Migration Legislation Amendment (2017 Measures No. 2) Regulations 2017

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

Dated 18 May 2017

Peter Cosgrove
Governor-General

By His Excellency's Command

Peter Dutton
Minister for Immigration and Border Protection

OPC62658 - A

Contents

1 Name

This instrument is the *Migration Legislation Amendment (2017 Measures No. 2) Regulations 2017*.

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	1 July 2017.	1 July 2017

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—New permanent visa for New Zealand citizens and age requirement for points-tested Subclass 189 visas

Migration Regulations 1994

1 Paragraph 2.26AC(2)(a)

Omit "visa; or", substitute "visa in the Points-tested stream; or".

2 Subitems 1137(2) to (4) of Schedule 1

Repeal the subitems, substitute:

Points-tested stream

(2) Subitems (3) to (4C) set out the requirements for:

(a) an applicant (a ***primary Points-tested applicant***) seeking to satisfy the primary criteria for the grant of a Subclass 189 (Skilled—Independent) visa in the Points-tested stream; or

(b) an applicant (a ***secondary applicant***) seeking to satisfy the secondary criteria for the grant of a Subclass 189 (Skilled—Independent) visa, whose application is:

(i) combined with the application of a primary Points-tested applicant; or

(ii) sought to be combined with such an application before a decision is made in relation to that application.

Note: A member of the family unit of a primary Points-tested applicant may apply for the grant of a Subclass 189 (Skilled—Independent) visa, seeking to satisfy the secondary criteria. However, the application by the member of the family unit must be made before a decision is made in relation to the application by the primary Points-tested applicant.

(3) Visa application charge—first instalment (payable at the time the application is made):

First instalment—Visas in the Points-tested stream etc.

Item	Component	Amount
1	Base application charge	$3,600
2	Additional applicant charge for an applicant who is at least 18	$1,800
3	Additional applicant charge for an applicant who is less than 18	$900

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

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

(4) Visa application charge—second instalment (payable before grant of visa):

Second instalment—Visas in the Points-tested stream etc.		
Item	**Applicant**	**Amount**
1	Applicant who: (a) was at least 18 at the time of application; and (b) is assessed as not having functional English	$4,885
2	Any other applicant	Nil

(4A) Other:

(a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

(b) An applicant may be in or outside Australia, but not in immigration clearance.

(c) An applicant in Australia must hold:

(i) a substantive visa; or

(ii) a Subclass 010 Bridging A visa; or

(iii) a Subclass 020 Bridging B visa; or

(iv) a Subclass 030 Bridging C visa.

(d) An application by a secondary applicant may be made at the same time, and combined with, an application by a primary Points-tested applicant.

(4B) A primary Points-tested applicant must meet the further requirements in the table.

Item	Further requirements—Visas in the Points-tested stream
1	The applicant must have been invited, in writing, by the Minister to apply for a Subclass 189 (Skilled—Independent) visa
2	The applicant must apply for that visa within the period stated in the invitation
3	The applicant must not have turned 45 at the time of invitation to apply for the visa
4	The applicant must nominate a skilled occupation: (a) that is specified by the Minister, in an instrument under subitem (4C), as a skilled occupation at the time of invitation to apply for the visa; and (b) that is specified in the invitation as the skilled occupation which the applicant may nominate; and (c) for which the applicant declares in the application that the applicant's skills have been assessed as suitable by the relevant assessing authority and that the assessment is not for a Subclass 485 (Temporary Graduate) visa
5	The applicant must not nominate the New Zealand stream

(4C) The Minister may, by legislative instrument, specify skilled occupations for the purposes of item 4 of the table in subitem (4B).

New Zealand stream

(4D) Subitems (4E) to (4G) set out the requirements for:

(a) an applicant (a ***primary NZ applicant***) seeking to satisfy the primary criteria for the grant of a Subclass 189 (Skilled—Independent) visa in the New Zealand stream; or

(b) an applicant (a ***secondary applicant***) seeking to satisfy the secondary criteria for the grant of a Subclass 189 (Skilled—Independent) visa, whose application is:

(i) combined with the application of a primary NZ applicant; or

(ii) sought to be combined with such an application before a decision is made in relation to that application.

Note: A member of the family unit of a primary NZ applicant may apply for the grant of a Subclass 189 (Skilled—Independent) visa, seeking to satisfy the secondary criteria. However, the application by the member of the family unit must be made before a decision is made in relation to the application by the primary NZ applicant.

(4E) Visa application charge—first instalment (payable at the time the application is made):

First instalment—Visas in the New Zealand stream etc.

Item	Component	Amount
1	Base application charge	$720
2	Additional applicant charge for an applicant who is at least 18	$360
3	Additional applicant charge for an applicant who is less than 18	$180

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

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

(4F) Visa application charge—second instalment (payable before grant of visa):

Second instalment—Visas in the New Zealand stream etc.

Item	Applicant	Amount
1	Applicant who satisfies the primary criteria	$2,880
2	Applicant who was at least 18 at the time of the application, and satisfies the secondary criteria	$1,440
3	Applicant who was under 18 at the time of the application, and satisfies the secondary criteria	$720

(4G) Other:

(a) An application must be made at the place, and in the manner, (if any) specified by the Minister in a legislative instrument made for this item under subregulation 2.07(5).

(b) The applicant must not nominate the Points-tested stream.

(c) A primary NZ applicant must hold a Subclass 444 (Special Category) visa.

(d) A secondary applicant in Australia must hold:

(i) a substantive visa; or

(ii) a Subclass 010 Bridging A visa; or

(iii) a Subclass 020 Bridging B visa; or

(iv) a Subclass 030 Bridging C visa.

(e) An application by a secondary applicant may be made at the same time, and combined with, an application by a primary NZ applicant.

