

EXPLANATORY STATEMENT

Select Legislative Instrument No.

Issued by the Minister for Immigration and Border Protection

Migration Act 1958

Migration Legislation Amendment (2017 Measures No. 1) Regulations 2017

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 in summary provides that the Governor-General may make regulations prescribing matters required or permitted by the Migration Act to be prescribed, or which are 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 (2017 Measures No. 1) Regulations 2017* (the Regulations) is to amend the *Migration Regulations 1994* (the Migration Regulations) to strengthen and improve immigration policy, and to amend the *Migration Agents Regulations 1998* (the Migration Agents Regulations) following the 2014 Independent Review of the Office of the Migration Agents Registration Authority.

In particular, the Regulations amend the Migration Regulations to:

- clarify that it is not a requirement that a dependent child of another applicant (***the parent applicant***), born in Australia on or after 1 July 2016 and making a combined application with the parent applicant for a Resident Return (Temporary) (Class TP) visa, be included in the passport of the parent applicant.

The amendment operates in a beneficial manner. It ensures that an application for a Resident Return (Temporary) (Class TP) visa that was made or purported to have been made prior to the commencement of this Regulations will not be held to be invalid on the basis that the applicant was not included in the passport of the parent applicant;

- improve the processing of protection visa applications and correct some anomalies by:
 - allowing members of the same family unit, who satisfy fast track applicant requirements, to be added to a valid application for a Subclass 785 (Temporary Protection) visa (TPV) or a Subclass 790 (Safe Haven Enterprise) visa (SHEV) which has not yet been finally determined, where they are also fast track applicants. The effect is improved efficiencies for applicants and decision makers as a member of the same family unit as an existing applicant may be added to their application;

- extending the period before a SHEV or TPV ceases so that, rather than ceasing when their subsequent visa application is finally determined, the visa will cease 35 days after their subsequent visa application is finally determined. This allows the person time to depart Australia without the risk of becoming unlawful. No visa holders have yet been impacted ; and
- allowing children, who are born to parents who entered Australia lawfully but were unlawful at the time of the child's birth, to be eligible to apply for a permanent protection visa. This is intended to fix an unintended consequence that a child in this situation was only eligible for a temporary protection visa, while their parents could apply for a permanent protection visa. Some children have been impacted to date and alternative solutions are in place for these few cases;
- remove redundant provisions and make consequential changes which are minor and technical in nature. Policy settings have not been altered by these amendments.

The Regulations also amend the Migration Agents Regulations to:

- implement Recommendation 10 of the 2014 Independent Review of the Office of the Migration Agents Registration Authority (OMARA) to reform the arrangements for continuing professional development that registered migration agents must undertake to meet the requirements for re-registration. In particular, the Regulations:
 - create a more open and competitive market-based framework for the provision of continuing professional development activities, under which only the types, topics and broad conditions for the delivery of activities are prescribed in the Migration Agents Regulations, rather than requiring each particular activity to be individually approved as under the previous arrangements; and
 - restructure the provisions under which providers of continuing professional development may be approved to clarify the core competency requirements for the delivery of continuing professional development, requiring providers to meet specified standards, providing for approval to be subject to other specified conditions as appropriate, and providing for approval generally to be for 24 months, unless cancelled for breach of the relevant standards or conditions, rather than indefinitely as under the previous arrangements;
- strengthen the regulation of migration agents through the following changes:
 - ensuring that registered migration agents are subject to the Code of Conduct at Schedule 2 to the Migration Agents Regulations even when giving assistance to, or making representations on behalf of, their migrating employees and professional development applicants;
 - making other consequential amendments to the Code of Conduct; and
 - making structural and technical amendments to reflect recent amendments to professional development sponsorship arrangements in Migration Regulations; and
- reduce an unnecessary administrative burden on registered migration agents by creating more flexibility as to how and when applicants for repeat registration are required to provide information about their average fees during the previous 12 months.

The amendments in Schedule 1 and Schedule 2 to the Regulations operate to affect existing applications and visa holders. However these amendments all operate to benefit the applicants or visa holders. The Schedule 1 measure operates to ensure that the child's application will be taken to have been made at the same time and place as, and combined with, the parent's application. The amendments to clauses 785.511 and 790.511 in Schedule 2 provide for a longer visa validity period than before. The other amendments made by Schedule 2 apply to applications already made but not finally determined, however the amendments operate to benefit the applicant.

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 Regulations are 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 Regulations may be exercised.

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

The Regulations is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

Sections 1 to 4 to the Regulations commence on the day after this instrument is registered.

Schedules 1, 2, 3, 5, 6 and items 1 and 4 of Schedule 7 to the Regulations commence on 18 April 2017.

Part 1 of Schedule 4 and items 2 and 3 of Schedule 7 to the Regulations commence on 1 October 2017.

This commencement date allows continuing professional development providers to be approved under the new arrangements and the new framework to be set up prior to the commencement of the new requirements for continuing professional development on 1 January 2018. Continuing professional development will then be able to be delivered under the new framework from the date of its commencement.

Part 2 of Schedule 4 of the Regulations commences on 1 January 2018.

These amendments prescribe the new requirements for continuing professional development, which will be in force on and from 1 January 2018.

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments made by the Regulations. The OBPR considers that the changes in the Regulations have minor regulatory impacts, no further analysis in the form of a Regulation Impact Statement is thus required. The OBPR consultation references are as follows:

- 19860 (Schedule 1)
- 21226 (Schedule 2)
- 19212 and 21892 (Schedule 3)
- 18313 (Schedule 4)
- 21396 (Schedule 5)
- 21395 (Schedule 6)

In relation to the amendments made by Schedule 1, the Department consulted with the Department of Infrastructure and Regional Development, the lead agency for the Norfolk Island governance reforms. This accords with subsection 17(1) of the Legislation Act which envisages consultations where appropriate and reasonably practicable.

In relation to the amendments made by Schedule 2, no consultation was undertaken because these amendments do not substantially alter existing arrangements. This accords with subsection 17(1) of the Legislation Act which envisages consultations where appropriate and reasonably practicable.

In relation to the amendments made by Schedule 3, no consultation was necessary because these amendments are minor and machinery in nature and do not substantially alter existing arrangements. This accords with subsection 17(1) of the Legislation Act which envisages consultations where appropriate and reasonably practicable.

In relation to the amendments made by Schedule 4, the Department had extensive consultations with the Migration Institute of Australia and the OMARA Independent Reference Group. They were in support of these amendments. This accords with subsection 17(1) of the Legislation Act which envisages consultations where appropriate and reasonably practicable.

In relation to the amendments made by Schedule 5, the Department consulted with the OMARA and they were in support of these amendments. This accords with subsection 17(1) of the Legislation Act which envisages consultations where appropriate and reasonably practicable.

In relation to the amendments made by Schedule 6, the OMARA consulted with the OMARA Independent Reference Group which has representatives from various stakeholder groups involved in the migration advice sector and also represents consumers' perspectives. They were in support of this amendment. This accords with subsection 17(1) of the Legislation Act which envisages consultations where appropriate and reasonably practicable.

AUTHORISING PROVISIONS

Subsection 504(1) of 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 regulations may prescribe criteria for a visa or visas of a specified class;
- subsection 40(1), which provides that the regulations may provide that visas or visas of a specified class may 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(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;
- section 276, which sets out the circumstances in which a person gives and does not give ‘immigration assistance’;
- subsection 282(4), which sets out the circumstances in which a person ‘makes immigration representations’;
- subsection 282(5), which provides that a person does not make immigration representations in the circumstances prescribed by the Regulations;
- subsection 288(1), which provides that an individual may apply to the Migration Agents Registration Authority to be registered as a registered migration agent;
- section 290A, which provides that the regulations prescribe the requirements that the applicant must meet for continuing professional development of registered migration agents;
- subsection 314(1), which provides that the regulations may prescribe a Code of conduct for migration agents; and
- subsection 314(2), which provides that a registered migration agent must conduct himself or herself in accordance with the prescribed Code of Conduct.

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 (2017 Measures No. 1) Regulation 2017

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 – Former holders of Norfolk Island entry permits**Overview of Schedule 1 of the Legislative Instrument**

On 1 July 2016 Norfolk Island was integrated into Australia's migration zone. The *Norfolk Island Legislation (Migration) Transitional Rule 2016* put in place arrangements to facilitate the transition of Norfolk Island permit holders and non-citizen residents to the Australian visa regime as of 1 July 2016. In addition to this, amendments to the Migration Regulations were made to make provision for these people beyond 30 June 2016, that is, after the end of the transitional arrangements.

This additional regulatory amendment is consequential to the previous regulation amendments. The amendment clarifies that a dependent child, born in Australia on or after 1 July 2016 to a parent who held a Norfolk Island temporary entry or general entry permit on 30 June 2016, or their dependent child, can make a combined visa application for a Resident Return (Temporary) (Class TP) visa with the parent if they are not included in the passport of the parent applicant. This clarifies that such a child does not have to be included in a parent's passport to lodge a combined application.

The changes are being made in recognition of passport arrangements in most countries which no longer list dependent children in a parent's passport. This will ensure that a child covered by paragraph 1216(3A)(c) can use his or her own passport when applying for a Resident Return (Temporary) (Class TP) visa for Australia, combined with their parent's application.

Human rights implications

The human rights implications (including the right to work) relevant to the Norfolk Island reform were addressed as part of the *Norfolk Island Legislative Amendment Act 2015* and *Migration Amendment (Norfolk Island) Regulation 2016*.

