



## Migration Amendment (Temporary Protection Visas) Regulation 2013

### Select Legislative Instrument No. 234, 2013

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I, Professor Marie Bashir AC CVO, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Migration Act 1958*.

Dated 17 October 2013

Marie Bashir  
Administrator

By Her Excellency's Command

Scott Morrison  
Minister for Immigration and Border Protection

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OPC60271 - B



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## Contents

1	Name of regulation.....	1
2	Commencement.....	1
3	Authority.....	1
4	Schedule(s).....	1
<b>Schedule 1—Amendments</b>		<b>2</b>
	<i>Migration Regulations 1994</i>	2

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No. 234, 2013      *Migration Amendment (Temporary Protection Visas) Regulation 2013*      *i*

OPC60271 - B



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## **1 Name of regulation**

This regulation is the *Migration Amendment (Temporary Protection Visas) Regulation 2013*.

## **2 Commencement**

This regulation commences on **18 October 2013**.

## **3 Authority**

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

## **4 Schedule(s)**

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

### *Migration Regulations 1994*

#### **1 Subregulation 2.07AQ(3) (table item 1, column headed “Criterion 2”, at the end of paragraph (d))**

Add “granted before 18 October 2013”.

#### **2 After regulation 2.08G**

Insert:

#### **2.08H Certain persons taken to have applied for Subclass 785 (Temporary Protection) visas**

- (1) For subsection 46(2) of the Act, a Protection (Class XA) visa is a prescribed class of visa.
- (2) A valid application for a Protection (Class XA) visa made, but not finally determined, before 18 October 2013 is taken to also be a valid application for a **Subclass 785 (Temporary Protection) visa** if the applicant:
  - (a) holds a Subclass 785 (Temporary Protection) visa; or
  - (b) has held a Subclass 785 (Temporary Protection) visa since last entering Australia; or
  - (c) did not hold a visa that was in effect on the applicant’s last entry into Australia; or
  - (d) is an unauthorised maritime arrival; or
  - (e) was not immigration cleared on the applicant’s last entry into Australia.

#### **3 Subitem 1127AA(3) of Schedule 1 (table item 1, column headed “Criterion 1”, at the end of paragraph (d))**

Add “granted before 18 October 2013”.

#### **4 At the end of subitem 1401(3) of Schedule 1**

Add:

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- (d) An application by a person for a Protection (Class XA) visa is a valid application for a Subclass 785 (Temporary Protection) visa only if the person:
- (i) holds a Subclass 785 (Temporary Protection) visa; or
  - (ii) has held a Subclass 785 (Temporary Protection) visa since last entering Australia; or
  - (iii) did not hold a visa that was in effect on the person's last entry into Australia; or
  - (iv) is an unauthorised maritime arrival; or
  - (v) was not immigration cleared on the person's last entry into Australia.
- (e) An application by a person for a Protection (Class XA) visa is a valid application for a Subclass 866 (Protection) visa only if the person:
- (i) does not hold a Subclass 785 (Temporary Protection) visa; and
  - (ii) has not held a Subclass 785 (Temporary Protection) visa since last entering Australia; and
  - (iii) held a visa that was in effect on the person's last entry into Australia; and
  - (iv) is not an unauthorised maritime arrival; and
  - (v) was immigration cleared on the person's last entry into Australia.

#### **5 Subitem 1401(4) of Schedule 1**

Repeal the subitem, substitute:

- (4) Subclasses:
- (a) Subclass 785 (Temporary Protection)
  - (b) Subclass 866 (Protection).

#### **6 After Subclass 773 of Schedule 2**

Insert:

## Subclass 785—Temporary Protection

### 785.1—Interpretation

#### 785.111

In this Part:

*Refugees Convention* means the Refugees Convention as amended by the Refugees Protocol.

Note: *Refugees Convention*, *Refugees Protocol* and *member of the same family unit* are defined in section 5 of the Act.

### 785.2—Primary criteria

Note: All applicants must satisfy the primary criteria.

### 785.21—Criteria to be satisfied at time of application

#### 785.211

- (1) One of subclauses (2) to (5) is satisfied.
- (2) The applicant:
  - (a) claims to be a person in respect of whom Australia has protection obligations under the Refugees Convention; and
  - (b) makes specific claims under the Refugees Convention.
- (3) The applicant claims to be a member of the same family unit as a person who is:
  - (a) mentioned in subclause (2); and
  - (b) an applicant who has made a valid application for a Subclass 785 (Temporary Protection) visa.
- (4) The applicant claims to be a person in respect of whom Australia has protection obligations because the applicant claims that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm.
- (5) The applicant claims to be a member of the same family unit as a person who is:

- 
- (a) mentioned in subclause (4); and
  - (b) an applicant who has made a valid application for a Subclass 785 (Temporary Protection) visa.

**785.22—Criteria to be satisfied at time of decision****785.221**

- (1) One of subclauses (2) to (5) is satisfied.
- (2) The Minister is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention.

Note: See paragraph 36(2)(a) of the Act.

- (3) The Minister is satisfied that:
  - (a) the applicant is a person who is a member of the same family unit as an applicant who is mentioned in subclause (2); and
  - (b) the applicant mentioned in subclause (2) has been granted a Subclass 785 (Temporary Protection) visa.

Note: See paragraph 36(2)(b) of the Act.

- (4) The Minister is satisfied that the applicant:
  - (a) is not a person in respect of whom Australia has protection obligations under the Refugees Convention; and
  - (b) is a person in respect of whom Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Note: See paragraph 36(2)(aa) of the Act.

- (5) The Minister is satisfied that:
  - (a) the applicant is a person who is a member of the same family unit as an applicant mentioned in subclause (4); and
  - (b) the applicant mentioned in subclause (4) has been granted a Subclass 785 (Temporary Protection) visa.

Note: See paragraph 36(2)(c) of the Act.

**785.222**

- (1) Subclause (2) or (3) is satisfied.
- (2) The applicant, or a member of the family unit of the applicant, has not been offered a temporary stay in Australia by the Australian Government for the purposes of regulation 2.07AC.
- (3) Section 91K of the Act does not apply to the applicant's application because of a determination made by the Minister under subsection 91L(1) of the Act.

**785.223**

The applicant has undergone a medical examination carried out by any of the following (a *relevant medical practitioner*):

- (a) a Medical Officer of the Commonwealth;
- (b) a medical practitioner approved by the Minister for the purposes of this paragraph;
- (c) a medical practitioner employed by an organisation approved by the Minister for the purposes of this paragraph.

