



# **Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 15 March 2018

Peter Cosgrove  
Governor-General

By His Excellency's Command

Alan Tudge  
Minister for Citizenship and Multicultural Affairs

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# Contents

1	Name.....	1
2	Commencement .....	1
3	Authority.....	1
4	Schedules.....	1
<b>Schedule 1—Amendments</b>		<b>2</b>
Part 1—Main amendments		2
<i>Migration Regulations 1994</i>		2
Part 2—Consequential amendments		54
<i>Medical Indemnity Regulations 2003</i>		54



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## 1 Name

This instrument is the *Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018*.

## 2 Commencement

- (1) Each provision of this 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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	18 March 2018.	18 March 2018

Note: This table relates only to the provisions of this instrument as originally made.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.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the following:

- (a) the *Medical Indemnity Act 2002*;
- (b) the *Migration Act 1958*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### Part 1—Main amendments

#### *Migration Regulations 1994*

##### 1 Regulation 1.03

Insert:

*annual market salary rate*, for a proposed occupation nominated under section 140GB of the Act or an occupation in relation to which a position is nominated under regulation 5.19, means the earnings an Australian citizen or an Australian permanent resident earns or would earn for performing equivalent work on a full-time basis for a year in the same workplace at the same location.

##### 2 Regulation 1.03 (definition of *associated entity*)

Repeal the definition, substitute:

*associated entity*, of a person, means an entity that is an associated entity of the person under section 50AAA of the *Corporations Act 2001*, determined as if that section applied in relation to entities including a body of the Commonwealth, a State or a Territory.

##### 3 Regulation 1.03 (definition of *associated with*)

Omit “the meaning given”, substitute “a meaning affected”.

##### 4 Regulation 1.03

Insert:

*earnings* has a meaning affected by regulation 2.57A.

##### 5 Regulation 1.03 (note to the definition of *long stay activity sponsor*)

Repeal the note.

##### 6 Regulation 1.03

Insert:

*non-monetary benefits* has the meaning given by subregulation 2.57A(3).

*overseas business sponsor* means a standard business sponsor who was lawfully operating a business outside Australia and was not lawfully operating a business in Australia at the time:

- (a) the approval as a standard business sponsor was granted; or
- (b) if a term of the approval as a standard business sponsor has been varied—of the most recent variation.

##### 7 Regulation 1.03 (notes 1 and 2 to the definition of *professional development sponsor*)

Repeal the notes.

**8 Regulation 1.03 (notes 1 to 3 to the definition of *standard business sponsor*)**

Repeal the notes.

**9 Regulation 1.03**

Repeal the following definitions:

- (a) definition of *Subclass 457 (Business (Long Stay)) visa*;
- (b) definition of *Subclass 457 (Temporary Work (Skilled)) visa*.

**10 Regulation 1.03 (note to the definition of *temporary activities sponsor*)**

Repeal the note.

**11 Regulation 1.03 (note to the definition of *training and research sponsor*)**

Repeal the note.

**12 Subregulation 1.12(5) (cell at table item 5, column 2)**

Repeal the cell, substitute:

Any of the following visas:

- (a) Subclass 457 (Temporary Work (Skilled)) visa;
- (b) Subclass 482 (Temporary Skill Shortage) visa

**13 Subregulation 1.12(5) (cell at table item 6, column 2)**

Repeal the cell, substitute:

Any of the following visas:

- (a) Subclass 457 (Temporary Work (Skilled)) visa;
- (b) Subclass 482 (Temporary Skill Shortage) visa

**14 Subregulation 1.12(5) (table item 8)**

Repeal the item, substitute:

- |   |                                              |                                                   |
|---|----------------------------------------------|---------------------------------------------------|
| 8 | Subclass 482 (Temporary Skill Shortage) visa | Any of the following visas:                       |
|   |                                              | (a) Subclass 457 (Temporary Work (Skilled)) visa; |
|   |                                              | (b) Subclass 482 (Temporary Skill Shortage) visa  |

**15 Regulations 1.13A and 1.13B**

Repeal the regulations, substitute:

**1.13A Meaning of *adverse information***

- (1) *Adverse information* about a person is any adverse information relevant to the person's suitability as:
  - (a) an approved sponsor; or

- (b) a nominator (within the meaning of regulation 5.19).
- (2) Without limiting subregulation (1), **adverse information** about a person includes information that the person:
- (a) has contravened a law of the Commonwealth, a State or a Territory; or
  - (b) is under investigation, subject to disciplinary action or subject to legal proceedings in relation to a contravention of such a law; or
  - (c) has been the subject of administrative action (including being issued with a warning) for a possible contravention of such a law by a Department or regulatory authority that administers or enforces the law; or
  - (d) has become insolvent (within the meaning of section 95A of the *Corporations Act 2001*); or
  - (e) has given, or caused to be given, to the Minister, an officer, the Tribunal or an assessing authority a bogus document, or information that is false or misleading in a material particular.
- (3) Nothing in this regulation affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).
- (4) In this regulation:

**information that is false or misleading in a material particular** means information that is:

- (a) false or misleading at the time it is given; and
- (b) relevant to any of the matters the Minister may consider when making a decision under the Act or these Regulations, whether or not the decision is made because of that information.

Note: For the definition of **bogus document**, see subsection 5(1) of the Act.

### 1.13B Meaning of *associated with*

- (1) Two persons are **associated with** each other if:
- (a) they:
    - (i) are or were spouses or de facto partners; or
    - (ii) are or were members of the same immediate, blended or extended family; or
    - (iii) have or had a family-like relationship; or
    - (iv) belong or belonged to the same social group, unincorporated association or other body of persons; or
    - (v) have or had common friends or acquaintances; or
  - (b) one is or was a consultant, adviser, partner, representative on retainer, officer, employer, employee or member of:
    - (i) the other; or
    - (ii) any corporation or other body in which the other is or was involved (including as an officer, employee or member); or
  - (c) a third person is or was a consultant, adviser, partner, representative on retainer, officer, employer, employee or member of both of them; or
  - (d) they are or were related bodies corporate (within the meaning of the *Corporations Act 2001*); or



- (e) one is or was able to exercise influence or control over the other; or
- (f) a third person is or was able to exercise influence or control over both of them.

- (2) For the purposes of subregulation (1), it does not matter if a person has ceased to exist.
- (3) This regulation does not limit the circumstances in which persons are *associated with* each other.
- (4) In this regulation:

*officer* has the meaning given by section 9 of the *Corporations Act 2001*.

**16 At the end of subregulation 1.20(4)**

Add:

- ; (i) Subclass 482 (Temporary Skill Shortage).

**17 At the end of subregulation 2.05(4AA)**

Add:

- ; or (f) a Subclass 482 (Temporary Skill Shortage) visa.

**18 At the end of subregulation 2.05(4AC)**

Add:

- ; (c) a Subclass 482 (Temporary Skill Shortage) visa.

**19 At the end of paragraph 2.05(5A)(b)**

Add:

- ; or (vi) a Subclass 482 (Temporary Skill Shortage) visa.

**20 Subregulation 2.05(6)**

Repeal the subregulation.

**21 Subregulation 2.06AAB(1) (table item 12)**

Repeal the item.

**22 Subregulation 2.06AAB(1) (after table item 13)**

Insert:

13A Subclass 482 (Temporary Skill Shortage)

**23 Subparagraph 2.06AAC(a)(iii)**

Omit “and”, substitute “or”.

**24 At the end of paragraph 2.06AAC(a)**

Add:

- (iv) a Subclass 482 (Temporary Skill Shortage) visa; and

**25 Paragraph 2.07AA(2)(c)**

Repeal the paragraph, substitute:

(c) that Government has provided that application or the information contained in that application to Immigration.

**26 Subregulation 2.07AA(3)**

Repeal the subregulation.

**27 At the end of subregulations 2.07AG(1) and (2)**

Add:

; or (f) a Subclass 482 (Temporary Skill Shortage) visa.

**28 Regulation 2.07AH (heading)**

Repeal the heading, substitute:

**2.07AH Applications for certain substantive visas by persons for whom condition 8534 has been waived under subregulation 2.05(6) before 18 March 2018**

**29 Paragraph 2.07AH(a)**

After “subregulation 2.05(6)”, insert “(as in force before 18 March 2018)”.

**30 At the end of regulation 2.07AH**

Add “or a Subclass 482 (Temporary Skill Shortage) visa”.

**31 At the end of subregulation 2.12F(2B)**

Add:

; (k) Subclass 482 (Temporary Skill Shortage).

**32 Paragraph 2.12F(3A)(b)**

After “paragraph 457.223(4)(aa) of Schedule 2”, insert “(as in force before 18 March 2018)”.

**33 Subparagraph 2.12F(3B)(c)(ii)**

Repeal the subparagraph, substitute:

- (ii) if the nomination application was made before 18 March 2018—the nomination application sought to meet the requirements of subregulation 5.19(3) (as in force before 18 March 2018), when it was more likely that the requirements of subregulation 5.19(4) (as in force before 18 March 2018) would have been met, or vice versa;
- (ia) if the nomination application was made on or after 18 March 2018—the nomination application is withdrawn before a decision is made under regulation 5.19 because the nomination application, by mistake, identified the wrong stream;

**34 Subparagraph 2.12F(3B)(c)(iv)**

Repeal the subparagraph, substitute:

- (iv) after the visa application was made, the position ceased to be available to the applicant because the business within which the applicant was, or was to be, employed to work in the position ceased to operate actively and lawfully in Australia;

**35 At the end of subparagraph 2.12F(3B)(c)(v)**

Add “or a Subclass 482 (Temporary Skill Shortage) visa”.

**36 Subparagraph 2.12F(3B)(c)(vi)**

Repeal the subparagraph, substitute:

- (vi) if the nomination application is made before 18 March 2018 and the visa application is in the Temporary Residence Transition stream—the applicant did not satisfy the 2-year requirement in sub-subparagraph 5.19(3)(c)(i)(A) or (ii)(C) as in force before 18 March 2018 (whichever is applicable) when the nomination application was made;
- (vii) if the nomination application is made on or after 18 March 2018 and the visa application is in the Temporary Residence Transition stream—the applicant did not, when the nomination application was made, satisfy the 3-year requirement in paragraph 5.19(5)(e) or paragraph 5.19(5)(f) or (g) (as applicable) or any requirement for a different period of time specified for the applicant in an instrument made under subregulation 5.19(6); and

**37 Subregulation 2.25A(1)**

Omit “4006A(1)(a), 4006A(1)(b), 4006A(1)(c),”.

**38 Paragraph 2.43(1)(kb)**

After “subregulation 457.223(4)”, insert “(as in force before 18 March 2018)”.

**39 Subparagraph 2.43(1)(kb)(i)**

After “paragraph 457.223(4)(d)”, insert “(as in force before 18 March 2018)”.

**40 After paragraph 2.43(1)(kb)**

Insert:

- (kc) in the case of the holder of a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream, Medium-term stream or Labour Agreement stream—that, despite the grant of the visa, the Minister is satisfied that:
  - (i) the holder did not have a genuine intention at the time of grant of the visa to perform the occupation mentioned in subclause 482.212(2) of Schedule 2; or
  - (ii) the holder has ceased to have a genuine intention to perform that occupation; or
  - (iii) the position associated with that occupation is not genuine;

**41 Paragraph 2.43(1)(l)**

After “Subclass 457 (Temporary Work (Skilled)) visa”, insert “or a Subclass 482 (Temporary Skill Shortage) visa”.

**42 Subparagraph 2.43(1)(l)(i)**

Repeal the subparagraph.

**43 Paragraph 2.43(1)(la)**

Repeal the paragraph.

**44 After subparagraph 2.43(1)(ld)(ix)**

Insert:

or (x) a Subclass 482 (Temporary Skill Shortage) visa;

**45 After subparagraph 2.43(1)(le)(iv)**

Insert:

or (v) a Subclass 482 (Temporary Skill Shortage) visa;

**46 After paragraph 2.56(k)**

Insert:

(l) the Subclass 482 (Temporary Skill Shortage) visa;

**47 Subregulation 2.57(1) (definition of *base rate of pay*)**

Repeal the definition.

**48 Subregulation 2.57(1) (definition of *information and communication technology activity*)**

Repeal the definition.

**49 Subregulation 2.57(1) (sub-subparagraphs (b)(i)(A) and (ii)(C) of the definition of *primary sponsored person*)**

After “Subclass 457 (Temporary Work (Skilled)) visa”, insert “or a Subclass 482 (Temporary Skill Shortage) visa”.

**50 Subregulation 2.57(1) (sub-subparagraphs (b)(i)(A), (ii)(A), (iii)(C) and (iv)(C) of the definition of *secondary sponsored person*)**

After “Subclass 457 (Temporary Work (Skilled)) visa”, insert “or a Subclass 482 (Temporary Skill Shortage) visa”.