This additional regulatory amendment engages the following rights:

Best interests of the child

Article 3 of the Convention on the Rights of the Child (CRC) states:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Family unity

Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR) states:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Article 23(1) of the ICCPR states:

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

This additional regulatory amendment will provide positive impacts to the rights and benefits of the child and family unit. It will allow certain family members who hold individual passports to make combined applications with a parent applicant for the Resident Return (Temporary) (Class TP) visa where they previously may have been unable to do so. This will allow a more consistent outcome for family members. Allowing children who hold their own passport to obtain the same visa status as their parents assists with promoting their rights under article 3 of the CRC. The amendment will permit these children to be able to apply for and be assessed for a Resident Return (Temporary) (Class TP) visa with one of their parents, as well as ensuring that their applications are considered together and are therefore more likely to receive the same outcome. This is consistent with the principle of family unity.

Conclusion

The amendments in this Schedule are compatible with human rights.

Schedule 2 – Amendments relating to protection visas

Overview of Schedule 2 of the Legislative Instrument

Schedule 2 amends provisions of Schedule 1 and Schedule 2 to the Migration Regulations to improve the processing of applications for protection visas (PVs) and outcomes for members of the same family unit (MSFU) applying for PVs. More specifically, the amendments address unintended operational processes and outcomes for MSFUs as a consequence of ‘split’ applications. The term PV refers to protection visas generally and, as set out in section 35A of the Migration Act, may include Permanent Protection Visas (PPV), Temporary Protection Visas (TPV) and Safe Haven Enterprise Visas (SHEV).

The amendments to the Migration Regulations include the following:

1. Permitting members of the same family unit to be added to TPV or SHEV applications

The new regulation 2.08AAA provides that MSFUs may be added to valid and undecided TPV or SHEV applications in the Fast Track protection assessment stream. Prior to the insertion of regulation 2.08AAA, a MSFU could not be added to TPV or SHEV applications unless they were a newborn child. Not permitting MSFUs to be added after lodgement impacted family units by requiring non-combined applications, processing and outcomes, and was administratively ineffective.

2. Aligning visa cessation dates for TPVs and SHEVs with the standard 35 days after a decision is made in relation to a subsequent TPV and SHEV application

The amended subparagraphs 785.511(a)(ii) and 790.511(a)(ii) of Schedule 2 now provide the standard 35 days for cessation of a TPV and SHEV after an application for a further TPV or SHEV has been finally determined. Prior to these amendments, the regulations for both TPV and SHEV holders provided that their existing visa would cease on the day that the subsequent valid application is finally determined. This had the potential to result in situations where the existing visa ceased before the applicant was notified that the refusal decision has been affirmed by the relevant merits review body. The amendment aligns the visa cessation dates for TPV and SHEV holders with those for other visas.

3. *Permitting children of parents who arrived in Australia lawfully, but who were unlawful non-citizens at the time of birth, to be added to their parents' PPV applications*

The newly inserted subitem 1401(3A) provides an exemption to subparagraph 1401(3)(d)(iv) of Schedule 1 by providing that a child who was born in Australia to parents who entered Australia lawfully but who were unlawful non-citizens at the time of the child's birth can be added to their parents' PPV applications. Before this amendment, a child in such circumstances would have been deemed not to have held a visa in effect on their last entry into Australia, and could only have applied for a TPV.

Human rights implications

The Legislative Instrument positively engages the following human rights and freedoms:

Best interests of the child

Article 3 of the Convention on the Rights of the Child (CRC) states:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

The new regulation 2.08AAA permits children, other than newborn children who are already added because of regulation 2.08, to be added as MSFUs to valid and undecided TPV or SHEV applications in the Fast Track stream. Further, the qualifications to subparagraph 1401(3)(d)(iv) by subitem (3A) permit children born to parents who entered Australia lawfully, but who were unlawful non-citizens at the time of birth, to be included in their parents' PPV applications rather than to have to apply separately for a TPV. These amendments will allow family groups to combine their applications and have the same processing and outcome.

The Government is committed to acting in accordance with Article 3 of the CRC. Allowing children to remain with their parents is generally in their best interests and providing children with the same process and outcome as their parents facilitates this and thus promotes this right under Article 3 of the CRC.

Family unity

Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR) states:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Article 23(1) of the ICCPR states:

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

The amendments positively engage Article 17(1) and Article 23(1) of the ICCPR. By allowing MSFUs to be added to TPV and SHEV applications, and permitting children born to parents who entered Australia lawfully, but who were unlawful non-citizens at the time of birth, to be included in their parents' PPV applications, the measures contribute to ensuring that family members can have their protection claims processed in Australia under the same assessment process. By ensuring that these children's claims can be assessed with their immediate family members' claims, the measure will ensure that family units are considered

together and receive the same migration outcome which is consistent with the principle of family unity.

Conclusion

The amendments in this Schedule are compatible with human rights.

Schedule 3 – Technical amendments to remove redundant provisions

Overview of Schedule 3 of the Legislative Instrument

The technical amendments remove a number of redundant provisions from the Migration Regulations regarding regulation 5.17, which deals with prescribed evidence of functional English proficiency for the purposes of paragraph 5(2)(b) of the Migration Act. Paragraph 5(2)(b) of the Migration Act relevantly provides that for the purposes of the Migration Act, a person has functional English at a particular time if the person provides the Minister with prescribed evidence of the person's English language proficiency.

Previously, regulation 5.17 relevantly specifies the results of an Australian Assessment of Communicative English Skills (ACCESS) test as evidence of functional English (paragraph 5.17(e)). However, the ACCESS test (defined in Regulation 1.03) is no longer in use, available or accepted by the Department. The continued reference to this test in the Migration Regulations is misleading and its removal (from regulations 1.03 and 5.17) will provide departmental staff and stakeholders with accurate information regarding the evidentiary requirements for functional English.

Regulation 5.17 also refers to the evidence of functional English required for applicants of the Business Skills Established Business (Residence) (Class BH) visa (paragraph 5.17(h)). This visa was omitted with effect from July 2013 and there are no applications for this visa waiting to be decided. Therefore, as there are no longer functional English evidentiary requirements applicable to this visa, these references in regulation 5.17 are redundant.

The amendment additionally repeals subclauses 010.611(3A) and 020.611(3) of Schedule 2 to the Migration Regulations and substitutes text to remove the redundant references to the Skilled – Independent Regional (Provisional) (Class UX) visa, as the Class UX visa was repealed on 1 July 2012. Instead, the provisions are updated to relate to the application of conditions to a Bridging visa A or Bridging visa B on the basis of a valid application for a Skilled (Provisional) (Class VC) visa.

Subregulation 2.05(4AA) of the Migration Regulations is also amended to remove a reference to subregulation 2.05(4A), which was repealed on 19 November 2016. Therefore, the reference to subregulation 2.05(4A) in subregulation 2.05(4AA) is redundant.

Human rights implications

These amendments remove redundant information from the Migration Regulations, and do not engage any of the applicable rights or freedoms.

Conclusion

The amendments in this Schedule are compatible with human rights.

Schedule 4 – Reform of continuing professional development requirements for registered migration agents

Overview of Schedule 4 of the Legislative Instrument

These amendments are intended to implement Recommendation 10 of the 2014 OMARA Review. This Review made 24 recommendations, the majority of which the Government has accepted and will be implemented over time.

Recommendation 10, which is the basis for the proposed changes, is intended to strengthen continuing professional development (CPD) requirements for registered migration agents applying for re-registration. Recommendation 10 specifically recommends the creation of a more open and competitive market-based framework for the provision of CPD with the role of the OMARA to be significantly reduced, and generally restricting the role of the OMARA to determining the eligibility of a firm or organisation to provide CPD services.

These amendments to the Migration Agents Regulations implement Recommendation 10 of the OMARA Review by:

- prescribing CPD requirements to be met by registered migration agents applying for re-registration by reference to types of activities that constitute CPD when delivered on specified topics and to prescribed standards and specified conditions, rather than in terms of specific activities (such as particular courses) individually approved by the OMARA; and
- restructuring the requirements for approval of providers of CPD to make them clearer and more transparent, and revise the standards and conditions under which CPD must be delivered.

The amendments also provide that CPD providers will be approved under the new arrangements for a period of 24 months, rather than being approved indefinitely as is currently the case with approved providers. To ensure continuity, the approval of CPD providers who apply for a further period of approval before their current approval expires, will be extended until a decision is made on that application.

The amendments provide for CPD activities and the topics to which they must relate to be specified by the Minister for Immigration and Border Protection in a legislative instrument. The instrument will set out the types of activities that will be acceptable for CPD purposes, any conditions that must be met in delivering the activities, and the points that will be awarded for completion of those activities.

To maintain the quality of CPD activities following the removal of the requirement for individual activities to be approved by the OMARA, changes will be made to the CPD provider standards which will be specified by the Minister for Immigration and Border Protection in a legislative instrument. The CPD provider standards set out the minimum standards for the provision of high quality CPD activities for registered migration agents and for the conduct of approved CPD providers. CPD providers who fail to comply with the CPD provider standards will be liable for cancellation of approval as a CPD provider.

Human rights implications

These amendments aim to clarify and simplify the CPD requirements for migration agents and do not engage or limit any of the applicable rights, individual freedoms or discriminate against any person or groups of persons.

Conclusion

The amendments in this Schedule are compatible with human rights.

Schedule 5 – Immigration assistance and immigration representations by registered migration agents

Overview of Schedule 5 of the Legislative Instrument

The objective of these amendments is to ensure that registered migration agents are subject to the Code of Conduct (the Code) at Schedule 2 to the Migration Agent Regulations when giving advice to migrating employees and professional development applicants.

The Migration Act requires all persons giving ‘immigration assistance’ (as defined by section 276 of the Migration Act) to be registered as a migration agent (section 280 of the Migration Act).

Similarly, a person who is not registered as a migration agent must not ask for or receive a fee or other reward for making ‘immigration representations’ (section 282 of the Migration Act). There are some situations where the Migration Act permits advice to be given without it constituting the provision of immigration assistance. Similarly, the Migration Act permits some representations to be made without being immigration representations. These circumstances are prescribed in Part 2 of the Migration Agents Regulations (‘Immigration assistance given by persons not registered’).

