Migration Amendment (Temporary Activity Visas) Regulation 2016

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 10 November 2016

Peter Cosgrove
Governor-General

By His Excellency's Command

Peter Dutton
Minister for Immigration and Border Protection

Contents

1 Name

This is the *Migration Amendment (Temporary Activity Visas) Regulation 2016*.

2 Commencement

(1) Each provision of this instrument 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.

Commencement information

Column 1	Column 2	Column 3
Provisions	**Commencement**	**Date/Details**
1. The whole of this instrument	19 November 2016.	19 November 2016

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

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

3 Authority

This instrument is made under the *Migration Act 1958*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—General amendments

Part 1—Subclass 408 (Temporary Activity) visa

Migration Regulations 1994

1 At the end of Part 2 of Schedule 1

Add:

1237 Temporary Activity (Class GG)

(1) Form: The approved form specified by the Minister in a legislative instrument made for the purposes of this item under subregulation 2.07(5).

(2) Visa application charge:

(a) first instalment (payable at the time the application is made):

(i) for an applicant in a class of persons specified by the Minister in a legislative instrument made for the purposes of this subparagraph under subregulation 2.07(5), the amount is nil; and

(ii) for an applicant whose application is combined with an application made by a person referred to in subparagraph (i), the amount is nil; and

(iii) for an applicant in a class of persons specified by the Minister in a legislative instrument made for the purposes of this subparagraph under subregulation 2.07(5):

First instalment		
Item	**Component**	**Amount**
1	Base application charge	$70
2	Additional applicant charge for an applicant who is at least 18	$70
3	Additional applicant charge for an applicant who is less than 18	$20

(iv) for any other applicant:

First instalment		
Item	**Component**	**Amount**
1	Base application charge	$275
2	Additional applicant charge for an applicant who is at least 18	$275
3	Additional applicant charge for an applicant who is less than 18	$70

(b) the second instalment (payable before grant of visa) is nil.

Note 1: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and

non-Internet application charge. Not all of the components may apply to a particular application.

Note 2: Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and who has combined the application with that applicant's application.

Additional requirements

(3) The requirements in the table must be met.

Requirements

Item	Requirements
1	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 purposes of this item under subregulation 2.07(5)
2	An applicant may be in or outside Australia, but not in immigration clearance
3	If an applicant: (a) is seeking to satisfy the criterion in clause 408.219A of Schedule 2 on the basis of a clause in Subdivision 408.22 of Schedule 2 other than clause 408.229 (Australian Government endorsed events); and (b) either: (i) is in Australia; or (ii) is outside Australia, and states on the application form that the proposed length of stay in Australia exceeds 3 months; the application must meet the requirement in subitem (4) or (5) of this item
4	If an applicant holds a substantive visa, the visa must not be: (a) a permanent visa; or (b) a Subclass 403 (Temporary Work (International Relations)) visa in the Domestic Worker (Diplomatic or Consular) stream; or (c) a Subclass 771 (Transit) visa; or (d) a special purpose visa; or (e) a temporary visa specified by the Minister in a legislative instrument made for the purposes of this paragraph under subregulation 2.07(5)
5	If an applicant is in Australia and does not hold a substantive visa: (a) the applicant must have held a substantive visa; and (b) the last substantive visa held by the applicant must not have been: (i) a Subclass 403 (Temporary Work (International Relations)) visa in the Domestic Worker (Diplomatic or Consular) stream; or (ii) a Subclass 771 (Transit) visa; or (iii) a special purpose visa; and (c) the application must be made: (i) within 28 days after the day when the last substantive visa held by the applicant ceased to be in effect; or (ii) if that last substantive visa was cancelled, and the Tribunal has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation—within 28 days after the day when the applicant is taken, under section 368D or 379C of the Act, to have been notified of the Tribunal's decision
6	An applicant seeking to satisfy the primary criteria must declare in the application (the ***primary application***) whether or not each of the following: (a) the applicant;

Requirements	
Item	**Requirements**
	(b) any person who has made a combined application with the applicant; has engaged in conduct, in relation to the primary application or the combined application, that constitutes a contravention of subsection 245AS(1) of the Act

(4) For the purposes of item 3 of the table in subitem (3), an application meets the requirement in this subitem if the application specifies a person who has agreed to be the applicant's sponsor in relation to the application, and the person is:
  (a) a temporary activities sponsor; or
  (b) a person who has applied for approval as a temporary activities sponsor, but whose application has not yet been decided.

(5) For the purposes of item 3 of the table in subitem (3), an application lodged on or before 18 May 2017 meets the requirement in this subitem if the application specifies a person who has agreed to be the applicant's sponsor in relation to the application, and the person is:
  (a) a long stay activity sponsor; or
  (b) a training and research sponsor; or
  (c) a special program sponsor; or
  (d) an entertainment sponsor; or
  (e) a superyacht crew sponsor; or
  (f) a person who has applied for approval as a sponsor mentioned in any of paragraphs (a) to (e), but whose application has not yet been decided.

(6) An application by a person claiming to be a member of the family unit of a person (the ***primary applicant***) who is an applicant for a Temporary Activity (Class GG) visa may be made at the same time and place as, and combined with, an application by the primary applicant or any other member of the family unit who claims to be a member of the family unit of the primary applicant.

(7) Subclasses:

Subclass 408 (Temporary Activity)

2 Before Part 410 of Schedule 2

Insert:

Subclass 408—Temporary Activity

408.1—Interpretation

408.111

In this Part:

adverse supporter information: see clause 408.112.

foreign government agency has the meaning given by subregulation 2.57(1).

government agency has the meaning given by subregulation 2.57(1).

net employment benefit: an activity which a person seeks to enter or remain in Australia to carry out is taken to bring a ***net employment benefit*** to the Australian entertainment industry if:

(a) the person seeks to enter or remain in Australia to carry out the activity individually or in association with a group; and

(b) the Minister is satisfied that the carrying out of the activity would lead to greater employment of Australian citizens or Australian permanent residents (or both) than if a person normally resident in Australia undertook the activity.

passes the sponsorship test: a person ***passes the sponsorship*** test in relation to an applicant if:

(a) the person:

(i) is an approved sponsor; and

(ii) has agreed, in writing, to be the sponsor of the applicant; and

(iii) has not withdrawn that agreement; and

(iv) has not ceased to be the sponsor of the applicant; and

(b) either:

(i) there is no adverse information known to Immigration about the person, or a person associated with the person; or

(ii) it is reasonable to disregard any adverse information known to Immigration about the person, or a person associated with the person; and

(c) if the person is not a temporary activities sponsor—the application was made on or before 18 May 2017.

Note: The sponsor may be, but is not required to be, the same as the sponsor (or applicant for approval as a sponsor) specified in the visa application.

passes the support test: a person or organisation ***passes the support test*** in relation to an applicant if:

(a) if requested by the Minister—the applicant produces a letter of support, from the person or organisation, which:

(i) identifies the event, activity or work for which the applicant seeks to enter or remain in Australia; and

(ii) sets out the duties of the applicant in relation to the event, activity or work; and

(iii) sets out the date or dates, and the location or locations, of the event, activity or work; and

(b) either:

(i) there is no adverse supporter information known to Immigration about the person or organisation, or a person associated with the person or organisation; or

(ii) it is reasonable to disregard any adverse supporter information known to Immigration about the person or organisation, or a person associated with the person or organisation.

sporting organisation has the meaning given by subregulation 2.57(1).

408.112

(1) In this Part, ***adverse supporter information*** is any adverse information relevant to the suitability of a person or organisation to support an application for a Subclass 408 visa (otherwise than as an approved sponsor of the applicant), and includes information that the person or organisation, or a person associated with the person or organisation:

(a) has been found guilty by a court of an offence under a Commonwealth, State or Territory law that relates to one or more of the matters referred to in subclause (2); or

(b) has, to the satisfaction of a competent authority, acted in contravention of such a law; or

(c) has been the subject of administrative action (including being issued with a warning), by a competent authority, for a possible contravention of such a law; or

(d) is under investigation, subject to disciplinary action or subject to legal proceedings in relation to an alleged contravention of such a law; or

(e) has become insolvent within the meaning of subsections 5(2) and (3) of the *Bankruptcy Act 1966* and section 95A of the *Corporations Act 2001*.

(2) The matters are the following:

(a) discrimination;

(b) immigration;

(c) industrial relations;

(d) occupational health and safety;

(e) people smuggling and related offences;

(f) slavery, sexual servitude and deceptive recruiting;

(g) taxation;

(h) terrorism;

(i) trafficking in persons and debt bondage.

(3) The conviction, contravention, administrative action, investigation, disciplinary action, legal proceedings or insolvency mentioned in paragraphs (1)(a) to (e) must have occurred within the previous 3 years.

(4) In this clause:

competent authority has the meaning given by subregulation 2.57(1).

408.2—Primary criteria

Note 1: The primary criteria must be satisfied by at least one member of a family unit. Any other member of the family unit who is an applicant for a visa of this subclass need satisfy only the secondary criteria.

Note 2: All criteria must be satisfied at the time a decision is made on the application.

408.21—Common criteria

Note: These criteria are for all applicants seeking to satisfy the primary criteria for a Subclass 408 visa.

408.211

The applicant does not intend to engage in activities that will have adverse consequences for employment or training opportunities, or conditions of employment, for Australian citizens or Australian permanent residents.

408.212

The applicant has adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.

408.213

The applicant genuinely intends to stay temporarily in Australia for the purpose for which the visa is granted, having regard to:

(a) if the applicant has held a substantive visa—whether the applicant has complied substantially with the conditions to which the last substantive visa, or any subsequent bridging visa, held by the applicant was subject; and

(b) whether the applicant intends to comply with the conditions to which the Subclass 408 visa would be subject; and

(c) any other relevant matter.

408.214

The applicant does not hold:

(a) a permanent visa; or

(b) a temporary visa specified by the Minister in a legislative instrument made for the purposes of this paragraph.

408.215

The applicant has:

(a) adequate means to support himself or herself; or

(b) access to adequate means to support himself or herself;

during the period of the applicant's intended stay in Australia.

408.216

(1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013, 4014, 4020 and 4021.

(2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.

(3) If the applicant has not turned 18, the applicant satisfies public interest criteria 4012, 4017 and 4018.

408.217

The applicant satisfies special return criteria 5001, 5002 and 5010.

408.218

Either:

(a) the applicant has not, in the previous 3 years, engaged in conduct that constitutes a contravention of subsection 245AR(1), 245AS(1), 245AT(1) or 245AU(1) of the Act; or

(b) both of the following apply:

(i) the applicant has engaged in such conduct in that period;

(ii) the Minister considers that it is reasonable to disregard the conduct.

408.219

(1) Subject to subclause (2), the applicant:

(a) will not be performing as an entertainer in Australia:

(i) under a performing contract; or

(ii) for non-profit purposes; and

(b) will not be supporting an entertainer or a group of entertainers in Australia; and

(c) will not be directing, producing or taking another part in:

(i) a film, television or radio production that is to be shown or broadcast in Australia; or

(ii) a theatre production or concert that is to be performed in Australia; or

(iii) a recording that is to take place in Australia.

(2) This clause does not apply to an applicant who satisfies the requirements in clause 408.229 (Australian Government endorsed events) or 408.229A (entertainment).

408.219A

A clause in Subdivision 408.22 applies to the applicant.

408.22—Alternative criteria

Note: A clause in this Subdivision must apply to the applicant in order for the applicant to satisfy the primary criterion in clause 408.219A.

408.221

Invited participant in an event

This clause applies to the applicant if:

(a) the applicant seeks to enter or remain in Australia to participate in one or more events; and

(b) the applicant stated on the application form that the proposed length of stay in Australia did not exceed 3 months; and

(c) the applicant has been invited to participate in the event or events by a person or organisation; and

(d) the person or organisation:

(i) is directly responsible for the event or events; or

(ii) has a formal role in preparing for, or conducting, the event or events; and

(e) the duties or tasks to be undertaken by the applicant are appropriate and reasonable, having regard to the requirements of the event or events; and

(f) either:

(i) the person or organisation is a temporary activities sponsor and passes the sponsorship test in relation to the applicant; or

(ii) if the applicant was outside Australia when the application was made—the person or organisation passes the support test in relation to the applicant.

408.222

(1) This clause applies to the applicant if subclause (2) or (3) applies to the applicant.

Sports trainee

(2) This subclause applies to the applicant if:

(a) the applicant seeks to enter or remain in Australia to participate in sport by being trained by a sporting organisation (the ***relevant sporting organisation***) that is lawfully operating in Australia; and

(b) the applicant is a sportsperson or adjudicator who:

(i) is currently competing or adjudicating at the Australian national level, or equivalent; or

(ii) is endorsed by the relevant peak sporting body in Australia or overseas as having the demonstrated potential to compete or adjudicate at the Australian national level, or equivalent; and

(c) the relevant sporting organisation has an international reputation for training elite sportspeople or adjudicators; and

(d) the relevant sporting organisation is not a sporting club that, as its primary activity, competes in sporting competitions below the Australian national level for the sport; and

(e) either:

(i) the relevant sporting organisation is a temporary activities sponsor, or a long stay activity sponsor, and passes the sponsorship test in relation to the applicant; or

(ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months—the relevant sporting organisation passes the support test in relation to the applicant.

Elite player, coach, instructor or adjudicator

(3) This subclause applies to the applicant if:

(a) the applicant seeks to enter or remain in Australia to be a player, a coach, an instructor or an adjudicator in relation to an Australian sporting team or sporting organisation; and

(b) the applicant has been invited to participate in the activity referred to in paragraph (a) by a sporting organisation (the ***relevant sporting organisation***) that is lawfully operating in Australia; and

(c) the applicant has entered into a formal arrangement that provides for the applicant to participate in the activity referred to in paragraph (a) for a period specified in the arrangement; and

(d) the Minister has been provided with a letter of endorsement from the national sporting body responsible for administering the sport in Australia, certifying that the applicant has the ability to play, coach, instruct or adjudicate at the Australian national level; and

(e) either:

(i) the relevant sporting organisation is a temporary activities sponsor, or a long stay activity sponsor, and passes the sponsorship test in relation to the applicant; or

(ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months—the relevant sporting organisation passes the support test in relation to the applicant.

408.223

Religious worker

This clause applies to the applicant if:

(a) the applicant seeks to enter or remain in Australia to provide services as a religious worker; and

(b) the applicant has been invited to provide the services by a religious institution that is lawfully operating in Australia; and

(c) the applicant will be engaged on a full-time basis to work or participate in an activity in Australia that:

(i) is predominately non-profit in nature; and

(ii) directly serves the religious objectives of the religious institution; and

(d) the applicant has appropriate qualifications and experience to undertake the work or activity; and

(e) either:

(i) the religious institution is a temporary activities sponsor, or a long stay activity sponsor, and passes the sponsorship test in relation to the applicant; or

(ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months—the religious institution passes the support test in relation to the applicant.

408.224

Domestic worker

This clause applies to the applicant if:

(a) the applicant seeks to enter or remain in Australia to provide services as a domestic worker; and

(b) the applicant has been invited to provide the services by a person or organisation that is:

(i) a foreign government agency that employs a person (the ***first visa holder***) who holds a Subclass 403 (Temporary Work (International Relations)) visa in the Privileges and Immunities stream; or

(ii) a foreign organisation that is lawfully operating in Australia and that employs a person (the ***first visa holder***) who holds a Subclass 457 (Temporary Work (Skilled)) visa; and

(c) the first visa holder is the national managing director, deputy national managing director or State or Territory manager of an Australian office of the foreign government agency or foreign organisation; and

(d) the applicant will be employed to undertake full-time domestic duties in the private household of the first visa holder; and

(e) the grant of the visa would not cause the number of domestic workers holding visas for employment in the household of the first visa holder to exceed 3 (including the applicant); and

(f) the applicant has turned 18; and

(g) the applicant has experience working as a domestic worker; and

(h) the person or organisation provides evidence that:

(i) the person or organisation has been unable to find a suitable person in Australia to undertake the duties; or

(ii) there are compelling reasons for employing the applicant; and

(i) the applicant is to be employed in Australia in accordance with the standards for wages and working conditions provided for under relevant Australian legislation and awards; and

(j) either:

(i) the person or organisation is a temporary activities sponsor, or a long stay activity sponsor, and passes the sponsorship test in relation to the applicant; or

(ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months—the person or organisation passes the support test in relation to the applicant.

408.225

Superyacht crew

This clause applies to the applicant if:

(a) the applicant is a member of the crew of a superyacht; and

(b) the applicant has turned 18; and

(c) either:

(i) the captain, owner or operator of the superyacht is a temporary activities sponsor, or a superyacht crew sponsor, and passes the sponsorship test in relation to the applicant; or

(ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months—the captain, owner or operator of the superyacht passes the support test in relation to the applicant.

408.226

(1) This clause applies to the applicant if either subclause (2) or (3) applies to the applicant.

Research

(2) This subclause applies to the applicant if:

(a) the applicant seeks to enter or remain in Australia to observe or participate in an Australian research project:

(i) at an Australian tertiary or research institution (the ***relevant institution***) that is lawfully operating in Australia; and

(ii) in collaboration with academics employed by the relevant institution; and

(b) the applicant:

(i) is employed, or was formerly employed, as an academic at a tertiary or research institution; and

(ii) has a significant record of achievement in his or her field; and

(c) either:

(i) the relevant institution is a temporary activities sponsor, or a training and research sponsor, and passes the sponsorship test in relation to the applicant; or

(ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months—the relevant institution passes the support test in relation to the applicant.

Research (student)

(3) This subclause applies to the applicant if:

(a) the applicant:

(i) is a student of a foreign educational institution; or

(ii) has graduated from a foreign educational institution during the 12 months preceding the making of the application; and

(b) the applicant seeks to enter or remain in Australia to undertake research at an Australian tertiary or research institution (the ***relevant institution***) that is closely related to the course in which the student is or was enrolled at the foreign educational institution; and

(c) the relevant institution is lawfully operating in Australia; and

(d) either:

(i) the relevant institution is a temporary activities sponsor, or a training and research sponsor, and passes the sponsorship test in relation to the applicant; or

(ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months—the relevant institution passes the support test in relation to the applicant.

408.227

Staff exchange

This clause applies to the applicant if:

(a) the applicant seeks to enter or remain in Australia to work for an organisation (the ***first organisation***) that is:

(i) an Australian organisation that is lawfully operating in Australia; or

(ii) a government agency; or
(iii) a foreign government agency; and

(b) there is a written agreement between the first organisation and a foreign organisation (the ***reciprocating organisation***) that provides for:
(i) the applicant to work for the first organisation in Australia for a period specified in the agreement; and
(ii) a named person, who is an Australian citizen or an Australian permanent resident, to have the opportunity to obtain experience with the reciprocating organisation for a specified period; and

(c) the exchange set out in paragraph (b) will be of benefit to both the applicant and the Australian citizen or Australian permanent resident; and

(d) the work that the applicant will perform for the first organisation will be in a skilled position; and

(e) either:
(i) the first organisation is a temporary activities sponsor, or a long stay activity sponsor, and passes the sponsorship test in relation to the applicant; or
(ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months—the first organisation passes the support test in relation to the applicant.

408.228

(1) This clause applies to the applicant if any of subclauses (2) to (5) apply to the applicant.

Youth exchange program

(2) This subclause applies to the applicant if:
(a) the applicant seeks to enter or remain in Australia to participate in a youth exchange program that has been approved in writing by the Secretary for the purposes of this paragraph; and
(b) the program is being conducted by a person or organisation that is:
(i) an Australian organisation that is lawfully operating in Australia; or
(ii) a government agency; and
(c) the person or organisation is a party to a special program agreement with the Secretary in relation to the program; and
(d) either:
(i) the person or organisation is a temporary activities sponsor, or a special program sponsor, and passes the sponsorship test in relation to the applicant; or
(ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months—the person or organisation passes the support test in relation to the applicant.

School to School Interchange Program

(3) This subclause applies to the applicant if:

(a) the applicant seeks to enter or remain in Australia to participate in the School to School Interchange Program; and

(b) the School to School Interchange Program is being conducted, or is proposed to be conducted, by a person or organisation that is:

(i) a community-based, non-profit Australian organisation that is lawfully operating in Australia; or

(ii) a government agency; and

(c) either:

(i) the person or organisation is a temporary activities sponsor, or a special program sponsor, and passes the sponsorship test in relation to the applicant; or

(ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months—the person or organisation passes the support test in relation to the applicant.

School Language Assistants Program

(4) This subclause applies to the applicant if:

(a) the applicant seeks to enter or remain in Australia to participate in the School Language Assistants Program; and

(b) the School Language Assistants Program is being conducted, or is proposed to be conducted, by:

(i) a community-based, non-profit Australian organisation that is lawfully operating in Australia; or

(ii) a government agency; and

(c) either:

(i) the person or organisation is a temporary activities sponsor, or a special program sponsor, and passes the sponsorship test in relation to the applicant; or

(ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months—the person or organisation passes the support test in relation to the applicant.

Other programs

(5) This subclause applies to the applicant if:

(a) the applicant seeks to enter or remain in Australia to participate in a program which:

(i) has the objective of cultural enrichment or community benefit; and

(ii) has been approved in writing by the Secretary for the purposes of this paragraph; and

(b) the program is being conducted, or is proposed to be conducted, by a person or organisation that is:

(i) a community-based, non-profit Australian organisation that is lawfully operating in Australia; or

(ii) a government agency; and

(c) the person or organisation is a party to a special program agreement with the Secretary in relation to the program; and

(d) either:

(i) the person or organisation is a temporary activities sponsor, or a special program sponsor, and passes the sponsorship test in relation to the applicant; or

(ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months—the person or organisation passes the support test in relation to the applicant.

408.229

Australian Government endorsed event

This clause applies to the applicant if:

(a) the applicant seeks to enter or remain in Australia to undertake work directly associated with an event; and

(b) the event is specified in a legislative instrument made by the Minister for the purposes of this paragraph; and

(c) the applicant is in a class of persons specified in the instrument in relation to the event.

Note: There is no requirement for a person or organisation to pass the sponsorship test or pass the support test in relation to the applicant.

408.229A

(1) This clause applies to the applicant if any of subclauses (2) to (8) apply to the applicant.

Performing in film or television production subsidised by government

(2) This subclause applies to the applicant if:

(a) the applicant seeks to enter or remain in Australia to perform:

(i) as an entertainer under a performing contract for one or more specific engagements (other than non-profit engagements) in Australia; and

(ii) in a film or television production that is subsidised, in whole or in part, by a government in Australia; and

(iii) in a leading role, major supporting role or cameo role, or to satisfy ethnic or other special requirements; and

(b) the Arts Minister, or a person authorised by the Arts Minister, has provided a certificate confirming that the relevant Australian content criteria have been met; and

(c) either:

(i) an eligible sponsor passes the sponsorship test in relation to the applicant; or

(ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months—an eligible supporter passes the support test in relation to the applicant; and

(d) the eligible sponsor or eligible supporter holds any necessary licences in respect of the production; and

(e) the eligible sponsor or eligible supporter has consulted with relevant Australian unions in relation to the employment or engagement of the applicant in Australia.

Performing in film or television production not subsidised by government

(3) This subclause applies to the applicant if:

(a) the applicant seeks to enter or remain in Australia to perform:

(i) as an entertainer under a performing contract for one or more specific engagements (other than non-profit engagements) in Australia; and

(ii) in a film or television production that is not subsidised in any way by a government in Australia; and

(iii) in a leading role, major supporting role or cameo role, or to satisfy ethnic or other special requirements; and

(b) the Arts Minister, or a person authorised by the Arts Minister, has provided a certificate confirming that:

(i) citizens and residents of Australia have been afforded a reasonable opportunity to participate in all levels of the production; and

(ii) the foreign investment, or the private investment guaranteed against the foreign returns by a distributor, in the production is greater than the amount to be expended on entertainers sponsored or supported for entry; and

(c) either:

(i) an eligible sponsor passes the sponsorship test in relation to the applicant; or

(ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months—an eligible supporter passes the support test in relation to the applicant; and

(d) the eligible sponsor or eligible supporter holds any necessary licences in respect of the production; and

(e) the eligible sponsor or eligible supporter has consulted with relevant Australian unions in relation to the employment or engagement of the applicant in Australia.

Performing in productions not related to film or television

(4) This subclause applies to the applicant if:

(a) the applicant seeks to enter or remain in Australia to perform as an entertainer under a performing contract that:

(i) is not related to a film or television production; and

(ii) is for one or more specific engagements (other than non-profit engagements) in Australia; and

(b) the activity of the applicant referred to in paragraph (a) will bring a net employment benefit to the Australian entertainment industry; and

(c) either:

(i) an eligible sponsor passes the sponsorship test in relation to the applicant; or

(ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months—an eligible supporter passes the support test in relation to the applicant; and

(d) the eligible sponsor or eligible supporter holds any necessary licences in respect of the activity of the applicant referred to in paragraph (a); and

(e) the eligible sponsor or eligible supporter has consulted with relevant Australian unions in relation to the employment or engagement of the applicant in Australia; and

(f) the eligible sponsor or eligible supporter has provided an itinerary specifying the dates and venues for all performances.

Production roles other than as a performer

(5) This subclause applies to the applicant if:

(a) the applicant will be directing, producing or taking another part (otherwise than as a performer) in:

(i) a film, television or radio production that is to be shown or broadcast in Australia; or

(ii) a theatre production or concert that is to be performed in Australia; or

(iii) a recording that is to take place in Australia; and

(b) the activity of the applicant referred to in paragraph (a) will bring a net employment benefit to the Australian entertainment industry; and

(c) either:

(i) an eligible sponsor passes the sponsorship test in relation to the applicant; or

(ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months—an eligible supporter passes the support test in relation to the applicant; and

(d) the eligible sponsor or eligible supporter holds any necessary licences in respect of the activity of the applicant referred to in paragraph (a); and

(e) the eligible sponsor or eligible supporter has consulted with relevant Australian unions in relation to the employment or engagement of the applicant in Australia; and

(f) the eligible sponsor or eligible supporter has provided an itinerary specifying the dates and venues for the production, concert or recording.

Support staff for profit

(6) This subclause applies to the applicant if:

(a) the applicant will be supporting an entertainer or a body of entertainers in relation to a performing contract for one or more specific engagements (other than non-profit engagements) in Australia by assisting a performance or by providing personal services; and

(b) the activity of the applicant referred to in paragraph (a) will bring a net employment benefit to the Australian entertainment industry; and

(c) either:

(i) an eligible sponsor passes the sponsorship test in relation to the applicant; or

(ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months—an eligible supporter passes the support test in relation to the applicant; and

(d) the eligible sponsor or eligible supporter holds any necessary licences in respect of the activity of the applicant referred to in paragraph (a); and

(e) the eligible sponsor or eligible supporter has consulted with relevant Australian unions in relation to the employment or engagement of the applicant in Australia; and

(f) the eligible sponsor or eligible supporter has provided an itinerary specifying the dates and venues for all performances.

Non-profit engagements

(7) This subclause applies to the applicant if:

(a) the applicant will be:

(i) performing as an entertainer in one or more specific engagements that are for non-profit purposes; or

(ii) supporting an entertainer or a body of entertainers in relation to one or more specific engagements that are for non-profit purposes, by assisting a performance or by providing personal services; and

(b) either:

(i) an eligible sponsor passes the sponsorship test in relation to the applicant; or

(ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months—an eligible supporter passes the support test in relation to the applicant; and

(c) the eligible sponsor or eligible supporter has provided an itinerary specifying the dates and venues for all performances.

Documentary program or commercial for overseas market

(8) This subclause applies to the applicant if:

(a) the applicant will participate in the making of a documentary program or commercial that is for an overseas market; and

(b) either:

(i) an eligible sponsor passes the sponsorship test in relation to the applicant; or

(ii) if the applicant was outside Australia when the application was made, and stated on the application form that the proposed length of stay did not exceed 3 months—an eligible supporter passes the support test in relation to the applicant.