Subclasses

3 Divisions 189.2 and 189.3 of Schedule 2

Repeal the Divisions, substitute:

189.2—Primary criteria

Note: The primary criteria for the grant of a Subclass 189 visa include criteria set out in streams.

For a Subclass 189 visa in the Points-tested stream, the criteria in Subdivisions 189.21 and 189.22 are the primary criteria.

For a Subclass 189 visa in the New Zealand stream, the criteria in Subdivisions 189.21 and 189.23 are the primary criteria.

The primary criteria must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a Subclass 189 visa need satisfy only the secondary criteria in Division 189.3.

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

189.21—Common criteria

Note: These criteria are for all applicants seeking to satisfy the primary criteria for a Subclass 189 visa.

189.211

Requirements for applicant

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

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

Requirements for family unit members who are also applicants

(3) Each member of the family unit of the applicant who is an applicant for a Subclass 189 visa satisfies public interest criteria 4001, 4002, 4003, 4004 and 4020.

(4) Each member of the family unit of the applicant who:

(a) is an applicant for a Subclass 189 visa; and

(b) had turned 18 at the time of application;

satisfies public interest criterion 4019.

(5) Each member of the family unit of the applicant who:

(a) is an applicant for a Subclass 189 visa; and

(b) has not turned 18;

satisfies public interest criteria 4015 and 4016.

Requirements for family unit members who are not themselves applicants

(6) Each member of the family unit of the applicant who is not an applicant for a Subclass 189 visa satisfies public interest criteria 4001, 4002, 4003 and 4004.

189.212

(1) The applicant satisfies special return criteria 5001 and 5002.

(2) Each member of the family unit of the applicant who is an applicant for a Subclass 189 visa satisfies special return criteria 5001 and 5002.

189.22—Criteria for Points-tested stream

Note: These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 189 visa in the Points-tested stream.

189.221

The applicant was invited, in writing, by the Minister to apply for the visa.

189.222

(1) At the time of invitation to apply for the visa:

(a) the relevant assessing authority had assessed the applicant's skills as suitable for the applicant's nominated skilled occupation; and

(b) the assessment was not for a Subclass 485 (Temporary Graduate) visa; and

(c) if the assessment specified a period during which the assessment was valid, and the period did not end more than 3 years after the date of the assessment—the period had not ended; and

(d) if paragraph (c) did not apply—not more than 3 years had passed since the date of the assessment.

(2) If the assessment was made on the basis of a qualification obtained in Australia while the applicant held a student visa, the qualification was obtained as a result of studying a registered course.

189.223

At the time of invitation to apply for the visa, the applicant had competent English.

189.224

(1) The applicant's score, when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act, is not less than the score stated in the invitation to apply for the visa.

(2) The applicant's score, when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act, is not less than the qualifying score for that Subdivision.

Note: Subdivision B of Division 3 of Part 2 of the Act provides for the application of a points system under which applicants for relevant visas are given an assessed score based on a prescribed number of points for particular attributes, assessed against the relevant pool mark and pass mark: see sections 92 to 96 of the Act.

The prescribed points and the manner of their allocation are provided for in Division 2.6 and Schedule 6D of these Regulations. Pool marks and pass marks are set from time to time by the Minister by instrument: see section 96 of the Act.

189.225

(1) The applicant satisfies public interest criteria 4005 and 4010.

(2) Each member of the family unit of the applicant who is an applicant for a Subclass 189 visa satisfies public interest criteria 4005 and 4010.

(3) Each member of the family unit of the applicant who is not an applicant for a Subclass 189 visa satisfies public interest criterion 4005, unless it would be unreasonable to require the member to undergo assessment in relation to the criterion.

189.226

(1) The applicant satisfies special return criterion 5010.

(2) Each member of the family unit of the applicant who is an applicant for a Subclass 189 visa satisfies special return criterion 5010.

189.23—Criteria for New Zealand stream

Note: These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 189 visa in the New Zealand stream.

189.231

(1) The applicant had been usually resident in Australia for a continuous period of at least 5 years immediately before the date of the application.

(2) That continuous period of usual residence in Australia started on or before 19 February 2016.

189.232

(1) The applicant has provided copies of notices of assessment, and of any notices of amended assessments, given to the applicant by the Commissioner of Taxation, of the applicant's income tax liability in relation to the 4 most recently completed income years before the date of the application (during the period of 5 years immediately before that date).

(2) The requirement in subclause (1) is satisfied in relation to a copy of a notice even if the copy does not include the applicant's tax file number within the meaning of Part VA of the *Income Tax Assessment Act 1936*.

189.233

(1) For each of the 4 completed income years mentioned in subclause 189.232(1):
   (a) the applicant's taxable income (within the meaning of the *Income Tax Assessment Act 1997*) is no less than the minimum amount specified by the Minister for the year under subclause (2); or
   (b) the applicant:

(i) satisfies the Minister that he or she was a member of a class of exempt applicants specified by the Minister under subclause (2) during the whole, or a specified period, of that year; and

(ii) provides evidence specified by the Minister under subclause (2) in relation to that class of applicants.

(2) The Minister may, by legislative instrument:

(a) for the purposes of paragraph (1)(a), specify a minimum amount of income for an income year; and

(b) for the purposes of paragraph (1)(b), specify a class of exempt applicants, and evidence in relation to that class.

189.234

(1) The applicant satisfies public interest criterion 4007.

(2) Each member of the family unit of the applicant who is an applicant for a Subclass 189 visa satisfies public interest criterion 4007.

(3) Each member of the family unit of the applicant who is not an applicant for a Subclass 189 visa satisfies public interest criterion 4007, unless it would be unreasonable to require the member to undergo assessment in relation to the criterion.