**51 Subregulation 2.57(3A)**

After “In this Part”, insert “(other than paragraph 2.72(18)(a) or subparagraph 2.79(3)(b)(iii))”.

**52 Subregulation 2.57A(1)**

Omit “In this Part, a”, substitute “A”.

**53 Paragraphs 2.59(b), (d) and (e)**

Repeal the paragraphs.

**54 Paragraph 2.59(h)**

Omit “holder of, or an applicant or a proposed applicant (the *visa applicant*) for, a Subclass 457 (Temporary Work (Skilled)) visa”, substitute “holder of a Subclass 457 (Temporary Work (Skilled)) visa or a Subclass 482 (Temporary Skill Shortage) visa, or an applicant or a proposed applicant (the *visa applicant*) for a Subclass 482 (Temporary Skill Shortage) visa”.

**55 Subparagraph 2.59(h)(ii)**

Omit “the applicant; and”, substitute “the applicant.”.

**56 Paragraphs 2.59(i) and (j)**

Repeal the paragraphs.

**57 Regulation 2.59 (note)**

Repeal the note.

**58 After paragraph 2.60S(2)(b)**

Insert:

- (ba) the applicant has not taken any action, and has not sought to take any action, that would result in the transfer to another person of some or all of the costs, including migration agent costs, associated with a nomination under subsection 140GB(1) of the Act (including a fee mentioned in subregulation 2.73(5) or (7) or 2.73A(3)); and
- (bb) the applicant has not taken any action, and has not sought to take any action, that would result in another person paying to a person some or all of the costs, including migration agent costs, associated with a nomination under subsection 140GB(1) of the Act (including a fee mentioned in subregulation 2.73(5) or (7) or 2.73A(3)); and

**59 After subparagraphs 2.60S(3)(a)(i) and (b)(i)**

Insert:

- (ia) associated with a nomination under subsection 140GB(1) of the Act (including a fee mentioned in subregulation 2.73(5) or (7) or 2.73A(3)); or

**60 Paragraph 2.61(3A)(b)**

Repeal the paragraph, substitute:

- (b) if the application is for approval as a standard business sponsor—the application must be made using:
  - (i) if, at the time the application is made, the applicant is a standard business sponsor other than an overseas business sponsor—the form specified by the Minister in a legislative instrument made for the purposes of this subparagraph; or
  - (ii) in any other case—the form specified by the Minister in a legislative instrument made for the purposes of this subparagraph; and
- (ba) if the application is for approval as a temporary activities sponsor—the application must be made using the form specified by the Minister in a legislative instrument made for the purposes of this paragraph; and

**61 At the end of regulation 2.61**

Add:

- (4) The Minister may refund the fee for an application for approval as a standard business sponsor if:
  - (a) the application is made because of a mistake by Immigration; and
  - (b) the Minister:
    - (i) receives a written request for a refund from the person who paid the fee; or

- (ii) considers it is reasonable in the circumstances to refund the amount to the person who paid the fee without receiving a written request for a refund.

(5) A refund under subregulation (4) must be paid to the person who paid the fee.

(6) A refund under subregulation (4) may be paid:

- (a) in Australian currency; or
- (b) if the fee in respect of which the refund is being paid was paid in another currency, in that other currency.

## **62 Subregulation 2.62(2)**

Omit “If the application was made using approved form 1196 (Internet) or 1478 (Internet), the”, substitute “The”.

## **63 Regulation 2.63 (heading)**

Repeal the heading, substitute:

### **2.63 Temporary activities sponsor or temporary work sponsor**

## **64 Subregulation 2.63(1)**

Omit “standard business sponsor,”.

## **65 After regulation 2.63**

Insert:

### **2.63A Standard business sponsor**

- (1) For the purposes of subsection 140G(3) of the Act, the terms of an approval of a person as a standard business sponsor are prescribed in this regulation.
- (2) An approval as a standard business sponsor starts:
  - (a) on the day on which the approval is granted; or
  - (b) if, immediately before the day on which the approval is granted, the person was because of an earlier approval a standard business sponsor other than an overseas business sponsor—immediately after the earlier approval ceases.
- (3) However, an approval as a standard business sponsor does not start if:
  - (a) immediately before the day on which the approval is granted, the person was because of an earlier approval a standard business sponsor other than an overseas business sponsor; and
  - (b) before the time at which the approval would otherwise start, the person’s approval as a standard business sponsor is cancelled.
- (4) An approval as a standard business sponsor ceases:
  - (a) if, immediately after the approval starts, the person is an overseas business sponsor—on the earlier of the following:
    - (i) the start of a later approval of the person as a standard business sponsor;
    - (ii) 5 years after the day on which the approval is granted; or

(b) in any other case—5 years after the day on which the approval is granted.

**66 Regulation 2.65**

Repeal the regulation, substitute:

**2.65 Application**

This Division applies in relation to an approval as a temporary activities sponsor.

**67 Subregulation 2.66(1)**

Omit “a standard business sponsor or”.

**68 Paragraph 2.66(5)(a)**

Omit “a standard business sponsor or”.

**69 Regulation 2.67**

Omit “a standard business sponsor or”.

**70 Regulation 2.68**

Repeal the regulation.

**71 Paragraph 2.68A(b)**

Omit “2.61”, substitute “2.66”.

**72 Regulation 2.68J (heading)**

Repeal the heading, substitute:

**2.68J Additional criteria for variation of terms of approval—transfer, recovery and payment of costs**

**73 Subregulation 2.68J(1)**

Omit “regulations 2.68 and 2.68A”, substitute “regulation 2.68A”.

**74 Subregulation 2.68J(2)**

Omit “2.68 or”.

**75 After paragraph 2.68J(2)(b)**

Insert:

- (ba) the applicant has not taken any action, and has not sought to take any action, that would result in the transfer to another person of some or all of the costs, including migration agent costs, associated with a nomination under subsection 140GB(1) of the Act (including a fee mentioned in subregulation 2.73A(3)); and
- (bb) the applicant has not taken any action, and has not sought to take any action, that would result in another person paying to a person some or all of the costs, including migration agent costs, associated with a nomination under subsection 140GB(1) of the Act (including a fee mentioned in subregulation 2.73A(3)); and

**76 Subregulation 2.68J(3)**

Omit “2.68 or”.

**77 After subparagraphs 2.68J(3)(a)(i) and (b)(i)**

Insert:

- (ia) associated with a nomination under subsection 140GB(1) of the Act (including a fee mentioned in subregulation 2.73A(3)); or

**78 Subregulation 2.69(2)**

Omit “If the application was made using approved form 1196 (Internet) or 1478 (Internet), the”, substitute “The”.

**79 Regulation 2.72**

Repeal the regulation, substitute:

**2.72 Criteria for approval of nomination—Subclass 457 (Temporary Work (Skilled)) visa and Subclass 482 (Temporary Skill Shortage) visa**

*Application of this regulation*

- (1) This regulation applies in relation to a person who:
  - (a) is a standard business sponsor or a party to a work agreement (other than a Minister); and
  - (b) under paragraph 140GB(1)(b) of the Act, nominates a proposed occupation in relation to any of the following (the *nominee*):
    - (i) a holder of a Subclass 457 (Temporary Work (Skilled)) visa;
    - (ii) a holder of a Subclass 482 (Temporary Skill Shortage) visa;
    - (iii) an applicant or a proposed applicant for a Subclass 482 (Temporary Skill Shortage) visa.
- (2) For the purposes of paragraph 140GB(2)(b) of the Act, the criteria set out in this regulation are prescribed.

*General*

- (3) The Minister is satisfied that the person made the nomination in accordance with the process set out in regulation 2.73.
- (4) The Minister is satisfied that either:
  - (a) there is no adverse information known to Immigration about the person or a person associated with the person; or
  - (b) it is reasonable to disregard any adverse information known to Immigration about the person or a person associated with the person.
- (5) The Minister is satisfied that:
  - (a) if the occupation is nominated for a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream or Medium-term stream—the person is a standard business sponsor; or
  - (b) if the occupation is nominated for a Subclass 482 (Temporary Skill Shortage) visa in the Labour Agreement stream—the person is a party to a work agreement (other than a Minister).



*Information to be provided as part of nomination*

- (6) If the nominee holds:
- (a) a Subclass 457 (Temporary Work (Skilled)) visa; or
  - (b) a Subclass 482 (Temporary Skill Shortage) visa;
- the Minister is satisfied that the person has listed on the nomination each other holder of either of those kinds of visa who was granted the visa on the basis of having the necessary relationship with the nominee as mentioned in clause 457.321 of Schedule 2 (as in force before 18 March 2018) or subclause 482.312(1) of Schedule 2.
- (7) However, the Minister may disregard the fact that one or more persons required to be listed on the nomination are not listed, if the Minister is satisfied it is reasonable in the circumstances to do so.

*Nominated occupation*

- (8) The Minister is satisfied that:
- (a) the occupation and its corresponding 6-digit code correspond to an occupation and its corresponding 6-digit code specified in:
    - (i) if the occupation is nominated for a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream or Medium-term stream—the instrument made under subregulation (9) in force at the time the nomination is made; or
    - (ii) if the occupation is nominated for a Subclass 482 (Temporary Skill Shortage) visa in the Labour Agreement stream—the work agreement; and
  - (b) the occupation applies to the nominee in accordance with the instrument or work agreement.
- (9) The Minister may, by legislative instrument, specify occupations and, for each occupation:
- (a) whether the occupation is:
    - (i) a short term skilled occupation; or
    - (ii) a medium and long term strategic skills occupation; and
  - (b) either:
    - (i) the 6-digit ANZSCO code for the occupation; or
    - (ii) if there is no 6-digit ANZSCO code for the occupation—a 6-digit code for the occupation; and
  - (c) if there is no 6-digit ANZSCO code for the occupation—tasks, qualifications and experience for the occupation; and
  - (d) any matters for the purpose of determining whether the occupation applies to a nominee, including matters relating to any of the following:
    - (i) the person who nominated the occupation;
    - (ii) the nominee;
    - (iii) the occupation;
    - (iv) the position in which the nominee is to work;
    - (v) the circumstances in which the occupation is undertaken;
    - (vi) the circumstances in which the nominee is to be employed in the position.

- (10) The Minister is satisfied that the position associated with the occupation is:
- (a) genuine; and
  - (b) a full-time position.

*Additional requirements in relation to Short-term stream and Medium-term stream*

- (11) If:
- (a) the occupation is nominated for a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream or Medium-term stream; and
  - (b) the person is not an overseas business sponsor; and
  - (c) the occupation is not an occupation specified by the Minister in an instrument made under subregulation (13);

the Minister is satisfied that:

- (d) the nominee will be engaged only as an employee under a written contract of employment by the person or an associated entity of the person (the **employer**); and
- (e) the person will give the Minister a copy of the contract signed by the employer and the nominee.

- (12) If:
- (a) the occupation is nominated for a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream or Medium-term stream; and
  - (b) the person is an overseas business sponsor; and
  - (c) the occupation is not an occupation specified by the Minister in an instrument made under subregulation (13);

the Minister is satisfied that:

- (d) the nominee will be engaged only as an employee under a written contract of employment by the person; and
- (e) the person will give the Minister a copy of the contract signed by the person and the nominee.

- (13) The Minister may, by legislative instrument, specify occupations for the purposes of paragraphs (11)(c) and (12)(c), subregulation 2.73(13), paragraphs 2.73(14)(c) and 2.86(2A)(b), subregulation 2.86(2AA), paragraph 5.19(5)(g), subregulation 5.19(7), clauses 482.224 and 482.233 of Schedule 2 and paragraph 8607(3)(a) of Schedule 8.

- (14) If:
- (a) the occupation is nominated for a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream or Medium-term stream; and
  - (b) the nominee holds a Subclass 457 (Temporary Work (Skilled)) visa or a Subclass 482 (Temporary Skill Shortage) visa; and
  - (c) the Minister requested the person to provide evidence that the nominee satisfies the language test requirements;

the person has provided evidence to the Minister that the nominee satisfies:

- (d) if the occupation is nominated for a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream—any language test requirements specified by the Minister in a legislative instrument for clause 482.223 of Schedule 2 that would apply to the nominee if the nominee were an

applicant for a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream; or

- (e) if the occupation is nominated for a Subclass 482 (Temporary Skill Shortage) visa in the Medium-term stream—any language test requirements specified by the Minister in a legislative instrument for clause 482.232 of Schedule 2 that would apply to the nominee if the nominee were an applicant for a Subclass 482 (Temporary Skill Shortage) visa in the Medium-term stream.

