

EXPLANATORY STATEMENT

Issued by the Minister for Immigration, Citizenship and Multicultural Affairs

Migration Act 1958

Migration Amendment (Temporary Sponsored Parent Visa and Other Measures) Regulations 2019

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

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

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

The *Migration Amendment (Temporary Sponsored Parent Visa and Other Measures) Regulations 2019* (the Regulations) amend the *Migration Regulations 1994* (the Migration Regulations) to:

- establish a new family sponsorship framework, as provided for by the *Migration Amendment (Family Violence and Other Measures) Act 2018*, and create a new class of family sponsor called a ‘parent sponsor’;
- create a new Subclass 870 (Sponsored Parent (Temporary)) visa (a Temporary Sponsored Parent visa) for the parents of Australian citizens, Australian permanent residents and eligible New Zealand citizens;
- create a new defined term, ‘outstanding public health debt’, which relates to debts for medical and aged care expenses, which have been appropriately notified to the Department of Home Affairs:
 - the parent sponsor, their spouse or de facto partner, and their sponsored parent(s) must not have an outstanding public health debt, or they must have made appropriate arrangements to pay any such debt; and
- clarify requirements for certain temporary visa holders to maintain adequate health insurance in Australia.

New family sponsorship framework

The Regulations set up the ‘family sponsorship’ framework and create a new class of sponsor called a ‘parent sponsor’. In particular:

- A parent sponsor applicant needs to be at least 18 and meet requirements relating to identity, residence, maximum number of persons who can be sponsored, income, character and conduct, debts to the Commonwealth and outstanding public health debts.
- In order to facilitate the disclosure of information about family violence, the person applying to be a parent sponsor is required to agree that certain information may be disclosed to the sponsored person.

- A parent sponsor is required to satisfy obligations relating to the provision of support to the parent, payment of the parent's outstanding public health debts, and providing relevant information to the Department of Home Affairs (the Department).
- A sponsorship may be cancelled or barred for a failure to satisfy a sponsorship obligation, where adverse information or a threat to the Australian community becomes known, where the sponsor is liable for an outstanding public health debt and does not pay the debt in full as soon as practicable, where false or misleading information has been provided or where there has been a material change in circumstances. These requirements and obligations aim to protect both the parent and the Australian community while the parent is in Australia.

New Temporary Sponsored Parent visa

Key requirements for the Temporary Sponsored Parent visa are that the parent has an approved sponsor, has access to sufficient funds to cover their stay in Australia, has adequate arrangements for health insurance, does not have any outstanding public health debts without appropriate arrangements to pay those debts and meets public interest criteria.

The total visa application charge is \$5,000 for a visa of up to three years or \$10,000 for a visa of up to five years. The majority of this charge is only payable if the visa is to be granted. A person cannot be granted a Temporary Sponsored Parent visa if they have previously held Temporary Sponsored Parent visas for a total period of 10 years.

Adequate arrangements for health insurance

Prior to these amendments, there was no definition of 'adequate arrangements for health insurance' in the Act or Regulations. However, the term 'adequate arrangements for health insurance', and variations of that term, are used regularly throughout some parts of the Regulations, as both a visa criterion (meaning the applicant needs to demonstrate that they have adequate arrangements for health insurance before they can be granted the visa) and a visa condition (meaning the person must continue to maintain adequate health insurance while they hold the visa subject to that condition).

The Regulations create a new definition of 'adequate arrangements for health insurance'. In particular:

- The new definition provides that adequate arrangements for health insurance means health insurance that meets the requirements specified in a legislative instrument or, if no such requirements are specified, that are adequate in the circumstances.
- Affected visa holders are required to maintain adequate arrangements for health insurance for the duration of their stay in Australia, helping to offset any public health costs which may otherwise be incurred.

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

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments made by the Regulations. The OBPR consultation reference is **21913**.

In accordance with section 17 of the *Legislation Act 2003* (the Legislation Act), which requires consultations which are appropriate and reasonably practicable to be undertaken, the Government released a discussion paper, ‘Introducing a temporary visa for parents’, on 23 September 2016. A total of 158 substantive written submissions were received in response. In addition, four targeted consultation sessions were held with key stakeholders in Sydney, Parramatta, Melbourne and Brisbane. Feedback from these consultations was used to inform the development of the visa settings.

The following Commonwealth government agencies were also consulted: the Department of the Prime Minister and Cabinet; the Attorney-General’s Department; the Treasury; the Department of Finance; the Australian Taxation Office; the Department of Social Services; the Department of Health; and the Department of Human Services.

The Regulations commence on 17 April 2019, at the same time as Schedule 1 to the *Migration Amendment (Family Violence and Other Measures) Act 2018*.

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

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.

AUTHORISING PROVISIONS

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed, or 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:

- Subsections 29(2) and 29(3), which provide that the regulations may prescribe a period during which the holder of a visa may travel to, enter and remain in Australia;
- subsection 31(1), which provides that the regulations may prescribe classes of visas;
- subsection 31(3), which provides that the regulations may prescribe criteria for a visa or visas of a specified class (which, without limiting the generality of this subsection, may be a class provided for by section 32, 36, 37, 37A or 38B but not by section 33, 34, 35, 38 or 38A);
- subsection 31(4), which provides that the regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia, or both;
- subsection 31(5), which provides that the regulations may specify that a visa is a visa of a particular class;
- subsection 40(1), which provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- subsection 40(2), which provides that without limiting subsection 40(1), the circumstances may be, or may include, that, when the person is granted the visa, the person:
 - (a) is outside Australia; or
 - (b) is in immigration clearance; or
 - (c) has been refused immigration clearance and has not subsequently been immigration cleared; or
 - (d) is in the migration zone and, on last entering Australia, was immigration cleared or bypassed immigration clearance and had not subsequently been immigration cleared;
- subsection 41(1), which provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions;

- subsection 41(2), which provides that, without limiting subsection 41(1), the regulations may provide that a visa, or visas of a specified class, are subject to:
 - (a) a condition that, despite anything else in the Act, the holder of the visa will not, after entering Australia, be entitled to be granted a substantive visa (other than a protection visa), while he or she remains in Australia; or
 - (b) a condition imposing restrictions about the work that may be done in Australia by the holder, which, without limiting the generality of this paragraph, may be restrictions on doing any work, work other than specified work or work of a specified kind;
- subsection 41(3), which provides that, in addition to any conditions specified under subsection 41(1), the Minister may specify that a visa is subject to such conditions as are permitted by the regulations for the purpose of subsection 41(3);
- subsection 45A, which provides that the regulations may prescribe that a non-citizen who makes an application for a visa is liable to pay a visa application charge if, assuming the charges were paid, the application would be a valid visa application;
- subsection 45B(1), which provides that the regulations may prescribe the amount of visa application charge, not exceeding the visa application charge limit;
- subsection 45B(2), which provides that the regulations may prescribe that the visa application charge in relation to an application may be nil;
- subsection 45C(1), which provides that the regulations may:
 - (a) provide that the visa application charge may be payable in instalments; and
 - (b) specify how those instalments are to be calculated; and
 - (c) specify when the instalments are payable;
- subsection 46(1), which provides that the regulations may prescribe the criteria and requirements to be satisfied for a visa application to be valid;
- subsection 46(3), which provides that the regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application;
- subsection 46(4), which provides that, without limiting subsection 46(3), the regulations may prescribe:
 - (a) the circumstances that must exist for an application for a visa of a specified class to be a valid application; and
 - (b) how an application for a visa of a specified class must be made; and
 - (c) where an application for a visa of a specified class must be made; and
 - (d) where an applicant must be when an application for a visa of a specified class is made;

- section 140A, which provides that a visa may be prescribed to which Division 3A (Sponsorship) of Part 2 of the Migration Act applies;
- subsection 140E(1), which provides that the Minister must approve a person as a sponsor in relation to one or more classes prescribed for the purpose of subsection 140E(2) if prescribed criteria are satisfied;
- subsection 140E(1A) which provides that the regulations may prescribe one or more classes of family sponsor in relation to which a person must be approved on satisfaction of the prescribed criteria;
- subsection 140E(3) which provides that the regulations may prescribe criteria for approval of a person as a work or family sponsor;
- subsection 140F, which provides that the regulations may establish a process for the Minister to approve a person as a sponsor;
- section 140G, which provides that an approval as a sponsor may be on terms specified in the approval and that the terms must be of a kind prescribed by the regulations;
- subsection 140GA(1), which provides that the regulations may establish a process for the Minister to vary a term of a person's approval as a sponsor;
- subsection 140H(1) which provides that the regulations may prescribe sponsorship obligations that a person approved as a sponsor must satisfy;
- subsection 140HA(2A) which provides that the sponsorship obligations prescribed under subsection 140H(1) that relate to a person who is or was an approved family sponsor must include obligations in relation to paying prescribed medical, hospital, aged care or other health-related expenses incurred by a visa holder or former visa, complying with prescribed requirements to keep information and provide information to the Minister, and notifying the Minister of prescribed changes in the circumstances of the person, visa holder or former visa holder;
- section 140L which provides that the regulations may prescribe the circumstances in which a sponsor may be barred or the sponsor's approval may be cancelled;
- section 140N which provides that the regulations may prescribe processes for cancelling or barring approval as a sponsor;
- section 140O which provides that the regulations may prescribe the circumstances under which the Minister may waive a bar placed on a sponsor, and the criteria to be taken into account in determining whether to waive a bar;
- subsection 140S(1) which provides that the regulations may prescribe an amount of a kind which a person who is or was an approved sponsor is required to pay to the Commonwealth, a State or Territory or another person in relation to a sponsorship obligation;

- subsection 140ZH(1) which provides that the regulations may prescribe kinds of personal information that may be disclosed about a person specified in the subsection, to a person or body specified in the subsection;
- subsection 140ZH(1A) which provides that the regulations may prescribe kinds of personal information that may be disclosed about a person specified in the subsection, to a person or body specified in the subsection;
- subsection 140ZH(2) which provides that the regulations may prescribe the circumstances in which the Minister may disclose personal information under subsection 140ZH(1) or (1A);
- paragraph 338(9), which provides that a decision that is prescribed for the purposes of this subsection is a *Part 5-reviewable* decision;
- subparagraph 504(1)(a)(i) which provides that the regulations may make provision for and in relation to the charging and recovery of fees in respect of any matter under the Act or the regulations;
- subsection 504(2) which provides that section 14 of the *Legislation Act 2003* does not prevent, and has not prevented regulations whose operation depends on a country or other matter being specified or certified by the Minister in an instrument in writing made under the regulations after the regulations have taken effect; and
- subsection 506B(1) which provides that the Secretary may request any of the persons mentioned in subsection (2) (which include an applicant for, and holder or former holder of, a visa, as well as nominators and approved sponsors) to provide the tax file number of a person who is an applicant for, or holder or former holder of a visa of a kind 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 (Temporary Sponsored Parent Visa and Other Measures) Regulations 2019

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

Overview of the Legislative Instrument*New family sponsorship framework*

This Legislative Instrument amends the *Migration Regulations 1994* to establish the family sponsorship requirements under the new framework and create a new subclass of visa – the Sponsored Parent (Temporary) (subclass 870) visa (Class GH), – herein referred to as the Temporary Sponsored Parent Visa, or TSPV.

This new visa will promote temporary family reunification and enable parents, sponsored by their adult Australian citizen, permanent resident or eligible New Zealand citizen children, to visit Australia for up to five years. The new visa responds to long-standing migrant community concerns regarding delays in family reunification including lengthy wait times experienced under existing parent visa arrangements given the high demand and limited number of visas available under the non-contributory stream and the significant cost associated with the contributory stream.

The TSPV will allow Australia to benefit socially by uniting families on a temporary basis, who might not otherwise have the opportunity to spend extended periods of time together in Australia. This visa provides parents with an opportunity to spend more time in Australia with their sponsoring child than is available under existing visitor visa arrangements, where parents can only spend up to 12 months in Australia before having to depart.

Persons seeking approval as a parent sponsor must be at least 18 and meet requirements relating to identity, residence, maximum number of persons who can be sponsored, income, character and conduct, debts to the Commonwealth and outstanding public health debts.