**785.224**

- (1) One of subclauses (2) to (4) is satisfied.
- (2) The applicant has undergone a chest x-ray examination conducted by a medical practitioner who is qualified as a radiologist in Australia.
- (3) The applicant is under 11 years of age and is not a person in respect of whom a relevant medical practitioner has requested the examination mentioned in subclause (2).
- (4) The applicant is a person:
  - (a) who is confirmed by a relevant medical practitioner to be pregnant; and
  - (b) who has been examined for tuberculosis by a chest clinic officer employed by a health authority of a State or Territory; and
  - (c) who has signed an undertaking to place herself under the professional supervision of a health authority in a State or Territory and to undergo any necessary treatment; and

- 
- (d) who the Minister is satisfied should not be required to undergo a chest x-ray examination at this time.

**785.225**

- (1) A relevant medical practitioner has considered:
- (a) the results of any tests carried out for the purposes of the medical examination required under clause 785.223; and
  - (b) the radiological report (if any) required under clause 785.224 in respect of the applicant.
- (2) If the relevant medical practitioner:
- (a) is not a Medical Officer of the Commonwealth; and
  - (b) considers that the applicant has a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community;
- he or she has referred any relevant results and reports to a Medical Officer of the Commonwealth.

**785.226**

If a Medical Officer of the Commonwealth considers that the applicant has a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community, arrangements have been made, on the advice of the Medical Officer of the Commonwealth, to place the applicant under the professional supervision of a health authority in a State or Territory to undergo any necessary treatment.

**785.227**

The applicant:

- (a) satisfies public interest criteria 4001 and 4003A; and
- (b) if the applicant had turned 18 at the time of application—satisfies public interest criterion 4019.

**785.228**

- (1) If the applicant is a child mentioned in paragraph 2.08(1)(b), subclause (2) or (3) is satisfied.
  - (2) Both of the following apply:
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- (a) the applicant is a member of the same family unit as an applicant mentioned in subclause 785.211(2);
  - (b) the applicant mentioned in subclause 785.211(2) has been granted a Subclass 785 (Temporary Protection) visa.
- (3) Both of the following apply:
- (a) the applicant is a member of the same family unit as an applicant mentioned in subclause 785.211(4);
  - (b) the applicant mentioned in subclause 785.211(4) has been granted a Subclass 785 (Temporary Protection) visa.

#### **785.229**

The Minister is satisfied that the grant of the visa is in the national interest.

#### **785.3—Secondary criteria**

Note: All applicants must satisfy the primary criteria.

#### **785.4—Circumstances applicable to grant**

##### **785.411**

The applicant **must be in Australia when the visa is granted.**

#### **785.5—When visa is in effect**

##### **785.511**

Temporary visa permitting the holder to remain in Australia until the earlier of:

- (a) the end of 36 months from the date of grant of the visa; and
- (b) the end of any shorter period, specified by the Minister, from the date of grant of the visa.

#### **785.6—Conditions**

##### **785.611**

Conditions 8503, 8564 and 8565.

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**7 Subclauses 866.211(2) and (4) of Schedule 2**

Omit “to whom”, substitute “in respect of whom”.

**8 Subclauses 866.221(2) to (5) of Schedule 2**

Repeal the subclauses, substitute:

- (2) The Minister is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention.

Note: See paragraph 36(2)(a) of the Act.

- (3) The Minister is satisfied that:
- (a) the applicant is a person who is a member of the same family unit as an applicant who is mentioned in subclause (2); and
  - (b) the applicant mentioned in subclause (2) has been granted a Subclass 866 (Protection) visa.

Note: See paragraph 36(2)(b) of the Act.

- (4) The Minister is satisfied that:
- (a) the applicant is not a person in respect of whom Australia has protection obligations under the Refugees Convention; and
  - (b) the applicant is a person in respect of whom Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Note: For paragraph (b), see paragraph 36(2)(aa) of the Act.

- (5) The Minister is satisfied that:
- (a) the applicant is a person who is a member of the same family unit as an applicant mentioned in subclause (4); and
  - (b) the applicant mentioned in subclause (4) has been granted a Subclass 866 (Protection) visa.

Note: See paragraph 36(2)(c) of the Act.

**9 After clause 866.221**

Insert:

**866.222**

The applicant:

- (a) does not hold a Subclass 785 (Temporary Protection) visa;  
and
- (b) has not held a Subclass 785 (Temporary Protection) visa  
since last entering Australia; and
- (c) held a visa that was in effect on the applicant's last entry into  
Australia; and
- (d) is not an unauthorised maritime arrival; and
- (e) was immigration cleared on the applicant's last entry into  
Australia.

**10 Subclause 866.223**

Omit "relevant medical practitioner", substitute "*relevant medical practitioner*".

**11 At the end of Schedule 8**

Add:

- 8565 The holder must notify Immigration of any change in the holder's residential address within 14 days after the change occurs.

**12 At the end of Schedule 13**

Add:

**Part 21—Amendments made by the Migration  
Amendment (Temporary Protection Visas)  
Regulation 2013**

**2101 Operation of Schedule 1**

- (1) The amendments of these Regulations made by Schedule 1 to the *Migration Amendment (Temporary Protection Visas) Regulation 2013* apply in relation to an application for a visa made on or after 18 October 2013.
- (2) The amendment of these Regulations made by Schedule 1 to the *Migration Amendment (Temporary Protection Visas)*

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*Regulation 2013*, other than the amendments made by items 1, 3 and 4 of that Schedule, apply in relation to an application for a visa made, but not finally determined, before 18 October 2013.

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*No. 234, 2013*      *Migration Amendment (Temporary Protection Visas) Regulation 2013*      11

*OPC60271 - B*

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 234, 2013**

Issued by the Minister for Immigration and Border Protection

*Migration Act 1958*

*Migration Amendment (Temporary Protection Visas) Regulation 2013*

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

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

The purpose of the *Migration Amendment (Temporary Protection Visas) Regulation 2013* ('the Regulation') is to amend the *Migration Regulations 1994* ('the Principal Regulations') to establish new arrangements for dealing with people who have arrived in Australia **without visas** and claimed protection.

