

EXPLANATORY STATEMENT

Issued by the Minister for Immigration and Border Protection

Migration Act 1958

Migration Legislation Amendment (2016 Measures No. 5) Regulation 2016

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

Subsection 504(1) of the Migration Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Migration Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Migration Act.

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

The purpose of the *Migration Legislation Amendment (2016 Measures No. 5) Regulation 2016* (the Regulation) is to amend the *Migration Regulations 1994* (the Migration Regulations) to strengthen and update immigration policy.

In particular, the Regulation amends the Migration Regulations to:

- create a new visitor visa stream for frequent travellers which permits both tourism and business visitor activities and allow up to 10 years' validity. This visa stream is only be available to citizens of certain countries as specified in an instrument;
- simplify the provisions that enable the Minister to specify matters in a legislative instrument in relation to requirements for a valid visa application;
- change when certain Bridging visas cease (refer Subclass 010 (Bridging A) visas, Subclass 020 (Bridging B) visas, Subclass 030 (Bridging C) visas, Subclass 050 (Bridging (General)) visas and Subclass 051 (Bridging (Protection Visa Applicant)) visas. As a result of the amendments, where the cessation of one of these bridging visas was previously triggered by notification of a decision, it will instead be triggered by the decision itself. This removes uncertainty around whether a bridging visa has ceased where there is defective notification and therefore provide more certainty about a person's visa status. As an associated measure, the Regulation also extends the period during which the bridging visas remain in effect once an event which triggers cessation occurs (for example, when a decision is made or an application is withdrawn). These bridging visas now cease:
 - 35 days, rather than 28 days, after the relevant event occurs; or
 - 14 working days, rather than 7 working days, after the relevant event occurs.

A Statement of Compatibility with Human Rights (the Statement) has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulation is compatible with human rights. A copy of the Statement is at Attachment B.

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

Details of the Regulation are set out in Attachment C.

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

The Regulation commences on 19 November 2016.

The Office of Best Practice Regulation (the OBPR) has been consulted regarding the amendments made by the Regulation. The OBPR considers that the changes in the Regulation will not have a significant regulatory impact on businesses, individuals or community organisations and no further analysis (in the form of a Regulation Impact Statement) is required. The OBPR consultation references are as follows:

- 19030 (Schedule 1); and
- 20613 (Schedule 2).

Regarding the amendments made by Schedule 1, consultation was conducted with tourism industry stakeholders in relation to these changes through the Tourism Visa Advisory Group.

Regarding the amendments made by Schedule 2, no consultation was undertaken under section 17 of the *Legislation Act 2003*. The amendments are designed to provide greater certainty about when certain bridging visas cease to be in effect by linking cessation to the making of a decision, rather than to notification of that decision. In addition, the amendments extend the time during which a bridging visa remains in effect once the relevant decision has been made. This change is intended to ensure that bridging visa holders are not disadvantaged by the fact that cessation will now be linked to the decision, rather than the subsequent notification of that decision. Bridging visa holders will be advised of the ceasing arrangements for their visa when they are notified of the grant of their bridging visa. In light of the above, further consultation was not considered necessary or appropriate. This accords with subsection 17(1) of the *Legislation Act 2003* which envisages consultations where appropriate and reasonably practicable.

AUTHORISING PROVISIONS

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

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

- subsection 31(3), which provides that the *Migration Regulations 1994* (the Migration Regulations) may prescribe criteria for a visa or visas of a specified class (which, without limiting the generality of this subsection, may be a class provided for by section 32, 35A, 37, 37A or 38B but not by section 33, 34, 35, 38 or 38A);
- subsection 31(4), which provides that the regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia, or both;
- subsection 40(1), which provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- subsection 41(1), which provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions;
- subsection 46(1), which relevantly provides that, subject to subsections 46(1A), (2) and (2A), an application for a visa is valid if, and only if:
 - it is for a visa of a class specified in the application; and
 - it satisfies the criteria and requirements prescribed under this section; and
 - subject to the Migration Regulations providing otherwise, any visa application charge that the Migration Regulations require to be paid at the time when the application is made, has been paid; and
 - any fees payable in respect of it under the Migration Regulations have been paid;
- subsection 46(3), which provides that the regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application;
- subsection 504(2), which provides that section 14 of the *Legislation Act 2003* does not prevent, and has not prevented, regulations whose operation depends on a country or other matter being specified or certified by the Minister in an instrument in writing made under the regulations after the commencement of the regulations;

- section 73 of the Act, which provides that, if the Minister is satisfied that an eligible non-citizen satisfies the criteria for a bridging visa as prescribed under subsection 31(3), the Minister may grant a bridging visa permitting the non-citizen to remain in, or to travel to, enter and remain in Australia, during a specified period or until a specified event happens; and
- Subsection 82(7A) of the Act, which provides that a bridging visa permitting the holder to remain in, or travel to, enter and remain in, Australia until a specified event happens, ceases to be in effect the moment the event happens.

