



Migration Regulations

Statutory Rules No. 268, 1994

made under the

Migration Act 1958

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Volume 1: regulations 1.01–5.40
Schedule 1
Schedule 2 (Subclasses 010–310)

Volume 2: Schedule 2 (Subclasses 410–995)
Schedules 3–12
Endnotes

Each volume has its own contents

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About this compilation

This compilation

This is a compilation of the *Migration Regulations* that shows the text of the law as amended and in force on 26 February 1997 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au).

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

Division 1.1—Introductory

1.01 Citation

These Regulations may be cited as the Migration Regulations.

1.02 Commencement

These Regulations commence on 1 September 1994.

Regulation 1.03

Division 1.2—Interpretation

Note: This Division sets out definitions that apply to the Regulations as a whole. Elsewhere in the Regulations there may be definitions that have more limited application. A term defined in section 5 of the Act has the same meaning in the Regulations, in the absence of a contrary intention. An index of all the terms defined either in section 5 or in regulation 1.03 is set out in the list of Defined Terms at the front of the Regulations.

1.03 Interpretation

In these Regulations, unless the contrary intention appears:

ACCESS test means the Australian Assessment of Communicative English Skills test;

adoption has the meaning set out in regulation 1.04;

Note: **adopt** and **adopted** have corresponding meanings: see *Acts Interpretation Act 1901*, section 18A.

aged dependent relative, in relation to a person who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen, means a relative who:

- (a) has never married, or is widowed, divorced or formally separated from his or her spouse; and
- (b) has been dependent on that person for a reasonable period, and remains so dependent; and
- (c) is old enough to be granted an age pension under the *Social Security Act 1991*;

aged parent means a parent who is old enough to be granted an age pension under the *Social Security Act 1991*;

airline crew member means a person who:

- (a) is employed by an international air carrier as an aircrew member; and
- (b) travels to Australia in the course of his or her employment as a crew member on an aircraft; and
- (c) who will depart Australia in the course of his or her employment as a member of the crew of, or a passenger on, an aircraft;

airline positioning crew member means a person who:

- (a) is employed by an international air carrier as an aircrew member; and
- (b) travels to Australia in the course of his or her employment as a passenger on an aircraft; and
- (c) who will depart Australia as a member of the crew of an aircraft;

appropriate regional authority, in relation to a State or Territory and applications for visas of a particular class, means a Department or authority of that State or Territory that is specified by Gazette Notice, for the purposes of these Regulations, in relation to the grant of visas of that class;

approved appointment means an appointment that, under subregulation 5.19 (1), is an approved appointment for the purpose of these Regulations;

approved form means a form approved by the Minister under section 495 of the Act or regulation 1.18, and a reference to an approved form by number is a reference to the form so approved and numbered;

Asia-Pacific forces member means a person who:

- (a) is a member of the armed forces of Brunei, Fiji, Malaysia, Thailand or Tonga; and
- (b) is travelling to Australia, or is in Australia, in the course of his or her duty; and
- (c) holds military identity documents and movement orders issued from an official source of the relevant country;

assisted student means a student under:

- (a) the Subsidised Overseas Students Program administered by Education; or
- (b) a scholarship scheme, or a training program, that is approved by AusAID;

assurance of support, in relation to an application for the grant of a visa, means an assurance of support under Division 2.7;

AUD, in relation to an amount of money, means Australian dollars;

AusAID means the Australian Agency for International Development within Foreign Affairs and includes the Australian International Development Assistance Bureau (AIDAB);

Australian permanent resident means:

- (a) in relation to an applicant for a Return (Residence) (Class BB) visa or a Resident Return (Temporary) (Class TP) visa—a non-citizen who is the holder of a permanent visa; or
- (b) in any other case—a non-citizen who, being usually resident in Australia, is the holder of a permanent visa;

authorised officer means an officer authorised by the Secretary for the purposes of the provision in which it occurs;

award course means a course of education or training leading to:

- (a) the completion of a primary or secondary education program; or
- (b) a degree, diploma, trade certificate or other formal award;

balance of family test has the meaning set out in regulation 1.05;

bogus document has the same meaning as in section 97 of the Act;

Note: The definition is:

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or

Schedule 1 Classes of visas

Part 1 Preliminary

Division 1.2 Interpretation

Regulation 1.03

- (c) was obtained because of a false or misleading statement, whether or not made knowingly;

business skills points test means the test set out in Schedule 7;

category A course, in relation to the holder of a visa or entry permit granted before 1 September 1994, means a course of education or training that:

- (a) is offered by an institution or other body or person in Australia that is a registered provider, for the purposes of the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*, of that course in the State or Territory in which that person is undertaking, or proposes to undertake, it; and
- (b) is either:
- (i) a course of primary or secondary education; or
 - (ii) a post-secondary course (having as an entry requirement the successful completion of Year 12 studies or the equivalent) leading to the award of a degree, diploma (including an associate diploma and a graduate diploma) or graduate certificate or to an equivalent award;

category A student means a student who, immediately before 1 September 1994, held a Class 560 (student (category A)) entry permit granted under the Migration (1993) Regulations or a student (Category A) (code number 560) entry permit granted under the Migration (1989) Regulations;

category B course, in relation to the holder of a visa or entry permit granted before 1 September 1994, means a course of education or training that:

- (a) is offered by an institution or other body or person in Australia that is a registered provider, for the purposes of the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*, of that course in the State or Territory in which that person is undertaking, or proposes to undertake, it; and
- (b) is not a category A course;

category B student means a student who, immediately before 1 September 1994, held a Class 561 (student (category B)) entry permit granted under the Migration (1993) Regulations or a student (category B) (code number 561) entry permit under the Migration (1989) Regulations;

clearance officer has the meaning given by section 165 of the Act;

Note: the definition is:

clearance officer means an officer, or other person, authorised by the Minister to perform duties for the purposes of (Division 5 of Part 2 of the Act).

close relative, in relation to a person, means:

- (a) the spouse of the person; or
- (b) a child, adopted child, parent, brother or sister of the person; or
- (c) a step-child, adopted step-child, step-parent, step-brother or step-sister of the person;

Commissioner means a Commissioner appointed under section 203 of the Act;

Commonwealth country means each of the following countries:

- (a) Antigua;
- (b) Bahamas;
- (c) Barbados;
- (d) Belize;
- (e) Canada;
- (f) Grenada;
- (g) Jamaica;
- (h) Mauritius;
- (j) New Zealand;
- (k) Papua New Guinea;
- (l) Saint Lucia;
- (m) Saint Vincent and the Grenadines;
- (n) Solomon Islands;
- (p) St Christopher and Nevis;
- (q) Tuvalu;
- (r) the United Kingdom of Great Britain and Northern Ireland;

Commonwealth forces member means a person who:

- (a) is a member of the armed forces of a Commonwealth country; and
- (b) is travelling to Australia, or is in Australia, in the course of his or her duty; and
- (c) holds military identity documents and movement orders issued from an official source of the relevant country;

Commonwealth Medical Officer means a medical practitioner employed by the Australian government;

compelling need to work has the meaning set out in regulation 1.08;

condition means a condition set out in a clause of Schedule 8, and a reference to a condition by number is a reference to the condition set out in the clause so numbered in that Schedule;

criminal detention has the meaning set out in regulation 1.09;

custody, in relation to a child, means:

- (a) the right to have the daily care and control of the child; and
- (b) the right and responsibility to make decisions concerning the daily care and control of the child;

dependent, in relation to a person, means wholly or substantially dependent on another person for financial, psychological or physical support;

dependent child means the natural or adopted child of a person (other than a child who is a spouse or engaged to be married), being a child:

- (a) who:
 - (i) has not turned 18; and

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- (ii) is wholly or substantially in the daily care and control of that person;
or
- (b) who:
 - (i) has turned 18; and
 - (ii) is dependent on that person; or
- (c) who is wholly or substantially incapacitated for work because of a disability of a kind referred to in paragraphs (a) to (g) of the definition of *disability* in subsection 4(1) of the *Disability Discrimination Act 1992*;

Education means the Department of Employment, Education, Training and Youth Affairs;

Education Minister means the Minister for Employment, Education, Training and Youth Affairs;

eligible business has the meaning given to it in subsection 134(10) of the Act;

eligible New Zealand citizen means a New Zealand citizen who:

- (a) is the holder of a special category visa; and
- (b) is usually resident in Australia; and
- (c) at the time of his or her last entry to Australia, would have satisfied public interest criteria 4001 to 4004 and 4007 to 4009;

entry permit has the meaning given by subsection 4(1) of the Act as in force immediately before 1 September 1994, and includes an entry visa operating as an entry permit;

entry visa has the meaning given by subsections 4(1) and 17(5) of the Act as in force immediately before 1 September 1994;

exchange student means an overseas secondary school student participating in a secondary school student exchange program approved by:

- (a) the State or Territory education authority that administers the program; and
- (b) the Education Minister;

fiscal year, in relation to a business or investment, means:

- (a) if there is applicable to the business or investment by law an accounting period of 12 months—that period; or
- (b) in any other case—a period of 12 months approved by the Minister in writing for that business or investment;

Foreign Affairs means the Department of Foreign Affairs and Trade;

foreign armed forces dependant means a person who:

- (a) is the spouse of, or a dependent relative of:
 - (i) an Asia-Pacific forces member; or
 - (ii) a Commonwealth forces member; or
 - (iii) a SOFA forces member; or
 - (iv) a SOFA forces civilian component member; and

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- (b) holds a valid national passport and a certificate that he or she is the spouse, or a dependent relative, of a person referred to in subparagraph (a)(i), (ii), (iii) or (iv); and
- (c) is accompanying or joining a person of that kind;

Note: Under section 10 of the *Australian Citizenship Act 1948*, a child born in Australia on or after 26 January 1949 but before 20 August 1986 acquired Australian citizenship by birth. A child born in Australia on or after 20 August 1986 acquired Australian citizenship by birth only if one or both of the parents was an Australian citizen or Australian permanent resident. For details see s. 10 of that Act.

foreign naval forces member means a person who forms part of the complement of a ship of the regular armed forces of a foreign government and is on board the ship;

Foreign Minister means the Minister for Foreign Affairs;

formal course, in relation to the holder of a visa or entry permit granted before 1 February 1991, means:

- (a) a course of study at a primary or secondary school approved, or within a class of schools approved, by the Education Minister in writing for the purposes of the definition of **formal course** in subregulation 2 (1) of the Migration (1989) Regulations; or
- (b) any course of study approved in writing by the Education Minister as a formal course for the purposes of that definition; or
- (c) a course of study at a technical and further education institution, or at a higher education institution, leading to a formal award such as a degree or diploma;

Gazette Notice means:

- (a) a notice in the Gazette by the Minister that is authorised by the Act; or
- (b) a notice under regulation 1.17;

guardian, in relation to a child, means a person who:

- (a) has responsibility for the long-term welfare of the child; and
- (b) has, in relation to the child, all the powers, rights and duties that are vested by law or custom in the guardian of a child, other than:
 - (i) the right to have the daily care and control of the child; and
 - (ii) the right and responsibility to make decisions concerning the daily care and control of the child;

guest of Government means:

- (a) an official guest of the Australian government; or
- (b) a spouse or dependent relative of a person referred to in paragraph (a) who is accompanying that person;

and includes:

- (c) a member of the personal or official staff of a guest of Government, being a member who is accompanying that guest; and
- (d) a media representative accompanying the official party of a guest of Government;

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home country, in relation to a person, means:

- (a) the country of which the person is a citizen; or
- (b) if the person is not usually resident in that country, the country of which the person is usually a resident;

IELTS test means the International English Language Testing System test;

Immigration means the Department of Immigration and Multicultural Affairs;

Industry Minister means the Minister for Industry, Science and Tourism;

interdependent relationship has the meaning given by regulation 1.09A;

international air carrier has the meaning given by subsection 504(6) of the Act;

in Australia means in the migration zone;

labour agreement means:

- (a) a formal agreement entered into between the Minister, or the Education Minister, and a person or organisation in Australia under which an employer is authorised to recruit persons (other than the holders of permanent visas) to be employed by that employer in Australia; or
- (b) a formal agreement entered into between the Minister and a sporting organisation under which the sporting organisation is authorised to recruit persons (other than the holders of permanent visas) to take part in the sporting activities of the sporting organisation, whether as employees or otherwise;

labour market requirements has the meaning set out in regulation 1.10;

long-term interdependent relationship, in relation to an applicant for a visa, means an interdependent relationship between the applicant and another person that has continued for not less than 5 years;

long-term spouse relationship, in relation to an applicant for a visa, means a relationship between the applicant and another person, each as the spouse of the other, that has continued:

- (a) if there is a dependent child of both the applicant and the other person—for not less than 2 years; or
- (b) in any other case—for not less than 5 years;

main business has the meaning set out in regulation 1.11;

marital relationship includes a de facto relationship;

Medical Officer of the Commonwealth means a medical practitioner appointed by the Minister in writing under regulation 1.16AA to be a Medical Officer of the Commonwealth for the purposes of these Regulations;

member of the crew, in relation to a non-military ship, means:

- (a) a person who is articulated crew; or

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- (b) a person who is not articulated crew but is employed on the ship under contract and is included in the crew list or the supernumerary crew list of the ship; or
- (c) if the ship is a ship of the kind described in paragraph (b) of the definition of *non-military ship*—a person who is employed in scientific research conducted on or from the ship;

member of the family unit has the meaning set out in regulation 1.12;

member of the Royal Family means a member of the Queen's immediate family;

member of the Royal party includes:

- (a) a member of the personal staff of the Queen who is accompanying Her Majesty in Australia; and
- (b) a member of the personal staff of a member of the Royal Family, being a staff member who is accompanying that member of the Royal Family in Australia; and
- (c) a media representative accompanying the official party of the Queen or of a member of the Royal Family in Australia; and
- (d) a person who is accompanying the Queen or a member of the Royal Family in Australia as a member of the official party of the Queen or the member of the Royal Family;

Migration (1959) Regulations means the Regulations comprising Statutory Rules 1959 No. 35 and those Regulations as amended from time to time;

Migration (1989) Regulations means the Regulations comprising Statutory Rules 1989 No. 365 and those Regulations as amended from time to time;

Migration (1993) Regulations means the Regulations comprising Statutory Rules 1992 No. 367 and those Regulations as amended from time to time;

Note: The Migration (1993) Regulations are listed in full in Part 1 of the Schedule to the Migration Reform (Transitional Provisions) Regulations. They are repealed by regulation 42 of those Regulations but continue to apply to certain matters.

net employment benefit has the meaning given by regulation 1.12A;

nominator has the meaning given by regulation 1.13;

non-award course means a course of education or training that is not an award course;

non-formal course, in relation to the holder of a visa or entry permit granted before 1 February 1991, means a course of study or training other than a formal course;

non-formal course student, in relation to a visa or entry permit granted before 1 February 1991, means a person granted entry to Australia to attend a full-time non-formal course of study;

non-military ship means:

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- (a) a ship that is engaged in:
 - (i) commercial trade; or
 - (ii) the carriage of passengers for reward; or
- (b) a ship that is owned and operated by a foreign government for the purposes of scientific research; or
- (c) has been accorded public vessel status by Foreign Affairs; or
- (d) a ship:
 - (i) that is being imported into Australia; and
 - (ii) of which the master has not entered into an agreement with the crew under the *Navigation Act 1912*;

NOOSR means the National Office of Overseas Skills Recognition within Education;

occupational trainee means a person who is in Australia as the holder of a Subclass 442 (Occupational Trainee) visa;

Occupational English Test means an Occupational English Test conducted by the National Language and Literacy Institute of Australia;

Occupations Requiring English List means the list mentioned in regulation 1.19;

oral application, in relation to a visa, means an application made in accordance with regulation 2.09;

orphan relative has the meaning set out in regulation 1.14;

outside Australia means outside the migration zone;

overseas passenger means:

- (a) in relation to a vessel arriving at a port in Australia in the course of, or at the conclusion of, an overseas voyage—a passenger:
 - (i) who:
 - (A) was on board the vessel when it left a place outside Australia at the commencement of, or during the course of, the voyage; and
 - (B) whose journey in the vessel ends in Australia; or
 - (ii) who:
 - (A) was on board the vessel when it left a place outside Australia at the commencement of, or during the course of, the voyage; and
 - (B) intends to journey in the vessel to a place outside Australia; and
- (b) in relation to a vessel leaving a port in Australia and bound for or calling at a place outside Australia—a passenger on board the vessel who:
 - (i) joined the vessel at a port in Australia; and

- (ii) intends to journey in the vessel to or beyond that place outside Australia;

Note: Under the Act, *vessel* includes an aircraft, and *port* includes an airport.

overseas voyage, in relation to a vessel, means a voyage that commenced at, or during which the vessel called at, a place outside Australia;

ownership interest has the meaning given to it in subsection 134(10) of the Act;

parent includes an adoptive parent and a step-parent;

parole means conditional release from prison before the completion of a sentence of imprisonment;

passenger card means a card of the kind referred to in section 506 of the Act;

periodic detention means a system of restriction of liberty by which periods at liberty alternate with periods in prison, and includes the systems of intermittent imprisonment known as day release and weekend release;

permanent entry permit means an entry permit that had effect without limitation as to time;

permanent entry visa means an entry visa that operated as, or was capable of operating as, a permanent entry permit;

permanent humanitarian visa means:

- (a) a Subclass 200, 201, 202, 203, 204, 205, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217 or 866 visa; or
- (b) a Group 1.3 or Group 1.5 (Permanent resident (refugee and humanitarian)) visa or entry permit within the meaning of the Migration (1993) Regulations; or
- (c) a humanitarian visa, or equivalent entry permit, within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa, within the meaning of the Migration Reform (Transitional Provisions) Regulations, being:
 - (i) such a visa granted on the basis of an application for a visa, or entry permit, of a kind specified in paragraph (b) or (c); or
 - (ii) a visa or entry permit of a kind specified in paragraph (b) or (c) having effect under those Regulations as a transitional (permanent) visa.

points system means the system of assessment under Subdivision B of Division 3 of Part 2 of the Act;

PRC means the People's Republic of China;

prescribed form means a form set out in Schedule 10, and a reference to a prescribed form by number is a reference to the form so numbered in that Schedule;

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prohibited non-citizen means a person who, on or before 18 December 1989, was a prohibited non-citizen within the meaning of the Act as in force at that time;

public interest criterion means a criterion set out in a clause of Part 1 of Schedule 4, and a reference to a public interest criterion by number is a reference to the criterion set out in the clause so numbered in that Part;

qualifying business means an enterprise that:

- (a) is operated for the purpose of making profit through the provision of goods, services or goods and services (other than the provision of rental property) to the public; and
- (b) is not operated primarily or substantially for the purpose of speculative or passive investment;

registered course means a course of education or training offered by an institution, body or person that is registered as a provider under section 5 of the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*;

Note: A current list of registered courses appears in the Commonwealth Register of Institutions and Courses for Overseas Students kept under section 5 of the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*.

relative, in relation to a person, means:

- (a) in the case of an applicant for a Subclass 200 (Refugee) visa or a Protection (Class AZ) visa:
 - (i) a close relative; or
 - (ii) a grandparent, grandchild, aunt, uncle, niece or nephew, or a step-grandparent, step-grandchild, step-aunt, step-uncle, step-niece or step-nephew; or
 - (iii) a first or second cousin; or
- (b) in any other case:
 - (i) a close relative; or
 - (ii) a grandparent, grandchild, aunt, uncle, niece or nephew, or a step-grandparent, step-grandchild, step-aunt, step-uncle, step-niece or step-nephew;

Note: **Close relative** is defined in this regulation: see above.

remaining relative has the meaning set out in regulation 1.15;

review authority means:

- (a) a person who is a review officer for the purposes of Part 5 of the Act; and
- (b) the Immigration Review Tribunal;

and for the purposes of Parts 010, 020, 030, 040, 041 and 050 of Schedule 2, includes the Refugee Review Tribunal;

RHQ agreement means an agreement referred to in regulation 1.16A;

Schedule 3 criterion means a criterion set out in a clause of Schedule 3, and a reference to a Schedule 3 criterion by number is a reference to the criterion set out in the clause so numbered in that Schedule;

school-age dependant, in relation to a person, means a member of the family unit of the person who has turned 5, but has not turned 19;

settled, in relation to an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen, means lawfully resident in Australia for a reasonable period;

SOFA forces civilian component member means a person who:

- (a) is, for the purposes of a Status of Forces Agreement between Australia and Papua New Guinea, Singapore or the United States of America, a member of the civilian component of the armed forces of one of those countries; and
- (b) holds a national passport that is in force and a certificate that he or she is a member of the civilian component of the armed forces of the relevant country;

SOFA forces member means a person who:

- (a) is, for the purposes of a Status of Forces Agreement between Australia and Papua New Guinea, Singapore or the United States of America, a member of the armed forces of one of those countries; and
- (b) holds military identity documents and movement orders issued from an official source of the relevant country;

special need relative, in relation to an Australian citizen usually resident in Australia, an Australian permanent resident usually resident in Australia or an eligible New Zealand citizen, means a relative who is willing and able to provide substantial and continuing assistance to the citizen or resident if:

- (a) the citizen or resident has a permanent or long-term need for assistance because of death, disability, prolonged illness or other serious circumstances affecting the citizen or resident personally, or a member of his or her family unit; and
- (b) the assistance cannot reasonably be obtained from:
 - (i) any other relative of the citizen or resident, being a relative who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; or
 - (ii) welfare, hospital, nursing or community services in Australia;

special return criterion means a criterion set out in a clause of Part 1 of Schedule 5, and a reference to a special return criterion by number is a reference to the criterion set out in the clause so numbered in that Schedule;

sponsor has the meaning given by regulation 1.20;

sponsorship means an undertaking of the kind referred to in regulation 1.20 to sponsor an applicant;

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spouse has the meaning set out in regulation 1.15A;

subsidised student means a student enrolled in a course of study in respect of which the student is subsidised under the Subsidised Overseas Student Program administered by Education;

temporary entry permit means an entry permit whose effect was subject to a limitation as to time;

the Act means the *Migration Act 1958*;

tourism means participation in activities of a recreational nature including amateur sporting activities, informal study courses, relaxation, sightseeing and travel;

trainee, in the case of a visa or entry permit granted before 1 February 1991, means a person:

- (a) in respect of whom the Education Minister has approved participation in occupational training in Australia; and
- (b) who has been granted a visa or an entry permit to enable such participation;

transit passenger means a person who:

- (a) enters Australia by aircraft; and
- (b) holds a confirmed onward booking to leave Australia to travel to a third country on the same or another aircraft within 8 hours of the person's arrival in Australia; and
- (d) holds documentation necessary to enter the country of his or her destination;

work means an activity that, in Australia, normally attracts remuneration;

working age means:

- (a) in the case of a female, under 60 years of age; and
- (b) in the case of a male, under 65 years of age;

working age parent means a parent other than an aged parent.

Note: **aged parent** is defined in this regulation.

1.04 Adoption

- (1) A person (in this regulation called **the adoptee**) is taken to have been adopted by a person (in this regulation called **the adopter**) if, before the adoptee attained the age of 18 years, the adopter assumed a parental role in relation to the adoptee under:
 - (a) formal adoption arrangements made in accordance with, or recognised under, the law of a State or Territory of Australia relating to the adoption of children; or
 - (b) formal adoption arrangements made in accordance with the law of another country, being arrangements under which the persons who were recognised

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- by law as the parents of the adoptee before those arrangements took effect ceased to be so recognised and the adopter became so recognised; or
- (c) other arrangements entered into outside Australia that, under subregulation (2), are taken to be in the nature of adoption.
- (2) For the purposes of paragraph (1)(c), arrangements are taken to be in the nature of adoption if:
- (a) the arrangements were made in accordance with the usual practice, or a recognised custom, in the culture or cultures of the adoptee and the adopter; and
- (b) the child-parent relationship between the adoptee and the adopter is significantly closer than any such relationship between the adoptee and any other person or persons, having regard to the nature and duration of the arrangements; and
- (c) the Minister is satisfied that:
- (i) formal adoption of the kind referred to in paragraph (1)(b):
- (A) was not available under the law of the place where the arrangements were made; or
- (B) was not reasonably practicable in the circumstances; and
- (ii) the arrangements have not been contrived to circumvent Australian migration requirements.

1.05 Balance of family test

- (1) For the purposes of this regulation:
- (a) a person is a child of another person (*the parent*) if the person is a child, adopted child or step-child of:
- (i) the parent; or
- (ii) a spouse of the parent; or
- (iii) a former spouse of the parent, if the child was born or adopted:
- (A) before the parent became the spouse of the former spouse; or
- (B) while the parent was the spouse of the former spouse; and
- (b) if the whereabouts of a child of the parent are unknown, the child is taken to be resident in the usual country of residence of the parent.
- (2) A parent satisfies the balance of family test if:
- (a) each of the children of the parent is either:
- (i) lawfully and permanently resident in Australia; or
- (ii) a person who is:
- (A) the holder of a special category visa; and
- (B) usually resident in Australia; or
- (b) the number of children of the parent who are lawfully and permanently resident in Australia or are holders of special category visas usually resident in Australia is:
- (i) greater than, or equal to, the total number of children of the parent who are resident overseas; or

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- (ii) greater than the greatest number of children of the parent who are resident in any single overseas country.
- (3) In applying the balance of family test, no account is to be taken of a child of the parent:
- (a) if the child has been removed by court order, by adoption or by operation of law (other than in consequence of marriage) from the exclusive custody of the parent; or
 - (b) if the child is resident in a country where the child suffers persecution or abuse of human rights and it is not possible to reunite the child and the parent in another country; or
 - (c) if the child is resident in a refugee camp operated by:
 - (i) the United Nations High Commissioner for Refugees; or
 - (ii) the government of Hong Kong;and is registered by the Commissioner as a refugee; or
 - (d) if:
 - (i) the child is a step-child of the parent; and
 - (ii) the child had turned 18 at the time at which the parent became the spouse of the child's other parent;and one or more of the following subparagraphs applies:
 - (iii) the other parent is deceased; or
 - (iv) the parent is permanently separated from the other parent; or
 - (v) the parent is divorced from the other parent.

1.06 References to classes of visas

A class of visas may be referred to :

- (a) in the case of a class of visas referred to in Schedule 1—by the code allotted to the class in the heading of the item in Schedule 1 that relates to that class of visas; or
- (b) in the case of a transitional visa, by the following codes:
 - (i) transitional (permanent): BF;
 - (ii) transitional (temporary): UA.

Note: For example, Cultural/Social (Temporary) Class may be referred to as Class TE.

1.07 References to subclasses of visas

- (1) A reference to a visa of a particular subclass (for example, “a visa of Subclass 414”) is a reference to a visa granted on satisfaction of the criteria set out in the Part of Schedule 2 that bears the number of the subclass.
- (2) A reference to an applicant for a visa of a particular subclass is a reference to an applicant who applies for a visa of a class that may, under Schedule 1, be granted on satisfaction of the criteria set out in the Part of Schedule 2 that bears the number of the subclass.

1.08 Compelling need to work

For the purposes of these Regulations, a non-citizen has a compelling need to work if and only if:

- (a) he or she is in financial hardship; or
- (b) he or she:
 - (i) is nominated by an employer in respect of an approved appointment (within the meaning of regulation 5.19); and
 - (ii) appears to the Minister, on the basis of information contained in the application, to meet the criteria in clause 805.213 of Schedule 2; or
- (c) he or she:
 - (i) is:
 - (A) an applicant for a Business (Temporary) (Class TB) visa; or
 - (B) an applicant for an Educational (Temporary) (Class TH) visa who appears to the Minister, on the basis of information contained in the application, to satisfy the criteria for the grant of a Subclass 418 visa; or
 - (C) an applicant for a Medical Practitioner (Temporary) (Class UE) visa; or
 - (D) an applicant for a Temporary Business Entry (Class UC) visa who seeks a visa to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period, or periods, of 3 months or more; and
 - (ii) has been sponsored by an employer in relation to that application; and
 - (iii) appears, on the basis of that application, to meet the criteria for that visa.

1.09 Criminal detention

For the purposes of these Regulations, a person is in criminal detention if he or she is:

- (a) serving a term of imprisonment (including periodic detention) following conviction for an offence; or
 - (b) in prison on remand;
- but not if he or she is:
- (c) subject to a community service order; or
 - (d) on parole after serving part of a term of imprisonment; or
 - (e) on bail awaiting trial.

1.09A Interdependent relationship

- (1) In this regulation:
 - ancestor* includes a parent.
- (2) For the purposes of these Regulations:

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interdependent relationship means a relationship that is genuine and continuing between 2 persons:

- (a) who are not within a prohibited degree of relationship; and
 - (b) who have both turned 18; and
 - (c) who have a mutual commitment to a shared life to the exclusion of any spouse relationships or any other interdependent relationships; and
 - (d) who:
 - (i) live together; or
 - (ii) do not live separately and apart on a permanent basis.
- (3) For the purposes of this regulation, persons are within a prohibited degree of relationship if either of them is:
- (a) an ancestor or descendant of the other person; or
 - (b) a brother or sister of the other person (whether or not they have both parents in common).
- (4) For the purposes of subregulation (3):
- (a) a person is taken to be an ancestor or descendant of another person even if the relationship between them is traced through, or to, a person who is or was an adopted child; and
 - (b) the relationship of parent and child between an adoptive parent and an adopted child is taken to continue even though:
 - (i) the order by which the adoption was effected has been annulled, cancelled or discharged; or
 - (ii) the adoption has otherwise ceased to be effective; and
 - (c) the relationship between an adopted child and the adoptive parent, or each of the adoptive parents, is taken to be or to have been the natural relationship of child and parent; and
 - (d) a person who has been adopted more than once is taken to be the child of each person by whom he or she has been adopted.
- (5) In forming an opinion for the purposes of subregulation (2) in relation to an application for an Interdependency (Migrant) (Class BI), Interdependency (Provisional) (Class UG), General (Residence) (Class AS) or Extended Eligibility (Temporary) (Class TK) visa, the Minister must have regard to all the circumstances of the relationship, including, in particular:
- (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one party to the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for care and support of children, if any; and

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- (ii) the persons' living arrangements; and
 - (iii) any sharing of responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (ii) any basis on which the persons plan and undertake joint social activities; and
 - (iii) whether the persons represent themselves to other persons as being in an interdependent relationship; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons themselves see the relationship as a long-term one.
- (6) If a person has been living with another person for 6 months or longer, that fact is to be taken to be strong evidence that the relationship is genuine and continuing, but a relationship of shorter duration is not to be taken not to be genuine and continuing only for that reason.

1.10 Labour market requirements

An application for a visa meets labour market requirements if the Minister is satisfied that:

- (a) the application is in accordance with a labour agreement; or
- (b) in respect of the employment to which the application relates:
 - (i) no Australian citizen or Australian permanent resident is readily available who has suitable qualifications and experience; and
 - (ii) if appropriate—relevant employer and employee organisations have been consulted.

1.11 Main business

- (1) For the purposes of these Regulations and subject to subregulation (2), a business is a main business in relation to an applicant for a visa if:
- (a) the applicant has, or has had, an ownership interest in the business; and
 - (b) the applicant maintains, or has maintained, direct and continuous involvement in management of the business from day to day and in making decisions affecting the overall direction and performance of the business; and
 - (c) the value of the applicant's ownership interest, or the total value of the ownership interests of the applicant and the applicant's spouse, in the business is or was at least 10% of the total value of the business; and
 - (d) the business is a qualifying business.

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- (2) If an applicant has, or has had, an ownership interest in more than 1 qualifying business that would, except for this subregulation, be a main business in relation to the applicant, the applicant must not nominate more than 2 of those qualifying businesses as main businesses.

1.12 Member of the family unit

- (1) Subject to subregulation (2), a person is a member of the family unit of another person (in this subregulation called *the family head*) if the person is:
- (a) a spouse of the family head; or
 - (b) a dependent child of the family head or of a spouse of the family head; or
 - (c) a dependent child of a dependent child of the family head or of a spouse of the family head; or
 - (d) a relative of the family head or of a spouse of the family head who:
 - (i) does not have a surviving spouse or any other relative (other than the family head) able to care for that relative in the relevant country; and
 - (ii) is usually resident in the family head's household; and
 - (iii) is dependent on the family head; or
 - (e) a relative of the family head or of a spouse of the family head who:
 - (i) has never married or is widowed, divorced or separated; and
 - (ii) is usually resident in the family head's household; and
 - (iii) is dependent on the family head.
- (2) A person is a member of the family unit of an applicant for a Student (Temporary) (Class TU) visa if the person is:
- (a) a spouse of the applicant; or
 - (b) a dependent child of the applicant or of that spouse who is unmarried and has not turned 18; or
 - (c) a person who has entered into an agreement to marry the applicant if the applicant and that person intend that the marriage is to take place not later than 3 months after the entry of the person to Australia.

1.12A Net employment benefit

If:

- (a) an applicant for a visa seeks to enter Australia to undertake an activity individually or in association with a group; and
- (b) the Minister is satisfied that the undertaking of the activity would lead to greater employment of Australian citizens or Australian permanent residents (or both) than if a person normally resident in Australia undertook the activity;

the entry of the applicant to Australia is taken to confer a net employment benefit on Australia.

1.13 Nominator

For the purposes of these Regulations, *nominator*, in relation to an applicant for a visa, means:

- (a) a person who puts forward, on the relevant approved form, the name of the applicant as an applicant for a visa of a particular class;

but does not include:

- (b) a person who proposes another person for entry to Australia as an applicant for a permanent humanitarian visa;
- (c) a person or body who gives an undertaking of a kind referred to in Part 208, 209, 210, 211, 212, 213, 214, 215, 216 or 217 of Schedule 2.

1.14 Orphan relative

An applicant for a visa is an orphan relative of another person who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen if:

- (a) the applicant:
 - (i) has not turned 18; and
 - (ii) is unmarried; and
 - (iii) is a relative of that other person; and
- (b) the applicant cannot be cared for by either parent because each of them is either dead, permanently incapacitated or of unknown whereabouts; and
- (c) it is in the best interests of the applicant if he or she settles with that other person in Australia.

1.15 Remaining relative

- (1) An applicant for a visa is a remaining relative if the applicant has a relative who:

- (a) is:
 - (i) a brother, sister or parent; or
 - (ii) a step-brother, step-sister or step-parent;

of the applicant; and

- (b) is:
 - (i) an Australian citizen; or
 - (ii) an Australian permanent resident; or
 - (iii) an eligible New Zealand citizen; and

- (c) is usually resident in Australia;

unless the applicant is disqualified under subregulation (2).

- (2) An applicant is disqualified if:

- (a) the applicant or the spouse (if any) of the applicant:
 - (i) usually resides in the same country, not being Australia, as an overseas near relative; or
 - (ii) has had contact with an overseas near relative during a reasonable period preceding the application; or

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- (b) the applicant and the spouse (if any) of the applicant together have more than 3 overseas near relatives; or
- (c) the applicant is a child who:
 - (i) has not turned 18; and
 - (ii) has been adopted by an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen (in this paragraph called *the adoptive parent*) while overseas;

but, at the time of the application, the adoptive parent has not been residing overseas for a period of at least 12 months.

- (3) In this regulation, *overseas near relative* means a person who is:
 - (a) a parent, brother, sister or non-dependent child; or
 - (b) a step-parent, step-brother, step-sister or non-dependent step-child;of the applicant or of the spouse (if any) of the applicant but is not a relative of a kind referred to in subregulation (1).

1.15A Spouse

- (1) For the purposes of these Regulations, a person is the spouse of another person if:
 - (a) the 2 persons are:
 - (i) married to each other under a marriage that is recognised as valid for the purposes of the Act; or
 - (ii) de facto spouses of each other, as set out in subregulation (2); and
 - (b) the Minister is satisfied that:
 - (i) the 2 persons have a mutual commitment to a shared life as husband and wife to the exclusion of all others; and
 - (ii) the relationship between the 2 persons is genuine and continuing; and
 - (c) the Minister is satisfied that the 2 persons are:
 - (i) living together; or
 - (ii) not living separately and apart on a permanent basis.
- (2) A person is the de facto spouse of another person:
 - (a) if the persons:
 - (i) are of opposite sexes; and
 - (ii) are not married to each other under a marriage that is recognised as valid for the purposes of the Act; and
 - (iii) are not within a relationship that is a prohibited relationship for the purposes of subsection 23B (2) of the *Marriage Act 1961*; and
 - (b) if:
 - (i) either of the persons is domiciled in Australia—both of them have turned 18; or
 - (ii) neither of the persons is domiciled in Australia—both of them have turned 16.

- (3) In forming an opinion for the purposes of paragraph (1)(b) and (c) in relation to an application for:
- (aa) an Extended Eligibility (Temporary) (Class TK) visa; or
 - (ab) a Family (Residence) (Class AO) visa; or
 - (ac) a General (Residence) (Class AS) visa; or
 - (ad) a Spouse (Migrant) (Class BC) visa; or
 - (ae) a Spouse (Provisional) (Class UF) visa;
- the Minister must have regard to all of the circumstances of the relationship, including, in particular:
- (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one party to the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses;
 - (b) the nature of the household, including:
 - (i) any joint responsibility for care and support of children, if any; and
 - (ii) the parties' living arrangements; and
 - (iii) any sharing of responsibility for housework;
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married or in a de facto relationship with each other;
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities;
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) In forming an opinion for the purposes of paragraph (1) (b) and (c) in relation to an application for a visa of a class other than a class specified in paragraph (3) (aa), (ab), (ac), (ad) or (ae), the Minister may have regard to any of the factors set out in subregulation (3).
- (5) If a person has been living with another person for 6 months or longer, that fact is to be taken to be strong evidence that the relationship is genuine and continuing, but a relationship of shorter duration is not to be taken not to be genuine and continuing only for that reason.