In particular the Regulation reintroduces Temporary Protection (**Subclass 785 (Temporary Protection) visas**), the only protection visa (a visa that may be provided to people within Australia in respect of whom Australia owes protection obligations) available to people who:

- are **unauthorised maritime arrivals** as described in the Act; or
- otherwise **arrived in Australia without a visa**; or
- were **not immigration cleared** on their last arrival in Australia; or
  - are the member of the same family unit as a person mentioned above; and
  - that person has been granted a Subclass 785 (Temporary Protection) visa

The reintroduction of Temporary Protection visas is a key element of the Government's border protection strategy to combat people smuggling and to **discourage** people from making dangerous voyages to Australia.

The Regulation **prevents** people in the above cohort **from being eligible to apply for, or being granted, a protection visa that allows the holder to remain in Australia indefinitely** (i.e. Subclass 866 (Protection) visas).

The Subclass 866 (Protection) visa remains available to applicants from outside the cohort, but people within the cohort are unable to make a valid application for Subclass 866 (Protection) visas, and any existing application from the cohort is unable to meet the requirements for grant.

Details of the Regulation are set out in Attachment C

A Statement of Compatibility with Human Rights has been completed for the Regulation, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement's overall assessment is that the Regulation is compatible with human rights because it advances the protection of human rights and, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate. A copy of the Statement is at Attachment B.

The Office of Best Practice Regulation (the OBPR) has been consulted and advises that the changes do not have a regulatory impact on business or the non-for-profit sector and no further analysis is required. The OBPR consultation reference is 15318.

The Regulation is required as a matter of urgency at the direction of the Government to re-introduce Temporary Protection (Subclass 785 (Temporary Protection)) visas. No further consultation beyond consultation with the Attorney Generals Department and the Australian Government Solicitor was undertaken.

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

The Regulation commences on **18 October 2013**.

## ATTACHMENT A

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

In addition, the following provisions may apply:

- subsection 30(2), which provides that a visa to remain in Australia (whether also a visa to travel to and enter Australia) may be a visa, to be known as a temporary visa, to remain:
  - during a specified period; or
  - until a specified event happens; or
  - while the holder has a specified status;
- subsection 31(3), which provides that regulations may prescribe criteria for a visa or visas of a specified class (which, without limiting the generality of this subsection, may be a class provided for by section 32, 36, 37, 37A or 38B but not section 33, 34, 35, 38 or 38A);
- subsection 31(4), which provides that the regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia, or both;
- subsection 36(1), which provides that there is a class of visas to be known as protection visas;
- subsection 36(2), which provides that a criterion for a protection visa is that the applicant is:
  - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol; or
  - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
  - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (a); and
    - (ii) holds a protection visa; or

- (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
  - (i) is mentioned in paragraph (aa); and
  - (ii) holds a protection visa.
- subsection 40(1), which provides that the regulations may provide that visa or visas of specified class may only be granted in specified circumstances;
- subsection 40(2), which provides that, without limiting subsection 40(1), the circumstances may be, or may include that when the person is granted the visa, the person:
  - is outside Australia; or
  - is in immigration clearance; or
  - has been refused immigration clearance and has not subsequently been immigration cleared; or
  - is in the migration zone and, on last entering Australia:
    - was immigration cleared; or
    - bypassed immigration clearance and had not subsequently been immigration cleared;
- subsection 41(1), which provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions;
- subsection 41(2), which relevantly provides that, without limiting subsection 41(1), the regulations may provide that a visa, or visas of a specified class, are subject to a condition that, despite anything else in the Act, the holder of the visa will not, after entering Australia, be entitled to be granted a substantive visa (other than a protection visa or a temporary visa of a specified kind) while he or she remains in Australia; or
- subsection 41(3), which provides that, in addition to any conditions specified under subsection 41(1), the Minister may specify that a visa is subject to such conditions as are permitted by the regulations for the purposes of this subsection;
- subsection 45(1), which provides that, subject to the Act and the regulations, a non-citizen who wants a visa must apply for a visa of a particular class;
- subsection 46(1), which relevantly provides that subject to subsections 48(1A), 48(2) and 48(2A), an application for a visa is valid if, and only if:
  - it is for a visa class specified in the application; and
  - it satisfied the criteria and the requirements prescribed under this section; and
  - it is not prevented by section 48 (visa refused or cancelled earlier), 48A (protection visa), 91E (CPA and safe third countries), 91K (temporary safe haven visa), 91P (non-citizens with access to protection from third

countries), 161 (criminal justice), 164D (enforcement visa), 195 (detainees) or 501E (visa refused or cancelled on character grounds).

- 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;
- Subsection 46(4), which provides that, without limiting subsection 46(3), the Regulations may also prescribe:
  - the circumstances that must exist for an application for a visa of a specified class to be a valid application; and
  - how an application for a visa of a specified class must be made; and
  - where an application for a visa of a specified class must be made; and
  - where an applicant must be when an application for a visa of a specified class is made;

## **Statement of Compatibility with Human Rights**

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

### **Amendments to *Migration Regulations 1994* (Relating to the reintroduction of Temporary Protection visas)**

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

#### **Overview of the Legislative Instrument**

This Legislative Instrument seeks to amend the *Migration Regulations 1994* to:

- Reintroduce Temporary Protection visas (subclass 785).

The reintroduction of Temporary Protection visas is a key element of the Government's border protection strategy to combat people smuggling and to discourage people from making dangerous voyages to Australia.

Unauthorised Maritime Arrivals (UMAs) and Unauthorised Air Arrivals (UAA) who are found to engage Australia's *non refoulement* obligations will be granted a Temporary Protection Visa for a period of up to three years at one time. A reassessment will be required to determine if an individual is eligible for a further Temporary Protection visa.

Holders of a Temporary Protection visa will have access to work rights and selected support services. They will have access to Medicare and pending arrangements with state and territory governments, children will have access to public education. Holders of Temporary Protection visas receive greater access to benefits and services than other temporary visa holders.

Holders of a Temporary Protection visa are not eligible to sponsor family members for an Australian visa, including under the family migration program.

#### **Human rights implications**

##### *Family Sponsorship*

As explained above, those granted Temporary Protection visas will not be eligible to sponsor family members to migrate to Australia. Under the International Covenant on Civil and Political Rights (ICCPR), Article 17 states that no one shall be subjected to arbitrary or unlawful interference with his family and that everyone has the right to protection of the law against such interference. Article 23 states that the family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

As refugees are unable to return to their country of origin for fear of persecution, if family reunification is not available there is the potential that some Temporary Protection visa holders may be separated from their family for years until they are either deemed not to engage Australia's protection obligations and removed from Australia or they are granted a permanent Protection visa.

