EXPLANATORY STATEMENT

Issued by the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

Migration Act 1958
Australian Citizenship Act 2007

Home Affairs Legislation Amendment (2021 Measures No 1) Regulations 2021

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.

The *Australian Citizenship Act 2007* (the Citizenship Act) provides for the process of becoming an Australian citizen, the circumstances in which citizenship may cease, and some other matters related to citizenship.

Subsection 504(1) of the Migration Act provides that the Governor-General may make regulations, not inconsistent with the Migration Act, 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.

Section 54 of the Citizenship Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Citizenship Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Citizenship Act.

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

The *Home Affairs Legislation Amendment (2021 Measures No 1) Regulations 2021* (the Regulations) amend the Migration *Regulations 1994* (Migration Regulations) and the *Australian Citizenship Regulation 2016* (the Citizenship Regulation) as follows:

Amendments to the Migration Regulations 1994

Schedule 1 – Business Innovation and Investment Program – implements findings of a review and consultations to streamline and improve the operation of the Business Innovation and Investment Program to produce better outcomes for the Australian economy and support Australia's post-COVID-19 economic recovery by maximising the impact of high value investors, business owners and entrepreneurs.

Schedule 2 – Working holiday maker visas – provides a nil visa application charge and eligibility concessions for working holiday makers affected by the COVID-19 pandemic.

Schedule 3 – Bridging visa amendments – makes amendments to reduce face-to-face contact by permitting the requirement for an interview to be waived for certain bridging visa applicants, and amends visa condition 8401, requiring visa holders to report to the

Department, to provide the Minister with a discretion to allow bridging visa holders to report to the Department electronically or by telephone, rather than by attending in person.

Schedule 4 – Manner of Reporting on arriving overseas passengers and crew members – enables officers to require reporting to be given in a particular way, including a digital format, to provide greater efficiency and in accordance with the digital transformation agenda.

Amendments to the Australian Citizenship Regulation 2016

Schedule 5 – Changes to citizenship fees – provides a nil fee for an application for evidence of citizenship when it is combined with an application for citizenship by descent or adoption (consistent with other applications); updates eligibility for concessional fees for an application for citizenship by conferral; and updates citizenship application fees to better reflect the cost of processing these applications..

Schedule 6 – Payment of citizenship fees in foreign currencies – makes routine amendments to incorporate instruments made under the Migration Regulations updating the places and currencies in which citizenship application fees may be paid and the relevant exchange rates.

Schedule 7 – Application, saving and transitional Provisions – sets out application and transitional provisions for Schedules 1 to 6.

The matters dealt with in the Regulations are appropriate for implementation in regulations rather than by Parliamentary enactment. It has been the consistent practice of the Government of the day to provide for detailed visa criteria and conditions in the Migration Regulations rather than in the Migration Act itself. The Migration Act expressly provides for these matters to be prescribed in regulations.

The current Migration Regulations have been in place since 1994, when they replaced regulations made in 1989 and 1993. Providing for these details to be in delegated legislation rather than primary legislation gives the Government the ability to respond quickly to emerging situations such as the COVID-19 pandemic.

The amendments to the Citizenship Regulation relate to matters of detail and are therefore appropriate for inclusion in regulations.

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. No Regulation Impact Statement is required. The OBPR consultation references are:

- Schedule 1 – 25905
- Schedule 2 – 42822

- Schedule 3 – 43432
- Schedule 4 – 43433
- Schedule 5 – 43470
- Schedule 6 – 42679

Consultations

Subsection 17(1) of the *Legislation Act 2003* (the Legislation Act) requires that appropriate and reasonably practicable consultation be undertaken prior to implementing changes to regulations.

Consultation in relation to the Regulations was undertaken as follows:

Schedule 1 – Business innovation and investment program

Two public consultation rounds were held to inform these changes:

- On 19 December 2019, the former acting Immigration, Citizenship, Migrant Services and Multicultural Affairs, Minister Tudge, announced a public consultation process, seeking submissions from stakeholders to inform the Department's review of the Business Innovation and Investment Program with a view to getting a better deal for Australia. The consultation process closed on 14 February 2020.
    - 41 written submissions were received and nine roundtable discussions were held with a range of stakeholders, including state and territory governments, Commonwealth agencies, fund managers, migration agents and members of the public.
    - A summary of these consultations and public submissions are available on the Department's website: https://www.homeaffairs.gov.au/reports-and-publications/submissions-and-discussion-papers/biip-getting-better-deal-australia. There was broad support for the changes.
- On 17 December 2020 the government announced key changes to the Business Innovation and Investment Program as a part of getting a better deal for Australia. As part of this announcement the Government committed to continuing to consult widely with industry to inform any further changes to the Complying Investment Framework.
    - 19 submissions were received from stakeholders, including state and territory governments, Commonwealth agencies, fund managers, migration agents and members of the public. There was broad support for the changes.

The Department held a range of discussions, both through roundtable discussions and individually with the following groups:

- Federal Government agencies: Austrade, Australian Securities and Investment Commission, Department of Education, Skills and Employment, Department of Foreign Affairs and Trade, Department of Industry, Science, Energy and Resources, AusIndustry and the Treasury.
- State and Territory government representatives.
- Fund managers, migration agents and industry groups.

In addition, submissions were received from the following organisations who broadly supported the changes:

Commonwealth - Australian Trade and Investment Commission (Austrade); Australian Securities and Investment Commission (ASIC); Department of Education, Skills and Employment (DESE); Department of Foreign Affairs and Trade (DFAT); Department of Industry, Science, Energy and Resources (DISER); AusIndustry; The Treasury.

State and Territory - Chief Minister, Treasury and Economic Development, Australian Capital Territory; Migration Northern Territory; New South Wales Trade, Tourism and Investment Precincts; Department of Innovation and Skills, South Australia; Department of Growth, Tasmania; The Hon. Martin Pakula MP, Minister for Jobs, Innovation and Trade, Victoria Small Business Development Corporation, Western Australia.

Industry bodies - Australia China Business Council; Australian Investment Council (AIC); Financial Services Council (FSC); Migration Institute of Australia (MIA); Property Funds Australia

Fund Managers - Atlas Advisors; Bensons Property Group; Ellerston Capital; Guosen Securities (HK) Asset Management Co; MinterEllison; Moelis; Morgan Stanley Wealth Management; Mutual Limited; Ord Minnett; Real Asset Management (RAM); SG Hiscock & Company Limited; Southmore Capital; Uniseed.

Migration Agents/ Migration Lawyers - AUSA Migration; Australian Migration Specialists; Fragomen; Globility; Golden Circle; IMC Migration; Johninfo Lawyers; Lena Hung and Associates; Lewis Migration; Suffolk Law; Verity Law.

Others – Cryptoraven; Jim's Group.

Schedule 2 – Working holiday maker visas

This initiative was approved as part of the 2020-21 Federal Budget. Consultations were undertaken with the Treasury, Department of Finance, Department of Foreign Affairs and Trade, Department of Education, Skills and Employment, and Department of Prime Minister and Cabinet. The measure was announced by the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs on 12 October 2020. Details of the proposed change were communicated to Hospitality and Tourism industry peak bodies through the Department's Tourism Visa Advisory Group (TVAG). The proposed changes were well received by the sector.

There was no direct consultation with working holiday maker visa holders (as potential beneficiaries of the change), migration agents, lawyers, or other peak bodies in relation to this measure. No such consultations were considered appropriate or reasonably practicable given the beneficial nature of the change. Given the timeframe for implementation of the change following the announcement, all stakeholders and interested parties could have raised concerns if any existed. This did not occur, which reflects the positive and beneficial nature of the change.

Schedule 3 – Bridging visa amendments

The changes to interview requirements and reporting requirements are beneficial changes for visa applicants and visa holders. They also respond to public health imperatives to reduce face-to face contact where possible during the COVID-19 pandemic. The changes are considered to be of a machinery nature as they are limited refinements of existing visa

criteria and visa conditions. As a result, external consultation was not considered necessary or appropriate.

Schedule 4– Manner of reporting on arriving overseas passengers and crew members

Extensive internal consultation was undertaken within the Department and included the following areas: Maritime Operations; Mobile Apps Team; Border Operations Centre; Traveller Operations Policy; ABF Innovation; Operations System Management; Seaport Referrals; Enterprise Architecture; and Traveller Capability Partnership Team. Consultation with other Commonwealth agencies was not considered necessary as the amendments have no impact on other agencies or portfolios. External consultation with industry was undertaken with several agents and port companies, including Shipping Australia, Flinders Ports (South Australia) and Ports Australia.

Schedule 5 – Changes to citizenship fees

In relation to the amendments to implement a nil fee for evidence of citizenship, consultation was undertaken with the Department of Foreign Affairs and Trade, the Department of Education, Skills and Employment, the Department of Health, the Department of Social Services, the National Disability Insurance Scheme and state and territory births, deaths and marriages registries.

In relation to the amendments for concessional fees, consultation was undertaken with Services Australia and the Department of Veterans' Affairs (DVA). As both of these amendments are objectively beneficial to applicants, further consultation was not considered necessary.

The citizenship fee increases are consistent with the Australian Government Charging Framework, which categorises these fees as a resource charge. While resource charges are based on the potential value of the activity to the recipient, the new fees align with the cost of delivering the citizenship program.

Application fees for Australian citizenship are increased to more accurately reflect the cost of delivering the citizenship program. The previous schedule of citizenship fees was implemented on 1 January 2016. This is the first change to citizenship application fees since 2016 and has been determined by a review of citizenship processes and costs. The new fees are commensurate with the comprehensive approach to end-to-end processing of citizenship applications and reflect inflation costs as well as changes to processes implemented since 2016. Based on the previous fees, the Government was only recovering approximately 50 per cent of the costs of processing citizenship applications.

The change in fees (not amounting to a taxation) was determined by a review of citizenship processes and costs and is reasonable in comparison to citizenship fees in other, similar countries such as New Zealand, the United States, Canada and the United Kingdom. No further consultation was undertaken for these amendments because the comparable annual increases over the five year period since citizenship fees were last updated are relatively minor in nature and do not substantially alter existing arrangements.

Schedule 6 – Payment of citizenship fees in foreign currencies

No consultation was undertaken in relation to Schedule 6 as the amendments do not substantially alter existing arrangements.

Schedule 7 – Application, saving and transitional provisions

No consultation was undertaken in relation to Schedule 7 as the amendments are technical amendments.

The Regulations commence on 1 July 2021.

Further details of the Regulations are set out in Attachment C.

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

ATTACHMENT A

AUTHORISING PROVISIONS

Section 54 of the *Australian Citizenship Act 2007* (the Citizenship Act) relevantly provides that the Governor-General may make regulations prescribing matters required or permitted by the Citizenship Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Citizenship Act.

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provides that the Governor-General may make regulations (the 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.

The following provisions of the Citizenship Act may also be relevant:

- subsection 21(1), which provides that a person may make an application to the Minister to become an Australian citizen; and

- paragraph 46(1)(d), which provides that an application under a provision of the Citizenship Act must be accompanied by the fee (if any) prescribed by the regulations.

In addition, the following provisions of the Migration Act may also be relevant:

- subsection 29(1), which provides that the Minister may grant a non-citizen permission, to be known as a visa, to do either or both of the following: (a) travel to and enter Australia; (b) remain in Australia;

- subsection 29(2), which provides that, without limiting subsection 29(1), a visa to travel to, enter and remain in Australia may be one to:

    (a) travel to and enter Australia during a prescribed or specified period; and

    (b) if, and only if, the holder travels to and enters during that period, remain in Australia during a prescribed or specified period or indefinitely;

- subsection 30(2), which provides that a visa to remain in Australia (whether also a visa to travel to and enter Australia) may be a visa, to be known as a temporary visa, to remain during a specified period, or until a specified event happens, or while the holder has a specified status;

- 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;

- 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;

- section 40, which provides that the Regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;

- subsection 45B(1), which provides that the amount of visa application charge is the amount, not exceeding the visa application charge limit, prescribed in relation to the application (the visa application charge limit is determined under the *Migration (Visa Application) Charge Act 1997*);

- subsection 45B(2), which provides that the amount prescribed in relation to an application may be nil;

- paragraph 46(1)(b), which provides that the Regulations may prescribe the criteria and requirements for making a valid application for a visa;

- 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;

- subsection 338(9), which provides that the Regulations may prescribe a decision to be a *Part 5-reviewable decision*;

- paragraph 347(2)(d), which provides that if a decision is prescribed for the purposes of subsection 338(9) as a *Part 5-reviewable* decision, the Regulations may prescribe the person who may apply for review; and

- subsection 504(2), which provides that section 14 of the Legislation Act does not prevent regulations whose operation depends on a country or other matter being specified by the Minister in an instrument made under the Regulations after the commencement of the Regulations.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Home Affairs Legislation Amendment (2021 Measures No 1) Regulations 2021

This Disallowable 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 Schedule 1 – Business Innovation and Investment Program

Schedule 1 amends the *Migration Regulations 1994* (the Migration Regulations) to improve and streamline the current requirements for two visas, the Subclass 188 (Business Innovation and Investment (Provisional)), and Subclass 888 (Business Innovation and Investment (Permanent)) visas, through which the Business Innovation and Investment Program (BIIP) is implemented, and repeals a third visa, the Subclass 132 (Business Talent) visa, which is no longer required.

The BIIP aims to attract to Australia migrants with business, investment and entrepreneurial skills that will benefit the Australian economy. These amendments will streamline and improve the BIIP to ensure that it is well-placed to support Australia's post-COVID-19 economic recovery by maximising the impact of high value investors, business owners and entrepreneurs.

Within the BIIP, there are provisional visa options leading to a permanent visa for:

- **Business people** with a range of business skills who want to establish, develop and manage a new or existing business in Australia.
- **Entrepreneurs** who have a funding agreement from a third party to undertake an entrepreneur activity that is proposed to lead to either the commercialisation of a product or service or the development of a promising, high-value business in Australia.
- **Investors** who want to make a specified investment in the Australian economy and maintain business and investment activities in Australia.

The BIIP originally comprised of three visa subclasses:

- Subclass 132 (Business Talent): a permanent visa with two streams:
    - Significant Business History; and
    - Venture Capital Entrepreneur
- Subclass 188 (Business Innovation and Investment (Provisional)): a temporary (provisional) visa with five streams (with provision for extensions in two streams):
    - Business Innovation;
    - Business Innovation Extension;
    - Investor;
    - Significant Investor;
    - Significant Investor Extension;
    - Premium Investor; and

    - Entrepreneur
- Subclass 888 (Business Innovation and Investment (Permanent)): a permanent visa with five streams:
    - Business Innovation;
    - Investor;
    - Significant Investor;
    - Premium Investor; and
    - Entrepreneur.

Subclasses 188 and 888 can be applied for by both persons in Australia and outside Australia, as could Subclass 132 up until its repeal by these amendments on 1 July 2021. Persons wishing to apply for a provisional BIIP visa submit an Expression of Interest and if they are nominated by a State or Territory Government (or in some cases Austrade), they will be invited to apply for the visa. The Subclass 888 visa is primarily geared towards persons who have come through the provisional visa pathway provided by the Subclass 188 visa. Applicants on that pathway do not need to submit a new Expression of Interest for the Subclass 888 visa, but are still required to be nominated by the relevant agency.

The Department recently conducted a review of the BIIP:

- On 19 December 2019, the then acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs announced a public consultation process, seeking submissions from stakeholders to inform the Department's review of the BIIP with a view to getting a better deal for Australia. The consultation process closed on 14 February 2020.
    - 41 written submissions were received and nine roundtable discussions were held with a range of stakeholders, including state and territory governments, Commonwealth agencies, fund managers, migration agents and members of the public.
- On 17 December 2020, following these consultations, the government announced key changes to the BIIP. As part of this announcement the Government committed to continuing to consult widely with industry to inform any further changes to the Complying Investment Framework.
    - 19 submissions were received from stakeholders, including state and territory governments, Commonwealth agencies, fund managers, migration agents and members of the public.
- A summary of these consultations, public submissions and the review report are available on the Department's website: https://www.homeaffairs.gov.au/reports-and-publications/submissions-and-discussion-papers/biip-getting-better-deal-australia.

The amendments to improve the BIIP follow on from this review and consultations and implement the following measures.

- Streamlining the BIIP to sharpen the focus on outcomes and measurable returns to the Australian economy, by closing three underperforming streams of the BIIP to new applicants.
    - The Schedule repeals the Subclass 132 visa, including both of its streams, that is, the Significant Business History and Venture Capital Entrepreneur streams, to remove the direct-to-permanent pathway and focus on the more measureable and desirable outcomes through the provisional-to-permanent pathway provided by the Subclass 188 visa pathway to a Subclass 888 visa.

