

EXPLANATORY STATEMENT

Issued by the Minister for Immigration and Multicultural Affairs

Migration Act 1958

Migration Amendment (Cessation and Grant of Bridging Visas) Regulations 2024

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

The *Migration Amendment (Cessation and Grant of Bridging Visas) Regulations 2024* (the Amendment Regulations) amend the *Migration Regulations 1994* (Migration Regulations) to cease certain bridging visas, held by a non-citizen if they have been determined by the Foreign Minister or their delegate, as a person whose presence in Australia may be directly or indirectly associated with the proliferation of weapons of mass destruction (WMD), and immediately grant a replacement Subclass 050 (Bridging (General)) visa to the non-citizen, by operation of law.

As criteria for the grant of a visa, the requirement that a non-citizen must not be associated with the proliferation of WMD is prescribed in Public Interest Criteria (PIC) 4003(b) and PIC 4003A, which apply to a range of temporary and permanent visas. The Amendment Regulations define a WMD determination as a determination mentioned in sub-subparagraph 2.43(1)(a)(i)(B) and subparagraph 2.43(1)(a)(ii) and PIC 4003(b) and 4003A in Schedule 4 to the Migration Regulations. A WMD determination operates to prevent the grant of a visa to a non-citizen where PIC 4003(b) or 4003A are criteria for the grant of a visa as well as requiring the cancellation of any visa held by a non-citizen for the purposes of paragraph 116(1)(g) of the Migration Act.

In circumstances where a non-citizen was granted a bridging visa in association with a valid application for a substantive visa that includes PIC 4003(b) or 4003A as criteria for the grant of that visa, and the non-citizen did not satisfy that criterion, the Amendment Regulations would operate to cease their bridging visa at the time the Minister makes a decision to refuse the substantive visa (the *cessation time*). Under regulation 2.24A, where the non-citizen was onshore at the cessation time, they would immediately be granted a single Subclass 050 (Bridging (General)) visa, with mandatory conditions 8103 and 8207 imposed.

Visa conditions 8103 (must not undertake work in Australia without permission) and 8207 (must not engage in study or training in Australia), appropriately restrict the non-citizen's work and study rights, where a WMD determination has been made in respect of the person to minimise the risk of the non-citizen proliferating WMD.

The Amendment Regulations prevent a non-citizen who is a person in respect of whom a WMD Determination has been made from making a valid application for a Subclass 010 (Bridging A) visa, Subclass 020 (Bridging B) visa or a Subclass 030 (Bridging C) visa.

The Amendment Regulations also provide for a non-citizen to make an application for a bridging visa without work and study limitations, if a the Foreign Minister or a person authorised by the Foreign Minister subsequently determines that the applicant is no longer a person whose presence in Australia is directly or indirectly associated with the proliferation of WMD. A person who is the subject of a WMD determination may seek merits review of the decision to refuse or cancel the substantive visa on the grounds that PIC 4003(b) or 4003A is not satisfied.

The Amendment Regulations only apply to a non-citizen visa applicant to which a WMD determination may apply, rather than all applicants included in a substantive visa application. For example, secondary applicants to the substantive visa application, such as family members of the primary applicant, would not be subject to work and study restrictions in the event that only the primary applicant was subject to a WMD determination.

The Amendment Regulations do not operate retrospectively. The amendments made by Parts 1 and 2 apply in relation to a bridging visa granted on or after the commencement of the Amendment Regulations. Amendments made by Part 3 apply in relation to a visa application made on or after commencement of the Amendment Regulations.

The matters dealt with in the Regulations are appropriate for implementation in regulations rather than by Parliamentary enactment. It has been the consistent practice of the Government of the day to provide for detailed visa settings in the Migration Regulations rather than in the Migration Act itself. The Migration Act expressly provides for these matters to be prescribed in regulations, as can be seen in the authorising provision. Providing for these details to be in delegated legislation rather than primary legislation gives the Government the ability to effectively manage the operation of Australia's visa program and respond quickly to emerging needs.

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

The Office of Impact Analysis (OIA) has been consulted in relation to the amendments. The OIA considers the proposal is unlikely to have a more than minor regulatory impact. As such, the preparation of an Impact Analysis (IA) was not required. The OIA consultation reference number is OIA23-04536.

The approach to these regulations was informed through consultation with the Department of Foreign Affairs and Trade. Consultation focused on the implementation of the changes, dissemination of the changes once legislated, and supports available for non-citizens undertaking review processes, such as the ability to undertake work, where appropriate. This feedback helped to inform the Amendment Regulations and implementation planning. The Department also consulted the education sector at the Education Visa Consultative. Feedback helped to inform the approach to the Amendment Regulations, as well as implementation planning.

The amendments commence on the day after registration on the Federal Register of Legislation.

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

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

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

The Amendment Regulations will be repealed by operation of Division 1 of Part 3 of Chapter 3 of the Legislation Act. Specifically, that Division (under section 48A) operates to automatically repeal a legislative instrument that has the sole purpose of amending or repealing another instrument. As the Amendment Regulations will automatically repeal, they do not engage the sunseting framework under Part 4 of the Legislation Act.

The Department follows standard practices to notify clients and stakeholders about the Amendment Regulations, including updating its website. Briefing of the education sector will occur through the Education Visa Consultative Committee.

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

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

Statement of Compatibility with Human Rights

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

Migration Amendment (Cessation and Grant of Bridging Visas) Regulations 2024

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

Overview of the Regulations

The Australian Government supports international efforts to prevent the proliferation of Weapons of Mass Destruction (WMD). Maintaining Australian leadership in global arms control, non-proliferation, counter-proliferation, and disarmament efforts is a fundamental pillar of the Government's response to international security challenges.