Eligible sponsor

(9) For the purposes of this clause, a person is an ***eligible sponsor*** if:

(a) the person is a temporary activities sponsor or an entertainment sponsor; and

(b) the person is:

(i) an Australian organisation that is lawfully operating in Australia; or

(ii) a government agency; or

(iii) a foreign government agency.

Eligible supporter

(10) For the purposes of this clause, a person or organisation is an ***eligible supporter*** if the person or organisation is:

(a) an Australian organisation that is lawfully operating in Australia; or
(b) a government agency; or
(c) a foreign government agency; or
(d) an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

408.3—Secondary criteria

Note 1: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

Note 2: All criteria must be satisfied at the time a decision is made on the application.

408.311

The applicant is a member of the family unit of a person (the ***primary applicant***) who holds any of the following visas granted on the basis of satisfying the primary criteria for the grant of that visa:

(a) a Subclass 408 (Temporary Activity) visa;
(b) a Subclass 401 (Temporary Work (Long Stay Activity)) visa;
(c) a Subclass 402 (Training and Research) visa in the Research stream;
(d) a Subclass 416 (Special Program) visa granted on the basis that the primary applicant satisfied the criterion in paragraph 416.222(a) (special program other than a special program of seasonal work);
(e) a Subclass 420 (Temporary Work (Entertainment)) visa;
(f) a Subclass 488 (Superyacht Crew) visa.

408.312

If the primary applicant was sponsored by an approved sponsor, the sponsor:

(a) has agreed, in writing, to be the sponsor of the applicant; and
(b) has not withdrawn its agreement to be the sponsor of the applicant; and
(c) has not ceased to be the sponsor of the primary applicant; and
(d) either:
    (i) there is no adverse information known to Immigration about the sponsor or a person associated with the sponsor; or
    (ii) it is reasonable to disregard any adverse information known to Immigration about the sponsor or a person associated with the sponsor.

408.313

Either:

(a) the applicant has not, in the previous 3 years, engaged in conduct that constitutes a contravention of subsection 245AR(1), 245AS(1), 245AT(1) or 245AU(1) of the Act; or
(b) both of the following apply:
    (i) the applicant has engaged in such conduct in that period;
    (ii) the Minister considers that it is reasonable to disregard the conduct.

408.314

The applicant has adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.

408.315

The applicant genuinely intends to stay temporarily in Australia as a member of the family unit of the primary applicant, having regard to:

(a) if the applicant has held a substantive visa—whether the applicant has complied substantially with the conditions to which the last substantive visa, or any subsequent bridging visa, held by the applicant was subject; and

(b) any other relevant matter.

408.316

The applicant has:

(a) adequate means to support himself or herself; or

(b) access to adequate means to support himself or herself;

during the period of the applicant's intended stay in Australia.

408.317

(1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013, 4014, 4020 and 4021.

(2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.

(3) If the applicant has not turned 18, the applicant satisfies public interest criteria 4017 and 4018.

408.318

The applicant satisfies special return criteria 5001, 5002 and 5010.

408.4—Circumstances applicable to grant

408.411

The applicant may be in or outside Australia at the time of grant, but not in immigration clearance.

408.5—When visa is in effect

408.511

(1) If the applicant is outside Australia at the time of grant—temporary visa permitting the holder:

(a) to travel to and enter Australia until a date specified by the Minister; and

(b) for a primary applicant—to remain in Australia during a period (the ***period of stay***) beginning on the day the applicant first enters Australia as the

holder of the visa and ending at the end of a period specified by the Minister, which must not exceed:

(i) for a primary applicant who states on the application form that the proposed length of stay in Australia is 3 months or less—3 months; or

(ii) for a primary applicant who satisfies the criterion in clause 408.219A on the basis of clause 408.229 (Australian Government endorsed events)—4 years; or

(iii) for any other primary applicant—2 years; and

(c) for a secondary applicant—to remain in Australia during a period (the ***period of stay***) beginning on the day the applicant first enters Australia as the holder of the visa and ending on the day that the primary applicant's visa ceases to be in effect; and

(d) to travel to and re-enter Australia during the period of stay.

(2) If the applicant is in Australia at the time of grant—temporary visa permitting the holder:

(a) for a primary applicant—to remain in Australia during a period (the ***period of stay***) beginning on the date of grant of the visa and ending at the end of a period specified by the Minister, which must not exceed:

(i) for a primary applicant who satisfies the criterion in clause 408.219A on the basis of clause 408.221 (invited participant in an event)—3 months; or

(ii) for a primary applicant who satisfies the criterion in clause 408.219A on the basis of clause 408.229 (Australian Government endorsed events)—4 years; or

(iii) for any other primary applicant—2 years; and

(b) for a secondary applicant—to remain in Australia during a period (the ***period of stay***) beginning on the date of grant of the visa and ending on the day that the primary applicant's visa ceases to be in effect; and

(c) to travel to and re-enter Australia during the period of stay.

408.6—Conditions

408.611

If the applicant is a primary applicant:

(a) the visa is subject to conditions 8107 and 8303; and

(b) if the visa was granted on the basis that clause 408.229A (entertainment) applied to the applicant—the visa is subject to condition 8109; and

(c) conditions 8106, 8114, 8301, 8501, 8502, 8503, 8516, 8525 and 8526 may be imposed.

408.612

If the applicant is a secondary applicant:

(a) the visa is subject to condition 8303; and

(b) conditions 8106, 8301, 8501, 8502, 8503, 8516, 8522, 8525 and 8526 may be imposed.

Part 2—Subclass 407 (Training) visa

Migration Regulations 1994

3 At the end of Part 2 of Schedule 1

Add:

1238 Training (Class GF)

(1) Form: The approved form specified by the Minister in a legislative instrument made for the purposes of this item under subregulation 2.07(5).

(2) Visa application charge:

(a) first instalment (payable at the time the application is made):

First instalment

Item	Component	Amount
1	Base application charge	$275
2	Additional applicant charge for an applicant who is at least 18	$275
3	Additional applicant charge for an applicant who is less than 18	$70

(b) the second instalment (payable before grant of visa) is nil.

Note 1: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Note 2: Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

Additional requirements

(3) The requirements in the table must be met.

Requirements

Item	Requirements
1	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 purposes of this item under subregulation 2.07(5)
2	An applicant may be in or outside Australia, but not in immigration clearance
3	An application must specify the person who has agreed to be the applicant's approved sponsor
4	The person specified in an application for the purposes of item 3 must be: (a) a temporary activities sponsor, or a person who has applied for approval as a temporary activities sponsor but whose application has not yet been decided; or (b) for an application lodged on or before 18 May 2017—a professional development sponsor or a training and research sponsor, or a person who has applied for approval as

Requirements	
Item	**Requirements**
	a professional development sponsor or a training and research sponsor but whose application has not yet been decided
5	If the person specified in an application for the purposes of item 3 is not a Commonwealth agency: (a) in a case where the person is an approved sponsor of a kind referred to in item 4: (i) the person must have nominated a program of occupational training in relation to the applicant under paragraph 140GB(1)(b) of the Act; and (ii) if a decision in respect of the nomination has been made under subsection 140GB(2) of the Act, the nomination must have been approved under that subsection and the approval must not have ceased under regulation 2.75A; and (iii) the application must identify the nomination; or (b) in a case where the person has applied for approval as a sponsor of a kind referred to in item 4, but the application has not yet been decided: (i) the person must have made a nomination of a program of occupational training in relation to the applicant that would be a nomination under paragraph 140GB(1)(b) of the Act if the person were an approved sponsor of a kind referred to in item 4; and (ii) the application must identify the nomination
6	If an applicant holds a substantive visa, the visa must not be: (a) a permanent visa; or (b) a Subclass 403 (Temporary Work (International Relations)) visa in the Domestic Worker (Diplomatic or Consular) stream; or (c) a Subclass 771 (Transit) visa; or (d) a special purpose visa; or (e) a temporary visa specified by the Minister in a legislative instrument made for the purposes of this paragraph under subregulation 2.07(5)
7	If an applicant is in Australia and does not hold a substantive visa: (a) the applicant must have held a substantive visa; and (b) the last substantive visa held by the applicant must not have been: (i) a Subclass 403 (Temporary Work (International Relations)) visa in the Domestic Worker (Diplomatic or Consular) stream; or (ii) a Subclass 771 (Transit) visa; or (iii) a special purpose visa; and (c) the application must be made: (i) within 28 days after the day when the last substantive visa held by the applicant ceased to be in effect; or (ii) if that last substantive visa was cancelled, and the Tribunal has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation—within 28 days after the day when the applicant is taken, under section 368D or 379C of the Act, to have been notified of the Tribunal's decision
8	An applicant seeking to satisfy the primary criteria must declare in the application (the ***primary application***) whether or not each of the following: (a) the applicant; (b) any person who has made a combined application with the applicant; has engaged in conduct, in relation to the primary application or the combined application, that constitutes a contravention of subsection 245AS(1) of the Act

(4) An application by a person claiming to be a member of the family unit of a person (the ***primary applicant***) who is an applicant for a Training (Class GF) visa may be made at the same time and place as, and combined with, an application by that person or any other member of the family unit who claims to be a member of the family unit of the primary applicant.

(5) Subclasses:

Subclass 407 (Training)

4 After Part 405 of Schedule 2

Insert:

Subclass 407—Training

407.1—Interpretation

Note: There are no interpretation provisions specific to this Part.

407.2—Primary criteria

Note 1: The primary criteria must be satisfied by at least one member of a family unit. Any other member of the family unit who is an applicant for a visa of this subclass need satisfy only the secondary criteria.

Note 2: All criteria must be satisfied at the time a decision is made on the application.

407.211

Either:

(a) the applicant has turned 18; or

(b) the applicant has not turned 18 and exceptional circumstances exist for the grant of the visa.

407.212

The applicant has functional English.

Note: For ***functional English***, see subsection 5(2) of the Act.

407.213

Each of the following applies:

(a) an approved sponsor has agreed, in writing, to be the sponsor of the applicant;

(b) the sponsor is:

(i) a temporary activities sponsor; or

(ii) if the application was made on or before 18 May 2017—a professional development sponsor or a training and research sponsor;

(c) the sponsor has not withdrawn its agreement to be the sponsor of the applicant;

(d) the sponsor has not ceased to be the sponsor of the applicant.

407.214

If the approved sponsor is not a Commonwealth agency:

(a) the sponsor has nominated a program of occupational training in relation to the applicant under paragraph 140GB(1)(b) of the Act; and

(b) the nomination has been approved under section 140GB of the Act on the basis of the criteria in regulation 2.72A; and

(c) the approval of the nomination has not ceased under regulation 2.75A; and

(d) either:

(i) there is no adverse information known to Immigration about the sponsor or a person associated with the sponsor; or

(ii) it is reasonable to disregard any adverse information known to Immigration about the sponsor or a person associated with the sponsor.

407.215

The applicant does not intend to engage in activities that will have adverse consequences for employment or training opportunities, or conditions of employment, for Australian citizens or Australian permanent residents.

407.216

The applicant has adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.

407.217

The applicant genuinely intends to stay temporarily in Australia for the purpose for which the visa is granted, having regard to:

(a) if the applicant has held a substantive visa—whether the applicant has complied substantially with the conditions to which the last substantive visa, or any subsequent bridging visa, held by the applicant was subject; and

(b) whether the applicant intends to comply with the conditions to which the Subclass 407 visa would be subject; and

(c) any other relevant matter.

407.218

The applicant does not hold:

(a) a permanent visa; or

(b) a temporary visa specified by the Minister in a legislative instrument made for the purposes of this paragraph.

407.219

The applicant has:

(a) adequate means to support himself or herself; or

(b) access to adequate means to support himself or herself;

during the period of the applicant's intended stay in Australia.

407.219A

(1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013, 4014, 4020 and 4021.

(2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.

(3) If the applicant has not turned 18, the applicant satisfies public interest criteria 4012, 4017 and 4018.

407.219B

The applicant satisfies special return criteria 5001, 5002 and 5010.

407.219C

Either:

(a) the Minister is satisfied that the applicant has not, in the previous 3 years, engaged in conduct that constitutes a contravention of subsection 245AR(1), 245AS(1), 245AT(1) or 245AU(1) of the Act; or

(b) both of the following apply:

(i) the Minister is satisfied that the applicant has engaged in such conduct in that period;

(ii) the Minister considers that it is reasonable to disregard the conduct.

407.3—Secondary criteria

Note 1: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

Note 2: All criteria must be satisfied at the time a decision is made on the application.

407.311

The applicant is a member of the family unit of a person who holds any of the following visas granted on the basis of satisfying the primary criteria for the grant of the visa:

(a) a Subclass 402 (Training and Research) visa;

(b) a Subclass 407 (Training) visa.

407.312

The approved sponsor of the primary applicant:

(a) has agreed, in writing, to be the sponsor of the applicant; and

(b) has not withdrawn its agreement to be the sponsor of the applicant; and

(c) has not ceased to be the sponsor of the primary applicant; and

(d) either:

(i) there is no adverse information known to Immigration about the sponsor or a person associated with the sponsor; or

(ii) it is reasonable to disregard any adverse information known to Immigration about the sponsor or a person associated with the sponsor.

407.313

Either:

(a) the Minister is satisfied that the applicant has not, in the previous 3 years, engaged in conduct that constitutes a contravention of subsection 245AR(1), 245AS(1), 245AT(1) or 245AU(1) of the Act; or

(b) both of the following apply:

(i) the Minister is satisfied that the applicant has engaged in such conduct in that period;

(ii) the Minister considers that it is reasonable to disregard the conduct.

407.314

The applicant has adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.

407.315

The applicant genuinely intends to stay temporarily in Australia as a member of the family unit of the primary applicant, having regard to:

(a) if the applicant has held a substantive visa—whether the applicant has complied substantially with the conditions to which the last substantive visa, or any subsequent bridging visa, held by the applicant was subject; and

(b) any other relevant matter.

407.316

The applicant has:

(a) adequate means to support himself or herself; or

(b) access to adequate means to support himself or herself;

during the period of the applicant's intended stay in Australia.

407.317

(1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013, 4014, 4020 and 4021.

(2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.

(3) If the applicant has not turned 18, the applicant satisfies public interest criteria 4012, 4017 and 4018.

407.318

The applicant satisfies special return criteria 5001, 5002 and 5010.

407.4—Circumstances applicable to grant

407.411

The applicant may be in or outside Australia at the time of grant, but not in immigration clearance.

407.5—When visa is in effect

407.511

(1) If the applicant is outside Australia at the time of grant—temporary visa permitting the holder:
  (a) to travel to and enter Australia until a date specified by the Minister; and
  (b) to remain in Australia during a period (the ***period of stay***) beginning on the day the applicant first enters Australia as the holder of the visa and ending at the end of a period specified by the Minister, which must not exceed 2 years; and
  (c) to travel to and re-enter Australia during the period of stay.

(2) If the applicant is in Australia at the time of grant—temporary visa permitting the holder:
  (a) to remain in Australia during a period (the ***period of stay***) beginning on the date of grant of the visa and ending at the end of a period specified by the Minister, which must not exceed 2 years; and
  (b) to travel to and re-enter Australia during the period of stay.

407.6—Conditions

407.611

If the applicant is a primary applicant:
  (a) the visa is subject to conditions 8102, 8303, 8501 and 8516; and
  (b) conditions 8106, 8107, 8301, 8502, 8503, 8525 and 8526 may be imposed.

407.612

If the applicant is a secondary applicant:
  (a) the visa is subject to conditions 8104, 8303 and 8501; and
  (b) conditions 8106, 8301, 8502, 8503, 8516, 8522, 8525 and 8526 may be imposed.

Part 3—Subclass 403 Temporary Work (International Relations) visa

Migration Regulations 1994

5 Regulation 1.03

Insert:

program of seasonal work means arrangements for the performance of seasonal work in Australia that have been approved, in writing, by the Secretary of a Commonwealth Department as a program of seasonal work for the purposes of this definition.

6 Regulation 1.03 (definition of *special program of seasonal work*)

Repeal the definition.

7 Paragraph 1234(2)(a) of Schedule 1

Repeal the paragraph (not including the note), substitute:

(a) first instalment (payable at the time the application is made):

(i) for an applicant who is in a class of persons specified by the Minister in a legislative instrument made for the purposes of this item under subregulation 2.07(5), the amount is nil; and

(ii) for an applicant whose application is combined with an application made by a person referred to in subparagraph (i), the amount is nil; and

(iii) for any other applicant:

First instalment

Item	Component	Amount
1	Base application charge	$275
2	Additional applicant charge for an applicant who is at least 18	$275
3	Additional applicant charge for an applicant who is less than 18	$70

8 Paragraph 1234(3)(c) of Schedule 1

Repeal the paragraph, substitute:

(b) Subject to paragraph (c), an applicant may be in or outside Australia, but not in immigration clearance.

(c) An applicant seeking to satisfy the criteria for a Subclass 403 (Temporary Work (International Relations)) visa in the Seasonal Worker Program stream must be outside Australia.

(ca) If an applicant is seeking to satisfy the primary criteria for a Subclass 403 (Temporary Work (International Relations)) visa in the Seasonal Worker Program stream, the application must meet the requirement in subitem (3A) or (3B).

(cb) An applicant must not hold a permanent visa.

9 At the end of subitem 1234(3) of Schedule 1

Add:

Note: An applicant for a Temporary Work (International Relations) (Class GD) visa cannot meet the secondary criteria for the grant of the visa if the primary applicant holds a Subclass 403 (Temporary Work (International Relations)) visa in the Seasonal Worker Program stream or the Domestic Worker (Diplomatic or Consular) stream (see clause 403.311 of Schedule 2).

10 After subitem 1234(3) of Schedule 1

Insert:

(3A) For the purposes of paragraph (3)(ca), an application meets the requirement in this subitem if the application specifies a person who has agreed to be the applicant's sponsor in relation to the application, and the person is:

(a) a temporary activities sponsor; or

(b) a person who has applied for approval as a temporary activities sponsor, but whose application has not yet been decided.

(3B) For the purposes of paragraph (3)(ca), an application meets the requirement in this subitem if:

(a) the application is lodged on or before 18 May 2017; and

(b) the application specifies a person who has agreed to be the applicant's sponsor in relation to the application, and the person is:

(i) a special program sponsor; or

(ii) a person who has applied for approval as a special program sponsor, but whose application has not yet been decided.

11 Division 403.2 of Schedule 2 (note)

Omit "Subdivisions 403.22 to 403.25" (wherever occurring), substitute "Subdivisions 403.22 to 403.26".

12 Division 403.2 of Schedule 2 (note)

Omit all the words from and including "The primary criteria must be satisfied" to and including "a Subclass 415 (Foreign Government Agency) visa", substitute "The primary criteria must be satisfied by at least one member of a family unit".

13 At the end of Division 403.2 of Schedule 2

Add:

403.26—Criteria for the Seasonal Worker Program stream

Note: These criteria are only for applicants being assessed against the primary criteria for a Subclass 403 visa in the Seasonal Worker Program stream.

403.261

Each of the following applies:

(a) an approved sponsor has agreed, in writing, to be the sponsor of the applicant;

(b) the sponsor is:

(i) a temporary activities sponsor; or

(ii) if the application was made on or before 18 May 2017—a special program sponsor;

(c) the sponsor has not withdrawn its agreement to be the sponsor of the applicant;

(d) the sponsor has not ceased to be the sponsor of the applicant;

(e) either:

(i) there is no adverse information known to Immigration about the sponsor or a person associated with the sponsor; or

(ii) it is reasonable to disregard any adverse information known to Immigration about the sponsor or a person associated with the sponsor;

(f) the applicant is seeking to enter Australia to participate in a program of seasonal work conducted by the sponsor;

(g) the applicant satisfies public interest criteria 4005 and 4019.

14 Division 403.3 of Schedule 2 (note)

Repeal the note, substitute:

Note 1: These criteria are for applicants who are members of the family unit of a person who satisfies the primary criteria.

Note 2: All criteria must be satisfied at the time a decision is made on the application.

15 Paragraph 403.311(c) of Schedule 2

Omit "stream;", substitute "stream.".

16 Paragraphs 403.311(d) and (e) of Schedule 2

Repeal the paragraphs.

17 Clause 403.312 of Schedule 2

Omit "or a Subclass 406 (Government Agreement) visa".

18 Paragraph 403.316(3)(b) of Schedule 2

Omit "or".

19 Paragraphs 403.316(3)(c) and (d) of Schedule 2

Repeal the paragraphs.

20 Subparagraph 403.316(4)(a)(ii) of Schedule 2

Omit "or", substitute "and".

21 Subparagraphs 403.316(4)(a)(iii) and (iv) of Schedule 2

Repeal the subparagraphs.

22 Clauses 403.411 and 403.412 of Schedule 2

Repeal the clauses, substitute:

403.411

(1) An applicant who satisfies the primary criteria for the grant of:

(a) a Subclass 403 visa in the Government Agreement stream; or

(b) a Subclass 403 visa in the Foreign Government Agency stream; or
(c) a Subclass 403 visa in the Privileges and Immunities stream;

may be in or outside Australia, but not in immigration clearance, when the visa is granted.

(2) An applicant who satisfies the secondary criteria for the grant of a Subclass 403 visa in relation to a primary applicant referred to in subclause (1) may be in or outside Australia, but not in immigration clearance, when the visa is granted.

(3) For an applicant not covered by subclause (1) or (2):
(a) if the applicant was in Australia when the application was made—the applicant must be in Australia, but not in immigration clearance, when the visa is granted; or
(b) if the applicant was outside Australia when the application was made—the applicant must be outside Australia when the visa is granted.

23 Division 403.6 of Schedule 2

Repeal the Division, substitute:

403.6—Conditions

403.611

(1) This clause applies to an applicant who satisfies the primary criteria for the grant of:
(a) a Subclass 403 visa in the Government Agreement stream; or
(b) a Subclass 403 visa in the Foreign Government Agency stream; or
(c) a Subclass 403 visa in the Privileges and Immunities stream.

(2) The visa is subject to conditions 8107, 8303, 8501 and 8516.

(3) Conditions 8301, 8502, 8503, 8525 and 8526 may be imposed.

403.612

(1) This clause applies to an applicant who satisfies the secondary criteria for the grant of a Subclass 403 visa.

(2) The visa is subject to conditions 8303, 8501 and 8516.

(3) Conditions 8106, 8301, 8502, 8503, 8522, 8525 and 8526 may be imposed.

403.613

(1) This clause applies to an applicant who satisfies the primary criteria for the grant of a Subclass 403 visa in the Domestic Worker (Diplomatic or Consular) stream.

(2) The visa is subject to conditions 8110, 8303, 8501 and 8516.

(3) Conditions 8301, 8502, 8503, 8525 and 8526 may be imposed.

403.614

(1) This clause applies to an applicant who satisfies the primary criteria for the grant of a Subclass 403 visa in the Seasonal Worker Program stream.

(2) The visa is subject to conditions 8107, 8303, 8501 and 8503.

(3) Conditions 8301, 8502, 8516, 8525 and 8526 may be imposed.

Part 4—Subclass 400 Temporary Work (Short Stay Specialist) visa

Migration Regulations 1994

24 Paragraph 2.05(4AC)(a)

Omit "Activity", substitute "Specialist".

25 Subparagraphs 2.06AAC(a)(ii) and 2.43(1)(ia)(i)

Omit "Activity", substitute "Specialist".

26 Item 1231 of Schedule 1 (heading)

Repeal the heading, substitute:

1231 Temporary Work (Short Stay Specialist) (Class GA)

27 Subparagraphs 1231(2)(a)(i) and (ii) of Schedule 1

Repeal the subparagraphs.

28 Subparagraph 1231(2)(a)(v) of Schedule 1 (cell at table item 1, column headed "Amount")

Omit "$175", substitute "$275".

29 Subparagraph 1231(2)(a)(v) of Schedule 1 (cell at table item 2, column headed "Amount")

Omit "$90", substitute "$275".

30 Subparagraph 1231(2)(a)(v) of Schedule 1 (cell at table item 3, column headed "Amount")

Omit "$45", substitute "$70".

31 Paragraph 1231(3)(c) of Schedule 1

Omit "Activity", substitute "Specialist".

32 Subitem 1231(4) of Schedule 1

Omit "Activity", substitute "Specialist".

33 Part 400 of Schedule 2 (heading)

Repeal the heading, substitute:

Subclass 400—Temporary Work (Short Stay Specialist)

34 Clause 400.111 of Schedule 2

Repeal the clause, substitute:

400.111

In this Part:

non-ongoing, in relation to a person's proposed engagement in work, means engagement in the following circumstances:

(a) the work is likely to be completed within a continuous period of 6 months or less;

(b) the person:

(i) has not been given an expectation of staying in Australia, for a purpose relating to the work, after the end of that period; and

(ii) has not made arrangements to stay in Australia, for a purpose relating to the work, after the end of that period.

35 Clause 400.212 of Schedule 2

Repeal the clause.

36 At the end of Subdivision 400.22 of Schedule 2

Add:

400.225

(1) The applicant does not intend to engage in any course:

(a) leading to the completion of a primary or secondary education program; or

(b) leading to a degree, diploma, trade certificate or other formal award.

(2) The applicant does not intend to engage in any other course (other than a language training program) completion of which may be unconditionally credited towards, or accepted as a prerequisite for, a course of studies at a higher educational institution in or outside Australia.

37 Subdivision 400.23 of Schedule 2

Repeal the Subdivision.

38 Before subclause 400.312(1) of Schedule 2

Insert:

(1A) This clause applies to an applicant who is a member of the family unit of a person who holds a Subclass 400 visa in the Highly Specialised Work stream granted on the basis of satisfying the primary criteria for the grant of the visa.

39 Paragraph 400.511(a) of Schedule 2

Repeal the paragraph, substitute:

(a) to travel to and enter Australia, within:

(i) 6 months after the date of the grant of the visa; or

(ii) a lesser period specified by the Minister; and

40 Sub-subparagraph 773.213(1)(g)(iii)(D) of Schedule 2

Omit "Activity", substitute "Specialist".

41 Subparagraph 858.211(1)(a)(v) of Schedule 2

Omit "Activity", substitute "Specialist".

42 Sub-subparagraph 858.211(2)(b)(i)(E) of Schedule 2

Omit "Activity", substitute "Specialist".

43 Subparagraph 11(a)(ii) of Part 2 of Schedule 9

Omit "Activity", substitute "Specialist".

Part 5—Repeals of visa classes

Division 1—Subclass 401 (Temporary Work (Long Stay Activity)) visa

Migration Regulations 1994

44 Item 1232 of Schedule 1

Repeal the item.

45 Part 401 of Schedule 2

Repeal the Part.

Division 2—Subclass 402 (Training and Research) visa

Migration Regulations 1994

46 Item 1233 of Schedule 1

Repeal the item.

47 Part 402 of Schedule 2

Repeal the Part.

Division 3—Subclass 416 (Special Program) visa

Migration Regulations 1994

48 Item 1205 of Schedule 1

Repeal the item.

49 Part 416 of Schedule 2

Repeal the Part.

Division 4—Subclass 420 (Temporary Work (Entertainment)) visa

Migration Regulations 1994

50 Regulation 1.03 (definition of *Subclass 420 (Temporary Work (Entertainment)) visa*)

Repeal the definition.

51 Item 1235 of Schedule 1

Repeal the item.

52 Part 420 of Schedule 2

Repeal the Part.

Division 5—Subclass 426 (Domestic Worker (Temporary)—Diplomatic or Consular) visa

Migration Regulations 1994

53 Subparagraph 403.221(a)(ii) of Schedule 2

Repeal the subparagraph.