The purpose of these provisions is to allow some individuals who are not registered migration agents to give assistance and make representations without attracting the regulatory framework which governs the giving of ‘immigration assistance’ and the making of ‘immigration representations’. In particular, assistance is not ‘immigration assistance’ and representations are not ‘immigration representations’ where they are given by an employer to a migrating employee or by a professional development sponsor to a person whose visa application that person has sponsored (or will sponsor).

Prior to the changes made by these amendments, these provisions did not expressly exclude circumstances where the person giving the assistance, or making the representations, was a registered migration agent.

In turn this created uncertainty about whether the Code of Conduct applied to registered migration agents when giving assistance to migrating employees and professional development applicants. This uncertainty arose because the Code of Conduct only applies to regulate the giving of ‘immigration assistance’. It was therefore possible that a registered migration agent might avoid disciplinary action for engaging in conduct that would otherwise amount to a breach of the Code of Conduct because the assistance did not fall within the scope of the Code of Conduct. The kind of conduct that might amount to a breach of the Code of Conduct might be not acting in the legitimate interests of the client, or not dealing with the client fairly (Part 2.1 of the Code of Conduct).

To address these issues, the amendments expressly provide that the exemptions described above do not apply to registered migration agents. As noted above, the title of Part 2 of the Migration Agents Regulations is ‘Immigration assistance given by persons not registered’. The changes therefore align with the intended operation of this Part.

The amendments strengthen the obligations of registered migration agents in relation to migrating employees and professional development applicants sponsored by the agent. The amendments also make changes to the Code of Conduct to clarify that registered migration agents are responsible for ensuring that assistance given to, or representations made on behalf

of, these individuals by an employee of the agent accord with the standards of conduct required by the Code of Conduct.

Human rights implications

These amendments provide greater clarity for registered migration agents in knowing when they should adhere to the standards of the Code of Conduct. No human rights obligations have been identified that are engaged by the amendments.

Conclusion

The amendments in this Schedule are compatible with human rights.

Schedule 6 – Identifying fees in repeat applications for migration agent registration

Overview of Schedule 6 of the Legislative Instrument

The objective of the amendments is to remove the mandatory requirement for a registered migration agent to provide information to the OMARA, at the time of renewing their registration, about their average fees during the previous 12 months.

The main purpose of the collection and publication of this information is to provide information to consumers about average fees charged by registered migration agents.

A review of the current methodology for collecting this data has identified a number of limitations. As a result, it is no longer considered appropriate to collect average fee information from every agent applying for repeat registration. Instead, it is intended to collect the information on a discretionary basis, where the data provided would support the calculation of average fees for consumers.

These amendments reduce the administrative burden on registered migration agents associated with the requirement to provide average fee information by creating more flexibility as to how and when it must be provided. As a result of the change, registered migration agents applying for repeat registration will only need to provide average fee information if it is requested by the OMARA in writing. It is intended that the OMARA will only make such a request where it will provide meaningful data.

In addition, the amendments allow the OMARA to request average fee information only in relation to specific dates within the 12 months prior to the registered migration agent's application for repeat registration. This in turn imposes a less onerous burden on the registered migration agent, who will only need to calculate average fee information in relation to the more limited period, rather than in relation to the full 12 months prior to repeat registration.

The change is minor in nature and will not limit any of the other statutory information-gathering powers available to the OMARA. The regulatory burden on registered migration agents will be reduced by streamlining the process they must follow when lodging their annual registration application.

The change is minor in nature and will not limit any of the other statutory information-gathering powers available to the OMARA. The regulatory burden on registered migration agents will be reduced by streamlining the process they must follow when lodging their annual registration application.

Human rights implications

The amendments detailed aim to further streamline the registration requirements for migration agents and do not engage or limit any of the applicable rights, individual freedoms or discriminate against any person or groups of persons.

Conclusion

The amendments in this Schedule are compatible with human rights.

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

ATTACHMENT C**Details of the *Migration Legislation Amendment (2017 Measures No. 1) Regulation 2017*****Section 1 – Name**

This section provides that the title of the Regulation is the *Migration Legislation Amendment (2017 Measures No. 1) Regulation 2017* (the Regulations).

Section 2 – Commencement

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.

The table provides the following commencement dates for the amendments:

- Sections 1 – 4 – The day after this instrument is registered
- Schedules 1, 2 and 3 – 18 April 2017
- Schedule 4, Part 1 – 1 October 2017
- Schedule 4, Part 2 – 1 January 2018
- Schedules 5 and 6 – 18 April 2017
- Schedule 7, item 1 – 18 April 2017
- Schedule 7, items 2 and 3 – 1 October 2017
- Schedule 7, item 4 – 18 April 2017

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.

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

Section 3 – Authority

This section provides that the Regulations are made under the *Migration Act 1958* (the Migration Act).

The purpose of this section is to set out the Migration Act under which the Regulations 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 the Schedules to the Regulations.

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

Schedule 1 – Former holders of Norfolk Island entry permits

Item 1 – After paragraph 1216(3B)(c) of Schedule 1

This item inserts new paragraph 1216(3B)(ca) into Schedule 1 to the Migration Regulations. Item 1216 contains criteria that an applicant must satisfy in order to make a valid application for a Resident Return (Temporary) (Class TP) visa. Subitems 1216(3A) and (3B) deal specifically with certain applicants who satisfy criteria in relation to Norfolk Island. The insertion of new paragraph 1216(3B)(ca) is to clarify that it is not a requirement that an applicant covered by paragraph 1216(3A)(c) be included in the passport of the parent applicant.

This does not affect the existing ability of any other applicant covered by subitem 1216(3A) to make a combined application, if they are included in the passport of another applicant covered by paragraph 1216(3A)(a) or 1216(3A)(b).

The purpose of this amendment is to ensure that children who are not included in their parent's passport (ie they have their own passport) can still make a valid application, as well as children who are included in their parent's passport.

Item 2 – Division 159.3 of Schedule 2 (after the heading)

This item inserts a note in Division 159.3 of Part 159 of Schedule 2 to the Migration Regulations. This note makes it clear that only the secondary criteria must be satisfied by applicants whose application is covered by paragraph 1216(3A)(c) of Schedule 1 to the Migration Regulations.

Schedule 2 – Amendments relating to protection visas

Item 1 – After regulation 2.08A

This item amends the Migration Regulations to insert regulation 2.08AAA after regulation 2.08A.

Without this amendment, unless a member of the same family unit (MSFU) is a newborn child, they cannot be added to a valid and not yet finally determined Temporary Protection (Class XD) visa (TPV) or Safe Haven Enterprise (Class XE) visa (SHEV) application. The purpose of this amendment is to allow a MSFU, who can satisfy fast track applicant requirements defined in subsection 5(1) of the Migration Act, to be added to a valid and not finally determined TPV or SHEV application, where those applicants also satisfy fast track applicant requirements.

The effect of this amendment is that a MSFU does not have to make a separate TPV or SHEV application. Instead, if the original applicant makes a request to include a MSFU

when their TPV or SHEV application has not been finally determined, their MSFU will be considered to have made a combined application with the original applicant.

Item 2 – Paragraph 2.12C(2)(d)

This item omits the reference to “or, 2.08AA” in paragraph 2.12C(2)(d) and substitute it with “, 2.08AA or 2.08AAA”.

This paragraph specifies that no components of visa application charge are applicable to combined applications permitted by regulation 2.08 or 2.08AA. This item is a consequential amendment to reflect the insertion of regulation 2.08AAA.

Item 5 – After subitem 1401(3) of Schedule 1

This item amends item 1401 to insert an additional subitem 1401(3A).

Subparagraph 1401(3)(d)(iv) in Schedule 1 to the Migration Regulations requires that to make a valid PPV application, an applicant must have held a visa that was in effect on their last entry to Australia. A child born to parents who lawfully entered Australia but became unlawful by the time of the person’s birth, was deemed to have entered Australia unlawfully and could not meet this requirement to apply for a PPV with their parents.

The purpose and effect of this amendment is to exempt the child in these circumstances from the requirement in subparagraph 1403(3)(d)(iv), and allow them to apply for a PPV with their parents.

Item 8 – Paragraph 1403(3)(d) of Schedule 1

This item amends paragraph 1403(3)(d) to insert “is unable to make a valid application for a Protection (Class XA) visa and” after “valid only if the person”.

This item provides that a TPV application is valid only if the person is unable to make a valid application for a PPV and also meets one of the requirements listed in paragraph 1403(3)(d). As a result of the new subitem 1401(3A) in Item 5 above, there is a possibility of a child being able to satisfy the eligibility criteria for both a PPV and a TPV. This item is a consequential amendment to avoid such situations.

The purpose of this amendment is to ensure that a person, who can make a valid PPV application, is not eligible to make a valid TPV application. The effect of this amendment is to allow a person to be eligible to apply for only one of the protection visa classes, particularly for the cohort of children who fall within the circumstances explained in Item 5, and are now eligible to make a valid application for a PPV.

Item 11 – Paragraph 1404(3)(d) of Schedule 1

This item amends paragraph 1404(3)(d) to insert “is unable to make a valid application for a Protection (Class XA) visa and” after “valid only if the person”.

This item provides that a SHEV application is valid only if the person is unable to make a valid application for a PPV and also meets one of the requirements listed in paragraph 1404(3)(d). As a result of the new subitem 1401(3A) in Item 5 above, there is a possibility of a person being able to satisfy the eligibility criteria for both a PPV and a SHEV. This item is a

consequential amendment to avoid such situations.

The purpose of this amendment is to ensure that a person, who can make a valid PPV application, is not eligible to make a valid SHEV application. The effect of this amendment is to allow a person to be eligible to apply for only one of the protection visa subclasses, particularly for the cohort of children who fall within the circumstances explained in Item 5, and are now eligible to make a valid application for a PPV.