    - The Schedule also repeals the Premium Investor stream of the Subclass 188 visa as this visa stream has been assessed as unsuccessful and the program would be best served by focusing on the remaining two investment streams.
    - Current applicants for these three streams, and current holders of visas in these streams, are not affected by these amendments.
- Increasing, through amendments to the Subclass 188 visa, the assets and turnover requirements for the Business Innovation stream, to enable Australia to attract business migrants with more financial capital to invest in their businesses in Australia, as the current requirements have not changed since 2012.
- Improving the quality and integrity of investment outcomes for the Investor stream by changing the current designated investment requirement (based on passive investment in State and Territory government security) to a requirement to make a complying significant investment. This change is made through amendments to the Subclass 188 visa and related interpretational provisions and will direct investments into areas where there is a greater need and greater impact on Australia's economic growth by directly helping emerging and start-up companies, and increasing the investment required from at least $1,500,000 to at least $2,500,000.
- Adjusting the requirements for the Entrepreneur stream to make the Entrepreneur stream more attractive for start-up and early stage entrepreneurs. These amendments to the Subclass 188 and 888 visas implement successful elements of the Supporting Innovation in South Australia (SISA) pilot model, by:
    - Removing the current requirement for Entrepreneur visa applicants to secure significant investment. The $200,000 funding threshold and limits on eligible sources of funding have proven unrealistic to attract entrepreneurs to Australia.
    - Requiring applicants to be endorsed by State or Territory Government and innovation industry partners to ensure alignment of the proposed entrepreneurial activity with the innovation ecosystem in each state and territory.
- Aligning the periods of the provisional visa and provisional residence to make them more consistent across streams and with the two provisional skilled regional visas introduced in November 2019 (Subclasses 491 and 494). This measure is implemented by extending the Subclass 188 provisional visa validity period to five years and by changing the period of provisional residence required for grant of the Subclass 888 permanent visa. For most streams this change will represent a reduction of the period required from four to three years, meaning holders can seek to progress to permanent residence more quickly.
- Adjustments to the concessions introduced by the *Migration Amendment (COVID-19 Concessions) Regulations 2020* on 19 September 2020 to remove provisions that have not been used and are no longer considered to be desirable. The concession would have allowed withdrawal of some investments but required an instrument to operate. An instrument has not been made and therefore the amendment does not take away a current ability to make such a withdrawal.

The amendments apply only to those persons who are invited to apply for a BIIP visa after 1 July 2021. Current applicants for BIIP visas and holders of BIIP visas, including holders of the provisional Subclass 188 visa looking to move onto the permanent Subclass 888 visa, are not affected by these amendments. This is to ensure that applicants who are already on a pathway to the permanent visa, or who have been invited to commence the pathway by

applying for a provisional visa, at the time the amendments commence remain on the current pathway and relevant amendments will not apply to them.

Human rights implications of Schedule 1 – Business Innovation and Investment Program

Non-discrimination and the right to work

Article 6(1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) provides that:

> *The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*

Article 2(2) of the ICESCR provides:

> *The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

Article 2 of the ICESCR reflects the provision relating to discrimination in Article 2(1) of the ICCPR.

Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR) provides:

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

Setting visa requirements that depend on a number of factors, including a person's financial status, may engage the above rights to non-discrimination, including, for those persons who are already in Australia, as they relate to the right to work.

In its General Comment 18, the UN Human Rights Committee stated that:

> *The Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.*

Similarly, in its General Comment on Article 2 of the ICESCR (E/C.12/GC/20), UNCESCR has stated (at 13) that:

> *Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.*

Neither the ICCPR nor the ICESCR give a right for non-citizens to enter Australia for the purposes of seeking residence or employment. The UN Human Rights Committee, in its General Comment 15 on the position of aliens under the ICCPR, stated that:

> *The [ICCPR] does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory. However, in certain circumstances an alien may enjoy the protection of the [ICCPR] even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and respect for family life arise.*
>
> *Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment. A State may also impose general conditions upon an alien who is in transit. However, once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the [ICCPR].*

As such, Australia is able to set requirements for the entry of non-citizens into Australia and conditions for their stay, and does so on the basis of reasonable and objective criteria.

The aim of the BIIP is to target aspiring migrants who have a demonstrated history of success or talent in innovation, investment and business and are able to make a significant contribution to the national innovation system and the Australian economy. Australia sets the requirements for the entry and stay of BIIP entrants on the basis of reasonable and objective criteria aimed at promoting these objectives.

The amendments made by this Schedule to the current requirements for BIIP visas have been implemented following reviews that included public consultation and stakeholder feedback. The amendments are aimed at improving the outcomes of the BIIP for the Australian community. Importantly, the amendments do not affect current applicants for these visas or holders of these visas, including those on a pathway from a provisional BIIP visa to a permanent BIIP visa. This means that the permanent BIIP visa requirements will be preserved to match what the person expected when they applied for their provisional BIIP visa. As such, the rights of existing BIIP visa applicants and holders will not be affected by these amendments.

The amendments may impact on those persons who are considering applying for a BIIP visa but who have not yet been invited to do so at the time the amendments commence on 1 July 2021. While the amendments continue to provide for clear pathways for each cohort of the BIIP - business owners, investors and entrepreneurs, some prospective applicants may no longer be able to meet the changed requirements. However, this does not affect the person's current rights on the visa that they hold and they may be able to apply for another visa appropriate to their circumstances, including other skilled visas, that would permit them to continue working or engaging in other business activities in Australia.

Since the impact of the amendments is only on persons who may wish to apply for a BIIP visa in the future, does not affect their current rights and only potentially affects their options to remain in Australia beyond the duration of their current non-BIIP visa, the amendments made by this Schedule are consistent with the above rights. Further, the amendments to improve the settings of the BIIP program are reasonable, necessary and proportionate to the aims of a visa program that is specifically designed to maximise the impact of high value investors, business owners and entrepreneurs to the Australian economy and community.

Overview of Schedule 2 – Working holiday maker visas

Schedule 2 amends the Migration Regulations to facilitate the grant of further working holiday maker (WHM) visas to certain holders and former holders of those visas who have been affected by the COVID-19 pandemic. Schedule 2 makes provision to permit applications without a visa application charge, and also provides that a *COVID-19 affected visa* is irrelevant to the assessment of eligibility for further WHM visas.

The main purpose of the WHM program is to build people-to-people and cultural links between Australia and partner countries. While people who have been granted a WHM visa can choose to supplement their holiday with short-term employment, employment is not the primary objective of the visa.

However, people who have been granted WHM visas have become an important source of labour, particularly in remote and regional Australia.

The WHM program consists of two visa subclasses namely:

- the Work and Holiday (Subclass 462) visa; and.
- the Working Holiday (Subclass 417) visa

Both WHM visas are granted with a 12-month stay period. The key differences between the two visas are that the Work and Holiday (Subclass 462) visa arrangements generally have caps on the number of visas granted annually (except for the United States of America) and include additional eligibility requirements such as a minimum education level, English language proficiency or letters of support from a partner country Government. The Working Holiday (Subclass 417) visa arrangements are uncapped with no limit on the annual number of visa grants.

There are incentives for people who have been granted a WHM visa to work in specified locations and industries, referred to as 'specified work'. While people who have been granted a WHM visa can work in any area or industry, a person who has held their first WHM visa in Australia (having never been previously in Australia as a holder of a WHM visa) may then be granted a second visa if they have carried out at least three months of specified work. If a person undertakes at least six months of specified work whilst holding their second WHM visa or a related bridging visa, they may be eligible to be granted a third WHM visa.

As a result of the COVID-19 pandemic and travel restrictions in place from 20 March 2020, many WHM visa holders were either unable to enter Australia or departed Australia earlier than planned and could not return, thus losing the benefit of the visa and the opportunity to live and work in Australia. In recognition of this fact, and also recognising the important contribution that WHM visa holders make to the Australian economy, the Government is implementing concessions covering WHM visas that ceased or will cease between 20 March 2020 and 31 December 2021while the holder is outside Australia.

Schedule 2 amends the Migration Regulations to:

- Allow WHM visa holders in a specified class of persons to pay a nil Visa Application Charge (VAC). The intention is that WHM visa holders who are outside Australia, and could not enter Australia or left and were unable to return to Australia due to COVID-19 travel restrictions, be able to apply on or before 31 December 2022 for a new WHM visa with a nil VAC as long as they meet the age requirement. If they exceed the age requirement, they will get a refund of their VAC (the refund process

is already in place). It is intended that this measure will ensure that WHM visa holders, who are outside Australia, are not disadvantaged by travel restrictions, and will incentivise them to return to Australia once borders are open.

- Create a new defined term, *COVID-19 affected visa*, to cover WHM visas that were granted before 20 March 2020 and ceased or will cease between that date and 31 December 2021, provided that, if the visa has ceased, the visa holder was outside Australia when the visa ceased. This includes visas that expired during that period, and visas that were cancelled at the request of the visa holder. It is also a requirement that the holder or former holder has applied, from outside Australia, for another WHM visa between 1 July 2021 and 31 December 2022.
- Make changes to the Schedule 1 application validity criteria and Schedule 2 visa criteria for WHM visas so that WHMs are not disadvantaged because they have held a *COVID-19 affected visa*. The new rules are intended to operate so that, where an applicant has held a *COVID-19 affected visa* when they apply for a WHM visa, the *COVID-19 affected visa* is treated as not being a WHM visa for the purposes of the usual criteria in Schedules 1 and 2. That is, the visa is effectively treated, for the purposes of the WHM program, as though it never existed. This preserves the entitlement of WHMs to progress to a second and third WHM visa if they wish to do so and undertake the required 'specified work'. Eligible WHMs will be able to be hold up to four WHM visas in total (i.e. counting the *COVID-19 affected visa*).

Human rights implications of Schedule 2 – Working holiday maker visas

The amendments made by Schedule 2 are broadly beneficial for WHMs, the tourism industry and Australian employers.

Right to work

The amendment to allow holders of *Covid-19 affected visas* access to subsequent WHM visas in the future will benefit those holders as the visa they did not use or only partially used will not count towards the limit on the number of WHM visas that they may hold. Where those visa holders are in Australia at the time of the subsequent visa application, this may positively engage Article 6(1) of the *International Covenant on Economic, Social and Cultural Rights*, which states that:

> *The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*

The subsequent WHM visa eligibility provided by these amendments will allow WHM visa holders further time in Australia in the future to pursue work, holiday or undertake limited study, which promotes their rights, particularly the right to work.

The changes to the VAC affect only those WHMs who are outside Australia, and human rights obligations are therefore not engaged. However, since the changes are aimed at making it easier for the affected WHMs to come to or return to Australia in the future on a WHM visa, to pursue work, holiday or undertake limited study, the changes may in a broader sense promote their rights once they are in Australia, including the right to work

Overview of Schedule 3 – Bridging visa amendments

Schedule 3 amends the Migration Regulations to amend visa condition 8401, so that holders of Bridging visa subclasses 041, 050, 051, 060, and 070 (that is, holders of Bridging visas D, E, F and R) may be permitted to report to the Department without attending in person at a departmental office.

Additionally, the amending regulations provide for authorised officers to waive the requirement for Subclass 050 (Bridging (General)) visa applicants to undergo an interview as a part of the visa application process.

The amending regulations aim to decrease unnecessary face-to-face interactions, strengthening the Department' ability to work within public health guidelines throughout the COVID-19 environment and beyond.

The amending regulations provide for:

Reducing face-to-face interactions by amending reporting condition 8401

Certain holders of Bridging visas (subclasses 041, 050, 051, 060, and 070) are subject to reporting condition 8401 which, prior to these amendments, required them to report to the Department at a specified time/s and place. The condition is only available for these bridging visa classes, and does not apply to the other bridging visas or substantive visas.

There is an expectation that people on these Bridging visas take active steps to progress their own status resolution outcome (eg. grant of a substantive visa or applying for travel documents or plane tickets to depart Australia). Condition 8401 ensures that a visa applicant remains engaged with the Department until a decision is made on their substantive visa application, or they depart Australia. The condition assists the Department to monitor the progress of these types of activities. When imposing a reporting condition, visa processing officers consider the purpose and frequency of reporting and how this will affect the client.

The amending regulations alter condition 8401, to allow for digital or telephone reporting. Therefore, non-citizens will not have to report in person, unless specified. The new condition is not being applied retrospectively. It will only apply to visas granted from 1 July 2021.

Allowing for remote reporting will be a safer, more efficient way to manage large numbers of clients who must report regularly and will mitigate the risk posed to public health by face-to-face contact.

Discretion to waive the interview requirement on a Subclass 050 visa

Prior to these amendments, the clause 050.222 included a requirement that the Department must interview a Subclass 050 applicant unless specified circumstances apply. The amending regulations introduce a general discretion for an authorised officer to waive the interview requirement if the authorised officer determines that an interview is not required.

Interviews may be conducted face-to-face or by phone. By creating a general discretion to waive this interview requirement, the amending regulations reduce face-to-face interactions, in line with COVID-19 physical distancing principles.

The amending regulations also address the challenges associated with phone interviews as an alternative to face-to-face interview, which have been compounded in the current health environment. Currently, where a departmental officer calls the client to conduct an interview by phone, the departmental telephone line appears as private number. Clients can be

reluctant to provide information on receipt of a phone call, particularly in the event that the call is received from an unidentified private number. This is unlike the situation where the client is required to report to the Department by phone, where it is the client who initiates the call.

In determining which Subclass 050 applicants should be interviewed, consideration may be given to a range of factors relating to the applicant's immigration history. For example, the interview may be waived for applicants presenting for frequent, repeat interviews for the grant of subsequent subclass 050 visas, particularly in the event that no new information is required or available and where applicants have a history of compliance with migration laws.

Human rights implications of Schedule 3 – Bridging visa amendments

This legislative instrument engages the following rights:

- the right to health in Article 12 (1) and (2)(c)of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and
- the rights of equality and non-discrimination in Articles 2(1) and 26 of the *International Covenant on Civil and Political Rights* (ICCPR)

Rights relating to health

Article 12(1) and (2) of the ICESCR provide:

1. 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.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

    (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

The measures in the Disallowable Legislative Instrument are aimed at promoting the right to health, by limiting the amount of face-to-face interactions to essential interactions only, where applicable.

Amending reporting condition 8401 to allow Bridging visa subclasses 041, 050, 051, 060, and 070 to report digitally or via the telephone and introducing a discretion to waive the interview requirement for Subclass 050applicants reduces the number of persons who are required to attend a Departmental office in person. This promotes the right to health by assisting to prevent and control the spread of contagious diseases, such as COVID-19.

Rights relating to non-discrimination

Article 2(1) of the ICCPR provides that:

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

Article 26 of the ICCPR provides that:

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

In its General Comment 18, the UN Human Rights Committee stated that:

> "The Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant."

The object of the *Migration Act 1958* (the Act) is to 'regulate, in the national interest, the coming into, and presence in, Australia of non-citizens'. In that sense, the purpose of the Act is to differentiate on the basis of nationality between non-citizens and citizens. The UN Human Rights Committee has recognised in the ICCPR context that:

> "The Covenant does not recognize the right of aliens to enter or reside in the territory of a State party. It is in principle a matter for the State to decide who it will admit to its territory […] Consent for entry may be given subject to conditions relating, for example, to movement, residence and employment (CCPR General Comment 15, 11 April 1986)."

The measures in this amendment apply to people based on their current immigration status.

Amending reporting condition 8401

Bridging visa holders subject to condition 8401 are required to report to the Department at a specific time and place. The amending regulation amends this requirement to allow for digital or telephone reporting, rather than in person reporting (unless specified otherwise).

This reporting requirement only applies to certain Bridging visas and not substantive visas. Bridging visas provide a lawful status to those seeking to resolve their immigration status as they await an outcome on their substantive visa application, or prepare for their departure from Australia. Therefore, it is particularly important that Bridging visa holders remain engaged with the Department. The amending regulations do not change the reporting requirements, only the means by which the reporting can be made. Some Bridging visa holders will still be required to report in person to comply with condition 8401. Whether a person will be required to report in person will be assessed on a case-by-case basis. Those who may not be required to report in person include Bridging visa holders in the community who have a history of compliance with migration laws.

The method of reporting is determined by the Minister's delegate granting the Bridging visa. While specifying digital and telephone reporting for only some Bridging visa holders may discriminate against those who are still required to report face-to-face, the overall measure is aimed at reducing unnecessary face-to-face time, including during serious health events such as a pandemic, and decreases the travel time and cost (borne by the holder) associated with the need to report in person to the Department. To the extent that a person is discriminated

against by the requirement to report in person the requirement is reasonable, necessary and proportionate in achieving a legitimate objective.

Waiving the interview requirement on a Subclass 050

The current regulations already do not require an authorised officer to interview a Subclass 050 applicant in certain circumstances. The amending regulations provide authorised officers with an additional general discretion to waive the interview requirement prior to making a decision on a Subclass 050 application in a wider range of circumstances.

An authorised officer may consider an interview is not required for visa applicants presenting for frequent, repeat interviews for the grant of subsequent Subclass 050 visas, particularly in the event that no new information is required or available and where applicants have a history of compliance with migration laws. Waiving the interview requirement can also reduce face-to-face contact in public health emergencies, such as COVID-19.

The interview requirement will not be waived for all applicants. For example, an authorised officer may determine that the interview requirement should not be waived for applicants who have a history of non-compliance with migration law. In these circumstances, the ability to ask the applicant questions and confirm information contained in their visa application may be a necessary step when determining whether the individual is likely to comply with their visa conditions should they be granted a Subclass 050 or where the delegate needs more information in order to establish whether the criteria for grant is met or not met. In some cases, clients may be more comfortable explaining their situation orally rather than in writing, particularly where English is a second language.