54 Subparagraph 403.231(a)(ii) of Schedule 2

Repeal the subparagraph.

55 Paragraph 403.241(a) of Schedule 2

Repeal the paragraph, substitute:

(a) at that time, the applicant held a Subclass 403 visa in the Domestic Worker (Diplomatic or Consular) stream; or

56 Subparagraph 403.242(1)(a)(ii) of Schedule 2

Omit "or a Subclass 426 (Domestic Worker (Temporary)—Diplomatic or Consular) visa".

57 Subparagraph 403.251(a)(ii) of Schedule 2

Repeal the subparagraph.

58 Paragraph 461.213(a) of Schedule 2

Repeal the paragraph, substitute:

(a) at the time of application, the applicant held a substantive temporary visa other than a Subclass 403 (Temporary Work (International Relations)) visa in the Domestic Worker (Diplomatic or Consular) stream; or

59 Subclause 600.223(1) of Schedule 2

Omit all the words after "the visa", substitute "was not a Subclass 403 (Temporary Work (International Relations)) visa in the Domestic Worker (Diplomatic or Consular) stream".

60 Paragraph 600.223(2)(a) of Schedule 2

Repeal the paragraph, substitute:

(a) the last substantive visa the applicant held was not a Subclass 403 (Temporary Work (International Relations)) visa in the Domestic Worker (Diplomatic or Consular) stream; and

61 Subclauses 602.213(2) and (4) of Schedule 2

Omit all the words after "by the applicant", substitute "was not a Subclass 403 (Temporary Work (International Relations)) visa in the Domestic Worker (Diplomatic or Consular) stream".

62 Subparagraph 676.215(a)(i) of Schedule 2

Repeal the subparagraph, substitute:

(i) at the time of application, the applicant held a substantive temporary visa other than a Subclass 403 (Temporary Work (International

Relations)) visa in the Domestic Worker (Diplomatic or Consular) stream; or

Division 6—Subclass 488 (Superyacht Crew) visa

Migration Regulations 1994

63 Item 1227A of Schedule 1

Repeal the item.

64 Part 488 of Schedule 2

Repeal the Part.

Part 6—Other amendments

Migration Regulations 1994

65 Regulation 1.03 (definition of *domestic worker sponsor*)

Repeal the definition.

66 Regulation 1.03 (at the end of paragraph (b) of the definition of *entertainment sponsor*)

Add ", on the basis of an application made before 19 November 2016".

67 Regulation 1.03 (definition of *exchange sponsor*)

Repeal the definition.

68 Regulation 1.03 (definition of *foreign government agency sponsor*)

Repeal the definition.

69 Regulation 1.03 (at the end of paragraph (b) of the definition of *long stay activity sponsor*)

Add ", on the basis of an application made before 19 November 2016".

70 Regulation 1.03 (definition of *occupational trainee sponsor*)

Repeal the definition.

71 Regulation 1.03 (at the end of paragraph (b) of the definition of *professional development sponsor*)

Add ", on the basis of an application made before 19 November 2016".

72 Regulation 1.03 (definition of *religious worker sponsor*)

Repeal the definition.

73 Regulation 1.03 (at the end of paragraph (b) of the definition of *special program sponsor*)

Add ", on the basis of an application made before 19 November 2016".

74 Regulation 1.03 (definition of *sport sponsor*)

Repeal the definition.

75 Regulation 1.03 (at the end of paragraph (b) of the definition of *superyacht crew sponsor*)

Add ", on the basis of an application made before 19 November 2016".

76 Regulation 1.03

Insert:

temporary activities sponsor means a person who:

(a) is an approved sponsor; and

(b) is approved as a sponsor in relation to the temporary activities sponsor class by the Minister under subsection 140E(1) of the Act.

Note: ***Approved sponsor*** is defined in subsection 5(1) of the Act.

77 Regulation 1.03 (definition of *temporary work sponsor*)

Repeal the definition, substitute:

temporary work sponsor means any of the following:

(a) a special program sponsor;

(b) an entertainment sponsor;

(c) a superyacht crew sponsor;

(d) a long stay activity sponsor;

(e) a training and research sponsor.

78 Regulation 1.03 (at the end of paragraph (b) of the definition of *training and research sponsor*)

Add ", on the basis of an application made before 19 November 2016".

79 Regulation 1.03 (definition of *visiting academic sponsor*)

Repeal the definition.

80 After paragraph 1.20(4)(gc)

Insert:

(gca) Subclass 407 (Training);

(gcb) Subclass 408 (Temporary Activity);

81 At the end of subregulation 2.12F(2)

Add:

; (h) in relation to an application for a Subclass 408 (Temporary Activity) visa that met the requirement in item 3 of the table in subitem 1237(3) of Schedule 1, the applicant's application was withdrawn because the applicant did not have an approved sponsor.

82 Before paragraph 2.12F(2B)(d)

Insert:

(a) Subclass 407 (Training);

83 Subparagraph 2.43(1)(ia)(id)

Repeal the subparagraph, substitute:

(id) a Subclass 407 (Training) visa; or

(ie) a Subclass 408 (Temporary Activity) visa; or

84 Subparagraphs 2.43(1)(ia)(ii), (iv), (vi), (vii), (viii), (ix) and (x)

Repeal the subparagraphs.

85 Subparagraph 2.43(1)(lc)(ib)

Repeal the subparagraph, substitute:

(ib) a Subclass 407 (Training) visa; or

(ic) a Subclass 408 (Temporary Activity) visa; or

86 Subparagraphs 2.43(1)(lc)(ii), (iv), (v), (vi), (vii), (viii), (ix) and (x)

Repeal the subparagraphs.

87 Subparagraph 2.43(1)(ld)(ib)

Repeal the subparagraph, substitute:

(ib) a Subclass 407 (Training) visa; or

88 Subparagraphs 2.43(1)(ld)(ii), (iv), (v), (vi), (vii) and (viii)

Repeal the subparagraphs.

89 Subparagraphs 2.43(1)(le)(ii) and (iii)

Repeal the subparagraphs, substitute:

(ia) a Subclass 408 (Temporary Activity) visa granted on the basis that the primary sponsored person satisfied the criteria in clause 408.223 (religious worker) or 408.224 (domestic worker) of Schedule 2; or

90 Paragraphs 2.56(ab) and (b)

Repeal the paragraphs, substitute:

(b) the Subclass 403 (Temporary Work (International Relations)) visa in the Seasonal Worker Program stream;

(ba) the Subclass 407 (Training) visa;

(bb) the Subclass 408 (Temporary Activity) visa;

91 Paragraphs 2.56(d), (f), (g), (h), (i), (j) and (l)

Repeal the paragraphs.

92 Subregulation 2.57(4)

Repeal the subregulation.

93 Paragraphs 2.58(b) to (n)

Repeal the paragraphs, substitute:

(b) a temporary activities sponsor.

94 Regulations 2.60 and 2.60A

Repeal the regulations, substitute:

2.60 Criterion for approval as a temporary activities sponsor

For the purposes of subsection 140E(1) of the Act, the criterion that must be satisfied for the Minister to approve a person (the ***applicant***) as a temporary activities sponsor is that the Minister is satisfied that:

(a) the applicant has applied for approval as a temporary activities sponsor in accordance with the process referred to in regulation 2.61; and

(b) the applicant is not already a temporary activities sponsor; and

(c) the applicant is:

(i) an Australian organisation that is lawfully operating in Australia; or

(ii) a government agency; or

(iii) a foreign government agency; or

(iv) a sporting organisation that is lawfully operating in Australia; or

(v) a religious institution that is lawfully operating in Australia; or

(vi) a person who is the captain or owner of a superyacht, or an organisation that operates a superyacht; or

(vii) a foreign organisation that is lawfully operating in Australia; and

(d) either:

(i) there is no adverse information known to Immigration about the applicant or a person associated with the applicant; or

(ii) it is reasonable to disregard any adverse information known to Immigration about the applicant or a person associated with the applicant; and

(e) the applicant has the capacity to comply with the sponsorship obligations applicable to a person who is or was a temporary activities sponsor.

95 Regulations 2.60D to 2.60M

Repeal the regulations.

96 Subregulations 2.60S(1) and (2)

Omit "to 2.60M", substitute "and 2.60".

97 After subparagraphs 2.60S(2)(e)(i) and (f)(i)

Insert:

(ia) a Subclass 403 (Temporary Work (International Relations)) visa; or

(ib) a Subclass 408 (Temporary Activity) visa; or

98 Subregulation 2.60S(3)

Omit "to 2.60M", substitute "and 2.60".

99 After subparagraphs 2.60S(3)(c)(i) and (d)(i)

Insert:

(ia) a Subclass 403 (Temporary Work (International Relations)) visa; or

(ib) a Subclass 408 (Temporary Activity) visa; or

100 Subregulation 2.61(2)

Repeal the subregulation.

101 Subregulation 2.61(3A)

After "standard business sponsor", insert "or a temporary activities sponsor".

102 Paragraph 2.61(3B)(a)

After "standard business sponsor", insert "or a temporary activities sponsor".

103 Subregulations 2.61(4) to (6)

Repeal the subregulations.

104 Subregulation 2.62(2)

After "approved form 1196 (Internet)", insert "or 1478 (Internet)".

105 Regulation 2.63 (heading)

Repeal the heading, substitute:

2.63 Standard business sponsor, temporary activities sponsor or temporary work sponsor

106 Subregulation 2.63(1)

After "standard business sponsor", insert ", temporary activities sponsor".

107 Paragraph 2.65(b)

Repeal the paragraph, substitute:

(b) a temporary activities sponsor.

108 Regulation 2.65 (note)

Repeal the note, substitute:

Note: Amendments of these Regulations that commenced on 19 November 2016 closed the sponsorship categories of long stay activity sponsor, training and research sponsor, special program sponsor, entertainment sponsor and superyacht crew sponsor. The terms of an approval as one of those sponsors are no longer able to be varied.

109 Regulation 2.66 (heading)

Repeal the heading, substitute:

2.66 Process to apply for variation of terms of approval

110 Subregulation 2.66(1)

After "standard business sponsor", insert "or a temporary activities sponsor".

111 Paragraph 2.66(5)(a)

After "standard business sponsor", insert "or a temporary activities sponsor".

112 Regulation 2.66A

Repeal the regulation.

113 Regulation 2.67

Omit "temporary work sponsor", substitute "temporary activities sponsor".

114 Regulation 2.68

Omit "to approve an application for a variation of a term of approval as a standard business sponsor", substitute "to vary a term of an approval of a person (the ***applicant***) as a standard business sponsor".

115 At the end of regulation 2.68

Add:

Note: The criteria in regulation 2.68J, relating to transfer, recovery and payment of costs, must also be satisfied.

116 Regulation 2.68A

Repeal the regulation, substitute:

2.68A Criteria for variation of terms of approval—temporary activities sponsor

For the purposes of paragraph 140GA(2)(b) of the Act, the criteria that must be satisfied for the Minister to vary a term of a person's approval as a temporary activities sponsor are that the Minister is satisfied that:

(a) the person satisfies the criterion for approval as a temporary activities sponsor set out in regulation 2.60; and

(b) the person has applied for the variation in accordance with the process referred to in regulation 2.61.

Note: The criteria in regulation 2.68J, relating to transfer, recovery and payment of costs, must also be satisfied.

117 Subregulation 2.68J(2)

Omit "to approve an application by a person (the ***applicant***) for a variation of a term of approval as a sponsor", substitute "to vary a term of an approval of a person (the ***applicant***) as a sponsor".

118 After subparagraphs 2.68J(2)(e)(i) and (f)(i)

Insert:

(ia) a Subclass 403 (Temporary Work (International Relations)) visa; or

(ib) a Subclass 408 (Temporary Activity) visa; or

119 Subregulation 2.68J(3)

Omit "to approve an application by a person (the ***applicant***) for a variation of a term of approval as a sponsor", substitute "to vary a term of an approval of a person (the ***applicant***) as a sponsor".

120 After subparagraphs 2.68J(3)(c)(i) and (d)(i)

Insert:

(ia) a Subclass 403 (Temporary Work (International Relations)) visa; or

(ib) a Subclass 408 (Temporary Activity) visa; or

121 Subregulation 2.69(2)

After "approved form 1196 (Internet)", insert "or 1478 (Internet)".

122 Paragraph 2.70(c)

Omit "a foreign government agency sponsor,".

123 At the end of regulation 2.70

Add:

; or (d) a temporary activities sponsor.

124 Regulations 2.72A to 2.72J

Repeal the regulations, substitute:

2.72A Criteria for approval of nomination—Subclass 407 (Training) visa

(1) This regulation applies to a person (the ***sponsor***):

(a) who is:

(i) a temporary activities sponsor; or

(ii) if the nomination referred to in paragraph (b) is made on or before 18 May 2017—a professional development sponsor or a training and research sponsor; and

(b) who has nominated, under paragraph 140GB(1)(b) of the Act, a program of occupational training (the ***nominated program***) in relation to a holder of, or an applicant or proposed applicant for, a Subclass 407 (Training) visa (the ***nominee***).

(2) For the purposes of subsection 140GB(2) of the Act, the criteria that must be satisfied for the Minister to approve the nomination are the criteria set out in this regulation.

Criteria

(3) The Minister is satisfied that the sponsor is:
(a) a temporary activities sponsor; or
(b) if the nomination is made on or before 18 May 2017—a professional development sponsor or a training and research sponsor.

(4) The Minister is satisfied that the sponsor made the nomination in accordance with regulation 2.73A.

(5) The Minister is satisfied that the nominee will participate in the nominated program.

(6) If the nominee holds a visa, the Minister is satisfied that the sponsor has listed on the nomination each secondary sponsored person who holds the same visa as the nominee on the basis of the secondary sponsored person's relationship to the nominee.

(7) However, the Minister may disregard the fact that one or more secondary sponsored persons are not listed on the nomination if the Minister is satisfied that it is reasonable in the circumstances to do so.

(8) The Minister is satisfied that the sponsor has provided the following:
(a) information that identifies the employer or employers in relation to the nominated program, including:
(i) the location and contact details of each employer; and
(ii) if the sponsor and the employer are not the same person—the relationship between the sponsor and the employer;
(b) information that identifies the location or locations where the nominated program will be carried out;
(c) information that identifies each member of the family unit of the nominee who holds, or proposes to apply for, the same visa as the nominee on the basis of satisfying the secondary criteria.

(9) For the purposes of paragraph (8)(a), if undertaking the nominated program is a volunteer role (within the meaning given by subregulation 2.57(5)), ***employer*** includes the person or organisation responsible for the tasks to be carried out as part of the nominated program.

(10) The Minister is satisfied that the sponsor has certified, in writing and as part of the nomination, whether or not the sponsor has engaged in conduct in relation to the nomination that constitutes a contravention of subsection 245AR(1) of the Act.

(11) The Minister is satisfied that:
  (a) there is no adverse information known to Immigration about the sponsor or a person associated with the sponsor; or
  (b) if any adverse information is known to Immigration about the sponsor or a person associated with the sponsor—it is reasonable to disregard the information.

(12) The Minister is satisfied that:
  (a) the occupational training will be provided directly by the sponsor; or
  (b) the sponsor is supported by a Commonwealth agency, and the Commonwealth agency has provided a letter endorsing the arrangement for the provision of the occupational training; or
  (c) the sponsor is specified in a legislative instrument made by the Minister for the purposes of this paragraph; or
  (d) the occupational training will be provided in circumstances specified in a legislative instrument made by the Minister for the purposes of this paragraph.

(13) The Minister is satisfied that the sponsor does not engage in, or intend to engage in, activities that will have adverse consequences for employment or training opportunities, or conditions of employment, for Australian citizens or Australian permanent residents.

(14) The Minister is satisfied that the nominee has functional English.

Note: For ***functional English***, see subsection 5(2) of the Act.

(15) Regulation 2.72B applies to the nomination.

(16) The Minister is satisfied that the nominated program is offered as a genuine training opportunity for a purpose referred to in the subregulation of regulation 2.72B that applies.

2.72B Criteria for approval of nomination—alternative criteria for Subclass 407 (Training) visa

(1) For the purposes of subregulation 2.72A(15), this regulation applies to a nomination by an approved sponsor (the ***sponsor***) of a program of occupational training in relation to a holder of, or an applicant or proposed applicant for, a Subclass 407 (Training) visa (the ***nominee***) if any subregulation of this regulation applies.

Occupational training required for registration etc.

(2) This subregulation applies if the Minister is satisfied that:
  (a) the occupational training is necessary for the nominee to obtain registration, membership or licensing in Australia, or in the home country of the nominee, in relation to the occupation of the nominee; and
  (b) the registration, membership or licensing is required in order for the nominee to be employed in the occupation of the nominee in Australia or in the home country of the nominee; and
  (c) the duration of the occupational training is necessary for the nominee to obtain registration, membership or licensing in Australia, or in the home country of the nominee, in relation to the occupation of the nominee, taking into account the prior experience of the nominee; and

(d) the occupational training is workplace based; and
(e) the nominee has appropriate qualifications and experience to undertake the occupational training.

Occupational training to enhance skills

(3) This subregulation applies if the Minister is satisfied that:
(a) the occupational training is:
(i) a structured workplace training program; and
(ii) specifically tailored to the training needs of the nominee; and
(iii) of a duration that meets the specific training needs of the nominee; and
(b) the occupational training is in relation to an occupation specified, with its corresponding 6-digit code, by the Minister in a legislative instrument made for the purposes of this paragraph; and
(c) the nominee has the equivalent of at least 12 months of full-time experience in the occupation to which the occupational training relates in the 24 months immediately preceding the time of nomination.

Occupational training for capacity building overseas—overseas qualification

(4) This subregulation applies if the Minister is satisfied that:
(a) the nominee is required to complete a period of no more than 6 months of practical experience, research or observation to obtain a qualification from a foreign educational institution; and
(b) the occupational training is a structured workplace-based training program specifically tailored to the training needs of the nominee.

Occupational training for capacity building overseas—government support

(5) This subregulation applies if the Minister is satisfied that:
(a) the occupational training is supported by a government agency, or by the government of a foreign country that is the home country of the nominee; and
(b) the occupational training is a structured workplace-based training program that is:
(i) specifically tailored to the training needs of the nominee; and
(ii) of a duration that meets the specific training needs of the nominee.

Occupational training for capacity building overseas—professional development

(6) This subregulation applies if the Minister is satisfied that:
(a) the nominee:
(i) has an overseas employer; and
(ii) is in a managerial or professional position in relation to the overseas employer; and
(b) the occupational training is relevant to, and consistent with, the development of the managerial or professional skills of the nominee; and
(c) the occupational training will provide skills and expertise relevant to, and consistent with, the business of the overseas employer of the nominee; and
(d) the primary form of the occupational training is the provision of face-to-face teaching in a classroom or similar environment.

125 Regulation 2.73A

Repeal the regulation, substitute:

2.73A Process for nomination—Subclass 407 (Training) visa

(1) This regulation applies to a person who is nominating, under paragraph 140GB(1)(b) of the Act, a program of occupational training in relation to a holder of, or an applicant or proposed applicant for, a Subclass 407 (Training) visa.

(2) For the purposes of subsection 140GB(3) of the Act, the person may nominate the program in accordance with a process specified in a legislative instrument made by the Minister for the purposes of this subregulation.

(3) A legislative instrument made for the purposes of subregulation (2) may specify any of the following:
  (a) a form for the nomination;
  (b) a fee which must accompany the nomination;
  (c) any other requirements in relation to the nomination.

126 Regulations 2.73B and 2.73C

Repeal the regulations.

127 Subregulation 2.74(2)

After "approved form 1196 (Internet)", insert "or 1479N (Internet)".

128 Regulation 2.75A (heading)

Repeal the heading, substitute:

2.75A Period of approval of nomination—Subclass 407 (Training) visa

129 Subregulation 2.75A(1)

Repeal the subregulation, substitute:

(1) This regulation applies to a nomination, under paragraph 140GB(1)(b) of the Act, of a program of occupational training in relation to a holder of, or an applicant or proposed applicant for, a Subclass 407 (Training) visa.

130 Paragraph 2.75A(2)(f)

Omit "occupation, program or activity", substitute "program".

131 Paragraph 2.80(1)(a)

Repeal the paragraph, substitute:

(a) a temporary activities sponsor or a long stay activity sponsor of a primary sponsored person or a secondary sponsored person (the ***sponsored person***), if:
  (i) the primary sponsored person holds a Subclass 408 (Temporary Activity) visa granted on the basis that the primary sponsored person satisfied the criteria in clause 408.223 (religious worker) of Schedule 2; or

(ii) the last substantive visa held by the primary sponsored person was a Subclass 408 (Temporary Activity) visa granted on the basis that the primary sponsored person satisfied the criteria in clause 408.223 (religious worker) of Schedule 2; or

(aa) a long stay activity sponsor of a primary sponsored person or a secondary sponsored person (the ***sponsored person***), if:

(i) the primary sponsored person holds a Subclass 401 (Temporary Work (Long Stay Activity)) visa in the Religious Worker stream; or

(ii) the last substantive visa held by the primary sponsored person was a Subclass 401 (Temporary Work (Long Stay Activity)) visa in the Religious Worker stream; or

132 After paragraph 2.80(1)(c)

Insert:

(ca) a temporary activities sponsor or a special program sponsor of a primary sponsored person or a secondary sponsored person (the ***sponsored person***), if:

(i) the primary sponsored person holds a Subclass 408 (Temporary Activity) visa granted on the basis that the primary sponsored person satisfied the criteria in clause 408.228 (special program) of Schedule 2; or

(ii) the last substantive visa held by the primary sponsored person was a Subclass 408 (Temporary Activity) visa granted on the basis that the primary sponsored person satisfied the criteria in clause 408.228 (special program) of Schedule 2; or

133 Paragraph 2.80(3)(d)

Omit "the Subclass 416 (Special Program) visa, the Subclass 428 (Religious Worker) visa", substitute "the Subclass 408 (Temporary Activity) visa, the Subclass 416 (Special Program) visa".

134 Subparagraph 2.80(5)(a)(ia)

After "holds a", insert "Subclass 408 (Temporary Activity) visa or a".

135 Subparagraph 2.80(5)(a)(ii)

Omit ", a Subclass 428 (Religious Worker) visa".

136 Sub-subparagraph 2.80(5)(b)(iii)(B)

Omit "the Subclass 416 (Special Program) visa, the Subclass 428 (Religious Worker) visa", substitute "the Subclass 408 (Temporary Activity) visa, the Subclass 416 (Special Program) visa".

137 Sub-sub-subparagraph 2.80(5)(b)(iii)(C)(II)

Omit "a Subclass 416 (Special Program) visa, a Subclass 428 (Religious Worker) visa", substitute "a Subclass 408 (Temporary Activity) visa, a Subclass 416 (Special Program) visa".

138 Sub-subparagraph 2.80(5)(c)(iii)(B)

Omit "the Subclass 416 (Special Program) visa, the Subclass 428 (Religious Worker) visa", substitute "the Subclass 408 (Temporary Activity) visa, the Subclass 416 (Special Program) visa".

139 Sub-sub-subparagraph 2.80(5)(c)(iii)(C)(II)

Omit "a Subclass 416 (Special Program) visa, a Subclass 428 (Religious Worker) visa", substitute "a Subclass 408 (Temporary Activity) visa, a Subclass 416 (Special Program) visa".

140 Subregulation 2.80A(1)

Repeal the subregulation, substitute:

(1) This regulation applies to a person who is or was a temporary activities sponsor, or a long stay activity sponsor, of a primary sponsored person or a secondary sponsored person, if:

(a) the sponsored person holds a Subclass 408 (Temporary Activity) visa granted on the basis that the primary sponsored person satisfied the criteria in clause 408.224 (domestic worker) of Schedule 2; or

(b) the last substantive visa held by the sponsored person was a Subclass 408 (Temporary Activity) visa granted on the basis that the primary sponsored person satisfied the criteria in clause 408.224 (domestic worker) of Schedule 2.

141 Before paragraph 2.80A(4)(a)

Insert:

(aa) if subregulation (1) applies—starts to apply on the day on which the primary sponsored person is granted the visa referred to in that subregulation; or

142 Paragraph 2.80A(4)(a)

Before "starts to apply", insert "if subregulation (1A) applies—".

143 Subparagraph 2.80A(4)(a)(ii)

Omit "or a Subclass 427 (Domestic Worker (Temporary)—Executive) visa".

144 Sub-subparagraph 2.80A(4)(b)(iii)(B)

Omit "Subclass 427 (Domestic Worker (Temporary)—Executive) visa", substitute "Subclass 408 (Temporary Activity) visa".

145 Sub-sub-subparagraph 2.80A(4)(b)(iii)(C)(II)

Omit "Subclass 427 (Domestic Worker (Temporary)—Executive) visa", substitute "Subclass 408 (Temporary Activity) visa".

146 Sub-subparagraph 2.80A(4)(c)(iii)(B)

Omit "Subclass 427 (Domestic Worker (Temporary)—Executive) visa", substitute "Subclass 408 (Temporary Activity) visa".

147 Sub-sub-subparagraph 2.80A(4)(c)(iii)(C)(II)

Omit "Subclass 427 (Domestic Worker (Temporary)—Executive) visa", substitute "Subclass 408 (Temporary Activity) visa".

148 Subparagraph 2.82(2)(a)(iii)

After "if the person is", insert "a temporary activities sponsor,".

149 Subregulation 2.84(4)

After "a professional development sponsor of a primary sponsored person", insert "(other than a holder of a Subclass 407 (Training) visa)".

150 Subregulations 2.84(4A) and (4B)

Repeal the subregulations, substitute:

(4A) If the person is or was a temporary activities sponsor, the person must inform Immigration about a change to the information, in relation to the sponsor's address and contact details, provided to Immigration in the person's application for approval as a temporary activities sponsor.

(4B) If the person is or was:

(a) a temporary activities sponsor in relation to a primary sponsored person; or

(b) a professional development sponsor in relation to a primary sponsored person who holds a Subclass 407 (Training) visa; or

(c) any of the following kinds of sponsor in relation to a primary sponsored person who holds a Subclass 408 (Temporary Activity) visa:

(i) a special program sponsor;

(ii) an entertainment sponsor;

(iii) a superyacht crew sponsor;

(iv) a long stay activity sponsor;

(v) a training and research sponsor;

the person must inform Immigration about each of the following events:

(d) the primary sponsored person failing to participate in the activity in relation to which the visa was granted;

(e) the primary sponsored person ceasing participation in the activity in relation to which the visa was granted;

(f) if the primary sponsored person was granted a Subclass 408 (Temporary Activity) visa on the basis that subclause 408.222(3) (elite player, coach, instructor or adjudicator) of Schedule 2 applied to the primary sponsored person—a change to the formal arrangement referred to in paragraph 408.222(3)(c) of Schedule 2;

(g) if the primary sponsored person was granted a Subclass 408 (Temporary Activity) visa on the basis that the primary sponsored person satisfied the criteria in clause 408.225 (superyacht crew) of Schedule 2—the cessation, or expected cessation, of a primary sponsored person's employment with the sponsor;

(h) if the primary sponsored person was granted a Subclass 408 (Temporary Activity) visa on the basis that the primary sponsored person satisfied the criteria in clause 408.227 (staff exchange) of Schedule 2—a change to the agreement referred to in paragraph 408.227(b) of Schedule 2;

(i) if the primary sponsored person was granted a Subclass 408 (Temporary Activity) visa on the basis that the primary sponsored person satisfied any of the criteria in clause 408.229A (entertainment) of Schedule 2 and the sponsor is an Australian organisation—the organisation ceasing to exist;

(j) if the primary sponsored person was granted a Subclass 408 (Temporary Activity) visa on the basis that the primary sponsored person satisfied the criteria in subclause 408.229A(2), (3), (4), (5) or (6) (entertainment) of Schedule 2—the sponsor ceasing to hold a licence referred to in paragraph 408.229A(2)(d), (3)(d), (4)(d), (5)(d) or (6)(d) of Schedule 2, as the case may be;

(k) the person paying the return travel costs of the primary sponsored person, or a secondary sponsored person in relation to the primary sponsored person, in accordance with the obligation referred to in regulation 2.80.