Parent sponsors will also be required to meet sponsorship obligations, which are enforceable and remain in effect for the life of the approved sponsorship and beyond in some circumstances. Where a parent stays in Australia after the visa ceases and the sponsorship ends, the sponsor will continue to be liable for any outstanding public health debts incurred by the parent before the parent departs Australia or is granted a permanent visa. As sponsors will assume legal liability for any outstanding public health debts incurred by sponsored parents, they will not be required to lodge a sponsorship bond.

Sponsorship obligations also include the requirement to support sponsored parents financially and provide accommodation; keep certain records and provide certain records when requested; and notify the Department when certain events occur. For example, notification is required if the sponsor is charged with or convicted of an offence, becomes the subject of an

apprehended violence or a similar order, or if they incur a debt to the Commonwealth. Prior to sponsorship approval, a sponsorship applicant will be required to agree to disclose certain information to the sponsored person. This is primarily to facilitate the disclosure of information about criminal history, particularly offences related to family violence.

Temporary Sponsored Parent visa

Eligibility to apply for a TSPV will be contingent on the parent having an approved parent sponsor. TSPV applicants will not be subject to the ‘balance of family test’ in the Migration Regulations or be required to pay an Assurance of Support (AoS), as required for permanent parent visa applicants. The TSPV has been designed so that visa holders do not become a burden to the Australian community and both the visa holder and the sponsor are responsible for any health related costs incurred during the parent’s stay in Australia. The parent will be required to hold, and maintain, adequate health insurance for the duration of their stay in Australia. Visa applicants will also be required to agree to disclose certain information to their sponsor to facilitate the disclosure of information about criminal history, particularly offences related to family violence.

This visa seeks to strike an appropriate balance between providing an opportunity for overseas parents to have extended visits with adult children in Australia while protecting the Australian community against the potential costs of the parents accessing community healthcare resources. This arrangement ensures that any costs are not borne by the Australian community.

A sponsor will be under an obligation to pay in full, as soon as practicable, any outstanding public health debts incurred by their parent while in Australia under the sponsorship arrangements. Therefore, the liability for an outstanding public health debt incurred by their parent will ultimately rest with the sponsor. Such a debt may be incurred for health services provided to the visa holder, where the cost has not been covered in part or in full by their individual insurer or through other arrangements. If the costs are not paid, they may constitute an “outstanding public health debt”. This will occur if they are an expense incurred in relation to public health or aged care services and are reported to the Department as outstanding by an authority under an agreement between the authority and the Department. Where the debt is not resolved by the visa holder, there is an obligation on the sponsor to pay the debt, and the debt can be pursued by the relevant State, Territory or local government authority through a court.

Adequate arrangements for health insurance

Previously, there was no definition of ‘adequate health insurance’ in the Act or Regulations. However, the term ‘adequate health insurance, and variations of that term, are used throughout the Regulations as both a visa criterion (meaning the applicant needs to demonstrate that they have adequate arrangements for health insurance before they can be granted the visa) and a visa condition (meaning the person must continue to maintain adequate health insurance while they hold the visa subject to that condition). Schedule 3 to the Legislative Instrument creates a new definition of ‘adequate arrangements for health insurance’. In particular:

- The new definition provides that adequate arrangements for health insurance means health insurance that meets the requirements specified in a legislative instrument or, if no such requirements are specified, that are adequate in the circumstances.

- Affected visa holders are required to maintain adequate arrangements for health insurance for the duration of their stay in Australia, helping to offset any public health costs which may otherwise be incurred.

The effect of the addition of the definition is that the Regulations would provide a more robust and flexible health insurance setting, and strengthen the legislative basis for implementing clear, consistent policy.

Requiring temporary visa holders to maintain appropriate health insurance mitigates against potential debt to individuals where healthcare services are needed. These amendments seek to ease the burden on Australia's healthcare system by providing clarity around the definition of "adequate arrangements for health insurance".

This regulation amendment has been considered against key international treaties, in particular the following articles:

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

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

Article 23 of the International Covenant on Civil and Political Rights (ICCPR), which states:

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

Relevant human rights obligations are discussed in detail below, with other international treaties referred to where relevant.

Family unity

The TSPV is an additional visa option which allows a visa holder to remain in Australia for up to five years without the need to depart. The visa also allows multiple entries if a visa holder wishes to depart and re-enter Australia during the visa validity period. There is no right to family reunification under international law and the visa holder is expected to depart Australia when the visa ceases, unless another visa is granted.

Existing permanent parent visas may not be appropriate for overseas parents due to a range of factors including costs, the lack of desire for a permanent visa and long processing times. The TSPV provides an additional option for parents allowing temporary family reunification and an important social link to children and grandchildren in Australia.

As a temporary visa, the TSPV does not provide a right to remain in Australia permanently. TSPV holders may be eligible for a second TSPV of up to five years, but would be required to leave Australia for at least 90 consecutive days before making an application for the second TSPV. If a TSPV holder is unable to depart Australia prior to the expiry of their visa, a sponsor can request that the visa holder be permitted to apply for a further TSPV in Australia, or they can apply for an alternative visa to maintain lawful status.

If a sponsorship or visa application is refused, the requirement that the parent visa holder depart may be seen as interference with family. However, it would not be arbitrary as it is a

clear condition of the visa that it only allows temporary entry to Australia. The temporary nature of the visa would have formed part of the family's decision to apply for this visa instead of pursuing permanent parent visa pathways. As noted above, there is no right to family reunification under international law and this visa is one of a number of visa options for families seeking to reunite in Australia. Overseas parents seeking permanent reunion with their family in Australia are able to consider other visa options to travel to Australia.

Right to privacy

The TSPV is the first visa to be linked to the new family sponsorship framework in the *Migration Amendment (Family Violence and Other Measures) Act 2018*. This framework provides for a family sponsorship framework under the Act, which requires the sponsor to apply for approval before the visa applicant can make a valid visa application. The framework also enables the sharing of information between sponsors and visa applicants. Under the new framework, sponsors and visa applicants are required to agree to share their police checks and details of migration-related activities with other parties to the application and prescribed Commonwealth and State and Territory agencies. The Department will be authorised to disclose relevant information between the parties and/or refuse the application where applicable.

The sharing of information related to police checks and migration-related activities for both the sponsor and the parent is reasonable and necessary for the safety and welfare of elderly parents who may be vulnerable to exploitation within the community and potential victims of family violence. The sharing of information will also act to protect any children within a family unit in instances where there is previous criminal activity related to offences against children. If parties to an application receive information related to other parties' police checks, they are then able to make an informed decision on whether to proceed with the sponsorship or visa application if there are any concerns identified relating to a person's previous history.

Approved family sponsors are also required to agree to obligations to provide information to the Department if there are material changes in their circumstances that could affect the welfare and wellbeing of their sponsored parents. These include circumstances where the approved family sponsor is charged with or convicted of an offence, becomes the subject of an apprehended violence or a similar order, or if they have an outstanding debt to the Commonwealth.

While the requirement to share personal information may be seen as an interference with privacy, as noted above this is a requirement designed to protect vulnerable members of the family from potential abuse and ensures that the whole family unit can make informed decisions about family sponsorship. As such, any interference is not arbitrary and the applicant and sponsor will be aware that this information will be shared and can take this into account in the decision whether to apply for the visa. Applicants outside Australia do not engage Australia's obligations under the ICCPR although the policy objectives of balancing privacy with the need to protect vulnerable persons are the same.

The requirement to notify the Department with regard to material changes in a sponsor's circumstances is also designed to protect elderly parents in a potentially vulnerable situation or at the risk of possible abuse or exploitation.

A visa holder's right to privacy under Article 17 may also be engaged when information is disclosed by state, territory or local government authorities when notifying the Department of a public health debt and when the Department responds with details of the sponsor who has provided the financial guarantee.

Every authority entering into letters of exchange with the Department will be responsible for their own arrangements in terms of ensuring that they abide by relevant privacy laws. Sponsors will be made aware that their details will be provided to public health and aged care providers in the event of an outstanding public health debt being incurred by their parent.

The limitation on the right to privacy is necessary, reasonable and proportionate to achieve the aim of limiting the financial burden on Australia's public health system by allowing health authorities to pursue recovery of outstanding debts and reduce the burden on Australian community. The requirement for visa holders and sponsors to cover health costs incurred by the visa holder is an essential element of the TSPV framework, which allows temporary family reunification while safeguarding Australia's health system.

Rights relating to health and medical treatment

Article 12 of the ICESCR states that:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

These measures do not prevent any person from seeking and obtaining medical care while in Australia. A person who requires urgent medical assistance will not be denied that assistance if they are unable to pay for the treatment or they do not have adequate health insurance. As is already the case, such a person may incur a debt for the treatment.

In Australia, emergency departments of public health facilities triage patients and treat them according to their need, not on the basis of whether or not they can pay for the treatment or have health insurance to cover the cost of the treatment. This amendment will not alter this protocol.

The condition for visa holders to maintain adequate health insurance already exists for a range of temporary visas which permit non-citizens to enter Australia, including to visit or spend time with family members. The new definition pertaining to adequate health insurance does not significantly alter existing settings – it instead gives the Department the opportunity to clarify arrangements, which were previously dealt with under policy.

Greater awareness of a visa holder's liability for the cost of health treatment reinforces the importance of purchasing and maintaining health insurance. Where a visa holder has family in Australia, these requirements provide additional safeguards, reducing the financial risk for their family.

The amendment aims to ensure that visa applicants and visa holders are aware of their existing responsibility to pay for the health services they access in Australia, and subsequently, to mitigate the effect of potential financial burden because of this. This amendment will not prevent a person from seeking or obtaining further medical treatment while they remain in Australia.

Non-discrimination

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

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

Prior to sponsorship approval, sponsor applicants are required to meet a minimum income threshold. The income test is aimed at ensuring that a sponsored parent will receive sufficient support from their sponsors such as living costs, accommodation and provision of healthcare and, where required, aged care costs while they remain in Australia on a TSPV.

The specific threshold will be set by the Minister in an instrument and will be based on the Australian full-time adult average weekly ordinary time earnings as determined by the Australian Bureau of Statistics.

If a sponsorship application is refused for failing to meet the income test, this requirement may be seen as discriminatory based on a person's financial status. However, this measure is aimed at protecting the welfare of elderly parents who may be vulnerable if their sponsor does not have sufficient resources to support their stay in Australia, particularly on a long-term basis. This measure also reduces the risks of visa holders imposing a burden on the Australian community or the public health system. The income test will be based on objective community standards relying on data from the Australian Bureau of Statistics.

The TSPV provides an additional option in addition to a range of visa products already available to families seeking to visit their children in Australia. Australian citizens and permanent residents who do not meet the required income threshold will be able to consider other visa options, which would allow their parents to visit Australia. This visa supplements the existing parent visa options offering temporary family reunification without the waiting periods or significant cost of other existing family visas. It is designed to facilitate more options for offshore parents to spend time with their families in Australia without creating a burden on the Australian community and disadvantaging other members of the community. The requirements for a sponsor to meet a minimum income threshold is an important element of ensuring that the TSPV does not become an additional cost to the community by ensuring that adult children who sponsor their parents are able to afford the costs of the parent visa holder living in Australia. As noted above, parents of Australian citizens and permanent residents who do not meet the income test will be able to consider other visa options for visiting their children in Australia.

The total visa application charge is \$5,000 for a visa of up to three years or \$10,000 for a visa of up to five years. The majority of this charge is only payable if the visa is to be granted. A former TSPV holder may apply for a subsequent TSPV visa after they have departed Australia. However, a parent cannot be granted a TSPV visa if they have previously held Temporary Sponsored Parent visas for a total period of 10 years.

The TSPV provides an alternative option for parents who do not wish to apply for a permanent Contributory Parent visa due to the significant visa application charges of approximately \$50,000 per parent, or the Non-Contributory Parent visa where the waiting times may exceed 30 years, or a visitor visa which only allows for short-term stay in Australia.

Under the TSPV, visa holders will also be able to stay in Australia for a continuous period of up to five years without having to depart Australia, thereby saving them the cost and time of additional travel.

