IN THE HIGH COURT OF AUSTRALIA
PERTH REGISTRY

No. P49 of 2016

BETWEEN:

MINISTER FOR IMMIGRATION AND BORDER PROTECTION
Appellant

and

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YOGESH KUMAR AND ORS
Respondents

APPELLANT'S SUBMISSIONS

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Part I: Certification

1. These submissions are in a form suitable for publication on the internet.

Part II: Statement of issues

2. The appeal presents two issues:

    1. Did the legislative provisions governing the First Respondent's application for a Student (Temporary) (Class TU) Subclass 572 (Vocational Education and Training Sector) visa (**572 visa**) prescribe a "last day" for the application to be made?

    2. If the answer to question one is no, can s 36(2) of the *Acts Interpretation Act 1901* (Cth) (**Acts Interpretation Act**) have any application in circumstances where the legislation in question does not provide a "last day" for a "thing" to be done?

3. The Appellant (the **Minister**) contends that the answer to both questions is "no".

Part III: Notices pursuant to s 78B of the *Judiciary Act 1903* (Cth)

4. The Appellant has considered whether any notice should be given in compliance with s 78B of the *Judiciary Act 1903* and has concluded that no such notice is necessary.

Part IV: Citations

5. Neither the judgment of the Federal Circuit Court (at first instance), nor the judgment of the Federal Court (on appeal) are reported. The internet citations are:

    Kumar v Minister for Immigration and Border Protection [2015] FCCA 2573
    Kumar v Minister for Immigration and Border Protection [2016] FCA 177

Part V: Facts

6. The first respondent held a Skilled (Provisional) (Class VC) Subclass 485 (Temporary Graduate) visa (**485 visa**). It was due to cease on Sunday, 12 January 2014. On Friday, 10 January 2014, he posted to the Department of Immigration and Border Protection (**the Department**) an application for a Student (Temporary) (Class TU) Subclass 572 (Vocational Education and Training Sector) visa (**572 visa**). It was received by the Department on Monday, 13 January 2014.

7. It is common ground that the application for the 572 visa was not made until received by the Department on 13 January 2014.[1] Accordingly, at the time of the application, the first respondent was no longer the holder of the 485 visa. It had ceased the day before, on 12 January 2014.

8. A criterion for the grant of a 572 visa specified in cl 572.211(1) of sch 2 to the *Migration Regulations 1994* (Cth) (**Migration Regulations**) was that, at the time the application is made, the applicant meets the requirements of subcls (2), (3), (4) or (6). Subclauses (4) and (6) are not relevant for present purposes; it is common ground that they were not met. Attention may be confined to subcls (2) and (3).

9. Subclause (2) applies if, at the time of application, the applicant is the holder of a substantive visa of one of a number of specified classes, including a 485 visa (see subcl (2)(d)(iia)). Having regard to the matters in paragraphs [6] and [7] above, this subclause was, on its terms, not met.

10. Subclause (3) applies if at the time of application, the applicant is not the holder of a substantive visa (see subcl 3(a)). This aspect of subcl (3) was met. However, subcl (3) also imposes further requirements which it is common ground were not met.

11. Accordingly, on the terms of cl 572.211, cl 572.211(1) was unsatisfied. It was on this basis that a delegate of the Minister refused to grant the 572 visa, the Administrative Appeals Tribunal affirmed that decision and the Federal Circuit Court dismissed an application for judicial review of the Tribunal's decision.[2]

12. The Federal Court, constituted by North J, allowed an appeal from the decision of the Federal Circuit Court and quashed the decision of the Tribunal.[3] Justice North's decision turned on the application of s 36(2) of the Acts Interpretation Act, which provides:

> If:
> (a) an Act requires or allows a thing to be done; and
> (b) the last day for doing the thing is a Saturday, a Sunday or a holiday;
> then the thing may be done on the next day that is not a Saturday, a Sunday or a holiday.

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1 Regulation 2.10(2A) of the *Migration Regulations 1994* (Cth) provides that an application for a visa must be made at an office of Immigration (defined in reg 1.03 to mean the Department) in Australia, unless other provision is made in the Migration Regulations. No other provision was made relevant to the first respondent. Accordingly, the application for the 572 visa had to be made at an office of Immigration, which meant that the time of the application was when the application documents were physically received by the Department: *Cabal v Minister for Immigration and Multicultural Affairs (No 2)* (1999) 91 FCR 314 at [23]–[24]; *Chen v Minister for Immigration and Border Protection* (2013) 216 FCR 241 (FC) at [60].

2 *Kumar v Minister for Immigration and Border Protection* [2015] FCCA 2573.

3 *Kumar v Minister for Immigration and Border Protection* [2016] FCA 177.

Example: If a person has until 31 March to make an application and 31 March is a Saturday, the application may be made on Monday 2 April.

Part VI: Argument

Summary of argument

13. Section 45 of the *Migration Act 1958* (Cth) (**Migration Act**) and cl 572.211 of sch 2 to the Migration Regulations do not provide for a last day for a thing to be done. Rather, they provide for particular legal consequences to follow depending on the particular status of the first respondent at the time of the application. Section 36(2) of the Acts Interpretation Act has no work to do in these circumstances. That is because s 36(2) operates to extend the time for doing a thing where a statutory provision requires or permits a thing to be done by a particular time. It does not otherwise operate to affect the rights or obligations created or conferred by the Migration Act and the Migration Regulations.

14. In any particular case, there may be room for dispute as to whether a particular statutory provision is properly characterised as requiring or allowing a thing to be done, or as having some other character.[4] In this case, however, there is no doubt. Section 45 of the Migration Act permitted the first respondent to apply for a visa. The criteria for the validity of that application were in s 46 of the Migration Act, and Div 2.2 and sch 1 to the Migration Regulations 1994 (see especially cl 1222). These provisions did not impose any time within which an application for a 572 visa must be made; nor did they make the holding of a substantive visa a criterion for validity. Nothing in the statutory provisions created a time limit, or more properly, a "last day" for the visa application to be made. The fact that the particular circumstances of the first respondent meant that different visa criteria applied depending on when he made his application did not alter this position.

15. The radical nature of North J's approach to s 36(2) should not be understated. Its effect is, in substance, to alter the criteria applicable to the grant of a 572 visa. Notwithstanding its express terms, the requirements of cl 572.211(2) of sch 2 to the Migration Regulations are held to be met even though, at the time he made his application for a 572 visa, the first respondent did not hold a 485 visa and even though neither cl 572.211 nor any other provision specified a "last day" for him to apply for a 572 visa. That is a most unlikely consequence, entirely at odds with the language of s 36(2) of the Acts Interpretation Act. The decision is inconsistent with, in particular, *Associated Dominions Insurance Society Pty Ltd v Balmford*[5] in that it attributes to s 36(2) an operation that goes beyond providing for an extension of time in certain circumstances. It gives to s 36(2) a substantive operation that treats as extant a visa which has expired.

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4 Especially, perhaps, in the context of a provision having the effect of a limitation period. See, for example, *Price v J F Thompson (Qld) Pty Ltd* [1990] 1 Qd R 278.

5 (1950) 81 CLR 161.

The error in the reasoning of the Court below

16. Justice North reasoned (at [12]) that s 45 of the Migration Act allows a person to apply for a visa. The making of a visa application was said to be a "thing to be done" within the meaning of s 36(2) of the Acts Interpretation Act. So much may be accepted.

