



Migration Amendment (Administrative Review Tribunal Consequential Amendments) Regulations 2024

I, the Honourable Sam Mostyn AC, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 15 August 2024

Sam Mostyn AC
Governor-General

By Her Excellency's Command

Tony Burke
Minister for Immigration and Multicultural Affairs

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1 Name

This instrument is the *Migration Amendment (Administrative Review Tribunal Consequential Amendments) Regulations 2024*.

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	Immediately after the commencement of Schedule 2 to the <i>Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024</i> .	

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—Amendments

Part 1—Main Amendments

Migration Regulations 1994

1 Regulation 1.03 (paragraphs (a) and (b) of the definition of *substituted Subclass 600 visa*)

Omit “section 345, 351, 417 or 501J”, substitute “section 351 or 501J, or repealed section 417,”.

2 Paragraphs 2.08AAA(1)(b) and (e)

Repeal the paragraphs.

3 Subregulations 2.08E(2A) and (2B)

Repeal the subregulations.

4 At the end of subparagraphs 2.08F(3)(b)(i) and (ii)

Add “as in force when the matter is remitted”.

5 After subparagraph 2.08F(3)(b)(ii)

Insert:

- (ia) the ART remits a matter in relation to the pre-conversion application in accordance with subsection 349(2) of the Act;
- (iib) the ART remits a matter in relation to the pre-conversion application in accordance with paragraph 105(c) of the ART Act;

6 At the end of subparagraphs 2.08F(4)(b)(i) and (ii)

Add “as in force when the matter was remitted”.

7 At the end of paragraphs 2.08G(1A)(a), (b) and (c)

Add “as in force when the matter is remitted”.

8 After paragraph 2.08G(1A)(c)

Insert:

- (ca) the ART remits a matter in relation to the pre-conversion application in accordance with subsection 349(2) of the Act;
- (cb) the ART remits a matter in relation to the pre-conversion application in accordance with paragraph 105(c) of the ART Act;

9 At the end of subparagraphs 2.08G(2)(b)(i), (ii) and (iii)

Add “as in force when the matter was remitted”.

10 Subparagraph 2.12C(5)(e)(iii)

Omit “section 195A, 345, 351, 417 or 501J”, substitute “section 195A, 351 or 501J, or repealed section 417,”.

11 Paragraphs 2.12G(1)(b) and 2.12H(2)(c)

Omit “subsection 5(9)”, substitute “section 11A”.

12 Paragraph 2.15(1)(a)

Omit “3 working”, substitute “5”.

13 Sub-subparagraph 2.15(1)(b)(ii)(B)

Repeal the sub-subparagraph.

14 Paragraph 2.15(3)(a)

Omit “3 working”, substitute “5”.

15 Subparagraph 2.15(3)(b)(ii)

Repeal the subparagraph.

16 Paragraph 2.15(4)(a)

Omit “2 working”, substitute “5”.

17 After subregulation 2.74(1)

Insert:

(1A) If the applicant has a right to have the decision reviewed by application under Part 5 of the Act, the notification must state all of the following:

- (a) that the decision can be reviewed by the ART;
- (b) the time in which the application for review may be made;
- (c) who can apply for the review;
- (d) where the application for review may be made.

18 Paragraph 2.98(1)(c)

After “decision reviewed”, insert “by application”.

19 Subparagraph 2.98(1)(c)(i)

After “reviewed”, insert “by the ART”.

20 Division 4.1 (heading)

Repeal the heading (including the note), substitute:

Division 4.1A—Preliminary

21 Before regulation 4.02

Insert:

Division 4.1—Review of reviewable migration decisions

4.01A Application of this Division

This Division applies in relation to the review of reviewable migration decisions.

Note: The review of reviewable protection decisions is dealt with in Division 4.2.

22 Subregulation 4.02(5)

Omit “For paragraph 347(2)(d)”, substitute “For the purposes of paragraph 347A(1)(d)”.

23 Regulations 4.10 and 4.11

Repeal the regulations.

24 After regulation 4.12

Insert:

4.12A Prescribed information and documents for review applications

- (1) This regulation is made for the purposes of subsection 347(2) of the Act.
- (2) If the person (the **review applicant**) making an application for review of a reviewable migration decision has a copy of the notification of the decision, the prescribed document is a copy of that notification.
- (3) If the review applicant does not have a copy of that notification and the review applicant is an individual, the prescribed information is:
 - (a) the review applicant's full name; and
 - (b) the review applicant's address and contact details; and
 - (c) the date of the decision (if known to the review applicant) and a description of the decision; and
 - (d) at least one of the following:
 - (i) the review applicant's date of birth;
 - (ii) the review applicant's country of birth;
 - (iii) the review applicant's citizenship or nationality;
 - (iv) the country of issue and number of the review applicant's passport; and
 - (e) if the decision relates to an application for a visa made by a person (the **visa applicant**) who is not the review applicant—the information specified in subregulation (5).
- (4) If the review applicant does not have a copy of that notification and the review applicant is not an individual, the prescribed information is:
 - (a) the review applicant's name; and
 - (b) the review applicant's trading name (if any and if different from the review applicant's name); and
 - (c) if the review applicant has an ABN (within the meaning of the *A New Tax System (Australian Business Number) Act 1999*) or ACN (within the meaning of the *Corporations Act 2001*)—the ABN or ACN; and
 - (d) the review applicant's business address; and
 - (e) the name, position and contact details of a contact person for the review applicant; and
 - (f) the date of the decision (if known to the review applicant) and a description of the decision; and
 - (g) if the decision relates to an application for a visa made by a person (the **visa applicant**) who is not the review applicant—the information specified in subregulation (5).
- (5) For the purposes of paragraphs (3)(e) and (4)(g), the following information is specified:
 - (a) the visa applicant's full name;
 - (b) the visa applicant's address and contact details;

- (c) at least one of the following:
- (i) the visa applicant's date of birth;
 - (ii) the visa applicant's country of birth;
 - (iii) the visa applicant's citizenship or nationality;
 - (iv) the country of issue and number of the visa applicant's passport.

25 Subregulation 4.13(1)

Repeal the subregulation, substitute:

- (1) Subject to this regulation, the prescribed fee for an application for review by the ART of a reviewable migration decision is \$3,496.

Note: The fee in this subregulation is subject to increase under regulation 4.13A.

26 Subregulation 4.13(4)

Repeal the subregulation, substitute:

- (4) If the ART Principal Registrar, having regard to the review applicant's income, expenses, liabilities and assets, considers that the payment of the fee mentioned in subregulation (1) would cause, or has caused, financial hardship to the review applicant, the prescribed fee is 50% of the amount mentioned in subregulation (1).

27 Regulation 4.13A

Repeal the regulation, substitute:

4.13A Annual increases in fees

The fee prescribed by subregulation 4.13(1) is increased, in accordance with regulation 4.13B, on each 1 July starting on 1 July 2025.

28 Subregulation 4.13B(5) (definition of *relevant period*)

Omit "2018", substitute "2024".

29 Subregulation 4.14(1) (subheading before table item 1)

Omit "*severe*".

30 Subregulation 4.14(1) (table item 1)

Omit "the Registrar of the Tribunal has made a determination mentioned in subregulation 4.13(4)", substitute "subregulation 4.13(4) applies".

31 Subregulation 4.14(1) (subheading before table item 5)

Omit "*Tribunal*", substitute "*ART*".

32 Regulation 4.15 (heading)

Repeal the heading, substitute:

4.15 ART's power to remit matters with orders

33 Subregulation 4.15(1)

Omit "paragraph 349(2)(c)", substitute "the purposes of subsection 349(2)".

34 Paragraph 4.15(1)(a)

Omit “or entry permit made on or after 19 December 1989”.

35 Paragraph 4.15(1)(b)

Omit “direction”, substitute “order”.

36 Paragraph 4.15(1)(b)

Omit “or entry permit”.

37 After subregulation 4.15(1)

Insert:

(1A) For the purposes of subsection 349(2) of the Act:

- (a) the following are prescribed matters:
 - (i) a nomination under subsection 140GB(1) of the Act;
 - (ii) a nomination referred to in subregulation 5.19(1); and
- (b) a permissible order is that the nomination must be taken to have met a specified criterion or requirement for approval under subsection 140GB(2) of the Act or subregulation 5.19(3) (as the case may be).

38 Subregulation 4.15(2)

Omit “paragraph 349(2)(c)”, substitute “the purposes of subsection 349(2)”.

39 Subregulation 4.15(3)

Omit “direct”, substitute “order”.

40 Subregulation 4.15(3) (note 1)

Repeal the note.

41 Subregulation 4.15(4)

Repeal the subregulation, substitute:

- (4) If:
 - (a) a person applies for a Prospective Marriage (Temporary) (Class TO) visa; and
 - (b) in the period after the Minister’s decision on the application is made and before the application is finally determined, the applicant:
 - (i) marries the person who was specified in the application as the applicant’s prospective spouse; and
 - (ii) notifies the ART of the marriage; and
 - (c) the marriage is recognised as valid for the purposes of the Act; and
 - (d) the ART decides to remit the application to the Minister for reconsideration;

then, for the purposes of paragraph 349(2)(b) of the Act, the permissible order is that the application must be taken to also be an application:

- (e) for a Partner (Migrant) (Class BC) visa and for a Partner (Provisional) (Class UF) visa; and
- (f) that is made on the day that the application is remitted to the Minister.

42 Regulations 4.17 to 4.25 and 4.27B

Repeal the regulations.

43 Division 4.2 (heading)

Omit “Part 7-reviewable”, substitute “reviewable protection”.

44 Subdivision 4.2.1 (heading)

Repeal the heading.

45 Regulation 4.28

Repeal the regulation, substitute:

4.28 Application of this Division

This Division applies in relation to the review of reviewable protection decisions.

Note: The review of reviewable migration decisions is dealt with in Division 4.1.

46 Subdivision 4.2.3 (heading)

Repeal the heading.

47 Regulations 4.31 and 4.31AA

Repeal the regulations, substitute:

4.31 Prescribed information and documents for review applications

- (1) This regulation is made for the purposes of subsection 347(2) of the Act.
- (2) If the person making an application for review of a reviewable protection decision has a copy of the notification of the decision, the prescribed document is a copy of that notification.
- (3) If the person does not have a copy of that notification, the prescribed information is:
 - (a) the person’s full name; and
 - (b) the person’s address and contact details; and
 - (c) the date of the decision (if known to the person) and a description of the decision; and
 - (d) at least one of the following:
 - (i) the person’s date of birth;
 - (ii) the person’s country of birth;
 - (iii) the person’s citizenship or nationality or a statement that the person is stateless;
 - (iv) the country of issue and number of the person’s passport.

48 Paragraph 4.31A(a)

After “2.08A”, insert “, 2.08AAA”.

49 Subregulations 4.31B(1) and (2)

Repeal the subregulations, substitute:

- (1) The prescribed fee for an application for review by the ART of a reviewable protection decision is \$2,151.

Note: The fee in this subregulation is subject to increase under regulation 4.31BA.

- (2) The fee must be paid within the 7-day period beginning on the day when:
 - (a) if the ART's decision is given to the applicant orally—the applicant is taken, under subsection 368(7) of the Act, to have been notified of that decision; or
 - (b) otherwise—the applicant is taken, under section 379C of the Act, to have received the notification of that decision.

50 Subregulation 4.31B(3)

Omit “direction”, substitute “order”.

51 After subregulation 4.31B(3)

Insert:

- (3AA) No fee is payable for review of a reviewable protection decision if:
 - (a) the decision was referred to the ART under subitem 35(2) or 37(2) of Schedule 16 to the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024*; or
 - (b) the proceeding for review of the decision was continued and finalised by the ART in accordance with subitem 36(2) of that Schedule.

52 Regulation 4.31BA

Repeal the regulation, substitute:

4.31BA Annual increases in fees

The fee prescribed by subregulation 4.31B(1) is increased in accordance with regulation 4.31BB, on each 1 July starting on 1 July 2025.

53 Subregulation 4.31BB(5) (paragraph (a) of the definition of fee)

Omit “paragraph 4.31B(1)(c)”, substitute “subregulation 4.31B(1)”.

54 Subregulation 4.31BB(5) (definition of relevant period)

Omit “2018”, substitute “2024”.

55 Subparagraph 4.31C(1)(a)(ii)

Omit “direction”, substitute “order”.

56 Paragraph 4.31C(1)(b)

Omit “section 417 of the Act, has substituted for the decision of the Tribunal”, substitute “section 351 or repealed section 417 of the Act, has substituted for the decision of the Administrative Appeals Tribunal or the ART”.

57 Subregulation 4.33(1)

Omit “paragraph 415(2)(c)”, substitute “subsection 349(2)”.

58 Subregulation 4.33(2)

Omit “paragraph 415(2)(c)”, substitute “paragraph 349(2)(b)”.

59 Subregulation 4.33(2)

Omit “direction” (wherever occurring), substitute “order”.

60 Subregulation 4.33(3)

Omit “For paragraph 415(2)(c)”, substitute “For the purposes of paragraph 349(2)(b)”.

61 Subregulation 4.33(3)

Omit “direction” (wherever occurring), substitute “order”.

62 Subregulation 4.33(4)

Omit “For paragraph 415(2)(c)”, substitute “For the purposes of paragraph 349(2)(b)”.

63 Subregulation 4.33(4)

Omit “direction” (wherever occurring), substitute “order”.

64 Subregulation 4.33(5)

Omit “For paragraph 415(2)(c)”, substitute “For the purposes of paragraph 349(2)(b)”.

65 Subregulation 4.33(5)

Omit “direction”, substitute “order”.

66 Regulation 4.34

Omit “subsection 418(2)”, substitute “subsection 352(2)”.

67 Regulations 4.34A to 4.36

Repeal the regulations.

68 Division 4.4

Repeal the Division.

69 Subparagraphs 1129(3)(c)(ii) and (d)(ii) of Schedule 1

Omit “section 345, 351, 417 or 501J”, substitute “section 351 or 501J, or repealed section 417,”.

