) (other programmes). Regulation 2.93 requires the sponsor to obtain the written approval of the Secretary for any changes to a programme previously approved by the Secretary. This is a measure to safeguard the interests of participants in those programmes. The same obligation already exists for ‘special program sponsors’. The amendments ensure that the equivalent obligation is applicable in the new legislative framework established by this Amendment Regulation, under which the class of ‘special program sponsor’ is replaced by the class of ‘temporary activities sponsor’.

Items 184 - 187

These amendments apply regulation 2.94A, in Division 2.20 of Part 2A of the Migration Regulations, to ‘temporary activities sponsors’ who sponsor youth exchanges programmes and other programmes conducted for a cultural or community purpose, as provided for in the criteria for the new Subclass 408 (Temporary Activity visa, at clauses 408.228(2) (youth exchange programs) and clause 408.228(5) (other programs).

The objective of regulation 2.94A, in so far as it applies to youth exchange programmes and other programmes, is to allow the Minister to cancel approval as a sponsor, or bar a sponsor from sponsoring more people, or bar an approved sponsor or former approved sponsor from applying for further approval as a sponsor, where the sponsor has not complied with a term or condition of a ‘special program agreement’. A special program agreement is a written agreement between the sponsor and the Secretary about how the programme will be

conducted. The special program agreement must be in place before visas are granted. This is a measure to safeguard the interests of participants in those programmes. The same obligation already exists for ‘special program sponsors’. The amendments ensure that the equivalent obligation is applicable in the new legislative framework established by this Amendment Regulation, under which the class of ‘special program sponsor’ is replaced by the class of ‘temporary activities sponsor’.

Items 188 - 189

These items amend subregulation 4.01(1A) in Division 4.1 of Part 4 of the Migration Regulations. The amendments omit redundant references to repealed visas, and prescribe the new Subclass 407 (Training) visa in subregulation 4.02(1A) for the purposes of paragraph 338(2)(d) of the Act.

The effect of the amendments is that, to be eligible to apply for merits review of a decision to refuse a new Subclass 407 visa, a non-citizen who applied for the visa in Australia must either be sponsored by an approved sponsor at the time of applying for merits review of the decision to refuse the visa, or merits review of the sponsorship decision must also be pending at that time. This is consistent with the arrangements for other temporary work visas, except for the new Subclass 408 (Temporary Activity) visa. The criteria for the grant of a Subclass 408 visa do not require applicants to be sponsored in all cases. Accordingly, paragraph 338(2)(d) of the Act is not applicable. That paragraph only applies if the visa cannot be granted without sponsorship. If there are alternative criteria for the grant of the visa which do not require sponsorship, paragraph 338(2)(d) does prevent access to merits review by the Administrative Appeals Tribunal by refused visa applicants who satisfy paragraphs 338(2)(a), (b) and (c).

Item 190 – At the end of subregulation 4.02(4)

This item amends subregulation 4.02(4) in Division 4.1 of Part 4 of the Migration Regulations. The amendment inserts new paragraphs to provide for review by the Administrative Appeals Tribunal in relation to decisions to refuse to grant the new Subclass 407 (Training) visa (paragraph 4.02(4)(o)) and the new Subclass 408 (Temporary Activity) visa (paragraph 4.02(4)(p)) in cases where the visa applicant applied for the visa while outside Australia.

The effect of the item is that merits review by the Administrative Appeals Tribunal is available if the visa was applied for outside Australia and the visa applicant was sponsored by an Australian citizen, a company that operates in the migration zone, a partnership that operates in the migration zone, or the holder of a permanent visa, or a New Zealand citizen who holds a special category visa. These limitations on the availability of merits review for applicants who apply outside Australia are based on the policy reflected in subsection 338(5) of the Migration Act. That section does not apply directly in the case of Subclass 407 and Subclass 408, because those visas can be granted in Australia or outside Australia, whereas subsection 338(5) only applies if the visa must be granted outside Australia. The restriction in subsection 338(5) is becoming less relevant as the Department’s processes become more flexible in the online environment. To maintain access to merits review, it is necessary to provide for a review right by prescribing the relevant decisions pursuant to subsection 338(9) of the Migration Act. Identical arrangements have previously been made for the Subclass 457

(Temporary Work) (Skilled) visa (paragraph 4.02(4)(l)) and the Subclass 489 (Skilled – Regional (Provisional) visa (paragraph 4.02(4)(la)).