(15) Subject to subregulation (16), if:

- (a) the occupation is nominated for a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream or Medium-term stream; and
- (b) the Minister is not satisfied that the nominee's annual earnings in relation to the occupation will be at least the amount specified by the Minister in a legislative instrument made for the purposes of this paragraph;

the Minister is satisfied that:

- (c) the annual market salary rate for the occupation has been determined by the person in accordance with the instrument made under subregulation (17); and
- (d) the annual market salary rate, excluding any non-monetary benefits, for the occupation (determined by the person in accordance with an instrument made under subregulation (17)) is not less than the temporary skilled migration income threshold specified by the Minister in a legislative instrument made for the purposes of this paragraph; and
- (e) the nominee's annual earnings in relation to the occupation will not be less than the annual market salary rate for the occupation (determined by the person in accordance with an instrument made under subregulation (17)); and
- (f) the nominee's annual earnings, excluding any non-monetary benefits, in relation to the occupation will not be less than the temporary skilled migration income threshold specified by the Minister in a legislative instrument made for the purposes of paragraph (d); and
- (g) either:
  - (i) there is no information known to Immigration that indicates that the annual market salary rate for the occupation (determined by the person in accordance with an instrument made under subregulation (17)) is inconsistent with Australian labour market conditions relevant to the occupation; or
  - (ii) it is reasonable to disregard any such information.

(16) However:

- (a) the Minister may disregard the criterion in paragraph (15)(d) if the Minister is satisfied that:
  - (i) the annual market salary rate for the occupation (determined by the person in accordance with an instrument made under subregulation (17)) is not less than the temporary skilled migration income threshold specified by the Minister in a legislative instrument made for the purposes of paragraph (15)(d); and
  - (ii) it is reasonable in the circumstances to do so; and
- (b) the Minister may disregard the criterion in paragraph (15)(f) if the Minister is satisfied that it is reasonable in the circumstances to do so.

- (17) The Minister may, by legislative instrument, specify a method for determining the annual market salary rate for an occupation nominated under section 140GB of the Act or an occupation in relation to which a position is nominated under regulation 5.19.
- (18) If the occupation is nominated for a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream or Medium-term stream, the Minister is satisfied that:
- (a) either:
    - (i) there is no information known to Immigration that indicates that the employment conditions (other than in relation to earnings) that will apply to the nominee are less favourable than those that apply, or would apply, to an Australian citizen or an Australian permanent resident performing equivalent work at the same location; or
    - (ii) it is reasonable to disregard any such information; and
  - (b) if the person is lawfully operating a business in Australia—the person has not engaged in discriminatory recruitment practices.

*Additional requirements in relation to Labour Agreement stream*

- (19) If the occupation is nominated for a Subclass 482 (Temporary Skill Shortage) visa in the Labour Agreement stream, the Minister is satisfied that:
- (a) the occupation is specified in the work agreement as an occupation that the person may nominate; and
  - (b) if the work agreement specifies requirements that must be met by the party to the work agreement—the requirements of the work agreement have been met; and
  - (c) the number of nominations made by the person and approved by the Minister under section 140GB of the Act is less than the number of approved nominations permitted under the work agreement for the year.

## 80 Regulation 2.73

Repeal the regulation, substitute:

### 2.73 Process for nomination—Subclass 457 (Temporary Work (Skilled)) visa and Subclass 482 (Temporary Skill Shortage) visa

*Application of this regulation*

- (1) This regulation applies in relation to a person who is nominating a proposed occupation under paragraph 140GB(1)(b) of the Act in relation to any of the following (the *nominee*):
- (a) a holder of a Subclass 457 (Temporary Work (Skilled)) visa;
  - (b) a holder of a Subclass 482 (Temporary Skill Shortage) visa;
  - (c) an applicant or a proposed applicant for a Subclass 482 (Temporary Skill Shortage) visa.
- (2) For the purposes of subsection 140GB(3) of the Act, the person may nominate a proposed occupation in accordance with the process set out in this regulation.

*General requirements for nominations*

- (3) The nomination must be made using the internet.
- (4) The nomination must be made using the form specified by the Minister in a legislative instrument made for the purposes of this subregulation.
- (5) The nomination must be accompanied by the fee specified by the Minister in a legislative instrument made for the purposes of this subregulation.
- (6) Unless the occupation is nominated for a Subclass 482 (Temporary Skill Shortage) visa in the Labour Agreement stream, the occupation must be nominated for a Subclass 482 (Temporary Skill Shortage) visa in:
  - (a) if the occupation is a short term skilled occupation specified in the instrument made under subregulation 2.72(9) in force at the time the nomination is made—the Short-term stream; or
  - (b) if the occupation is a medium and long term strategic skills occupation specified in the instrument made under subregulation 2.72(9) in force at the time the nomination is made—the Medium-term stream.

*Alternative method of nominations*

- (7) For subregulations (3) to (5):
  - (a) if the Minister specifies, in a legislative instrument made for the purposes of this subregulation, a different way of making a nomination of an occupation, in circumstances specified in the instrument, the application may be made in that way; and
  - (b) if the Minister specifies in the instrument a form for the different way of making the nomination, the nomination must be made using that form; and
  - (c) if the Minister specifies in the instrument a different fee for making the nomination, the nomination must be accompanied by that fee.

Note: Subregulation (3) relates to making nominations on the internet. It may be necessary for the Minister to specify arrangements other than those in subregulations (3) to (5) if special circumstances exist.

*Information to be included in nominations*

- (8) The nomination must identify the nominee.
- (9) The person must provide the following information as part of the nomination:
  - (a) if the occupation is nominated for a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream or Medium-term stream—the name of the occupation and the corresponding 6-digit code as they are specified in the instrument made under subregulation 2.72(9) in force at the time the nomination is made;
  - (b) if:
    - (i) the person is a party to a work agreement; and
    - (ii) the occupation is nominated for a Subclass 482 (Temporary Skill Shortage) visa in the Labour Agreement stream;the name of the occupation and the corresponding 6-digit code (if any) as they are specified in the work agreement;
  - (c) the location or locations at which the occupation is to be carried out;

- (d) the proposed period of stay for a visa granted on the basis of the nomination, in accordance with subregulations (10) and (11);
  - (e) any other information specified by the Minister in a legislative instrument made for the purposes of this paragraph.
- (10) For the purposes of paragraph (9)(d):
- (a) if:
    - (i) the occupation is a short term skilled occupation specified in the instrument made under subregulation 2.72(9) in force at the time the nomination is made; and
    - (ii) it would not be inconsistent with any international trade obligation of Australia to require the period of stay for a Subclass 482 (Temporary Skill Shortage) visa granted on the basis of the nomination to be no more than 2 years;the proposed period of stay may be 1 or 2 years; or
  - (b) otherwise—the proposed period of stay may be 1, 2, 3 or 4 years.
- (11) However, if:
- (a) the person is a party to a work agreement; and
  - (b) the occupation is nominated for a Subclass 482 (Temporary Skill Shortage) visa in the Labour Agreement stream;
- the period of stay must not exceed the period specified in the work agreement.
- (12) The person must certify, in writing, as part of the nomination whether or not the person has engaged in conduct, in relation to the nomination, that constitutes a contravention of subsection 245AR(1) of the Act.
- (13) Unless the occupation is an occupation specified by the Minister in an instrument made under subregulation 2.72(13), the person must certify as part of the nomination, in writing, that:
- (a) the employment contract entered into with the nominee complies; or
  - (b) the employment contract to be entered into with the nominee will, when entered, comply;
- with all applicable requirements imposed by Commonwealth, State or Territory law relating to employment including, if applicable, the National Employment Standards (within the meaning of the *Fair Work Act 2009*).

*Additional requirements in relation to Short-term stream and Medium-term stream*

- (14) If the occupation is nominated for a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream or Medium-term stream, the person must certify as part of the nomination, in writing:
- (a) that the tasks of the position include a significant majority of the tasks specified for the occupation in:
    - (i) ANZSCO; or
    - (ii) if there is no ANZSCO code for the occupation—the instrument made under subregulation 2.72(9) in force at the time the nomination is made; and
  - (b) that the qualifications and experience of the nominee are commensurate with the qualifications and experience specified for the occupation in:

- (i) ANZSCO; or
  - (ii) if there is no ANZSCO code for the occupation—the instrument made under subregulation 2.72(9) in force at the time the nomination is made; and
- (c) unless the occupation is an occupation specified by the Minister in an instrument made under subregulation 2.72(13), that the occupation is a position in:
- (i) if the person is an overseas business sponsor—the person’s business; or
  - (ii) in any other case—the person’s business or a business of an associated entity of the person.

*Additional requirements in relation to Labour Agreement stream*

- (15) If:
- (a) the person is a party to a work agreement; and
  - (b) the occupation is nominated for a Subclass 482 (Temporary Skill Shortage) visa in the Labour Agreement stream;
- the person must certify as part of the nomination, in writing, that:
- (c) the tasks of the position include a significant majority of the tasks specified for the occupation in:
    - (i) ANZSCO; or
    - (ii) if there is no ANZSCO code for the occupation—the work agreement; and
  - (d) the qualifications and experience of the nominee are commensurate with the qualifications and experience specified for the occupation in the work agreement.

**2.73AA Refund of nomination fee—Subclass 457 (Temporary Work (Skilled)) visa and Subclass 482 (Temporary Skill Shortage) visa**

- (1) The Minister may refund the fee mentioned in subregulation 2.73(5) or (7) paid in relation to a nomination if:
- (a) subregulation (2) or (3) applies; and
  - (b) the Minister:
    - (i) receives a written request for a refund from the person who paid the amount; or
    - (ii) considers it is reasonable in the circumstances to refund the amount to the person who paid the amount without receiving a written request for a refund.
- (2) This subregulation applies if the nomination is made because of a mistake by Immigration.
- (3) This subregulation applies if:
- (a) the nomination is of an occupation for a Subclass 482 (Temporary Skill Shortage) visa in the Labour Agreement stream; and
  - (b) the person is a party to a work agreement; and
  - (c) the person withdraws the nomination before a decision is made under section 140GB of the Act because:

- (i) the person has listed an occupation in the nomination that is not specified in the work agreement as an occupation that the person may nominate; or
  - (ii) the number of nominations made by the person and approved by the Minister under section 140GB of the Act is equal to or greater than the number of approved nominations permitted under the work agreement for the year.
- (4) A refund under subregulation (1) must be paid to the person who paid the amount.
- (5) A refund under subregulation (1) may be paid:
- (a) in Australian currency; or
  - (b) if the amount in respect of which the refund is being paid was paid in another currency, in that other currency.

### **81 Subregulation 2.74(2)**

Omit “If the application was made using approved form 1196 (Internet) or 1479N (Internet), the”, substitute “The”.

### **82 Regulation 2.75 (heading)**

Repeal the heading, substitute:

### **2.75 Period of approval of nomination—Subclass 457 (Temporary Work (Skilled)) visa and Subclass 482 (Temporary Skill Shortage) visa**

### **83 Subregulation 2.75(1)**

Repeal the subregulation, substitute:

- (1) This regulation applies in relation to a nomination by a person of an occupation in which any of the following (the *nominee*) is identified as the person who will work in the occupation:
- (a) a holder of a Subclass 457 (Temporary Work (Skilled)) visa;
  - (b) a holder of a Subclass 482 (Temporary Skill Shortage) visa;
  - (c) an applicant or a proposed applicant for a Subclass 482 (Temporary Skill Shortage) visa.

### **84 Paragraphs 2.75(2)(c) to (f)**

Repeal the paragraphs, substitute:

- (c) the day on which the nominee is granted a Subclass 482 (Temporary Skill Shortage) visa; and
- (d) if the nomination is of an occupation for a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream or the Medium-term stream—the nomination end day, unless, on the nomination end day:
  - (i) the person is a standard business sponsor; or
  - (ii) there is an application for approval as a standard business sponsor made by the person before the sponsorship end day in relation to which a decision has not been made under subsection 140E(1) of the Act; and



- (e) the day on which an application mentioned in subparagraph (d)(ii) is refused; and
- (f) if:
  - (i) the nomination is of an occupation for a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream or the Medium-term stream; and
  - (ii) the person's approval as a standard business sponsor is cancelled under subsection 140M(1) of the Act;the day on which the person's approval as a standard business sponsor is cancelled; and
- (g) if the approval of the nomination is given to a party to a work agreement (other than a Minister) and the nomination is of an occupation for a Subclass 482 (Temporary Skill Shortage) visa in the Labour Agreement stream—the day on which the work agreement ceases.

### **85 At the end of regulation 2.75**

Add:

- (3) In this regulation:

*nomination end day*, in relation to a nomination, means the day 3 months after the sponsorship end day in relation to the nomination.