Item 12 – Subparagraph 785.511(a)(ii) of Schedule 2

This item amends subparagraph 785.511(a)(ii) to insert “35 days after” before “the day”.

Previously, if a TPV holder chose to apply for a subsequent TPV or SHEV before their first TPV ceases, their first visa would cease on the day their subsequent visa application is finally determined. This created a risk that the TPV holder may become unlawful prior to or at notification of a refusal decision.

The purpose of this amendment is to provide TPV holders in these circumstances 35 days after the day the subsequent application is finally determined. The effect of this amendment is that these TPV holders have a period of 35 days to organise their departure. Given that they may have lived in Australia for a substantial period of time, they will benefit from some time to terminate living arrangement prior to leaving the country. As there have been no subsequent TPV or SHEV applications yet, this amendment is to address a future risk rather than a current problem.

Item 13 – Subparagraph 790.511(a)(ii) of Schedule 2

This item amends subparagraph 790.511(a)(ii) to insert “35 days after” before “the day”.

Similar to the previous TPV arrangement outlined in Item 12 above, if a SHEV holder chose to apply for a subsequent TPV or SHEV before their first SHEV ceased, their first visa would cease on the day their subsequent visa application was finally determined. This created a risk that the TPV holder may become unlawful prior to or at notification of the decision.

The purpose of this amendment is to provide SHEV holders in these circumstances 35 days after the day the subsequent application is finally determined. The effect of this amendment is that these SHEV holders have a period of 35 days to organise their departure. Given that they may have lived in Australia for a substantial period of time, they will benefit from some time to terminate living arrangements prior to leaving the country. As there have been no subsequent TPV or SHEV applications yet, this amendment is to address a future risk rather than a current problem.

Schedule 3 – Technical amendments to remove redundant provisions

Item 1 – Regulation 1.03 (definition of *ACCESS test*)

This item amends regulation 1.03 of the Migration Regulations to repeal the definition of “ACCESS test”.

The term “ACCESS test” is referred to in paragraph 5.17(e) of the Migration Regulations as an acceptable form of evidence that a person has functional English language. However, this test is not available anymore and has not been used for many years.

Further, the instrument made under paragraph 5.17(a) of the Migration Regulations in 2012 which specified evidence of functional English, no longer referenced the ACCESS test and only specified the IELTS test as acceptable evidence of functional English language (IMMI 12/ 073 – F2012L01447). This instrument was repealed in 2014.

Although additional tests were specified as evidence of functional English in subsequent instruments (IMMI 14/055 – F2014L01551 and IMMI15/004 – F2014L01668), the ACCESS test was never re-introduced. There are no unfinalised applications that would rely on the ACCESS test as evidence of functional English language. Therefore, there is no requirement for this term to be defined in the Migration Regulations.

The purpose and effect of this amendment is to repeal the definition of “ACCESS test”.

Item 2 – Subregulation 2.05(4AA)

This item amends subregulation 2.05(4AA) of the Migration Regulations to omit the phrase “and subject to subregulation (4A),”.

Subregulation 2.05(4A) was repealed on 19 November 2016. This reference in subregulation 2.05(4AA) is therefore redundant.

The purpose and effect of this amendment is to repeal the redundant reference to subregulation 2.05(4A) in subregulation 2.05(4AA).

Item 3 – Paragraphs 5.17(e) and (h)

This item amends the Migration Regulations to repeal paragraphs 5.17(e) and (h).

As outlined in Item 1 above, paragraph 5.17(e) refers to the ACCESS test as being one of the prescribed forms of evidence of English language proficiency for the purposes of paragraph 5(2)(b) of the Migration Act. However, this test has been removed from the instrument which specified evidence of functional English. This instrument had previously specified the ACCESS test, but currently only specifies IELTS test as acceptable evidence for functional English language. The ACCESS test has not been used since 2012 and there are no unfinalised applications which would rely on this test. Therefore, paragraph 5.17(e) is redundant.

Paragraph 5.17(h) refers to the prescribed evidence of English language proficiency for an applicant for a Business Skills – Established Business (Residence) (Class BH) visa. However, Class BH visa was repealed on 1 July 2013. There are no outstanding undecided applications for the Class UX visas. Therefore, paragraph 5.17(h) is redundant.

The purpose and effect of this amendment is to repeal redundant paragraphs 5.17(e) and (h).

Item 4 – Subparagraph 5.17(j)(i)

This item amends the Migration Regulations to repeal subparagraph 5.17(j)(i).

This subparagraph refers to paragraph 5.17(h) which is repealed by Item 3 above. Therefore, this is a consequential amendment to reflect the repeal of paragraph 5.17(h).

The purpose and effect of this amendment is to repeal redundant subparagraph 5.17(j)(i).

Item 5 – Subparagraph 5.17(j)(iii)

This item amends subparagraph 5.17(j)(iii) to omit “(e) or”.

This subparagraph refers to paragraph 5.17(e) which is repealed by Item 3 above. Therefore, this is a consequential amendment to reflect the repeal of paragraph 5.17(e).

The purpose and effect of this amendment is to repeal the redundant reference to paragraph 5.17(e) in subparagraph 5.17 (j)(iii).

Item 6 – Subclause 010.611(3A) of Schedule 2

This item amends subclause 010.611(3A) of the Migration Regulations to remove the reference to the Skilled – Independent Regional (Provisional) (Class UX) visa. Paragraph 010.611(3A)(d) refers to visa condition 8501 for a Subclass 010 (Bridging A) visa granted to a non-citizen who has a valid application for a Class UX visa. However, Class UX visa was repealed on 1 July 2012, and as there are no unfinalised applications, this reference is redundant.

The purpose and effect of this amendment is to repeal paragraphs 010.611(3A)(d) and (e).

Item 7 – Subclause 020.611(3) of Schedule 2

This item amends subclause 020.611(3) of the Migration Regulations to remove the reference to the Skilled – Independent Regional (Provisional) (Class UX) visa. Paragraph 020.611(3)(b) refers to visa condition 8501 for a Subclass 020 (Bridging B) visa granted to a non-citizen who has a valid application for a Class UX visa. However, Class UX visa was repealed on 1 July 2012, and as there are no unfinalised applications, this reference is redundant.

The purpose and effect of this amendment is to repeal paragraphs 020.611(3)(b) and (c).

Item 8 – Clause 300.411 of Schedule 2

This item repeals clause 300.411 of the Migration Regulations, which refers to Prospective Marriage (Temporary) (subclass 300) visa applicants who hold a Subclass 303 (Emergency (Temporary Visa Applicant)) visa. Such persons can have their Prospective Marriage (Temporary) (subclass 300) visa granted in or outside Australia. However, the Subclass 303 (Emergency (Temporary Visa Applicant)) visa was repealed on 22 March 2014 and there are no remaining holders of this visa. Therefore, this clause is redundant.

The purpose and effect of this amendment is to repeal redundant clause 300.411.

Item 9 – Clause 300.412 of Schedule 2

This item amends clause 300.412 to omit “In any other case, the” and substitute it with “The”.

This clause refers to other circumstances applicable to grant, of which there are none after the repeal of clause 300.411 by Item 8 above. Therefore, this is a consequential amendment to reflect the repeal of clause 300.411.

Item 10 – Clause 309.411 of Schedule 2

This item repeals clause 309.411, which refers to Partner (Provisional) (Class UF) visa applicants and Prospective Marriage (Temporary) (Class TO) visa applicants who hold a Subclass 303 (Emergency (Temporary Visa Applicant)) visa. Such persons could have their Partner (Provisional) (subclass 309) visa granted in or outside Australia. However, as noted in Item 8 above, the Subclass 303 (Emergency (Temporary Visa Applicant)) visa was repealed on 22 March 2014 and there are no remaining holders of this visa. Therefore, this clause is redundant.

The purpose and effect of this amendment is to repeal redundant clause 309.411

Item 11 – Clause 309.412 of Schedule 2

This item amends clause 309.412 to omit “In any other case, the” and substitute it with “The”.

This clause refers to other circumstances applicable to grant, of which there are none after the repeal of clause 309.411 by Item 10 above. Therefore, this is a consequential amendment to reflect the repeal of clause 309.411.

Schedule 4 – Reform of continuing professional development requirements for registered migration agents*Migration Agents Regulations 1998*

The *Migration Agents Regulations 1998* (the Migration Agents Regulations) prescribe, among other things, the requirements for continuing professional development (CPD) that a registered migration agent must meet in order to satisfy the requirements for renewal of registration under section 290A of the *Migration Act 1958*.

The purpose of the amendments made by this Schedule is to establish a new framework for continuing professional development, to implement Recommendation 10 of the 2014 Independent Review of the Office of the Migration Agents Registration Authority (the OMARA). The Review recommended “the creation of a more open and competitive market-based framework for the provision of CPD activities”, and that the role of the OMARA be “significantly reduced and generally restricted to determining the eligibility of a firm or organisation to provide CPD”. It also recommended “setting the requirements for registered migration agents to complete CPD learning in competency areas, noting that this should be structured to allow greater flexibility and variance in the learning offered”. These recommendations were agreed to by the Government.

These amendments implement recommendation 10 by introducing a less prescriptive framework for CPD requirements. Under the new arrangements, activities of specified types on specified topics which are delivered by approved CPD providers to the required standards and conditions will meet the CPD requirements, gaining relevant points for migration agents undertaking the activity. Individual activities will no longer need to be separately approved.

CPD providers will be approved after assessment against core competency criteria intended to ensure that they are capable of providing CPD activities to the required standard. Approval will be generally be for 24 months, but may be cancelled for breach of the specified standards or conditions.

A description of the individual amendments follows.

Part 1 – Amendments commencing 1 October 2017

Part 1 of this Schedule makes amendments:

- to establish a new less prescriptive CPD activity framework; and
- to introduce revised arrangements for the approval of CPD providers and the standards to which CPD activities must be delivered.