Item 191 – At the end of subregulation 4.02(5)

This item amends subregulation 4.02(5) in Division 4.1 of Part 4 of the Migration Regulations. The amendment inserts new paragraphs which are consequential to the amendments made by the item immediately above, to provide that review by the Administrative Appeals Tribunal may only be sought by the sponsor or nominator (in the case of Subclass 407 – paragraph 4.02(5)(n)) or the sponsor (in the case of Subclass 408, which does not require nomination – paragraph 4.02(5)(o)). The new paragraphs are consistent with the existing arrangements for review rights by applicants who apply outside Australia for temporary visas. A review right is only provided if the applicant has a sponsor or nominator, and it is the sponsor or nominator who has the right to apply for review.

Items 192 - 193

These items amend regulations 5.19L and 5.19M in Division 5.3 of Part 5 of the Migration Regulations to include references to the new class of ‘temporary activities sponsor’ in regulation 5.19L, and the new Subclass 407 (Training) visa and the new Subclass 408 (Temporary Activity) visa in regulation 5.19M. The Migration Regulations define classes of sponsor (regulation 5.19L) and classes of visa (regulation 5.19M) for the purpose of section 245AQ of the Migration Act. Section 245AQ is part of a regime introduced by the *Migration Amendment (Charging for a Migration Outcome) Act 2015* to make it unlawful for a person to ask for, receive, offer or provide a benefit in return for a migration outcome in relation to specified classes of sponsor and visa. The new statutory regime created new powers, and criminal and civil penalties, and definitions related to payments for sponsorships, nominations, and visas.

The effect of this amendment is that the prohibition on charging for a migration outcome applies to the new class of ‘temporary activities sponsor’ and to the new Subclass 407 and Subclass 408 visas. The amendment also removes redundant references to repealed classes of sponsor in regulation 5.19L.

Items 194 - 195

These items amend Part 773 of Schedule 2 to the Migration Regulations to repeal redundant references and to make consequential amendments to reflect the creation of the new Subclass 407 (Training) visa and the new Subclass 408 (Temporary Activity) visa. The effect of the amendments is that:

- a dependent child of a Subclass 407 or Subclass 408 holder, who arrives in Australia in the company of the visa holder, may be granted a Subclass 773 (Border) visa; and
- a person who, immediately before last departing Australia, held a Subclass 407 or Subclass 408 visa may, in certain circumstances, be able to obtain a Subclass 773 visa if the Subclass 407 or Subclass 408 visa has expired.

The amendments are consistent with existing arrangements.

Item 196 - Part 2 of Schedule 4 (items 4052, 4055 and 4055AA)

This item repeals redundant references from Part 2 of Schedule 4 to the Migration Regulations.

Item 197 - Paragraph 8107(4)(e) of Schedule 8

This item repeals and substitutes paragraph 8107(4)(e) of Schedule 8 to the Migration Regulations. This is a technical amendment, and is consequential to the repeal and substitution of regulation 2.72A by item 124 of Part 6 of the Amendment Regulation.

Item 198 - At the end of clause 8107 of Schedule 8

This item inserts new subclause 8107(5) into Schedule 8 to the Migration Regulations. The effect of the amendment is that visa condition 8107 requires the holder of a Subclass 407 (Training) visa to engage in the program of occupational training identified in the most recent nomination, engage in work or activity only if it is consistent with that program, and work only for an employer identified in the most recent nomination. A visa holder who fails to meet these conditions may be subject to visa cancellation under section 116 of the Migration Act. The Minister may cancel a visa if the visa holder fails to comply with a condition of the visa (paragraph 116(1)(b) of the Migration Act).

Item 199 – In the appropriate place in Schedule 13

This item amends Schedule 13 to the Migration Regulations to insert Part 60 entitled "Amendments made by the *Migration Amendment (Temporary Activity Visas) Regulation 2016*" and inserts new clauses 6001 and 6002. Schedule 13 sets out the application provisions (sometimes referred to as transitional provisions) which explain how the new regulations apply, including whether they affect accrued rights or liabilities.