151 Subregulation 2.84(4C)

Before "primary sponsored person" (wherever occurring), insert "non-Subclass 408".

152 Subregulation 2.84(4D)

Repeal the subregulation.

153 Subregulation 2.84(4E)

Before "primary sponsored person" (wherever occurring), insert "non-Subclass 408".

154 Subregulations 2.84(4F), (4G), (4H) and (4I)

Repeal the subregulations.

155 Paragraph 2.84(4J)(a)

Before "primary sponsored person", insert "non-Subclass 408".

156 Subregulations 2.84(4K) and (4L)

Before "primary sponsored person" (wherever occurring), insert "non-Subclass 408".

157 Subregulation 2.84(5)

Omit "(4B)(a), (4G)(a)", substitute "(4B)(g)".

158 Subregulation 2.84(6) (table item 1, column headed "For an event mentioned in …")

Omit "(4B)(a), (4G)(a)", substitute "(4B)(g)".

159 Subregulation 2.84(6) (table item 4, column headed "the notification must be made …", paragraph (a))

Omit "(4B)(a), (4G)(a)", substitute "(4B)(g)".

160 At the end of regulation 2.84

Add:

(9) In this regulation:

non-Subclass 408 primary sponsored person means a primary sponsored person who does not hold a Subclass 408 (Temporary Activity) visa.

161 Subparagraphs 2.85(1)(a)(i) and (ii)

Repeal the subparagraphs.

162 After paragraph 2.85(1)(b)

Insert:

(ba) a temporary activities sponsor or a special program sponsor in relation to a primary sponsored person or a secondary sponsored person, if:

(i) the primary sponsored person or secondary sponsored person holds a Subclass 408 (Temporary Activity) visa granted on the basis that the primary sponsored person satisfied the criteria in clause 408.228 (special program) of Schedule 2, or the last substantive visa held by the primary sponsored person or secondary sponsored person was such a visa; and

(ii) the position in the activity in relation to which the primary sponsored person or secondary sponsored person was granted the visa is a volunteer role; or

163 Subparagraphs 2.85(1)(d)(iii) to (vi)

Repeal the subparagraphs, substitute:

(iii) the primary sponsored person holds a Subclass 408 (Temporary Activity) visa granted on the basis that the primary sponsored person satisfied the criteria in clause 408.222 (sport), 408.223 (religious worker) or 408.229A (entertainment) of Schedule 2 in relation to a volunteer role; or

(iv) the last substantive visa held by the primary sponsored person was a visa referred to in subparagraph (iii); or

164 Subparagraphs 2.85(1)(e)(iii) and (iv)

Omit "Subclass 442 (Occupational Trainee) visa", substitute "Subclass 407 (Training) visa".

165 Subparagraph 2.85(4)(a)(i)

Omit "Subclass 416 (Special Program) visa or a Subclass 470 (Professional Development) visa", substitute "Subclass 408 (Temporary Activity) visa granted on the basis that the primary sponsored person satisfied the criteria in clause 408.222 (sport), 408.223 (religious worker), 408.228 (special program) or 408.229A (entertainment) of Schedule 2, or a Subclass 416 (Special Program) visa".

166 Subparagraph 2.85(4)(a)(ii)

Omit "a Subclass 420 (Entertainment) visa, a Subclass 421 (Sport) visa, a Subclass 428 (Religious Worker) visa or a Subclass 442 (Occupational Trainee) visa", substitute "a Subclass 407 (Training) visa or a Subclass 420 (Entertainment) visa".

167 After regulation 2.86

Insert:

2.86A Obligation to ensure primary sponsored person works or participates in activity in relation to which the visa was granted

(1) This regulation applies to a person (the ***sponsor***) who is or was an approved sponsor of:

(a) a primary sponsored person (the ***sponsored person***) who holds a Subclass 408 (Temporary Activity) visa; or

(b) a person (the ***sponsored person***) who was a primary sponsored person if the last substantive visa held by the sponsored person was a Subclass 408 (Temporary Activity) visa.

(2) The sponsor must ensure that the sponsored person undertakes the activity in relation to which the visa was granted.

(3) The obligation mentioned in subregulation (2) starts to apply on the day the visa is granted.

(4) The obligation mentioned in subregulation (2) ceases to apply on the earliest of the following days:

(a) the day on which the sponsored person is granted a further substantive visa that:

(i) is a visa of a different subclass to the last substantive visa held by the sponsored person; and

(ii) is in effect;

(b) the day on which the primary sponsored person is granted a further Subclass 408 (Temporary Activity) visa, if the sponsor is not a sponsor in relation to that further visa;

(c) the first day on which each of the following has occurred:

(i) the primary sponsored person has left Australia;

(ii) the visa referred to in subregulation (1) has ceased to be in effect;

(iii) if the primary sponsored person held a Subclass 020 (Bridging B) visa when the primary sponsored person left Australia, and the last substantive visa held by the primary sponsored person was the visa referred to in subregulation (1)—the bridging visa has ceased to be in effect.

168 After subparagraphs 2.87(1A)(c)(i), (1A)(d)(i), (1B)(c)(i) and (1B)(d)(i)

Insert:

(ia) a Subclass 403 (Temporary Work (International Relations)) visa; or

(ib) a Subclass 407 (Training) visa; or

(ic) a Subclass 408 (Temporary Activity) visa; or

169 Paragraph 2.87(2A)(a)

Repeal the paragraph, substitute:

(a) the person is or was:

(i) a temporary activities sponsor in relation to a primary sponsored person or a secondary sponsored person (the ***sponsored person***); or

(ii) a long stay activity sponsor in relation to a primary sponsored person or a secondary sponsored person (the ***sponsored person***); and

170 Subparagraphs 2.87(2A)(b)(iii) and (iv)

Repeal the subparagraphs, substitute:

(iii) the sponsored person holds a Subclass 408 (Temporary Activity) visa granted to the sponsored person on the basis that the primary sponsored person satisfied the criteria in clause 408.223 (religious worker) or 408.224 (domestic worker) of Schedule 2; or

(iv) the last substantive visa held by the sponsored person was a Subclass 408 (Temporary Activity) visa granted to the sponsored person on the basis that the primary sponsored person satisfied the criteria in clause 408.223 (religious worker) or 408.224 (domestic worker) of Schedule 2;

171 Regulation 2.87A

Repeal the regulation.

172 At the end of subregulation 2.89(1)

Add:

; or (d) a temporary activities sponsor in relation to a primary sponsored person or a secondary sponsored person.

173 At the end of subregulations 2.90(1) and 2.91(1)

Add:

; or (d) a temporary activities sponsor.

174 Paragraph 2.91(2)(b)

Omit "standard business sponsor or temporary work sponsor", substitute "standard business sponsor, temporary work sponsor or temporary activities sponsor".

175 Paragraphs 2.92(1)(a) and (c)

Omit "in relation to a primary sponsored person".

176 At the end of subregulation 2.92(1)

Add:

; or (d) a temporary activities sponsor.

177 Subregulation 2.92(2) (heading)

Repeal the heading, substitute:

Standard business sponsors, temporary activities sponsors, professional development sponsors and temporary work sponsors

178 Subregulation 2.92(2)

After "standard business sponsor", insert ", a temporary activities sponsor".

179 Subregulation 2.92(4) (heading)

Repeal the heading, substitute:

Standard business sponsors, temporary activities sponsors and temporary work sponsors

180 Subregulation 2.92(4)

Omit "or a temporary work sponsor", substitute ", a temporary activities sponsor or a temporary work sponsor, in relation to a primary sponsored person,".

181 Paragraph 2.92(4)(c)

After "standard business sponsor", insert ", temporary activities sponsor".

182 At the end of subregulation 2.93(1)

Add:

; or (c) a temporary activities sponsor who is conducting, or has conducted, a program referred to in subclause 408.228(2) (youth exchange program) or (5) (other program) of Schedule 2.

183 After paragraph 2.93(2)(b)

Insert:

or (c) if the person is or was a temporary activities sponsor referred to in paragraph (1)(c)—the program referred to in that paragraph;

184 Subregulation 2.94A(1)

Repeal the subregulation, substitute:

(1) This regulation applies to a person who is or was:

(a) a special program sponsor; or

(b) a professional development sponsor; or

(c) a temporary activities sponsor who is conducting, or has conducted, a program referred to in subclause 408.228(2) (youth exchange program) or (5) (other program) of Schedule 2.

185 Paragraph 2.94A(2)(a)

Omit "the person", substitute "if the person is or was a special program sponsor—the person".

186 Paragraph 2.94A(2)(b)

Omit "the person", substitute "if the person is or was a professional development sponsor—the person".

187 At the end of subregulation 2.94A(2)

Add:

; or (c) if the person is or was a temporary activities sponsor—the person has not complied with a term or condition of the special program agreement referred to in paragraph 408.228(2)(c) or (5)(c) (as the case requires) of Schedule 2.

188 Paragraphs 4.02(1A)(ab) and (b)

Repeal the paragraphs, substitute:

(b) a Subclass 407 (Training) visa;

189 Paragraphs 4.02(1A)(d), (f), (g), (h), (i) and (j)

Repeal the paragraphs.

190 At the end of subregulation 4.02(4)

Add:

; (o) a decision to refuse to grant a Subclass 407 (Training) visa to a non-citizen, if:

(i) the non-citizen was outside Australia at the time of application; and

(ii) the non-citizen was sponsored or nominated, as required by a criterion for the grant of the visa, by:

(A) an Australian citizen; or
(B) a company that operates in the migration zone; or
(C) a partnership that operates in the migration zone; or
(D) the holder of a permanent visa; or
(E) a New Zealand citizen who holds a special category visa;

(p) a decision to refuse to grant a Subclass 408 (Temporary Activity) visa to a non-citizen, if:
(i) the non-citizen was outside Australia at the time of application; and
(ii) the non-citizen was sponsored, as referred to in paragraph (a) of the definition of ***passes the sponsorship test*** in clause 408.111 of Schedule 2, by:
(A) an Australian citizen; or
(B) a company that operates in the migration zone; or
(C) a partnership that operates in the migration zone; or
(D) the holder of a permanent visa; or
(E) a New Zealand citizen who holds a special category visa.

191 At the end of subregulation 4.02(5)

Add:

; (n) in the case of a decision to which paragraph (4)(o) applies—the sponsor or nominator;
(o) in the case of a decision to which paragraph (4)(p) applies—the sponsor.

192 Paragraphs 5.19L(f) to (h)

Repeal the paragraphs, substitute:

(f) a temporary activities sponsor.

193 After paragraph 5.19M(d)

Insert:

(da) a Subclass 407 (Training) visa;
(db) a Subclass 408 (Temporary Activity) visa;

194 Paragraphs 773.213(3)(b), (d) and (e) of Schedule 2

Repeal the paragraphs.

195 After paragraph 773.213(4)(a) of Schedule 2

Insert:

(aa) Subclass 407 (Training);
(ab) Subclass 408 (Temporary Activity);

196 Part 2 of Schedule 4 (items 4052, 4055 and 4055AA)

Repeal the items.

197 Paragraph 8107(4)(e) of Schedule 8

Repeal the paragraph, substitute:

(e) engage in work or an activity for an employer other than the employer identified in accordance with paragraph 2.72A(7)(a) as in force before

19 November 2016 (subject to subregulation 2.72A(8) as in force before that day) in the most recent nomination in which the holder is identified.

198 At the end of clause 8107 of Schedule 8

Add:

(5) If the visa is a subclass 407 (Training) visa, the holder must not:
  (a) cease to engage in the most recently nominated program in relation to which the holder is identified; or
  (b) engage in work or an activity that is inconsistent with the most recently nominated program in relation to which the holder is identified; or
  (c) engage in work or an activity for an employer other than an employer identified in accordance with paragraph 2.72A(8)(a) (subject to subregulation 2.72A(9)) in the most recent nomination in which the holder is identified.

199 In the appropriate position in Schedule 13

Insert:

Part 60—Amendments made by the Migration Amendment (Temporary Activity Visas) Regulation 2016

6001 Operation of Parts 3 and 4 of Schedule 1

The amendments of these Regulations made by Parts 3 and 4 of Schedule 1 to the *Migration Amendment (Temporary Activity Visas) Regulation 2016* apply in relation to an application for a visa made on or after 19 November 2016.

Note: Parts 3 and 4 of Schedule 1 to the *Migration Amendment (Temporary Activity Visas) Regulation 2016* commence on 19 November 2016.

6002 Operation of Parts 5 and 6 of Schedule 1

(1) The amendments of these Regulations made by Parts 5 and 6 of Schedule 1 to the *Migration Amendment (Temporary Activity Visas) Regulation 2016* apply in relation to the following:
  (a) an application for a visa made on or after 19 November 2016;
  (b) an application for approval as a sponsor made on or after 19 November 2016;
  (c) an application for a variation of a term of an approval as a sponsor made on or after 19 November 2016;
  (d) a nomination made under subsection 140GB(1) of the Act on or after 19 November 2016, including such a nomination made:
    (i) by an approved sponsor that was approved as a sponsor as a result of an application for approval made before, on or after 19 November 2016; or
    (ii) in relation to an application for a visa made before, on or after 19 November 2016.

(2) If:

(a) before 19 November 2016, a person applies for approval in relation to any of the following classes of sponsor:
  (i) a long stay activity sponsor;
  (ii) a training and research sponsor;
  (iii) a special program sponsor;
  (iv) an entertainment sponsor;
  (v) a superyacht crew sponsor;
  (vi) a professional development sponsor; and
(b) the Minister has not approved, or refused to approve, the person as a sponsor in relation to that class of sponsor; and
(c) after 18 May 2017, the person gives the Minister a written notice withdrawing the application;

the application is taken to be withdrawn, and the Minister may refund the fee paid in accordance with regulation 2.61 in relation to the application.

(3) If:
(a) before 19 November 2016, an approved sponsor makes a nomination under subsection 140GB(1) of the Act identifying a proposed applicant for:
  (i) a Subclass 401 (Temporary Work (Long Stay Activity)) visa; or
  (ii) a Subclass 402 (Training and Research) visa; or
  (iii) a Subclass 420 (Temporary Work (Entertainment)) visa; and
(b) the proposed applicant does not apply for the visa before 19 November 2016; and
(c) the Minister has not approved, or refused to approve, the nomination; and
(d) the approved sponsor gives the Minister a written notice withdrawing the nomination;

the nomination is taken to be withdrawn, and the Minister may refund the fee paid in accordance with regulation 2.73A in relation to the nomination.

Note: Parts 5 and 6 of Schedule 1 to the *Migration Amendment (Temporary Activity Visas) Regulation 2016* commence on 19 November 2016.

Schedule 2—Visa application charge for entrepreneur stream

Migration Regulations 1994

1 Paragraph 1104BA(2)(a) of Schedule 1

Repeal the paragraph, substitute:

(a) first instalment (payable at the time the application is made):

First instalment

Item	Component	Amount
1	Base application charge	$2,305
2	Additional applicant charge for an applicant who is at least 18	$1,155
3	Additional applicant charge for an applicant who is less than 18	$575

Note: Regulation 2.12C explains the components of the first instalment of visa application charge and specifies the amounts of subsequent temporary application charge and non-Internet application charge. Not all of the components may apply to a particular application.

Additional applicant charge is paid by an applicant who claims to be a member of the family unit of another applicant and seeks to combine the application with that applicant's application.

EXPLANATORY STATEMENT

Select Legislative Instrument 2016 No.

Issued by the Minister for Immigration and Border Protection

Migration Amendment (Temporary Activity Visas) Regulation 2016

Subsection 504(1) of the *Migration Act 1958* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the 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 Act.

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

The *Migration Amendment (Temporary Activity Visas) Regulation 2016* (the Regulation) amends the *Migration Regulations 1994* (the Migration Regulations) to progress the Government's visa simplification and deregulation and digital transformation agendas by reforming temporary visas that permit various types of work and activity in Australia (entertainers, occupational trainees, religious workers, researchers, elite sportspeople, and a number of other specialised categories). The Regulation reduces the overall number of visa subclasses by three, streamlines the requirements for sponsorship, nomination, visa application and grant and provides for online applications.

In particular, the Regulation repeals five visas and creates two new visas. The new visas cover all of the cohorts who were covered by the repealed visas. The Regulation introduces a new Subclass 407 (Training) visa and a Subclass 408 (Temporary Activity) visa to replace the following temporary activity visas:

- Subclass 401 (Temporary Work (Long Stay Activity)) visa;
- Subclass 402 (Training and Research) visa;
- Subclass 416 (Special Program) visa;
- Subclass 420 (Temporary Work (Entertainment)) visa; and
- Subclass 488 (Superyacht Crew) visa.

The Regulation also makes minor amendments to the Subclass 400 Temporary Work (Short Stay Activity) visa and the Subclass 403 Temporary Work (International Relations) visa.

The Regulation creates a new class of sponsor for these visas, called the 'temporary activities sponsor'. This class of sponsor replaces six classes of sponsors:

- professional development sponsor;
- special program sponsor;
- superyacht crew sponsor;
- long stay activity sponsor;
- training and research sponsor; and
- entertainment sponsor.

The Regulation also removes most requirements for sponsors to complete an additional nomination process in relation to sponsored visa applicants. This streamlines the sponsorship process and removes red tape. The nomination requirement is retained in relation to occupational trainees (Subclass 407) where three stage processing (sponsorship, nomination and visa is considered necessary to ensure the integrity of the programme. Further, retaining nominations is beneficial for visa holders in this cohort as it enables movement between sponsors without the additional burden of a visa application.

The Regulation also introduces a uniform and flat pricing structure (visa application charges). These changes apply to the new Subclass 407 and Subclass 408 visas, and the existing Subclass 400 and Subclass 403 visas. This pricing structure balances an increase for the purely economic Subclass 400 visa with a reduction for other visas which are predominantly social or cultural in nature. For many visa applicants, the visa application charges have been reduced. These changes introduce greater equity and fairness into the visa pricing structure.

The Regulation also gives effect to the Government's Digital Transformation agenda and the aim for a simpler, clearer, faster public service by providing for online applications for all visa applicants, their sponsors and their nominators in relation to these visas. The online lodgement system commences at the same time as the Regulation and will lead to significant benefits for clients, and also generate efficiencies and savings for the Department of Immigration and Border Protection (the Department).

Schedule 2 to the Regulation amends the visa application charge (VAC) for the recently introduced Entrepreneur stream in the Subclass 888 (Business Innovation and Investment (Permanent)) visa.

In particular, the Regulation corrects the arrangements relating to the first instalment of the VAC for an application for a Subclass 888 (Business Innovation and Investment (Permanent)) visa. It repeals specific provisions that applied to applicants seeking to satisfy the criteria for the Entrepreneur stream of the Subclass 888 visa, with the effect that those applicants only need to pay the lower amount of VAC applicable to all other applicants for a Subclass 888 visa, as intended. Although no persons are yet eligible to apply for this permanent visa (and therefore no one has been disadvantaged by the higher VAC), the Regulation ensures the lower and correct VAC applies in the future when persons will be eligible to apply for the visa.

Statements of Compatibility with Human Rights have been completed for the Regulation, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment of the Statements is that the measures in the Regulation are 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*. Copies of the Statements are at Attachment B.

Details of the Regulation are set out in Attachment C.

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

The Office of Best Practice Regulation (the OBPR) has been consulted. OBPR advised that Regulation Impact Statements are not required. The regulation changes are expected to have only minor impacts on business. The OBPR consultation references are 19898 (Schedule 1) and 20000 (Schedule 2).

In relation to Schedule 1, the Department consulted extensively in developing the new visa framework. In September 2014, the Department issued a discussion paper and received 68 submissions. The submissions were considered in the formulation of a proposed framework that was released for consultation in December 2014. Responses were received from 71 industry stakeholders. In April 2015, the Department again sought stakeholder views by conducting a survey and received 1177 responses. The responses were considered by the Department in formulating the final framework.

Parallel to this review, the Department and the Ministry for the Arts undertook a joint review of the Subclass 420 Temporary Work (Entertainment) visa and released a discussion paper on 12 January 2015. The discussion paper canvassed a range of deregulation opportunities and proposed changes to longstanding VAC concessions. Sixty-three key stakeholders, including unions, entertainment bodies, current sponsors, relevant government agencies and migration agents were advised of the review. The Department subsequently met with a number of stakeholders to discuss their comments about the deregulation options.

Most recently, public information sessions on the temporary activity visas were conducted in Perth, Melbourne, Brisbane and Sydney from 23 to 30 September 2016.

In relation to Schedule 2, no consultations were necessary as the amendment is correcting an inadvertent administrative error in drafting the VAC for the Subclass 888 visa.

The Regulation is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulation commences on 19 November 2016.

Authority: Subsection 504(1) of the *Migration Act 1958*

ATTACHMENT A

Subsection 504(1) of the *Migration Act 1958* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the 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 Act.

In addition, the following provisions may apply:

- subsection 31(1) of the Act, which provides that there are to be prescribed classes of visas;

- subsection 31(3) of the Act, which provides that 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 or 38A);

- subsection 31(5) of the Act, which provides that the Migration Regulations may specify that a visa is a visa of a particular class;

- subsection 40(1) of the Act, which provides that the Migration Regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;

- subsection 41(1) of the Act, which provides that the Migration Regulations may provide that visas, or visas of a specified class, are subject to specified conditions;

- subsection 41(2) of the Act, which provides that, without limiting subsection 41(1), the Migration Regulations may provide that a visa, or visas of a specified class, are subject to:

    - a condition that, despite anything else in the Act, the holder of the visa will not, after entering Australia, be entitled to be granted a substantive visa (other than a protection visa or a temporary visa of a specified kind), while he or she remains in Australia; or
    - a condition imposing restrictions on doing any work, work other than specified work or work of a specified kind.

- subsection 45(1) of the Act, which provides that, subject to this Act and the Migration Regulations, a non-citizen who wants a visa must apply for a visa of a particular class;

- subsection 45B(1) of the Act, which provides that the amount of visa application charge is the amount, not exceeding the visa application charge limit, prescribed in relation to the application;

- subsection 45C(1) of the Act, which provides that the Migration Regulations may:
    - provide that visa application charges may be payable in instalments; and
    - specify how those instalments are to be calculated; and
    - specify when instalments are payable;
- subsection 45C(2) of the Act, which provides in part that the Migration Regulations may also:
    - make provision for and in relation to:
        - the way, including the currency, in which visa application charge is to be paid; or
        - working out how much visa application charge is to be paid; or
        - the time when the visa application charge is to be paid; or
        - the persons who may be paid the visa application charge on behalf of the Commonwealth;
- section 140A of the Act, which provides that Division 3A of Part 2 of the Act applies to visas of a prescribed kind;
- subsection 140E(1) of the Act, which provides that the Minister must approve a person as a sponsor in relation to one or more classes prescribed for the purpose of subsection 140E(2) if prescribed criteria are satisfied;
- subsection 140E(2) of the Act, which provides that the regulations must prescribe classes in relation to which a person may be approved as a sponsor;
- subsection 140E(3) of the Act, which provides that different criteria may be prescribed for:
    - different kinds of visa (however described); and
    - different classes in relation to which a person may be approved as a sponsor; and
    - different classes of person within a class in relation to which a person may be approved as a sponsor;
- subsection 140F(1) of the Act, which provides that the Migration Regulations may establish a process for the Minister to approve a person as a sponsor;
- subsection 140F(2) of the Act, which provides that different processes may be prescribed for:
    - different kinds of visa (however described); and
    - different classes in relation to which a person may be approved as a sponsor;

- subsection 140G(1) of the Act, which provides that an approval as a sponsor may be on terms specified in the approval;

- subsection 140G(2) of the Act, which provides that the terms must be of a kind prescribed by the Migration Regulations;

- subsection 140G(3) of the Act, which provides that an actual term may be prescribed by the Migration Regulations;

- subsection 140G(4) of the Act, which provides that different kinds of terms may be prescribed for:

    - different kinds of visa (however described); and
    - different classes in relation to which a person may be approved as a sponsor;

- subsection 140GA(1) of the Act, which provides that the regulations may establish a process for the Minister to vary a term of a person's approval as a sponsor;

- subsection 140GA(2) of the Act, which provides that the Minister must vary a term specified in an approval if:

    - the term is of a kind prescribed by the Migration Regulations for the purposes of this paragraph; and
    - prescribed criteria are satisfied;

- subsection 140GA(3) of the Act, which provides that different processes and different criteria may be prescribed for:

    - different kinds of visa (however described); and
    - different kinds of terms; and
    - different classes in relation to which a person may be approved as a sponsor;

- subsection 140GB(1) of the Act, which provides that an approved sponsor may nominate:

    - an applicant, or proposed applicant, for a visa of a prescribed kind (however described), in relation to:

        - the applicant or proposed applicant's proposed occupation; or
        - the program to be undertaken by the applicant or proposed applicant; or
        - the activity to be carried out by the applicant or proposed applicant; or

    - a proposed occupation, program or activity;

- subsection 140GB(2) of the Act, which provides that the Minister must approve an approved sponsor's nomination if prescribed criteria are satisfied;

- subsection 140GB(3) of the Act, which provides that the Migration Regulations may establish a process for the Minister to approve an approved sponsor's nomination.

- subsection 140GB(4) of the Act, which provides that different criteria and different processes may be prescribed for:

    - different kinds of visa (however described); and
    - different classes in relation to which a person may be approved as a sponsor.

- subsection 140H(1) of the 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 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 Act, which provides that sponsorship obligations must be satisfied in the manner (if any) and within the period (if any) prescribed by the Migration Regulations; and

- subsection 140H(6) of the Act, which provides that different kinds of sponsorship obligations may be prescribed for:

    - different kinds of visa (however described); and
    - different classes in relation to which a person may be, or may have been, approved as a sponsor.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Migration Amendment (Temporary Activity Visas) Regulation 2016

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*.

Schedule 1 – General Amendments

Overview of Schedule 1

The Australian Government is seeking to simplify and streamline temporary work visas. This legislative instrument furthers that agenda. The number of visa subclasses will be reduced, in net terms, by three. In addition, the legislative instrument simplifies arrangements for sponsorship of visa applicants. Six classes of sponsor are replaced by one new class of sponsor.

The legislative instrument repeals five temporary work visa subclasses, and amends the *Migration Regulations 1994* (the Migration Regulations) to create two new temporary work visa subclasses as indicated below.

The amendments are primarily to:

- Part 2A of the Migration Regulations in regards to sponsorship and nomination requirements; and
- Schedules 1 and 2 of the Migration Regulations in regards to visa application and assessment requirements.

There are further minor and consequential changes to other parts of the Migration Regulations to support the introduction of the Subclass 407 (Training) visa and the Subclass 408 (Temporary Activity) visa. There are also minor changes to the existing Subclass 403 (Temporary Work (International Relations)) visa and the Subclass 400 (Temporary Work (Short Stay Activity) visa.

These amendments are achieved with only minor changes to existing policy settings. The service to clients is enhanced by the availability of online visa application lodgement for the new visas and related sponsorship and nomination applications. Changes have also been made to the visa pricing structure.

Calculation of Visa Application Charge

The rationalisation of the visa structure, including the creation of two new visas and the relocation of streams in existing visas, such as the relocation of the Invited Participant stream from Subclass 400 into the new Subclass 408 (Temporary Activity) visa, and the differing Visa Application Charges (VACs) that previously existed in relation to these streams, has required a reassessment of the temporary activity visa framework pricing structure.