Circumstances in someone's country of origin may change, and TPV holders will be able to voluntarily depart and return to their country of origin and family at any time.

**There is no right to family reunification under international law.** The protection of the family unit under Articles 17 and 23 does not amount to a right to enter Australia where there is no other right to do so. Further, avoiding arbitrary interference with the family or protecting the family can be weighed against other countervailing considerations including the integrity of the migration system and the national interest.

A UMA and UAA becomes separated from their family when they choose to travel to Australia without their family, Australia has not caused that separation. To this end, Australia does not consider that Articles 17 and 23 are engaged by this Legislative Instrument. To the extent that this might amount to interference with the family, Australia maintains that any interference is not arbitrary and Australia considers that this is a necessary, reasonable and proportionate measure to achieve the legitimate aim of preventing UMAs from making the dangerous journey to Australia by boat. In addition, it furthers the legitimate aim of encouraging people to arrive in Australia via regular means, such as by obtaining a permanent visa under Australia's Refugee and Humanitarian Programme for persons outside Australia, which allows family groups to migrate together. Therefore, the Legislative instrument is consistent with the rights contained under Articles 17 and 23 of the ICCPR.

### *Rights of the Child*

Article 3 of the Convention on the Rights of the Child (CRC) requires that the best interests of the child are treated as a primary consideration in all actions concerning children. However, other considerations may also be primary considerations. While it may be in the best interests of unaccompanied minors (UAMs) to be reunited with their family, it is clearly not in their best interests to be placed in the hands of people smugglers to take the dangerous journey by boat to Australia.

The reintroduction of Temporary Protection visas seek to prevent minors from taking potentially life threatening avenues to achieve resettlement for their families in Australia. This goal, as well as the need to maintain the integrity of Australia's migration system and protect the national interest, is also a primary consideration. Australia considers that on balance these and other primary considerations outweigh the best interests of the child in seeking family reunification. Therefore, Australia considers that this Legislative Instrument is consistent with Article 3 of the CRC.

Article 10 of the CRC requires that applications for family reunification made by minors or their parents are treated in a positive, humane and expeditious manner. However, Article 10 does not amount to a right to family reunification. The Australian Government will not provide a separate pathway to family reunification that will allow people smugglers to exploit children and encourage them to risk their lives on dangerous boat journeys. As such, to the extent that the rights under Article

10 are limited by the reintroduction of Temporary Protection visas, Australia considers that these limitations are necessary, reasonable and proportionate to achieve a legitimate aim.

### Permission to Travel

A holder of a Temporary Protection visa will not be able to re-enter Australia if they depart. This raises issues relating to freedom of movement under Article 12 of the ICCPR, in particular the right to leave any country (Art 12(2)). Article 12 states that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence and everyone shall be free to leave any country, including his own. Article 12 further states that the above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant.

The inability of a Temporary Protection visa holder to re-enter Australia is not a prohibition on departing Australia, although it may discourage Temporary Protection holders from choosing to depart. This restriction on re-entry is designed to maintain the integrity of Australia's borders, encourage regular migration and discourage dangerous voyages by boat. The potential discouraging effect of restricting travel is considered to be reasonable in the circumstances and proportionate to Australia's legitimate aim of offering protection to genuine refugees and those fearing significant harm, while also protecting the integrity of the protection visa regime. The inability to re-enter Australia is not exclusive to Temporary Protection visa holders, several other temporary visas do not allow re-entry to Australia after departure.

### **Conclusion**

The Regulation amendment is compatible with human rights because it is consistent with Australia's human rights obligations and to the extent that it may also limit human rights, those limitations are reasonable, necessary and proportionate.

**ATTACHMENT C**

## **Details of the Migration Amendment (Temporary Protection Visas) Regulation 2013**

### **Section 1 – Name of Regulation**

This section provides that the Regulation is the *Migration Amendment (Temporary Protection Visas) Regulation 2013* (‘the Regulation’).

### **Section 2 – Commencement**

This section provides that the Regulation commences on 18 October 2013.

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

### **Section 3 – Authority**

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

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

### **Section 4 – Schedule(s)**

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

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

## **Schedule 1 – Amendments**

### **Item [1] – Subregulation 2.07AQ(3) (table item 1, column headed “Criterion 2”, at the end of paragraph (d))**

This item inserts ‘granted before 18 October 2013’ at the end of paragraph (d) in the column headed Criterion 2, table item 1, in subregulation 2.07AQ(3) of the *Migration Regulations 1994* (the Principal Regulations).

Regulation 2.07AQ provides that an application for a Resolution of Status (Class CD) visa is taken to have been validly made by a person if the requirements of subregulation 2.07AQ(3) are met. One requirement in item 1 of the table in 2.07AQ(3) is that the holder of a Subclass 785 (Temporary Protection) visa makes a valid application for a Protection (Class XA) visa.

The amendment to paragraph (d) in the column headed criterion 2 in item 1 of the table in regulation 2.07AQ(3) means that this requirement is that the holder of a Subclass 785 (Temporary Protection) visa granted before 18 October 2013 makes a valid application for a Protection (Class XA) visa.

The date of 18 October 2013 is the date on which these amendments commence. The purpose of choosing this date is to ensure that people who are granted a Subclass 785 (Temporary Protection) visa after the commencement of the Regulation are unable to access the Resolution of Status (Class CD) visa, which is a permanent visa. This reflects the Government's intention that there will be no permanent visa pathway available to people granted a Subclass 785 (Temporary Protection) visa under the new Temporary Protection Visa regime.

Item [2] – After regulation 2.08G

This item inserts new regulation 2.08H after regulation 2.08G in Part 1 of the Principal Regulations.

New regulation 2.08H entitled 'Certain persons taken to have applied for Subclass 785 (Temporary Protection) visas' provides:

- For subsection 46(2) of the Act, a Protection (Class XA) visa is a prescribed class of visa.
- A valid application for a Protection (Class XA) visa made, but not finally determined, before 18 October 2013 is taken to also be a valid application for a Subclass 785 (Temporary Protection) visa if the applicant:
  - holds a Subclass 785 (Temporary Protection) visa; or
  - has held a subclass 785 (Temporary Protection) visa since last entering Australia; or
  - did not hold a visa that was in effect on the applicant's last entry into Australia; or
  - is an unauthorised maritime arrival; or
  - was not immigration cleared on the applicant's last entry into Australia.