189.3—Secondary criteria

Note: These criteria are for applicants who are members of the family unit of a person who satisfies the primary criteria. All criteria must be satisfied at the time a decision is made on the application.

189.31—Criteria

189.311

The applicant:

(a) is a member of the family unit of a person (the ***primary applicant***) who holds a Subclass 189 visa granted on the basis of satisfying the primary criteria for the grant of the visa; and

(b) made a combined application with the primary applicant.

189.312

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

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

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

(4) If the primary applicant holds a Subclass 189 visa in the Points-tested stream, the applicant satisfies public interest criteria 4005 and 4010.

(5) If the primary applicant holds a Subclass 189 visa in the New Zealand stream, the applicant satisfies public interest criterion 4007.

189.313

(1) If the primary applicant holds a Subclass 189 visa in the Points-tested stream, the applicant satisfies public interest criteria 5001, 5002 and 5010.

(2) If the primary applicant holds a Subclass 189 visa in the New Zealand stream, the applicant satisfies special return criteria 5001 and 5002.

Schedule 2—Outgoing passenger cards

Migration Regulations 1994

1 Subregulation 3.01(3)

After "A person to whom this regulation applies", insert "who is arriving in Australia".

2 Paragraphs 3.01(3)(b) and (c)

Repeal the paragraphs, substitute:

(b) provide the completed passenger card to an officer.

Schedule 3—Transitional arrangements

Migration Regulations 1994

1 In the appropriate position in Schedule 13

Insert:

Part 63—Amendments made by Migration Legislation Amendment (2017 Measures No. 2) Regulations 2017

6301 Amendments relating to Subclass 189 (Skilled—Independent) visas

(1) The amendments to these Regulations made by Schedule 1 to the *Migration Legislation Amendment (2017 Measures No. 2) Regulations 2017* apply in relation to an application for a Subclass 189 (Skilled—Independent) visa made on or after 1 July 2017, subject to subclause (2).

Note: Schedule 1 to the *Migration Legislation Amendment (2017 Measures No. 2) Regulations 2017* commences on 1 July 2017.

(2) However, the amendments do not apply in relation to an application for a Subclass 189 (Skilled—Independent) visa, if:

(a) both:

(i) the application is made in response to an invitation given by the Minister before 1 July 2017; and

(ii) the application is made on or after 1 July 2017; or

(b) both:

(i) the applicant claims to be a member of the family unit of an applicant (the ***primary applicant***) to whom paragraph (a) applies; and

(ii) the application is combined with the application made by the primary applicant.

6302 Operation of Schedule 2

The amendments made by Schedule 2 to the *Migration Legislation Amendment (2017 Measures No. 2) Regulations 2017* apply in relation to departures from Australia occurring on or after 1 July 2017.

EXPLANATORY STATEMENT

Issued by the Minister for Immigration and Border Protection

Migration Act 1958

Migration Legislation Amendment (2017 Measures No. 2) Regulations 2017

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

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 which are necessary or convenient to be prescribed for carrying out or giving effect to the Migration Act.

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

The *Migration Legislation Amendment (2017 Measures No. 2) Regulations 2017* (the Amendment Regulations) amends the *Migration Regulations 1994* to create a new permanent visa stream for certain New Zealand citizens, lower the maximum age permitted to apply for a Subclass 189 (Skilled – Independent) visa in the Points-tested stream, and remove the requirement for persons departing Australia to complete a passenger card.

In particular, the Amendment Regulations:

- amend the Subclass 189 visa to create two new visa streams:
    - the Points-tested stream, which substantially replicates the current Subclass 189 visa; and
    - the New Zealand stream, which facilitates New Zealand citizens who are already resident in, and contributing to, Australia to become permanent residents, in accordance with the Government's announcement on 19 February 2016. The new visa stream is broadly available to New Zealand citizens who:
        - were usually resident in Australia on or before 19 February 2016; and
        - since that time have continued to be usually resident in Australia for at least five years before applying for the visa; and
        - have been contributing to Australia by earning a certain level of taxable income; and
        - meet mandatory health, character and security criteria;

- lower the maximum age permitted to be eligible to apply for the Points-tested stream from 50 to 45 years to support broader Government initiatives to better target skilled migrants with longer-term productivity; and

- remove the requirement for persons departing Australia to complete a passenger card as this information can now be more efficiently obtained from other

sources. This aligns with the Government's digital transformation and low contact, automated border clearance agendas.

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

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

Details of the Amendment Regulations are set out in Attachment C.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Regulations commence on 1 July 2017.

The Office of Best Practice Regulation (the OBPR) has been consulted in relation to the amendments made by the Amendment Regulations. The OBPR advises that the changes are expected to have nil or minor regulatory impacts on businesses, individuals or community organisations. The OBPR reference numbers are as follows:

- in relation to the New Zealand stream in Schedule 1: 20260;
- in relation to the Points-tested stream in Schedule 1: 21913 and 21908;
- in relation to Schedule 2: 20730.

In relation to the New Zealand stream amendments in Schedule 1, consultation regarding the permanent residence visa for New Zealand citizens occurred through a whole-of-Government process. Consultation also included the Government of New Zealand.

In relation to the Points-tested stream amendments in Schedule 1, the lowering of the maximum age limit for invited applicants was decided following consultation with other Australian Government Departments. The consultation was in the form of Inter-Departmental Committee Meetings. Consultation external to the Australian Government was not undertaken, however the decision to lower the age considered recommendations made by the Productivity Commission in their 2016 report *Migrant Intake into Australia*. Specifically, recommendation 13.1 was that the Australian Government consider reducing the age limit of 50 years for permanent migration under the skill stream. Additionally, the reduction in age supports broader Government initiatives to better target Australia's skilled migrants, leading to longer term productivity from the skilled migration programme.

