

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 34, 2015**

Issued by the Minister for Immigration and Border Protection

*Migration Act 1958*

*Migration Amendment (2015 Measures No.1) Regulation 2015*

The *Migration Act 1958* (the Migration Act) is an Act to regulate, in the national interest, the coming into, and presence in, Australia of non-citizens.

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

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

The purpose of the *Migration Amendment (2015 Measures No. 1) Regulation 2015* (the Regulation) is to amend the *Migration Regulations 1994* (the Migration Regulations) to strengthen and improve immigration policy.

In particular, the Regulation amends the Migration Regulations to:

- limit the number of domestic flights that foreign aircrew are permitted to work on while holding a Special Purpose visa. The amendments provide a limit of two connecting domestic flights for foreign air crew and one connecting domestic flight for positioning foreign air crew (persons forming crew on departure). This ensures that opportunities for Australian workers on domestic flights are protected;
- allow an English language test score to be accepted for points tested skilled visas if the test was conducted three years before the applicant was invited to apply for the visa, rather than three years before the application was lodged. This ensures that English test scores do not become invalid between the invitation to apply for the visa and the application being lodged;
- enable lower English language test scores to be specified for the Skilled Recognised Graduate and Temporary Graduate visas so that these visas can be more responsive to Australia's labour market requirements. The tests and scores will be specified in an instrument made by the Minister;
- provide that the visa application form, the place in which a visa application must be lodged and the manner in which a visa application must be made (for example by internet or paper) are specified in an instrument made by the Minister, rather than set out in the Migration

Regulations. This enables these administrative details to be changed more rapidly, as required, to facilitate more efficient processing arrangements;

- extend the timeframes in which an approved sponsor must notify the department of certain events relating to the sponsored person (for example, a change in work duties). The amendment extends the timeframe from 10 working days to 28 calendar days to ensure there is sufficient time to comply with the requirement. It also reduces confusion for businesses as it would align with other comparable reporting periods that must be met by business;
- repeal the requirement that an applicant for a Temporary Graduate visa must provide evidence of having made arrangements for medical examinations at the time of application for the visa. The amendment removes an unnecessary burden on applicants as many applicants may not be required to have a medical examination to meet the health requirement at the time of decision for the visa;
- prescribe the time periods and the manner in which the Minister must make notifications in relation to visa cancellation or revocation of cancellation permitted under powers that were introduced in the *Migration Amendment (Character and General Visa Cancellation) Act 2014* (sections 501BA and 501CA). The same time periods that apply to section 501 (refusal or cancellation on character grounds) apply in relation to these powers; and
- make technical or consequential amendments.

A Statement of Compatibility with Human Rights (Statement) has been prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulation is compatible with human rights. A copy of the Statement is at [Attachment B](#).

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

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

The Office of Best Practice Regulation (OBPR) has been consulted in relation to the amendments made by the Regulation. The OBPR advice is outlined here:

- regarding the amendments made by Schedule 1, OBPR advises that the proposal is likely to have a minor regulatory impact on business, community organisations or individuals, but does not require a Regulation Impact Statement to be prepared. The OBPR consultation reference is 17237;
- regarding the amendments made by Schedule 2, OBPR advises that the changes are likely to have a minor impact on business, community organisations and individuals and no further analysis (in the form of a

Regulation Impact Statement) is required. The OBPR consultation references are 17284 and 18291;

- regarding the amendments made by Schedule 3, OBPR advises that the changes do not have a regulatory impact on business or the not-for-profit sector. The OBPR consultation reference is 16910;
- regarding the amendments made by Schedule 4, OBPR advises that the changes have a minor impact on individuals and no further analysis (in the form of a Regulation Impact Statement) is required. The OBPR consultation reference is 18006;
- regarding the amendments made by Schedule 5, OBPR advises that the proposal is likely to have a minor regulatory impact (savings) on individuals but a Regulation Impact Statement does not need to be prepared. The OBPR consultation reference is 17754; and
- regarding the amendments made by Schedule 6, OBPR advises that the changes have a minor impact on individuals and no further analysis (in the form of a Regulation Impact Statement) is required. The OBPR consultation reference is 17108.

Other consultation was undertaken on the Regulation as outlined here:

- Regarding the amendments made by Schedule 1, the Department of Immigration and Border Protection (the department) has undertaken consultation with an inter-departmental committee that comprised of the Department of Infrastructure and Transport, Department of the Prime Minister and Cabinet, the Australian Customs and Border Protection Service, the Department of Employment, Education and Workplace Relations and the Department of Resources, Energy and Tourism. The department developed three policy options for the validity of the Special Purpose visa, which were released in a discussion paper titled “Visa Arrangements for International Airline Crew” on 30 October 2012. The options that were canvassed were:
  - up to the first port of arrival in Australia; or
  - those domestic sectors that compose part of the international flight and involve the same international vessel, on which they enter and/or depart Australia; or
  - for one domestic sector of an inwards international flight and one domestic sector of an international outwards flight.

Further, the department received 15 submissions from stakeholders outlining their comments and concerns on the issue. The stakeholders included: QANTAS/Jetstar Group, Virgin Australia, Flight Attendants’ Association of Australia, the Transport Workers Union, Australian Federation of Air Pilots, Australian and International Pilots Association, National Tourism Alliance, Northern Territory Airports, Northern Territory Chamber of Commerce and Industry, Senator Nick Xenophon, two private citizens, Department of Agriculture, Australian Customs and Border Protection Service, Department of Resources Energy and Tourism,

Department of the Prime Minister and Cabinet, and Department of Infrastructure and Transport.

- The feedback received demonstrated the complexity of the issue and the divergent views from the stakeholders. Union and worker representative groups favoured option one which better protects the workers and increase opportunities for Australian workers. Industry favoured option three with some proposing an increase in the number of domestic sectors, and Government agencies supported a more moderate approach reflected in option three. The amendments balance the opinions of the stakeholders to facilitate entry whilst ensuring that the Special Purpose Visas are used appropriately.
- Regarding the amendments made by Schedule 2, external consultations on the changes to English language requirements for Subclass 476 and Subclass 485 and points-tested visa subclasses were conducted with industry skills assessing bodies and the international education sector via the department's stakeholder consultative forums, including the Skilled Migration Officials Group and the Education Visa Consultative Committee. No external consultation was undertaken in relation to the removal of the definition of the Occupational English Test because the amendments are minor in nature and do not substantially alter existing arrangements. This accords with a circumstance where consultation may not be necessary under section 18 of the *Legislative Instrument Act 2003* (the Legislative Instruments Act).
- Regarding the amendments made by Schedule 3, consultation was undertaken in relation to the range of changes proposed by the *Review of Character and General Visa Cancellation Framework* which encompassed both amendments to the Migration Act and to the Migration Regulations with the Attorney-General's Department, the Australian Federal Police and the Department of Prime Minister and Cabinet.
- Regarding the amendments made by Schedule 4, no other consultation was undertaken for this Regulation because the amendments are minor in nature and do not substantially alter existing arrangements. This accords with a circumstance where consultation may not be necessary under section 18 of the Legislative Instrument Act.
- Regarding the amendments made by Schedule 5, the department contacted the Department of Health and the department's migration medical service provider, Bupa Medical Visa Services, to make them aware of the proposed amendment and to provide them with the opportunity to comment. No issues were raised.
- Regarding the amendments made by Schedule 6, no other consultation had been undertaken for this Regulation because the amendments are minor in nature and do not substantially alter existing arrangements. This accords with a circumstance where consultation may not be necessary under section 18 of the Legislative Instruments Act.

The Regulation is a legislative instrument for the purposes of the Legislative Instruments Act.

The Regulation commences on 18 April 2015.

## **AUTHORISING PROVISIONS**

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provides that the Governor-General may make regulations, not inconsistent with the Migration Act, prescribing all matters which by the Migration Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the Migration Act.