Subsection 46(2) of the Act relevantly provides that an application for a visa is valid if it is an application for a visa of a class prescribed for the purposes of subsection 46(2) and, under the regulations, the application is taken to be validly made.

The effect of this regulation is that a valid application for a Protection (Class XA) visa that was made, but not finally determined, before 18 October 2013 by a person who falls into one of the categories above is taken to also be an application for a Subclass 785 (Temporary Protection) visa.

Previously, an applicant for a Protection (Class XA) visa would be granted a Subclass 866 (Protection) visa should they satisfy the criteria for the grant of that visa. From 18 October 2013, the Protection (Class XA) visa will include the Subclass 785 (Temporary Protection) visa.

The purpose of this amendment is to reflect the Government's intention by ensuring that those applicants who fall into one of the categories above can be considered for the grant of a Subclass 785 (Temporary Protection) visa, which is a temporary visa that permits the holder to stay in Australia for up to 3 years after the visa is granted. A complementary amendment in this Regulation means that they could not be granted a Subclass 866 (Protection) visa, which is a visa that would allow the holder to stay in Australia indefinitely.

Item [3] – Subitem 1127AA(3) of Schedule 1 (table item 1, column headed “Criterion 1”, at the end of paragraph (d))

This item inserts ‘granted before the 18 October 2013’ at the end of paragraph (d) in the column headed Criterion 1, table item 1, in subitem 1127AA(3) of Schedule 1 to the Principal Regulations.

Previously, Subitem 1127AA(3) relevantly provided that an application for a Resolution of Status (Class CD) visa was a valid application where the applicant holds a Subclass 785 (Temporary Protection) visa.

Amended paragraph (d) in the column headed Criterion 1, table item 1, subitem 1127AA(3) provides that an application for a Resolution of Status (Class CD) visa is a valid application where the applicant holds a Subclass 785 (Temporary Protection) visa that has been granted before 18 October 2013.

The date of 18 October 2013 is the date on which these amendments commence. The purpose of choosing this date is to ensure that people who are granted a Subclass 785 (Temporary Protection) visa after the commencement of the Regulation are unable to make a valid application for a Resolution of Status (Class CD) visa. This reflects the Government's intention that there will be no permanent visa pathway available to people granted a Subclass 785 (Temporary Protection) visa under the new Temporary Protection Visa regime.

Item [4] - At the end of subitem 1401(3) of Schedule 1

This item inserts new paragraphs (d) and (e) into subitem 1401(3) of Schedule 1 to the Principal Regulations.

Item 1401 provides for the requirements for a valid application for a Protection (Class XA) visa.

New paragraph 1401(3)(d) provides that an application by a person for a Protection (Class XA) visa is a valid application for a Subclass 785 (Temporary Protection) visa only if the person:

- holds a Subclass 785 (Temporary Protection) visa; or
- had held a Subclass 785 (Temporary Protection) visa since last entering Australia; or
- did not hold a visa that was in effect on the person's last entry into Australia; or
- is an unauthorised maritime arrival; or
- was not immigration cleared on the person's last entry into Australia.

The effect of the amendment is that a person making an application for a Protection (Class XA) visa will be able to make a valid application for a Subclass 785 (Temporary Protection) visa application only if they satisfy one of the five alternatives in paragraph 1401(3)(d).

New paragraph 1401(3)(e) provides that an application by a person for a Protection (Class XA) visa is a valid application for a Subclass 866 (Protection) visa only if the person:

- does not hold a Subclass 785 (Temporary Protection) visa; and
- has not held a Subclass 785 (Temporary Protection) visa since last entering Australia; and
- held a visa that was in effect on the person's last entry into Australia;
- is not an unauthorised maritime arrival; and
- was immigration cleared on the person's last entry into Australia.

The effect of the amendment is that a person making an application for a Protection (Class XA) visa will be able to make a valid application for a Subclass 866 (Protection) visa only if they satisfy one of the five alternatives in paragraph 1401(3)(e).

The purpose of inserting new paragraphs 1401(3)(d) and 1401(3)(e) is to establish the requirements that must be met in order to make a valid application for a particular subclass of visa within the Protection (Class XA) visa.

New paragraphs (d) and (e) reflect the Government's intention that a person who is an unauthorised maritime arrival, who arrived in Australia without a visa, or who was not immigration cleared on their last entry into Australia (including unauthorised arrivals by air) will not be able to make a valid application for a Subclass 866 (Protection) visa. In addition the new paragraph (e) reflects the Government's intention that someone who holds a Subclass 785 (Temporary Protection) visa, or who held a Subclass 785 (Temporary Protection) visa since last entering Australia will never be able to make a valid application for a Subclass 866 (Protection) visa.

#### Item [5] – Subitem 1401(4) of Schedule 1

This item repeals and substitutes subitem 1401(4) of Schedule 1 to the Regulations.

Subitem 1401(4) lists the subclasses of the Protection (Class XA) visa. Previously Subclass 866 (Protection) visa was the only subclass in that class.

Substituted subitem 1401(4) provides that the subclasses of the Protection (Class XA) visa are:

- the Subclass 785 (Temporary Protection) visa; and
- the Subclass 866 (Protection) visa.

The purpose of this amendment is to complement other amendments in this Regulation by listing the new Subclass 785 (Temporary Protection) visa as another subclass of the Protection (Class XA) visa.

Item [6] – After Subclass 773 of Schedule 2

This item inserts a new Subclass 785 after Subclass 773 of Schedule 2 to the Regulations.

*Subclass 785 – Temporary Protection*

New Subclass 785 provides for the criteria for the grant of the Subclass 785 (Temporary Protection) visa, the circumstances applicable to grant, when the visa is in effect and also the conditions to be attached to the visa.

*New Division 785.1 – Interpretation*

This amendment inserts a new Division 785.1 and new clause 785.111, which provide that, in Part 785, the term *Refugees Convention* means the Refugees Convention as amended by the Refugees Protocol. A new note is also inserted to provide that the terms *Refugees Convention*, *Refugees Protocol* and *member of the same family unit* are defined in section 5 of the Act.

The purpose of this amendment is to provide for the meaning of the term ‘Refugees Convention’ as used in new Subclass 785.

*New Division 785.2 – Primary criteria*

The amendment inserts new Division 785.2 which lists the primary criteria for the grant of a Subclass 785 (Temporary Protection) visa.

A new note is inserted to provide that all applicants must satisfy the primary criteria.

