

EXPLANATORY STATEMENT

Issued by the Minister for Immigration, Citizenship and Multicultural Affairs

Migration Act 1958

Migration Amendment (Enhanced Integrity) Regulations 2018

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

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

In addition, regulations may be made pursuant to the provisions of the Migration Act listed in [Attachment A](#).

The *Migration Amendment (Enhanced Integrity) Regulations 2018* (the Regulations) will amend the *Migrations Regulations 1994* (the Migration Regulations) to support the integrity of the temporary and permanent employer sponsored skilled visa programs.

In particular, the Regulations amend the Migration Regulations to:

- specify the information that must be published by the Minister in relation to sponsor sanctions;
- clarify merits review rights for offshore applicants for certain visas;
- specify the visas in relation to which the Department of Home Affairs (the Department) may request the tax file number of an applicant for, or holder or former holder of; and
- specify the purposes for which a tax file number can be used, recorded or disclosed.

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

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

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments made by the Regulations. No Regulation Impact Statement is required. The OBPR consultation references are 22417 (sponsor sanction disclosure); 20664 (review rights); and 22418 (tax file number sharing).

Consultation

Consultation was undertaken with the Commonwealth Attorney-General's Department in relation to the amendments insofar as they create, abolish or affect the power or jurisdiction of a tribunal (Part 2 of Schedule 1); provide for collection, storage, use or disclosure of tax file numbers (Part 3 of Schedule 1); and provide for collection, storage, use or disclosure of other personal information (Part 1 of Schedule 1).

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

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on 13 December 2018.

ATTACHMENT A

AUTHORISING PROVISIONS

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

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

- subsection 140K(4), which provides that the Minister must, subject to subsection 140K(7), publish the information (including personal information) prescribed by the regulations if an action is taken under section 140K in relation to an approved sponsor, or former approved sponsor who fails to satisfy an applicable sponsorship obligation;
- subsection 338(9), which provides that a decision that is prescribed for the purposes of this subsection is a ***Part 5-reviewable decision***;
- subsection 506B(1), which permits the Secretary to request the tax file number of a person who is an applicant for, or holder or former holder of, a visa of a kind (however described) prescribed by the regulations; and
- subsection 506B(7), which provides that a tax file number provided under section 506B may be used, recorded or disclosed by an officer for any purposes prescribed by the regulations.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Migration Amendment (Enhanced Integrity) Regulations 2018

This Disallowable Legislative Instrument, Migration Amendment (Enhanced Integrity) Regulations 2018 (the Legislative Instrument), is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Legislative Instrument amends the *Migration Regulations 1994* (the Regulations) to enable the Department of Home Affairs (the Department) to implement measures to strengthen the integrity of Australia's temporary and permanent employer sponsored skilled migration programs.

The purpose of the Legislative Instrument is threefold.

Public disclosure of sponsor sanctions

Firstly, the Legislative Instrument sets out the information that must be published by the Minister in relation to sponsor sanctions. Where an action is taken under section 140K of the Migration Act 1958 (the Act) in relation to an approved or former approved sponsor, this amendment would require the Minister to publish information that identifies the sponsor, the applicable sponsorship obligation that the sponsor failed to satisfy, and information relating to the action taken under section 140K of the Act in relation to the sponsor.

Clarification of review rights

Secondly, the Legislative Instrument clarifies merits review rights for offshore applicants for certain visas. This amendment would ensure that the circumstances in which offshore applicants for a Subclass 457 (Temporary Work Skilled) visa, a Subclass 482 (Temporary Skill Shortage) visa, or a Subclass 407 (Training) visa can apply for merits review of a decision to refuse to grant a visa are consistent with the merits review rights for onshore applicants.

Tax File Number (TFN) sharing

Thirdly, the Legislative Instrument prescribes visas for which the Department may request the tax file number of an applicant for, or holder or former holder of, as well as the purposes for which a tax file number can be used, recorded or disclosed. These amendments would allow the Secretary to request the tax file number of applicants for, or holder or former holders of temporary and permanent skilled visas, which could be used, recorded or disclosed for identity verification, compliance, policy development and research purposes.