70 Subparagraph 1222(4)(c)(ii) of Schedule 1

Repeal the subparagraph, substitute:

- (ii) if that last substantive visa was cancelled, and the ART has made a decision to set aside and substitute the cancellation decision or the Minister’s decision not to revoke the cancellation—the later of the day when that last substantive visa ceased to be in effect and the day when:
 - (A) if the ART’s decision is given to the applicant orally—the applicant is taken, under subsection 368(7) of the Act, to have been notified of the decision; or
 - (B) otherwise—the applicant is taken, under section 379C of the Act, to have received the notification of the ART’s decision;

71 Subparagraph 1229(4)(a)(iv) of Schedule 1

Repeal the subparagraph, substitute:

- (iv) if the ART made a decision to set aside and substitute the Minister's decision not to revoke the cancellation of the applicant's eligible student visa—the applicant must:
 - (A) if the ART's decision is given to the applicant orally—have been taken, under subsection 368(7) of the Act, to have been notified of the decision not more than 28 days before the day on which the application is made;
 - (B) otherwise—have been taken, under section 379C of the Act, to have received the notification of the ART's decision not more than 28 days before the day on which the application is made;

72 Subitem 1237(3) of Schedule 1 (table item 5, subparagraph (c)(ii))

Repeal the subparagraph, substitute:

- (ii) if that last substantive visa was cancelled, and the ART 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:
 - (A) if the ART's decision is given to the applicant orally—the applicant is taken, under subsection 368(7) of the Act, to have been notified of the decision; or
 - (B) otherwise—the applicant is taken, under section 379C of the Act, to have received the notification of the ART's decision

73 Subitem 1238(3) of Schedule 1 (table item 7, subparagraph (c)(ii))

Repeal the subparagraph, substitute:

- (ii) if that last substantive visa was cancelled, and the ART 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:
 - (A) if the ART's decision is given to the applicant orally—the applicant is taken, under subsection 368(7) of the Act, to have been notified of the decision; or
 - (B) otherwise—the applicant is taken, under section 379C of the Act, to have received the notification of the ART's decision

74 Divisions 010.1, 020.1, 030.1 and 050.1 of Schedule 2 (note to Division heading)

Repeal the note, substitute:

Note: *ART* is defined in subsection 5(1) of the Act. *Compelling need to work* and *criminal detention* are defined in regulation 1.03. For *eligible non-citizen*, see regulation 2.20. There are no interpretation provisions specific to this Part.

75 Subclause 050.212(1) of Schedule 2

Omit "(6B),".

76 Subparagraph 050.212(5B)(c)(ii) of Schedule 2

Omit "section 345, 351 or 417", substitute "section 351, or repealed section 417,".

77 Subparagraph 050.212(6)(b)(i) of Schedule 2

Omit "section 345, 351 or 417", substitute "section 351".

78 Subparagraphs 050.212(6)(b)(ii) and (c)(i) of Schedule 2

Omit "section 345, 351 or 417", substitute "section 351, or repealed section 417,".

79 Subclause 050.212(6AA) of Schedule 2

Omit “section 345, 351 or 417 of the Act, to substitute a more favourable decision for the decision of the Tribunal”, substitute “section 351 or repealed section 417 of the Act, to substitute a more favourable decision for the decision of the Administrative Appeals Tribunal or the ART”.

80 Paragraph 050.212(6A)(b) of Schedule 2

Omit “section 345, 351 or 417 of the Act, to substitute a more favourable decision for the decision of the Tribunal”, substitute “section 351 or repealed section 417 of the Act, to substitute a more favourable decision for the decision of the Administrative Appeals Tribunal or the ART”.

81 Subclause 050.212(6B) of Schedule 2

Repeal the subclause.

82 Subparagraph 050.511(1)(b)(iiia) of Schedule 2

After “subsection 473CC(2) of the Act”, insert “, as in force at the time of the decision,”.

83 Subparagraph 050.511(1)(b)(iiia) of Schedule 2

After “section 473CA of the Act”, insert “as in force at the time of the referral”.

84 Subparagraphs 050.615(1)(b)(i) and 050.615A(1)(b)(i) of Schedule 2

Omit “section 345, 351 or 417”, substitute “section 351, or repealed section 417,”.

85 Clause 050.616 of Schedule 2

Repeal the clause.

86 Division 051.1 of Schedule 2 (note 1 to Division heading)

Repeal the note, substitute:

Note 1: *ART* is defined in subsection 5(1) of the Act. *Compelling need to work* and *criminal detention* are defined in regulation 1.03. For *eligible non-citizen*, see regulation 2.20. For *finally determined*, see section 11A of the Act. There are no interpretation provisions specific to this Part.

87 Paragraph 051.511(1)(bb) of Schedule 2

After “subsection 473CC(2) of the Act”, insert “, as in force at the time of the decision,”.

88 Paragraph 051.511(1)(bb) of Schedule 2

After “section 473CA of the Act”, insert “as in force at the time of the referral”.

89 Paragraph 051.513(1)(bb) of Schedule 2

After “subsection 473CC(2) of the Act”, insert “, as in force at the time of the decision,”.

90 Paragraph 051.513(1)(bb) of Schedule 2

After “section 473CA of the Act”, insert “as in force at the time of the referral”.

91 Clause 100.111 of Schedule 2 (paragraph (b) of the definition of *sponsoring partner*)

Omit “section 345, 351, 417 or 501J”, substitute “section 351 or 501J, or repealed section 417,”.

92 Paragraph 100.221(2A)(a) of Schedule 2

Omit “section 345, 351, 417 or 501J”, substitute “section 351 or 501J, or repealed section 417,”.

93 Subparagraph 100.321(d)(i) of Schedule 2

Omit “section 345, 351, 417 or 501J”, substitute “section 351 or 501J, or repealed section 417,”.

94 Clause 801.111 of Schedule 2 (paragraph (b) of the definition of *sponsoring partner*)

Omit “section 345, 351, 417 or 501J”, substitute “section 351 or 501J, or repealed section 417,”.

95 Paragraph 801.221(2A)(a) of Schedule 2

Omit “section 345, 351, 417 or 501J”, substitute “section 351 or 501J, or repealed section 417,”.

96 Paragraph 801.311(3)(a) of Schedule 2

Omit “section 345, 351, 417 or 501J”, substitute “section 351 or 501J, or repealed section 417,”.

97 Subparagraph 801.321(a)(iii) of Schedule 2

Omit “section 345, 351, 417 or 501J”, substitute “section 351 or 501J, or repealed section 417,”.

98 Paragraph 3001(2)(d) of Schedule 3

Repeal the paragraph, substitute:

- (d) if the last substantive visa held by the applicant was cancelled, and the ART has made a decision to set aside and substitute the cancellation decision or the Minister’s decision not to revoke the cancellation—the later of the day when that last substantive visa ceased to be in effect and the day when:
 - (i) if the ART’s decision is given to the applicant orally—the applicant is taken, under subsection 368(7) of the Act, to have been notified of the decision; or
 - (ii) otherwise—the applicant is taken, under section 379C of the Act, to have received the notification of the ART’s decision.

Part 2—Bulk amendments

Migration Regulations 1994

99 Amendments of listed provisions

The provisions listed in the following table are amended as set out in the table.

Amendments		
Provision	Omit (wherever occurring)	Substitute
1.03 (definition of <i>outstanding</i>)	Tribunal	ART
1.13A(2)(e)	Tribunal	ART
2.11(3)	Tribunal	ART
2.43(1)(1)(ii)	Tribunal	ART
2.90(2)	Tribunal	ART
4.02 (heading)	Part 5-reviewable	Reviewable migration
4.02(4), (4A) and (4B)	Part 5-reviewable	reviewable migration
4.12 (heading)	Tribunal	ART
4.12(2)(c)	Part 5-reviewable	reviewable migration
4.12(2)	Tribunal	ART
4.12(4)(c)	Part 5-reviewable	reviewable migration
4.12(4)	Tribunal	ART
4.12(5)	Tribunal of:	ART of:
4.12(5)(b)	Part 5-reviewable	reviewable migration
4.12(5)	Tribunal of the	ART of the
4.12(6)(c)	Part 5-reviewable	reviewable migration
4.12(6)	Tribunal	ART
4.13 (heading)	Tribunal	ART
4.13(2) and (3)	Tribunal	ART
4.14 (heading)	Tribunal	ART
4.14(1) (table items 2 and 3)	Tribunal	ART
4.14(2)	Tribunal	ART
4.15(1)	Tribunal's	ART's
4.15(3)	Tribunal	ART
4.16	Registrar	ART
4.16	Tribunal	ART
4.27	Tribunal	ART
4.31A (heading)	Tribunal	ART
4.31A(c)	Part 7-reviewable	reviewable protection
4.31A	Tribunal	ART
4.31B (heading)	Tribunal	ART
4.31B(3)	Tribunal	ART
4.31B(3A)(b)	Tribunal's	ART's
4.31B(3A)(b)	Tribunal	ART
4.31C (heading)	Tribunal	ART
4.31C(1)(a)	Tribunal	ART

Amendments		
Provision	Omit (wherever occurring)	Substitute
4.33 (heading)	Tribunal	ART
4.39(1) (definition of <i>lodge an address for service</i>)	Tribunal	ART
4.39(2)	Part 5-reviewable	reviewable migration
4.39(2)	Part 7-reviewable	reviewable protection
4.39(3)	Tribunal	ART
5.19(15)(b)(ii)	Part 5-reviewable	reviewable migration
5.19(15) (note)	Part 5-reviewable	reviewable migration
5.41(1)	Tribunal	ART
1111(3A)(e)(ii) of Schedule 1	Tribunal	ART
1128(3)(e)(ii) of Schedule 1	Tribunal	ART
1216(3)(d)(ii) of Schedule 1	Tribunal	ART
1229(5)(e)(iv) of Schedule 1	Tribunal	ART
1301(3)(e) of Schedule 1	Tribunal	ART
010.511(1)(b) of Schedule 2	Tribunal	ART
010.513(c) of Schedule 2	Tribunal	ART
020.511(1)(b) of Schedule 2	Tribunal	ART
020.512(ba) of Schedule 2	Tribunal	ART
030.511(1)(b) of Schedule 2	Tribunal	ART
030.512(c) of Schedule 2	Tribunal	ART
050.511(1)(b) of Schedule 2	Tribunal	ART
050.511C(1)(b)(ii) of Schedule 2	Tribunal	ART
050.511D(1) of Schedule 2	Tribunal	ART
050.512(c) of Schedule 2	Tribunal	ART
050.513(1) of Schedule 2	Tribunal	ART
050.513B(1) of Schedule 2	Tribunal	ART
050.514(1) of Schedule 2	Tribunal	ART
050.514AB(1) of Schedule 2	Tribunal	ART
051.511(1) of Schedule 2	Tribunal	ART
051.512(d) of Schedule 2	Tribunal	ART
051.513(1) of Schedule 2	Tribunal	ART
051.513(2)(d) of Schedule 2	Tribunal	ART
100.221(4A)(b) of Schedule 2	Tribunal	ART
192.112(2)(e) of Schedule 2	Tribunal	ART
309.321(2)(b)(iii) of Schedule 2	Tribunal	ART
408.112(2)(e) of Schedule 2	Tribunal	ART
801.221(8)(b) of Schedule 2	Tribunal	ART
820.321(b)(iii) of Schedule 2	Tribunal	ART
4020(1) of Schedule 4	Tribunal	ART
4020(1) of Schedule 4	Part 5-reviewable	reviewable migration

Part 3—Application and transitional provisions

Migration Regulations 1994

100 In the appropriate position in Schedule 13

Insert:

Part 139—Amendments made by the Migration Amendment (Administrative Review Tribunal Consequential Amendments) Regulations 2024

13901 Definition

In this Part:

amending Part means Part 1 of Schedule 1 to the *Migration Amendment (Administrative Review Tribunal Consequential Amendments) Regulations 2024*.

13902 Application provision—invitation to give additional information or comments

The amendments made to paragraphs 2.15(1)(a), (3)(a) and (4)(a) by the amending Part apply in relation to an invitation given under section 56 or 57 of the Act on or after the commencement of the amending Part.

13903 Transitional provision—invitation to give additional information or comments

- (1) This clause applies if:
 - (a) an invitation was given under section 56 or 57 of the Act before the commencement of the amending Part; and
 - (b) the prescribed period for the invitation was the period prescribed by sub-subparagraph 2.15(1)(b)(ii)(B) or subparagraph 2.15(3)(b)(ii) of these Regulations (as the case may be); and
 - (c) immediately before that commencement, that period has not ended.
- (2) The prescribed period for the invitation is taken, on and after the commencement of the amending Part, to be the period prescribed by sub-subparagraph 2.15(1)(b)(ii)(C) or subparagraph 2.15(3)(b)(iii) of these Regulations (as the case may be).

13904 Application and saving provisions—review application fee

- (1) Subregulation 4.31B(2), as inserted by the amending Part, applies in relation to an application for review made on or after the commencement of the amending Part.
- (2) Despite the repeal of subregulation 4.31B(2) as in force immediately before the commencement of the amending Part, that subregulation continues to apply, on and after that commencement, in relation to an application for review made before that commencement, as if the repeal had not happened.

EXPLANATORY STATEMENT

Issued by the Minister for Immigration and Multicultural Affairs

Migration Act 1958

Migration Amendment (Administrative Review Tribunal Consequential Amendments) Regulations 2024

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

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

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

The Government has established a new, fit-for-purpose federal administrative review body, the **Administrative Review Tribunal (ART)**, which will replace the Administrative Appeals Tribunal (**AAT**).

