EXPLANATORY STATEMENT

Issued by authority of the Minister for Home Affairs

Migration Act 1958

Migration Amendment (Protecting Australia's Critical Technology) Regulations 2022

1 The instrument is made under subsection 504(1) of the *Migration Act 1958* (the Migration Act). 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.

2 The instrument amends the *Migration Regulations 1994* (Migration Regulations) in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (the Acts Interpretation Act). That subsection provides that a power to make a legislative instrument includes a power to amend or repeal that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.

3 Part 1 of Schedule 1 of the instrument, containing measures relating to student visa holders, commences on 1 July 2022. Part 2 of Schedule 1 of the instrument, relating to other visa holders, commences after Part 1 of Schedule 1 on a date to be determined via notifiable instrument made by the Minister.

4 The instrument is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

Purpose

5 The purpose of the instrument is to amend the Migration Regulations in relation to visa applicants and visa holders who pose an unreasonable risk of unwanted critical technology knowledge transfer.

6 The instrument:

- creates a Public Interest Criterion (PIC) by which the Minister can refuse to grant certain visas if there is an unreasonable risk of unwanted transfer of critical technology by the visa applicant;
- inserts a condition for Subclass 500 (Student) visa holders studying, or intending to undertake, higher education studies that they must not change their course of study, or research topic, unless approved by the Minister. The Minister cannot approve the change unless satisfied that there is not an unreasonable risk of unwanted transfer of critical technology by the visa holder; and
- provides for the cancellation of a visa where the Minister is satisfied that there is an unreasonable risk of unwanted transfer of critical technology by the visa holder. Cancellation will be discretionary for 'relevant visas' (certain protection visas and related bridging visas), but mandatory for all other types of visa.

7 These measures correlate generally with the PIC, student visa condition and cancellation ground that aim to prevent the proliferation of weapons of mass destruction.

8 The term ‘unreasonable transfer of critical technology’ is defined to mean a transfer of ‘critical technology’ or communication of information about critical technology that would have any of the following outcomes:

- harm or prejudice to the security or defence of Australia, or to the health and safety of the Australian public;
- interference or prejudice to the prevention, detection, investigation, prosecution or punishment of Commonwealth offences;
- harm to Australia’s international relations—including by enabling critical technology to be used in a way contrary to Australia’s international obligations and commitments.

9 Critical technologies can be digital (such as artificial intelligence) or non-digital (such as synthetic biology). Technological advances drive increased productivity, growth and improved living standards, but also have the potential to harm our national and economic security interests and undermine our democratic values and principles. Critical technologies are also enabling economic coercion, foreign interference and cyber threats.

10 ‘Critical technology’ will be defined by legislative instrument made by the Minister. The intention is for this instrument to list technologies that have been identified by the Department of the Prime Minister and Cabinet’s *List of Critical Technologies in the National Interest*, in consultation with other Government and industry stakeholders.

Consultation

11 External consultation has been undertaken with the Department of Defence; Department of Foreign Affairs and Trade; Department of Education, Skills and Employment; Department of Industry, Science, Energy and Resources; Attorney-General's Department; and the Critical Technology Policy Coordination Office within Department of the Prime Minister and Cabinet.

12 Further consultation is planned with impacted sectors in the lead up to the implementation of these measures. This includes consultation with industry, university and research sectors on the impact of the regulations. This consultation accords with subsection 17(1) of the Legislation Act.

13 The Office of Best Practice Regulation (OBPR) was also consulted and considered that the instrument dealt with matters of a minor or machinery nature and no regulatory impact statement was required. The OBPR reference number is 43442.

Details of the instrument

14 Details of the instrument are set out in **Attachment A**.

Parliamentary scrutiny etc.

15 The instrument is subject to disallowance under section 42 of the Legislation Act. A Statement of Compatibility with Human Rights has been prepared in relation to the instrument, and provides that to the extent that the instrument impacts human rights, the impact is reasonable and proportional. The Statement is included at **Attachment B** to this explanatory statement.

16 The instrument was made by General the Honourable David Hurley AC DSC (Retd), Governor General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, in accordance with subsection 504(1) of the Migration Act.

Attachment A

Details of the *Migration Amendment (Protecting Australia's Critical Technology) Regulations 2022*

Section 1 Name

This section provides that the name of the instrument is the *Migration Amendment (Protecting Australia's Critical Technology) Regulations 2022.*

Section 2 Commencement

This section provides for the commencement of the instrument.

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

The effect of the table is that the Regulations commence as follows:

- sections 1 to 4, which are the formal provisions relating to the name, commencement and operation of the Regulations, commence the day after the instrument is registered on the Federal Register of Legislation (FRL);

- Part 1 of Schedule 1 to the Regulations commences on 1 July 2022;

- Part 2 of Schedule 1 to the Regulations commences on a time to be fixed by the Minister in a notifiable instrument. The commencement time must not be prior to the commencement of Part 1 of Schedule 1. However, if the Minister does not issue a notifiable instrument within 6 months from when the instrument is registered on FRL, Part 2 of Schedule 1 of the instrument commences on the later of 6 months after the instrument is registered and immediately after the commencement of Part 1 of Schedule 1 to the Regulations.

Section 3 Authority

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

Section 4 Schedule

This section enables the amendment of the *Migration Regulations 1994* (the Migration Regulations) in the way set out in Schedule 1 to the instrument.

Schedule 1—Amendments

Part 1—Subclass 500 (Student) visas

Part 1 of Schedule 1 of the Regulations amends the Migration Regulations in relation to student visas.

Division 1—Public interest criterion and visa conditions

Item 1 Regulation 1.03

Item 1 inserts a definition of ***critical technology*** in regulation 1.03 of the Migration Regulations. This term is defined to mean:

- technology of a kind specified by the Minister in an instrument made under new subregulation 1.15Q(2) (paragraph (a) of the definition, see further at item 2 below); or

- property (whether tangible or intangible) that is part of, a result of, or used for the purposes of researching, testing, developing or manufacturing any technology specified by the Minister in an instrument made under new subregulation 1.15Q(2) (paragraph (b)).