Australia is committed to the appropriate regulation of conventional weapons. Australia has legal obligations contained in a range of treaties including the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the Chemical Weapons Convention (CWC), the Biological Weapons Convention (BWC) and others.

Australia's migration legislation has included long standing powers to refuse or cancel a visa where the person has been 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 WMD.

Specifically, Public Interest Criterion (PIC) 4003(b) in the *Migration Regulations 1994* (the Migration Regulations) provides that the Foreign Minister, or a person authorised by the Foreign Minister can determine whether the applicant may be directly or indirectly associated with the proliferation of weapons of mass destruction." Similarly, PIC 4003A provides 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". Either PIC 4003(b) or PIC 4003A is prescribed as a criterion to be satisfied for the grant of a range of temporary and permanent visas.

The Department of Foreign Affairs and Trade (DFAT) is the principal agency that assesses information in order to determine if a person's presence in Australia may be associated with the proliferation of WMD. Where a WMD determination is made and PIC 4003(b) or 4003A are prescribed as a criterion for the grant of a visa, the visa application must be refused on grounds relating to proliferation of WMD. Further, where a WMD determination is made

personally by the Foreign Minister, any visa held by a person must be cancelled pursuant to section 116(3) of the *Migration Act 1958* and regulation 2.43(2) of the Migration Regulations.

The *Migration Amendment (Cessation and Grant of Bridging Visas) Regulations 2024* (the Amendment Regulations) amend the Migration Regulations to strengthen the existing framework to ensure that an individual, in respect of whom a WMD determination exists, is subject to appropriate work and study restrictions on any Bridging Visas (BV) they hold. BVs are granted to a non-citizen to maintain their lawful status in Australia in a range of circumstances, including while applying for a substantive visa or for seeking merits review or judicial review of a decision to refuse a substantive visa.

The Amendment Regulations contain provisions to:

- cease all BVs held by an individual immediately following a refusal of a substantive visa based on failure to meet PIC 4003(b) or PIC 4003A,
- grant a Bridging E Visa (BVE) with the following mandatory conditions:
 - condition 8207 (must not engage in studies or training) and
 - condition 8103 (must not work in Australia without the permission in writing from the Minister in relation to the specified work or timing of the work),
- prevent an individual from applying for a Bridging A visa (BVA), Bridging B visa (BVB) or Bridging C visa (BVC) if they are the subject of a WMD determination, and
- ensure that, where a person remains the subject of a WMD determination any future BVE includes mandatory conditions 8207 and 8103.

The cessation of a BV held following a visa refusal on the basis of a WMD PIC applies only to BVs granted on or after the commencement of the Amendment Regulations, and not to those held at the time of commencement.

Without these amendments, individuals who are the subject of a WMD determination would be able to continue to study, and work, in the field of concern, while they are seeking merits review of their refusal decision. This would undermine both the PIC framework and the Australian government's position of supporting international efforts to prevent the proliferation of WMD.

The amendments made by the Amendment Regulations, therefore, provide the government with the tools to appropriately restrict study and work rights of particular individuals who are the subject of a WMD determination, for the legitimate objective of preventing the proliferation of WMD. This, in turn, supports the protection of the Australian and international community.

Human rights implications

These amendments engage the following rights:

- The rights of equality and non-discrimination in Article 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);
- The right to education in Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); and
- The right to work in Article 6 of the ICESCR.

Rights of equality and non-discrimination

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.

Article 2(2) of the ICESCR states:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In its General Comment 18, the UN Human Rights Committee (UNHRC) 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 [ICCPR].

Similarly, in its General Comment on Article 2 of the ICESCR, the UN Committee on Economic, Social and Cultural Rights 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 [ICESCR] 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. The UNHRC, in its General Comment 15 on the position of aliens under the ICCPR, stated that:

The [ICCPR] 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 [ICCPR] 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 [ICCPR].

As such, Australia is able to set requirements for the entry and stay of non-citizens in Australia, and does so on the basis of reasonable and objective criteria.

The measures implemented by the Amendment Regulations apply only to individuals who are subject to a WMD determination and who hold or apply for a BV, and not to non-citizens more broadly or to Australian citizens.

These measures will have the effect of limiting the BV options available to individuals subject to a WMD determination, and limiting their ability to work and study while in Australia on a bridging visa. While this measure will engage the right to freedom from discrimination, restricting work and study entitlements for this cohort is reasonable and necessary to minimise risk to the international community and to assist in preventing the proliferation of WMD.

While the grant of a BVE with work and study conditions to the WMD cohort may engage the right to freedom from discrimination, the Amendment Regulations make a number of amendments that make the restriction of work and study more proportionate to the objectives of this measure.

The amendments ensure that:

- Individuals subject to a WMD determination are not restricted from performing all work in Australia. Condition 8103 requires the individual to request permission from the Minister prior to commencing specified work. This process provides the Minister, or delegate, the opportunity to consider the type of work being sought to be performed to ensure it does not raise the risk of the proliferation of WMD. This means that the condition targets work of concern to provide the most minimally restrictive condition possible while not precluding all work in Australia.
- An individual who is no longer the subject of a WMD determination because the Foreign Minister or a person authorised by the Foreign Minister has subsequently determined that the applicant is no longer a person whose presence in Australia is

directly or indirectly associated with the proliferation of WMD, will be eligible to apply for a new BV without work or study restrictions if those restrictions would not ordinarily apply.