17. His Honour held that the last day for the first respondent to apply for the 572 visa was Sunday, 12 January 2014. His Honour held that since the last day for applying for a visa fell on a Sunday, s 36(2) allowed the visa application to be made on Monday, 13 January 2014 (at [13]). This reasoning is inconsistent with the plain text of s 36(2) and cl 572.211 of sch 2 to the Migration Regulations.[6]

18. Nothing in cl 572.211 (even read in light of s 45 of the Migration Act) provides, expressly or implicitly, for a "last day" for applying for a visa. The first respondent was entitled to apply for a 572 visa either before or after his 485 visa ceased. The consequence of the cessation of his 485 visa was that he would have to meet different criteria for his application to be successful — namely, he would have to meet subclause (3), rather than subclause (2). But s 36(2) of the Acts Interpretation Act does not apply merely because different consequences may follow depending on when an application is made. It applies only where there is a "last day" for making such an application. Here, it had no application because there was no "last day" for the first respondent to apply for a 572 visa.

19. In explaining the operation of s 36(2), his Honour held (at [15]) that the provision does not operate only to effect an extension of time. Rather, it "allows for the thing to be effectuated on the later date as if it were being done on the earlier date". Thus, it was said (at [14]), the "circumstances that existed on the Saturday, Sunday or holiday" are, by operation of s 36(2), "regarded as existing on the extended date". This characterisation of the operation of s 36(2) is not supported by either the text or context of the provision. If cl 572.211(2) provided for a last day for the first respondent to apply for a visa (which it did not), it could only operate to extend the time for the making of the 572 visa application. There is no warrant in the text of 36(2) to suggest that it could operate to extend the term of the first respondent's 485 visa (either generally or for the limited purpose of determining the criteria applicable to his application for the 572 visa).

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[6] Noting that the Acts Interpretation Act is applicable to the construction of the *Migration Regulations*: see 13(1)(a) of the *Legislation Act 2003* (Cth).

Previous authorities

(a) The High Court

20. In *Associated Dominions Assurance Society Pty Ltd v Balmford*[7], this Court considered a notice given under s 55(1) of the *Life Insurance Act 1945* (Cth). The statutory scheme permitted the Commissioner to serve a notice on a company calling upon it to show cause, within a specified period of not less than 14 days, why the Commissioner should not investigate its business. Section 55(2) provided that if the company failed to show cause within the specified period, the Commissioner may make the investigation.

21. The issue before the Court was the validity of a notice which had been given but which specified a period of less than 14 days from the date of service, as opposed to the date of the notice. The case touched only obliquely on s 36(2) of the Acts Interpretation Act, which applied to the notice as a statutory instrument. Justice Williams said:[8]

> I do not think that the respondent can obtain any assistance from s 36(2). If a period complying with s 55 of the Life Insurance Act had been specified which ended on a Sunday, s 36(2) of the Acts Interpretation Act would have enlarged the period until the following Monday. But the last day of a period of at least fourteen days from the day of the service of the notice would have expired on a Monday and not on a Sunday, and s 36 (2) would not have come into operation. I am of opinion that s 36(2) could only operate upon an effective notice under s 55 of the Life Insurance Act and could not convert a notice which is invalid because it does not specify a period of at least fourteen days from the date of the notice into a valid notice under the latter section.

22. Justice Webb, who agreed in the judgment of Williams J, relevantly added: [9]

> [T]he notice was drawn in contravention of s 55 and invalid. Section 36 of the Acts Interpretation Act does not make it valid; the purpose of s 36 is to provide for the construction of instruments otherwise valid.

23. Justice Fullagar said:[10]

> **I would agree that the combined effect of the notice and of s 36(2) of the Acts Interpretation Act is that the company may "show cause" at any time up to midnight on [Monday] 17th May.** The last day of the period prescribed or allowed by the instrument for the doing of the thing falls on a Sunday. The "thing," therefore, may be done on the following day, which is a Monday. In my opinion, however, it does not follow that the notice was a good and valid notice. Section 36(2) of the Acts Interpretation Act does not say that the notice shall be

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7 (1950) 81 CLR 161.
8 (1950) 81 CLR 161 at 181.
9 (1950) 81 CLR 161 at 181-182.
10 (1950) 81 CLR 161 at 186–187.

> construed as if the period specified in it expired on Monday the 17th, instead of Sunday the 16th. And s 55 of the Life Insurance Act does say that the notice shall "specify" a period not less than fourteen days from service of the notice. The notice actually served did not "specify" such a period: it "specified" a period which was too short by one day, and the Acts Interpretation Act does not affect this position. The two statutory provisions, read together, mean simply this: the notice must specify a period not less than fourteen days from service of the notice within which the thing must be done, and, if the last day of the period so specified falls on a Sunday, the thing may be done on the following Monday. The notice simply did not specify such a period, and it is, therefore, bad (emphasis added).

24. Chief Justice Latham, in dissent, found it unnecessary to consider the application of s 36(2)(a).

25. Two matters may be gleaned from the judgments in *Associated Dominions Insurance Society Pty Ltd v Balmford.*

26. *First*, as made plain in the emphasised portion of the extract from the judgment of Fullagar J quoted above, s 36(2) was capable of applying to a valid notice because the notice, read in the context of s 55 of the *Life Insurance Act 1945*, specified a last day for the company to show cause.

27. *Secondly,* s 36(2) did not operate to make valid an invalid notice. This is because the operation of the provision is limited to providing for an extension of time where the last day for showing cause fell on a Saturday, Sunday or holiday. Section 36(2) does not otherwise alter or affect matters governed by the statute in question.

(b) The Full Court of the Federal Court

28. The Full Court of the Federal Court in *Zangzinchai v Millanta*[11] considered the previous form of s 36(2). At the time, s 36(2) provided:

> Where the last day of any period prescribed or allowed by an Act for the doing of anything falls on a Saturday, on a Sunday or on a day which is a public holiday or a bank holiday in the place in which the thing is to be or may be done, the thing may be done on the first day following which is not a Saturday, a Sunday or a public holiday or bank holiday in that place.

29. The appellant in that case had sought to apply for review of a decision to refuse him an entry permit. The relevant provisions permitted such review only if the appellant was lawfully present in Australia when he lodged his application for an entry permit. That was not so for the appellant: his temporary entry permit had ceased on 1 March 1992, a Sunday, and he had applied for another entry permit on 2 March 1992, the following Monday.

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[11] (1994) 53 FCR 35.

30. The majority held that s 36(2) did not assist the appellant:[12]

> Counsel for the appellant submitted that the regulations allowed a time for the doing of an act, or, alternatively, authorised the doing of an act — namely the making of an application for an entry permit. While it was true that the holder of a temporary entry permit might apply, or as counsel for the appellant submitted, was authorised by the legislation to apply, for an entry permit during the currency of the temporary entry permit, this misunderstands the nature of the regulations. The regulations did not prescribe or allow a time in which an application for an extended eligibility (economic) entry permit might be made. Rather, different consequences flowed depending upon whether the application was made while the applicant was or was not the holder of the temporary entry permit. If a person made an application after a temporary entry permit had expired, the person had to satisfy different criteria before being eligible for the grant of a further entry permit, than was the case if the person was the holder of an entry permit at the time of application.