While waiving the interview requirement for some visa applicants may discriminate against those who are still required to attend an interview, the overall measure is aimed at reducing unnecessary face-to-face time, including during serious health events such as a pandemic, and decreases the travel time and cost (borne by the holder) associated with attending an interview in person at the Department.

To the extent that a person is discriminated against by not having the requirement to attend an interview waived, the requirement is reasonable, necessary and proportionate in achieving a legitimate objective.

Overview of Schedule 4 – Manner of Reporting on arriving overseas passengers and crew members

Schedule 4 amends the Migration Regulations to compel the master of a civilian vessel to provide, on request by an officer, the list of all overseas passengers and crewmembers and their prescribed particulars *in a manner specified by an officer.*

Regulation 3.14 of the Migration Regulations provides that the master of a civilian vessel carrying overseas passengers which arrives at a port in Australia (the relevant port) must, if requested by an officer, give the officer certain information about the passengers on board the vessel.

If the last port entered by the vessel before its arrival at the relevant port was outside Australia, the particulars that must be given are: each passenger's full name; each passenger's date of birth; the country of issue and number of each passenger's passport; the citizenship of

each passenger; the intended address in Australia (if any) of each passenger; and the place in Australia (if any) at which each passenger's journey in the vessel ends.

If there are overseas passengers on the vessel whose journey is to end at the relevant port, the particulars that must be given are: each passengers full name; each passenger's date of birth; the country of issue and number of each passenger's passport; the citizenship of each passenger; and the intended address in Australia of each passenger.

If there are passengers on the vessel who were on board the vessel when it left a place outside Australia; and they intend to travel in the vessel beyond Australia; and the master has not previously been asked by an officer to give particulars of those passengers; the particulars that must be given are: each passengers full name; each passenger's date of birth; the country of issue and number of each passenger's passport; and the citizenship of each passenger.

Regulation 3.17 of the Migration Regulations provides that the master of a civilian vessel that enters Australia must, at any port of call in Australia, if requested by an officer, give the officer a list showing, the number of members of the vessel's crew; and in respect of each member of the crew, the particulars that must be given are: each crew members' full name; each crew members' date of birth; each crew members citizenship; and the country of issue and number of each crew members' passport; and if the vessel is a ship, produce to the officer the ship's articles.

Schedule 4 makes amendments so that the master of the vessel must give the particulars of passengers and crew members in the manner specified by the authorised officer. This information has to date been provided in a paper format that required multiple interventions to remediate issues stemming from data quality errors and inconsistent collection processes used by different vessels. This amendment enables the officer to request that the information be provided in a particular way, including a particular digital format, such as a mobile application, in order to provide efficiency gains and in accordance with the digital transformation agenda. This reduces the administrative burden for vessel masters and authorised officers.

An electronic platform for the collection of this information has recently been developed, and is known as the Mobile Optical Passport Scanner (MOPS). The MOPS application allows for a scan of the machine-readable zone of the biodata page of the passport to be uploaded, which converts the information into a comma separated values (CSV) file and is submitted to the Australian Border Force (ABF) to perform the necessary immigration and customs checks. The MOPS application process is usually performed by the master of the vessel (with approval and on behalf of the passport holder) and provides the particulars required.

Trials have been conducted where information has been provided electronically, using the MOPS application on a voluntary basis, and feedback so far from those that have used the MOPS application has been positive. It is easy to use, track and manage the same data to that of manual forms. The MOPS application is more efficient than the current paper based process, thus allowing the master of the ship to complete the necessary requirements more expediently. It is an offence, with a penalty of 10 penalty units, not to provide the information required under regulations 3.14 and 3.17 to an officer, if requested. However, the amendments do not make it an offence to not provide the information in the manner specified by the officer.

The information collected is checked against various departmental systems to determine if the traveller has the authority to enter Australia. The amendments will enhance the way information is collected but does not change the way in which the information will be used, and will not result in additional sharing of information.

Human rights implications of Schedule 4 – Manner of Reporting on arriving overseas passengers and crew members

Schedule 4 does not engage any of the applicable rights or freedoms.

In addition to the existing method of capturing, collecting and transmitting information using paper based forms, the amendments made by Schedule 4 allow for the same information to also be captured, collected and transmitted electronically, if required by an officer. The requested information and the way the ABF uses and stores this information to perform immigration and customs checks have not changed.

Overview of Schedule 5 – Changes to citizenship fees

Schedule 5 amends the *Australian Citizenship Regulation 2016* (the Citizenship Regulation) to provide a nil fee for an application for evidence of citizenship when it is made at the same time and on the same form as an application for citizenship by descent or adoption; to broaden eligibility for concessional fees for an application for Australian citizenship by conferral; and to increase citizenship application fees in line with increases in administrative costs associated with these activities.

Nil fee for application for evidence of citizenship made at same time as an application for citizenship by descent or adoption

The purpose of these amendments is to ensure that successful applicants for citizenship by descent or adoption receive an Australian citizenship certificate without completing an additional form or paying an additional fee. To achieve this, the amendments impose a nil fee for evidence of citizenship where the application for evidence of citizenship is made on the same form and at the same time as an application for citizenship by descent or adoption.

This amendment aligns with the circumstances in place for an application for citizenship by conferral or resumption, whereby an application for citizenship can be made at the same time and on the same form as an application for evidence of citizenship. The application for evidence of citizenship in this instance attracts a nil fee. This amendment therefore creates the same arrangement for an application for citizenship by descent or adoption.

The amendments improve efficiency in the Citizenship Program by streamlining arrangements for evidence of citizenship into a single, consistent process.

Concessional citizenship application fees

The purpose of these amendments is to simplify eligibility criteria for concessional fees, and to ensure that eligibility for concessional fees is reinstated for those who were previously eligible, where this eligibility changed as a consequence of operational practices of Services Australia and the Department of Veterans' Affairs (DVA).

Under subsection 16(1) and Schedule 3 to the Citizenship Regulation, some applicants for Australian citizenship by conferral can pay a concessional fee, rather than the standard application fee.

Prior to these amendments, eligibility for a concessional fee was based on holding an eligible pensioner concession card (PCC) or health care card (HCC) issued by Services Australia (formerly the Department of Human Services) or DVA, endorsed with a specified code indicating the type of payment or allowance the holder received. The eligibility criteria ceased to reflect the operational practices of Services Australia and DVA. Consequently, some applicants who would previously have been eligible for concessional fees were no longer eligible under the Citizenship Regulation.

Therefore, the amendments simplify eligibility criteria for concessional fees and reinstate eligibility for concessional fees for those who were previously eligible, by:

- updating eligibility criteria for concessional fees to ensure those in receipt of JobSeeker Payment are not excluded;
- removing additional requirements for Parenting Payment Single recipients in item 11 of Schedule 3 to align eligibility for this cohort with all other PCC holders;
- removing outdated references to HCCs;
- removing references to any specific codes or payment types for all PCCs issued by DVA or Services Australia, and instead referring to PCCs issued by the Commonwealth; and
- extending eligibility to dependent children of PCC holders who are under 18 and listed on the PCC, if making an independent application.

Changes to citizenship application fees

The purpose of this amendment is to update fees for applications for Australian citizenship to more accurately reflect the cost of delivering the citizenship program.

The change in fees was determined by a review of citizenship processes and costs. The new fees reflect inflation costs and are commensurate with the comprehensive approach to end to end processing of citizenship applications.

This is the first fee increase in five years as the current schedule of citizenship fees was implemented on 1 January 2016. The Government has only been recovering around 50 per cent of the cost of processing citizenship applications.

The change in fees is reasonable in comparison to citizenship fees in other, similar countries such as New Zealand, the United States, Canada and the United Kingdom.

Fees are amended in accordance with the following table:

Item Number	Type of Application	Fee up to 30 June 2021 (AUD)	New Fee from 1 July 2021 (AUD)
1	Citizenship by descent – person born outside Australia to an Australian parent Applications made at the same time under section 16 of the Act by 2 or more	$230 for the application by the first sibling, and $95 for the applications	$315 for the application by the first sibling, and $130 for the applications made

	siblings	made by the second and subsequent siblings	by the second and subsequent siblings
2	Citizenship by descent – person born outside Australia to an Australian parent An application under section 16 of the Act, other than an application mentioned in item 1	$230	$315
3	Citizenship through adoption – person adopted in accordance with the Hague Convention on Intercountry Adoption Applications made at the same time under section 19C of the Act by 2 or more siblings	$230 for the application by the first sibling, and $95 for the applications made by the second and subsequent siblings	$315 for the application by the first sibling, and $130 for the applications made by the second and subsequent siblings
4	Citizenship through adoption – person adopted in accordance with the Hague Convention on Intercountry Adoption An application under section 19C of the Act, other than an application mentioned in item 3	$230	$315
10	Citizenship by conferral – other than general eligibility - citizenship test not required (see item 16) – eligible for concessional fee	$20	$35
13	Citizenship by conferral – general eligibility (see item 14) – eligible for concessional fee	$40	$70
14	Citizenship by conferral – general eligibility An application under section 21 of the Act, other than an application mentioned in items 5 to 13 or items 15 to 18, if the applicant claims eligibility on the basis of the criteria in subsection 21(2) of the Act	$285	$490
16	Citizenship by conferral – other than general eligibility - citizenship test not required	$180	$300

	An application under section 21 of the Act, other than an application mentioned in items 5 to 15 or items 17 and 18		
17	Citizenship by conferral – general eligibility – applicant previously passed citizenship test in association with a previous application (see item 18) – eligible for concessional fee	$20	$35
18	Citizenship by conferral – general eligibility – applicant previously passed citizenship test in association with a previous application An application (the ***new application***) under section 21 of the Act, other than an application mentioned in item 5, 6, 8, 13 or 17, if: (a) the applicant claims eligibility on the basis of the criteria in subsection 21(2) of the Act; and (b) the applicant previously made an application (the ***old application***) on or after 1 October 2007; and (c) under the old application, the applicant sat a test as described in paragraph 21(2A)(a) of the Act	$180	$300
21	Renunciation of Australian citizenship An application under section 33 of the Act	$205	$265
24	Notice of evidence of Australian citizenship An application under section 37 of the Act, other than an application mentioned in item 22 or 23	$190	$240

Items in Schedule 3 that relate to an application for resuming Australian citizenship and those that provide for a nil fee are not being amended.

Human rights implications of Schedule 5 – Changes to citizenship fees

The measures in this Disallowable Legislative Instrument may engage the right to acquire or change a nationality under the following international instruments:

- Article 24(3) of the International Covenant on Civil and Political Rights;
- Article 5(iii) of the Convention on the Elimination of all Forms of Racial Discrimination;
- Article 18 of the Convention on the Rights of Persons with Disabilities;
- Article 9 of the Convention on the Elimination of All Forms of Discrimination Against Women; and
- Article 7 of the Convention of the Rights of the Child.

The first two amendments, which provide a nil application fee for evidence of citizenship for applicants applying for citizenship by descent or adoption and broaden eligibility for concessional fees for an application for citizenship by conferral, promote the right to acquire nationality under the applicable instruments.

The third amendment, which will increase fees for citizenship applications, may engage the right to acquire or change a nationality under the instruments listed above. To the extent that a person on an income support payment has a right to acquire or change a nationality, an increase in fees may limit that right. However, any limitation is reasonable and proportionate, as the scheme allows for concessional fees for those who are on income support payments. Fee increases are necessary to ensure the continued delivery of the citizenship program in a timely and efficient manner.

Overview of Schedule 6 – Payment of citizenship fees in foreign currencies

Schedule 6 amends the Citizenship Regulation to allow citizenship application fees, and refunds of citizenship application fees where appropriate, to be paid in foreign countries and foreign currencies.

In particular, item 1 of Schedule 6 to the Amendment Regulations amends subsection 16(7) of the Citizenship Regulation to incorporate, by reference, instruments made under the Migration Regulations that relate to the payment of fees in foreign countries and foreign currencies. Australian Government offices overseas routinely collect Australian citizenship application fees. These amendments facilitate the lawful collection of citizenship application fees in specified foreign countries and foreign currencies at updated exchange rates.

Subsections 16(2) and (3) of the Citizenship Regulation provide that the application must be made in a place, and in the currency, specified in the 'places and currencies instrument'. Subsection 16(4) of the Citizenship Regulation provides that, if the currency in which the payment is to be made is specified in the 'conversion instrument', the amount of the payment is to be worked out using the exchange rate for the currency specified in the instrument. These instruments are defined in subsection 16(7) of the Citizenship Regulation and are re-made under the Migration Regulations every six months to reflect currency fluctuations and changes to acceptable currencies. Consequently, subsection 16(7) of the Citizenship Regulation requires biannual amendment to reflect the current version of these instruments.

Purpose of amendments

The acceptable foreign countries and currencies are set out in legislative instruments made under subregulations 5.36(1) and (1A) of the Migration Regulations. The *Australian Citizenship Act 2007* does not allow for the making of a legislative instrument under the Citizenship Regulation to specify matters in relation to the collection of application fees in foreign countries and foreign currencies. Instead, subsection 16(7) of the Citizenship Regulation incorporates by reference instruments made under the Migration Regulations to specify the foreign countries where a fee may be paid, the currency that can be accepted in each listed country and the currency exchange rate that must be applied.

As a result, the relevant instruments, *Places and Currencies for Paying of Fees* and *Payment of Visa Application Charges and Fees in Foreign Currencies*, are updated on 1 January and 1 July each year, and amendments to the Citizenship Regulation are made to incorporate those instruments from that date. The only amendments this Disallowable Legislative Instrument makes to the Citizenship Regulation are the updating of the instrument name in subsection 16(7).

As such, the amendments made by Schedule 6 are technical in nature, and do not substantially alter existing arrangements.

Human rights implications of Schedule 6 – Payment of citizenship fees in foreign currencies

Schedule 6 does not engage any of the applicable rights or freedoms.

Overview of Schedule 7 – Application, saving and transitional provisions

Schedule 7 sets out the application, saving and transitional provisions for Schedules 1 to 6, noting that no provisions are required for Schedule 4.

Human rights implications of Schedule 7 – Application, saving and transitional provisions

Schedule 7 does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

The Hon. Alex Hawke MP,
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

ATTACHMENT C

Details of the *Home Affairs Legislation Amendment (2021 Measures No 2) Regulations 2021*

Section 1 – Name

This section provides that the name of the instrument is the *Home Affairs Legislation Amendment (2021 Measures No 2) Regulations 2021* (the Regulations).

Section 2 – Commencement

This section provides for the commencement of the instrument.

The whole of the instrument commences on 1 July 2021.

Section 3 – Authority

This section provides that the instrument is made under the *Australian Citizenship Act 2007* (the Citizenship Act) and the *Migration Act 1958* (the Migration Act).

Section 4 – Schedules

This section provides for how the amendments in the Regulations operate.

Schedule 1 – Business Innovation and Investment Program

Migration Regulations 1994

The items in this Schedule amend the *Migration Regulations 1994* (Migration Regulations) to improve and streamline the Business Innovation and Investment Program to sharpen the focus on business and investment outcomes that produce measurable returns to the Australian economy. In particular, the amendments:

- close one underperforming provisional visa stream to new primary applications: the Premium Investor stream in the Subclass 188 (Business Innovation and Investment (Provisional) visa (family members can still apply to join primary visa holders);

- repeal the Subclass 132 (Business Talent (Permanent)) visa, containing the Significant Investor and Venture Capital Entrepreneur streams. This is repealed in response to the underperformance of these visa streams and to remove a direct pathway to a permanent visa and require all business and investment migration applicants to undergo a mandatory provisional period before grant of a permanent visa;

- increase assets, turnover and investment requirements for eligibility for the Subclass 188 (Business Innovation and Investment (Provisional)) visa, to update amounts generally last set in 2012 and to enable Australia to attract business migrants with more financial and business capital to invest in Australia;

- improve the quality of investment outcomes for the Investor stream of the Subclass 188 (Business Innovation and Investment (Provisional)) visa by changing the previous requirement for applicants to make a *designated investment* (a passive investment in State or Territory government bonds) to a requirement to make a *complying significant investment*, which directs investments into areas where there is greater need and greater impact on Australia's economic growth by assisting emerging and start-up companies, and also increasing the amounts of investments required to update amounts which were generally last set in 2012;

- adjust the requirements of the Entrepreneur stream of the Subclass 188 (Business Innovation and Investment (Provisional)) and Subclass 888 (Business Innovation and Investment (Permanent)) visas to provide greater flexibility to make the Entrepreneur stream more attractive for start-up and early stage entrepreneurs;

- align the periods of the provisional visa and the provisional residence requirements for grant of the permanent visa to make them consistent across streams by extending the provisional visa validity period to five years and reducing the mandatory provisional period required for grant of the permanent visa for all streams from four to three years; and

- remove a concession for certain holders of a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Significant Investor stream to withdraw funds from or cancel components of their complying significant investment under certain circumstances, which is not required in view of the reduced impact of the COVID-19 pandemic.