The policy objective in relation to this reassessment was to increase fairness and equity across different cohorts while supporting Australia to be competitive in the international market. A uniform and flat VAC structure at a price point of $275 for primary applicants meets these objectives and is a desirable policy outcome as it removes price from being a determining factor for visa applicants and ensures an equitable price point for all applicants in this visa framework. In calculating the price point for the VAC, the Government also considered the potential effects that changes to longstanding VAC concessions might have on users of this visa framework. Family members over the age of 18 also pay $275. Family members who are under 18 pay $70. These charges represent the lowest possible uniform and flat VAC structure that would not have an adverse effect on the Budget.

The Subclass 407 (Training) visa

The amendments to the Migration Regulations:

- repeal the existing Training and Research (Subclass 402) visa;
- establish a new class of 'temporary activities sponsor' which replaces the training and research sponsor class and the professional development sponsor class (as well as the sponsor classes noted below in relation to Subclass 408); and
- establish a new visa subclass, Subclass 407 (Training), for visa applicants who enter Australia to undertake occupational training for up to two years. The new visa and related nomination requirements include strengthened integrity measures to ensure that the visa is used only for genuine occupational training which does not adversely impact the Australian labour market. The new visa is less expensive than the Subclass 402 visa. The visa application charge for primary applicants has been reduced from $380 to $275.

The Subclass 408 (Temporary Activity) visa

The amendments to the Migration Regulations:

- repeal four existing visas: Subclass 401 Temporary Work (Long Stay Activity), Subclass 416 (Special Program), Subclass 420 ((Temporary Work) (Entertainment)), and Subclass 488 (Superyacht Crew);
- establish a new class of 'temporary activities sponsor' which replaces four sponsorship classes: long stay activity sponsor, special program sponsor, entertainment sponsor, and superyacht crew sponsor;
- establish a single visa subclass, Subclass 408 (Temporary Activity), that consolidates the current Schedule 1 and 2 criteria for temporary stay in Australia

by: invited participants in events; sports trainees and elite sportspeople; religious workers; domestic workers employed by senior overseas-based executives; superyacht crew; academic researchers; participants in youth exchange programs, student exchange programs and other cultural programs; persons working on Australian Government endorsed events; and persons working in the entertainment industry. The visa permits stay in Australia for up to two years, except for persons entering in connection with Australian Government endorsed events (such as the Commonwealth Games) where the maximum permitted stay is four years;

- reduce visa related charges. The visa application charge for primary applicants has been reduced from $380 to $275. In addition, there is no longer a requirement to nominate each visa applicant, which incurred a fee of $170 per nomination. The change in visa related costs includes the removal of bulk discount provisions which resulted in lower visa charges for large commercial entertainment ventures. The changes will create a fairer and more equitable pricing structure. Exemptions from visa application charges will continue to be available for persons specified in an instrument made by the Minister. In addition, a reduced visa application charge will be available for persons specified in an instrument made by the Minister;
- remove the requirement for nominations (nominations are additional to the requirements for sponsorship) which applied to Subclass 401 and Subclass 420 visas. This will reduce the regulatory burden and cost on sponsors; and
- remove the requirement for sponsorship for visa applicants who are outside Australia and who seek a stay of up to three months. In those cases, sponsorship is replaced by a simple requirement for a letter of support. This will reduce the regulatory burden and cost on those supporters, as they will no longer be required to become sponsors.

The amended Subclass 403 (Temporary Work (International Relations)) visa

This existing subclass is amended to:

- include a Seasonal Worker Program stream. The programme was previously catered for in the repealed Subclass 416 (Special Program) visa. The location of this cohort within Subclass 403 is consistent with the government to government arrangements which underpin the programme; and
- make other minor changes, including adjustment of the VACs to conform to the new VAC structure

The amended Subclass 400 (Temporary Work (Short Stay Activity) visa

The existing subclass is amended to:

- remove the Invited Participant stream, which is superseded by the inclusion of this cohort in the new Subclass 408 (Temporary Activity) visa;
- rename the subclass as the *Subclass 400 (Temporary Work (Short Stay Specialist) visa*. This name better reflects the purpose of the visa following the removal of the Invited Participant stream; and

- make other minor changes, including adjustment of the VACs to conform to the new VAC structure

Human rights implications

This legislative Instrument has been considered against each of the seven core international human rights treaties. The legislative instrument positively engages the right to work as provided for in Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) by making these temporary work visas more accessible for applicants and sponsors. This is achieved by the availability of online visa application lodgement, simplified arrangements for sponsorship of visa applicants and a reduction in the level of visa application charges for many applicants.

Conclusion

This legislative instrument is compatible with human rights as it supports the attainment of human rights.

Schedule 2 – Visa application charge for entrepreneur stream

Overview of Schedule 2

Schedule 2 corrects a technical error in the *Migration Regulations 1994* regarding the Visa Application Charge (VAC) for a Subclass 888 visa in the Entrepreneur stream. The instrument amends subitem 1104BA(2) of Schedule 1 to the *Migration Regulations 1994* to remove the specified amounts of the first instalment of the VAC amounts for applications for a Subclass 888 visa in the Entrepreneur stream. It provides that the same amounts of the first instalment of the VAC apply for applications for a Subclass 888 visa in the Entrepreneur stream as for all other applications for a Subclass 888 visa. This change reflects the approved and intended charges for the Subclass 888 visa in the Entrepreneur stream and represents a reduction in the VAC.

Human rights implications

The amendment does not engage any of the applicable rights or freedoms. Rather, lowering the VAC is beneficial to applicants for a Subclass 888 visa in the Entrepreneur stream.

Conclusion

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

The Hon. Peter Dutton MP, Minister for Immigration and Border Protection

ATTACHMENT C

Details of the proposed *Migration Amendment (Temporary Activity Visas) Regulation 2016*

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Migration Amendment (Temporary Activity Visas) Regulation 2016* (the Amendment Regulation).

Section 2 – Commencement

This section provides that the Amendment Regulation commences on 19 November 2016.

Section 3 – Authority

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

The purpose of this section is to set out the Acts under which the Amendment 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 this instrument has effect according to its terms.

The effect of this section is that the *Migration Regulations 1994* (the Migration Regulations) are amended as set out in the applicable items in Schedule 1 and Schedule 2 to the Amendment Regulation.

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

Schedule 1 – General Amendments

Part 1 – Subclass 408 (Temporary Activity) visa

The new Temporary Activity (Class GG) visa, which contains the Subclass 408 (Temporary Activity) visa, replaces the following visas and streams:

- Invited Participant Stream in the Subclass 400 (Temporary Work (Short Stay Activity) visa;
- Subclass 401 (Temporary Work (Long Stay Activity)) visa;
- Research Stream in the Subclass 402 (Training and Research) visa;
- Subclass 416 (Special Program) visa;
- Subclass 420 (Temporary Work (Entertainment) visa; and
- Subclass 488 (Superyacht Crew) visa.

The new visa consolidates the various visas outlined above into one visa. In addition, this visa also introduces a new pathway for applicants seeking to engage in work directly associated with an Australian government endorsed event. The activities covered by the Subclass 408 visa are as follows:

- participating in events where the applicant is invited by a person or organisation who is directly responsible for, or has a formal role in, preparing for or conducting the event;
- elite sporting activities or training for such an activity;
- religious activity that is predominantly non-profit in nature;
- domestic work for certain senior executives of a foreign government agency or foreign organisation;
- working as a crew of a superyacht;
- observing or participating in an academic research project;
- working in a skilled position under a staff exchange arrangement;
- participating in certain special programs in Australia;
- engaging in work directly associated with an Australian government endorsed event; and
- working in the entertainment industry.

Item 1 – At the end of Part 2 of Schedule 1

New item 1237 sets out the requirements for making a valid application for the Temporary Activity (Class GG) visa. This visa class includes only one subclass: the Subclass 408 (Temporary Activity) visa. Subclass 408 completely replaces four visas (Subclass 401, Subclass 416, Subclass 420, and Subclass 488), and also incorporates part of Subclass 402, which is also repealed. Also, as noted above, Subclass 408 replaces the Invited Participant stream of the Subclass 400 visa. The provisions which repeal subclasses 401, 402, 416, 420 and 488 are contained in Part 5 of Schedule 1 to the Amendment Regulation.

The requirements for making a valid application for a Temporary Activity (Class GG) visa in new item 1237 broadly reflect the current requirements for making a valid application for the repealed visas, with minor changes and clarifications to the policy settings.

New subitem 1237(1) provides that the approved form is the form specified by the Minister in a legislative instrument. This is standard practice throughout the Migration Regulations pursuant to subregulation 2.07(5). The form to be specified in the instrument will be an internet form as all applications for the visa must be made online.

New paragraph 1237(2)(a) provides that the first instalment of the visa application charge (VAC) is $275 (and $70 for family members aged less than 18), unless the applicant is:

- in a class of persons specified by the Minister in an instrument in writing, in which case there is a nil VAC (subparagraphs 1237(2)(a)(i) and (ii)); or

- in a class of persons specified by the Minister in an instrument in writing, in which case there is a reduced VAC of $70 (and $20 for family members aged less than 18) (subparagraphs 1237(2)(a)(iii)).

The VAC for primary applicants has been reduced from the $380 that applied to the repealed visas, to $275. In addition, the removal of the previous visa requirement for nominations represents a saving to sponsors of $170 for each primary applicant. This change in visa related costs, including the removal of bulk discount provisions which resulted in lower visa charges per person for large commercial entertainment ventures, will create a fairer and more equitable pricing structure. In relation to the exemptions for non-profit organisations, which previously appeared in Schedule 1 in relation to the Subclass 420 Temporary Work (Entertainment) visa, those provisions are not carried forward in the same form into Subclass 408 because they may not meet the requirement for application validity criteria to be framed in objective terms in order for validity to be quickly determined. The assessment of claims in relation to the non-profit exemption from visa application charges required a potentially complex evaluative process by decision-makers and for that reason is incompatible with the purpose of Schedule 1 to the Migration Regulations and a quick assessment of application validity. The non-profit exemption is replaced by an exemption for visa applicants who are sponsored by Charitable Organisations that are registered with the Australian Charities and Not-for-Profits Commission. This exemption will be specified in a legislative instrument to be made by the Minister, which will come into effect at the same time as the Amendment Regulation, on 19 November 2016. This will provide an objective basis for the exemption from visa application charges, and will provide clarity and certainty for visa applicants and sponsoring or supporting organisations.

The nil VAC and reduced VAC provisions also provide flexibility to allow entry at nil or reduced cost in cases where Australia is competing with other countries to attract visa applicants, e.g. for large business meetings, seminars or conventions, and to allow entry at nil or reduced cost where the Minister determines that it is in the public interest to do so.

Paragraph 1237(2)(b) provides that the second instalment of the visa application charge (VAC) is nil.

New subitem 1237(3) sets out the other requirements for making a valid application for a visa of the new Class GG.

Item 1 in the table requires that an application must be made at the place, and in the manner (if any) specified by the Minister in a legislative instrument. This is standard practice throughout the Migration Regulations pursuant to subregulation 2.07(5).

Item 2 in the table provides that an applicant may be in or outside Australia, but not in immigration clearance, when the application is made.

Item 3 in the table imposes a requirement for sponsorship unless the applicant is outside Australia and seeking no more than three months entry, or unless the applicant is seeking to enter or remain in Australia to undertake work directly associated with an Australian Government endorsed event.

The required sponsorship to make a valid application is specified at subitems 1237(4) and 1237(5). The sponsor must be either a 'temporary activities sponsor' or one of the five specified 'legacy' classes of sponsor, or someone who has applied to be a sponsor but whose application has not yet been decided. If the sponsor is a legacy sponsor, the visa application must be lodged by 18 May 2017. This represents a six month transitional period during which legacy sponsors can sponsor applicants for the new visa. It is anticipated that most legacy sponsors will apply to be approved as a new class of temporary activities sponsor during this period. The requirement imposed by item 3 will be facilitated by the online visa application form, which will not be able to be submitted unless a valid sponsor ID reference number is entered in the appropriate field.

Item 4 in the table provides that, if the applicant holds a substantive visa, it must not be one of the visas specified in the item. This item serves two purposes. The named visas are visas in relation to which holders are generally not permitted to apply for other visas in Australia. Permanent visas are listed to avoid situations where holders of permanent visas apply unnecessarily for a temporary visa. This can occur if the holder of the permanent visa believes that he or she no longer holds a permanent visa or if notification that a permanent visa has been granted by the Department has not yet been received. Item 4 also provides capacity to list temporary visas in an instrument for the same reason. Some temporary visas are more beneficial than the Subclass 408 and it would be unnecessary for the holder of one of those visas to apply for Subclass 408. The background to these legislative changes is that subsection 82(2) of the Migration Act will cause a substantive visa to cease if another substantive visa is granted, even if the second visa is less beneficial. Provisions have also been inserted into Schedule 2 to prevent the grant of a Subclass 408 visa in these situations (clause 408.214).

Item 5 in the table requires an applicant, who is in Australia, to have held a substantive visa, which must not have been one of the named visas. As noted in item 4 above, these are visas in relation to which holders are generally not permitted to apply for other visas in Australia. This provision complements item 4 by covering the situation where the non-citizen held one of the named visas, and the visa expired, and no further substantive visa has been granted.

Item 5 in the table also provides that the application must be made within 28 days after the day when the last substantive visa held by the applicant ceased to be in effect; or, if the last substantive visa was cancelled and the Administrative Appeals Tribunal set aside the cancellation or set aside and substitute the Minister's decision not to revoke the cancellation, 28 days after the day the last substantive visa ceased to be in effect or the day on which the applicant is taken to have been notified of the Tribunal's decision ('the 28 day rule'). These requirements were previously criteria prescribed in Schedule 2 for the relevant repealed visa subclasses, to be satisfied after a valid application had been made. Moving the 28 day rule to Schedule 1 prevents a valid application from being made (and having to be refused) if an applicant in Australia does not hold a substantive visa and cannot meet this objective requirement.

One result of the move of the 28 day rule to Schedule 1 will be a reduction in the number of futile review applications to the Administrative Appeals Tribunal. It was possible for applicants to seek review of visa refusal decisions based on a failure to meet the 28 day rule, despite the fact that this is an objective requirement and the Tribunal is bound to affirm the refusal decision. The new model is consistent with the need to make efficient use of the

Tribunal's resources. The new model will also prevent non-citizens from incurring the futile expense and wasted time of a review. If a non-citizen disputes the applicability of the 28 day rule, this can be dealt with by judicial review in the Federal Circuit Court, where the question can be examined as a 'jurisdictional fact'. There should be very few such cases, given the objective nature of the rule and the established evidentiary basis for the rule in Departmental and Tribunal systems.

Item 6 in the table requires that an applicant seeking to satisfy the primary criteria for a relevant visa must declare in the application whether or not either the applicant, or any person who has made a combined application with the applicant, has engaged in conduct in relation to the application that constitutes a contravention of subsection 245AS(1) of the Migration Act. Subsection 245AS(1) provides that a person contravenes the subsection if the person offers to provide, or provides, a benefit to another person in return for the occurrence of a sponsorship-related event, which would include agreeing to be the visa applicant's sponsor.

New subitems 1237(4) and (5) are discussed above, see subitem 1237(3), item 3.

New subitem 1237(6) provides that an application by a person claiming to be a member of the family unit of a person who is seeking to satisfy the primary criteria for the grant of a Subclass 408 (Temporary Activity) visa may be made at the same time and place as, and combined with, the application by that person. The effect of this provision is that an applicant who is seeking to satisfy the secondary criteria and is making a combined application only has to pay the relevant additional applicant charge of the VAC and not the base application charge as the application will be combined in a way permitted by Schedule 1 (see paragraph 2.12C(4)(a) in Division 2.2A of Part 2 of the Migration Regulations).

New subitem 1237(7) provides that the only subclass in the Temporary Activity (Class GG) visa is Subclass 408 (Temporary Activity).

Item 2 – Before Part 410 of Schedule 2

This item inserts a new Part 408 of Schedule 2 to the Migration Regulations, and contains the new Subclass 408 (Temporary Activity) visa ('Subclass 408 visa').

Division 408.1 – Interpretation

Clause 408.111 sets out the meaning of certain defined terms for the purposes of Part 408. This clause assists with the interpretation of the visa criteria in this Part.

With the exception of three new terms (*adverse supporter information* (see explanations for clause 408.112)*, passes the sponsorship test* and *passes the support test*), this clause either substantially replicates the previous meaning of the relevant terms, or provides a signpost to other parts of the Migration Regulations which contain the meaning of these terms. This clause also relocates the definition of *sporting organisation* from subregulation 2.57(1) as it is only used in this Part.

Previously, *net employment benefit* was defined in subregulation 2.57(4) of the Migration Regulations. This amendment relocates this term into clause 408.111 because it is only used in this Part.

The previous definition of this term referred to the conferring of a net employment benefit on Australia. This amendment replicates the effect of the previous definition for this term, but clarifies that the 'net employment benefit' refers to a benefit to the Australian entertainment industry from an activity which a person is seeking to carry out in Australia. This is a technical change to clarify the intended meaning of this term.

Passes the sponsorship test

The definition of ***passes the sponsorship test*** identifies the basic conditions under which an approved sponsor can sponsor applicants for the Subclass 408 visa. For all applicants who need to be sponsored, their sponsors are required to pass the sponsorship test. Although a valid application can be lodged on the basis that the applicant has identified a person who has applied for approval to become a sponsor, for the visa to be granted, the applicant must be sponsored by an approved sponsor who passes the sponsorship test.

For a sponsor to pass the sponsorship test in relation to an applicant, they will need to meet both of the following conditions:

- be (and continue to be) an approved sponsor of the applicant. Their agreement to sponsor the applicant must be evidenced in writing; and
- not be the subject of adverse information, including adverse information about an associated person, unless it is reasonable to disregard the information.

'Adverse information' is defined in regulation 1.13A of Division 1.2 of Part 1 of the Migration Regulations.

As explained in relation to the Schedule 1 requirements for Subclass 408 (item 1 above), the sponsor must be a 'temporary activities sponsor' or, for visa applications made on or before 18 May 2017, a relevant class of legacy sponsor. In general terms, legacy sponsors are only able to provide sponsorship for the same types of activities and visa applicants that they could sponsor prior to 19 November 2016.

As set out in a 'Note', the applicant's sponsor, at the time a decision is made on the visa application, does not have to be the sponsor identified in the visa application. There is flexibility for visa applicants to obtain new sponsors if this is required.

Passes the support test

The definition of ***passes the support test*** identifies the basic conditions under which a person or organisation ('the supporter') can support a non-sponsored Subclass 408 visa applicant. Applicants outside Australia, seeking up to three months stay, are not required to obtain a sponsor. It is sufficient that an appropriate person or organisation (which is specified differently for each activity) is supporting the visa applicant. For applicants who do not need to be sponsored, a supporter must pass the support test.

For supporters to pass the support test in relation to an applicant, they will need to meet both of the following conditions:

- on request by the Minister, provide a letter of support which provides comprehensive details of the applicant's proposed activity in Australia; and

- not be the subject of 'adverse supporter information', including information about an associated person, unless it is reasonable to disregard the information.

The support test was created for ease of reference to the conditions under which a person or organisation can support a non-sponsored Subclass 408 visa applicant. As supporters are not required to be approved sponsors, they are not subject to the rules that apply to sponsors in the Act and the Migration Regulations, such as the sponsorship obligations in Division 2.19 of Part 2A of the Migration Regulations. This will streamline visa processes for a large number of short term entrants coming to Australia for cultural or community activities, or for short term employment in specialised fields such as the entertainment industry (e.g., tours by overseas performing artists). However, anyone who seeks entry to Australia for longer than three months, or who applies for the Subclass 408 visa after entry to Australia, will require sponsorship (unless the visa is granted in relation to an Australian Government endorsed event). These arrangements strike an appropriate balance between the integrity and accountability provided by a sponsorship regime, and the objective of streamlining short term entry into Australia. A number of additional checks and balances are built into the visa criteria discussed below.

Clause 408.112 – adverse supporter information

The definition of ***adverse supporter information*** replicates the meaning of ***adverse information*** in regulation 1.13A, but specifically applies to supporters. It was not possible to apply the definition in 1.13A as its application is limited to sponsors and nominators. This is a technical change only. The content of clause 408.112 is the same as regulation 1.13A.

Division 408.2 – Primary criteria

Subdivision 408.21 – Common criteria

Clauses 408.211 to 408.219

All applicants seeking to satisfy the primary criteria are required to meet the common criteria. These criteria include a requirement that the applicant's activities will not have adverse consequences for the employment or training of Australian citizens or permanent residents. The criteria also require that the applicant genuinely seeks to stay temporarily in Australia for the purpose for which the visa is granted. The applicant is also required to have adequate arrangements for health insurance, adequate means to support himself or herself in Australia, and must satisfy certain public interest criteria and also satisfy certain special return criteria relevant to applicants who have previously been in Australia. A further integrity measure requires that the applicant must not have engaged in any conduct that contravenes the prohibitions in the Migration Act on payments for sponsorship-related events.

Clause 408.214 provides that the applicant must not hold a permanent visa or a temporary visa specified in a legislative instrument. The purpose of this measure is to prevent a Subclass 408 visa being granted to an applicant who already holds a more beneficial visa. This provision mirrors the provision in item 4 of the table at subitem 1237(3) of Schedule 1 (refer to explanation in item 1 above). Whereas the Schedule 1 provision will prevent the holder of a more beneficial visa from applying for a Subclass 408 visa, this clause addresses the situation where the application for the Subclass 408 visa has already been made before the

more beneficial visa is granted. For example, a Subclass 408 visa might be applied for on a particular day, and a permanent visa (e.g. a spouse visa applied for months earlier) might be granted on the following day. In those circumstances the Subclass 408 visa could not be granted. This is to prevent the grant of the Subclass 408 visa unintentionally ceasing the more beneficial visa.

Clause 408.219 requires that the applicant must not be seeking to a visa to work in the entertainment industry unless the applicant satisfies the criteria for the entertainment activity (clause 408.229A) or the criteria for Australian Government endorsed events (clause 408.229). The intention is that an applicant who intends to do work related to entertainment must be assessed and approved under cluse 408.229A, which carries over the previous legislative rules applying under the repealed Subclass 420 Temporary Work (Entertainment) visa. The exception for Australian Government endorsed events is intended to allow for the entry of persons working on events in an entertainment capacity, e.g. media or performers associated with the Commonwealth Games.

Clause 408.219A

The purpose and effect of this clause is to require the applicant to meet one of the clauses in Subdivision 408.22.

Subdivision 408.22 – Alternative criteria

The criteria in this Subdivision represent alternative 'pathways' to the grant of a Subclass 408 visa. An applicant seeking to satisfy the primary criteria for the grant of a Subclass 408 visa must meet all of the common criteria and one of the alternative criteria in Subdivision 408.22. In general, the alternative criteria are closely modelled on the criteria for the visas which are repealed by the Amendment Regulation, and also incorporate aspects of the nomination and sponsorship approval criteria which applied in relation to those visas. The consolidation of criteria within the Subclass 408 visa is facilitated by the move from paper-based applications to online lodgement, which took effect on the commencement of the Amendment Regulation on 19 November 2016.

An applicant who is seeking to satisfy the primary criteria for Subclass 408 will be assessed against the activity nominated by the applicant in the online application. If required by the facts of a particular case, decision-makers will also consider whether an applicant can satisfy a criterion for an activity other than the activity selected in the online form. The visa can be granted if the applicant satisfies any of the alternative criteria. In practice, however, the activities are all quite different from each other, and it will be rare for an applicant to be eligible to meet a criterion other than the nominated criterion. However, applicants may inadvertently or mistakenly select the wrong activity for their circumstances. The Migration Regulations provide flexibility to allow such errors to be rectified.

Clause 408.221 – Invited Participant in an event

This criterion provides for the grant of a Subclass 408 visa to a person who seeks to enter or remain in Australia to participate in one or more events. The criterion replaces the Invited Participant stream of the Subclass 400 Temporary Work (Short Stay Activity) visa. That stream has been repealed. Whereas a Subclass 400 visa in the Invited Participant stream

could only be granted to a visa applicant outside Australia, Subclass 408 provides greater flexibility. Applicants may be in or outside Australia.

As was the case with Subclass 400, there is no definition of 'event'. It is intended that this pathway will cater for a wide variety of cultural, community or business purposes, covering festivals, conferences, seminars, etc. Another aspect of the increased flexibility, compared to Subclass 400, is that the invitation can be issued by an individual, in addition to the provision for invitations by organisations. Another change is that the individual or organisation issuing the invitation does not have to be based in Australia. A further change is that visa holders will now be able to receive remuneration for work which is directly related to the event. However, visa holders will be subject to visa condition 8107 which has the effect that the visa holder must not engage in work which is inconsistent with the activity in relation to which the visa was granted. This means that the visa holder can only engage in paid employment if it is part of the event.

To balance the increased flexibility provided to invited participants, a visa granted to a person who satisfies this criterion will be limited to a maximum stay of three months. In addition, all onshore applicants will require sponsorship by a temporary activities sponsor. Applicants outside Australia will require the support of the person or organisation issuing the invitation. In all cases, the sponsor or supporter must be directly responsible for the event(s) or have a formal role in preparing for or conducting the event(s). Further, the person or organisation will have to 'pass the sponsorship test' (onshore applicants) or 'pass the support test' (offshore applicants), meaning that there must be no adverse information about the sponsor/supporter or an associated person known to the Department of Immigration and Border Protection, unless it is reasonable to disregard that information.

Clause 408.222 – Sports trainee and elite player, coach, instructor or adjudicator

This clause caters for elite level sport. It covers players, coaches, instructors, adjudicators and sports trainees. The visa may be granted for up to two years. These criteria are substantively the same as the criteria for 'sporting activity' in the nomination criteria for the repealed Subclass 401 Temporary Work (Long Stay Activity) visa. However, sports trainees were previously covered by the nomination criteria for the repealed Subclass 402 (Training and Research) visa. The visa applicant must be sponsored (for stays of more than three months) or supported (for stays of up to three months) by a sporting organisation that is lawfully operating in Australia. One change from previous criteria is that the sponsor of a sports trainee must not be a sporting club that, as its primary activity, competes in sporting competitions below the Australian national level for the sport (paragraph 408.222(d)). This provision is intended to prevent clubs that primarily compete below the national level from recruiting trainees (e.g. young rugby players from the Pacific region) for the purpose of strengthening the club's competitiveness in inter-club competitions.

Another change from previous arrangements is that the provisions no longer cater for entry by sporting teams or individuals involved in sporting competitions. There are other visas which cater for these circumstances. Professional sportspeople entering for competitions (e.g. cricket teams, professional tennis players) often use the Highly Specialised Work stream in the Subclass 400 visa. Amateur sportspeople are able to enter on visitor visas.

Visa holders will be subject to visa condition 8107 which has the effect that the visa holder must not engage in work which is inconsistent with the activity in relation to which the visa

was granted. This means that the visa holder can only engage in employment as a player, coach, instructor, adjudicator or sports trainee (as relevant to the particular visa holder).

Clause 408.223 – Religious worker

This clause provides the criteria for non-citizens seeking to enter or remain in Australia as religious workers. The visa may be granted for up to two years. These criteria are substantively the same as the criteria in the Religious Worker stream of the repealed Subclass 401 visa and related nomination criteria. The intention is to allow entry to non-citizens who will be performing religious work for a religious institution. The work must be predominantly non-profit in nature and must directly serve the religious objectives of the religious institution. The visa applicant must be sponsored (for stays of more than three months) or supported (for stays of up to three months) by a religious institution that is lawfully operating in Australia. The visa holder is not permitted to work in Australia other than undertaking the religious work for which the visa was granted.