31. That reasoning was correct and directly applicable in this case. The statute in question, as here, did not provide for a last day for a thing to be done. Instead, as here, the statute provided for particular legal consequences to follow depending on the particular status of the first respondent at the time of the application. Section 36(2), however, only operates to extend the time for doing a thing where a statutory provision provides for a thing to be done by a particular time. It does not otherwise operate to affect the rights or obligations created or conferred by the statute.

(c) Decisions with respect to bankruptcy legislation

32. Decisions made with respect to bankruptcy legislation illustrate the circumstances in which s 36(2) does and does not apply.

33. *Roskell v Snelgrove*[13] concerned s 52(5) of the *Bankruptcy Act 1966* (Cth) (**Bankruptcy Act**), which provides:

> The Court may, at any time before the expiration of the period of 12 months commencing on the date of presentation of a creditor's petition, if it considers it just and equitable to do so, upon such terms and conditions as it thinks fit, order that the period at the expiration of which the petition will lapse be such period, being a period exceeding 12 months and not exceeding 24 months, commencing on the date of presentation of the petition as is specified in the order.

34. Justice Lindgren, sitting as a single judge of the Federal Court, held that where the period of 12 months commencing on the date of presentation of a creditor's petition ended on a bank holiday, s 36(2) of the Acts Interpretation Act permitted the Court to exercise the power conferred by s 52(5) of the

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[12] (1994) 53 FCR 35 at 39.
[13] (2008) 246 ALR 175.

Bankruptcy Act on the following day. That is because s 52(5) provides a last day within which the Court may exercise the power, after which it may no longer do so.

35. Similarly, in *Mathai v Kwee*[14] Graham J, sitting as a single judge of the Federal Court, considered s 40(1)(g) of the Bankruptcy Act. That section provides that a debtor commits an act of bankruptcy if the debtor does not comply with a bankruptcy notice within the time specified in the notice. Justice Graham held that where the period specified in the bankruptcy notice ended on a weekend, s 36(2) of the Acts Interpretation Act permitted the debtor to comply with the notice on the following Monday. That is because s 40(1)(g) provides a last day within which a debtor may comply with bankruptcy notice, after which the debtor commits an act of bankruptcy.

36. In contrast, in *Re Tavella*[15] Clyne J sitting in the Federal Bankruptcy Court considered s 55(1)(c) of the *Bankruptcy Act 1924-1950* (Cth) which provided:

> A creditor shall not be entitled to present a petition against a debtor unless the act of bankruptcy on which the petition is ground has occurred within six months before the presentation of the petition.

The petition before his Honour was presented on a Monday, which was six months and one day after the act of bankruptcy relied upon. His Honour held that s 36(2) of the Acts Interpretation Act could offer no assistance because the issue before the Court did not relate to "the doing of an act by the petitioning creditor"; rather, the requirement that the petition be presented within six months of the act of bankruptcy was a "relevant fact necessary to the validity of the petition".[16] Hence, the requirement in s 55 was not construed as a time period within which a petitioning creditor must present a petition, but instead as an essential characteristic of an act of bankruptcy.[17]

37. The approach in *Re Tavella* has been followed consistently in subsequent cases considering s 44(1) of the Bankruptcy Act, being the statutory successor of the provision considered in *Re Tavella.*[18] It was also followed by Evans J sitting as a single judge in the Supreme Court of Tasmania in *Jadwan Pty v Porter.*[19] That case concerned a court rule that provided for an original writ to remain in force for 12 months from the date of issue. Justice Evans declined to apply another court rule with an effect similar to s 36(2), stating that the rule regarding the duration of the force of a writ "is more appropriately equated with provisions that deal with status than a provision that imposes a limitation period".[20]

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[14] [2005] FCA 932.
[15] (1953) 16 ABC 166
[16] (1953) 16 ABC 166 at 168.
[17] *McPherson v.* Lawless [1960] VR 363 at 369.
[18] *Re Arba Ex Parte: St Martins Investments Pty Limited* [1982] FCA 62; *Shephard v Chiquita Brands South Pacific Limited* [2004] FCAFC 76 at [16]-[21].
[19] (2004) 13 Tas R 162.
[20] (2004) 13 Tas R 162 at [8].

38. The bankruptcy cases considered above further illustrate the distinction drawn from *Associated Dominions Assurance Society Pty Ltd v Balmford*. There is a distinction between a legislative provision that stipulates a last day for something to be done, on one hand, and, on the other hand, a legislative provision that otherwise operates with respect to legal rights or obligations (including a person's visa status). Section 36(2) can operate in the former case, but has no application in the latter case.

The impact of the amendment to s 36(2)

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39. Justice North held (at [24]) that the views of the majority in *Zangzinchai* did not apply to the current text of s 36(2) of the Acts Interpretation Act, as it stood following amendments made to s 36 in 2011 by the *Acts Interpretation Amendment Act 2011* (Cth) (**Amendment Act**).[21] His Honour did not explain how a radical alteration of the operation of s 36(2), and a departure from Full Court authority, is warranted by that change in language. Prior to the 2011 amendment, the provision read:

> Where the last day of any period prescribed or allowed by an Act for the doing of anything falls on a Saturday, on a Sunday or on a day
20 which is a public holiday or bank holiday in the place in which the thing is to be or may be done, the thing may be done on the first day following which is not a Saturday, a Sunday or a public holiday or bank holiday in that place.

40. The new provision, set out in full above, adopted the words:

> If ... an Act requires or allows a thing to be done ... and the last day for doing the thing is a Saturday, a Sunday or a holiday ...

41. In truth, the language of the new and the old provisions is substantively identical. There is no relevant difference between the verb "prescribe" (used in the past tense) in the old provision and the verb "require" (used in the third
30 person present tense) in the new provision. Nor does the adoption of the modern drafting convention of using a series of subparagraphs within a single sentence alter the meaning of the provision.

42. Further, the relevant extrinsic material does not support the construction adopted by North J. Having regard to the treatment of s 36(2) in *Zangzinchai*, it would be expected that if the operation of s 36(2) were to be substantially broadened by amendment, this would be indicated by clear words, or at least some indication in the extrinsic material. Neither is the case. To the contrary, the amendment to s 36(2) was largely to modernise the language of the
40 provision. That is borne out by the Explanatory Memorandum, which said: "The rationale for the amendment is to make section 36 more user friendly. It does not substantively change the existing policy."[22]

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[21] *Acts Interpretation Amendment Act 2011* (Cth), sch 1, item 93.
[22] Explanatory Memorandum to the Acts Interpretation Amendment Bill 2011 (Cth) at 35 [225].

43. It is true that the Explanatory Memorandum also states that the new s 36 was "intended to capture a broader range of situations that are likely to arise from time to time".[23] This, however, should be understood as referring to the express alterations to the terms of s 36, including the very substantial expansion of s 36(1). It does not warrant a departure from the previously understood meaning of the words "last day", which were retained in s 36(2). This is especially so when the principal purpose of the Amendment Act was to "address the usability and readability" of the principal act.[24]

44. Justice North was correct to state (at [27]) that the Explanatory Memorandum refers to the policy underlying the provision without stating what the policy is. This is beside the point. The fact that the Explanatory Memorandum said that the policy of s 36(2) had "not substantially changed" would suggest the operation of the provision had also not changed.