This item also inserts a definition of ***unwanted transfer of critical technology*** in regulation 1.03 of the Migration Regulations, which is defined in detail in new subregulation 1.15Q(1) (see item 2).

Item 2 At the end of Division 1.2 of Part 1

Item 2 inserts new subsection 1.15Q(1) in the Migration Regulations to define ***unwanted transfer of critical technology***. The term is defined to mean any direct or indirect transfer of critical technology (paragraph (a)), or communication of information about critical technology (paragraph (b)), that falls within one or more of paragraphs 1.15Q(1)(c) to (f).

- Paragraph (c) is that the transfer or communication would harm or prejudice the security or defence of Australia, including the operations, capabilities or technologies of, or methods or sources used by, domestic (i.e. Australian) intelligence agencies (as defined in Part 5.6 of the *Criminal Code*) or foreign intelligence agencies (as defined in the *Criminal Code*).

- Paragraph (d) is that the transfer or communication would harm or prejudice the health and safety of the Australian public or a section of the Australian public.

- Paragraph (e) is that the transfer or communication would interfere with or prejudice the prevention, detection, investigation, prosecution or punishment of a criminal offence against a law of the Commonwealth.

- Paragraph (f) is that the transfer or communication would harm or prejudice Australia's international relations, in relation to information provided confidentially by another country (subparagraph (i)), by enabling critical technology to be used in a way that is contrary to Australia's international obligations and commitments (subparagraph (ii)), or by leading to a reaction by a foreign country that damages Australia's interests or relations with the foreign country or a particular reason (subparagraph (iii)).

These grounds are modelled after grounds outlined in section 121.1 of the *Criminal Code* in relation to information causing harm to Australia's interest (paragraphs (a), (b), (c) and subparagraph (d)(i)) and the grounds upon which the Defence Minister determines whether the supply of certain technologies would prejudice the security, defence or international relations under section 25A of the *Defence Trade Controls Act 2012* as prescribed in section 8 of the *Defence Trade Controls Regulation 2013* (subparagraphs (f)(ii) and (iii)).

Item 2 also inserts new subregulation 1.15Q(2) which provides that the Minister may, by legislative instrument, specify kinds of technology for the purposes of the definition of critical technology in regulation 1.03. This instrument will be a legislative instrument for the *Legislation Act 2003* (Legislation Act). It is intended to make this instrument after the making of the Regulations, but prior to the commencement of Part 1 of Schedule 1.

The instrument made under subregulation 1.15Q(2) is intended to be guided by the *List of critical technologies in the national interest*, produced by the Critical Technologies Policy Coordination Office (CTPCO) in the Department of Prime Minister and Cabinet (PM&C). The instrument, when it is made, will be able to selectively choose from the technologies in the CTPCO list and also be informed by other policy sources.

Subsection 504(2) of the Migration Act 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.

Item 3 At the end of clause 500.217 of Schedule 2

Item 3 inserts a new subsection (6) into clause 500.217 in Schedule 2 of the Migration Regulations. This inserts a reference to new public interest criterion (PIC) 4003B in relation to primary applicants for a student visa who are undertaking a postgraduate research course.

The effect of item 3 is that primary applicants for a student visa who are undertaking a postgraduate research course will be required to satisfy new PIC 4003B (see item 7) before being granted a visa.

Item 4 At the end of clause 500.317 of Schedule 2

Item 4 inserts a new subsection (6) into clause 500.317 in Schedule 2 of the Migration Regulations. This would insert a reference to new PIC 4003B in relation to secondary applicants for a student visa where both:

- the secondary applicant is a member of the family unit of a person (the primary applicant) who holds a student visa, the primary applicant having satisfied the primary criteria for that visa; and
- the person's (i.e. the primary applicant's) course of study or intended course of study is a postgraduate research course.

The effect of item 4 is that these applicants will be required to satisfy new PIC 4003B (see item 7) before being granted a visa.

Item 5 Paragraph 500.611(1)(a) of Schedule 2

Item 5 adds new visa conditions for student visa holders in Schedule 2 of the Migration Regulations by inserting new paragraphs 500.611(1)(aa) and (ab).

New paragraph (aa) would apply new visa condition 8204A (see item 8 below) to student visa holders where the applicant is studying a higher education course or postgraduate research course and intends to change their course of study, thesis or research topic. The terms ***postgraduate research course*** and ***higher education course*** are already defined in clause 500.111 of Schedule 2 to the Migration Regulations.

New paragraph (ab) would apply new visa condition 8204B (see item 8 below) to student visa holders where the applicant is undertaking a course of study other than a higher education course or postgraduate course, and intends to change their course of study into such a course.

Item 6 Paragraph 500.612(1)(a) of Schedule 2

Item 6 inserts new visa condition 8204B in paragraph 500.612(1)(a) of Schedule 2 of the Migration Regulations. The effect of this provision will be to apply new visa condition 8204B in all cases for a person who meets the secondary criteria for a student visa.

Item 7 After clause 4003A of Schedule 4

Item 7 inserts new clause 4003B into Schedule 4 to the Migration Regulations (referred to as PIC 4003B). PIC 4003B is that the Minister has not determined that there is an unreasonable risk of an unwanted transfer of critical technology by the person.

An 'unreasonable' risk is not intended to include a remote risk. Whether the risk is 'unreasonable' for a particular person will involve consideration of (amongst other things) the person's background and affiliations and the sensitivity of the material with which the person is proposing to work with. Whether a transfer of critical technology may or must be made in compliance with a foreign law will not, of itself, render the risk of transfer 'reasonable' for these purposes.

A decision to refuse to grant a visa after a decision that a PIC is not met would, like refusal decisions generally, subject to Administrative Appeals Tribunal (AAT) review where the decision is a Part 5-reviewable decision as defined by section 338 of the Migration Act. This includes all of the visa subclasses made subject to the new PIC by these Regulations, other than Temporary Work (Short Stay Specialist) (subclass 400) (which can only be granted when the applicant is outside Australia and therefore is not captured by subsection 338(2) of the Migration Act).