Human rights implications

The Right to work and rights at work

Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- a) *Remuneration which provides all workers, as a minimum, with:*
 - i. *Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*
 - ii. *A decent living for themselves and their families in accordance with the provisions of the present Covenant;*
- b) *Safe and healthy working conditions;*
- c) *Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*
- d) *Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays*

Article 8 of the International Covenant on Civil and Political Rights (ICCPR) provides:

1. *No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.*
2. *No one shall be held in servitude.*
3. (a) *No one shall be required to perform forced or compulsory labour.*

The Legislative Instrument positively engages Article 7 of the ICESCR and Article 8 of the ICCPR and protects both the right to work and right to fair work conditions for workers to be properly remunerated by their employer.

Under paragraph 2.79(1A)(b) and subregulation 2.79(2) of the Regulations a sponsor is obligated to provide an annual salary and working conditions that are no less favourable than would be enjoyed by an Australian citizen in the same position.

By prescribing the information that must be published about a sponsor who has breached their obligations, the Legislative Instrument positively engages Article 7 of the ICESCR and Article 8 of the ICCPR. The amendments assist visa holders to make informed decisions about potential employers and therefore be better placed to avoid workplace exploitation in Australia. Additionally, by releasing a sponsor's adverse compliance history to the public, the Department will be able to demonstrate that there are public repercussions for sponsors who breach their sponsor obligations described by Division 2.19 of the Regulations. This will

encourage visa holders, and others, to report suspected breaches, and acts as a deterrent to a sponsor who may otherwise breach their obligations.

The Legislative Instrument also positively engages with Article 7 of the ICESCR and Article 8 of the ICCPR through TFN sharing for compliance and research purposes, which will assist the Department in identifying where visa holders are not being paid correctly. This will reduce the potential for visa holders to be exploited, which is a further protection measure for temporary work visa holders, and thus upholds their right to fair work conditions under Article 7 of the ICESCR.

Right to an adequate standard of living

Article 11(1) of the ICESCR provides

1. *The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*

Breaches of sponsor obligations may jeopardise the income and standard of living of sponsored visa holders. Temporary work visa holders rely on their employer to provide them with an income that supports an adequate standard of living, given they do not qualify for unemployment benefits in Australia.

This reliance of the temporary work visa holder upon their employer may, in some cases, provide the visa holder with an incentive to tolerate an erosion of their workplace rights. By prescribing the information that must be published about a sponsor who has breached their obligations, the Legislative Instrument ensures a visa holder's standard of living is not deprived or taken advantage of, as the public disclosure of sponsor sanction details could result in financial and reputational impacts for the approved sponsor. These impacts would serve as a general deterrent for employers that may consider breaching the sponsorship obligations.

Additionally, the Department's ability to use TFN sharing to verify that relevant visa holders are being paid the salary approved during the nomination process and investigate where salaries are reduced inappropriately, is a further layer of income protection for temporary work visa holders, who are unable to access the welfare system.

As such, the Legislative Instrument positively engages Article 11 of the ICESCR as it protects a temporary work visa holder's right to an adequate standard of living, by assisting the Department in identifying and taking action where a visa holder's salary is reduced, by deterring sponsors from breaching their obligations, and ensuring sponsors are kept accountable should they fail to satisfy their obligations.

Right to Privacy and Reputation

The International Covenant on Civil and Political Rights (ICCPR) Article 17 states:

- 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
- 2. Everyone has the right to the protection of the law against such interference or attacks.*

The Legislative Instrument engages with the right to privacy, as changes will be made to the Regulations to use, record or disclose TFNs:

- to verify the identity of persons in relation to whom tax file numbers have been provided,
- to ensure compliance with sponsorship obligations and visa conditions,
- in policy development,
- for research, gathering intelligence, or identify trends or risks in relation to visas prescribed under the Regulations.

The amendments limit TFN sharing to specific purposes, and limit it to skilled temporary and permanent visa subclasses.

Serious ramifications may result from salary underpayments or breaches of visa conditions. Sponsors may be removed, or suspended from, the sponsored skilled work visa program. Visa holders may have their visa cancelled.

Data matching using TFNs minimises the risk of misidentifying a visa holder when investigating a sponsor for compliance with their obligations. The data collected will be used for compliance and research purposes. As such, TFN sharing will enable the Department to undertake compliance activities with improved targeting. TFN sharing will also support legitimate research activities into skilled migration trends and outcomes.

The limits placed on a visa holder's right to privacy by TFN sharing are justifiable as reasonable, necessary and proportionate because it provides the Department with a tool to more accurately identify and investigate infringements of that visa holder's work rights.