The amendments generally apply only to applicants who were invited to apply for a provisional Subclass 188 visa on or after 1 July 2021, the date the amendments commence. Applicants who were invited to apply for a Subclass 188 visa before 1 July 2021 would have commenced on a pathway from a provisional Subclass 188 visa to a permanent Subclass 888 visa before these amendments were made, and therefore the Migration Regulations that were in force at the time their pathway commenced continue to apply to those applicants.

Details of the particular items are as follows.

Item [1] – Subregulation 1.11A(1)

This item amends subregulation 1.11A(1) of the Migration Regulations to omit a reference to Part 132 of Schedule 2 to the Migration Regulations.

Regulation 1.11A defines when an applicant has ownership for the purposes of certain Parts of Schedule 2. As a consequence of the repeal of Subclass 132 by this Schedule (see below), it is no longer necessary for regulation 1.11A to apply in respect of Subclass 132 as no further applications for the subclass can be made after 1 July 2021.

Item [2] – Paragraph 2.05(4AA)(b)

This item repeals paragraph 2.05(4AA)(b) of the Migration Regulations.

Paragraph 2.05(4AA)(b) referred to a Subclass 132 (Business Talent) visa. The repeal of the paragraph is consequential to the repeal of that subclass by this Schedule (see below).

Item [3] – Subparagraph 2.05(5A)(b)(ii)

This item repeals subparagraph 2.05(5A)(b)(ii) of the Migration Regulations.

Subparagraph 2.05(5A)(b)(ii) referred to a Subclass 132 (Business Talent) visa. The repeal of the subparagraph is consequential to the repeal of that subclass by this Schedule (see below).

Item [4] – Subregulation 2.06AAB(1)(table item 1)

This item repeals item 1 of the table in subregulation 2.06AAB(1) of the Migration Regulations.

Item 1 of the table in subregulation 2.06AAB(1) referred to a Subclass 132 (Business Talent) visa. The repeal of the item is consequential to the repeal of that subclass by this Schedule (see below).

Item [5] – Paragraphs 2.07AG(1)(b) and (2)(b)

This item repeals paragraphs 2.07AG(1)(b) and (2)(b) of the Migration Regulations.

Paragraphs 2.07AG(1)(b) and (2)(b) referred to a Subclass 132 (Business Talent) visa. The repeal of the paragraphs is consequential to the repeal of that subclass by this Schedule (see below).

Item [6] – Subregulations 5.19C(8A) and (8B)

This item repeals subregulations 5.19C(8A) and (8B) from the Migration Regulations.

Subregulations 5.19C(8A) and (8B) provided that an investment would not be taken to have ceased to be a complying significant investment at a particular time if the investor has, during a concession period, withdrawn funds from, or cancelled, a component of a complying significant investment specified by the Minister in a legislative instrument made under subregulation 5.19C(8B).

Subregulations 5.19C(8A) and (8B) were inserted in the Migration Regulations by the *Migration Amendment (COVID-19 Concessions) Regulations 2020* on 19 September 2020. However, in view of the reduced impact of the COVID-19 pandemic, it was subsequently considered not necessary for an instrument to be made under subregulation 5.19C(8B) to enable components of a complying significant investment to be withdrawn. The provision has therefore not operated and it is appropriate to remove it from the Migration Regulations.

Item [7] – Subregulation 5.19E(3)

This item amends subregulation 5.19E(3) of the Migration Regulations by inserting the words "If the applicant is invited to apply for the visa before 1 July 2021" at the beginning of the subregulation.

Regulation 5.19E defines the meaning of *complying entrepreneur activity* for the purposes of satisfying the requirements for grant of a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Entrepreneur stream.

The effect of this amendment is that the current requirement of subregulation 5.19E(3) relating to funding agreements for a *complying entrepreneur activity* applies only to applicants who were invited to apply for the visa before 1 July 2021. For applicants invited to apply after 1 July 2021, the funding available for the applicant's proposed entrepreneurial activity will be a factor to be taken into consideration by the relevant State or Territory government agency in deciding whether to nominate the applicant to apply for a Subclass 188 visa in the Entrepreneur stream.

Subregulation 5.19E(2) continues to apply to all applicants. The subregulation requires that the applicant's intended activity must relate to an innovative idea that is proposed to lead to the commercialisation of a product or services in Australia, or the development of an enterprise or business in Australia. It is in the best interests of the relevant State or Territory to nominate only genuine entrepreneurial applicants with satisfactory funding for the limited number of places in the Entrepreneur stream that are available to each State and Territory.

Item [8] – At the end of subregulation 5.19E(3)

This item adds a new paragraph (g) in subregulation 5.19E(3) of the Migration Regulations.

Subregulation 5.19E(3) sets out the requirements for a funding agreement from an authorised source for a *complying entrepreneur activity*. New paragraph 5.19E(3)(g) requires that all of the funding provided or to be provided to the entrepreneurial entity under the agreement of agreements must be unencumbered and lawfully acquired. This requirement is currently in subregulation 5.19E(4).

As noted above under the preceding item of this Schedule, the current subregulations 5.19E(3) and (4) continue to apply to applicants who were invited to apply before 1 July 2021. This amendment, in conjunction with the amendment in the following item, has the effect that all requirements to be met by applicants who were invited to apply for the visa before 1 July 2021 are contained within one subregulation 5.19E(3) rather than in two subregulations.

Item [9] – Subregulation 5.19E(4)

This item repeals subregulation 5.19E(4) of the Migration Regulations.

The provisions of subregulation 5.19E(4) are moved to subregulation 5.19E(3) by the amendment made by the above item.

Item [10] – Item 1104AA of Schedule 1

This item repeals item 1104AA (Business Skills Talent (Permanent)(Class EA)) of Schedule 1 to the Migration Regulations.

Class EA had one Subclass 132 (Business Talent). The effect of this amendment is to prevent any further applications for a Subclass 132 visa being made on or after 1 July 2021, in conjunction with the repeal of Subclass 132 in Schedule 2 to the Migration Regulations by this Schedule (see below).

Item [11] – Subitem 1104BA(4) of Schedule 1 (before table item 1)

This item inserts a new item 1AA in the table in subitem 1104BA(4) of Schedule 1 to the Migration Regulations.

Subitem 1104BA(4) deals with requirements for making a valid application for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in Business Innovation stream. Applicants must meet the requirements in at least one item in the table.

New item 1AA has two paragraphs. Paragraph (a) applies to an applicant who holds a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Business Innovation stream. Paragraph (b) requires that if paragraph (a) applies to the applicant, the applicant must have held the Subclass 188 visa in the Business Innovation stream for at least 3 years before making an application for the permanent visa, unless the applicant was invited to apply for the Subclass 188 in the Business Innovation stream visa before 1 July 2021.

The effect of the amendment is that applicants who are invited to apply for a Subclass 188 visa in the Business Innovation stream on or after 1 July 2021 must hold the visa for at least 3 years before they can make a valid application for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Business Innovation stream.

Item [12] – Subitem 1104BA(4) of Schedule 1 (table item 1)

This item amends item 1 in the table in subitem 1104BA(4) of Schedule to the Migration Regulations, to remove a reference to a Subclass 188 visa in the Business Innovation stream.

The effect of this amendment is that item 1 in the table now applies only to applicants for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Business Innovation stream who hold a Subclass 188 visa in the Business Innovation Extension stream. Applicants who hold a Subclass 188 visa in the Business Innovation stream come within new table item 1AA (see the above item of this Schedule).

The requirement to have held a provisional visa for three years before making an application for the permanent visa is not necessary for applicants who hold a Subclass 188 visa in the Business Innovation Extension stream, because all applicants holding that visa would already have held a Subclass 188 visa in the Business Innovation stream for at least three years before the Subclass 188 visa in the Business Innovation Extension stream was granted.

Item [13] – Subitem 1104BA(4) of Schedule 1 (table item 2)

This item repeals item 2 of the table in subitem 1104BA(4) of Schedule 1 to the Migration Regulations and substitutes a new item 2.

Table item 2 applies to an applicant for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Business Innovation stream who holds a Subclass 188 visa granted

on the basis that the applicant was the spouse or de facto partner of a person who held a Subclass 188 visa in the Business Innovation or the Business Innovation Extension stream.

New table item 2 has two paragraphs. Paragraph (a) applies to an applicant who held a Subclass 188 visa as a secondary applicant on the basis of being the spouse or de facto partner of a person who held a Subclass 188 visa in the Business Innovation or Business Innovation Extension stream. Paragraph (b) requires that if paragraph (a) applies to the applicant, the applicant must have held the Subclass 188 visa for at least three years before making an application for the permanent visa, unless the person who held a Subclass 188 visa in the Business Innovation or Business Innovation Extension stream was invited to apply for a Subclass 188 visa in the Business Innovation stream before 1 July 2021.

Item [14] – Subitem 1104BA(4) of Schedule 1 (table item 3)

This item repeals item 3 in the table in subitem 1104BA(4) of Schedule 1 to the Migration Regulations and substitutes a new item 3.

Paragraph (a) of new item 3 continues the previous provision that an applicant for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Business Innovation stream may hold a Subclass 444 (Special Category) visa. Paragraph (b) of new item 3 requires that unless the applicant was granted the Subclass 444 visa before 1 July 2021, the applicant must have held the Subclass 444 visa for at least three years.

Item [15] – Subitem 1104BA(5) of Schedule 1 (table items 1 and 2)

This item repeals items 1 and 2 in the table in subitem 1104BA(5) of Schedule 1 to the Migration Regulations, and substitutes new items 1 and 2.

Subitem 1104BA(5) deals with requirements for making a valid application for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Investor stream. Applicants must meet the requirements in at least one item in the table.

New table item 1 has two paragraphs. Paragraph (a) applies to an applicant who holds a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Investor stream. Paragraph (b) requires that if paragraph (a) applies to the applicant, the applicant must have held the Subclass 188 visa in the Investor stream for at least 3 years before making the application for the permanent visa, unless the applicant was invited to apply for the Subclass 188 visa in the Investor stream before 1 July 2021.

New table item 2 has two paragraphs. Paragraph (a) applies to an applicant who holds a Subclass 188 visa as a secondary applicant on the basis of being the spouse or de facto partner of a person who held a Subclass 188 visa in the Investor stream. Paragraph (b) requires that if paragraph (a) applies to the applicant, the applicant must have held the Subclass 188 visa for at least 3 years before making the application for the permanent visa, unless the person who held a Subclass 188 visa in the Investor stream was invited to apply for that visa before 1 July 2021.

Item [16] – Subitem 1104BA(5A) of Schedule 1 (before table item 1)

This item inserts a new item 1A in the table in subitem 1104BA(5A) of Schedule 1 to the Migration Regulations.

Subitem 1104BA(5A) deals with requirements for making a valid application for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in Significant Investor stream. Applicants must meet the requirements in at least one item in the table.

New table item 1A has two paragraphs. Paragraph (a) applies to an applicant who holds a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Significant Investor stream. Paragraph (b) requires that if paragraph (a) applies to the applicant, the applicant must have held the Subclass 188 visa in the Significant Investor stream for at least 3 years before making the application for the permanent visa, unless the applicant was invited to apply for the Subclass 188 visa before 1 July 2021.

Item [17] – Subitem 1104BA(5A) of Schedule 1 (table item 1)
This item amends item 1 in the table in subitem 1104BA(5A) of Schedule to the Migration Regulations, to remove a reference to a Subclass 188 visa in the Significant Investor stream.

The effect of this amendment is that item 1 in the table now applies only to applicants for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Significant Investor stream who held a Subclass 188 visa in the Significant Investor Extension stream. Applicants who hold a Subclass 188 visa in the Significant Investor Extension stream come within new table item 1A (see this Schedule, above).

The requirement to have held a provisional visa for three years before making an application for the permanent visa is not necessary for applicants holding a Subclass 188 visa in the Significant Investor Extension stream, because all applicants holding that visa would already have held a Subclass 188 visa in the Significant Investor stream for at least three years before it was granted.

Item [18] – Subitem 1104BA(5A) of Schedule 1 (table item 2)

This item repeals item 2 of the table in subitem 1104BA(5A) of Schedule 1 to the Migration Regulations and substitutes a new table item 2.

Table item 2 applies to an applicant for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Significant Investor stream who holds a Subclass 188 visa granted on the basis that the applicant was the spouse or de facto partner of a person who held a Subclass 188 visa in the Significant Investor or the Significant Investor Extension stream, and the applicant has ceased to be the spouse or de facto partner of that person or the person has since died..

New table item 2 has three paragraphs. Paragraph (a) applies to an applicant who holds a Subclass 188 visa as a secondary applicant on the basis of being the spouse or de facto partner of a person who held a Subclass 188 visa in the Significant Investor or Significant Investor Extension stream. Paragraph (b) requires that the applicant has ceased to be the spouse or de facto partner of that person, or the person has since died. Paragraph (c) requires that the applicant must have held the Subclass 188 visa for at least 3 years before making the

application for the permanent visa, unless the person who held a Subclass 188 visa in the Significant Investor or Significant Investor Extension stream was invited was invited to apply for a Subclass 188 visa in the Significant Investor stream before 1 July 2021.

Item [19] – Paragraph 1104BA(5C)(a) of Schedule 1

This item repeals paragraph 1104BA(5C)(a) of Schedule 1 to the Migration Regulations and substitutes a new paragraph 1104BA(5C)(a).

Item 1104BA(5C) deals with requirements for making a valid application for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in Entrepreneur stream.

New paragraph 1104BA(5C)(a) has two subparagraphs. Subparagraph 1104BA(5C)(a)(i) requires an applicant to hold a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Entrepreneur stream. Subparagraph 1104BA(5C)(a)(ii) requires that the applicant must have held the Subclass 188 visa in the Entrepreneur stream for at least 3 years before making an application for the permanent visa, unless the applicant was invited to apply for the Subclass 188 in the Entrepreneur stream visa before 1 July 2021.

Item [20] – Subparagraph 1202B(2)(a)(ib) of Schedule 1

This item repeals subparagraph 1202B(2)(a)(ib) of Schedule 1 to the Migration Regulations.

Repealed subparagraph 1202B(2)(a)(ib) previously out the amount of the first instalment of the visa application charge to be paid by an applicant seeking to satisfy the primary criteria for the grant of a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Premium Investor stream, or an applicant whose application is combined or sought to be combined with an application made by that person.

This amendment is consequential to other amendments made by this Schedule which close the Premium Investor stream of Subclass 188 to further applications from 1 July 2021 (see below).

Item [21] – Subitem 1202B(6C) of Schedule 1

This amendment repeals subitem 1202B(6C) of Schedule 1 to the Migration Regulations.

Repealed subitem 1202B(6C) previously set out the requirements for making an application for a Subclass 188 (Business Innovation and Investment) visa in the Premium Investor steam. This amendment has the effect of closing the Premium Investor stream to further primary applications from 1 July 2021. The amendment responds to findings that the stream is underperforming and that other streams in the Business Innovation and Investment Program are more beneficial to the Australian economy. Applications by members of the family units of holders of a Subclass 188 visa in the Premium Investor stream that was grnted on the basis of an application made before 1 July 2021 may still be made.

Item [22] – Part 132 of Schedule 2

This item repeals Part 132 (Business Talent) of Schedule 2 to the Migration Regulations. Following the repeal by this Schedule of item 1104AA (Business Skills Talent

(Permanent)(Class EA)) of Schedule 1 to the Migration Regulations (see above), no further applications for a Subclass 132 (Business Talent) visa can be made after 1 July 2021.

Repealed Subclass 132 had two streams, the Significant Business History stream and the Venture Capital Entrepreneur stream. Applicants who satisfied either stream were granted a permanent Subclass 132 visa without having to satisfy any requirements relating to a period of temporary provisional residence. These streams were found to be under-performing in producing outcomes that are beneficial to the Australian economy. Closing the Subclass 132 visa to further applications assists in changing the focus of the Business Innovation and Investment Program to areas that are more advantageous to Australia, and removes provision for certain applicants under the Business Innovation and Investment Program to progress immediately to a permanent visa.

Item [23] – Clause 188.113 of Schedule 2 (paragraph (e) of note 2)

This item repeals paragraph (e) of note 2 in clause 188.311 of Schedule 2 to the Migration Regulations.

Repealed paragraph (e) referred to the definition of *complying premium investment* in regulation 5.19D of the Migration Regulations. This amendment is consequential to other amendments in this Schedule which remove the Premium Investor stream from Subclass 188 (Business Innovation and Investment (Provisional)) and close the stream to further applications from 1 July 2021. As a result, the definition is no longer required.

Item [24] – Division 188.2 of Schedule 2 (note)

This item omits the words "If the applicant applies for a Subclass 188 visa in the Premium Investor stream, the criteria in Subdivisions 188.21 and 188.27 are the primary criteria", from the note in Division 188.2 of Schedule 2 to Migration Regulations.

This amendment is consequential to other amendments in this Schedule which remove the Premium Investor stream from Subclass 188 (Business Innovation and Investment (Provisional)) and close the stream to further primary visa applications from 1 July 2021.