Item 8 After clause 8204 of Schedule 8

Item 8 inserts new clauses 8204A and 8204B into Schedule 8 to the Migration Regulations (referred to as visa conditions 8204A and 8204B).

New visa condition 8204A applies to primary student visa holders undertaking a higher education course or postgraduate research course. Under this condition, the visa holder must not change the holder's course of study, or thesis or research topic, unless:

- the Minister is satisfied that there is not an unreasonable risk of an unwanted transfer of critical technology by the person; and
- the Minister has approved the change in writing.

New visa condition 8204B applies to other primary student visa holders and all secondary student visa holders. Under this condition, the visa holder must not undertake or change a course of study or research, or thesis or research topic, for the graduate course types mentioned in the visa condition, or a bridging course required as a prerequisite for a master's or doctorate course, unless:

- the Minister is satisfied that there is not an unreasonable risk of an unwanted transfer of critical technology by the person; and

- the Minister has approved in writing the holder undertaking or changing the course of study or research, or thesis or research topic.

An 'unreasonable' risk is not intended to include a remote risk. Whether the risk is 'unreasonable' for a particular person will involve consideration of (amongst other things) the person's background and affiliations and the sensitivity of the material with which the person is proposing to work with. Whether a transfer of critical technology may or must be made in compliance with a foreign law will not, of itself, render the risk of transfer 'reasonable' for these purposes.

Division 2—Other amendments

Item 9 At the end of subregulation 4.02(4)

Subsection 4.02(4) of the Migration Regulations prescribes, for subsection 338(9) of the Migration Act, decisions that are Part 5-reviewable decisions and therefore subject to merits review as outlined in Part 5 of the Migration Act.

Item 9 inserts new paragraphs (u) and (v) into subsection 4.02(4) of the Migration Regulations, to provide that the following decisions are Part-5 reviewable decisions:

- a decision not to approve a change of a visa holder's course of study, or thesis or research topic, for the purposes of visa condition 8204A (paragraph (u)); and

- a decision not to approve a visa holder undertaking or changing a course of study or research, or thesis or research topic, for the purposes of visa condition 8204B (paragraph (v)).

Providing merits review of these decisions is an important oversight and transparency mechanism for the Minister's approval process under new visa conditions 8204A and 8204B.

Item 10 At the end of subregulation 4.02(5)

Subsection 4.02(5) of the Migration Regulations provides that, for paragraph 347(2)(d) of the Migration Act, an application for review of a decision mentioned in subregulation (4) may only be made by the persons set out in the subsection.

Item 10 adds new paragraph (t) to subsection 4.02(5) to provide that the visa holder is the only person who may apply for review of a decision under paragraphs 4.02(4)(u) and (v) (see item 9).

Item 11 In the appropriate position in Schedule 13

Item 11 provides that the amendments made by Division 1 of Part 1 of Schedule 1 of the Regulations apply in relation to any application for a visa made after the commencement of that Part.

In other words:

- PICs 4003B only needs to be satisfied for applications received after the commencement of Part 1 of Schedule 1; and

- the new visa conditions 8204A and 8204B only apply to student visas for which the application was received after the commencement of Part 1—visa applications made but not yet determined would not have these conditions apply.

Part 2—Public interest criterion and visa cancellation

Part 2 of Schedule 1 to the Regulations amends the Migration Regulations:

- to implement a new public interest criterion in relation to visa subclasses other than subclass 500 (Student) visas (Division 1); and
- to implement a new circumstance in which the Minister may or must cancel a person's visa (Division 2).

Division 1—Public interest criterion

Item 12 Subparagraphs 2.73AA(3D)(b)(ii) and 2.73C(7)(b)(ii)

Item 12 inserts a reference to new public interest criterion (PIC) 4003B in subparagraphs 2.73AA(3D)(b)(ii) and 2.73C(7)(b)(ii) of the Migration Regulations.

Section 2.73AA of the Migration Regulations sets out the circumstances for refunds of the nomination fee and nomination training contribution charge for the Subclass 457 (Temporary Work (Skilled)) (subclass 457) visa and Subclass 482 (Temporary Skill Shortage) (subclass 482) visa.

Section 2.73C of the Migration Regulations sets out the circumstances for refunds of the nomination fee and nomination training contribution charge for the Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) (subclass 494) visa.

The effect of item 12 is that the Minister may refund these fees under sections 2.73AA and 2.73C of the Migration Regulations if the applicant for a subclass 457, subclass 482 or subclass 494 visa does not satisfy new PIC 4003B.

Item 13 Subparagraphs 5.37A(8)(b)(ii) and (iii)

Item 13 inserts a reference to new public interest criterion (PIC) 4003B in subparagraphs 5.37A(8)(b)(ii) and (iii) of the Migration Regulations.

Section 5.37A of the Migration Regulations sets out the circumstances for refunds of employer nomination fee in section 5.37 and nomination training contribution charge under paragraph 5.19(2)(fa).

The effect of item 13 is that the Minister may refund these fees if:

- the visa applicant does not satisfy new PIC 4003B; or
- a member of the family unit of the visa applicant does not satisfy new PIC 4003B.

Items 14-38

Items 14-38 amend Schedule 2 of the Migration Regulations to insert a requirement that a visa applicant must meet PIC 4003B for the following visa subclasses:

- Global Talent Independent Program visas, including the Employer Nomination Scheme (permanent) (subclass 186) visa (items 14 and 15), Regional Sponsored Migration Scheme (permanent) (subclass

187) visa (items 16 and 17), Skilled Independent (permanent) (subclass 189) visa (items 18 and 19) and Distinguished Talent (permanent) (subclass 858) visa (items 37 and 38);

- Permanent Residence (Skilled Regional) (Subclass 191) (items 20, 21, 22);
- Temporary Work (Short Stay Activity) (subclass 400) (items 23 and 24);
- Training (subclass 407) (items 25 and 26);
- Temporary Activity (subclass 408) (items 27 and 28);
- Recognised Skill Graduate (subclass 476) (items 29 and 30);
- Temporary Skill Shortage (subclass 482) (items 31 and 32);
- Temporary Graduate (subclass 485) (items 33 and 34);
- Skilled Employer Sponsored Regional (Provisional) visa (subclass 494) (items 35 and 36).