*sponsorship end day*, in relation to a nomination, means the day on which the approval as a standard business sponsor of the person who made the nomination ceases.

### **86 Paragraph 2.76(2)(b)**

Omit “Subclass 457 (Temporary Work (Skilled)) visa”, substitute “Subclass 482 (Temporary Skill Shortage) visa”.

### **87 Subparagraphs 2.79(1)(a)(i) and (ii) and (b)(i)**

After “Subclass 457 (Temporary Work (Skilled)) visa”, insert “or a Subclass 482 (Temporary Skill Shortage) visa”.

### **88 At the end of subparagraph 2.79(1)(b)(ii)**

Add “or a Subclass 482 (Temporary Skill Shortage) visa”.

### **89 Subparagraphs 2.79(1A)(a)(i) and (ii)**

After “Subclass 457 (Temporary Work (Skilled)) visa”, insert “or a Subclass 482 (Temporary Skill Shortage) visa”.

### **90 Subregulation 2.79(2)**

Repeal the subregulation.

### **91 Paragraphs 2.79(3)(a) to (d)**

Repeal the paragraphs, substitute:

- (a) if:
  - (i) the person is mentioned in paragraph (1)(a); and

- (ii) the nomination by the person of an occupation in which the primary sponsored person is identified was made before 18 March 2018; the terms and conditions of employment provided to the primary sponsored person are:
  - (iii) no less favourable than the terms and conditions of employment that the Minister was satisfied, under paragraph 2.72(10)(c) (as in force before 18 March 2018), were no less favourable than the terms and conditions of employment that are provided, or would be provided, to an Australian citizen or an Australian permanent resident; and
  - (iv) no less favourable than the terms and conditions of employment that the person provides, or would provide, to an Australian citizen or an Australian permanent resident to perform equivalent work in the person's workplace at the same location; or
- (b) if the person is mentioned in paragraph (1)(a) and the nomination by the person of an occupation in which the primary sponsored person is identified was made on or after 18 March 2018:
  - (i) the primary sponsored person's annual earnings in relation to the occupation are not less than the annual earnings the person indicated, at the time the nomination was approved, would be provided to the primary sponsored person for the occupation; and
  - (ii) the primary sponsored person's earnings in relation to the occupation are not less than the earnings an Australian citizen or an Australian permanent resident earns or would earn for performing equivalent work in the same workplace at the same location; and
  - (iii) the employment conditions (other than in relation to earnings) that apply to the primary sponsored person are no less favourable than those that apply, or would apply, to an Australian citizen or an Australian permanent resident performing equivalent work at the same location; or

**92 Subregulation 2.79(3A)**

Repeal the subregulation.

**93 Subparagraph 2.79(4)(a)(ii)**

Repeal the subparagraph.

**94 Subparagraph 2.79(4)(a)(iii)**

After "Subclass 457 (Temporary Work (Skilled)) visa", insert "or a Subclass 482 (Temporary Skill Shortage) visa".

**95 Sub-subparagraph 2.79(4)(b)(i)(A)**

After "Subclass 457 (Temporary Work (Skilled)) visa", insert "or a Subclass 482 (Temporary Skill Shortage) visa".

**96 Subparagraphs 2.80(1)(d)(i) and (ii) and (e)(i)**

After "Subclass 457 (Temporary Work (Skilled)) visa", insert "or a Subclass 482 (Temporary Skill Shortage) visa".

**97 At the end of subparagraph 2.80(1)(e)(ii)**

Add "or a Subclass 482 (Temporary Skill Shortage) visa".

**98 Paragraph 2.80(3)(d)**

Omit “or the Subclass 457 (Temporary Work (Skilled)) visa”, substitute “, the Subclass 457 (Temporary Work (Skilled)) visa or the Subclass 482 (Temporary Skill Shortage) visa”.

**99 Subparagraph 2.80(5)(a)(ii)**

Omit “or a Subclass 457 (Temporary Work (Skilled)) visa”, substitute “, a Subclass 457 (Temporary Work (Skilled)) visa or a Subclass 482 (Temporary Skill Shortage) visa”.

**100 Subparagraph 2.80(5)(b)(ii)**

Repeal the subparagraph, substitute:

- (ii) the day on which the primary sponsored person is granted a further substantive visa that is in effect and is:
  - (A) if the last substantive visa held by the primary sponsored person was a Subclass 457 (Temporary Work (Skilled)) visa—a visa that is not a Subclass 457 (Temporary Work (Skilled)) visa or a Subclass 482 (Temporary Skill Shortage) visa; or
  - (B) in any other case—a visa of a different subclass to the last substantive visa held by the primary sponsored person; and

**101 Sub-subparagraph 2.80(5)(b)(iii)(B)**

Omit “or the Subclass 457 (Temporary Work (Skilled)) visa”, substitute “, the Subclass 457 (Temporary Work (Skilled)) visa or the Subclass 482 (Temporary Skill Shortage) visa”.

**102 Sub-sub-subparagraph 2.80(5)(b)(iii)(C)(II)**

Omit “or a Subclass 457 (Temporary Work (Skilled)) visa”, substitute “, a Subclass 457 (Temporary Work (Skilled)) visa or a Subclass 482 (Temporary Skill Shortage) visa”.

**103 Subparagraph 2.80(5)(c)(ii)**

Repeal the subparagraph, substitute:

- (ii) the day on which the secondary sponsored person is granted a further substantive visa that is in effect and is:
  - (A) if the last substantive visa held by the secondary sponsored person was a Subclass 457 (Temporary Work (Skilled)) visa—a visa that is not a Subclass 457 (Temporary Work (Skilled)) visa or a Subclass 482 (Temporary Skill Shortage) visa; or
  - (B) in any other case—a visa of a different subclass to the last substantive visa held by the secondary sponsored person; and

**104 Sub-subparagraph 2.80(5)(c)(iii)(B)**

Omit “or the Subclass 457 (Temporary Work (Skilled)) visa”, substitute “, the Subclass 457 (Temporary Work (Skilled)) visa or the Subclass 482 (Temporary Skill Shortage) visa”.

**105 Sub-sub-paragraph 2.80(5)(c)(iii)(C)(II)**

Omit “or a Subclass 457 (Temporary Work (Skilled)) visa”, substitute “, a Subclass 457 (Temporary Work (Skilled)) visa or a Subclass 482 (Temporary Skill Shortage) visa”.

**106 Subparagraph 2.82(3)(c)(i)**

After “Subclass 457 (Temporary Work (Skilled)) visa”, insert “or a Subclass 482 (Temporary Skill Shortage) visa”.

**107 At the end of subparagraph 2.82(3)(c)(ii)**

Add “or a Subclass 482 (Temporary Skill Shortage) visa”.

**108 Paragraph 2.82(3)(c)**

Omit “or activity”.

**109 Paragraph 2.84(2)(b)**

Omit “by registered post or electronic mail”.

**110 Subparagraph 2.84(2)(b)(i)**

Repeal the subparagraph, substitute:

- (i) electronically, in the manner specified by the Minister in a legislative instrument made for the purposes of this subparagraph; and

**111 After paragraph 2.84(3)(aa)**

Insert:

- (ab) a primary sponsored person failing to commence employment by the time agreed between the person and the primary sponsored person;

**112 Subparagraph 2.84(3)(b)(i)**

After “paragraphs 2.59(d) and (e)”, insert “(as in force before 18 March 2018)”.

**113 Paragraph 2.84(3)(c)**

After “paragraphs 2.68(e) and (f)”, insert “(as in force before 18 March 2018)”.

**114 Subregulation 2.86(2)**

Repeal the subregulation, substitute:

- (2) If the primary sponsored person holds a Subclass 457 (Temporary Work (Skilled)) visa or a Subclass 482 (Temporary Skill Shortage) visa, or the last substantive visa held by the primary sponsored person was a Subclass 457 (Temporary Work (Skilled)) visa or a Subclass 482 (Temporary Skill Shortage) visa, the person must ensure that the primary sponsored person:
  - (a) works in the nominated occupation; and
  - (b) does not work in an occupation unless both of the following apply:
    - (i) the occupation was nominated by the person in relation to the primary sponsored person under subsection 140GB(1) of the Act;
    - (ii) the nomination was approved by the Minister under subsection 140GB(2) of the Act.

**115 Subregulation 2.86(2A)**

Omit “Subject to subregulation (2B), if”, substitute “If”.

**116 Paragraphs 2.86(2A)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) the primary sponsored person holds a Subclass 457 (Temporary Work (Skilled)) visa or a Subclass 482 (Temporary Skill Shortage) visa, or the last substantive visa held by the primary sponsored person was a Subclass 457 (Temporary Work (Skilled)) visa or a Subclass 482 (Temporary Skill Shortage) visa; and
- (b) the nominated occupation is not an occupation specified by the Minister in an instrument made under subregulation 2.72(13);

**117 Subregulation 2.86(2AA)**

Omit “in writing for sub-subparagraph 2.72(10)(e)(iii)(B)”, substitute “made under subregulation 2.72(13)”.

**118 Subregulations 2.86(2AB) and (2B)**

Repeal the subregulations, substitute:

- (2AB) The person’s obligation in subregulation (2AA) applies only in relation to the following:
- (a) a primary sponsored person who holds a Subclass 457 (Temporary Work (Skilled)) visa on the basis of satisfying the criteria in subclause 457.223(4) of Schedule 2 (as in force before 18 March 2018);
  - (b) a primary sponsored person whose last substantive visa was a Subclass 457 (Temporary Work (Skilled)) visa held on the basis of satisfying the criteria in subclause 457.223(4) of Schedule 2 (as in force before 18 March 2018);
  - (c) a primary sponsored person who holds a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream or Medium-term stream;
  - (d) a primary sponsored person whose last substantive visa was a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream or Medium-term stream.

**119 Subregulation 2.86(2C)**

After “Subclass 457 (Temporary Work (Skilled)) visa”, insert “or a Subclass 482 (Temporary Skill Shortage) visa”.

**120 Subparagraph 2.86(3)(a)(ii)**

Omit “person; or”, substitute “person; and”.

**121 Subparagraph 2.86(3)(a)(iii)**

Repeal the subparagraph.

**122 Subparagraph 2.86(3)(b)(ii)**

Repeal the subparagraph, substitute:

- (ii) the day on which the primary sponsored person is granted a further substantive visa that is in effect and is:

- (A) if the last substantive visa held by the primary sponsored person was a Subclass 457 (Temporary Work (Skilled)) visa—a visa that is not a Subclass 457 (Temporary Work (Skilled)) visa or a Subclass 482 (Temporary Skill Shortage) visa; or
- (B) in any other case—a visa of a different subclass to the last substantive visa held by the primary sponsored person; and

**123 After subparagraphs 2.87(1A)(a)(iii) and (b)(iii) and (1B)(a)(iii) and (b)(iii)**

Insert:

- (iiia) associated with a nomination under subsection 140GB(1) of the Act (including a fee mentioned in subregulation 2.73(5) or (7) or 2.73A(3)); or

**124 Regulation 2.94B**

Repeal the regulation.

**125 After paragraph 4.02(1A)(k)**

Insert:

- (ka) a Subclass 482 (Temporary Skill Shortage) visa;

**126 Paragraph 4.02(4)(l)**

After “Subclass 457 (Temporary Work (Skilled)) visa”, insert “or a Subclass 482 (Temporary Skill Shortage) visa”.

**127 Subregulations 4.02(4A) to (4C)**

Repeal the subregulations, substitute:

(4A) For the purposes of paragraph (4)(a), the decision is not a Part 5-reviewable decision if:

- (a) the decision relates to a person whose application for approval as an approved sponsor in relation to the standard business sponsor class has been refused; and
- (b) in making the decision, the Minister did not consider the criterion at paragraph 2.59(f).

Note: The Minister is required to consider the criterion at paragraph 2.59(f) only if the applicant is lawfully operating a business in Australia.

(4B) For the purposes of paragraphs (4)(d) and (h), the decision is not a Part 5-reviewable decision if:

- (a) the decision relates to a person who is:
  - (i) a standard business sponsor; or
  - (ii) a former standard business sponsor; and
- (b) either:
  - (i) in making the decision under subsection 140E(1) of the Act (whether to approve the person as a standard business sponsor), the Minister did not consider the criterion at paragraph 2.59(f); or
  - (ii) if a term of the approval of the person as a standard business sponsor has been varied—in making the decision under subsection 140GA(2)

of the Act (whether to vary the terms of approval), the Minister did not consider the criterion at paragraph 2.68(g) (as in force before 18 March 2018).

Note: The Minister is required to consider the criterion at paragraph 2.59(f) or 2.68(g) only if the applicant is lawfully operating a business in Australia.