Rights of the Child

Article 3(1) of the Convention on the Rights of the Child (CRC) states:

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

The introduction of the TSPV will positively engage Article 3(1) of the CRC for minor children in Australia. As the TSPV is an additional visa option for overseas parents to spend time with their children in Australia, any minor grandchildren in the family unit will also benefit by having additional time with their grandparents.

The TSPV allows parents to be granted a temporary visa to remain in Australia for up to five years without the need to depart during that time, while also providing the flexibility of multiple entries during the visa period if they wish to travel outside Australia. There are expected to be significant cultural and social benefits to any minor grandchildren within the family unit by being able to spend time with their overseas grandparents.

TSPV holders will have the ability to provide support and care for minor grandchildren in Australia, including domestic childcare if parents are working, thereby providing the ability for the children to bond with grandparents in their formative years. Although the requirement for grandparents to depart at the cessation of their visa may cause some emotional hardship for minor children, this visa provides an additional option for extended visits to Australia that would not otherwise be possible based on the significant costs and processing times of other permanent visa subclasses. Permanent visa pathways are available and it is open to a former TSPV holder to apply for a permanent visa if they wish to migrate to Australia permanently.

In addition, the requirement discussed above that applicants and sponsors share police check information is designed as a safeguard for the protection of minor grandchildren from potential abuse if an applicant has convictions for relevant offences against children. In this regard, it positively engages Article 3 of the CRC and allows a sponsor in Australia to be fully informed of any risk to their children in making a decision whether to proceed with a sponsorship application in such circumstances.

Minor children are not able to become a sponsor for a TSPV. Due to the nature of sponsorship, including the income requirement for approval as a sponsor, and the liability for any health care debts incurred by TSPV holders in Australia, it would be unreasonable to allow sponsorship by minors. As this is an additional visa option, this measure does not impact on the ability of children to reunite with parents through other existing visa options which do not attract the enforceable sponsorship obligations of the TSPV.

Article 10 of the CRC states:

In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the

purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner.

There is no right to family reunification under international law. Article 10 is an obligation to treat an application for family reunion between a parent and child in a positive, humane and expeditious manner. As stated above, a minor child is not able to be a sponsor for a TSPV and the CRC only applies to children aged under 18. Therefore Article 10 is not engaged by this visa subclass, noting that minor children can still sponsor their parents through other visa pathways.

Right not to be tried or punished twice

Article 14 (7) of the International Covenant on Civil and Political Rights (ICCPR) states:

No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Under the sponsorship framework for the TSPV, sponsors may be refused because of certain past criminal convictions. Refusal will be a discretionary decision that will balance the relevant history of the sponsor with the public policy benefits of reunion with family members as well as the possible risk to other family members. Sponsors who are refused approval will be afforded natural justice and will be able to seek merits review of the decision by the Administrative Appeals Tribunal

The aim of this measure is to protect vulnerable parent applicants from possible abuse or exploitation. This is not a punitive measure for sponsors with previous convictions but a discretion which seeks to protect vulnerable persons from possible abuse. To the extent that this measure may be seen as punishing the sponsor, this is outweighed by the need to protect potentially vulnerable applicants. A sponsorship refusal does not prevent parents being able to visit their children in Australia as they will be able to apply for a different type of visa, in accordance with current arrangements. The TSPV is an additional visa and there are other visa options available which would allow parents to visit their family.

Conclusion

The regulation amendments are compatible with human rights because they advance the protection of human rights, especially with regard to the best interests of children in Australia not to be subjected to family violence and to enjoy the social benefits of spending time with their grandparents in Australia. Where there are limits to human rights, such as with respect to privacy, those limitations are reasonable, necessary, proportionate and rationally connected to the legitimate objective of informing potentially vulnerable people of relevant criminal behaviour and protecting them from harm.

THE HON DAVID COLEMAN MP
Minister for Immigration, Citizenship and Multicultural Affairs

ATTACHMENT C**Details of the Migration Amendment (Temporary Sponsored Parent Visa and Other Measures) Regulations 2019****Section 1 – Name**

This section provides that the name of the instrument is the *Migration Amendment (Temporary Sponsored Parent Visa and Other Measures) Regulations 2019* (the Regulations).

Section 2 – Commencement

This section provides that Sections 1 – 4 of the instrument (and anything in the instrument not elsewhere covered) commence on the day after the instrument is registered, and Schedules 1 to 3 of the instrument commence at the same time as Schedule 1 to the *Migration Amendment (Family Violence and Other Measures) Act 2018* (the Family Violence Act) commences.

Section 3 – Authority

This section provides that this instrument is made under the *Migration Act 1958*.

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 this instrument

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

Schedule 1— New family sponsorship framework***Migration Regulations 1994*****Item 1 – Regulation 1.03**

This item amends regulation 1.03 to include references to two new defined terms, *aged care service* and *approved provider*. For the purposes of the Migration Regulations, these terms have the same meaning as in the *Aged Care Act 1997*.

These amendments operate in conjunction with the amendment made to regulation 1.03 in item 4 below to define the term *has an outstanding public health debt*.

Items 2 and 3 – Regulation 1.03 (paragraphs (a) and (b) of the definition of *entertainment sponsor*)

These items amend the definition of *entertainment sponsor* in regulation 1.03 so that the definition refers to an “approved work sponsor” rather than “an approved sponsor”.

These amendments clarify that these provisions only apply in relation to approved work sponsors, and do not apply in relation to approved family sponsors. This is consequential to the creation of the family sponsorship framework by the Family Violence Act.

The entertainment sponsor class was closed to further applications for approval by the *Migration Amendment (Temporary Activity Visas) Regulations 2016*, on 19 November 2016. However approvals of entertainment sponsors on the basis of applications made before that date continue to be in effect.

Item 4 – Regulation 1.03

This item amends regulation 1.03 to include a reference to the new defined term, *has an outstanding public health debt*. For the purposes of the Migration Regulations, this term has the meaning given by new regulation 1.15K. See item 20 below.

Items 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 - Regulation 1.03 (paragraphs (a) and (b) of the definitions of *long stay activity sponsor*, *professional development sponsor*, *special program sponsor*, *standard business sponsor*, *superyacht crew sponsor*, *temporary activities sponsor*, and *training and research sponsor*.)

These items amend the definitions in regulation 1.03 of a number of sponsorship classes so that the definitions refer to an “approved work sponsor” rather than “an approved sponsor”. The relevant sponsorship classes are *long stay activity sponsor*, *professional development sponsor*, *special program sponsor*, *standard business sponsor*, *superyacht crew sponsor*, *temporary activities sponsor*, and *training and research sponsor*.

These amendments clarify that these provisions only apply in relation to approved work sponsors, and do not apply in relation to approved family sponsors. This is consequential to the creation of the family sponsorship framework by the Family Violence Act.

It should be noted that the sponsor classes of long stay activity sponsor, professional development sponsor, special program sponsor, superyacht crew sponsor, and training and research sponsor were closed to further applications for approval by the *Migration Amendment (Temporary Activity Visas) Regulations 2016*, on 19 November 2016. However approvals of sponsors on the basis of applications made before that date continue to be in effect. The standard business and temporary activities sponsor classes remain open to new applications for approval as a work sponsor.

Item 7 – Regulation 1.03

This item adds a new definition of parent sponsor in regulation 1.03. Parent sponsor is defined to mean a person who has been approved as a family sponsor in relation to the parent sponsor class under subsection 140E(1A) of the Migration Act.

Item 20 - At the end of Division 1.2 of Part 1

This item adds new regulation 1.15K – When a person has an outstanding public health debt. This term is used in new provisions relating to approval as a parent sponsor and new Subclass 870 (Sponsored Parent (Temporary)).

The intention is to capture health and aged care expenses as described that were incurred after the commencement of these Regulations, where a State, Territory or local government authority has notified the Department of Home Affairs (the Department) that the debt is outstanding.

Outstanding public health debts can only be notified to the Department under an agreement between the relevant authority and the Department.

A decision on when a debt should be reported as ‘outstanding’ will ultimately be a matter for the authority owed the debt. For example, an authority may choose not to inform the Department of a health debt where the debt is too small to warrant referral, where the authority is inclined to waive the debt for compelling or compassionate reasons, or where an appropriate payment plan is in place. When a debt is resolved, the health authority will notify the Department that this has happened, and the person will no longer have an ‘outstanding public health debt’.

Item 21 – Subparagraph 2.12F(2)(g)(ii); Item 22 - Paragraphs 2.12F(2)(h) and 2.43(1)(lc), (ld) and (le); Item 23 – Paragraph 2.43(1B)(a); and Item 24 – Paragraphs 2.43(1B)(a) and (d)

These items amend subparagraph 2.12F(2)(g)(ii) and paragraphs 2.12F(2)(h), 2.43(1)(lc), 2.43(1)(ld), 2.43(1)(le), 2.43(1B)(a), and 2.43(1B)(d), to add the word “work” after the word “approved”. The effect of these amendments is that previous references to “an approved sponsor” are changed to “an approved work sponsor”.

These items make amendments to clarify that these provisions only apply in relation to approved work sponsors, and do not apply in relation to approved family sponsors. This is consequential to the creation of the family sponsorship framework by the Family Violence Act.

Item 25 – At the end of regulation 2.56

This item adds a reference to the new Subclass 870 (Sponsored Parent)(Temporary) visa to the list of visas in regulation 2.56. This ensures that Division 3A of Part 2 of the Migration Act (about Sponsorship) applies to the new Subclass 870 visa.

Item 26 –Subregulation 2.57(1)

This item inserts new definitions in subregulation 2.57(1) for the purposes of Part 2A of the Migration Regulations (relating to sponsorship under Division 3A of Part 2 of the Act).

These definitions are inserted for the purposes of the new parent sponsor class.

The terms have the meanings given in the provisions referred to, except *permitted sponsored person* and *previously sponsored parent*, which are defined in this provision.

Permitted sponsored person

This term is used in various parts of the Regulations in relation to who may be sponsored by a parent sponsor.

The intention is that a person may seek to sponsor their biological parent, adoptive parent or step-parent, or their spouse or de facto partner's biological parent, adoptive parent or step-parent, as long as the spouse or de facto partner is also an Australian citizen, Australian permanent resident or an eligible New Zealand citizen. It is not the purpose of this visa to facilitate the stay of parents of temporary visa holders.

The term *permitted sponsored person* can, in some circumstances, also encompass a parent of a deceased spouse or de facto partner where that spouse or de facto partner was the parent's sponsor immediately before their death. This gives effect to the intention that, where a sponsor dies, their spouse or de facto partner can apply to 'take over' the sponsorship. The parent must be the holder of a Subclass 870 (Sponsored Parent (Temporary)) visa, and the application must be made within 90 days of the death of the spouse or de facto partner.

Note that the term "parent and child" is defined in regulation 1.14A, which applies to these provisions. Subregulation 1.14A(1) provides that a reference to parent includes a step-parent.

Previously sponsored parent

This term is used in various parts of the Regulations.

This term refers to a person who was previously sponsored by either the sponsor (or a person applying to be a sponsor) or their spouse or de facto partner.

Items 27 and 30 – Subregulation 2.57(1) (paragraph (a) of the definition of *primary sponsored person*) and subregulation 2.57(1) (paragraph (a) of the definition of *secondary sponsored person*)

These items amend the definitions of *primary sponsored person* and *secondary sponsored person* in subregulation 2.57(1) by inserting the word "work" after the words "approved as a".

The purpose of these amendment is to make it clear that the definitions of *primary sponsored person* and *secondary sponsored persons*, set out in subregulation 2.57(1) for the purposes of Part 2A (Sponsorship applicable to Division 3A of Part 2 of the Act) of the Migration Regulations, are applicable only in relation to persons who are or were approved as a work sponsor under subsection 140E(1) of the Migration Act.

These items make amendments to clarify that these provisions only apply in relation to approved work sponsors, and do not apply in relation to approved family sponsors. This is consequential to the creation of the family sponsorship framework by the Family Violence Act.