The *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024* (**C&T No. 1 Act**) made extensive amendments to the Migration Act to support the commencement of the ART. Those amendments significantly harmonise how reviews of migration and protection decisions are conducted with the way reviews are conducted in other caseloads. Some of the key changes were to:

- consolidate Parts 5 and 7 into new Part 5 of the Migration Act;
- repeal a range of procedural requirements to increase efficiency and flexibility for the ART when conducting reviews of reviewable migration and protection decisions;
- repeal Part 7AA to abolish the Immigration Assessment Authority (IAA); and
- introduce a range of terminology changes.

The *Migration Amendment (Administrative Review Tribunal Consequential Amendments) Regulations 2024* (**Amending Regulations**) amend the *Migration Regulations 1994* (**Migration Regulations**) to align with the amended Migration Act and support the transition to the ART. Most amendments are consequential to the C&T No. 1 Act and broadly have the effect of standardising the way reviews of reviewable migration and protection decisions are conducted with reviews of other types of decisions. The Amending Regulations also specify the requirements for properly making an application to the ART (a necessary precondition to invoking the Tribunal's jurisdiction) and make other minor amendments aimed at improving efficiency for the ART or to simplify drafting in the Migration Regulations.

The consequential amendments include:

- amending Divisions 4.1 and 4.2 of Part 4 of the Migration Regulations to reflect the consolidation of Parts 5 and 7 into new Part 5 of the Migration Act and the repeal of certain

procedural requirements for the ART when conducting reviews of reviewable migration and protection decisions;

- repealing Division 4.4 of Part 4 of the Migration Regulations, which is redundant following the repeal of Part 7AA of the Migration Act by the C&T No. 1 Act;
- amending terminology throughout the Migration Regulations to repeal the definition of ‘Tribunal’ and insert ‘ART’, repeal ‘Part 5-reviewable decision’ and insert ‘reviewable migration decision’, repeal ‘Part 7-reviewable decision’ and insert ‘reviewable protection decision’ and repeal all definitions in relation to fast track applicants; and
- updating references to the new provisions in the Migration Act.

The Amending Regulations prescribe the information or documents that must be provided to the ART when making an application for review of a reviewable migration or reviewable protection decision. They provide that an applicant must give to the ART either a copy of the notification of the decision, or if they do not have a copy of notification of the decision, the prescribed information. **Providing this document or information within the timeframe for applying for review (7 days for people in immigration detention; 28 days for other migration and protection reviewable applicants)** is a necessary precondition to invoking the ART’s jurisdiction. These amendments are consequential to the repeal, by the C&T No. 1 Act, of the requirement to apply by completing the approved form, which was intended to remove a barrier to accessing merits review.

The Amending Regulations maintain existing policy settings in relation to fees payable by applicants seeking merits review of reviewable migration and reviewable protection decisions. The only exception to this is an amendment to the financial hardship provisions for review of a reviewable migration decision to standardise with the financial hardship concession for other ART caseloads. This change includes lowering the threshold for reduction of the fee for review from ‘severe financial hardship’ to ‘financial hardship’. The Amending Regulations also amend the Migration Regulations to put beyond doubt that the IAA matters that transition to the ART will not be required to pay a fee, which **replicates the current requirements for review by the IAA.**

The Amending Regulations enhance efficiency of **the ART** by expanding the remittal powers when **reviewing decisions to refuse nominations.** Currently, the AAT has no power to remit matters of these kinds.

A number of amendments simplify and update drafting in the Migration Regulations. This includes by locating all remittal powers in the one regulation. It also includes amending regulation 2.15 of the Migration Regulations by **omitting ‘working days’ and substituting ‘days’**, thereby standardising the unit of time across the regulation and aligning with the *Administrative Review Tribunal Act 2024*.

The matters dealt with in the Amending Regulations are appropriate for implementation in regulations as opposed to Parliamentary enactment, as they are specifically being made to ensure that the Migration Regulations are consistent with the Migration Act as amended by the C&T No. 1 Act. The Migration Act expressly provides for the matters dealt with in the Amending Regulations to be prescribed in regulations, as can be observed in the list of authorising provisions in Attachment A.

A Statement of Compatibility with Human Rights has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Migration Regulations are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. A copy of this Statement is at Attachment B.

Consultation was undertaken throughout the drafting of the Amending Regulations through the Administrative Reform Taskforce at the Attorney-General’s Department (AGD). Through the

interdepartmental working groups established by AGD and targeted consultation, the Department consulted with AGD, the AAT, Department of Social Services, and the National Disability Insurance Agency. All stakeholders support the Amending Regulations. This accords with the consultation requirements in section 17 of the *Legislation Act 2003* (**Legislation Act**).

The Amending Regulations **commence at the same time** as Schedule 2 to the C&T No. 1 Act commences, which occurs **on 14 October 2024**.

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

The Amending Regulations amend the Migration Regulations, which are exempt from sunseting under table item 38A of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. The Migration Regulations are exempt from sunseting on the basis that the repeal and remaking of the Migration Regulations:

- is unnecessary as the Migration Regulations are regularly amended numerous times each year to update policy settings for immigration programs;
- would require complex and difficult to administer transitional provisions to ensure, amongst other things, the position of the many people who hold Australian visas, and similarly, there would likely be a significant impact on undecided visa and sponsorship applications; and
- would demand complicated and costly systems, training and operational changes that would impose significant strain on Government resources and the Australian public for insignificant gain, while not advancing the aims of the Legislation Act.

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

AUTHORISING PROVISIONS

Subsection 504(1) of the *Migration Act 1958* (the Migration Act) relevantly provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Migration Act.

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

- subsection 31(1), which provides that the *Migration Regulations 1994* (Migration Regulations) may prescribe classes of visas;
- subsection 31(3), which provides that the Migration Regulations may prescribe criteria for a visa or visas of a specified class;
- subsection 31(4), which provides that the Migration Regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia, or both;
- section 40, which provides that the Migration Regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- section 45A, which provides that a non-citizen who makes an application for a visa is liable to pay a visa application charge if, assuming the charge were paid, the application would be a valid visa application;
- paragraph 46(1)(b), which provides that the Migration Regulations may prescribe the criteria and requirements for making a valid application for a visa;
- subsection 46(3), which provides that the Migration Regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application;
- subsection 46(4), which provides that, without limiting subsection 46(3), the Migration Regulations may prescribe:
 - (a) the circumstances that must exist for an application for a visa of a specified class to be a valid application; and
 - (b) how an application for a visa of a specified class must be made; and
 - (c) where an application for a visa of a specified class must be made; and
 - (d) where an applicant must be when an application for a visa of a specified class is made;
- subsection 347(2), which provides that the Minister may prescribe information or documents to be included in an application for a review to be properly made as well as the fees to be paid when making an application;
- subsection 347A(1), which provides that the Minister may prescribe who can apply for certain kinds of reviewable migration decisions; and
- subsection 349(2), which allows the Tribunal to make a decision on the review remitting a prescribed matter for reconsideration with such orders or recommendations as are permitted by the Migration Regulations.

Statement of Compatibility with Human Rights

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

Migration Amendment (Administrative Review Tribunal Consequential Amendments) Regulations 2024

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

Overview of the Disallowable Legislative Instrument

The *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024 (C&T No. 1 Act)* amends the *Migration Act 1958 (Migration Act)* with effect from 14 October 2024. The C&T No. 1 Act formed part of a package of legislation which abolished the Administrative Appeals Tribunal (AAT) and established the Administrative Review Tribunal (ART).

The C&T No. 1 Act amended the Migration Act to significantly harmonise how reviews of migration and protection decisions are conducted with the way reviews are conducted in other caseloads. It consolidated Parts 5 and 7 into new Part 5 of the Migration Act, repealed a range of procedural requirements to increase efficiency and flexibility for the ART when conducting reviews of reviewable migration and protection decisions and introduced a range of terminology changes. It also repealed Part 7AA of the Migration Act **to abolish the Immigration Assessment Authority (IAA).**

This Disallowable Legislative Instrument, the *Migration Amendment (Administrative Review Tribunal Consequential Amendments) Regulations 2024 (Amending Regulations)*, amends the *Migration Regulations 1994 (Migration Regulations)* to give effect to the C&T No. 1 Act. The Amending Regulations make amendments that are necessary to enable reviews of reviewable migration and reviewable protection decisions to be conducted by the ART. Most of these amendments are simple consequential amendments which, like the C&T No. 1 Act, broadly have the effect of standardising the way reviews of migration and protection decisions are conducted with reviews of other types of decisions. A particularly significant consequential amendment is **to repeal all provisions relating to fast track reviews conducted by the IAA.**

The Amending Regulations retain special arrangements for reviews of reviewable migration and protection decisions in **two key areas, both of which relate to the requirements for properly making an application to the ART.** First, they prescribe documents and information that applicants are **required to provide when making an application.** Second, they prescribe specific fees for reviews of **migration and protection matters and the circumstances in which they become payable or may be reduced.** These amendments maintain an existing distinction between reviews of reviewable migration and protection decisions and the standard arrangements applying to most other types of applications to the ART.

Finally, the Amending Regulations make a number of minor amendments aimed at improving efficiency for the ART or to simplify drafting.

Consequential amendments

The Amending Regulations make a significant number of amendments to the Migration Regulations that are simple consequential changes to reflect amendments to the Migration Act made by the C&T No. 1 Act. These include:

- Repealing specific requirements for certain written invitations and notices the AAT was required to send to review applicants when conducting reviews under Parts 5 and 7 of the Migration Act.
- Repealing the definition of ‘Tribunal’ and inserting a definition of ‘ART’.
- Repealing the term ‘Part 5-reviewable decision’ and inserting ‘reviewable migration decision’.
- Repealing the term ‘Part 7-reviewable decision’ and inserting ‘reviewable protection decision’.
- Updating references to new provisions in the Migration Act.

The Amending Regulations give effect to the transition of matters previously handled by the IAA to the ART. As mentioned above, the C&T No. 1 Act repealed Part 7AA of the Migration Act, abolishing the IAA and providing for those matters to be dealt with as reviewable protection decisions by the ART. Consequently, references to ‘fast track applicants’ have been repealed. The Amending Regulations also clarify that IAA matters which transition to the ART on commencement will not attract the requirement to pay an application fee, replicating current arrangements for review by the IAA.

ART application requirements and fees

The Amending Regulations prescribe the information or documents that must be provided to the ART when making an application for review of a reviewable migration or reviewable protection decision. The arrangements promote clarity, consistency and accessibility of review by simplifying the application process for the review of reviewable migration and protection decisions.

The Amending Regulations amend the Migration Regulations to retain the existing fees for reviews of migration and protection decisions. Whilst these fees remain higher than the fees for review of other decisions by the ART, this is consistent with the arrangement that existed under the AAT. The current annual increase in fees based on the Consumer Price Index, provided by the Migration Regulations, will continue to apply. The Amending Regulations do not increase these fees, and a range of measures remain available to mitigate the burden of fees, as follows:

- **For reviewable migration decisions:** the Amending Regulations lower the threshold that an applicant is required to meet in order for the review fee to be reduced by 50% from ‘severe financial hardship’ to ‘financial hardship’. This ensures consistency with the standard threshold applied by the ART.
- **For reviewable protection decisions:** the Amending Regulations provide that the fee for review of a decision must only be paid within a 7-day period beginning on the day the

applicant has been deemed to be notified of the decision by the ART. No fee is payable where the ART decides to remit the matter to the Department.

Minor amendments to improve efficiency for the ART or simplify drafting

The Amending Regulations make minor amendments intended to improve efficiency for the ART by inserting a new provision which enables the ART to remit an additional category of reviewable migration decisions.

The Amending Regulations also amend regulation 2.15 of the Migration Regulations by omitting 'working days' and substituting 'days'. This is due to a policy intention to avoid unnecessary confusion when determining the prescribed period a person in immigration detention has in which to give additional information or comments under s 58(2) of the Migration Act, which relates to procedural fairness for visa decisions at the primary stage. This change simplifies the calculation of timeframes and standardises the unit of time across the regulation, bringing the unit of time into alignment with the *Administrative Review Tribunal Act 2024*. Depending on the day of the week the invitation is issued, this change could operate to slightly extend the maximum timeframe within which the person can provide such additional information or comments, both initially and if they request an extension.

Human rights implications

This Disallowable Legislative Instrument may engage the following rights:

- right to an effective remedy in Article 2(3) of the *International Covenant on Civil and Political Rights* (ICCPR)
- right to be equal before the courts and tribunals and the right to a fair hearing in Article 14(1) of the ICCPR
- right of non-refoulement in Article 3 of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) and in relation to Articles 6(1) and 7 of the ICCPR
- right to freedom from unlawful expulsion from the territory of a State Party in Article 13 of the ICCPR.

Right to an effective remedy, right to be equal before the courts and tribunals, and the right to a fair hearing

Article 2(3) of the ICCPR provides that a person whose rights or freedoms are violated shall have an effective and enforceable remedy determined by competent judicial, administrative or legislative authorities. The extent to which Article 2(3) applies to migration and protection decisions is not fully settled because, strictly speaking, there is no general right for a non-citizen to hold a visa or enter or remain in Australia. Nevertheless, the availability of merits review ensures there is an effective and enforceable remedy determined by a competent administrative authority for decisions made under the Migration Act, including where those decisions may impact a person's rights under the ICCPR.

Article 14(1) of the ICCPR provides that all persons shall be equal before the courts and tribunals. It further provides that everyone is entitled in the determination of their 'rights and obligations in a suit at law' to a 'fair and public hearing by a competent, independent and impartial tribunal established

by law.’ The extent to which Article 14(1) applies to administrative review proceedings (because of a question about whether such proceedings constitute ‘a suit at law’) is not fully settled.

To the extent that they may apply, the Amending Regulations promote the right to an effective remedy in Article 2(3) of the ICCPR and the right to a fair hearing in Article 14(1) of the ICCPR.

Simplified application process

The Amending Regulations set out the documents and information that an applicant is required to give to the ART to properly make an application for review of a reviewable migration or protection decision. These amendments provide that an applicant must give the ART either a copy of the notification of the decision, or the prescribed information. To properly make an application for review under paragraph 347(2) of the Migration Act as amended by the C&T No. 1 Act, an applicant for review must meet these requirements. The information and documents required to properly make an application for review are generally readily available to all visa applicants.