The effect of items 14-38 is that new PIC 4003B applies to applications for these visa subclasses as set out in the items.

Division 2—Visa cancellation

Item 39 After paragraph 2.43(1)(b)

Subsection 2.43(1) of the Migration Regulations prescribes, for paragraph 116(1)(g) of the Migration Act, the grounds on which the Minister may cancel a person's visa.

Item 39 inserts new paragraph (c) in subsection 2.43(1) of the Migration Regulations to provide that the Minister may cancel a person's visa if there is an unreasonable risk of an unwanted transfer of critical technology by the holder of the visa.

An 'unreasonable' risk is not intended to include a remote risk. Whether the risk is 'unreasonable' for a particular person will involve consideration of (amongst other things) the person's background and affiliations and the sensitivity of the material with which the person is proposing to work with. Whether a transfer of critical technology may or must be made in compliance with a foreign law will not, of itself, render the risk of transfer 'reasonable' for these purposes.

Item 40 At the end of paragraph 2.43(2)(a)

Paragraph 2.43(2)(a) of the Migration Regulations prescribes, for subsection 116(3) of the Migration Act, the circumstances in which the Minister must cancel a person's visa in the case of a visa other than a 'relevant visa'. Subsection 2.43(3) of the Migrations Regulations sets out the visa subclasses that fall within the term 'relevant visa'.

Item 40 inserts new subparagraph (iv) into paragraph 2.43(2)(a) of the Migration Regulations to include a reference to new paragraph 2.43(1)(c). The effect of this will be to provide that, for a visa other than a 'relevant visa', the Minister must cancel a person's visa if there is an unreasonable risk of an unwanted transfer of critical technology by the holder of the visa.

Decisions to cancel a person's visa will be reviewable under Part 5 of the Migration Act, unless made by the Minister personally (see subsection 338(3) of the Migration Act).

Division 3—Application and transitional provisions

Item 41 At the end of Part 108 of Schedule 13

Item 41 provides that:

- the amendments made by Division 1 of Part 2 of Schedule 1 to the Regulations apply in relation to any application for a visa made after the commencement of that Part; and
- the amendments made by Division 2 of Part 2 of Schedule 1 to the Regulations apply in relation to any visa granted before, at or after the commencement of that Part.

In effect, this means that the requirement to satisfy PIC 4003B in an application for a visa mentioned in Division 1 apply to applications made after the commencement of Part 2. Any applications made but not yet determined will not need to satisfy PIC 4003B.

Attachment B

Statement of Compatibility with Human Rights

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

Migration Amendment (Protecting Australia's Critical Technology) Regulations 2022

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 the Disallowable Legislative Instrument

The Australian Government is committed to maximising the opportunities offered by critical technologies while minimising risks to our national interest. Australia's ability to harness the opportunities created by critical technologies has a significant impact on our economic success, national security and community safety.

Critical technologies can be digital (such as artificial intelligence) or non-digital (such as synthetic biology). Technological advances drive increased productivity, growth and improved living standards; but also have the potential to harm our national security and undermine our democratic values and principles, for example, if foreign actors and entities extracted this knowledge contrary to Australia's national interests and undermined our competitive advantage if subject to espionage or foreign interference. Critical technologies are also enabling rapid military modernisation, economic coercion, foreign interference and cyber threats.

This convergence of factors presents a spectrum of risks to Australia's ability to realise the opportunities of secure, transparent critical technologies, including through: the design, development and use of technology contrary to our values and institutions; impeding our ability to make sovereign decisions about the access, control and application of critical technologies; and interference in our domestic critical technologies ecosystem.

It is vital to maintain the integrity of our research, science, ideas, information and capabilities—to enable Australian industries to thrive and maximise our sovereign intellectual property.

There are existing and emerging policy gaps in preventing the unwanted transfer of Australia's critical technologies to foreign actors and entities, contrary to our national interest. The *Migration Amendment (Protection Australia's Critical Technology) Regulations 2022* (Critical Technology Regulations) amends the *Migration Regulations 1994* (the Regulations) to strengthen Australia's visa integrity framework to address some of these gaps.

The Critical Technology Regulations seek to establish a framework to protect Australia's critical technologies, and knowledge about those technologies, from unwanted transfer to foreign actors and entities seeking to extract this knowledge contrary to Australia's national interests and which undermines our competitive advantage if subject to espionage or foreign interference.

The Critical Technology Regulations:

- Define 'critical technology' and 'unwanted transfer of critical technology'.

- Create a new Public Interest Criterion (PIC) to allow the Minister for Home Affairs (or delegate) to refuse a visa to individuals whose presence in Australia may directly or indirectly pose an unreasonable risk of unwanted transfer of critical technology.
    - The PIC will be applied to applicants for a Student (subclass 500) visa intending to study a masters (research) or doctorate commencing on 1 July 2022.
    - The PIC will be applied to the following visa subclasses, commencing on a date to be fixed by the Minister by notifiable instrument, after the commencement of provisions applied to Student (subclass 500) visa:
        - Training (subclass 407)
        - Temporary Activity (subclass 408)
        - Temporary Work (Short Stay Specialist) (subclass 400)
        - Temporary Skill Shortage (subclass 482)
        - Temporary Graduate (subclass 485)
        - Recognised Skill Graduate (subclass 476)
        - Skilled Employer Sponsored Regional (Provisional) visa (subclass 494).
        - Permanent Residence (Skilled Regional) (Subclass 191) (expected to commence 16 November 2022)

        Global Talent Independent Program visas:

        - Employer Nomination Scheme (permanent)(subclass 186) visa
        - Regional Sponsored Migration Scheme (permanent)(subclass 187) visa
        - Skilled Independent (permanent)(subclass 189) visa
        - Distinguished Talent (permanent)(subclass 858) visa.
- Create a new visa condition that the holder of a student (subclass 500) visa who is undertaking post graduate research or higher education course must not change his or her course of study, or thesis or research topic, unless approval is given by the Minister, after the Minister is satisfied that there is not an unreasonable risk of unwanted transfer of critical technology by the holder. This measure will assist in screening students who transfer from a non-sensitive to a sensitive field of study or research to assess whether they pose an unreasonable risk of unwanted transfer of critical knowledge.
- Create a new visa condition that the holder of a student (subclass 500) visa must not undertake or change his or her course of study, or thesis or research topic for a graduate certificate, a graduate diploma, a master's degree or a doctorate; or any bridging course required as a prerequisite to a course of study or research for a master's degree or a doctorate. This is unless approval is given by the Minister, after the Minister is satisfied that there is not an unreasonable risk of unwanted transfer of critical technology by the holder.