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Division 1.3—Administration

1.16 Delegation

- (1) The Minister may, by writing signed by the Minister, delegate to an officer any of the Minister's powers under these Regulations, other than this power of delegation.
- (2) The Secretary may, by writing signed by the Secretary, delegate to an officer any of the Secretary's powers under these Regulations, other than this power of delegation.

1.16AA Appointment of Medical Officer of the Commonwealth

The Minister may, by writing signed by the Minister, appoint a medical practitioner to be a Medical Officer of the Commonwealth for the purposes of these Regulations.

1.16A Regional headquarters agreements

If an organisation that has its head office outside Australia wishes to establish a regional headquarters in Australia, the Minister and the Industry Minister may enter into an agreement with the organisation to provide for the entry to, and stay in, Australia of staff members of the organisation for the purposes of the regional headquarters.

1.17 Specification of matters by Gazette Notice

The Minister may, by notice published in the Gazette, specify matters required by individual provisions of these Regulations to be specified for the purposes of those provisions.

1.18 Approved forms

The Minister may, in writing, approve forms for:

- (a) use in making an application for a visa; or
- (b) any other purpose authorised or required by these Regulations.

1.19 Occupations Requiring English List

The Minister may publish by Gazette Notice a list of occupations requiring proficiency in English of at least the standard required for the award of 15 points under Part 3 of Schedule 6.

Note: Part 3 of Schedule 6 deals with the award of points on the basis of an applicant's language skills.

Division 1.4—Sponsorship

1.20 Sponsorship

- (1) For the purposes of these Regulations, *sponsor*, in relation to an applicant for a visa, means a person who undertakes the obligations of a sponsor in relation to the applicant, but does not include:
 - (a) a person who proposes another person for entry to Australia as an applicant for a permanent humanitarian visa;
 - (b) a person or body who gives an undertaking of a kind referred to in Part 208, 209, 210, 211, 212, 213, 214, 215, 216 or 217 of Schedule 2.
- (2) The obligations of a sponsor in relation to an applicant for a visa are the following:
 - (a) if the application is for a permanent visa (other than a Business Skills (Migrant) (Class AD), Business Skills (Residence) (Class BH), Interdependency (Migrant) (Class BI) or Spouse (Migrant) (Class BC) visa)—the sponsor undertakes to assist the applicant, to the extent necessary, financially and in respect of accommodation, during the period of 2 years immediately following the applicant’s entry into Australia under that visa (including any period of participation by the applicant in the program known as the Adult Migrant English Program administered by Immigration that falls within that period);
 - (b) if the application is for a temporary visa (other than a Spouse (Provisional) (Class UF) or Interdependency (Provisional) (Class UG) visa)—the sponsor accepts responsibility for:
 - (i) all financial obligations to the Commonwealth incurred by the applicant arising out of the applicant’s stay in Australia; and
 - (ii) compliance by the applicant with all relevant legislation and awards in relation to any employment entered into by the applicant in Australia; and
 - (iii) unless the Minister otherwise decides, compliance by the applicant with the conditions under which the applicant was allowed to enter Australia;
 - (c) if the application is a concurrent application for either:
 - (i) a Spouse (Migrant) (Class BC) and a Spouse (Provisional) (Class UF) visa; or
 - (ii) an Interdependency (Migrant) (Class BI) and an Interdependency (Provisional) (Class UG) visa;the sponsor undertakes to assist the applicant, to the extent necessary, financially and in respect of accommodation, during the period of 2 years immediately following the applicant’s entry into Australia as the holder of any of those visas.
- (3) A person who has been approved by the Minister as the sponsor of an applicant for a visa must enter into the sponsorship by completing the relevant approved

Schedule 1 Classes of visas

Part 1 Preliminary

Division 1.4 Sponsorship

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form and give it to the Minister not later than a reasonable period after the Minister approves the person as a sponsor.

Division 1.4A—Temporary business entry: sponsorship and nomination

1.20A Object of this Division

The object of this Division is to provide for:

- (a) applications for approval as a business sponsor; and
- (b) nominations by business sponsors of activities to be undertaken in Australia by prospective holders of Subclass 457 (Business (Long Stay)) visas; and
- (c) approval of those applications and nominations; and
- (d) revocation of approvals as a business sponsor.

1.20B Interpretation

In this Division:

key activity, in relation to a person (in this definition called *the employer*) who proposes to provide employment in Australia to an individual, means an activity that:

- (a) is essential to the business operations of the employer; and
- (b) requires:
 - (i) specialist or professional skills; or
 - (ii) specialised knowledge of the business operations of the employer;

labour market testing, in relation to a position, means testing of the Australian labour market to demonstrate that a suitably qualified Australian citizen or Australian permanent resident is not readily available to fill the position;

person includes an unincorporated body of persons;

pre-qualified business sponsor means a person approved as a pre-qualified business sponsor in accordance with regulation 1.20D;

standard business sponsor means a person approved as a standard business sponsor in accordance with regulation 1.20D.

1.20C Applications for approval as business sponsors

- (1) A person may apply to the Minister for approval as:
 - (a) a pre-qualified business sponsor; or
 - (b) a standard business sponsor.

Note: In relation to the effect of approval as a pre-qualified business sponsor and a standard business sponsor, see:

- subregulations 1.20D (5) and (6); and
- subclauses 457.223 (4) and (5) of Schedule 2.

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- (2) Application must be made in accordance with approved form 1067.
- (3) An application for approval as a pre-qualified business sponsor must be accompanied by a fee of \$3,000.

1.20D Approval as business sponsors

- (1) Subject to this regulation, the Minister may, by instrument in writing, approve or reject an application for approval as a pre-qualified business sponsor or as a standard business sponsor.
- (2) The Minister must approve an application for approval as a pre-qualified business sponsor, or as a standard business sponsor, made in accordance with regulation 1.20C if:
 - (a) the Minister is satisfied that the applicant for approval is lawfully operating in Australia a business in which the employment of the holder of a Subclass 457 (Business (Long Stay)) visa would contribute to:
 - (i) the creation or maintenance of employment for Australian citizens or Australian permanent residents; or
 - (ii) expansion of Australian trade in goods or services; or
 - (iii) the improvement of Australian business links with international markets; or
 - (iv) competitiveness within sectors of the Australian economy; and
 - (b) in respect of each visa applicant who seeks to satisfy the primary criteria for a Subclass 457 visa to be granted on the basis that:
 - (i) the applicant for approval is the employer referred to in subclause 457.223 (4) or (5) of Schedule 2 in relation to the visa application; and
 - (ii) the visa applicant satisfies the requirements of that subclause; the Minister is satisfied that:
 - (iii) the applicant for approval proposes to be the direct employer in Australia of the visa applicant as the holder of the visa (in this subregulation called *the visa holder*); or
 - (iv) if the applicant for approval is a body corporate—the applicant for approval is, under section 50 of the Corporations Law, related to the body corporate that proposes to be the direct employer in Australia of the visa holder; and
 - (c) the Minister is satisfied that the applicant for approval:
 - (i) will introduce to, or utilise or create in, Australia new or improved technology or business skills; or
 - (ii) has a satisfactory record of, or a demonstrated commitment towards, training Australian citizens and Australian permanent residents in the business operations of the applicant in Australia; and
 - (d) the Minister is satisfied that nothing adverse is known to Immigration about the business background of the applicant for approval; and

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- (e) the Minister is satisfied that where relevant, the applicant for approval has a satisfactory record of compliance with the immigration laws of Australia; and
 - (f) the Minister is satisfied that while there is in effect a Subclass 457 visa granted on the basis that:
 - (i) the applicant for approval is the employer referred to in subclause 457.223 (4) or (5) of Schedule 2 in relation to a visa application; and
 - (ii) the visa holder satisfies the requirements of that subclause;the applicant for approval is able, in relation to each visa holder, to comply with the undertakings given by the applicant in accordance with form 1067.
- (3) An instrument approving a person as a standard business sponsor must specify the maximum number of nominations of business activities, being a number not exceeding the number proposed in the application for approval, that may be approved under regulation 1.20H in relation to the standard business sponsor while the approval is in effect.
- (4) As soon as practicable after deciding an application for approval as a pre-qualified business sponsor, or as a standard business sponsor, the Minister must provide the applicant with:
- (a) a copy of the instrument approving or rejecting the application; and
 - (b) if the application is rejected, a statement of the reasons why the application was not approved.
- (5) Unless renewed under regulation 1.20E, approval of a person as a pre-qualified business sponsor ceases to have effect:
- (a) at the end of the period of 24 months commencing on the day on which the approval is given; or
 - (b) on revocation of the approval under regulation 1.20F;
- whichever happens first.
- (6) Approval of a person as a standard business sponsor ceases to have effect:
- (a) when the number of Subclass 457 visas granted, since the giving of the approval, on the basis that:
 - (i) the applicant satisfies the primary criteria; and
 - (ii) the standard business sponsor is the employer (within the meaning of subclause 457.223 (4) or (5) of Schedule 2;is equal to the number of nominations of business activities determined under subregulation (3) in relation to that approval of that standard business sponsor; or
 - (b) at the end of the period of 12 months commencing on the day on which the approval is given; or
 - (c) on revocation of the approval under regulation 1.20F;
- whichever happens first.

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1.20E Renewal of approvals as pre-qualified business sponsors

- (1) Subject to this regulation, the Minister may, by instrument in writing, renew or refuse to renew the approval of a person as a pre-qualified business sponsor for a period of 12 months after the expiry of the current period of approval.
- (2) Subject to subregulation (3), the Minister must renew the approval of a person as a pre-qualified business sponsor:
 - (a) in relation to the period of 12 months following the period of 24 months mentioned in subregulation 1.20D (5)—on payment by the person, before the end of the 24-month period, of a fee of \$1,000; and
 - (b) in relation to:
 - (i) the period of 12 months following the period to which a fee paid under paragraph (a) relates; or
 - (ii) a succeeding period of 12 months;
on payment by the person, before the end of each 12-month period, of a fee of \$1,000.
- (3) The Minister must not renew the approval of a person as a pre-qualified business sponsor unless the Minister is satisfied that the person:
 - (a) has complied with the undertakings given by the person in accordance with approved form 1067 in the period preceding the period to which the renewal relates; and
 - (b) continues to satisfy the requirements for approval as a pre-qualified business sponsor.
- (4) As soon as practicable after the Minister makes a decision to renew, or refuse to renew, the approval of a person as a pre-qualified business sponsor, the Minister must provide the person with:
 - (a) a copy of the instrument renewing, or refusing to renew, the approval; and
 - (b) if the Minister refuses to renew the approval, the reasons for the refusal.

1.20F Revocation of approval as business sponsor

- (1) Without limiting the power of the Minister to revoke the approval of a person as a pre-qualified business sponsor, or as a standard business sponsor, the Minister may, in particular, by instrument in writing, revoke such an approval if the Minister is satisfied that the person:
 - (a) has not complied, or is not complying, with the undertakings given by the person in accordance with approved form 1067; or
 - (b) does not continue to satisfy the requirements for approval as a pre-qualified business sponsor or standard business sponsor.
- (2) As soon as practicable after revoking the approval of a person as a pre-qualified business sponsor, or as a standard business sponsor, the Minister must provide the person with:
 - (a) a copy of the instrument revoking the approval; and
 - (b) a statement of the reasons for the revocation.

1.20G Nomination of business activities

- (1) A person who:
 - (a) is a party to a labour agreement; or
 - (b) is a pre-qualified business sponsor; or
 - (c) is a standard business sponsor; or
 - (d) does not operate a business in Australia but:
 - (i) has given undertakings in accordance with approved form 1067; and
 - (ii) is a person whom the Minister is satisfied (apart from not operating a business in Australia) would, on application, be likely to be approved as a standard business sponsor;may nominate to the Minister an activity in which an individual is proposed to be employed by the person in Australia.
- (2) A nomination must be made in accordance with approved form 1068.
- (3) A nomination, except a nomination by a party to a labour agreement or a pre-qualified business sponsor, must be accompanied by a fee of \$205.
- (4) If a person (except a party to a labour agreement) who nominates an activity that is not a key activity proposes to employ a visa applicant in a position to perform the activity, the nomination must be accompanied:
 - (a) in the case of proposed employment for a period of more than 3, but not more than 12, months—by the results of labour market testing in relation to the position, where so required by the Minister; and
 - (b) in the case of proposed employment for a period of more than 12 months—by the results of labour market testing in relation to the position.

1.20H Approval of nominations of business activities

- (1) Subject to this regulation, the Minister may, by instrument in writing, approve, or refuse to approve, the nomination of an activity in which an individual is proposed to be employed in Australia.
- (2) Subject to subregulation (3), the Minister must approve the nomination of an activity made in accordance with regulation 1.20G.
- (3) The Minister must not approve the nomination of an activity that is accompanied by the results of labour market testing unless the Minister is satisfied that those results indicate that a suitably qualified Australian citizen or Australian permanent resident is not readily available to fill the position to which the nominated activity relates.
- (4) As soon as practicable after making a decision to approve, or to refuse to approve, the nomination of an activity, the Minister must provide the person who nominated the activity with:
 - (a) a copy of the instrument approving, or refusing to approve, the nomination of the activity; and

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- (b) if the nomination is not approved, a statement of the reasons why the nomination was not approved.
- (5) The nomination of an activity ceases to have effect:
- (a) at the end of the period of 12 months commencing on the day on which the nomination of the activity is approved; or
 - (b) when the position in which the nominated activity is to be performed by the holder of a Subclass 457 visa is filled; or
 - (c) in the case of an activity nominated by a person who is a party to a labour agreement—when that agreement ceases to have effect; or
 - (d) in the case of an activity nominated by a person who is approved as a pre-qualified business sponsor or a standard business sponsor—when the approval ceases to have effect; or
 - (e) in the case of an activity nominated by a person to whom paragraph 1.20G (1) (d) refers—either:
 - (i) upon the Minister becoming satisfied that the person is not able to comply with undertakings given by the person in accordance with approved form 1067; or
 - (ii) upon the Minister ceasing to be satisfied that the person (apart from not operating a business in Australia) would, on application, be likely to be approved as a standard business sponsor;
- whichever happens first.

1.20I Exercise of Minister's powers under this Division

In addition to being exercisable by the Minister personally or by a delegate of the Minister, the powers and functions of the Minister under this Division are exercisable by a person who:

- (a) is the holder of an office under the Act; and
 - (b) is authorised in writing by the Minister to exercise those powers;
- and, when any of those powers or functions is exercised by such a person, that power or function is taken, for the purposes of these Regulations, to have been exercised by the Minister.

Division 1.4B—Sponsorship and nomination: spouse, prospective spouse and interdependency visas**1.20J Limitation on approval of sponsorships and nominations— spouse, prospective spouse and interdependency visas**

- (1) Subject to subregulations (2) and (3), the Minister must not approve:
 - (a) the sponsorship of an applicant for:
 - (i) a Spouse (Provisional) (Class UF) visa or a Prospective Marriage (Temporary) (Class TO) visa, as the spouse or prospective spouse of the sponsor; or
 - (ii) an Interdependency (Provisional) (Class UG) visa, as a person in an interdependent relationship with the sponsor; or
 - (b) the nomination of an applicant for an Extended Eligibility (Temporary) (Class TK) visa as the spouse of, or as a person in an interdependent relationship with, the nominator;unless the Minister is satisfied that:
 - (c) not more than 1 other person has been granted a visa as the spouse or prospective spouse of, or as a person in an interdependent relationship with, the sponsor or nominator on the basis of a sponsorship or nomination; and
 - (d) if another person has been granted a visa of a kind referred to in paragraph (c)—not less than 5 years has passed since the date of making the application for that visa; and
 - (e) if the sponsor or nominator was granted a visa as the spouse or prospective spouse of, or as a person in an interdependent relationship with, another person on the basis of a sponsorship or nomination—not less than 5 years has passed since the date of making the application for that visa.
- (2) Despite subregulation (1), the Minister may approve the sponsorship or nomination of an applicant for a visa if the Minister is satisfied that there are compelling circumstances affecting the sponsor or nominator.
- (3) Subject to subregulation (4), this regulation applies in relation to an application for a visa made on or after 1 November 1996.
- (4) This regulation does not apply in relation to an application by a person who:
 - (a) was the holder of a Subclass 300 visa that was granted on the basis of an application for a Prospective Marriage (Temporary) (Class TO) visa that was made before 1 November 1996; and
 - (b) has applied for an Extended Eligibility (Temporary) (Class TK) visa; and
 - (c) is seeking to remain permanently in Australia on the basis of the person's marriage to the person who was specified as the intended spouse in the application that resulted in the grant of that Prospective Marriage (Temporary) (Class TO) visa.

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Division 1.5—Special provisions relating to domestic violence

1.21 Interpretation

(1) In this Division:

competent person means:

- (a) in relation to domestic violence committed against an adult:
 - (i) a person registered as a medical practitioner under a law of a State or Territory providing for the registration of medical practitioners; or
 - (ii) a person registered as a psychologist under a law of a State or Territory providing for the registration of psychologists; or
 - (iii) a person who:
 - (A) is a registered nurse within the meaning of section 3 of the *Health Insurance Act 1973*; and
 - (B) is performing the duties of a registered nurse; or
 - (iv) a person who:
 - (A) is a member of the Australian Association of Social Workers or is recognised by that Association as a person who is eligible to be a member of that Association; and
 - (B) is performing the duties of a social worker; or
 - (v) a person who is a court counsellor under the *Family Law Act 1975*; or
 - (vi) a person holding a position of a kind described in subregulation (2); or
- (b) in relation to domestic violence committed against a child:
 - (i) a person referred to in paragraph (a); or
 - (ii) an officer of the child welfare or child protection authorities of a State or Territory;

statutory declaration means a statutory declaration under the *Statutory Declarations Act 1959*;

violence includes a threat of violence.

(2) The positions referred to in subparagraph (a) (vi) of the definition of **competent person** in subregulation (1) are:

- (a) manager or coordinator of:
 - (i) a women's refuge; or
 - (ii) a crisis and counselling service that specialises in domestic violence; or
 - (b) a position with:
 - (i) decision-making responsibility for:
 - (A) a women's refuge; or
 - (B) a crisis and counselling service that specialises in domestic violence;
- that has a collective decision-making structure; and

- (ii) responsibility for matters concerning domestic violence within the operations of that refuge or crisis and counselling service.

1.22 References to person having suffered or committed domestic violence

- (1) A reference in these Regulations to a person having suffered domestic violence is a reference to a person being taken, under regulation 1.23, to have suffered domestic violence.
- (2) A reference in these Regulations to a person having committed domestic violence in relation to a person is a reference to a person being taken, under regulation 1.23, to have committed domestic violence in relation to that person.

1.23 When is a person taken to have suffered or committed domestic violence?

- (1) For the purposes of these Regulations:
 - (a) a person (*the alleged victim*) is taken to have suffered domestic violence; and
 - (b) another person (*the alleged perpetrator*) is taken to have committed domestic violence in relation to the alleged victim;if:
 - (c) on the application of the alleged victim, a court has granted an injunction under paragraph 114 (1) (a), (b) or (c) of the *Family Law Act 1975* against the alleged perpetrator; or
 - (d) a court has made an order under a law of a State or Territory against the alleged perpetrator for the protection of the alleged victim from violence; or
 - (e) a court has convicted the alleged perpetrator of, or has recorded a finding of guilt against the alleged perpetrator in respect of, an offence of violence against the alleged victim; or
 - (f) the alleged victim and the alleged perpetrator have made a joint undertaking to a court in relation to proceedings in which an allegation is before the court that the alleged perpetrator has committed an act of violence against the alleged victim; or
 - (g) if the alleged victim is a person referred to in subregulation (2)—the alleged victim or another person on the alleged victim's behalf presents evidence in accordance with regulation 1.24 that:
 - (i) the alleged victim has suffered relevant domestic violence; and
 - (ii) the alleged perpetrator has committed that relevant domestic violence.
- (2) In paragraph (1) (g):
 - (a) the persons referred to are the following:
 - (i) a spouse of the alleged perpetrator;
 - (ii) a dependent child of:
 - (A) the alleged perpetrator; or
 - (B) the spouse of the alleged perpetrator; or
 - (C) both the alleged perpetrator and his or her spouse; or

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- (D) a person in an interdependent relationship with the alleged perpetrator;
- (iii) a member of the family unit of a spouse of the alleged perpetrator (being a member of the family unit who has made a combined application for a visa with the spouse);
- (iv) a person who is in an interdependent relationship with the alleged perpetrator; and
- (b) a reference to relevant domestic violence is a reference to violence against the alleged victim or his or her property that causes the alleged victim, or a member of the alleged victim's family, to fear for, or to be apprehensive about, the alleged victim's personal well-being or safety.

1.24 Evidence

- (1) The evidence referred to in paragraph 1.23 (1) (g) is:
 - (a) a statutory declaration under regulation 1.25 (which deals with statutory declarations by or on behalf of alleged victims) together with:
 - (i) a statutory declaration under regulation 1.26 (which deals with statutory declarations by competent persons); and
 - (ii) a copy of a record of an assault on the alleged victim allegedly committed by the alleged perpetrator, being a record kept by a police service of a State or Territory; or
 - (b) a statutory declaration under regulation 1.25, together with 2 statutory declarations under regulation 1.26.
- (2) A person must not submit, for the purposes of an application that relies on this Division, 2 statutory declarations by competent persons who both have a qualification specified in:
 - (a) the same subparagraph of paragraph (a) of the definition of *competent person*; or
 - (b) subparagraph (b) (ii) of that definition.

1.25 Statutory declaration by alleged victim, etc.

- (1) A statutory declaration under this regulation must be made by:
 - (a) the spouse of the alleged perpetrator; or
 - (b) if the alleged perpetrator is in an interdependent relationship with a person—that person.
- (2) A statutory declaration under this regulation that is made by a person who alleges that he or she is the victim of relevant domestic violence (within the meaning of paragraph 1.23 (2) (b)) must:
 - (a) set out the allegation; and
 - (b) name the person alleged to have committed the relevant domestic violence.
- (3) A statutory declaration under this regulation that is made by a person who alleges that another person is the victim of relevant domestic violence (within the meaning of paragraph 1.23 (2) (b)) must:

- (a) name that other person; and
- (b) set out the allegation; and
- (c) identify the relationship of the maker of the statutory declaration to that other person; and
- (d) name the person alleged to have committed the relevant domestic violence; and
- (e) set out the evidence on which the allegation is based.

1.26 Statutory declaration by competent person

A statutory declaration under this regulation:

- (a) must be made by a competent person; and
- (b) must set out the basis of the competent person's claim to be a competent person for the purposes of this Division; and
- (c) must state that, in the competent person's opinion, relevant domestic violence (within the meaning of paragraph 1.23 (2) (b)) has been suffered by a person; and
- (d) must name the person who, in the opinion of the competent person, has suffered that relevant domestic violence; and
- (e) must name the person who, in the opinion of the competent person, committed that relevant domestic violence; and
- (f) must set out the evidence on which the competent person's opinion is based.

1.27 Statutory declaration not admissible in evidence

A statutory declaration made under regulation 1.25 or 1.26 is not admissible in evidence before a court or tribunal other than in a prosecution of the maker of the statutory declaration under section 11 of the *Statutory Declarations Act 1959*.

Part 2—Visas

Division 2.1—Classes, criteria, conditions etc.

2.01 Classes of visas (Act, s. 31)

For the purposes of section 31 of the Act, the prescribed classes of visas are:

- (a) such classes (other than those created by the Act) as are set out in the respective items in Schedule 1; and
- (b) the following classes:
 - (i) transitional (permanent); and
 - (ii) transitional (temporary).

Note: For the classes created by the Act, see ss. 32 to 38.

2.02 Subclasses

- (1) Schedule 2 is divided into Parts, each identified by the word **Subclass** followed by a 3-digit number (being the number of the subclass of visa to which the Part relates) and the title of the subclass.
- (2) For the purposes of this Part and Schedules 1 and 2, a Part of Schedule 2 is relevant to a particular class of visa if the Part of Schedule 2 is listed under the subitem **Subclasses** in the item in Schedule 1 that refers to that class of visa.

2.03 Criteria applicable to classes of visas

- (1) For the purposes of subsection 31(3) of the Act (which deals with criteria for the grant of a visa), the prescribed criteria for the grant to a person of a visa of a particular class are:
 - (a) the primary criteria set out in a relevant Part of Schedule 2; or
 - (b) if a relevant Part of Schedule 2 sets out secondary criteria, those secondary criteria.
- (2) If a criterion in Schedule 2 refers to a criterion in Schedule 3, 4 or 5 by number, a criterion so referred to must be satisfied by an applicant as if it were set out at length in the first-mentioned criterion.
- (3) If a criterion in Schedule 2 specifies that a person is to be the holder of, or have held, a visa of a particular class or subclass, that criterion is taken to be satisfied:
 - (a) if:
 - (i) before 1 September 1994, the person held a visa or entry permit that was granted under the Migration (1993) Regulations, the Migration (1989) Regulations or the Act as in force before 19 December 1989; and
 - (ii) the criteria that were applicable to, or the grounds for the grant of, that visa or entry permit are the same in effect as the criteria applicable to the new visa; and

- (iii) the visa or entry permit was continued in force as a transitional visa on 1 September 1994 by the Migration Reform (Transitional Provisions) Regulations; or
- (b) if:
 - (i) before 1 September 1994, the person applied for a visa or entry permit under the Migration (1993) Regulations, the Migration (1989) Regulations or the Act as in force before 19 December 1989; and
 - (ii) the criteria that were applicable to, or the grounds for the grant of, that visa or entry permit are the same in effect as the criteria applicable to the new visa; and
 - (iii) either:
 - (A) in the case of an application made before 19 December 1989—the Minister had not made a decision on the application; or
 - (B) in any other case—the application had not been finally determined;
- before 1 September 1994; and
- (iv) on or after 1 September 1994 the person was granted a transitional visa under the Migration Reform (Transitional Provisions) Regulations on the basis that he or she had satisfied the criteria, or the grounds, applicable to the visa or entry permit referred to in subparagraph (i).

2.04 Circumstances in which a visa may be granted (Act, s. 40)

For the purposes of section 40 of the Act, and subject to these Regulations, the only circumstances in which a visa of a particular class may be granted to a person who has satisfied the criteria in a relevant Part of Schedule 2 are the circumstances set out in that Part of Schedule 2.

2.05 Conditions applicable to visas

- (1) For the purposes of subsection 41(1) of the Act (which deals with conditions that apply to a visa), the conditions to which a visa is subject are the conditions (if any) set out in, or referred to in, the Part of Schedule 2 that relates to visas of the subclass in which the visa is included.
- (2) For the purposes of subsection 41(3) of the Act (which deals with conditions that may be imposed on a visa), the conditions that the Minister may impose on a visa are the conditions (if any) referred to as being conditions that may be imposed in the Part of Schedule 2 that relates to visas of the subclass in which the visa is included.
- (3) For the purposes of subsection 29(2) and (3) of the Act (which deal with the period during which the holder of a visa may travel to, enter and remain in Australia), the limits on the period within which a person may:
 - (a) remain in Australia; or
 - (b) travel to, enter, and remain in Australia;

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Part 2 Visas

Division 2.1 Classes, criteria, conditions etc.

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as the case requires, under the authority of a visa of a particular subclass are specified in the relevant Part of Schedule 2.

2.06 Non-citizens who do not require visas to travel to Australia

For the purposes of subsection 42(3) of the Act (which deals with the classes of person who may travel to Australia without a visa that is in effect), the following classes of non-citizens are prescribed:

- (a) New Zealand citizens who hold and produce New Zealand passports that are in force;
- (b) non-citizens who hold and produce passports that are in force and are endorsed with an authority to reside indefinitely on Norfolk Island.

2.06A Certain visas to state period that holder may stay in Australia

- (1) This regulation applies to Long Stay (Visitor) (Class TN) visas that are granted to an applicant in whose case the risk factor referred to in public interest criterion 4011 is present.
- (2) A visa to which this regulation applies must specify as the period during which the holder is authorised to stay in Australia a period not longer than:
 - (a) 6 months; or
 - (b) if the Minister determines that a shorter period would be adequate to meet the needs of the holder, having regard to the reasons for, and the circumstances of the grant, of the visa—that shorter period.
- (3) This regulation does not affect any provision imposing, or authorising the imposition of, conditions in relation to the grant of a visa.

Division 2.2—Applications

2.07 Application for visa—general

- (1) For the purposes of sections 45 and 46 of the Act (dealing with application for a visa), if an application is required for a particular class of visa, the following matters are set out in the relevant Part of Schedule 1:
 - (a) the approved form (if any) to be completed by an applicant;
 - (b) the fee (if any) payable on an application;
 - (c) other matters relating to the application.
- (2) A fee is not payable on an application for a visa if:
 - (a) the application is combined with another application in a way permitted by:
 - (i) the relevant item in Schedule 1; or
 - (ii) regulation 2.08, 2.08A or 2.08B; and
 - (b) the fee (if any) has been paid on that other application.
- (3) An applicant must complete an approved form in accordance with any directions on it.

2.07AA Application for certain visitor visas

Despite anything in regulation 2.07, an application for a Temporary Business Entry (Class UC) visa may be made on behalf of the applicant by an approved nominator (within the meaning of clause 456.111 of Schedule 2) if and only if the applicant is a person who seeks to enter Australia for business purposes.

2.07AB Applications for Electronic Travel Authority visas

For the purposes of sections 45 and 46 of the Act, an application for an Electronic Travel Authority (Class UD) visa is taken to have been validly made when the applicant, when seeking the grant of the visa, whether:

- (a) in person; or
 - (b) by telephone; or
 - (c) by written communication (including facsimile message); or
 - (d) by electronic transmission using a computer; or
 - (e) in any other manner approved in writing by the Minister;
- provides his or her passport details to:
- (f) a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia; or
 - (g) an office of an agent referred to in sub-subparagraph 2.10 (1) (a) (iii) (B) when requesting a ticket for travel to Australia.

2.07A Refund of application fee in certain circumstances

If:

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- (a) a person applies in Australia for a Long Stay (Visitor) (Class TN), Medical Treatment (Visitor) (Class UB) or Short Stay (Visitor) (Class TR) visa; and
 - (b) the Minister is satisfied that the applicant meets the requirements of subclause 675.221 (4), 676.221 (4), 685.221 (6) or 686.221 (4) of Schedule 2; and
 - (c) the further visa is granted;
- the Minister must refund the application fee (if any) paid by the person.

2.08 Application by newborn child

- (1) If:
 - (a) a non-citizen applies for a visa; and
 - (b) after the application is made but before it is decided, a child is born to the non-citizen;then:
 - (c) the child is taken to have applied for a visa of the same class at the time he or she was born; and
 - (d) the child's application is taken to be combined with the non-citizen's application.
- (2) Despite any provision in Schedule 2, a child referred to in subregulation (1):
 - (a) must satisfy the criteria to be satisfied at the time of decision; and
 - (b) at the time of decision must satisfy a criterion (if any) applicable at the time of application that an applicant must be sponsored, nominated or proposed.

2.08A Addition of spouses and dependent children to certain applications for permanent visas

- (1) If:
 - (a) a person (in this regulation called *the original applicant*) applies for a permanent visa of a class for which Schedule 1 permits combined applications; and
 - (b) after the application is made, but before it is decided, the Minister receives, in writing in accordance with Division 2.3, a request from the original applicant to have the spouse, or a dependent child, of the original applicant (in this regulation called *the additional applicant*) added to the original applicant's application; and
 - (c) the request includes a statement that the original applicant claims that the additional applicant is the spouse or dependent child, as the case requires, of the original applicant; and
 - (d) at the time when the Minister receives the request, the additional applicant satisfies the provisions of Schedule 1 that relate to the whereabouts of an applicant at the time of application and apply to a visa of the same class;then:
 - (e) the additional applicant is taken to have applied for a visa of the same class; and
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- (f) the application of the additional applicant:
 - (i) is taken to have been made at the time when the Minister receives the request; and
 - (ii) is taken to be combined with the application of the original applicant; and
 - (iii) is taken to have been made at the same place as, and on the same form as, the application of the original applicant.

- (2) Despite any provision in Schedule 2, the additional applicant:
 - (a) must be, at the time when the application is taken to be made under subparagraph (1) (f) (i), a person who satisfies the applicable secondary criteria to be satisfied at the time of application; and
 - (b) must satisfy the applicable secondary criteria to be satisfied at the time of decision.

2.08B Addition of dependent children to certain applications for temporary visas

- (1) If:
 - (a) a person (in this regulation called *the original applicant*) applies for an Extended Eligibility (Temporary) (Class TK) visa, an Interdependency (Provisional) (Class UG) visa, a Prospective Marriage (Temporary) (Class TO) visa or a Spouse (Provisional) (Class UF) visa; and
 - (b) either:
 - (i) after the application is made but before it is decided; or
 - (ii) after a decision to grant the visa is made;the Minister receives, in writing in accordance with Division 2.3, a request from the original applicant to have a dependent child of the original applicant (in this regulation called *the dependent child*) added to the original applicant's application; and
 - (c) the request includes a statement that the original applicant claims that the dependent child is the dependent child of the original applicant; and
 - (d) at the time when the Minister receives the request, the dependent child satisfies the provisions of Schedule 1 that relate to the whereabouts of an applicant at the time of application and apply to a visa of the same class;then:
 - (e) the dependent child is taken to have applied for a visa of the same class; and
 - (f) the application of the dependent child:
 - (i) is taken to have been made at the time when the Minister receives the request; and
 - (ii) is taken to be combined with the application of the original applicant; and
 - (iii) is taken to have been made at the same place as, and on the same form as, the application of the original applicant.
- (2) Despite any provision in Schedule 2, the dependent child:

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- (a) must be, at the time when the application is taken to be made under subparagraph (1)(f)(i), a person who satisfies the applicable secondary criteria to be satisfied at the time of application; and
- (b) must satisfy the applicable secondary criteria to be satisfied at the time of decision.

2.08C Certain applicants for Independent (Migrant) (Class AT) visas taken to have applied also for Employer Nomination (Migrant) (Class AN) visas

- (1) An applicant for an Independent (Migrant) (Class AT) visa who has been nominated by an employer in respect of an appointment in the business of that employer is taken also to have applied for an Employer Nomination (Migrant) (Class AN) visa on the day when Immigration receives the employer nomination, if each of the following requirements is satisfied as at that date:
 - (a) the applicant was less than 45 years of age at the time of that application for an Independent (Migrant) (Class AT) visa;
 - (b) a decision to grant, or refuse to grant, to the applicant a Subclass 126 (Independent) visa has not been made;
 - (c) the applicant:
 - (i) has been assessed in relation to a Subclass 126 (Independent) visa under Subdivision B of Division 3 of Part 2 of the Act; and
 - (ii) was given an assessed score that is more than or equal to the applicable pool mark at the time when the score was assessed;
 - (d) the appointment for which the applicant has been nominated is an approved appointment in accordance with subregulation 5.19(4);
 - (e) the applicant has functional English;
 - (f) the applicant has a diploma (within the meaning of subregulation 2.26(5)) or higher qualification.
- (2) If subregulation (1) applies to an applicant for an Independent (Migrant) (Class AT) visa:
 - (a) the applicant's application for an Employer Nomination (Migrant) (Class AN) visa is taken to have been made outside Australia, whether the employer nomination in relation to that applicant is received in or outside Australia; and
 - (b) any other person included in the applicant's application for an Independent (Migrant) (Class AT) visa is taken also to be included in the applicant's application for an Employer Nomination (Migrant) (Class AN) visa.

2.09 Oral applications for visas

- (1) Subject to subregulation (2), if an item in Schedule 1 authorises oral application for a class of visa by a person in a specified class of persons, a person in that class may apply for a visa of that class by telephone to, or attendance at, an office of Immigration in Australia specified by Gazette Notice as an office at which an oral application may be made, but only at a time, or during a period,

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specified by Gazette Notice as a time at which, or period during which, an oral application may be made at that office.

- (2) An oral application for a Return (Residence) (Class BB) visa may be made:
- (a) at an office of Immigration in Australia (whether specified by Gazette Notice for the purposes of subregulation (1) or not); and
 - (b) only by attendance at that office.