- A non-citizen subject to a WMD determination is not precluded from applying for every type of BV. These individuals will still be able to apply for a BVE to lawfully remain in Australia, provided other criteria are met, to access merits or judicial review of the decision to refuse their substantive visa application.

These amendments ensure that the measures are applied in a focussed and balanced way, and will not apply to an individual on an indefinite basis if the Foreign Minister or a person authorised by the Foreign Minister has subsequently determined that the applicant is no longer a person whose presence in Australia is directly or indirectly associated with the proliferation of WMD. This means that the measures are proportionate and provide a minimally restrictive approach to the legitimate objective of preventing the proliferation of WMD both internationally and domestically.

Right to education

Article 13(1) of the ICESCR states:

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Article 13(2) of the ICESCR states, in part:

The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right: [...]

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

The United Nations Committee on Economic, Social and Cultural Rights in General Comment No. 13 specifies that the right to education includes that educational institutions be accessible, physically as well as economically, to everyone without discrimination.

Importantly, the ICESCR does not give a right for non-citizens to enter Australia. Australia is able to set requirements for the entry and stay of non-citizens in Australia, and does so on the basis of reasonable and objective criteria.

The measures in these Regulations will apply only to those individuals in respect of whom a WMD determination exists, and not to non-citizens more broadly. These measures will have the effect of setting requirements for the stay of specific non-citizens in Australia who are the subject of a WMD determination.

The Migration Regulations already contain condition 8207, which can apply to an individual's substantive or bridging visa in certain circumstances. These amendments extend the circumstances where condition 8207 must apply, to include circumstances where a substantive visa (usually a Student Visa) has been refused on the basis of failure to meet PIC 4003(b) or 4003A. This ensures that, for example, following the refusal of a student visa, that individual cannot continue to study the course of concern while awaiting review of the visa decision.

While this measure will limit the right to education by imposing condition 8207 on the BVEs for this cohort, this is reasonable and necessary to prevent study of concern while an individual remains in Australia on a BV, which is directly related to the legitimate goal of preventing the proliferation of WMD. This measure only applies to the individual who is subject to a WMD determination, rather than bridging visas held by the members of the individual's family unit who applied for the substantive visa as secondary applicants, unless those family members are themselves subject to a WMD determination.

The Amendment Regulations have a number of features that make the study restriction more proportionate to the objectives of this measure. For example,

- An individual who is no longer the subject of a WMD determination, will be eligible to apply for a new BV without work or study restrictions if those restrictions would not ordinarily apply.
- An individual who is the subject of a WMD determination is not precluded from applying for every type of BV. These individuals will still be able to lawfully remain in Australia on a bridging visa, provided other criteria are met, to access merits or judicial review of the decision to refuse their substantive visa application.

This means a person will not be precluded from remaining lawfully in Australia, provided other criteria are met. But instead, while they remain in Australia, their access to education will be restricted. This approach acknowledges that certain types of study or work in Australia could lead to the acquisition of knowledge that could enable an individual to assist in the proliferation of WMD. Including a study restriction on BVs in these limited circumstances is therefore a minimally restrictive approach to addressing the legitimate risk of the proliferation of WMD.

Right to work

Article 6(1) of the ICESCR provides:

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

These amendments impose certain limitations on work in Australia for individuals in respect of whom there is a WMD determination. Certain types of work in Australia, for example, work in scientific research or academia, may lead to the acquisition of knowledge that could directly or indirectly enable a person to assist in the proliferation of WMD.

The amendments do not restrict the individual from performing all work in Australia. Instead, condition 8103, which is an existing condition in the Migration Regulations, will apply as a mandatory condition and will require the Minister's approval before the visa holder can commence to perform work. This process provides the Minister, or delegate, the opportunity to consider the type of work being sought to be performed to ensure it does not raise the risk of the proliferation of WMD.

This measure therefore engages and limits the right to work, however this is achieved in a way that is proportionate to the objective being sought and is no more restrictive than required. This visa condition will directly lead to a reduction of the risk by preventing work of concern being performed on a BV, particularly while the person is seeking merits review following the refusal of their substantive visa because of failure to meet the WMD PIC. This limitation on work in these cases is therefore rationally connected to the legitimate objective of preventing the proliferation of weapons of mass destruction. Further, the condition is aimed at targeting only work of concern to provide the most minimally restrictive condition possible, while not precluding all work in Australia.

Additionally, the Amendment Regulations contain safeguards to ensure that if the Foreign Minister or a person authorised by the Foreign Minister has subsequently determined that the applicant is no longer a person whose presence in Australia is directly or indirectly associated with the proliferation of WMD, the individual can apply for another BV, provided other criteria are met. Additionally, in those circumstances, the individual can apply for a new BVE and will not be subject to work and study limitations if those would not ordinarily apply.

This limitation is therefore reasonable, proportionate and necessary as it serves the legitimate purpose of protecting the international community and supporting the goal of preventing the proliferation of WMD.

Conclusion

The amendments made by the Amendment Regulations are compatible with human rights because to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate to the objective of supporting the international community to prevent the proliferation of Weapons of Mass Destruction.

The Hon Tony Burke MP

Minister for Immigration, Citizenship and Multicultural Affairs

Details of the *Migration Amendment (Cessation and Grant of Bridging Visas) Regulations 2024*

Section 1 - Name

This section provides that the name of the instrument is the *Migration Amendment (Cessation and Grant of Bridging Visas) Regulations 2024* (the Amendment Regulations).