## **128 Paragraph 4.02(5)(d)**

Omit “employer”, substitute “person”.

## **129 Regulation 5.19**

Repeal the regulation, substitute:

### **5.19 Approval of nominated positions—Subclass 186 (Employer Nomination Scheme) visa and Subclass 187 (Regional Sponsored Migration Scheme) visa**

#### *Application*

- (1) A person (the *nominator*) (including a partnership or unincorporated association) may apply to the Minister for approval of the nomination of a position in Australia.
- (2) The application must:
  - (a) be made in accordance with approved form 1395 (Internet); and
  - (b) identify the position; and
  - (c) identify a person (the *identified person*) in relation to the position; and
  - (d) identify an occupation in relation to the position; and
  - (e) identify the subclass and stream to which the nomination relates, which must be one of the following:
    - (i) a Subclass 186 (Employer Nomination Scheme) visa in the Temporary Residence Transition stream;
    - (ii) a Subclass 187 (Regional Sponsored Migration Scheme) visa in the Temporary Residence Transition stream;
    - (iii) a Subclass 186 (Employer Nomination Scheme) visa in the Direct Entry stream;
    - (iv) Subclass 187 (Regional Sponsored Migration Scheme) visa in the Direct Entry stream;
    - (v) a Subclass 186 (Employer Nomination Scheme) visa in the Labour Agreement stream; and
  - (f) be accompanied by the fee mentioned in regulation 5.37; and
  - (g) include a written certification by the nominator stating whether or not the nominator has engaged in conduct, in relation to the nomination, that constitutes a contravention of subsection 245AR(1) of the Act.

#### *Approval of nomination*

- (3) The Minister must, in writing:
  - (a) approve the nomination if the Minister is satisfied that the requirements set out in subregulation (4) are met; or
  - (b) otherwise—refuse to approve the nomination.

*Requirements for approval—general*

- (4) The requirements to be met for the nomination to be approved are as follows:
- (a) the application is made in accordance with subregulation (2);
  - (b) either:
    - (i) there is no adverse information known to Immigration about the nominator or a person associated with the nominator; or
    - (ii) it is reasonable to disregard any adverse information known to Immigration about the nominator or a person associated with the nominator;
  - (c) if it is mandatory, in the State or Territory in which the position is located, for a person to:
    - (i) hold a licence of a particular kind; or
    - (ii) hold registration of a particular kind; or
    - (iii) be a member (or a member of a particular kind) of a particular professional body;  
to perform tasks of the kind to be performed in the occupation, the identified person is, or is eligible to become, the holder of the licence, the holder of the registration, or a member of the body, at the time of application;
  - (d) the nominator has a satisfactory record of compliance with the laws of the Commonwealth, and of each State or Territory in which the nominator operates a business and employs employees in the business, relating to employment;
  - (e) if the nomination relates to a visa in a Temporary Residence Transition stream—the requirements set out in subregulation (5) are met;
  - (f) if the nomination relates to a visa in a Direct Entry stream—the requirements set out in subregulation (9) are met;
  - (g) if the nomination relates to a visa in a Labour Agreement stream—the requirements set out in subregulation (14) are met.

*Temporary Residence Transition stream—additional requirements for approval*

- (5) If the nomination relates to a visa in a Temporary Residence Transition stream, the following requirements must also be met:
- (a) at the time the application is made, the identified person holds:
    - (i) a Subclass 457 (Temporary Work (Skilled)) visa granted on the basis that the person satisfied the criterion in subclause 457.223(4) of Schedule 2 as in force before 18 March 2018; or
    - (ii) a Subclass 482 (Temporary Skill Shortage) visa in the Medium-term stream; or
    - (iii) for a person specified in a legislative instrument made by the Minister for the purposes of this subparagraph—a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream; or
    - (iv) if the last substantive visa held by the identified person was a visa mentioned in subparagraph (i), (ii) or (iii)—a bridging visa granted on the basis that the person is an applicant for a visa mentioned in subparagraph (i) or (ii); or
    - (v) if the last substantive visa held by the identified person was a visa mentioned in subparagraph (i), (ii) or (iii)—for a person specified in a



- legislative instrument made under subparagraph (iii), a bridging visa granted on the basis that the person is an applicant for a visa mentioned in subparagraph (iii); or
- (vi) if the last substantive visa held by the identified person was a visa mentioned in subparagraph (i), (ii) or (iii)—a bridging visa granted on the basis that the person is an applicant for a Subclass 186 (Employer Nomination Scheme) visa or a Subclass 187 (Regional Sponsored Migration Scheme) visa;
- (b) the occupation:
- (i) is listed in ANZSCO; and
- (ii) has the same 4-digit ANZSCO occupation unit group code as the occupation in relation to which the identified person's most recently held Subclass 457 (Temporary Work (Skilled)) visa or Subclass 482 (Temporary Skill Shortage) visa was granted;
- (c) unless a legislative instrument made under subregulation (8) exempts the identified person from the operation of this paragraph—the occupation must:
- (i) be an occupation specified in an instrument made under subregulation (8) and in force at the time the application is made; and
- (ii) apply to the identified person in accordance with an instrument made under that subregulation;
- (d) either:
- (i) there is no information known to Immigration that indicates that the identified person is not genuinely performing the tasks of the occupation as specified in ANZSCO; or
- (ii) it is reasonable to disregard any such information;
- (e) during the period of 4 years immediately before the application is made, the identified person held one or more of the following for a total period of at least 3 years:
- (i) a Subclass 457 (Temporary Work (Skilled)) visa granted on the basis that the person satisfied the criterion in subclause 457.223(4) of Schedule 2 as in force before 18 March 2018;
- (ii) a Subclass 482 (Temporary Skill Shortage) visa in the Medium-term stream;
- (iii) for a person specified in a legislative instrument made under subparagraph (a)(iii)—a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream;
- (f) unless paragraph (g) applies—during the period of 4 years immediately before the application is made, the identified person was employed in the position in relation to which the visa, or visas, mentioned in paragraph (e) were granted:
- (i) for a total period of at least 3 years (not including any periods of unpaid leave); and
- (ii) on a full-time basis, with the employment being undertaken in Australia;
- (g) if the visa, or visas, mentioned in paragraph (e) were granted in relation to an occupation specified in an instrument made under subregulation 2.72(13)—during the period of 4 years immediately before the application is made, the identified person was employed in the

- occupation for a total period of at least 3 years (not including any periods of unpaid leave);
- (h) the nominator:
    - (i) was the standard business sponsor who last identified the identified person in a nomination approved under section 140GB of the Act; and
    - (ii) is actively and lawfully operating a business in Australia;
  - (i) unless it is reasonable to disregard subparagraphs (i) and (ii)—the nominator:
    - (i) fulfilled any commitments the nominator made relating to meeting the nominator's training requirements during the period of the nominator's most recent approval as a standard business sponsor; and
    - (ii) complied with the applicable obligations under Division 2.19 relating to the nominator's training requirements during the period of the nominator's most recent approval as a standard business sponsor;
  - (j) the application identifies a need for the identified person to be employed in the position, under the direct control of the nominator;
  - (k) there is a genuine need for the identified person to be employed in the position, under the direct control of the nominator;
  - (l) the identified person will be employed on a full-time basis in the position for at least 2 years;
  - (m) the terms and conditions of the identified person's employment will not include an express exclusion of the possibility of extending the period of employment;
  - (n) the nominator's business has the capacity to employ the identified person for at least 2 years and to pay the person at least the annual market salary rate for the occupation each year;
  - (o) the requirements set out in subregulation 2.72(15) are met, applying subregulations 2.72(15) and (16) as if:
    - (i) paragraph 2.72(15)(a) did not apply; and
    - (ii) references to the nominee were references to the identified person; and
    - (iii) references to the person were references to the nominator;
  - (p) either:
    - (i) there is no information known to Immigration that indicates that the employment conditions (other than in relation to earnings) that will apply to the identified person are less favourable than those that apply, or would apply, to an Australian citizen or an Australian permanent resident performing equivalent work at the same location; or
    - (ii) it is reasonable to disregard any such information;
  - (q) the nominator has provided the information required by the Minister for the purposes of paragraph (k) to (n).

*Minister may vary certain Temporary Residence Transition stream requirements*

- (6) The Minister may, by legislative instrument, determine different periods of time for the purposes of paragraphs (5)(e), (f) and (g) for persons specified in the instrument.

- (7) Paragraphs (5)(j), (k) and (l) do not apply in relation to occupations specified in an instrument made under subregulation 2.72(13).
- (8) The Minister may, by legislative instrument, specify:
- (a) occupations for the purposes of paragraph (5)(c); and
  - (b) persons who are exempt from the operation of that paragraph; and
  - (c) for each occupation, any matters for the purposes of determining whether the occupation applies to an identified person, including matters relating to any of the following:
    - (i) the nominator;
    - (ii) the identified person;
    - (iii) the occupation;
    - (iv) the position in which the identified person is to work;
    - (v) the circumstances in which the occupation is undertaken;
    - (vi) the circumstances in which the person is to be employed in the position.

*Direct Entry stream—additional requirements for approval*

- (9) If the nomination relates to a visa in a Direct Entry stream, the following requirements must also be met:
- (a) the nominator is actively and lawfully operating a business in Australia;
  - (b) if the nominator's business activities include activities related to the hiring of labour to other unrelated businesses—the position is within the business activities of the nominator and not for hire to other unrelated businesses;
  - (c) the application identifies a need for the identified person to be employed in the position, under the direct control of the nominator;
  - (d) there is a genuine need for the identified person to be employed in the position, under the direct control of the nominator;
  - (e) the identified person will be employed on a full-time basis in the position for at least 2 years;
  - (f) the terms and conditions of the identified person's employment will not include an express exclusion of the possibility of extending the period of employment;
  - (g) the nominator's business has the capacity to employ the identified person for at least 2 years and to pay the person at least the annual market salary rate for the occupation each year;
  - (h) the requirements set out in subregulation 2.72(15) are met, applying subregulations 2.72(15) and (16) as if:
    - (i) paragraph 2.72(15)(a) did not apply; and
    - (ii) references to the nominee were references to the identified person; and
    - (iii) references to the person were references to the nominator;
  - (i) either:
    - (i) there is no information known to Immigration that indicates that the employment conditions (other than in relation to earnings) that will apply to the identified person are less favourable than those that apply, or would apply, to an Australian citizen or an Australian permanent resident performing equivalent work at the same location;
    - or

- (ii) it is reasonable to disregard any such information;
- (j) the requirements set out in subregulation (10) or (12) are met.

*Occupations for the Subclass 186 (Employer Nomination Scheme) visa in the Direct Entry stream*

- (10) The requirements of this subregulation are as follows:
  - (a) the tasks to be performed in the position will be performed in Australia and correspond to the tasks of an occupation specified in a legislative instrument:
    - (i) made under subregulation (11); and
    - (ii) in force at the time the application is made;
  - (b) the occupation applies to the identified person in accordance with that instrument;
  - (c) either:
    - (i) the nominator's business has operated for at least 12 months, and the nominator fulfilled the requirements for the training of Australian citizens and Australian permanent residents that are specified in a legislative instrument made by the Minister for the purposes of this subparagraph; or
    - (ii) the nominator's business has operated for less than 12 months, and the nominator has an auditable plan for fulfilling the requirements specified in the instrument mentioned in subparagraph (i).
- (11) The Minister may, by legislative instrument, specify occupations for the purposes of subregulation (10) and, for each occupation, specify any matters for the purposes of determining whether the occupation applies to an identified person, including matters relating to any of the following:
  - (a) the nominator;
  - (b) the identified person;
  - (c) the occupation;
  - (d) the position in which the identified person is to work;
  - (e) the circumstances in which the occupation is undertaken;
  - (f) the circumstances in which the person is to be employed in the position.

*Occupations for the Subclass 187 (Regional Sponsored Migration Scheme) visa in the Direct Entry stream*

- (12) The requirements of this subregulation are as follows:
  - (a) the position is located at a place in regional Australia;
  - (b) the business operated by the nominator is located at that place;
  - (c) the position cannot be filled by an Australian citizen or an Australian permanent resident who is living in, or would move to, the local area concerned;
  - (d) the tasks to be performed in the position correspond to the tasks of an occupation specified in a legislative instrument:
    - (i) made under subregulation (13); and
    - (ii) as in force at the time the application is made;
  - (e) the occupation applies to the identified person in accordance with that instrument;

- (f) the Minister has been advised by a body that meets the requirements set out in paragraph (g) of this subregulation about matters relating to the following:
    - (i) whether the identified person would be paid at least the annual market salary rate for the occupation;
    - (ii) whether there is a genuine need for the identified person to be employed in the position, under the direct control of the nominator;
    - (iii) whether the position can be filled by an Australian citizen or an Australian permanent resident who is living in, or would move to, the local area concerned;
  - (g) the body must:
    - (i) be specified in a legislative instrument made by the Minister for the purposes of this paragraph; and
    - (ii) be located in the State or Territory in which the position is located; and
    - (iii) have responsibility for the local area in which the position is located.
- (13) The Minister may, by legislative instrument, specify occupations for the purposes of subregulation (12) and, for each occupation, specify any matters for the purposes of determining whether the occupation applies to an identified person, including matters relating to any of the following:
- (a) the nominator;
  - (b) the identified person;
  - (c) the occupation;
  - (d) the position in which the identified person is to work;
  - (e) the circumstances in which the occupation is undertaken;
  - (f) the circumstances in which the person is to be employed in the position.