In relation to the amendments made by Schedule 2, consultation occurred with Government and industry stakeholders. Consultation also occurred via consultative forums such as the National Passenger Facilitation Committee (NPFC). NPFC membership includes major airlines and airline representative bodies, industry and Government tourism bodies, airport owners and key Government agencies.

ATTACHMENT A

AUTHORISING PROVISIONS

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

In addition, the following provisions of the Migration Act may apply:

- subsection 31(3), which provides that the regulations may prescribe criteria for a visa or visas of a specified class;

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

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

- subsection 45C(1), which provides that the regulations may provide that visa application charge may be payable in instalments, and specify how those instalments are to be calculated, and when instalments are payable;

- subsection 46(3), which provides that the regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application;

- paragraph 46(4)(a), which relevantly provides that, without limiting subsection 46(3), the regulations may prescribe the circumstances that must exist for an application for a visa of a specified class to be a valid application; and

- subsection 175(2), which provides that a person is to comply with subsection 175(1) in a prescribed way. Relevantly, paragraph 175(1)(b) provides that persons departing Australia may be required to provide to a clearance authority any information (including the person's signature, but not any other personal identifier) required by the Migration Act or the regulations.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Migration Legislation Amendment (2017 Measures No. 2) Regulations 2017

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

Schedule 1 – New permanent visa for New Zealand citizens and age requirement for points-tested Subclass 189 visa

New Zealand stream

These amendments to the *Migration Regulations 1994* (the Regulations) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the amendments

On 19 February 2016, the Australian Government announced an additional pathway to permanent residence, and thereafter Citizenship, for Subclass 444 (Special Category) visa (SCV) holders. SCVs are temporary visas that are available to New Zealand citizens who are not of health or character concern, and remain in effect so long as the visa holder is in Australia and remains a New Zealand citizen.

Until 26 February 2001, holders of an SCV were afforded the same rights as permanent residents. Since then, all new SCV arrivals have been required to become permanent visa holders before they can obtain Australian citizenship or sponsor their family members for an Australian permanent visa.

This additional visa pathway will be available from 1 July 2017. It will be available to SCV holders, who meet prescribed criteria, as detailed below.

This pathway will be made available as an additional visa stream (called 'the New Zealand stream') within the Subclass 189 (Skilled Independent) visa category of the General Skilled Migration component of Australia's annual Migration Programme. The New Zealand stream allows qualified applicants to become permanent residents after five years of residence in Australia

In order to make a valid application and be granted a visa in the New Zealand stream, an applicant (the primary applicant) must, among other things:

- be a New Zealand citizen who holds an SCV;
- be usually resident in Australia for the required period of time;

- be contributing to Australia via the payment of income tax, demonstrated through notices of assessment from the Australian Taxation Office for the four full income years immediately before the application, and the taxable income for each income year is at least the level specified by the Minister in a legislative instrument; and
- meet mandatory health, character and security criteria.

Members of the family unit of the primary applicant can hold any visa and must meet mandatory health, character and security criteria.

Under the proposed amendments, the Minister will have the power to specify, in a legislative instrument, a class of applicants that are exempt from having to satisfy the taxable income requirement.

The amendments would also allow the Minister to specify, by legislative instrument, the class of exempt applicants and the evidence that must be provided in relation to that class of persons.

The total amount of the visa application charge (VAC) will be consistent with the General Skilled Migration Programme, however concessional arrangements have been introduced to the New Zealand stream, allowing 20 per cent of the VAC to be paid at time of lodgement and the remainder to be paid before the visa grant.

Human rights implications

These amendments provide a pathway to permanent residency for New Zealand citizens only. Accordingly, it is necessary to consider whether they limit any of Australia's non-discrimination obligations.

Article 2(1) of the *International Covenant on Civil and Political Rights* (the ICCPR) states that:

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

Article 2(1) of the ICCPR obliges Australia to ensure the rights of the Covenant to all individuals within its territory and subject to its jurisdiction. As these amendments do not interfere with any of the rights provided for in the ICCPR, they do not engage article 2(1). In this respect, it should be noted that there is no right to a visa or to permanent residency.

Article 26 of the ICCPR states:

> *All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language,*

religion, political or other opinion, national or social origin, property, birth or other status.

These amendments do not discriminate based on any of the grounds in article 26 of the ICCPR. Rather, they provide an additional beneficial pathway to permanent residency for certain SCV holders. To the extent that these amendments could be seen to discriminate on the basis of 'nationality' or 'other status' (citizenship), this limitation is reasonable and proportionate to the meeting of a legitimate State objective.

While New Zealand citizens already have special arrangements that allow them to enter and reside in Australia indefinitely, these arrangements do not themselves provide a pathway to permanent residence, and thereafter citizenship. These amendments acknowledge that although there is a diverse range of permanent visas available, there are some New Zealand citizens who will not be able to meet the requirements for a permanent visa, despite having lived in Australia for many years and despite having contributed to Australia's society and economy. These amendments also acknowledge the special bilateral relationship between Australia and New Zealand.

Conclusion

This Legislative Instrument is compatible with human rights, as any limitations that might be seen to arise are reasonable, necessary and proportionate.

Points-tested stream

In addition to amending the Regulations to support the Government's additional pathway to permanent residence for certain New Zealand SCV holders, the amendments also lower the maximum age for invited applicants through the Subclass 189 visa in the Points-tested stream. The Points-tested stream in the Subclass 189 visa (the Points-tested visa) is a permanent visa for highly skilled people who are independent migrants with high human capital attributes. It is part of the points-tested skilled visa programme, which targets highly talented migrants who will make the best contribution to Australia's future labour market needs, selecting potential migrants on the basis of skill sets and attributes needed to succeed in finding a job in the Australian labour market.