Section 2 - Commencement

This section provides that the Amendment Regulations commence on the day after registration on the Federal Register of Legislation.

Section 3 - Authority

This section provides that the Amendment Regulations are made under the *Migration Act 1958*.

Section 4 - Schedules

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

Schedule 1 – Amendments

Part 1—Cessation of certain bridging visas and grant of replacement bridging visa

Migration Regulations 1994

Item [1] – After regulation 2.24

This item inserts new regulation 2.24A in the *Migration Regulations 1994* (the Migration Regulations).

Regulation 2.24A of the Migration Regulations provides for the grant of a Subclass 050 Bridging (General) visa without application, as well as cessation of certain other bridging visas, in certain circumstances. Subregulation 2.24A(1) of the Migration Regulations provides that regulation 2.24A applies to a person if they were granted a bridging visa on the basis of making a valid application for a substantive visa and at the cessation time, the bridging visa ceased to be in effect under one of the provisions mentioned in subparagraphs 2.24A(1)(b)(i)-(v) and, at the cessation time, the person is in Australia but not in immigration clearance.

Section 82 of the *Migration Act 1958* (the Migration Act) provides the circumstances in which a bridging visa ceases to be in effect, regardless of any ceasing events specified in Schedule 2 to the Migration Regulations. In particular, subsection 82(3) of the Migration Act provides that a bridging visa held by a non-citizen ceases to be in effect if another visa – other than a special purpose visa or a maritime crew visa – for the non-citizen comes into effect. Subsection 82(7A) provides for the cessation of a bridging visa if a specified event happens.

Subregulation 2.24A(2) provides for the grant of a Subclass 050 Bridging (General) visa in respect of the application for the substantive visa, despite anything in Schedule 1 and Divisions 050.2 to 050.4 of Part 2 of Schedule 2 to the Migration Regulations.

Subregulation 2.24A(3) provides at the cessation time, if the person was the holder of a visa in any of the classes in paragraph 2.24A(3)(a) – (d), that visa, despite anything in Schedule 2 to the Migration Regulations, would cease to be in effect immediately after the cessation time (per paragraph 2.24A(b)).

Regulation 2.24A operates to grant the non-citizen a single Subclass 050 (Bridging (General) visa) and cease any other bridging visas held by the non-citizen. This ensures that following the cessation of the non-citizen's bridging visa in circumstances where a WMD determination has been made, the non-citizen would immediately be granted a Subclass 050 (Bridging (General)) visa and would not become unlawful. It also ensures that the person, in respect of whom a WMD determination has been made, has limited work and study rights.

The Subclass 050 (Bridging (General)) visa is the appropriate replacement visa because it provides the ability to impose tailored work and study conditions—condition 8207 and condition 8103. It is also an appropriate visa to grant to a non-citizen where they are the subject of a WMD determination and are pursuing merits or judicial review and have no other recourse to remain in Australia, unless the Foreign Minister or a person authorised by the Foreign Minister subsequently determines that the person is no longer a person whose presence in Australia is directly or indirectly associated with the proliferation of WMD.

Item [2] – Subparagraph 010.511(1)(b)(ii) of Schedule 2

This item amends subparagraph 010.511(1)(b)(ii) of Schedule 2 to provide that it applies where subclause (1A) does not apply in relation to the decision made by the Minister.

Clause 010.511 of Schedule 2 to the Migration Regulations specifies when a Subclass 010 (Bridging A) visa granted to a non-citizen who has applied for a substantive visa will come into effect, and when it will cease to be in effect.

Subparagraph 010.511(1)(b)(ii) of Schedule 2 to the Migration Regulations provides that a Subclass 010 (Bridging A) visa permits the holder to remain in Australia until 35 days after the Minister makes a decision in respect of the substantive visa application to refuse to grant that visa.

Subsection 5(1) of the Migration Act provides that a visa period begins when the visa is granted. Section 73 of the Migration Act provides that the Minister may grant a bridging visa permitting the holder to remain in, or travel to, and enter and remain Australian during a specified period or until a specified event occurs.

Section 82 of the Migration Act and the Schedule 2 criteria for each bridging visa subclass specify the circumstances that will cause the bridging visa to come into effect and cease to be in effect.

Item [3] – After subparagraph 010.511(1)(b)(ii) of Schedule 2

Paragraph 010.511(1)(b) of Schedule 2 of the Migration Regulations provides the time in which a Subclass 010 (Bridging A) visa is permitted to remain in Australia.

This item inserts new subparagraph 010.511(1)(b)(iaa) in Schedule 2 to the Migration Regulations. Subparagraph 010.511(1)(b)(iaa) of Schedule 2 to the Migration Regulations provides that a Subclass 010 (Bridging A) visa holder is permitted to remain in Australia until the time that a decision is made by the Minister to refuse to grant the visa if a criterion for the grant of the substantive visa is that, the non-citizen satisfies PIC 4003(b) or 4003A and the non-citizen did not satisfy that criterion.

The purpose of this amendment is to provide an event in the Migration Regulations that ceases a non-citizen's bridging visa following a decision from the Minister to refuse to grant the non-citizen a substantive visa, because they failed to satisfy PIC 4003(b) or PIC 4003A.

Item [4] – After subclause 010.511(1) of Schedule 2

This item inserts subclause 010.511(1A) in clause 010.511 of Schedule 2 to the Migration Regulations.

Subclause 010.511(1A) applies in relation to a decision made by the Minister to refuse to grant a non-citizen a substantive visa if a criterion for the grant of the substantive visa is that the non-citizen must satisfy PIC 4003(b) or 4003A, and the non-citizen did not satisfy the criterion.