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

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

Migration Legislation Amendment (2016 Measures No. 5) 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 – Frequent Traveller Stream

As announced in the *White Paper on Developing Northern Australia*, the Government is trialling the introduction of a 10-year validity Visitor visa for Chinese nationals.

To support this initiative, this Schedule amends the *Migration Regulations 1994* to introduce a new Frequent Traveller stream into the Subclass 600 (Visitor) visa, by introducing the criteria for this visa and setting its Visa Application Charge (VAC).

The Frequent Traveller stream will facilitate the grant of a visa with up to 10 years' validity which will allow for multiple entries and up to a three-month stay period after each entry during the validity period of the visa, with no more than 12 months cumulative stay in a 24 month period.

The Frequent Traveller stream will permit both tourism and business visitor activities, however use of this visa to maintain de facto residence or to work in Australia will not be permitted and such actions will lead to a consideration of cancellation.

The introduction of the Frequent Traveller stream is intended to reduce the regulatory burden on applicants who will have to complete fewer repeat visa applications.

The new Frequent Traveller stream offers an additional Visitor visa option to interested Chinese nationals and will not disadvantage Chinese nationals or clients of other nationalities as it will not prohibit or restrict the grant of Visitor visas in the existing streams to Chinese nationals or nationals of any other country.

The VAC for the Frequent Traveller stream will be AUD1000 and will be marketed as a premium visa product to attract high value frequent travellers.

Initially, the Frequent Traveller stream will only be available to applicants who are nationals of the People's Republic of China with a view to progressively allowing nationals of other countries to apply following evaluation.

Human rights implications

The amendments in this Schedule have been considered against each of the seven core international human rights treaties and engage the following rights:

Non-discrimination

Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26 of the ICCPR states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

To the extent that the amendments in this Schedule engage the obligations in Article 2(1) and Article 26 of the ICCPR by only initially allowing Chinese nationals to apply for the Frequent Traveller stream, the Government considers that this is reasonable for the legitimate purpose of testing the implementation of the Frequent Traveller stream as well as further interest in it with an increasingly large cohort of applicants who may be most likely to apply for this product in the future. Depending on the success of the practical implementation of the Frequent Traveller stream and if sufficient interest is shown, it may be expanded to eligible passport holders of other nationalities in the future.

Further, the benefit of an extended validity visa to Chinese nationals will not disadvantage clients of other nationalities as it will not prohibit or restrict the grant of other streams of the Subclass 600 (Visitor) visa to nationals of other countries.

Conclusion

To the extent that the amendments in this Schedule engage human rights, they are compatible with those human rights.

Schedule 2 – Cessation of bridging visas

This Schedule amends the *Migration Regulations 1994* (the Regulations) to make changes to prescribed trigger events for bridging visa cessation. The effect of this amendment is that bridging visas (subclasses 010, 020, 030, 050, 051) will cease a fixed period after a relevant decision or purported decision is made, by the Department of Immigration and Border Protection or the relevant review authority, in relation to certain application processes.

Human rights implications

Right to Security of the Person and Freedom from Arbitrary Detention

International Covenant on Civil and Political Rights (ICCPR)

Article 9.1

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

The amendments in this Schedule may engage the right to security of the person and freedom from arbitrary detention under Article 9.1 of the ICCPR. Australia has a universal visa system

and under the *Migration Act 1958* (the Act), people who have entered Australia and do not hold valid visas are unlawful non-citizens and must, relevantly, be detained and removed as soon as practicable unless they are granted a visa.

However, immigration detention is lawful by virtue of the Migration Act. Further, the Government submits it is not arbitrary, and thus does not breach Article 9.

Broadly, the purpose of bridging visas is to provide lawful status in Australia to certain non-citizens while they await the outcome of a migration or citizenship related decision.