The Points-tested visa requires all applicants to have lodged an Expression of Interest (EOI) in SkillSelect and be invited to apply before they are able to lodge a visa application. SkillSelect controls access to Australia's skilled migration programme through minimum threshold requirements. Only those potential migrants who meet the necessary requirements are invited to apply for a skilled migration visa and invitations are issued at levels which match the needs of the Australian economy. As a minimum requirement, all applicants must be able to demonstrate they have the ability to meet the points-test pass mark (currently set at 60 points) to be eligible for an invitation.

The maximum age for the Points-tested visa is being reduced from 50 years to 45 years of age. This is in line with the Government's initiative to better target migrants who will be productive for a longer period of time. The amendment to the maximum age requirement will only impact those applicants who are invited to apply on or after 1 July 2017. This amendment is one of a number of other measures being introduced to support the broader initiative of strengthening the integrity of the skilled migration programme and better targeting highly productive migrants for migration to Australia.

Human rights implications

The amendments have been assessed against the seven core international human rights treaties. The amendment engages the right to non-discrimination, including as it relates to the right to work.

These amendments engage Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2 of the International Covenant on Economic, Social and Cultural rights (ICESCR).

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

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

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

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

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

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

As such, Australia is able to set requirements for the entry of non-citizens into Australia and conditions for their stay, and does on the basis of reasonable and objective criteria. The aim of the permanent skilled migration programme is to maximise benefits of migration to the Australian economy.

Currently, around half of all applicants for the Points-tested visa apply directly from outside Australia. For those persons who are in Australia and who wish to apply for the Points-tested visa while in Australia, the right to work may additionally be engaged. Article 6(1) of the ICESCR states:

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

The Productivity Commission, in their inquiry report *Migrant Intake Into Australia* released in 2016, acknowledges the importance of applying an age limit to Australia's skilled migration programme. The Productivity Commission notes, at page 24, that 'given that the objective of the skill stream is largely economic, this [the economic impacts on Australia] should be given primacy in determining eligibility criteria for that stream'.

The Productivity Commission notes that 'permanent immigrants who arrive at a relatively young age, particularly those who are highly educated, generally contribute more tax revenue over their lifetime and make comparatively lower use of government-funded services. In contrast, those who arrive at an older age have lower rates of labour force participation and contribute to higher costs due to their use of government-subsidised health care and other support services' (Productivity Commission, p. 13). In particular, they note that:

> *'Government expenditure per person increases rapidly after the age of 60 years, labour market participation falls precipitously and taxes paid decrease. The steep rise in such net costs to taxpayers after age 60 years means that the present value of the future stream of net transfers to immigrants required from existing Australians is positive at ages much* earlier *than 60 years (and under any realistic scenarios at an age less than 50 years).'* (Productivity Commission, p. 444-5)

The Productivity Commission utilises their analysis and findings as 'strong grounds for reducing the current age limit [50] for eligibility for permanent residency' (Productivity Commission, p. 445), resulting in Recommendation 13.1 of their report.

While the Productivity Commission does not provide a recommendation on the final lowered maximum age, the Government determined that under 45 years of age was appropriate given that this is the highest age at which a migrant can receive points under the skilled migration points test. Additionally, skilled migrants were required to be under 45 years of age prior to the significant changes to the skilled migration programme implemented in 2012.

Since the Subclass 189 visa was implemented in July 2012, less than one per cent of the programme has been made up of people who are between the ages of 45 and 49 years.

Under the current skilled migration points test, applicants who are between the ages of 45 and 49 years are not awarded any extra points based on their age. This is in recognition that migrants under the age of 45 are more likely to have a longer period of labour market productivity before requiring increased access to social and medical services.

Where migrants are highly talented or skilled and are over 45 years of age, they may be eligible for other visa programmes such as the permanent employer sponsored visa programme, which features exemptions to the age requirement, or the Distinguished Talent or Business Innovation visa programmes. They may also be eligible for a 2-4 year temporary visa for employment purposes, which does not have an age limit.

In addition, as this visa is a permanent residence visa, the reduction in the maximum age requirement will not prevent any current holders of the subclass 189 visa, or any other permanent residence visa, from accessing work or impede their right to work.

Conclusion

The amendment to lower the maximum age for the Points-tested visa is based on reasonable and objective criteria aimed at maximising the economic benefits of the skilled migration stream for Australia, as recommended by the Productivity Commission. Other visa pathways are available for applicants over 45 both in and outside Australia to enter and/or remain in, and seek employment in Australia. For persons already holding this visa, their right to work is unaffected.

The amendments are therefore compatible with human rights to the extent that it differentiates based on a person's age and may affect the right to work of those in Australia, these differentiations and limitations are based on reasonable and objective criteria which are proportionate to achieving the aims of the skilled migration programme in setting the criteria for the entry and stay of skilled non-citizens.

Schedule 2 – Outgoing passenger cards

Overview of the amendments

Regulation 3.01 previously required, among other things, certain persons departing Australia to complete a passenger card.

Regulation 3.01 also required a person departing Australia to provide the completed passenger card to an officer or an authorised system, or to deposit the completed passenger card at a place of a kind specified in a legislative instrument made by the Minister under subparagraph 3.01(3)(c)(ii) of the Regulations.

Schedule 2 amends regulation 3.01 to remove the requirement for a person to complete a passenger card when departing Australia.

These amendments have been made because a passenger card for a person departing Australia is no longer required as the information collected on a passenger card is now obtained from other sources. This is in line with the current Government direction towards digitisation, automation and deregulation.

Human rights implications

The amendments made by Schedule 2 do not engage any of the applicable rights or freedoms. Removal of the requirement for a person to complete a passenger card when departing Australia and amending regulation 3.01 does not engage any of the applicable rights or freedoms.