The purpose of this amendment is to provide a circumstance in the Migration Regulations that ceases a non-citizen's bridging visa following a decision from the Minister to refuse to grant the non-citizen a substantive visa because they failed to satisfy PIC 4003(b) or PIC 4003A.

Item [5] – Subparagraph 020.511(1)(b)(ii) of Schedule 2

Clause 020.511 of Schedule 2 to the Migration Regulations specifies when a Subclass 020 (Bridging B) visa granted to a non-citizen who has applied for a substantive visa will come into effect, and when it will cease to be in effect.

Subparagraph 020.511(1)(b)(ii) of Schedule 2 to the Migration Regulations provides that a Subclass 020 (Bridging B) visa permits the holder to remain in Australia until 35 days after the Minister has made a decision in respect of a substantive visa application to refuse to grant that visa.

This item amends subparagraph 020.511(1)(b)(ii) of Schedule 2 to provide that the subparagraph applies where subclause 020.511(1A) does not apply in relation to the Minister's decision to refuse to grant the visa.

Item [6] – After subparagraph 020.511(1)(b)(ii) of Schedule 2

Paragraph 020.511(1)(b) of Schedule 2 of the Migration Regulations provides the time in which a Subclass 010 (Bridging A) visa holder is permitted to remain in Australia.

This item inserts new subparagraph 010.511(1)(b)(iaa) in Schedule 2 to the Migration Regulations. Subparagraph 020.511(1)(b)(iaa) of Schedule 2 to the Migration Regulations provides that a Subclass 020 (Bridging B) visa holder is permitted to remain in Australia until the time that a decision is made by the Minister to refuse to grant the visa if a criterion for the grant of the substantive visa is that that non-citizen satisfies PIC 4003(b) or 4003A and the non-citizen did not satisfy that criterion.

The purpose of this amendment is to provide a circumstance in the Migration Regulations that ceases a non-citizen's bridging visa following a decision from the Minister to refuse to grant the non-citizen a substantive visa because they failed to satisfy PIC 4003(b) or PIC 4003A.

Item [7] – After subclause 020.511(1) of Schedule 2

Clause 020.511 of Schedule 2 to the Migration Regulations provides when a Subclass 020 (Bridging B) visa granted to a non-citizen who has applied for a substantive visa comes into effect, and when it ceases to be in effect.

This item inserts new subparagraph 020.511(1A) in clause 020.511 of Schedule 2 to the Migration Regulations.

Subclause 020.511(1A) provides that it applies in relation to a decision made by the Minister to refuse to grant a non-citizen a substantive visa if, a criterion for the grant of the substantive visa is that the non-citizen satisfies PIC 4003(b) or 4003A and the non-citizen did not satisfy the criterion.

This amendment provides a circumstance in the Migration Regulations that ceases a non-citizen's bridging visa following a decision from the Minister to refuse to grant the non-citizen a substantive visa because they do not satisfy PIC 4003(b) or PIC 4003A.

Item [8] – Subparagraph 030.511(1)(b)(ii) of Schedule 2

Clause 030.511 of Schedule 2 to the Migration Regulations specifies when a Subclass 030 (Bridging C) visa will come into effect, and when it will cease to be in effect.

Subparagraph 030.511(1)(b)(ii) of Schedule 2 to the Migration Regulations provides that a Subclass 030 (Bridging C) visa permits the holder to remain in Australia until 35 days after the Minister has made a decision in respect of a substantive visa application to refuse to grant that visa.

This item amends subparagraph 030.511(1)(b)(ii) of Schedule 2 to provide that it applies where subclause (1A) does not apply in relation to the decision made by the Minister.

Item [9] – After subparagraph 030.511(1)(b)(ii) of Schedule 2

Paragraph 030.511(1)(b) of Schedule 2 of the Migration Regulations provides the time in which a Subclass 030 (Bridging C) visa holder is permitted to remain in Australia.

This item inserts new subparagraph 030.511(1)(b)(iaa) in Schedule 2 to the Migration Regulations. Subparagraph 030.511(1)(b)(iaa) of Schedule 2 to the Migration Regulations provides that a Subclass 030 (Bridging C) visa holder is permitted to remain in Australia until the time that a decision is made by the Minister to refuse to grant the visa if a criterion for the grant of the substantive visa is that that non-citizen satisfies PIC 4003(b) or 4003A, and the non-citizen did not satisfy that criterion.

The purpose of this amendment is to provide a circumstance in the Migration Regulations that ceases a non-citizen's bridging visa following a decision from the Minister to refuse to grant the non-citizen a substantive visa because they failed to satisfy PIC 4003(b) or PIC 4003A.

Item [10] – After subclause 030.511(1) of Schedule 2

Clause 030.511 of Schedule 2 to the Migration Regulations provides when a Subclass 030 (Bridging C) visa granted to a non-citizen who has applied for a substantive visa comes into effect and ceases to be in effect.

This item inserts new subclause 030.511(1A) in clause 030.511 of Schedule 2 to the Migration Regulations.

Subclause 030.511(1A) provides that it applies in relation to a decision made by the Minister to refuse to grant a non-citizen a substantive visa if a criterion for the grant of the substantive visa is that the non-citizen satisfies PIC 4003(b) or 4003A and the non-citizen did not satisfy the criterion.