Item [25] – Subclause 188.225(1) of Schedule 2

This item omits the words "of at least AUD500,000 in each of those years" in subclause 188.225(1) of Schedule 2 to the Migration Regulations, and substitutes the words: "in each of those years of: (a) if the time of invitation was before 1 July 2021 – at least AUD500,000; or (b) if the time of invitation was on or after 1 July 2021 – at least AUD750,000."

Subclause 188.225(1) sets out the value of the annual turnover of one or more established main businesses in which an applicant for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Business Innovation stream must have had an ownership interest for at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa. The effect of this amendment is that for applicants who were invited to apply for the visa before 1 July 2021 the value remains at AUD500,000. For applicants invited to apply for the visa on or after 1 July 2021, the value is raised to AUD750,000.

Item [26] – Clause 188.226 of Schedule 2

This item omits the words "net value of at least AUD800,000" in clause 188.226 of Schedule 2 to the Migration Regulations, and substitutes the words: "net value of (a) if the time of invitation was before 1 July 2021 – at least AUD800,000; or (b) if the time of invitation was on or after 1 July 2021 – at least AUD1,250,000."

Clause 188.226 sets out the required net value at the time of invitation to apply for a Subclass 188 (Business Innovation and Investment (Provisional)) visa of the business and personal assets of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse and de facto partner together, that can be applied to the establishment or conduct of a business in Australia.

The effect of this amendment is that for applicants who were invited to apply for the visa before 1 July 2021 the net value remains at AUD800,000. For applicants who are invited to apply for the visa on or after 1 July 2021, the net value is raised to AUD1,250,000.

Item [27] – Clause 188.244 of Schedule 2

This item amends clause 188.244 of Schedule 2 to the Migration Regulations to insert (1) at the beginning of the clause.

This amendment enables the restructure of the clause into two subclauses (1) and (2) to facilitate the insertion of new requirements by this Schedule (see below) for applicants for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Investor stream who are invited to apply for the visa on or after 1 July 2021.

Item [28] – Paragraph 188.244(b) of Schedule 2

The item repeals paragraph 188.244(b) of Schedule 2 to the Migration Regulations and substitutes a new paragraph (b) referring to a new subclause 188.244(2).

This amendment facilitates the restructuring of clause 188.224 into two subclauses (1) and (2).

Item [29] – At the end of clause 188.244 of Schedule 2

This item inserts a new subclause (2) in clause 188.244 of Schedule 2 to the Migration Regulations. The new subclause has two paragraphs (a) and (b).

New paragraph 188.244(2)(a) repeats the requirement of the repealed subparagraph 188.244(b)(i), that an applicant for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Investor stream must have maintained a direct involvement in managing eligible investments of the applicant, the applicant's spouse or de facto partner, or the applicant and the applicant's souse or de facto partner together.

New paragraph 188.244(2)(b) makes different requirements for the total net value of the eligible investments referred to in paragraph 188.244(a). If the time of invitation to apply for the visa was before 1 July 2021, the eligible investments must be of at least the previous net

value of AUD1,500,000. If the time of invitation to apply for the visa was on or after 1 July 2021, the net value of the eligible investments must be at least AUD2,500,000.

Item [30] – Clause 188.245 of Schedule 2

This item omits the words "net value of at least AUD2,250,000" in clause 188.245 of Schedule 2 to the Migration Regulations, and substitutes the words: "net value of: (a) if the time of invitation was before 1 July 2021 – at least AUD2,250,000; or (b) if the time of invitation was on or after 1 July 2021 – at least AUD2,500,000."

Clause 188.245 sets out the required net value at the time of invitation to apply for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Investor stream of the business and personal assets of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse and de facto partner together.

The effect of this amendment is that for applicants who were invited to apply for the visa before 1 July 2021 the minimum net value remains at AUD2,250,000. For applicants who are invited to apply for the visa on or after 1 July 2021, the value is raised to AUD2,500,000.

Item [31] – Before subclause 188.246(1) of Schedule 2

This item inserts a new subclause (1A) in clause 188.246 of Schedule 2 to the Migration Regulations.

New subclause 188.246(1A) requires an applicant who was invited to apply for Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Investor stream before 1 July 2021 to satisfy subclauses 188.246(1) and (2).

The effect of this amendment is that the requirements of subclauses 188.246(1) and (2) apply only to applicants who were invited to apply for the visa before 1 July 2021. Subclauses 246(1) and (2) require the applicant to have made a designated investment of at least AUD 1,500,000 in the name of the applicant or in the names of the applicant and the applicant's spouse or de facto partner in the State or Territory which nominated the applicant, and certain other requirements about the source of the funds.

Regulation 5.19A requires that a designated investment must made in a security issued by an Australian State or Territory government authority that is specified by the Minister in a legislative instrument. The range of investments that may qualify as a designated investment is therefore relatively limited.

Item [32] – After clause 188.246 of Schedule 2

This item inserts a new clause 188.246A in Schedule 2 to the Migration Regulations.

New subclause 188.246A(1) provides that if an applicant for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Investor stream is invited to apply for the visa on or after 1 July 2021, the applicant must meet the requirements of subclauses (2), (3) and (4).

Subclause 188.246A(2) require the applicant to have made a complying significant investment of at least AUD 2,500,000, and to have a genuine intention to hold the complying significant investment for the period of the visa.

Subclause 246A(3) makes certain requirements about the source or sources of the funds used to make the complying significant investment.

Subclause 246A(4) requires the applicant to give specified evidence about the complying significant investment, and documentation concerning other relevant matters to the Minister.

A complying significant investment must meet the requirements of regulation 5.19C. In particular, it must be of a kind specified by the Minister in a legislative instrument and must comply with any requirements specified in the instrument. This allows flexibility for a complying significant investment to include a range of investments, for instance, in venture capital and private growth equity funds and emerging companies.

Item [33] – Subclause 188.248(1) of Schedule 2

This item amends subclause 188.248(1) of Schedule 2 to the Migration Regulations by omitting words subclause relating to a designated investment, and substituting references to either a designated investment referred to in subclause 246(1), or a complying significant investment referred to in subclause 188.246A(2).

This amendment is consequential to the amendments made by this Schedule, above, which requires an applicant who was invited to apply for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Investor stream before 1 July 2021 to make a designated investment of at least the specified amount, or, if the applicant is invited to apply for the visa on or after 1 July 2021, to make a complying significant investment of at least the specified amount.

The effect of the provision is to require that the applicant genuinely has a realistic commitment to continue to maintain business or investment activity in Australia after the designated investment or the complying significant investment, as relevant, matures.

Item [34] – Subclause 188.248(2) of Schedule 2

This item amends subclause 188.248(2) of Schedule 2 to the Migration Regulations by omitting the words “he or she made the designated investment” and substituting the words “the nominating State or Territory government agency is located”.

This amendment is consequential to the amendments made by this Schedule, above, which require an applicant who was invited to apply for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Investor stream before 1 July 2021 to make a designated investment of at least the specified amount, or, if the applicant is invited to apply for the visa on or after 1 July 2021, to make a complying significant investment of at least the specified amount.

The effect of the amendment is to require that the applicant has a genuine intention to reside for at least two years in the State or Territory in which the nominating State or Territory government agency is located. This amendment ensures that the requirement applies to

applicants required to make a complying significant investment as well as to applicants required to make a designated investment.

Item [35] – Subclause 188.252(2) of Schedule 2

This item amends subclause 188.252(1) of Schedule 2 to the Migration Regulations by adding the words "If the time of invitation to apply for the visa was before 1 July 2021" at the beginning of the subclause.

The effect of this amendment is that the current requirement that an applicant for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Significant Investor stream must have a genuine intention to hold the complying significant investment required to be made under subclause 188.252(1) for at least 4 years would continue to apply to applicants who were invited to apply for the visa before 1 July 2021. Applicants who are invited to apply for the visa on or after 1 July 2021 are required to satisfy new subclause 188.252(3), inserted by the following item of this Schedule (see below).

Item [36] – After subclause 188.252(2) of Schedule 2 (before the note)

This item adds a new subclause 188.252(3) in clause 188.252 of Schedule 2 to the Migration Regulations.

New subclause 188.252(3) requires an applicant who was invited to apply for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Significant Investor stream on or after 1 July 2021 to hold the complying significant investment that the applicant is required to make under subclass 188.252(1) for the whole period of the visa. The effect of this amendment is to introduce variability of the period in which the investment must be held for applicants invited to apply for the visa on or after 1 July 2021, as the period within which the person holds the visa could vary from 3 to 5 years.

Item [37] – Paragraph 188.261(1B)(b) of Schedule 2

This item repeals paragraph 188.261(1B)(b) of Schedule 2 to the Migration Regulations and substitutes a new paragraph.

New paragraph 188.261(1B)(b) repeats the requirement of repealed subparagraph 188.261(1B)(b)(i) that an applicant for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Significant Investor Extension stream must continue to hold a complying significant investment within the meaning of regulation 5.19C as in force at the time the applicant applied for a Subclass 188 visa in the Significant Investor stream.

New paragraph 188.261(1B)(b) omits previous subparagraph 188.261(1B)(b)(ii) which provided that if the Subclass 188 visa in the Significant Investor stream was granted before 1 July 2021, during a concession period the applicant may have withdrawn funds or cancelled a component of a complying significant investment specified in an instrument under subregulation 5.19C(8B). This amendment is consequential to the repeal by this Schedule of subregulations 5.19C(8A) and (8B) (see above).

Item [38] – Subdivision 188.27 of Schedule 2

The item repeals Subdivision 188.27 of Schedule 2 to the Migration Regulations.

Repealed subdivision 188.27 previously set out criteria to be satisfied by an applicant for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Premium Investor stream. Amendments to item 1202B of Schedule 1 to the Migrations Regulations by this Schedule (see above) have the effect of closing the Premium Investor stream to further applications from 1 July 2021. Consequently, Subdivision 188.27 is no longer required.

Item [39] – After paragraph 188.282(a) of Schedule 2

This item inserts a new paragraph (ab) in clause 188.282 of Schedule 2 to the Migration Regulations.

New paragraph 188.282(ab) requires that an applicant for a Subclass 188 (Business Innovation and Investment)) visa in the Entrepreneur stream must have a genuine intention to undertake and continue to undertake, the complying entrepreneur activity in Australia.

Item [40] – Paragraph 188.282(b) of Schedule 2

This item inserts the words "if the time of application to apply for the visa was before 1 July 2021" at the beginning of paragraph 188.282(b) of the Schedule 2 to the Migration Regulations.

Paragraph 188.282(b) requires an applicant to have a genuine intention to undertake, and continue to undertake, a complying entrepreneur activity, as defined in regulation 5.19E of the Migration Regulations, in accordance with the agreement or agreements mentioned in paragraph 5.19E(3)(b) in relation to the activity. Amendments to subregulation 5.19E(3) by this Schedule, above, have the effect that the subregulation applies only in relation to an applicant for a Subclass 188 (Business Innovation and Investment)) visa in the Entrepreneur stream who was invited to apply for the visa before 1 July 2021. Consequently, this amendment limits the application of paragraph 188.282(b) to applicants who were invited to apply for the visa before 1 July 2021.

Item [41] – Paragraph 188.282(b) of Schedule 2

This item omits the words "in Australia" from paragraph 188.282(b) of Schedule 2 to the Migration Regulations.

This is a stylistic amendment only. The words "in Australia" are not required in this context as the definition of *complying entrepreneur activity* in regulation 5.19E relates only to activities in Australia.

Item [42] – Clause 188.311A of Schedule 2

This item inserts "(1)" before "If" at the beginning of clause 188.311A in Schedule 2 to the Migration Regulations.

This amendment makes the previous paragraphs 188.311A(a) and (b) into a new subclause 188.311A(1) to facilitate the insertion of a new subclause 188.311A(2) by this Schedule (see below).

Item [43] – Paragraph 188.311A(b) of Schedule 2

This item amends paragraph 188.311A(b) of Schedule 2 to the Migration Regulations to insert a reference to "the Investor stream".

This amendment is consequential to the amendment made by this Schedule, above, which has the effect that an applicant for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Investor stream who is invited to apply for the visa on or after 1 July 2021 is required to make a complying significant investment. Paragraph 188.311A(b) requires a completed copy of form 1412 (a deed of acknowledgement, undertaking and release in relation to the complying significant investment) to be signed by secondary applicants aged 18 years and over and given to the Minister.

Item [44] – At the end of clause 188.311A of Schedule 2

This item adds a new subclause (2) in clause 188.311A of Schedule 2 to the Migration Regulations.

New subclause 188.311A(2) provides that the requirement of subclause 188.311A(1) for certain secondary applicants to provide a completed copy of approved form 1412 does not apply if the primary applicant holds a Subclass 188 visa in the Investor stream and was invited to apply for that visa before 1 July 2021. This amendment clarifies that form 1412 is only required if the primary applicant is required to make a complying significant investment.

Applicants invited to apply before 1 July 2021 continue to make a designated investment in specified State and Territory government securities, in respect of which a form 1412 is not required.

Item [45] – Clause 188.511 of Schedule 2

This item amends clause 188.511 of Schedule 2 to the Migration Regulations to remove a reference to the Premium Investor stream. This amendment is consequential to the repeal of the Premium Investor stream by this Schedule (see above).

Item [46] – Clause 188.511 of Schedule 2

This item amends clause 188.511 of Schedule 2 to the Migration Regulations to omit words to the effect that a Subclass 188 visa in the Investor stream, the Significant Investor stream or the Entrepreneur stream permits the holder to travel to, enter and remain in Australia for 4 years and 3 months from the date of grant of the visa, and to substitutes words to the effect that if the applicant was invited to apply for the visa before 1 July 2021 the visa period is 4 years and 3 months, and if the time of invitation to apply for the visa is on or after 1 July 2021, the visa period is 5 years.

Item [47] – Paragraph 188.512(a) of Schedule 2

This item repeals paragraph 188.512(a) of Schedule 2 to the Migration Regulations and substitutes new paragraphs 188.512(a) and (ab). Clause 188.512 deals with the visa period of a Subclass 188 visa in the Business Innovation Extension stream.

New paragraph 188.512(a) provides that if the holder of a Subclass 188 visa in the Business Innovation stream for which the applicant was invited for apply before 1 July 2021 is granted a Subclass 188 visa in the Business Innovation Extension stream, the visa period of that visa is 6 years from the date of grant of the Subclass 188 visa in the Business Innovation stream.

New paragraph 188.512(ab) provides that if the holder of a Subclass 188 visa in the Business Innovation stream for which the applicant is invited for apply on or after 1 July 2021 is granted a Subclass 188 visa in the Business Innovation Extension stream, the visa period of that visa is 7 years from the date of grant of the Subclass 188 visa in the Business Innovation stream.

Item [48] – Paragraphs 188.512A(a) and (b) of Schedule 2

This item repeals paragraphs 188.512A(a) and (b) of Schedule 2 to the Migration Regulations and substitutes new paragraphs 188.512A(a), (b), (c) and (d). Clause 188.512A deals with the visa period of a Subclass 188 visa in the Significant Investor Extension stream.

New paragraph 188.512A(a) provides that if the holder of a Subclass 188 visa in the Significant Investor stream for which the applicant was invited for apply before 1 July 2021 is granted a Subclass 188 visa in the Significant Investor Extension stream, the visa period of that visa is 6 years from the date of grant of the Subclass 188 visa in the Significant Investor stream.

New paragraph 188.512A(b) provides that if the holder of a Subclass 188 visa in the Significant Investor stream for which the applicant was invited for apply on or after 1 July 2021 is granted a Subclass 188 visa in the Significant Investor Extension stream, the visa period of that visa is 7 years from the date of grant of the Subclass 188 visa in the Significant Investor stream.

New paragraph 188.512A(c) provides that if the applicant holds a Subclass 188 visa in the Significant Investor Extension stream, that is, if the applicant is being granted a second Subclass 188 visa in the Significant Investor stream, and the applicant was invited to apply for the Subclass 188 visa in the Significant Investor stream previously held by the applicant before 1 July 2021, the visa period of the second Subclass 188 visa in the Significant Investor Extension stream is 8 years from the date of grant of the Subclass 188 visa in the Significant Investor stream.

New paragraph 188.512A(d) p if the applicant holds a Subclass 188 visa in the Significant Investor Extension stream, that is, if the applicant is being granted a second Subclass 188 visa in the Significant Investor stream, and the applicant was invited to apply for the Subclass 188 visa in the Significant Investor stream previously held by the applicant on or after 1 July 2021, the visa period of the second Subclass 188 visa in the Significant Investor Extension stream is 9 years from the date of grant of the Subclass 188 visa in the Significant Investor stream.

Item [49] – After clause 188.611 of Schedule 2

This item inserts a new clause 188.611A in Schedule 2 to the Migration Regulations.

New clause 188.611A provides that if a Subclass 188 visa in the Investor stream is granted to an applicant who is invited to apply for the visa on or after 1 July 2021, visa condition 8557 must be imposed on the visa.

Visa condition 8557 imposes a requirement on the visa holder to hold an investment on the basis of which the visa was granted, including a complying significant investment within the meaning of regulation 5.19C, for the whole of the visa period.