Part 1 commences on 1 October 2017. This commencement date allows CPD providers to be approved under the new arrangements in readiness for delivery of CPD activities under the new framework from 1 January 2018 (see Part 2 of this Schedule, below). Approved activities may continue to be delivered under the current arrangements until 31 December 2017, and approved providers may continue to be approved under the current arrangements up until that date.

Approved activities undertaken under the current arrangements and delivered by approved providers prior to 31 December 2017 will be recognised for the purpose of meeting CPD requirements by a registered migration agent applying for re-registration on and after 1 January 2018 (see new subregulation 20(2) inserted in Division 4 of Part 5 of the Migration Agents Regulations by Schedule 7, below), but all CPD activities undertaken on and after 1 January 2018 must meet the requirements of the new framework and must be delivered by a CPD provider approved under new Part 3C of the Migration Agents Regulations after 1 October 2017. Approved providers under the current arrangements will no longer be able to deliver approved activities from 1 January 2018.

Details of the items in Part 1 are as follows:

Item 1 – Subregulation 3(1)

This item inserts three new definitions in subregulation 3(1) of the Migration Agents Regulations. The new definitions are: *CPD activity*, *CPD provider*, *CPD provider standards*, and *expiry day*.

The new definitions relate to terms used in respect of the new CPD activity framework. Details of the new terms are:

- ***CPD activity***, which is defined to mean an activity that is specified by the Minister in an instrument made under new regulation 3AA (see item 2, below); that relates to a topic specified by the Minister; that is conducted by a person approved as a *CPD provider* (see new definition, below); and that is conducted by the CPD provider in accordance with any conditions specified for the activity;
- ***CPD provider***, which is defined to mean a person for whom an approval under new Part 3C is in effect (see item 3, below, which inserts new Part 3C);
- ***CPD provider standards***, which has the meaning given by new subregulation 9Q(2) (see below); and
- ***expiry day***, which has the meaning given by new subregulation 9R(3); this term is relevant to a person's approval as a *CPD provider* under new Part 3C (see item 3, below, which inserts new Part 3C).

Item 2 – At the end of Part 1

This item inserts new regulation 3AA (Instrument specifying matters relating to CPD activities) in the Migration Agents Regulations.

The purpose of new regulation 3AA is to provide for the Minister to make a legislative instrument specifying matters for the purposes of the definition of *CPD activity* (see item 1, above) and other matters relevant to CPD which must be undertaken by a registered migration agent to meet the requirements for renewal of registration.

New regulation 3AA provides that the matters that may be specified are:

- activities for the purposes of the definition of *CPD activity* (see item 1, above) – examples of activities that could be specified include, but are not limited to, workshops, programmes of education, conferences, seminars and lectures, real time distance learning, and private study with assessment;
- topics to which activities may relate – a specified activity (see above) will not constitute a *CPD activity* unless it is on one of the topics specified; examples of topics that could be specified include, but are not limited to, migration legislation and policy, and other topics of a legal or business nature that are relevant to a registered migration agent’s practice;
- conditions for the conduct of activities – conditions which could be specified include, but are not limited to, duration of the activity and the way in which it is conducted;
- the points that types of activities are worth – the CPD requirement is prescribed in terms of the points gained for each CPD activity undertaken by a migration agent; see regulation 6 of the Migration Agents Regulations as amended by item 5 of this Schedule, below; and
- activities that are mandatory, and a minimum number of points for such activities.

Providing for these matters to be specified by the Minister in a legislative instrument allows flexibility for them to be changed or adjusted rapidly in response to changing circumstances or conditions. For instance, experience could show that there was demand for, and benefit in, specifying additional new activities that would provide effective CPD.

Item 3 – After Part 3B

This item inserts a new Part 3C – Approval of CPD providers – in the Migration Agents Regulations.

The purpose of new Part 3C is to set out the requirements to be met by a person applying for approval as a *CPD provider*. Applications for approval as a CPD provider may be made from 1 October 2017. However, CPD providers approved under the new arrangements will not be able to commence providing *CPD activities* until 1 January 2018 when the new CPD framework commences (see Part 2 of this Schedule, below).

Details of the regulations in new Part 3C are:

Regulation 9M – Application for approval as a CPD provider

New regulation 9M provides that a person (which includes an incorporated body) may apply to the Minister for approval as a CPD provider. The application must be made in the form approved by the Minister, and must be accompanied by the fee specified by the Minister in a legislative instrument.

Regulation 9N – Approval of CPD providers

New subregulation 9N(1) provides that the Minister may approve a person as a CPD provider if the person has applied in accordance with regulation 9M (above), and the applicant satisfies the Minister that the applicant meets the requirements set out in subregulation 9P(1) (see below).

New subregulation 9N(2) provides that, despite subregulation 9N(1), the Minister must not approve the applicant if the Minister has any reason to doubt that the fit and proper person requirements in subregulation 9P(2) (see below) are met.

New subregulation 9N(3) provides that if the Minister decides not to approve the applicant as a CPD provider, the applicant must be notified of the decision in writing as soon as practicable, and given the reasons for it.

Regulation 9P – Requirements to be approved as a CPD provider

New subregulation 9P(1) sets out the requirements which a person must satisfy the Minister the person meets, for approval as a CPD provider under subregulation 9N(1) (above). The requirements relate to core competency areas relevant to delivery of CPD, including the applicant's experience and qualifications, policies and administrative arrangements in place in relation to relevant aspects of conducting CPD, and ability to deliver training that meets relevant standards. Subregulation 9P(1) will replace the requirements currently in regulation 9K of the Migration Agents Regulations for the approval of approved providers. The new provisions are intended to streamline the requirements and make them more transparent.

New subregulation 9P(2) provides the fit and proper person requirements for the purposes of subregulation 9N(2) (see above). An applicant for approval as a CPD provider must not be approved if the Minister has any reason to doubt that the fit and proper person requirements are met. The fit and proper person requirements are that the applicant, and any person who would be employed by the applicant to deliver CPD or who would deliver CPD on behalf of the applicant if the applicant became a CPD provider, is a person of good character, good reputation and integrity.

Regulation 9Q – Conditions of approval as CPD provider

New subregulation 9Q(1) provides that a person's approval as a CPD provider is subject to the person's compliance with:

- any conditions specified by the Minister in the approval (conditions may be specified from time to time as appropriate in the circumstances; examples could be, but would not be limited to, a condition relating to when a CPD provider was to commence provision of CPD (for instance, within 6 months of approval) or the time frames within which CPD should be provided (for instance, CPD delivery could be restricted to a specified number of consecutive hours)); and
- the standards specified for CPD providers in an instrument made under subregulation 9Q(2) (see below).

New subregulation 9Q(2) provides that the Minister may, by legislative instrument, specify standards to be complied with by CPD providers. Standards that may be specified include, but are not limited to, standards relating to delivery of CPD, administration, personnel, marketing and advertising of available CPD, evaluation and continuous improvement, and records management and reporting. Providing for these standards to be specified by the Minister in a

legislative instrument allows flexibility for them to adjust if required in the light of monitoring their operation and effectiveness over time.

Failure to comply with the conditions and standards set out in regulation 9Q may result in cancellation of approval of a CPD provider. See new regulation 9T, below.

Regulation 9R – Period of approval as CPD provider

New subregulation 9R(1) provides (subject to new subregulation 9S(5), see below), that approval as a CPD provider takes effect:

- on the day the Minister approves the person; or
- if the approval is given while a previous approval is still in effect, at the end of the expiry day of that approval (see new subregulation 9R(3), below, for the meaning of *expiry day*).

New subregulation 9R(2) provides that an approval continues in effect until its *expiry day* (see new subregulation 9R(3), below), unless it is continued under new subregulation 9S(3) (see below), or cancelled under new regulation 9T (see below).

New subregulation 9R(3) gives the meaning of *expiry day* as it applies to approval as a CPD provider. The *expiry day* for an approval is:

- the second anniversary of the day the approval took effect; or
- if subregulation 9S(5) applies (Minister approves a CPD provider after the expiry day of the previous approval), the second anniversary of the expiry day of the previous approval.

The effect of new regulation 9R, in conjunction with new regulation 9S, below, is that the term of an approval will be for continuing periods of 24 months from the date of the first approval, provided that the CPD provider applies for re-approval before the expiry day of the current approval.

Regulation 9S – Automatic continuation of approval as CPD provider until application to be approved again is dealt with

The purpose of this regulation is to ensure that approval as a CPD provider remains continuous, in particular in circumstances where a CPD provider applies for renewal of approval before the end of the expiry day of the current approval, but the application is not dealt with before the expiry of the current approval. In those circumstances, the approval will automatically remain in force after the expiry day and until the application is decided, or until the Minister is deemed to have approved the application (see subregulation 9S(4) below).

This ensures that a CPD provider can continue to deliver CPD despite administrative delays in renewing approval. This benefits registered migration agents undertaking CPD with a particular CPD provider by ensuring there is no gap in which CPD undertaken may not be counted because the CPD provider was not approved until after the expiry day of their previous approval.

Details of regulation 9S are:

Subregulation 9S(1) – When person’s approval is automatically continued

This subregulation provides that subregulation 9S(3) (see below) applies to continue approval as a CPD provider past the expiry day for the approval if the CPD provider applies for renewal of approval before the end of the expiry day of the current approval, and the Minister has not decided the application by the end of the expiry day.

Subregulation 9S(2) – Exception – cancellation

This subregulation makes it clear that approval as a CPD provider is not continued in effect under subregulation 9S(3) if the approval is cancelled (see new regulation 9T, below).

Subregulation 9S(3) – Period of continuation of approval

This regulation sets out the period for which approval as a CPD provider automatically continues in effect. Approval continues after the expiry day until:

- the Minister decides the application for renewal of approval;
- cancellation of the approval (see regulation 9T, below); or
- the end of the period that is 21 months after the expiry day (if there is no decision before the end of 21 months, the application will be deemed to have been approved; see subregulation 9S(4), below).