The Regulations currently prescribe an exhaustive list of trigger events which will cause a bridging visa to cease. For bridging visas that are granted and held in association with certain matters, such as substantive visa application or in relation to a citizenship process, these events include notification of the outcome or decision in relation to the application. Therefore, any bridging visa held in association with these processes will not cease until effective notification of a decision in relation to that process has occurred. Sections 494B and 494C of the Act provide for the methods by which the Minister can notify a person of the decision in relation to a particular application process (for example) and when a person is taken to have been notified of that decision, respectively.

It follows that under the current bridging visa cessation framework, it is difficult for both Departmental officers and visa applicants alike to determine whether a bridging visa held in association with a certain process has in fact ceased.

The purpose of this amendment is to:-

- simplify the complex framework in relation to bridging visa cessation;
- shift bridging visa cessation from effective notification of the decision to the decision itself;
- provide greater consistency and certainty in relation to when a bridging visa ceases, and more generally, the immigration status of the person/s concerned once a decision has been made;
- produce greater efficiencies and streamline the processes and timeframes in relation to the immigration status resolution process; and
- encourage visa applicants to more proactively engage with the Department of Immigration and Border Protection to facilitate the efficient management of their immigration status.

The amendment does not affect whether or not a visa application is finally determined, or timeframes for applying for merits review. Visa applicants will still need to be properly notified of a decision in relation to their visa application for the application to be finally determined; and the legislative amendment does not deal with or affect merits review timeframes, which still require effective notification in order to trigger the timeframe for merits review.

Conclusion

The amendments in this schedule engage Article 9 of the ICCPR by affecting the period of time within which a non-citizen's bridging visa will cease, which may lead to a person becoming an unlawful non-citizen if no other visa is held; however, it does not limit this right.

The Hon. Peter Dutton MP, Minister for Immigration and Border Protection

ATTACHMENT C**Details of the *Migration Legislation Amendment (2016 Measures No. 5) Regulation 2016*****Section 1 – Name**

This section provides that the title of the Regulation is the *Migration Legislation Amendment (2016 Measures No. 5) Regulation 2016* (the Regulation).

Section 2 – Commencement

This section provides for the Regulation to commence on 19 November 2016.

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

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

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

Section 3 – Authority

The purpose of this section is to set out the authority under which the Regulation is made, namely the *Migration Act 1958* (the Migration Act).

Section 4 – Schedules

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

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

Schedule 1 – Frequent Traveller Stream***Migration Regulations 1994*****Item 1 – Subregulation 2.07(1) (note)**

This item is a technical amendment to update a note in order to reflect the changes made at items 2-4 below.

Items 2-4 – Subregulation 2.07(5) and paragraph 2.07(5)(c)

These items expand the matters the Minister can specify by legislative instrument under subregulation 2.07(5) for the purposes of whether an application for a particular class of visa is valid. The matters the Minister could specify by legislative instrument under subregulation 2.07(5) were: the approved form for making an application for that visa class; the way in which a visa application for that visa class must be made, and the place at which an application for that visa class must be made. Items 2-4 expand the matters the Minister can specify by legislative instrument to include ‘any other matter’.

This does not permit the Minister to specify new matters by instrument without a regulation being made. Subregulation 2.07(5) requires that Schedule 1 to the *Migration Regulations 1994* (the Migration Regulations) must prescribe the matter to be specified by instrument. Therefore any additional matter to be specified by instrument must first be prescribed in Schedule 1, which would be an amendment in a disallowable instrument, thereby giving the Parliament the opportunity to scrutinise and disallow the amendment and prevent the matter being specified by instrument if it so wished.

The amendment was not strictly necessary but was suggested by the Office of Parliamentary Counsel purely to simplify drafting so that all provisions prescribing matters in Schedule 1 could refer back to subregulation 2.07(5) for neatness. In this way, the amendment is a technical amendment only and does not alter any existing instrument-making powers. These amendments support the changes at item 8, which set out the visa application validity requirements for the new Frequent Traveller stream in the Subclass 600 (Visitor) visa (Frequent Traveller visa). The amendments do not substantially alter existing arrangements for making visa applications, but support future flexibility to change and update administrative arrangements for making and processing applications.

Item 5 – Subregulation 2.07(6)

This item makes a minor amendment, which is consequential to the changes at items 2-4 above and ensures consistency of language within the subregulation.

Items 6-7 - Paragraph 1236(2)(a) of Schedule 1 and after paragraph 1236(2)(a) of Schedule 1

These items specify that the first instalment of the visa application charge for Frequent Traveller visas is \$1,000, payable at the time of application. There is no second instalment.