The context for Schedule 13 is provided by the *Legislation Act 2003* which has the effect that amendments to the Migration Regulations cannot apply retrospectively, i.e. a provision of the Amendment Regulation would not apply in relation to a person (other than the Commonwealth or an authority of the Commonwealth) if the provision commenced before the day the instrument is registered, to the extent that as a result: (a) the person's rights as at that day would be affected so as to disadvantage the person; or (b) liabilities would be imposed on the person in respect of anything done or omitted to be done before that day (subsection 12(2) of the *Legislation Act 2003*). None of the provisions of the Amendment Regulation commence before registration, and subsection 12(2) is not engaged.

Further context for Schedule 13 is provided by paragraph 13(1)(a) of the *Legislation Act 2003*, which has the effect that the *Acts Interpretation Act 1901* applies to the Amendment Regulation as if it were an Act. Paragraph 7(2)(c) of the *Acts Interpretation Act 1901* is particularly relevant, as it has the effect that the repeal and amendment of provisions of the Migration Regulations made by the Amendment Regulation do not affect any right, privilege, obligation or liability acquired, accrued or incurred under the Migration Regulations.

As a preliminary point, it can be noted that no application provisions are required for the new Subclass 407 (Training) visa or the new Subclass 408 (Temporary Activity) visa as those

visas only come into existence of 19 November 2016 when this Amendment Regulation commences.

Inserted clause 6001, entitled 'Operation of Parts 3 and 4 of Schedule 1', provides that the amendments of the Migration Regulations made by Parts 3 and 4 of Schedule 1 to this Amendment Regulation apply in relation to an application for a visa made on or after 19 November 2016. A note clarifies that Parts 3 and 4 of Schedule 1 to the *Migration Amendment (Temporary Activity Visas) Regulation 2016* commence on 19 November 2016. This is a routine application provision in cases where amendments are being made to existing visas. Parts 3 and 4 of Schedule 1 of the Amendment Regulation deal with amendments to the existing Subclass 403 Temporary Work (International Relations) visa and the existing Subclass 400 Temporary Work (Short Stay Specialist) visa. The effect of the provision is to preserve the position of persons who apply for the visas prior to 19 November 2016. Those visa applications are not affected by the changes in the law relating to the grant of Subclass 403 or Subclass 400.

Inserted clause 6002, entitled 'Operation of Parts 5 and 6 of Schedule 1', provides that the amendments of the Migration Regulations made by Parts 5 and 6 of Schedule 1 to this Amendment Regulation apply as set out in clause 6002. Part 5 provides for the repeal of five visa classes and subclasses. Part 6 provides for consequential amendments to sponsorship, nominations, visa cancellation, and merits review.

Paragraphs 6002(1)(a), (b), and (c) provide that the amendments apply to applications made on or after 19 November, i.e. visa applications, applications for approval as a sponsor, and applications for variation of a term of approval as a sponsor. These are routine application provisions, to preserve the position of all persons who have applications lodged with the Department of Immigration and Border Protection when the Amendment Regulation commences on 19 November 2016.

Paragraph 6002(1)(d) also provides that the amendments only apply to nominations made on or after 19 November 2016. One effect is that no new nominations for applicants for Subclasses 401, 402 (Occupational Trainee stream) and 420 visas can be made, including by legacy sponsors and including for applications made before 19 November 2016, as those provisions have been repealed. However, an application for these visas cannot validly be made without a nomination in place at the time of making the application. Therefore the majority of applicants will not be impacted by the amendments. In a small number of cases an applicant's nomination may expire between the visa application being made and a visa decision being made, or they may change their sponsor and wish to provide a new nomination. In those small number of cases, the applicant will not be able to provide a new nomination for the purposes of visa grant. Given the small number impacted, it would have been inefficient to continue to support the operation of the repealed nomination provisions after 19 November 2016 in a context where all paper-based applications are being replaced by online applications and where the new visa scheme for Subclass 408 no longer requires nominations. However, the Department will consider alternative arrangements for applicants who are adversely affected.

The effect of these application provisions and provisions throughout the Amendment Regulation is that applications to be approved as a legacy sponsor can no longer be made as of 19 November 2016.

The relevant definitions of the legacy sponsors have therefore been amended accordingly (see items 66, 69, 71, 73, 75, 78). The criteria for approval in the legacy sponsor classes have also been repealed (see items 94 and 95) but are saved for applications made prior to 19 November 2016 by paragraphs 6002(1)(b) and (c) noted above.