Subregulation 9S(4) – Approval if no decision within a certain period

The effect of this subregulation is that if an application for renewal of approval is made before the end of the expiry day of the previous approval and no decision is made within 21 months of the expiry day of the previous approval, and if the approval has not been cancelled within that period, the Minister is taken to have approved the application at the end of the 21 months. The new approval is taken to have been subject to the same conditions, if any, as were specified in relation to the previous approval (see new paragraph 9Q(1)(a), above).

The purpose of this provision is to prevent undue uncertainty of approval as a CPD provider where there has been administrative or other delay of 21 months in deciding an application for renewal of approval, provided the application for renewal is made before the end of the expiry day for the previous approval. The deemed approval at the end 21 months since the previous expiry day is taken to have effect for 24 months from the end of the previous expiry day (see paragraph 9R(3)(b), above). This means that the person will then have 3 months to apply for another renewal of approval as a CPD provider before the deemed approval ceases.

Subregulation 9S(5) – When approval is in effect

This subregulation sets out when an approval of an application to which regulation 9S applies is in effect.

Paragraph 9S(5)(a) provides that the approval takes effect at the end of the day the Minister approves, or is taken to have approved, the application. The effect of this provision is that a previous approval and a new approval cannot both be in effect at the same time because the previous approval ends when the decision on the application is made or taken to have been made (see subregulation 9S(3) above).

Paragraph 9S(5)(b) provides that the approval continues in effect (unless continued by subregulation 9S(3) or cancelled under regulation 9T) until the end of its expiry day. For an

approval to which subregulation 9S(5) applies, the expiry day is 24 months after the previous expiry day (see (paragraph 9R(3)(b), above).

Regulation 9T – Cancellation of approval as CPD provider

Subregulation 9T(1) sets out the circumstances under which the Minister may cancel the person's approval as a CPD provider, by giving written notice to a person. The circumstances are that:

- the Minister is satisfied that the CPD provider has failed to comply with any of the standards or conditions referred to in regulation 9Q, above (this includes the CPD provider standards and any conditions that may be specified in the approval – see regulation 9Q, above);
- the Minister is not satisfied that the person meets the requirements for approval set out in subregulation 9P(1), above, or that the person has done as they intended to do in order to satisfy a requirement (for example, paragraph 9P(1)(a), under certain circumstances, requires the person to intend to obtain the services of a person who has specified experience or who holds a specified qualification); or
- the Minister has reason to doubt that the fit and proper person requirements set out in subregulation 9P(2) are met.

Subregulation 9T(2) provides that a person's approval as a CPD provider may be cancelled by written notice, if the person requests the Minister in writing to cancel the approval.

Subregulation 9T(3) provides that a cancellation under subregulation 9T(1) or (2) takes effect on the day notice of the cancellation is given, or on a later day specified in the notice.

Regulation 9U – Delegation

New regulation 9U provides that the Minister may, in writing, delegate to an APS employee in the Department of Immigration and Border Protection any or all of the Minister's functions and powers under new Part 3C (Approval of CPD providers), apart from the Minister's powers to make, vary or revoke a legislative instrument. The powers of the Minister in new Part 3C which may be delegated under regulation 9U are the power in regulation 9M to approve a person as a CPD provider, and the power in regulation 9T to cancel a person's approval as a CPD provider.

Powers of the Migration Agents Registration Authority are currently delegated by the Minister, acting under section 320 of the Migration Act, to employees in the Office of the Migration Agents Registration Authority within the Department of Immigration and Border Protection. The power under new regulation 9U for the Minister to delegate the Minister's powers under new Part 3C to any APS employee will allow delegation of these powers to the same employees and will provide flexibility if administrative arrangements in the future require powers relating to migration agents to be exercised by employees in other areas of the Department.

Subregulation 9U(2) provides that in performing functions and exercising powers under a delegation, the delegate must comply with any directions of the Minister.

Part 2 – Amendments commencing 1 January 2018

The amendments made by this Part commence on 1 January 2018 to implement the new CPD framework, which was set up by Part 1 of this Schedule, above, on 1 October 2017. Details of these amendments follow.

Item 4 – Subregulation 3(1)

This item repeals the definitions of *approved activity* and *approved provider* from subregulation 3(1) of the Migration Agents Regulations. From 1 January 2018 these terms will no longer be used in the Migration Agents Regulations, as Parts 3A and 3B, where they occur, will be repealed (see item 7 of this Schedule, below). The terms will be replaced with two new terms, *CPD activity* and *CPD provider*, respectively, inserted in the Migration Agents Regulations by item 1 of this Schedule, above.

Item 5 – Regulation 3AA (at the end of the note)

This item adds a reference to subregulation 6(1) at the end of the note after regulation 3AA of the Migration Agents Regulations. The reference is added from 1 January 2018.

Regulation 3AA was inserted by item 2 of Part 1 of this Schedule to commence on 1 October 2017 (see above). Regulation 3AA provides a power for the Minister to specify a number of matters in a legislative instrument, for the purposes of provisions in the Migration Agents Regulations.

From 1 October 2017, only the matters covered in paragraphs 3AA(a) (activities), 3AA(b) (topics to which activities may relate) and 3AA(c) (conditions for the conduct of activities) were relevant because these matters are referred to in the definition of *CPD activity* which was inserted in subregulation 3(1) from 1 October 2017 by item 1 of Part 1 of this Schedule (see above).

Part 2 of this Schedule substitutes a new regulation 6 in the Migration Agents Regulations from 1 January 2018 (see item 6, below). From that date, an instrument specifying matters set out in paragraph 3AA(d) (points that activities are worth), and paragraph 3AA(e) (activities that are mandatory and a minimum number of points for such activities) will be relevant to new subregulation 6(1) which refers to these specified matters. Therefore, this item amends the note from 1 January 2018 to add a reference to subregulation 6(1).

Item 6 – Regulation 6

This item repeals regulation 6 of the Migration Agents Regulations and substitutes a new regulation 6 (Continuing professional development). New regulation 6 prescribes the CPD requirements that must be met from 1 January 2018 by a migration agent applying for renewal of registration, for the purposes of section 290A of the Migration Act.

New regulation 6 restructures and clarifies the way in which the CPD requirement must be met. The previous regulation 6 was confusing for users with references to requirements in Schedule 1 (Continuing professional development) to the Migration Agents Regulations. That Schedule is repealed by this Schedule (see item 8, below), and the provisions prescribing the CPD requirements from 1 January 2018 are consolidated in new regulation 6. Details of the provisions of new regulation 6 are as follows.

Subregulation 6(1) prescribes that, for the purposes of section 290A of the Migration Act, the requirements for CPD of a registered migration agent who makes an application for repeat registration are that (within the period set out in subregulation 6(2)), the applicant has completed CPD activities worth at least 10 points, and the completed activities include activities specified in an instrument made under regulation 3AA as mandatory for the applicant and worth at least the maximum number of points specified in the instrument as required for the mandatory activity.

To gain the points required, a migration agent must complete activities that meet the definition of *CPD activity* (see item 1 of this Schedule, above). The relevant points for each activity and mandatory activities will be specified in an instrument made under paragraphs 3AA(d) and (e) of the Migration Agents Regulations (see item 2 of this Schedule, above).

Subregulation 6(2) provides that the period within which the points prescribed under subregulation 6(1) must be obtained is 12 months before the application was made, or, if the OMARA is satisfied that the applicant failed to meet a requirement because of circumstances beyond the applicant's control, the applicant may be allowed an additional 3 months to complete the CPD.

Subregulation 6(3) provides that points obtained for completing a CPD activity may be counted only in respect of one repeat application.

Subregulation 6(4) sets out the evidential requirements for completion of CDP activities. A registered agent must include with the application for renewal of registration a statement that the requirements have been met and a list of the CPD activities completed. Registered agents must also keep written records of CPD activities completed, with confirmation by the CPD provider, and must show the records to the OMARA on request.

Subregulation 6(5) sets out requirements for the records referred to in subregulation 6(4). They must be in English and must be retained for a period of 2 years after the CPD activity was completed.

Item 7 – Parts 3A and 3B

This item repeals Part 3A (Approved activities) and Part 3B (Approved providers of approved activities) of the Migration Agents Regulations, from 1 January 2018.

From that date, *approved activities* will be replaced with *CPD activities* meeting the definition in subregulation 3(1) (see item 1, above) and specified in a legislative instrument made under regulation 3AA (see item 2 of this Schedule, above). Activities will no longer be required to be approved as individual activities under the process set out Part 3A.

Also from 1 January 2018, the process for approving providers of approved activities as set out in Part 3B will be replaced with the new clarified and more transparent process set out in Part 3C (see item 3 of this Schedule, above).

Item 8 – Schedule 1

This item repeals Schedule 1(Continuing professional development) to the Migration Agents Regulations. From 1 January 2018, Schedule 1 will no longer be required as its relevant provisions will be incorporated in new regulation 6 to prescribe CPD requirements more clearly and transparently (see item 6 of this Schedule, above).

Item 9 – Clause 2.5 of Schedule 2 (note 2)

This item amends note 2 of Schedule 2 (Code of Conduct) to the Migration Agents Regulations by omitting a reference to “Schedule 1” and substituting “regulation 6”. The note refers to the obligations of registered migration agents to satisfy the CPD requirements prescribed in the Migration Agents Regulations. This amendment is consequential to the CPD requirements being consolidated in regulation 6 by these amendments (see item 6 of this Schedule, above) and Schedule 1 being repealed (see item 8 of this Schedule, above).

Schedule 5 – Immigration assistance and immigration representations by registered migration agentsItem 1 – Regulation 3A (definition of *specified application*)

This item repeals the definition of ‘specified application’ as this term is no longer used in this Division following these amendments.