In addition, the following provisions may apply:

- subsection 31(3) of the Migration Act, which provides that the *Migration Regulations 1994* (the Migration Regulations) may prescribe criteria for a visa or visas of a specified class (which, without limiting the generality of this subsection, may be a class provided for by section 32, 36, 37, 37A or 38B but not by section 33, 34, 35, 38 and 38A).
- subsection 40(1) of the Migration Act, which provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances.
- subsection 41 (1) of the Migration Act, which provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions.
- subsection 41(2) of the Migration Act, which provides that, without limiting subsection 41(1), the regulations may provide that visa, or visas of specified class, are subject to:
  - a condition that, despite anything else in this Act, the holder of the visa will not, after entering Australia, be entitled to be granted a substantive visa (other than a protection visa, or a temporary visa of a specified kind) while he or she remains in Australia; or
  - a condition imposing restrictions about the work that may be done in Australia by the holder, which, without limiting the generality of this paragraph, may be restrictions on doing:
    - any work; or
    - work other than specified work; or
    - work of a specified kind.
- subsection 41(3) of the Migration Act, which provides that, in addition to any conditions specified under subsection 41(1), or in the subsection 41(2B), the Minister may specify that a visa is subject to such conditions as permitted by the regulations for the purposes of this subsection.
- subsection 46(1) of the Migration Act, which relevantly provides that, subject to subsections 46(1A), (2) and (2A), an application for a visa is valid if, and only if:
  - it is for a visa of a class specified in the application; and
  - it satisfies the criteria and requirements prescribed under this section; and
  - subject to the Migration Regulations providing otherwise, any visa application charge that the Migration Regulations require to be paid at the time when the application is made, has been paid; and
  - any fees payable in respect of it under the Migration Regulations have been paid; and

- it is not prevented by section 48 (visa refused or cancelled earlier), 48A (protection visa), 91E (CPA and safe third countries), 91K (temporary safe haven visa), 91P (non-citizens with access to protection from third countries), 161 (criminal justice), 164D (enforcement visa), 195 (detainees) or 501E (visa refused or cancelled on character grounds);
- paragraph 46(2)(b) of the Migration Act provides that, subject to subsection 46(2A), an application for a visa is valid if under the Migration Regulations, the application referred to in paragraph 46(2)(a) is taken to have been validly made.
- subsection 140H(1) of the Migration Act, which provides that a person who is or was an approved sponsor must satisfy the sponsorship obligations prescribed by the Migration Regulations.
- subsection 140H(4) of the Migration Act, which provides that the Migration Regulations may require a person to satisfy sponsorship obligations in respect of each visa holder sponsored by the person or generally.
- subsection 140H(5) of the Migration Act, which provides that the sponsorship obligations must be satisfied in the manner (if any) and within the period (if any) prescribed by the Migration Regulations.
- paragraph 501CA(3)(b) of the Migration Act, which provides that as soon as practicable after making the original decision, the Minister must invite the person to make representations to the Minister, within the period and in the manner ascertained in accordance with the regulations, about revocation of the original decision.
- subsection 501G(3) of the Migration Act, which provides that a notice given under subsection 501G(1) of the Act (which deals with notices given with respect to a decision to refuse to grant, cancel or not revoke a decision to cancel a visa under subsection 501(1) or (2) or 501A(2) or section 501B, 501BA, 501CA or 501F) must be given in the prescribed manner.
- paragraph 504(1)(e) of the Migration Act, which provides that the Migration Regulations may be made in relation to the giving the documents to, the lodging the documents with or the service of the documents on the Minister, the Secretary or any other person or body, for purposes of the Migration Act.
- subsection 504(2) of the Migration Act, which provides that section 14 of the *Legislative Instruments Act 2003* does not prevent, and has not prevented, regulations whose operation depends on a country or other matter being specified or certified by the Minister in an instrument in writing made under the regulations after the taking effect of the regulations.
- section 505 of the Migration Act, which provides that, to avoid doubt, regulations for the purpose of prescribing a criterion for visas of a class may provide that the Minister, when required to decide whether an applicant for a visa of the class satisfies the criterion:
  - is to get a specified person or organisation, or a person or organisation in a specified class, to:
    - give an opinion on a specified matter; or
    - make an assessment of a specified matter; or
    - make a finding about a specified matter; or
    - make a decision about a specified matter; and
  - is:
    - to have regard to that opinion, assessment, finding or decision in; or

- to take that opinion, assessment, finding or decision to be correct for the purposes of;  
deciding whether the applicant satisfies the criterion.

**ATTACHMENT B****Statement of Compatibility with Human Rights**

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

***Migration Amendment (2015 Measures No.1) Regulation 2015***

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

**Overview of the Legislative Instrument – Schedule 1**

The purpose of this regulation change is to clarify the use of the Special Purpose visa (SPV) for international airline crew (including positioning crew) working on international flights entering and leaving Australia. Australian migration legislation has facilitative visa and clearance arrangements for international airline crew, which acknowledge the International Civil Aviation Organisation's recommended practice of participating states waiving visa requirements for airline crew, without compromising Australia's universal visa policy. International airline crew are not required to apply for a visa, but are granted an SPV by operation of law when they arrive, provided they perform the work they would normally perform as part of their duties as an airline crew member or an airline positioning crew member.

Some airlines are able to sell tickets to domestic passengers on international flights within Australia, leading to airlines increasingly combining their international and domestic services, which have led to concerns about the visa arrangements for international airline crew and the use of such aircrew on domestic flight routes on foreign work conditions. This regulation change limits the number of domestic flights that international airline crew are permitted to work on while holding a SPV. This change provides a limit of two connecting domestic flights for airline crew members and one connecting domestic flight for positioning airline crew members (persons forming crew on departure). This ensures that opportunities for Australian workers on domestic flights are protected.

**Human rights implications**

*Article 6 and Article 4 of the ICESCR*

Article 6 of 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.*

It is the long standing position of the Australian government that an authority from the Australian government needs to be granted before a non-citizen is permitted to work. This authority and associated 'work rights' are attached to certain types of visas, including the SPV. A person is not permitted to work in Australia unless work rights have been granted, and merely by arriving lawfully in Australia does not entitle a person to work rights in the absence of a visa with work rights.

The work rights of temporary non-citizens may be conditioned or limited on a case by case basis. 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.*

The authority from the Australian government granting work rights and conditions or limitations placed on temporary non-citizens such as the SPV in respect of those work rights are lawful as a matter of domestic law and have as their objective the continued integrity of Australia's migration programme and ensuring that temporary non-citizens are not the subject of exploitation. As such, the amendments are justified in accordance with Article 4 of ICESCR. The government also notes that there are other visa options available to foreign aircrew who seek to work in Australia on a longer-term basis.

### **Conclusion**

This regulation engages the right to work. To the extent that it engages the right to work, it is reasonable, necessary and proportionate in achieving its objective.

### **Overview of the Legislative Instrument – Schedule 2**

These amendments to the Migration Regulations are to implement changes to English language requirements for the Skilled – Recognised Graduate (subclass 476) visa, the Temporary Graduate (subclass 485) visa, as well as the range of points-tested skilled visa subclasses: Skilled – Independent (Permanent) (subclass 189), Skilled – Nominated (Permanent) (subclass 190) and Skilled – Regional (Provisional) (subclass 489).

The amendments:

- remove references to 'competent English' in clauses 476.111 and 485.111 of Schedule 2 of the Migration Regulations;
- allow applicants under clause 476.213 and clause 485.212 of Schedule 2 to provide an overall minimum English language score and a minimum score for each of the four components of an approved English language test as specified by the Minister in a legislative instrument;
- continue to allow applicants for Subclass 476 or a Subclass 485 visas who hold a valid passport issued by the United Kingdom, the United States of America, Canada, New Zealand or the Republic of Ireland, and are citizens of that country, to meet threshold English language requirements;
- rectify a legislative inconsistency by amending paragraphs 1.15(1)(b), 1.15C(1)(b), 1.15D(b), 1.15EA(a) relating to the various levels of English language proficiency to reflect points tested skilled visa eligibility criteria; and
- remove a redundant definition 'Occupational English Test' from the Migration Regulations.