The proper approach to construction

45. In *Zangzinchai*, Burchett J (in dissent) gave great emphasis to what was said to be the beneficial or remedial purpose of s 36(2).[25] Properly understood, however, the provision is neither beneficial nor remedial in the relevant sense. Rather, it is an interpretive provision (reflecting a common law rule of construction[26]), which is applicable to all legislation. It does not operate to confer a benefit on any particular class of persons. It will often operate in favour of the individual vis-à-vis the state, but is equally capable of operating in favour of the Commonwealth or one of its authorities. In other circumstances, its operation may be limited to the rights of private individuals *inter se*. Section 36(2) does not operate to remedy an injustice – its terms apply regardless of whether, in the particular circumstances, it causes or alleviates unfairness.[27]

46. In any event, any rule of construction regarding the proper approach to beneficial or remedial legislation must not distract attention from the actual words of the provision. As this Court said in *Khoury v Government Insurance Office (NSW)*:[28]

> the rule that remedial provisions are to be beneficially construed so as to provide the most complete remedy of the situation with which they are intended to deal must ... be restrained within the confines of "the actual language employed" and what is "fairly open" on the words used.

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[23] Explanatory Memorandum to the Acts Interpretation Amendment Bill 2011 (Cth) at 35 [224].
[24] Explanatory Memorandum to the Acts Interpretation Amendment Bill 2011 (Cth) at 2 [2].
[25] (1994) 53 FCR 35 at 42-44.
[26] *Pritam v S Russell & Sons Ltd* [1973] QB 336 at 353C; *Mucelli v Government of Albania* [2009] UKHL 2; [2009] 1 WLR 276 at 298 [84]; *R. (on the application of Modaresi) v Secretary of State for Health* [2013] UKSC 53; [2013] 4 All ER 318 at [10] and [33].
[27] *Pritam v S Russell & Sons Ltd* [1973] QB 336 at 349 where Lord Denning MR compared the competing merits of extending a limitation period by one day.
[28] (1984) 165 CLR 622 at 638.

47. In this case, the "actual language employed" by s 36(2) is a requirement that there be a "last day" to do a "thing". For the reasons stated, in this case, the relevant provisions imposed no temporal limitation. Accordingly, the appeal should be allowed.

Part VII: Statutory provisions

48. See annexure.

Part VIII: Orders sought

49. The Appellant seeks orders in the following form:
    1. Appeal allowed.
    2. Set aside orders 2-4 of the Federal Court made on 23 February 2016 and in their place order that the appeal to the Federal Court be dismissed.
    3. The Appellant pay the Respondents' costs of the appeal to this Court.

Part IX: Oral argument

50. The Appellant estimates it will require one hour for the presentation of argument (including reply)

Dated: 6 October 2016

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Acts Interpretation Act 1901

Act No. 2 of 1901 as amended

This compilation was prepared on 30 June 2011
taking into account amendments up to Act No. 46 of 2011

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

Part VIII—Distance and time

35 Measurement of distance

In the measurement of any distance for the purposes of any Act, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane.

36 Reckoning of time

(1) Where in an Act any period of time, dating from a given day, act, or event, is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned exclusive of such day or of the day of such act or event.

(2) Where the last day of any period prescribed or allowed by an Act for the doing of anything falls on a Saturday, on a Sunday or on a day which is a public holiday or a bank holiday in the place in which the thing is to be or may be done, the thing may be done on the first day following which is not a Saturday, a Sunday or a public holiday or bank holiday in that place.

37 Expressions of time

Where in an Act any reference to time occurs, such time shall, unless it is otherwise specifically stated, be deemed in each State or part of the Commonwealth to mean the standard or legal time in that State or part of the Commonwealth.

Acts Interpretation Act 1901

No. 2, 1901

Compilation No. 29

Compilation date:	5 March 2016
Includes amendments up to:	Act No. 126, 2015
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Prepared by the Office of Parliamentary Counsel, Canberra

Part 8—Distance, time and age

35 Measurement of distance

In the measurement of any distance for the purposes of any Act, that distance shall be measured in a straight line on a horizontal plane.

36 Calculating time

(1) A period of time referred to in an Act that is of a kind mentioned in column 1 of an item in the following table is to be calculated according to the rule mentioned in column 2 of that item:

Calculating periods of time

Item	Column 1 If the period of time:	Column 2 then the period of time:
1	is expressed to occur between 2 days	includes both days.
2	is expressed to begin at, on or with a specified day	includes that day.
3	is expressed to continue until a specified day	includes that day.
4	is expressed to end at, on or with a specified day	includes that day.
5	is expressed to begin from a specified day	does not include that day.
6	is expressed to begin after a specified day	does not include that day.
7	is expressed to end before a specified day	does not include that day.

Example 1: If a claim may be made between 1 September and 30 November, a claim may be made on both 1 September and 30 November.

Example 2: If a permission begins on the first day of a financial year, the permission is in force on that day.

Example 3: If a licence continues until 31 March, the licence is valid up to and including 31 March.

Example 4: If a person's right to make submissions ends on the last day of a financial year, the person may make submissions on that day.

Example 5: If a variation of an agreement is expressed to operate from 30 June, the variation starts to operate on 1 July.

Example 6: If a decision is made on 2 August and a person has 28 days after the day the decision is made to seek a review of the decision, the 28-day period begins on 3 August.

Example 7: If a person must give a notice to another person at any time during the period of 7 days before the day a proceeding starts and the proceeding starts on 8 May, the notice may be given at any time during the 7-day period starting on 1 May and ending on 7 May.

(2) If:

(a) an Act requires or allows a thing to be done; and

(b) the last day for doing the thing is a Saturday, a Sunday or a holiday;

then the thing may be done on the next day that is not a Saturday, a Sunday or a holiday.

Example: If a person has until 31 March to make an application and 31 March is a Saturday, the application may be made on Monday 2 April.

(3) In this section:

holiday, in relation to the time for doing a thing, means:

(a) a day that is a public holiday in the place in which the thing is to be or may be done; and

(b) if the thing is to be or may be done at a particular office or other place—a day on which the place or office is closed for the whole day.

37 Expressions of time

Where in an Act any reference to time occurs, such time shall, unless it is otherwise specifically stated, be deemed in each State or part of the Commonwealth to mean the legal time in that State or part of the Commonwealth.

Migration Act 1958

No. 62, 1958

Compilation No. 131

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Volume 1:	**sections 1–261K**
Volume 2:	sections 262–507
	Schedule
	Endnotes

Each volume has its own contents

This compilation includes commenced amendments made by Act No. 59, 2015

Prepared by the Office of Parliamentary Counsel, Canberra

vessel had been used or otherwise involved in the commission of an environment detention offence.

Note: Subsection 33(10) also disapplies this section.

(4) In subsection (3):

Australian resident has the same meaning as in the *Fisheries Management Act 1991*.

Commonwealth aircraft has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

Commonwealth ship has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

Subdivision AA—Applications for visas

44 Extent of following Subdivisions

(1) This Subdivision and the later Subdivisions of this Division, other than this section, Subdivision AG and subsection 138(1), do not apply to criminal justice visas.

(2) This Subdivision and the later Subdivisions of this Division, other than this section and Subdivision AG, do not apply to enforcement visas.

45 Application for visa

(1) Subject to this Act and the regulations, a non-citizen who wants a visa must apply for a visa of a particular class.