Clause 408.224 – Domestic worker

This clause provides criteria for non-citizens seeking to enter or remain in Australia as domestic workers for a defined cohort of senior executives. The visa may be granted for up to two years. These criteria are substantively the same as the criteria in the repealed Domestic Worker (Executive) stream of the Subclass 401 visa and the related sponsorship and nomination criteria. For example, clause 408.224 would cover a nanny in the executive's household. This visa assists in ensuring Australia's competitiveness as a destination for senior executives who may not otherwise be prepared to relocate to Australia if it involved disrupting established care arrangements for children. A maximum of three overseas based domestic staff may be employed at any time, and there must be evidence that a suitable person cannot be found in Australia to perform the duties, unless there are compelling reasons for employing the applicant. In addition, a further criterion provides that the Minister must be satisfied that the applicant is to be employed in Australia in accordance with the standards for wages and working conditions provided for under relevant Australian legislation and awards. The visa applicant must be sponsored (for stays of more than three months) or supported (for stays of up to three months) by the organisation which employs the senior executive. The visa holder is not permitted to work in Australia other than as a domestic worker for the specified executive.

Clause 408.225 – Superyacht crew

This clause provides for non-citizens seeking to enter or remain in Australia to work as superyacht crew. These criteria are substantively the same as the criteria for the repealed Subclass 488 (Superyacht Crew) visa. The visa may be granted for up to two years. There is a definition of "superyacht" in Regulation 1.03, in Division 1.2 of Part 1 of the Migration Regulations. A superyacht is defined as a sailing ship or motor vessel of a kind that is specified by the Minister under regulation 1.15G to be a superyacht. Regulation 1.15G provides that the Minister may, by instrument in writing, specify that a sailing ship or motor vessel of a particular kind is a superyacht. The relevant instrument (F2009LO1302) provides that a superyacht is any high value luxury sailing ship or motor vessel which is: (a) 24 metres or longer in length; and (b) not carrying cargo; and (c) used for sport or pleasure. This category does not cover commercial cruise ships. The visa applicant must be sponsored (for stays of more than three months) or supported (for stays of up to three months) by the captain

or owner of the superyacht, or by the organisation which operates the superyacht. The visa holder is not permitted to work in Australia other than as a member of the superyacht crew.

Clause 408.226 – Research and Research (student)

This clause provides for non-citizens seeking to enter or remain in Australia to engage in research at an Australian tertiary or research institution. The visa may be granted for up to two years. The criteria for academics are substantively the same as the criteria for the repealed Research stream of the Subclass 402 (Training and Research) visa. The criteria for recent graduates are substantively the same as the criteria for the repealed Occupational Trainee stream of the Subclass 402 visa and related nomination criteria for occupational training for capacity building overseas.

The key change for academics is the removal of restrictions on the receipt of salary, scholarships and allowances. The capacity to restrict recent graduates from receiving salary, which was a discretionary visa condition in the repealed legislation, has also been removed. However, visa holders must not engage in work which is inconsistent with the activity in relation to which the visa was granted. This means that paid employment in only permissible if it is part of the research activity.

The visa applicant must be sponsored (for stays of more than three months) or supported (for stays of up to three months) by an Australian tertiary or research institution.

Clause 408.227 – Staff Exchange

This clause provides for non-citizens seeking to enter or remain in Australia to participate in a staff exchange arrangement. The visa may be granted for up to two years. The criteria are substantively the same as the criteria for the repealed Exchange stream of the Subclass 401 visa and related nomination criteria.

The visa applicant must be sponsored (for stays of more than three months) or supported (for stays of up to three months) by an Australian organisation or government agency or a foreign government agency. The visa holder is only permitted to work in the position which is the subject of the staff exchange.

Clause 408.228 – Special Programs

This clause provides for non-citizens seeking to enter or remain in Australia to participate in youth exchange programs, school to school student interchange, school language assistant programs, and other programs which have the objective of cultural enrichment or community benefit. The visa may be granted for up to two years. The criteria are substantively the same as the criteria for part of the repealed Subclass 416 (Special Program) visa.

The repealed Subclass 416 visa covered two cohorts of applicants:

- Non-citizens who seek to participate in an approved special program of the type noted above; and
- Non-citizens who seek to participate in a special program of seasonal work.

Applicants who seek to participate in seasonal work arrangements will now apply for the new Seasonal Worker program stream in the Subclass 403 (Temporary Work (International Relations)) visa (refer to Part 3 of the Amendment Regulation).

The visa applicant must be sponsored (for stays of more than three months) or supported (for stays of up to three months) by an Australian organisation or a government agency. Unless the program is a youth exchange program, the Australian organisation must be community based and not-for-profit. Visa holders are only permitted to undertake work which is consistent with the approved program, e.g. a School Language Assistant is not permitted to undertake work other than as a school language assistant in the sponsoring school.

Clause 408.229 – Australian Government endorsed event

This clause sets out the criteria for applicants who seek to undertake work directly associated with an Australian Government endorsed event. This is a new visa pathway which has no equivalent in the repealed visas. The event and the relevant classes of eligible visa applicants are to be specified by the Minister in a legislative instrument. This will provide the Minister with the flexibility to specify, over time, events that are appropriate in the circumstances. It is envisaged that only a limited number of major events will be approved, e.g. the Commonwealth Games. Visas granted on the basis of this criterion may be granted for up to four years. This is intended to facilitate work associated with the organisation and staging of major events which involve long lead times. Visa holders will only be able to undertake work which is directly associated with the event.

Visa applicants covered by these arrangements do not require a sponsor or supporter. This requirement will be subsumed by the administrative agreements between the government and event organisers, which will be concluded prior to eligible classes of visa applicant being listed in the legislative instrument.

Clause 408.229A – Entertainment-related activities

This clause sets out the criteria for non-citizens seeking to enter or remain in Australia for entertainment-related activity. The criteria are substantively the same as the criteria in the repealed Subclass 420 (Temporary Work (Entertainment)) visa and related nomination and sponsorship criteria. The visa may be granted for up to two years. Permission to work is limited to the entertainment activity in relation to which the visa was approved. The visa applicant must be sponsored by an eligible sponsor (subclause 408.229A(9)) for stays of more than three months, or supported by an eligible supporter (subclause 408.229A(10)) for stays of up to three months.

The structure of the provisions identifying eligible visa applicants reflects the structure of the criteria in the nomination criteria for the repealed Subclass 420. These criteria have been in existence for many years:

- Subclause 408.229A(2) – performing in film or television productions subsidised by government;
- Subclause 408.229A(3) – performing in film or television productions not subsidised by government;

- Subclause 408.229A(4) – performing in productions not related to film or television;
- Subclause 408.229A(5) – production roles other than as a performer
- Subclause 408.229A(6) – support staff for profit;
- Subclause 408.229A(7) – non-profit engagements;
- Subclause 408.229A(8) – documentary program or commercial for overseas market

The only substantive change from previous criteria is in relation to the category of 'documentary program or commercial for overseas market'. Subclause 408.229A(8) does not carry across the previous criterion which required that "*there is no suitable person in Australia who is capable of doing, and available to do, the occupation or activity in which the visa applicant will be engaged*" or the criterion which required that "*the occupation or activity in which the visa applicant will be engaged would not be contrary to the interests of Australia*." The omission of these criteria does not reflect a change in policy. The policy is adequately covered by, respectively, the common criterion dealing with no adverse consequences for employment (clause 408.211) and the public interest criteria (clause 408.216).

Division 408.3 – Secondary criteria

This Division sets out the requirements to be met by an applicant who is seeking to meet the secondary criteria for the grant of a Subclass 408 visa on the basis of being a member of the family unit of a person who satisfies the primary criteria for the grant of a Subclass 408 visa. An applicant may also meet the secondary criteria if they are the member of the family unit of a person who holds a Subclass 401 visa, a Subclass 402 visa in the Research stream, a Subclass 416 visa (other than a visa granted as part of the seasonal worker programme), a Subclass 420 visa, or a Subclass 488 visa, on the basis of satisfying the primary criteria. The inclusion of these repealed visas provides a pathway for family members to join the visa holder in Australia. Without the creation of this pathway within Subclass 408, the repeal of the identified visas would have the result that there would be no pathway for subsequent entry by family members.

Secondary applicants are required to meet certain public interest criteria and special return criteria, as well as other requirements as prescribed. In particular, the approved sponsor of the primary applicant must have agreed to be the approved sponsor of the secondary applicant.

Division 408.4 – Circumstances applicable to grant

Clause 408.411 provides that the applicant may be in or outside Australia at the time of grant, but not in immigration clearance. Previously, the repealed visas generally provided that if the application was made in Australia, the applicant must be in Australia when the visa is granted, and if the application was made outside Australia, the applicant must be outside Australia when the visa is granted. The increased flexibility provided by clause 408.411 is a result of the continuing move to an online application environment as part of the government's digital transformation agenda.

Division 408.5 - When visa is in effect

This Division provides that the visa is a temporary visa, and sets out when the applicant is permitted to travel to, enter and remain in Australia.

Clause 408.511 provides a maximum visa period for primary and secondary applicants. Consistent with the provisions in the repealed visas, this clause provides for visa holders to travel to, enter, and remain in Australia during the visa period. The visa period will be specified by the Minister and can vary between applicants.

Depending on the circumstances of the applicant, the visa period must not exceed 3 months, 2 years or 4 years. The circumstances are as follows:

- 3 months – Offshore applicants who state they are entering for 3 months or less and any applicant (onshore and offshore) who meets the requirements of clause 408.221 (Invited participant in an event);
- 4 years – applicants who meet the requirements in clause 408.229 (Australian Government endorsed events); and
- 2 years – any other applicants who do not fall in the above 2 categories.

All secondary applicants' visas will cease on the same day as the primary applicant's visa.

Subclause 408.511(1) provides for the visa period of applicants outside of Australia at the time of grant and subclause 408.511(2) provides for the visa period of applicants in Australia at the time of grant.

Division 408.6 - Conditions

This Division sets out the Schedule 8 conditions which must, or may, be attached to the visa depending on whether the applicant has satisfied the primary or secondary criteria.

Clauses 408.611 and 408.612 set out the mandatory and discretionary visa conditions for primary and secondary visa applicants.

For primary applicants, conditions 8107 and 8303 must be imposed. Condition 8107 limits the visa holder's permission to work in Australia to the activity or employment for which the visa was granted. Condition 8303 prohibits the visa holder from becoming involved in activities disruptive to, or violence threatening harm to, the Australian community or a group within the Australian community.

In addition, for primary applicants whose visa was granted on the basis of meeting the criteria in clause 408.229A (entertainment), condition 8109 must be imposed. This condition ensures that the applicant does not depart from the scheduled entertainment activities for which the visa was granted without prior permission from the Secretary of the Department of Immigration and Border Protection.

For secondary applicants, condition 8303 must be imposed and certain other conditions are discretionary.

Part 2 – Subclass 407 (Training) visa

New Part 407 sets out the criteria and other provisions in relation to a Subclass 407 (Training) visa. The new Subclass 407 replaces the Subclass 402 (Training and Research) visa which is repealed by items [46] and [47] of this Schedule. Many of the criteria for the new Subclass 407 visa are consistent with the criteria for the repealed visa. The major change

is that the research component of Subclass 402 has been moved to Subclass 408 (see item 408.226, which is inserted by item 2 above). A new visa subclass was created, rather than amending the old subclass, in order to facilitate the move to online lodgement of visa applications, and to reinforce to users of this visa that strengthened integrity measures will apply to deter potential misuse of the visa.

Item 3 – At the end of Part 2 of Schedule 1

New item 1238 sets out the requirements for making a valid application for the Training (Class GF) visa. This visa class includes only one subclass: the Subclass 407 (Training) visa. The Subclass 407 visa replaces the Subclass 402 visa, as noted above.

The requirements for making a valid application for a Training (Class GF) visa in new item 1238 broadly reflect the current requirements for making a valid application for the repealed Subclass 402 visa, with minor changes and clarifications to the policy settings.

New subitem 1238(1) provides that the approved form is the form specified by the Minister in a legislative instrument. This is standard practice throughout the Migration Regulations pursuant to subregulation 2.07(5). The form to be specified in the instrument will be an internet form as all applications for the visa must be made online.

New paragraph 1238(2)(a) provides that the first instalment of the visa application charge (VAC) is $275 (and $70 for family members aged less than 18).

Paragraph 1238(2)(b) provides that the second instalment of the visa application charge (VAC) is nil.

New subitem 1237(3) sets out the other requirements for making a valid application for a visa of the new Class GF.

Item 1 in the table requires that an application must be made at the place, and in the manner (if any) specified by the Minister in a legislative instrument. This is standard practice throughout the Migration Regulations pursuant to subregulation 2.07(5).

Item 2 in the table provides that an applicant may be in or outside Australia, but not in immigration clearance, when the application is made.

Item 3 in the table imposes a requirement for the application to specify the person who has agreed to be the applicant's approved sponsor.

Item 4 in the table provides that the specified sponsor must be either a 'temporary activities sponsor' or one of two specified 'legacy' classes of sponsor, or someone who has applied to be a sponsor but whose application has not yet been decided. If the sponsor is a legacy sponsor, the visa application must be lodged by 18 May 2017. This represents a six month transitional period during which legacy sponsors can sponsor applicants for the new visa. It is anticipated that most legacy sponsors will apply for the new class of temporary activities sponsor during this period.

Item 5 in the table provides that, if the specified sponsor is not a Commonwealth agency, there must be a nomination of a program of occupational training that has been approved by the Department, or that has been lodged with the Department and not yet decided. The requirement imposed by item 5 will be facilitated by the online visa application, which will not be able to be submitted unless a valid nomination ID reference number is entered in the appropriate field.

Item 6 in the table provides that, if the applicant holds a substantive visa, it must not be one of the visas specified in the item. This item serves two purposes. The named visas are visas in relation to which holders are generally not permitted to apply for other visas in Australia. Permanent visas are listed to avoid situations where holders of permanent visas apply unnecessarily for a temporary visa. This can occur if the holder of the permanent visa believes that he or she no longer holds a permanent visa or if notification that a permanent visa has been granted by the Department has not yet been received. Item 6 also provides capacity to list temporary visas in an instrument for the same reason. Some temporary visas are more beneficial than the Subclass 407 and it would be unnecessary for the holder of one of those visas to apply for Subclass 407. The background to these legislative changes is that subsection 82(2) of the Migration Act will cause a substantive visa to cease if another substantive visa is granted, even if the second visa is less beneficial. Provisions have also been inserted into Schedule 2 to prevent the grant of a Subclass 407 visa in these situations (clause 407.218).

Item 7 in the table requires an applicant, who is in Australia, to have held a substantive visa, which must not have been one of the named visas. As noted in item 6, these are visas in relation to which holders are generally not permitted to apply for other visas in Australia. This provision complements item 6 by covering the situation where the non-citizen held one of the named visas, and the visa expired, and no further substantive visa has been granted.

Item 7 in the table also provides that the application must be made within 28 days after the day when the last substantive visa held by the applicant ceased to be in effect; or, if the last substantive visa was cancelled and the Administrative Appeals Tribunal set aside the cancellation or set aside and substitute the Minister's decision not to revoke the cancellation, 28 days after the day the last substantive visa ceased to be in effect or the day on which the applicant is taken to have been notified of the Tribunal's decision (‘the 28 day rule’). These requirements were previously criteria prescribed in Schedule 2 for the relevant repealed visa subclasses, to be satisfied after a valid application had been made. Moving the 28 day rule to Schedule 1 prevents a valid application from being made (and having to be refused) if an applicant in Australia does not hold a substantive visa and cannot meet this objective requirement.

One result of the move of the 28 day rule to Schedule 1 will be a reduction in the number of futile review applications to the Administrative Appeals Tribunal. It was possible for applicants to seek review of visa refusal decisions based on a failure to meet the 28 day rule, despite the fact that this is an objective requirement and the Tribunal is bound to affirm the refusal decision. The new model is consistent with the need to make efficient use of the Tribunal’s resources. The new model will also prevent non-citizens from incurring the futile expense and wasted time of a review. If a non-citizen disputes the applicability of the 28 day rule, this can be dealt with by judicial review in the Federal Circuit Court, where the question can be examined as a ‘jurisdictional fact’. There should be very few such cases, given the

objective nature of the rule and the established evidentiary basis for the rule in Departmental and Tribunal systems.

Item 8 in the table requires that an applicant seeking to satisfy the primary criteria for a relevant visa must declare in the application whether or not either the applicant, or any person who has made a combined application with the applicant, has engaged in conduct in relation to the application that constitutes a contravention of subsection 245AS(1) of the Migration Act. Subsection 245AS(1) provides that a person contravenes the subsection if the person offers to provide, or provides, a benefit to another person in return for the occurrence of a sponsorship-related event, which would include agreeing to be the visa applicant's sponsor.

New subitem 1238(4) provides that an application by a person claiming to be a member of the family unit of a person who is seeking to satisfy the primary criteria for the grant of a Subclass 408 (Temporary Activity) visa may be made at the same time and place as, and combined with, the application by that person. The effect of this provision is that an applicant who is seeking to satisfy the secondary criteria and is making a combined application only has to pay the relevant additional applicant charge of the VAC and not the base application charge as the application will be combined in a way permitted by Schedule 1 (see paragraph 2.12C(4)(a) in Division 2.2A of Part 2 of the Migration Regulations).

New subitem 1238(5) provides that the only subclass in the Training (Class GF) visa is Subclass 407 (Training).

Item 4 – After Part 405 of Schedule 2

Applicants seeking to satisfy the primary criteria for a Subclass 407 visa are required to satisfy a number of common criteria and also be nominated in relation to a program of occupational training by an approved sponsor. Applicants who are members of the family unit of an applicant who satisfies the primary criteria need satisfy only the secondary criteria.

The Subclass 407 visa also provides a visa pathway for members of the family unit of a person who holds a Subclass 402 visa on the basis of satisfying the primary criteria. This is consequential to the repeal of that visa on 19 November 2016.

Details of the provisions of new Subclass 407 (Training) are as follows:

Division 407.1 - Interpretation

There are no interpretation provisions specific to this Part.

Division 407.2 - Primary criteria

This Division sets out the criteria to be satisfied by a person seeking to satisfy the primary criteria for the grant of a Subclass 407 visa. The note provides that the primary criteria must be satisfied by at least one member of the family unit. The note also provides that all criteria must be satisfied at the time a decision is made on the application.

Clauses 407.211 to 407.219C

The primary criteria include a requirement that the applicant has turned 18 unless there are exceptional circumstances for the grant of the visa, and the applicant must have functional English. Other criteria require that the applicant's activities in Australia will not have adverse consequences for the employment or training of Australian citizens or permanent residents. The criteria also require that the applicant genuinely seeks to stay temporarily in Australia for the purpose for which the visa is granted. The applicant is also required to have health insurance and adequate means to support himself or herself in Australia, satisfy certain public interest criteria, and satisfy certain special return criteria relevant to applicants who have previously been in Australia. A further integrity measure requires that the applicant must not have engaged in any conduct that contravenes the prohibitions in the Migration Act on payments for sponsorship-related events.

Clause 407.213 requires the applicant to be sponsored by an approved sponsor who is a temporary activities sponsor or, for visa applications lodged until 18 May 2017, a training and research sponsor or a professional development sponsor. This represents a six month transitional period during which legacy sponsors can sponsor applicants for the new visa.

Clause 407.214 provides that if the approved sponsor is not a Commonwealth agency, the applicant must be identified in a nomination of an occupation, a program or an activity approved under section 140GB of the Act. The nomination must meet the criteria in regulation 2.72A, as amended by this Schedule (item 124).

Clause 407.218 provides that the applicant must not hold a permanent visa or a temporary visa specified in a legislative instrument. The purpose of this measure is to prevent a Subclass 407 visa being granted to an applicant who already holds a more beneficial visa. This provision mirrors the provision in item 6 of the table at subitem 1238(3) of Schedule 1 (item 3 above). Whereas the Schedule 1 provision will prevent the holder of a more beneficial visa from applying for a Subclass 407 visa, this clause addresses the situation where the application for the Subclass 407 visa has already been made before the more beneficial visa is granted. For example, a Subclass 407 visa might be applied for on a particular day, and a permanent visa (applied for months earlier) might be granted on the following day.

Division 407.3 - Secondary criteria

This Division sets out the requirements to be met by an applicant who is seeking to meet the secondary criteria for the grant of a Subclass 407 visa on the basis of being a member of the family unit of a person who satisfies the primary criteria for the grant of a Subclass 407 visa. A person may also meet the secondary criteria if they are the member of the family unit of a person who holds a Subclass 402 visa on the basis of satisfying the primary criteria.

Secondary applicants are required to meet certain public interest criteria and special return criteria, as well as other requirements as prescribed. In particular, the approved sponsor of the primary applicant must have agreed to be the approved sponsor of the secondary applicant.

Division 407.4 - Circumstances applicable to grant

Clause 407.411 provides that the applicant may be in or outside Australia at the time of grant, but not in immigration clearance. This is consistent with the repealed Subclass 402 visa, but provides more flexibility for applicants entering for professional development, who were previously required to be outside Australia at time of grant.

Division 407.5 - When visa is in effect

This Division provides that the visa is a temporary visa, and sets out when the applicant is permitted to travel to, enter and remain in Australia. For applicants outside Australia the visa permits entry within a specified period and, if entry is made during that period, permits stay for a specified period commencing on the date of entry. The maximum period of stay is two years. If the visa is granted to an applicant in Australia, the visa is permission to remain for a specified period commencing on the date of grant. The maximum period of stay is two years. In either case, the visa holder can travel in an out of Australia during the permitted period of stay.

Division 407.6 - Conditions

This Division sets out the Schedule 8 conditions which must, or may, be attached to the visa depending on whether the applicant has satisfied the primary or secondary criteria.

Part 3 – Subclass 403 Temporary Work (International Relations) visa

This part makes a number of amendments to the Subclass 403 Temporary Work (International Relations) visa. Subclass 403 incorporates streams for applicants covered by an international government agreement; applicants who are to be employed as representatives of certain foreign government agencies or as foreign language teachers in Australian schools; applicants who undertake domestic duties in the households of holders of diplomatic visas; and applicants accorded privileges and immunities.

The main amendment made by the Amendment Regulation is the creation of an additional stream to cater for the seasonal worker programme. The seasonal worker programme was established in 2008 within the Subclass 416 (Special Program) visa to allow for the entry and temporary stay in Australia of persons invited to undertake seasonal work in Australia in accordance with an approved program. The Subclass 416 visa is repealed by the Amendment Regulation (items 48 and 49), as part of the consolidation of several visas. It was decided to relocate the provisions relating to the seasonal worker programme to Subclass 403 because this programme implements arrangements between Australia and regional governments. The Seasonal Worker Programme contributes to the economic development of participating countries by providing access to work opportunities in the Australian agriculture and accommodation industries. The Seasonal Worker Programme offers seasonal labour in selected industries to Australian employers who cannot source local labour. Participating countries include Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu and Vanuatu.

Item 5 – Regulation 1.03

This item inserts a definition of 'program of seasonal work' in regulation 1.03 of Division 1.2 of Part 1 of the Migration Regulations. The definition reflects existing administrative arrangements under which the relevant Commonwealth Department (currently the Department of Employment) approves the arrangements for seasonal work. That approval must be obtained before a visa can be granted by the Department of Immigration and Border Protection.

Item 6 – Regulation 1.03 (definition of *special program of seasonal work*)

This item repeals a redundant definition which related to the repealed Subclass 416 (Special Program) visa.

Item 7 – Paragraph 1234(2)(a) of Schedule 1

This item replaces paragraph 1234(2)(a) of Schedule 1 to the Migration Regulations to prescribe new visa application charges (VACs) for the Subclass 403 visa. The exemptions from payment of the VAC which previously applied will continue to apply under the amended provision. However, all of the classes of person entitled to a 'nil' VAC will be specified in a legislative instrument made by the Minister and dependent applicants whose application is combined with these classes of person will also be entitled to a 'nil' VAC.

For applicants who are required to pay a VAC, the level of the VAC has been adjusted to conform with the new VAC structure applying to the Subclass 400, Subclass 403, Subclass 407 and Subclass 408 visas. The visa application charge for primary applicants has been reduced from $380 to $275. Some additional applicants (family members) who previously paid no VAC will now pay $275 (applicants who are at least 18) and $70 (applicants who are less than 18).

Items 8 – 10

The effect of these amendments is to maintain the existing position in relation to the programme for seasonal workers, that visa applicants must be outside Australia when the visa is granted, cannot bring a family member to Australia, and must be sponsored by an appropriate sponsor. Under the new sponsorship framework created by the Amendment Regulation, the sponsor will be a 'temporary activities sponsor'. Approved sponsors in the closed class of 'special program sponsor' will be able to sponsor seasonal workers for the purpose of visa applications lodged on or before 18 May 2017. This is consistent with the transitional arrangements for all 'legacy' sponsor classes.

The amendments also insert a new paragraph 1234(3)(cb) which has the effect that an application for a Subclass 403 visa cannot be made by a person who holds a permanent visa. This amendment is consistent with other provisions being inserted by the Amendment Regulation which have the objective of preventing inadvertent and unnecessary applications for temporary visas by non-citizens who hold permanent visas.

Items 11 – 12

These items make consequential amendments and repeal a redundant reference to a repealed visa.

Items 13 – At the end of Division 403.2 of Schedule 2

This item inserts a new stream in the Subclass 403 Temporary Work (International Relations) visa. These criteria are only for applicants being assessed against the primary criteria for a Subclass 403 visa in the Seasonal Worker Program stream. The criteria are substantively the same as the criteria for seasonal workers in the repealed Subclass 416 (Special Program) visa. The main requirement is that the applicant is sponsored by an approved sponsor who is conducting a programme of seasonal work which has been approved by the Secretary of a Commonwealth Department (see the definition of 'program of seasonal work' at item 5 above). The visa applicant must also meet the 'common criteria' for the Subclass 403 visa set out in Division 403.21 of Schedule 2 to the Migration Regulations. These criteria require health insurance, a genuine intention to remain temporarily in Australia for the purpose of seasonal work, access to adequate means of support, and satisfaction of a number of other public interest criteria.

Items 14 to 21

These items make a number of technical amendments which are consequential to previous items in this Part of the Amendment Regulation.

Item 22 – Clauses 403.411 and 403.412 of Schedule 2

This item repeals clauses 403.411 and 403.412 of Schedule 2 to the Migration Regulations and substitutes a new clause 403.411. The new clause provides increased flexibility in relation to the location of visa applicants when the visa is granted. Previously, applicants who were to be granted Subclass 403 visas in the Government Agreement stream, Foreign Government Agency stream, or Privileges and Immunities stream were required to be outside Australia at time of grant if the visa application was made outside Australia. This restriction is no longer necessary and those applicants and their family members can now be inside or outside Australia at time of grant, regardless of where the visa application was made. The requirements for other applicants remain the same. Applicants for Subclass 403 visas in the Domestic Worker stream must be outside Australia at time of grant if they were outside Australia when the visa application was made, and they must be in Australia at the time of grant if they were in Australia when the visa application was made. Applicants for the Seasonal Worker Program stream can only apply for the visa if they are outside Australia (see item 8 of the Amendment Regulation), and they must be outside Australia when the visa is granted.

Item 23 – Division 403.6 of Schedule 2

This item repeals Division 403.6 of Schedule 2 to the Migration Regulations and substitutes a new Division 403.6. Division 403.6 sets out the visas conditions which may or must be imposed on Subclass 403 visas. The conditions vary between streams and according to whether the applicant is a primary applicant or secondary applicant (family member). The Division has been restructured to accommodate the new Seasonal Worker Program stream. The visa conditions for the new stream are substantively the same as the visa conditions imposed on seasonal workers in the repealed Subclass 416 (Special Program) visa.