The changes to English language test score requirements contribute to maintaining English language standards in the visa programme by mandating a baseline score for each of the test components, while benefiting Subclass 476 and Subclass 485 visa applicants who are 'only just' missing out on meeting existing English language requirements. This change is welcomed by industry stakeholders who raised concerns about not being able to provide an

overall/total English language test score, where scores in some components may be slightly below the current threshold while others are above. The changes to move English language test score requirements for Skilled – Recognised Graduate (subclass 476) and Temporary Graduate (subclass 485) visa applicants from the Migration Regulations to instead be specified in a legislative instrument provide flexibility to make further changes more easily if these requirements need to be adjusted to better reflect labour market needs.

Previously the Migration Regulations allowed applicants to provide a test score from an approved English language test that was conducted in the three years immediately prior to the day the application was lodged. However this did not align with points tested skilled visa eligibility criteria which stated that applicants can provide an English language test score from a test that was conducted in the three years immediately prior to the day the applicant was *invited* to apply.

Fixing the legislative anomaly relating to the various English language proficiency levels resolves the current ambiguity around points tested skilled visa eligibility requirements. Applicants are not disadvantaged by having to provide another English language test score if their results expire during the period that may have elapsed between being invited to apply and lodging their application.

The Regulation also makes a technical amendment to remove a redundant definition. “Occupational English Test” (OET) is incorrectly defined in Regulation 1.03 of the Migration Regulations as ‘Occupational English Test means an Occupational English Test conducted by the National Language and Literacy Institute of Australia’ (NLLIA). This is incorrect as the NLLIA ceased conducting the test in 2005 and the test is now conducted by Cambridge Boxhill Language Assessment Trust (CBLA).

This Regulation amendment omits the definition of “Occupational English Test” from the Migration Regulations, as there are no other references in the Migration Regulations to “Occupational English Test”, rather the references are in the associated Legislative Instruments where OET is spelt out.

### **Human rights implications**

The department conducted reviews to assess the appropriateness of English language requirements across its visa programmes. The aim of these changes to English language test requirements for skilled applicants is to ensure this criterion is more responsive to Australia’s labour market requirements without jeopardising visa programme integrity. While these Regulation amendments may engage the ICCPR Article 2 right to freedom from discrimination on the basis of language and national origin in accessing rights, they are compatible with Australia’s human rights obligations as they are based on objective criteria, and are aimed at a legitimate goal.

The object of the Migration 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 Migration 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).

This requirement clearly differentiates between those who speak English natively and those who do not. This is, however, a necessary part of a skilled migration programme – a minimum level of competence in English is clearly objectively relevant to participation in Australian workplaces.

These amendments make the English language requirements more flexible, and in that sense are human rights positive.

The amendment relating to the definition of OET is merely technical in nature, it does not engage any of the applicable rights or freedoms.

### **Conclusion**

For reasons outlined above, these measures are compatible with human rights as it does not raise any human rights issues.

### **Overview of the Legislative Instrument – Schedule 3**

Schedule 3 of the Regulation comprises items 1 and 2. Schedule 3 proposes amendments to Regulation 2.55(1)(b) and Public Interest Criterion (PIC) 4013. The amendments are consequential technical amendments to the *Migration Amendment (Character and General Visa Cancellation) Act 2014* and the *Migration Amendment (2014 Measures No. 2) Regulation 2014*, which came in to effect in 2014. These two previous amendments implemented a number of substantive changes and additions to the character and general visa cancellation provisions in the Migration Act and the Migration Regulations, including:

- a new mandatory cancellation power in section 501(3A);
- the power to revoke a mandatory cancellation decision in section 501CA;
- the power to set-aside and substitute a revocation decision made under section 501CA in section 501BA; and
- a new risk factor to PIC 4013 in subclause (3), extending the 3 year exclusion period to include persons subject to visa cancellation under section 116(1)(e).

For a discussion of Australia's obligations under international law with respect to these substantive amendments, please refer to the Statements of Compatibility with Human Rights prepared to accompany the Act and Regulation amendments made in December 2014.

Item 1 of Schedule 3 of the Regulation allows for the subsection 501(3A), section 501CA and section 501BA powers to be included within the notification requirements set out in the Migration Regulations. This means that the notification timeframes applicable to section 501 is utilised where a decision under subsection 501(3A), section 501BA or section 501CA is made. As this amendment to Regulation 2.55 is purely technical, it does not engage Australia's international obligations.

Item 2 of Schedule 3 of the Regulation makes a technical amendment to PIC 4013, which deals with risk factors related to the granting of a visa to an applicant who has previously had a visa cancelled under certain sections of the Migration Act. Subclause (1) of PIC 4013 provides that if the applicant is affected by a risk factor they cannot be granted a visa unless 3 years have passed since the cancellation of the previously held visa. The *Migration Amendment (2014 Measures No. 2) Regulation 2014* inserted a new subclause (3) of

PIC 4013 but subclause (1) was not amended to include the new risk factor introduced in subclause (3). As a consequence, subclause (3) falls out of the operation of the temporary exclusion period scheme. Item 2 of Schedule 3 of the Regulation is a technical amendment to ensure that subclause (3) is captured. The implications of extending the scope of the 3 year exclusion period to include visas cancelled under section 116(1)(e) were discussed in the Statement of Compatibility prepared for The *Migration Amendment (2014 Measures No. 2) Regulation 2014*.

### **Human rights implications**

The legislative amendments in Schedule 3 of the Regulation are consequential and technical amendments to substantive amendments made by the *Migration Amendment (Character and General Visa Cancellation) Act 2014* and the *Migration Amendment (2014 Measures No. 2) Regulation 2014*.

The Legislative Amendments do not engage any of the applicable rights or freedoms.

### **Conclusion**

The Legislative Amendments are compatible with human rights as they do not raise any human rights issues.

## **Overview of the Legislative Instrument – Schedule 4**

This Legislative Instrument will increase the period that approved sponsors are required to notify the department of notifiable events from 10 working days to 28 calendar days. Sponsors are required to notify the department when certain events occur. Depending on the sponsorship type such events may include, but are not limited to: cessation of employment, change in work duties, and change in information.

The purpose of this amendment is to support compliance and to contribute to efficiency and effectiveness by aligning the notification requirement with other comparable reporting periods that must be met by business.

### **Human rights implications**

This Legislative Instrument may engage with the right to privacy. However, any impact on that right is reasonable and proportionate to the goal of the orderly management of the migration programme, as the information sought goes to the reasons for the grant of a visa. As this measure extends the time frame for notifications it is effectively rights-positive.

### **Conclusion**

This Legislative Instrument is compatible with human rights.

## **Overview of the Legislative Instrument – Schedule 5**

The Legislative Instrument repeals clause 485.214 of the Migration Regulations, which provided that Subclass 485 visa applicants must provide evidence of having made arrangements for a medical examination, for the purpose of their application.

The reason for repealing clause 485.214 is that there was an inconsistency between that clause and PIC 4005, which sets out circumstances in which a medical assessment would have to be undertaken, but does not require an examination to be arranged in every case. The effect of the repeal is to reduce the regulatory burden for Subclass 485 visa applicants, who

now only have to make arrangements for a medical examination for the purpose of their application if required to under PIC 4005.

### **Human rights implications**

The repeal of the requirement for a medical assessment to be arranged in every case does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

### **Overview of the Legislative Instrument – Schedule 6**

The purpose of the amendments made by this Legislative Instrument is to introduce a legal framework in the Migration Regulations under which certain requirements of the visa application process can be changed by legislative instrument so that the department can quickly and flexibly manage the way the application process is administered.

These amendments enable administrative matters under the Migration Regulations relating to the approved form required for applying for a visa of a class, and the place at which and way in which an application must be made, to be specified by the Minister in a legislative instrument. The majority of these matters have previously been prescribed directly under the Migration Regulations. This has often meant that when the department has sought to make changes to the approved forms and way or place of making an application, delays may have occurred due to the complex regulations change process.