The purpose of the note is to explicitly provide that all applicants seeking to satisfy the criteria for the grant of a Subclass 785 (Temporary Protection) visa must satisfy the primary criteria.

The primary criteria for the grant of a Subclass 785 (Temporary Protection) visa largely replicates the primary criteria for the grant of a Subclass 866 (Protection) visa.

The requirements that an applicant is a person in respect of whom Australia has protection obligations, either under the Refugees Convention or under the complementary protection provisions of the Act or is a member of the same family unit as a person in respect of whom Australia has protection obligations are the same for both visa subclasses in the Protection (Class XA) visa.

Further, the current health and public interest criteria in the Subclass 866 (Protection) visa are replicated in the new Subclass 785 (Temporary Protection) visa.

The fundamental difference between the Subclass 866 (Protection) visa and the Subclass 785 (Temporary Protection) visa is that one is a permanent visa and the other is a temporary visa. The Subclass 866 (Protection) visa is a permanent visa which allows the holder to travel outside Australia and return, and to sponsor others for the grant of an Australian visa. The Subclass 785 (Temporary Protection) visa can only be granted for a period of up to 36 months and only permits the holder to remain in Australia. Because it is not a permanent visa, the holder is not able to sponsor other people for the grant of a visa.

*New Subdivision 785.21 – Criteria to be satisfied at time of application*

New Subdivision 785.21 provides for the primary criteria to be satisfied at the time of application for a Subclass 785 (Temporary Protection) visa.

New clause 785.211 provides that the applicant must satisfy one of the following criteria:

- the applicant:
  - claims to be a person in respect of whom Australia has protection obligations under the Refugees Convention; and
  - makes specific claims under the Refugees Convention; or
- the applicant claims to be a member of the same family unit as a person who:
  - claims to be a person in respect of whom Australia has protection obligations under the Refugees Convention; and
  - makes specific claims under the Refugees Convention; and
  - is an applicant who has made a valid application for a Subclass 785 (Temporary Protection) visa; or
- the applicant claims to be a person in respect of whom Australia has protection obligations because the applicant claims that, as a necessary

and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm; or

- the applicant claims to be a member of the same family unit as a person who:
  - claims to be a person in respect of whom Australia has protection obligations because the applicant claims that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm; and
  - is an applicant who has made a valid Subclass 785 (Temporary Protection) visa.

New clause 785.211 largely replicates, for the Subclass 785 (Temporary Protection) visa, the time of application criterion in clause 866.211 for the Subclass 886 (Protection) visa.

The purpose of this provision is to provide that, at the time of application, the applicant must claim to be a person, or a member of the same family unit as a person in respect of whom Australia has protection obligations, either under the Refugees Convention or under the complementary protection provisions in the Act.

*New Subdivision 785.22 – Criteria to be satisfied at time of decision*

New Subdivision 785.22 provides for the primary criteria to be satisfied at the time of decision for a Subclass 785 (Temporary Protection) visa.

The criterion in new clause 785.221 provides that the applicant must satisfy one of the following:

- the Minister is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention (see paragraph 36(2)(a) of the Act); or
- the Minister is satisfied that the applicant is a person who is a member of the same family unit as an applicant who:
  - is a person in respect of whom Australia has protection obligations under the Refugees Convention (see paragraph 36(2)(a) of the Act); and
  - has been granted a Subclass 785 (Temporary Protection) visa (see paragraph 36(2)(b) of the Act); or
- the Minister is satisfied that the applicant:
  - is not a person in respect of whom Australia has protection obligations under the Refugees Convention; and

- is a person in respect of whom Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm (see paragraph 36(2)(aa) of the Act); or
- the Minister is satisfied that the applicant is a person who is a member of the same family unit as an applicant who:
  - is not a person in respect of whom Australia has protection obligations under the Refugees Convention; and
  - is a person in respect of whom Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm (see paragraph 36(2)(aa) of the Act); and
  - has been granted a Subclass 785 (Temporary Protection) visa (see paragraph 36(2)(c) of the Act).

The new clause 785.221 largely replicates for the Subclass 785 (Temporary Protection) visa the time of decision criterion (clause 866.221) for the current Subclass 886 (Protection) visa.

The purpose of this provision is to provide that the Minister must be satisfied that the applicant is either:

- a person in respect of whom Australia has protection obligations, either under the Refugees Convention or under the complementary protection provisions of the Act; or
- a member of the same family unit as a person in respect of whom Australia has protection obligations.

The criterion in new subclause 785.222 requires that either:

- the applicant, or a member of the family unit of the applicant, has not been offered a temporary stay in Australia by the Australian Government for the purposes of regulation 2.07AC; or
- Section 91K of the Act does not apply to the applicant's application because of a determination made by the Minister under subsection 91L(1) of the Act.

New clause 785.222 replicates, for the Subclass 785 (Temporary Protection) visa, the time of decision criterion in clause 866.227 for the Subclass 866 (Protection) visa.

Section 91K of the Act prevents a valid Protection (Class XA) visa application being made by a Temporary Safe Haven visa holder (or by persons who have

not left Australia since ceasing to hold a temporary safe haven visa) unless the Minister has personally intervened in the public interest under s91L of the Act to lift this bar.

The purpose of the amendment is to prevent persons being eligible for the grant of a Subclass 785 (Temporary Protection) visa where they have been offered a Temporary Safe Haven (Class UJ) visa or where they hold a Temporary Safe Haven visa, unless the Minister has personally intervened in the public interest under s91L of the Act to lift the 91K bar.

The criterion in new clause 785.223 requires that the applicant has undergone a medical examination carried out by any of the following (*a relevant medical practitioner*):

- a Medical Officer of the Commonwealth;
- a medical practitioner approved by the Minister for the purposes of this paragraph;
- a medical practitioner employed by an organisation approved by the Minister for the purposes of this paragraph.

The purpose of the new clause is to ensure that an applicant must meet health requirements equivalent to those in subclause 866.223 for the Subclass 866 (Protection) visa.

The criterion in new clause 785.224 requires that the applicant satisfies one of the following:

- the applicant has undergone a chest x-ray examination conducted by a medical practitioner who is qualified as a radiologist in Australia; or
- the applicant is under 11 years of age and is not a person in respect of whom a relevant medical practitioner has requested a chest x-ray examination conducted by a medical practitioner who is qualified as a radiologist in Australia; or
- the applicant is a person:
  - who is confirmed by a relevant medical practitioner to be pregnant; and
  - who has been examined for tuberculosis by a chest clinic officer employed by a health authority of a State or Territory; and
  - who has signed an undertaking to place herself under the professional supervision of a health authority in a State or Territory and to undergo any necessary treatment; and
  - who the Minister is satisfied should not be required to undergo a chest x-ray examination at this time.