In calculating the amount of the visa application charge, the following considerations were relevant:

- the number of visa applications that would have been required to facilitate travel over a 10 year period prior to this visa stream being available;
- the associated savings in visa application charges and compliance with regulatory requirements; and
- international comparisons in relation to equivalent visas, to ensure that Australia remains a competitive and attractive destination.

It is intended that all parameters of the new visa, including the visa application charge, will be reassessed as part of an evaluation process. Future adjustments may be required to ensure that the visa settings are appropriate and reasonable.

Item 8 - After subitem 1236(6) of Schedule 1

This item specifies that an application for a Frequent Traveller visa must meet the following validity criteria:

- an application must be made at a place, and in the manner specified by the Minister in a legislative instrument; and
- the applicant must:
 - be outside Australia;
 - be in a place specified by the Minister by legislative instrument (if such a legislative instrument has been made); and
 - hold a valid passport of a kind specified by the Minister in a legislative instrument.

The matters to be specified by legislative instrument for the purpose of this item relate to an applicant's location and the kind of passport they hold. It is appropriate for the Minister to have the flexibility to specify different locations and different kinds of passports for the purpose of this item, particularly as this is commencing as a trial, as this will provide the flexibility to respond quickly and efficiently to changes in the visa application caseload. This flexibility is also beneficial for applicants, as it supports an efficient and effective application process.

As a further consideration, while the Frequent Traveller visa is initially only intended to be available to applicants who are nationals of the People's Republic of China, it may be desirable in future to progressively allow nationals of other countries to apply. Allowing the Minister to specify kinds of passport by legislative instrument would support a staged approach to such an expansion.

Subsection 504(2) of the *Migration Act 1958* authorises the specification of such matters in an instrument, including after the taking effect of the regulations.

Item 9 - Division 600.2 of Schedule 2 (note)

This item adds a note specifying the primary criteria which apply to applications for a Frequent Traveller visa.

Item 10 - At the end of Division 600.2 of Schedule 2

The item adds primary criteria for Frequent Traveller visas, requiring that applicants:

- intend to visit Australia as a tourist or to engage in a business visitor activity; and
- do not 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.

The item also adds a note to clarify that the above criteria only apply to applicants for Frequent Traveller visas.

The requirements contained in this item are intended to support grants of Frequent Traveller visas to applicants who intend to travel to Australia for reasons which align with the intended purpose of the visa (that is, for tourism or business visitor activity purposes).

The Regulations define ‘tourism’ to mean participation in activities of a recreational nature including amateur sporting activities, informal study courses, relaxation, sightseeing and travel. The Regulations further define ‘business visitor activity’ as: making a general business or employment enquiry; investigating, negotiating, entering into, or reviewing a business contract; an activity carried out as part of an official government to government visit; and participation in a conference, trade fair or seminar in Australia unless the person is being paid by an organiser for participation. It does not include an activity that is, or includes, undertaking work for, or supplying services to, an organisation or other person based in Australia or an activity that is, or includes the sale of goods or services directly to the general public.

Item 11 - Clause 600.512 of Schedule 2

This item makes a technical amendment, which is consequential to the changes at item 12.

Item 12 - At the end of clause 600.512 of Schedule 2

This item specifies that a holder of a Frequent Traveller visa can travel to and enter Australia on multiple occasions, and can remain in Australia for three months after each entry. Once granted, the Frequent Traveller visa will continue to allow the holder to enter Australia until a date specified by the Minister (which must not be more than ten years after the date of grant of the visa).

Item 13 - At the end of Division 600.6 of Schedule 2

This item specifies the conditions which must be imposed on a Frequent Traveller visa. These conditions specify that the visa holder:

- must not work in Australia other than by engaging in a business visitor activity;
- while in Australia, must not engage, for more than three months, in any studies or training;
- will not, after entering Australia, be entitled to be granted a substantive visa, other than a protection visa, while the holder remains in Australia;
- must continue to be a person who would satisfy the primary or secondary criteria, as the case requires, for the grant of the visa;
- must be free from tuberculosis at the time of travel to, and entry into, Australia;
- must not remain in Australia after the end of the period of stay permitted by the visa;
- must notify the Minister of any change in the holder’s personal details not less than two working days before the change is to occur;
- must undergo a medical assessment carried out by a Medical Officer of the Commonwealth, a medical practitioner approved by the Minister, or a medical practitioner employed by an organisation approved by the Minister if requested in writing by the Minister to do so; and

- must not stay in Australia for more than 12 months in any period of 24 months (this condition operates so that the time spent in Australia is calculated cumulatively, even where the visa holder departs Australia and subsequently returns).