The amendments do not substantially alter the existing arrangements. Future changes to legislative instruments will be able to be made more rapidly, allowing greater flexibility to quickly change and update administrative arrangements for making and processing applications. For example, future legislative instruments may allow applicants to lodge an application by internet, or by posting it to a specified address rather than having to locate an office of the department.

It is envisaged that there may be benefits to applicants through easier access to application lodgement arrangements which are set out in a more consolidated and orderly way.

### **Human rights implications**

This Legislative Instrument does not engage with any human rights.

### **Conclusion**

This Legislative Instrument is compatible with human rights.

**Minister for Immigration and Border Protection**

**ATTACHMENT C****Details of the *Migration Legislation Amendment (2015 Measures No. 1) Regulation 2015*****Section 1 – Name of instrument**

This section provides that the title of the Regulation is the *Migration Amendment (2015 Measures No. 1) Regulation 2015* (the Regulation).

**Section 2 – Commencement**

This section provides that the Regulation commences on 18 April 2015.

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

**Section 3 – Authority**

This section provides that the Regulation is made under the Migration Act.

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

**Section 4 – Schedule(s)**

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

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

**Schedule 1 – Work-related conditions for foreign air crew****Item 1 – Subregulations 2.05(1) and (2)**

This item makes a technical amendment to subregulations 2.05(1) and (2) to ensure that the language used is consistent with the relevant powers in the Migration Act under which they are made.

Subsection 41(1) of the Migration Act provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions.

Subregulation 2.05(2) explains that, for the purpose of subsection 41(3) of the Migration Act, the conditions which the Minister may impose on a visa is a condition permitted to be imposed on the visa by Schedule 2 to the *Migration Regulations 1994* (Migration Regulations).

This item contains technical amendments to subregulations 2.05(1) and (2) to ensure that the language is consistent with that in the relevant powers in the Migration Act.

These amendments also clarify that the conditions referred to in Schedule 2 are set out in Schedule 8 to the Migration Regulations and that the term “condition” is defined in regulation 1.03 to assist readers.

The amendment also inserts a note into substituted subregulation 2.05(1) that refers to the current regulation 2.40A which is inserted by item 3 below. Regulation 2.40A provides for visa conditions that are to be imposed on Special Purpose visas that are granted to airline crew members and airline positioning crew members. Regulation 2.05 applies to all visas other than those that are taken to be granted by operation of law (for example, Special Purpose visas). For Special Purpose visas, regulation 2.40A applies.

Item 2 – At the end of subregulation 2.40(4)

Regulation 2.40 sets out the cohorts of persons (including both airline crew members and airline positioning crew members) that hold a prescribed status and as a result are to be granted a Special Purpose visa, on entering Australia, by operation of section 33 of the Migration Act.

This item inserts a note that refers to new regulation 2.40A inserted by item 3 below, which provides for visa conditions that are to be imposed on Special Purpose visas that are granted to airline crew members and airline positioning crew members. This amendment has the effect of referring to the work restrictions that apply to airline crew members and airline positioning crew members.

Items 3 and 4 – At the end of Division 2.8 and after clause 8116 of Schedule 8

Special Purpose visas granted to international airline crew members and airline positioning crew members provide for a streamlined visa solution that permits members of those crews to travel to, enter and temporarily remain in Australia in the course of their employment.

The intention is that the Special Purpose visa allows airline crew members and airline positioning crew members to work on the flight in which they will enter and leave Australia. Where the flight also includes connecting flights between domestic ports, it is intended that a maximum of 2 connecting domestic flights are permitted. It is also intended that airline positioning crew members are only permitted to work on the international flight that leaves Australia and where necessary, 1 connecting domestic flight that is part of schedule of that international flight.

Item 3 imposes visa conditions 8117 and 8118 on Special Purpose visas that are granted to airline crew members and airline positioning crew members. The conditions are inserted into Schedule 8 to the Migration Regulations by item 4 and sets out the relevant flights on which airline crew members and airline positioning crew members are permitted to work.

The purpose and effect of these amendments is to provide the permitted maximum flights on which foreign air crew are allowed to work and the obligations of the employer of these international members of the crew.

Relevantly, an employer who allows an airline crew member or an airline positioning crew member to work in breach of their visa conditions will enliven the provisions in

Subdivision C of Division 12 of Part 2 of the Migration Act and related laws, which deal with offences and civil penalties in relation to work by non-citizens.

For example, if a person is an airline crew member and is granted a Special Purpose visa with condition 8118 imposed, the person is only able to work on the international flights entering and leaving Australia and a maximum of 2 domestic connecting flights that are part of those international flights.

Alternatively, if a person is an airline positioning member and is granted a Special Purpose visa with condition 8117 imposed, the person is only able to work on the international flight leaving Australia and 1 domestic connecting flight that is part of the international flight leaving Australia.

In both examples, if an employer allows an airline crew member or an airline positioning crew member to work in breach of their visa condition, the department may, under the provisions in Subdivision C of Division 12 of Part 2 of the Migration Act, sanction that employer (i.e. imprisonment or fine).

## **Schedule 2 – English language test requirements**

### **Item 1 – Regulation 1.03 (definition of Occupational English Test)**

This item amends regulation 1.03 to remove the redundant definition of ‘Occupational English Test’.

The definition of ‘Occupational English Test’ is out of date as the test is now conducted by the Cambridge Boxhill Language Assessment Trust. Further, there are no references in the regulations to ‘Occupational English Test’, rather the references are all in the associated instruments and the meaning of ‘Occupational English Test’ is spelt out in those instruments.

### **Item 2 – Regulation 1.03**

This item amends regulation 1.03 to include a new definition of “score”. The amendment is consequential to the insertion of new clauses 476.213 and 485.212 (items 12 and 14 below).

The purpose of this amendment is to make clear that the term score – when used in relation to an English Language Test – means any score or result and any combination of a score or result from an individual component of a test or from a general score awarded in relation to the whole test.

The effect of the amendment to include a definition, in relation to an English language test, of ‘score’ is to provide the Minister with the flexibility to specify scores in any or all components of a particular test, and/or an overall score, as appropriate, in relation to the particular test.

### **Item 3 – Paragraph 1.15B(1)(b)**

This item inserts 3 new paragraphs in subregulation 1.15B(1).

The effect of this amendment is to clarify that for an application for a visa, a person has “vocational English” in specific circumstances.

If an applicant for a visa undertakes a language test and is invited to apply for the visa, the test must be conducted in the three years immediately before the date of the invitation.

If an applicant for a visa undertakes a language test but is not invited to apply for the visa, the test must be conducted in the three years immediately before the date of application.

The purpose of this amendment is to allow an English language test score to be accepted if the test was conducted three years before the applicant was invited to apply for the visa, rather than three years before the application was lodged. This would ensure that English test scores do not become invalid between the invitation to apply for the visa and the application being lodged.

It retains the requirement that the test must have been taken in the three years before the application is made for visas that do not require an invitation to apply.

It is necessary to distinguish between applicants who are invited to apply and those who are not required to be invited to apply so that the three years’ timeframe for a language test can be calculated from the appropriate time.

#### Items 4 and 6 – Subregulation 1.15B(2) and 1.15C(2)

These amendments insert “also” after “A person” to make it clear that subregulations 1.15B(2) and 1.15C(2) are alternatives to subregulation (1) in the relevant provision and are not cumulative requirements.

For example, in the amendment made by item 3 above, subregulation 1.15B(1) specifies some circumstances in which a person has a particular English Language skill level.

Subregulation 1.15B(2) specifies another circumstance in which a person would also meet the required English Language skill level.

These are minor technical amendments to clarify the operation of the provisions.

#### Item 5 – Paragraph 1.15C(1)(b)

This item inserts 3 new paragraphs in subregulation 1.15C(1).

The effect of this amendment is to clarify that for an application for a visa, a person has ‘competent English’ in specific circumstances.

If an applicant for a visa (or their spouse or de facto partner) undertakes a language test and is invited to apply for the visa, the test must be conducted in the three years immediately before the date of the invitation.