Items 28, 29 and 31 – Subregulation 2.57(1)

These items amend the definitions of *primary sponsored person* and *secondary sponsored person* in subregulation 2.57(1) by omitting words to the effect that the definition refers to the

holder of a visa that was prescribed for the purposes of section 140A of the Act. The words “of a kind mentioned in regulation 2.56 (other than a Subclass 870 (Sponsored Parent (Temporary)) visa)” are added in their stead. Item 25 (see above) amends regulation 2.56 to include the Subclass 870 (Sponsored Parent (Temporary)) visa at new paragraph 2.56(n).

This amendment clarifies that the definitions of primary sponsored person and secondary sponsored person are applicable to the visas listed at regulation 2.56, but not to the Subclass 870 (Sponsored Parent (Temporary)) visa).

Item 32 – Subregulation 2.57(1)

This item inserts a new definition, *sponsorship start day*, in subregulation 2.57(1) for the purposes of Part 2A of the Migration Regulations (relating to sponsorship under Division 3A of Part 2 of the Act).

The intention is to clarify that a person’s sponsorship commences on the day that the person is approved as a parent sponsor under regulation 2.60U.

Items 33, 34, 35, 36 and 37 – Regulation 2.58

These items amend regulation 2.58 (Classes of sponsor) to insert the word “work” after the words “approved as a”. Current regulation 2.58 is renumbered as subregulation 2.58(1) by item 33. The effect of these amendments is that subregulation 2.58(1) prescribes, for the purposes of subsection 140E(2) of the Migration Act, the classes of sponsor in relation to which a person may be approved as a work sponsor. The prescribed classes of work sponsor are a standard business sponsor and a temporary activities sponsor.

Item 36 amends the note in regulation 2.58 to clarify that a person (other than a Minister) who is a party to a work agreement is an approved work sponsor and does not need to be approved as a work sponsor under subsection 140E(1) of the Migration Act.

Item 37 inserts new subregulation 2.58(2), which provides that for the purposes of subsection 140E(2) of the Migration Act, a parent sponsor is a class of sponsor in relation to which a person may be approved as a family sponsor.

These amendments are consequential to the creation of the family sponsorship framework by the Family Violence Act.

Items 38 and 39 - Division 2.13 of Part 2A

These items amend the heading, and the note to the heading, in Division 2.13 of Part 2A of the Migration Regulations, which relates to criteria for approval for sponsors, to clarify that these criteria only apply to approval as a work sponsor.

These are consequential amendments to clarify that these provisions only apply in relation to approved work sponsors, and do not apply in relation to approved family sponsors. This is consequential to the creation of the family sponsorship framework by the Family Violence Act.

Items 40 and 41 – Regulation 2.60S (heading) and Subregulations 2.60S(2) and (3)

These items amend regulation 2.60S (which sets out additional sponsorship criteria relating to the transfer, recovery and payment of costs), to ensure it only applies to applications for approval as a work sponsor.

The additional criteria prescribed by regulation 2.60S do not need to be considered in relation to an application for approval as a parent sponsor (which is currently the only prescribed class of family sponsor), as there may be legitimate reasons for a parent to pay the child's sponsorship costs (as opposed to an employer-employee relationship, where this may be an indicator of exploitation and/or fraud).

Item 42 – After Division 2.13 of Part 2A

This item inserts new Division 2.13A, containing new regulations 2.60T, 2.60U, 2.60V, 2.60W, 2.60X, 2.60Y and 2.60Z, which set out the criteria for approval as a parent sponsor for the purposes of subsection 140E(1A) of the Migration Act.

Regulation 2.60T – Purpose of Division

New regulation 2.60T provides that Division 2.13A is made for the purposes of subsection 140E(1A) of the Migration Act.

Regulation 2.60U - Criteria for approval as a parent sponsor

New subregulation 2.60U(1) provides that if a person applies for approval as a family sponsor in relation to the parent sponsor class, the Minister must approve the applicant as a family sponsor in relation to that class if the Minister is satisfied that:

- the applicant is not an ineligible sponsor (this is a defined term; refer below);
- the applicant has applied correctly (refer regulation 2.61A); and
- the application specifies the permitted number of people that can be sponsored (refer below); and
- they are “permitted sponsored persons” (refer subregulation 2.57(1) and the explanation above at item 26); and
- the applicant meets the general sponsor requirements (refer regulation 2.60V); and
- the applicant passes the income test (refer regulation 2.60W); and
- the applicant meets the conduct requirements (refer regulation 2.60X); and
- the applicant meets the outstanding debt requirements (refer regulation 2.60Y); and
- the applicant's spouse or de facto partner (if any) meets the partner requirements (refer regulation 2.60Z).

Ineligible sponsor

As described above, paragraph 2.60U(1)(a) provides that the applicant must not be a ineligible sponsor. Subregulation 2.60U(2) sets out the meaning of “ineligible sponsor”. The effect of these provisions is that, if a sponsor and/or their spouse or de facto partner has previously been a parent sponsor, any further applications for approval as a parent sponsor cannot be approved if three or more previously sponsored parents have not left Australia or been granted a permanent visa. In these circumstances, the application must be refused. This is because the sponsor's household is already potentially liable for more than two outstanding

public health debts until those parents depart Australia or are granted permanent visas (noting that the sponsor is obligated to pay any outstanding public health debts incurred by a parent:

- while they are in Australia after the parent sponsor has been approved; and
- after the Subclass 870 visa ceases until the parent departs Australia or is granted a permanent visa (refer regulation 2.87CE)).

The intention is to limit the potential liability of the sponsor's household to ensure those debts can be recovered and maintain the integrity of the programme. Note that "previously sponsored parent" is defined in subregulation 2.57(1) to mean a person previously sponsored by either the applicant or their partner.

Permitted number of persons that can be sponsored

Paragraph 2.60U(1)(c) provides that the maximum number of persons that can be sponsored at any one time is two persons.

As above, the intention is to limit the financial burden and potential liability for outstanding public health debts per household to maintain the integrity of the program.

Subregulations 2.60U(3) and (4) set out further limitations on the permitted number of persons that can be sponsored.

Subregulation 2.60U(3) provides that if one previously sponsored parent has not left Australia and does not hold a permanent visa, then the application for approval as a parent sponsor can only specify one parent, unless the second parent is the person in Australia. The intention is to limit the sponsor's liability in relation to the obligation to pay a sponsored parent's outstanding public health debts to a maximum of two parents. The sponsoring child's obligation in relation to a previously sponsored parent continues until that parent leaves the country or is granted a permanent visa and, as a consequence, the sponsor is prevented from sponsoring more than one other person until the obligation in relation to the first parent has ceased.

As a result of the meaning of 'previously sponsored parent', this rule applies regardless of whether the parent in Australia is the parent of the person making the application for sponsorship approval or the parent of their spouse or de facto partner.

If a sponsorship approval is given in relation to one parent, and a previously sponsored parent who was onshore at the time the approval was given subsequently leaves or is granted a permanent visa, it would be open to the sponsor to seek to vary the sponsorship to add a second person (refer regulation 268K).

Subregulation 2.60U(4) provides that if two previously sponsored parents have not left Australia and do not hold a permanent visa, then an application for sponsorship approval can only be made in relation to those two parents. As above, the intention is to limit the sponsor's liability in relation to the obligation to pay a sponsored parent's outstanding public health debts to liability for the debts of a maximum of two parents.

Permitted sponsored persons

Paragraph 2.60U(1)(d) ensures that a sponsorship can only be approved in relation to "permitted sponsored persons", which is a term defined in subregulation 2.57(1).

The intention is that a person may seek to sponsor their biological parent, adoptive parent or step-parent, or their spouse or de facto partner's biological parent, adoptive parent or step-parent, so long as the spouse or de facto partner is also an Australian citizen, Australian permanent resident or an eligible New Zealand citizen. It is not intended to permit the sponsorship of a parent of a spouse or de facto partner who is on a temporary or provisional visa as it not the purpose of this visa to facilitate the stay of parents of temporary visa holders. It is possible for a person to 'take over' the sponsorship of a deceased spouse or de facto partner's parents if they apply to do so within 90 days of the death of the spouse or de facto partner.

Note that the term "parent and child" is defined in regulation 1.14A, which applies to these provisions. Subregulation 1.14A(1) provides that a reference to parent includes a step-parent.

Regulation 2.60V – General sponsor requirements

Paragraph 2.60U(1)(e) provides that the applicant must meet the general sponsor requirements. These are set out in regulation 2.60V.

Paragraphs 2.60V(a) to (c) relate to age, identity and residence. Paragraph 2.60V(d) relates to disclosure of information. This is primarily to facilitate the disclosure of information about family violence to the proposed sponsored person. If there is concerning information about family violence, this may be disclosed to the proposed sponsored person, in consultation with the sponsor, to inform their decision about seeking the visa, in accordance with measures put in place by the Family Violence Act.

Regulation 2.60W – Income test

New Regulation 2.60W sets out the criteria that an applicant for approval as a family sponsor in the parent sponsor class must satisfy in order to pass the income test. This amendment contemplates two sets of circumstances that may arise in relation to satisfying the criteria for passing the income test. The first examines only the applicant's taxable income and the second examines the applicant's taxable income combined with:

- the taxable income of the applicant's partner;
- the taxable income of another child of the parent; or
- the taxable income of both the applicant's partner and another child of the parent.

Applicant's taxable income only

New subregulation 2.60W(1) provides that, in circumstances where only the applicant's taxable income is being taken into account, in order for an applicant to pass the income test the applicant's taxable income, for the income year or each of the income years specified in an instrument made under subregulation 2.60W(4), is at least equal to the amount specified in such an instrument.

Applicant's taxable income combined with other taxable incomes

New subregulation 2.60W(2) provides that, an applicant passes the income test if the combined sum of the applicant's taxable income and the taxable income of either or both of the persons specified in subregulation 2.60W(3) for the income year or each of the income years specified in an instrument under subregulation (4), is at least equal to the amount specified in such an instrument; and the taxable income of the applicant, for that year or each

of those years, is at least equal to half of that amount. If up to three people's taxable incomes are to be taken into account in determining whether the applicant passes the income test, the applicant must be able to show that for each income year specified, their taxable income for that year was at least 50 percent of the amount specified. The balance is made up by the taxable income of the other one or two contributors.

New subregulation 2.60W(3) provides that for the purposes of subparagraph (2)(a)(ii) the specified persons whose income can be counted towards the income test are:

- the sponsor applicant's spouse or de facto partner; and
- one other child of the parent, provided they are an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

The sponsor applicant's partner is not required to be an Australian citizen, Australian permanent resident or eligible New Zealand citizen in order to show contributing income in recognition that many partners have blended finances, however the other child of the parent is required to be.

Specified amounts and years

New subregulation 2.60W(4) provides the Minister with the power to make a legislative instrument to specify an amount, or amounts, and an income year or income years, for the purposes of subregulations 2.60W(1) and (2).

Definitions

For the purposes of regulation 2.60W, new subregulation 2.60W(5) defines *income year* to have the meaning given by the *Income Tax Assessment Act 1997* and *taxable income* to have the meaning given by the *Income Tax Assessment Act 1997*.

Regulation 2.60X – Conduct requirements

New regulation 2.60X sets out the criteria that must be satisfied by a person who is an applicant seeking approval as a family sponsor in relation to the parent sponsor class to *meet the conduct requirements*.

There are three conduct requirements to be met:

Adverse information

Paragraph 2.60X(1)(b) provides that a requirement for approval is that there is no adverse information known to Immigration about the applicant or a person associated with the applicant or it is reasonable to disregard any such information.

“Adverse information” is relevantly defined in regulation 1.13A as any information relevant to the person's suitability to be an approved sponsor (including the information referred to in the definition).

Police check

Paragraph 2.60X(1)(a) and subregulation 2.60X(2) together require an applicant to provide a police check from every country (including Australia) where they have spent more than 12 months cumulatively since the later of:

- 10 years before the day the application is made; or
- the day the applicant turned 16 years of age.

It is not intended to require a police check from a person from a time prior to their being 16 years of age.

Information in the police check may be considered toward whether there is adverse information relevant to the person's suitability to be a sponsor under paragraph 2.60X(1)(b).