- Create a new cancellation ground applicable to visa holders, as a discretionary cancellation ground for 'relevant visas', as defined in subsection 2.43(3) of the Migration Regulations, and a mandatory cancellation ground for other visa holders.

Human rights implications

This Disallowable Legislative Instrument engages the following rights:

- The right to liberty in Article 9 of the *International Covenant on Civil and Political Rights* (ICCPR).
- *Non-refoulement* obligations in Article 3(1) of the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) and Articles 6 and 7 of the ICCPR.
- The right not to be arbitrarily deprived of the right to enter one's own country in Article 12(4) of the ICCPR
- The expulsion of aliens in Article 13 of the ICCPR.
- Rights relating to family and children in Articles 17(1) and 23(1) of the ICCPR and Article 3 of the *Convention on the Rights of the Child* (CRC)
- The right to privacy in Article 17(1) of the ICCPR.
- The right to hold an opinion without interference and freedom of expression in Articles 19 and 20 of the ICCPR
- The right to work in Article 6 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

The Critical Technology Regulations seek to protect Australia's critical technologies by providing mechanisms for ensuring Ministerial oversight of individuals whose presence in Australia may directly or indirectly pose an unreasonable risk of unwanted critical knowledge transfer.

The Critical Technology Regulations insert new criteria for the grant of certain visa subclasses, visa conditions that student visa holders must comply with, and a new prescribed cancellation ground that enables discretionary cancellation of certain bridging, protection and humanitarian visas and mandatory cancellation of all other visas.

While it is not anticipated that a significant number of visa holders will be impacted by these measures, including the cancellation powers, it is important the Minister, or the Minister's delegate, has the ability to use these powers, where required, in order to mitigate the risks posed by the unwanted transfer of critical technology to foreign actors and entities.

Visa holders in Australia at the time of cancellation are provided with notice of intent to cancel. Visa holders located outside Australia at the time of cancellation are not required to be provided with a notice of intent to cancel. Visa holders whose visas are cancelled in Australia are able to seek merits review of that decision in most circumstances. Judicial review of cancellation decisions is available regardless of the location of the person when their visa was cancelled.

As a result of the Critical Technology Regulations, there may be an increase in the number of people liable for consideration of visa refusal or cancellation if they fail to meet the criteria, fail to comply with visa conditions, or satisfy the prescribed visa cancellation ground. Cancellation of a visa holder's visa may also result in the consequential cancellation of a family member's visa.

The measures in this Disallowable Legislative Instrument are aimed at the legitimate objectives of protecting Australia's national security, public order, public health and safety, and Australia's international relations.

Right to liberty

Article 9(1) of the ICCPR states:

> *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

The purpose of the *Migration Act 1958* (the Migration Act) is to 'regulate, in the national interest, the coming into and presence in Australia of non-citizens'. A person whose visa is cancelled becomes an 'unlawful non-citizen' under the Migration Act and is liable to be detained under s.189 and liable for removal from Australia under s.198.

The objective of these amendments is to protect national security, public order, public health and safety, and Australia's international relations by preventing the unwanted direct and indirect transfer of critical technology to foreign actors and entities where such actions would prejudice or harm Australia's national security, defence or international relations, the health and safety of the Australian community, or interfere with the prevention and prosecution of criminal offences.

These objectives will be achieved by providing oversight of student visa holders studying, or intending to study, a higher education course or postgraduate research course If the visa holder is studying a higher education course or postgraduate research course, and the student visa holder wants to change their course of study, thesis or research topic, the Minister must approve the change, following an assessment of whether the visa holder is not likely to cause an unreasonable risk of unwanted transfer of critical technology. If the visa holder is undertaking other studies, but wishes to transfer to a higher education course or post graduate course, the holder cannot start that new course until approved by the Minister or delegate on the same grounds. If the student visa holder changes their course of study, thesis or research topic without gaining Ministerial approval, they will have failed to comply with a condition of their visa and will be liable for consideration of discretionary cancellation of their student visa under paragraph 116(1)(b) of the Migration Act.

Further, the Critical Technology Regulations prescribe new grounds for the cancellation of a person's visa if there is an unreasonable risk of an unwanted transfer of critical technology by the visa holder (under paragraph 116(1)(g) and subsection 116(3) of the Migration Act). The cancellation ground is discretionary for certain bridging, protection and humanitarian visa holders, and mandatory for all other visa holders. Section 117 of the Migration Act provides, however, that a permanent visa cannot be cancelled under section 116 if the holder is in Australia and was immigration cleared on their last entry.

While likely to be used sparingly, these powers are necessary to enable the Minister to mitigate the risk of unwanted transfer of critical technology that would prejudice or harm Australia's national security, defence or international relations, the health and safety of the Australian community, or interfere with the prevention and prosecution of criminal offences.

The potential for harm to Australia's interests from such an unwanted transfer is significant and to address the risks posed by rapid military modernisation, economic coercion, foreign interference and cyber threats and to maintain the integrity of Australia's research, science, ideas, information and capabilities, it is necessary for the Minister to be able to cancel a person's visa where the unreasonable risk of unwanted transfer of critical technology is identified.