If an applicant for a visa (or their spouse or de facto partner) undertakes a language test but is not invited to apply for the visa, the test must be conducted in the three years immediately before the date of application.

The purpose of this amendment is to allow an English language test score to be accepted if the test was conducted three years before the applicant was invited to apply for the visa, rather than three years before the application was lodged. This would ensure that English test scores do not become invalid between the invitation to apply for the visa and the application being lodged.

It retains the requirement that the test must have been taken in the three years before the application is made for visas that do not require an invitation to apply.

It is necessary to distinguish between applicants who are invited to apply and those who are not required to be invited to apply so that the three years' timeframe for a language test can be calculated from the appropriate time.

Items 7 and 9 – After paragraphs 1.15D(a) and 1.15EA(a)

These amendments make clear that the 'person' referred to in paragraphs 1.15D(a) and 1.15EA(a) must be an applicant for a visa. These are technical amendments to clarify the operation of the provisions.

Item 8 – Paragraph 1.15D(b)

Applicants for certain visas are awarded points if they possess "proficient English" at the time of receiving an invitation to apply for the visa, so the timing of the English test must reference the date of the invitation rather than the date of the application.

This amendment permits an applicant for a visa **to** take advantage of a test conducted in the period of 3 years immediately before the day on which the invitation to apply for the relevant visa was issued, rather than the date of application. If the expiration of a test is calculated according to the date of the application it is possible that a test might expire between the time of the invitation and the application and this would disadvantage those applicants for invitation only visas who have sat a test close to three years before the date of invitation.

All visas for which the definition of "proficient English" is relevant are visas which require an invitation.

Item 10 – Paragraph 1.15EA(b)

Applicants for certain visas are awarded points if they possess "superior English" at the time of receiving an invitation to apply for the visa, so the timing of the English test must reference the date of the invitation rather than the date of the application.

This amendment permits an applicant for a visa **to** take advantage of a test conducted in the period of 3 years immediately before the day on which the invitation to apply for the relevant visa was issued, rather than the date of application. If the expiration of a test is calculated according to the date of the application it is possible that a test might expire between the time of the invitation and the application and this would disadvantage those applicants for invitation only visas who have sat a test close to three years before the date of invitation.

All visas for which the definition of “superior English” is relevant are visas which require an invitation.

Items 11 and 13 – Clause 476.111 of Schedule 2 (note) and Clause 485.111 of Schedule 2 (note 2)

These amendments repeal the note following Clause 476.111 and note 2 following Clause 485.111 of Schedule 2, which refer to the definition of “competent English” in regulation 1.15C of the Migration Regulations. These amendments are consequential to the removal of the references to “competent English” in clause 476.213 (see item 12 below) and clause 485.212 (see item 14 below).

Item 12 – Clause 476.213 of Schedule 2

Clause 476.213, which is a criterion for grant of a Skilled – Recognised Graduate (subclass 476) visa, removes the reference to “competent English” and replaces it with a requirement that, at the time of application, the applicant has undertaken a specified language test, and achieved a specified score.

The purpose of this amendment is to enable lower English language test scores for individual components of a test (while maintaining a minimum average score) to be specified for the Skilled – Recognised Graduate visa so that test results can be more flexible and these visas can be more responsive to Australia’s labour market requirements. The available tests and the acceptable scores will be specified in an instrument made by the Minister.

Item 14 – Clause 485.212 of Schedule 2

Clause 485.212, which is a criterion for grant of a Temporary Graduate (subclass 485) visa, removes the reference to “competent English” and replaces it with a requirement that, at the time of application, the applicant has undertaken a specified language test, and achieved a specified score.

The purpose of this amendment is to enable lower English language test scores for individual components of a test (while maintaining a minimum average score) to be specified for the Temporary Graduate visa so that test results can be more flexible and these visas can be more responsive to Australia’s labour market requirements. The available tests and the acceptable scores will be specified in an instrument made by the Minister.

**Schedule 3 – Character and cancellation**

Item 1 – Paragraph 2.55(1)(b)

Regulation 2.55 in Part 2 of the Migration Regulations deals with the giving of documents relating to proposed cancellation, cancellation, or revocation of cancellation of visas under certain provision of the Migration Act. Regulation 2.55 prescribes the way documents must be given in relation to decisions to which the regulation applies. Previously, paragraph 2.55(1)(b) provided that regulation 2.55 applied to the giving of a document under subsection

501G(3) of the Migration Act in relation to a decision to cancel a visa under section 501, subsection 501A(2), section 501B or section 501F of the Migration Act.

The effect of this amendment is to provide that, in addition to the provisions already listed, regulation 2.55 also applies to giving of documents in relation to a decision under section 501BA of the Migration Act by the Minister to set aside a delegate's decision under section 501CA to revoke a cancellation of a visa; and to a decision under section 501CA of the Migration Act about revocation of a decision under section 501(3A) to cancel a visa held by a person serving a sentence of imprisonment. Sections 501BA and 501CA were inserted in the Migration Act by the *Migration Amendment (Character and General Visa Cancellation) Act 2014*.

#### Item 2 – Subclause 4013(1) of Schedule 4

This item amends the chapeau of subclause 4013(1) of Schedule 4 to the Migration Regulations to omit “(2) or (2A)” and substitute “(2), (2A) or (3)”.

Public Interest Criterion 4013 deals with ‘risk factors’ associated with considering granting a visa to an applicant whose previous visa was cancelled under specified provisions, and sets out a temporary exclusion period for grant of a visa to those applicants.

Broadly, old subclause 4013(1) provides that if the applicant is affected by a risk factor they cannot be granted a visa unless three years have passed since the cancellation of the previously held visa. The old chapeau to subclause 4013(1) provides that “[I]f the applicant is affected by a risk factor mentioned in subclause (1A), (2) or (2A):”. This item substitutes subclause 4013(1), incorporating one amendment, the inclusion of a reference to subclause 4013(3) to the existing listed subclauses.

Subclause 4013(3) provides that a person is affected by a risk factor if a visa previously held by the person was cancelled because the Minister was satisfied that a ground mentioned in paragraph 116(1)(e) of the Migration Act applied to the person.

Paragraph 116(1)(e) of the Migration Act provides that subject to subsections 116(2) and (3) of the Migration Act, the Minister may cancel a visa if he or she is satisfied that the presence of its holder in Australia is or may be, or would or might be, a risk to the health, safety or good order of the Australian community or a segment of the Australian community; or the health or safety of an individual or individuals.

The effect of this amendment is to provide that the Minister cannot grant the visa if the application is made within three years after the previously held visa was cancelled on paragraph 116(1)(e) grounds unless the Minister is satisfied, in the particular case, that either compelling circumstances that affect the interests of Australia or compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen justify the granting of the visa within 3 years after the cancellation or determination. The purpose of this amendment is to include a reference to subclause 4013(3) in subclause 4013(1) so that where a person has had a visa cancelled under paragraph 116(1)(e) of the Migration Act (risk to health, safety or good order), they cannot be granted a further visa for three years (except in compelling or compassionate circumstances).

## **Schedule 4 – Sponsorship obligation timeframes**

### **Item 1 – Subregulation 2.84(6) table**

Subregulation 2.84(6) of the Migration Regulations provided approved sponsors 10 working days to notify the department of the events and changes in circumstances specified in subregulations 2.84(3) to (5).

The proposed amendments would increase the period that approved sponsors have to notify the department of certain events from 10 working days to 28 calendar days. The purpose of these amendments is to support compliance and to contribute to efficiency and effectiveness by aligning the notification requirement with other comparable reporting periods that must be met by businesses.

### **Item 2 – Subregulation 2.84(6) (table item 4)**

This item omits the reference to “subregulation (5)” in the table item 4 of regulation 2.84(6) of Part 2A Division 2.19 of the Migration Regulations and substitutes it with “paragraph (5)(b)”.

Subregulation 2.84(5) of the Migration Regulations provides events that require an approved sponsor to notify the department.

This item is a technical amendment to stipulate the timeframes specifically for subregulation 2.84(6) events in table item 4. This is because the events referenced in paragraph 2.84(5)(a) already have set notification dates in table item 1.