The purpose of the new clause is to ensure that an applicant must meet health requirements equivalent to those in clause 866.224 for the Subclass 866 (Protection) visa.

The criterion in new clause 785.225 requires that:

- a relevant medical practitioner has considered the results of any tests carried out for the purposes of the medical examination required under clause 785.223 and the radiological report (if any) required under clause 785.224 in respect of the applicant; and
- if the relevant medical practitioner:
  - is not a Medical Officer of the Commonwealth; and
  - considers that the applicant has a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community,

he or she has referred any relevant results and reports to a Medical Officer of the Commonwealth.

The purpose of the new clause is to ensure that an applicant must meet health requirements equivalent to those in clause 866.224A for the Subclass 866 (Protection) visa.

The criterion in new clause 785.226 requires that if a Medical Officer of the Commonwealth considers that the applicant has a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community, arrangements have been made, on the advice of the Medical Officer of the Commonwealth, to place the applicant under the professional supervision of a health authority in a State or Territory to undergo any necessary treatment.

The purpose of the new clause is to ensure that an applicant must meet health requirements equivalent to those in clause 866.224B for the Subclass 866 (Protection) visa.

The criterion in new clause 785.227 requires the applicant to:

- satisfy public interest criteria 4001 and 4003A; and
- if the applicant had turned 18 at the time of application – satisfy public interest criterion 4019.

Public interest criterion (PIC) 4001 is a mechanism by which the character test in subsection 501(6) of the Act is taken into account for an applicant.

PIC 4003A requires that the applicant is not determined by the Foreign Minister, or a person authorised by the Foreign minister, to be a person whose presence in Australia may be directly or indirectly associated with the proliferation of weapons of mass destruction.

PIC 4019 requires that the applicant sign a values statement relevant to the visa subclass or, if compelling circumstances exist, the Minister has decided that the applicant is not required to sign a values statement.

PICs 4001, 4003A and 4019 apply to the Subclass 866 (Protection) visa. The purpose of this amendment is to replicate for the Subclass 785 (Temporary Protection) visa the PICs currently applied to the Subclass 866 (Protection) visa.

The criterion in new subclause 785.228(1) requires that, if the applicant is a child mentioned in paragraph 2.08(1)(b), subclause 785.228(2) or 785.228(3) is satisfied.

Paragraph 2.08(1)(b) relevantly describes a child, other than a contributory parent newborn child, born to a non-citizen after that non-citizen applied for a visa; but that application has not yet been decided. Under regulation 2.08, such children are relevantly taken to have applied for a visa of the same class as the parent at the time he or she was born.

- New subclause 785.228(2) provides that both of the following apply:
  - the applicant is a member of the same family unit as an applicant mentioned in subclause 785.211(2);
  - the applicant mentioned in subclause 785.211(2) has been granted a Subclass 785 (Temporary Protection) visa.
- New subclause 785.228(3) provides that both of the following apply:
  - the applicant is a member of the same family unit as an applicant mentioned in subclause 785.211(4);
  - the applicant mentioned in subclause 785.211(4) has been granted a Subclass 785 (Temporary Protection) visa.

The purpose of new clause 785.228 is to ensure that a child who would be taken to have an application due to subregulation 2.08(1) can only be granted a Subclass 785 (Temporary Protection) visa if they are a member of the same family unit of someone who was granted a Subclass 785 (Temporary Protection) visa on the basis of meeting subclause 785.211(2) or subclause 785.211(4).

The criteria in new clause 785.229 requires that the Minister is satisfied that the grant of the visa is in the national interest.

New clause 785.229 replicates for the Subclass 785 (Temporary Protection) visa the criterion in clause 886.226 for the Subclass 866 (Protection) visa. The effect of new clause 785.229 is that the Minister is able to refuse to grant a Subclass 785 (Temporary Protection) visa where the Minister is not satisfied that the grant it is in the national interest.

### *New division 785.3 – Secondary Criteria*

New division 785.3 provides for the secondary criteria which must be satisfied for the grant of a Subclass 785 visa.

A new note is inserted under new division 785.3 which provides that all applicants must satisfy the primary criteria.

*New division 785.4 – Circumstances applicable to grant*

New division 785.4 provides for the circumstances applicable to the grant of a Subclass 785 (Temporary Protection) visa.

New clause 785.411 provides that the applicant must be in Australia when the visa is granted.

Clause 785.411 replicates current clause 866.411 for the Subclass 866 (Protection) visa. The purpose of clause 785.411 is to explicitly state that an applicant must be in Australia to be granted a Subclass 785 (Temporary Protection) visa.

*New division 785.5 – When visa is in effect*

New division 785.5 provides for when a visa is in effect.

New clause 785.511 provides that a Subclass 785 (Temporary Protection) visa is a temporary visa permitting the holder to remain in Australia for 36 months or a shorter period determined by the Minister.

The effect of this clause is that a Subclass 785 (Temporary Protection) visa holder can only be granted a Subclass 785 (Temporary Protection) visa for a period of up to 36 months and that the visa will cease to be in effect when the holder leaves Australia.

The purpose of this clause is to explicitly provide that the Subclass 785 (Temporary Protection) visa is a temporary visa that only permits the holder to remain in Australia for a period of up to three years. An effect of this is that the visa will cease if the holder leaves Australia whilst the visa is in effect.

*New Division 785.6 – Conditions*

New Subdivision 785.6 provides for the conditions to be attached to a Subclass 785 (Temporary Protection) visa.

New clause 785.611 provides that conditions 8503, 8564 and 8565 apply.

The effect of this provision is that those conditions apply by operation of law to a Subclass 785 (Temporary Protection) visa. If a visa holder breaches one of the conditions, their visa may be liable for cancellation under paragraph 116(b) of the Act.

Condition 8503 provides that the visa holder will not, after entering Australia, be entitled to be granted a substantive visa, other than a protection visa, whilst the holder remains in Australia.

The legal effect of this condition is that, unless the Minister waives the condition under subsection 41(2A) of the Act, a person who holds, or who held, a visa with this condition attached to it cannot make a valid application for a visa (other than a protection visa) while they remain in Australia (paragraph 46(1A)(c) of the Act).