Item 14 - At the end of Schedule 8

This item creates two new visa conditions:

- the visa holder must undergo a medical assessment carried out by a Medical Officer of the Commonwealth, a medical practitioner approved by the Minister, or a medical practitioner employed by an organisation approved by the Minister if requested in writing by the Minister to do so; and
- must not stay in Australia for more than 12 months in any period of 24 months (this condition operates so that the time spent in Australia is calculated cumulatively, even where the visa holder departs Australia and subsequently returns).

These conditions must be imposed on Frequent Traveller visas (see item 13 above).

Schedule 2 – Cessation of bridging visas

Migration Regulations 1994

Broadly, the purpose of bridging visas is to provide lawful status in Australia to certain non-citizens while they await the outcome of a migration or citizenship related decision.

The purpose of the Regulation is to amend the *Migration Regulations 1994* (‘the Regulations’) to provide greater certainty about when certain bridging visas cease to be in effect. The amendments apply to the following bridging visa subclasses:

- Subclass 010 (Bridging A) visa (‘BVA’)
- Subclass 020 (Bridging B) visa (‘BVB’)
- Subclass 030 (Bridging C) visa (‘BVC’)
- Subclass 050 (Bridging (General)) visa (‘BVE 050’)
- Subclass 051 (Bridging (Protection Visa Applicant)) visa (‘BVE 051’).

The Regulations previously prescribed an exhaustive list of trigger events which would cause a bridging visa to cease. For bridging visas that were granted and held in association with certain matters, such as substantive visa application or in relation to a citizenship process, these events included notification of the outcome or decision in relation to the application. Therefore, any bridging visa held in association with these processes would not cease until effective notification of a decision in relation to that process had occurred.

Sections 494B and 494C of the Act provide for the methods by which the Minister can notify a person of the decision in relation to a particular application process (for example) and when a person is taken to have been notified of that decision, respectively.

It followed that under the previous bridging visa cessation framework, it was difficult for both Departmental officers and visa applicants alike to determine whether a bridging visa held in association with a certain process had in fact ceased where there was defective notification.

The purpose of this amendment is to:-

- simplify the complex framework in relation to bridging visa cessation;
- shift bridging visa cessation from effective notification of the decision to the decision itself;
- provide greater consistency and certainty in relation to when a bridging visa ceases, and more generally, the immigration status of the person/s concerned once a decision has been made;
- produce greater efficiencies and streamline the processes and timeframes in relation to the immigration status resolution process; and
- encourage visa applicants to more proactively engage with the Department of Immigration and Border Protection to facilitate the efficient management of their immigration status.

The amendment does not affect whether or not a visa application is finally determined, or timeframes for applying for merits review. Visa applicants will still need to be properly notified of a decision in relation to their visa application for the application to be finally determined; and the legislative amendment does not deal with or affect merits review timeframes, which still require effective notification in order to trigger the timeframe for merits review.

Consistent with the previous framework, unless otherwise specified the ceasing events set out in the relevant parts of the Regulations are intended to operate so that whichever of those events occurs first triggers the cessation of the bridging visa.

Further details in relation to the proposed amendments are outlined below.

Items 2-5, 9-12, 16-19, 23-26 and 62-66– Subparagraphs 010.511(b)(ii),(iii),(v),(vii) and (viii), subparagraphs 020.511(b)(ii),(iii),(iv),(vii) and (viii), subparagraphs 030.511(ii),(iii),(v),(vi) and (vii), subparagraphs 050.511(b)(ii),(iii),(iiia),(iv),(vi) and (vii) and subparagraphs 051.511(a)(ii),(b),(ba),(d) and (e) of Schedule 2

A person may be granted a bridging visa because they have made an application for a substantive visa (that is, a visa other than a bridging visa, a criminal justice visa or an enforcement visa). The Regulations specify that these bridging visas stay in effect until one of a range of specified events (‘ceasing events’) occurs. These items make changes to the following ceasing events for a BVA, BVB, BVC, BVE 050 or BVE 051 granted to a person who has applied for a substantive visa.