This condition is imposed on a Subclass 188 visa in the Investor stream for which the applicant is invited to apply on or after 1 July 2021 as following amendments by this Schedule, above, those applicants are required to make a complying significant investment.

Item [50] – Clause 188.612 of Schedule 2

This item amends clause 188.612 of Schedule 2 to the Migration Regulations to remove a reference to the Premium Investor stream. This amendment is consequential to the repeal of the Premium Investor stream by this Schedule (see above).

Item [51] – Subclause 888.221(1) of Schedule 1

This item repeals subclause 888.221(1) of Schedule 2 to the Migration Regulations and substitutes a new subclause.

Repealed subclause 888.221(1) provided that an applicant for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Business Innovation stream must have been in Australia as the holder of one or more of the visas mentioned in the table in subitem 1104BA(4) of Schedule 1 to the Migration Regulations, for a total period of at least one year in the two years immediately before the application was made.

New subclause 888.221(1) provides that if an applicant was invited to apply for or was granted a relevant visa mentioned in the table in subitem 1404BA(4) on or after 1 July 2021, or if the visa is a secondary Subclass 188 visa, the primary person was invited to apply for a Subclass 188 visa on or after 1 July 2021, the applicant must have been in Australia as the holder of the visa mentioned in the table in subitem 1104BA(4) for a total period of at least one year in the three years immediately before the application was made.

This amendment does not apply where time of invitation to apply for the relevant visa was before 1 July 2021 or the relevant visa was granted before that date.

The amendment relating to applicants invited to apply for the relevant visa on or after 1 July 2021, or whose relevant visa was granted on or after 1 July 2021, are made in conjunction with the amendments to subitem 1104BA(4) by this Schedule, above, which require that where the time of invitation to apply for, or grant of a relevant visa was, on or after 1 July 2021, the visa mentioned in the table in subitem 1104BA(4) must have been held for at least

three years before an application for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Business Innovation stream can be made.

Item [52] – Paragraph 888.221(2)(b) of Schedule 2

This item amends paragraph 888.221(2)(b) of Schedule 2 to the Migration Regulations to add a reference to new item 1AA, which is added to the table in subitem 1104BA(4) by amendments made by this Schedule, above.

This amendment ensures that subclause 888.221(2) continues to apply to a holder of a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Business Innovation stream who is applying for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Business Innovation stream.

Item [53] – Subclause 888.231(1) of Schedule 2

This item repeals subclause 888.231(1) of Schedule 2 to the Migration Regulations and substitutes a new subclause.

Repealed subclause 888.231(1) provided that an applicant for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Investor stream must have been in Australia as the holder of a visa mentioned in the table in subitem 1104BA(5) of Schedule 1 to the Migration Regulations for a total period of at least two years in the four years immediately before the application was made.

This amendment provides that if an applicant was invited to apply for a relevant visa on or after 1 July 2021, or if the applicant holds a secondary Subclass 188 and the primary person was invited to apply for a Subclass 188 visa on or after 1 July 2021, the applicant must have been in Australia as the holder of the visa mentioned in the table in subitem 1104BA(5) for a total period of at least two years in the three years immediately before the application was made.

This requirement does not apply where the time of invitation to apply for the relevant visa was before 1 July 2021. The requirement for those applicants continues to be that the applicant must have been in Australia as the holder of the relevant visa for at least two years of the four years immediately before the application was made.

This amendment is made in conjunction with the amendments to the table in subitem 1104BA(5) made by this Schedule, above, which require that where the time of invitation to apply for a relevant visa was on or after 1 July 2021, the visa mentioned in the table in subitem 1104BA(5) must have been held for at least three years before a valid application for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Investor stream can be made.

Item [54] – Clause 888.232 of Schedule 2

This item amends clause 888.232 of Schedule 2 to the Migration Regulations to provide that the clause applies only to applicants for a Subclass 888 in the Investor stream if the applicant is mentioned in certain subclauses inserted in clause 888.231 by this Schedule, above.

The effect of this amendment is that clause 888.232, which relates to the holding of a designated investment, applies only to applicants who were invited to apply for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Investor stream before 1 July 2021. The effect of other amendments made this Schedule is that applicants who are invited to apply for a Subclass 188 visa in the Investor stream on or after 1 July 2021 are required to make a complying significant investment rather than a designated investment. New clause 888.233, which is inserted by the following item of this Schedule, applies to these applicants.

Item [55] – At the end of Division 888.23 of Schedule 2

This item adds a new clause 888.233 in Division 888.23 of Schedule 2 to the Migration Regulations.

New clause 888.233 applies to applicants of a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Investor stream who are invited to apply for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Investor stream, on or after 1 July 2021. The new clause requires these applicants to have held a complying significant investment for the whole of the period during which the applicant held a Subclass 188 visa.

Item [56] – Subclause 888.241(1) of Schedule 2

This item inserts the words "If the applicant is covered by subclauses (1A) to (1D)" at the beginning of subclause 888.241(1) of Schedule 2 to the Migration Regulations.

The effect of this amendment, in conjunction with the amendment made by the following item, is that the requirements of subclause 888.241(1) relating to the periods for which a Subclass 188 visa in the Significant Investor or Significant Investor Extension streams which must be held by an applicant for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Significant Investor stream apply only to applicants who were invited to apply for a Subclass 188 visa in the Significant Investor stream before 1 July 2021.

Following amendments to the table in subitem 1104BA(5A) of Schedule 1 to the Migration Regulations made by this Schedule, above, applicants who are invited to apply for a Subclass 188 visa in the Significant Investor stream on or after 1 July 2021 have to hold the visa for at least three years before making an application for a Subclass 888 visa. Applicants who hold a Subclass 188 visa in the Significant Investor Extension stream at the time of applying for a Subclass 888 visa would already have held a Subclass 188 visa in the Significant Investor stream for three years.

Item [57] – After subclause 888.241(1) of Schedule 2

This item inserts new subclauses 888.241(1)(1AA), (1), (1B), and (1C) in Schedule 2 to the Migration Regulations.

The purpose of the new subclauses is to specify the visas held by applicants for a Subclass 888 visa in the Significant Investor stream to whom subclause 888.241(1) continue to apply (see the above item of this Schedule). These visas are visas for which the applicant was invited to apply before 1 July 2021.

Item [58] – Subclause 888.241(2) of Schedule 2

This item omits a reference to subclause 888.241(2C) in subclause 888.241(2) of Schedule 2 to the Migration Regulations.

This amendment is consequential to the repeal of subclause 888.241(2C) by this Schedule (see below).

Item [59] – Paragraph 888.241(2B)(b) of Schedule 2

This item repeals paragraph 888.241(2B)(b) of the Migration Regulations and substitute a new paragraph 888.241(2B)(b).

Repealed paragraph 888.241(2B)(b) dealt with the time an applicant for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Significant Investor stream is required to have held a complying significant investment. This was for the whole period of four years that a Subclass 188 visa in the Significant Investor or Significant Investor stream was required to be held under subclause 888.241(1).

The effect of new paragraph 888.241(2B)(b) is that if an applicant was invited to apply for a Subclass 188 in the Significant Investor stream before 1 July 2021, the complying significant investment would have to be held for the continuous period of four years mentioned in subclause 888.241(1). However, applicants who are invited to apply for a Subclass 188 visa in the Significant Investor stream on or after 1 July 2021 are required to hold their complying significant investment for the whole period during which they hold the visa that was held at the time of applying for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Significant Investor stream.

This amendment introduces flexibility for applicants who are invited to apply on or after 1 July 2021. The effect of amendments made by this Schedule, above, is that a Subclass 188 visa granted to these applicants will be for five years but the visa holder can apply for a Subclass 888 visa in the Significant Investor stream at any time after holding that visa for three years. This amendment ensures that the complying significant investment has to be held only for the period that the Subclass 188 is held.

Item [60] – Subclause 888.241(2C) of Schedule 2

This item repeals subclause 888.241(2C) of Schedule 2 to the Migration Regulations.

Repealed subclause 888.241(2C) provided for a concession to certain applicants for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Significant Investor stream to allow them to withdraw funds from, or to cancel a component of a complying significant investment that was specified in an instrument under subregulation 5.19C(8B). No instrument was made under subregulation 5.19C(8B), and due to the reduced impact of the COVID-19 pandemic it is not intended to make an instrument. Subregulations 5.19C(8A) and (8B) are repealed by other items in this Schedule, above, and consequentially, subclause 888.241(2C) is also repealed.

Item [61] – Subclause 888.241(4)(b) of Schedule 2

This item omits a reference to subclause (2C) from paragraph 888.241(4)(b) of Schedule 2 to the Migration Regulations. This amendment is consequential to the amendment made by the above item of this Schedule, which repeals subclause 888.241(2C).

Item [62] – Paragraphs 888.261(1)(a) and (b) of Schedule 2

This item repeals paragraphs 888.261(1)(a) and (b) of Schedule 2 of the Migration Regulations and substitutes new paragraphs 888.261(1)(a) and (b).

Repealed paragraph 888.261(1)(a) required an applicant for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Entrepreneur stream to hold a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Entrepreneur stream and to have held that visa for a continuous period of at least four years.

New paragraph 888.261(1)(a) continues the previous requirement in respect of applicants who were invited to apply for a Subclass 188 visa in the Entrepreneur stream before 1 July 2021, and in addition provides that if the applicant is invited to apply for a Subclass 188 visa in the Entrepreneur stream on or after 1 July 2021, the applicant must have held the Subclass 188 visa for a continuous period of at least three years. This is consistent with amendments made to paragraph 1104BA(5C)(a) of Schedule 1 to the Migration Regulations by this Schedule, above, which permit the holder of a Subclass 188 visa in the Entrepreneur stream for which the applicant was invited to apply on or after 1 July 2021, to apply for a Subclass 888 visa in the Entrepreneur stream after holding the Subclass 188 visa for at least three years.

Repealed paragraph 888.261(1)(b) required an applicant for a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Entrepreneur stream to have resided in Australia for at least two years of the last four years while holding a Subclass 188 visa in the Entrepreneur stream.

New paragraph 888.261(1)(b) continues the previous requirement in respect of applicants who were invited to apply for a Subclass 188 visa in the Entrepreneur stream before 1 July 2021, and in addition provides that if the applicant is invited to apply for a Subclass 188 visa in the Entrepreneur stream on or after 1 July 2021, the applicant must have resided in Australia for at least two years while holding a Subclass 188 visa in the Entrepreneur stream.

This amendment provides greater flexibility for applicants who are invited to apply for a Subclass 188 visa on or after 1 July 2021 to meet the requirement to have resided in Australia for at least two years. Under amendments made by other items of this Schedule, above, these applicants are able to apply for a Subclass 888 visa in the Entrepreneur stream after holding a Subclass 188 visa in the Entrepreneur stream for at least three years but would have up to five years to meet the requirement to have resided in Australia for at least 2 years.

Item [63] – At the end of subclause 888.261(3) of Schedule 2

This item adds a new paragraph (d) in subclause 888.261(3) of Schedule 2 to the Migration Regulations.

Subclass 888.261(3) sets out matters to which the Minister or delegate must have regard (without limiting the matters) in assessing whether an applicant for a Subclass 888 (Business

Innovation and Investment (Permanent)) visa in the Entrepreneur stream has demonstrated overall a successful record of undertaking activities of an entrepreneurial nature, for the purposes of satisfying the criterion in subclause 888.261(2). New paragraph 88.2561(3)(d) provides for the Minister or delegate to take into consideration any endorsement of the applicant's record by a body recognised by the nominating State or Territory government agency as a start-up incubator, start-up accelerator or other body that assists start-up businesses.

Item [64] – Parts 7A.6 to 7A.8 of Schedule 7A

This item repeals Parts 7A.6, 7A.7 and 7A.8 of Schedule 7A (Business Innovation and Investment Points Test – Attributes and Points (Business Skills (Provisional)(Class EB) Visas) to the Migration Regulations.

Applicants for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Business Innovation and Investor streams must achieve a score on the business innovation and investment points test that is not less than the number of points specified by the Minister in an instrument for the relevant stream.

Part 7A.6 (Investor experience qualifications) is relevant to applicants for the Investor stream only.

Part 7A.7 (Financial asset qualifications) and Part 7A.8 (Business turnover qualifications) are relevant to applicants for the Business Innovation stream and the Investor stream.

The purpose of this item is to increase amounts of investment, assets and turnover that were generally last set in 2012. The new amounts apply only in respect of applicants who are invited to apply for a Subclass 188 (Business Innovation and Investment (Provisional)) visa on or after 1 July 2021. Applicants invited to apply before 1 July 2021 continue to be awarded points on the basis of the previous amounts.

Details of the amendments are:

Part 7A.6 – Investor experience qualifications – Investor stream only

Item 7A61 provides for applicants who are invited to apply on or after 1 July 2021 to be awarded 10 points if they have held eligible investments of not less that AUD250,000 in the four years immediately before the time of application. Applicants invited to apply before 1 July 2021 continue to be awarded 10 points on the basis of eligible investments of not less than AUD100,000 held for four years.

Item 7A62 provides for applicants who are invited to apply on or after 1 July 2021 to be awarded 15 points if they have held eligible investments of not less that AUD250,000 in the seven years immediately before the time of application. Applicants invited to apply before 1 July 2021 continue to be awarded 15 points on the basis of eligible investments of not less than AUD100,000 held for seven years.

Part 7A.7 – Financial asset qualifications

Item 7A71 provides for applicants who are invited to apply on or after 1 July 2021 to be awarded 5 points if the net value of relevant assets in each of the two fiscal years immediately before the time of application was not less than AUD1,250,000. Applicants

invited to apply before 1 July 2021 continue to be awarded 5 points on the basis of relevant assets of a net value of not less than AUD800,000 in each of the two fiscal years immediately before the time of invitation.

Item 7A72 provides for applicants who are invited to apply on or after 1 July 2021 to be awarded 15 points if the net value of relevant assets in each of the two fiscal years immediately before the time of application was not less than AUD1,750,000. Applicants invited to apply before 1 July 2021 continue to be awarded 15 points on the basis of relevant assets of a net value of not less than AUD1,300,000 in each of the two fiscal years immediately before the time of invitation.

Item 7A73 provides for applicants who are invited to apply on or after 1 July 2021 to be awarded 25 points if the net value of relevant assets in each of the two fiscal years immediately before the time of application was not less than AUD2,250,000. Applicants invited to apply before 1 July 2021 continue to be awarded 25 points on the basis of relevant assets of a net value of not less than AUD1,800,000 in each of the two fiscal years immediately before the time of invitation.

Item 7A74 provides for applicants who are invited to apply on or after 1 July 2021 to be awarded 35 points if the net value of relevant assets in each of the two fiscal years immediately before the time of application was not less than AUD2,750,000. Applicants invited to apply before 1 July 2021 continue to be awarded 5 points on the basis of relevant assets of a net value of not less than AUD2,250,000 in each of the two fiscal years immediately before the time of invitation.

Part 7A.8 – Business turnover qualifications

Item 7A81 provides for applicants who are invited to apply on or after 1 July 2021 to be awarded 5 points if the applicant had an ownership interest in one or more main businesses that had an annual turnover of not less than AUD750,000 in at least two of the four fiscal years immediately before the time of invitation. Applicants invited to apply before 1 July 2021 continue to be awarded 5 points on the basis of relevant business turnover of not less than AUD500,000 in at least two of the four fiscal years immediately before the time of invitation.

Item 7A82 provides for applicants who are invited to apply on or after 1 July 2021 to be awarded 15 points if the applicant had an ownership interest in one or more main businesses that had an annual turnover of not less than AUD1,250,000 in at least two of the four fiscal years immediately before the time of invitation. Applicants invited to apply before 1 July 2021 continue to be awarded 15 points on the basis of relevant business turnover of not less than AUD1,000,000 in at least two of the four fiscal years immediately before the time of invitation.

Item 7A83 provides for applicants who are invited to apply on or after 1 July 2021 to be awarded 25 points if the applicant had an ownership interest in one or more main businesses that had an annual turnover of not less than AUD1,750,000 in at least two of the four fiscal years immediately before the time of invitation. Applicants invited to apply before 1 July 2021 continue to be awarded 25 points on the basis of relevant business turnover of not less than AUD1,500,000 in at least two of the four fiscal years immediately before the time of invitation.

Item 7A84 provide for applicants who are invited to apply on or after 1 July 2021 to be awarded 35 points if the applicant had an ownership interest in one or more main businesses that had an annual turnover of not less than AUD2,250,000 in at least two of the four fiscal years immediately before the time of invitation. Applicants invited to apply before 1 July 2021 continue to be awarded 5 points on the basis of relevant business turnover of not less than AUD2,000,000 in at least two of the four fiscal years immediately before the time of invitation.

Schedule 2 – Working holiday maker visas

Migration Regulations 1994

The amendments outlined below are a component of concessions for working holiday makers (WHMs) affected by the COVID-19 pandemic. The target cohort is WHMs granted a Subclass 417 (Working Holiday) visa or a Subclass 462 (Work and Holiday) visa (collectively referred to in this Explanatory Statement as WHM visas) that expired or will expire between 20 March 2020 and 31 December 2021 while the holder is outside Australia. Those WHMs may be able to receive a visa application charge (VAC) waiver for a future application, or a refund.