This amendment makes the operation of subregulation 2.84(6) table item 4 clearer.

## **Schedule 5 – Medical examination requirements**

### **Item 1 – Clause 485.214 of Schedule 2**

This item repeals clause 485.214 of Schedule 2 of the Migration Regulations.

Old clause 485.214 provided that:

When the application was made, it was accompanied by evidence that:

- (a) the applicant; and
  - (b) each person included in the application;
- had made arrangements to undergo a medical examination for the purpose of the application.

The effect of this amendment is that there is no longer a need to require applications for a Subclass 485 (Temporary Graduate) visa to be accompanied by evidence of having made arrangements for a medical examination at the time of application.

Applicants for a Subclass 485 (Temporary Graduate) visa continue to be required to satisfy public interest criterion (PIC) 4005 which prescribes whether or not a person is required to

undergo a medical examination and what types of medical assessments or medical tests are required.

It is expected that the majority of Subclass 485 (Temporary Graduate) visa applicants continue to complete medical examinations to meet PIC 4005. However they can save time by no longer having to provide the department with evidence of arrangements for medical examinations when they lodge their application.

The purpose of the amendment is to reduce the regulatory burden on Subclass 485 (Temporary Graduate) visa applicants.

## **Schedule 6 – Legislative instrument for application requirements**

### **Item 1 – Regulation 1.03**

This item inserts a definition, “office of Immigration”, in regulation 1.03 in Division 1.2 of Part 1 of the Migration Regulations.

This definition clarifies that the term “office of Immigration” includes an office occupied by an officer of the department at an airport or a detention centre.

This clarification of the meaning of “office of Immigration” was previously included in subregulation 2.10(4) (which deals with where an application must be made), for the purposes of Division 2.2 (not including regulation 2.09) of Part 1 of the Migration Regulations and Schedule 1 to the Migration Regulations. This definition in regulation 1.03 replaces subregulation 2.10(4), which is repealed by this Schedule (see item 6, below). This definition applies to all references to “office of Immigration” throughout the Migration Regulations, subject to a contrary intention in any particular provision.

### **Item 2 – At the end of subregulation 2.07(1)**

This item inserts a note at the end of subregulation 2.07(1) in Division 2.2 of Part 2 of the Migration Regulations. The note explains that an item of Schedule 1 may provide that the form, place or manner for making an application is specified by the Minister in a legislative instrument made for the item under subregulation 2.07(5).

Subregulation 2.07(1) prescribes the approved form and other requirements for making a valid application, for the purposes of section 46 of the Migration Act. These matters are set out in items in Schedule 1 to the Migration Regulations. The purpose of the note is to make clear that an item in Schedule 1 may provide for the form, and place or manner for making a valid visa application to be prescribed by reference to matters specified in a legislative instrument made by the Minister under subregulation 2.07(5) for the relevant item of Schedule 1. Subregulation 2.07(5) is inserted by this Regulation. For further details of its operation, please see the notes on item 3 of this Schedule, below.

### **Item 3 – At the end of regulation 2.07**

This item inserts subregulations 2.07(5) and (6) in Division 2.2 of Part 2 of the Migration Regulations.

Regulation 2.07 prescribes requirements for making a valid application for a visa. Subregulation 2.07(1) provides for approved forms and other matters to be set out in an item of Schedule 1 that is relevant to an application for a visa of a particular class.

Subregulation 2.07(5) provides that if an item in Schedule 1 prescribes a form, place or way required for making a valid visa application by reference to a legislative instrument made under subregulation 2.07(5), the Minister may make a legislative instrument specifying the requirement for the relevant item in Schedule 1. The purpose of subregulation 2.07(5) is to provide an express power for the Minister to make the legislative instruments referred to in Schedule 1.

Two notes are inserted after subregulation 2.07(5). Note 1 provides examples of the ways for making an application that may be specified, for instance by internet, orally or by posting, faxing or emailing the application to a specified address. Note 2 explains that if no location for making an application is prescribed under Schedule 1, the application must be made at a place set out in regulation 2.10 (Where application must be made).

Subregulation 2.07(6) provides that a legislative instrument made under subregulation 2.07(5) may specify different requirements for different classes of visa (however described), and different classes of applicant. The purpose of this subregulation is to make it clear that different requirements may be specified in relation to different kinds of visa within the same class, and different classes of applicants for a visa of the same class.

Subregulations 2.07(5) and (6) operate in conjunction with further amendments made by this Regulation to items in Schedule 1 to the Migration Regulations, to provide that the form, place and way of making an application for a visa of a relevant class are specified by the Minister in a legislative instrument.

Provision for these matters to be specified by the Minister in a legislative instrument allows the approved form, and the way and place for making visa applications to be changed rapidly. This enables efficiencies, such as internet applications and centralised processing, to be introduced in a timely manner. It also allows for responses to changes in the visa application caseload to be made efficiently.

#### Item 4 – Regulation 2.07A

This item inserts the words “of Schedule 1” after “1305(1)” in regulation 2.07A in Division 2.2 of Part 2 of the Migration Regulations.

This amendment makes it clear that the subitem 1305(1) referred to in regulation 2.07A is located in Schedule 1 to the Migration Regulations.

#### Item 5 – At the end of regulation 2.09

This item adds subregulation 2.09(4) in regulation 2.09 (Oral applications for visas) in Division 2.2 of Part 2 of the Migration Regulations.

Subregulation 2.09(4) provides that in regulation 2.09, “office of Immigration” does not include an office occupied by an officer of the department at an airport or detention centre. The effect of this provision is that an oral application cannot be made at an airport or detention centre, although it can be made at any other “office of Immigration” subject to a number of conditions set out in regulation 2.09.

This amendment is consequential to moving the definition of “office of Immigration” from subregulation 2.10(4) to regulation 1.03, where it is of general applicability in the Migration Regulations subject to contrary intention in the particular provision. See item 1 of this Schedule, above. Subregulation 2.10(4) is repealed by this Regulation; see item 6 of this Schedule, below.

The definition of “office of Immigration” as including an office occupied by an officer of the department at an airport or a detention centre, was of limited applicability in subregulation 2.10(4) and did not apply to regulation 2.09. Following the repeal of subregulation 2.10(4), this amendment is necessary to ensure that the general definition now in regulation 1.03 does not apply in regulation 2.09 as oral applications are not intended to be made at a detention centre or airport.

Item 6 – Subregulation 2.10(4)

This item repeals subregulation 2.10(4).

Please see the notes on items 1 and 5 of this Schedule, above, for details of the purpose of this amendment.

Item 7 – Subregulations 2.10A(2) and 2.10B(2)

This item amends subregulations 2.10A(2) and 2.10B(2) in Division 2.2 of Part 2 of the Migration Regulations, by omitting the words “The person” and substituting the words “For section 46 of the Act, the person”.

These amendments have no substantive effect. Their purpose is to make it clear that the provisions of regulations 2.10A and 2.10B are prescribed under section 46 of the Migration Act as requirements that must be met for making valid applications for the relevant visas in the cases to which these regulations apply.

Item 8 – Part 1 of Schedule 1 (note to Part heading)

This item repeals the note to the heading of Part 1 (Permanent visas) of Schedule 1 to the Migration Regulations. The note is redundant as it refers to a regulation which was repealed in 2013, but repeal of the note was overlooked at that time.