- Where the Minister refuses to grant the substantive visa, and the holder does not seek merits review of the refusal decision, the bridging visa no longer ceases 28 days after the holder is notified of the Minister’s refusal decision, but 35 days after the decision is made.
- Where the Minister refuses to grant the substantive visa, and the holder applies within 35 days to the Administrative Appeals Tribunal (the Tribunal) for merits review of the refusal decision, the bridging visa no longer ceases 28 days after the holder is notified by the Tribunal of its decision:
 - on the merits review; or
 - that the application for merits review was not made in accordance with the law governing the making of applications to the Tribunal.

Instead the bridging visa will cease 35 days after the Tribunal’s decision is made.

- Where the holder withdraws the substantive visa application or the merits review application, the bridging visa no longer ceases 28 days after that withdrawal, but instead ceases 35 days after the withdrawal.
- Where the Minister decides that the substantive visa application is invalid, the bridging visa no longer ceases 28 days after the holder is notified of this by Immigration, but 35 days after the decision is made.

In addition to the above, items 5, 12, 19 and 66 make technical amendments to clarify that when the Tribunal remits the substantive visa application to the Minister for reconsideration the bridging visa will continue to be in effect until one of the ceasing events relevant to the reconsideration occurs.

Items 29-32 – Paragraph 050.511C(b) and subparagraphs 050.511C(b)(i), (ii), (iii) and (iv) of Schedule 2

A person may be granted a BVE 050 because they have applied for judicial review of a decision under the *Australian Citizenship Act 2007*. These items make changes so that if the relevant court remits the matter to the Minister or the Tribunal for reconsideration, the person's BVE 050 no longer ceases 28 days after the holder is notified of the Minister or the Tribunal's decision on the reconsideration, but 35 days after that decision is made.

These items do not make changes to the relevant ceasing events where the court makes a decision on the judicial review proceedings, other than a decision to remit the matter, and also does not make changes to the relevant ceasing event where the person withdraws his or her application for judicial review.

Items 35-36 – paragraph 050.511D(b) and subparagraph 050.511D(b)(i) and (ii) of Schedule 2

A person may be granted a BVE 050 because they have applied for merits review of a decision under the *Australian Citizenship Act 2007*. These items make changes to the following ceasing events for these bridging visas.

- Where the Tribunal makes a decision that the application for merits review was not made in accordance with the law governing the making of applications to the Tribunal, the BVE 050 no longer ceases 28 days after the person is notified of that decision, but 35 days after the Tribunal makes the decision.
- Where the Tribunal makes a decision on the merits review, the BVE 050 no longer ceases 28 days after the person is notified of the decision, but 35 days after the Tribunal makes the decision.
- Where the person withdraws his or her application for merits review, the BVE 050 no longer ceases 28 days, but instead ceases 35 days after that withdrawal.

Items 40-41 and 51-52 – Paragraphs 050.513(a) and (c) and paragraphs 050.514(a) and (c) of Schedule 2

A person may be granted a BVE 050 on the basis that they have applied for merits review of a decision to cancel a visa. These items make changes to the following ceasing events for these bridging visas.

- Where the Tribunal makes a decision that the application for merits review was not made in accordance with the law governing the making of applications to the

Tribunal, the BVE 050 no longer ceases 28 days after the person is notified of that decision, but 35 days after the Tribunal makes the decision.

- Where the Tribunal makes a decision on the merits review, the BVE 050 no longer ceases 28 days after the person is notified of the decision, but 35 days after the Tribunal makes the decision.
- Where the person withdraws his or her application for merits review, the BVE 050 no longer ceases 28 days after that withdrawal, but instead ceases 35 days after the withdrawal.

Where a person's visa is consequentially cancelled because of the cancellation of a visa held by another person described above (for example, because they hold the visa as a result of being a member of the family unit of the other person or as a result of being a child born in Australia to that other person), they may be granted a BVE 050 because the other person has applied for merits review of the cancellation decision. These items therefore also make changes to the following ceasing events for these bridging visas.

- Where the Tribunal makes a decision that the other person's application for merits review was not made in accordance with the law governing the making of applications to the Tribunal, the BVE 050 no longer ceases 28 days after the other person is notified of that decision, but 35 days after the Tribunal makes the decision.
- Where the Tribunal makes a decision on the merits review, the BVE 050 no longer ceases 28 days after the other person is notified of the decision, but 35 days after the Tribunal makes the decision.
- Where the other person withdraws his or her application for merits review, the BVE 050 no longer ceases 28 days after that withdrawal, but instead ceases 35 days after the withdrawal.