2.10 Where application must be made

- (1) An application for a visa must be made:
- (a) in the case of an application to be made outside Australia:
 - (i) at a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia; or
 - (ii) if the application is:
 - (A) an application for a Long Stay (Visitor) (Class TN), Medical Treatment (Visitor) (Class UB), Short Stay (Visitor) (Class TR) or Student (Temporary) (Class TU) visa; or
 - (B) an application for a Temporary Business Entry (Class UC) visa made by an applicant who seeks a visa to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period, or periods, of 3 months or less—
at an office of a visa application agency that is approved in writing by the Minister for the purpose of receiving applications of that kind; or
 - (iii) if the application is for an Electronic Travel Authority (Class UD) visa—either:
 - (A) at a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia; or
 - (B) at an office of an agent who is approved in writing by the Minister as an agent with whom an application for Electronic Travel Authority (Class UD) visa may be made; or
 - (b) in the case of an application to be made in Australia—subject to regulation 2.09 and subregulation (3), at any office of Immigration in Australia.
- (2) For the purposes of subparagraph (1)(a)(iii), a person is taken to have made an application for an Electronic Travel Authority (Class UD) visa at a diplomatic, consular or migration office, or at an office of an agent, if the person sends the application to the office by telephone, by written communication including facsimile message, by electronic transmission using a computer or by any other manner approved in writing by the Minister for the purposes of regulation 2.07AB.
- (3) An unlawful non-citizen who is located by an officer of Immigration may apply for a bridging visa directly to that officer.
- (4) For the purposes of subregulation (1), an office occupied by an officer of Immigration at an airport or a detention centre is an office of Immigration.
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2.11 Special provision for certain applications refused outside Australia

- (1) If:
 - (a) a non-citizen has made an application (in this regulation called *the first application*) outside Australia for a visa; and
 - (b) the visa has been refused; and
 - (c) it appears to the Minister, on the basis of the information available to the Minister, that, if the non-citizen had applied for a visa of a different class, the visa would be likely to have been granted;the Minister may invite the non-citizen to make an application (in this regulation called *the further application*) for a visa of that class.
- (2) An invitation made under subregulation (1) is to be an invitation:
 - (a) if the first application was for a permanent visa—to make an application for a permanent visa; or
 - (b) if the first application was for a temporary visa—to make an application for a temporary visa;except that:
 - (c) if the first application was for a Prospective Marriage (Temporary) (Class TO) visa, the Minister may invite the applicant to make a further application for both a Spouse (Provisional) (Class UF) visa and a Spouse (Migrant) (Class BC) visa; and
 - (d) if the first application was for both a Spouse (Provisional) (Class UF) visa and a Spouse (Migrant) (Class BC) visa, the Minister may invite the applicant to make a further application for a Prospective Marriage (Temporary) (Class TO) visa; and
 - (e) if the first application was for a Return (Residence) (Class BB) visa, the Minister may invite the applicant to make a further application for a Resident Return (Temporary) (Class TP) visa.
- (3) A review authority is not to invite a further application under subregulation (1).
- (4) The non-citizen must make the further application within 28 days (or, if the Minister in the circumstances of the case so decides, 70 days) after the day on which the non-citizen is notified of the invitation to make that application.
- (5) If the Minister invites a non-citizen to make a further application, the fee payable on that application is the amount (if any) by which the fee payable on the further application is greater than the fee paid on the first application.
- (6) If the Minister invites a non-citizen to make a further application, and the fee payable on an application for the class applied for under the further application is less than the fee paid on the first application, the non-citizen is not entitled to a refund of the difference.

2.12 Certain non-citizens whose applications refused in Australia (Act, s. 48)

- (1) For the purposes of section 48 of the Act (which limits further applications by a person whose visa has been cancelled, or whose application for a visa has been refused) the following classes of visas are prescribed:
 - (a) Change in Circumstances (Residence) (Class AG);
 - (b) Citizens of former Yugoslavia (Temporary) (Class TC);
 - (c) Protection (Class AZ);
 - (ca) subject to subregulation (3), Medical Treatment (Visitor) (Class UB);
 - (d) Sri Lankan (Temporary) (Class TT);
 - (e) Territorial Asylum (Residence) (Class BE);
 - (f) Border (Temporary) (Class TA);
 - (g) Special Category (Temporary) (Class TY);
 - (h) Bridging A (Class WA);
 - (j) Bridging B(Class WB);
 - (k) Bridging C (Class WC);
 - (l) Bridging D (Class WD);
 - (m) Bridging E (Class WE).
- (3) Paragraph (1)(ca) applies to a person if and only if he or she meets the requirements of subclause 685.212(6) or (7) of Schedule 2.

2.12A Safe third country and prescribed connection (subsection 91D (1) of the Act)

- (1) For the purposes of paragraphs 91D (1) (a) and (b) of the Act:
 - (a) PRC is a safe third country in relation to a person who is, or has been, a Vietnamese refugee settled in PRC, or a person who is a close relative of, or is dependent on, a person who is, or has been, a Vietnamese refugee settled in PRC, as covered by the Memorandum of Understanding between Australia and PRC the English text of which is set out in Schedule 11; and
 - (b) a person referred to in paragraph (a) has a prescribed connection with PRC for the purposes of paragraph 91D (1) (b) of the Act if the person, or a parent of the person, resided in PRC at any time before the person entered Australia.
- (2) The use in subregulation (1) of the word ‘Vietnamese’ is as a reference to nationality or country of origin and not as an ethnic description.

Note: 1 **PRC** is defined in regulation 1.03.

Note 2: Subsection 91D (4) of the Act provides: ‘A regulation made for the purposes of paragraph (1) (a) ceases to be in force at the end of 2 years after the regulation commences.’
- (3) This regulation does not apply to a person to whom regulation 2.12B applies.

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2.12B Safe third country, prescribed connection and cut off day (subsection 91D (1) and paragraph 91G (1) (b) of the Act)

- (1) For the purposes of paragraph 91D (1) (a) of the Act, PRC is a safe third country in relation to a person who:
 - (a) either:
 - (i) is, or has been, a Vietnamese refugee settled in PRC; or
 - (ii) is a close relative of, or is dependent on, a person who is, or has been, a Vietnamese refugee settled in PRC;as covered by the agreement between Australia and PRC; and
 - (b) entered Australia without lawful authority on or after 1 January 1996.
- (2) For the purposes of paragraph 91D (1) (b) of the Act, a person referred to in subregulation (1) has a prescribed connection with PRC if the person, or a parent of the person, resided in PRC at any time before the person entered Australia.
- (3) For the purposes of paragraph 91G (1) (b) of the Act, the cut off day in relation to this regulation is 6 February 1996.
- (4) In this regulation:
 - (a) ***agreement between Australia and PRC*** means the agreement constituted by the Memorandum of Understanding the English text of which is set out in Schedule 11, together with the exchange of letters between representatives of Australia and PRC dated 5 June 1996 and 6 June 1996 the text of which is set out in Schedule 12;
 - (b) the use of the word ***Vietnamese*** is as a reference to nationality or country of origin and not as an ethnic description.

- Notes:
1. ***PRC*** is defined in regulation 1.03.
 2. Subsection 91D (4) of the Act provides: 'A regulation made for the purposes of paragraph (1) (a) ceases to be in force at the end of 2 years after the regulation commences.'

Division 2.3—Communication between applicant and Minister

2.13 Communication with Minister

- (1) For the purposes of section 52 of the Act (which deals with the way in which an applicant or interested person must communicate with the Minister), an applicant or interested person must communicate with the Minister about a visa application in the way provided by this regulation.
- (2) Except as provided by subregulation (3), the communication must be in writing.
- (3) The communication may be oral if it is:
 - (a) a communication about an application for a bridging visa; or
 - (b) an enquiry about the stage reached in the consideration of a visa application; or
 - (c) an oral application; or
 - (d) a communication about an application for an Electronic Travel Authority (Class UD) visa.
- (4) A written communication must include:
 - (a) the applicant's full name, as set out in the application; and
 - (b) the applicant's date of birth; and
 - (c) either:
 - (i) the Immigration file number, if that number has previously been given to the applicant in writing; or
 - (ii) if subparagraph (i) does not apply—the number of the receipt issued by Immigration when the application was given to the Minister; and
 - (d) if the application was made outside Australia, the name of the office at which the application was given to the Minister.
- (5) A document accompanying a written communication must be:
 - (a) the original; or
 - (b) a copy of the original certified in writing to be a true copy by:
 - (i) a Justice of the Peace; or
 - (ii) a Commissioner for Declarations; or
 - (iii) a person before whom a statutory declaration may be made under the *Statutory Declarations Act 1959*; or
 - (iv) if the copy is to be certified in a place outside Australia—a person who is the equivalent of a Justice of the Peace or Commissioner for Declarations in that place.

Note: This regulation is subject to sections 56 and 58 of the Act, which provide that the Minister may specify the way in which additional information or comments about an application may be given by an applicant. If the Minister specifies a way in which further information or comments must be given for the purposes of either of those sections, the information or comments must be given in that way. Regulation 2.13 then does not apply.

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2.14 Where written communication must be sent

For the purposes of section 52 of the Act (which deals with the way in which an applicant or interested person must communicate with the Minister), a written communication to the Minister about an application must be sent to or left at:

- (a) the office at which the application was given to the Minister; or
- (b) if the Minister has notified the applicant in writing of another office in substitution for that office—that other office.

2.15 Response to invitation to give information or comments—prescribed periods

- (1) For the purposes of subsection 58(2) of the Act (which deals with invitations to make comments or give further information), and subject to subregulation(2), the prescribed period for giving additional information or comments in response to an invitation is:
 - (a) in the case of an application for a substantive visa that was made by an applicant who is in immigration detention—3 working days after the applicant is notified of the invitation; or
 - (b) in the case of an application made by a person who is in Australia, other than a person referred to in paragraph (a):
 - (i) if the invitation is given at an interview—7 days after the interview; or
 - (ii) if the invitation is given otherwise than at an interview:
 - (A) in the case of an application for a Long Stay (Visitor) (Class TN), Medical Treatment (Visitor) (Class UB) or Short Stay (Visitor) (Class TR) visa—7 days after the applicant is notified of the invitation; or
 - (B) in the case of an application for a Temporary Business Entry (Class UC) visa made by an applicant who seeks a visa to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period, or periods, of 3 months or less—7 days after the applicant is notified of the invitation; or
 - (C) in any other case—28 days after the applicant is notified of the invitation; or
 - (c) in the case of an application made by an applicant who is not in Australia:
 - (i) 28 days; or
 - (ii) if the Minister so decides in the circumstances of the case—70 days; after the applicant is notified of the invitation.
- (2) Subregulation (1) does not apply to a request for information or comments to be obtained from a third party regarding the following matters:
 - (a) the applicant's health;
 - (b) the satisfaction by the applicant of public interest criteria;
 - (c) the satisfaction of criteria relating to the applicant's capacity to communicate in English;
 - (d) assessment of the applicant's skills or qualifications.

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- (3) For the purposes of paragraph 58(3)(b) of the Act (which deals with the time in which an interview is to take place), the prescribed period is:
- (a) in the case of an application for a substantive visa that was made by an applicant who is in immigration detention—3 working days after the applicant is notified of the invitation; or
 - (b) in the case of an application made by an applicant who is in Australia, other than a person referred to in paragraph (a):
 - (i) in the case of an application for a Long Stay (Visitor) (Class TN), Medical Treatment (Visitor) (Class UB) or Short Stay (Visitor) (Class TR) visa—7 days after the applicant is notified of the invitation; or
 - (ii) in the case of an application for a Temporary Business Entry (Class UC) visa made by an applicant who seeks a visa to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period, or periods, of 3 months or less—7 days after the applicant is notified of the invitation; or
 - (iii) in any other case—28 days after the applicant is notified of the invitation; or
 - (c) in the case of an application made by an applicant who is not in Australia:
 - (i) 28 days; or
 - (ii) if the Minister so decides in the circumstances of the case—70 days; after the applicant is notified of the invitation.
- (4) For the purposes of subsection 58(4) or (5) of the Act (dealing with extending the period to respond to an invitation or attend for interview), the prescribed further period is:
- (a) if the applicant is in immigration detention—2 working days; or
 - (b) if the applicant is in Australia but is not in immigration detention—7 days; or
 - (c) if the applicant is not in Australia:
 - (i) 7 days; or
 - (ii) if the Minister so decides in the circumstances of the case—28 days; after the applicant is notified of the invitation.

2.16 Notification of decision on visa application

- (1) For the purposes of subsection 66(1) of the Act (dealing with giving notice of decisions), the Minister is to notify an applicant of a decision to grant or refuse a visa:
- (a) if the decision is to grant the visa:
 - (i) if under these Regulations evidence of that visa must be given to the applicant in a particular way—by giving the applicant evidence of the visa in that way; or
 - (ii) if under these Regulations no evidence of the visa need be given to the applicant—by telling the applicant orally that the visa has been granted; or

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- (b) in the case of a bridging visa granted at the same time as a substantive visa—by giving the applicant evidence of the substantive visa; or
 - (c) by sending a notice of the decision to, or leaving a notice of the decision at, the last address given to the Minister by the applicant under section 53 of the Act (which deals with what an applicant must tell the Minister); or
 - (d) by handing a notice of the decision to the applicant or a person specified by the applicant under subsection 53(4) of the Act.
- (2) If 2 or more applicants have combined their applications in a way permitted by Schedule 1, the Minister need notify only 1 of those applicants of the Minister's decisions on those applications.

Note: The matters that the notice must include are set out in s. 66 (2) of the Act.

Division 2.4—Evidence Of Visas

2.17 Ways of giving evidence of a visa

- (1) For the purposes of subsection 71(1) of the Act (which deals with giving evidence of the grant of a visa), evidence of a visa that has been granted to a non-citizen may be given:
 - (a) in the way (if any) specified in the relevant Part of Schedule 2 for a visa of that subclass; or
 - (b) if the relevant Part of Schedule 2 does not specify a way of giving evidence—by:
 - (i) a label that is affixed to the non-citizen’s passport by an officer; or
 - (ii) an imprint that is stamped in the non-citizen’s passport by an officer; or
 - (iii) a document that is given to the non-citizen by an officer.
- (2) Evidence of the grant of a substantive visa (other than a transitional visa) that is given by means of a visa label must include:
 - (a) a statement of the period for which the visa is in effect; and
 - (b) a statement of the class and the subclass to which the visa belongs; and
 - (c) if the visa allows the holder to travel to and enter Australia—a statement of that fact.
- (3) In a statement for the purposes of paragraph (2)(b):
 - (a) the class to which a visa belongs may be identified by the 2-letter code specified in the heading of the relevant Part of Schedule 1; and
 - (b) the subclass to which a visa belongs may be identified by the 3-digit code of the relevant Part of Schedule 2.
- (4) Every document of the kind referred to in subparagraph (1)(b)(iii) must be uniquely identified (for example, by a distinctive number).
- (5) If the Minister has given to a non-citizen to whom a visa has been granted a written statement of the conditions (if any) to which the grant of the visa is subject, it is not necessary for the evidence of the visa to set out those conditions.
- (6) If:
 - (a) evidence of the grant of a visa (other than a transitional visa or a visa of a class referred to in regulation 2.18) to a non-citizen has been given to the non-citizen; and
 - (b) either:
 - (i) the evidence, or the passport in which it was given, has been damaged, defaced, lost, stolen or destroyed, or otherwise cannot, for good reason, be presented for travel purposes; or
 - (ii) the passport has expired, or has been cancelled, or is no longer applicable to that person;

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replacement evidence is to be given to the non-citizen in the form of a label that is affixed to a passport of the non-citizen by an officer.

- (7) In the case of a substantive visa, the replacement evidence must include:
- (a) a statement of the period for which the visa is in effect; and
 - (b) a statement of the class and the subclass to which the visa belongs; and
 - (c) if the visa allows the holder to travel to and enter Australia, a statement of that fact.

2.18 Re-evidencing of resident return visas

- (1) If:
- (a) evidence of a resident return visa has been given in a passport; and
 - (b) either:
 - (i) the evidence, or the passport, has been damaged, defaced, lost, stolen or destroyed, or otherwise cannot, for good reason, be presented for travel purposes; or
 - (ii) the passport has expired, or has been cancelled, or is no longer applicable to that person;

the person to whom the visa was granted may apply to the Minister for evidence of the visa to be given to the person in a passport of that person.

- (2) Subject to subregulation (2A), an application must be in accordance with either of approved forms 786 or 1085.

(2A) An application made in Australia may also be made:

- (a) orally, by attending an office of Immigration in Australia and presenting a valid passport; or
- (b) in writing:
 - (i) delivered to an office of Immigration in Australia; and
 - (ii) accompanied by presentation of a valid passport.

(3) The fee payable on an application is:

- (a) if the application is made in Australia—\$55; or
- (b) if the application is made outside Australia—\$65.

(4) In this regulation, **resident return visa** means:

- (a) a Return (Residence) (Class BB) visa; or
- (b) a Resident Return (Temporary) (Class TP) visa; or
- (c) a Group 1.4 (resident return (permanent entry) or class 159 (resident return (F)) visa granted under the Migration (1993) Regulations that is continued in force under the Migration Reform (Transitional Provisions) Regulations as a transitional (temporary) or transitional (permanent) visa, as the case requires; or
- (d) a visa of one of the following classes granted under the Migration (1989) Regulations:
 - (i) return visa, class A (code number 154);

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- (ii) return visa, class B (code number 155);
- (iii) return visa, class C (code number 156);
- (iv) return visa, class D (code number 157);
- (v) return visa, class E (code number 158);
- (vi) return visa, class F (code number 159);

that is continued in force under the Migration Reform (Transitional Provisions) Regulations as a transitional (temporary) or transitional (permanent) visa, as the case requires; or

- (e) a transitional (permanent) visa that is taken to have been granted under regulation 9 of the Migration Reform (Transitional Provisions) Regulations; or
- (f) a Subclass 156 (One Year Return) visa.

2.19 Evidence of visa need not be given in certain cases

No evidence of the grant of a visa need be given:

- (a) if the relevant Part of Schedule 2 so provides; or
- (b) if the relevant Part of Schedule 2 requires the evidence to be placed in a passport, and the holder of the visa:
 - (i) does not produce a passport to an officer; or
 - (ii) produces to an officer a document that the Minister has directed, under subsection 71(3) of the Act, is not to be taken to be a passport for the purposes of the clause of Schedule 2 under which evidence is to be given of the visa;

until the holder produces a passport to an officer; or

- (c) if the visa:
 - (i) is not a Return (Residence) (Class BB) visa; and
 - (ii) is granted on the basis of an oral application.

Note: Under subsection 71(3) of the Act, the Minister may declare that a specified document is not to be taken to be a passport for the purposes of a provision of the Regulations that provides that evidence of a visa may be given by endorsing a valid passport or other valid travel document.

Division 2.5—Bridging Visas

2.20 Eligible non-citizen (Act, s. 72)

- (1) For the purposes of the definition of *eligible non-citizen* in section 72 of the Act (which deals with persons eligible to be granted a bridging visa), the classes of persons described in subregulations (2) to (11) are prescribed.
- (2) This subregulation applies to a non-citizen who, before 1 September 1994:
 - (a) was in custody under Division 4B of Part 2 of the Act as in force immediately before 1 September 1994; and
 - (b) was released from custody on expiry of a period referred to in subsection 54Q(1) or (2) of that Act (which deals with the release of designated persons from custody); and
 - (c) has not departed Australia since being released from custody; and
 - (d) has not subsequently been granted a visa or entry permit.
- (3) This subregulation applies to a non-citizen:
 - (a) who is, or has been, in immigration detention under Division 6 of Part 2 of the Act (which deals with the immigration detention of designated persons); and
 - (b) in respect of whom the period mentioned in subsection 182(1) or (2) of the Act expires on or after 1 September 1994;
from the day 2 working days before the expiry of the period mentioned in whichever of those subsections applies to the non-citizen.
- (4) This subregulation applies to a non-citizen:
 - (a) who is:
 - (i) in immigration detention under Division 6 of Part 2 of the Act; and
 - (ii) the spouse of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen and the Minister is satisfied that the relationship is genuine and continuing; and
 - (iii) nominated by the Australian citizen, Australian permanent resident or eligible New Zealand citizen referred to in subparagraph (ii); or
 - (b) who is a member of the family unit of a person referred to in paragraph (a).
- (5) This subregulation applies to a non-citizen:
 - (a) who is in immigration detention under Division 6 of Part 2 of the Act; and
 - (b) who has not turned 18; and
 - (c) in respect of whom a child welfare authority of a State or Territory has certified that release from detention is in the best interests of the non-citizen; and
 - (d) in respect of whom the Minister is satisfied that:
 - (i) arrangements have been made between the non-citizen and an Australian citizen, Australian permanent resident or eligible New Zealand citizen for the care and welfare of the non-citizen; and

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- (ii) those arrangements are in the best interests of the non-citizen; and
 - (iii) the grant of a visa to the non-citizen would not prejudice the rights and interests of any person who has, or may reasonably be expected to have, custody or guardianship of, or access to, the non-citizen.
- (6) This subregulation applies to a non-citizen who:
- (a) either:
 - (i) bypassed immigration clearance on or after 1 September 1994 and has not subsequently been granted a visa; or
 - (ii) entered Australia without authority before 1 September 1994 and has not subsequently been granted a visa or entry permit; and
 - (c) has remained in Australia since 1 September 1994; and
 - (d) has not come to the notice of Immigration as an illegal entrant or an unlawful non-citizen within 45 days of entering Australia.
- (7) This subregulation applies to a non-citizen:
- (a) who, on or after 1 September 1994:
 - (i) was refused immigration clearance; or
 - (ii) bypassed immigration clearance and came to the notice of Immigration as an unlawful non-citizen within 45 days of entering Australia; and
 - (b) who has, on or after 1 September 1994:
 - (i) made a protection (Class AZ) visa application that has not been finally determined; or
 - (ii) applied for judicial review of a decision to refuse a protection (Class AZ) visa; and
 - (c) who has not turned 18; and
 - (d) in respect of whom a child welfare authority of a State or Territory has certified that release from detention is in the best interests of the non-citizen; and
 - (e) in respect of whom the Minister is satisfied that:
 - (i) arrangements have been made between the non-citizen and an Australian citizen, Australian permanent resident or eligible New Zealand citizen for the care and welfare of the non-citizen; and
 - (ii) those arrangements are in the best interests of the non-citizen; and
 - (iii) the grant of a visa to the non-citizen would not prejudice the rights and interests of any person who has, or may reasonably be expected to have, custody or guardianship of, or access to, the non-citizen.
- (8) This subregulation applies to a non-citizen:
- (a) who, on or after 1 September 1994:
 - (i) was refused immigration clearance; or
 - (ii) bypassed immigration clearance and came to the notice of Immigration as an unlawful non-citizen within 45 days of entering Australia; and
 - (b) who has, on or after 1 September 1994:
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- (i) made a protection (Class AZ) visa application that has not been finally determined; or
 - (ii) applied for judicial review of a decision to refuse a protection (Class AZ) visa; and
 - (c) who has turned 75; and
 - (d) in respect of whom the Minister is satisfied that adequate arrangements have been made for his or her support in the community.
- (9) This subregulation applies to a non-citizen:
- (a) who, on or after 1 September 1994:
 - (i) was refused immigration clearance; or
 - (ii) bypassed immigration clearance and came to the notice of Immigration as an unlawful non-citizen within 45 days of entering Australia; and
 - (b) who has, on or after 1 September 1994:
 - (i) made a protection (Class AZ) visa application that has not been finally determined; or
 - (ii) applied for judicial review of a decision to refuse a protection (Class AZ) visa; and
 - (c) who has a special need (based on health or previous experience of torture or trauma) in respect of which a medical specialist appointed by Immigration has certified that the non-citizen cannot properly be cared for in a detention environment; and
 - (d) in respect of whom the Minister is satisfied that adequate arrangements have been made for his or her support in the community.
- (10) This subregulation applies to a non-citizen:
- (a) who, on or after 1 September 1994:
 - (i) was refused immigration clearance; or
 - (ii) bypassed immigration clearance and came to the notice of Immigration as an unlawful non-citizen within 45 days of entering Australia; and
 - (b) who has, on or after 1 September 1994:
 - (i) made a protection (Class AZ) visa application that has not been finally determined; or
 - (ii) applied for judicial review of a decision to refuse a protection (Class AZ) visa; and
 - (c) who is the spouse of an Australian citizen, Australian permanent resident or eligible New Zealand citizen; and
 - (d) in relation to whom the Minister is satisfied that the non-citizen's relationship with that Australian citizen, Australian permanent resident or eligible New Zealand citizen is genuine and continuing; and
 - (e) who is nominated by that Australian citizen, Australian permanent resident or eligible New Zealand citizen.
- (11) This subregulation applies to a non-citizen who is a member of the family unit of a non-citizen to whom subregulation (10) applies.
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2.21 Most beneficial bridging visas (Act, s. 68(4)(b)(ii))

- (1) For the purposes of subparagraph 68(4)(b)(ii) of the Act (which deals with the order in which bridging visas are reactivated), if a non-citizen holds more than 1 bridging visa, the bridging visa that is the most beneficial is to be determined as set out in this regulation.
- (2) The order of classes from most beneficial to least beneficial is:
 - (a) Bridging B visa (Class WB);
 - (b) Bridging A visa (Class WA);
 - (c) Bridging C visa (Class WC);
 - (d) Bridging D visa (Class WD);
 - (e) Bridging E visa (Class WE).
- (3) A bridging visa of Class WA, WB or WC that confers an unlimited right to work is taken to be more beneficial than another bridging visa of the same class that confers a limited right to work, and a bridging visa of one of those classes that confers a limited right to work is taken to be more beneficial than one of the same class that confers no right to work.
- (4) A bridging visa of Class WA, WB or WC is taken to be more beneficial than another bridging visa of the same class that is subject to the same work conditions if the first-mentioned visa was granted before the second-mentioned visa.
- (5) If a non-citizen holds 2 or more Bridging E visas, the one that is granted later or latest is taken to be the more or most beneficial.

2.22 Invalid application for substantive visa

- (1) Subject to subregulation (2), a non-citizen is taken to have applied for a Bridging D (Class WD) visa if:
 - (a) the non-citizen is in Australia but is not in immigration detention; and
 - (b) he or she applies for a substantive visa of a class that may be granted in Australia; and
 - (c) the application:
 - (i) is given to the Minister in a way other than by personal attendance at an office of Immigration; and
 - (ii) is invalid as an application for a substantive visa of that class; and
 - (d) the invalidity of the application is not by reason of its purporting to have been made contrary to section 48A of the Act (whether or not the Minister has made a determination under subsection 48B (1) of the Act in relation to the application or action has been taken by any person to seek the making of such a determination).
- (2) References in subregulation (1) to an application do not include an oral application or an oral communication that purports to be an oral application.

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2.23 Further application for bridging visa (Act, s. 74)

For the purposes of subsection 74(2) of the Act (which deals with a further application for a bridging visa), the prescribed circumstances are that the Minister is satisfied that, although the non-citizen has not made a further application for a Bridging E visa (Class WE) after being refused a visa of that class, the non-citizen now satisfies the criteria for the grant of a visa of that class.

2.24 Eligible non-citizen in immigration detention (Act, s. 75)

- (1) For the purposes of paragraph 75(1)(a) (which deals with the class of bridging visa that may be granted to a non-citizen in immigration detention), the prescribed class of bridging visa is bridging E (Class WE).
- (2) For the purposes of paragraph 75 (1)(b) of the Act (which deals with the time in which the Minister must make a decision on a bridging visa application), the prescribed period is:
 - (a) in the case of an application by:
 - (i) a non-citizen who has been immigration cleared; or
 - (ii) a non-citizen who is an eligible non-citizen referred to in subregulation 2.20(6);2 working days; or
 - (b) in any other case—28 days.

2.25 Grant of bridging visa E without application

If:

- (a) a non-citizen is:
 - (i) in criminal detention; or
 - (ii) unwilling or unable to make a valid application; and
- (b) the Minister is satisfied that the non-citizen meets the criteria for a Class WE visa;

then, despite anything in Schedule 2, the Minister may grant the non-citizen a Bridging visa Class WE.

Division 2.5A—Special provisions relating to certain health criteria

2.25A Referral to Medical Officers of the Commonwealth

- (1) In determining whether an applicant satisfies the criteria for the grant of a visa, the Minister must seek the opinion of a Medical Officer of the Commonwealth on whether a person (whether the applicant or another person) meets the requirements of paragraph 4005 (a), 4005 (b), 4005 (c), 4006A (1) (a), 4006A (1) (b), 4006A (1) (c), 4007 (1) (a), 4007 (1) (b) or 4007 (1) (c) of Schedule 4 unless:
 - (a) the application is for a temporary visa and there is no information known to Immigration (either through the application or otherwise) to the effect that the person may not meet any of those requirements; or
 - (b) the application is for a permanent visa that is made from a country that is a country specified by Gazette Notice for the purposes of this paragraph and there is no information known to Immigration (either through the application or otherwise) to the effect that the person may not meet any of those requirements.
- (2) In determining whether an applicant satisfies the criteria for the grant of a Medical Treatment (Visitor) (Class UB) visa, the Minister must seek the opinion of a Medical Officer of the Commonwealth on whether the applicant meets the requirements of:
 - (a) subparagraphs 675.221 (2) (f) (i) and 675.221 (2) (g) (i), (ii) and (iii) of Schedule 2; or
 - (b) subparagraphs 685.221 (2) (f) (i) and 685.221 (2) (g) (i), (ii) and (iii) of Schedule 2;if there is information known to Immigration (either through the application or otherwise) to the effect that the applicant may not meet any of those requirements or be able to satisfy the Minister as to those matters.
- (3) The Minister is to take the opinion of the Medical Officer of the Commonwealth on a matter referred to in subregulation (1) or (2) to be correct for the purposes of deciding whether a person meets a requirement or satisfies a criterion.

2.25B Test to be applied

In determining whether or not, during an applicant's proposed period of stay in Australia, a person's disease or condition would be likely to:

- (a) result in a significant cost to the Australian community in the areas of health care or community services; or
- (b) prejudice the access of an Australian citizen or permanent resident to health care or community services;

the Medical Officer of the Commonwealth must consider the person's need and eligibility for health care or community services, without regard to whether that person will use the services.

Division 2.6—Prescribed qualifications—application of points system

2.26 Prescribed qualifications and prescribed number of points

- (1) For the purposes of subsection 93(1) of the Act (which deals with determination of an applicant's points score):
 - (a) each qualification specified in column 2 of an item in Part 1, 2, 4, 5, 6, or 7 of Schedule 6 is prescribed as a qualification in relation to an applicant for a Subclass 105 (Concessional Family) visa; and
 - (b) each qualification specified in column 2 of an item in Part 1, 2, or 3 of Schedule 6 is prescribed as a qualification in relation an applicant for for a Subclass 126 (Independent) visa.
- (2) In relation to a prescribed qualification specified in Column 2 of an item in Schedule 6, the number of points specified in Column 3 of that item is prescribed.
- (3) For the purposes of subsection 93(1) of the Act (which deals with determination of an applicant's points score), the Minister:
 - (a) is not to give an applicant a prescribed number of points for more than one prescribed qualification in each Part of Schedule 6; and
 - (b) is to give the applicant only the number of points applicable to the prescribed qualification that meets the applicant's circumstances and for which the prescribed number of points is the highest for any such prescribed qualification; and
 - (c) is to deduct 25 points from the total number of points otherwise obtained by an applicant if the usual occupation of the applicant is that of medical practitioner (including specialist medical practitioner).
- (4) If:
 - (a) an applicant cannot provide the evidence that is required by an item in Part 3 of Schedule 6; and
 - (b) the Minister determines that it is not reasonably practicable for the applicant to sit for an ACCESS test or an IELTS test;the Minister may determine that the applicant has a level of English proficiency equivalent to that mentioned in an item in that Part.
- (5) In Part 1 of Schedule 6:

associate diploma means:

- (a) a formal educational qualification awarded by an Australian educational institution as an associate diploma for which:
 - (i) the entry level to the course leading to the qualification is satisfactory completion of year 12 in the Australian school system or of equivalent schooling; and
 - (ii) 2 years of full-time study, or the equivalent period of part-time study, is required; or

- (b) a formal educational qualification that is of an equivalent standard awarded by an educational institution outside Australia;

certificate or advanced certificate means:

- (a) a formal educational qualification awarded by an Australian educational institution as a certificate or advanced certificate for which:
- (i) in the case of a qualification that is an advanced certificate—the entry level to the course leading to the qualification is completion of year 10 in the Australian school system or of equivalent schooling; and
 - (ii) in any case—for which 1 year of full-time study, or the equivalent period of part-time study, is required; or
- (b) a formal educational qualification that is of an equivalent standard awarded by an educational institution outside Australia;

degree means:

- (a) a formal educational qualification awarded by an Australian educational institution as a degree or a postgraduate diploma for which:
- (i) the entry level to the course leading to the qualification is:
 - (A) in the case of a bachelor's degree—satisfactory completion of year 12 in the Australian school system or of equivalent schooling; and
 - (B) in the case of a master's degree—satisfactory completion of a bachelor's degree awarded at an Australian tertiary educational institution or of an equivalent award; and
 - (C) in the case of a doctoral degree—satisfactory completion of a bachelor's degree awarded with honours, or a master's degree, at an Australian tertiary educational institution or of an equivalent award; and
 - (D) in the case of a postgraduate diploma—satisfactory completion of a bachelor's degree or diploma awarded at an Australian tertiary educational institution or of an equivalent award; and
 - (ii) in the case of a bachelor's degree, not less than 3 years of full-time study, or the equivalent period of part-time study, is required; or
- (b) a formal educational qualification that is of an equivalent standard awarded by an educational institution outside Australia;

diploma means:

- (a) a formal educational qualification awarded by an Australian educational institution as a diploma for which:
- (i) the entry level to the course leading to the qualification is satisfactory completion of year 12 in the Australian school system or of equivalent schooling; and
 - (ii) 3 years of full-time study, or the equivalent period of part-time study, is required; or
- (b) a formal educational qualification that is of an equivalent standard awarded by an educational institution outside Australia;
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professional-equivalent occupation means an occupation specified by Gazette Notice as a professional-equivalent occupation;

priority occupation means an occupation specified by Gazette Notice as a priority occupation;

relevant Australian authority means:

- (a) NOOSR, or any body authorised in writing by NOOSR to assess educational qualifications or work experience on behalf of NOOSR; or
- (b) the Department of Industrial Relations; or
- (c) if the circumstances of a case preclude an authority referred to in paragraph (a) or (b) from making an assessment, the Minister;

technical-equivalent occupation means an occupation specified by Gazette Notice as a technical-equivalent occupation;

trade certificate means:

- (a) an Australian trade qualification obtained as a result of the completion of:
 - (i) an indentured apprenticeship; or
 - (ii) a training contract;that is required by State or Territory industrial training legislation or a relevant Federal, State or Territory industrial award and involves:
 - (iii) part-time formal training at a technical college or a college of technical and further education; and
 - (iv) employment within the meaning of:
 - (A) an industrial award under a law of the Commonwealth or of a State or Territory; or
 - (B) a law of a State or Territory dealing with commercial or industrial training; or
- (b) a qualification obtained outside Australia that is of an equivalent standard;

usual occupation means an occupation that the applicant has engaged in for gain or reward for a continuous period of at least 6 months during the period of 2 years immediately preceding the relevant application for a visa.

(6) In Part 4 of Schedule 6:

- (a) a reference to adoption is a reference to an adoption occurring before the person adopted turned 18; and
- (b) a reference to a step-relationship is a reference to a step-relationship where the applicant and the relevant step-relative of the applicant:
 - (i) have been members of the same family unit for a reasonable period; and
 - (ii) are members of the same family unit at the time of the relevant application.

2.27 Combination of scores—“points system”

If:

- (a) an applicant to whom regulation 2.26 applies (in this regulation called ‘the applicant’) does not receive the pass mark or pool mark (as the case requires) under that regulation; and
- (b) the spouse of the applicant is an applicant for a visa of the same class; the applicant is taken to have received the pass mark or pool mark (as the case requires) if the sum of:
 - (c) the points which the spouse could receive under Parts 1, 2 and 3 of Schedule 6; and
 - (d) the points which the applicant receives under Parts 4, 5, 6 and 7 of Schedule 6;is equal to, or exceeds the pass mark or pool mark (as the case requires).

2.28 Notice of putting application aside

- (1) If the Minister puts an application aside under paragraph 94(3)(a) of the Act, he or she must notify the applicant in writing that he or she has done so.
- (2) A notification under subregulation (1) must set out:
 - (a) the decision of the Minister; and
 - (b) the reason for the decision; and
 - (c) that the decision can be reviewed; and
 - (d) the time in which an application for review may be made; and
 - (e) who can apply for the review; and
 - (f) where the application for review can be made.

2.29 Interpretation-Schedule 7

In Schedule 7:

- (a) a reference to an applicant for a Subclass 127 visa is a reference to an applicant for a Business Skills (Migrant) (Class AD) visa who:
 - (i) is a person of the kind referred to in clause 127.211 of Schedule 2; and
 - (ii) has not submitted a notification of the kind referred to in subclause 129.215(2) of Schedule 2 from the appropriate regional authority;
- (b) a reference to an applicant for a Subclass 128 visa is a reference to an applicant for a visa of that class who:
 - (i) is a person of the kind referred to in clause 128.212 of Schedule 2; and
 - (ii) has not submitted a notification of the kind referred to in subclause 130.213(2) of Schedule 2 from the appropriate regional authority;
- (c) a reference to an applicant for a Subclass 129 visa is a reference to an applicant for a Business Skills (Migrant) (Class AD) visa who:
 - (i) is a person of the kind referred to in clause 129.211 of Schedule 2; and

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- (ii) has submitted a notification of the kind referred to in subclause 129.215(2) of Schedule 2 from the appropriate regional authority;
- (d) a reference to an applicant for a Subclass 130 visa is a reference to an applicant for a visa of that class who:
 - (i) is a person of the kind referred to in clause 130.212 of Schedule 2; and
 - (ii) has submitted a notification of the kind referred to in subclause 130.213 (2) of Schedule 2 from the appropriate regional authority.