The Attorney-General's Department have been consulted in relation to this requirement.

Satisfaction of sponsorship obligations

Paragraph 2.60X(1)(c) provides that if the applicant has previously been a parent sponsor, the applicant did not fail to satisfy a sponsorship obligation, or it is reasonable to disregard any such failure.

These measures aim to protect the Australian community and the proposed sponsored person by ensuring the person is suitable to sponsor a non-citizen's entry and stay in Australia.

Regulation 2.60Y – Outstanding debt requirements

New Regulation 2.60Y sets out the criteria that must be satisfied by a person who is an applicant seeking approval as a family sponsor in the parent sponsor class to meet the outstanding debt requirements.

Outstanding public health debts

The effect of subregulation 2.60Y(2) is that a person cannot be approved as family sponsor in the parent sponsor class if any of the following persons have an outstanding public health debt and appropriate arrangements have not been made for payment of the debt:

- themselves;
- their partner (if any);
- the person(s) they are seeking to sponsor; or
- any parent they, or their partner, previously sponsored.

The term 'has an outstanding public health debt' is defined in regulation 1.15K to mean, in summary, a medical or aged care related expense incurred after the commencement of these regulations that has been reported to the Department of Home Affairs under an agreement between the Department and the health authority to which the debt is owed. A Medicare eligible person cannot incur an outstanding public health debt.

Although the person seeking to be a sponsor must be an Australian citizen, Australian permanent resident or eligible New Zealand citizen, they may have incurred an outstanding public health debt at an earlier time when they were a temporary visa holder. If such a debt is still outstanding (meaning the authority which notified the Department of the debt has not withdrawn that notification), and the Minister is not satisfied there are appropriate arrangements for payment, the person will be precluded from sponsoring their parent (who may incur further medical or aged care expenses for which the sponsor would also be liable). The same applies if the applicant's partner has an outstanding public health debt with no appropriate arrangements for payment.

Further, if any persons previously sponsored by either the applicant or their partner have an outstanding public health debt, with no appropriate arrangements for payment, the sponsorship application cannot be approved.

Additionally, if the person the applicant is seeking to sponsor has spent time in Australia previously, for example on a visitor visa, and incurred an outstanding public health debt during that time and has no appropriate arrangements for payment, the person will be precluded from being sponsored.

In line with the election commitment of 2016 announcing the new visa, these measures are designed to ease the potential burden on Australia's public health and aged care system which may occur in the event of non-payment of health or aged care costs.

Outstanding debts to the Commonwealth

The effect of subregulation 2.60Y(3) is that a person cannot be approved as family sponsor in the parent sponsor class if they have any outstanding debts to the Commonwealth and appropriate arrangements have not been made for payment of those debts.

Regulation 2.60Z – Partner requirements

New regulation 2.60Z provides that a person *meets the partner requirements* if they are not a parent sponsor and have either:

- if they were ever previously a parent sponsor, have not failed to satisfy a sponsorship obligation; or
- it is reasonable to disregard any such failure.

The purpose of this provision is to maintain the integrity of the family sponsorship program, and to ensure that approved sponsors, and their households, have no history of deliberately or negligently failing to meet sponsorship obligations.

Items 43 and 44 - Regulation 2.61 (heading) and Subregulation 2.61(1)

These items make consequential amendments to the heading of regulation 2.61 and to subregulation 2.61(1) to ensure that they only apply to work sponsors. This is consequential to the creation of new regulation 2.61A which sets out the requirements for an application for approval as a family sponsor in the parent sponsor class.

Item 44 also makes a technical amendment to the note to update the drafting; no substantive change is intended.

These amendments are consequential to amendments made by the Family Violence Act.

Item 45 - After regulation 2.61

This item adds a new regulation 2.61A, after regulation 2.61, to establish the process for making an application for approval as a family sponsor in the parent sponsor class for the purposes of subsection 140F(1) of the Migration Act.

Paragraphs 2.61A(2)(a) and (b) ensure that a person cannot apply to be approved as a family sponsor in the parent sponsor class if:

- they are already an approved family sponsor; or
- they or their spouse or de facto partner (partner) has already made an application to be a family sponsor that is not finally determined.

The intention is that a person cannot apply to be a parent sponsor if they already are a parent sponsor or they or their partner has a pending application that is not finally determined. (Finally determined is defined in subsection 5(9) of the Migration Act and includes where a decision is no longer subject to merits review).

Paragraph 2.61A(c) ensures that a person cannot apply to be approved as a family sponsor in the parent sponsor class after a particular date, or during a particular period, specified in an instrument.

The intention is to be able to limit the number of sponsorship applications that can be made in a particular programme year if required. This reflects the fact that the Subclass 870 visa itself will be subject to an annual grant limit, capping the number of Subclass 870 visas that can be granted during any programme year. The annual limit will be specified in a legislative instrument made under section 85 of the Migration Act. The initial limit will be set at 15,000 grants per year. It would not be desirable to allow unlimited numbers of parent sponsorships to be approved if a cap on visa grants is in place, particularly given that a sponsorship will automatically cease after six months if no Subclass 870 visa application is made by the parent nominated in the sponsorship application (see item 49 below).

Subregulation 2.61A(3) specifies that an application for approval as a family sponsor must only be made using the internet, must be made using the electronic form, and be accompanied by the fee, specified in an instrument made under subregulation 2.61A(4).

Subregulation 2.61(4) provides the power to make the instrument to specify the relevant matters.

Item 46 – Subregulation 2.62(1)

This item makes a technical amendment to update the drafting of the provision. No substantive change is intended.

Item 47 – After regulation 2.62(1)

This item inserts an equivalent provision to subregulation 2.62(1) to apply to decisions about the approval of a person as a family sponsor under subsection 140E(1A).

Similar to the notification requirements for a decision about the approval of a work sponsor, the Minister must give written notice of a decision about a family sponsor to the applicant:

- within a reasonable period;
- by attaching a written copy of the decision; and
- if the decision is to refuse the application – by attaching a statement of reasons for the decision.

Any differences in the language between subregulations 2.62(1) and new (1A) are updated drafting techniques and no substantive difference is intended.

Item 48 – Subregulation 2.62(2)

This item makes a consequential amendment to clarify that subregulation 2.62(2) (‘the Minister may provide the notification to the applicant in an electronic form’) applies to both subregulations (1) and (1A). It is intended that “electronic form” includes ImmiAccount.

Item 49 - At the end of Division 2.15 of Part 2A

This Item inserts new regulation 2.64B at the end of Division 2.15 of Part 2A of the Migration Regulations.

Terms of the sponsorship approval

Regulation 2.64B sets out the terms of an approval as a parent sponsor under section 140G of the Migration Act.

Approval has effect only in relation to specified persons

Subregulation 2.64B(1) sets out a kind of term to be specified in the approval under subsection 140G(2) of the Migration Act. It provides that an approval of a person as a parent sponsor has effect only in relation to a permitted sponsored person specified in the approval.

The intention is that the approval has effect only in relation to persons specified in the approval. This term may be varied under regulation 2.68K to add a person to the approval if the relevant criteria are met. A person may be removed from the approval by the sponsor withdrawing sponsorship in relation to that person.

When the approval ceases to have effect

Subregulation 2.64B(2) prescribes an actual term under subsection 140G(3) of the Migration Act.

The effect is that the approval of a parent sponsor in relation to a particular permitted sponsored person ceases to have effect if:

- the sponsor’s permanent visa (if any) is cancelled – this is to maintain the setting that the sponsor must be an Australian citizen, Australian permanent resident or eligible New Zealand citizen;
- the sponsor dies;
- the sponsor withdraws their sponsorship of that person;
- the parent does not apply for the Subclass 870 visa within 6 months after the sponsorship approval, or the variation approval if they were added to the approval by a variation (refer regulation 2.68K) – this is to ensure that the checks that are conducted in relation to the sponsor at the time the sponsorship application is assessed remain current by the time the parent applies for the visa;
- the sponsored person’s Subclass 870 visa ceases – once the visa ceases, then the sponsorship of that person also immediately ceases.

Subregulation 2.64B(3) clarifies that if more than one person is sponsored, then the cessation of the sponsorship only applies in relation to the individual affected and continues in relation to the other individual (except in the case of the sponsor’s death or permanent visa cancellation, which would cease the sponsorship for all persons).

Note that some sponsorship obligations continue even after the sponsorship has ceased (refer subdivision 2.19.2).

Subregulation 2.64B(4) clarifies that the circumstances resulting in a sponsorship approval ceasing do not limit the circumstances in which a sponsor may be barred or an approval cancelled.

Item 50 - Regulation 2.65

This item makes a consequential amendment to ensure that Division 2.16 (about varying the terms of approval of a sponsorship) applies to an approval of a parent sponsor, as well as to a temporary activities sponsor. This is consequential to the introduction of the parent sponsor class by these Regulations.

Items 51 and 52 - Subregulation 2.66(1) and Paragraph 2.66(5)(a)

These items make consequential amendments to ensure that regulation 2.66 (about the process to apply to vary a term of approval) applies to an approval of a parent sponsor, as well as to a temporary activities sponsor. This is consequential to the introduction of the parent sponsor class by these Regulations.

Item 53 - Regulation 2.67

This item makes a technical amendment to regulation 2.67 (about which terms of approval may be varied for a temporary activities sponsor), by renumbering the current regulation as subregulation 2.67(1). This is consequential to the amendment to add new subregulation 2.67(2) which relates to parent sponsors.

Item 54 - At the end of regulation 2.67

This item inserts new subregulation 2.67(2) to provide that a term of an approval as a parent sponsor that may be varied is the term set out in subregulation 2.64B(1) (about who the approval has effect for).

The intention is that a sponsor may seek to vary the approval to add another parent in certain circumstances.

Items 55, 90 and 92 - Subregulations 2.68J(2) and (3), Paragraphs 2.87(1A)(c) and (d) and Paragraphs 2.87(1B)(c) and (d)

These items make consequential amendments to ensure that the relevant provisions only apply in relation to work sponsors, and do not apply in relation to parent sponsors.

These provisions are about the transfer, payment and recovery of costs between a sponsor and sponsored person. It is not appropriate to apply these provisions in the parent-child relationship context, as there may be legitimate reasons for a parent to pay the child's sponsorship costs (as opposed to an employer-employee relationship, where this is may be an indicator of exploitation and/or fraud).

Item 56 – After regulation 2.68J

This item inserts a new regulation 2.68K after regulation 2.68J in Division 2.16 (Variation of terms of approval of sponsorship) of Part 2A of the Migration Regulations.

Regulation 2.68K sets out the criteria that must be met for the Minister to vary the term about who the sponsorship approval has effect for.

The intention is that if only one parent is specified in the approval, the sponsor may seek to vary the term to add a second permitted sponsored person to the approval.

This is to facilitate a situation where, for example, the sponsor specified his Father for the sponsorship approval, while his Mother remained at home to run the business. However, later the sponsor wishes to vary the approval to add his Mother to the approval as well so that she can also apply for a Subclass 870 visa and join them in Australia. These provisions allow for a variation of the approval to add the second parent, rather than requiring the sponsor to apply for sponsorship again.

The criteria that must be met to vary the term to add a second person are:

- the sponsor applied correctly (refer regulation 2.66); and
- the approval only had effect in relation to one person – that is, if the approval already had effect in relation to two people, then no further persons can be added; and
- the person to be added is a permitted sponsored person and the effect will be that the approval will now have effect for that person as well; and
- any parents previously sponsored by either the sponsor or their partner have either left Australia since their Subclass 870 visa ceased or have been granted a permanent visa, unless they are the person being added to the approval; and
- neither the sponsor, their partner, the person currently sponsored, the person proposed to be added by the variation, nor any person previously sponsored by either the sponsor or their partner has an outstanding public health debt without appropriate arrangements to make payment; and
- the sponsor agrees to the disclosure of information about the sponsor to the parent to be added to the approval; and
- there is no adverse information known about the sponsor or it is reasonable to disregard that information; and
- the sponsor has not failed to satisfy any sponsorship obligations or it is reasonable to disregard any such failure.