A legislative instrument to provide for refunds came into effect on 27 February 2021 (see the *Migration (Refund of Visa Application Charge) Instrument (LIN 21/007) 2021*). The amendments outlined below create a power to provide the VAC waiver (see items 3 and 5) for applications made from 1 July 2021. It is intended that a new legislative instrument, to provide for the nil VAC, will come into effect on 1 July 2021.

The amendments below also amend visa application requirements and criteria for visa grant so that the targeted cohort are not disadvantaged by having held a ***COVID-19 affected visa*** (a new term, defined in items 1 and 2, to identify the cohort).

Item [1] – Regulation 1.03

This item inserts a definition of ***COVID-19 affected visa*** in regulation 1.03 of the Migration Regulations. The definition provides that ***COVID-19 affected visa*** means a Subclass 417 (Working Holiday) visa, or a Subclass 462 (Work and Holiday) visa, covered by subregulation 1.15P(1) or a Subclass 417 (Working Holiday) visa, or a Subclass 462 (Work and Holiday) visa, of a kind specified for the purposes of this definition by the Minister under subregulation 1.15P(2). Regulation 1.15P is explained at item 2 below.

Item [2] – At the end of Division 1.2 of Part 1

This item inserts new regulation 1.15P. The purpose of regulation 1.15P is to describe the visas that are ***COVID-19 affected visas***. This is relevant to the concessions set out in the items below.

Subregulation 1.15P(1) provides that a WHM visa is a *COVID-19 affected visa* if all of the following requirements are met:

- The visa was in force during the travel restrictions resulting from the COVID-19 pandemic. This is defined as meaning that the visa was granted before 20 March 2020 and ceased to be in effect on or after that day (paragraphs 1.15P(1)(a) and (b));

- The visa expired, or was cancelled at the request of the visa holder, by 31 December 2021, at a time when the visa holder was outside Australia; or the visa, if still in effect, will expire by 31 December 2021(paragraphs 1.15P(1)(e) and (f)); and

- The holder or former holder of the visa is outside Australia and applies for another WHM visa, between 1 July 2021 and 31 December 2022 (paragraphs 1.15P(1)(c) and (d)).

The intention is to cater for visa holders who did not enter Australia because of the pandemic and also those who departed early because of the pandemic. As explained in relation to the items below, the intention is that those visa holders or former visa holders will be able, from 1 July 2021, to apply for another visa without paying any visa application charge or meeting certain criteria that would otherwise apply based on having held the previous visa in Australia. For the holder or former holder of a first WHM visa that is a *COVID-19 affected visa*, who did not enter Australia on that visa, the concession will be a nil VAC for the next WHM visa application. That application must be made from outside Australia. For the holder or former holder of a *COVID-19 affected visa* who has been in Australia as the holder of the visa, the concessions will be a nil VAC for the next WHM visa application, provided it is made from outside Australia, and also concessions in relation to certain visa application requirements and criteria for visa grant that apply to WHM visa holders who have been in Australia on one or more WHM visas. In effect, the *COVID-19 affected visa* will be disregarded when those applications are assessed.

Subregulation 1.15P(2) provides that the Minister may, by legislative instrument, specify kinds of WHM visas for the purposes of the definition of *COVID-19 affected visa* in regulation 1.03. This capacity to expand the definition of *COVID-19 affected visa* by using definitions in a legislative instrument has been included to cater for future contingencies, given the uncertainty about when the pandemic will ease and borders reopen.

Subregulation 1.15P(3) provides that a legislative instrument made under subregulation 1.15P(2) may specify kinds of WHM visas by reference to circumstances relating to a person who holds or held the visa. This ensures that there is flexibility to target future concessions to whatever circumstances may arise as a result of the pandemic.

Regulation 1.15P does not affect the underlying position that the Subclass 417 (Working Holiday) visa and Subclass 462 (Work and Holiday) visa are mutually exclusive. It is not possible for an applicant to move from one visa to the other. The effect of regulation 1.15P is that a COVID-19 affected Subclass 417 visa is ignored for the purpose of further applications for Subclass 417 visas, and a COVID-19 affected Subclass 462 visa is ignored for the purpose of further applications for Subclass 462 visas.

Item [3] – Paragraph 1224A(2)(a) of Schedule 1
Item [5] – Paragraph 1225(2)(a) of Schedule 1

These items repeal and substitute paragraph 1224A(2)(a) and paragraph 1225(2)(a) of Schedule 1 to the Migration Regulations. These paragraphs set out the amount of the visa application charge (VAC) for the WHM visas. The substituted paragraphs include the amount of the VAC that applies from 1 July 2021 ($495) and also make provision for the Minister to specify in a legislative instrument the classes of persons who are not required to pay the VAC.

The intention is that, from 1 July 2021, a legislative instrument will provide for a nil VAC for applicants who hold or held a *COVID-19 affected visa* as described in the previous item.

The VAC increases from $485 to $495 on 1 July 2021 in accordance with annual indexation arrangements for VACs. The indexation is included in these Regulations for drafting convenience. The increased VACs for all visas other than WHM visas are set out in the *Migration Amendment (Visa Application Charges) Regulations 2021*, which also commence on 1 July 2021.

Item [4] – At the end of subitem 1224A(3) of Schedule 1
Item [6] - After subitem 1225(3B) of Schedule 1

These items amend criteria in Schedule 1 to the Migration Regulations to ensure that a *COVID-19 affected visa* (see item 2 above) is not relevant to the criteria that must be met to make a valid application for a WHM visa.

In order to apply for a second WHM visa, applicants must declare that they have undertaken three months of specified work. In order to obtain a third visa, applicants must declare that they have undertaken another six months of specified work. No more than three visas may be held.

The effect of the amendments is that:

- if the applicant has only held one WHM visa, and that visa is a *COVID-19 affected visa*, the applicant is treated as a person who has never held a WHM visa; and

- if the applicant has held two or three WHM visas, and one of those visas is a *COVID-19 affected visa*, the applicant is treated as a person who has held, respectively, one or two such visas.

The result is that the *COVID-19 affected visa* is treated as if it did not exist, and the applicant is restored to the position he or she was in before that visa was granted. This means that working holiday makers affected by the COVID-19 pandemic will be able to access up to four WHM visas. For example, a non-*COVID-19 affected visa,* followed by a *COVID-19 affected visa*, followed by two more non-*COVID-19 affected visas.*

Item [7] – At the end of clause 417.211 of Schedule 2
Item [8] – Clause 417.222 of Schedule 2
Item [9] – Paragraph 417.222(b) of Schedule 2
Item [10] – At the end of clause 417.222 of Schedule 2

These items amend the criteria in Schedule 2 to the Migration Regulations for the grant of a Subclass 417 (Working Holiday) visa.

Item [8] and [9] make technical amendments.

Items [7] and [10] mirror the provisions described above in items [4] and [6], by amending the criteria for the grant of a Subclass 417 (Working Holiday) visa so that a *COVID-19 affected visa* is disregarded. That is:

- if the applicant has held only one Subclass 417 visa in Australia, and that visa is a *COVID-19 affected visa*, the requirement to have completed three months of specified Subclass 417 work, to obtain a second visa, will not apply;

- if the applicant has held two Subclass 417 visas in Australia, and the second visa is a *COVID-19 affected visa*, the requirement to have completed six months of specified Subclass 417 work will not apply, and the applicant will instead be subject to the requirement to have done three months of specified Subclass 417 work. This requirement is automatically met because it was met for the grant of the second visa, which became a *COVID-19 affected visa*; and

- if the applicant has held three Subclass 417 visas in Australia, and the third visa is a *COVID-19 affected visa*, the applicant will be treated as a person who has only held two visas. In this situation, the applicant will be subject to the requirement to have done six months of specified Subclass 417 work. This requirement is automatically met because it was met for the grant of the third visa, which became a *COVID-19 affected visa.*

The end result of the concessions is that up to four Subclass 417 visas may be held, provided that the first, second, or third visa is a *COVID-19 affected visa.*

Item [11] – Paragraph 462.211(a) of Schedule 2
Item [12] – Paragraph 462.211A(a) of Schedule 2
Item [13] – Clause 462.211B of Schedule 2
Item [14] – Clause 462.218 of Schedule 2
Item [15] – At the end of clause 462.218 of Schedule 2
Item [16] – Clause 462.219 of Schedule 2
Item [17] – At the end of clause 462.219 of Schedule 2
Item [18] – Clauses 462.221 and 462.221A of Schedule 2
Item [19] – Clause 462.224 of Schedule 2
Item [20] – At the end of clause 462.224 of Schedule 2

These items amend the criteria in Schedule 2 to the Migration Regulations for the grant of a Subclass 462 (Work and Holiday) visa.

Items [14], [16], and [19] make technical amendments.

The other items amend the criteria for the grant of a Subclass 462 (Work and Holiday) visa so that a *COVID-19 affected visa* is disregarded. The position is identical to the position described above in relation to the Subclass 417 (Working Holiday) visa:

- if the applicant has held only one Subclass 462 (Work and Holiday) visa in Australia, and that visa is a *COVID-19 affected visa*, the requirement to have completed three months of specified Subclass 462 work, to obtain a second visa, will not apply;

- if the applicant has held two Subclass 462 visas in Australia, and the second visa is a *COVID-19 affected visa*, the requirement to have completed six months of specified Subclass 462 work will not apply, and the applicant will instead be subject to the requirement to have done three months of specified Subclass 462 work. This requirement is automatically met because it was met for the grant of the second visa, which became a *COVID-19 affected visa*; and

- if the applicant has held three Subclass 462 visas in Australia, and the third visa is a *COVID-19 affected visa*, the applicant will be treated as a person who has only held two visas. In this situation, the applicant will be subject to the requirement to have done six months of specified Subclass 462 work. This requirement is automatically met because it was met for the grant of the third visa, which became a *COVID-19 affected visa.*

The end result of the concessions is that up to four Subclass 462 visas may be held, provided that the first, second, or third visa is a *COVID-19 affected visa.*

Schedule 3 – Bridging visa amendments

Migration Regulations 1994

Item [1] – Paragraph 2.25(2)(a)
Item [2] – Subregulation 2.25(3)

These items amend regulation 2.25 of the Migration Regulations to make technical drafting changes that are consequential to the amendments made by item [3] and item [4] below.

Regulation 2.25 allows the Minister to grant a Bridging E visa to certain non-citizens without the need for a visa application. The criteria for the grant of a visa under regulation 2.25 include a discretionary interview requirement in subregulation 2.25(3).

Subregulation 2.25(3) is repealed by item [2] because the effect of items [3] and [4] is that the interview requirement for the grant of a Bridging Visa E is discretionary for all applicants who were previously required to be interviewed. Subregulation 2.25(3) was therefore no longer required. The new discretionary interview criterion in clause 050.222 (inserted by item [4] below) is incorporated into regulation 2.25 by item [1].

Item [3] – Subclause 050.222(1) of Schedule 2
Item [4] – At the end of clause 050.222 of Schedule 2

These items amend clause 050.222 of Schedule 2 to the Migration Regulations to provide a general discretion to officers authorised by the Secretary to waive the requirement for an applicant for a Bridging Visa E to be interviewed as a precondition for the grant of the visa.

Previously, clause 050.222 required the applicant to be interviewed by an authorised officer, unless one of the limited exceptions in subclauses 050.222(2), (3), or (4) was applicable. The amendment retains the existing exceptions and add a general discretion, in subclause 050.222(5), for an authorised officer to waive the interview requirement if the officer has decided that an interview is not necessary. This increases the efficiency of visa processing by allowing low risk applicants to be granted a Bridging Visa E without an interview, and also has the public health benefit of reducing the need for face to face contact.

Item [5] – Clause 8401 of Schedule 8

This item repeals visa condition 8401 and substitutes a new visa condition 8401 in Schedule 8 to the Migration Regulations.

Visa condition 8401previously provided that: "*The holder must report: (a) at a time or times; and (b) at a place; specified by the Minister for the purpose*". The condition is applied to certain bridging visas (see, in Schedule 2 to the Migration Regulations: Subclass 041 (Bridging (Non-Applicant)); Subclass 050 (Bridging (General)); Subclass 051 (Bridging (Protection Visa Applicant)); Subclass 060 (Bridging F); and Subclass 070 (Bridging (Removal Pending)).

The substituted condition provides that: "*The holder must report: (a) at the time or times; and (b) at a place or in a manner; specified by the Minister from time to time.*"

The substituted condition continues to allow for reporting at a Departmental office if necessary, but will give delegates of the Minister the authority to specify that reporting is to occur via telephone, email, or other electronic means specified by the delegate.

The purpose of the amendment is to allow greater flexibility in relation to reporting by low risk bridging visa holders. This will increase the efficiency of monitoring of visa holders and also has the public health benefit of reducing the need for face to face contact.

Schedule 4 – Manner of reporting on arriving overseas passengers and crew members

Migration Regulations 1994

Item [1] – After subregulation 3.14(1)

This item inserts new subregulation 3.14(1A) into Part 3 of the Migration Regulations. The purpose is to ensure the master of a civilian vessel that enters Australia must provide the information set out in regulation 3.14 in a way requested by the officer, if the officer requests a particular way.

Regulation 3.14 sets out the particulars that must be provided about overseas passengers on board a civilian vessel entering Australia to an officer, if requested. Particulars include: their full name, their date of birth, the country of issue and number of their passport, their citizenship, their intended address in Australia, and the place in Australia where their journey in the vessel ends.

This information has to date been provided in a paper format. This amendment enables the officer to request the information in a particular way, including a particular digital format, such as a mobile application, in order to provide efficiency gains and in accordance with the digital transformation agenda.

Item [2] – Subregulation 3.15(1)

This item omits "a list is" and substitutes with "particulars are" in subregulation 3.15(1) to the Migration Regulations.

The purpose of removing references to "a list is" and replacing with "particulars are" is to reflect that this information may be provided in a digital format that may not include a list. It also provides consistency in language with related provisions in Division 3.2. This is a technical amendment and consequential to the insertion of new subregulation 3.14(1A).

Item [3] – Subregulation 3.15(4)

This item repeals subregulation 3.15(4) and substitutes a new provision that specifies that the master must, if asked to do so by the officer, give the officer a specified number (not exceeding 6) copies of the relevant medical certificate.

This amendment de-links the number of medical certificate copies that may be requested from the number of document copies that are requested under subregulation 3.14(5). Given the information under 3.14 may be given digitally going forward and may not result in a number of copies being given, the requirement to provide a number of copies of medical certificates is de–linked from this and independently provides that up to six copies may be requested. This amendment is consequential to the insertion of new subregulation 3.14(1A).

Item [4] - Before subregulation 3.17(1)

This item inserts the sub heading "Members of crew" before subregulation 3.17(1) in the Migration Regulations. A sub heading is also inserted above subregulation 3.17(2) by Item [7]. These are technical amendments to assist reader friendliness by identifying what each subregulation is about.

Item [5] – Paragraph 3.17(1)(a)

This item omits "give the officer a list showing the number of members of the crew and showing,", and substitutes "notify the officer of the number of members of the crew and give the officer the following particulars". These changes reflect that this information may be provided in a digital format that may not include giving an officer a list. They also provide consistency in language with related provisions in Division 3.2. This is a technical amendment and consequential to the insertion of new subregulation 3.17(1A) (see below).

Item [6] – Subparagraphs 3.17(1)(a)(i), (ii) and (iii)

This item omits "and" from subparagraph 3.17(1)(a)(i),(ii) and (iii). This is a technical amendment as the "and" is unnecessary given the chapeau already makes this clear. It does not make any substantive change.

Item [7]– After subregulation 3.17(1)
Item [9] – At the end of regulation 3.17

These items insert new subregulations 3.17(1A) and 3.17(3) into Part 3 of the Migration Regulations.

The purpose of new subregulations 3.17(1A) and 3.17(3) is to ensure the master of the relevant vessel must provide the information set out in subregulations 3.17(1) and (2) in a way requested by the officer, if the officer requests a particular way.

This information has to date been provided in a paper format. This amendment enables the officer to request the information in a particular way, including a particular digital format, such as a mobile application, in order to provide efficiency gains and in accordance with the digital transformation agenda.

Item [7] also inserts the sub heading "Persons other than passengers and crew for discharge outside Australia" above subregulation 3.17(*2*). This is a technical amendment to assist reader friendliness.

Item [8] – Subregulation 3.17(2)

This item omits "a list signed by the master showing", and substitutes "particulars of". This reflects that this information may be provided in a digital format that may not include giving an officer a signed list. It also provides consistency in language with related provisions in Division 3.2. This is a technical amendment and consequential to the insertion of new subregulation 3.17(3).

Schedule 5 – Changes to citizenship fees

Australian Citizenship Regulation 2016

Item [1] – Section 5

This item repeals the definitions of ***Human Services Department*** and ***Veterans' Affairs Department*** in section 5 of the *Australian Citizenship Regulation 2016* (the Citizenship Regulation).