45AA Application for one visa taken to be an application for a different visa

Situation in which conversion regulation can be made

(1) This section applies if:

(a) a person has made a valid application (a ***pre-conversion application***) for a visa (a ***pre-conversion visa***) of a particular class; and

(b) the pre-conversion visa has not been granted to the person, whether or not a migration decision has been made in relation to the pre-conversion application; and

(c) since the application was made, one or more of the following events has occurred:

(i) the requirements for making a valid application for that class of visa change;

(ii) the criteria for the grant of that class of visa change;

(iii) that class of visa ceases to exist; and

(d) had the application been made after the event (or events) occurred, because of that event (or those events):

(i) the application would not have been valid; or

(ii) that class of visa could not have been granted to the person.

(2) To avoid doubt, under subsection (1) this section may apply in relation to:

(a) classes of visas, including protection visas and any other classes of visas provided for by this Act or the regulations; and

(b) classes of applicants, including applicants having a particular status; and

(c) applicants for a visa who are taken to have applied for the visa by the operation of this Act or the regulations.

Example: If a non-citizen applies for a visa, and then, before the application is decided, gives birth to a child, in some circumstances the child is taken, by the operation of the regulations, to have applied for a visa of the same class at the time the child is born (see regulation 2.08).

Conversion regulation

(3) For the purposes of this Act, a regulation (a ***conversion regulation***) may provide that, despite anything else in this Act, the pre-conversion application for the pre-conversion visa:

(a) is taken not to be, and never to have been, a valid application for the pre-conversion visa; and

(b) is taken to be, and always to have been, a valid application (a ***converted application***) for a visa of a different class (specified by the conversion regulation) made by the applicant for the pre-conversion visa.

Note: This section may apply in relation to a pre-conversion application made before the commencement of the section (see the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*).

For example, a conversion regulation (made after the commencement of this section) could have the effect that a pre-conversion application for a particular type of visa made on 1 August 2014 (before that commencement):

(a) is taken not to have been made on 1 August 2014 (or ever); and

(b) is taken to be, and always to have been, a converted application for another type of visa made on 1 August 2014.

(4) Without limiting subsection (3), a conversion regulation may:

(a) prescribe a class or classes of pre-conversion visas; and

(b) prescribe a class of applicants for pre-conversion visas; and

(c) prescribe a time (the ***conversion time***) when the regulation is to start to apply in relation to a pre-conversion application, including different conversion times depending on the occurrence of different events.

Visa application charge

(5) If an amount has been paid as the first instalment of the visa application charge for a pre-conversion application, then, at and after the conversion time in relation to the application:

(a) that payment is taken not to have been paid as the first instalment of the visa application charge for the pre-conversion application; and

(b) that payment is taken to be payment of the first instalment of the visa application charge for the converted application, even if the first instalment of the visa application charge that would otherwise be payable for the converted application is greater than the actual amount paid for the first instalment of

the visa application charge for the pre-conversion application; and

(c) in a case in which the first instalment of the visa application charge payable for the converted application is less than the actual amount paid for the first instalment of the visa application charge for the pre-conversion application, no refund is payable in respect of the difference only for that reason.

Note: For the visa application charge, see sections 45A, 45B and 45C.

Effect on bridging visas

(6) For the purposes of this Act, if, immediately before the conversion time for a pre-conversion application, a person held a bridging visa because the pre-conversion application had not been finally determined, then, at and after the conversion time, the bridging visa has effect as if it had been granted because of the converted application.

(7) For the purposes of this Act, if, immediately before the conversion time for a pre-conversion application, a person had made an application for a bridging visa because of the pre-conversion application, but the bridging visa application had not been finally determined, then, at and after the conversion time:

(a) the bridging visa application is taken to have been applied for because of the converted application; and

(b) the bridging visa (if granted) has effect as if it were granted because of the converted application.

Note: This Act and the regulations would apply to a bridging visa to which subsection (6) or (7) applies, and to when the bridging visa would cease to have effect, in the same way as this Act and the regulations would apply in relation to any bridging visa.

For example, such a bridging visa would generally cease to be in effect under section 82 if and when the substantive visa is granted because of the converted application.

Conversion regulation may affect accrued rights etc.

(8) To avoid doubt:

(a) subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply in relation to the effect of a conversion regulation (including a conversion regulation enacted by the Parliament); and

(b) subsection 7(2) of the *Acts Interpretation Act 1901*, including that subsection as applied by section 13 of the *Legislation Act 2003*, does not apply in relation to the enactment of this section or the making of a conversion regulation (including a conversion regulation enacted by the Parliament).

45A Visa application charge

A non-citizen who makes an application for a visa is liable to pay visa application charge if, assuming the charge were paid, the application would be a valid visa application.

45B Amount of visa application charge

(1) The amount of visa application charge is the amount, not exceeding the visa application charge limit, prescribed in relation to the application.

Note: The visa application charge limit is determined under the *Migration (Visa Application) Charge Act 1997*.

(2) The amount prescribed in relation to an application may be nil.

(3) The Minister must publish the Contributory Parent Visa Composite Index (within the meaning of the *Migration (Visa Application) Charge Act 1997*) for a financial year in the *Gazette* before the start of the financial year.

Note: The Contributory Parent Visa Composite Index affects the visa application charge limit in relation to contributory parent visas (within the meaning of the *Migration (Visa Application) Charge Act 1997*).

(4) If the Contributory Parent Visa Composite Index for a financial year is not published as required by subsection (3), it is not to be taken, merely because of that fact, to be invalid or to be a figure other than that published by the Australian Government Actuary for the financial year.

45C Regulations about visa application charge

(1) The regulations may:

(a) provide that visa application charge may be payable in instalments; and

(b) specify how those instalments are to be calculated; and

(c) specify when instalments are payable.

(2) The regulations may also:

(a) make provision for and in relation to:

(i) the recovery of visa application charge in relation to visa applications; or

(ii) the way, including the currency, in which visa application charge is to be paid; or

(iii) working out how much visa application charge is to be paid; or

(iv) the time when visa application charge is to be paid; or

(v) the persons who may be paid visa application charge on behalf of the Commonwealth; or

(b) make provision for the remission, refund or waiver of visa application charge or an amount of visa application charge; or

(c) make provision for exempting persons from the payment of visa application charge or an amount of visa application charge; or

(d) make provision for crediting visa application charge, or an amount of visa application charge, paid in respect of one application against visa application charge payable in respect of another application.

46 Valid visa application

Validity—general

(1) Subject to subsections (1A), (2) and (2A), an application for a visa is valid if, and only if:

(a) it is for a visa of a class specified in the application; and

(b) it satisfies the criteria and requirements prescribed under this section; and

(ba) subject to the regulations providing otherwise, any visa application charge that the regulations require to be paid at the time when the application is made, has been paid; and

(c) any fees payable in respect of it under the regulations have been paid; and

(d) it is not prevented by any provision of this Act, or of any other law of the Commonwealth, including, without limitation, the following provisions of this Act:

(i) section 48 (visa refused or cancelled earlier);

(ii) section 48A (protection visa refused or cancelled earlier);

(iii) section 161 (criminal justice visa holders);

(iv) section 164D (enforcement visa holders);

(v) section 195 (detainee applying out of time);

(vi) section 501E (earlier refusal or cancellation on character grounds); and

(e) it is not invalid under any provision of this Act, or of any other law of the Commonwealth, including, without limitation, the following provisions of this Act:

(i) section 46AA (visa applications, and the grant of visas, for some Act-based visas);

(ii) section 46A (visa applications by unauthorised maritime arrivals);

(iii) section 46B (visa applications by transitory persons);

(iv) section 91E or 91G (CPA and safe third countries);

(v) section 91K (temporary safe haven visas);

(vi) section 91P (non-citizens with access to protection from third countries).