These criteria aim to ensure that the sponsor's potential liability for outstanding public health debts is limited and to re-assess the sponsor's suitability to be a sponsor, and their compliance with sponsorship obligations, before extending the sponsorship to an additional person. The process also ensures that the sponsor consents to any relevant information about family violence being disclosed to the parent proposed to be added to the approval.

The requirement that any previously sponsored parents must have either left Australia since the ceasing of the Subclass 870 visa or been granted a permanent visa is to reflect that the sponsor's obligation to pay outstanding health debts extends to any debts incurred after the parent's Subclass 870 visa ceases and until they either depart Australia or are granted a permanent visa (refer regulation 2.87CE).

Note that ‘previously sponsored parent’ is defined in subregulation 2.57(1) to mean a person previously sponsored by either the sponsor or their partner.

Subregulation 2.68K(4) confirms that if the Minister varies the term, the additional parent is taken to be specified in the approval of the parent sponsor.

Item 57 - subregulation 2.69(1)

This item makes a technical amendment to update the drafting of the provision. No substantive change is intended.

Items 58 to 96 (except Item 62)

These items make consequential amendments to clarify that these provisions only apply in relation to approved work sponsors and do not apply in relation to approved family sponsors. This is consequential to the creation of the family sponsorship framework by the Family Violence Act.

Item 62 – Division 2.19 of Part 2A (after the heading)

This item divides Division 2.19 (about sponsorship obligations) into two subdivisions. The first subdivision 2.19.1 – Sponsorship obligations of approved work sponsors etc – contains the previously existing provisions that now only apply to work sponsors. The creation of subdivision 2.19.1 is consequential to item 97 which creates subdivision 2.19.2 – Sponsorship obligations of approved family sponsors etc.

Item 97 - At the end of Division 2.19 of Part 2A

This item adds a new Subdivision 2.19.2 at the end of Division 2.19 of Part 2A of the Migration Regulations and sets out the sponsorship obligations that an approved family sponsor must satisfy. New Subdivision 2.19.2 adds new regulations 2.87CA, 2.87CB, 2.87CC, 2.87CD and 2.87CE to Division 2.19 of Part 2A.

Regulation 2.87CA - Sponsorship obligations

Subregulation 2.87CA(1) provides that each of the obligations mentioned is a sponsorship obligation for subsection 140H(1) of the Migration Act.

Subregulation 2.87CA(2) prescribes expenses for the purposes of paragraph 140HA(2A)(aa) of the Migration Act.

Regulation 2.87CB - Obligation to keep records

Regulation 2.87CB provides that a person who is or was an approved family sponsor must keep records of a kind specified in an instrument and in the manner specified in the instrument.

The obligation requires the person to keep relevant records starting on the day the person was approved to be a sponsor and ending 2 years after the person ceases to be a sponsor. Records are required to be kept beyond the life of the sponsorship as some sponsorship obligations continue after the sponsorship has ceased.

Regulation 2.87CC - Obligation to give records to the Minister

The effect of regulation 2.87CC is to provide that a person who is or was an approved family sponsor must, if requested in writing by the Minister, give to the Minister records required to be kept under regulation 2.87CB or records that a person is required to keep under another law that applies to the person and that relates to Division 3A of Part 2 of the Migration Act (relating to sponsorship).

The records must be given within the timeframe and in the manner specified by the Minister in the request. The period specified in the request must not be less than 7 days after the person is taken to receive the notice. Section 494C of the Migration Act provides when a person is taken to have received a document given by one of the methods specified in section 494B of the Migration Act.

Regulation 2.87CD - Obligation to give information to Immigration when certain events occur

The effect of regulation 2.87CD is to provide that a person who is an approved family sponsor must give to the Department details of certain events within 28 days of the event occurring and in the manner specified in an instrument.

The relevant events are set out in subregulation 2.87CD(2).

Of note, paragraph 2.87CD(2)(a) ensures that a person must continue to provide updates, such as for contact details or relationship status, each time these change.

Regulation 2.87CE - Obligation to pay outstanding public health debt of sponsored person

The effect of regulation 2.87CE is to provide that a person who is or was a parent sponsor must, as soon as practicable, pay in full any outstanding public health debts incurred during the relevant time (outlined below) by a parent who is or was sponsored by them.

The sponsor is obligated to pay any outstanding public health debts that relate to expenses incurred during the period when they sponsored the person and after the sponsorship ended but before the person next leaves Australia or is granted a permanent visa.

The intention is that a sponsor remains liable for expenses incurred for as long as the parent remains in Australia even after the Subclass 870 visa and sponsorship cease, regardless of whether the parent has been granted another visa or not. Once the parent leaves Australia or is granted a permanent visa, then the sponsor stops being liable for any new expenses, however the obligation to pay any debts incurred before that time remains until the debts are paid in full.

If appropriate arrangements to pay the debt are in place, then this is likely to meet the requirement of the obligation to pay the debt in full “as soon as practicable”.

Note that “has an outstanding public health debt” is defined in regulation 1.15K and relates to medical and aged care expenses that have been reported to the Department.

This provision works in conjunction with new regulation 2.102D and section 140S of the Migration Act to ensure that a payee may recover the amount as a debt due to the payee in an eligible court.

These measures are designed to ease the potential burden on Australia’s public health and aged care system which may occur in the event of non-payment of health or aged care costs.

Regulation 2.87CF – Obligation to support sponsored person financially and in respect of accommodation

Regulation 2.87CF provides that a person who is or was a parent sponsor of another person must assist that person, to the extent necessary, financially and in relation to accommodation.

The purpose and effect of new regulation 2.87CF is to make clear that a parent sponsor must assist the persons they have sponsored financially and in relation to accommodation during the period of their stay in Australia. The parent sponsor must provide the assistance starting at the time the sponsored person's Subclass 870 visa is granted, and only ending if the sponsored person's Subclass 870 visa has ceased to be in effect and they have left Australia or the sponsored person has been granted another substantive visa. To be clear, the obligation to provide assistance to the extent necessary continues to apply if the parent remains in Australia after the cessation of the Subclass 870 visa either unlawfully or as the holder of a bridging visa.

Item 98 - Regulation 2.87D

This Item makes a technical amendment to regulation 2.87D by renumbering the current regulation as subregulation 2.87D(1). This amendment is consequential to the amendment in item 99, below.

Item 99 - At the end of regulation 2.87D

This Item adds a new subregulation 2.87D(2), which provides that for the purposes of subsection 140K(7) of the Migration Act, the Minister is not required to publish information under subsection 140K(4) of the Act that relates to an approved family sponsor or former approved family sponsor.

Section 140K of the Migration Act deals with sanctions that may be imposed on an approved sponsor who has not satisfied an applicable sponsorship obligation. Subsection 140K(4), 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 that section in relation to an approved sponsor or former approved sponsor who fails to satisfy an applicable sponsorship obligation.

The effect of this amendment is that, if a sanction is imposed on an approved, or formerly approved, family sponsor, the Minister is not required to publish information about the sanction or the family sponsor. It is not appropriate to publish information about family sponsors, and this information will not be released

Items 100 to 107

These Items make consequential amendments to regulations 2.89, 2.90, 2.91 and 2.92 of Division 2.20 of Part 2A (which deals with the circumstances in which a sponsor may be barred or a sponsor's approval may be cancelled).

The effect of these amendment is that these provisions also apply to a parent sponsor. The effect is that the Minister may cancel a sponsorship or bar a parent sponsor in accordance with section 140M for failure to satisfy a sponsorship obligation, providing false or misleading information, where the application or variation criteria are no longer met, or for contravention of an Australia law.

Item 108 - Paragraphs 2.93(3)(d) and 2.94(4)(d)

This Item amends paragraphs 2.93(3)(d) and 2.94(4)(d) by adding the word “work” after the words “person as a”.

These amendments clarify that these provisions only apply in relation to approved work sponsors, and do not apply in relation to approved family sponsors. This is consequential to the creation of the family sponsorship framework by the Family Violence Act.

Item 109 - At the end of Division 2.20 of Part 2A

This Item adds new regulation 2.94B to the end of Division 2.20 of Part 2A of the Migration Regulations.

The effect of new regulation 2.94B is to specify, for subparagraph 140L(1)(a)(ii) of the Migration Act, additional circumstances in which the Minister may take action to bar further sponsorship or cancel an existing sponsorship approval in relation to a person who is, or was, an approved family sponsor.

The regulation provides four new circumstances in which the Minister may take action to bar further sponsorship or cancel an existing sponsorship approval.

Regarding paragraph 2.64B(c), it is not intended to exercise the discretion to cancel or bar where a person has appropriate arrangements to make payment of the outstanding public health debt.

These provisions aim to protect the Australian community and ease the burden on the health and aged care systems.

Item 110 - 112 - Regulation 2.101, At the end of regulation 2.101

Regulation 2.101 sets out the criteria to be taken into account by the Minister when determining whether to waive a bar placed on an approved sponsor.

Items 110 and 111 make amendments so that the existing criteria under regulation 2.101 apply only to approved work sponsors (new subregulation 2.101(1)).

Item 112 adds a new subregulation (2) to regulation 2.101, setting out the criteria to be taken into account by the Minister in determining whether to waive a bar placed on an approved family sponsor. The criteria are whether the person has applied correctly, whether significant new evidence or information has come to light which was not available at the time the decision to place the bar was made; and whether there are exceptional circumstances that justify waiving the bar.

Item 113 and 114 - Regulation 2.102C (notes 2 and 3)

Items 113 and 114 amend notes 2 and 3 to Regulation 2.102C (‘Purposes for which powers of inspectors may be exercised’) to alter references to “a sponsor” to “an approved sponsor”.

This is a technical amendment to the descriptions in the notes of the effect of sections 140L and 140M of the Act; the amendments ensure the notes more closely align with the language of the Act.

Item 115- After Division 2.22A of Part 2A

This Item inserts a new Division 2.22B after Division 2.22A of Part 2A of the Migration Regulations, to deal with liability for, and the recovery of amounts that a person is required to pay under section 140S of the Migration Act.

This Item also inserts new regulation 2.102D, which prescribes for the purposes of subsection 140S(1) of the Migration Act, the amount that a person is required to pay under subregulation 2.87CE(2) in relation to the sponsorship obligation mentioned in that subregulation.

New regulation 2.87CE creates a new obligation for a person who is or was a parent sponsor to pay, as soon as practicable, any outstanding public health debts incurred during the relevant time (outlined below) by a parent who is or was sponsored by them.

The sponsor is obligated to pay any outstanding public health debts that relate to expenses incurred during the period when they sponsored the person and after the sponsorship ended but before the person next leaves Australia or is granted a permanent visa. New regulation 2.87CE is explained in further detail in Item 97 above. The definition of ‘has an outstanding public health debt’ is contained in new regulation 1.15K (see Item 4 above).

Items 116 to 126 – Regulation 2.103

These items amend regulation 2.103 to ensure these provisions only apply in relation to approved work sponsors. This is consequential to the creation of regulation 2.103A, relating to approved family sponsors, by these Regulations (Item 27 below) and the insertion of new subsection 140ZH(1A) in the Migration Act by the Family Violence Act.

Item 127 – After regulation 2.103

This item inserts new regulation 2.103A which prescribes information for the purposes of subsection 140ZH(1A) of the Migration Act, which was inserted by the Family Violence Act.

Under new subsection 140ZH(1A), the Minister may disclose personal information of a prescribed kind about a person mentioned in column 2 of an item of the table to a person or body mentioned in column 3 of the item.