Item 2 – Regulations 3C and 3D

The item creates new regulation 3BA, which allows the Minister to specify kinds of visas in a legislative instrument for the purposes of Division 2.1 (‘Assistance given by employers and their employees’) of Part 2 of the Migration Agents Regulations (‘Immigration assistance given by persons not registered’). This is to facilitate amendments made by this Schedule that require kinds of visas to be prescribed (see below).

The item also repeals old regulations 3C and 3D and replaces them with new regulations 3C and 3D.

Division 2.1 outlines the circumstances where assistance given by employers to migrating employees does not amount to ‘immigration assistance’ under the Migration Act. This in turn means the assistance does not attract the regulatory framework under the Migration Act and the Migration Agents Regulations.

New regulation 3C provides that assistance is not ‘immigration assistance’ where the person giving the assistance is an employer (or prospective employer) of the person receiving the assistance, provided that:

- the person receiving the assistance is, or will be, a migrating employee of the employer;
- the person receiving the assistance has made, or intends to make, an application for a kind of visa specified by the Minister;
- the assistance relates to that application; and
- the person giving the assistance is not a registered migration agent.

The assistance also does not amount to immigration assistance if it is given by an employee of the employer (including if the employer is a registered migration agent).

New regulation 3D provides that representations are not ‘immigration representations’ where the person making the representations is an employer (or prospective employer) of the person on whose behalf the representations are made, provided that:

- the person on whose behalf the representations are made is, or will be, a migrating employee of the employer;
- the person on whose behalf the representations are made has made, or intends to make, an application for a kind of visa specified by the Minister;
- the representations relate to that application; and
- the person making the representations is not a registered migration agent.

The representations also do not amount to immigration representations where they are given by an employee of the employer (including if the employer is a registered migration agent).

Old regulations 3C and 3D contained similar provisions to the above, however the requirement that the person giving the assistance, or making the representations, is not a registered migration agent was inserted by this item. By adding this requirement it is intended to prevent registered migration agents from relying on regulation 3C or 3D to avoid their obligations under the Migration Act and the Migration Agents Regulations, including under the Code of Conduct at Schedule 2 of those regulations. As noted above, the title of Part 2 of the Migration Agents Regulations is ‘immigration assistance given by persons not registered’. The changes therefore align with the intended operation of this Part.

Item 3 – Regulations 3E, 3F and 3G

This item replaces regulation 3E, which previously defined the terms ‘applicant’ and ‘professional development sponsor’ for the purposes of Division 2.2 (‘Assistance given by professional development sponsors’) of Part 2 of the Migration Agents Regulations.

Previously the definition of ‘professional development sponsor’ referred to specific visa subclasses. However, as a result of earlier changes to professional development sponsorship arrangements in the Migration Regulations, these references are no longer appropriate. Instead, new regulation 3E defines ‘professional development sponsor’ to mean an organisation that is sponsoring, or intends to sponsor, a person who is in a class of persons specified by the Minister in a legislative instrument in relation to the person’s application or intended application for a visa.

New regulation 3E also provides that ‘employee’ has the same meaning as in regulation 3B of Division 2.1 (namely an individual who is engaged to work in a person’s workplace for an indefinite period rather than for a specified term or for the duration of a specified task, where the person is responsible for paying the individual’s salary or wages).

The item also:

- creates new regulation 3EA, which provides that the Minister may specify classes of persons for the purpose of Division 2.2 in a legislative instrument; and
- repeals and replaces regulations 3F and 3G.

New regulation 3F provides that assistance is not ‘immigration assistance’ where the person giving the assistance is a professional development sponsor of the person receiving the assistance, provided that:

- the person receiving the assistance is in a class of persons specified by the Minister in a legislative instrument;
- the assistance is given in relation to an application for a visa the person receiving the assistance has made or intends to make;
- the professional development sponsor has sponsored, or intends to sponsor, the person in relation to that application; and
- the person giving the assistance is not a registered migration agent.

The assistance also does not amount to immigration assistance if it is given by an employee of the sponsor (including if the employer is a registered migration agent).

New regulation 3G provides that representations are not ‘immigration representations’ where the person making the representations is a professional development sponsor of the person on whose behalf the representations are made, provided that:

- the person on whose behalf the representations are made is in a class of persons specified by the Minister in a legislative instrument;
- the representations are made in relation to an application for a visa made by the person on whose behalf the representations are made (or in relation to an application for a visa that person intends to make);
- the professional development sponsor has sponsored, or intends to sponsor, the person in relation to that application; and
- the person making the representations is not be a registered migration agent.

The representations also do not amount to immigration representations if they are given by an employee of the sponsor (including if the employer is a registered migration agent).

Old regulations 3F and 3G contained similar provisions to the above, however the requirement that the person giving the assistance, or making the representations, is not a registered migration agent was inserted by this item. By adding this requirement it is intended to prevent registered migration agents from relying on regulation 3F or 3G to avoid their obligations under the Migration Act and the Migration Agents Regulations, including under the Code of Conduct at Schedule 2 to those regulations. As noted above, the title of Part 2 of the Migration Agents Regulations is ‘immigration assistance given by persons not registered’. The changes therefore align with the intended operation of this Part.

Item 4 – Schedule 2 (note to Schedule heading)

This item makes a minor technical change to the note to which follows the Schedule 2 heading. The note provides a cross-reference to regulation 8; instead of ‘regulation 8’ the note has been amended to ‘see regulation 8’.

Item 5 – Schedule 2 (preamble to Code of Conduct)

This item omits the preamble to the Code of Conduct which applies to registered migration agents. The preamble contains information that is inaccurate or out of date, and has therefore been removed from Schedule 2. This change does not have any implications for the obligations of registered migration agents under the Code.

Item 6 – Paragraph 2.1A(c) of Schedule 2

This item repeals paragraph 2.1A(c) of the Code of Conduct at Schedule 2 to the Migration Agents Regulations, which provides that a registered migration agent must not accept a person as a client if the agent is, or intends to be, involved with the person in a business activity that is relevant to the assessment of a visa application or cancellation review application.

This is a consequential amendment to ensure that the changes made by the amending regulations do not altogether exclude registered migration agents from providing advice to migrating employees or in the capacity of a professional development sponsor. In the absence of paragraph 2.1A(c), paragraph 2.1A(d) still provides as a safeguard that registered migration agents must not accept a client where there is any other interest of the agent that would affect the legitimate interests of the client.

Item 7 – After clause 8.3 of Schedule 2

This item inserts new clauses 8.3A and 8.3B into the Code of Conduct to provide that, where an employee of a registered migration agent gives assistance or makes representations in the circumstances mentioned in regulations 3C, 3D, 3F or 3G, then the registered migration agent must ensure that the employee's conduct is in accordance with the standards of conduct required by the Code.

In effect, this means the registered migration agent must ensure that the assistance or representations are given or made in accordance with the same standard of conduct as would be required if the registered migration agent had given the assistance or made the representations.

Schedule 6 – Identifying fees in repeat applications for migration agent registrationItem 1 – Regulation 3XA

This item is made under subsection 504(1), which 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 Migration Act.

The item reduces an unnecessary administrative burden on registered migration agents by creating more flexibility as to how and when applicants for repeat registration are required to provide information about their average fees during the previous twelve months. For the purposes of the Migration Agents Regulations, an individual applies for 'repeat registration' if they:

- apply for registration; and
- have been registered at some time in the period of twelve months before making the application.

Previously, regulation 3XA required all registered migration agents applying for repeat registration to provide information about the average fees charged by the individual, as a registered migration agent, during the previous twelve months. The item removes this requirement, and instead provides that applicants for repeat registration need to provide information about average fees only if this information is requested by the OMARA.

This request must be made by the OMARA in writing, and can be included in a form approved under regulation 11 for use in making applications for registration.

In making a request for information about average fees, the OMARA can nominate a specified period in relation to which the information should be given. However, the OMARA must not specify a period that begins more than twelve months before the person's application for repeat registration was made.

The item also removes the requirement that the information must be provided by the applicant:

- in an approved form; and
- with the application for repeat registration.

Instead, if information about average fees is requested, the applicant must give this information to the OMARA in a written statement.

Schedule 7 – Application and transitional provisions

This Schedule inserts provisions relevant to the operation of the amendments made by the Schedules to the Regulation. Items 1-3 insert provisions in the Migration Agents Regulations that are relevant to the amendments of those regulations. Item 4 inserts provisions in the Migration Regulations that are relevant to amendments of those regulations.

Migration Agents Regulations 1998

Item 1 – In the appropriate position in Part 5

This item inserts a new Division 4 (Amendments made by the Migration Legislation Amendment (2017 Measures No. 1) Regulations 2017) in Part 5 (Transitional provisions) of the Migration Agents Regulations.

Item 1 commences on 18 April 2017 (see item 6 of the table in section 2 (Commencement) of the amending Regulations). This aligns with the commencement of Schedules 2 and 3 to the amending Regulations (see item 2 of the table), which make the amendments referred to in item 1 of this Schedule. The regulations inserted in new Division 4 by item 1 are as follows.

Regulation 15 – Definitions

This regulation defines the following the term *amending Regulations* for the purposes of new Division 4. The term means the *Migration Legislation Amendment (2017 Measures No. 1) Regulations 2017*.

Regulation 16 – Operation of amendments of regulation 3XA

This regulation provides that the amendments of regulation 3XA made by Schedule 6 to the amending regulations apply in relation to applications for repeat registration made on or after 18 April 2017. This means that registered migration agents applying for repeat registration on or after that date will not be subject to a mandatory requirement to provide information about their average fees, and instead will only be required to provide this information if requested to do so by the Migration Agents Registration Authority in writing.

Regulation 17 – Operation of amendments of Divisions 2.1 and 2.2 of Part 2

This regulation provides that the amendments of Divisions 2.1 and 2.2 of Part 2 of the Migration Agents Regulations made by Schedule 5 to the amending regulations apply in relation to assistance given, and representations made, on or after 18 April 2017. This means that on or after 18 April 2017 assistance given, and representations made, by registered migration agents to migrating employees and professional development applicants will no longer be subject to the exemptions under Divisions 2.1 and 2.2 of Part 2 on the giving of ‘immigration assistance’ or the making of ‘immigration representations’.