The Legislative Instrument also limits the information that will be published when an approved sponsor fails to satisfy the applicable sponsorship obligation. This information may be linked to individuals within an organisation, as in the case of sole proprietors. However, given the disclosure of information is limited to information such as the name of the business, the Australian Business Number and the relevant legal requirements that have been breached, there will be limited circumstances where personal information of individuals will be involved. As such, to the extent that the publication of a sponsor's breaches of the relevant legal requirements discloses personal information, Article 17 of the ICCPR is engaged.

Publication of details of sponsor sanctions will be executed in accordance with the *Australian Border Force Act 2015* (the ABF Act), and the *Privacy Act 1988* (Cth), both setting out protections in Australian domestic law consistent with the requirement in Article 17(2) of the ICCPR. Public disclosure of details when a party breaches regulatory requirements is an existing practice within the Australian Government. The Office of the Migration Agents Registration Authority (OMARA) regularly publishes details of disciplinary decisions taken against migration agents on its website. This includes agent names, registration numbers, and the results of compliance investigations. Similarly, the Fair Work Ombudsman (FWO) publishes the details, including business names, of litigation outcomes, enforceable undertakings, and compliance partnerships on the FWO website. The Department will publish an analogous level of detail as is currently published by the OMARA and the FWO.

The publication of sponsor sanction details should be seen as the Department applying a consistent approach to the enforcement of regulatory requirements with entities that participate in its programs. In this way, the publication of sponsor's breaches of the relevant legal requirements is reasonable; it is applying a measure used in similar contexts for similar purposes.

Given the serious ramifications for vulnerable visa holders that arise from sponsors breaching the relevant legal requirements, such as limiting a visa holder's ability to earn a wage that allows them to appropriately support themselves and their families, the limitation of a sponsor's right to privacy is reasonable and necessary. The amendment is also a proportionate limitation as the publication will be appropriately limited to cases where a breach has been substantiated and a sanction has been imposed. As such, it will be confined to cases where it is necessary to inform future potential visa holders of the risks of accepting employment with the relevant sponsor and to cases that will genuinely act as a deterrent to other sponsors. Further, the public disclosure of a sponsor's adverse compliance outcomes will support public confidence in the integrity of the skilled migration programs by demonstrating that sponsors breaching their legal requirements will not go unnoticed.

To the extent that the amendments engage Article 17 of the ICCPR, the amendments are reasonable, necessary and proportionate limitations aimed at protecting the rights of temporary work visa holders and the integrity of the skilled migration programs.

Right to effective remedy

Article 2 of the ICCPR states that:

Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

The review rights of applicants who apply onshore are set out in the Act. The Legislative Instrument provides that applicants offshore have the same access to review rights as applicants who apply onshore. Changes to the Act have clarified the circumstances in which onshore applicants are eligible for merits review; it is appropriate to also clarify review rights for offshore applicants.

Merits review rights for applicants whose Subclass 457 visa, Subclass 482 visa, or Subclass 407 visa is refused currently depend on the circumstances in place at the time the merits review application is lodged, as opposed to the time the visa decision is made. This leads to a complex situation where some visa applicants may not have merits review rights at the time their application is refused, but may subsequently obtain merits review rights as a result of future events. This includes the approval of a new nomination or lodgement of a review application in relation to a nomination refusal. Visa applicants also currently have merits review rights in circumstances where a nomination has been lodged but has not been decided at the time they apply for merits review of the decision to refuse to grant a visa.

The ambiguity of review rights in this situation presents a barrier to properly notifying an applicant of their merits review rights, as required under the Act, and also undermines the original policy intention of these provisions to provide certainty in relation to notification of review rights.

Over the past four years, this ambiguity has led to vexatious applications for merits review aimed solely at inappropriately extended a visa applicant's stay in Australia. The Legislative Instrument clarifies the circumstances when a visa applicant with an approved nomination has merits review rights.

The clarification of merits review rights will result in the removal of certain merits review rights, namely in circumstances where a nomination application has been lodged but is not yet approved at the time the decision to refuse to grant a visa is made. The amendment makes it clear that merits review is available at the appropriate point in the visa application process, namely when a visa is refused, and only in circumstances where there is either an approved nomination, or a decision affecting whether there is an approved nomination. This reflects the original policy intention.