Division 2.7—Assurances of support

Subdivision 2.7.1—Assurances of support given in relation to applications lodged before 20 December 1991

2.30 Interpretation

In this Subdivision:

assurance of support means:

- (a) an assurance of support given under the Migration (1989) Regulations, the Migration (1993) Regulations or these Regulations in relation to an application lodged before 20 December 1991; or
- (b) a maintenance guarantee that:
 - (i) was given on or before 18 December 1989 under regulations that were in force under the Act or under any of the Acts repealed by the Act; and
 - (ii) is expressed, or otherwise purports, to have effect after 19 December 1991.

2.31 Form of certain assurances of support

An assurance of support given under this Subdivision must be in the form approved by the Minister.

2.32 Duration of assurances of support

An assurance of support that:

- (a) was given under the Migration (1989) Regulations before 20 December 1991 and, at the end of 19 December 1991, had been in force for less than 2 years; or
 - (b) was given under Division 1 of Part 6 of the Migration (1989) Regulations on or after 20 December 1991; or
 - (c) was given under Division 1 of Part 5 of the Migration (1993) Regulations; or
 - (d) is given under this Subdivision;
- ceases to have effect at the end of 2 years after:
- (e) the day when the applicant enters Australia; or
 - (f) the grant of the relevant visa; or
 - (g) if he or she is granted an entry permit before 1 September 1994, the grant of that entry permit;
- whichever happens latest.

Regulation 2.33

2.33 Effect of assurance of support

If, while an assurance of support has effect after 19 December 1991 in respect of a person, that person has received support in the form of:

- (a) a job search allowance payable under Part 2.11 of the *Social Security Act 1991*; or
- (b) a newstart allowance payable under Part 2.12 of that Act; or
- (c) a special benefit payable under Part 2.15 of that Act;

an amount equal to the value of the support provided (less any amount paid in respect of the support by or on behalf of that person to the Commonwealth) is a debt due and payable to the Commonwealth by the person who gave the assurance, and may be recovered by action in a Court of competent jurisdiction.

2.34 Earlier liabilities not affected

Nothing in this Subdivision affects any liability incurred under, or in respect of, an assurance of support before 20 December 1991.

Subdivision 2.7.2—Assurances of support given in relation to applications lodged after 19 December 1991

2.35 Interpretation

In this Subdivision:

assurance of support means an assurance of support that is given in relation to an application lodged after 19 December 1991;

required assurance means an assurance of support that is an unconditional requirement prescribed in Schedule 2 for the grant of a visa;

relevant visa, in relation to an assurance of support, means:

- (a) the visa for the grant of which the giving of the assurance of support was required; or
- (b) the entry permit or entry visa for the grant of which under the Migration (1989) Regulations or the Migration (1993) Regulations the giving of the assurance of support was required; or
- (c) the entry permit the grant of which on entry under the Migration (1989) Regulations or the Migration (1993) Regulations was a consequence of the grant of a travel-only visa for the grant of which the giving of the assurance of support was required.

2.36 Form and duration of assurance of support

- (1) An assurance of support:
 - (a) must be on the approved form; and
 - (b) has effect in respect of a person for the period of 2 years beginning on the day when that person enters Australia or is granted the relevant visa, whichever happens later.
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- (2) A required assurance is taken not to have been given unless the bond (if any) required by regulation 2.39 in relation to it has been lodged.

2.37 Persons in respect of whom assurance of support may be given

- (1) Subject to subregulation (2), a person must not give assurances of support having effect at the same time in respect of more than 2 persons.
- (2) A person does not count for the purposes of subregulation (1) if that person:
- (a) has not turned 18; and
 - (b) is included in an assurance of support given in respect of another person.

2.38 Liability of person giving assurance of support

- (1) If a person receives a payment in the form of:
- (a) a job search allowance payable under Part 2.11 of the *Social Security Act 1991*; or
 - (b) a newstart allowance payable under Part 2.12 of that Act; or
 - (c) a special benefit payable under Part 2.15 of that Act; or
 - (d) a widow allowance under Part 2.8A of that Act; or
 - (e) a partner allowance under Part 2.15A of that Act; or
 - (f) a parenting allowance under Part 2.18 of that Act; or
 - (g) a youth training allowance under Part 8 of the *Student and Youth Assistance Act 1973*;
- and an assurance of support has effect in respect of the person when he or she receives the payment, the person who gave the assurance is liable, subject to this regulation, to pay to the Commonwealth the amount of the payment.
- (2) A person is not liable to pay an amount that would otherwise be payable under subregulation (1) in respect of a required assurance until the Commonwealth has taken all reasonable steps to enforce the bond lodged in respect of the assurance.
- (3) An amount payable under subregulation (1) is reduced by:
- (a) any amount obtained by the Commonwealth under the bond that has not been applied to reduce a person's liability to the Commonwealth; and
 - (b) any amount paid to the Commonwealth in respect of the payment.

2.39 Bond (required assurances)

- (1) A person who gives a required assurance in respect of an applicant for a visa who has turned 18 must lodge with the Minister a bond in accordance with this regulation.
- (2) The bond must be lodged before a decision is made on the application to which the required assurance relates.
- (3) The bond must be in a form approved by the Minister that secures the payment to the Commonwealth, on demand, of any amount (up to the amount of the bond) due to the Commonwealth under regulation 2.38 in respect of:
-

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- (a) the applicant; and
 - (b) if the assurance has effect also in relation to a person who has not turned 18, that person.
- (4) The amount of a bond is:
- (a) unless paragraph (b) applies—\$3,500; or
 - (b) if the application to which the assurance relates is dependent on the holding by, or grant to, another person of a visa of the same class as that sought in the application—\$1,500.

Division 2.8—Special purpose visas

2.40 Persons having a prescribed status—special purpose visas (Act, s. 33(2)(a))

Persons who hold prescribed status

- (1) For the purposes of paragraph 33(2)(a) of the Act (which deals with persons who are taken to have been granted special purpose visas), and subject to this regulation, each non-citizen who is included in one of the following classes of person has a prescribed status:
- (a) members of the Royal Family;
 - (b) members of the Royal party;
 - (c) guests of Government;
 - (d) SOFA forces members;
 - (e) SOFA forces civilian component members;
 - (f) Asia-Pacific forces members;
 - (g) Commonwealth forces members;
 - (h) foreign armed forces dependants;
 - (j) foreign naval forces members;
 - (k) members of the crew of non-military ships (other than ships being imported into Australia);
 - (kaa) spouses and dependent children of members of the crew of non-military ships (other than ships being imported into Australia);
 - (ka) members of the crew of ships being imported into Australia:
 - (l) airline positioning crew members;
 - (m) airline crew members;
 - (n) transit passengers who are citizens of a country listed in Part 3 of Schedule 9;
 - (na) transit passengers who hold passports (other than passports that purport to be official passports or diplomatic passports) issued by the authorities of Taiwan;
 - (p) persons visiting Macquarie Island;
 - (q) children born in Australia:
 - (i) of a mother who at the time of the birth holds a special purpose visa, if only the mother is in Australia at that time; or
 - (ii) to parents both of whom, at the time of the birth, hold special purpose visas, if at that time both parents are in Australia;
 - (r) Indonesian citizens, or persons having a right to return to Indonesia, visiting the casino on Christmas Island;
 - (s) Singaporean citizens visiting the casino on Christmas Island.

Note: the terms used in paragraphs (1)(a) to (n) are defined in regulation 1.03.

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Armed forces members

- (2) A person included in a class of persons specified in paragraph (1)(d), (e), (f), (g) or (j) has a prescribed status only while he or she is not absent without leave.

Armed forces dependants

- (3) A person included in a class of persons specified in paragraph (1)(h) has a prescribed status only while the person of whom he or she is a spouse, or on whom he or she is dependent, is not absent without leave.

Persons must not work in Australia

- (4) A person included in a class of persons specified in paragraph (1)(d), (e), (f), (g), (j), (k), (kaa), (ka), (l) or (m) has a prescribed status only while he or she does not perform work in Australia (other than work of a kind that he or she normally performs during the course of his or her duties as a person of a kind referred to in the relevant paragraph).

Foreign naval forces members

- (5) A person included in a class of persons specified in paragraph (1)(j) has a prescribed status if and only if the vessel on which he or she enters the migration zone has the prior approval of the Australian government to do so.

Crew on visiting non-military ships

- (6) A person included in a class of persons specified in paragraph (1)(k) has a prescribed status if and only if the ship of whose crew he or she is a member:
- (a) enters Australia at:
 - (i) a proclaimed port; or
 - (ii) a port other than a proclaimed port, if permission for it to do so has been given in advance by the Australian Customs Service under section 58 of the *Customs Act 1901*;
 - (b) will depart Australia to a place outside Australia during the course of the voyage.

Crew members who sign off ships

- (7) A person included in a class of persons specified in paragraph (1)(k) or (ka) who has signed off the ship of whose crew he or she is a member has a prescribed status:
- (a) if and only if the master, owner, agent or charterer of the ship provides a letter of guarantee that the person will leave Australia within 30 days after signing off; and
 - (b) only for the shorter of the following periods:
 - (i) the period specified in the letter of guarantee as the period within which he or she will leave Australia;
 - (ii) 30 days after he or she signs off the ship..

Crew members of imported ships

- (8) A person included in a class of persons specified in paragraph (1)(ka) has a prescribed status:
- (a) if and only if the ship of whose crew he or she is a member enters Australia at:
 - (i) a proclaimed port; or
 - (ii) a port other than a proclaimed port, if permission for it to do so has been given in advance by the Australian Customs Service under section 58 of the *Customs Act 1901*; and
 - (b) for 5 working days after an agreement is made between the person and the ship's master under section 46 of the *Navigation Act 1912*.
- (8A) A person included in a class of persons specified in paragraph (1) (kaa) has a prescribed status:
- (a) if and only if:
 - (i) the person enters Australia on the ship of whose crew the relevant primary person is a member; and
 - (ii) the ship enters Australia at:
 - (A) a proclaimed port; or
 - (B) a port other than a proclaimed port, if permission for it to do so has been given in advance by the Australian Customs Service under section 58 of the *Customs Act 1901*; and
 - (iii) the master of the ship:
 - (A) identifies the person as being the spouse or a dependent child of a member of the crew of the ship; and
 - (B) undertakes in writing to ensure that the person leaves Australia; and
 - (b) only until the earlier of the following events:
 - (i) the person leaves Australia; or
 - (ii) the relevant primary person ceases to have a prescribed status.
- (8B) In subregulation (8A):

relevant primary person, in relation to a person included in the class of persons specified in paragraph (1) (kaa), means the person on whom that person is dependent, or of whom that person is the spouse.

Positioning aircrew members

- (9) A person included in a class of persons specified in paragraph (1)(l) has a prescribed status for the period of 5 working days beginning when he or she disembarks from the aircraft on which he or she travelled to Australia if and only if he or she:
- (a) holds a passport that is in force; and
 - (b) carries a letter from his or her employer certifying aircrew status and setting out the purpose of the person's travel to Australia and the arrangements for the person to leave Australia.
-

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Division 2.8 Special purpose visas

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Operational aircrew members

- (10) A person included in a class of persons specified in paragraph (1)(m) has a prescribed status for the period of 30 days beginning when he or she disembarks from the aircraft on which he or she travelled to Australia if and only if he or she:
- (a) holds a current identity document as an air crew member issued by the air carrier by which he or she is employed; and
 - (b) is included in a list of the crew (being a list that gives the name, date of birth and sex of each crew member) that is signed on behalf of the air carrier and given to an officer.

Transit passengers

- (11) A person included in a class of persons specified in paragraph (1)(n) or (na) has a prescribed status only while he or she remains in the airport transit lounge.

Macquarie Island visitors

- (12) A person included in a class of persons specified in paragraph (1)(p) has a prescribed status:
- (a) only while he or she remains on Macquarie Island; and
 - (b) only if the Secretary of the Department of the Environment and Land Management of the State of Tasmania has granted written permission in advance for the person to visit that Island.

Children born in Australia

- (13) A person included in a class of persons specified in paragraph (1)(q) has a prescribed status:
- (a) in the case of a child referred to in subparagraph (1)(q)(i)—until the child's mother ceases to have a prescribed status; or
 - (b) in the case of a child referred to in subparagraph (1)(q)(ii)—until whichever of the child's parents last ceases to have a prescribed status ceases to have that status.

Christmas Island casino visitors

- (14) A person included in a class of persons specified in paragraph (1) (r) has a prescribed status only:
- (a) while he or she is travelling directly from Indonesia to Christmas Island; and
 - (b) either:
 - (i) until the end of 5 days after his or her arrival on Christmas Island; or
 - (ii) until he or she leaves the island;whichever is the sooner; and
- if and only if he or she:
- (c) either:
 - (i) holds and produces an Indonesian passport that is in force; or

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- (ii) holds and produces a passport that is in force and contains a visa that gives the person the right (exercisable for at least 10 days after arrival on Christmas Island) to return to Indonesia; and
 - (d) carries a valid invitation acceptable to the Minister to visit the casino.
- (15) A person included in a class of persons specified in paragraph (1) (s) has a prescribed status only:
 - (a) while he or she is travelling directly from Singapore or Indonesia to Christmas Island; and
 - (b) either:
 - (i) until the end of 5 days after his or her arrival on Christmas Island; or
 - (ii) until he or she leaves the island;whichever is the sooner; andif and only if he or she:
 - (c) holds and produces a Singaporean passport that is in force; and
 - (d) carries a valid invitation acceptable to the Minister to visit the casino.

Division 2.9—Visa cancellation

Subdivision 2.9.1—Cancellation under Subdivision C of Division 3 of Part 2 of the Act

Note: The obligations of a visa holder under Subdivision C of Division 3 of Part 2 of the Act are: to supply correct information on his or her application form (s. 101), including answers on passenger cards (s. 102); not to give bogus documents (s. 103); to notify changes in circumstances (s. 104); and, if incorrect information is given, to correct it (s. 105). The obligation is not affected by other sources of information being available (s. 106). If the Minister gives a visa holder a notice under s. 107(1) stating that there may have been non-compliance and asking the visa holder for a response, the answers must be correct (s. 107(2)).

2.41 Whether to cancel visa—incorrect information or bogus document (Act, s. 109(1)(c))

For the purposes of paragraph 109(1)(c) of the Act, the following circumstances are prescribed.

- (a) the correct information;
- (b) the content of the genuine document (if any);
- (c) the likely effect on a decision to grant a visa or immigration clear the visa holder of the correct information or the genuine document;
- (d) the circumstances in which the non-compliance occurred;
- (e) the present circumstances of the visa holder;
- (f) the subsequent behaviour of the visa holder concerning his or her obligations under Subdivision C of Division 3 of Part 2 of the Act;
- (g) any other instances of non-compliance by the visa holder known to the Minister;
- (h) the time that has elapsed since the non-compliance;
- (j) any breaches of the law since the non-compliance and the seriousness of those breaches;
- (k) any contribution made by the holder to the community.

Note: Under s. 109 of the Act, the Minister may cancel a visa if there was non-compliance by the holder of a kind set out in Subdivision C of Division 3 of Part 2 of the Act. The Minister is to have regard to the prescribed circumstances in considering whether to cancel the visa.

2.42 Notice of decision to cancel visa under s. 109

- (1) If the Minister cancels a visa under section 109 of the Act, the Minister must notify the former holder of the visa in writing that the visa has been cancelled.
- (2) A notification under subregulation (1) must set out the ground for the cancellation.

Subdivision 2.9.2—Cancellation generally

2.43 Grounds for cancellation of visa (Act, s. 116)

- (1) For the purposes of paragraph 116(1)(g) of the Act (which deals with circumstances in which the Minister may cancel a visa), the grounds prescribed are:
 - (a) that the Foreign Minister has determined that the holder of the visa is a person whose presence in Australia is, or would be, prejudicial to relations between Australia and a foreign country;
 - (b) that the holder of the visa has been assessed by the competent Australian authorities to be directly or indirectly a risk to Australian national security;
 - (c) in the case of a bridging visa held by a person who applied for a substantive visa—that the application for the substantive visa has been determined to be invalid;
 - (d) in the case of a visa granted before 1 September 1994 that:
 - (i) was continued in force on and after 1 September 1994 as a Transitional (Temporary) visa under the Migration Reform (Transitional Provisions) Regulations; and
 - (ii) allowed multiple entries to Australia;at some time before 1 September 1994 the holder exceeded the period of stay in Australia permitted by the visa;
 - (e) in the case of the holder of an Electronic Travel Authority (Class UD) visa—that the grant of that visa has prejudiced the rights and interests of any person who has custody or guardianship of, or access to, the holder of that visa;
 - (f) in the case of the holder of an Electronic Travel Authority (Class UD) visa who is under the age of 18 years and is not accompanied by his or her parent or guardian—that the holder of that visa does not have adequate funds, or adequate arrangements have not been made, for the holder's maintenance, support and general welfare during the holder's proposed visit in Australia.
- (2) For the purposes of subsection 116 (3) of the Act (which deals with the circumstances in which the Minister must cancel a visa), each of the circumstances comprising the grounds set out in paragraphs (1) (a), (b) and (c) is prescribed as a circumstance in which a visa must be cancelled.

2.44 Invitation to comment—response

- (1) For the purposes of subsection 121(2) of the Act (which deals with the time in which a holder must give comments, other than at interview), the periods set out in subregulation (2) are prescribed.
- (2) The periods referred to in subregulation (1) begin when the visa holder is notified under subsection 119(2), or receives an invitation under subsection 120(2), as the case requires, and are:
 - (a) if the visa holder is in Australia—5 working days;

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- (b) if the visa holder is outside Australia:
 - (i) where the cancellation of his or her visa is being considered in Australia—28 days; or
 - (ii) where the cancellation of his or her visa is being considered at a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth in the country in which the visa holder is present—5 working days; or
 - (iii) where the cancellation of his or her visa is being considered at a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth in another country than the country in which the visa holder is present—28 days.
- (3) For the purposes of subsection 121(4) of the Act (which deals with extension of time to give comments), 5 working days is prescribed.

2.45 Notification of decision (Act, s. 127)

For the purposes of section 127 of the Act (which deals with notification of decisions to cancel a visa), the way of notifying the visa holder of a decision is in writing.

2.46 Time to respond to notice of cancellation (Act, s. 129(1)(c))

For the purposes of paragraph 129(1)(c) of the Act (which deals with response to cancellation of a visa), the following periods are prescribed:

- (a) if the former holder of the visa is outside Australia when he or she is given a notice of the cancellation—28 days;
- (b) if he or she is in Australia when he or she is given notice of the cancellation:
 - (i) if he or she wishes the cancellation to be reconsidered while he or she is in Australia—5 minutes; or
 - (ii) if he or she wishes the cancellation to be reconsidered while he or she is outside Australia, and he or she departs Australia as soon as possible after being given a notice of the cancellation—28 days.
beginning when the former holder of the visa is given a notice of the cancellation.

2.47 Notice of cancellation (Act, s. 129)

For the purposes of subsection 129(2) of the Act (which deals with giving notice of cancellation of a visa), the way of giving the former holder of the visa a notice of the cancellation is in writing.

2.48 Revocation of cancellation (Act, s. 131(2))

For the purposes of subsection 131(2) of the Act (which deals with the circumstances in which cancellation of a visa must not be revoked), the

circumstance is that the visa was cancelled on a ground prescribed under subsection 116(3).

Note: The grounds prescribed under subsection 116(3) are grounds on which a visa **must** be cancelled. For those grounds, see subregulation 2.39(2).

2.49 Notice of decision whether to revoke cancellation (Act, s. 132)

For the purposes of subsection 132 of the Act (which deals with notification of a decision about cancellation of a visa), the way of notifying the visa holder of a decision is in writing.

2.50 Cancellation of business visas

(1) In this regulation:

old business skills entry permit means:

- (a) an entry permit granted under the Migration (1993) Regulations (including an entry visa of any of those classes that operated as an entry permit) of any of the following classes:
 - (i) Class 127 (business skills);
 - (ii) Class 128 (business skills (senior executive));
 - (iii) Class 129 (State/Territory sponsored business skills);
 - (iv) Class 130 (State/Territory sponsored business skills (senior executive));
- (b) an entry permit granted under the Migration (1989) Regulations of any of the following classes:
 - (i) business (general) (code number 123);
 - (ii) business (joint venture) (code number 122);
 - (iii) business skills (code number 127);
 - (iv) business skills (senior executive) (code number 128);

old business skills visa means:

- (a) a visa granted under the Migration (1993) Regulations of any of the following classes:
 - (i) Class 127 (business skills);
 - (ii) Class 128 (business skills (senior executive));
 - (iii) Class 129 (State/Territory sponsored business skills);
 - (iv) Class 130 (State/Territory sponsored business skills (senior executive));
- (b) a visa granted under the Migration (1989) Regulations of any of the following classes:
 - (i) business (general) (code number 123);
 - (ii) business (joint venture) (code number 122);
 - (iii) business skills (code number 127);
 - (iv) business skills (senior executive) (code number 128).

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- (2) For the purposes of paragraph (a) of the definition of **business visa** in subsection 134 (10) of the Act, the following classes of visas are prescribed:
- (a) Business Skills (Migrant) (Class AD);
 - (b) Business Skills (Residence) (Class BH).
- (3) For the purposes of paragraph (b) of the definition of **business visa** in subsection 134 (10) of the Act, the prescribed kinds of visas, and the prescribed provisions of the Migration Reform (Transitional Provisions) Regulations that apply to each of those kinds of visas, are the kinds of visas and the provisions of those Regulations set out in the following paragraphs:
- (a) a transitional (permanent) visa (being a visa to which regulation 4 of those Regulations applies) that a person is taken to hold because he or she held an old business skills entry permit;
 - (b) a transitional (permanent) visa (being a visa to which regulation 6 of those Regulations applies) that a person is taken to hold because he or she held an old business skills visa;
 - (c) a transitional (permanent) visa (being a visa to which regulation 7 of those Regulations applies) that a person is taken to hold because he or she held a permanent return visa granted on the basis of holding an old business skills visa;
 - (d) a transitional (permanent) visa (being a visa to which regulation 22 of those Regulations applies) that a person is granted because:
 - (i) the person:
 - (A) applied for an old business skills visa; or
 - (B) applied for a permanent return visa on the basis of holding an old business skills visa; and
 - (ii) the application was not decided before 1 September 1994.

Part 3—Immigration clearance and collection of information

Division 3.1—Information to be given by arriving persons

3.01 Provision of information (general requirement)

- (1) In this regulation:
officer includes a clearance officer.
- (2) This regulation applies to:
 - (a) a person who is an overseas passenger:
 - (i) arriving on board a vessel at a port in Australia in the course of, or at the conclusion of, an overseas flight or an overseas voyage; or
 - (ii) leaving Australia on board a vessel bound for or calling at a place outside Australia; and
 - (b) a person on board an aircraft arriving at, or departing from, an airport in Australia, being an aircraft operated by an international air carrier;other than:
 - (c) a person included in a class of persons set out in an item in Part 1 of Schedule 9, being an item in which the word “no” appears in column 4; and
 - (d) a person who, under regulation 3.06, is not required to complete a passenger card.
- (3) A person to whom this regulation applies must:
 - (a) complete a passenger card:
 - (i) in relation to the person and to any other person that person is in charge of on the relevant flight or voyage; and
 - (ii) in accordance with directions set out on the passenger card; and
 - (b) give the completed passenger card to an officer.
- (4) An officer may require a person to whom this regulation applies to provide to the officer information about that person in respect of any of the following matters:
 - (a) name;
 - (b) date of birth and country of birth;
 - (c) citizenship;
 - (d) sex and marital status;
 - (e) usual occupation;
 - (f) passport number;
 - (g) if the person is not:
 - (i) an Australian citizen; or
 - (ii) a person who is eligible for the grant of a Special Category visa or a Permanent Resident of Norfolk Island visa; or
 - (iii) a person who will on entry be taken to hold a special purpose visa;

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- the number of the Australian visa held by the person;
- (h) flight number of aircraft or name of ship in relation to the relevant flight or voyage;
- (i) country in which the person boarded, or intends to disembark from, the aircraft or ship;
- (j) if the person is entering Australia—the intended address of the person in Australia.

3.02 Passenger card

- (1) A passenger card must include the following questions, or substantially similar questions:
 - (a) “Do you currently suffer from tuberculosis?”;
 - (b) “Have you any criminal conviction/s for which the sentence/s (whether served or not) totalled 12 months imprisonment or more?”;
 - (f) “Please tick and answer only one of A, B or C:
“I am:
“A. Migrating permanently to Australia;
Give:
 Previous country of residence;
B. A visitor or temporary entrant;
Give:
 - (1) Intended length of stay in Australia;
 - (2) Main reason for coming to Australia (tick one only):
 - Convention/conference
 - Business
 - Visiting friends/relatives
 - Holiday
 - Employment
 - Education
 - Other
 - (3) Country of residence;“C. Resident returning to Australia:
“Give:
 - (1) Time you have been away from Australia;
 - (2) Country where you spent most time while abroad.”.
- (2) The questions set out in subregulation (1):
 - (a) may be printed on the passenger card in any order; and
 - (b) may be numbered in any way.
- (3) A passenger card may include instructions for completing it, including instructions that questions are to be answered by ticks or other symbols.

3.03 Evidence of identity of arriving person etc. (Act, s. 166)

- (1) For the purposes of paragraph 166(1)(b) of the Act (which deals with information to be provided by a person entering Australia), the information required to be given to a clearance officer is that set out in regulation 3.02.

Note: Under section 166, a person who enters Australia (other than a person referred to in sections 168 and 169-broadly, persons who have left Australia only for short periods without going to a foreign country, persons in prescribed classes (see below) and allowed inhabitants of the Protected Zone) must give evidence of their identity and provide certain information, and must do so in a prescribed way.

- (2) For the purposes of subsection 166(2) of the Act (which deals with the way in which a person entering Australia must give information), a person who is required to comply with section 166 of the Act must:
- (a) in the case of an Australian citizen-give a clearance officer a completed passenger card; and
 - (b) in the case of a non-citizen who is taken to hold a special purpose visa:
 - (i) show a clearance officer evidence of the person's identity, as specified in Part 1 of Schedule 9; and
 - (ii) give the clearance officer a completed passenger card where required by Part 1 of Schedule 9; and
 - (c) in the case of a non-citizen who is eligible to hold a special category visa:
 - (i) show a clearance officer a New Zealand passport that is in force; and
 - (ii) give the clearance officer a completed passenger card; and
 - (d) in the case of a non-citizen who has the right of permanent residence on Norfolk Island:
 - (i) show a clearance officer a passport that is in force and is endorsed with an authority to reside indefinitely on Norfolk Island; and
 - (ii) give the clearance officer a completed passenger card; and
 - (e) in the case of a non-citizen who holds an Electronic Travel Authority (Class UD) visa:
 - (i) show a clearance officer evidence of the person's identity, as specified in Part 1 of Schedule 9; and
 - (ii) give the clearance officer a completed passenger card; and
 - (f) in the case of a non-citizen other than a non-citizen referred to in paragraph (b), (c), (d) or (e):
 - (i) show a clearance officer his or her passport and evidence of a visa; and
 - (ii) give the clearance officer a completed passenger card.

3.04 Place and time for giving evidence (Act, s. 167)

For the purposes of subsection 167(2) of the Act (which deals with the time and place at which a person who enters Australia must comply with section 166):

- (a) the place at which a person who is required to comply with section 166 must do so is:
 - (i) a regional or area office of Immigration; or

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- (ii) at any place where there is a clearance officer, including a port; and
- (b) the period within which the person must do so is 2 working days after he or she enters Australia.

3.05 Allowed inhabitants of the Protected Zone (Act, s. 168(2))

For the purposes of subsection 168(2) of the Act (which deals with compliance with section 166 by allowed inhabitants of the Protected Zone):

- (a) the place at which an allowed inhabitant of the Protected Zone who is required to comply with section 166 must do so is:
 - (i) a regional or area office of Immigration; or
 - (ii) at any place where there is a clearance officer, including a port; and
- (b) the period within which the inhabitant must do so is 5 working days after he or she goes to a part of the migration zone outside the protected area.

3.06 Persons not required to comply with s. 166 of the Act (Act, s. 168 (3))

For the purposes of subsection 168(3) of the Act (which deals with the classes of person not required to give information under section 166), each class of person set out in Part 2 of Schedule 9 is prescribed.

3.07 Persons taken not to leave Australia (Act, s. 80 (c))

For the purposes of paragraph 80(c) of the Act, the prescribed period is 30 days.

3.08 Offence—failure to complete a passenger card

A person who is required by these Regulations to complete a passenger card must not fail to do so.

Penalty: 10 penalty units.

3.09 Evidence of identity—domestic travel on overseas vessels

- (1) In this regulation:

boarding pass means a document that permits a person to board an aircraft, given to the person by the operator of the aircraft;

officer includes a clearance officer;

overseas vessel has the meaning given by section 165 of the Act.

Note: *Vessel* includes an aircraft: see s. 5(1) of the Act.

- (2) A person who travels, or appears to intend to travel, on an overseas vessel from a port in Australia to another port in Australia without calling at a port outside Australia may be required by an officer at either port or both ports in Australia to provide evidence of his or her identity to the officer by producing:
 - (a) a passport issued to the person that is in the form in which it was issued; or

- (b) a document of a kind mentioned in subregulation (3) that:
 - (i) bears the signature or a photograph of the person, or both; and
 - (ii) is in force.
- (3) The kinds of document referred to in paragraph (2)(b) are the following:
 - (a) an aviation security identity card issued by the operator of the aircraft or by the operator of an airport in Australia;
 - (b) a licence to drive a motor vehicle issued under a law of the Commonwealth or of a State or Territory;
 - (c) a card that identifies the person as:
 - (i) an officer or employee of the Commonwealth or of a State or Territory, or of a Commonwealth, State or Territory authority; or
 - (ii) the holder of an office under the law of the Commonwealth or of a State or Territory; or
 - (iii) an officer or employee of a body that is specified for the purpose of this paragraph by Gazette Notice;
 - (d) a document issued by the Commonwealth, or by a State or Territory, or by a Commonwealth, State or Territory authority, that identifies the person as being entitled to receive payments as a beneficiary from the government or authority concerned;
- (4) If a person to whom this regulation applies is boarding or disembarking from an overseas vessel that is an aircraft, an officer may require the person to show the officer the person's boarding pass.
- (5) An officer may require a person who is travelling with a person:
 - (a) who has not turned 16 years of age; and
 - (b) in respect of whom a document cannot be produced to the officer as required;to write on the boarding pass issued to the first-mentioned person the full name of the second-mentioned person.

3.10 Use of information

- (1) With the written consent of the Minister, use may be made of information collected under this Part in respect of persons, being information that:
 - (a) is collected from passenger cards or passports, or contained in notified data bases (or both), by an officer of any Department or authority of the Commonwealth, or of a State or Territory; and
 - (b) is concerned with any of the following matters, namely law enforcement, national security, national intelligence, education, health, community services, social welfare, employment, labour, taxation, statistics, quarantine, customs, excise.
- (2) The consent of the Minister for the use of information concerned with a matter specified in subregulation (1) may be given in respect of a particular occasion or any number of occasions.

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- (3) If:
- (a) the Commonwealth has entered into an agreement with another country in relation to the provision of information concerning international movements of air traffic and passengers on international flights; and
 - (b) the Minister is satisfied that the provision to that country of the information specified in subregulation (4) would facilitate the handling of aircraft or of passengers travelling to destinations outside Australia;
- the Minister may cause that information to be provided to the immigration authorities of that country.
- (4) The information mentioned in paragraph (3)(b) is the following information in respect of passengers travelling to, or to and beyond, the country referred to in that subregulation:
- (a) name;
 - (b) date of birth;
 - (c) citizenship;
 - (d) passport number;
 - (e) date of departure from Australia;
 - (f) flight number;
 - (g) place of intended disembarkation;
 - (h) ultimate destination.
- (5) If the Commonwealth enters into an agreement of a kind referred to in paragraph (3)(a):
- (a) the Minister must, as soon as is practicable, cause notice of the fact to be published in the Gazette; and
 - (b) information must not be made available under the agreement earlier than the day after the day on which the notice is published.

3.11 Production of deportee or removee

- (1) If a person has been placed on board a vessel for the purpose of:
- (a) deportation from Australia under an order made by the Minister under the Act; or
 - (b) removal from Australia;
- an officer may require the master to produce the deportee or removee to the officer at any time before the vessel's departure from its last port of call in Australia.
- (2) The master must not, without reasonable excuse, fail to comply with a requirement under subregulation (1).

3.12 Offences by master of vessel

The master of a vessel must not:

- (a) refuse or neglect to afford all reasonable facilities to an officer for the performance of the officer's duties; or

- (b) deliver to an officer, under these Regulations, a list or statement that is incorrect in a material particular.

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Division 3.2—Information about passengers and crew on overseas vessels

3.13 Interpretation:

In this Division:

civilian vessel means a vessel other than a vessel of the regular armed forces of a Government recognised by Australia;

master includes owner, charterer, and agent in Australia.

Note: *Vessel* includes an aircraft: see the Act, s. 5 (1).

3.14 Information about overseas passengers—inbound civilian vessel

(1) If:

(a) a civilian vessel arrives at a port in Australia (in this regulation called *the relevant port*); and

(b) the vessel carries overseas passengers;

the master must, on the request of an officer, give the officer, to the best of the master's knowledge and belief, the particulars set out in subregulation (2), (3) or (4), as the case requires.

Note: The penalty for failing to do so is a fine of \$100 or imprisonment for 3 months: see regulation 5.32.

(2) If the last port entered by the vessel before its arrival at the relevant port was outside Australia, the particulars are:

(a) each passenger's full name; and

(b) each passenger's date of birth; and

(c) the country of issue and number of each passenger's passport; and

(d) the citizenship of each passenger; and

(e) the intended address in Australia (if any) of each passenger; and

(f) the place in Australia (if any) at which each passenger's journey in the vessel ends.

(3) If there are overseas passengers on the vessel whose journey is to end at the relevant port, the particulars in respect of each of those passengers are:

(a) his or her full name; and

(b) his or her date of birth; and

(c) the country of issue and number of his or her passport; and

(d) his or her citizenship; and

(e) his or her intended address in Australia.

(4) If:

(a) there are passengers on the vessel who:

(i) were on board the vessel when it left a place outside Australia; and

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- (ii) intend to travel in the vessel beyond Australia; and
 - (b) the master has not previously been asked by an officer to give particulars of those passengers;
- the particulars of each of those passengers are:
- (c) his or her full name; and
 - (d) his or her date of birth; and
 - (e) the country of issue and number of his or her passport; and
 - (f) his or her citizenship.
- (5) The master must, if asked to do so by an officer, give the officer a specified number (not exceeding 6) of copies of a document containing particulars given under this regulation.

3.15 Medical certificate

- (1) If a list is given to an officer under subregulation 3.14(2), the medical officer of the vessel must also give the officer a certificate signed by him or her that certifies that, in his or her opinion:
- (a) no passenger on the vessel; or
 - (b) no passenger on the vessel other than a passenger named in the certificate; is suffering from:
 - (c) tuberculosis; or
 - (d) a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community; or
 - (e) a disease or condition that, during the person's proposed period of stay in Australia, would be likely to:
 - (i) result in a significant cost to the Australian community in the areas of health care or community services; or
 - (ii) prejudice the access of an Australian citizen or permanent resident to health care or community services.
- (2) If a passenger is named in the certificate as suffering from a disease or condition referred to in paragraph (1)(c), (d) or (e), the certificate must also set out the disease or condition from which the passenger is suffering.
- (3) If a vessel has no medical officer, the certificate must be signed and given by the master to the best of his or her knowledge and belief.
- (4) If an officer has required the master of a vessel to provide copies of a document under subregulation 3.14(5), the medical officer or master must provide the same number of copies of the certificate.

3.16 Information about overseas passengers—outbound civilian vessel

- (1) If:
- (a) a civilian vessel leaves a port in Australia on an overseas voyage or an overseas flight; and
 - (b) the vessel carries overseas passengers:
-

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Division 3.2 Information about passengers and crew on overseas vessels

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- (i) who were on board the vessel when it left a place outside Australia, and who intend to travel in the vessel beyond Australia; or
- (ii) who joined the vessel at that port;

the master of the vessel must give an officer a list setting out, to the best of the master's knowledge and belief, the following particulars of each of those passengers:

- (c) his or her full name;
- (d) his or her date of birth;
- (e) the country of issue and number of his or her passport;
- (f) his or her citizenship;
- (g) the place where his or her journey in the vessel ends.