Part 4 – Subclass 400 Temporary Work (Short Stay Specialist) visa

Part 4 of Schedule 1 to the Amendment Regulation makes a number of changes to the Subclass 400 Temporary Work (Short Stay Activity) visa. The changes are:

- Alteration of the name of the visa, which becomes the Subclass 400 Temporary Work (Short Stay Specialist) visa. The new name is a more accurate description of the purpose of the visa following the amendments made by the Amendment Regulation. The Amendment Regulation repeals the Invited Participant stream. The remaining streams in the Subclass 400 visa – the Highly Specialised Work stream and the Australia's Interest stream – cater for short term skilled work assignments. The broader category of invited participants in events is now catered for in the new Subclass 408 visa (clause 408.221);

- Adjustments to the visa application charges (VACs). The VACs for the Subclass 400 visa have increased to bring them into line with the flat VAC structure which now applies to Subclass 400, Subclass 403, Subclass 407 and Subclass 408. Subparagraph 1231(2)(a)(v) now provides that the first instalment of the VAC is $275 (up from $175) for primary applicants, $275 (up from $90) for family members who are at least 18, and $70 (up from $45) for family members aged less than 18. The provisions providing for 'nil' VAC have been retained for representatives of foreign governments and their family members, and for persons listed in a legislative instrument made by the Minister;

- Amendments relating to a visa criterion, which requires that the applicant not be intending to study in Australia. The criterion now only applies to the Highly Specialised Work stream (including family members of the primary visa applicant). The criterion no longer applies to applicants for the Australia's Interest stream or applicants' family members. This change is intended to provide greater flexibility to cater for the wide variety of applicants who are granted visas in this stream;

- Amendments to provide greater flexibility to decision-makers to control the timing of entry to Australia by holders of Subclass 400. Previously, the visa holder was required to travel to and enter Australia within 6 months of the grant of the visa. The effect of the amendment is that decision-makers can now specify a lesser period in appropriate cases.

Part 5 – Repeals of visa classes

Part 5 provides for the repeal of the visa classes and subclasses (legacy visas) which are replaced by the new Subclass 407 (Training) and Subclass 408 (Temporary Activity) visas. The repeals do not affect current holders of the legacy visas or applicants for those visas. Applications made prior to 19 November 2016 are processed under the law as in force at that time. This is covered by the application provisions set out at item 199 of the Amendment Regulation.

The classes and subclasses repealed by Part 5 are as follows:

- Special Program (Temporary) (Class TE) – item 1205 in Schedule 1 to the Migration Regulations; Subclass 416 (Special Program) in Schedule 2 to the Migration Regulations;

- Superyacht Crew (Temporary) (Class UW) – item 1227A in Schedule 1; Subclass 488 (Superyacht Crew) in Schedule 2

- Temporary Work (Long Stay Activity) (Class GB) – item 1232 in Schedule 1; Subclass 401 (Temporary Work (long Stay Activity)) in Schedule 2;

- Training and Research (Class GC) – item 1233 in Schedule 1; Subclass 402 (Training and Research) in Schedule 2;

- Temporary Work (Entertainment) (Class GE) – item 1235 in Schedule 1; Subclass 420 Temporary Work (Entertainment) in Schedule 2.

Part 5 of the Amendment Regulation also provides for the repeal of redundant references to the Subclass 426 (Domestic Worker (Temporary) – Diplomatic or Consular) visa which was repealed on 24 November 2012 (see items 53 – 62).

Part 6 – Other amendments

Items 65, 67 – 68, 70, 72, 74 and 79

These items repeal redundant definitions.

Items 66, 69, 71, 73, 75 and 78

These items amend the definitions of various classes of sponsor in regulation 1.03 of Division 1.2 of Part 1 of the Migration Regulations. The effect of the amendment is to close six classes of sponsor to new applicants (long stay activity sponsor, professional development sponsor, special program sponsor, superyacht crew sponsor, entertainment sponsor and training and research sponsor). The amendment makes it clear that references to those classes of sponsor in the Migration Regulations are references to sponsors approved on the basis of applications made before 19 November 2016.

Item 76 – Regulation 1.03

This item inserts a definition of 'temporary activities sponsor' into regulation 1.03 of Division 1.2 of Part 1 of the Migration Regulations. Temporary activities sponsors are a new class of sponsor, replacing the classes of sponsor listed in the previous item.

Item 77 - Regulation 1.03 (definition of *temporary work sponsor*)

This item repeals the definition of 'temporary work sponsor' in regulation 1.03 of Division 1.2 of Part 1 of the Migration Regulations, and substitutes a new definition. The term 'temporary work sponsor' is a shorthand term to refer to various classes of sponsor. The

definition has been updated to omit redundant references. The definition now includes only the classes of sponsor which closed to new applications as of 19 November 2016.

Item 80 – After paragraph 1.20(4)(gc)

This item amends subregulation 1.20(4) of Division 1.4 of Part 1 of the Migration Regulations to insert references to Subclass 407 (Training) visa and the Subclass 408 (Temporary Activity) visa. The effect of the amendment is that those visas are not subject to the sponsorship regime established by the Migration Regulations. This is because the visas are subject to a different sponsorship regime, as set out in Division 3A of Part 2 of the Migration Act.

Item 81 – At the end of subregulation 2.12F(2)

This item amends subregulation 2.12F(2) of Division 2.2A of Part 2 of the Migration Regulations to allow a refund of the visa application charge to be made to an applicant for a Subclass 408 (Temporary Activity) visa who withdraws the application because the application is not supported by an approved sponsor.

Item 82 - Before paragraph 2.12F(2B)(d)

This item amends subregulation 2.12F(2B) of Division 2.2A of Part 2 of the Migration Regulations to allow a refund of the visa application charge to be made to an applicant for a Subclass 407 (Training) visa who withdraws the application because there was not an approved nomination that identified the applicant. The item also omits references to visa subclasses which were repealed on 19 November 2016.

Item 83 - Subparagraph 2.43(1)(ia)(id)

This item amends subregulation 2.43(1) of Division 2.9 of Part 2 of the Migration Regulations to allow Subclass 407 (Training) visas and Subclass 408 (Temporary Activity) visas to be cancelled under section 116 of the Migration Act on the ground that, despite the grant of the visa, the Minister is satisfied that the visa holder did not have at the time of grant of the visa, or has ceased to have, a genuine intention to stay temporarily in Australia to carry out the relevant work or activity. The item also omits a redundant reference to a repealed visa.

Items 84, 86 and 88

These items omit redundant references to repealed visas from subregulation 2.43(1) of Division 2.9 of Part 2 of the Migration Regulations.

Item 85 - Subparagraph 2.43(1)(lc)(ib)

This item amends subregulation 2.43(1) of Division 2.9 of Part 2 of the Migration Regulations to allow Subclass 407 (Training) visas and Subclass 408 (Temporary Activity) visas to be cancelled under section 116 of the Migration Act on the ground that the sponsor's approval to be a sponsor has been cancelled, or the sponsor has been barred, under section 140M of the Migration Act. The amendment also allows Subclass 407 visa to be cancelled on

the ground that a criterion for the approval of the latest nomination of the visa holder is no longer met. The item also omits a redundant reference to a repealed visa.

Item 87 - Subparagraph 2.43(1)(ld)(ib)

This item amends subregulation 2.43(1) of Division 2.9 of Part 2 of the Migration Regulations to allow Subclass 407 (Training) visas held by family members of the principal visa holder to be cancelled under section 116 of the Migration Act on the ground that the sponsor has not included the family members in the most recent nomination of the principal visa holder. The item also omits a redundant reference to a repealed visa.

Item 89 - Subparagraphs 2.43(1)(le)(ii) and (iii)

This item amends subregulation 2.43(1) of Division 2.9 of Part 2 of the Migration Regulations to allow Subclass 408 (Temporary Activity) visas held by religious workers and domestic workers to be cancelled under section 116 of the Migration Act on the ground that the sponsor has paid the return travel costs of the visa holder in accordance with applicable sponsorship obligations.

Item 90 - Paragraphs 2.56(ab) and (b)

This item amends regulation 2.56 of Division 2.11 of Part 2A of the Migration Regulations to provide that the Subclass 407 (Training) visa, the Subclass 408 (Temporary Activity) visa, and the Subclass 403 Temporary Work (International Relations) visa (Seasonal Worker program stream) are visas to which the sponsorship regime in Division 2A of Part 2 of the Migration Act is applicable. The item also omits redundant references to repealed visas.

Item 91- Paragraphs 2.56(d), (f), (g), (h), (i), (j) and (l)

This item amends regulation 2.56 of Division 2.11 of Part 2A of the Migration Regulations to omit redundant references to repealed visas.

Item 92 - Subregulation 2.57(4)

This item omits subregulation 2.57(4) of Division 2.11 of Part 2A of the Migration Regulations. The subregulation sets out the meaning of ‘net employment benefit’. Following the amendments made by the Amendment Regulation, that concept is only relevant to the Subclass 408 (Temporary Activity) visa, and the definition has therefore been moved to clause 408.111 of Schedule 2 of the Migration Regulations.

Item 93 - Paragraphs 2.58(b) to (n)

This item omits references to six classes of sponsor in regulation 2.58 in Division 2.12 of Part 2A of the Migration Regulations, and inserts a reference to the new class of ‘temporary activities sponsor’. The omitted classes of sponsor closed to new applications for approval as a sponsor as of 19 November 2016. The omitted classes of sponsor are: professional development sponsor, special program sponsor, entertainment sponsor, superyacht crew sponsor, long stay activity sponsor, and training and research sponsor.

Regulation 2.58 prescribes the classes of sponsor in relation to which a person may be approved as a sponsor for the purpose of the sponsorship regime established by Division 3A of Part 2 of the Migration Act. There are now only two classes: standard business sponsors, for sponsorship in relation to Subclass 457; and temporary activities sponsors, for sponsorship in relation to Subclass 403 (Seasonal Worker Program stream), Subclass 407 (Training) and Subclass 408 (Temporary Activity).

Item 94 – Regulations 2.60 and 2.60A

This item repeals regulation 2.60 and 2.60A from Division 2.13 of Part 2A of the Migration Regulations, and substitutes new regulation 2.60. The repealed regulations provided the criteria for approval as a professional development sponsor and a special program sponsor. These classes of sponsor closed to new applications as of 19 November 2016. A transitional provision saves the Migration Regulations for the purpose of applications made before that date.

The new regulation 2.60 sets out the criteria for approval as a temporary activities sponsor. The criteria for approval as a temporary activities sponsor reflect the permission given to temporary activities sponsors to sponsor a wide variety of visa applicants across three subclasses - the Subclass 407 (Training) visa, the Subclass 408 (Temporary Activity) visa, and the Subclass 403 Temporary Work (International Relations) visa (Seasonal Worker program stream). A wide variety of organisations can become temporary activities sponsors, including Australian organisations, religious institutions, sporting organisations, and foreign organisations. Apart from the specialised category of owners/captains of superyachts, individuals are not eligible to be temporary activities sponsors. The sponsor must be a lawfully operating organisation or a government agency. These eligibility criteria are the same as previous eligibility criteria across the six specialised classes of sponsor which are replaced by the temporary activities sponsor.

There are limitations on eligibility for visas based on sponsorship by a temporary activities sponsor, which reflect the settings in the previous legislation in relation to sponsorship by the specialised classes of sponsor. These criteria now apply as criteria in Schedule 2 of the Migration Regulations for the grant of the visas, rather than as criteria for approval as the relevant class of sponsor. For example, a religious worker applying for a Subclass 408 (Temporary Activity) visa can be sponsored by a temporary activities sponsor, but the criteria for the grant of the visa require the temporary activities sponsor to be a religious institution (clause 408.223 in Schedule 2 of the Migration Regulations).

The criteria for approval as a temporary activities sponsor also carry over previous provisions allowing refusal of an application to be approved as a temporary activities sponsor if the Department has ‘adverse information’ about the applicant for approval or an associated person. There is a definition of associated persons at regulation 1.13B in Division 1.2 of Part 1 of the Migration Regulations. Adverse information, as defined in regulation 1.13A in Division 1.2 of Part 1 of the Migration Regulations, is any adverse information relevant to a person’s suitability to be a temporary activities sponsor. This allows the Department to consider a wide range of matters in relation to the past conduct and likely future conduct of the applicant, including whether the applicant is likely to exploit sponsored visa holders or use those visa holders to meet labour requirements which are outside the intended scope of the visas.

Item 95 - Regulations 2.60D to 2.60M

This item repeals regulations 2.60D to 2.60M from Division 2.13 of Part 2A of the Migration Regulations. The repealed regulations provided the criteria for approval of the following classes of sponsor which closed to new applications as of 19 November 2016: special program sponsor, entertainment sponsor, superyacht crew sponsor, long stay activity sponsor, and training and research sponsor. A transitional provision saves the Migration Regulations for the purpose of applications made before that date.

Items 96 and 98

These items make technical amendments (consequential to items 94 and 95) to regulation 2.60S in Division 2.13 of Part 2A of the Migration Regulations.

Items 97 and 99

These items amend regulation 2.60S in Division 2.13 of Part 2A of the Migration Regulations to bring the Subclass 403 Temporary Work (International Relations) visa and the Subclass 408 Temporary Activity visa within the scope of a criterion which requires that applicants for approval as a standard business sponsor or a temporary activities sponsor must not have transferred recruitment costs to the applicant or any other person.

Item 100 – Subregulation 2.61(2)

This item repeals redundant subregulation 2.61(2) in Division 2.14 of Part 2A of the Migration Regulations. The subregulation set out the requirements, including the forms and fees, for applying for approval as a sponsor in classes of sponsor which were closed to new applications as of 19 November 2016.

Items 101 and 102

These items include a reference to temporary activities sponsors in subregulations 2.61(3A) and 2.61(3B) in Division 2.14 of Part 2A of the Migration Regulations. The effect of these amendments is to authorise the Minister to set out the process for applying for approval as a temporary activities sponsor, including the form and fee, in an instrument in writing. This approach has been adopted because it provides increased flexibility when it is necessary to amend form numbers or fees. The amendments simply add the temporary activities sponsors to subregulations which authorise the Minister to make instruments in relation to these matters for the purpose of applications for approval as a standard business sponsor. Those provisions have been in place since 2012. It is considered appropriate to locate the fees in an instrument on the basis that the instruments under regulation 2.61 are legislative instruments for the purpose of the *Legislation Act 2003* and are disallowable by Parliament. The exemptions from disallowance which apply to most instruments made under the Migration Regulations do not apply to instruments made under Part 2A (see item 20 in the table at regulation 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*).

Item 103 - Subregulations 2.61(4) to (6)

This item repeals redundant subregulations 2.61(4) – 2.61(6) in Division 2.14 of Part 2A of the Migration Regulations. The subregulations set out additional aspects of the process for applying for approval as a sponsor in the classes of sponsor which were closed to new applications as of 19 November 2016.

Item 104 – Subregulation 2.62(2)

This item amends regulation 2.62 in Division 2.14 of Part 2A of the Migration Regulations to allow the Minister to notify an applicant of a decision via the internet in cases where the application for approval as a temporary activities sponsor was made via the internet.

Items 105 and 106

These items substitute a new heading to regulation 2.63 in Division 2.14 of Part 2A of the Migration Regulations to include a reference to temporary activities sponsors, and to include a reference to temporary activities sponsors in regulation 2.63. The effect of this amendment is that the duration of approval as a temporary activities sponsor is a term of approval which can be varied by the Minister. This means that, as with the existing sponsor classes, a temporary activities sponsor does not need to make a further application to be a temporary activities sponsor. Provided that relevant criteria are met, the term of approval can be extended from time to time. One of the advantages of being a temporary activities sponsor, as compared to the existing classes of sponsor, is that approval as a temporary activities sponsor will, under Departmental policy, be granted for up to five years, which is consistent with the other remaining class of sponsor (standard business sponsorship). The classes of sponsor which are closed to new applications as of 19 November 2016 (professional development sponsor, special program sponsor, entertainment sponsor, superyacht crew sponsor, long stay activity sponsor, and training and research sponsor) are only approved for up to three years.

Item 107 – Paragraph 2.65(b)

This item amends regulation 2.65 in Division 2.16 of Part 2A of the Migration Regulations which specifies the classes of sponsor who can apply for variation of the duration of their approval as a sponsor. This is akin to a renewal of the sponsorship. The amendment omits reference to temporary work sponsors and inserts a reference to the new class of temporary activities sponsor. The term ‘temporary work sponsor’ is defined in regulation 1.03. It is a shorthand term to refer to various classes of sponsor which closed to new applications as of 19 November 2016. It is not possible, as of 19 November 2016, to apply to become a temporary work sponsor or to apply for variation of the duration of the approval as a temporary work sponsor.

Item 108 – Regulation 2.65 (note)

This item repeals the note under regulation 2.65 in Division 2.16 of Part 2A of the Migration Regulations and inserts a new note to explain the effect of the changes made by the item immediately above.

Items 109 – 111

These items amend regulation 2.66 in Division 2.16 of Part 2A of the Migration Regulations. Regulation 2.66 sets out the process for applying for variation of the duration of approval as a standard business sponsor. The effect of the amendments is that the process for applying for variation of the duration of approval as a temporary activities sponsor will be the same as the process for standard business sponsors. As noted above in relation to the process for applying for sponsorship (items 101 - 102), it was considered to be acceptable to provide for the process, including the fee, to be specified in an instrument in writing, on the basis that these instruments are subject to disallowance by the Parliament in accordance with the *Legislation Act 2003*.

Item 112 – Regulation 2.66A

This item repeals regulation 2.66A in Division 2.16 of Part 2A of the Migration Regulations. Regulation 2.66A provided for a process to vary the duration of the approval as a temporary work sponsor. As noted above (item 107), the 'temporary work sponsor' is a shorthand term to refer to various classes of sponsor which closed to new applications as of 19 November 2016. It is no longer possible, as of that date, to apply for variation of the duration of the approval as a temporary work sponsor.

Item 113 – Regulation 2.67

This item amends regulation 2.67 in Division 2.16 of Part 2A of the Migration Regulations to include a reference to temporary activities sponsors. The effect of the amendment is to permit the duration of an approval as a temporary activities sponsor to be varied. Variation of this term of approval is the means by which approval as a sponsor is renewed for a further period of time.

Items 114 – 115

These items make a technical amendment to regulation 2.68 in Division 2.16 of Part 2A of the Migration Regulations, and add a note, to provide greater clarity.

Item 116 - Regulation 2.68A

This item repeals regulation 2.68A in Division 2.16 of Part 2A of the Migration Regulations and substitutes a new regulation 2.68A. The repealed regulation set out the criteria for variation of the duration of approval as a temporary work sponsor. The sponsor classes covered by the definition of temporary work sponsor were closed to new applications as of 19 November 2016 and applications for variation of the duration of approval were also closed as of that date. A transitional provision preserves the repealed regulation for the purpose of applications for variation of the duration of approval which were made before 19 November 2016.

The new regulation 2.68A sets out the criteria for the variation of the duration of approval as a temporary activities sponsor. The criteria for variation of the term of approval mirror the approval process. The criteria are that the person has applied for the variation in accordance with the process referred to in regulation 2.61 and the person satisfies the criterion for

approval as a temporary activities sponsor set out in regulation 2.60. However, the person must also meet the criterion at regulation 2.68J, noted below at item 106.

Items 117 and 119

These items make technical amendments to subregulations 2.68J(2) and (3) in Division 2.16 of Part 2A of the Migration Regulations.

Items 118 and 120

These items amend regulation 2.68J in Division 2.16 of Part 2A of the Migration Regulations to bring the Subclass 403 Temporary Work (International Relations) visa and the Subclass 408 Temporary Activity visa within the scope of a criterion which requires that applicants for variation of the duration of approval as a standard business sponsor or a temporary activities sponsor must not have transferred recruitment costs to the applicant or any other person. Regulation 2.68J mirrors regulation 2.60S which applies to the initial application to become a standard business sponsor or a temporary activities sponsor.

Item 121 – Subregulation 2.69(2)

This item amends regulation 2.69 in Division 2.16 of Part 2A of the Migration Regulations to allow the Minister to notify an applicant of a decision via the internet in cases where the application for variation of the duration of approval as a temporary activities sponsor was made via the internet.

Items 122 - 123

These items amend regulation 2.70 in Division 2.17 of Part 2A of the Migration Regulations to omit a redundant reference, and to include a reference to temporary activities sponsors. The effect of the amendment is that temporary activities sponsors are brought within the ambit of Division 2.17 of Part 2A of the Migration Regulations. Division 2.17 of the Migration Regulations supports the regime in the Migration Act providing for approved sponsors to nominate visa applicants, proposed visa applicants, and holders of specified temporary visas, in relation to occupations, programmes or activities. Not all sponsored visas require a nomination in addition to sponsorship. This is an extra layer of regulation that the Government decided to remove from some cohorts of visa applicants. This is reflected in the fact that none of the cohorts in the new Subclass 408 (Temporary Activity) visa require nomination. However, a requirement for nomination has been retained in the Subclass 407 (Training) visa in order to maintain strong integrity controls around that visa, regarded as necessary because the visa it replaces, the Subclass 402 Temporary Work (Training and Research) visa has been used inappropriately by some sponsors. As a nomination requirement is included in Subclass 407, it is necessary to bring temporary activities sponsors within the ambit of Division 2.17. This Division will only be relevant to temporary activities sponsors who are sponsoring applicants or proposed applicants for Subclass 407, or who are sponsoring holders of that visa. If the temporary activities sponsor is a Commonwealth agency, the nomination requirement in Subclass 407 does not apply.

Item 124 – Regulations 2.72A to 2.72J

This item repeals regulations 2.72A to 2.72J in Division 2.17 of Part 2A of the Migration Regulations and substitutes new regulations 2.72A and 2.72B. The repealed regulations provided the criteria for approval of nominations for various repealed visas, some of which were repealed in 2012 and others of which were repealed by this Amendment Regulation on 19 November 2016: Subclass 401 (Temporary Work (Long Stay Activity)) visa, Subclass 402 (Training and Research) visa, and Subclass 420 (Temporary Work (Entertainment)) visa. A transitional provision preserves the operation of the repealed provisions for the purpose of assessing nominations for Subclass 401, Subclass 402, and Subclass 420 which were made prior to 19 November 2016.

The new regulation 2.72A sets out the criteria for approval of nominations of a program of occupational training in relation to a holder of, or an applicant or a proposed applicant, for a Subclass 407 (Training) visa. Unless the sponsor is a Commonwealth agency, it is a requirement that primary visa applicants for the Subclass 407 visa must be identified in an approved nomination (clause 407.214 of Schedule 2 of the Migration Regulations). The sponsor must be a temporary activities sponsor or, for nominations made by 18 May 2017, a training and research sponsor or a professional development sponsor. The cut-off date of 18 May 2017 represents a six month transitional period from the commencement of the Amendment Regulation on 19 November 206, during which sponsors in the classes being closed on 19 November can sponsor and nominate applicants for the new Subclass 407 visa.

The criteria for approval of a nomination of a programme of occupational training comprise a number of criteria which apply to every nomination, and then five alternative criteria, only one of which needs to be satisfied. The criteria which must be met by all nomination are as follows:

- The nomination must be made by a sponsor as noted above, in accordance with the required process (subregulations 2.72A(3) and (4));
- The Minister must be satisfied that the nominee will participate in the nominated program. This will allow the refusal of the nomination if the visa applicant is assessed as not having a genuine intention to participate (subregulation 2.72A(5));
- Family members holding the same visa must generally be included in the nomination (subregulations 2.72A(6) and (7));
- Details of proposed employers and the location of work must be provided (subregulations 2.72A(8) and (9)). There are limited circumstances in which there will be more than one employer. In most cases the sponsor must also be the employer. The Amendment Regulation introduces new restrictions on the outsourcing of the occupational training to third parties (see subregulation 2.72A(12) below);
- The sponsor must declare any conduct in relation to the nomination which contravenes subsection 245AR(1) of the Migration Act (subregulation 2.72A(10)). That section makes it a criminal offence to ask for or receive a payment in return for making a nomination;
- The Minister must be satisfied that there is no adverse information about the sponsor or a person associated with a sponsor, or that it is reasonable to disregard that information (subregulations 2.72A(11)). There is a definition of associated persons at regulation 1.13B in Division 1.2 of Part 1 of the Migration Regulations. Adverse information, as defined in regulation 1.13A in Division 1.2 of Part 1 of the Migration

Regulations, is any adverse information relevant to a person's suitability to be a nominator. This allows the Department to consider a wide range of matters in relation to the past conduct and likely future conduct of the applicant, including whether the applicant is likely to exploit sponsored visa holders or use those visa holders to meet labour requirements which are outside the intended scope of the visas;

- The Minister must be satisfied that the occupational training will be provided directly by the sponsor, except in cases where the sponsor is supported by a Commonwealth agency, or the sponsor is specified in a legislative instrument, or the occupational training will be provided in circumstances specified in a legislative instrument (subregulations 2.72A(12)). Sponsors may also be specified in the legislative instrument as a class. They do not have to be individually listed (see subsection 13(3) of the *Legislation Act 2003*). The restrictions on the provision of third party training are an important new integrity measure to prevent Subclass 407 being used by sponsors who are operating as, in effect, labour hire firms. In some cases, the primary objective of the sponsor and the third party employer/trainer is to provide labour to those businesses, with the training being used as a pretext for the supply of labour to that business. This improper use of occupational training has been an issue with the Subclass 402 (Training and Research) visa, which closes to new applications as of 19 November 2016 and is replaced by the Subclass 407 (Training) visa;
- Related to the previous point, the Minister must be satisfied that the sponsor does not engage in, or intend to engage in, activities that will have adverse consequences for employment or training opportunities, or conditions of employment, for Australian citizens or Australian permanent residents. Further the Minister must be satisfied that the nominated program is offered as a genuine training opportunity (subregulations 2.72A(13) and (16)). This criterion will allow the Department to consider the 'business model' of the sponsor to ensure that the sponsor is genuinely engaged in occupational training and will not use the Subclass 407 visa for the purpose of introducing additional labour into the Australian labour market;
- The Minister must be satisfied that the nominee has functional English. Functional English can be demonstrated in a number of ways, as set out in regulation 5.17 of the Migration Regulations.

The five alternative sets of specific criteria, only one of which must be satisfied, reflect the criteria which previously applied to nominations in relation to the Occupational Trainee stream of the Subclass 402 (Training and Research) visa and the criteria which applied to the Professional Development stream of Subclass 402. The criteria cover the following categories of occupational training:

- Workplace based occupational training required to obtain a registration, membership or licence required to be employed in an occupation in Australia or the home country (subregulation 2.72B(2));
- Workplace occupational training to enhance skills in an occupation specified by the Minister in a legislative instrument (subregulation 2.72B(3));
- Workplace occupational training to obtain a qualification from a foreign educational institution (subregulation 2.72B(4));
- Workplace occupational training for a nominee supported by his or her government (subregulation 2.72B(5));and

- Professional development for overseas managers and professionals (subregulation 2.72B(6)). This category simplifies the process for professional development by removing the previous requirement, which existed under the repealed Subclass 402 visa, for a professional development agreement between a professional development sponsor and the nominee's overseas employer. However, the nature of the permitted training has not changed. The primary form of the training must be face-to-face teaching in a classroom or similar environment (subregulation 2.72B(6)).

Items 125 - 126

These items repeal regulations 2.73A, 2.73B, and 2.73C in Division 2.17 of Part 2A of the Migration Regulations. Those regulations dealt with the process for making a nomination for the purposes of various repealed visa subclasses, including the subclasses being repealed by this Amendment Regulation.