These amendments are consequential to C&T No. 1 Act, which repealed the requirement that applicants complete an approved form when applying for merits review, which was intended to remove a barrier to accessing merits review. The new requirements support the objective of increasing accessibility for applicants, while ensuring the ART and the Department of Home Affairs have sufficient information to enable the applicant and the specific decision to be reviewed to be identified. This is necessary to allow the ART to conduct its review and the Department to accurately update a person’s visa status if they have properly made an application for review.

To the extent Article 2(3) and Article 14 of the ICCPR apply, and in conjunction with the amendments made by the C&T No. 1 Act, these amendments are intended to improve a person’s ability to access merits review by the ART of their visa decision. Any new burden which is placed on the applicant by these requirements is minimal and balances the need for accessibility with the need for the ART and Department to identify the review applicant now that they no longer need to provide that information by way of an approved form.

Abolition of the IAA (repeal of Part 7AA of the Migration Act)

The C&T No. 1 Act repealed Part 7AA of the Migration Act and abolished the IAA. The IAA provided a more limited form of review for protection visa applications based on the material before the primary decision-maker, subject to a few exceptions. As outlined above, the C&T No. 1 Act provides for matters that would have been reviewed by the IAA to transition to the ART as reviewable protection decisions.

The Amending Regulations repeal Division 4.4 of the Migration Regulations, which was made for the purpose of Part 7AA of the Migration Act and which prescribed certain matters for the purposes of reviews conducted by the IAA. The Amending Regulations support the objective of the C&T No. 1 Act to promote the right to an effective remedy and a fair hearing by expanding access to a full merits review process to unsuccessful protection visa applicants.

Application fees

As set out above, the Amending Regulations maintain the requirement for applicants to pay a fee for the review of a reviewable migration decision or reviewable protection decision. The fee-related amendments do not impose an additional limitation on access to review of migration and protection

decisions as they retain the fees and fee structures that were in place in the Migration and Refugee Division of the AAT prior to the implementation of the ART.

For applications for review of reviewable migration decisions, the existing prescribed fee of \$3,496 is retained. The Amending Regulations may assist some applicants to access review because the threshold for fee reduction has been lowered to be consistent with the standard threshold applying in most other caseloads. If the ART Principal Registrar considers payment of the fee would cause the review applicant financial hardship, the prescribed fee is reduced by 50%. The prescribed fee, or the request for the fee reduction together with at least 50% of the fee, must be paid within the time period for making the application for review for the application to be properly made.

For reviews of reviewable protection decisions, the Amending Regulations maintain the existing requirement that the fee is only payable where the applicant is unsuccessful at merits review. The existing prescribed fee of \$2,151 is retained. The burden of paying the fee is mitigated by the retention of the existing requirement that the fee be paid within a 7-day period beginning on the day that the applicant has been deemed to be notified of the decision by the ART. There are no fees payable for reviewable protection decisions where the matter is remitted back to the Department for reconsideration.

To the extent that the Regulation Amendments engage Articles 2(3) and 14 of the ICCPR, the amendments are compatible with human rights.

Non-refoulement obligations

Article 3(1) of the CAT provides '[n]o State Party shall expel, return ('*refouler*') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture'. *Non-refoulement* obligations also arise with respect to Articles 6 and 7 of the ICCPR, which provide that every human being has the inherent right to life and shall not be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Relevantly to these obligations, the Amending Regulations interact with merits review of reviewable protection decisions. The outcome of merits review will affect whether the person is granted or continues to hold a protection visa, or whether they may become liable for removal from Australia.

Amendments made to Division 4.1 and 4.2 of the Migration Regulations standardise the review process for migration and protection visa applicants under the new Part 5 of the Migration Act by repealing a range of procedural requirements. In doing so, the Amending Regulations strengthen the administrative review framework, without removing or otherwise diminishing an applicant's access to administrative review of a decision.

Further, the other changes being made by the Amending Regulations such as simplifying merits review application procedures and extending response timeframes in visa processes do not detract from, and in most cases improve access to merits review of migration and protection decisions and improve procedural fairness at the primary stage of visa decision-making.

The Amending Regulations promote human rights by retaining and/or improving merits review processes. These processes act as a safeguard to ensuring that *non-refoulement* obligations under the CAT and ICCPR are properly identified in relevant visa processes. Other provisions of the Migration Act ensure that removal from Australia is not authorised if a protection finding has been made in a protection visa process. Judicial review also remains available as another safeguard.

Freedom from unlawful expulsion

Article 13 of the ICCPR provides that an alien lawfully in the territory of a State Party may be expelled only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against their expulsion and to have their case reviewed by, and be represented before, the competent authority.

The Amending Regulations ensure that there continues to be a robust, competent administrative review mechanism available for reviewable migration and protection decisions. The legislative framework is intended to ensure that applicants for merits review by the ART have a fair opportunity to present their case and the amendments repeal a range of procedural requirements in order to improve access to merits review. They also extend response timeframes in primary visa processes. The amendments made by the Amending Regulations therefore support the human rights protected by Article 13.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights. To the extent that the Amending Regulations limit any human rights, those limitations are reasonable, necessary and proportionate to legitimate aims.

The Hon Tony Burke MP
Minister for Immigration and Multicultural Affairs

Details of the Migration Amendment (Consequential and Transitional Provisions) Regulations 2024

Section 1 – Name

This section provides that the title of this instrument is the *Migration Amendment (Administrative Review Tribunal Consequential Amendments) Regulations 2024* (the **Amending Regulations**).

Section 2 – Commencement

This section provides for the commencement of the Amending Regulations. Subsection 2(1) provides that 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 1 has effect according to its terms.

Item 1 of the table in subsection 2(1) provides that the whole of this instrument commences immediately after the commencement of Schedule 2 to the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024 (C&T No. 1 Act)*.

A note under the table in subsection 2(1) provides that this table relates only to the provisions of this instrument as originally made and will not be amended to deal with any later amendments of this instrument.

Subsection 2(2) provides that any information in column 3 of the table is not part of this instrument. It states that information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

Section 3 – Authority

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

Section 4 – Schedules

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

Schedule 1 – Amendments

Part 1 – Main Amendments

Migration Regulations 1994

Item [1] - Regulation 1.03 (paragraphs (a) and (b) of the definition of *substituted Subclass 600 visa*)

This item makes consequential amendments to the Migration Regulations to amend the definition of ‘substituted Subclass 600 visa’ by omitting the words ‘section 345, 351, 417 or 501J’ from paragraphs (a) and (b), and substituting ‘section 351 or 501J, or repealed section 417,’.

Prior to the commencement of the C&T No. 1 Act, section 417 of the Migration Act provided the Minister may substitute for a decision of the Administrative Appeals Tribunal (AAT) made under section 415, another decision that is more favourable to the applicant, if the Minister thinks it is in the public interest to do so. The C&T No. 1 Act repealed Part 7 of the Migration Act (which included section 417) and amended section 351 of the Migration Act with the effect of enabling the Minister to exercise under that section the same power previously conferred in section 417.

This item is consequential to the repeal of Part 7 by the C&T No. 1 Act. The inclusion of a reference to ‘repealed section 417’ makes clear that the definition of ‘substituted Subclass 600 visa’ will include a Subclass 600 (Visitor) visa and a Subclass 676 (Tourist) visa (granted before 23 March 2013) that was granted following a decision by the Minister to substitute a more favourable decision under section 417 of the Migration Act before that provision was repealed.

This item also repeals the reference to section 345 of the Migration Act. That section was repealed from the Migration Act in 1998 and its inclusion in paragraphs (a) and (b) of the definition of ‘substituted Subclass 600 visa’ in regulation 1.03 no longer has any practical utility.

Item [2] - Paragraphs 2.08AAA(1)(b) and (e)

This item makes consequential amendments to the Migration Regulations to repeal paragraphs 2.08AAA(1)(b) and (e) of the Migration Regulations.

Regulation 2.08AAA provides for the addition of certain applicants, being members of the same family unit as the original applicant, to certain applications for Temporary Protection (Class XD) Visas (TPV) and Safe Haven Enterprise (Class XE) visas (SHEV). Prior to the Amending Regulations, paragraphs 2.08AAA(1)(b) and (e) provided that the regulation applies if the original applicant is a fast track applicant and the additional applicant is, or if added to the application would be, a fast track applicant.

The repeal of these paragraphs is consequential to the C&T No. 1 Act, which repeals Part 7AA of the Migration Act, with the effect of abolishing the Immigration Assessment Authority (IAA) and the fast track review process.

Item [3] - Subregulations 2.08E(2A) and (2B)

This item makes technical amendments to repeal subregulations 2.08E(2A) and (2B) of the Migration Regulations. This is a technical amendment to complement item 41 of the Amending

Regulations, which inserts a new subregulation into regulation 4.15 that has the same effect as the subregulations repealed by this item.

This amendment simplifies the Migration Regulations by locating in one regulation within Division 4.1 (which provides for review of reviewable migration decisions) of Part 4 all of the powers of the Administrative Review Tribunal (ART) to remit reviewable migration decisions under section 349 of the Migration Act. See items 32 to 41 for further detail on these amendments.

Item [4] - At the end of subparagraph 2.08F(3)(b)(i) and (ii)

This item adds to subparagraphs 2.08F(3)(b)(i) and (ii) of the Migration Regulations the words ‘as in force when the matter is remitted’.

This is a technical amendment to put beyond doubt that an application for a Protection (Class XA) visa continues to be taken to be a valid application for a TPV after a relevant remittal decision is made under legislation which has since been repealed.

Item [5] - After subparagraph 2.08F(3)(b)(ii)

This item inserts two subparagraphs after subparagraph 2.08F(3)(b)(ii) of the Migration Regulations. These subparagraphs intend to capture pre-conversion matters which are remitted by the ART under subsection 349(2) of the Migration Act or paragraph 105(c) of the *Administrative Review Tribunal Act 2024* (ART Act). When read together with regulation 2.08G, it ensures the pathway to the permanent Subclass 851 Resolution of Status visa (RoS) is maintained after the commencement of the ART.

Item [6] - At the end of subparagraphs 2.08F(4)(b)(i) and (ii)

This item adds ‘as in force when the matter is remitted’ to the end of subparagraphs 2.08F(4)(b)(i) and (ii) of the Migration Regulations, to clarify that remittal decisions made under legislation which has since been repealed continue to be captured. The effect of this item is to ensure the RoS pathway for this class of person is uninterrupted by any of the legislative changes made in support of establishing the ART.

Item [7] - At the end of paragraph 2.08G(1A)(a), (b) and (c)

Item [8] - After paragraph 2.08G(1A)(c)

Item [9] - At the end of subparagraphs 2.08G(2)(b)(i), (ii) and (iii)

Items 7 and 9 add ‘as in force when the matter is remitted’ to the end of each paragraph or subparagraph in regulation 2.08G of the Migration Regulations, to ensure remittal decisions made under legislation which has since been repealed continue to be captured. This item ensures the pathway to the RoS is uninterrupted by any of the legislative changes made in support of establishing the ART.

Item 8 inserts subparagraphs 2.08G(1A)(ca) and (cb) after paragraph 2.08G(1A)(c). The effect of the subparagraphs is to ensure the regulation captures applications remitted by the ART, and give effect to the policy intention that the current pathway to RoS is maintained after the commencement of the ART.

Item [10] - Subparagraph 2.12C(5)(e)(iii)

This item omits the words ‘section 195A, 345, 351, 417 or 501’ and substitutes with ‘section 195A, 351 or 501J, or repealed section 417’ in subparagraph 2.12C(5)(e)(iii) of the Migration Regulations.

As mentioned above in relation to item 1, the C&T No. 1 Act repealed section 417 and amended the power in section 351 to be available for both reviewable migration and protection decisions. This item inserts a reference to ‘repealed section 417’ to make clear that if a decision was substituted by the Minister under section 417 before the commencement of the ART, that decision would continue to be captured by subparagraph 2.12C(5)(e)(iii).

This item also repeals the reference to section 345 of the Migration Act. That section was repealed from the Migration Act in 1998 and its inclusion in subparagraph 2.12C(5)(e)(iii) no longer has any practical utility.

Item [11] - Paragraphs 2.12G(1)(b) and 2.12H(2)(c)

This item amends paragraphs 2.12G(1)(b) and 2.12H(2)(c) of the Migration Regulations by omitting the words ‘subsection 5(9)’ and substituting them with ‘section 11A’. Prior to the amendments made by the C&T No. 1 Act, subsection 5(9) defined when an application under the Migration Act is ‘finally determined’. The C&T No. 1 Act repealed subsection 5(9) of the Migration Act and inserted section 11A to provide for when an application under Migration Act is ‘finally determined’.

Item [12] - Paragraph 2.15(1)(a)

Item [13] - Sub-subparagraph 2.15(1)(b)(ii)(B)

Item [14] - Paragraph 2.15(3)(a)

Item [15] - Subparagraph 2.15(3)(b)(ii)

Item [16] - Paragraph 2.15(4)(a)

These items make amendments to regulation 2.15 of the Migration Regulations to repeal provisions no longer necessary due to the abolition of the fast track process by the C&T No. 1 Act and to simplify and standardise the timeframes for applicants in immigration detention to respond to an invitation to provide additional information or comment given under section 56 or 57 of the Migration Act.

Regulation 2.15 prescribes, for the purposes of section 58 of the Migration Act, the period for giving additional information or comments in response to an invitation by the Minister. Item 12 amends the timeframe to respond to the Minister’s invitation for additional information or comment for an applicant for a substantive visa in immigration detention from ‘3 working days’ to ‘5 days’. Item 14 amends the timeframe for an interview to take place for an applicant for a substantive visa in immigration detention from ‘3 working days’ to ‘5 days’. Item 16 amends the extension period to respond to the Minister for an applicant in immigration detention from ‘2 working days’ to ‘5 days’.