Item [11] – Subclause 050.511(1) of Schedule 2

This item amends subclause 050.511(1) to provide when a Subclass (Bridging (General)) visa granted to a non-citizen who has applied for a substantive visa, other than a non-citizen to whom subclause 050.222(3) applies, or a visa granted under regulation 2.24A, comes into effect and when it ceases to be in effect.

Item [12] – Subparagraph 050.511(1)(b)(ii) of Schedule 2

Clause 050.511 of Schedule 2 to the Migration Regulations specifies when a Subclass 050 (Bridging (General)) visa granted to a non-citizen who has applied for a substantive visa will come into effect and when it will cease to be in effect.

Subparagraph 050.511(1)(b)(ii) of Schedule 2 to the Migration Regulations provides that a Subclass 050 (Bridging (General)) visa permits the holder to remain in Australia until 35 days after the Minister has made a decision – in respect of a substantive visa application – to refuse to grant that visa.

This item amends subparagraph 050.511(1)(b)(ii) of Schedule 2 to provide that the subparagraph applies where subclause 050.511(1A) does not apply in relation to the Minister's decision to refuse to grant the visa.

Item [13] – After subparagraph 050.511(1)(b)(ii) of Schedule 2

Paragraph 050.511(1)(b) of Schedule 2 of the Migration Regulations provides the time in which a Subclass 050 (Bridging (General)) visa holder is permitted to remain in Australia.

This item inserts new subparagraph 050.511(1)(b)(iaa) in Schedule 2 to the Migration Regulations and which provides that a Subclass 050 (Bridging (General)) visa holder is permitted to remain in Australia until the time that a decision is made by the Minister to refuse to grant the visa if a criterion for the grant of the substantive visa is that that non-citizen satisfies PIC 4003(b) or 4003A, and the non-citizen did not satisfy that criterion.

The purpose of this amendment is to provide a circumstance in the Migration Regulations that ceases a non-citizen's bridging visa following a decision from the Minister to refuse to grant the non-citizen a substantive visa because they failed to satisfy PIC 4003(b) or PIC 4003A.

Item [14] – After subclause 050.511(1) of Schedule 2

Clause 050.511 of Schedule 2 to the Migration Regulations provides when a Subclass 050 (Bridging (General)) visa granted to a non-citizen who has applied for a substantive visa comes into effect and when it ceases to be in effect.

This item inserts new subclause 050.511(1A) in clause 050.511 of Schedule 2 to the Migration Regulations.

Subclause 050.511(1A) provides that it applies in relation to a decision made by the Minister to refuse to grant a non-citizen a substantive visa if a criterion for the grant of the substantive visa is that the non-citizen satisfies PIC 4003(b) or 4003A, and the non-citizen did not satisfy the criterion.

Item [15] – Subparagraph 051.511(1)(a)(ii) of Schedule 2

Clause 051.511 of Schedule 2 to the Migration Regulations specifies when a Subclass 051 (Bridging (Protection Visa Applicant)) visa granted to a non-citizen who has applied for a protection visa will come into effect and when it will cease to be in effect.

Subparagraph 051.511(1)(a)(ii) of Schedule 2 to the Migration Regulations provides that a Subclass 051 (Bridging (Protection Visa Applicant)) visa permits the holder to remain in Australia until 35 days after the Minister has made a decision in respect of a substantive visa application, to refuse to grant that visa.

This item amends subparagraph 051.511(1)(a)(ii) of Schedule 2 to provide that the subparagraph applies where subclause 051.511(1A) does not apply in relation to the Minister's decision to refuse to grant the visa.

Item [16] – After paragraph 051.511(1)(a) of Schedule 2

This item inserts new paragraph 051.511(1)(aa) in Schedule 2 to the Migration Regulations.

Paragraph 051.511(1)(a) of Schedule 2 of the Migration Regulations provides the time in which a holder of a Subclass 051 (Bridging (Protection Visa Applicant)) visa holder is permitted to remain in Australia.

Subparagraph 051.511(1)(aa) of Schedule 2 to the Migration Regulations provides that a holder of a Subclass 051 (Bridging (Protection Visa Applicant)) visa is permitted to remain in Australia until the Minister's decision – in respect of the holder's substantive visa – is to refuse to grant the visa if a criterion for the grant of the substantive visa is that that non-citizen satisfies PIC 4003(b) or 4003A and the non-citizen did not satisfy that criterion.

Item [17] – After subclause 051.511(1) of Schedule 2

This item inserts new subclause 051.511(1A) of Schedule 2 to the Migration Regulations.

Clause 051.511 of Schedule 2 to the Migration Regulations provides when a Subclass 051 (Bridging (Protection Visa Applicant)) visa granted to a non-citizen who has applied for a substantive visa comes into effect and when it ceases to be in effect.

This item inserts new subclause 051.511(1A) in clause 051.511 of Schedule 2 to the Migration Regulations.

Subclause 051.511(1A) provides that it applies in relation to a decision made by the Minister to refuse to grant a non-citizen a substantive visa if a criterion for the grant of the substantive visa is that the non-citizen satisfies PIC 4003(b) or 4003A, and the non-citizen did not satisfy the criterion.

Part 2—Cessation and conditions of certain bridging visas

Migration Regulations 1994

Item [18] – Regulation 1.03

This item inserts a new definition in the Migration Regulations for the term ‘*weapons of mass destruction determination*’ in regulation 1.03. The definition provides that a WMD determination means a determination mentioned in any of the provisions from (a) to (d).

The definition applies in relation to all circumstances where the non-citizen has had a visa cancelled or refused. As amended, the regulations apply to any non-citizen who has been 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 WMD.