Item 125 also substitutes a new regulation 2.73A which sets out the process for nominating a program of occupational training in relation to a holder of, or an applicant or proposed applicant for, a Subclass 407 (Training) visa. The regulation authorises the specification of a process in a legislative instrument, which may specify the form, fee, and other matters such as the address to which the nomination must be sent. The specification of the form and fee in a legislative instrument provides greater flexibility to adjust these from time to time. It is considered appropriate to locate the fees in an instrument on the basis that the instruments under regulation 2.73 and new regulation 2.73A are legislative instruments for the purpose of the *Legislation Act 2003* and are disallowable by Parliament.

Item 127 – Subregulation 2.74(2)

This item amends regulation 2.74 in Division 2.17 of Part 2A of the Migration Regulations to allow the Minister to notify an applicant of a decision via the internet in cases where the nomination was made via the internet.

Items 128 to 130

These items amend regulation 2.75A in Division 2.17 of Part 2A of the Migration Regulations to provide that an approved nomination of a program of occupational training is valid for a period specified in the regulation. The maximum length of time that an approved nomination is valid is 12 months. The amendments also repeal references to nominations in relation to various repealed visas, some of which were repealed in 2012 and others of which were repealed by this Amendment Regulation on 19 November 2016: Subclass 401 (Temporary Work (Long Stay Activity)) visa, Subclass 402 (Training and Research) visa, and Subclass 420 (Temporary Work (Entertainment)) visa.

Items 131 to 147

These items amend regulations 2.80 and 2.80A in Division 2.19 of Part 2A of the Migration Regulations. Regulation 2.80 deals with the obligations of sponsors to pay travel costs to enable certain sponsored persons to leave Australia. Regulation 2.80A deals with the obligations of sponsors to pay travel costs in relation to domestic workers. The effect of the amendments is to apply the existing rules to the same cohorts of persons who were previously

covered but who hold the new Subclass 408 (Temporary Activity) visa. The existing obligations of sponsors, in relation to holders of the visas repealed by this Amendment Regulation, will continue to apply.

Item 148 - Subparagraph 2.82(2)(a)(iii)

This item amends regulation 2.82 in Division 2.19 of Part 2A of the Migration Regulations. Regulation 2.82 deals with the obligations of sponsors to keep various records in relation to sponsored persons. The effect of the amendment is to apply those obligations to the new class of sponsor – the temporary activities sponsor – created by this Amendment Regulation.

Items 149 - 160

These items amend regulation 2.84 in Division 2.19 of Part 2A of the Migration Regulations. Regulation 2.84 deals with the obligations of sponsors to provide information to the Department of Immigration and Border Protection when certain events occur. The effect of the amendments is to omit redundant provisions and to insert new provisions to apply the existing rules to the new class of sponsor – the temporary activities sponsor – created by this Amendment Regulation. The amendments also cover the situation where sponsors in closed classes of sponsor are sponsoring visa applicants in relation to the new Subclass 408 (Temporary Activity) visa or the Subclass 407 (Training) visa, which is permissible in relation to visa applications made on or before 18 May 2017. The amendments maintain the existing rules in relation to reporting obligations in those cases. None of the amendments affect the obligations of sponsors in relation to holders of the visas repealed by this Amendment Regulation. Those obligations will continue to apply, including in cases where the repealed visas are granted after the commencement of the Amendment Regulation.

Items 161 - 166

These items amend regulation 2.85 in Division 2.19 of Part 2A of the Migration Regulations. Regulation 2.85 deals with the obligations of sponsors to secure an offer of a reasonable standard of accommodation for specified sponsored persons. The amendments made by these items maintain the existing position in relation to persons who come to Australia to undertake volunteer roles in religious work, sport, entertainment, and special programs such as youth exchange programs. To ensure that the sponsored person is not destitute and is not forced to work in Australia, it is an obligation for the sponsor to secure an offer of a reasonable standard of accommodation. The effect of the amendments is to apply the existing rules to sponsors of the new Subclass 408 (Temporary Activity) visa, which caters for religious work, sport, entertainment, and special programs. The obligations will apply to temporary activities sponsors who sponsor these volunteers. The obligations will also apply to any of the sponsors in the closed sponsor classes who sponsor volunteers in relation to Subclass 408, which is permissible in relation to visa applications made on or before 18 May 2017.

Item 167 – After regulation 2.86

This item inserts new regulation 2.86A in Division 2.19 of Part 2A of the Migration Regulations. The new regulation imposes an obligation on sponsors of Subclass 408 (Temporary Activity) visas to ensure that the primary sponsored person works or participates in the activity in relation to which the visa was granted.

The new regulation mirrors existing regulation 2.86 which imposes an equivalent obligation on sponsors in relation to visa holders who are nominated by a sponsor. One of the deregulation measures introduced by this Amendment Regulation is the removal of the requirement for nomination in relation to all cohorts of visa applicants who are now covered by the Subclass 408 visa. This created a gap in the sponsorship obligations framework which is addressed by new regulation 2.86A.

Regulation 2.86A is intended to ensure that sponsors take responsibility for ensuring that the sponsored non-citizen undertakes the activity in relation to which the visa was granted. For example, a sponsor would fail to comply with this obligation if a visa was granted for the purpose of religious work, and the visa holder was being used in some other capacity such as an employee of a business. The obligation on the sponsor begins to apply on the day that the visa is granted and continues until the applicant obtains a new sponsor, or obtains a different substantive visa, or leaves Australia with no permission to return.

Items 168 - 170

These items amend regulation 2.87 in Division 2.19 of Part 2A of the Migration Regulations. Regulation 2.87 imposes an obligation on approved sponsors, and persons who were approved sponsors, not to take any action to recover, transfer or take certain actions that would result in another person paying for certain costs.

The amendments insert references to the visas which require sponsorship as a result of the amendments made by this Amendment Regulation – the new Subclass 407 (Training) visa, the new Subclass 408 (Temporary Activity) visa, and the existing Subclass 403 (Temporary Work (International Relations)) visa. The Subclass 403 visa is included because there is a new stream within that visa – the Seasonal Worker Program steam – which requires sponsorship. The seasonal worker programme was previously covered by the Subclass 416 (Special Program) visa which is repealed by this Amendment Regulation.

To satisfy the obligation a person must not attempt to transfer to another person, or recover or seek to recover from another person, all or part of the following costs:

- the costs that relate specifically to the recruitment of the visa holder, including migration agent costs; and

- the costs, including migration agent costs, associated with becoming an approved sponsor, being an approved sponsor, or being a former approved sponsor.

The amendments also impose an obligation on temporary activities sponsors of Subclass 408 visa holders who are religious workers (who satisfied clause 408.223 in Schedule 2 of the Migration Regulations) or domestic workers (who satisfied clause 408.224 in Schedule 2 of the Migration Regulations). The obligation provides that the sponsor must not recover or seek to recover any expenditure in Australia by the sponsor in relation to financial support of the sponsored person or a sponsored family member of the person. These obligations mirror the obligations imposed on long stay activity sponsors who sponsored religious workers and domestic workers under the Subclass 401 (Temporary Work (Long Stay Activity)) visa which is repealed by this Amendment Regulation.

Item 171 – Regulation 2.87A

This item repeals regulation 2.87A in Division 2.19 of Part 2A of the Migration Regulations. The regulation imposed an obligation on sponsors or former sponsors involved in staff exchange arrangements to make the same or equivalent position available to exchange participants on their return to Australia. The obligation was imposed on long stay activity sponsors in relation to staff exchange arrangements provided for under the Subclass 401 (Temporary Work (Long Stay Activity)) visa. The obligation ensured that if the sponsor did not arrange for the position to be made available to the Australian participant, a civil penalty may be imposed or administrative action taken.

From 19 November 2016, the visa covering staff exchange arrangements will be the Subclass 408 (Temporary Activity) visa, with sponsorship by a temporary activities sponsor. It was decided that there was no requirement for a sponsor obligation equivalent to regulation 2.87A because it represents an unnecessary regulatory interference with normal employer-employee relationships. As a deregulation measure, it was decided not to replicate this sponsorship obligation for the new visa.

Item 172 - At the end of subregulation 2.89(1)

This item amends subregulation 2.89(1) in Division 2.20 of Part 2A of the Migration Regulations, to provide that the regulation applies to the new sponsor class of 'temporary activities sponsor'. The regulation applies to all existing sponsors, i.e. standard business sponsors, professional development sponsors and temporary work sponsors. The regulation also applies to persons who were approved sponsors. Regulation 2.89 prescribes, for the purposes of subparagraph 140L(1)(a)(i) of the Act, a circumstance in relation to failure to satisfy a sponsorship obligation. This allows the Minister to cancel approval of a sponsor, or bar an approved sponsor from sponsoring more people or applying for further approval as a sponsor, where the sponsor fails to satisfy a sponsorship obligation.

Item 173 - At the end of subregulations 2.90(1) and 2.91(1)

This item amends regulation 2.90 and regulation 2.91 in Division 2.20 of Part 2A of the Migration Regulations to include references to 'temporary activities sponsors'. Regulation 2.90 allows the Minister to cancel approval of a sponsor, or bar an approved sponsor from sponsoring more people or applying for further approval as a sponsor, if the Minister is satisfied that the sponsor has provided false or misleading information to the Department of Immigration and Border Protection or to the Administrative Appeals Tribunal. Regulation 2.91 allows the Minister to cancel approval of a sponsor, or bar an approved sponsor from sponsoring more people or applying for further approval as a sponsor, if the Minister is satisfied that the person no longer satisfies the criteria for approval as a sponsor, or no longer satisfies the criteria for approval of a variation.

Item 174 – Paragraph 2.91(2)(b)

This item is consequential to the previous item.

Items 175 to 181

These items amend regulation 2.92 in Division 2.20 of Part 2A of the Migration Regulations. The objective of regulation 2.92 is to allow the Minister to cancel approval of a sponsor, or bar an approved sponsor from sponsoring more people or applying for further approval as a sponsor, where the sponsor has been found to have contravened a Commonwealth, State or Territory law.

Subregulation 2.92(1) is amended to include a reference to the new sponsor class of 'temporary activities sponsors' and to bring them within the scope of the regulation. Subregulation 2.92(1) is also amended to remove the words "in relation to a primary sponsored person" from the references to standard business sponsors and temporary work sponsors. This amendment clarifies regulation 2.92 to make it clear that the circumstances in which a sponsor may be barred, or a sponsor's approval cancelled, include findings by a court or a competent authority that the sponsor has breached any Commonwealth, State or Territory law. The amendment makes it clear that the regulation covers breaches of laws involving persons other than the primary sponsored person. For example, the regulation would apply if the sponsor was found to have requested a payment from a family member of the primary sponsored person, or from a third party, in contravention of section 245AR of the Act.

These items also make consequential technical changes to regulation 2.92.

Items 182 and 183

These amendments apply regulation 2.93, in Division 2.20 of Part 2A of the Migration Regulations, to 'temporary activities sponsors' who sponsor youth exchanges programmes and other programmes conducted for a cultural or community purpose, as provided for in the criteria for the new Subclass 408 (Temporary Activity visa, at clauses 408.228(2) (youth exchange programmes) and clause 408.228(5) (other programmes). Regulation 2.93 requires the sponsor to obtain the written approval of the Secretary for any changes to a programme previously approved by the Secretary. This is a measure to safeguard the interests of participants in those programmes. The same obligation already exists for 'special program sponsors'. The amendments ensure that the equivalent obligation is applicable in the new legislative framework established by this Amendment Regulation, under which the class of 'special program sponsor' is replaced by the class of 'temporary activities sponsor'.

Items 184 - 187

These amendments apply regulation 2.94A, in Division 2.20 of Part 2A of the Migration Regulations, to 'temporary activities sponsors' who sponsor youth exchanges programmes and other programmes conducted for a cultural or community purpose, as provided for in the criteria for the new Subclass 408 (Temporary Activity visa, at clauses 408.228(2) (youth exchange programs) and clause 408.228(5) (other programs).

The objective of regulation 2.94A, in so far as it applies to youth exchange programmes and other programmes, is to allow the Minister to cancel approval as a sponsor, or bar a sponsor from sponsoring more people, or bar an approved sponsor or former approved sponsor from applying for further approval as a sponsor, where the sponsor has not complied with a term or condition of a 'special program agreement'. A special program agreement is a written agreement between the sponsor and the Secretary about how the programme will be

conducted. The special program agreement must be in place before visas are granted. This is a measure to safeguard the interests of participants in those programmes. The same obligation already exists for 'special program sponsors'. The amendments ensure that the equivalent obligation is applicable in the new legislative framework established by this Amendment Regulation, under which the class of 'special program sponsor' is replaced by the class of 'temporary activities sponsor'.

Items 188 - 189

These items amend subregulation 4.01(1A) in Division 4.1 of Part 4 of the Migration Regulations. The amendments omit redundant references to repealed visas, and prescribe the new Subclass 407 (Training) visa in subregulation 4.02(1A) for the purposes of paragraph 338(2)(d) of the Act.

The effect of the amendments is that, to be eligible to apply for merits review of a decision to refuse a new Subclass 407 visa, a non-citizen who applied for the visa in Australia must either be sponsored by an approved sponsor at the time of applying for merits review of the decision to refuse the visa, or merits review of the sponsorship decision must also be pending at that time. This is consistent with the arrangements for other temporary work visas, except for the new Subclass 408 (Temporary Activity) visa. The criteria for the grant of a Subclass 408 visa do not require applicants to be sponsored in all cases. Accordingly, paragraph 338(2)(d) of the Act is not applicable. That paragraph only applies if the visa cannot be granted without sponsorship. If there are alternative criteria for the grant of the visa which do not require sponsorship, paragraph 338(2)(d) does prevent access to merits review by the Administrative Appeals Tribunal by refused visa applicants who satisfy paragraphs 338(2)(a), (b) and (c).

Item 190 – At the end of subregulation 4.02(4)

This item amends subregulation 4.02(4) in Division 4.1 of Part 4 of the Migration Regulations. The amendment inserts new paragraphs to provide for review by the Administrative Appeals Tribunal in relation to decisions to refuse to grant the new Subclass 407 (Training) visa (paragraph 4.02(4)(o)) and the new Subclass 408 (Temporary Activity) visa (paragraph 4.02(4)(p)) in cases where the visa applicant applied for the visa while outside Australia.

The effect of the item is that merits review by the Administrative Appeals Tribunal is available if the visa was applied for outside Australia and the visa applicant was sponsored by an Australian citizen, a company that operates in the migration zone, a partnership that operates in the migration zone, or the holder of a permanent visa, or a New Zealand citizen who holds a special category visa. These limitations on the availability of merits review for applicants who apply outside Australia are based on the policy reflected in subsection 338(5) of the Migration Act. That section does not apply directly in the case of Subclass 407 and Subclass 408, because those visas can be granted in Australia or outside Australia, whereas subsection 338(5) only applies if the visa must be granted outside Australia. The restriction in subsection 338(5) is becoming less relevant as the Department's processes become more flexible in the online environment. To maintain access to merits review, it is necessary to provide for a review right by prescribing the relevant decisions pursuant to subsection 338(9) of the Migration Act. Identical arrangements have previously been made for the Subclass 457

(Temporary Work) (Skilled) visa (paragraph 4.02(4)(l)) and the Subclass 489 (Skilled – Regional (Provisional) visa (paragraph 4.02(4)(la)).

Item 191 – At the end of subregulation 4.02(5)

This item amends subregulation 4.02(5) in Division 4.1 of Part 4 of the Migration Regulations. The amendment inserts new paragraphs which are consequential to the amendments made by the item immediately above, to provide that review by the Administrative Appeals Tribunal may only be sought by the sponsor or nominator (in the case of Subclass 407 – paragraph 4.02(5)(n)) or the sponsor (in the case of Subclass 408, which does not require nomination – paragraph 4.02(5)(o)). The new paragraphs are consistent with the existing arrangements for review rights by applicants who apply outside Australia for temporary visas. A review right is only provided if the applicant has a sponsor or nominator, and it is the sponsor or nominator who has the right to apply for review.

Items 192 - 193

These items amend regulations 5.19L and 5.19M in Division 5.3 of Part 5 of the Migration Regulations to include references to the new class of 'temporary activities sponsor' in regulation 5.19L, and the new Subclass 407 (Training) visa and the new Subclass 408 (Temporary Activity) visa in regulation 5.19M. The Migration Regulations define classes of sponsor (regulation 5.19L) and classes of visa (regulation 5.19M) for the purpose of section 245AQ of the Migration Act. Section 245AQ is part of a regime introduced by the *Migration Amendment (Charging for a Migration Outcome) Act 2015* to make it unlawful for a person to ask for, receive, offer or provide a benefit in return for a migration outcome in relation to specified classes of sponsor and visa. The new statutory regime created new powers, and criminal and civil penalties, and definitions related to payments for sponsorships, nominations, and visas.

The effect of this amendment is that the prohibition on charging for a migration outcome applies to the new class of 'temporary activities sponsor' and to the new Subclass 407 and Subclass 408 visas. The amendment also removes redundant references to repealed classes of sponsor in regulation 5.19L.

Items 194 - 195

These items amend Part 773 of Schedule 2 to the Migration Regulations to repeal redundant references and to make consequential amendments to reflect the creation of the new Subclass 407 (Training) visa and the new Subclass 408 (Temporary Activity) visa. The effect of the amendments is that:

- a dependent child of a Subclass 407 or Subclass 408 holder, who arrives in Australia in the company of the visa holder, may be granted a Subclass 773 (Border) visa; and
- a person who, immediately before last departing Australia, held a Subclass 407 or Subclass 408 visa may, in certain circumstances, be able to obtain a Subclass 773 visa if the Subclass 407 or Subclass 408 visa has expired.

The amendments are consistent with existing arrangements.

Item 196 - Part 2 of Schedule 4 (items 4052, 4055 and 4055AA)

This item repeals redundant references from Part 2 of Schedule 4 to the Migration Regulations.

Item 197 - Paragraph 8107(4)(e) of Schedule 8

This item repeals and substitutes paragraph 8107(4)(e) of Schedule 8 to the Migration Regulations. This is a technical amendment, and is consequential to the repeal and substitution of regulation 2.72A by item 124 of Part 6 of the Amendment Regulation.

Item 198 - At the end of clause 8107 of Schedule 8

This item inserts new subclause 8107(5) into Schedule 8 to the Migration Regulations. The effect of the amendment is that visa condition 8107 requires the holder of a Subclass 407 (Training) visa to engage in the program of occupational training identified in the most recent nomination, engage in work or activity only if it is consistent with that program, and work only for an employer identified in the most recent nomination. A visa holder who fails to meet these conditions may be subject to visa cancellation under section 116 of the Migration Act. The Minister may cancel a visa if the visa holder fails to comply with a condition of the visa (paragraph 116(1)(b) of the Migration Act).

Item 199 – In the appropriate place in Schedule 13

This item amends Schedule 13 to the Migration Regulations to insert Part 60 entitled "Amendments made by the *Migration Amendment (Temporary Activity Visas) Regulation 2016*" and inserts new clauses 6001 and 6002. Schedule 13 sets out the application provisions (sometimes referred to as transitional provisions) which explain how the new regulations apply, including whether they affect accrued rights or liabilities.

The context for Schedule 13 is provided by the *Legislation Act 2003* which has the effect that amendments to the Migration Regulations cannot apply retrospectively, i.e. a provision of the Amendment Regulation would not apply in relation to a person (other than the Commonwealth or an authority of the Commonwealth) if the provision commenced before the day the instrument is registered, to the extent that as a result: (a) the person's rights as at that day would be affected so as to disadvantage the person; or (b) liabilities would be imposed on the person in respect of anything done or omitted to be done before that day (subsection 12(2) of the *Legislation Act 2003*). None of the provisions of the Amendment Regulation commence before registration, and subsection 12(2) is not engaged.

Further context for Schedule 13 is provided by paragraph 13(1)(a) of the *Legislation Act 2003,* which has the effect that the *Acts Interpretation Act 1901* applies to the Amendment Regulation as if it were an Act. Paragraph 7(2)(c) of the *Acts Interpretation Act 1901* is particularly relevant, as it has the effect that the repeal and amendment of provisions of the Migration Regulations made by the Amendment Regulation do not affect any right, privilege, obligation or liability acquired, accrued or incurred under the Migration Regulations.

As a preliminary point, it can be noted that no application provisions are required for the new Subclass 407 (Training) visa or the new Subclass 408 (Temporary Activity) visa as those

visas only come into existence of 19 November 2016 when this Amendment Regulation commences.

Inserted clause 6001, entitled 'Operation of Parts 3 and 4 of Schedule 1', provides that the amendments of the Migration Regulations made by Parts 3 and 4 of Schedule 1 to this Amendment Regulation apply in relation to an application for a visa made on or after 19 November 2016. A note clarifies that Parts 3 and 4 of Schedule 1 to the *Migration Amendment (Temporary Activity Visas) Regulation 2016* commence on 19 November 2016. This is a routine application provision in cases where amendments are being made to existing visas. Parts 3 and 4 of Schedule 1 of the Amendment Regulation deal with amendments to the existing Subclass 403 Temporary Work (International Relations) visa and the existing Subclass 400 Temporary Work (Short Stay Specialist) visa. The effect of the provision is to preserve the position of persons who apply for the visas prior to 19 November 2016. Those visa applications are not affected by the changes in the law relating to the grant of Subclass 403 or Subclass 400.

Inserted clause 6002, entitled ‘Operation of Parts 5 and 6 of Schedule 1’, provides that the amendments of the Migration Regulations made by Parts 5 and 6 of Schedule 1 to this Amendment Regulation apply as set out in clause 6002. Part 5 provides for the repeal of five visa classes and subclasses. Part 6 provides for consequential amendments to sponsorship, nominations, visa cancellation, and merits review.

Paragraphs 6002(1)(a), (b), and (c) provide that the amendments apply to applications made on or after 19 November, i.e. visa applications, applications for approval as a sponsor, and applications for variation of a term of approval as a sponsor. These are routine application provisions, to preserve the position of all persons who have applications lodged with the Department of Immigration and Border Protection when the Amendment Regulation commences on 19 November 2016.

Paragraph 6002(1)(d) also provides that the amendments only apply to nominations made on or after 19 November 2016. One effect is that no new nominations for applicants for Subclasses 401, 402 (Occupational Trainee stream) and 420 visas can be made, including by legacy sponsors and including for applications made before 19 November 2016, as those provisions have been repealed. However, an application for these visas cannot validly be made without a nomination in place at the time of making the application. Therefore the majority of applicants will not be impacted by the amendments. In a small number of cases an applicant’s nomination may expire between the visa application being made and a visa decision being made, or they may change their sponsor and wish to provide a new nomination. In those small number of cases, the applicant will not be able to provide a new nomination for the purposes of visa grant. Given the small number impacted, it would have been inefficient to continue to support the operation of the repealed nomination provisions after 19 November 2016 in a context where all paper-based applications are being replaced by online applications and where the new visa scheme for Subclass 408 no longer requires nominations. However, the Department will consider alternative arrangements for applicants who are adversely affected.

The effect of these application provisions and provisions throughout the Amendment Regulation is that applications to be approved as a legacy sponsor can no longer be made as of 19 November 2016.

The relevant definitions of the legacy sponsors have therefore been amended accordingly (see items 66, 69, 71, 73, 75, 78). The criteria for approval in the legacy sponsor classes have also been repealed (see items 94 and 95) but are saved for applications made prior to 19 November 2016 by paragraphs 6002(1)(b) and (c) noted above.

For Subclass 407, nomination will still be a requirement to make a valid application and to be granted a visa. Relevant legacy sponsors will be able to receive approval for nominations for Subclass 407 visa applications, if the nomination is made by 18 May 2017 (see subregulation 2.72A(3) inserted by item 124). This is a six month transitional period during which the relevant legacy sponsor classes can nominate visa applicants for the new Subclass 407 (Training) visa. This is not relevant to the new Subclass 408 (Temporary Activity) visa, as that visa does not require nominations. However, the transitional period for Subclass 408 is similar. Legacy sponsors can 'pass the sponsorship test' in relation to Subclass 408 visa applicants if the visa application is lodged on or before 18 May 2017 (see the definition of 'passes the sponsorship test' in clause 408.111 of Schedule 2 to the Migration Regulations, inserted by item 2).

The Department put in place a communication and consultation strategy to alert legacy sponsors to the proposed changes in advance of the commencement day. Legacy sponsors are permitted a six month transitional period noted above, and they can apply at any time from 19 November 2016 for approval as a temporary activities sponsor, for which the application fee will be $420 (as set out in a legislative instrument to be made for the purpose of subregulation 2.61(3A) as amended by item 101 of the Amendment Regulation).

Subclause 6002(2) provides for refunds of the fee paid under regulation 2.61 for approval to become a sponsor in one of the legacy classes of sponsor to cater for this transitional period. If the application to be a legacy sponsor has not been decided by 18 May 2017 there would be almost no purpose in being approved as a legacy sponsor after 18 May for the reasons outlined above. Subclause 6002(2) allows the Minister to refund the fee if the application is withdrawn.

Subclause 6002(3) provides for refunds of the fee paid under regulation 2.73A in relation to a nomination lodged prior to 19 November 2016 for a proposed visa applicant for a legacy visa who did not subsequently lodge a visa application prior to 19 November 2016. In this situation, the nomination serves no purpose. Subclause 6002(3) allows the Minister to refund the fee if the nomination is withdrawn.

Schedule 2 – Visa application charge for entrepreneur stream

Migration Regulations 1994

Item 1 – Paragraph 1104BA(2)(a) of Schedule 1

This item amends the amount of the first instalment of the visa application charge (VAC) relating to a Subclass 888 (Business Innovation and Investment (Permanent)) Visa in the Entrepreneur stream, by repealing paragraph 1104BA(2)(a) of Schedule 1 of the Migration Regulations, and substituting it with a new paragraph setting out a new and lower charge.

The purpose of this amendment is to correct the arrangements relating to the first instalment of the visa application charge (VAC) in relation to an application for a Subclass 888 (Business Innovation and Investment (Permanent)) visa, by replacing specific provisions that applied to applicants seeking to satisfy the criteria for a Subclass 888 visa in the Entrepreneur stream. The effect is that those applicants would only need to pay the lower amount of VAC applicable to all other applicants for a Subclass 888 visa, as intended.

Specifically, the effect of new paragraph 1104BA(2)(a) is to reduce the current VAC of $3,600 for a base application, $1,800 for an additional applicant over 18, and $900 for an additional applicant aged under 18, to the following lower VACs:

- $2,305 for a base application;
- $1,155 for an additional applicant over 18; and
- $575 for an additional applicant aged under 18.

In calculating the amount of the visa application charge, the intention was that the charge for a permanent Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Entrepreneur stream would remain consistent with the VAC for all other streams of the Subclass 888 visa of $2305. Through an administrative oversight, the intended VAC for the provisional stage was inadvertently mirrored for the permanent stage. This resulted in a higher charge of $3600 being set, instead of the intended charge of $2305. Although no persons are yet eligible for this permanent visa (and therefore no one has been disadvantaged by the higher VAC), the amendment ensures the lower and correct fee applies in the future when persons will be eligible to pay the VAC.

The VAC for the permanent Subclass 888 (Business Innovation and Investment (Permanent) Visa is determined by the Government by reference to a range of factors, including Government policy objectives, the likely contribution of the individual to Australian society and the comparison to similar visas in the global economy. Specifically, the VAC for the Subclass 888 (Business Innovation and Investment (Permanent) Visa stream is set at $2305 to balance the expected economic contribution of business and investment migrants with the amount the Government could reasonably expect such applicants to afford. The pricing also ensures the visa programme remained internationally competitive. The VAC of $2305 is intended to now also apply to the Entrepreneur stream because, after four years on a provisional Entrepreneur visa, an applicant could reasonably be expected to have generated sufficient wealth to cover this charge.