(1A) Subject to subsection (2), an application for a visa is invalid if:

(a) the applicant is in the migration zone; and

(b) since last entering Australia, the applicant has held a visa subject to a condition described in paragraph 41(2)(a); and

(c) the Minister has not waived that condition under subsection 41(2A); and

(d) the application is for a visa of a kind that, under that condition, the applicant is not or was not entitled to be granted.

(2) Subject to subsection (2A), an application for a visa is valid if:

(a) it is an application for a visa of a class prescribed for the purposes of this subsection; and

(b) under the regulations, the application is taken to have been validly made.

Provision of personal identifiers

(2A) An application for a visa is invalid if:

(aa) the Minister has not waived the operation of this subsection in relation to the application for the visa; and

(ab) the applicant has been required to provide one or more personal identifiers under section 257A for the purposes of this subsection; and

(b) the applicant has not complied with the requirement.

Note: An invalid application for a visa cannot give rise to an obligation under section 65 to grant a visa: see subsection 47(3).

Prescribed criteria for validity

(3) The regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application.

(4) Without limiting subsection (3), the regulations may also prescribe:

(a) the circumstances that must exist for an application for a visa of a specified class to be a valid application; and

(b) how an application for a visa of a specified class must be made; and

(c) where an application for a visa of a specified class must be made; and

(d) where an applicant must be when an application for a visa of a specified class is made.

(5) To avoid doubt, subsections (3) and (4) do not require criteria to be prescribed in relation to the validity of visa applications, including, without limitation, applications for visas of the following classes:
  (a) special category visas (see section 32);
  (b) permanent protection visas (see subsection 35A(2));
  (c) temporary protection visas (see subsection 35A(3));
  (ca) safe haven enterprise visas (see subsection 35A(3A));
  (d) bridging visas (see section 37);
  (e) temporary safe haven visas (see section 37A);
  (f) maritime crew visas (see section 38B).

46AA Visa applications, and the grant of visas, for some Act-based visas

Visa classes covered by this section

(1) The following classes of visas are covered by this section:
  (a) special category visas (see section 32);
  (b) permanent protection visas (see subsection 35A(2));
  (c) temporary protection visas (see subsection 35A(3));
  (ca) safe haven enterprise visas (see subsection 35A(3A));
  (d) bridging visas (see section 37);
  (e) temporary safe haven visas (see section 37A);
  (f) maritime crew visas (see section 38B).

Applications invalid if no prescribed criteria

(2) An application for a visa of any of the classes covered by this section is invalid if, when the application is made, both of the following conditions are satisfied:
  (a) there are no regulations in effect prescribing criteria that must be satisfied for a visa of that particular class to be a valid application;
  (b) there are no regulations in effect prescribing criteria that must be satisfied for a visa of that particular class to be granted.

is to have regard to are whichever of the following are more favourable to the applicant:

(a) the regulations for that purpose that were in force at the time the assessment was made by the Minister;

(b) the regulations for that purpose that are in force at the time the decision was made by the Tribunal about the assessment.

(2) In determining whether the regulations mentioned in paragraph (1)(a) or (1)(b) are more favourable to the applicant, the only applicable pass mark and applicable pool mark that the Tribunal may have regard to are:

(a) in relation to regulations covered by paragraph (1)(a)—the applicable pass mark and the applicable pool mark that applied at the time the assessment was made by the Minister; and

(b) in relation to regulations covered by paragraph (1)(b)—the applicable pass mark and the applicable pool mark that applied at the time the decision is made by the Tribunal about the assessment.

351 Minister may substitute more favourable decision

(1) If the Minister thinks that it is in the public interest to do so, the Minister may substitute for a decision of the Tribunal under section 349 another decision, being a decision that is more favourable to the applicant, whether or not the Tribunal had the power to make that other decision.

(2) In exercising the power under subsection (1), the Minister is not bound by Subdivision AA or AC of Division 3 of Part 2 or by the regulations, but is bound by all other provisions of this Act.

(3) The power under subsection (1) may only be exercised by the Minister personally.

(4) If the Minister substitutes a decision under subsection (1), he or she is to cause to be laid before each House of the Parliament a statement that:

(a) sets out the decision of the Tribunal; and
(b) sets out the decision substituted by the Minister; and
(c) sets out the reasons for the Minister's decision, referring in particular to the Minister's reasons for thinking that his or her actions are in the public interest.

(5) A statement made under subsection (4) is not to include:
(a) the name of the applicant; or
(b) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned—the name of that other person.

(6) A statement under subsection (4) is to be laid before each House of the Parliament within 15 sitting days of that House after:
(a) if the decision is made between 1 January and 30 June (inclusive) in a year—1 July in that year; or
(b) if a decision is made between 1 July and 31 December (inclusive) in a year—1 January in the following year.

(7) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances.

352 Tribunal to notify Secretary of application for review of Part 5-reviewable decisions

(1) If an application for review is made to the Tribunal, the Registrar must, as soon as practicable, give the Secretary written notice of the making of the application.

(2) Subject to subsection (3), the Secretary must, within 10 working days after being notified of the application, give to the Registrar the prescribed number of copies of a statement about the decision under review that:
(a) sets out the findings of fact made by the person who made the decision; and

Migration Regulations 1994

Statutory Rules No. 268, 1994 as amended

made under the

Migration Act 1958

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Volume 1: regulations 1.01–3.31
Volume 2: regulations 4.01–5.45 and Schedule 1
Volume 3: Schedule 2 (Subclasses 010–410)
Volume 4: Schedule 2 (Subclasses 416–801)
Volume 5: Schedule 2 (Subclasses 802–995)
Volume 6: Schedules 3–13
Volume 7: Endnotes

Each volume has its own contents

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(b) Applicant, other than a contributory parent newborn child, must be in Australia but not in immigration clearance.

(c) If the applicant has previously made a valid application for another parent visa:

(i) a decision to grant or to refuse to grant that visa must have been made; or

(ii) the application for that visa must have been withdrawn.

(d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Contributory Aged Parent (Temporary) (Class UU) visa may be made at the same time and place as, and combined with, the application by that person.

(da) An application must be made:

(i) by posting the application (with the correct pre-paid postage) to the post office box address or other address specified by the Minister in an instrument in writing for this subparagraph; or

(ii) by having the application delivered by a courier service to the address specified by the Minister in an instrument in writing for this subparagraph; or

(iii) if no address has been specified for subparagraphs (i) and (ii)—by lodging the application at an office of Immigration.

(e) Application by a contributory parent newborn child must be made by notifying Immigration, in writing, of the birth of the applicant.

(4) Subclasses:

884 (Contributory Aged Parent (Temporary))

1222. Student (Temporary) (Class TU)

(1) Form:

(a) In the case of an application by an applicant who:

(i) is outside Australia; and

(ii) is included in a class of persons specified by Gazette Notice for the purposes of this subparagraph: 157A or 157E.

(aa) In the case of an application by an applicant who is in Australia and:

(i) is included in a class of persons specified by an instrument in writing for the purposes of this subparagraph: 157A or 157A (Internet); or

(ii) is included in a class of persons specified by an instrument in writing for the purposes of this subparagraph: 157P or 157P (Internet).