It is the Australian Government's position that while merits review can be an important safeguard, there is no express requirement for merits review under the ICCPR, including under Article 13. As such, the removal of certain merits review rights in this context does not limit Article 13. Furthermore, merits review rights continue to be available for nomination and visa decisions, albeit only after refusal. This amendment does not change or remove, in any way, a visa applicant's rights to judicial review, which is the right to challenge the legal validity of a decision in a court.

Conclusion

The proposed amendments are compatible with human rights because they support the relevant human rights and to the extent that they may also limit human rights, those limitations are reasonable, necessary and proportionate.

Migration Amendment (Enhanced Integrity) Regulations 2018

**The Hon. David Coleman, Minister for Immigration, Citizenship and Multicultural
Affairs**

ATTACHMENT C**DETAILS OF THE *MIGRATION AMENDMENT (ENHANCED INTEGRITY) REGULATIONS 2018*****Section 1 Name**

This section provides that the title of the Regulations is the *Migration Amendment (Enhanced Integrity) Regulations 2018*.

Section 2 Commencement

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

The table provides that the amendments commence as follows:

- Sections 1 to 4 commence the day after the regulations are registered.
- Part 1 of Schedule 1 commences either at the start of the day after the regulations are registered or the commencement of item 1 of Schedule 1 to the *Migration and Other Legislation Amendment (Enhanced Integrity) Act 2018* (whichever is the later). However, the provisions do not commence at all if item 1 of Schedule 1 to the *Migration and Other Legislation Amendment (Enhanced Integrity) Act 2018* does not commence.
- Part 2 of Schedule 1 commences either at the start of the day after the regulations are registered or the commencement of item 4 of Schedule 1 to the *Migration and Other Legislation Amendment (Enhanced Integrity) Act 2018* (whichever is the later). However, the provisions do not commence at all if item 4 of Schedule 1 to the *Migration and Other Legislation Amendment (Enhanced Integrity) Act 2018* does not commence.
- Part 3 of Schedule 1 commences either at the start of the day after the regulations are registered or the commencement of item 8 of Schedule 1 to the *Migration and Other Legislation Amendment (Enhanced Integrity) Act 2018* (whichever is the later). However, the provisions do not commence at all if item 8 of Schedule 1 to the *Migration and Other Legislation Amendment (Enhanced Integrity) Act 2018* does not commence.

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

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

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

Section 3 Authority

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

The purpose of this section is to set out the Act under which the Regulations are made.

Section 4 Schedules

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

The effect of this section is that the *Migration Regulations 1994* (the Migration Regulations) are amended as set out in the applicable items in the Schedules to the Regulations.

The purpose of this section is to provide for how the amendments made by these Regulations operate.

SCHEDULE 1 – Amendments

Part 1 – Public disclosure of sanctions

Item 1 After Division 2.19 of Part 2A

This item inserts new Division 2.19A in Part 2A of the Migration Regulations.

New regulation 2.87D prescribes the information that must be published by the Minister for the purposes of subsection 140K(4) of the Migration Act.

The effect of this amendment is that, subject to any prescribed exceptions, the Minister must publish this information (including personal information) if an action is taken under section 140K of the Migration Act in relation to an approved sponsor or former approved sponsor who fails to satisfy an applicable sponsorship obligation.

New paragraph 2.87D(a) requires the Minister to publish information that identifies the sponsor or former approved sponsor. This may include, for example, the business and/or trading name of the sponsor and their Australian Business Number. In some circumstances, it may be possible for this information to be linked to individuals within an organisation, as in the case of sole proprietors or small businesses. However, given the disclosure of information that identifies the sponsor is intended to be limited to business details, there will be limited circumstances where personal information of individuals will be involved.

New paragraph 2.87D(b) requires the Minister to publish the applicable sponsorship obligation that the approved sponsor or former approved sponsor failed to satisfy. This may include the specific provision of the Migration Act or Regulations and details of the relevant obligation that the sponsor failed to satisfy. For example, that regulation 2.79 was breached twice, and information about regulation 2.79.

New paragraph 2.87D(c) requires the Minister to publish information relating to the action taken under section 140K of the Migration Act in relation to the approved sponsor or former approved sponsor. This may include details of any sanction action taken in relation to the sponsor as a consequence of breaching an applicable obligation. For example, the sponsor's approval may be cancelled, or they may be barred from making future applications for approval as a sponsor for a specified period under section 140M of the Migration Act. This may also include information relating to any subsequent decisions in relation to the action taken under section 140K of the Migration Act, for example a decision made under section 140O to waive a bar placed on the sponsor under section 140M.