Changing from ‘working days’ to ‘days’ simplifies the calculation of timeframes and standardises the unit of time across the Migration Regulations.

Item 13 repeals sub-subparagraph 2.15(1)(b)(ii)(B), which prescribed the period in which fast track applicants must give further information to the Minister under subsection 58(2) of the Migration Act. This amendment is consequential to the C&T No. 1 Act, which repealed Part 7AA of the Migration Act.

Item 15 repeals subparagraph 2.15(3)(b)(ii), which prescribed the period in which fast track applicants must give further information to the Minister under paragraph 58(3)(b) of the Migration Act. This amendment is consequential to the C&T No. 1 Act, which repealed Part 7AA of the Migration Act.

Item [17] - After subregulation 2.74(1)

This item inserts subregulation 2.74(1A) after subregulation 2.74(1) of the Migration Regulations.

Subregulation 2.74(1A) requires the Minister to include in a notification of a decision made under subsection 140GB(2) certain information if the applicant has a right to apply to the ART under Part 5 of the Migration Act for review of the decision.

The effect of this item is to standardise regulation 2.74 with other provisions in the Migration Act and Migration Regulations which prescribe the information which must be included in a notification of decision, rather than relying on section 266 of the ART Act.

Item [18] - Paragraph 2.98(1)(c)

Item [19] - Subparagraph 2.98(1)(c)(i)

Regulation 2.98 specifies the notification requirements for when the Minister makes a decision under section 140M of the Migration Act.

Item 18 amends paragraph 2.98(1)(c) of the Migration Regulations by inserting the words ‘by application’. This item updates terminology, consistently with the C&T No. 1 Act, to clarify that review of a decision made under section 140M is sought by application under Part 5 of the Migration Act.

Item 19 amends subparagraph 2.98(1)(c)(i) of the Migration Regulations by inserting the words ‘by the ART’. The effect of this item is that notifications of decisions made under section 140M must state that the decision is reviewable ‘by the ART’.

The effect of these items is to standardise regulation 2.98 with other provisions in the Migration Act and Migration Regulations which prescribe the information which must be included in a notification of decision, rather than relying on section 266 of the ART Act.

Item [20] - Division 4.1 (heading)

This item repeals the heading ‘Division 4.1 – Review of decisions other than decisions relating to protection visas’ of the Migration Regulations, as well as the note beneath that heading. The heading is substituted with ‘Division 4.1A – Preliminary’. These amendments are consequential to the C&T No. 1 Act, which consolidated Parts 5 and 7 of the Migration Act within Part 5.

Item [21] - Before regulation 4.02

This item makes a consequential amendment by inserting a new heading for Division 4.1 and new regulation 4.01A of the Migration Regulations.

The new heading is ‘Division 4.1 – Review of reviewable migration decisions’.

New regulation 4.01A provides that Division 4.1 applies in relation to the review of reviewable migration decisions. New regulation 4.01A also includes a note which provides that the review of reviewable protection decisions are dealt with in Division 4.2 of the Migration Regulations. These amendments are consequential to the C&T No. 1 Act, which repealed the term ‘Part 5-reviewable decision’ and inserted the term ‘reviewable migration decision’.

Item [22] - Subregulation 4.02(5)

This item makes technical amendments to subregulation 4.02(5) of the Migration Regulations by omitting the words ‘For paragraph 347(2)(d)’ and substituting those words with ‘For the purposes of paragraph 347A(1)(d)’. Prior to the amendments, regulation 4.02 prescribed, for the purposes of paragraph 338(2)(d) and subsection 338(9) of the Migration Act, certain decisions as ‘Part-5 reviewable decisions’. Subregulation 4.02(5) prescribes, for the purposes of paragraph 347(2)(d) of the Migration Act, the person who may apply for the review of decisions prescribed in subregulation 4.02(4).

The amendments made by this item reflect amendments made to Part 5 of the Migration Act by the C&T No. 1 Act, including the repeal and remaking of section 347 into sections 347 and 347A. This amendment to subregulation 4.02(5) ensures it continues to have the same effect after the commencement of the ART.

Item [23] - Regulations 4.10 and 4.11

This item repeals regulations 4.10 and 4.11 of the Migration Regulations.

Prior to its repeal, regulation 4.10 prescribed the time for making an application to the AAT under Part 5 of Migration Act. The C&T No. 1 Act amended section 347 of the Migration Act so that it now specifies the time for making an application for review by the ART under Part 5 of the Migration Act.

Prior to its repeal, regulation 4.11 set out the process for how an applicant should give their application to the AAT for a review of a decision under Part 5 of the Migration Act. Subsection 34(1) of the ART Act now provides for the method of making an application to the ART under Part 5 of the Migration Act.

Item [24] - After regulation 4.12

This item inserts new regulation 4.12A into Division 4.1 of the Migration Regulations. The new regulation prescribes the information or documents that must be provided to the ART when making an application for review of a reviewable migration decision.

The new subregulation 4.12A(1) provides that this regulation is made for the purposes of subsection 347(2) of the Migration Act.

The new subregulation 4.12A(2) provides that if the review applicant who is making an application for review of a reviewable migration decision has a copy of the notification of the decision, the prescribed document is a copy of that notification.

The new subregulation 4.12A(3) provides that if the review applicant does not have a copy of that notification, and they are an individual, the prescribed information is:

- the review applicant’s full name; and
- the review applicant’s address and contact details; and
- the date of the decision (if known to the review applicant) and a description of the decision; and
- at least one of the following;
 - the review applicant’s date of birth;
 - the review applicant’s country of birth;
 - the review applicant’s citizenship or nationality;
 - the country of issue and number of the review applicant’s passport; and
- if the decision relates to an application for a visa for a person (known as the visa applicant) who is not the review applicant, the information specified in subregulation 4.12A(5).

The new subregulation 4.12A(4) provides that if the review applicant does not have a copy of the notification of decision, and they are not an individual, the prescribed information is:

- the review applicant’s name; and
- the review applicant’s trading name (if any and if it is different from the review applicant’s name); and
- the review applicant’s ABN (within the meaning of the *A New Tax System (Australian Business Number) Act 1999*) or ACN (within the meaning of the *Corporations Act 2001*) if they have one; and
- the review applicant’s business address; and
- the name, position and contact details of a contact person for the review applicant; and
- the date of the decision (if known to the review applicant) and a description of the decision; and
- if the decision relates to an application for a visa made by a person (known as the visa applicant) who is not the review applicant, the information specified in subregulation 4.12A(5).

The new subregulation 4.12A(5) prescribes, for the purposes of paragraphs 4.12A(3)(e) and 4.12A(4)(g), the information the review applicant is to provide if the decision that is the subject of the review application relates to an application for a visa made by a person who is not the review applicant. The prescribed information is:

- the visa applicant’s full name; and
- the visa applicant’s address and contact details; and
- at least one of the following:
 - the visa applicant’s date of birth;
 - the visa applicant’s country of birth;
 - the visa applicant’s citizenship or nationality;
 - the country of issue and number of the visa applicant’s passport.

The effect of this amendment is that review applicants may satisfy the requirement in subsection 347(2) to provide prescribed documents to the ART by providing to the ART a copy of the notification of the decision which is the subject of the review application. If a review applicant does not have a copy of the notification of the decision, they may satisfy the requirement in subsection 347(2) by providing the information specified in subregulations 4.12A(3), (4) or (5) as relevant. A review applicant must provide the prescribed document or prescribed information within the relevant timeframe under subsection 347(3) of the Migration Act for making an application for review for the

application to be properly made (see section 348 of the Migration Act). The ART will have no jurisdiction to review a decision if the application for review is not properly made.

Prior to the amendments made by the C&T No 1. Act, paragraph 347(1)(a) of the Migration Act required an application to the AAT to be made in an ‘approved form’. Item 136 of the C&T No. 1 Act removed the requirement to make an application using an approved form to increase the accessibility of the ART and afford greater flexibility to applicants when making an application for review.

The new regulation 4.12A strikes an appropriate balance between the objective of reducing barriers to review applicants seeking to engage the ART’s jurisdiction and the need for the Department of Home Affairs (**Department**) and the ART to be able to identify the review applicant and the decision the review applicant is seeking to have reviewed. It is crucial the review applicant can be identified with certainty to enable the ART to conduct the review and the Department to manage the review applicant(s) visa status because the existence of an ongoing merits review proceeding can have implications on the visa status of persons related to the review application.

The new subregulation 4.12A(3) provides for the collection of personal information by the ART. Australian Privacy Principle (**APP**) 3.1 of the Schedule to the *Privacy Act 1988* specifies that an agency must not collect personal information unless the information is reasonably necessary for, or directly related to, one or more of the entity’s functions or activities. Subregulation 4.12A(3) is consistent with APP 3.1 because it is directly related to the ART’s functions of reviewing administrative decisions. The ART is unable to conduct a review if it cannot identify and make contact with a review applicant.

The new subregulation 4.12A(5) also provides for the collection of personal information of a ‘visa applicant’ from another person, the ‘review applicant’. Relevantly, APP 3.6 provides that an APP entity must collect personal information about an individual only from the individual, unless an exception applies. One exception is that the collection of personal information from someone other than the individual is authorised by Australian law. Subregulation 4.12A(3) authorises the collection of personal information from a person other than the individual in circumstances where the review applicant is a different person to the visa applicant.

Item [25] - Subregulation 4.13(1)

Item [26] - Subregulation 4.13(4)

These items make consequential and technical amendments to regulation 4.13 of the Migration Regulations. Regulation 4.13 prescribes:

- the fee for a review under Division 4.1;
- the circumstances in which a fee must be paid; and
- when it may be reduced by 50%.

Item 25 repeals and replaces subregulation 4.13(1). The new subregulation 4.13(1) prescribes that the fee for a review of a reviewable migration decision is \$3,496. The effect of this subregulation is to maintain the fee at the same level paid by applicants seeking review of decisions under Part 5 of the Migration Act prior to the commencement of the Amending Regulations. While the unamended subregulation 4.13(1) states the fee is \$3000, the note in that subregulation indicates the fee is subject to increase under regulation 4.13A. As such, the amendment to 4.13(1) reflects the current fee payable (as at 1 July 2024) for review by the ART of a reviewable migration decision.

Item 26 repeals and replaces subregulation 4.13(4). Prior to amendment, subregulation 4.13(4) provided that if the Registrar was satisfied that the payment of the fee prescribed in subregulation 4.13(1) has caused, or is likely to cause, severe financial hardship to the review applicant, the Registrar may determine that the fee is reduced by 50%. The amended subregulation changes the threshold that an applicant must meet to be eligible for the reduced fee from 'severe financial hardship' to 'financial hardship'. It also enables the ART Principal Registrar to have regard to the 'applicant's income, expenses, liabilities and assets' when determining whether payment of the fee would cause financial hardship. This ensures that the arrangements for reducing fees for reviews of reviewable migration decisions are consistent with the standard threshold applied by the ART. This increases efficiency for the ART when assessing claims of financial hardship.

Item [27] - Regulation 4.13A

This item makes technical amendments to repeal and replace regulation 4.13A of the Migration Regulations. The new regulation 4.13A provides that the fee prescribed by subregulation 4.13(1) is increased in accordance with regulation 4.13B on each 1 July starting on 1 July 2025. The intention of this item is to update and simplify the regulation and not change its operative effect.

Item [28] - Subregulation 4.13B(5) (definition of *relevant period*)

This item amends the definition of 'relevant period' in subregulation 4.13B(5) of the Migration Regulations by omitting the reference to '2018' and substituting it with '2024'. Regulation 4.13B sets out the method for calculating the increase of fees prescribed in Division 4.1. The intention of this item is to update the year referred to in subregulation 4.13B(5) (in line with items 25 and 27 above) and not to change its operative effect.

Item [29] - Subregulation 4.14(1) (subheading before table item 1)

Item [30] - Subregulation 4.14(1) (table item 1)

Item [31] - Subregulation 4.14(1) (subheading before table item 5)

These items amend subregulation 4.14(1) of the Migration Regulations. Regulation 4.14 specifies the circumstances in which an applicant may be refunded all or part of the fee prescribed in Division 4.1.

Item 29 amends the subheading before table item 1 by omitting the word 'severe'. This amendment is consequential to item 26 of the Amending Regulations.

Item 30 amends table item 1 by omitting the words 'the Registrar of the Tribunal has made a determination mentioned in subregulation 4.13(4)' and substituting them with the words 'subregulation 4.13(4) applies.' This amendment is consequential to item 26 of the Amending Regulations.

Item 31 amends the subheading before table item 5 by omitting the word 'Tribunal' and substituting with 'ART'. This ensures consistency with terminology used in the C&T No. 1 Act (see item 99 for further explanation of terminology changes).

- Item [32] - Regulation 4.15 (heading)**
- Item [33] - Subregulation 4.15(1)**
- Item [34] - Paragraph 4.15(1)(a)**
- Item [35] - Paragraph 4.15(1)(b)**
- Item [36] - Paragraph 4.15(1)(b)**
- Item [37] - After subregulation 4.15(1)**
- Item [38] - Subregulation 4.15(2)**
- Item [39] - Subregulation 4.15(3)**
- Item [40] - Subregulation 4.15(3) (note 1)**
- Item [41] - Subregulation 4.15(4)**

These items amend regulation 4.15 of the Migration Regulations to reflect the changes made to section 349 of the Migration Act by the C&T No. 1 Act.

Prior to the amendments, regulation 4.15 was made for the purposes of paragraph 349(2)(c) of the Migration Act. Prior to the amendments made by the C&T No. 1 Act, paragraph 349(2)(c) provided the AAT may remit a prescribed matter for reconsideration in accordance with such directions or recommendations permitted by the Migration Regulations. The C&T No. 1 Act repealed and replaced section 349 of the Migration Act. Subsection 349(2) (as amended by the C&T No. 1 Act) allows the ART to set aside a decision and remit a prescribed matter for reconsideration with such orders or recommendations as are permitted by the Migration Regulations.