- (2) The master must, if asked to do so by an officer, give the officer a specified number (not exceeding 6) of copies of a document containing particulars given under this regulation.

3.17 Information about crew

- (1) The master of a civilian vessel that enters Australia must, at any port of call in Australia, if so requested by an officer:
 - (a) give the officer a list showing the number of members of the crew; and showing, in respect of each member of the crew:
 - (i) his or her full name; and
 - (ii) his or her date of birth; and
 - (iii) his or her citizenship; and
 - (iv) the country of issue and number of his or her passport; and
 - (b) if the vessel is a ship, produce to the officer the ship's articles.
- (2) The master of a civilian vessel that is a ship must, at the first port of call in Australia of the ship, give an officer a list signed by the master showing the name and citizenship of every person on board other than:
 - (a) a passenger; or
 - (b) a member of the crew whose name appears on the ship's articles as a member of the crew for discharge at a port outside Australia.

Part 4—Review of decisions;

Division 4.1—Review of decisions other than decisions relating to refugee status

Note: This Division of Part 4 of the Regulations deals with review of visa decisions. (Review of decisions relating to refugee status is dealt with in Division 4.2.) It refers in many places to the definition of **Part 5 reviewable decision** in section 337 of the Act. Broadly, paragraphs (a) and (b) of that definition cover decisions relating to visas if the person is in Australia. Paragraphs (c) and (d) cover decisions relating to refusal or cancellation of bridging visas if the applicant or former holder is in immigration detention because of that refusal or cancellation. Paragraphs (e), (f) and (g) cover decisions relating to visas that could not be granted in Australia—paragraph (e) covering visas that require an applicant to be nominated or sponsored by an Australian citizen or Australian permanent resident or eligible New Zealand citizen or a body or organisation in Australia; paragraph (f) covering visas that require the applicant to have been an Australian citizen or Australian permanent resident; and paragraph (g) visas that require the applicant to have as a relative an Australian citizen or Australian permanent resident and to have been intending to visit that relative). Paragraph (h) covers decisions relating to points test assessed scores.

4.01. Interpretation

Expressions used in this Part, other than *nominated* and *sponsored*, have the same respective meanings as in Part 5 of the Act.

4.02 Application for internal review

- (1) For the purposes of paragraph 339(1)(b) of the Act (which deals with giving applications for review to the Secretary), a regional or area office of Immigration is prescribed.
- (2) For those purposes, the period for giving an application to the Secretary is:
 - (a) in the case of an internally-reviewable decision of a kind mentioned in paragraph (a) of the definition of **Part 5 reviewable decision** in section 337 of the Act—28 days after the notification of the internally reviewable decision; or
 - (b) in the case of an internally-reviewable decision of the kind mentioned in paragraph (e), (f), (g) or (h) of that definition—70 days after the date on which the decision is notified to the person to whom the decision relates.
- (3) An application for internal review must set out:
 - (a) the name and address of the applicant for review; and
 - (b) a brief statement of the capacity in which the applicant applies for review; and
 - (c) details of the decision to which the application relates; and
 - (d) if:
 - (i) the application is made in relation to a decision refusing to grant a visa or a decision relating to a points test assessed score; and
 - (ii) the applicant for the review was not also the applicant for the visa; the name and address of the applicant for the visa.

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4.03 Combined applications for internal review

(1) If:

- (a) 2 or more visa applicants have combined their primary applications in a way permitted by Schedule 1 or regulation 2.08 in Australia; and
- (b) the Minister's decisions in respect of 2 or more of those visa applicants are that visas not be granted;

the visa applicants referred to in paragraph (b) may combine their applications for internal review of the Minister's decisions.

(2) If:

- (a) a person has nominated or sponsored 2 or more members of a family unit in respect of primary applications by them of a kind referred to in paragraph (e) of the definition of *Part 5 reviewable decision* in section 337 of the Act; and
- (b) the Minister's decisions in respect of 2 or more of the members of that family unit are that visas not be granted;

the nominator or sponsor may combine his or her applications for internal review of the Minister's decisions in respect of each of the members of the family unit to whom the Minister refused to grant a visa.

(3) If:

- (a) 2 or more visa applicants have combined their primary applications in a way permitted by Schedule 1 or regulation 2.08 for visas of a kind referred to in paragraph (f) or (g) of the definition of *Part 5 reviewable decision* in section 337 of the Act; and
- (b) the Minister's decisions in respect of 2 or more of those visa applicants are that visas not be granted;

the Australian citizen or Australian permanent resident who is a parent, spouse, child, brother or sister of the visa applicants may combine his or her applications for internal review of the Minister's decisions in respect of each of those visa applicants to whom the Minister refused to grant a visa.

4.04 Internal review—prescribed fee and waiver

- (1) Subject to this regulation, the prescribed fee on an application for internal review of an internally reviewable decision is \$200.
- (2) If a person combines 2 or more applications for internal review in accordance with regulation 4.03, an application fee is payable in respect of only 1 of those applications.
- (3) The Secretary may determine that the fee should not be paid in a particular case if he or she is satisfied that payment of the fee has caused, or is likely to cause, severe financial hardship to the review applicant.

4.05 Refund of fee for internal review

- (1) The amount of a fee paid on an application for review of an internally reviewable decision is to be refunded if:
- (a) the decision to which the review relates is set aside or varied by a review authority; or
 - (b) the review authority remits the matter to the original decision maker for reconsideration; or
 - (c) under subregulation 4.04(3), the Secretary determines that the fee should not be paid; or
 - (d) the applicant is not entitled to apply for internal review; or
 - (e) the decision to which the application relates is not subject to internal review; or
 - (f) the Minister has issued a conclusive certificate under subsection 338(3) of the Act (which deals with the issue of conclusive certificates) in relation to the decision to which the application relates.

Note: The conclusive certificate certifies that review would be contrary to the public interest.

- (2) If an application for review of an internally reviewable decision is withdrawn, the fee paid (if any) on the application is to be refunded if the application is withdrawn because:
- (a) the death has occurred, since the visa application was made, of:
 - (i) the applicant for the visa that was the subject of the review application; or
 - (ii) a member of that applicant's family unit; or
 - (b) the applicant for the visa that was the subject of the review application has been granted a visa of the class applied for otherwise than because the Minister has reconsidered the primary application and the applicant's score on the reconsideration is more than or equal to the applicable pass mark.

4.06 Review officer's power to give directions

For the purposes of paragraph 341(2)(c) of the Act (which deals with a review officer's power to remit):

- (a) an application for a visa or entry permit made on or after 19 December 1989 is a prescribed matter; and
- (b) a permissible direction is that the applicant must be taken to have satisfied a specified criterion for the visa or entry permit.

Note: **prescribed matter**: in this case, one that the review officer may remit for reconsideration.

4.07 Notification of decision of review officer

- (1) A review officer must notify an applicant of a decision:
- (a) by sending a notice of the decision to, or leaving a notice of the decision at, the last address given to the Minister by the applicant under section 53 of the Act (which deals with what an applicant must tell the Minister); or

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- (b) by handing a notice of the decision to the applicant or a person specified by the applicant under subsection 53(4) of the Act.
- (2) A notice in regard to a decision of the kind referred to in paragraph (h) of the definition of **Part 5 reviewable decision** in section 337 of the Act must set out:
 - (a) the decision of the review officer; and
 - (b) the reason for the decision; and
 - (c) that the decision can be reviewed; and
 - (d) the time in which the application for review may be made; and
 - (e) who can apply for the review; and
 - (f) where the application for review can be made.
- (3) The review officer must notify the applicant not later than 10 days after making the decision.

Note: The content of the notice is set out in s. 343 of the Act.

4.08 Response to invitation to give information or comments on internal review of decision—prescribed periods

- (1) For the purposes of subsection 58(2) of the Act (which deals with invitations to make comments or give further information) as applied to the review of a decision by section 342 of the Act (which applies the Code of Procedure to review proceedings), and subject to subregulation (2), the prescribed period for giving additional information or comments in response to an invitation is:
 - (a) in the case of a review application regarding a decision that was made in Australia:
 - (i) in the case of a review application regarding a decision concerning:
 - (A) a Long Stay (Visitor) (Class TN), Medical Treatment (Visitor) (Class UB), Short Stay (Visitor) (Class TR) visa; or
 - (B) a Temporary Business Entry (Class UC) visa in relation to which the applicant seeks a visa to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period, or periods, of 3 months or less—
7 days after the applicant is given the invitation; or
 - (ii) in any other case—28 days after the applicant is given the invitation;
or
 - (b) in the case of a review application regarding a decision that was made outside Australia:
 - (i) if the information or comments are to be given by the review applicant—28 days; or
 - (ii) if the information or comments are to be given by the visa applicant—28 days, or, if the Minister so decides in the circumstances of the case, 70 days;after the applicant is given the invitation.
- (2) Subregulation (1) does not apply to a request for information or comments to be provided by a third party regarding the following matters:

- (a) the visa applicant's health;
 - (b) the satisfaction by the visa applicant of public interest criteria;
 - (c) the satisfaction of criteria relating to the visa applicant's capacity to communicate in English;
 - (d) assessment of the visa applicant's skills or qualifications.
- (3) For the purposes of paragraph 58(3)(b) of the Act (dealing with the period in which an interview must take place) as it applies to a review application under section 342 of the Act, the prescribed period is:
- (a) in the case of a review application regarding a decision that was made in Australia:
 - (i) in the case of a review application regarding a decision concerning:
 - (A) a Long Stay (Visitor) (Class TN), Medical Treatment (Visitor) (Class UB), Short Stay (Visitor) (Class TR) visa; or
 - (B) a Temporary Business Entry (Class UC) visa in relation to which the applicant seeks a visa to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period, or periods, of 3 months or less—
7 days after the applicant is given the invitation; or
 - (ii) in any other case—28 days after the applicant is given the invitation;
or
 - (b) in the case of a review application regarding a decision made outside Australia:
 - (i) if the information or comments are to be given by the review applicant—28 days; or
 - (ii) if the information or comments are to be given by the visa applicant—28 days, or, if the Minister so decides in the circumstances of the case, 70 days;after the applicant is given the invitation.
- (4) For the purposes of subsection 58(4) of the Act (dealing with extending the period to provide comments), the prescribed further period is:
- (a) in the case of a review application regarding a decision made in Australia—7 days; or
 - (b) in the case of a review application regarding a decision made outside Australia—28 days.
- (5) For the purposes of paragraph 58(5)(b) of the Act (dealing with extending the period to attend for interview), the prescribed further period is:
- (a) in the case of a review application regarding a decision made in Australia—7 days; or
 - (b) in the case of a review application regarding a decision made outside Australia—28 days.
-

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4.09 IRT-reviewable decisions

For the purposes of paragraphs 338(2)(d) and 346(1)(d) of the Act (which deal with decisions that are not internally reviewable), the following Part 5 reviewable decisions are prescribed to be IRT-reviewable decisions:

- (a) a decision to refuse a substantive visa, if:
 - (i) the applicant is in immigration detention when the decision is notified to him or her; or
 - (ii) the applicant is a member of a family unit of which another member is in immigration detention at the time the decision is notified to the applicant, and the applications for visas by those 2 members were combined; or
 - (iii) the applicant is a person to whom section 48 of the Act (which deals with persons refused visas or whose visas have been cancelled in Australia) applied at the time he or she made the application; or
 - (iv) the applicant is a person to whom regulation 8 of the Migration Reform (Transitional Provisions) Regulations applies;
- (b) a decision to refuse:
 - (i) a Transitional (Temporary) visa on the basis of an application for a December 1989 (temporary) (code number 440) entry permit made under the Migration (1989) Regulations that is taken, under the Migration Reform (Transitional Provisions) Regulations, to be an application for a Transitional (Temporary) visa; or
 - (ii) a Transitional (Permanent) visa on the basis of an application for:
 - (A) a December 1989 (permanent) (code number 812) entry permit made under the Migration (1989) Regulations; or
 - (B) a Class 812 (December 1989 (permanent)) entry permit made under the Migration (1993) Regulations;that is taken, under the Migration Reform (Transitional Provisions) Regulations to be an application for a Transitional (Permanent) visa;
- (c) a decision to refuse a visa made as a delegate of the Minister by:
 - (i) the Secretary; or
 - (ii) an officer holding or acting in a Senior Executive Service position;
- (d) a decision to cancel a visa.

Note: **IRT-reviewable decisions** are reviewable only by the Tribunal.

4.10 Time for lodgement of application for review by the Tribunal

- (1) Subject to subregulation (2), the period within which an application for review of an IRT-reviewable decision must be given to the Tribunal is:
 - (a) in the case of a primary decision of a kind mentioned in paragraph (a) of the definition of **Part 5 reviewable decision** in section 337 of the Act—28 days after the notification of the IRT-reviewable decision;
 - (b) in the case of a primary decision of a kind mentioned in paragraph (b) of that definition:

- (i) 2 working days after the notification of the IRT-reviewable decision;
or
 - (ii) if the applicant gives notice to the Tribunal within those 2 working days that he or she intends to apply for review of the decision—5 working days after the applicant gives that notice;
 - (c) in the case of a primary decision of a kind mentioned in paragraph (e), (f), (g) or (h) of that definition—70 days after the notification of the IRT-reviewable decision.
- (2) The period within which an application for review of an IRT-reviewable decision must be given to the Tribunal by an applicant in immigration detention is:
- (a) in the case of an application for review of a decision of a kind referred to in paragraph (c) or (d) of the definition of **Part 5 reviewable decision** in section 337 of the Act—2 working days after the notification of the IRT-reviewable decision; or
 - (b) in any other case:
 - (i) 2 working days after the notification of the IRT-reviewable decision;
or
 - (ii) if the applicant gives notice to the Tribunal within those 2 working days that he or she intends to apply for review of the decision—5 working days after the applicant gives that notice.
- (3) For the purposes of subparagraph (1)(b)(ii) or paragraph (2)(b), notice is taken to be given to the Tribunal when it is received at a registry of the Tribunal.
- (4) An application for review of an IRT-reviewable decision must set out:
- (a) the name and address of the applicant for review; and
 - (b) a brief statement of the capacity in which the applicant applies for review; and
 - (c) details of the decision to which the application relates; and
 - (d) if:
 - (i) the application is made in relation to a decision refusing to grant a visa, or a decision relating to a points test assessed score; and
 - (ii) the applicant for the review was not also the applicant for the visa; the name and address of the applicant for the visa.
- (5) An application that is sent to the Tribunal by post is taken to be given to the Tribunal at the time it is received at a registry of the Tribunal.
- (6) An application that is sent to the Tribunal by facsimile is taken to be given to the Tribunal at the time the facsimile is received at a registry of the Tribunal.

4.11 Giving the application to the Tribunal

An application for review by the Tribunal must be given to the Tribunal:

- (a) in the case of a primary decision referred to in paragraph (c) or (d) of the definition of **Part 5 reviewable decision** in section 337 of the Act—at a registry of the Tribunal, by:

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- (i) any method set out in subparagraph (c)(i), (ii) or (iii); or
- (ii) by sending it to that registry by facsimile transmission; or
- (b) in the case of a primary decision of any other kind, by an applicant who is in immigration detention:
 - (i) at a registry of the Tribunal, by:
 - (A) any method set out in subparagraph (c)(i), (ii) or (iii); or
 - (B) sending it to that registry by facsimile transmission; or
 - (ii) by giving it to an officer of Immigration at a detention centre, or at an office occupied by an officer of Immigration at an airport; or
- (c) in any other case—at a registry of the Tribunal:
 - (i) by posting it to that registry; or
 - (ii) by leaving it at that registry in a box designated for receiving applications; or
 - (iii) by leaving it with an officer of the Tribunal at that registry.

4.12 Combined applications for review by the Tribunal

(1) If:

- (a) 2 or more persons have, in accordance with regulation 4.03, combined their applications for internal review of decisions of the Minister; and
- (b) the review officer's decisions in respect of 2 or more of those persons are that the primary decisions be affirmed;

the persons referred to in paragraph (b) may combine their applications for review by the Tribunal of the review officer's decisions.

(2) If:

- (a) 2 or more applicants have combined their primary applications in Australia in a way permitted by Schedule 1 or regulation 2.08; and
- (b) the Minister's decisions in respect of 2 or more of those applicants are that a visa not be granted; and
- (c) the Minister's decisions are IRT-reviewable decisions;

the applicants referred to in paragraph (b) may combine their applications for review by the Tribunal of the Minister's decisions.

(3) If:

- (a) a person has nominated or sponsored 2 or more members of a family unit in respect of their primary applications for visas of a kind referred to in paragraph (e) of the definition of **Part 5 reviewable decision**; and
- (b) the Minister's decisions in respect of 2 or more of the members of that family unit are that a visa not be granted; and
- (c) the nominator or sponsor has, in accordance with regulation 4.03, combined his or her applications for internal review of the Minister's decisions in respect of each of the members of the family unit to whom the Minister refused to grant a visa; and
- (d) the review officer's decisions in respect of 2 or more of those members are that the primary decisions be affirmed;

the nominator or sponsor may combine his or her applications for review by the Tribunal of the Minister's decisions in respect of each of the members of the family unit to whom the Minister refused to grant a visa.

(4) If:

- (a) a person has nominated or sponsored 2 or more members of a family unit in respect of their primary applications for visas of a kind referred to in paragraph (e) of the definition of **Part 5 reviewable decision**; and
- (b) the Minister's decisions in respect of 2 or more of the members of that family unit are that a visa not be granted; and
- (c) the Minister's decisions are IRT-reviewable decisions;

the nominator or sponsor may combine his or her applications for review by the Tribunal of the Minister's decisions in respect of each of the members of the family unit to whom the Minister refused to grant a visa.

(5) If:

- (a) 2 or more members of a family unit have combined their primary applications, in a way permitted by Schedule 1 or regulation 2.08, for visas of a kind referred to in paragraph (f) or (g) of the definition of **Part 5 reviewable decision** in section 337 of the Act; and
- (b) the Minister's decisions in respect of 2 or more of the members of that family unit are that visas not be granted; and
- (c) the Australian citizen or Australian permanent resident who is a parent, spouse, child, brother or sister of the applicants has, in accordance with regulation 4.03, combined his or her applications for internal review of the Minister's decisions in respect of 2 or more of the members of the family unit to whom the Minister refused to grant a visa; and
- (d) the review officer's decisions in respect of 2 or more of those members are that the primary decisions be affirmed;

the Australian citizen or Australian permanent resident referred to in paragraph (c) may combine his or her applications for review by the Tribunal of the review officer's decisions in respect of each of the members of the family unit to whom the Minister refused to grant a visa.

(6) If:

- (a) 2 or more visa applicants have combined their primary applications, in a way permitted by Schedule 1 or regulation 2.08, for visas of a kind referred to in paragraph (f) or (g) of the definition of **Part 5 reviewable decision** in section 337 of the Act; and
- (b) the Minister's decisions in respect of 2 or more of those visa applicants are that visas not be granted; and
- (c) the Minister's decisions are IRT-reviewable decisions;

the Australian citizen or Australian permanent resident who is a parent, spouse, child, brother or sister of the visa applicants may combine his or her applications for review by the Tribunal of the Minister's decisions in respect of each of those visa applicants to whom the Minister refused to grant a visa.

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4.13 Review by the Tribunal—prescribed fee and waiver

- (1) Subject to this regulation, the prescribed fee on an application for review by the Tribunal of a decision is \$300.
- (2) No fee is payable on an application for review by the Tribunal of a primary decision of a kind referred to in paragraph (c) or (d) of the definition of **Part 5 reviewable decision** in section 337 of the Act.
- (3) If a person combines 2 or more applications for review by the Tribunal in accordance with regulation 4.12, an application fee is payable in respect of only 1 of those applications.
- (4) The Registrar, or a Deputy Registrar, of the Tribunal may determine that the fee on an application for review by the Tribunal of a decision should not be paid if he or she is satisfied that payment of the fee has caused, or is likely to cause, severe financial hardship to the review applicant.

4.14 Refund of fee for review by Tribunal

- (1) The amount of a fee paid on an application for review by the Tribunal is to be refunded if:
 - (a) the decision to which the review relates is set aside or varied; or
 - (b) the application is remitted to the primary decision-maker for reconsideration; or
 - (c) the Registrar or a Deputy Registrar determines under subregulation 4.13 (4) that the fee should not be paid; or
 - (d) the applicant is not entitled to apply for review by the Tribunal; or
 - (e) the decision to which the application relates is not subject to review by the Tribunal; or
 - (f) the Minister has given a conclusive certificate as referred to in subsection 346 (4) of the Act (which deals with conclusive certificates) in relation to the decision to which the application relates.

Note: The conclusive certificate certifies that review would be contrary to the public interest.

- (2) If an application for review by the Tribunal is withdrawn, the fee paid on the application is to be refunded if the application is withdrawn because:
 - (a) the death has occurred, since the visa application was made, of:
 - (i) the applicant for the visa that was the subject of the application; or
 - (ii) a member of that applicant's family unit; or
 - (b) the applicant for the visa that was the subject of the application has been granted a visa of the class applied for otherwise than because the Minister has reconsidered the primary application and the applicant's score on the reconsideration is more than or equal to the applicable pass mark.
- (3) If an application for review by the Tribunal, being an application made on or after 1 November 1995, is withdrawn (otherwise than for a reason specified in subregulation (2)) before the end of the period referred to in subsection 361 (2) of the Act (which deals with notice to the Tribunal that the applicant wants the

Tribunal to obtain oral evidence), 50% of the fee paid on the application is to be refunded.

4.15 Tribunal's power to give directions

For the purposes of paragraph 349(2)(c) of the Act (which deals with the Tribunal's power to remit):

- (a) an application for a visa or entry permit made on or after 19 December 1989 is a prescribed matter; and
- (b) a permissible direction is that the applicant must be taken to have satisfied a specified criterion for the visa or entry permit.

Note 1: **Prescribed matter:** in this case, a matter that the Tribunal may remit for reconsideration.

Note 2: See s. 390 of the Act, which modifies the *Administrative Appeals Tribunal Act 1975* for the purposes of review by the Administrative Appeals Tribunal of migration decisions. Under s. 43(1A)(c), taken to be inserted in the Administrative Appeals Tribunal Act for those purposes, the matters set out in regulation 4.15 apply also to review by the Administrative Appeals Tribunal.

4.16 Statement about decision under review

The number of copies that the Secretary must give to the Registrar under subsection 352(2) of the Act (which deals with the statement that the Secretary must give to the Tribunal) is 1.

4.17 Time limits etc. in relation to other evidence—bridging visa decisions

- (1) In a case where the Tribunal is reviewing a decision referred to in paragraph (c) or (d) of the definition of **Part 5 reviewable decision**, a person who is required to provide to the Tribunal other evidence referred to in paragraph 360(1)(b) of the Act (which deals with other evidence that the Tribunal considers is necessary) must provide the evidence within 2 working days after the person is notified that the Tribunal has required the evidence to be obtained.
- (2) The other evidence referred to in subregulation (1) may be provided by facsimile transmission.
- (3) If the other evidence referred to in subregulation (1) is provided by facsimile transmission, it is taken to have been provided at the time the facsimile is received at a registry of the Tribunal.
- (4) For the purposes of this regulation, evidence is not to be taken to be provided until received at a registry of the Tribunal.

4.18 Time limits etc. in relation to other evidence—decisions other than bridging visa decisions

- (1) In a case other than a case referred to in subregulation 4.17(1), a person who is required to provide to the Tribunal other evidence referred to in paragraph 360(1)(b) of the Act (which deals with other evidence that the

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Tribunal considers is necessary) must provide the evidence within whichever is applicable of the following periods after the person is notified that the Tribunal has required the evidence to be obtained:

- (a) if the evidence is provided personally—10 days; or
 - (b) if the evidence is provided by post from a place in Australia:
 - (i) 14 days; or
 - (ii) if the Tribunal so directs—28 days; or
 - (c) if the evidence is provided by post from a place outside Australia:
 - (i) 30 days; or
 - (ii) if the Tribunal so directs—70 days.
- (2) The other evidence referred to in subregulation (1) may be provided by facsimile transmission.
 - (3) If the other evidence referred to in subregulation (1) is provided by facsimile transmission, it is taken to have been provided at the time the facsimile is received at a registry of the Tribunal.
 - (4) For the purposes of this regulation, evidence is not to be taken to be provided until received at a registry of the Tribunal.

4.19 Summons to attend before Tribunal

A summons referred to in subsection 363(3) of the Act (which deals with summonses to give evidence or produce documents) may be served on a person:

- (a) by delivering the summons to the person personally;
- (b) by leaving it at the last-known place of residence of the person with a person who appears to live there and who appears to have turned 16; or
- (c) by sending the summons by certified post to the person's last known place of residence; or
- (d) in the case of a summons to the review applicant—if the review applicant has notified the Tribunal of an address for service under regulation 4.39, by sending the summons by certified post to that address.

4.20 Fees for persons giving evidence

- (1) For the purposes of subsection 374(1) of the Act (which deals with the fees and allowances to be paid to a person summoned to give evidence), the fees and allowances for expenses to be paid to a person summoned to appear before the Tribunal in relation to a review by the Tribunal are the fees and allowances in accordance with the scale in Schedule 2 to the Administrative Appeals Tribunal Regulations as in force from time to time.
- (2) The presiding member of the Tribunal is to determine the fees and allowances (if any) payable to a person under subregulation (1).

4.21 Number of Senior Members and of members of the Tribunal (Act, s. 394)

- (1) For the purposes of paragraph 394(b) of the Act (which deals with the number of Senior Members of the Tribunal), 6 is prescribed.
- (2) For the purposes of paragraph 394(c) of the Act (which deals with the number of members of the Tribunal), 50 is prescribed.

4.23 Expedited review (close family visit visas)

- (1) This regulation applies to review of a decision to refuse to grant a Long Stay (Visitor) (Class TN) or Short Stay (Visitor) (Class TR) visa if and only if:
 - (a) the applicant stated in his or her application that he or she intended to visit Australia, or remain in Australia as a visitor, for the purposes of visiting an Australian citizen or an Australian permanent resident who is a parent, spouse, child, brother or sister of the applicant; and
 - (b) that application was made to allow the applicant to participate in an event of special family significance in which he or she is directly concerned; and
 - (c) the applicant identified the event and the applicant's concern in that application; and
 - (d) that application was refused because either:
 - (i) the Minister was not satisfied that the expressed intention of the applicant only to visit Australia was genuine; or
 - (ii) the applicant did not satisfy public interest criterion 4011; and
 - (e) the application was made long enough before the event to allow for internal review, and review by the Tribunal, if the application were refused.
- (2) The refusal of that application must be reviewed immediately by a review officer on receipt of an application for internal review.
- (3) A decision of a review officer must be reviewed immediately by the Tribunal on receipt of an application for review of the decision.
- (4) A review authority must give notice to the applicant of its decision in respect of an application for review as soon as practicable.

4.24 Expedited review (decision to cancel visa)

- (1) A decision to cancel a visa (other than a decision of a kind referred to in paragraph (d) of the definition of **Part 5 reviewable decision** in section 337 of the Act) must be reviewed immediately by the Tribunal on receipt by it of an application for review of the decision.
- (2) The Tribunal must give notice of its decision in respect of an application for review to the applicant as soon as practicable.

4.25 Expedited review (certain applicants in immigration detention)

- (1) If:
 - (a) a decision is made to refuse a substantive visa; and
-

Schedule 1 Classes of visas

Part 4 Review of decisions;

Division 4.1 Review of decisions other than decisions relating to refugee status

Regulation 4.26

- (b) the person who applied for the visa is in immigration detention when the review application is made;
the Tribunal must review the decision immediately on receipt of the application.
- (2) The Tribunal must give notice of its decision in respect of an application for review to the applicant as soon as practicable.

4.26 Prescribed period for making certain decisions (Act, s. 367)

For the purposes of subsection 367(1) of the Act (which deals with the time for the Tribunal to make a decision in certain cases), the prescribed time is 7 working days.

Note: Subsection 367(1) of the Act provides for the Regulations to limit the time for the Tribunal to decide on review of certain decisions regarding bridging visas.

4.27 Delegation by Secretary

The Secretary may, by signed instrument, delegate the Secretary's powers under this Division to an officer of Immigration who is a review officer for the purposes of Part 5 of the Act.

Division 4.2—Refugee Review Tribunal and decisions relating to protection visas

Subdivision 4.2.1—Introductory

4.28 Interpretation

Expressions used in this Division and in Part 7 of the Act have the same respective meanings in this Division as in that Part.

Subdivision 4.2.2—Tribunal members

4.29 Membership

For the purposes of subsection 458 (2) of the Act, the prescribed number of members (other than the Principal Member) of the Tribunal is 100.

4.30 Remuneration and allowances

For the purposes of subsection 463 (3) of the Act, the remuneration and allowances of the first full-time member (other than the Principal Member) to be appointed are the maximum remuneration and allowances payable to a holder of an office in the Senior Executive Service of the Australian Public Service classified as SES Band 1.

Subdivision 4.2.3—General

4.31 Applications

- (1) For the purposes of paragraph 412(1)(b) of the Act, each period stated in subregulation (2) is prescribed as the period within which an application for review of an RRT-reviewable decision to which the period applies must be given to the Tribunal.
 - (2) A period mentioned in subregulation (1) commences on the day on which the applicant is notified of the decision to which the application relates, and ends at the end of:
 - (a) in the case of an application given to the Tribunal by or for an applicant in immigration detention on that day—7 working days (beginning with the first working day that occurs on or after that day); or
 - (b) in any other case—28 days.
- Note: As to when an applicant is taken to be notified, see r. 5.03.
- (3) Subject to this regulation, an application must be lodged at a registry of the Tribunal:
 - (a) by posting the application to that registry; or

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- (b) by leaving it at that registry in a box designated for the lodgment of such applications; or
 - (c) by leaving it with a person employed at that registry and authorised to receive such documents; or
 - (d) by means of electronic facsimile transmission to that registry.
- (4) An application posted in accordance with paragraph (3)(a) or transmitted in accordance with paragraph (3)(d) is not to be taken to have been lodged until it is received at a registry of the Tribunal.

4.31A Combined applications for review by the Tribunal

- (1) If:
- (a) 2 or more applicants have combined their primary applications for a Protection (Class AZ) visa in a way permitted by Schedule 1 or regulation 2.08; and
 - (b) the Minister's decisions in respect of 2 or more of those applicants are that Protection (Class AZ) visas not be granted; and
 - (c) the Minister's decisions are RRT-reviewable decisions;
- the applicants referred to in paragraph (b) may combine their applications for review by the Tribunal of the Minister's decisions.
- (2) Subregulation (1) applies to an application for review made on or after 1 August 1996.

4.32 Notice of lodgment of application—person in immigration detention

- (1) This regulation applies in the case of an application for review of an RRT-reviewable decision that is lodged by or for a person who is in immigration detention.
- (2) The person lodging it must give notice in writing, in accordance with subregulation (3), to an officer of Immigration appointed by the Secretary to be a detention review officer in the relevant State or Territory.
- (3) The notice must:
- (a) be given to the officer on the day on which the application is lodged; and
 - (b) state:
 - (i) the nature of the application and the name of the person in respect of whom it was lodged; and
 - (ii) the registry at which it was lodged; and
 - (iii) if the applicant is assisted by an agent (whether or not a registered agent within the meaning of Part 3 of the Act), the agent's name and address; and
 - (iv) the manner in which the application has been lodged (being a manner specified in subregulation 4.31(3)).
- (4) Failure to comply with this regulation does not affect the validity of an application.
-

4.33 Powers of Tribunal

- (1) For the purposes of paragraph 415(2)(c) of the Act, an application for a Protection (Class AZ) visa is prescribed.
- (2) For the purposes of paragraphs 415(2)(c) of the Act and 43(1A)(c) of the *Administrative Appeals Tribunal Act 1975* (as substituted in relation to an RRT-reviewable decision by section 452 of the Act), it is a permissible direction that the applicant must be taken to have satisfied the criteria for the visa that are specified in the direction.

4.34 Statement about decision under review—number of copies

For the purposes of subsection 418(2) of the Act, the prescribed number of copies of a statement of the kind mentioned in that subsection is 1.

4.35 Time limit for providing evidence

- (1) This regulation applies where the Tribunal, acting under paragraph 425(1)(b) of the Act, gives a person notice requiring the person to provide evidence to the Tribunal.
- (2) If the person is required to provide the evidence in person, the person must provide the evidence within a period of 10 days after the date of notification.
- (3) If the person is required to provide the evidence by post from a place in Australia, the person must post the evidence in time for it to be received at the registry in due course of post within:
 - (a) a period of 14 days after the date of notification; or
 - (b) if the Tribunal directs a longer period, not exceeding 28 days, after the date of notification—that longer period.
- (4) If the person is required to provide the evidence by post from a place outside Australia, the person must post the evidence in time for it to be received at the registry in due course of post within:
 - (a) a period of 30 days after the date of notification; or
 - (b) if the Tribunal directs a longer period, not exceeding 70 days, after the date of notification—that longer period.
- (5) In requiring a person to provide evidence, the Tribunal is to specify whether the person is required to provide the evidence in person, by post from a place in Australia or by post from a place outside Australia.

4.36 Duties, powers and functions of officers of Tribunal

Each officer of the Tribunal has the following duties, powers and functions:

- (a) the issuing of a summons by the Tribunal under paragraph 427(3)(a) or (b) of the Act;
- (b) the obtaining of documents in connection with the review of an RRT-reviewable decision;

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- (c) the directing of attendance at a registry of the Tribunal in connection with the review of an RRT-reviewable decision.

4.37 Fees and allowances for persons giving evidence

- (1) For the purposes of subsection 436(1) of the Act, the fees and allowances for expenses to be paid to a person summoned to appear before the Tribunal in relation to a review by the Tribunal are the fees and allowances in accordance with the scale in Schedule 2 to the Administrative Appeals Tribunal Regulations as in force from time to time.
- (2) The principal member of the Tribunal is to determine the fees and allowances (if any) payable to a person under subregulation (1).

Division 4.3—Service of documents

4.38 Interpretation

In this Division:

Tribunal means the Immigration Review Tribunal or the Refugee Review Tribunal.

4.39 Address for service

(1) In this regulation:

lodge an address for service, in relation to an applicant for review, means give the Tribunal notice in writing of an address at which documents relating to a review may be sent to the applicant.

(2) An applicant for review may:

- (a) lodge an address for service in a review; and
- (b) at any time after lodging an address for service, lodge a new address for service in that review.

(3) If an applicant for review lodges with the Tribunal a new address for service under paragraph (2)(b):

- (a) that new address becomes the applicant for review's address for service in the review; and
- (b) he or she must, immediately after doing so, serve on the Minister a notice of that new address for service.

(4) An address for service may be, but need not be, the applicant's residential address.

4.40 Notice of decision of Tribunal

(1) A notice or statement to be given to an applicant in relation to a decision of the Tribunal is to be taken to be duly given if the notice or statement is given:

- (a) by posting it to the last address for service provided by the applicant in connection with his or her application for review; or
- (b) by posting it to the residential address provided by the applicant in his or her application for review; or
- (c) by giving it to the applicant or to a person authorised by the applicant to receive documents of that kind on behalf of the applicant; or
- (d) by leaving it at the place of residence of the applicant with a person who appears to live there and appears to have turned 16.

(2) It is sufficient compliance with the requirement to give a notice or statement under subregulation (1) if a facsimile or certified copy of the notice or statement is so given.

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- (3) A document posted in accordance with paragraph (1)(a) or (b) must bear correct pre-paid postage and, if the document is posted to an overseas address, the postage must be at the full airmail rate.

4.41 Service of documents

- (1) If:
- (a) a document is to be given to, or served on, a person for the purposes of a review by the Tribunal; and
 - (b) no other provision as to the manner of giving or serving the document is made by the Act or these Regulations;
- the document may be given or served:
- (c) if the person has lodged an address for service under regulation 4.39, by posting it to, or leaving it at, that address; or
 - (d) if the person has not lodged an address for service:
 - (i) by giving it to the person personally or to a person duly authorised to receive documents on behalf of the first-mentioned person; or
 - (ii) by posting it to the person at his or her last-known place of residence; or
 - (iii) by leaving it at that place of residence of the person with another person who apparently lives there and has apparently turned 16.
- (2) It is sufficient compliance with a requirement to give or serve a document referred to in subregulation (1) if a facsimile or certified copy of the document is given or served in accordance with that subregulation.
- (3) A document posted in accordance with paragraph (1)(d) must bear correct pre-paid postage and, if the document is posted to an overseas address, the postage must be at the full airmail rate.
- (4) A document posted in accordance with this regulation is taken to be received at a time worked out as set out in regulation 5.03.

Part 5—Miscellaneous

Division 5.1—Service of documents

5.01 Interpretation

In this Division:

document includes:

- (a) a letter; and
- (b) an invitation, notice, notification, statement or summons, if it is in writing.

5.02 Service of document on person in immigration detention

- 5.02. For the purposes of the Act and these Regulations, a document to be served on a person in immigration detention may be served by giving it to the person himself or herself, or to another person authorised by him or her to receive documents on his or her behalf.