The purpose of publishing the information specified in new regulation 2.87D is to deter businesses from breaching their sponsorship obligations, and to allow Australians and overseas workers to inform themselves about a sponsor's breaches. It will also increase public awareness of the Department's sponsor monitoring activities.

The Migration Act and Migration Regulations do not specify when this information is to be published, including with respect to an application for merits review of a sanction decision. Delaying publication of a sanction until a decision is made on an application for merits review would significantly weaken the impact of the measure. However, where a review applicant notifies the Department that they have sought review, it is intended that the published information would be updated to reflect this. Where a sanction decision is varied or set aside on review, it is intended that the published information would be updated or removed respectively. This is consistent with Australian Privacy Principle 13.1(b), which requires an entity holding personal information about an individual to take reasonable steps to ensure that the information is accurate, up-to-date, complete, relevant and not misleading.

Part 2 – Review of decisions relating to certain visas

Item 2 Subregulation 4.02(1AA)

This item repeals subregulation 4.02(1AA).

Subregulation 4.02(1AA) provides that, for section 337 of the Migration Act, *sponsored* includes being identified in a nomination under section 140GB of the Act. Section 337 of the Act provides that, for the purposes of Part 5 of the Act, *sponsored* has the same meaning as in the Migration Regulations.

In *Kandel v the Minister for Immigration and Border Protection* [2015] FCCA 2013 (*Kandel*), the Court accepted that ‘sponsored by an approved sponsor’ in former paragraph 338(2)(d) of the Migration Act, read in conjunction with subregulation 4.02(1AA), included situations where the applicant was identified in a nomination that had yet to be decided at the time of application for review.

This interpretation was inconsistent with the policy intention of former paragraph 338(2)(d), as it encouraged sponsors to lodge repeat applications for approval of a nomination, rather than seeking review of a nomination refusal. It also resulted in a confusing situation where an applicant had no entitlement to seek merits review of a decision to refuse their visa at the time the visa decision was made, but could subsequently obtain review rights (for example, because a repeat nomination application had been lodged).

To address the decision in *Kandel*, the *Migration and Other Legislation Amendment (Enhanced Integrity) Act 2018* (the Enhanced Integrity Act) repealed former paragraph 338(2)(d) and substituted it with new paragraph 338(2)(d). New paragraph 338(2)(d) provides that a decision to refuse to grant a non-citizen a prescribed visa will be a **Part 5-reviewable decision**, if, at the time the decision to refuse to grant the visa is made:

- the non-citizen is identified in a current approved nomination; or
- an application has been made to the Migration and Refugee Division of the Administrative Appeals Tribunal (the MRD) for review of a decision not to approve the sponsor of the non-citizen, and a decision on the review is pending; or
- an application has been made to the MRD for review of a decision not to approve the nomination identifying the non-citizen, and a decision on the review is pending; or
- if it is not a criterion for the grant of the visa that the non-citizen is identified in an approved nomination, the non-citizen is sponsored by an approved sponsor.

As paragraph 338(2)(d) clarifies the circumstances in which a non-citizen can apply for merits review of a decision based on a nomination under section 140GB of the Migration Act, subregulation 4.02(1AA) is no longer necessary.

Item 3 Paragraph 4.02(4)(l)

This item repeals paragraph 4.02(4)(l), and replaces it with new paragraph 4.02(4)(l).

Paragraph 4.02(4)(l) sets out the circumstances in which a decision to refuse to grant a Subclass 457 (Temporary Work (Skilled)) visa or a Subclass 482 (Temporary Skill Shortage) visa to a non-citizen who is outside Australia at the time of application is a ***Part 5-reviewable decision***. New paragraph 4.02(4)(l) provides that such a decision will be a ***Part 5-reviewable decision*** if:

- the non-citizen is identified in a current approved nomination; or
- an application has been made to the MRD for review of a decision not to approve the proposed sponsor of the non-citizen, and a decision on the review is pending; or
- an application has been made to the MRD for review of a decision not to approve the nomination identifying the non-citizen, and a decision on the review is pending; or
- the non-citizen did not seek to satisfy the primary criteria for the grant of the visa, and the application was refused on the basis the non-citizen did not satisfy the secondary criteria.