Item 32 repeals the heading of regulation 4.15 and substitutes it with ‘ART’s power to remit matters with orders’. This item updates the terminology in the heading with that used in subsection 349(2) of the Migration Act (as amended by the C&T No. 1 Act).

Items 33 and 38 amend subregulations 4.15(1) and 4.15(2) respectively by omitting the words ‘paragraph 349(2)(c)’ and substituting them with ‘subsection 349(2)’. These items are consequential to the amendments made to section 349 of the Migration Act by the C&T No. 1 Act.

Item 34 amends paragraph 4.15(1)(a) by omitting the words ‘or entry permit made on or after 19 December 1989’. Item 36 amends paragraph 4.15(1)(b) by omitting the words ‘or entry permit’. These terms are omitted because they no longer have practical utility.

Items 35 and 39 amends paragraphs 4.15(1)(b) and 4.15(3) respectively by omitting the word ‘direction’ or ‘direct’ and substituting it with the word ‘order’. These items update the terminology used in these paragraphs with that used in subsection 349(2) of the Migration Act (as amended by the C&T No. 1 Act).

Item 37 inserts subregulation 4.15(1A). The new subregulation provides, for the purposes of subsection 349(2) of the Migration Act, a prescribed matter includes a nomination under subsection 140GB(1) of the Migration Act and a nomination referred to in subregulation 5.19(1). It permits the ART to make an order that a nomination must be taken to have met a specified criterion or requirement for approval under subsection 140GB(2) of the Migration Act or subregulation 5.19(3) (as the case may be).

The effect of this amendment is to enable the ART to remit a matter where the decision which is the subject of the review is a decision in relation to a nomination made under subsection 140GB(1) or subregulation 5.19(1). The AAT, before these amendments, had no power to remit these matters. If the AAT found that a nomination satisfied one or more specified criteria or requirements, it had to assess all remaining criteria or requirements before making a decision on the review. The purpose of

item 37 is to enhance efficiency for the ART by enabling it to remit these matters to the Department for reconsideration where it finds in the applicant's favour on the criterion or requirement in dispute.

Item 40 amends subregulation 4.15(3) by repealing the note, consistently with modern drafting practices.

Item 41 repeals subregulation 4.15(4) and replaces it with a new subregulation 4.15(4). The new subregulation provides that:

- if a person applies for a Prospective Marriage (Temporary) (Class TO) visa, and
- the applicant gets married during merits review of that refusal, and
- notifies the ART of the marriage, and
- the marriage is recognised as valid for the purposes of the Act, and
- the ART decides to remit the application to the Minister for reconsideration, then

the permissible order that the ART can make when remitting matters of this kind is that the application must be taken to also be an application for a Partner (Migration) (Class BC) visa and for a Partner (Provisional) (Class UF) visa and that is made on the day that the application is remitted to the Minister. This allows the Department to assess the now married applicant for the 'spouse' visas rather than the 'prospective marriage' visas. This amendment complements the repeal of subregulations 2.08E(2A) and (2B) by item 3. The effect of items 3 and 41 is to locate all matters prescribed for the purposes of subsection 349(2) of the Migration Act in regulation 4.15.

Item [42] - Regulations 4.17 to 4.25 and 4.27B

This item repeals regulations in the Migration Regulations made for the purposes of sections of the Migration Act repealed by the C&T No. 1 Act.

Prior to the amendments, regulations 4.17, 4.18, 4.18A, 4.18B and 4.21 were made under sections 359B and 360A(4) of the Migration Act, which set out requirements for written invitations and notices from the AAT. Sections 359B and 360A(4) were repealed by the C&T No. 1 Act to enable the ART to undertake a flexible review, proportionate to the matters before it.

Prior to the amendments, regulation 4.19 was made under paragraph 363(3)(a) of the Migration Act and concerned the manner of serving on a person a summons to appear before the AAT to give evidence. Paragraph 363(3)(a) was repealed by the C&T No. 1 Act. Section 74 of the ART Act deals with the power of the ART to summon a person to appear or produce documents.

Prior to the amendments, regulation 4.23, 4.24 and 4.25 provided for expedited reviews. The content of these regulations is instead covered by the ART's practice directions.

Prior to the amendments, regulation 4.27B was made under subsection 368D(4) of the Migration Act, which allowed an applicant to request a written statement in relation to an oral decision made by the AAT. Subsection 368D(4) was repealed by the C&T No. 1 Act. The ART is required to give a written statement for all decisions pursuant to section 368A of the Migration Act (as amended by the C&T No. 1 Act).

Item [43] - Division 4.2 (heading)

Item [44] - Subdivision 4.2.1 (heading)

Item [45] - Regulation 4.28

Item [46] - Subdivision 4.2.3 (heading)

These items make amendments to the heading and application of Division 4.2 of the Migration Regulations. Prior to the amendments, Division 4.2 was made under Part 7 of the Migration Act and prescribed certain matters for the purposes of reviews of Part 7-reviewable decisions. Part 7 of the Migration Act was repealed by the C&T No. 1 Act and consolidated with Part 5.

Item 43 amends the heading of Division 4.2 by omitting the words ‘Part 7-reviewable’ and substituting them with ‘reviewable protection’. These terminology changes are consistent with the Migration Act as amended by the C&T No. 1 Act.

Items 44 and 46 are technical amendments to repeal the headings of subdivisions 4.2.1 and 4.2.3, which are no longer necessary.

Item 45 repeals regulation 4.28 and substitutes it with a new regulation 4.28. Prior to amendment, regulation 4.28 provided the expressions used in Division 4.2 and Part 7 would have the same respective meanings. The new regulation 4.28 specifies that Division 4.2 applies in relation to the review of reviewable protection decisions, in accordance with changes that are consistent with the Migration Act as amended by the C&T No. 1 Act.

Item [47] - Regulations 4.31 and 4.31AA

This item repeals regulations 4.31 and 4.31AA and inserts a new regulation 4.31 of the Migration Regulations.

Prior to the amendments, regulation 4.31 prescribed the time for making an application to the AAT under Part 7 of Migration Act. The C&T No. 1 Act amended section 347 of the Migration Act so that it now specifies the time for making an application for review by the ART under Part 5 of the Migration Act.

The new subregulation 4.31(1) provides that this regulation is made for the purposes of paragraph 347(2) of the Migration Act.

The new subregulation 4.31(2) provides that if the person who is making an application for review of a reviewable protection decision has a copy of the notification of the decision, the prescribed document is a copy of that notification.

The new subregulation 4.31(3) provides that if the person does not have a copy of that notification, the prescribed information is:

- the person’s full name; and
- the person’s address and contact details;
- the date of the decision (if known to the person) and a description of the decision; and
- at least one of the following:
 - the person’s date of birth;
 - the person’s country of birth;
 - the person’s citizenship or nationality or a statement that the person is stateless;
 - the country of issue and number of the person’s passport.

The effect of this amendment is that a person applying for review of a reviewable protection decision may satisfy the requirement in subsection 347(2) to provide prescribed documents to the ART by providing to the ART a copy of the notification of the decision which is the subject of the review application. If the person does not have a copy of the notification of the decision, they may satisfy the requirement in subsection 347(2) by providing the information specified in subregulation 4.31(3). A person applying for review of a reviewable protection decision must provide the prescribed document or prescribed information within the relevant timeframe under section 347 of the Migration Act for making an application for review for the application to be properly made (see section 348 of the Migration Act). The ART will have no jurisdiction to review a decision if the application for review is not properly made.

The new regulation 4.31 strikes an appropriate balance between the objective of reducing barriers for people seeking to engage the ART's jurisdiction and the need for the Department and the ART to be able to identify the person and the decision they are seeking to have reviewed. It is crucial that the person can be identified with certainty to enable the ART to conduct the review and the Department to manage their visa status because the existence of an ongoing merits review proceeding can have implications on the visa status of persons related to the review application.

The new subregulation 4.31(3) provides for the collection of personal information by the ART. APP 3.1 of the Schedule to the *Privacy Act 1988* specifies that an agency must not collect personal information unless the information is reasonably necessary for, or directly related to, one or more of the entity's functions or activities. The new subregulation 4.31(3) is consistent with APP 3.1 because it is directly related to the ART's functions of reviewing administrative decisions. The ART is unable to conduct a review if it cannot identify and make contact with the person seeking review of a reviewable protection decision.

This item also repeals regulation 4.31AA. That regulation sets out the process for how an applicant should give their application to the AAT for a review of a Part 7-reviewable decision. Subsection 34(1) of the ART Act provides for the method of making an application to the ART under Part 5 of the Migration Act.

Item [48] - Paragraph 4.31A(a)

This item amends paragraph 4.31A(a) of the Migration Regulations by inserting a reference to regulation 2.08AAA. This reflects the changes to that regulation in item 2 of the Amending Regulations. Regulation 4.31A allows for the combination of applications under this Division should the applicants meet the criteria contained within the regulation.

Item [49] - Subregulations 4.31B(1) and (2)

Item [50] - Subregulation 4.31B(3)

Item [51] - After subregulation 4.31B(3)

These items make consequential and technical amendments to regulation 4.31B of the Migration Regulations to ensure consistency with the Migration Act, as amended by the C&T No. 1 Act. Prior to these amendments, regulation 4.31B prescribed the fees for reviews under Division 4.2 and the circumstances in which they must be paid.

Item 49 repeals and substitutes subregulations 4.31B(1) and (2). The new subregulation 4.31B(1) provides that the prescribed fee for a review by the ART of a reviewable protection decision is \$2,151. The new subregulation 4.31B(2) provides that the fee must be paid within the 7-day period

beginning on the day the applicant has deemed to have been notified of the decision by the ART. This item maintains the fee at the same level required to be paid by applicants who applied to the AAT for review of Part-7 reviewable decisions prior to the amendments. It replicates the timeframe within which the fee must be paid.

Item 50 amends subregulation 4.31B(3) by omitting the word ‘direction’ and substituting with ‘order’. This amendment maintains consistency with the terminology used in the Migration Act (as amended by C&T No. 1 Act) and Migration Regulations.

Item 51 inserts new subregulation 4.31B(3AA) after subregulation 4.31B(3). This provides that, if a decision is referred to the ART under subitems 35(2) or 37(2) of Schedule 16 to the C&T No. 1 Act, or if the proceeding for review of the decision was continued and finalised by the ART under subitem 36(2) of that Schedule, no fee is payable. This item is consequential to the repeal of Part 7AA by the C&T No. 1 Act. The purpose of this item is to clarify that IAA matters transitioned to the ART will not attract a fee, maintaining the current policy settings for those applicants.

Item [52] - Regulation 4.31BA

This item repeals and replaces regulation 4.31BA of the Migration Regulations. The new regulation 4.31BA provides that a fee prescribed by subregulation 4.31B(1) will be increased in accordance with regulation 4.31BB on each 1 July, starting on 1 July 2025. The intention of this item is to update the regulation and not change its operative effect.

Item [53] - Subregulation 4.31BB(5) (paragraph (a) of the definition of fee)

Item [54] - Subregulation 4.31BB(5) (definition of relevant period)

These items amend regulation 4.31BB of the Migration Regulations, which sets out the method of calculating the annual increase of fees for applications for review under Division 4.2.

Item 53 amends paragraph (a) of the definition of fee in subregulation 4.31BB(5) by omitting the words ‘paragraph 4.31B(1)(c)’ and substituting them with ‘subregulation 4.31B(1)’. The effect of this item is that the definition of ‘fee’ will include the fee prescribed by subregulation 4.31B(1). This reflects amendments to regulation 4.31B as set out in item 49.

Item 54 amends the definition of ‘relevant period’ in subregulation 4.31BB(5) by omitting the reference to ‘2018’ and substituting with ‘2024’. The intention of this item is to update the year referred to in the regulation (in line with changes made in item 49 and 52) and not change its operative effect.

Item [55] - Subparagraph 4.31C(1)(a)(ii)

Item [56] - Paragraph 4.31C(1)(b)

These items amend regulation 4.31C of the Migration Regulations. Prior to these amendments, regulation 4.31C provided that a fee paid under regulation 4.31B was to be waived or refunded if a review of a decision was remitted to the AAT by the court and the AAT remitted the matter with a permissible direction under regulation 4.33 or if the Minister favourably substituted a decision of the AAT.

Item 55 amends subparagraph 4.31C(1)(a)(ii) by omitting the word ‘direction’ and substituting it with ‘order’. The purpose of this item is to ensure consistency with the terminology in subsection 349(2) of the Migration Act, as amended by the C&T No. 1 Act.

Item 56 amends paragraph 4.31C(1)(b) by omitting the words ‘section 417 of the Act, has substituted for the decision of the Tribunal’, and substituting with the words ‘section 351 or repealed section 417 of the Act, has substituted for the decision of the Administrative Appeals Tribunal or the ART’. This amendment is consequential to the repeal of Part 7 (which included section 417) by the C&T No. 1 Act, as explained above in relation to item 1. Retaining a reference to ‘repealed section 417’ ensures the regulation continues to apply after the commencement of the ART to decisions substituted by the Minister under section 417, before the repeal of that section.

Item [57] - Subregulation 4.33(1)

Item [58] - Subregulation 4.33(2)

Item [59] - Subregulation 4.33(2)

Item [60] - Subregulation 4.33(3)

Item [61] - Subregulation 4.33(3)

Item [62] - Subregulation 4.33(4)

Item [63] - Subregulation 4.33(4)

Item [64] - Subregulation 4.33(5)

Item [65] - Subregulation 4.33(5)

These items amend regulation 4.33 of the Migration Regulations. Regulation 4.33 sets out the remittal powers of the AAT on review of a Part-7 reviewable decision. The amendments are consequential to the C&T No. 1 Act, which repealed Part 7 of the Migration Act and amended section 349 to enable the ART to make a decision to remit a reviewable protection decision.