Items 43-44 and 54-55 – Subparagraphs 050.513A(b)(i) and (iii) and subparagraphs 050.514AA(b)(i) and (ii)

A person may have their visa cancelled if they are sent a notice under section 20 of the *Education Services for Overseas Students Act 2000* and fail to comply with that notice. Where a person applies for revocation of such a cancellation decision, they may be granted a BVE 050. The Regulations specify that this BVE 050 will stay in effect until one of a range of ceasing events occurs. These items make changes to the following ceasing events for these bridging visas.

- Where a decision is made on the revocation application, the BVE 050 no longer ceases 7 working days after the holder is notified of the decision, but 14 working days after the decision is made.
- Where the holder withdraws the revocation application, the BVE 050 no longer ceases 7 working days after that withdrawal, but instead ceases 14 working days after the withdrawal.

Where a person's visa is consequentially cancelled because of the cancellation of a visa held by another person described above (for example, because they hold the visa as a result of being a member of the family unit of the other person or as a result of being a child born in Australia to that other person), they may be granted a BVE 050 because the other person has applied for revocation of the cancellation decision. These items therefore also make changes to the following ceasing events for these bridging visas.

- Where a decision is made on the revocation application, the BVE 050 no longer ceases 7 working days after the other person is notified of the decision, but 14 working days after the decision is made.
- Where the other person withdraws the revocation application, the BVE 050 no longer ceases 7 working days after that withdrawal, but instead ceases 14 working days after the withdrawal.

Items 47-48 and 58-59 – Paragraphs 050.513B(a) and (c) and paragraphs 050.514AB(a) and (c)

A person may have their visa cancelled if they are sent a notice under section 20 of the *Education Services for Overseas Students Act 2000* and fail to comply with that notice. In this event, it is open to the person to apply in writing to the Minister for revocation of the cancellation. Where a decision is made not to revoke the cancellation of the visa, and the person applies for merits review of that decision, they may be granted a BVE 050. These items make changes to the following ceasing events for these bridging visas.

- Where the Tribunal makes a decision that the application for merits review was not made in accordance with the law governing the making of applications to the Tribunal, the BVE 050 no longer ceases 28 days after the person is notified of that decision, but 35 days after the Tribunal makes the decision.
- Where the Tribunal makes a decision on the merits review, the BVE 050 no longer ceases 28 days after the person is notified of the decision, but 35 days after the Tribunal makes the decision.
- Where the person withdraws his or her application for merits review, the BVE 050 no longer ceases 28 days after that withdrawal, but instead ceases 35 days after the withdrawal.

Where a person's visa is consequentially cancelled because of the cancellation of a visa held by another person described above (for example, because they hold the visa as a result of being a member of the family unit of the other person or as a result of being a child born in Australia to that other person), they may be granted a BVE 050 because the other person has applied for merits review of a refusal to revoke the cancellation decision. These items therefore also make changes to the following ceasing events for these bridging visas.

- Where the Tribunal makes a decision that the other person's application for merits review was not made in accordance with the law governing the making of applications to the Tribunal, the BVE 050 no longer ceases 28 days after the other person is notified of that decision, but 35 days after the Tribunal makes the decision.
- Where the Tribunal makes a decision on the merits review, the BVE 050 no longer ceases 28 days after the other person is notified of the decision, but 35 days after the Tribunal makes the decision.
- Where the other person withdraws his or her application for merits review, the BVE 050 no longer ceases 28 days after that withdrawal, but instead ceases 35 days after the withdrawal.

Items 69-71 Subparagraph 051.513(1)(a)(ii), (b), (ba) and (d) of Schedule 2

A BVE 051 may be granted to a person under section 75 of the *Migration Act 1958* (section 75 of the Migration Act sets out where a bridging visa is deemed to be granted to a non-

citizen in immigration detention). These items make changes to when such a BVE 051 ceases in circumstances where the bridging visa is linked to a Protection visa application.