This is consistent with the circumstances in which a decision to refuse to grant a Subclass 457 visa or a Subclass 482 visa to a non-citizen who is in the migration zone at the time of application is a ***Part 5-reviewable decision*** under paragraph 338(2)(d) of the Migration Act (as amended by the Enhanced Integrity Act) and new paragraph 4.02(4)(q) of the Regulations (see item 7).

Item 4 Subparagraph 4.02(4)(la)(ii)

This item is consequential to item 8. It repeals subparagraph 4.02(4)(la)(ii), and replaces it with new subparagraph 4.02(4)(la)(ii). The new subparagraph omits the list of sponsors/nominators and inserts a reference to new subregulation 4.02(4AA).

Item 5 Paragraph 4.02(4)(o)

This item repeals paragraph 4.02(4)(o), and replaces it with new paragraph 4.02(4)(o).

Paragraph 4.02(4)(l) sets out the circumstances in which a decision to refuse to grant a Subclass 407 (Training) visa to a non-citizen who is outside Australia at the time of application is a ***Part 5-reviewable decision***. New paragraph 4.02(4)(o) provides that such a decision will be a ***Part 5-reviewable decision*** if:

- the non-citizen is identified in a current approved nomination; or
- an application has been made to the MRD for review of a decision not to approve the proposed sponsor of the non-citizen, and a decision on the review is pending; or
- an application has been made to the MRD for review of a decision not to approve the nomination identifying the non-citizen, and a decision on the review is pending; or
- the non-citizen did not seek to satisfy the primary criteria for the grant of the visa, and the application was refused on the basis the non-citizen did not satisfy the secondary criteria; or

- if it is not a criterion for the grant of the visa that the non-citizen is identified in an approved nomination, the non-citizen is sponsored by a Commonwealth agency.

This is consistent with the circumstances in which a decision to refuse to grant a Subclass 407 visa to a non-citizen who is in the migration zone at the time of application is a **Part 5-reviewable decision** under paragraph 338(2)(d) of the Migration Act (as amended by the Enhanced Integrity Act) and new paragraph 4.02(4)(q) of the Regulations (see item 7).

Item 6 Subparagraph 4.02(4)(p)(ii)

This item is consequential to item 8. It repeals subparagraph 4.02(4)(p)(ii), and replaces it with new subparagraph 4.02(4)(p)(ii). The new subparagraph omits the list of sponsors/nominators and inserts a reference to new subregulation 4.02(4AA).

Item 7 At the end of subregulation 4.02(4)

This item inserts new paragraph 4.02(4)(q). The effect of this amendment is that a decision to refuse a visa prescribed for the purpose of paragraph 338(2)(d) of the Migration Act (including a Subclass 457 visa, a Subclass 482 visa and a Subclass 407 visa) to a non-citizen will be a **Part 5-reviewable decision** if:

- the non-citizen did not seek to satisfy the primary criteria for the grant of the visa (for example, the non-citizen applied for the visa on the basis that they are a member of the family unit of the primary applicant), and the visa was refused on the basis that the non-citizen did not satisfy the secondary criteria for the visa (for example, the non-citizen is not 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 visa); and
- the requirements of paragraphs 338(2)(a), (b) and (c) of the Migration Act are met in relation to the non-citizen and the visa – that is, the visa could be granted while the non-citizen is in the migration zone; the non-citizen made the application for the visa while in the migration zone; and the decision to refuse to grant the visa was not made when the non-citizen was in immigration clearance or had been refused immigration clearance.

The purpose of this amendment is to ensure that onshore applicants who seek to satisfy the secondary criteria for the grant of the relevant visa are not precluded from seeking merits review of a decision to refuse to grant them a visa if they cannot satisfy paragraph 338(2)(d) of the Migration Act solely because they are not identified in the relevant sponsorship application or nomination. Where applicants have combined their visa applications in a way permitted by the Migration Regulations, they will continue to be able to lodge a combined application for merits review under subregulation 4.12(2), regardless of whether the applicant satisfies paragraph 338(2)(d) of the Migration Act or new paragraph 4.02(4)(q) of the Migration Regulations.

Item 8 After subregulation 4.02(4)

This item inserts new subregulation 4.02(4AA), which sets out by whom a non-citizen must be sponsored or nominated by for the purposes of subparagraphs 4.02(4)(l), (la), (o) and (p).

Current subparagraphs 4.02(4)(l), (la), (o) and (p) require the non-citizen to be sponsored or nominated by:

- an Australian citizen; or
- a company that operates in the migration zone; or
- a partnership that operates in the migration zone; or
- the holder of a permanent visa; or
- a New Zealand citizen who holds a special category visa.