Item 57 amends subregulation 4.33(1) by omitting ‘paragraph 415(2)(c)’ and substituting with ‘subsection 349(2)’ of the Migration Act.

Items 58, 60, 62 and 64 amend subregulations 4.33(2), (3), (4) and (5) respectively by omitting ‘paragraph 415(2)(c)’ and substituting ‘paragraph 349(2)(b)’.

Items 59, 61, 63 and 65 amend subregulations 4.33(2), (3), (4) and (5) respectively by omitting ‘direction’ (wherever occurring) and substituting ‘order’. The purpose of this item is to ensure consistency with the terminology in subsection 349(2) of the Migration Act, as amended by the C&T No. 1 Act.

Item [66] - Regulation 4.34

This item amends regulation 4.34 of the Migration Regulations by omitting ‘subsection 418(2)’ and substituting with ‘subsection 352(2)’.

Prior to these amendments, regulation 4.34 prescribed, for the purposes of subsection 418(2) of the Migration Act, that the number of copies of a statement about the decision under review the Secretary must provide to the AAT is one (1). The C&T No. 1 Act repealed subsection 418(2) and amended subsection 352(2) such that it also applies to reviews of protection reviewable decisions.

Item [67] - Regulations 4.34A to 4.36

This item repeals regulations 4.34A, 4.35, 4.35A, 4.35B, 4.35C, 4.35D, 4.35F and 4.36 of the Migration Regulations. These regulations were made under Part 7 of the Migration Act. This amendment is consequential to the repeal of Part 7 of the Migration Act by the C&T No. 1 Act.

Item [68] - Division 4.4

This item repeals all of Division 4.4 of the Migration Regulations. Division 4.4 prescribed matters relevant to reviews conducted by the IAA under Part 7AA of the Migration Act. This amendment is consequential to the C&T No. 1 Act, which repealed Part 7AA of the Migration Act and abolished the IAA.

Item [69] - Subparagraphs 1129(3)(c)(ii) and (d)(ii) of Schedule 1

This item amends subparagraphs 1129(3)(c)(ii) and (d)(ii) of Schedule 1 to the Migration Regulations by omitting the words ‘section 345, 351, 417 or 501J’ and substituting ‘section 351 or 501J, or repealed section 417,’.

Item 69 is consequential to the C&T No. 1 Act, which consolidated Parts 5 and 7 of the Migration Act and amended the power in section 351 so that it is available for both reviewable migration and reviewable protection decisions. Inserting a reference to ‘repealed section 417’ makes it clear that where the Minister has previously substituted a more favourable decision under section 417 of the Migration Act, the applicant may continue to meet the requirements of the paragraph.

This item removes the reference to section 345 of the Migration Act, as that section was repealed in 1998 and is no longer relevant.

Item [70] - Subparagraph 1222(4)(c)(ii) of Schedule 1

This item repeals and replaces subparagraph 1222(4)(c)(ii) of Schedule 1 to the Migration Regulations.

Item 1222 of Schedule 1 to the Migration Regulations sets out the requirements for making an application for a Student (Temporary) (Class TU) visa. One of the requirements in subitem 1222(4) was that the application must be made within 28 days after a day mentioned in paragraph 1222(4)(c). Subparagraph 1222(4)(c)(ii) applied where the applicant’s last substantive visa was cancelled and the AAT made a decision to set aside and substitute the cancellation decision or the Minister’s decision not to revoke the cancellation.

The new subparagraph provides that the 28 day period begins on the later of the day when that last substantive visa ceased to be in effect and the day when:

- if the ART’s decision was given to the applicant orally, the applicant is taken under subsection 368(7) of the Migration Act (as amended by the C&T No. 1 Act) to have been notified of the decision; or
- otherwise, the applicant is taken, under section 379C of the Migration Act (as amended by the C&T No. 1 Act), to have received notification of the ART’s decision.

Item 26 of Schedule 16 to the C&T No. 1 Act provides that the new law (defined as the law of the Commonwealth as in force from time to time after the transition time) applies in relation to a thing done by, or in relation to, the AAT as if the thing had been done by, or in relation to, the ART.

When read in light of item 26 of Schedule 16 to the C&T No. 1 Act, the effect of the new subparagraph is that it will apply to a decision of the AAT to set aside and substitute a relevant cancellation decision or decision of the Minister not to revoke a cancellation, as if that decision had been made by the ART. Where the AAT gave an oral decision, the new law (subsection 368(7))

would deem that decision to have been made on the day and time the decision is given orally to the applicant.

Item [71] - Subparagraph 1229(4)(a)(iv) of Schedule 1

This item repeals and replaces subparagraph 1229(4)(a)(iv) of Schedule 1 to the Migration Regulations. Item 1229 of Schedule 1 sets out the requirements for making an application for a Skilled (Provisional) (Class VC) visa.

The new subparagraph applies if the ART has made a decision to set aside and substitute the Minister's decision not to revoke the cancellation of the applicant's eligible student visa. If it applies, the subparagraph requires:

- if the ART's decision was given orally, that the applicant has been taken, under subsection 368(7) of the Migration Act (as amended by the C&T No. 1 Act), to have been notified of the decision not more than 28 days before the day on which the application is made;
- otherwise, that the applicant has been taken, under section 379C of the Migration Act (as amended by the C&T No. 1 Act), to have received notification of the ART's decision not more than 28 days before the day on which the application is made.

The effect of the item is that in order to make a valid application for a Skilled (Provisional) (Class VC) visa, if the subparagraph applies, an application for the visa must be made within 28 days of having been taken to have been notified of the relevant ART decision under subsection 368(7) or section 379C of the Migration Act (as amended by the C&T No. 1 Act).

As with item 70 above, this item is to be read in light of item 26 of Schedule 16 to the C&T No. 1 Act such that the new subparagraph will apply to a decision made by the AAT to set aside and substitute the Minister's decision not to revoke the cancellation of an applicant's eligible student visa, as if that decision had been made by the ART. Where the AAT gave an oral decision, the new law (subsection 368(7)) would deem that decision to have been made on the day and time the decision is given orally to the applicant.

Item [72] - Subitem 1237(3) of Schedule 1 (table item 5, subparagraph (c)(ii))

This item repeals and replaces subparagraph (c)(ii) of table item 5 in subitem 1237(3) of Schedule 1 to the Migration Regulations. Prior to these amendments, item 1237 of Schedule 1 set out the requirements for making an application for a Temporary Activity (Class GG) visa.

Prior to these amendments, if table item 5 applied, subparagraph (c) of that table item required an application to be made within 28 days after the date when the last substantive visa held by the applicant ceased to be in effect or within the timeframe specified in subparagraph (c)(ii).

The new subparagraph (c)(ii) inserted by this item specifies that, if that last substantive visa was cancelled and the ART has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation, the relevant timeframe is within 28 days after the day when:

- if the ART's decision was given orally – the applicant is taken, under subsection 368(7) of the Migration Act (as amended by the C&T No. 1 Act), to have been notified of the decision;
- otherwise, the applicant is taken, under section 379C of the Migration Act (as amended by the C&T No. 1 Act), to have received notification of the ART's decision.

As with items 70 and 71 above, this item is to be read in light of item 26 of Schedule 16 to the C&T No. 1 Act such that the new subparagraph will apply to a decision made by the AAT to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation, as if that decision had been made by the ART. Where the AAT gave an oral decision, the new law (subsection 368(7)) would deem that decision to have been made on the day and time the decision is given orally to the applicant.

Item [73] - Subitem 1238(3) of Schedule 1 (table item 7, subparagraph (c)(ii))

This item repeals and replaces subparagraph (c)(ii) of table item 7 of Subitem 1238(3) of Schedule 1 to the Migration Regulations. Item 1238 of Schedule 1 sets out the requirements for making an application for a Training (Class GF) visa.

Where table item 7 applied, subparagraph (c) of that table item required an application to be made within 28 days after the date when the last substantive visa held by the applicant ceased to be in effect or within the timeframe specified subparagraph (c)(ii).

The new subparagraph (c)(ii) inserted by this item specifies that, if that last substantive visa was cancelled and the ART has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation, the relevant timeframe is within 28 days after the day when:

- if the ART's decision was given orally – the applicant is taken, under subsection 368(7) of the Migration Act (as amended by the C&T No. 1 Act), to have been notified of the decision;
- otherwise, the applicant is taken, under section 379C of the Migration Act (as amended by the C&T No. 1 Act), to have received notification of the ART's decision.

As with items 70, 71 and 72 above, this proposed new subparagraph is to be read in light of item 26 of Schedule 16 to the C&T No. 1 Act such that the new subparagraph applies to a decision made by the AAT to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation, as if that decision had been made by the ART. Where the AAT gave an oral decision, the new law (subsection 368(7)) would deem that decision to have been made on the day and time the decision is given orally to the applicant.

Item [74] - Divisions 010.1, 020.1, 030.1 and 050.1 of Schedule 2 (note to Division heading)

This item repeals and substitutes the note to the Division headings in Divisions 010.1, 020.1, 030.1 and 050.1 of Schedule 2 to the Migration Regulations.

These amendments add into the note a reference to the new definition of the ART in subsection 5(1) of the Migration Act as amended by C&T No. 1 Act, and remove the reference to 'Tribunal' as repealed by C&T No. 1 Act.

Item [75] - Subclause 050.212(1) of Schedule 2

Item 75 amends subclause 050.212(1) of Schedule 2 to the Migration Regulations by omitting '(6B)'. This amendment is consequential to the repeal of subclause 050.212(6B) at item 81.

Item [76] - Subparagraph 050.212(5B)(c)(ii) of Schedule 2

This item makes consequential amendments to subparagraph 050.212(5B)(c)(ii) of Schedule 2 to the Migration Regulations by omitting the words ‘section 345, 351 or 417’ and substituting ‘section 351, or repealed section 417,’.

Item 76 is consequential to the C&T No. 1 Act, which consolidated Parts 5 and 7 of the Migration Act and amended the power in section 351 so that it is available for both reviewable migration and protection decisions. Inserting a reference to ‘repealed section 417’ makes it clear that where the Minister has previously substituted a more favourable decision under section 417 of the Migration Act, the applicant may continue to meet the requirements of the subparagraph.

This item removes the reference to section 345 of the Migration Act, as that section was repealed in 1998 and is no longer relevant.

Item [77] - Subparagraph 050.212(6)(b)(i) of Schedule 2

This item makes consequential amendments to subparagraph 050.212(6)(b)(i) of Schedule 2 to the Migration Regulations by omitting the words ‘section 345, 351 or 417’ and substituting ‘section 351’.

Subparagraph 050.212(6)(b)(i) refers to the circumstance where an applicant is the subject of a decision for which the Minister has power to substitute a more favourable decision.

Item 77 is consequential to the C&T No. 1 Act, which consolidated Parts 5 and 7 of the Migration Act and amended the power in section 351 so that it is available for both reviewable migration and protection decisions. It is not necessary to insert a reference to ‘repealed section 417’ in this subparagraph because the Minister will have no power under section 417 as it is repealed.

This item removes the reference to section 345 of the Migration Act, as that section was repealed in 1998 and is no longer relevant. It also removes the reference to section 417 which was repealed by the C&T No. 1 Act.

Item [78] - Subparagraphs 050.212(6)(b)(ii) and (c)(i) of Schedule 2

This item makes consequential amendments to subparagraphs 050.212(6)(b)(ii) and (c)(i) of Schedule 2 to the Migration Regulations by omitting the words ‘section 345, 351 or 417’ and substituting ‘section 351, or repealed section 417,’.

Item 77 is consequential to the C&T No. 1 Act, which consolidated Parts 5 and 7 of the Migration Act and amended the power in section 351 so that it is available for both reviewable migration and protection decisions. Inserting a reference to ‘repealed section 417’ makes it clear that where the Minister has previously substituted a more favourable decision under section 417 of the Migration Act, the applicant may still meet the requirements of the subparagraphs.

This item removes the reference to section 345 of the Migration Act, as that section was repealed in 1998 and is no longer relevant.

Item [79] - Subclause 050.212(6AA) of Schedule 2

Item [80] - Paragraph 050.212(6A)(b) of Schedule 2

These items make consequential amendments to subclause 050.212(6AA) and paragraph 050.212(6A)(b) of Schedule 2 to the Migration Regulations by omitting the words ‘section 345, 351 or 417 of the Act, to substitute a more favourable decision for the decision of the Tribunal’ and substituting ‘section 351 or repealed section 417 of the Act, to substitute a more favourable decision for the decision of the Administrative Appeals Tribunal or the ART’.

Items 79 and 80 are consequential to the C&T No. 1 Act, which consolidated Parts 5 and 7 of the Migration Act and amended the power in section 351 so that it is available for both reviewable migration and protection decisions. Inserting a reference to ‘repealed section 417’ makes it clear that where the Minister has previously substituted a more favourable decision under section 417 of the Migration Act, the applicant may still meet the requirements of the subclause and paragraph respectively.

These items remove the reference to section 345 of the Migration Act, as that section was repealed in 1998 and is no longer relevant.

The items also include terminology changes consistent with the C&T No. 1 Act (see item 99 for further explanation about terminology changes).

Item [81] - Subclause 050.212(6B) of Schedule 2

Item 81 repeals subclause 050.212(6B) of Schedule 2 to the Migration Regulations.

Subclause 050.212(6B) was inserted into the Migration Regulations on 1 July 2009 as a part of the *Migration Amendment Regulations 2009 (No. 6)*. The intention of the provision was to ensure that people who had requested ministerial intervention prior to 1 July 2009, and that request had not yet been subject to a decision by the Minister, were not disadvantaged by amendments made to certain provisions in relation to the Bridging Visa E. This provision is repealed because it has become redundant due to the passage of time.