- If the Minister decides to refuse the person's Protection visa application, the BVE 051 no longer ceases 28 days after the person is notified of the refusal decision, but 35 days after the decision is made.
- If the person applies for merits review of a refusal decision and the Tribunal decides that the person's application was not made in accordance with the law governing the making of applications to the Tribunal, the BVE 051 no longer ceases 28 days after the person is notified of the Tribunal's decision, but 35 days after the decision is made.
- If the person applies for merits review of a refusal decision and the Tribunal makes a decision on the person's application (other than a decision to remit the application to the Minister for reconsideration), the BVE 051 no longer ceases 28 days after the person is notified of the Tribunal's decision, but 35 days after the decision is made.
- If the protection visa application is refused and the refusal decision is referred to the Immigration Assessment Authority (the IAA) and the IAA makes a decision (other than a decision to remit the application to the Minister for reconsideration), the BVE 051 no longer ceases 28 days after the person is notified of the IAA's decision, but 35 days after the decision is made.
- If the person withdraws their application for a Protection visa or for review, the BVE 051 no longer ceases 28 days after that withdrawal, but instead ceases 35 days after the withdrawal.

Items 6, 13, 20, 27, 33, 37, 42, 49, 53, 60, 67 and 72 - At the ends of: clauses 010.511, 020.511, 030.511, 050.511, 050.511C, 050.511D, 050.513, 050.513B, 050.514, 050.514AB and 051.511, and after subclause 051.513(1) of Schedule 2

As a result of these items, the bridging visas captured by the amendments will cease a certain number of days after the date of the decision, regardless of the validity of the decision and despite any failure to comply with the requirements of the Migration Act or the Regulations in relation to the decision. The purpose of these amendments is to ensure there is certainty about when a bridging visa ceases, which would not exist if a successful judicial challenge to the validity of the decision could mean that a bridging visa had never actually ceased. This scenario would cause uncertainty for both bridging visa holders and the Department.

The amendments do not remove the legislative requirement for notifications nor make changes to the review framework which currently exists in respect of decisions made by the Minister or the Tribunal. The amendments also do not make changes to bridging visa eligibility for a person pursuing such a review.

Items 7-8, 14-15, 21-22, 28, 34, 38-39, 45-46, 50, 56-57, 61 and 68 – paragraph 010.513(c), clause 020.511, paragraph 020.512(ba), clause 030.511, paragraph 030.512(c), clause 050.511, clause 050.511C, clause 050.511D, paragraph 050.512(c), clause 050.513, paragraph 050.513A(c), clause 050.513B, clause 050.514, paragraph 050.514AA(c), clause 050.514AB, clause 051.511 and paragraph 051.512(d)

These items make technical amendments to support the operation of the Regulation.

Schedule 3 – Application and transitional provisions

Migration Regulations 1994

Item 1 – In the appropriate position in Schedule 13

The purpose of this item is to clarify to whom the amendments in the Schedule apply.

This item amends Schedule 13 to the Migration Regulations to insert Part 58, titled ‘Amendments made by Migration Legislation Amendment (2016 Measures No. 5) Regulation 2016’. Part 58 sets out the transitional and applications provisions for the amendments made to the Migration Regulations by the Regulation.

Clause 5801, titled ‘Operation of Schedule 1’, provides that the amendments at Schedule 1 apply in relation to an application for a Frequent Traveller visa made on or after 19 November 2016.

The clause also provides that any legislative instrument made under subregulation 2.07(5) which was in effect before 19 November 2016 continues to be in effect, regardless of the changes made by the Regulation. The purpose of this clause is to clarify that the Regulation is not intended to affect the operation of current legislative instruments.

Clause 5802, titled ‘Operation of Schedule 2’ provides that these amendments apply in relation to bridging visas granted on or after 19 November 2016. As the amendments relate to the cessation of a bridging visa, in effect this means that for bridging visas granted as a result of applications that are not finally determined (in accordance with the meaning in section 5 of the Migration Act) on 19 November 2016, these visas will cease in accordance with the cessation events made by these amendments.

Section 504 of the Migration Act authorises the making of regulations that are necessary or convenient to carry out or give effect to the objectives of the Migration Act, which include regulating the entry and stay of non-citizens in Australia in the national interest. Accordingly, the amendments apply to all relevant applications decided on or after the commencement of the Regulation.

It is appropriate that these amendments apply to visa applications already made before the commencement of the Regulation as it is necessary for effective administration. That is, the distinction between bridging visas granted before 19 November 2016 and on or after 19 November 2016 provides bridging visa holders with a clear and unambiguous point in time from which to determine the relevant cessation framework applicable to the associated bridging visa. This is consistent with, and supports the purpose of the amendment, being to provide greater consistency and certainty in relation to when a bridging visa ceases, and more generally, the immigration status of the person/s concerned.