New subregulation 4.02(4AA) simplifies these provisions by consolidating these common requirements in a single provision. The new list in subregulation 4.02(4AA) also includes a Commonwealth agency to capture certain applicants for a Subclass 407 visa. This amendment does not change the sponsorship or nomination requirements under current subparagraphs 4.02(4)(l), (la), (o) and (p).

Item 9 Paragraphs 4.02(5)(k) and (n)

This item replaces references to ‘the sponsor or nominator’ in paragraphs 4.02(5)(k) and (n) with ‘the person who applied to become the sponsor or who nominated the non-citizen’.

Paragraphs 4.02(5)(k) and (n) set out who can lodge an application for review of a decision mentioned in paragraphs 4.02(4)(l) (Subclass 457 and Subclass 482) and (o) (Subclass 407), respectively. The use of the term ‘the person who applied to become the sponsor or who nominated the non-citizen’ is consistent with the operation of new paragraphs 4.02(4)(l) and (o).

Item 10 At the end of subregulation 4.02(5)

This item inserts new paragraph 4.02(5)(q), which provides that an application for review of a decision to which paragraph 4.02(4)(q) applies (see item 7) must be made by the person to whose application the decision relates. This is consistent with the operation of paragraph 347(2)(a) of the Migration Act, which applies to decisions covered by subsection 338(2).

Where applicants have combined their visa applications in a way permitted by the Migration Regulations, they will continue to be able to lodge a combined application for merits review under subregulation 4.12(2), regardless of whether the applicant satisfies subsection 338(2) of the Migration Act or new paragraph 4.02(4)(q) of the Migration Regulations.

Item 11 In the appropriate position in Schedule 13

This item inserts new Part 80 in Schedule 13 to the Migration Regulations. New item 8001 provides that the amendments made by this Part apply in relation to decisions made after this part commences. The amendments will not affect the jurisdiction of the MRD in relation to applications made after commencement for review of a decision made before commencement of the amendments. This is consistent with the application of the amendments to the Migration Act made by the Enhanced Integrity Act.

Part 3 – Tax file numbers

Item 12 At the end of Division 5.6 of Part 5

This item inserts new regulation 5.35AB.

New subregulation 5.35AB(1) prescribes temporary and permanent skilled visas for the purposes of subsection 506B(1) of the Migration Act. The effect of this amendment is that the Secretary may request the tax file number of an applicant for, or holder or former holder of any of these visas.

Collecting the tax file numbers of temporary and permanent skilled visa applicants, holders and former holders will enhance the Department's ability to match and access data held by the ATO. This will assist the Department to undertake more streamlined, targeted and effective compliance activity, and this will improve the Department's ability to undertake research and trend analysis. This will assist the Department in identifying sponsors who do not comply with sponsor obligations, and visa holders that do not comply with their visa conditions. It will also provide an evidence base for the Department in developing skilled visa policy.

New subregulation 5.35AB(2) prescribes the purposes for which a tax file number provided under section 506B of the Migration Act may be used, recorded or disclosed for the purposes of subsection 506B(7) of the Migration Act.

New paragraph 5.35AB(2)(a) permits using, recording or disclosing tax file numbers to verify the identity of a person in relation to whom a tax file number has been provided. This may include, for example, identifying visa holders who have changed their identity or engaged in fraudulent identity practices.

New paragraph 5.35AB(2)(b) permits using, recording or disclosing tax file numbers to ensure compliance with the Migration Act and Migration Regulations, including compliance with sponsorship obligations and visa conditions. For example, tax file numbers may be used to identify sponsors who breach their obligations by underpaying visa holders. Tax file numbers may also be used to identify visa holders who have breached their visa conditions by, for example, working for more than one employer.

New paragraph 5.35AB(2)(c) permits using, recording or disclosing tax file numbers for the purpose of developing policy relating to visas prescribed by new subregulation 5.35AB(1). For example, research that is able to match tax file numbers to skilled visa holders may be utilised as an evidence base to inform strategic policy development.

New paragraph 5.35AB(2)(d) permits using, recording or disclosing tax file numbers for the purpose of research, gathering intelligence, and identifying trends or risks in relation to visas prescribed by new subregulation 5.35AB(1). For example, tax file numbers and subsequent data-matching could be used to research pay rates, and to identify fraud and breaches of visa conditions work.