5.03 Time of receipt of document etc. that is sent

- (1) For the purposes of these Regulations, and subject to specific provision elsewhere in these Regulations, a document that is sent by the Minister or a Tribunal is taken to be received:
 - (a) if the document is sent from a place in Australia to an address in Australia—7 days after the date of the document; or
 - (b) if the document is sent from:
 - (i) a place outside Australia to an address in Australia; or
 - (ii) a place in Australia to an address outside Australia; or
 - (iii) a place outside Australia to an address outside Australia;
21 days after the date of the document.
- (2) Subregulation (1) does not apply to a document unless it is sent within 7 days after the date of the document.

Regulation 5.04

Division 5.2—Procedure of commissioners and prescribed authorities

Note: If a person is proposed to be deported because he or she was convicted of certain serious offences (set out in section 203 of the Act), he or she may ask the Minister to appoint a Commissioner to inquire into whether the grounds for the deportation have been made out.

Section 253 of the Act provides that if a person arrested as a deportee asserts that he or she is not the person named in the deportation order, and makes a statutory declaration saying so, the person must be taken before a prescribed authority, who must inquire into whether there are reasonable grounds for supposing the person to be a deportee. The persons who may be prescribed authorities are set out in section 255 and include a judge or former judge, a legal practitioner of at least 5 years' standing, and a magistrate.

5.04 Power of Commissioner to send for witnesses and documents

A Commissioner appointed under subsection 203(4) of the Act (which deals with the appointment of commissioners) may, by writing signed by the Commissioner, summon any person:

- (a) to attend before the Commissioner at a time and place specified in the summons; and
- (b) to give evidence; and
- (c) to produce any books or documents in the person's custody or control which the person is required by the summons to produce.

5.05 Duty of witness to continue in attendance

A person who has been summoned to attend before a Commissioner as a witness must appear and report from day to day, unless excused by the Commissioner.

Penalty: 10 penalty units.

5.06 Arrest of witness failing to appear

- (1) If a person who has been summoned to attend before a Commissioner fails:
 - (a) to attend before the Commissioner as required by the summons; or
 - (b) to appear and report in accordance with regulation 5.05;the Commissioner may, on being satisfied that the summons has been duly served and that reasonable expenses have been paid or tendered to the person, issue a warrant for the person's arrest.
- (2) A warrant authorises:
 - (a) the arrest and bringing before the Commissioner of the person; and
 - (b) the detention of the person in custody for the purposes specified in the warrant until the person is released by order of the Commissioner.
- (3) A warrant may be executed by a member of the police force of the Commonwealth or of a State or Territory or by any person to whom it is addressed, and the person executing it has power to break and enter any place, building or vessel, using any force that is necessary and reasonable, for the purpose of executing the warrant.

- (4) The arrest of a person under this regulation does not relieve that person from any liability incurred by the person because of the failure of that person to attend before the Commissioner.

5.07 Witnesses' fees

- (1) A person who attends to give evidence before a Commissioner is, in respect of that attendance, to be paid such fees and travelling expenses as the Commissioner allows in accordance with the scale in Schedule 2 to the Public Works Committee Regulations as in force from time to time.
- (2) The fees and travelling expenses are payable:
- (a) in the case of a witness summoned at the request of the person to whom the investigation relates—by that person; and
 - (b) in any other case—by the Commonwealth.

5.08 Power to examine on oath or affirmation

- (1) A Commissioner may administer an oath to a person appearing as a witness before the Commissioner, whether the witness has been summoned or appears without being summoned, and may examine the witness on oath.
- (2) If a witness conscientiously objects to swear an oath, the witness may make an affirmation that the witness conscientiously objects to swear an oath and that the witness will state the truth, the whole truth, and nothing but the truth to all questions the witness is asked.
- (3) An affirmation so made is of the same force and effect, and entails the same liabilities, as an oath.

5.09 Offences by witnesses

A person summoned to attend before a Commissioner as a witness must not:

- (a) without reasonable cause, fail to attend, after payment or tender to the person of a reasonable sum for expenses of attendance; or
- (b) refuse to be sworn or to make an affirmation as a witness, or to answer any question when required to do so by the Commissioner; or
- (c) without reasonable cause, refuse or fail to produce a book or document which the person was required by the summons to produce.

Penalty: 10 penalty units.

5.10 Statements of person not admissible in evidence against the person

A statement or disclosure made by a person in answer to a question put to the person during an investigation by a Commissioner is not admissible in evidence against the person in any civil or criminal proceedings other than:

- (a) proceedings in respect of a false answer; or
- (b) proceedings relating to the deportation of the person.

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5.11 Representation by counsel etc.

- (1) In an investigation before a Commissioner, the person summoned to appear and the Minister are each entitled to be represented by a barrister or solicitor or by an agent approved by the Commissioner.
- (2) A barrister, solicitor or agent appearing before a Commissioner may examine or cross-examine witnesses and address the Commissioner.

5.12 Offences in relation to Commissioners

A person must not:

- (a) wilfully insult or disturb a Commissioner when exercising powers and functions under the Act; or
- (b) interrupt the proceedings of a Commissioner; or
- (c) use insulting language towards a Commissioner; or
- (d) by writing or speech use words calculated to influence improperly a Commissioner or a witness before a Commissioner.

Penalty: 10 penalty units.

5.13 Protection of Commissioners, barristers and witnesses

- (1) A Commissioner has, in the performance of the duties of a Commissioner, the same protection and immunity as a Justice of the High Court.
- (2) A barrister, solicitor or approved agent appearing before a Commissioner has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.
- (3) A witness summoned to attend, or appearing, before a Commissioner has the same protection as a witness in proceedings in the High Court.

5.14 Procedure of prescribed authorities

This Part applies to:

- (a) prescribed authorities referred to in section 255 of the Act; and
- (b) proceedings before those prescribed authorities under section 253 of the Act;

in the same manner as it applies to Commissioners and proceedings before Commissioners and as if references in those provisions to a Commissioner were references to a prescribed authority.

Division 5.3—General

5.15 Behaviour concern non-citizen

For the purposes of paragraph (e) of the definition of *behaviour concern non-citizen* in subsection 5(1) of the Act, each of the following circumstances is prescribed in relation to the exclusion of a person from a country other than Australia:

- (a) that the person refused or failed to present a passport on request by the competent authorities in that country in circumstances in which it would be unreasonable to refuse or fail to do so;
- (b) that the person presented to those authorities a passport that was a bogus document;
- (c) that the person was reasonably refused entry to that country on the ground that the person was not a genuine visitor;
- (d) that the authorities of that country considered the person to be a threat to the national security of the country.

5.15A Certain New Zealand citizens

For the purposes of paragraph 32 (2) (c) of the Act, it is declared that the class of persons each of whom:

- (a) is a New Zealand citizen who holds, and has shown to an officer, a New Zealand passport that is in force; and
- (b) is not a health concern non-citizen; and
- (c) is a behaviour concern non-citizen only because of having been excluded from a country other than Australia in circumstances that, in the opinion of the Minister, do not warrant the exclusion of the person from Australia;

is a class of persons for whom a visa of a class other than Special Category (Temporary) (Class TY) would be inappropriate.

5.16 Prescribed diseases—health concern non-citizen (Act, s. 5 (1))

For the purposes of the definition of *health concern non-citizen* in subsection 5(1) of the Act, tuberculosis (being tuberculosis that is not being controlled with medication, and in respect of which the person suffering from it refuses to sign an undertaking to visit a Commonwealth Medical Officer within 7 days of entering Australia) is a prescribed disease.

5.17 Prescribed evidence of English language proficiency (Act, s. 5(2)(b))

For the purposes of paragraph 5(2)(b) of the Act (dealing with whether a person has functional English), the evidence referred to in each of the following paragraphs is prescribed evidence of the English language proficiency of a person:

- (a) evidence that the person has a qualification or experience, or has attained test results, set out in column 2 of an item in Part 3 of Schedule 6, being a

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- qualification, experience or test results in relation to which 10 points or more is specified in column 3 of that item;
- (e) evidence that the person has attained the functional level of the ACCESS test, being evidence in the form of a copy of results of a test:
- (i) completed not more than 12 months before the person applies for the grant of a visa in relation to which those results are relevant; or
 - (ii) completed after the application is made;
- and certified by the body that conducted the test as the results of the test of the person;
- (f) evidence that the person has been assessed as having functional English by the provider of a course that is an approved English course for the purposes of section 4 of the *Immigration (Education) Act 1971*;
- (h) in the case of a person who is an applicant for a Business Skills (Migrant) (Class AD) or Business Skills (Residence) (Class BH) visa—evidence that the person has a score of at least 20 points under Part 3 of Schedule 7, being a score awarded on the basis of an interview of the person for the purpose of ascertaining that score;
- (j) if:
- (i) the person is an applicant for a visa of a class that is not mentioned in paragraph (h); and
 - (ii) evidence referred to in paragraph (a) cannot be provided by the person; and
 - (iii) it is not reasonably practicable for the person to attend at a place where, or time when, he or she could be subjected to a test mentioned in paragraph (e) or (f);
- evidence that the person has been determined by the Minister, on the basis of an interview with the person, to have functional English.

5.18 Prescribed laws relating to control of fishing (Act, s. 262(b))

For the purposes of paragraph 262(b) of the Act (specifying laws that, if broken by a non-citizen in certain circumstances, will render the non-citizen liable to repay costs to the Commonwealth), the following laws are prescribed:

- (a) the following laws of the Commonwealth:
- (i) the *Continental Shelf (Living Natural Resources) Act 1968*;
 - (ii) the *Fisheries Act 1952*;
 - (iii) the *Fisheries Management Act 1991*;
 - (iv) the *Torres Strait Fisheries Act 1984*;
- (b) the following laws of Queensland:
- (i) the *Fisheries Act 1976*;
 - (ii) the *Fishing Industry Organisation and Marketing Act 1982*;
- (c) the *Fisheries Act 1905* of Western Australia.

5.19 Approved appointments (employer nomination)

- (1) A proposed appointment is an approved appointment for the purpose of these Regulations if it is the subject of an employer nomination that meets the requirements of subregulation (2) or (4).
- (2) An employer nomination meets the requirements of this subregulation if:
 - (a) the employer nomination is made by an employer in respect of a need for a paid employee in a business:
 - (i) located in Australia; and
 - (ii) operated by that employer; and
 - (b) the work to be performed requires the appointment of a highly skilled person (within the meaning of subregulation (3)); and
 - (c) the appointment will provide the employee with full-time employment and:
 - (i) will be permanent; or
 - (ii) in the case of an appointment to an academic or scientific-research position in an academic, or scientific research, institution:
 - (A) will be for a fixed term of at least 3 years; and
 - (B) will not be subject to an express exclusion of the possibility of renewal of the appointment for a further fixed term of 3 years; and
 - (d) the Minister is satisfied:
 - (i) that the employer has made, and continues to make, adequate provision for training existing employees in work relevant to the business; or
 - (ii) if the business is newly established, that the employer is making adequate provision for future training of employees in work relevant to the business; and
 - (e) the Minister is satisfied that:
 - (i) an Australian citizen or Australian permanent resident cannot be found who is suitable for the appointment; or
 - (ii) in the circumstances of the case, the employer should not be required to seek a suitable employee in Australia; and
 - (f) the applicant is to be employed or engaged in Australia in accordance with the standards for wages and working conditions provided for under relevant Australian legislation and awards.
- (3) In subregulation (2):

highly skilled person, in relation to a proposed employment appointment, means a person who has, in respect of work of the kind to be performed under that appointment:

- (a) completed, over a period of at least 3 years, formal training or equivalent experience; and
- (b) unless the approved appointment is exceptional—been employed in work of the kind for which he or she was trained, or in which he or she is experienced, for at least 3 years:

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- (i) after completing the training or experience referred to in paragraph (a); and
 - (ii) before making the application; and
 - (c) acquired competence assessed by the Minister to be at least average for a person to whom paragraphs (a) and (b) apply.
- (4) An employer nomination meets the requirements of this subregulation if:
- (a) the employer nomination is made by an employer in respect of a need for a paid employee in a business that is:
 - (i) located in Australia; and
 - (ii) operated by that employer; and
 - (b) the appointment:
 - (i) will provide the employee with full-time employment; and
 - (ii) will be for at least 2 years; and
 - (c) unless the appointment is exceptional, the work to be performed requires the appointment of a person who has a diploma (within the meaning of subregulation 2.26 (5)) or higher qualification; and
 - (d) the applicant is to be employed or engaged in Australia in accordance with the standards for wages and working conditions provided for under relevant Australian legislation and awards; and
 - (e) a body, specified for the purpose of this paragraph by Gazette Notice, certifies that the employer nomination meets the requirements of this subregulation.

5.19A Designated investment

- (1) Subject to subregulation (2), the Minister may specify by Gazette Notice a security issued by an Australian State or Territory government authority as a security in which an investment is a designated investment for the purposes of a Part of Schedule 2.
- (2) The Minister may so specify a security if and only if:
 - (a) an investment in the security matures in not less than 3 years from its date of issue; and
 - (b) repayment of principal is guaranteed by the issuing authority; and
 - (c) an investment in the security cannot be transferred or redeemed before maturity except by operation of law or under other conditions acceptable to the Minister; and
 - (d) investment in the security is open to the general public at commercially competitive rates of return; and
 - (e) the Minister is satisfied that the Commonwealth will not be exposed to any liability as a result of an investment in the security by a person.

Division 5.4—Prescribed penalties

5.20 Prescribed penalties (Act, ss. 137, 229 and 230)

- (1) For the purposes of paragraph 504(1)(i) of the Act (which authorises the Regulations to set penalties as an alternative to prosecution), the prescribed penalty for an offence against section 137 of the Act is:
 - (a) in the case of a failure by a person to supply the person's address—\$250;
or
 - (b) in any other case—\$1,000.
- (2) For the purposes of paragraph 504(1)(j) of the Act, the prescribed penalty for an offence against section 229 or 230 of the Act is \$2,000.

Note: Section 137 permits the Secretary to require information from the holder of a business visa. Section 229 prohibits the carrying of persons to Australia without visas. Section 230 makes it an offence to have an unlawful non-citizen concealed on a vessel entering Australia.

Division 5.5—Infringement notices

5.21 Interpretation

(1) In this Division:

authorised officer includes the Secretary;

business visa has the same meaning as in section 137 of the Act;

infringement notice means a notice under regulation 5.22;

offence means a contravention of section 137, 229 or 230 of the Act;

prescribed penalty, in relation to an offence, means the prescribed penalty prescribed by regulation 5.20 in relation to the offence.

Note: s. 137 permits the Secretary to require information from the holder of a business visa. Section 229 prohibits the carrying of persons to Australia without visas. Section 230 makes it an offence to have an unlawful non-citizen concealed on a vessel entering Australia.

5.22 When can an infringement notice be served?

If an authorised officer has reason to believe that a person has committed an offence, he or she may cause an infringement notice to be served on the person in accordance with this Division.

5.23 What must an infringement notice contain?

(1) An infringement notice must:

- (a) state the name of the authorised officer who caused the notice to be served; and
- (b) set out:
 - (i) the day on which the offence is alleged to have been committed; and
 - (ii) if the offence is against section 229 or 230 of the Act, the place at which the offence is alleged to have been committed; and
- (c) give brief particulars of the alleged offence; and
- (d) set out the prescribed penalty; and
- (e) state that, if the person on whom it is served does not wish the matter to be dealt with by a court, he or she may pay that penalty within 28 days after the date of service of the notice unless the notice is withdrawn before the end of that period; and
- (f) specify where and how that penalty may be paid; and
- (g) set out the procedures relating to the withdrawal of notices and the consequences of the withdrawal of a notice.

(2) An infringement notice may contain any other particulars that the authorised officer considers necessary.

5.24 Can the time for payment be extended?

If an infringement notice has been served on a person, an authorised officer may, if he or she is satisfied that in all the circumstances it is proper to do so, allow a further period for payment of the prescribed penalty, whether or not the period of 28 days after the date of service of the notice has expired.

5.25 What happens if the prescribed penalty is paid?

If the person on whom an infringement notice is served pays the prescribed penalty in relation to the alleged offence before:

- (a) the end of:
 - (i) the period of 28 days after the date of service of the notice; or
 - (ii) if a further period has been allowed under regulation 5.24—that further period; or
 - (b) the notice is withdrawn;
- whichever happens first, then:
- (c) any liability of the person in respect of the alleged offence is discharged; and
 - (d) no further proceedings may be taken in respect of the alleged offence; and
 - (e) the person is not to be taken to have been convicted of the alleged offence.

5.26 Can an infringement notice be withdrawn?

- (1) If an infringement notice has been served on a person, an authorised officer may withdraw it by notice in writing served on the person in accordance with these Regulations, at any time before:
 - (a) the end of 28 days after the date of service of the notice; or
 - (b) if a further period has been allowed under regulation 5.24—the end of that further period.
- (2) An infringement notice for an alleged offence against section 229 or 230 of the Act must not be withdrawn under subregulation (1) after the expiry of 3 months commencing on the day on which the notice was served.

5.27 Refund of prescribed penalty if notice withdrawn

If:

- (a) an infringement notice has been served on a person; and
 - (b) the person has paid the prescribed penalty in accordance with the notice; and
 - (c) the notice is subsequently withdrawn;
- an authorised officer must arrange for the refund to the person of an amount equal to the amount so paid.

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5.28 Evidence

- (1) At the hearing of a prosecution for an offence specified in an infringement notice, a certificate signed by an authorised officer and stating:
 - (a) that the authorised officer did not allow further time under regulation 5.24 for payment of the penalty specified in the notice; and
 - (b) that the penalty has not been paid in accordance with the notice within 28 days after the date of service of the notice;is evidence of those matters.
- (2) At the hearing of a prosecution for an offence specified in an infringement notice, a certificate signed by an authorised officer and stating:
 - (a) that the authorised officer allowed, under regulation 5.24, the further time specified in the certificate for payment of the prescribed penalty; and
 - (b) that the penalty has not been paid in accordance with the notice or within the further time allowed;is evidence of those matters.
- (3) At the hearing of a prosecution for an offence specified in an infringement notice, a certificate signed by an authorised officer and stating that the notice was withdrawn on a day specified in the certificate is evidence of that fact.
- (4) A certificate that purports to have been signed by an authorised officer is taken to have been signed by that person unless the contrary is proved.

5.29 Can there be more than one infringement notice for the same offence?

This Division does not prevent more than one infringement notice being served on a person for the same offence, but regulation 5.25 applies to the person if the person pays the prescribed penalty in accordance with one of the infringement notices.

5.30 What if payment is made by cheque?

If a cheque is offered to Immigration as payment of all or part of the amount of a penalty specified in an infringement notice, payment is taken not to have been made unless the cheque is honoured upon presentation.

5.31 Infringement notice not compulsory

Nothing in this Division:

- (a) requires an infringement notice to be served on a person in relation to an offence; or
- (b) affects the liability of a person to be prosecuted for an offence if the person does not comply with an infringement notice; or
- (c) affects the liability of a person to be prosecuted for an offence if an infringement notice is not served on the person in relation to the offence; or
- (d) affects the liability of a person to be prosecuted for an offence if an infringement notice is served and withdrawn; or

- (e) limits the amount of the fine that may be imposed by a court on a person convicted of an offence.

Division 5.6—Miscellaneous

5.32 Search warrants (Act, ss. 223(14) and 251(4))

- (1) A search warrant for the purposes of subsection 223(14) of the Act (dealing with directions about, and seizure of, the valuables of non-citizens in detention) is to be in accordance with prescribed form 1.
- (2) A search warrant for the purposes of subsection 251(4) of the Act (dealing with entry and search for unlawful non-citizens) is to be in accordance with prescribed form 2.

5.33 Document for purposes of s.274(3)(a) of Act

A document for the purposes of paragraph 274(3)(a) of the Act (dealing with documents relating to persons to be removed or deported from Australia) is to be in accordance with prescribed form 3.

5.34 Offences

A person must not contravene or fail to comply with a provision of these Regulations that is applicable to that person.

Penalty: 10 penalty units.

5.35 Medical treatment of persons in detention under the Act

- (1) In this regulation:

detainee means a person held at a detention centre in detention under the Act;

medical treatment includes:

- (a) the administration of nourishment and fluids; and
- (b) treatment in a hospital.

- (2) The Secretary may authorise medical treatment to be given to a detainee if:

- (a) the Secretary, acting in person and on the written advice of:
 - (i) a Commonwealth Medical Officer; or
 - (ii) another registered medical practitioner;

forms the opinion that:

- (iii) that detainee needs medical treatment; and
 - (iv) if medical treatment is not given to that detainee, there will be a serious risk to his or her life or health; and
- (b) that detainee fails to give, refuses to give, or is not reasonably capable of giving, consent to the medical treatment.

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- (3) An authorisation by the Secretary under subregulation (2) is authority for the use of reasonable force (including the reasonable use of restraint and sedatives) for the purpose of giving medical treatment to a detainee.
- (4) A detainee to whom medical treatment is given under an authorisation under subregulation (2) is taken for all purposes to have consented to the treatment.
- (5) Medical treatment that is given under an authorisation under subregulation (2) must be given by, or in the presence of, a registered medical practitioner.
- (6) Nothing in this regulation authorises the Secretary to require a registered medical practitioner to act in a way contrary to the ethical, moral or religious convictions of that medical practitioner.

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Division 5.7—Fees

5.36 Payment of fees in foreign currencies

- (1) Payment in a foreign country of a fee payable under these Regulations may be made:
 - (a) by payment of the amount of that fee in Australian currency; or
 - (b) by payment of the corresponding amount in a currency that is specified for the purposes of this paragraph by Gazette Notice, ascertained in accordance with that Gazette Notice; or
 - (c) by payment of the corresponding amount, ascertained in accordance with subregulation (2), in the currency of the country in which the payment is made, not being a currency specified for the purposes of paragraph (b).
- (2) The formula is:
AUD x CER x 1.05
where:
AUD means the amount of the fee in Australian dollars;
CER means the highest exchange rate that is lawfully obtainable on a commercial basis for the purchase in the foreign country of Australian currency with the currency of the foreign country in a period that:
 - (a) begins:
 - (i) on the day when this regulation commences; or
 - (ii) on any subsequent day when that rate increases or decreases by at least 5%; and
 - (b) ends at the end of each day before another period begins.
- (3) If the amount worked out by that formula cannot be paid wholly in banknotes of that country, the corresponding amount is that amount rounded up to the nearest larger amount that is payable wholly in banknotes of that country.

5.37 Employer nomination fee

- (1) The fee payable in respect of an employer nomination to which subregulation 5.19(2) applies is \$275 and must be paid at the time the nomination is lodged.
- (2) No fee is payable in respect of an employer nomination to which subregulation 5.19(4) applies.

5.38 Sponsorship fee

- (1) This regulation applies to sponsorship of an applicant if:
 - (a) the applicant is applying for a temporary visa for which sponsorship is a requirement (other than a Subclass 426 (Domestic Worker (Diplomatic or Consular)) visa); and

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- (b) the sponsor is a person or organisation in Australia who, or which, lodges the application on behalf of the applicant.
- (2) Subject to subregulation (3), there is payable for a sponsorship of an applicant to which this regulation applies:
 - (a) if not more than 10 applications are lodged together by the sponsoring person or organisation—\$205 for each sponsorship; or
 - (b) if more than 10 applications are lodged together by the sponsoring person or organisation—\$2,050.
- (3) If an application for a visa is not subject to a fee under these Regulations, no fee is payable for a sponsorship in respect of that application.

5.39 Refund of fees

- (1) If:
 - (a) a fee is paid by a person, before or after the commencement of this regulation, for:
 - (i) an application for a visa; or
 - (ii) an application, made before 1 September 1994, for an entry permit; and
 - (b) the application is for any reason unnecessary or is made as a result of a mistake made by the person or by Immigration;the person is entitled to a refund of the amount of the fee paid.
- (2) If:
 - (a) a fee is paid by a person, before or after the commencement of this regulation, for:
 - (i) an application for a visa; or
 - (ii) an application, made before 1 September 1994, for an entry permit; and
 - (b) the applicant dies before a decision is made on the application;the legal personal representative of the applicant is entitled to a refund of the amount of the fee paid.
- (3) The receipt of a person purporting to be a legal personal representative of a deceased applicant is for all purposes a good discharge of any liability of the Commonwealth under subregulation (2).
- (4) A refund that is due to a person under this regulation may be paid to him or her in a currency other than Australian currency, if the fee was paid in that other currency.

5.40 Fee for assessment of a person's work qualifications and experience

- (1) The fee payable on an application for assessment, for the purposes of the Act, of a person's occupational qualifications or experience (or both) is:
 - (a) in the case of an assessment by NOOSR—\$300;

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- (b) in the case of an assessment by the Department of Industrial Relations:
 - (i) for a standard skills assessment—\$280; and
 - (ii) for an optional priority skills assessment—\$470.
- (2) The fee payable on an application for internal review of an assessment described in paragraph (1)(b) is \$280.
- (3) Subject to subregulation (4), if the review of an assessment is decided in favour of the applicant by a review authority, the fee paid under subregulation (2) is to be refunded.
- (4) A fee paid under subregulation (2) in respect of an application for review is not to be refunded if the applicant provided evidence for the purposes of the review that was not provided for the purposes of the application for assessment.

Schedule 1—Classes of visas

(Regulations 2.02 and 2.05)

Note: This Schedule sets out the specific ways in which a non-citizen applies for a visa of a particular class. An application that is not made as set out in this Schedule is not valid and will not be considered: see the Act, ss. 45, 46 and 47. If an item specifies that 2 or more persons may combine their applications, only 1 fee is payable: see r. 2.07(2).

Part 1—Permanent Visas

1101. Adoption (Migrant) (Class AA)

- (1) Form: 47
- (2) Fee:
 - (a) In the case of an application by an applicant whose brother or sister:
 - (i) applies for an Adoption (Migrant) visa at the same time and place as the applicant; and
 - (ii) has paid the fee specified in paragraph (b) on his or her application:
Nil.
 - (b) In any other case: \$600.
- (3) Other:
 - (a) Application must be made outside Australia.
 - (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for an Adoption (Migrant) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
102 (Adoption)

1101A. Ahmadi (Special Assistance) (Class BJ)

- (1) Form: 917
- (2) Fee: Nil.
- (3) Other:
 - (a) Application must be made outside Australia.
 - (aa) Applicant must be outside Australia.
 - (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for an Ahmadi (Special Assistance) visa may be made at the same time and place as, and combined with, the application by that person.
 - (c) Application must be accompanied by a written undertaking of support from the Ahmadiyya Muslim Association of Australia.

(4) Subclasses:

216 (Ahmadi)

1102. Burmese in Burma (Special Assistance) (Class AB)

(1) Form: 917.

(2) Fee: Nil.

(3) Other:

(a) Application must be made outside Australia.

(aa) Applicant must be outside Australia.

(b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Burmese (Special Assistance) visa may be made at the same time and place as, and combined with, the application by that person

(4) Subclasses:

211 (Burmese)

1103. Burmese in Thailand (Special Assistance) (Class AC)

(1) Form: 917.

(2) Fee: Nil.

(3) Other:

(a) Application must be made outside Australia

(aa) Applicant must be outside Australia.

(b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Burmese in Thailand (Special Assistance) visa may be made at the same time and place as, and combined with, the application by that person

(4) Subclasses:

213 (Burmese in Thailand)

1104. Business Skills (Migrant) (Class AD)

(1) Form: 47, 926 and 928.

(2) Fee: \$2,465.

(3) Other:

(a) Application may be made in Australia (but not in immigration clearance) or outside Australia.

(b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Business Skills (Migrant) visa may be

made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

- 127 (Business owner)
- 128 (Senior Executive)
- 129 (State/Territory sponsored business owner)
- 130 (State/Territory sponsored senior executive)
- 131 (Investment-linked)

1104A. Business Skills (Residence) (Class BH)

(1) Form:1029

(2) Fee: \$2,465.

(3) Other:

- (a) Application must be made in Australia, but not in immigration clearance.
- (b) The applicant must be in Australia, but not in immigration clearance.
- (c) Application by a person claiming to be a member of the family unit of an applicant may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

- 840 (Business Owner)
- 841 (Senior Executive)
- 842 (State/Territory Sponsored Business Owner)
- 843 (State/Territory Sponsored Senior Executive)
- 844 (Investment-linked)
- 845 (Established Business in Australia).

1105. Cambodian (Special Assistance) (Class AE)

(1) Form: 917.

(2) Fee: Nil.

(3) Other:

- (a) Application must be made outside Australia.
- (aa) Applicant must be outside Australia.
- (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Cambodian (Special Assistance) visa may

be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

214 (Cambodian)

1106. Camp Clearance (Migrant) (Class AF)

(1) Form: 842.

(2) Fee: Nil.

(3) Other:

(a) Application must be made outside Australia.

(aa) Applicant must be outside Australia.

(b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Camp Clearance (Migrant) visa may be made at the same time and place as, and combined with, the application by that person

(4) Subclasses:

205 (Camp clearance)

1107. Change in Circumstance (Residence) (Class AG)

(1) Form: 887.

(2) Fee:

(a) Applicant:

(i) whose parent has been granted a permanent visa; and

(ii) who was included in the parent's application for:

(A) a Group 1.1 (Migrant) visa under the Migration (1993) Regulations; or

(B) a Business (Joint venture) visa (code number 122) or a business (general) visa (code number 123) under the Migration (1989) Regulations;

Nil;

(aa) Applicant:

(i) who applies as the dependent child of an Australian citizen, Australian permanent resident or eligible New Zealand citizen; and

(ii) whose brother or sister:

(A) applies as the dependent child of an Australian citizen, Australian permanent resident or eligible New Zealand citizen for a Change in Circumstance (Residence) visa at the same time and place as the applicant; and

(B) has paid the fee specified in paragraph (b) on his or her application:

Nil.

(ab) Applicant:

(i) who applies as an orphan relative of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and

(ii) whose brother or sister:

(A) applies as an orphan relative of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen for a Change in Circumstance (Residence) visa at the same time and place as the applicant; and

(B) has paid the fee specified in paragraph (b) on his or her application:

Nil.

(ac) Applicant who appears to the Minister, on the basis of the information contained in the application, to be an orphan relative or a special need relative:

\$600.

(b) Any other applicant: \$1500.

(3) Other:

(a) Application must be made in Australia, but not in immigration clearance.

(b) Applicant must be in Australia but not in immigration clearance.

(c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Change in Circumstance (Residence) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

802 (Child)

804 (Aged parent)

806 (Family)

833 (Certain unlawful non-citizens)

1108. Child (Migrant) (Class AH)

(1) Form: 47.

(2) Fee:

(a) In the case of an application made by an applicant whose brother or sister:

(i) applies for a Child (Migrant) visa at the same time and place as the applicant; and

(ii) has paid the fee specified in paragraph (b) on his or her application:

Nil.

(b) In any other case: \$600.

(3) Other:

(a) Application must be made outside Australia.

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

(4) Subclasses:

101 (Child)

1109. Citizens of Former Yugoslavia (Special Assistance) (Class AI)

(1) Form: 917.

(2) Fee: Nil.

(3) Other:

(a) Application must be made outside Australia.

(aa) Applicant must be outside Australia.

(b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Citizens of Former Yugoslavia (Special Assistance) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

209 (Citizens of former Yugoslavia—displaced persons)

1110. Concessional Family (Migrant) (Class AJ)

(1) Form: 47.

(2) Fee: \$600.

(3) Other:

(a) Application must be made outside Australia.

(b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Concessional Family (Migrant) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

105 (Concessional Family)

106 (Regional Family)

1111. Confirmatory (Residence) (Class AK)

- (1) Form: 852.
- (2) Fee:
 - (a) In the case of an applicant who, on last arriving in Australia, was granted a Subclass 773 (border) visa: \$120.
 - (b) In any other case: Nil.
- (3) Other:
 - (a) Application must be made in Australia but not in immigration clearance.
 - (b) Applicant must be in Australia but not in immigration clearance.
 - (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Confirmatory (Residence) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
 - 808 (Confirmatory)

1112. Distinguished Talent (Migrant) (Class AL)

- (1) Form: 47.
- (2) Fee: \$600.
- (3) Other:
 - (a) Application must be made outside Australia.
 - (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Distinguished Talent (Migrant) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
 - 124 (Distinguished talent (Australian support))
 - 125 (Distinguished talent and Special Service (independent))

1113. East Timorese in Portugal, Macau or Mozambique (Special Assistance) (Class AM)

- (1) Form: 917.
- (2) Fee: Nil.
- (3) Other:
 - (a) Application must be made outside Australia.
 - (aa) Applicant must be outside Australia.

- (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for an East Timorese in Portugal, Macau or Mozambique (Special Assistance) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

208 (East Timorese in Portugal, Macau or Mozambique).

1114. Employer Nomination (Migrant) (Class AN)

- (1) Form: 47 (unless the applicant is taken, under regulation 2.08C, to have applied for an Employer Nomination (Migrant) (Class AN) visa, in which case no form is required).
- (2) Fee: \$600 (unless the applicant is taken, under regulation 2.08C, to have applied for an Employer Nomination (Migrant) (Class AN) visa, in which case no fee is payable).
- (3) Other:
 - (a) Application must be made outside Australia.
 - (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for an Employer Nomination (Migrant) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

121 (Employer Nomination Scheme)

1115. Family (Residence) (Class AO)

- (1) Form: 887.
- (2) Fee:
 - (a) If the applicant is the holder of a transitional (temporary) visa granted on the basis that he or she satisfied the criteria for the grant of an extended eligibility (temporary) entry permit under the Migration (1989) Regulations: \$175.
 - (b) Applicant:
 - (i) whose parent has been granted a permanent visa; and
 - (ii) who was included in the parent's application for:
 - (A) a Group 1.1 (Migrant) visa under the Migration (1993) Regulations; or
 - (B) a Business (Joint venture) visa (code number 122) or a business (general) visa (code number 123) under the Migration (1989) Regulations;

Nil.

- (ba) Applicant:

- (i) who applies as a dependent child of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
- (ii) whose brother or sister:
 - (A) applies as a dependent child of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen for a Family (Residence) visa at the same time and place as the applicant; and
 - (B) has paid the fee specified in paragraph (a) or (c) on his or her application:

Nil.

(bb) Applicant:

- (i) who applies as an orphan relative of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
- (ii) whose brother or sister:
 - (A) applies as an orphan relative of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen for a Family (Residence) visa at the same time and place as the applicant; and
 - (B) has paid the fee specified in paragraph (a) or (c) on his or her application:

Nil.

(bc) Applicant who appears to the Minister, on the basis of the information contained in the application, to be an orphan relative or a special need relative:

\$600.

(bd) Applicant who:

- (i) is the holder of a Subclass 300 (Prospective Marriage) visa granted on the basis of an application that was made:
 - (A) before 1 November 1996; or
 - (B) in response to an invitation under subregulation 2.11(1) in relation to an application for a Spouse (Migrant) (Class BC) visa that was made before 1 November 1996 and has been refused; and
- (ii) is married to the person who was specified as the applicant's intended spouse in the application that resulted in the grant of that Subclass 300 visa; and
- (iii) seeks to remain in Australia permanently on the basis of that marriage:

\$600.

(c) In any other case: \$1500.

(3) Other:

- (a) Application must be made in Australia but not in immigration clearance
- (b) Applicant must be in Australia but not in immigration clearance.

- (c) If the applicant is the holder of a Subclass 300 (Prospective Marriage) visa and seeks to remain in Australia permanently as the spouse of an Australian citizen, Australian permanent resident or eligible New Zealand citizen, the application may be made only if the application that resulted in the grant of that Subclass 300 visa was made:
 - (i) before 1 November 1996; or
 - (ii) in response to an invitation under subregulation 2.11(1) in relation to an application for a Spouse (Migrant) (Class BC) visa that was made before 1 November 1996 and has been refused.
- (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Family (Residence) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

- 831 (Prospective Marriage Spouse)
- 802 (Child)
- 804 (Aged parent)
- 806 (Family)
- 832 (Close ties)

1116. Family of NZ Citizen (Migrant) (Class AP)

- (1) Form: 47.
- (2) Fee: \$600.
- (3) Other:
 - (a) Application must be made outside Australia.
 - (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Family of NZ citizen (Migrant) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
 - 152 (Family of NZ Citizen)

1117. Former Citizen (Migrant) (Class AQ)

- (1) Form: 47.
- (2) Fee: \$600.
- (3) Other:
 - (a) Application must be made outside Australia

- (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Former Citizen (Migrant) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

150 (Former Citizen)

1118. Former Resident (Migrant) (Class AR)

(1) Form: 47.

(2) Fee: \$600.

(3) Other:

- (a) Application must be made outside Australia.
- (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Former Resident (Migrant) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

151 (Former Resident)

1119. General (Residence) (Class AS)

(1) Form:

- (a) If the applicant is the holder of a subclass 445 (Dependent Child) visa: 1002.
- (b) In any other case: 887.