*Labour Agreement stream—additional requirements for approval*

- (14) If the nomination relates to a visa in a Labour Agreement stream, the following requirements must also be met:
- (a) the nominator is a party to a labour agreement;
  - (b) the labour agreement:
    - (i) is in effect; and
    - (ii) specifies the occupation as one in relation to which a position may be nominated for the purposes of this regulation;
  - (c) if the labour agreement specifies requirements that must be met by a party to the labour agreement—the requirements of the labour agreement have been met;
  - (d) the number of nominations approved by the Minister under this regulation on application by the nominator is less than the number of approved nominations permitted under the labour agreement for the year.

*Minister must give notice of approval or refusal*

- (15) As soon as practicable after deciding whether to approve, or refuse to approve, the nomination, the Minister must give the nominator:
- (a) a copy of the written approval or refusal; and
  - (b) if the Minister refuses to approve the nomination:

- (i) a written statement of the reasons why the nomination was refused;  
and
- (ii) a written statement that the decision is a Part 5-reviewable decision.

Note: Division 4.1 deals with review of decisions. Paragraph 4.02(4)(e) provides that a decision under regulation 5.19 to refuse an application is a Part 5-reviewable decision.

*Meaning of regional Australia*

(16) In this regulation:

*regional Australia* means a part of Australia specified in legislative instrument made by the Minister for the purposes of this definition.

**130 After paragraph 5.19M(f)**

Insert:

- (fa) a Subclass 482 (Temporary Skill Shortage) visa;

**131 Subregulation 5.37(1) (note)**

Omit “5.19(2)(b)”, substitute “5.19(2)(f)”.

**132 Subregulations 5.37(2) to (4)**

Repeal the subregulations, substitute:

- (2) If the application relates to a visa in a Temporary Residence Transition stream:
  - (a) if the position is located in regional Australia—no fee is payable; or
  - (b) if the position is not located in regional Australia—the fee is \$540.
- (3) If the application relates to a visa in a Direct Entry stream:
  - (a) if the application seeks to meet the requirements set out in subregulation 5.19(10) (Employer Nomination Scheme)—the fee is \$540;  
or
  - (b) if the application seeks to meet the requirements set out in subregulation 5.19(12) (Regional Sponsored Migration Scheme)—no fee is payable.
- (4) If the application relates to a visa in a Labour Agreement stream:
  - (a) if the position is located in regional Australia—no fee is payable; or
  - (b) if the position is not located in regional Australia—the fee is \$540.

**133 Paragraphs 1114B(3)(d) and 1114C(3)(d) of Schedule 1**

Omit all the words after “a position”, substitute “nominated under regulation 5.19”.

**134 Item 1223A of Schedule 1**

Repeal the item.

**135 At the end of Part 2 of Schedule 1**

Add:

## 1240 Temporary Skill Shortage (Class GK)

- (1) Form: The approved form specified by the Minister in a legislative instrument made for the purposes of this item under subregulation 2.07(5).
- (2) Visa application charge:
- (a) first instalment (payable at the time the application is made):
- (i) for:
- (A) an applicant seeking to satisfy the criteria for the grant of a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream; or
- (B) an applicant whose application is combined with an application made by a person mentioned in sub-subparagraph (A); or
- (C) an applicant seeking to satisfy the secondary criteria for the grant of a Subclass 482 (Temporary Skill Shortage) visa who claims to be a member of the family unit of a person who holds a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream:

First instalment		
Item	Component	Amount
1	Base application charge	\$1,150
2	Additional applicant charge for an applicant who is at least 18	\$1,150
3	Additional applicant charge for an applicant who is less than 18	\$290

- (ii) for any other applicant:

First instalment		
Item	Component	Amount
1	Base application charge	\$2,400
2	Additional applicant charge for an applicant who is at least 18	\$2,400
3	Additional applicant charge for an applicant who is less than 18	\$600

- (b) the second instalment (payable before grant of visa) is nil.

Note 1: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Note 2: Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

- (3) Other:
- (a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for the purposes of this item under subregulation 2.07(5).
- (b) If:

- (i) the application is for a Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream; and
  - (ii) the applicant has held more than one Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream; and
  - (iii) the applicant was in Australia when the application for the most recent Subclass 482 (Temporary Skill Shortage) visa in the Short-term stream held by the applicant was made; and
  - (iv) it would not be inconsistent with any international trade obligation of Australia to require the applicant to be outside Australia;  
the applicant must be outside Australia.
- (c) Any other applicant for a Subclass 482 (Temporary Skill Shortage) visa may be in or outside Australia, but not in immigration clearance.
- (d) An applicant in Australia must hold:
- (i) a substantive visa; or
  - (ii) a Subclass 010 (Bridging A) visa; or
  - (iii) a Subclass 020 (Bridging B) visa; or
  - (iv) a Subclass 030 (Bridging C) visa.
- (e) An application by an applicant who:
- (i) seeks to satisfy the secondary criteria for the grant of a Subclass 482 (Temporary Skill Shortage) visa; and
  - (ii) claims to be a member of the family unit of a person who seeks to satisfy the primary criteria for the grant of a Subclass 482 (Temporary Skill Shortage) visa (the **primary applicant**);
- may be made at the same time and place as, and combined with, an application by the primary applicant or any other applicant who claims to be a member of the family unit of the primary applicant.
- (f) If the applicant seeks to satisfy the primary criteria for the grant of a Subclass 482 (Temporary Skill Shortage) visa:
- (i) a person must have nominated a proposed occupation (the **nominated occupation**) in relation to the applicant for a Subclass 482 (Temporary Skill Shortage) visa in a stream; and
  - (ii) the application must be for a Subclass 482 (Temporary Skill Shortage) visa in the stream for which the nominated occupation was nominated; and
  - (iii) the application must identify the nomination; and
  - (iv) one of the following must apply:
    - (A) the nomination has been approved under section 140GB of the Act and the approval of the nomination has not ceased under regulation 2.75;
    - (B) a decision in respect of the nomination has not been made under section 140GB of the Act; and
  - (v) the person who made the nomination must not be the subject of a bar under section 140M of the Act.
- (g) If:
- (i) the application is by a person seeking to satisfy the primary criteria for the grant of a Subclass 482 (Temporary Skill Shortage) visa; and
  - (ii) the nominated occupation in relation to the applicant is specified in a legislative instrument made by the Minister for the purposes of this paragraph; and



- (iii) the applicant is in a class of persons specified in the legislative instrument for the occupation;
- then:
- (iv) an assessing authority specified in the legislative instrument as the assessing authority for the occupation must have assessed the applicant's skills as suitable for the occupation, on the basis of a type of assessment specified in the legislative instrument and within the period specified in the legislative instrument; or
  - (v) both of the following must apply:
    - (A) the applicant has made an arrangement with the assessing authority specified in the legislative instrument as the assessing authority for the occupation to assess the applicant's skills, on the basis of a type of assessment specified in the legislative instrument;
    - (B) the assessing authority has not completed the assessment.
  - (h) Paragraph (g) does not limit subclause 482.212(3) or (4) of Schedule 2.

- (4) Subclasses:
  - 482 (Temporary Skill Shortage)

### **136 Sub-subparagraph 010.211(4)(a)(i)(B) of Schedule 2**

Omit "or 8547", substitute ", 8547 or 8607".

### **137 After subclause 010.611(3C) of Schedule 2**

Insert:

- (3D) In the case of a visa granted to a person who meets the requirements of subclause 010.211(2) or (3) on the basis of:
  - (a) making a valid application for a Subclass 482 (Temporary Skill Shortage) visa; and
  - (b) holding a Subclass 457 (Temporary Work (Skilled)) visa or a Subclass 482 (Temporary Skill Shortage) visa (the *first visa*) at the time of making the application mentioned in paragraph (a);the following conditions:
  - (c) if the first visa was subject to condition 8107—condition 8107;
  - (d) if the first visa was subject to condition 8501—condition 8501;
  - (e) if the first visa was subject to condition 8607—condition 8607.

### **138 Subclause 010.611(4) of Schedule 2**

Omit "and 8549", substitute ", 8549 and 8607".

### **139 After subclause 020.611(4A) of Schedule 2**

Insert:

- (4B) In the case of a visa granted to a person on the basis of:
  - (a) making a valid application for a Subclass 482 (Temporary Skill Shortage) visa; and
  - (b) holding a Subclass 457 (Temporary Work (Skilled)) visa or a Subclass 482 (Temporary Skill Shortage) visa (the *first visa*) at the time of making the application mentioned in paragraph (a);

the following conditions:

- (c) if the first visa was subject to condition 8107—condition 8107;
- (d) if the first visa was subject to condition 8501—condition 8501;
- (e) if the first visa was subject to condition 8607—condition 8607.

**140 Subclause 020.611(5) of Schedule 2**

Omit “and 8549”, substitute “, 8549 and 8607”.

**141 Division 186.2 of Schedule 2 (note to the heading)**

Omit “Agreement stream”, substitute “Labour Agreement stream”.

**142 Paragraph 186.221(a) of Schedule 2**

Omit “50”, substitute “45”.

**143 Paragraphs 186.223(1)(a) and (b) of Schedule 2**

Repeal the paragraphs, substitute:

- (a) nominated in an application for approval that:
  - (i) identifies the applicant in relation to the position; and
  - (ii) is made in relation to a visa in a Temporary Residence Transition stream; and

**144 At the end of Subdivision 186.22 of Schedule 2**

Add:

**186.225**

If the Minister requires the applicant to demonstrate that he or she has the skills that are necessary to perform the tasks of the occupation to which the position relates, the applicant demonstrates that he or she has those skills in the manner specified by the Minister.

**145 Paragraphs 186.233(1)(a) and (aa) of Schedule 2**

Repeal the paragraphs, substitute:

- (a) nominated in an application for approval that:
  - (i) identifies the applicant in relation to the position; and
  - (ii) is made in relation to a visa in a Direct Entry stream; and
  - (iii) seeks to meet the requirements of subregulation 5.19(10); and

**146 Subdivision 186.24 of Schedule 2 (heading)**

Omit “Agreement stream”, substitute “Labour Agreement stream”.

**147 Subdivision 186.24 of Schedule 2 (note to the heading)**

Omit “Agreement stream”, substitute “Labour Agreement stream”.

**148 Paragraphs 186.241(a) and (b) of Schedule 2**

Omit “50”, substitute “45”.

**149 Paragraph 186.242(1)(a) of Schedule 2**

Repeal the paragraph, substitute:

- (a) nominated in an application for approval that:
  - (i) identifies the applicant in relation to the position; and
  - (ii) is made in relation to a visa in a Labour Agreement stream; and

**150 Subclause 186.242(2) of Schedule 2**

Repeal the subclause.

**151 Clause 186.243 of Schedule 2**

Before “The applicant”, insert “(1)”.

**152 At the end of clause 186.243 of Schedule 2**

Add:

- (2) The applicant has English language skills that are suitable to perform the occupation to which the position relates.
- (3) Either:
  - (a) the applicant has worked in the occupation to which the position relates or a related field for at least 3 years; or
  - (b) the Minister considers that it is reasonable in the circumstances to disregard paragraph (a).
- (4) If the Minister requires the applicant to demonstrate that he or she has the skills that are necessary to perform the tasks of the occupation to which the position relates, the applicant demonstrates that he or she has those skills in the manner specified by the Minister.

**153 Clause 187.111 of Schedule 2 (definition of *regional Australia*)**

Omit “5.19(7)”, substitute “5.19(16)”.

**154 Division 187.2 of Schedule 2 (note to the heading)**

Omit “If an applicant applies for a Subclass 187 visa in the Agreement stream, the criteria in Subdivisions 187.21 and 187.24 are the primary criteria.”.

**155 Paragraph 187.221(a) of Schedule 2**

Omit “50”, substitute “45”.