(ca) In the case of an application by a person who seeks a Subclass 580 visa: 157G.

(d) In any other case: 157A.

(i) if the application is made outside Australia: 157A; or

(ii) if the application is made in Australia: 157A or 157A (Internet).

(2) Visa application charge:

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

(i) for an applicant (or a member of the family unit of each applicant):

(A) who has been granted approval, under a students' training scheme approved by the Commonwealth, to study in Australia; or

(B) whose application is combined, or sought to be combined, with an application made by that person;

the amount is nil; and

(ii) for an applicant (or a member of the family unit of each applicant):

(A) who is a secondary exchange student; or

(B) whose application is combined, or sought to be combined, with an application made by that person;

the amount is nil; and

(iii) for an applicant (or a member of the family unit of each applicant):

(A) who is an AusAID student to whom subparagraph 1.04A(3)(b)(ii) applies; or

(B) whose application is combined, or sought to be combined, with an application made by that person;

the amount is nil; and

(iv) for an applicant (or a member of the family unit of each applicant):

(A) who is a member of the family unit of an AusAID student who has not, since becoming an AusAID student, applied for a visa other than an AusAID student visa within the meaning of regulation 1.04A; or

(B) whose application is combined, or sought to be combined, with an application made by that person;

the amount is nil; and

(v) for an applicant (or a member of the family unit of each applicant):

(A) who is a Defence student to whom subparagraph 1.04B(b)(ii) applies; or

(B) whose application is combined, or sought to be combined, with an application made by that person;

the amount is nil; and

(vi) for an applicant (or a member of the family unit of each applicant):

(A) who is a member of the family unit of a Defence student who has not, since becoming a Defence student, applied for a visa other than a student visa; or

(B) whose application is combined, or sought to be combined, with an application made by that person;

the amount is nil; and

(vii) for a student (or a member of the family unit of each applicant) in relation to whom each of the following circumstances applies:

(A) the student was not able to complete a registered course due to provider default;

(B) there is satisfactory evidence that the student was enrolled in that course on the provider default day;

(C) the student holds a student visa, or the student's last substantive visa was a student visa;

(D) the student requires a student visa to allow him or her to complete an alternative registered course or one or more registered courses after an alternative registered course;

(E) the student's visa application is made no later than 12 months after the provider default day;

(F) the student has not made a previous application in the circumstances mentioned in this subparagraph because of the same provider default;

or whose application is combined, or sought to be combined, with an application made by that person, the amount is nil; and

(viii) for an applicant (or a member of the family unit of each applicant) who is an applicant for a Subclass 580 visa in relation to whom each of the following circumstances applies:

(A) the nominating student was not able to complete a registered course due to provider default;

(B) there is satisfactory evidence that the nominating student was enrolled in that course on the provider default day;

(C) the nominating student holds a student visa, or the nominating student's last substantive visa was a student visa;

(D) the nominating student requires a student visa to allow him or her to complete an alternative registered course or one or more registered courses after an alternative registered course;

(E) the person's visa application is made no later than 12 months after the provider default day; and

(F) the person has not made a previous application in the circumstances mentioned in this subparagraph because of the same provider default;

or whose application is combined, or sought to be combined, with an application made by that person, the amount is nil; and

(ix) for an applicant who:

(A) makes an application on form 157P or 157P (Internet); and

(B) is not mentioned in any of subparagraphs (i) to (viii));

or whose application is combined, or sought to be combined, with an application made by that person:

First instalment		
Item	**Component**	**Amount**
1	Base application charge	$75
2	Additional applicant charge for an applicant seeking to satisfy the criteria for the grant of a Subclass 574 (Postgraduate Research Sector) visa	Nil
3	Additional applicant charge for any other applicant who is at least 18	$55
4	Additional applicant charge for any other applicant who is less than 18	$20

(x) for any other applicant:

First instalment		
Item	**Component**	**Amount**
1	Base application charge	$535
2	Additional applicant charge for an applicant seeking to satisfy the criteria for the grant of a Subclass 574 (Postgraduate Research Sector) visa	Nil
3	Additional applicant charge for an applicant seeking to satisfy the criteria for the grant of a Subclass 580 (Student Guardian) visa who is at least 18	Nil
4	Additional applicant charge for any other applicant who is at least 18	$405
5	Additional applicant charge for any other applicant who is less than 18	$135

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

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

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

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

(3) Other:

(a) Subject to paragraph (aa), application may be made in or outside Australia, but not in immigration clearance.

(aa) An application made on form 157A or 157G by an applicant who is included in a class of persons specified in a Gazette Notice for this paragraph must be made by:

(i) posting the application (with the correct pre-paid postage) to the post office box address specified by the Minister; or

(ii) having the application delivered by a courier service to the address specified by the Minister.

Note: An application made under paragraph (aa) is taken to have been made outside Australia—see subregulation 2.07AF(6).

(b) Applicant must be in Australia to make an application in Australia.

(c) If the application is made on form 157A or 157E and the applicant seeks to satisfy the primary criteria, the application is accompanied by satisfactory evidence that:

(i) the applicant is enrolled in a registered full-time course of study:

(A) of a type that has been gazetted under regulation 1.40A; and

(B) the provider of which is not a suspended education provider; or

(ii) the applicant has been offered a place in a registered full-time course of study:

(A) of a type that has been gazetted under regulation 1.40A; and

(B) the provider of which is not a suspended education provider; or

(iii) if the applicant is an AusAID student who meets the requirement in subparagraph 1.04A(3)(b)(ii), a Defence student who meets the requirement in

subparagraph 1.04B(b)(ii) or a secondary exchange student—the applicant is enrolled, or intends to enrol, in a full-time course of study the provider of which is not a suspended education provider; or

(iv) if:

(A) the application was made in Australia; and

(B) at the time of application, the applicant was the holder of a Subclass 560, 562 or 574 visa; and

(C) the applicant is seeking to remain in Australia during the marking of his or her postgraduate thesis—

in connection with a full-time course of study or with a matter arising from the course, the relevant educational institution requires the applicant to remain in Australia during the marking of a postgraduate thesis.

(ce) If the application (not being an Internet application) is made outside Australia, application must be made at:

(i) a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia; or

(ii) an office of a visa application agency that is approved in writing by the Minister for the purpose of receiving applications for Student (Temporary) (Class TU) visas.

(cf) If the application is made in Australia, using form 157P, application must be made at:

(i) an office of Immigration in Australia; or

(ii) if the educational institution at which the applicant is enrolled is approved in writing by the Minister for the purpose of receiving applications for Student (Temporary) (Class TU) visas—that educational institution; or

(iii) if:

(A) the applicant holds a Subclass 560, 563, 570, 571, 572, 573, 574, 575 or 576 visa as a member of the family unit of a person who, having satisfied the primary criteria, holds a Subclass 560, 562, 570, 571, 572, 573, 574, 575 or 576 visa; and

(B) the educational institution at which that person is enrolled is approved in writing by the Minister for the purpose of receiving

applications for Student (Temporary) (Class TU) visas;

that educational institution.

(d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Student (Temporary) (Class TU) visa may be made at the same time and place as, and combined with, the application by that person.

(e) A person claiming to be a member of the family unit of the primary applicant must be included by the primary applicant in the application or the information under subregulation 2.07AF(3) or (4), except if the applicant became such a member of the family unit after the decision to grant the Student (Temporary) (Class TU) visa to the primary applicant was made.