Items 9, 11, 13, 15, 17, 20, 22, 24, 26, 28, 30, 32, 34, 36, 39, 41, 44, 46, 48, 51, 53, 55, 57, 59, 61, 63, 65, 68, 70, 72, 74, 76, 78, 80, 83, 86, 88, 90, 95, 97, 99, 101, 103, 105, 107, 112, 114, 116, 118, 120, 122, 124, 126 and 128 – Subitems 1104AA(1), 1104BA(1), 1104B(1), 1108(1), 1108A(1), 1111(1), 1112(1), 1113(1), 1114B(1), 1114C(1), 1118A(1), 1123(1), 1123A(1), 1123B(1), 1127AA(1), 1128(1), 1136(1), 1137(1), 1138(1), 1201(1), 1202A(1), 1202B(1), 1205(1), 1211(1), 1212B(1), 1214A(1), 1214B(1), 1216(1), 1217(1), 1218AA(1), 1219(1), 1224(1), 1224A(1), 1225(1), 1227(1), 1227A(1), 1228(1), 1229(1), 1230(1),

1231(1), 1232(1), 1233(1), 1234(1), 1235(1), 1236(1), 1301(1), 1302(1), 1303(1), 1304(1), 1305(1), 1306(1), 1401(1), 1402(1) and 1403(1) of Schedule 1

These items repeal subitem (1) of the specified items in Schedule 1 to the Migration Regulations, which previously prescribed approved forms for making an application for a visa of the relevant class, and substitute new subitems (1) to provide that the form is the approved form specified by the Minister in a legislative instrument made for the item under subregulation 2.07(5).

The effect of these amendments is that the relevant items of Schedule 1 now prescribe the form required for making an application for a visa of the particular class by reference to an approved form specified in a legislative instrument made by the Minister under subregulation 2.07(5), inserted in the Migration Regulations by this Regulation. For further details of the operation of subregulation 2.07(5), please see the notes on item 3 of this Schedule, above.

Items 10, 12, 14, 18, 21, 25, 27, 29, 33, 37, 40, 45, 47, 49, 54, 56, 58, 62, 64, 71, 77, 79, 84, 87, 89, 92, 96, 98, 100, 102, 104, 106, 113, 115, 117, 119, 121, 123, 125, 127 and 129 – Paragraphs 1104AA(3)(a), 1104BA(3)(a), 1104B(3)(a), 1108A(3)(a), 1111(3)(a), 1113(3)(a) and (aa), 1114B(3)(a), 1114C(3)(a), 1123(3)(a), 1123B(3)(a), 1127AA(3)(a), 1136(3)(a), 1137(3)(a), 1138(3)(a), 1202A(3)(a), 1202B(3)(a), 1205(3)(a), 1212B(3)(a), 1214B(3)(a) and (b), 1217(3)(a), 1224(3)(a), 1224A(3)(aa) and (ab), 1227(3)(a), 1227A(3)(d), 1228(3)(a), 1229(3)(c), 1230(3)(a), 1231(3)(a), 1232(3)(a), (aa) and (b), 1233(3)(a), 1234(a) and (b), 1235(3)(a), 1301(3)(a), 1302(3)(a), 1303(3)(a), 1304(3)(a), 1305(3)(a), 1306(3)(a), 1401(3)(a), 1402(3)(a) and (aa) and 1403(3)(a) of Schedule 1

These items repeal the listed paragraphs of subitem (3) of the specified items in Schedule 1 to the Migration Regulations, which previously prescribed where or how an application for a visa of the relevant class must be made, and substitute a new paragraph to provide that an application must be made at the place, and in the manner (if any) specified by the Minister in a legislative instrument made for the particular item under subregulation 2.07(5).

The effect of these amendments is that the relevant items of Schedule 1 will prescribe the place and manner required for making an application for a visa of the particular class, by reference to the place and manner (if any) specified in a legislative instrument made by the Minister under subregulation 2.07(5), inserted in the Migration Regulations by this Regulation. For further details of the operation of subregulation 2.07(5), please see the notes on item 3 of this Schedule, above.

Items 16, 23, 31, 35, 42, 52, 60, 66, 69 and 75 – Paragraphs 1108(3)(a), 1112(3)(a), 1118A(3)(a), 1123A(3)(a), 1128(3)(a) and (aa), 1201(3)(a) and (b), 1211(3)(a), (aa) and (ab), 1214BA(3)(a), 1216(3)(a), and 1219(3)(a) of Schedule 1

These items repeal the described paragraphs in the relevant items of Schedule 1 to the Migration Regulations, which prescribed requirements for the way and place for making a visa application, and substitutes new paragraphs (3)(a) to provide that an application must be made at the place, and in the manner (if any) specified by the Minister in a legislative instrument made for the item under subregulation 2.07(5).

The effect of these amendments is that the relevant items of Schedule 1 will prescribe the place and manner required for making an application by reference to the place and manner specified in a legislative instrument made by the Minister under subregulation 2.07(5), inserted in the Migration Regulations by this Regulation. For further details of the operation of subregulation 2.07(5), please see the notes on item 3 of this Schedule, above.

These items also insert paragraphs in the relevant items of Schedule 1 to provide where an applicant must be located at the time of application, either inside or outside Australia as appropriate to the particular item. These provisions were previously in the repealed paragraphs and are reinserted by the current paragraphs.

Item 19 – Paragraph 1108A(3)(da)

This item repeals paragraph 1108A(3)(da) of Schedule 1 to the Migration Regulations. Paragraph 1108A(3)(da) provided for the way of making an application. It is no longer required following the amendment made to paragraph 1108A(3)(a) by item 18 of this Schedule, above, as the way for making an application will now be specified in a legislative instrument made by the instrument under subregulation 2.07(5).

Item 43 – Subparagraph 1128(ba)(i) of Schedule 1

This item repeals subparagraph 1128(3)(ba)(i) of Schedule 1 to the Migration Regulations. The repealed subparagraph provided for where an application for a visa of the relevant class must be made. Following the amendment made to item 1128 by item 43 of this Schedule, above, the subparagraph is no longer required as the place for making an application will now be specified by the Minister in a legislative instrument.

Item 50 – Part 2 of Schedule 1 (note to Part heading)

This item repeals the note to the heading of Part 2 (Temporary visas (other than bridging visas)) of Schedule 1 to the Migration Regulations. The note is redundant as it refers to a regulation which was repealed in 2013, but repeal of the note was overlooked at that time.

Item 67 – Paragraph 1214BA(3)(d) of Schedule 1

This item repeals paragraph 1214BA(3)(d) of Schedule 1 to the Migration Regulations. The repealed paragraph provided for how an application for a visa of the relevant class must be made. Following the amendment made to item 1214BA by item 66 of this Schedule, above, the paragraph is no longer required as the way for making an application will now be specified by the Minister in a legislative instrument.

Item 73 – Before paragraph 1218AA(3)(a) of Schedule 1

This item inserts a new paragraph 1218AA(3)(aa) in item 1218AA of Schedule 1 to the Migration Regulations.

Paragraph 1218AA(3)(aa) provides that an application must be made at the place, and in the manner (if any) specified by the Minister in a legislative instrument made for the item under subregulation 2.07(5).

The effect of this amendment is that item 1218AA of Schedule 1 prescribes the place and manner required for making an application by reference to the place and manner specified in a legislative instrument made by the Minister under subregulation 2.07(5), inserted in the Migration Regulations by this Regulation. For further details of the operation of subregulation 2.07(5), please see the notes on item 3 of this Schedule, above.

Item 81 – Subitem 1225(3) of Schedule 1

This item repeals subitem 1225(3) of Schedule 1 to the Migration Regulations, which prescribed requirements for the way and place for making a visa application, and substitutes a new subitem 1225(3) to provide that an application must be made at the place, and in the manner (if any) specified by the Minister in a legislative instrument made for the item under subregulation 2.07(5).

The effect of this amendment is that subitem 1225(3) of Schedule 1 prescribes the place and manner required for making an application by reference to the place and manner specified in a legislative instrument made by the Minister under subregulation 2.07(5), inserted in the Migration Regulations by this Regulation. For further details of the operation of subregulation 2.07(5), please see the notes on item 3 of this Schedule, above.

Item 82 – Paragraphs 1225(3B)(a) and (b) of Schedule 1

This item repeals paragraphs 1225(3B)(a) and (b) of item 1225 in Schedule 1 to the regulations and substitutes a new paragraph 1225(3B)(a) and (b). This amendment is consequential to the amendment made by item 1225 by item 81 of this Schedule, above, which inserted a new subitem 1225(3) to prescribe by reference to a legislative instrument, how and where an application must be made.