For Subclass 407, nomination will still be a requirement to make a valid application and to be granted a visa. Relevant legacy sponsors will be able to receive approval for nominations for Subclass 407 visa applications, if the nomination is made by 18 May 2017 (see subregulation 2.72A(3) inserted by item 124). This is a six month transitional period during which the relevant legacy sponsor classes can nominate visa applicants for the new Subclass 407 (Training) visa. This is not relevant to the new Subclass 408 (Temporary Activity) visa, as that visa does not require nominations. However, the transitional period for Subclass 408 is similar. Legacy sponsors can ‘pass the sponsorship test’ in relation to Subclass 408 visa applicants if the visa application is lodged on or before 18 May 2017 (see the definition of ‘passes the sponsorship test’ in clause 408.111 of Schedule 2 to the Migration Regulations, inserted by item 2).

The Department put in place a communication and consultation strategy to alert legacy sponsors to the proposed changes in advance of the commencement day. Legacy sponsors are permitted a six month transitional period noted above, and they can apply at any time from 19 November 2016 for approval as a temporary activities sponsor, for which the application fee will be \$420 (as set out in a legislative instrument to be made for the purpose of subregulation 2.61(3A) as amended by item 101 of the Amendment Regulation).

Subclause 6002(2) provides for refunds of the fee paid under regulation 2.61 for approval to become a sponsor in one of the legacy classes of sponsor to cater for this transitional period. If the application to be a legacy sponsor has not been decided by 18 May 2017 there would be almost no purpose in being approved as a legacy sponsor after 18 May for the reasons outlined above. Subclause 6002(2) allows the Minister to refund the fee if the application is withdrawn.

Subclause 6002(3) provides for refunds of the fee paid under regulation 2.73A in relation to a nomination lodged prior to 19 November 2016 for a proposed visa applicant for a legacy visa who did not subsequently lodge a visa application prior to 19 November 2016. In this situation, the nomination serves no purpose. Subclause 6002(3) allows the Minister to refund the fee if the nomination is withdrawn.

Schedule 2 – Visa application charge for entrepreneur stream

Migration Regulations 1994

Item 1 – Paragraph 1104BA(2)(a) of Schedule 1

This item amends the amount of the first instalment of the visa application charge (VAC) relating to a Subclass 888 (Business Innovation and Investment (Permanent)) Visa in the Entrepreneur stream, by repealing paragraph 1104BA(2)(a) of Schedule 1 of the Migration Regulations, and substituting it with a new paragraph setting out a new and lower charge.

The purpose of this amendment is to correct the arrangements relating to the first instalment of the visa application charge (VAC) in relation to an application for a Subclass 888 (Business Innovation and Investment (Permanent)) visa, by replacing specific provisions that applied to applicants seeking to satisfy the criteria for a Subclass 888 visa in the Entrepreneur stream. The effect is that those applicants would only need to pay the lower amount of VAC applicable to all other applicants for a Subclass 888 visa, as intended.

Specifically, the effect of new paragraph 1104BA(2)(a) is to reduce the current VAC of \$3,600 for a base application, \$1,800 for an additional applicant over 18, and \$900 for an additional applicant aged under 18, to the following lower VACs:

- \$2,305 for a base application;
- \$1,155 for an additional applicant over 18; and
- \$575 for an additional applicant aged under 18.

In calculating the amount of the visa application charge, the intention was that the charge for a permanent Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Entrepreneur stream would remain consistent with the VAC for all other streams of the Subclass 888 visa of \$2305. Through an administrative oversight, the intended VAC for the provisional stage was inadvertently mirrored for the permanent stage. This resulted in a higher charge of \$3600 being set, instead of the intended charge of \$2305. Although no persons are yet eligible for this permanent visa (and therefore no one has been disadvantaged by the higher VAC), the amendment ensures the lower and correct fee applies in the future when persons will be eligible to pay the VAC.

The VAC for the permanent Subclass 888 (Business Innovation and Investment (Permanent)) Visa is determined by the Government by reference to a range of factors, including Government policy objectives, the likely contribution of the individual to Australian society and the comparison to similar visas in the global economy. Specifically, the VAC for the Subclass 888 (Business Innovation and Investment (Permanent)) Visa stream is set at \$2305 to balance the expected economic contribution of business and investment migrants with the amount the Government could reasonably expect such applicants to afford. The pricing also ensures the visa programme remained internationally competitive. The VAC of \$2305 is intended to now also apply to the Entrepreneur stream because, after four years on a provisional Entrepreneur visa, an applicant could reasonably be expected to have generated sufficient wealth to cover this charge.