(f) If the application is made on form 157G, the application must be accompanied by a form 157N.

(g) In the case of an application to which paragraph (h) applies, the application must be accompanied by:

(i) evidence of an intention to reside in Australia with a person who:

(A) is a parent of the applicant or a person who has custody of the applicant; or

(B) is:

(I) a relative of the applicant; and

(II) nominated by a parent of the applicant or a person who has custody of the applicant; and

(III) aged at least 21; or

(ii) evidence that the education provider for the course in which the applicant is enrolled has made appropriate arrangements for the applicant's accommodation, support and general welfare for at least the minimum period of enrolment stated on the applicant's:

(A) certificate of enrolment; or

(B) electronic confirmation of enrolment; or

(C) Acceptance Advice of Secondary Exchange Student (AASES);

plus 7 days after the end of that period.

(h) This paragraph applies to an application if:
  (i) the application is made in Australia; and
  (ii) the application is made on form 157A or 157A (Internet); and
  (iii) the applicant is under 18 years of age; and
  (iv) the applicant is not:
    (A) an AusAID student; or
    (B) a Defence student.

(4) Subclasses:

570 Independent ELICOS Sector
571 Schools Sector
572 Vocational Education and Training Sector
573 Higher Education Sector
574 Postgraduate Research Sector
575 Non-Award Sector
576 AusAID or Defence Sector
580 Student Guardian

(5) In this item:

nominating student, for an applicant, means a person who nominates the applicant on form 157N.

1223A. Temporary Business Entry (Class UC)

(1) Form:

(b) If:
  (i) the applicant seeks to satisfy the criteria for the grant of a Subclass 457 (Temporary Work (Skilled)) visa; and
  (ii) paragraph (bb) does not apply;

the application must be made as an internet application using the form specified by the Minister in an instrument in writing for this paragraph.

(ba) If:
  (i) the applicant seeks to satisfy the criteria for the grant of a Subclass 457 (Temporary Work (Skilled)) visa; and
  (ii) paragraph (bb) does not apply; and

Subclass 572—Vocational Education and Training Sector

572.1—Interpretation

572.111

In this Part:

course fees has the same meaning as in Schedule 5A.

course of study means a full-time registered course of study.

Note: To work out whether a course of study is a principal course, see subregulation 1.40(2).

full period has the same meaning as in Schedule 5A.

fully funded has the same meaning as in Schedule 5A.

living costs has the same meaning as in Schedule 5A.

travel costs has the same meaning as in Schedule 5A.

Note: *foreign country* is defined in paragraph 22(1)(f) of the *Acts Interpretation Act 1901* as any country (whether or not an independent sovereign state) outside Australia and the external Territories.

572.2—Primary criteria

Note: The primary criteria must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

572.21—Criteria to be satisfied at time of application

572.211

(1) If the application is made in Australia, the applicant meets the requirements of subclause (2), (3), (4) or (6).

(2) An applicant meets the requirements of this subclause if the applicant is:

Clause 572.211

(a) the holder of a visa of one of the following classes or subclasses:
  (i) Border (Temporary) (Class TA);
  (ii) Business (Temporary) (Class TB);
  (iii) Cultural/Social (Temporary) (Class TE);
  (iv) Educational (Temporary) (Class TH);
  (v) Electronic Travel Authority (Class UD);
  (vi) Expatriate (Temporary) (Class TJ);
  (vii) Family Relationship (Temporary) (Class TL);
  (viii) Interdependency (Temporary) (Class TM);
  (ixa) Maritime Crew (Temporary) (Class ZM);
  (x) Medical Practitioner (Temporary) (Class UE);
  (xi) Retirement (Temporary) (Class TQ);
  (xiii) Student (Temporary) (Class TU);
  (xiiia) Superyacht Crew (Temporary) (Class UW);
  (xiv) Supported Dependant (Temporary) (Class TW);
  (xv) Temporary Business Entry (Class UC);
  (xva) Subclass 400 (Temporary Work (Short Stay Activity));
  (xvb) Tourist (Class TR);
  (xvc) Visitor (Class TV);
  (xvi) Working Holiday (Temporary) (Class TZ);
  (xvii) Temporary Work (Long Stay Activity) (Class GB);
  (xviii) Training and Research (Class GC);
  (xviiia) Subclass 403 (Temporary Work (International Relations)) other than a visa in the Domestic Worker (Diplomatic or Consular) stream;
  (xix) Temporary Work (Entertainment) (Class GE);
  (xx) Special Program (Temporary) (Class TE);
  (xxi) Subclass 600 (Visitor); or
(b) the holder, as the spouse, de facto partner or a dependent relative of a diplomatic or consular representative of a foreign country, of a Diplomatic (Temporary) (Class TF) visa; or
(c) the holder of a special purpose visa; or
(d) the holder of a visa of one of the following subclasses:

(i) Subclass 303 (Emergency (Temporary Visa Applicant));
(ii) Subclass 427 (Domestic Worker (Temporary)—Executive);
(iia) Subclass 485 (Temporary Graduate);
(iii) Subclass 497 (Graduate—Skilled).

(3) An applicant meets the requirements of this subclause if:
(a) the applicant is not the holder of a substantive visa; and
(b) the last substantive visa held by the applicant was:
(i) a student visa; or
(ii) a special purpose visa; or
(iii) a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; or
(iv) a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, de facto partner or a dependent relative, of a diplomatic or consular representative of a foreign country; or
(v) a Subclass 497 (Graduate—Skilled) visa; and
(c) the application is made within 28 days (or within such period specified by Gazette Notice) after:
(i) the day when that last substantive visa ceased to be in effect; or
(ii) if that last substantive visa was cancelled, and the Migration Review Tribunal has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation—the later of:
(A) the day when that last substantive visa ceased to be in effect; and
(B) the day when the applicant is taken, under sections 368C, 368D and 379C of the Act, to have been notified of the Tribunal's decision; and
(d) the applicant satisfies Schedule 3 criterion 3005.

(4) An applicant meets the requirements of this subclause if:
(a) the applicant is the holder of a Subclass 560, 562 or 572 visa that is subject to condition 8101; and

(b) the application was made on form 157P or 157P (Internet); and

(c) the applicant gives to the Minister evidence that the applicant has commenced a course of study for which the visa held was granted.

(6) An applicant meets the requirements of this subclause if:

(a) the applicant is the holder of a Subclass 570, 571, 573, 574, 575 or 576 visa; and

(b) the application was made on form 157A or 157A (Internet); and

(c) the applicant gives to the Minister evidence of an offer of a place with an education provider of a course of study other than the education provider of a course of study for which the visa held was granted; and

(d) the Minister is satisfied that there are exceptional circumstances justifying the change in enrolment.

572.22—Criteria to be satisfied at time of decision

572.221

(1) Unless, at the time of application, the applicant met the requirements of subclause 572.211(4), the applicant satisfies the criteria in clauses 572.222 to 572.234.

(2) If, at the time of application, the applicant met the requirements of subclause 572.211(4):

(a) the applicant continues to meet the requirements of paragraph 572.211(4)(a); and

(b) either:

(i) both of the following:

(A) the Minister has no reason to believe that the applicant is not a genuine student;

(B) if the applicant had turned 18 at the time of application, the applicant satisfies paragraph 572.224(ba); or

(ii) the applicant satisfies the criteria in clauses 572.223 to 572.234.