This item also inserts paragraph 1225(3B)(a) to provide that an applicant may be inside or outside Australia but not in immigration clearance. The paragraph reinstates a provision that was previously in the repealed provisions.

Item 85 – Paragraph 1227(3)(d) of Schedule 1

This item repeals paragraph 1227(3)(d) of Schedule 1 to the Migration Regulations. The repealed paragraph dealt with the way an application must be made. It is no longer required following the amendment made to paragraph 1227(3)(a) by item 84 of this Schedule, above, which prescribes the way and place for making an application by reference to legislative instrument made by the Minister.

Item 91 – Paragraphs 1229(3)(a) and (b) of Schedule 1

This item repeals paragraphs 1229(3)(a) and (b) of Schedule 1 to the Migration Regulations. The repealed paragraphs provided for the way and place for making an application. They are no longer required following the amendment made to paragraph 1229(3)(c) by item 92 of this Schedule, below, as the way and place for making an application will now be specified in a legislative instrument made by the instrument under subregulation 2.07(5).

Item 93 – Paragraphs 1229(3)(d) and (e) of Schedule 1

This item repeals paragraphs 1229(3)(d) and (e) of Schedule 1 to the Migration Regulations. The repealed paragraphs provided for the way and place for making an application. They are no longer required following the amendment made to paragraph 1229(3)(c) by item 92 of this Schedule, above, as the way and place for making an application will now be specified in a legislative instrument made by the instrument under subregulation 2.07(5).

Item 94 – Subitem 1229(9) of Schedule 1

This item repeals subitem 1229(1) of Schedule 1. The repealed subitem applied to an applicant for a Subclass 487 (Skilled – regional Sponsored) visa. Subclass 487 was repealed from the Migration Regulations in 2013, and therefore the subitem no longer has any application.

Subitem 1236(1) of Schedule 1 (table items 1 and 2)

This item repeals items 1 and 2 in the table in subitem 1236(1) of Schedule 1, and inserts items 1 and 2 in the table. The repealed items made provisions about where an applicant for a visa of the relevant class must be located and where the application must be made.

Item 1 provides that the application must be made at a place, and in a manner (if any) specified by the Minister in a legislative instrument made for the item under subregulation 2.07(5). For further details of the effect of this amendment, see the notes on item 3 of this Schedule, above. Item 2 provides that an applicant may be in or outside Australia, which reinserts a provision about where an applicant must be located which was previously in the repealed items.

Items 109, 110 and 111 – Subitems 1236(4) (table item 1), 1236(5) (table item 1), and 1236(6) (table item 4) of Schedule 1

These items repeal the table items in the listed subitems in Schedule 1 to the Migration Regulations, which made provisions about where and how an application for a visa of the relevant class must be made. The items substitute table items which provide that an application must be made at a place, and in a manner (if any) specified by the Minister in a legislative instrument made for the item under subregulation 2.07(5). For further details of the effect of this amendment, see the notes on item 3 of this Schedule, above.

## **Schedule 7 – Application provisions**

### **Item 1 – At the end of Schedule 13**

This item amends Schedule 13 to the Migration Regulations to insert, after Part 40, new Part 41 entitled “Amendments made by Migration Amendment (2015 Measures No. 1) Regulation 2015”, which contains new clause 4101, entitled “Operation of Schedule 1”.

Clause 4101 contains a transitional amendment for the operation of Schedule 1 of the Regulation, such that the amendments in that Schedule apply in relation to a Special Purpose Visa taken to have been granted on or after 18 April 2015.

### **Item 2 – Schedule 13**

This item amends Schedule 13 to the Migration Regulations to insert a new Part 41, entitled “Amendments made by the Migration Amendment (2015 Measure No. 1) Regulation 2015”, which contains new clause 4102, entitled “Operation of Schedule 2”.

Subclause 4102(1) provides that the amendments of the Migration Regulations made by items 1 to 10 of Schedule 2 to the Regulation apply in relation to the following applications for a visa:

- (a) an application made, but not finally determined, before 18 April 2015;
- (b) an application made on or after 18 April 2015.

The purpose of this subclause is to apply the amendments made by these items to applications made but not finally determined at the date of commencement as well as applications made on or after the commencement date

Subclause 4102(2) provides however, that the amendments mentioned in subregulation (1) do not apply to an application mentioned in paragraph (1)(a) if:

- (a) the Minister invited the applicant under these Regulations, in writing, to apply for the visa; and
- (b) before the invitation was issued, the applicant undertook an English language test in accordance with these Migration Regulations as in force immediately before the commencement of this item.

The purpose of this subclause is to ensure that the amendments do not apply to undecided applications if the applicant achieved the required score in an English test after an invitation was issued (and before lodging an application). This exception is intended to prevent an applicant in this situation being disadvantaged by the new provisions which will require that the test must be conducted in the three years *before* the invitation, requiring them to sit a new test.

Subclause 4102(3) provides that the amendments of these Migration Regulations made by items 11 to 14 of Schedule 2 to the Regulation apply in relation to an application for a visa made on or after 18 April 2015.

The purpose and effect of these amendments is to clarify to whom the amendments in Schedule 2 of the Regulation applies.

### Item 3 – Schedule 13

This item amends Schedule 13 to the Migration Regulations to insert, after Part 40, new Part 41 entitled “Amendments made by Migration Amendment (2015 Measures No. 1) Regulation 2015”, which contains new clause 4103, entitled “Operation of Schedule 3”.

Subclause 4103(1) provides that the amendment of these Migration Regulations made by item 1 of Schedule 3 to the Regulation applies in relation to a notice given on or after 18 April 2015.

Subclause 4103(2) provides that the amendment of these Migration Regulations made by item 1 of Schedule 3 to the Regulation apply in relation to the following applications:

- (a) an application for a visa made, but not finally determined, before the commencement of that item;
- (b) an application for a visa made on or after the commencement of that item.

The purpose of this subclause is to apply the amendments made by this item to applications made but not finally determined at the date of commencement as well as applications made on or after the commencement date.

The purpose and effect of these amendments is to clarify to whom the amendments in the Regulation applies.

### Item 4 – Schedule 13

This item amends Schedule 13 to the Migration Regulations to insert after Part 40 new Part 41, entitled “Amendments made by the Migration Amendment (2015 Measures No. 1) Regulation 2015”, which contains clause 4104, entitled “Operation of Schedule 4”.

Clause 4104 provides that the amendments of the Migration Regulations made by Schedule 4 to the Regulation apply in relation to an event mentioned in regulation 2.84 that occurs on or after 18 April 2015.

The effect of these amendments is that an approved sponsor now has 28 calendar days to notify the department of any changes in circumstances that occur on or after 18 April 2015.

The purpose of these amendments is to clarify to whom the amendments in the Regulation applies.

### Item 5 – Schedule 13

This item amends Schedule 13 to the Migration Regulations to insert after Part 40 new Part 41, entitled “Amendments made by the Migration Amendment (2015 Measures No. 1) Regulation 2015”, which contains clause 4105, entitled “Operation of Schedule 5”.

Clause 4105 Operation of Schedule 5 provides that the amendment of these Migration Regulations made by Schedule 5 of the Regulation applies in relation to the following applications for a visa:

- (a) an application made, but not finally determined, before 18 April 2015;
- (b) an application for a visa made on or after 18 April 2015.

The purpose of this subclause is to apply the amendments made by these items to applications made but not finally determined at the date of commencement as well as applications made on or after the commencement date.

The purpose and effect of these amendments is to clarify to whom the amendments in the Regulation applies.

#### Item 6 – Schedule 13

This item amends Schedule 13 to the Migration Regulations to insert after Part 40 new Part 41, entitled “Amendments made by the Migration Amendment (2015 Measures No. 1) Regulation 2015”, which contains clause 4106, entitled “Operation of Schedule 6”.

Clause 4106 Operation of Schedule 6 provides that the amendment of these Migration Regulations made by Schedule 5 of the Regulation applies in relation to an application for a visa made on or after 18 April 2015.