Conclusion

The amendments in this Schedule are compatible with human rights as they do not raise any human rights issues.

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

ATTACHMENT C

Details of the *Migration Legislation Amendment (2017 Measures No. 2) Regulation 2017*

Section 1 – Name

This section provides that the title of the Regulations is the *Migration Legislation Amendment (2017 Measures No. 2) Regulations 2017* (the Amendment Regulations).

Section 2 – Commencement

Subsection 2(1) provides that each provision of the 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.

The table provides the whole of the instrument commences on 1 July 2017.

A note clarifies that 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.

Subsection 2(2) provides that any information in column 3 of the table is not part of the instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument. Column 3 of the table provides the date/details of the commencement date.

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

Section 3 – Authority

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

The purpose of this section is to set out the authority under which this instrument is made.

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.

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

Schedule 1 – New permanent visa for New Zealand citizens and age requirement for points-tested Subclass 189 visas

On 19 February 2016, the Prime Minister and the Minister for Immigration and Border Protection jointly announced that, in recognition of the special relationship between Australia and New Zealand, a 'streamlined pathway to Australian citizenship' will be created for certain New Zealand citizens. This will be achieved by providing a specific

permanent resident visa for New Zealanders who are already usually resident in, and contributing to, Australia, which will then enable them thereafter to apply for Australian citizenship.

In accordance with the Government's decision, the amendments in this Schedule amend the Subclass 189 visa to create two visa streams:

- one stream substantially replicates the criteria in the previous Subclass 189 visa, and is called: the Points-tested stream; and
- the other stream contains the new criteria for the new visa stream specifically for New Zealanders, and is called the New Zealand stream.

The only change between the visa criteria for the previous Subclass 189 visa and the Points-tested stream is the lowering of the applicant's maximum age at the time of invitation to apply for the visa from 50 years of age to 45 years of age. All other criteria remain the same.

For the New Zealand stream, the visa is available to New Zealand citizens who, amongst other things:

- hold a Subclass 444 (Special Category) visa ('Subclass 444 visa') at the time of application;
- meet the residence requirement (see clause 189.231 in item 3 below);
- earn a certain level of taxable income (see clauses 189.232 and 189.233 in item 3 below); and
- satisfy mandatory health, character and security criteria.

This visa is also available to those New Zealand citizens' family members who meet the applicable criteria.

Item 1 – paragraph 2.26AC(2)(a)

This item amends paragraph 2.26AC(2)(a) to make it clear that the "points" system, established by Subdivision B of Division 3 of Part 2 of the Migration Act, is only relevant to the 'Points-tested stream' in Subclass 189. The New Zealand stream is not subject to the points system.

Item 2 – Subitems 1137(2) to (4) of Schedule 1

This item repeals subitems 1137(2) to (4) of Schedule 1 to the Regulations, and substitutes new subitems 1137(2) to (4G).

Previously, subitems 1137(2) to (4) set out the criteria for making a valid application for a Subclass 189 visa. New subitems 1137(2) to (4G) set out the criteria for making a valid application for the Points-tested stream and New Zealand stream.

Applicants who wish to apply for a Subclass 189 visa must meet the relevant requirements set out for the relevant stream. An applicant can only apply for one stream.

Points-tested stream

Subitems 1137(2) to (4C) set out the requirements to make a valid application for the Points-tested stream.

These subitems substantially replicate the previous criteria in item 1137 for making a valid application. The structure of the provisions has been changed to reflect the fact that the visa now contains two streams.

A note has been inserted under subparagraph 1137(2)(b)(ii) to make clear that an applicant seeking to satisfy the secondary criteria ('the secondary applicant') for a Subclass 189 visa must apply before a decision is made on the application of the person seeking to satisfy the primary criteria ('the primary applicant') for the Points-tested stream. This is because a secondary applicant can only validly apply for the visa if their application is combined, or sought to be combined, with the primary applicant's application. A combined application can only be made either by applying for the visa at the same time as the primary applicant, or applying before a decision is made on the primary applicant's application and meeting the relevant requirements for combining the visa application. In the case of a permanent visa, these requirements are set out in regulation 2.08A. A secondary applicant who does not apply before a decision is made can only apply as a primary applicant.

The intention is that an applicant can only apply for a Subclass 189 visa if they either:

- are seeking to meet the primary criteria; or
- are seeking to meet the secondary criteria and they applied before a decision is made on the primary applicant's application.

The only substantive change to the criteria for making an application for a Subclass 189 visa is in relation to the age of the primary applicant. Previously, applicants must not have turned 50 at the time of invitation to apply for the visa. This amendment lowers the age requirement to 45 so that applicants who have turned 45 at the time of invitation are not eligible to apply for the visa.

This amendment supports the Government's significant reform package to strengthen the integrity and quality of Australia's skilled visa programme by targeting migrants with longer-term productivity. In addition, currently, whether an applicant is invited to apply for the Points-tested visa is dependent on the number of points they are given as a result of an assessment process: see section 93 of the Act, regulation 2.26AC and Schedule 6D to the Regulations. In accordance with Schedule 6D, the points are awarded based on numerous factors, including the applicant's age. An applicant who is aged 45 years or older is not given any points, as opposed to a younger applicant. As such, changing the age requirement to 45 years also supports the policy intention of the points test.

The new criteria also include a requirement that an applicant seeking to apply for the Points-tested stream must not have nominated the New Zealand stream. This amendment ensures that an applicant can only apply for one stream in the Subclass 189 visa, and not both streams. The application will only be a valid application for the applicant's chosen stream.

New Zealand stream

Subitems 1137(4D) to (4G) set out the requirements for validly applying for the New Zealand stream.