The table in new subsection 140ZH(1A) provides that:

- if the personal information of a prescribed kind is about a person who proposes to apply for a visa of a prescribed kind then, the Minister may disclose that personal information to an applicant for approval as a family sponsor in relation to the person; an approved family sponsor of the person; or an agency of the Commonwealth or of a State or Territory prescribed by the regulations;
- if the personal information of a prescribed kind is about a person who is an applicant for, or a holder or former holder of, a visa of a prescribed kind then, the Minister may disclose that personal information to an approved family sponsor of the person; or an agency of the Commonwealth or of a State or Territory prescribed by the regulations;
- if the personal information of a prescribed kind is about an applicant for approval as a family sponsor then, the Minister may disclose that personal information to a person who proposes to apply for a visa if the applicant is approved as a family

sponsor; or an agency of the Commonwealth or of a State or Territory prescribed by the regulations;

- if the personal information of a prescribed kind is about an approved family sponsor of a person mentioned in item 1 or 2 of the table then, the Minister may disclose that personal information to the person; or an agency of the Commonwealth or of a State or Territory prescribed by the regulations; and
- if the personal information of a prescribed kind is about a former approved family sponsor of a person who is an applicant for, or a holder of, a visa of a prescribed kind then, the Minister may disclose that personal information to the person; or an agency of the Commonwealth or of a State or Territory prescribed by the regulations.

The effect of this item will be to facilitate the sharing of personal information between parties identified in the sponsorship application. The types of personal information subject to disclosure, as prescribed in the regulations, will assist in further protecting potentially vulnerable visa applicants from the risk of family violence, particularly elder abuse, when participating in this program, while delivering on important elements of the second action plan in the National Plan to Reduce Violence against Women and their Children 2010-2022.

Item 128 - Subregulation 2.104(1)

Item 128 repeals existing subregulation 2.104(1) and substitutes new subregulation 2.104(1) which provides that, for the purposes of subsection 140ZH(2) of the Act, this regulation sets out the circumstances in which the Minister may disclose personal information under subsection 140ZH(1) or (1A) of the Act.

This Item makes a technical amendment to include a reference to new subsection 140ZH(1A) of the Migration Act and to update the drafting of this provision to align with current drafting convention and practice.

Item 129 - Paragraph 2.104(3)(c)

Subregulation 2.104(3) prescribes circumstances in which the Minister may disclose personal information to an approved sponsor or a former approved sponsor.

This Item amends paragraph 2.104(3)(c) so that it only applies in relation to approved work sponsors (or former approved work sponsors).

It also creates new paragraph 2.104(3)(d) which provides the equivalent provision in relation to an approved family sponsor (or former approved family sponsor).

The effect is that the Minister may disclose information that a sponsored person's visa has been cancelled to their approved family sponsor or former approved family sponsor.

Items 130-132 - Subregulation 2.104(4)

These Items make consequential amendments to reflect the creation of new regulation 2.103A and the creation of approved family sponsors.

Item 133 - Regulation 2.105

This Item makes a consequential amendment to regulation 2.105 to include a reference to new subsection 140ZH(1A) of the Migration Act as inserted by the Family Violence Act.

Item 134 - At the end of subregulation 4.02(1A)

This Item prescribes the Subclass 870 (Sponsored Parent (Temporary)) in subregulation 4.02(1A) visa so that a decision to refuse to grant a Subclass 870 visa is a Part 5-reviewable decision under section 338 of the Migration Act (refer to paragraph 338(1)(d) of the Migration Act).

Item 135 - Paragraph 4.02(4)(a)

This Item inserts a reference to new section 140E(1A) in paragraph 4.02(4)(a) so that a decision to refuse an application for approval as a family sponsor in relation to a class of sponsor is a Part 5-reviewable decision under section 338 of the Migration Act (refer subsection 338(9) of the Migration Act).

Items 136 -139 – Subregulation 4.02(4) and 4.02(4A)

These Items make consequential amendments to reflect the creation of the approved family sponsor class by the Family Violence Act.

Items 140 - 143 – Subclass 408 and 482

These Items make consequential amendments to clarify that the provisions only apply to approved work sponsors. This is consequential to the creation of the approved family sponsor class by the Family Violence Act.

Schedule 2—Temporary sponsored parent visa

This Schedule creates a new Subclass 870 visa (Sponsored Parent (Temporary) visa (Subclass 870) which can be granted to parents of Australian citizens, Australian permanent residents or eligible New Zealand citizens where the parent's child, or the child's partner, has been approved as a parent sponsor in relation to them (see Schedule 1 to this instrument).

Item 1 - At the end of subregulation 1.20(4)

This item adds a reference to the new Subclass 870 visa to subregulation 1.20(4) to ensure that the sponsorship undertakings in regulation 1.20 do *not* apply to a sponsor of a person who holds a Subclass 870 visa.

This is because an approved family sponsor is governed by Division 3A of Part 2 of the Migration Act and not by Division 1.4 of Part 2 of the Migration Act.

An approved family sponsor must instead satisfy the obligations in Division 2.19 of Part 2A of the Migration Regulations.

Items 2 - 7

The effect of these items is to ensure that a person cannot apply for the following visas if they hold a Subclass 870 visa or have not departed Australia since holding a Subclass 870 visa:

- Parent (Migrant) (Class AX)
- Aged Parent (Residence)(Class BP)
- Contributory Parent (Migrant)(Class CA)
- Contributory Aged Parent (Residence)(Class DG)
- Contributory Parent (Temporary)(Class UT).

The Subclass 870 visa is a temporary visa and it is not intended to be a pathway to any other parent category visa. A person must depart Australia at the end of their temporary stay in Australia before they may apply for another parent category visa. The person is not prevented from applying for any other substantive visa if they meet the application and visa criteria.

Item 8 - After item 1238 of Schedule 1

This Item adds new Item 1239 (Family (Temporary) (Class GH)) to Part 2 of Schedule 1 to the Migration Regulations to create a new class of sponsored family visas, which currently contains one visa subclass, the Subclass 870 (Sponsored Parent (Temporary)) visa.

Subitem 1239(1) provides that the application form for applying for a Family (Temporary) (Class GH) visa, is the approved form specified by the Minister in a legislative instrument made for the purposes of this item under subregulation 2.07(5).

Subitem 1239(2) provides for the Visa Application Charge (VAC). Paragraph 1239(2)(a) provides that the first instalment of the VAC is \$1000.

Paragraph 1239(2)(b) provides in effect that the second instalment of the VAC is:

- If the visa is to be granted for a period of up to 3 years, \$4000

- If the visa is to be granted for a period of more than 3 years, \$9,000

Note that subregulation 870.511(2) provides that a visa may not be granted for a period of more than 5 years.

Subitem 1239(3) provides other requirements that must be met to make a valid application for the visa, as stated in that provision.

Paragraph 1239(3)(b) ensures that a person cannot apply for another Subclass 870 visa while they hold a Subclass 870 visa. When a person's Subclass 870 visa ceases, the approval of the parent sponsor in relation to them also ceases (refer paragraph 2.64B(2)(e)). If the person wishes to apply for another Subclass 870 visa, the sponsor must re-apply to be approved as a parent sponsor first. When that person is approved for another sponsorship, then the parent may apply for their next Subclass 870 visa.

Paragraph 1239(3)(e) ensures that a person must be outside Australia to make a valid application, unless the applicant has been permitted by the Minister to be in Australia at the time of making the application. The Subclass 870 visa is intended to be a temporary stay visa and should be applied for while a person is outside Australia. Permission may be given to apply while in Australia in exceptional circumstances, such as an accident or serious illness which means the person cannot travel offshore.

Paragraph 1239(3)(f) ensures that a person cannot make a valid application if they have held Subclass 870 visas for a total of ten years already. That is the maximum time a person may hold Subclass 870 visas.

Subitem 1239(4) provides that the Subclass for this class is Subclass 870 (Sponsored Parent (Temporary)).

Item 9 - After Part 866 of Schedule 2

This Item adds a new Part 870 - Sponsored Parent (Temporary) after Part 866 of Schedule 2 to the Migration Regulations.

The effect of this amendment is to establish the criteria for the grant of a Subclass 870 (Sponsored Parent) (Temporary) visa.

Division 870.1

New Division 870.1 sets out the interpretation provisions that relate to new Part 870. Notes in subdivision 870.11 provide that there are no interpretation provisions specific to this part and refer to regulation 1.03 in relation to the term 'parent sponsor' and regulation 1.15K in relation to the term 'has an outstanding public health debt.'

Division 870.2

New Division 870.2 sets out the primary criteria for a subclass 870 Sponsored Parent (Temporary) visa. Notes immediately under the heading '870.2 - Primary criteria' provide that the criteria in this subdivision are for all applicants seeking to satisfy the primary criteria for a Subclass 870 visa, and that all criteria must be satisfied at the time a decision is made on the application.

Clause 870.221

The purpose of new clause 870.221 is to ensure that the visa cannot be granted unless there is an approved parent sponsor in relation to the applicant. It does not necessarily need to be the same parent sponsor that was specified in the visa application if, for example, that sponsor has deceased and a new parent sponsor has been approved in relation to the applicant in the interim.

Clause 870.222

The purpose of new clause 870.222 is to ensure that a visa applicant has genuine access to funds, and that the funds are sufficient to meet the costs and expenses of the applicant's intended stay in Australia. This measure is complemented by requirements that the parent sponsor must have a certain level of income to sponsor their parent and they are under an obligation to pay any outstanding health debts incurred by the parent.

Clause 870.223

New clause 870.223 gives effect to the policy intention that an applicant must be outside Australia for at least 90 consecutive days between holding Subclass 870 visas. This reflects that this is a temporary stay visa only.

There is an exception to this if:

- the person was in Australia at the time they applied for the visa. If there were exceptional circumstances to permit the person to be in Australia at the time of application it is recognised that they may not be able to meet this requirement; or
- there are exceptional circumstances which justify the grant of the visa earlier, such as earlier travel to Australia is required to attend a medical emergency.

If the person departed Australia while holding the Subclass 870 visa and remained outside Australia until the visa ceased, then that period while they were outside Australia holding the Subclass 870 visa may be counted toward the 90 consecutive days. However, if they departed Australia while holding a Subclass 870 visa and returned to Australia holding the Subclass 870 visa, then that period cannot be counted.

Clause 870.224

The purpose of new clause 870.224 is to ensure that the visa cannot be granted unless the person has adequate arrangements for health insurance during the period of the applicant's intended stay in Australia.

The term *adequate arrangements for health insurance* is defined in regulation 1.03 of the Migration Regulations (refer Item 1 of Schedule 3 to this Instrument).

This aims to ease the burden on Australia's public health care system.

Clause 870.225

New clause 870.225 provides that the applicant must have complied substantially with the conditions to which the last of any substantive visas held by the applicant, and subsequent bridging visas held by the applicant, were subject.

Any difference in wording between this provision and similar provisions in the Migration Regulations which appear to have the same intent only reflects an updated drafting style, no substantive difference is intended.

Clause 870.226

New clause 870.226 provides that the applicant must genuinely intend to stay in Australia temporarily.

This visa is a temporary stay visa only. It is not a pathway to permanent residence or permanent stay in Australia.

Clause 870.227

New clause 870.227 provides that an applicant must not have an outstanding public health debt, or if the applicant does have an outstanding public health debt, the debt has either been paid in full or appropriate arrangements have been made for the payment of the debt.

The definition of “has an outstanding public health debt” in regulation 1.15K in effect provides that an outstanding public health debt exists if the Department has been notified of the debt and that notification has not been withdrawn.

This criterion can be met if the Minister is satisfied that the debt has been paid in full, even if the notification from the relevant authority has not been withdrawn due to an administrative error, for example. This explains why the provision refers to an outstanding public health debt that has been paid in full.

Clause 870.228

New clause 870.228 sets out the Public Interest Criteria (PIC) that must be met by the applicant. Subclause (1) requires the applicant to meet PIC 4001, 4002, 4003, 4004, 4010, 4019, 4020 and 4021.

These broadly relate to character, national security, debts to the Commonwealth, ability to become established in Australia on a temporary basis, Australian values, fraudulent information and valid passport.

Subclause (2) requires that if the applicant was not in Australia at the time the application was made, they must satisfy PIC 4005 (requirements related to health). Subclause (3) requires that if the applicant was in Australia at the time the application was made, they must satisfy PIC 4007.

PIC 4007 substantially mirrors the health-related requirements in PIC 4005, but allows the Minister to waive some of these requirements where the grounds of a waiver are met. If the applicant was permitted to be in Australia when making the application, then it is recognised that there may be health related reasons which may require the Minister’s waiver under subclause 4007(2). Noting that the Minister may only waive the requirement if the grant of the visa would be unlikely to result in undue cost to the Australian community or undue prejudice to access of health care or community services.