The purpose of making condition 8503 a mandatory condition for a Subclass 785 (Temporary Protection) visa is to reflect the Government's intention that Subclass 785 (Temporary Protection) visa holders are not able to apply for permanent visas or any substantive visa other than a Subclass 785 (Temporary Protection) visa.

Condition 8564 provides that the visa holder must not engage in criminal conduct.

The purpose of making 8564 a mandatory condition for a Subclass 785 (Temporary Protection) visa is to send a strong message to Subclass 785 (Temporary Protection) visa holders about the behaviour expected of them in the community.

Condition 8565 provides that the holder must notify Immigration of any change in the holder's residential address within 14 days after the change.

The purpose of condition 8565 is to ensure that the Department is made aware of any change in address of a Subclass 785 (Temporary Protection) visa holder.

Item [7] – Paragraphs 866.211(2)(a) and 4(a) of Schedule 2

This item omits 'to whom' and substitutes 'in respect of whom' in paragraphs 866.211(2)(a) and 866.211(4)(a) of Schedule 2.

Previously paragraph 866.211(2)(a) provided that the applicant 'claims to be a person to whom Australia has protection obligations under the Refugees Convention'.

Amended paragraph 866.211(2)(a) provides that the applicant 'claims to be a person in respect of whom Australia has protection obligations under the Refugees Convention'.

Previously paragraph 866.211(4)(a) provided that the applicant 'is not a person to whom Australia has protection obligations under the Refugees Convention'.

Amended paragraph 866.211(4)(a) provides that the applicant 'is not a person to whom Australia has protection obligations under the refugees Convention'.

The purpose of the amendments is to mirror the language used in subsection 36(2) of the Act. The use of 'in respect of whom' rather than 'to whom' reflects the fact that Australia has obligations to other countries under the Refugees Convention, rather than obligations to individuals.

Item [8] – subclauses 866.221(2) to (5) of Schedule 2

This item repeals and substitutes subclauses 866.221(2) to (5) of Schedule 2.

Previously subclauses 866.221(2) to (5) provided that the Minister must be satisfied that the applicant is a person, or a member of the same family unit as a person to whom Australia has protection obligations, either under the Refugees Convention or under the complementary protection provisions in the Act.

The amendment does not alter the purpose of clause 866.221. Substituted subclauses 866.221(2) to (5) replicate the current subclauses 866.221(2) to (5) with the exceptions discussed below.

Substituted subclauses 866.221(2) and 866.221(4) omit the current use of the phrase ‘to whom Australia has protection obligations under the Refugees Convention’ and replace with ‘in respect of whom Australia has protection obligations under the Refugees Convention’.

The purpose for this change is to mirror the language used in subsection 36(2) of the Act. The use of ‘in respect of whom’ rather than ‘to whom’ reflects the fact that Australia has obligations to other countries under the Refugees Convention, rather than obligations to individuals.

Substituted paragraphs 866.221(3)(b) and 866.221(5)(b) remove the current reference to ‘Protection (Class XA) visa’ and replace it with ‘Subclass 866 (Protection) visa’.

The purpose of this change is to ensure that only a member of the same family unit as someone who has been granted a Subclass 866 (Protection) visa is eligible for the grant of a Subclass 866 (Protection) visa. Given that the amendments in this regulation insert the Subclass 785 (Temporary Protection) visa into the Protection (Class XA) visa, it is necessary that the provision clearly apply only to a Subclass 866 (Protection) visa. If the reference to Protection (Class XA) visas was to be retained there may have been a risk that family members would hold different visas with different conditions and which would be in effect for different periods.

#### Item [9] – After clause 866.221

This item inserts new clause 866.222 after clause 866.221 in Schedule 2.

The criterion in new clause 866.222 requires that the applicant:

- does not hold a Subclass 785 (Temporary Protection) visa; and
- has not held a Subclass 785 (Temporary Protection) visa since last entering Australia; and
- held a visa in effect on the applicant’s last entry into Australia; and
- is not an unauthorised maritime arrival; and
- was immigration cleared on the applicant’s last entry into Australia.

Clause 866.222 is a new criterion that all applicants for a Subclass 866 (Protection) visa must satisfy.

As this provision mirrors the amendments about who can make a valid application for a Subclass 866 (Protection) visa, the effect of this criterion is that only those people who have made a valid application for a Subclass 866 visa can be granted a Subclass 866 visa.

The purpose of this amendment is to ensure that a Subclass 866 (Protection) visa is no longer available to a person who is an unauthorised maritime arrival, did not hold a visa on their last entry to Australia, was not immigration cleared on their last entry to Australia, or who holds or has held a Subclass 785 (Temporary Protection) visa since last entering Australia. This amendment reflects the Government's intention that such a person will not be granted a permanent protection visa.

Item [10] – Subclause 866.223

This item amends subclause 866.223 of Schedule 2.

Previously subclause 866.223 provided:

- The applicant has undergone a medical examination carried out by any of the following (a relevant medical practitioner):
  - a Medical Officer of the Commonwealth;
  - a medical practitioner approved by the Minister for the purposes of this paragraph;
  - a medical practitioner employed by an organisation approved by the Minister for the purposes of this paragraph.

The amendment removes the reference to 'relevant medical partitioner' and substitute with '***relevant medical practitioner***' in subclause 866.223 in Schedule 2 to the Regulations.

The amendment is a technical amendment for the purposes of consistent drafting

Item [11] – At the end of Schedule 8

This item inserts new condition 8565 into Schedule 8 to the Regulations.

New condition 8565 provides that a visa holder must notify Immigration of any change in their residential address within 14 days after the change occurs.

The purpose of the new condition is to require the visa holder to inform the Department of Immigration and Border Protection of any changes to their address.

Item [12] – At the end of Schedule 13

This amendment inserts Part 21 – Amendments made by the *Migration Amendment (Temporary Protection Visas) Regulation 2013*.

The title of new item 2101 is ‘Operation of Schedule 1’.

New subitem 2101(1) provides that the amendments made by Schedule 1 to the *Migration Amendment (Temporary Protection Visas) Regulation 2013* apply in relation to an application for a visa made on or after the day that the schedule commences.

New item 2101(2) provides that the amendments made by Schedule 1 to the *Migration Amendment (Temporary Protection Visas) Regulation 2013*, other than the amendments made by items [1], [3] and [4] of that Schedule, apply in relation to an application for a visa made, but not finally determined, before the day that Schedule commences.

The purpose of item 2101 is to clarify to whom the amendments in this Regulation apply.