Eligibility for a concessional fee in relation to an application for citizenship has been based on the applicant holding an eligible pensioner concession card (PCC) or a health care card (HCC) issued by Services Australia (formerly the Department of Human Services) or the Department of Veterans' Affairs (DVA) with a specified code indicating the type of payment or allowance the holder receives.

The definitions in section 5 of the Citizenship Regulation have been repealed. Provisions in Schedule 3 to the Citizenship Regulation instead refer to 'the Commonwealth'. This change ensures that applicants are not disadvantaged in the event of changes to departmental names or departmental responsibilities relating to pensioner concession cards.

This item relates to the amendments contained in item 12.

Item [2] – Subsection 17(4)
Item [3] – Subsection 17(5)
Item [4] – Subsection 17(6)
Item [5] – Subsection 17(7)

These items increase the refund fees in subsections 17(4) and 17(5) of the Citizenship Regulation from $20 to $35, and in subsections 17(6) and 17(7) of the Citizenship Regulation from $105 to $190. These amendments are consequential to the increases in citizenship application fees made by Schedule 5 to the Regulations. The refund amount is the difference between application fees for citizenship by conferral for the relevant applicants where a test must be taken, and application fees for the relevant applicants where no test is taken.

Item [6] – Schedule 3 (table item 1)
Item [7] – Schedule 3 (table item 1)
Item [8] – Schedule 3 (table item 2)

These items increase the fees for an application for citizenship by descent under section 16 of the Act.

In particular, this item:

- omits the fee of $230 in item 1 of the table in Schedule 3 and substitutes a new fee of $315. This increases the application fee for citizenship by descent for the first sibling where two or more siblings are applying;
- omits the fee amount of $95 in item 1 of the table in Schedule 3 and substitutes a new fee of $130. This increases the application fee for citizenship by descent for the second and subsequent siblings where two or more siblings are applying; and
- omits the fee amount of $230 in item 2 of the table in Schedule 3 and substitutes a new fee of $315. This increases the application fee for citizenship by descent from $230 to $315 in relation to a single application.

Item [9] – Schedule 3 (table item 3)
Item [10] – Schedule 3 (table item 3)
Item [11] – Schedule 3 (table item 4)

These items increase the fees for an application for citizenship by adoption under section 19C of the Act.

In particular, this item:

- omits the fee of $230 in item 3 of the table in Schedule 3 and substitutes a new fee of $315. This increases the application fee for citizenship for children adopted under full Hague Convention or bilateral arrangements for the first sibling where two or more siblings are applying;

- omits the fee amount of $95 in item 3 of the table in Schedule 3 and substitutes a new fee of $130. This increases the application fee for citizenship for children adopted under full Hague Convention or bilateral arrangements for the second and subsequent siblings where two or more siblings are applying; and
- omits the fee amount of $230 in item 4 of the table in Schedule 3 and substitutes a new fee of $315. This increases the application fee for citizenship for children adopted under full Hague Convention or bilateral arrangements from $230 to $315 in relation to a single application.

Item [12] – Schedule 3 (items 10, 11, 12 and 13)

This item repeals table items 10 to 13, inclusive, and substitutes new table items 10 and 13.

New table item 10 provides for a concessional fee for certain applications (see below) for citizenship by conferral, but not an application mentioned in table items 5 to 9 or item 15. Table items 5 to 9 (inclusive) and 15 all provide for specific situations where the application for citizenship by conferral is subject to a nil fee, which is clearly more beneficial than a concessional fee.

The concessional fee in table item 10 applies in respect of an application for citizenship by conferral under section 21 of the Act where:
- an applicant is ***not*** claiming eligibility under subsection 21(2) of the Act (subsection 21(2) deals with general eligibility, meaning that the applicant is ***not*** required to sit the citizenship test and is therefore subject to a lower fee than for table item 13); and
- the applicant holds a pensioner concession card (PCC) issued by the Commonwealth, or the applicant is under the age of 18 and is listed as a dependant on a PCC issued by the Commonwealth held by another person.

This table item replaces table items 10, 11 and 12.

New table item 13 also provides a concessional fee for certain applications (see below) for citizenship by conferral, but not an application mentioned in table items 5 to 9 or item 15. As mentioned above, table items 5 to 9 (inclusive) and 15 all provide for specific situations where the application for citizenship by conferral is subject to a nil fee, which is clearly more beneficial than a concessional fee.

The concessional fee in table item 13 applies in respect of an application for citizenship by conferral under section 21 of the Act where:
- an applicant ***is*** claiming eligibility under subsection 21(2) of the Act (subsection 21(2) deals with general eligibility, meaning that the applicant ***is*** required to sit the citizenship test); and
- the applicant holds a PCC issued by the Commonwealth, or the applicant is under the age of 18 and is listed as a dependant on a PCC issued by the Commonwealth held by another person.

The effect of new table items 10 and 13 is that the items simplify eligibility criteria for concessional fees, and ensure that eligibility is reinstated for those who were previously eligible for concessional fees, by:
- updating eligibility criteria for concessional fees to ensure those in receipt of Jobseeker payment are not excluded;

- removing the current additional requirements for Parenting Payment Single (PPS) recipients in item 11 of Schedule 3 to align eligibility for this cohort with all other PCC holders;
- removing references to any HCCs as there should be no current holders of HCCs with the specified concession codes;
- removing references to any specific codes or payment types for holders of all PCCs issued by DVA or Services Australia; and
- extending eligibility to dependent children of PCC holders who are under 18 and listed on the PCC, if making an independent application.

The reference to a PCC issued by the Commonwealth ensures that applicants are not adversely affected by a departmental or agency name change in relation to the department or agency that is responsible for issuing or providing PCCs.

Item [13] – Schedule 3 (table item 14)

This item increases the fee for an application for citizenship by conferral under subsection 21(2) of the Act (general eligibility).

In particular, this item omits the fee of $285 in item 14 of the table in Schedule 3 and substitutes a new fee of $490.

Item [14] – Schedule 3 (table item 16)

This item increases the fee for an application for citizenship by conferral where the applicant is under 18 and applying independently.

In particular, this item omits the fee amount of $180 in item 16 of the table in Schedule 3 and substitutes a new fee of $300.

Item [15] – Schedule 3 (table item 17, paragraph (d))

This item repeals paragraph (d) in item 17 of the table in Schedule 3, and substitutes new paragraph (d).

This amendment is consequential to the amendments made by item 12 of the Regulations that repeal items 10 and 12 of the table in Schedule 3.

Item [16] – Schedule 3 (table item 17)

This item increases the fee for an application for citizenship by conferral (general eligibility) where the applicant is eligible for a concessional fee and not required to re-sit the citizenship test.

In particular, this item omits the fee of $20 in item 17 of the table in Schedule 3 and substitutes a new fee of $35.

Item [17] – Schedule 3 (table item 18)

This item increases the fee for an application for citizenship by conferral (general eligibility) where the applicant is not required to re-sit the citizenship test.

In particular, this item omits the fee of $180 in item 18 of the table in Schedule 3 and substitutes a new fee of $300.

Item [18] – Schedule 3 (table item 21)

This item increases the fee for an application for renunciation of citizenship.

In particular, this item omits the fee of $205 in item 21 of the table in Schedule 3 and substitutes a new fee of $265.

Item [19] – Schedule 3 (after table item 21)

This item inserts a new item into the table in Schedule 3 to the Citizenship Regulation. New item 21A is inserted after item 21 of the table in Schedule 3.

This new table item provides a nil fee for an application under section 37 of the Act that is made at the same time and on the same form as an application under section 16 or 19C of the Act (applications by adoption or descent).

This amendment improves efficiency in the Citizenship Program by streamlining arrangements for evidence of citizenship into a single, consistent process.

Previously, a person who applied for citizenship by descent or adoption paid a $230 application fee and, if approved, then completed a separate application form and paid a $190 fee to make an application for evidence of citizenship under section 37 of the Act.

By contrast, a person who applied for citizenship by conferral or resumption paid a $285 application fee and at the same time automatically made a combined application (on the same form) for evidence of citizenship. As part of this combined application, the application for evidence is subject to a nil fee. The form of evidence provided to a successful applicant is the Australian citizenship certificate.

New item 19 provides for successful applicants for citizenship by descent or adoption to similarly receive evidence of citizenship, in the form of an Australian citizenship certificate, without completing an additional form or paying an additional fee.

Item [20] – Schedule 3 (table item 24)

This item amends item 24 of the table in Schedule 3 to insert a reference to new table item 21A before the reference to table item 22. This amendment is consequential to the insertion of new table item 21A by item 19, above.

Item [21] – Schedule 3 (table item 24)

This item increases the fee for an application for evidence of citizenship.

In particular, this item omits the fee of $190 in item 24 of the table in Schedule 3 and substitutes a new fee of $240.

Schedule 6 – Payment of citizenship fees in foreign currencies

Australian Citizenship Regulation 2016

Item [1] – Subsection 16(7)

This item repeals and substitutes subsection 16(7) of the *Australian Citizenship Regulation 2016* (the Citizenship Regulation), which defines the terms 'conversion instrument' and 'places and currencies instrument'.

Definition of 'conversion instrument'

This item substitutes the definition of 'conversion instrument' in subsection 16(7) of the Citizenship Regulation with 'conversion instrument means the *Migration (Payment of Visa Application Charges and Fees in Foreign Currencies) Instrument (LIN 21/003) 2021 (No. 2)* as in force on 1 July 2021'.

The purpose of this amendment is to incorporate by reference a new instrument titled *Migration (Payment of Visa Application Charges and Fees in Foreign Currencies) Instrument (LIN 21/003) 2021 (No. 2)*. This instrument, made under paragraph 5.36(1A)(a) of the *Migration Regulations 1994* (the Migration Regulations), commences on 1 July 2021 and replaces the *Migration (LIN 21/001: Payment of Visa Application Charges and Fees in Foreign Currencies) Instrument 2021.*

The conversion instrument sets out the exchange rates to be used for specified foreign currencies in relation to the payment of fees. This instrument is relevant to the Citizenship Regulation because, once incorporated by reference, it allows a person who makes an application under the Citizenship Act to pay an application fee in a foreign currency at an exchange rate specified in the conversion instrument (see subsection 16(4) of the Citizenship Regulation).

Definition of 'places and currencies instrument'

This item also substitutes the definition of 'places and currencies instrument' in subsection 16(7) of the Citizenship Regulation with 'places and currencies instrument means the *Migration (Places and Currencies for Paying of Fees) Instrument (LIN 21/004) 2021 (No. 2)* as in force on 1 July 2021'.

The purpose of this amendment is to incorporate by reference a new instrument titled *Migration (Places and Currencies for Paying of Fees) Instrument (LIN 21/004) 2021 (No. 2)*. This instrument, made under paragraphs 5.36(1)(a) and (b) of the Migration Regulations, commences on 1 July 2021 and replaces the *Migration (LIN 21/002: Places and Currencies for Paying of Fees) Instrument 2021*.

The places and currencies instrument sets out the places and currencies in which fees may be paid. This instrument is relevant to the Citizenship Regulation because, once incorporated by reference, it allows a person who makes an application under the Citizenship Act to pay an application fee in a place, and in the currency, that is specified in the places and currencies instrument (see subsections 16(2) and (3) of the Citizenship Regulation).

Purpose of amendments

Australian Government offices overseas routinely collect Australian citizenship application fees. The amendments made by this item ensure that applicants for Australian citizenship may make the payment of a citizenship application fee in a specified foreign country, and in a foreign currency, at a defined and updated exchange rate.

The conversion instrument and the places and currencies instrument are re-made every six months under the Migration Regulations, so that the content of the instruments can be updated to reflect changes in exchange rates, specified foreign currencies and the places where application fees may be paid. As a consequence, subsection 16(7) of the Citizenship Regulation must also be amended so that it refers to and incorporates the re-made instruments.

The Citizenship Act does not currently allow for the making of a legislative instrument under the Citizenship Regulation to specify matters in relation to the collection of application fees in foreign countries and foreign currencies. Instead, the Citizenship Regulation incorporates by reference relevant instruments made under the Migration Regulations to specify the foreign countries where a fee may be paid, the currency that can be accepted in each listed country, and the currency exchange rate that must be applied.

The *Migration (Payment of Visa Application Charges and Fees in Foreign Currencies) Instrument (LIN 21/003) 2021 (No. 2)* and the *Migration (Places and Currencies for Paying of Fees) Instrument (LIN 21/004) 2021 (No. 2)* are both made under Part 5 of the Migration Regulations and are not subject to disallowance (see item 20(b), regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). These instruments are, therefore, incorporated in the Citizenship Regulation by these Regulations, as permitted by paragraph 14(1)(b) of the *Legislation Act 2003* (the Legislation Act).

Due to the operation of paragraph 14(1)(b) and subsection 14(2) of the Legislation Act, the Citizenship Regulation may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force *from time to time*. Rather, the legislative instruments made under paragraphs 5.36(1A)(a), 5.36(1)(a) and 5.36(1)(b) of the Migration Regulations can only be incorporated as in force at the time of incorporation (being 1 July 2021).

Both the *Migration (Payment of Visa Application Charges and Fees in Foreign Currencies) Instrument (LIN 21/003) 2021 (No. 2)* and the *Migration (Places and Currencies for Paying of Fees) Instrument (LIN 21/004) 2021 (No. 2)* will be freely available online on the Federal Register of Legislation.

Schedule 7 – Application, saving and transitional provisions

Schedule 7 sets out the application, saving and transitional provisions for Schedules 1 to 6, noting that no provisions are required for Schedule 4.

Australian Citizenship Regulation 2016

Item [1] - In the appropriate position in Part 4

This item inserts sections 28 and 29 in Part 4 of the Citizenship Regulation.

Section 28 is entitled 'Application of amendments made by Schedule 5 and Schedule 6 to the *Home Affairs Legislation Amendment (2021 Measures No. 1) Regulations 2021'*. Section 28 provides that the amendments of section 16 and 17 and Schedule 3 made by Schedule 5 and Schedule 6 to the Regulations applies in relation to an application under a provision of the Act made on or after 1 July 2021.

Section 29 is a transitional provision in relation to the amendments made by Schedule 5. The purpose of section 29 is to avoid the imposition of a fee in relation to certain applications for evidence of Australian citizenship under section 37 of the Citizenship Act.

A nil fee applies instead of the increased fee of $240 (up from $190 – see item 21 of Schedule 5) if the application for citizenship was made under section 16 (citizenship by descent) or section 19C (citizenship pursuant to intercountry adoption) of the Act before 1 July 2021, the Minister approves the application on or after 1 July 2021, and the evidence application is made within the period starting on 1 July 2021 and ending 6 months after the Minister approves the applicant becoming an Australian citizen.

This amendment places the transitional cohort in the same position as persons who apply under section 16 or section 19C from 1 July 2021, as those applicants are able to access a nil fee by making the application for evidence under section 37 at the same time and on the same form as an application under section 16 or section 19C (see item 19 of Schedule 5).

Migration Regulations 1994

Item [2] - In the appropriate position in Schedule 13

This item inserts new Part 99 into Schedule 13 to the Migration Regulations. Schedule 13 provides for the application and transitional provisions that apply to amendments to the Migration Regulations.

Clause 9901 Operation of Schedule 1 (Business Innovation and Investment Program)

This clause provides that the amendments made by Schedule 1, relating to the Business Innovation and Investment Program, apply to visa applications made on or after 1 July 2021. This accords with the usual practice under which changes to visa criteria only apply to visa applications made after the date of commencement of the amendments, which is 1 July 2021.

Clause 9902 Operation of Schedule 2 (working holiday maker visas)

This clause provides that the amendments made by Schedule 2, providing concessions for applicants for working holiday makers affected by the COVID-19 pandemic, apply to visa applications made on or after 1 July 2021. This accords with the usual practice under which changes to visa criteria only apply to visa applications made after the date of commencement of the amendments, which is 1 July 2021.

Clause 9903 Operation of Schedule 3 (bridging visa amendments)

This clause provides that the amendments made by Schedule 3 apply as set out below.

Subclause 9903(1): The amendments made by items 1 to 4 of Schedule 3 apply in relation to a Bridging E visa granted as a result of an application for the visa made on or after 1 July 2021 or granted by the Minister under regulation 2.25 on or after 1 July 2021. This accords with the usual practice under which changes to visa criteria only apply to visa applications made after the date of commencement of the amendments, which is 1 July 2021. In the case of visas granted by the Minister under regulation 2.25 there is no visa application and it follows that the amendments will apply to visas granted by the Minister on or after 1 July 2021.

Subclause 9903(2): The amendments made by item 5 of Schedule 3 apply in relation to a visa granted on or after 1 July 2021. Item 5 provides for a new form of visa condition 8401, expanding the ways in which visa holders subject to condition 8401 may be permitted to comply with reporting requirements. The new condition may be imposed on visas granted on or after the commencement date, regardless of whether the visa application was made before or after that date. The application of the condition to visas granted after 1 July 2021 on the basis of applications made before 1 July 2021, is appropriate because of the change is beneficial to those visa applicants. However, the new condition does not affect visas granted before 1 July 2020. Those visa holders remain subject to the previous form of condition 8401.