(2) Fee:

- (a) If the applicant is the holder of a subclass 445 (Dependent Child) visa: Nil.
- (b) If the applicant is the holder of a transitional (temporary) visa, granted on the basis that the holder satisfied the criteria for grant of an extended eligibility temporary entry permit under the Migration (1989) Regulations: \$175.
- (c) If the applicant is not the holder of a substantive visa, entered Australia before 19 December 1989, at the time of entry was engaged to be married to a person who was an Australian citizen or Australian permanent resident, and has subsequently married that person: \$600.
- (d) If the applicant is not the holder of a substantive visa, entered Australia on or after 19 December 1989 as the holder of a Class 300 entry permit, and ceased to hold a substantive visa after marrying the Australian citizen or Australian permanent resident whom the applicant entered Australia to marry: \$600.
- (e) If the applicant is the holder of a Prospective Marriage (Temporary) (Class TO) visa, is married to the person who was specified as the applicant's

intended spouse in the application for that visa and seeks to remain in Australia permanently on the basis of that marriage: \$600.

- (f) If the applicant is not the holder of a substantive visa, entered Australia as the holder of a Prospective Marriage (Temporary) (Class TO) visa, ceased to hold that visa after marrying the Australian citizen whom the applicant entered Australia to marry and seeks to remain in Australia permanently on the basis of that marriage: \$600.
- (g) In any other case: \$1,500.

(3) Other:

- (a) Application must be made in Australia but not in immigration clearance.
- (b) Applicant must be in Australia but not in immigration clearance.
- (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a General (Residence) visa may be made at the same time and place as, and combined with, the application by that person

(4) Subclasses:

- 801 (Spouse)
- 804 (Aged parent)
- 805 (Skilled)
- 806 (Family)
- 814 (Interdependency)
- 832 (Close ties)

1120. Independent (Migrant) (Class AT)

- (1) Form: 47.
- (2) Fee: \$600.
- (3) Other:
 - (a) Application must be made outside Australia.
 - (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for an Independent (Migrant) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

- 126 (Independent)

1120A. Interdependency (Migrant) (Class BI)

- (1) Form:
-

(a) If the applicant is the holder of a Subclass 445 (Dependent Child) visa:
1002.

(b) In any other case: 1035.

(2) Fee:

(a) If the applicant is the holder of a Subclass 445 (Dependent Child) visa: Nil.

(b) In any other case: \$600.

(3) Other:

(a) Application (otherwise than by the holder of a Subclass 445 (Dependent Child) visa) must be made outside Australia.

(b) Application by the holder of a Subclass 445 (Dependent Child) visa may be made in or outside Australia, but not in immigration clearance.

(c) Applicant (other than an applicant who is the holder of a Subclass 445 (Dependent Child) visa) must be outside Australia.

(d) Applicant who is the holder of a Subclass 445 (Dependent Child) visa may be in or outside Australia, but not in immigration clearance.

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

(4) Subclasses:

110 (Interdependency)

1121. Labour Agreement (Migrant) (Class AU)

(1) Form: 47.

(2) Fee: \$600.

(3) Other:

(a) Application must be made outside Australia.

(b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Labour Agreement (Migrant) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

120 (Labour agreement)

1122. Minorities of Former USSR (Special Assistance) (Class AV)

(1) Form: 917.

(2) Fee: Nil.

(3) Other:

- (a) Application must be made outside Australia.
- (aa) Applicant must be outside Australia.
- (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Minorities of Former USSR (Special Assistance) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

210 (Minorities of former USSR)

1123. Norfolk Island Permanent Resident (Residence) (Class AW)

(1) Form: 15

(2) Fee: Nil.

(3) Other:

- (a) Application must be made in immigration clearance.
- (b) Applicant must be in immigration clearance.
- (c) The applicant must show a clearance officer a passport that is in force and that is endorsed with an authority to reside indefinitely on Norfolk Island.

(4) Subclasses:

834 (Norfolk Is)

1124. Parent (Migrant) (Class AX)

(1) Form: 47.

(2) Fee: \$600.

(3) Other:

- (a) Application must be made outside Australia.
- (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Parent (Migrant) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

103 (Parent)

1125. Preferential Relative (Migrant) (Class AY)

(1) Form: 47.

(2) Fee:

- (a) In the case of an application made by an applicant:
 - (i) who applies as an orphan relative of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and

- (ii) whose brother or sister:
 - (A) applies as an orphan relative of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen for a Preferential Relative (Migrant) visa at the same time and place as the applicant; and
 - (B) has paid the fee specified in paragraph (b) on his or her application:

Nil.

- (b) In any other case: \$600.

- (3) Other:
 - (a) Application must be made outside Australia.
 - (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Preferential Relative (Migrant) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
 - 104 (Preferential family)

1126. Protection (Class AZ)

- (1) Form: 866.
- (2) Fee:
 - (a) \$30.
 - (b) If the applicant is in immigration detention and has not been immigration cleared: Nil.
- (3) Other:
 - (a) Application must be made in Australia.
 - (b) Applicant must be in Australia.
 - (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Protection visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
 - 866 (Protection)

1127. Refugee and Humanitarian (Migrant) (Class BA)

- (1) Form: 842.
 - (2) Fee: Nil.
 - (3) Other:
 - (a) Application must be made outside Australia.
 - (aa) Applicant must be outside Australia.
-

(b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Refugee and Humanitarian (Migrant) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

200 (Refugee)

201 (In-country special humanitarian)

202 (Global special humanitarian)

203 (Emergency rescue)

204 (Woman at risk)

1128. Return (Residence) (Class BB)

(1) Form: 1085 (unless the application is in accordance with paragraph (3)(ba), in which case no form is required).

(2) Fee:

(a) Application made in Australia: \$65.

(b) Application made outside Australia: \$80.

(3) Other:

(a) Application may be made in or outside Australia, but not in immigration clearance.

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

(ba) An application made in Australia may be:

(i) an oral application; or

(ii) an application in writing, otherwise than in accordance with form 1085;

if accompanied by presentation of a valid passport.

(c) Application by a person who is included in the passport of another applicant for a Return (Residence) visa may be made at the same time and place as, and combined with, the application by that other applicant

(4) Subclasses:

155 (Five Year Resident Return)

157 (Three Month Resident Return)

1129. Spouse (Migrant) (Class BC)

(1) Form:

(a) If the applicant is the holder of a Subclass 445 (Dependent Child) visa: 1002.

(b) In any other case: 47.

(2) Fee:

(a) If the applicant is the holder of a Subclass 445 (Dependent Child) visa: Nil.

(b) In any other case: \$600.

(3) Other:

(a) Application (otherwise than by the holder of a Subclass 445 (Dependent Child) visa) must be made outside Australia.

(b) Application by the holder of a Subclass 445 (Dependent Child) visa may be made in or outside Australia, but not in immigration clearance.

(c) Applicant (other than an applicant who is the holder of a Subclass 445 (Dependent Child) visa) must be outside Australia.

(d) Applicant who is the holder of a Subclass 445 (Dependent Child) visa may be in or outside Australia, but not in immigration clearance.

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

(4) Subclasses:

100 (Spouse)

1129A. Sri Lankan (Special Assistance) (Class BG)

(1) Form: 917.

(2) Fee: Nil.

(3) Other:

(a) Application must be made outside Australia.

(aa) Applicant must be outside Australia.

(b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Sri Lankan (Special Assistance) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

215 (Sri Lankan (special assistance)).

1130. Sudanese (Special Assistance) (Class BD)

(1) Form: 917.

(2) Fee: Nil.

(3) Other:

(a) Application must be made outside Australia.

(aa) Applicant must be outside Australia.

- (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Sudanese (Special Assistance) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

212 (Sudanese)

1131. Territorial Asylum (Residence) (Class BE)

(1) Form: Nil.

(2) Fee: Nil.

(3) Other:

- (a) Application must be made by or on behalf of the applicant in a manner approved by a Minister.
- (aa) At the time when the application is made, there is lodged at the office of Immigration at which, or with the officer of Immigration to whom, the application is made, documentation that:
 - (i) evidences the grant by a Minister to the applicant of territorial asylum in Australia; and
 - (ii) was issued by or on behalf of the Commonwealth.
- (b) Application must be made in Australia.
- (c) Applicant must be in Australia but not in immigration clearance.
- (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Territorial Asylum (Residence) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

800 (Territorial)

1132. Vietnamese (Special Assistance) (Class BK)

(1) Form: 917.

(2) Fee: Nil.

(3) Other:

- (a) Application must be made outside Australia.
- (aa) Applicant must be outside Australia.
- (b) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Vietnamese (Special Assistance) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

217 (Vietnamese)

Part 2—Temporary Visas (Other Than Bridging Visas)

1201. Border (Temporary) (Class TA)

- (1) Form: 871.
- (2) Fee: Nil.
- (3) Other:
 - (a) In the case of an application by a non-citizen who:
 - (i) is a dependent child of a non-citizen; and
 - (ii) is the holder of a subclass 773 visa:
 - (A) application may be made in Australia; and
 - (B) applicant must be in Australia.
 - (b) In any other case:
 - (i) Application must be made in immigration clearance.
 - (ii) Applicant must be in immigration clearance.
 - (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Border (Temporary) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:

773 (Border)

1203. Citizens of Former Yugoslavia (Temporary) (Class TC)

- (1) Form: 1004.
- (2) Fee: \$35.
- (3) Other:
 - (a) Application must be made in Australia, but not in immigration clearance
 - (b) Applicant must be in Australia
 - (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Citizens of Former Yugoslavia (Temporary) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:

443 (Citizens of former Yugoslavia)

1204. Confirmatory (Temporary) (Class TD)

- (1) Form: 1001.
-

- (2) Fee: Nil.
- (3) Other:
 - (a) Application must be made in Australia but not in immigration clearance.
 - (b) Applicant must be in Australia but not in immigration clearance.
 - (c) Applicant must be the holder of an Emergency (temporary) visa.
 - (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
 - 446 (Confirmatory)

1205. Cultural/Social (Temporary) (Class TE)

- (1) Form: 147.
- (2) Fee:
 - (a) If the application is made outside Australia and the applicant:
 - (i) appears to the Minister, on the basis of information contained in the application, to satisfy the requirements for a Subclass 411 (Exchange) visa; or
 - (ii) satisfies the requirements of paragraph (b) or (c):
Nil.
 - (b) An applicant satisfies the requirements of this paragraph if the purpose of the applicant's visit is to perform as an entertainer, or assist in performances, and:
 - (i) the Minister is satisfied that the purpose of the applicant's visit to Australia is:
 - (A) cultural; and
 - (B) not for a pecuniary reward exceeding the expenses of the applicant; or
 - (ii) the applicant is sponsored to enter Australia for the purpose of performing at:
 - (A) the Adelaide Festival; or
 - (B) the Brisbane Biennial Festival; or
 - (C) the Melbourne International Festival; or
 - (D) the Festival of Perth; or
 - (E) the Festival of Sydney; or
 - (F) a festival approved by the Secretary for the purposes of this sub-subparagraph; or
 - (iii) the applicant is sponsored to enter Australia by an organisation that:
 - (A) is funded, wholly or in part, by the Commonwealth; and
 - (B) is approved by the Secretary for the purposes of this clause.

Schedule 1 Classes of visas

Part 2 Temporary Visas (Other Than Bridging Visas)

- (c) An applicant satisfies the requirements of this paragraph if the application is made on the basis of the applicant having been:
 - (i) entered in a sporting event in an amateur capacity; or
 - (ii) appointed or employed to assist:
 - (A) an amateur participant; or
 - (B) an amateur team;

entered in a sporting event

- (d) If the application is made outside Australia and the applicant is a member of a sporting or entertainment body comprising not fewer than 10 applicants—a fee equal to \$1,450 divided by the number of applicants included in that body.
- (e) In any other case: \$145.

(3) Other:

- (a) Application may be made in or outside Australia, but not in immigration clearance

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

- (c) Application by a person claiming to be a member of the family unit of a person may be made at the same time and place as, and combined with, an application by any other member of the family unit seeking to satisfy either the primary or secondary criteria

(4) Subclasses: 411 (Exchange)

416 (Special program)

420 (Entertainment)

421 (Sport)

423 (Media and film staff)

424 (Public lecturer)

428 (Religious worker)

1206. Diplomatic (Temporary) (Class TF)

(1) Form: Nil

(2) Fee: Nil.

(3) Other:

- (a) Application must be made by or on behalf of the applicant in a manner approved by the Minister.
 - (b) Application may be made in or outside Australia, but not in immigration clearance.
 - (c) Applicant must be in Australia to make an application in Australia.
-

- (d) Application by a person claiming to be a member of the family unit of a person may be made at the same time and place as, and combined with, an application by any other member of the family unit seeking to satisfy either the primary or secondary criteria.

(4) Subclasses:

995 (Diplomatic)

1207. Domestic Worker (Temporary) (Class TG)

(1) Form: 147.

(2) Fee: \$145.

(3) Other:

- (a) Application may be made in or outside Australia, but not in immigration clearance.
- (b) Applicant must be in Australia to make an application in Australia.
- (c) Application by a person claiming to be a member of the family unit of a person may be made at the same time and place as, and combined with, an application by any other member of the family unit seeking to satisfy either the primary or secondary criteria.

(4) Subclasses:

426 (Domestic Worker (Temporary)—Diplomatic or Consular)

427 (Domestic Worker (Temporary)—Executive)

1208. Educational (Temporary) (Class TH)

(1) Form: 147.

(2) Fee: \$145.

(3) Other:

- (a) Application may be made in or outside Australia, but not in immigration clearance.
- (b) Applicant must be in Australia to make an application in Australia.
- (c) Application by a person claiming to be a member of the family unit of a person may be made at the same time and place as, and combined with, an application by any other member of the family unit seeking to satisfy either the primary or secondary criteria.

(4) Subclasses:

415 (Foreign government agency)

418 (Educational)

419 (Visiting academic)

442 (Occupational trainee)

1208A. Electronic Travel Authority (Class UD)

- (1) Form: Nil.
- (2) Fee:
 - (a) If the applicant satisfies the requirements for a Subclass 956 (Electronic Travel Authority (Business Entrant—Long Validity)) visa: \$45.
 - (b) In any other case: Nil.
- (3) Other:
 - (a) Application must be made outside Australia.
 - (b) Applicant must be outside Australia.
 - (c) If the applicant satisfies the requirements for a Subclass 956 (Electronic Travel Authority (Business Entrant—Long Validity)) visa or a Subclass 976 (Electronic Travel Authority (Visitor)) visa, the applicant must hold a valid passport that indicates that he or she is a national of a country specified by Gazette Notice for the purposes of this paragraph.
 - (d) If the applicant satisfies the requirements for a Subclass 977 (Electronic Travel Authority (Business Entrant—Short Validity)) visa, the applicant must hold a valid passport that indicates that he or she is a national of a country specified by Gazette Notice for the purposes of this paragraph.
 - (e) Application by a person included in the passport of another person may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:

956 (Electronic Travel Authority (Business Entrant—Long Validity))

976 (Electronic Travel Authority (Visitor))

977 (Electronic Travel Authority (Business Entrant—Short Validity)).

1209. Emergency (Temporary) (Class TI)

- (1) Form: 1003.
- (2) Fee: Nil.
- (3) Other:
 - (a) Application may be made inside or outside Australia, but not in immigration clearance.
 - (b) Applicant must be in Australia to make an application in Australia.
 - (c) Application by a person claiming to be a member of the family unit of a person may be made at the same time and place as, and combined with, an application by any other member of the family unit seeking to satisfy either the primary or secondary criteria.

(4) Subclasses:

302 (Emergency (Permanent Visa Applicant))

303 (Emergency (Temporary Visa Applicant))

1210. Expatriate (Temporary) (Class TJ)

(1) Form: 147.

(2) Fee: \$145.

(3) Other:

(a) Application may be made in or outside Australia, but not in immigration clearance.

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

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

(4) Subclasses:

432 (Expatriate)

1211. Extended Eligibility (Temporary) (Class TK)

(1) Form:

(a) If the applicant is outside Australia and is the dependent child of the holder of a visa of Subclass 309 (Spouse (Provisional)), 310 (Interdependency (Provisional)), 820 (Spouse) or 826 (Interdependency): 918.

(b) In any other case: 887.

(2) Fee:

(a) If the application is made on form 918 and lodged outside Australia: \$110.

(b) Applicant:

(i) who applies as a dependent child of a holder of a Subclass 309, 310, 820 or 826 visa; and

(ii) whose brother or sister:

(A) applies as a dependent child of a holder of a Subclass 309, 310, 820 or 826 visa for an Extended Eligibility (Temporary) visa at the same time and place as the applicant; and

(B) has paid the fee specified in paragraph (a) on his or her application:

Nil.

(c) In any other case: Nil.

(3) Other:

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Part 2 Temporary Visas (Other Than Bridging Visas)

- (a) Application (other than by the dependent child outside Australia of the holder of a visa of Subclass 309 (Spouse (Provisional)), 310 (Interdependency (Provisional)), 820 or 826) must be made at the same time and place as an application for a General (Residence) (Class AS) visa.
- (b) Application for a visa of subclass 820 or 826 must be made in Australia, but not in immigration clearance.
- (c) Applicant for a visa of subclass 820 or 826 must be in Australia, but not in immigration clearance.
- (d) Application by the dependent child of the holder of a visa of Subclass 309, 310, 820 or 826 must be made outside Australia.
- (e) If the applicant is the holder of a Subclass 300 (Prospective Marriage) visa and seeks to remain in Australia permanently as the spouse of an Australian citizen, the application may be made only if the application that resulted in the grant of that Subclass 300 visa was made on or after 1 November 1996.
- (f) Application by a person claiming to be a dependent child of a person who is an applicant for an Extended Eligibility (Temporary) visa may be made at the same time and place as, and combined with, the application by that person.
- (g) Application by a person claiming to be a member of the family unit of the holder or former holder of a prospective marriage (temporary) visa (as defined in Schedule 2, Part 820) who is an applicant for an Extended Eligibility (Temporary) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

820 (Spouse)

826 (Interdependency)

445 (Dependent Child)

1212. Family Relationship (Temporary) (Class TL)

(1) Form: 147.

(2) Fee: \$145.

(3) Other:

- (a) Application may be made in or outside Australia, but not in immigration clearance.
- (b) Applicant must be in Australia to make an application in Australia.
- (c) Application by a person claiming to be a member of the family unit of a person may be made at the same time and place as, and combined with, an application by any other member of the family unit seeking to satisfy either the primary or secondary criteria.

(4) Subclasses:

425 (Family relationship)

1213A. Interdependency (Provisional) (Class UG)

- (1) Form: 1035.
- (2) Fee: Nil.
- (3) Other:
 - (a) Application must be made outside Australia.
 - (b) Applicant must be outside Australia.
 - (c) Application must be made at the same time and place as an application for an Interdependency (Migrant) (Class BI) visa.
 - (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for an Interdependency (Provisional) visa may be made at the same time and place as, and combined with, the application by that person.
- (4) Subclasses:
 - 310 (Interdependency (Provisional))

1214. Long Stay (Visitor) (Class TN)

- (1) Form:
 - (a) If application is made outside Australia: 48, 48L or 48R.
 - (b) If the application is made in Australia: Form 601 (unless the application is an oral application in accordance with paragraph (3) (aa), in which case no form is required).
 - (2) Fee:
 - (a) Application made outside Australia: \$35.
 - (b) Application made in the migration zone: \$145.
 - (c) The Minister may waive the fee for an application by a person who applies as the representative of a foreign government.
 - (3) Other:
 - (a) Application may be made in or outside Australia, but not in immigration clearance.
 - (aa) Oral application may be made if, and only if, the applicant:
 - (i) is in Australia (but not in immigration clearance); and
 - (ii) is the holder of a Long Stay (Visitor) (Class TN) visa or a Short Stay (Visitor) (Class TR) visa.
 - (b) Application by a person included in the passport of another person may be made at the same time and place as, and combined with, the application by that person.
 - (4) Subclasses:
-

686 (Tourist (Long Stay))

1214AA. Medical Practitioner (Temporary) (Class UE)

- (1) Form: 147
- (2) Fee: \$145
- (3) Other:
 - (a) Application may be made in or outside Australia, but not in immigration clearance.
 - (b) Applicant must be in Australia to make an application in Australia.
 - (c) Application by a person claiming to be a member of the family unit of a person may be made at the same time and place as, and combined with, an application by any other member of the family unit seeking to satisfy either the primary or secondary criteria.
- (4) Subclasses:

422 (Medical Practitioner)

1214A. Medical Treatment (Visitor) (Class UB)

- (1) Form:
 - (a) If the applicant is outside Australia (whether or not the application is made outside Australia): 48ME.
 - (b) If the applicant is in Australia: 601.
 - (2) Fee:
 - (a) If the applicant is outside Australia (whether or not the application is made outside Australia):
 - (i) if the applicant seeks a visa that will permit him or her to remain in Australia for a period of more than 3 months: \$35; or
 - (ii) if the applicant seeks a visa that will permit him or her to travel to, and enter, Australia for a period of:
 - (A) 4 years; or
 - (B) the remaining period of validity of the applicant's passport, if that period is more than 12 months:
\$35; or
 - (iii) in any other case: Nil.
 - (b) If the applicant is in Australia: \$145.
 - (c) The Minister may waive the fee for an application by a person who applies as the representative of a foreign government.
 - (3) Other:
 - (a) Application may be made in or outside Australia, but not in immigration clearance.
-

- (b) If the applicant is outside Australia, the application may be made in the migration zone if and only if no fee is payable on the application.
- (c) Application by a person included in the passport of another person may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

675 (Medical Treatment (Short Stay))

685 (Medical Treatment (Long Stay)).

1215. Prospective Marriage (Temporary) (Class TO)

(1) Form: 47.

(2) Fee: \$600.

(3) Other:

- (a) Application must be made outside Australia.
- (b) Applicant must be outside Australia.
- (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Prospective Marriage (Temporary) visa must be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

300 (Prospective marriage)

1216. Resident Return (Temporary) (Class TP)

(1) Form: 1085.

(2) Fee: \$80.

(3) Other:

- (a) Application must be made outside Australia.
- (b) Application by a person who is included in the passport of another applicant for a Resident Return (Temporary) visa may be made at the same time and place as, and combined with, the application by that other applicant.

(4) Subclasses:

159 (Provisional Resident Return)

1217. Retirement (Temporary) (Class TQ)

(1) Form: 147.

(2) Fee: \$145.

(3) Other:

- (a) Application may be made in or outside Australia, but not in immigration clearance.
- (b) Applicant must be in Australia to make an application in Australia.
- (c) Application by a person claiming to be a member of the family unit of a person may be made at the same time and place as, and combined with, an application by any other member of the family unit seeking to satisfy either the primary or secondary criteria.

(4) Subclasses:

410 (Retirement)

1218. Short Stay (Visitor) (Class TR)

(1) Form:

- (a) If the applicant is outside Australia (whether or not the application is made outside Australia): 48 or 48R.
- (b) If the applicant is in Australia: 601.

(2) Fee:

- (a) If the applicant is outside Australia (whether or not the application is made outside Australia):
 - (i) if the applicant seeks a visa to be in effect for a period of 4 years or the remaining validity of the applicant's passport (whichever is the shorter), and that remaining period is 12 months or more: \$35; or
 - (ii) in any other case: Nil.
- (b) If the applicant is in Australia: \$145.
- (c) The Minister may waive the fee in the case of an application by a non-citizen who applies as the representative of a foreign government.

(3) Other:

- (a) Application may be made in or outside Australia, but not in immigration clearance.
- (b) If the applicant is outside Australia, the application may be made in Australia if and only if no fee is payable on the application.
- (c) Application by a person included in the passport of another person may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

676 Tourist (Short Stay))

1219. Special Category (Temporary) (Class TY)

(1) Form: 15.

(2) Fee: Nil.

- (3) Other:
- (a) Application must be made:
 - (i) in Australia either in immigration clearance or after clearance; or
 - (ii) if the applicant is to travel to Australia on a pre-cleared flight, -outside Australia in immigration clearance.
 - (b) The applicant must give the clearance officer a New Zealand passport that is in force.

- (4) Subclasses:

444 (Special Category)

1220A. Spouse (Provisional) (Class UF)

- (1) Form: 47.
- (2) Fee: Nil.
- (3) Other:
- (a) Application must be made outside Australia.
 - (b) Applicant must be outside Australia.
 - (c) Application must be made at the same time and place as an application for a Spouse (Migrant) (Class BC) visa.
 - (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Spouse (Provisional) visa may be made at the same time and place as, and combined with, the application by that person.

- (4) Subclasses:

309 (Spouse (Provisional))

1221. Sri Lankan (Temporary) (Class TT)

- (1) Form: 1004.
- (2) Fee: \$35.
- (3) Other:
- (a) Application must be made in Australia, but not in immigration clearance.
 - (b) Applicant must be in Australia.
 - (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Sri Lankan (Temporary) visa may be made at the same time and place as, and combined with, the application by that person.

- (4) Subclasses:

435 (Sri Lankan)

1222. Student (Temporary) (Class TU)

- (1) Form:
 - (a) In the case of an application made outside Australia: 157W or 157Y.
 - (b) In the case of an application in Australia: 157Y.
- (2) Fee:
 - (a) If the applicant or family members are approved under an overseas students training scheme approved by the Commonwealth, or applicant is an assisted student or an exchange student: Nil.
 - (b) In any other case: \$250.
- (3) Other:
 - (a) Application may be made in or outside Australia, but not in immigration clearance
 - (b) Applicant must be in Australia to make an application in Australia.
 - (c) Application by a person claiming to be a member of the family unit of a person may be made at the same time and place as, and combined with, the application by any other member of the family unit seeking to satisfy either the primary or secondary criteria.
- (4) Subclasses:

560 (Student)

562 (Iranian Postgraduate Student)

563 (Iranian Postgraduate Student Dependant).

1223. Supported Dependent (Temporary) (Class TW)

- (1) Form: 147.
- (2) Fee: \$145.
- (3) Other:
 - (a) Application may be made in or outside Australia, but not in immigration clearance.
 - (b) Applicant must be in Australia to make an application in Australia.
 - (c) Application by a person claiming to be a member of the family unit of a person may be made at the same time and place as, and combined with, an application by any other member of the family unit seeking to satisfy either the primary or secondary criteria.
- (4) Subclasses:

430 (Supported Dependent)

1223A. Temporary Business Entry (Class UC)

- (1) Form:
-

- (a) If the applicant seeks a visa that will permit the applicant to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period, or periods, of 3 months or less:
 - (i) if the application is made on the applicant's behalf by an approved nominator within the meaning of clause 456.111 of Schedule 2: 1034.
 - (ii) in any other case: 456.
- (b) If the applicant seeks a visa that will permit the applicant to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period, or periods, of more than 3 months: 1066.

(2) Fee:

- (a) Subject to paragraphs (b), (c) and (d), if the applicant seeks a visa that will permit the applicant to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period, or periods, of 3 months or less:
 - (i) Applicant outside Australia (whether or not the application is made outside Australia):
 - (A) if the applicant seeks a visa to be in effect for more than 1 entry or for a period of more than 1 month: \$45.
 - (B) if the applicant seeks a visa to be in effect for 1 entry only and for a period of 1 month or less: Nil.
 - (ii) Applicant in Australia: \$145.
- (b) Subject to paragraphs (c) and (d), if the application is made on the applicant's behalf by an approved nominator within the meaning of clause 456.111 of Schedule 2: \$35.
- (c) The Minister may waive the fee in relation to an application to which paragraph (a) or (b) applies that is made by a non-citizen applying as a representative of a foreign government.
- (d) If it appears to the Minister, on the basis of an application to which paragraph (a) or (b) applies, that the applicant is:
 - (i) a person:
 - (A) to whom privileges and immunities are, or are expected to be, accorded under the *International Organizations (Privileges and Immunities) Act 1963* or the *Overseas Missions (Privileges and Immunities) Act 1995*; and
 - (B) who is expected to be recommended by the Foreign Minister for the grant of a visa; or
 - (ii) the spouse, or a dependent child, of a person mentioned in subparagraph (i):

Nil.

- (e) Subject to paragraph (f), if the applicant seeks a visa that will permit the applicant to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period, or periods, of more than 3 months: \$145.
- (f) If it appears to the Minister, on the basis of an application to which paragraph (e) applies, that the applicant is:
 - (i) a person:

Schedule 1 Classes of visas

Part 2 Temporary Visas (Other Than Bridging Visas)

- (A) to whom privileges and immunities are, or are expected to be, accorded under the *International Organizations (Privileges and Immunities) Act 1963* or the *Overseas Missions (Privileges and Immunities) Act 1995*; and
- (B) who is expected to be recommended by the Foreign Minister for the grant of a visa; or
- (ii) a member of the family unit of a person mentioned in subparagraph (i):

Nil.

(3) Other:

- (a) Application (except an application by an approved nominator, within the meaning of clause 456.111 of Schedule 2, on an applicant's behalf) may be made in or outside Australia, but not in immigration clearance.
- (b) If the applicant seeks a visa that will permit the applicant to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period, or periods, of 3 months or less:
 - (i) Application may be made on the applicant's behalf by an approved nominator.
 - (ii) Application by an approved nominator on behalf of the applicant must be made in Australia.
 - (iii) Application may be made on the applicant's behalf by an approved nominator only if the applicant is outside Australia at the time of application.
 - (iv) If the applicant is outside Australia, the application may be made in Australia only if:
 - (A) no fee is payable on the application; or
 - (B) the application is made on the applicant's behalf by an approved nominator.
 - (v) Application by a person claiming to be a spouse or dependent child of an applicant may be made at the same time and place as, and combined with, the application of that person.
- (c) If:
 - (i) the applicant seeks a visa that will permit the applicant to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period, or periods, of more than 3 months; and
 - (ii) the applicant claims to be a member of the family unit of a person; application may be made at the same time and place as, and combined with, an application by any other member of the family unit seeking to satisfy either the primary or secondary criteria.

(4) Subclasses:

- 456 (Business (Short Stay))
- 457 (Business (Long Stay)).

1224. Transit (Temporary) (Class TX)

- (1) Form: 876.
- (2) Fee: Nil.
- (3) Other:
 - (a) Application must be made outside Australia.
 - (b) Applicant must be outside Australia.
- (4) Subclasses:

771 (Transit)

1225. Working Holiday (Temporary) (Class TZ)

- (1) Form: 147.
- (2) Fee: \$145.
- (3) Other:
 - (a) Application may be made in or outside Australia, but not in immigration clearance.
 - (b) Applicant must be in Australia to make an application in Australia.
 - (c) Application by a person claiming to be a member of the family unit of a person may be made at the same time and place as, and combined with, an application by any other member of the family unit seeking to satisfy either the primary or secondary criteria.
- (4) Subclasses:

417 (Working holiday)

Part 3—Bridging Visas

1301. Bridging A (Class WA)

- (1) Form: 887, 852, 147, 157Y, 601, 866, 1002, 1003, 1004 or 1005.
- (2) Fee: Nil.
- (3) Other:
 - (a) Application must be made in Australia but not in immigration clearance.
 - (b) Applicant must be in Australia but not in immigration clearance.
 - (c) Either:
 - (i) the applicant has made a valid application, in Australia, for a substantive visa that can be granted if the applicant is in Australia and that application has not been finally determined; or
 - (ii) the applicant has applied, within statutory time limits, for judicial review of a decision to refuse a substantive visa that was applied for in Australia and can be granted if the applicant is in Australia and the judicial proceedings (including proceedings on appeal, if any) have not been completed.
 - (d) Applicant must:
 - (i) be the holder of:
 - (A) a substantive visa; or
 - (B) a bridging (Class A) visa; or
 - (C) a bridging (Class B) visa; or
 - (ii) have held a substantive visa when he or she made the substantive visa application referred to in paragraph (c).
 - (e) If the last substantive visa held by the applicant was cancelled, the decision to cancel that visa has been set aside by a review authority.
 - (f) Applicant is not in immigration detention or criminal detention.
 - (g) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Bridging Class A visa may be made at the same time and place as, and combined with, the application by that person
- (4) Subclasses:

010 (Class A)

1302. Bridging B (Class WB)

- (1) Form: 1005 or 1006
 - (2) Fee: \$55.
 - (3) Other:
 - (a) Application must be made in Australia but not in immigration clearance
-

- (b) Applicant must be in Australia but not in immigration clearance
 - (baa) Either:
 - (i) the applicant has made a valid application, in Australia, for a substantive visa that can be granted if the applicant is in Australia and that application has not been finally determined; or
 - (ii) the applicant has applied, within statutory time limits, for judicial review of a decision to refuse a substantive visa that was applied for in Australia and can be granted if the applicant is in Australia and the judicial proceedings (including proceedings on appeal, if any) have not been completed.
 - (ba) Applicant must be:
 - (i) a person who is immigration cleared; or
 - (ii) an eligible non-citizen referred to in subregulation 2.20(6).
 - (c) Applicant is not in immigration detention or criminal detention
 - (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Bridging (Class B) visa may be made at the same time and place as, and combined with, the application by that person
- (4) Subclasses:
- 020 (Class B)

1303. Bridging C (Class WC)

- (1) Form: 887, 852, 147, 157Y, 601, 866, 1002, 1003, 1004 or 1005.
- (2) Fee: Nil.
- (3) Other:
 - (a) Application must be made in Australia but not in immigration clearance.
 - (b) Applicant must be in Australia but not in immigration clearance.
 - (c) Either:
 - (i) the applicant has made a valid application, in Australia, for a substantive visa that can be granted if the applicant is in Australia and that application has not been finally determined; or
 - (ii) the applicant has:
 - (A) applied, within statutory time limits, for judicial review of a decision to refuse a substantive visa that was applied for in Australia and can be granted if the applicant is in Australia and the judicial proceedings (including proceedings on appeal, if any) have not been completed; and
 - (B) held a bridging visa Class C granted on the basis of the refused application.
- (ca) Applicant must be:
 - (i) a person who is immigration cleared; or
 - (ii) an eligible non-citizen referred to in subregulation 2.20(6).

- (d) Applicant:
 - (i) was not the holder of a substantive visa when he or she made the substantive visa application referred to in paragraph (c); and
 - (ii) does not hold a bridging visa Class E; and
 - (iii) has not held a Bridging visa Class E since he or she last held a substantive visa.
- (e) Applicant is not in immigration detention or in criminal detention and has not escaped from either immigration detention or criminal detention.
- (f) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Bridging (Class C) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

030 (Class C)

1304. Bridging D (Class WD)

- (1) Form: 1007.
- (2) Fee: Nil
- (3) Other:
 - (a) Application must be made in Australia but not in immigration clearance.
 - (b) Applicant must be in Australia but not in immigration clearance.
 - (baa) If the applicant has attempted to make an application for a substantive visa, the attempt must have been made, in Australia, for a visa that can be granted if the applicant is in Australia.
 - (ba) Applicant must be:
 - (i) a person who is immigration cleared; or
 - (ii) an eligible non-citizen referred to in subregulation 2.20(6).
 - (c) Applicant is not in immigration detention or criminal detention
 - (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Bridging (Class D) visa may be made at the same time and place as, and combined with, the application by that person.

(4) Subclasses:

040 (Prospective Applicant)

041 (Non-applicant)

1305. Bridging E (Class WE)

- (1) Form: 887, 852, 147, 157Y, 601, 866, 1002, 1003, 1004, 1005 or 1008.
- (2) Fee: Nil.

- (3) Other:
- (a) Application must be made in Australia but not in immigration clearance.
 - (b) Applicant must be in Australia but not in immigration clearance
 - (ba) Applicant must be an eligible non-citizen within the meaning of section 72 of the Act.
 - (bb) If the applicant has made or intends to make an application for a substantive visa, then either:
 - (i) the applicant has made a valid application, in Australia, for a substantive visa that can be granted if the applicant is in Australia and that application has not been finally determined; or
 - (ii) the officer receiving the application is satisfied that the applicant intends, as soon as is practicable, to make an application in Australia for a substantive visa that can be granted if the applicant is in Australia; or
 - (iii) the applicant has applied, within statutory time limits, for judicial review of a decision to refuse a substantive visa that was applied for in Australia and can be granted if the applicant is in Australia and the judicial proceedings (including proceedings on appeal, if any) have not been completed.
 - (c) If applicant is in immigration detention, an officer appointed under subregulation 4.32 (2) as a detention review officer for the State or Territory in which the applicant is detained has been informed of the application.
 - (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Bridging (Class E) visa may be made at the same time and place as, and combined with, the application by that person.
 - (e) If the applicant has applied at the same time and on the same form for a substantive visa, the application for the substantive visa is valid.
- (4) Subclasses:
- 050 (Bridging visa (General))
 - 051 (Bridging visa (Protection visa applicant)).

Schedule 2—Provisions with respect to the grant of Subclasses of visas

Subclass 010—Bridging Visa A

010.1—Interpretation

Note: *Compelling need to work* and *criminal detention* are defined in regulation 1.03. For *eligible non-citizen* see regulation 2.20.

010.111

For the purposes of this Part:

review authority includes the Administrative Appeals Tribunal.

010.2—Primary criteria

Note: All applicants must satisfy the primary criteria.