Subitem 1137(4D) provides that subitems (4E) – (4G) sets out the requirements for an applicant seeking to satisfy the primary criteria for the New Zealand stream or a secondary applicant whose application is combined, or sought to be combined, with the primary applicant.

A note was inserted under subparagraph 1137(4D)(b)(ii) for the same reasons as inserting the note under subparagraph 1137(2)(b)(ii) in the Points-tested stream.

Subitems 1137(4E) and (4F) set out the first and second instalment of the visa application charge ('VAC') payable for the New Zealand stream. The overall VAC payable (first and second instalments) is the same as the first instalment of the VAC payable for the Points-tested stream, which is $3600.

However, consistent with the announcement on 19 February 2016, applicants are only required to pay 20% of the overall VAC at the time of application (as the first instalment of the VAC). The remaining 80% of the overall VAC is charged as the second instalment of the VAC, which is only payable by the applicant before the visa is granted.

Subitem 1137(4G) sets out the other requirements for applying for the New Zealand stream.

Paragraphs 1137(4G)(a) and (e) replicate standard procedural provisions.

Paragraph 1137(4G)(b) requires that the applicant must not have nominated the Points-tested stream when applying. This provision is inserted for the same reasons as table item 5 under subitem 1137(4B).

Paragraphs 1137(4G)(c) and (d) relate to the visa status of the primary and secondary applicants, and provide for the visa(s) that must be held by the respective applicants at the time of application.

Primary applicants are required to hold a Subclass 444 visa because that is the visa held by New Zealand citizens for whom this visa has been created.

Secondary applicants are required to hold a substantive visa, or certain bridging visas. The policy intention is to exclude applications by family members who are unlawful non-citizens or who have previously been unlawful non-citizens and now hold a Subclass 050 (Bridging E) visa.

Item 3 – Division 189.2 and 189.3 of Schedule 2

This item repeals and substitutes Divisions 189.2 and 189.3 of Schedule 2 to the Regulations.

Divisions 189.2 set out the primary criteria for each stream of the Subclass 189 visa and Division 189.3 set out the secondary criteria for the Subclass 189 visa.

Consistent with other visas with a stream structure, a Note is inserted immediately under the headings of each Division to outline the applicable criteria, who must satisfy those criteria and when those criteria must be satisfied.

Subdivision 189.21 – Common criteria

Subdivision 189.21 sets out the common criteria for both visa streams.

A note immediately under the heading '189.21 – Common criteria' provides that the criteria in this subdivision are for all applicants seeking to satisfy the primary criteria for a Subclass 189 visa.

Clause 189.211

Clause 189.211 sets out the public interest criteria ('PIC') that must be met by the primary applicant and their family members (whether these family members are applicants or non-applicants). This clause substantially replicates the PIC for the Subclass 189 visa before this amendment (see repealed clause 189.215).

Each applicant and their family members must satisfy the applicable PIC. If one person fails to meet the criteria, then it is intended for the visa to be refused for all applicants ('the one fail all fail rule'). This is consistent with the family unity policy in that it ensures that families are not split if, for example, the parent meets the PIC and can be granted the visa, but the child does not and must be refused.

The only difference between the PICs applicable to each stream is that:

- for the Points-tested stream, PIC 4005 and 4010 apply (which were imposed on previous Subclass 189 visa); and
- for the New Zealand stream, PIC 4007 applies.

Further explanation of the PIC imposed on the New Zealand stream is in clause 189.234 below.

Clause 189.212

Clause 189.212 sets out the special return criteria ('SRC') that must be met by the primary applicant and their family members who are also applying for the visa.

This clause substantially replicates the SRC for the Subclass 189 visa before this amendment (see repealed clause 189.216).

Consistent with the family unit policy, the one fail all fail rule applies and all applicants are required to meet the applicable SRC.

The only difference between the SRCs applicable to each stream is that the Points-tested stream applicants must also meet SRC 5010. That criterion is not relevant to the New Zealand stream.

Subdivision 189.22 – Criteria for Points-tested stream

Subdivision 189.22 sets out the criteria for the Points-tested stream.

A note immediately under the heading '189.22 – Criteria for the Points-tested stream' provides that the criteria in this subdivision are for all applicants seeking to satisfy the primary criteria for a Subclass 189 visa in the Points-tested stream.

The criteria in this subdivision replicate the primary criteria (other than the PICs and the SRCs covered in the common criteria) for the previous Subclass 189 visa.

Subdivision 189.23 – Criteria for New Zealand stream

Subdivision 189.23 sets out the criteria for the New Zealand stream.

A note immediately under the heading '189.23 – Criteria for the New Zealand stream' provides that the criteria in this subdivision are for all applicants seeking to satisfy the primary criteria for a Subclass 189 visa in the New Zealand stream.

Clause 189.231 – the residence requirement

This criterion provides for the residence requirement for this visa stream.

Consistent with the announcement on 19 February 2016, it is intended that the applicant can only meet this criterion if they have been usually resident in Australia for no less than 5 years counting backwards from the application date, they have maintained a continuous period of residence in Australia, and that period started on or before 19 February 2016.

The purpose of this criterion is to ensure that this visa can only be granted to those applicants who have demonstrated their commitment to Australia by living here for a significant period of time. That period of time will have already elapsed for many applicants. For more recent arrivals prior to 19 February 2016 (e.g. a New Zealand citizen who became usually resident in January 2016), the five-year period of residence will not accrue until 2021. However, regardless of the overall length of residence, applicants will only qualify if they can meet the income requirement set out below.

Clause 189.232 and 189.233 – the income requirement

These criteria provide for the income requirement for this visa stream.