Item [19] – After clause 050.511 of Schedule 2

This item inserts new clause 050.511AA of Schedule 2 to the Migration Regulations.

Paragraph 050.511AA(1)(a) of Schedule 2 provides that a Subclass 050 (Bridging (General)) visa granted to a non-citizen under regulation 2.24A of the Migration Regulations come into effect on grant.

Subparagraphs 050.511AA(1)(b)(i) – (vi) of Schedule 2 provide ceasing events for a Subclass 050 (Bridging (General)) visa that was granted without application to a non-citizen under regulation 2.24A of the Migration Regulations.

Subclause 050.511AA(2) of Schedule 2 to the Migration Regulations clarifies for the purposes of subparagraphs 050.511AA(1)(b)(i), (ii) and (iii), the 35 day period begins to run despite any failure to comply with the requirements of the Migration Act or Migration Regulations in relation to the decision mentioned in the subparagraph, and irrespective of the validity of the decision.

Item [20] – Clause 050.613 of Schedule 2

This item repeals and substitutes clause 050.613 of Schedule 2 to the Migration Regulations.

New subclause 050.613(1) of Schedule 2 provides the visa conditions that may be imposed on a Subclass 050 (Bridging (General)) visa, other than a visa to which new clause 050.616B applies, granted to an applicant who meets the requirements of subclause 050.212(6A) or (8).

Subclause 050.613(2) of Schedule 2 clarifies that despite anything in the other provisions in Division 050.6, those provisions do not apply where subclause 050.613(1) applies.

The note under subclause 050.613(2) clarifies that the only conditions that may be imposed on such a visa are those set out in subclause 050.613(1).

The purpose of this amendment is to preserve the current operation of clause 050.613 with the exception that, in the case of a non-citizen in respect of whom a WMD determination exists, new clause 050.616B applies instead. This appropriately limits work and study rights where a non-citizen is the subject of a WMD determination.

Item [21] – Subclause 050.613A(1) of Schedule 2

This item amends subclause 050.613A(1) to clarify that clause 050.613A applies to a visa, other than a visa to which clause 050.613, 050.616A or 050.616B of Schedule 2 to the Migration Regulations applies.

Item [22] – Subclause 050.613A(2) of Schedule 2

This item amends subclause 050.613A(2) to clarify that if subclause 050.613A(1) applies, any 1 or more of conditions 8116, 8201, 8207, 8401, 8505, 8506, 8507, 8508, 8510, 8511, 8512 and 8548 may be imposed on a Subclass 050 (Bridging (General)) visa.

This amendment also provides consistency in terminology in Division 050.6 of the Migration Regulations.

Item [23] – At the end of clause 050.613A of Schedule 2

This item inserts subclause 050.613A(4) of Schedule 2 to the Migration Regulations. Subclause 050.613A(4) operates to provide that despite anything in the other provisions of Division 050.6 to the Migration Regulations, those provisions do not apply in relation to a visa to which subclause 050.613A(1) applies.

The note under subclause 050.613A(4) clarifies the policy intention that only the visa conditions in subclauses 050.613A(1) and (2) apply to a visa to which subclause 050.613A(1) applies.

Item [24] – Subclause 050.616A(1) of Schedule 2

This item amends subclause 050.616A(1) to align with new subclause 050.616A(3) of Schedule 2 to the Migration Regulations which clarifies the operation of clause 050.616A.

Item [25] – At the end of clause 050.616A of Schedule 2

This item inserts new subclause 050.616A(3) of Schedule 2 to the Migration Regulations. Subclause 050.616A(3) operates to provide that despite anything in another provision of Division 050.6, those provisions do not apply in relation to a visa which subclause 050.616A(1) applies.

Item [26] – After clause 050.616A of Schedule 2

Division 050.6 of Schedule 2 to the Migration Regulations provides the conditions to be imposed on a Subclass 050 (Bridging (General)) visa. This item inserts new clause 050.616B of Schedule 2 to the Migration Regulations.

Clause 050.616B of Schedule 2 provides that in the case of a Subclass (Bridging (General)) visa granted under regulation 2.24A, or a visa granted to an applicant in respect of whom a WMD determination has been made, conditions 8103 and 8207 would be imposed. In addition, any one or more of the discretionary conditions 8501, 8303, 8549, 8401, 8402, 8505, 8506, 8507, 8508, 8509, 8510, 8511, 8512, 8513, 8514, 8550, 8552, 8553, 8554, 8555, 8556, 8560, 8563, 8564, 8566, 8578 may be imposed.

This item also inserts a note to provide clarity that the only conditions that are or may be imposed on such a visa are the conditions in subclause (1).

The policy intention is to limit a non-citizen's right to work and study in Australia if they are a person in respect of whom a WMD determination has been made and the Foreign Minister, or a person authorised by the Foreign Minister, has not subsequently determined that the applicant is no longer a person whose presence in Australia may be directly or indirectly associated with the proliferation of WMD.

It is the intention, that where the non-citizen is a person in respect of whom a WMD determination has been made, and is granted a Subclass 050 (Bridging (General)) visa, visa conditions 8103 and 8207 would be imposed.

Visa condition 8103 requires that the non-citizen must not perform work in Australia without prior permission in writing from the Minister. When the Minister is considering whether to grant permission to work, the Minister may consider a number of factors including:

- the nature of the proposed work may be directly or indirectly associated with the proliferation of WMD; and
- If work would ordinarily be permitted in the circumstances under current practices, if the non-citizen was not the subject of a WMD determination.

Visa condition 8207 requires that the non-citizen must not engage in any studies or training in Australia.