Clause 870.229

New clause 870.229 sets out the special return criteria that must be satisfied by the applicant. These impose certain restrictions on when a person may return to Australia if they have been here previously.

Division 870.3

New Division 870.3 may set out the secondary criteria for grant of a Subclass 870 visa, which are usually met by family members of the main applicant. In this case, there are no secondary criteria. This means that all applicants must satisfy the primary criteria.

Division 870.4

New Division 870.4 sets out the circumstances applicable to grant. New clause 870.411 provides that the applicant may be in or outside Australia, but not in immigration clearance, when the visa is granted. The note immediately following this clause provides that the second instalment of the visa application charge must be paid before the visa can be granted.

Division 870.5

New Division 870.5 sets out when the visa is in effect.

Clause 870.511 provides:

- That the visa is a temporary visa which permits the holder to enter Australia and to travel in and out of Australia unlimited times while they hold the visa. It provides they may do this starting on the day the visa is granted and ending on a date specified by the Minister (subject to subclauses (2) and (3)) (the visa validity period).
- The date specified by the Minister must not be more than 5 years after the day the visa is granted. The intention is that the maximum visa validity period that can be given is 5 years.
- The visa validity period given cannot result in a person holding Subclass 870 visas for more than 10 years.
- The visa will cease earlier than the date specified by the Minister according to the table in subclause 870.511(3).

Subclause 870.511(3) includes a table setting out events that may cause a Subclass 870 visa to cease to be in effect earlier than the date specified by the Minister, and when the cessation of the visa takes effect in those circumstances. Column 2 of the table specifies when the visa ceases after each event.

The effect of **Table Item 1** is that in the event that the parent sponsor's approval as a sponsor is cancelled, the Subclass 870 visa ceases to be in effect 35 days after the cancellation. The purpose of this time period is to allow the Subclass 870 visa holder to either apply for a different type of visa, or make arrangements to leave Australia.

The effect of **Table Item 2** is that in the event that the parent sponsor withdraws their sponsorship of the Subclass 870 visa holder, and no other person applies to be the visa holder's sponsor in accordance with the process referred to in either regulation 2.61A (application for approval as a parent sponsor) or 2.66 (application for variation of a term of a

sponsorship) within 35 days after the notification of withdrawal, the visa ceases to be in effect 35 days after Immigration receives notification, in writing, of the withdrawal. The purpose of this time period is to allow the Subclass 870 visa holder to find another eligible person to apply to be their sponsor, apply for a different type of visa, or make arrangements to leave Australia.

The effect of **Table Item 3** is that in the event that:

- the parent sponsor withdraws their sponsorship of the Subclass 870 visa holder; and
- another person applies to be the visa holder's sponsor within 35 days after the Department receives notification of the withdrawal in accordance with the process referred to in either regulation 2.61A or 2.66; and
- the Minister refuses the application;

the visa ceases to be in effect 35 days after the Minister's decision is affirmed, if the applicant seeks review of the decision, or otherwise 35 days after the Minister's decision is made. The purpose of this time period is to allow the Subclass 870 visa holder to apply for a different type of visa, or make arrangements to leave Australia.

The effect of **Table Item 4** is that in the event the parent sponsor dies, and no other person applies to be the visa holder's sponsor in accordance with the process referred to in either regulation 2.61A or 2.66 within 90 days after the parent sponsor's death, the visa ceases to be in effect 90 days after the death of the sponsor. The purpose of this time period is to allow the Subclass 870 visa holder to find another eligible person to apply to be their sponsor, apply for a different type of visa, or make arrangements to leave Australia. A longer duration is given in recognition of the circumstances.

The effect of **Table Item 5** is that in the event that:

- the parent sponsor dies; and
- another person applies to be the visa holder's sponsor within 90 days after the parent sponsor's death in accordance with the process referred to in either regulation 2.61A or 2.66; and
- the Minister refuses the application;

the visa ceases to be in effect 35 days after the Minister's decision is affirmed, if the applicant seeks review of the decision, or otherwise 35 days after the Minister's decision is made. The purpose of this time period is to allow the Subclass 870 visa holder to apply for a different type of visa, or make arrangements to leave Australia. A shorter duration is given because additional time would have been provided in the processing of the sponsorship application and, if applicable, merits review.

Division 870.6

New Division 870.6 sets out the conditions to which the Subclass 870 visa is subject. New clause 870.611 mandatorily applies conditions 8103, 8303, 8501, 8531, 8550 and 8564 to the visa.

Condition 8103 (amended by Item 10 below) prohibits all work unless permission has been given by the Minister. "Work" is defined in regulation 1.03 of the Migration Regulations to

mean “an activity that, in Australia, normally attracts remuneration”. The intention is that this visa should not be used to circumvent the normal criteria for a work category visa.

Condition 8303 prohibits disruptive, violent or threatening conduct.

Condition 8501 requires the holder to maintain *adequate arrangements for health insurance*. This term is now defined by these Regulations.

Condition 8531 requires the holder to depart Australia at the end of the period of stay permitted by the visa.

Condition 8550 requires the holder to notify the Minister of a change in personal details.

Condition 8564 prohibits criminal conduct.

Failure to comply with a visa condition is a ground for cancellation of a visa under paragraph 116(1)(b) of the Migration Act.

Item 10 - Clause 8103 of Schedule 8

This Item repeals and replaces clause 8103 of Schedule 8 to the Migration Regulations.

New clause 8103 provides that the holder must not undertake work in Australia without the permission in writing of the Minister, which may be in relation to specified work, or for a specified time.

“Work” is defined in regulation 1.03 of the Migration Regulations to mean “an activity that, in Australia, normally attracts remuneration”.

Schedule 3— Adequate arrangements for health insurance

Item 1 - Regulation 1.03

Item 2 - At the end of Division 1.2 of Part 1

This item amends regulation 1.03 by adding a new definition of *adequate arrangements for health insurance* for the purposes of the Migration Regulations.

The new definition provides that adequate arrangements for health insurance means an arrangement to be covered by health insurance that meets the requirements specified in an instrument under regulation 1.15L; or if no such requirements are specified, that are adequate in the circumstances.

Prior to these amendments, there was no definition of ‘adequate arrangements for health insurance’ in the Act or Regulations. However, the term ‘adequate arrangements for health insurance’, and variations of that term, are used regularly throughout some parts of the Regulations, as both a visa criterion (meaning the applicant needs to demonstrate that they have adequate arrangements for health insurance before they can be granted the visa) and a visa condition (meaning the person must continue to maintain adequate health insurance while they hold the visa subject to that condition).

Item 2 adds new regulation 1.15L which works in conjunction with the definition of *adequate arrangements for health insurance* inserted by Item 1.

New subregulation 1.15L(1) provides that the Minister may, by legislative instrument, specify requirements for health insurance in relation to a specified class or classes of visa; and requirements for health insurance in relation to a specified class or classes of person for the purposes of paragraph (a) of the definition of *adequate arrangements for health insurance* in regulation 1.03.

New subregulation 1.15L(2) provides that, without limiting subregulation (1), the Minister may specify different requirements for different classes of visa or person.

The effect of these amendments are that the Minister can specify minimum health insurance requirements for relevant visa applicants and holders by legislative instrument. If requirements for adequate arrangements for health insurance are not specified by legislative instrument then the Minister must be satisfied that the arrangements are adequate. When an instrument is in effect, it will provide a legislative basis for the minimum level of health insurance cover considered necessary for visa applicants and visa holders. It also provides clarity for visa holders, health insurers and the Private Health Insurance Ombudsman on what the minimum level of cover should provide for.

The instrument made under regulation 1.15L would not be disallowable because it is made under Part 1 of the Migration Regulations, and therefore is exempted from disallowance by section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (see table item 20). The instrument would be made under Part 1 of the Migration Regulations because it relates to the definition and definitions are contained in Part 1 of the Migration Regulations. For the reasons outlined above, specifying a transparent minimum level of health insurance cover is a positive measure.

Items 3, 7, 8 and 9 - Clauses 403.211, 403.313; Clauses 407.216, 407.314, 408.212 and 408.314; and Subclauses 485.215(1) and (2) and 485.312(1) and (2); and Clauses 500.215, 500.314, 590.217 and 590.313 of Schedule 2

Items 3, 7, 8 and 9 of this Schedule amend: clauses 403.211 and 403.313; clauses 407.216, 407.314, 408.212 and 408.314; subclauses 485.215(1) and (2) and 485.312(1) and (2); and clauses 500.215, 500.314, 590.217 and 590.313 of Schedule 2 to the Migration Regulations by omitting the words “in Australia”.

These items make technical amendments to ensure that the term ‘adequate arrangements for health insurance’ is referred to in a consistent way throughout the Migration Regulations and to ensure they all refer to the defined term.

Items 4, 5 and 6- Subclause 405.227(5), Paragraphs 405.228(5)(a) and (b) and Subclauses 405.329(2) and 405.330(2) and (2A) of Schedule 2

Items 4, 5 and 6 of this Schedule amend subclause 405.227(5), paragraphs 405.228(5)(a) and (b) and subclauses 405.329(2) and 405.330(2) and (2A) of Schedule 2 by omitting the words “health insurance cover in Australia” and substituting the words “arrangements for health insurance”.

These items make technical amendments to ensure that the term ‘adequate arrangements for health insurance’ is referred to in a consistent way throughout the Migration Regulations and to ensure they all refer to the defined term.

Item 10- In the appropriate position in Schedule 13

Part 85 – Amendments made by the *Migration Amendment (Temporary Sponsored Parent Visa and Other Measures) Regulations 2019*

This item inserts a new Part 85 in the appropriate place in Schedule 13 (Transitional Arrangements) to the Migration Regulations. New Part 85 provides application and transitional provisions for these Regulations.

Clause 8501 provides that, in this Part, amending regulations means the *Migration Amendment (Temporary Sponsored Parent Visa and Other Measures) Regulations 2019* and that *commencement day* means the day the amending regulations commence.

Clause 8502 provides for the operation of Schedule 3 to this Instrument.

General transitional arrangements

Subclause (1) provides that, subject to subclauses (2) and (3), the amendments to the Migration Regulations made by Schedule 3 to this Instrument apply in relation to the following:

- (a) a visa application made on or after the commencement day of Schedule 3 to this Instrument (that is, 17 April 2019);
- (b) a visa granted on or after the commencement day of Schedule 3 to this Instrument if the application for the visa was made on or after that day.

Paragraph (b) has been included as these Regulations amend a visa condition and it is intended to clarify that only visas granted on or after 17 April are impacted.

Exception for Subclass 405 (Investor Retirement) visas

Subclauses (2) and (3) set out the transitional arrangements for applications for a Subclass 405 (Investor Retirement) visa, for applicants seeking to satisfy the primary criteria for the grant of the visa, and applicants seeking to satisfy the secondary criteria for the grant of the visa.

For a person seeking to meet the primary or secondary criteria for a Subclass 405 (Investor Retirement) visa before, on or after 17 April 2019, subclause (2) provides that if the applicant is the holder of a Subclass 405 visa that was applied for before 17 April 2019; or the last substantive visa held by the applicant since last entering Australia was a Subclass 405 visa then, despite the amendment of paragraph 405.228(5)(a) of Schedule 2 to the Migration Regulations made by item 10 of Schedule 3 to this Instrument, that paragraph, as in force immediately before 17 April 2019, continues to apply in relation to the application.

This exception for the specified Subclass 405 visa applicants is to cater for the fact that if a person holds or has held a Subclass 405 visa and is seeking a further Subclass 405 visa, then they must meet a criterion, at subclause 405.228(5) and 405.330(2), that the applicant and their partner (if any) *have had* adequate arrangements for health insurance on those previous visas. It is not intended to impose the new definition retrospectively in such cases.

Therefore, the application provision provides that if the applicant holds a Subclass 405 visa that was applied for before these Regulations commenced, or the last substantive visa held was a Subclass 405 visa that was applied for before these Regulations commenced, then amendments to subclauses 405.228(5) and 405.330(2) do not apply to them.