To the extent that cancelling a person's visa may result in a limitation of the right not to be arbitrarily detained, any detention would not be arbitrary as it would be reasonable, necessary and proportionate in the

circumstances. In most cases, the person whose visa has been cancelled would be removed as soon as reasonably practicable, but will be liable to be detained as an unlawful non-citizen under the Migration Act pending that removal.

When exercising discretionary cancellation powers, delegates considering the cancellation of visas will be guided by comprehensive policy guidelines and be required to take into account the visa holder's circumstances, relevant *non-refoulement* obligations, whether the visa holder constitutes an 'unreasonable risk' and, where the proposed cancellation is for non-compliance with the new visa conditions, the seriousness of the breach. The visa holder will be given the opportunity to provide reasons why the visa should not be cancelled, in line with procedural fairness requirements under the Migration Act. The visa holder will also have the opportunity to seek merits review and judicial review of a decision to cancel their visa.

In circumstances where the visa is subject to mandatory cancellation, this will be in the circumstances that the visa holder presents an unacceptable risk to Australia's national security and related interests. Detention in this circumstance will not be arbitrary, and will be reasonable and necessary to protect the integrity of Australia's critical technology industries. It will also be proportionate, as there are options available for the non-citizen to seek release from immigration detention. The non-citizen can request the Minister to exercise their personal, non-compellable power to grant a visa, including a bridging visa, or to allow a detainee to reside outside of an immigration detention facility at a specified address in the community (residence determination). The non-citizen may also seek judicial review of the cancellation decision.

Subsection 140(1) of the Migration Act provides that where a person's visa is cancelled under section 116, the visa of a member of the family unit is also cancelled. If the primary visa holder has a visa cancelled pursuant to new paragraph 2.43(1)(c) of the Regulations, the visas of family members will also be cancelled. To the extent this may limit the right of a person not to be arbitrarily detained, detention is not arbitrary, and would be reasonable, necessary and proportionate in the circumstances. Family members of the visa holder have their visas granted pursuant to, and conditional upon, the purpose of the original visa holder. If the original visa holder's visa is cancelled, the conditions on which the family are present in Australia with the visa holder are no longer valid, and the family would be expected to depart together with the primary visa holder whose visa has been cancelled. However, family members whose visas are consequentially cancelled are eligible to apply for a bridging visa or another substantive a visa in their own right.

Subsection 140(2) of the Migration Act provides for a discretionary cancellation power where family members hold a visa independent of another visa holder. Where a visa holder has their visa cancelled under new paragraph 2.43(1)(c) of the Regulations, any such family members may also have their visa cancelled. To the extent this discretionary cancellation power may limit a person's right not to be arbitrarily detained, any detention would not be arbitrary and would be reasonable, necessary and proportionate. A delegate can take into account all the relevant factors, including the extent to which the family member may also pose an unreasonable risk or may have knowledge of, or be involved in, the unwanted transfer of critical technology. The family visa holder is also able to seek merits review of a cancellation decision.

Held detention in an immigration detention centre is a last resort for the management of unlawful non-citizens, particularly individuals whose removal may not be practicable in the reasonably foreseeable future. The Minister has a personal discretionary power under the Migration Act to intervene in an individual case and grant a visa, including a bridging visa, to a person in immigration detention, if the Minister thinks it is in the public interest to do so. What is and what is not in the public interest is for the Minister to decide.

The Minister also has a personal discretionary power to allow a detainee to reside outside of an immigration detention facility at a specified address in the community (residence determination). While a residence

determination permits an individual to be placed in the community subject to certain conditions, it continues to be a detention placement.

The Minister's powers to consider whether to grant a visa to permit an unlawful non-citizen's release from immigration detention, or to permit a community placement under a residence determination, until they are able to be removed from Australia, means that the person's individual circumstances, and the risk they may pose to the Australian community can be taken into account. This enables the least restrictive option to be implemented for the person having regard to their circumstances.

While some unlawful non-citizens affected by the amendments made by the Critical Technology Regulations will be subject to immigration detention while awaiting removal, the Minister's decision not to grant them a visa or place them in community detention will be made in consideration of their individual circumstances. This helps to ensure that an immigration detention placement is reasonable, necessary and proportionate to their individual circumstances and therefore not be arbitrary and contrary to Article 9.

In circumstances requiring ongoing detention, the length and conditions of immigration detention are subject to regular review. The Department and the Australian Border Force (ABF) use internal assurance and external oversight processes to help care for and protect people in immigration detention and maintain the health, safety and wellbeing of all detainees. This includes independent oversight by the Commonwealth Ombudsman and the Australian Human Rights Commission to provide greater transparency in the management of long-term detainees.

This ensures that any detention consequent to a visa cancellation is not arbitrary. Rather it constitutes a proportionate response to the individual circumstances of each case.

In light of the above considerations, to the extent the amendments may engage the right to liberty under Article 9 of the ICCPR, the proposed amendments are consistent with Article 9(1) of the ICCPR as any detention would be lawful and would not be arbitrary.

Non-refoulement obligations

Article 6 of the ICCPR states:

> *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

Article 7 of the ICCPR states:

> *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*

Article 3(1) of the CAT states:

> *No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.*

As a person whose visa is cancelled is liable for removal from Australia under the Migration Act and since the amendment means that a greater number of people may be subject to cancellation and hence removal, it potentially engages Article 3(1) of the CAT and Articles 6 and 7 of the ICCPR.

Australia remains committed to its international *non-refoulement* obligations . To the extent that these articles may be engaged, there is scope for these obligations to be considered as part of the decision to cancel a visa where that cancellation is discretionary, or through the protection visa process if the person makes a claim to engage Australia's protection obligations . Individuals would not be subject to involuntary removal from Australia to the country to which their protection claims relate unless and until any claims for protection they have advanced through a valid protection visa application have been assessed according to law. Where the assessment of that application results in a protection finding, as defined in section 197C of the Migration Act, the unlawful non-citizen is not required or authorised to be removed from Australia to that country. As such, this amendment does not affect Australia's commitment to complying with its *non-refoulement* obligations in relation to Article 3 of the CAT and Articles 6 and 7 of the ICCPR.