Item [82] – Subparagraph 050.511(1)(b)(iia) of Schedule 2

Item [83] – Subparagraph 050.511(1)(b)(iia) of Schedule 2

These items amend subparagraph 050.511(1)(b)(iia) of Schedule 2 to the Migration Regulations. Item 82 inserts ‘, as in force at the time of the decision,’ after ‘section 473CC(2) of the Act’. Item 83 inserts ‘as in force at the time of the referral’ after ‘section 473CA of the Act’. These amendments are consequential to the repeal of Part 7AA of the Migration Act and abolition of the IAA by C&T No. 1 Act (see item 68).

Item [84] - Subparagraphs 050.615(1)(b)(i) and 050.615A(1)(b)(i) of Schedule 2

This item makes consequential amendments to subparagraphs 050.615(1)(b)(i) and 050.615A(1)(b)(i) of Schedule 2 to the Migration Regulations by omitting the words ‘section 345, 351 or 417’ and substituting ‘section 351, or repealed section 417,’.

Item 84 is consequential to the C&T No. 1 Act, which consolidated Parts 5 and 7 of the Migration Act and amended the power in section 351 so that it is available for both reviewable migration and protection decisions. The inclusion of a reference to ‘repealed section 417’ makes it clear that conditions may still be imposed where the Minister has previously substituted a more favourable decision under section 417 of the Migration Act.

This item removes the reference to section 345 of the Migration Act, as that section was repealed in 1998 and is no longer relevant.

Item [85] - Clause 050.616 of Schedule 2

Item 85 repeals clause 050.616 of Schedule 2 to the Migration Regulations. Prior to these amendments, clause 050.616 referred to the conditions that would be applicable to an applicant who meets the requirements of subparagraph 050.212(6B). As subparagraph 050.212(6B) is repealed by item 81, this provision is redundant.

Item [86] - Division 051.1 of Schedule 2 (note 1 to Division heading)

This item repeals and replaces the first note to the heading of Division 051.1 of Schedule 2 to the Migration Regulations. The new note to the heading updates the references to the provisions in which relevant terms are defined. This is a consequential amendment to reflect the amendment of the Migration Act by the C&T No. 1 Act.

Item [87] - Paragraph 051.511(1)(bb) of Schedule 2

Item [88] - Paragraph 051.511(1)(bb) of Schedule 2

Item [89] - Paragraph 051.513(1)(bb) of Schedule 2

Item [90] - Paragraph 051.513(1)(bb) of Schedule 2

These items amend paragraphs 050.511(1)(bb) and 050.513(1)(bb) of Schedule 2 to the Migration Regulations. Items 87 and 89 insert the words ‘, as in force at the time of the decision’ after ‘subsection 473CC(2) of the Act’. Items 88 and 90 insert ‘as in force at the time of the referral’ after the reference to ‘section 473CA of the Act’. These amendments are consequential to the repeal of Part 7AA of the Migration Act and abolition of the IAA by C&T No. 1 Act (see item 68).

Item [91] - Clause 100.111 of Schedule 2 (paragraph (b) of the definition of sponsoring partner)

This item makes consequential amendments to clause 100.111 of Schedule 2 to the Migration Regulations to amend the definition of a ‘sponsoring partner’ by omitting the words ‘section 345, 351, 417 or 501J’ from paragraph (b) and substituting ‘section 351 or 501J, or repealed section 417,’.

Item 91 is consequential to the C&T No. 1 Act, which consolidated Parts 5 and 7 of the Migration Act and amended the power in section 351 so that it is available for both reviewable migration and protection decisions. Inserting a reference to ‘repealed section 417’ makes it clear that where the Minister has previously substituted a more favourable decision under section 417 of the Migration Act, paragraph (b) will continue to apply such that the definition of ‘sponsoring partner’ may still be met.

This item removes the reference to section 345 of the Migration Act, as that section was repealed in 1998 and is no longer relevant.

Item [92] - Paragraph 100.221(2A)(a) of Schedule 2

This item makes consequential amendments to paragraph 100.221(2A)(a) of Schedule 2 to the Migration Regulations by omitting the words ‘section 345, 351, 417 or 501J’ and substituting ‘section 351 or 501J, or repealed section 417,’.

Item 92 is consequential to the C&T No. 1 Act, which consolidated Parts 5 and 7 of the Migration Act and amended the power in section 351 so that it is available for both reviewable migration and protection decisions. Inserting a reference to ‘repealed section 417’ makes it clear that where the Minister has previously substituted a more favourable decision under section 417 of the Migration Act, the applicant may still meet the requirements of the paragraph.

This item removes the reference to section 345 of the Migration Act, as that section was repealed in 1998 and is no longer relevant.

Item [93] - Subparagraph 100.321(d)(i) of Schedule 2

This item makes consequential amendments to subparagraph 100.321(d)(i) of Schedule 2 to the Migration Regulations by omitting the words ‘section 345, 351, 417 or 501J’ and substituting ‘section 351 or 501J, or repealed section 417,’.

Item 93 is consequential to the C&T No. 1 Act, which consolidated Parts 5 and 7 of the Migration Act and amended the power in section 351 so that it is available for both reviewable migration and protection decisions. Inserting a reference to ‘repealed section 417’ makes it clear that where the Minister has previously substituted a more favourable decision under section 417 of the Migration Act, the applicant may still meet the requirements of the subparagraph.

This item removes the reference to section 345 of the Migration Act, as that section was repealed in 1998 and is no longer relevant.

Item [94] - Clause 801.111 of Schedule 2 (paragraph (b) of the definition of sponsoring partner)

This item makes consequential amendments to the definition of a ‘sponsoring partner’ in clause 801.111 of Schedule 2 to the Migration Regulations by omitting the words ‘section 345, 351, 417 or 501J’ from paragraph (b) and substituting ‘section 351 or 501J, or repealed section 417,’.

Item 94 is consequential to the C&T No. 1 Act, which consolidated Parts 5 and 7 of the Migration Act and amended the power in section 351 so that it is available for both reviewable migration and protection decisions. Inserting a reference to ‘repealed section 417’ makes it clear that paragraph (b) of the definition will continue to apply where the Minister had previously made a decision to substitute a more favourable decision under section 417 of the Migration Act.

This item removes the reference to section 345 of the Migration Act, as that section was repealed in 1998 and is no longer relevant.

Item [95] - Paragraph 801.221(2A)(a) of Schedule 2

This item makes consequential amendments to paragraph 801.221(2A)(a) of Schedule 2 to the Migration Regulations by omitting the words ‘section 345, 351, 417 or 501J’ and substituting ‘section 351 or 501J, or repealed section 417,’.

Item 95 is consequential to the C&T No. 1 Act, which consolidated Parts 5 and 7 of the Migration Act and amended the power in section 351 so that it is available for both reviewable migration and protection decisions. Including a reference to ‘repealed section 417’ makes it clear that where the Minister has previously substituted a more favourable decision under section 417 of the Migration Act, the applicant may still meet the requirements of the paragraph.

This item removes the reference to section 345 of the Migration Act, as that section was repealed in 1998 and is no longer relevant.

Item [96] - Paragraph 801.311(3)(a) of Schedule 2

This item makes consequential amendments to paragraph 801.311(3)(a) of Schedule 2 to the Migration Regulations by omitting the words ‘section 345, 351, 417 or 501J’ and substituting ‘section 351 or 501J, or repealed section 417,’.

Item 96 is consequential to the C&T No. 1 Act, which consolidated Parts 5 and 7 of the Migration Act and amended the power in section 351 so that it is available for both reviewable migration and protection decisions. Inserting a reference to ‘repealed section 417’ makes it clear that where the Minister has previously substituted a more favourable decision under section 417 of the Migration Act, the applicant may still meet the requirements of the paragraph.

This item removes the reference to section 345 of the Migration Act, as that section was repealed in 1998 and is no longer relevant.

Item [97] - Subparagraph 801.321(a)(iii) of Schedule 2

This item makes consequential amendments to subparagraph 801.321(a)(iii) of Schedule 2 to the Migration Regulations by omitting the words ‘section 345, 351, 417 or 501J’ and substituting ‘section 351 or 501J, or repealed section 417,’.

Item 97 is consequential to the C&T No. 1 Act, which consolidated Parts 5 and 7 of the Migration Act and amended the power in section 351 so that it is available for both reviewable migration and protection decisions. Inserting a reference to ‘repealed section 417’ makes it clear that where the Minister has previously substituted a more favourable decision under section 417 of the Migration Act, the applicant may continue to meet the requirements of the subparagraph.

This item removes the reference to section 345 of the Migration Act, as that section was repealed in 1998 and is no longer relevant.

Item [98] - Paragraph 3001(2)(d) of Schedule 3

This item repeals and substitutes paragraph 3001(2)(d) of Schedule 3 to the Migration Regulations. Subclause 3001(1) requires an application to be validly made within 28 days after the relevant day (within the meaning of subclause (2)).

The new paragraph 3001(2)(d) provides, for the purposes of subclause 3001(1) and clause 3002, if the last substantive visa held by the applicant was cancelled, and the ART has made a decision to set aside and substitute the cancellation decision or the Minister’s decision not to revoke the cancellation, the relevant day is the later of the day when that last substantive visa ceased to be in effect and the day when:

- if the ART’s decision was given orally – the applicant is taken, under subsection 368(7) of the Migration Act (as amended by the C&T No. 1 Act), to have been notified of the decision;
- otherwise, the applicant is taken, under section 379C of the Migration Act (as amended by the C&T No. 1 Act), to have received notification of the ART’s decision.

As with items 70 to 73 above, this item is to be read in light of item 26 of Schedule 16 to the C&T No. 1 Act such that the new paragraph will apply to a decision made by the AAT to set aside and

substitute the cancellation decision or the Minister's decision not to revoke the cancellation, as if that decision had been made by the ART. Where the AAT gave an oral decision, the new law (subsection 368(7)) would deem that decision to have been made on the day and time the decision is given orally to the applicant.

Part 2 – [Bulk amendments]

Migration Regulations 1994

Item [99] - Amendments of listed provisions

This item includes a table of bulk amendments to the Migration Regulations. These are terminology changes to update outdated references to the AAT with references to the ART and to reflect the consolidation of Parts 5 and 7 reviewable decisions within Part 5 of the Migration Act. The table provides for the following terminology changes:

- References to the 'Tribunal' are replaced with 'ART' to update outdated references to the AAT.
- References to 'Part-5 reviewable decisions' are replaced with references to 'reviewable migration decisions'.
- References to 'Part-7 reviewable decisions' are replaced with references to 'reviewable protection decisions'.

As mentioned above in relation to item 70, item 26 of Schedule 16 to the C&T No. 1 Act provides that the new law applies in relation to a thing done by, or in relation to, the AAT as if the thing had been done by, or in relation to, the ART.

The effect of this provision is that any reference in the Migration Regulations to the ART is taken to include a reference to the AAT, such that it is not necessary for a particular provision to refer to both entities. For example, in relation to the criteria set out in subclause 4020(1) of Schedule 4 to the Regulations, a bogus document or false or misleading information given to the AAT will continue to be captured by the subclause after the commencement of the ART.

Part 3 – Application and transitional provisions

Migration Regulations 1994

Item [100] - In the appropriate position in Schedule 13

Item 100 inserts Part 139 in Schedule 13 to the Migration Regulations. The purpose of Part 139 is to set out the application and transition of the amendments made by the Amending Regulations.

Clause 13901 inserts a definition for 'amending Part' which means Part 1 of Schedule 1 to the *Migration Amendment (Administrative Review Tribunal Consequential Amendments) Regulations 2024*.

Clause 13902 provides that the amendments made to paragraphs 2.15(1)(a), (3)(a) and (4)(a) by the amending Part apply in relation to an invitation to give additional information or comments under section 56 or 57 of the Migration Act on or after the commencement of the amending Part. The effect of this provision is that the prescribed period stipulated in invitations given under section 56 or 57 of

the Migration Act prior to the commencement of the amending Part continue to apply after commencement of the amending Part.

Clause 13903 provides the transitional provision for invitations to give additional information or comments under section 56 or section 57 of the Migration Act given to fast track applicants.

Subclause 13903(1) provides that clause 13903 applies if an invitation was given under section 56 or section 57 of the Migration Act before the commencement of the amending Part, and the prescribed period for the invitation was the period prescribed by sub-subparagraph 2.15(1)(b)(ii)(B) or subparagraph 2.15(3)(b)(ii) of the Migration Regulations (as the case may be), and that period had not ended immediately before the commencement of the amending Part.

Prior to these amendments, sub-subparagraph 2.15(1)(b)(ii)(B) and subparagraph 2.15(3)(b)(ii) each prescribed that, in the case of a fast track applicant, the period was 14 days after the applicant was notified of the invitation. These provisions are repealed by items 13 and 15 of the Amending Regulations.

Subclause 13903(2) provides that the prescribed period for the invitation is taken, on and after the commencement of the amending Part, to be the period prescribed by sub-subparagraph 2.15(1)(b)(ii)(C) or subparagraph 2.15(3)(b)(iii) of the Migration Regulations (as the case may be).

Sub-subparagraph 2.15(1)(b)(ii)(C) and subparagraph 2.15(3)(b)(iii) of the Migration Regulations provide that in 'any other case' the response period is 28 days after the applicant is notified of the invitation. The effect of clause 13903 is that the prescribed 28-day period within which to respond to an invitation under section 56 or 57 of the Migration Act or the time in which an interview is to take place would apply to fast track applicants who had received an invitation under section 56 or 57 of the Migration Act immediately prior to the commencement of the amending Part, so long as that prescribed 14-day period for response had not ended.

Clause 13904 provides for the application and savings provisions for review application fees.

Subclause 13904(1) provides that subregulation 4.31B(2) (see item 49), as inserted by the amending Part, applies in relation to an application for review made on or after the commencement of the amending Part.

Subclause 13904(2) provides that despite the repeal of subregulation 4.31B(2) (see item 49) as in force immediately before the commencement of the amending Part, that subregulation continues to apply, on and after that commencement, in relation to an application for review made before that commencement, as if the repeal had not happened.