Subclause 189.232(1) requires the applicant to have provided 4 notices of assessment (and of any notices of amended assessments) for each of the last 4 income years before the application date. At what time an income year begins during a calendar year would be determined by the applicable tax laws. As the applicant is required to have lived in Australia for at least 5 years immediately before the application date, there would be at least 4 completed income years (each income year consists of a 12-month period) within that 5-year period.

Subclause 189.232(2) makes clear that the notice is not required to include the applicant's tax file number. The applicant can remove the tax file number from the notice and still be considered to meet the requirements in subclass 189.232(1).

Clause 189.233 requires that, for each of the 4 income years, the applicant must either earn a certain level of taxable income, or be in a class of exempt applicants and provided the relevant evidence in relation to the year that they earn below the income threshold.

These criteria are intended to ensure that the visa can only be granted to those applicants who have demonstrated their commitment, and contributed, to Australia by earning a certain level of taxable income for the 4 income years immediately before the application date. The applicant's taxable income will be evidenced through the notice of assessment that they have provided.

Clause 189.234 – PIC

This criterion requires the applicant and his family members to meet PIC 4007.

PIC 4007 substantially mirrors the health-related requirements in PIC 4005, but allows the Minister to waive some of these requirements where the grounds of a waiver are met.

PIC 4007 is considered a more appropriate PIC for the New Zealand stream applicants because most of these applicants have already been living in Australia for some time on either a Subclass 444 visa or a Subclass 461 (New Zealand Citizen Family Relationship (Temporary)) visa. As such, it is appropriate to allow for the visa to be granted if the Minister considers it appropriate to waive the health requirements.

Unlike the Points-tested stream, PIC 4010 is not imposed on the New Zealand stream because applicants must already have been living in, and contributing to, Australia for at least five years before they can apply.

Subdivision 189.31 – Secondary criteria

Clause 189.311 replicates previous clause 189.311 and has the same purpose and effect. This criterion requires the applicant to be a family member of a Subclass 189 visa holder, and to have made a combined application with that visa holder.

The purpose and effect of this clause is to reinforce the intention that the secondary applicant can only be granted a visa if they had made a combined application with the primary applicant before a decision is made on the primary applicant's application.

Clause 189.312 sets out the PICs applicable to the secondary applicants and clause 189.313 sets out the SRCs applicable to the secondary applicants.

The only difference between the PICs and SRCs applicable to family members of the Points-tested stream visa holders and the New Zealand stream visa holders is that:

- for the Points-tested stream, PIC 4005 and 4010, and SRC 5010 applies (which were imposed on previous Subclass 189 visa); and
- for the New Zealand stream, PIC 4007 applies.

This is consistent with the difference between the PICs and SRCs applicable to the primary applicants for each stream, and the policy rationale behind those differences.

Schedule 2 – Outgoing passenger cards

Item 1 – Subregulation 3.01(3)

This item amends subregulation 3.01(3) of the Regulations by inserting the words "who is arriving in Australia" after the words "A person to whom this regulation applies".

Regulation 3.01 (Provision of information (general requirement)) applies to persons who are overseas passengers, and persons on board an aircraft, who are arriving at or departing from Australia. The regulation makes general requirements about the information such persons may be required to provide and the way in which it must be provided.

Subregulation 3.01(3) requires certain persons to complete a passenger card to provide specified information about the person. Previously, subregulation 3.01(3) applied to all persons to whom regulation 3.01 applied (that is, persons arriving at and departing from Australia). The effect of this amendment is that subregulation 3.01(3) now applies only to persons arriving in Australia, and persons departing Australia will no longer be required to provide a passenger card.

The information previously required to be provided by departing persons by completing a passenger card is now obtainable from other sources, and it is no longer necessary to obtain the information by means of an outgoing passenger card. This is in line with the current Government direction towards digitisation, automation and deregulation, and will result in ensuring the Government's objective of low contact, automated border clearance.

Item 2 – Paragraphs 3.01(3)(b) and (c)

This item amends paragraphs 3.01(3)(b) and (c) of the Regulations, by removing paragraph 3.01(3)(c) and amending paragraph 3.01(3)(b) which requires a person who is arriving in Australia to provide a completed passenger card.

Paragraph 3.01(3)(c) previously made provisions about the way in which a person departing from Australia was to provide a completed passenger card. However, following the amendments made by item 1 of this Schedule, above, persons departing Australia are no longer required to provide a completed passenger card and the provisions of paragraph 3.01(3)(c) are no longer required.

Schedule 3 – Transitional provisions

Item 1 – in the appropriate position in Schedule 13

This item inserts new Part 63 into the appropriate position in Schedule 13 to the Regulations.

New subclause 6301(1) provides that the amendments made by Schedule 1 to the Amendment Regulations apply in relation to an application for a Subclass 189 visa made on or after 1 July 2017, subject to subclause 6301(2).

Subclause 6301(2) provides the amendments do not apply in relation to the following applications for a Subclass 189 visa:

- an application made on or after 1 July 2017 in response to an invitation given by the Minister before 1 July 2017 ('the primary application'); and
- any applications combined with the primary application.

The effect of this subclause is that the pre-1 July 2017 requirements for validly applying for, and being granted, a Subclass 189 visa continue to apply to the applications described in that subclause. In particular, if the applicant is applying

for the visa on or after 1 July in response to an invitation given before 1 July, they must apply within the period stated in that invitation to make a valid application.

The purpose of subclause 6301(2) is to ensure that any invitations given before 1 July 2017 continue to be honoured, provided that the application is made within the period stated in that invitation.

Subclause 6301(2) does not relate to the New Zealand stream.

New clause 6302 provides that the amendments made by Schedule 2 apply in relation to departures from Australia occurring on or after 1 July.

This amendment is necessary to clarify to whom the amendments in the Amendment Regulations apply.