Right not to be arbitrarily deprived of the right to enter one's own country

Article 12(4) of the ICCPR provides 'No one shall be arbitrarily deprived of the right to enter his own country.' To the extent that a permanent visa holder outside Australia, or in immigration clearance in Australia, may have their visa cancelled under new paragraph 2.43(1)(c), this measure may engage the right under Article 12(4), depending on the strength, nature and duration of their ties to Australia and their ties to their country of citizenship. Even if Australia accepted that it was a non-citizen's 'own country' for the purposes of Article 12(4), the cancellation of their visa would not be inconsistent with Article 12(4) as it would not be arbitrary, and would be reasonable, necessary and proportionate in the circumstances.

The risks associated with unwanted transfer of critical technology are such that it is appropriate to cancel the visa of a person who poses an unreasonable risk of transfer, even if that deprives them of the right to enter Australia, and judicial review remains available in all cases.

Expulsion of aliens

Article 13 of the ICCPR states:

> *An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.*

Under international law, Australia has the right to take reasonable steps to control the entry and stay of aliens. Decisions to cancel a visa for contraventions of visa conditions introduced by the Critical Technology Regulations, as well as on the new cancellation grounds introduced by these amendments will be made in accordance with the Migration Act and the Regulations including under new paragraph 2.43(1)(c) and student visa conditions 8204A and 8204B.

To the extent individuals will have their visa cancelled, leading to their expulsion, the Migration Act and Regulation processes are in accordance with Article 13 in that, prior to a decision to cancel, the visa holder is provided with the opportunity to put forward reasons as to why their visa should not be cancelled to a delegated officer. Procedural fairness provisions for visa cancellations are enshrined in Subdivision E of the Migration Act and will apply to these decisions. Merits review by the Administrative Appeals Tribunal and judicial review in Australian courts will also be available. As such, this amendment does not limit Article 13 of the ICCPR.

Rights relating to families and children

Article 3(1) of the CRC states:

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

Article 17(1) of the ICCPR states:

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

Article 23(1) of the ICCPR states:

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

The best interests of the child are a primary consideration to be taken into account in decisions affecting a child and may be outweighed by countervailing primary considerations, including the safety of the Australian community. To the extent that a discretionary decision to cancel a visa under paragraph 2.43(1)(c) may impact on a child, the decision-maker will appropriately weigh the best interests of any children in Australia against other primary considerations, including the risks to the Australian community from the unwanted transfer of critical technology.

Accordingly, on the basis that the best interests of the child are treated as a primary consideration in the exercise of the discretion to cancel a visa, this amendment is consistent with Article 3(1) of the CRC. Mandatory cancellations do not take these factors into account, however this is reasonable, necessary and proportionate, given the significant risks of unwanted critical transfer. Merits and judicial review under the Migration Act is available for mandatory cancellations. As noted above, to the extent that a child's visa is subject to cancellation as a consequence of cancellation of a primary visa holder's visa, the child (and any other family members) will be able to apply for any other Australian visas to which they may be entitled.

This measure may also engage Articles 17 and 23 where visa holders subject to cancellation have family members who are entitled to remain in Australia, for example because they are Australian citizens.

Article 17 of the ICCPR sets out a prohibition on arbitrary and unlawful interference with the family and Article 23 sets out an obligation about the protection of the family unit. These obligations may be engaged by the new visa cancellation ground under paragraph 2.43(1)(c) or a breach of new student visa conditions 8203A or 8303B, to the extent that such visa holders may be detained or removed from Australia consequent to their visa being cancelled. In some circumstances, the detention or the removal of a person from Australia may result in the separation of family members as a direct consequence of action taken by Australia. In other circumstances, separation of family members will be a consequence of the choices made by family members who continue to have a right to remain in Australia.

To the extent that family members are separated as a direct consequence of action taken by the Commonwealth, it will not be an unlawful or arbitrary interference with the family or otherwise impermissibly limit Articles 17 or 23. These rights can be subject to proportionate and reasonable limitations that are aimed at legitimate objectives. In the case of these measures, these objectives include protecting Australia's national security, community health and safety by mitigating the risk of unwanted transfer by visa holders of critical technology to foreign actors and entities.

As discussed above, extending the grounds for cancellation under paragraph 2.43(1)(c) to include the unreasonable risk of an unwanted transfer of critical technology is necessary to protect the Australia's national security and public order from the risks of unwanted transfer of critical technology. Further, the degree of hardship that may be caused by a cancellation decision on the visa holder's family members in Australia will be taken into account as part of a discretionary decision to cancel the visa. While rights relating to family generally weigh against cancellation, these rights do not grant an absolute right to remain in Australia and so they also need to be considered in conjunction with the risks that unwanted transfer of critical technology will have on Australia's national security, community health and safety.

Mandatory visa cancellation decisions do not take these factors into account, however this is reasonable, necessary and proportionate, given the significant risks of unwanted transfer of critical technology. In most circumstances, merits review under the Migration Act is available for cancellation decisions (including mandatory cancellation decisions) where the visa holder is in Australia. Judicial review is also available, including under the Constitution.

Right to privacy

Article 17(1) of the ICCPR states:

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

The Australian Government has established visa screening processes that aim to prevent the entry to and stay of individuals in Australia whose entry and stay may directly or indirectly pose a risk to the national security, public order, public safety and Australia's international relations. However, there are existing and emerging policy gaps in preventing the unwanted transfer of critical technologies, contrary to our national interest. The amendments seek to strengthen Australia's visa integrity framework to address some of these gaps.

The amendments will enable both departmental, ABF and other Commonwealth officers to collect, use and disclose personal data for the purpose of identifying non-citizens who breach student visa conditions 8402A or 8402B, prescribed cancellation ground under paragraph 2.43(1)(c) or PIC 4003B. The ABF will receive and collect personal information if they are required to have an interaction with a client.