**156 Paragraphs 187.223(1)(a) and (b) of Schedule 2**

Repeal the paragraphs, substitute:

- (a) nominated in an application for approval that:
  - (i) identifies the applicant in relation to the position; and
  - (ii) is made in relation to a visa in the Temporary Residence Transition stream; and

**157 At the end of Subdivision 187.22 of Schedule 2**

Add:

### 187.225

If the Minister requires the applicant to demonstrate that he or she has the skills that are necessary to perform the tasks of the occupation to which the position relates, the applicant demonstrates that he or she has those skills in the manner specified by the Minister.

### 158 Paragraphs 187.233(1)(a) and (aa) of Schedule 2

Repeal the paragraphs, substitute:

- (a) nominated in an application for approval that:
  - (i) identifies the applicant in relation to the position; and
  - (ii) is made in relation to a visa in a Direct Entry stream; and
  - (iii) seeks to meet the requirements of subregulation 5.19(12); and

### 159 Subparagraph 187.234(b)(vi) of Schedule 2

Omit “or”.

### 160 At the end of paragraph 187.234(b) of Schedule 2

Add:

- (vii) the applicant has been employed in the occupation for at least 3 years on a full-time basis and at the level of skill required for the occupation; or

### 161 Paragraph 187.234(c) of Schedule 2

Omit “both”, substitute “all of the following requirements were met”.

### 162 Subparagraph 187.234(c)(i) of Schedule 2

Omit “and”.

### 163 At the end of paragraph 187.234(c) of Schedule 2

Add:

- ; (iii) the applicant has been employed in the occupation for at least 3 years on a full-time basis and at the level of skill required for the occupation.

### 164 Subdivision 187.24 of Schedule 2

Repeal the Subdivision.

### 165 Clause 408.112 of Schedule 2

Repeal the clause, substitute:

### 408.112

- (1) In this Part, *adverse supporter information* about a person or organisation is any adverse information relevant to the suitability of the person or organisation to support an application for a Subclass 408 visa (otherwise than as an approved sponsor of the applicant).
- (2) Without limiting subclause (1), *adverse supporter information* about a person or organisation includes information that the person or organisation:

- (a) has contravened a law of the Commonwealth, a State or a Territory; or
  - (b) is under investigation, subject to disciplinary action or subject to legal proceedings in relation to a contravention of such a law; or
  - (c) has been the subject of administrative action (including being issued with a warning) for a possible contravention of such a law by a Department or regulatory authority that administers or enforces the law; or
  - (d) has become insolvent (within the meaning of section 95A of the *Corporations Act 2001*); or
  - (e) has given, or caused to be given, to the Minister, an officer, the Tribunal or an assessing authority a bogus document, or information that is false or misleading in a material particular.
- (3) Nothing in this clause affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).
- (4) In this clause:

*information that is false or misleading in a material particular* means information that is:

- (a) false or misleading at the time it is given; and
- (b) relevant to any of the matters the Minister may consider when making a decision under the Act or these Regulations, whether or not the decision is made because of that information.

Note: For the definition of *bogus document*, see subsection 5(1) of the Act.

## **166 Subparagraph 408.224(b)(ii) of Schedule 2**

After “Subclass 457 (Temporary Work (Skilled)) visa”, insert “or a Subclass 482 (Temporary Skill Shortage) visa”.

## **167 Part 457 of Schedule 2**

Repeal the Part.

## **168 After Part 476 of Schedule 2**

Insert:

# **Subclass 482—Temporary Skill Shortage**

## **482.1—Interpretation**

### **482.111**

In this Part:

*nominated occupation*, in relation to an applicant, means the occupation nominated by the nomination identified in the application.

## **482.2—Primary criteria**

Note: The primary criteria for the grant of a Subclass 482 visa include criteria set out in streams.

An applicant must satisfy the criteria in Subdivision 482.21 and also in one of Subdivisions 482.22 to 482.24.

The primary criteria must be satisfied by the applicant for a visa in a stream.

The other members of the applicant's family unit who are applicants for a visa of this subclass must satisfy the secondary criteria.

All criteria must be satisfied at the time a decision is made on the application.

### **482.21—Common criteria**

Note: These criteria are for all applicants seeking to satisfy the primary criteria for a Subclass 482 visa.

#### **482.211**

If the applicant is in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

#### **482.212**

- (1) Each of the following applies:
  - (a) the nomination identified in the application has been approved under section 140GB of the Act;
  - (b) the person who made the nomination was an approved sponsor at the time the nomination was approved;
  - (c) the approval of the nomination has not ceased under regulation 2.75.
- (2) Both of the following apply:
  - (a) the applicant's intention to perform the nominated occupation is genuine;
  - (b) the position associated with the nominated occupation is genuine.
- (3) The applicant has the skills, qualifications and employment background that the Minister considers necessary to perform the tasks of the nominated occupation.
- (4) If the Minister requires the applicant to demonstrate that he or she has the skills that are necessary to perform the tasks of the nominated occupation, the applicant demonstrates that he or she has those skills in the manner specified by the Minister.

#### **482.213**

Either:

- (a) the applicant has not, in the previous 3 years, engaged in conduct that constitutes a contravention of subsection 245AR(1), 245AS(1), 245AT(1) or 245AU(1) of the Act; or
- (b) both of the following apply:
  - (i) the applicant has engaged in such conduct in that period;
  - (ii) the Minister considers that it is reasonable to disregard the conduct.

#### **482.214**

The applicant has adequate arrangements for health insurance during the period of the applicant's intended stay in Australia.

#### **482.215**

If the nominated occupation is a medical practitioner, the applicant's qualifications are recognised by the relevant authority in Australia for the registration of medical practitioners as entitling the applicant to practise as a medical practitioner.

#### **482.216**

Either:

- (a) there is no adverse information known to Immigration about the person who nominated the nominated occupation or a person associated with that person; or
- (b) it is reasonable to disregard any adverse information known to Immigration about the person who nominated the nominated occupation or a person associated with that person.

#### **482.217**

- (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4010, 4013, 4014, 4020 and 4021.
- (2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.

#### **482.218**

The applicant satisfies special return criteria 5001, 5002 and 5010.

#### **482.22—Criteria for Short-term stream**

Note: These criteria are only for applicants being assessed against the primary criteria for a Subclass 482 visa in the Short-term stream.

#### **482.221**

The applicant has worked in the nominated occupation or a related field for at least 2 years.

#### **482.222**

The applicant is a genuine applicant for entry and stay as a short term visa holder because:

- (a) the applicant intends genuinely to stay in Australia temporarily, having regard to:
  - (i) the applicant's circumstances; and
  - (ii) the applicant's immigration history; and
  - (iii) any other relevant matter; and
- (b) the applicant intends to comply with any conditions to which the visa is subject, having regard to:
  - (i) the applicant's record of compliance with any condition to which a visa previously held by the applicant (if any) was subject; and

- (ii) the applicant's stated intention to comply with any conditions to which the visa may be subject; and
- (c) of any other relevant matter.

#### 482.223

- (1) The applicant satisfies any language test requirements specified for the applicant by the Minister in a legislative instrument made for the purposes of this subclause.
- (2) If the Minister requires the applicant to demonstrate his or her English language proficiency, the applicant demonstrates his or her English language proficiency in the manner specified by the Minister.

#### 482.224

Unless the nominated occupation is an occupation specified by the Minister in an instrument made under subregulation 2.72(13):

- (a) the applicant is employed to work in the nominated occupation; and
- (b) the applicant is employed to work in a position in:
  - (i) if the person who nominated the nominated occupation was an overseas business sponsor at the time the nomination was approved—the person's business; or
  - (ii) if the person who nominated the nominated occupation was not an overseas business sponsor at the time the nomination was approved—the person's business or a business of an associated entity of the person.

#### 482.23—Criteria for Medium-term stream

Note: These criteria are only for applicants being assessed against the primary criteria for a Subclass 482 visa in the Medium-term stream.

#### 482.231

The applicant has worked in the nominated occupation or a related field for at least 2 years.

#### 482.232

- (1) The applicant satisfies any language test requirements specified for the applicant by the Minister in a legislative instrument made for the purposes of this subclause.
- (2) If the Minister requires the applicant to demonstrate his or her English language proficiency, the applicant demonstrates his or her English language proficiency in the manner specified by the Minister.

#### 482.233

Unless the nominated occupation is an occupation specified by the Minister in an instrument made under subregulation 2.72(13):

- (a) the applicant is employed to work in the nominated occupation; and



- (b) the applicant is employed to work in a position in:
  - (i) if the person who nominated the nominated occupation was an overseas business sponsor at the time the nomination was approved—the person’s business; or
  - (ii) if the person who nominated the nominated occupation was not an overseas business sponsor at the time the nomination was approved—the person’s business or a business of an associated entity of the person.

### **482.24—Criteria for Labour Agreement stream**

Note: These criteria are only for applicants being assessed against the primary criteria for a Subclass 482 visa in the Labour Agreement stream.

#### **482.241**

The nominated occupation is the subject of a work agreement between the Commonwealth and the person who nominated the nominated occupation.

#### **482.242**

Either:

- (a) the applicant has worked in the nominated occupation or a related field for at least 2 years; or
- (b) the Minister considers that it is reasonable in the circumstances to disregard paragraph (a).

#### **482.243**

The applicant has English language skills that are suitable to perform the nominated occupation.

### **482.3—Secondary criteria**

#### **482.311**

If the applicant is in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

#### **482.312**

- (1) The applicant is a member of the family unit of a person (the **primary applicant**) who, having satisfied the primary criteria, is the holder of a Subclass 457 (Temporary Work (Skilled)) visa or a Subclass 482 (Temporary Skill Shortage) visa.
- (2) If the applicant is a member of the family unit of the primary applicant in the circumstances described in subregulation 1.12(5), the applicant:
  - (a) is a spouse or de facto partner of the primary applicant; or
  - (b) is a child or step-child of the primary applicant or of a spouse or de facto partner of the primary applicant (other than a child or step-child who is engaged to be married or has a spouse or de facto partner) and:

- (i) has not turned 23; or
- (ii) has turned 23 and is under paragraph 1.05A(1)(b) dependent on the primary applicant or on the spouse or de facto partner of the primary applicant; or
- (c) is a dependent child of a person who meets the conditions in paragraph (b).

#### 482.313

Either:

- (a) the applicant has not, in the previous 3 years, engaged in conduct that constitutes a contravention of subsection 245AR(1), 245AS(1), 245AT(1) or 245AU(1) of the Act; or
- (b) both of the following apply:
  - (i) the applicant has engaged in such conduct in that period;
  - (ii) the Minister considers that it is reasonable to disregard the conduct.

#### 482.314

The applicant has adequate arrangements for health insurance during the period of the applicant's intended stay in Australia.

#### 482.315

Either:

- (a) the applicant is listed on the nomination identified in the primary applicant's application; or
- (b) the approved sponsor or former approved sponsor who has the most recent approved nomination under section 140GB of the Act of an occupation in relation to the primary applicant for the visa mentioned in subclause 482.312(1) has agreed in writing that the applicant may be a secondary sponsored person in relation to the approved sponsor or former approved sponsor.

#### 482.316

Either:

- (a) there is no adverse information known to Immigration about the person who made the nomination identified in the primary applicant's application or a person associated with that person; or
- (b) it is reasonable to disregard any adverse information known to Immigration about the person who made the nomination identified in the primary applicant's application or a person associated with that person.

#### 482.317

- (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4010, 4013, 4014, 4020 and 4021.
- (2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.

- (3) If the applicant had not turned 18 at the time of application, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

#### **482.318**

The applicant satisfies special return criteria 5001, 5002 and 5010.

### **482.4—Circumstances applicable to grant**

#### **482.411**

The applicant may be in or outside Australia at the time of grant, but not in immigration clearance.

### **482.5—When visa is in effect**

#### **482.511**

A temporary visa permitting the holder:

- (a) in the case of a holder who satisfied the primary criteria for the grant of the visa—to remain in Australia for the period of stay proposed in the nomination identified in the application for the visa starting on the date of grant; and
- (b) in the case of a holder who satisfied the secondary criteria for the grant of the visa as a member of the family unit of a person who satisfied the primary criteria for the grant of a Subclass 457 (Temporary Work (Skilled)) visa—to remain in Australia for a period from the date of grant until the end of the period the person is permitted to remain in Australia under the Subclass 457 (Temporary Work (Skilled)) visa; and
- (c) in the case of a holder who satisfied the secondary criteria for the grant of the visa as a member of the family unit of a person who satisfied the primary criteria for the grant of a Subclass 482 (Temporary Skill Shortage) visa—to remain in Australia for a period from the date of grant until the end of the period the person is permitted to remain in Australia under the Subclass 482 (Temporary Skill Shortage) visa; and
- (d) in the case of a holder:
  - (i) to whom paragraph (b) or (c) would apply; and
  - (ii) whose visa was granted on the basis that he or she was a member of the family unit of the holder of a visa in the circumstances described in subparagraph 1.12(2)(b)(ii) or subregulation 1.12(5); and
  - (iii) who is not dependent on the visa holder or the spouse or de facto partner of the visa holder under paragraph 1.05A(1)(b); to remain in Australia until the earlier of:
    - (iv) the end of the period in paragraph (b) or (c) that would have applied to the holder; and
    - (v) the end of the day before the holder's 23rd birthday; and
- (e) in any case—to travel to, and enter, Australia on multiple occasions before the end of the relevant period.