Regulation 18 – Operation of amendment of clause 2.1A of Code of Conduct

This regulation provides that the amendment of clause 2.1A of Schedule 2 to the Migration Agents Regulations made by Schedule 5 to the amending regulations applies in relation to accepting a person as a client on or after 18 April 2017. This means that on or after 18 April 2017 paragraph 2.1A(c) of the Code of Conduct will no longer apply to registered migration agents in relation to accepting a person as a client.

Regulation 19 – Operation of clauses 8.3A and 8.3B of Code of Conduct

This regulation provides that new Clause 8.3A of Schedule 2 (the Code of Conduct) applies in relation to assistance given on or after 18 April 2017. The regulation also provides that new Clause 8.3B of the Code of Conduct applies in relation to representations made on or after 18 April 2017.

This means that on or after 18 April 2017 registered migration agents will be required by the Code of Conduct to ensure that assistance given, or representations made, under Divisions 2.1 and 2.2 by their employees must be in accordance with the standards of conduct required by the Code of Conduct.

Item 2 – Regulation 15

This item amends regulation 15 of the Migration Agents Regulations (inserted by item 1 of this Schedule, above, on 18 April 2017), by inserting two additional definitions for the purposes of Division 4. These are:

- *approved activity* means an activity approved under Part 3A the Migration Agents Regulations prior to 1 January 2018; and
- *approved provider* means a provider of CPD approved under part 3B of the Migration Agents Regulations prior to 1 January 2018.

The amendment of regulation 15 commences on 1 October 2017 (see item 7 of the table in section 2 (Commencement) of the amending Regulations). This aligns with the commencement of Part 1 of Schedule 4 to the amending Regulations (see item 4 of the table), as the definitions are relevant to provisions inserted by item 3 of this Schedule, below, which relate to amendments made by Parts 1 and 2 of Schedule 4.

Item 3 – At the end of Division 4 of Part 5

This item inserts new regulation 20, 21 and 22 in Division 4 of Part 5 of the Migration Agents Regulations. The item commences on 1 October 2017 (see item 7 of the table in section 2

(Commencement) of the amending Regulations) for the same reasons as item 2, above. Details of the new regulations are as follows.

Regulation 20 – Transition from approved activities to CPD activities

This regulation contains a number of provisions relating to the transition from approved activities, within the meaning of the Migration Agents Regulations prior to 1 January 2018, to CPD activities, which are prescribed to meet CPD requirements on and after 1 January 2018. These provisions are:

- *subregulation 20(1)* provides that a provider of an approved activity (prior to 1 January 2018) must ensure that registered migration agents who commence the activity are able to complete it prior to 1 January 2018. This provision is intended to ensure that all CPD completed on and after 1 January 2018 meets the requirements for *CPD activities*. Approved activities completed after 1 January 2018 cannot be counted towards the CPD requirement for renewal of registration after that date;
- *subregulation 20(2)* provides that approved activities completed before 1 January 2018 may be counted to meet the CPD requirement on and after 1 January 2018, provided they have not been counted in relation to any previous application. As noted above in relation to subregulation 16(1), only approved activities completed before 1 January 2018 can be counted after 1 January 2018;
- *subregulation 20(3)* provides that a person approved as a CPD provider must not conduct CPD activities before 1 January 2018. This reflects the arrangement that CPD providers may be approved under the new provisions on and after 1 October 2017 (see Part 1 of Schedule 4, above) however they may not commence to conduct CPD activities under the new framework until 1 January 2018; and
- *subregulation 20(4)* provides that the amendments of regulation 6 made by this Schedule (see item 6, above) apply in relation to CPD activities conducted on or after 1 January 2018. The effect of this provision is that all CPD conducted on or after 1 January 2018 must meet the requirements of the definition of *CPD activity* (see item 1 of this Schedule, above) to be counted as CPD to meet the requirements prescribed under amended regulation 6 (see item 6 of Schedule 4, above). “Approved activities” within the meaning of the Migration Agents Regulations prior to 1 January 2018 which are completed after that date will no longer be acceptable for purposes of meeting the CPD requirement.

Regulation 21 – Transition from approved providers to CPD providers

This regulation is intended to put it beyond doubt that a person, including a person who was approved as an approved provider under the Migration Agents Regulations prior to 1 January 2018, is not a CPD provider unless approved under Part 3C of the Migration Agents Regulations on or after 1 October 2017 (see item 3 of this Schedule, above). The effect of this provision is that on or after 1 January 2018 only a CPD provider (as defined in subregulation 3(1), see item 1 of this Schedule above) will be able to conduct CPD activities.

Regulation 22 – Approval as CPD provider before 1 January 2018

This regulation makes a transitional provision in relation to CPD providers who are approved

between 1 October 2017 and 31 December 2017. Despite the provisions of subregulation 9R(1) concerning when an approval as a CPD provider would normally take effect (see item 3 of Schedule 4, above, which inserts new regulation 9R), if a person is approved as a CPD provider between 1 October 2017 and 31 December 2018, the approval takes effect on 1 January 2018, the date of the introduction of the new CPD framework. CPD activities cannot be delivered by CPD providers until after 1 January 2018; see subregulation 20(3), above.

Migration Regulations 1994

Item 4 – In the appropriate position in Schedule 13

This item amends Schedule 13 to the Migration Regulations to insert Part 62 titled ‘Amendments made by the Migration Legislation Amendment (2017 Measures No. 1) Regulations 2017 and inserts new clauses 6201 and 6202.

Clause 6201 – Operation of Schedule 1

The current subregulation 6201(1) provides that paragraph 1216(3A)(ca) of Schedule 1 to the Migration Regulations made by Schedule 1 to the *Migration Legislation Amendment (2017 Measures No. 1) Regulations 2017* applies both to an application for a Resident Return (Temporary) (Class TP) visa which, in accordance with new subregulation 6201(2), is taken to have been made before 18 April 2017 and to an application for a Resident Return (Temporary) (Class TP) visa made on or after 18 April 2017.

This has the effect of ensuring that new paragraph 1216(3A)(ca) of Schedule 1 to the Migration Regulations applies in relation to applications made on or after the commencement of these Regulations, while also ensuring that the amendments apply in relation to specific types of applications (set out in subregulation (2)) made prior to commencement.

New subregulation 6201(2) applies if all of paragraphs 6201(2)(a), (b) and (c) are satisfied. That is, if:

- (a) prior to 18 April 2017, a child applicant made or purported to make an application for a visa on the basis that clause 159.311 of Schedule 2 was satisfied in relation to the parent applicant, where the parent applicant’s application was covered by paragraph 1216(3A)(a) or (b) of Schedule 1; and
- (b) clause 159.311 of Schedule 2 would not be satisfied in relation to the child applicant only because his or her application could not be combined with the other applicant’s application (ie, the application of the parent applicant, as referred to in paragraph 1216(3B)(c) as in force at the time of the child’s application or purported application); and
- (c) had the child’s application been made on 18 April 2017, the application could have been combined with the parent applicant’s application as provided for by new paragraph 1216(3B)(ca),

then the child’s application is deemed to have been made at the same time and place, and combined with, the application of the parent applicant.

Paragraph 6201(1)(a) and subregulation 6201(2) make it clear that these beneficial application provisions will only apply to a child applicant covered by paragraph 1216(3A)(c) who would

have been affected by a mandatory requirement to be included in the passport of a parent in order to make a combined application with the parent.

Subsection 12(2) of the *Legislation Act 2003* states that a provision of a legislative instrument does not apply to a person if the provision commenced before the day the instrument is registered, to the extent that a person's rights would be affected to disadvantage the person or liabilities would be opposed on the person.

The amendments of item 1216 clarify that it is not intended that a subitem 1216(3A) applicant in relation to a Resident Return (Temporary) (Class TP) visa must be included in the passport of an applicant covered by either paragraph 1216(3A)(a) or 1216(3A)(b) in order to make a valid application. A paragraph 1216(3A)(a) applicant may continue to make a combined application if they are included in the passport of another paragraph 1216(3A)(a) applicant (eg, their spouse), and a paragraph 1216(3A)(b) applicant may also continue to make a combined application if they are included in the passport of a paragraph 1216(3A)(a) applicant. However, they are also able to make an application individually. The amendments do not affect these applicants.

As paragraph 1216(3A)(c) applicants are babies, it is important that they make a combined application with a parent. However, the insertion of new paragraph 1216(3B)(ca) allows some flexibility and permits paragraph 1216(3A)(c) applicants to make a combined application even where they are not included in the passport of a parent. This is important as most countries now issue individual passports to babies.

The beneficial application provision inserted into Schedule 13 in relation to this amendment is required to ensure that any application made before the commencement of the amendment which would have satisfied the criterion in clause 159.311 (but for the passport issue) is deemed to have been made at the same time and place as, and combined with the application of the parent applicant.

Clause 6202 – Operation of Schedule 2

Inserted clause 6202, titled 'Operation of Schedule 2', provides that the amendments of clauses 785.511 and 790.511 of Schedule 2 made by Schedule 2 to the *Migration Legislation Amendment (2017 Measures No. 1) Regulations 2017* apply in relation to visas granted before, on or after 18 April 2017. While these amendments have retrospective application on current TPV and SHEV holders, they are beneficial to visa holders and applicants by providing them a courtesy period to organise their departure. Therefore, these amendments do not engage subsection 12(2) of the *Legislation Act 2003*.

Other amendments made by Schedule 2 to the *Migration Legislation Amendment (2017 Measures No. 1) Regulations 2017* apply in relation to :

- An application for a visa made before, but not finally determined by, 18 April 2017;
- An application for a visa made on or after 18 April 2017.

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