This includes personally identifiable information (i.e. biographical data); professional history, affiliations and proposed course of study, criminal and/or other history of interaction with law enforcement; travel history (e.g. entry into Australia); and national security information held by Australian agencies that is directly relevant to the assessment of national security risks in relation to the applicant. Information sharing and disclosure between Commonwealth officers is subject to the requirements of the *Privacy Act 1988* and will be guided operationally through the development of procedural instructions, including referral guidelines to protect the privacy rights of non-citizens.

Information collection, use and disclosure to allow consideration of the cancellation ground or breach of student visa conditions in this amendment is not arbitrary or unreasonable because it is in the public interest that information held by the Department, including information provided to the Department by other agencies, be effectively utilised to arrive at lawful and merit-based decisions. Further, it supports the legitimate objective of upholding the migration and visa integrity frameworks and protecting our national security and community safety by identifying and assessing non-citizens who pose an unreasonable risk of unwanted transfer of critical technology to foreign actors and entities.

The collection, use and disclosure of personal information, in accordance with the requirements of the *Privacy Act 1988*, for the purpose of identifying non-citizens who contravene the Migration Act and Regulations, is a reasonable, necessary and proportionate measure to achieve the intended outcomes. Any limitation of the right to privacy of a person who has contravened the Migration Act, in order to help identify and assess them, would not be unlawful or arbitrary under Article 17 of the ICCPR.

Right to freedom of expression

Article 19 (2) of the ICCPR states:

> *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

Article 19 (3) of the ICCPR states:

> *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
>
> > *(a) For respect of the rights or reputations of others;*
> >
> > *(b) For the protection of national security or of public order (ordre public), or of public health or morals.*

New regulation 1.15Q provides that an 'unwanted transfer of critical technology' includes the communication of certain information about critical technology. Accordingly, the amendment may limit the right to freedom of expression under Article 19 of the ICCPR.

The legitimate aim of regulation 1.15Q is to safeguard Australia's national interests by disincentivising non-citizens from communicating information about critical technology in certain circumstances. These measures are necessary for:

- the protection of national security and public order (under paragraphs 1.15Q(1)(c); (e) and (f)), and
- the protection of public health under regulation 1.15Q(1)(f)).

The measures seek to protect Australia's critical technologies, and knowledge about those technologies, from unwanted transfer to foreign actors and entities seeking to extract this knowledge contrary to Australia's national interests and undermine our competitive advantage if subject to espionage or foreign interference.

Existing and emerging risks posed by the unwanted transfer of critical knowledge include the design, development and use of technology contrary to our values and institutions; impeding our ability to make sovereign decisions about the access, control and application of critical technologies; and interference in our domestic critical technologies ecosystem. As such the amendments serve the legitimate objectives for the purposes of Article 19(3) of the ICCPR.

Paragraphs 1.15Q (1)(c) to (f) set out the scope and specific circumstances in which a communication of information about critical technology will amount to an 'unwanted transfer of critical technology'. Further, subregulation 1.15Q(2) provides that the Minister may, by legislative instrument, specify the kinds of technology that will be captured by the term 'critical technology'. These provisions will mitigate against the risk of limiting the right to freedom of expression, unlawfully or unnecessarily.

The amendments are justified and reasonable, proportionate and necessary to achieve the intended outcome of preventing the unwanted transfer of critical technology where such actions would prejudice or harm Australia's national security, safety of the Australian community or interfere with integrity of the migration program.

Right to work

Article 6(1) of the ICESCR provides:

> *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 amendments allow the Minister or delegate to refuse to grant a visa on the basis that the applicant has not satisfied PIC 4003B (relating to unreasonable risk of unwanted critical technology transfer). If the PIC was determined by the delegate to be 'not met', an individual's visa application would be refused. The amending regulations therefore engage and may limit the right to work provided for in Article 6(1) of the ICESCR.

Most visa applicants covered by PIC 4003B are likely to be outside Australia at the time of application. However, the PIC will also apply to applicants for specific visas made by applicants who are located in Australia. With the exception of Temporary Work (Short Stay Specialist) (subclass 400) visas, which can only be granted to persons outside Australia, applicants in Australia for the remaining 11 visa subclasses (referenced on page 2), will be subject to PIC4003B.

The PIC will apply to these 11 specific visa subclasses to manage the risk of preventing higher risk individuals from working in fields of concern within identified critical technology fields in Australia. This is the least rights restrictive option, noting that it only has the effect of preventing visa grant where it has been determined that that there is an unreasonable risk of an unwanted transfer of critical technology by the visa applicant.

The amendments may also engage the right in Article 6 due to the practical effect of cancelling a visa holder's visa under paragraph 2.43(1)(c), which would mean the person would not be able to continue their employment in Australia.

The cancellation ground would be available in situations where the Minister or delegate reasonably believes that the visa holder poses an unreasonable risk of unwanted critical knowledge transfer.

The amendments neither deprive people of work unfairly nor do they seek to preclude foreign nationals from entering and working in Australia unless they pose an unreasonable risk of unwanted critical knowledge transfer. Visas are granted with the expectation that the visa holder will obey Australia's laws, make a positive contribution to Australian society, and respect community values.

States are able to set the conditions for the entry and stay of aliens. Article 4 of ICESCR provides that the State may subject the rights enunciated in the ICESCR:

> *…only to such limitations as are determined by law only insofar as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in democratic society.*

Limitation of this right is necessary to prevent the entry and stay of high risk individuals working in identified critical technology fields from the threat of unwanted knowledge transfer to hostile entities. At a time of

intensifying geostrategic competition, critical technologies confer a strategic edge and can be used to threaten our values, interests and way of life.

Accordingly, any limitation on the right to work of a person based on a decision to refuse to grant a visa or to cancel a visa on the basis that the person poses an unreasonable risk of unwanted critical knowledge transfer, would be reasonable, necessary and proportionate in the context of protecting Australia's national security, public order, public health and international relations.

Conclusion

The amendments to Migration Regulations made by the Critical Technology Regulations are compatible with human rights because they protect Australia's national security and the health and safety of our community. Therefore, to the extent they may limit some human rights, those limitations are reasonable, necessary and proportionate to those objectives.