## **482.6—Conditions**

### **482.611**

If the applicant satisfies the primary criteria for the grant of the visa, condition 8607 must be imposed.

### **482.612**

Condition 8501 must be imposed.

### **482.613**

Condition 8303 may be imposed.

### **169 Paragraph 773.213(4)(b) of Schedule 2**

Omit “visa”.

### **170 At the end of subclause 773.213(4) of Schedule 2**

Add:

; (c) Subclass 482 (Temporary Skill Shortage).

### **171 Clause 4006A of Schedule 4**

Repeal the clause.

### **172 Paragraph 4013(2)(d) of Schedule 4**

After “(kb),”, insert “(kc),”.

### **173 Subclause 8107(3) of Schedule 8**

After “subclause 457.223(2) or (4)”, insert “(as in force before 18 March 2018)”.

### **174 Paragraphs 8107(3A)(a) and (aa) of Schedule 8**

Repeal the paragraphs, substitute:

- (a) the holder’s occupation is specified in an instrument in writing for subparagraph 2.72(10)(e)(ii) or (iii) as in force before 18 March 2018; or

### **175 At the end of Schedule 8**

Add:

- 8607 (1) The holder must work only in the occupation (the *nominated occupation*) nominated by the nomination identified in the application for the most recent Subclass 482 (Temporary Skill Shortage) visa granted to the holder.
- (2) Unless subclause (3) applies, the holder must:
- (a) if the most recent Subclass 482 (Temporary Skill Shortage) visa granted to the holder is in the Labour Agreement stream—work only for the person who nominated the nominated occupation; or
- (b) if the most recent Subclass 482 (Temporary Skill Shortage) visa granted to the holder is in the Short-term stream or Medium-term stream and the person who nominated the nominated occupation was an overseas business

- sponsor at the time the nomination was approved—work only in a position in the person’s business; or
- (c) if the most recent Subclass 482 (Temporary Skill Shortage) visa granted to the holder is in the Short-term stream or Medium-term stream and the person who nominated the nominated occupation was not an overseas business sponsor at the time the nomination was approved—work only in a position in the person’s business or a business of an associated entity of the person.
- (3) This subclause applies if:
- (a) the nominated occupation is an occupation specified by the Minister in an instrument made under subregulation 2.72(13); or
- (b) the holder is continuing to work for a person for the purpose of fulfilling a requirement under a law relating to industrial relations and relating to the giving of notice.
- (4) Subject to subclause (6), the holder must commence work within:
- (a) if the holder was outside Australia when the visa was granted—90 days after the holder’s arrival in Australia; or
- (b) if the holder was in Australia when the visa was granted—90 days after the holder’s visa was granted.
- (5) If the holder ceases employment, the period during which the holder ceases employment must not exceed 60 consecutive days.
- (6) If the holder is required to hold a licence, registration or membership (an **authorisation**) that is mandatory to perform the nominated occupation in the location where the holder’s position is situated, the holder must:
- (a) hold the authorisation within:
- (i) if the holder was outside Australia when the visa was granted—90 days after the holder’s arrival in Australia; or
- (ii) if the holder was in Australia when the visa was granted—90 days after the holder’s visa was granted; and
- (b) continue to hold the authorisation while the holder is performing the occupation; and
- (c) notify Immigration, in writing, as soon as practicable if an application for the authorisation is refused; and
- (d) comply with each condition or requirement to which the authorisation is subject; and
- (e) not engage in work that is inconsistent with the authorisation, including any conditions or requirements to which the authorisation is subject; and
- (f) notify Immigration, in writing, as soon as practicable if the authorisation ceases to be in force or is revoked or cancelled.

### **176 Subparagraph 11(a)(iii) of Part 2 of Schedule 9**

Omit “and”.

### **177 At the end of paragraph 11(a) of Part 2 of Schedule 9**

Add:

- (iv) a Subclass 482 (Temporary Skill Shortage) visa; and

## 178 In the appropriate position in Schedule 13

Insert:

### **Part 67—Amendments made by the Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018**

#### **6701 Definitions**

In this Part:

*amending regulations* means the *Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018*.

*commencement day* means 18 March 2018.

#### **6702 Application provisions in relation to visa applications**

- (1) The amendments of regulations 1.12, 2.06AAB and 2.25A made by the amending regulations apply in relation to an application for a visa made on or after the commencement day.
- (2) Despite the repeal of the following provisions by the amending regulations, those provisions (including any instruments made under them), as in force immediately before the commencement of Schedule 1 to the amending regulations, continue to apply in relation to an application for a visa made before the commencement day:
  - (a) the definition of *base rate of pay* in regulation 2.57;
  - (b) item 1223A of Schedule 1;
  - (c) Part 457 of Schedule 2;
  - (d) clause 4006A of Schedule 4.
- (3) These Regulations and the provisions mentioned in subclause (2) (including any instruments made under them) apply on and after the commencement day as if section 8 of the *Migration (IMMI 17/057: English Language Requirements for Subclass 457 visas) Instrument 2017* specified “Total band score 35” as the minimum band score for the TOEFL iBT English test.

#### **6703 Application provision in relation to adverse information and adverse supporter information**

Despite the amendments of regulations 1.13A and 1.13B and clause 408.112 of Schedule 2 made by the amending regulations, those provisions, as in force immediately before the commencement of Schedule 1 to the amending regulations, continue to apply in relation to any of the following made before the commencement day:

- (a) an application for approval as a standard business sponsor or temporary activities sponsor;
- (b) a nomination under subsection 140GB(1) of the Act;
- (c) an application under regulation 5.19;

- (d) an application for a visa.

**6704 Application and transitional provisions in relation to amendments of Part 2A**

- (1) The amendments of Divisions 2.13 and 2.14 made by the amending regulations apply in relation to an application for approval as a standard business sponsor or temporary activities sponsor made on or after the commencement day.
- (2) Paragraphs 2.59(d), (e), (i) and (j) do not apply in relation to an application for approval as a standard business sponsor made, but not finally determined, before the commencement day.
- (3) The amendments of Division 2.15 made by the amending regulations apply in relation to an approval as a standard business sponsor, temporary activities sponsor or temporary work sponsor if the application for the approval was made on or after the commencement day.
- (4) The amendments of Division 2.16 made by the amending regulations apply in relation to an application made on or after the commencement day for a variation of a term of an approval.
- (5) Paragraphs 2.68(e), (f), (j) and (k) do not apply in relation to an application made, but not finally determined, before the commencement day for a variation of a term of an approval as a standard business sponsor.
- (6) Despite:
  - (a) the repeal of the definition of *base rate of pay* in subregulation 2.57(1); and
  - (b) the amendments of regulation 2.72;by the amending regulations, those provisions (including any instruments made under them), as in force immediately before the commencement of Schedule 1 to the amending regulations, continue to apply in relation to a nomination of an occupation made before the commencement day in relation to:
  - (c) a holder of a Subclass 457 (Temporary Work (Skilled)) visa; or
  - (d) an applicant or a proposed applicant for a Subclass 457 (Temporary Work (Skilled)) visa, if the applicant or proposed applicant applied for a Subclass 457 (Temporary Work (Skilled)) visa on the basis of the nomination before the commencement day.
- (7) Despite the amendments of regulation 2.73 made by the amending regulations, that regulation (including any instruments made under it), as in force immediately before the commencement of Schedule 1 to the amending regulations, continues to apply in relation to a nomination made before the commencement day of an occupation in relation to a holder of, or an applicant or a proposed applicant for, a Subclass 457 (Temporary Work (Skilled)) visa.
- (8) Regulation 2.73AA, as inserted by the amending regulations, applies in relation to a nomination made on or after the commencement day.
- (9) The Minister may refund the fee paid in relation to a nomination made before the commencement day of an occupation in relation to a proposed applicant for a Subclass 457 (Temporary Work (Skilled)) visa if:
  - (a) the nomination is approved under section 140GB of the Act before the commencement day; and

- (b) the proposed applicant did not apply for a Subclass 457 (Temporary Work (Skilled)) visa on the basis of the nomination before the commencement day; and
  - (c) the Minister:
    - (i) receives a written request for a refund from the person who paid the fee; or
    - (ii) considers it is reasonable in the circumstances to refund the amount to the person who paid the fee without receiving a written request for a refund.
- (10) The Minister may refund the fee paid in relation to a nomination made, but not finally determined, before the commencement day of an occupation in relation to a proposed applicant for a Subclass 457 (Temporary Work (Skilled)) visa if the proposed applicant did not apply for a Subclass 457 (Temporary Work (Skilled)) visa on the basis of the nomination before the commencement day.
- (11) A refund under subclause (9) or (10) must be paid to the person who paid the fee.
- (12) A refund under subclause (9) or (10) may be paid:
- (a) in Australian currency; or
  - (b) if the amount of the fee in respect of which the refund is being paid was paid in another currency, in that other currency.
- (13) The amendments of regulation 2.74 made by the amending regulations apply in relation to a nomination made on or after the commencement day.
- (14) Despite the amendments of regulation 2.75 made by the amending regulations, that regulation, as in force immediately before the commencement of Schedule 1 to the amending regulations, continues to apply in relation to a nomination made before the commencement day.
- (15) However, paragraph 2.75(2)(b) does not apply in relation to a nomination made before the commencement day if:
- (a) before the commencement day, the person identified in the nomination applied for a Subclass 457 (Temporary Work (Skilled)) visa on the basis of the nomination; and
  - (b) within 12 months after the day on which the nomination is approved, the person applies to the Tribunal for review of a decision to refuse to grant the visa.
- (16) Despite the repeal of subregulation 4.02(4C) by the amending regulations, that subregulation, as in force immediately before the commencement of Schedule 1 to the amending regulations, continues to apply, on and after the commencement day, in relation to a decision under subsection 140GA(2) of the Act not to vary a term specified in an approval, if the application for the variation was made before the commencement day, as if the reference in that subregulation to the criteria in paragraphs 2.68(e) and (f) were a reference to the criterion in paragraph 2.68(g).

### **6705 Application provisions in relation to nominations under regulation 5.19**

- (1) Despite the amendments of regulation 5.19 made by the amending regulations, that regulation (including any instruments made under it), as in force immediately before the commencement of Schedule 1 to the amending



regulations, continues to apply in relation to an application for approval of the nomination of a position made before the commencement day.

- (2) Despite the amendments of paragraph 1114B(3)(d) of Schedule 1 made by the amending regulations, that paragraph, as in force immediately before the commencement of Schedule 1 to the amending regulations, continues to apply in relation to a position nominated, before the commencement day, in accordance with a labour agreement that is in effect, by an employer that is a party to the labour agreement.
- (3) Despite the amendments of clauses 186.223, 186.233, 187.223 and 187.233 of Schedule 2 made by the amending regulations, those clauses, as in force immediately before the commencement of Schedule 1 to the amending regulations, continue to apply in relation to a position nominated in an application made under regulation 5.19 before the commencement day.
- (4) Despite the amendments of clause 186.242 of Schedule 2 made by the amending regulations, that clause, as in force immediately before the commencement of Schedule 1 to the amending regulations, continues to apply in relation to a position nominated, before the commencement day, in accordance with a labour agreement that is in effect, by an employer that is a party to the labour agreement.
- (5) Despite the amendments of clauses 186.221, 186.241, 186.243, 187.221 and 187.234 of Schedule 2 made by the amending regulations, those clauses, as in force immediately before the commencement of Schedule 1 to the amending regulations, continue to apply in relation to a visa application made before the commencement day.
- (6) Clauses 186.225 and 187.225 of Schedule 2, as inserted by the amending regulations, apply in relation to a visa application made on or after the commencement day.

## Part 2—Consequential amendments

### *Medical Indemnity Regulations 2003*

#### **179 Subparagraphs 12(1)(b)(i) and (ii)**

Repeal the subparagraphs, substitute:

- (i) the person was the holder of a temporary visa (within the meaning of the *Migration Act 1958*) that permitted the holder to work in Australia and that did not prohibit the holder from engaging in medical practice in Australia;