In addition to visa conditions 8103 and 8207, the Minister or their delegate may also impose any of the visa conditions in paragraph 050.616B(1)(d).

These changes are necessary because, under the existing framework, the Department cannot, in most cases, impose conditions limiting study and work on bridging visas held by non-citizens who have failed to satisfy PIC 4003(b) or 4003A. The consequence is that if a non-citizens bridging visa(s) permitted study and work at the time it was granted, and the non-citizen was subsequently issued a WMD determination, they would be able to continue to study and work in the field of WMD concern while they are seeking merits review of the decision to refuse their visa. This creates a gap in the proper functioning of the PIC framework and undermines the Australian government's position of supporting international efforts to prevent the proliferation of WMD.

These amendments address this gap by allowing appropriate work and study conditions to be imposed on bridging visas of non-citizens issued with a WMD determination.

Part 3—Bar on applications for certain bridging visas

Migration Regulations 1994

Item [27] – At the end of paragraph 1301(3)(d) of Schedule 1

This item inserts new subparagraph 1301(3)(d)(v) in Schedule 1 to the Migration Regulations.

Subparagraph 1301(3)(d)(v) provides a new circumstance in paragraph 1301(3)(d) for an application for a Subclass 010 (Bridging A) visa to be valid. New subparagraph 1301(d)(v) provides that the applicant must hold or have previously held a Bridging E (Class WE) visa granted under new regulation 2.24A.

The intention is that where the non-citizen is the holder or has been the holder of a Bridging E (Class WE) visa granted under new regulation 2.24A, the person would be able to apply for a Bridging A (Class WA) visa, provided they also meet the other Schedule 1 criteria, including new paragraph 1301(3)(da).

Item [28] – After paragraph 1301(3)(d) of Schedule 1

This item inserts new paragraph 1301(3)(da) in Schedule 1 to the Migration Regulations.

Paragraph 1301(3)(da) provides a new circumstance for an application for a Subclass 010 (Bridging A) visa to be valid. New paragraph 1301(3)(da) provides that either the applicant is not a person in respect of whom a WMD determination has been made, or the Foreign Minister or a person authorised by the Foreign Minister has subsequently determined that the applicant is no longer a person whose presence in Australia may be directly or indirectly associated with the proliferation of WMD.

The intention is that where a non-citizen is a person in respect of whom a WMD determination has been made, this provision operates to prevent the non-citizen from making a valid application for a Subclass 010 (Bridging A) visa.

This provision also provides in circumstances where the non-citizen holds, or held a Bridging E (Class WE) visa granted under new regulation 2.24A and the Foreign Minister, or a person authorised by the Foreign Minister, has subsequently determined that they are no longer a person whose presence in Australia may be directly or indirectly associated with the proliferation of WMD, to make a valid application for a Subclass (Bridging A) visa to be made, provided that the non-citizen meets the other relevant Schedule 1 criteria.

Item [29] – After paragraph 1302(3)(c) of Schedule 1

This item inserts new paragraph 1302(3)(ca) in Schedule 1 to the Migration Regulations

New paragraph 1302(3)(ca) provides a new circumstance for an application for a Subclass 020 (Bridging B) visa to be valid. New paragraph 1302(3)(ca) provides that either the applicant is not a person in respect of whom a WMD determination has been made, or the Foreign Minister or a person authorised by the Foreign Minister has subsequently determined that the applicant is no longer a person whose presence in Australia may be directly or indirectly associated with the proliferation of WMD.

The intention is that where a non-citizen is a person in respect of whom a WMD determination has been made, this provision operates to prevent the non-citizen from making a valid application for a Subclass 020 (Bridging B) visa.

Item [30] – Subparagraphs 1303(3)(d)(ii) and (iii) of Schedule 1

Subsection 1303(3) of Schedule 1 to the Migration Regulations provides the circumstances for an application for a Subclass 030 (Bridging C) visa to be valid. This item amends subparagraphs 1303(d)(ii) and (iii) to provide that the person does not hold a Bridging E (Class WE) visa, other than a Bridging E (Class WE) visa granted under new regulation 2.24A.

The intention is that where the non-citizen is the holder or has been the holder of a Bridging E (Class WE) visa granted under new regulation 2.24A, the person would be able to apply for a Subclass (Bridging C) visa, provided they also meet the other Schedule 1 criteria, including new paragraph 1303(3)(da).

Item [31] – After paragraph 1303(3)(d) of Schedule 1

This item inserts new paragraph 1303(3)(da) in Schedule 1 to the Migration Regulations

Paragraph 1303(3)(da) provides a new circumstance for an application for a Subclass 030 (Bridging C) visa to be valid. New paragraph 1303(3)(da) provides that either the applicant is

not a person in respect of whom a WMD determination has been made, or the Foreign Minister or a person authorised by the Foreign Minister has subsequently determined that the applicant is no longer a person whose presence in Australia is directly or indirectly associated with the proliferation of WMD.

The intention is that where a non-citizen is a person in respect of whom a WMD determination has been made, this provision operates to prevent the non-citizen from making a valid application for a Subclass 030 (Bridging C) visa.

Part 4—Application provisions

Migration Regulations 1994

Item [32] – In the appropriate position in Schedule 13

This item inserts Part 131 in the appropriate position in Schedule 13. This item provides for the operation of the amendments. Parts 1 and 2 of Schedule 1 to the amendments apply in relation to a visa granted on or after the commencement of those Parts. Part 3 of Schedule 1 to the amendments applies in relation to a visa application on or after the commencement of that Part.

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