010.21—Criteria to be satisfied at the time of application

010.211

- (1) The applicant meets the requirements of subclause (2), (3) or (4).
- (2) An applicant meets the requirements of this subclause if:
 - (a) he or she has made a valid application for a substantive visa; and
 - (b) that application has not been finally determined; and
 - (c) he or she held a substantive visa at the time that application was made; and
 - (d) he or she has applied for a bridging visa in respect of that application.
- (3) An applicant meets the requirements of this subclause if:
 - (a) he or she applied for a substantive visa and the application was refused;
and
 - (b) he or she has applied, within the time limit to do so, for judicial review of that refusal; and
 - (c) at the time of that application, he or she held a bridging visa class A or B;
and
 - (d) the judicial review proceedings (including proceedings on appeal, if any) are not completed.
- (4) An applicant meets the requirements of this subclause if:
 - (a) he or she holds a bridging visa Class A or B that is subject to condition 8101, 8102, 8103, 8104, 8105, 8107, 8108 or 8111; and
 - (b) the Minister is satisfied that the applicant has a compelling need to work.

010.22—Criteria to be satisfied at the time of decision

010.221

The applicant continues to satisfy the criterion set out in clause 010.211.

010.3—Secondary criteria: Nil.

Note: All applicants must satisfy the primary criteria.

010.4—Circumstances applicable to grant

010.411

The applicant must be in Australia, but not in immigration clearance.

Note: The applicant must be an eligible non-citizen at the time of grant: see the Act, s. 73.

010.5 When visa is in effect

010.511

In the case of a visa granted to a non-citizen who has applied for a substantive visa—bridging visa:

- (a) coming into effect:
 - (i) on grant; or
 - (ii) when the substantive visa (if any) held by the holder ceases; and
- (b) permitting the holder to remain in Australia until:
 - (i) if the Minister's decision in respect of the substantive visa application is to grant a visa—on the grant of the visa; or
 - (ii) if the Minister's decision in respect of that application is to refuse to grant a visa—28 days after the holder is notified of that refusal; or
 - (iii) if the substantive visa application is refused and the holder applies for merits review of that refusal—28 days after notification of the decision of:
 - (A) the review authority; or
 - (B) if the holder has the right to apply to another review authority for merits review of the decision of that review authority and so applies—28 days after notification of the decision of that other review authority; or
 - (iv) the grant of another bridging visa to the holder in respect of the same substantive visa application; or
 - (v) if the holder withdraws his or her application for a substantive visa or an application to a review authority—28 days after that withdrawal; or
 - (vi) if the substantive visa (if any) held by the holder is cancelled—that cancellation.

Clause 010.513

010.513

In the case of a visa granted to a non-citizen who has applied for judicial review of a decision—bridging visa:

- (a) coming into effect:
 - (i) on grant; or
 - (ii) when the substantive visa (if any) held by the holder ceases; and
- (b) permitting the holder to remain in Australia until:
 - (i) 28 days after the judicial review proceedings (including proceedings on appeal, if any) are completed; or
 - (ii) the grant of another bridging visa to the holder in respect of the same application for judicial review; or
 - (iii) if the holder withdraws his or her application for judicial review—28 days after that withdrawal;
 - (iv) if the substantive visa (if any) held by the holder is cancelled—that cancellation.

010.6—Conditions

010.611

- (1) In the case of a visa other than a visa granted to a non-citizen who:
 - (a) is an applicant for a protection (Class AZ) visa; or
 - (b) satisfies the criteria in subclause 010.211(4);whichever of conditions 8101, 8102, 8103, 8104, 8105, 8107, 8108 and 8111 applies to:
 - (c) the visa held by the holder at the time of application; or
 - (d) if that visa has ceased, the last Bridging visa A or Bridging visa B held by the holder.
- (2) In the case of a visa granted to a non-citizen who:
 - (a) satisfies the criterion in subclause 010.211(4); or
 - (b) is an applicant for a Protection (Class AZ) visa:
Nil.

010.7—Way of giving evidence

010.711

No evidence need be given unless the visa holder asks for it.

010.712

If evidence is given, to be given by a visa label attached to a passport.

Subclass 020—Bridging Visa B

Interpretation

Note: *Compelling need to work* and *criminal detention* are defined in regulation 1.03. For *eligible non-citizen* see regulation 2.20.

020.2—Primary criteria

Note: All applicants must satisfy the primary criteria.

020.111

For the purposes of this Part:

review authority includes the Administrative Appeals Tribunal.

020.21—Criteria to be satisfied at the time of application

020.211

The applicant is the holder of:

- (a) a Class A (Bridging) visa; or
- (b) a Class B (Bridging) visa.

020.212

The applicant wishes to leave and re-enter Australia during:

- (a) the processing of an application for a substantive visa that has not been finally determined; or
- (b) proceedings for judicial review of a decision to refuse a visa; and the Minister is satisfied that the applicant's reasons for wishing to do so are substantial.

020.213

The applicant's return to Australia would not be contrary to the public interest.

020.22—Criteria to be satisfied at the time of decision

020.221

The applicant continues to satisfy the criteria set out in clauses 020.211 and 020.212.

020.3—Secondary criteria: Nil.

Note: All applicants must satisfy the primary criteria.

Clause 020.411

020.4—Circumstances applicable to grant

020.411

The applicant must be in Australia, but not in immigration clearance.

Note: The applicant must be an eligible non-citizen at the time of grant: see the Act, s. 73.

020.5—When visa is in effect

020.511

In the case of a visa granted to a non-citizen who has applied for a substantive visa—bridging visa:

- (a) coming into effect:
 - (i) on grant; or
 - (ii) when the substantive visa (if any) held by the holder ceases; and
- (b) permitting the holder to remain in Australia until:
 - (i) if the Minister's decision in respect of the substantive visa application is to grant a visa—on the grant of the visa; or
 - (ii) if the Minister's decision in respect of that application is to refuse to grant a visa—28 days after the holder is notified of that refusal; or
 - (iii) if the substantive visa application is refused and the holder applies for merits review of that refusal—28 days after notification of the decision of:
 - (A) the review authority; or
 - (B) if the holder has the right to apply to another review authority for merits review of the decision of that review authority and so applies—28 days after notification of the decision of that other review authority; or
 - (iv) if the holder withdraws his or her application for a substantive visa or an application to a review authority—28 days after that withdrawal; or
 - (v) the grant of another bridging visa to the holder in respect of the same application for a substantive visa; or
 - (vi) if the substantive visa (if any) held by the holder is cancelled—that cancellation; and
- (c) permitting the holder to travel to and enter Australia until:
 - (i) a date specified by the Minister for the purpose; or
 - (ii) the visa ceases as set out in subparagraph (b)(i), (ii), (iii), (iv) (v) or (vi), as the case requires.

020.512

In the case of a visa granted to a non-citizen who has applied for judicial review of a decision—bridging visa:

- (a) coming into effect:
 - (i) on grant; or
-

- (ii) when the substantive visa (if any) held by the holder ceases; and
- (b) permitting the holder to remain in Australia until:
 - (i) 28 days after the judicial review proceedings (including proceedings on appeal, if any) are completed; or
 - (ii) if the holder withdraws his or her application for judicial review—28 days after that withdrawal; or
 - (iii) the grant of another bridging visa in respect of the same application for judicial review; or
 - (iv) if the substantive visa (if any) held by the holder is cancelled—that cancellation; and
- (c) permitting the holder to travel to and enter Australia until:
 - (i) a date specified by the Minister for the purpose; or
 - (ii) the visa ceases as set out in subparagraph (b)(i), (ii), (iii) or (iv), as the case requires.

020.6—Conditions

020.611

Whichever of conditions 8101, 8102, 8103, 8104, 8105, 8107, 8108 and 8111 applies to the visa held by the holder at the time of application.

020.612

In the case of a visa granted to a person who is an applicant for a protection visa:
Nil.

020.7—Way of giving evidence

020.711

Visa label attached to valid passport.

Clause 030.111

Subclass 030—Bridging Visa C

030.1—Interpretation

Note: *Criminal detention* and *compelling need to work* are defined in regulation 1.03. For *eligible non-citizen* see regulation 2.20.

030.111

For the purposes of this Part:

review authority includes the Administrative Appeals Tribunal.

030.2—Primary criteria

Note: All applicants must satisfy the primary criteria.

030.21—Criteria to be satisfied at time of application

030.211

The applicant does not hold a bridging visa Class E and has not held a bridging visa Class E since last holding a substantive visa.

030.212

- (1) The applicant meets the requirements of subclause (2), (2A), (3) or (5).
- (2) An applicant meets the requirements of this subclause if:
 - (a) the applicant is not the holder of a substantive visa; and
 - (b) the applicant has made a valid application for a substantive visa at the same time and on the same form as the bridging visa application; and
 - (c) the application has not been finally determined.
- (2A) An applicant meets the requirements of this subclause if:
 - (a) he or she is not the holder of a substantive visa; and
 - (b) he or she has made a valid application for a substantive visa; and
 - (c) that application has not been finally determined; and
 - (d) he or she has previously been granted a Bridging C (Class WC) visa in respect of that application.
- (3) An applicant meets the requirements of this subclause if:
 - (a) he or she holds a bridging visa Class C that is subject to condition 8101; and
 - (b) the Minister is satisfied that the applicant has a compelling need to work.
- (5) An applicant meets the requirements of this subclause if:

- (a) he or she applied for a substantive visa and the application was refused;
and
- (b) he or she has applied, within the time limit to do so, for judicial review of that refusal; and
- (c) at the time of that application, he or she held a bridging visa class C; and
- (d) the judicial review proceedings (including proceedings on appeal, if any) are not completed.

030.22—Criteria to be satisfied at the time of decision

030.221

The applicant continues to satisfy the criteria in clauses 030.211 to 030.212.

030.3—Secondary criteria: Nil.

Note: All applicants must satisfy the primary criteria.

030.4—Circumstances applicable to grant

030.411

The applicant must be in Australia, but not in immigration clearance.

Note: The applicant must be an eligible non-citizen at the time of grant: see the Act, s. 73.

030.5—When visa is in effect

030.511

In the case of a visa granted to a non-citizen who has applied for a substantive visa—bridging visa:

- (a) coming into effect:
 - (i) on grant; or
 - (ii) when the substantive visa (if any) held by the holder ceases; and
- (b) permitting the holder to remain in Australia until:
 - (i) if the Minister's decision in respect of the substantive visa application is to grant a visa—on the grant of the visa; or
 - (ii) if the Minister's decision in respect of that application is to refuse to grant a visa—28 days after the holder is notified of that refusal; or
 - (iii) if the substantive visa application is refused and the holder applies for merits review of that refusal—28 days after notification of the decision of:
 - (A) the review authority; or
 - (B) if the holder has the right to apply to another review authority for merits review of the decision of that review authority and so applies—28 days after notification of the decision of that other review authority; or

Clause 030.512

- (iv) the grant of another bridging visa to the holder in respect of the same application for a substantive visa; or
- (v) if the holder withdraws his or her application for a substantive visa or an application to a review authority—28 days after that withdrawal.

030.512

In the case of a visa granted to a non-citizen who has applied for judicial review of a decision—bridging visa:

- (a) coming into effect:
 - (i) on grant; or
 - (ii) when the substantive visa (if any) held by the holder ceases; and
- (b) permitting the holder to remain in Australia until:
 - (i) 28 days after the judicial review proceedings (including proceedings on appeal, if any) are completed; or
 - (ii) if the holder withdraws his or her application for judicial review—28 days after that withdrawal;
 - (iii) the grant of another bridging visa to the holder in respect of the same application for judicial review; or
 - (iv) if the substantive visa (if any) held by the holder is cancelled—that cancellation.

030.6—Conditions

030.611

In the case of a visa granted to an applicant who meets the requirements of subclause 030.212 (3): Nil.

030.612

In any other case: condition 8101.

030.7—Way of giving evidence

030.711

No evidence need be given unless the visa holder asks for it.

030.712

If evidence is given, to be given by a visa label attached to a passport.

Subclass 040—Bridging Visa (Prospective Applicant)

040.1—Interpretation

Note: *Criminal detention* is defined in regulation 1.03. For *eligible non-citizen* see regulation 2.20. No interpretation provisions specific to this Part.

040.2—Primary criteria

Note: All applicants must satisfy the primary criteria.

040.21—Criteria to be satisfied at time of application

040.211

The applicant is:

- (a) an unlawful non-citizen; or
- (b) the holder of a visa that will cease within the next 3 working days after the day of application.

040.212

Either:

- (a) the application is taken to be a valid application for a bridging visa Class D under regulation 2.22; or
- (b) the applicant has attended at an office of Immigration for the purpose of making an application for a substantive visa.

040.213

The Minister is satisfied that the applicant:

- (a) has attempted to make a valid application for a substantive visa and is unable to do so; and
- (b) will be able to make a valid application for a substantive visa within 5 working days.

040.214

The applicant has not previously been granted 2 bridging visas of subclass 040 since he or she last held a substantive visa.

040.22—Criteria to be satisfied at time of decision

040.221

The applicant continues to satisfy the criteria set out in subdivision 040.21.

Clause 040.411

040.3—Secondary criteria: Nil.

Note: All applicants must satisfy the primary criteria.

040.4—Circumstances applicable to grant

040.411

The applicant must be in Australia but not in immigration clearance.

Note: The applicant must be an eligible non-citizen at the time of grant: see the Act, s. 73.

040.51—When visa is in effect

040.511

Bridging visa coming into effect:

(a) on grant; or

(b) when the substantive visa (if any) held by the holder ceases;

and remaining in effect for 5 working days after date of grant.

040.6—Conditions

040.611

Condition 8101.

040.7—Way of giving evidence

040.711

No evidence is to be given.

Subclass 041—Bridging Visa (Non—applicant)

041.1—Interpretation

Note: *Criminal detention* is defined in regulation 1.03. For *eligible non-citizen* see regulation 2.20. No interpretation provisions specific to this Part.

041.2—Primary criteria

Note: All applicants must satisfy the primary criteria.

041.21—Criteria to be satisfied at time of application

041.211

The applicant is an unlawful non-citizen.

041.212

The applicant is unable, or does not want, to apply for a substantive visa.

041.213

An officer who is an authorised officer for the purposes of clause 050.222 is not available to interview the applicant.

041.22—Criteria to be satisfied at time of decision

041.221

The applicant continues to satisfy the criteria in subdivision 041.21.

041.3—Secondary criteria: Nil.

Note: All applicants must satisfy the primary criteria.

041.4—Circumstances applicable to grant

041.411

The applicant must be in Australia, but not in immigration clearance.

Note: The applicant must be an eligible non-citizen at the time of grant: see the Act, s. 73.

Clause 041.511

041.51—When visa is in effect

041.511

Bridging visa coming into effect upon grant and remaining in effect for 5 working days after date of grant.

041.6—Conditions

041.611

Conditions 8101 and 8401..

041.7—Way of giving evidence

041.711

No evidence is to be given.

Subclass 050—Bridging Visa (General)

050.1—Interpretation

Note: *Compelling need to work* and *criminal detention* are defined in regulation 1.03. For *eligible non-citizen* see regulation 2.20.

050.111

For the purposes of this Part:

review authority includes the Administrative Appeals Tribunal.

050.2—Primary criteria

Note: All applicants must satisfy the primary criteria.

050.21—Criteria to be satisfied at time of application

050.211

- (1) The applicant is:
 - (a) an unlawful non-citizen; or
 - (b) the holder of a Bridging E visa.
- (2) The applicant is not an eligible non-citizen of the kind set out in subregulation 2.20 (7), (8), (9), (10) or (11).

050.212

- (1) The applicant meets the requirements of subclause (2), (3), (4), (5), (6), (7) or (8).
- (2) An applicant meets the requirements of this subclause if the Minister is satisfied that the applicant is making, or is the subject of, acceptable arrangements to depart Australia.
- (3) An applicant meets the requirements of this subclause if:
 - (a) the applicant has made a valid application for a substantive visa and that application has not been finally determined; or
 - (b) the Minister is satisfied that the applicant will apply, within a period allowed by the Minister for the purpose, for a substantive visa.
- (4) An applicant meets the requirements of this subclause if:
 - (a) he or she has applied for judicial review of a decision; or
 - (b) he or she has applied for merits review of a decision:
 - (i) to cancel a visa; or

Clause 050.213

- (ii) to refuse a visa under section 501 of the Act (which deals with refusal of visas to persons not of good character, etc.); or
 - (c) the Minister is satisfied that the applicant will make an application of a kind referred to in paragraph (b).
- (5) An applicant meets the requirements of this subclause if:
 - (a) he or she held a visa that was cancelled under subsection 140 (1) or (3) of the Act (which deals with cancellation because of the cancellation of a visa held by another person); and
 - (b) either:
 - (i) the other person whose visa was cancelled has applied for review of the decision to cancel his or her visa; or
 - (ii) the Minister is satisfied that that other person will make an application of that kind.
- (6) An applicant meets the requirements of this subclause if he or she is the subject of a request to the Minister under section 345, 351, 391, 417 or 454 of the Act (which deal with the Minister's power to substitute a more favourable decision for the decision of a review authority) that has not been decided.
- (7) An applicant meets the requirements of this subclause if he or she:
 - (a) is in criminal detention; and
 - (b) if he or she has been sentenced to imprisonment or periodic detention, has actually served a period of imprisonment; and
 - (c) no criminal justice stay certificate or criminal justice stay warrant about the non-citizen is in force.
- (8) An applicant meets the requirements of this subclause if he or she is the holder of a bridging visa Class E that is subject to condition 8101 and the Minister is satisfied that the applicant has a compelling need to work.

050.213

The Minister is satisfied that, if a bridging visa is granted to the applicant, the applicant will abide by the conditions (if any) imposed on it.

050.214

A security has been lodged by the applicant, if asked for by an officer authorised under section 269 of the Act (which deals with security for compliance with the Act).

050.22—Criteria to be met at the time of decision

050.221

The applicant continues to satisfy the criteria set out in clauses 050.211 to 050.214.

050.222

- (1) Unless subclause (2) or (3) applies, the applicant has been interviewed by an officer who is authorised by the Secretary for the purposes of this clause.
- (2) This subclause applies if:
 - (a) the applicant is not in immigration detention; and
 - (b) the applicant has made a valid application for a substantive visa; and
 - (c) the applicant holds a Bridging E (Class WE) visa; and
 - (d) the applicant is not seeking to be granted a further Bridging E (Class WE) visa that is subject to conditions other than those that apply to the Bridging E (Class WE) visa that the applicant currently holds.
- (3) This subclause applies if:
 - (a) an officer who is authorised by the Secretary for the purposes of this clause was not available to interview the applicant at the time of the application; and
 - (b) the applicant is not in immigration detention; and
 - (c) the applicant has made a valid application for a substantive visa; and
 - (d) the applicant has previously held, but does not currently hold, a Bridging E (Class WE) visa.

050.3—Secondary criteria: Nil.

Note: All applicants must satisfy the primary criteria.

050.4—Circumstances applicable to grant

050.411

The applicant must be in Australia but not in immigration clearance.

Note: The applicant must be an eligible non-citizen at the time of grant: see the Act, s. 73.

050.5—When visa is in effect

050.511

In the case of a visa granted to a non-citizen (other than a non-citizen to whom subclause 050.222 (3) applies) who has applied for a substantive visa—bridging visa:

- (a) coming into effect on grant; and
- (b) permitting the holder to remain in Australia until:
 - (i) if the Minister's decision in respect of the substantive visa application is to grant a visa—on the grant of the visa; or
 - (ii) if the Minister's decision in respect of that application is to refuse to grant a visa—28 days after the holder is notified of that refusal; or

Clause 050.512

- (iii) if the substantive visa application is refused and the holder applies for merits review of that refusal—28 days after notification of the decision of:
 - (A) the review authority; or
 - (B) if the holder has the right to apply to another review authority for merits review of the decision of that review authority and so applies—28 days after notification of the decision of that other review authority; or
- (iv) if the holder withdraws his or her application for a substantive visa or an application to a review authority—28 days after that withdrawal; or
- (v) the grant of a further bridging visa to the holder in respect of his or her substantive visa application.

050.512

In the case of a visa granted to a non-citizen (other than a non-citizen to whom subclause 050.222 (3) applies) who has applied for judicial review of a decision—bridging visa:

- (a) coming into effect on grant; and
- (b) permitting the holder to remain in Australia until:
 - (i) if another bridging visa is granted to the holder in respect of his or her judicial review application—on the grant of that bridging visa; or
 - (ii) 28 days after the judicial review proceedings (including proceedings on appeal, if any) are completed; or
 - (iii) if the holder withdraws his or her application for judicial review—28 days after that withdrawal.

050.513

In the case of a visa granted to a non-citizen (other than a non-citizen to whom subclause 050.222 (3) applies) who has applied for merits review of a decision to cancel a visa—visa coming into effect on grant permitting the holder to remain in Australia until:

- (a) 28 days after notification of the review decision; or
- (b) if another bridging visa is granted to the holder in respect of his or her merits review application—the grant of that bridging visa; or
- (c) if the decision to cancel the substantive visa is reversed—on the reversal of that decision.

050.514

In the case of a visa granted to a non-citizen (other than a non-citizen to whom subclause 050.222 (3) applies) to whom subsection 140(1) or (3) of the Act (which deal with cancellation as a result of cancellation of a visa held by another non-citizen) applies, if the other person whose visa was cancelled has applied for review of that cancellation decision—visa coming into effect on grant permitting the holder to remain in Australia until:

- (a) 28 days after notification of the review decision; or
- (b) if another bridging visa is granted to the holder in respect of that merits review application—the grant of that bridging visa; or
- (c) if the decision to cancel the substantive visa is reversed—on the reversal of that decision.

050.514A

In the case of a visa granted to a non-citizen to whom subclause 050.222 (3) applies—bridging visa:

- (a) coming into effect on grant; and
- (b) permitting the holder to remain in Australia for 5 working days from date of grant.

050.515

- (1) In the case of a visa granted, or taken to have been granted, to a non-citizen who is in criminal detention—visa coming into effect on grant and ceasing on:
 - (a) the non-citizen's unconditional release from criminal detention; or
 - (b) the non-citizen's release on bail; or
 - (c) if the non-citizen is in prison:
 - (i) the non-citizen's completing a sentence of imprisonment; or
 - (ii) subject to subclause(2), the non-citizen's release on parole; or
 - (iv) the non-citizen's escaping from prison; or
 - (ca) subject to subclause (2), in the case of a non-citizen who is subject to an order for periodic detention—the completion of the period of periodic detention imposed by that order; or
 - (d) the signing of a deportation order against the non-citizen; or
 - (e) the grant of another visa to the holder; or
 - (f) if the non-citizen is subject to an order for periodic detention—the non-citizen's breaching a condition of that order.
- (2) Subparagraph (1) (c) (ii) and paragraph (1) (ca) apply only in the case of a non-citizen who has actually served a part of a term of imprisonment.

050.516

In the case of a visa that is taken to have been granted by operation of section 75 of the Act (which deals with applications for bridging visas which the Minister does not decide within a short period)—visa coming into effect on grant permitting the applicant to remain in Australia for:

- (a) 5 working days from date of grant; or
- (b) if within 5 working days of grant the holder shows an officer a ticket for departure from Australia—14 days from date of grant.

Clause 050.517

050.517

In any other case—visa coming into effect on grant and ceasing on a date specified by the Minister for the purpose.

050.6—Conditions

050.611

In the case of a visa granted to a non-citizen who:

- (a) applied for a substantive visa at the same time and on the same form as he or she applied for the bridging visa; and
- (b) is not in immigration detention; and
- (c) held a Bridging E (Class WE) visa at the time when he or she made the application referred to in paragraph (a):

whichever of conditions 8101, 8104, 8201, 8401, 8402, 8505 or 8506 that apply to that bridging visa.

050.611A

In the case of a visa granted to an unlawful non-citizen:

- (a) who is not in immigration detention; and
- (b) who has held a Bridging E (Class WE) visa since he or she last held a substantive visa, but does not hold a Bridging E (Class WE) visa immediately before the time of grant; and
- (c) who was interviewed by an officer authorised by the Secretary for the purposes of clause 050.222 before the visa was granted;

any 1 or more of conditions 8101, 8104, 8201, 8401, 8402, 8505 or 8506 may be imposed.

050.611B

In the case of a visa granted to an unlawful non-citizen to whom subclause 050.222 (3) applies:

- (a) condition 8401; and
- (b) any 1 or more of conditions 8101, 8104, 8201, 8505 and 8506 may be imposed.

050.612

In the case of a visa that is taken to have been granted by operation of section 75 of the Act—conditions 8101, 8201, 8402, 8506 and 8509.

050.613

In the case of a visa granted to an applicant who meets the requirements of subclause 050.212 (8)—any 1 or more of conditions 8104, 8201, 8401, 8403, 8505, 8506, 8507, 8508, 8510, 8511 and 8512 may be imposed.

050.614

In any other case—any 1 or more of conditions 8101, 8104, 8201, 8401, 8403, 8505, 8506, 8507, 8508, 8510, 8511 and 8512 may be imposed.

050.7—Way of giving evidence

050.711

No evidence need be given unless the visa holder asks for it.

050.712

If evidence is given, to be given by a visa label attached to a passport.

Clause 051.111

Subclass 051—Bridging Visa (Protection Visa Applicant)

051.1—Interpretation

Note 1: Compelling need to work and criminal detention are defined in regulation 1.03. For eligible non-citizen see regulation 2.20.

Note 2: A bridging visa subclass 051 may also be granted without application.

051.111

For the purposes of this Part:

review authority includes the Administrative Appeals Tribunal.

051.2—Primary Criteria

Note: All applicants must satisfy the primary criteria.

051.21—Criteria to be met at time of application

051.211

The applicant is an eligible non-citizen referred to in subregulation 2.20 (7), (8), (9), (10) or (11).

051.212

- (1) The applicant meets the requirements of subclause (2) or (3).
- (2) An applicant meets the requirements of this subclause if:
 - (a) the Minister is satisfied that the applicant meets the public interest criteria for the grant of a protection visa; and
 - (b) the applicant or a person acting on his or her behalf has signed an undertaking acceptable to the Minister that, if the applicant's application for a protection visa is refused, the applicant will depart Australia, or present himself or herself to Immigration for removal:
 - (i) within 28 days after the applicant is notified of final determination of the applicant's protection visa application; or
 - (ii) if the applicant applies for judicial review of the refusal—28 days after completion of judicial review proceedings (including proceedings on appeal, if any); or
 - (iii) if the applicant withdraws his or her protection visa application, or application (if any) for judicial review—28 days after that withdrawal.
- (3) An applicant meets the requirements of this subclause if the applicant has applied for judicial review of a decision to refuse a protection visa application and the judicial review proceedings (including proceedings on appeal, if any) have not been completed.

051.22—Criteria to be met at the time of decision

051.221

The applicant continues to satisfy the criteria in clauses 051.211 and 051.212.

051.3—Secondary Criteria: Nil.

Note: All applicants must satisfy the primary criteria.

051.4—Circumstances Applicable to Grant

051.411

The applicant must be in Australia but not in immigration clearance.

051.5—When Visa is in Effect

051.511

In the case of a visa granted to a non-citizen who has applied for a protection visa—bridging visa coming into effect on grant, permitting the holder to remain in Australia until:

- (a) either:
 - (i) if the Minister's decision in respect of the protection visa application is to grant a visa—the grant of the protection visa; or
 - (ii) if the Minister's decision in respect of that application is to refuse to grant a visa—28 days after the holder is notified of that refusal; or
- (b) if that application is refused and the holder applies for merits review of that decision—28 days after notification of the decision of the final review authority appealed to; or
- (c) the grant of a further bridging visa to the holder in respect of his or her protection visa application; or
- (d) if the holder withdraws the application for the protection visa or for review—28 days after that withdrawal.

051.512

In the case of a visa granted to a non-citizen who has lodged an application for judicial review of a decision to refuse a protection visa application—bridging visa coming into effect on grant and permitting the applicant to remain in Australia until:

- (a) if another bridging visa is granted to the holder in respect of his or her application for judicial review—the grant of that bridging visa; or
- (b) 28 days after the judicial review proceedings (including proceedings on appeal, if any) have been completed; or
- (c) if the applicant withdraws the application for judicial review—28 days after that withdrawal.

Clause 051.513

051.513

In the case of a visa that is taken to have been granted by operation of section 75 of the Act—bridging visa coming into effect on grant and permitting the applicant to remain in Australia until:

- (a) either:
 - (i) if the Minister's decision in respect of the protection visa application is to grant a visa—the grant of the visa; or
 - (ii) if the Minister's decision in respect of that application is to refuse to grant a visa—28 days after the holder is notified of that refusal; or
- (b) if the protection visa application is refused and the holder applies for merits review of that decision—28 days after notification of the decision of the final review authority appealed to; or
- (c) the grant of a further bridging visa to the holder in respect of his or her protection visa application; or
- (d) if the holder withdraws the application for the protection visa or for review—28 days after that withdrawal.

051.6—Conditions

051.611

In the case of a visa that is taken to have been granted by operation of section 75 of the Act—conditions 8101, 8201, 8402, 8506 and 8513.

051.612

In any other case—any 1 or more of conditions 8101, 8104, 8201, 8401, 8403, 8505, 8506, 8507, 8508, 8510, 8511 and 8512 may be imposed.

051.7—Way of Giving Evidence

051.711

No evidence need be given unless the visa holder asks for it.

051.712

If evidence is given, to be given by a visa label attached to a passport.

Subclass 100—Spouse

100.1—Interpretation

100.111

In this Part:

sponsoring spouse, in relation to an applicant, means the person who was specified as the applicant's spouse or intended spouse in the application that resulted in the grant of the Subclass 309 (Spouse (Provisional)) visa referred to in paragraph 100.221(2)(a), (3)(a) or (4)(a), as the case requires.

Note: *long-term spouse relationship* and *permanent humanitarian visa* are defined in regulation 1.03.

100.2—Primary criteria

Note: The primary criteria must be satisfied by at least 1 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.

100.21—[No criteria to be satisfied at time of application]

100.22—Criteria to be satisfied at time of decision

100.221

- (1) The applicant meets the requirements of subclause (2), (3) or (4).
 - (2) The applicant meets the requirements of this subclause if:
 - (a) the applicant is the holder of a Subclass 309 (Spouse (Provisional)) visa; and
 - (b) the applicant is the spouse of the sponsoring spouse; and
 - (c) subject to subclauses (5), (6) and (7), at least 2 years have passed since the application was made.
 - (3) The applicant meets the requirements of this subclause if the applicant:
 - (a) first entered Australia as the holder of a Subclass 309 (Spouse (Provisional)) visa and continues to be the holder of that visa; and
 - (b) would meet the requirements of subclause (2) except that, after the applicant first entered Australia as the holder of that visa, the sponsoring spouse has died; and
 - (c) satisfies the Minister that the applicant would have continued to be the spouse of the sponsoring spouse if the sponsoring spouse had not died.
 - (4) The applicant meets the requirements of this subclause if:
 - (a) the applicant first entered Australia as the holder of a Subclass 309 (Spouse (Provisional)) visa and continues to be the holder of that visa; and
-

Clause 100.222

- (b) the applicant would meet the requirements of subclause (2) except that the relationship between the applicant and the sponsoring spouse has ceased; and
- (c) after the applicant first entered Australia as the holder of that visa—either or both of the following circumstances applies:
 - (i) either or both of the following:
 - (A) the applicant;
 - (B) a member of the family unit of the sponsoring spouse or of the applicant or of both of them;has suffered domestic violence committed by the sponsoring spouse;
 - (ii) the applicant:
 - (A) has custody or joint custody of, or access to; or
 - (B) has a residence order or contact order made under the *Family Law Act 1975* relating to; at least 1 child in respect of whom the sponsoring spouse:
 - (C) has been granted joint custody or access by a court; or
 - (D) has a residence order or contact order made under the *Family Law Act 1975*; or
 - (E) has an obligation under a child maintenance order made under the *Family Law Act 1975*, or any other formal maintenance obligation.

Note: For special provisions relating to domestic violence, see Division 1.5.

- (5) Paragraph (2)(c) does not apply to an applicant who at the time of making the application was in a long-term spouse relationship with the sponsoring spouse.
- (6) Paragraph (2)(c) does not apply to an applicant whose sponsoring spouse:
 - (a) is, or was, the holder of a permanent humanitarian visa; and
 - (b) before that permanent visa was granted, was in a spouse relationship with the applicant of which Immigration was informed before that permanent visa was granted.
- (7) Nothing in paragraph (2)(c) prevents the Minister, less than 2 years after the application is made, from:
 - (a) refusing to grant a Subclass 100 visa; or
 - (b) granting a Subclass 100 visa to an applicant who meets the requirements of subclause (3) or (4).

100.222

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

100.223

If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

100.224

- (1) Each member of the family unit of the applicant who is an applicant is a person who satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.
- (2) Each member of the family unit of the applicant who is not an applicant is a person who satisfies:
 - (a) public interest criteria 4001, 4002, 4003 and 4004; and
 - (b) public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

100.225

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;made a combined application with the applicant;

the Minister is satisfied that the grant of a Subclass 100 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

100.226

If at least 2 years have passed since the application was made and the applicant does not meet the requirements of subclause 100.221 (3) or (4), the applicant is nominated for the grant of the Subclass 100 visa by the sponsoring spouse.

100.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

100.31—Criteria to be satisfied at time of application

100.311

The applicant is a member of the family unit of a person who has applied for a Spouse (Migrant) (Class BC) visa, and the Minister has not decided to grant or refuse to grant a visa to the person.

Clause 100.321

100.32—Criteria to be satisfied at time of decision

100.321

The applicant is the holder of:

- (a) a Subclass 309 (Spouse (Provisional)) visa; or
- (b) a Subclass 445 (Dependent Child) visa;

granted on the basis that the applicant was a member of the family unit of another person who was the holder of a Subclass 309 visa, and that other person has been granted a Subclass 100 visa.

100.322

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

100.323

If the Minister requires an assurance of support in respect of the person who satisfies the primary criteria:

- (a) the applicant is included in the assurance of support given in respect of that person, and that assurance has been accepted by the Minister; or
- (b) an assurance of support has been given in relation to the applicant, and has been accepted by the Minister.

100.324

If the applicant is the dependent child of a person who is the holder of a Subclass 100 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

100.4—Circumstances applicable to grant

100.411

The applicant must be:

- (a) in Australia, but not in immigration clearance; or
- (b) outside Australia;

when the visa is granted.

100.5—When visa is in effect

100.511

Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

100.6—Conditions

100.611

If the applicant is outside Australia at the time of grant, first entry must be made before a date specified by the Minister for the purpose.

100.612

If the applicant meets the primary criteria and is outside Australia at the time of the grant, condition 8502 may be imposed before the applicant's first entry to Australia as the holder of the visa.

100.613

If the applicant meets the secondary criteria and is outside Australia at the time of the grant, either or both of conditions 8502 and 8515 may be imposed before the applicant's first entry to Australia as the holder of the visa.

100.7—Way of giving evidence

100.711

Visa label affixed to a valid passport.

Clause 101.211

Subclass 101—Child

101.1—Interpretation

Note: *eligible New Zealand citizen, dependent child* and *spouse* are defined in regulation 1.03; and *adoption* is defined in regulation 1.04. There are no interpretation provisions specific to this Part.

101.2—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.

101.21—Criteria to be satisfied at time of application

101.211

- (1) The applicant is a dependent child of an Australian citizen, Australian permanent resident or eligible New Zealand citizen and either:
 - (a) is the natural child of that Australian citizen, Australian permanent resident or eligible New Zealand citizen; or
 - (b) was adopted overseas and meets the requirements of subclause (2).
- (2) An applicant meets the requirements of this subclause if he or she was adopted overseas by a person who, when the applicant was adopted, was not an Australian citizen, Australian permanent resident or eligible New Zealand citizen, but who subsequently became an Australian citizen, Australian permanent resident or eligible New Zealand citizen.

101.212

The applicant is sponsored by a person who:

- (a) has turned 18; and
- (b) is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
- (c) is either:
 - (i) the Australian citizen or Australian permanent resident or eligible New Zealand citizen referred to in subclause 101.211(1) or (2), as the case requires; or
 - (ii) the cohabiting spouse of that Australian citizen, Australian permanent resident or eligible New Zealand citizen.

101.22—Criteria to be satisfied at time of decision

101.221

The applicant continues to satisfy the criterion specified in clause 101.211.

101.222

The sponsorship referred to in clause 101.212 has been approved by the Minister and is still in force.

101.223

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

101.225

101.225

If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

101.226

The Minister is satisfied that the grant of the visa would not prejudice the rights and interests of any person who has custody or guardianship of, or access to, the applicant.

101.227

- (1) Each member of the family unit of the applicant who is an applicant is a person who satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.
- (2) Each member of the family unit of the applicant who is not an applicant is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

101.228

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;made a combined application with the applicant;

the Minister is satisfied that the grant of a subclass 101 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

Clause 101.311

101.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

101.31

Criteria to be satisfied at the time of application

101.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in subdivision 101.21.

101.312

The sponsorship referred to in clause 101.212 of the person who satisfies the primary criteria includes sponsorship of the applicant.

101.32—Criteria to be satisfied at time of decision

101.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 101 visa.

101.322

The sponsorship referred to in clause 101.312 has been approved by the Minister and is still in force.

101.323

The applicant satisfies public interest criteria 44001, 4002, 4003, 4004, 4007 and 4009.

101.325

If the Minister requires an assurance of support in respect of the person who satisfies the primary criteria:

- (a) the applicant is included in the assurance of support given in respect of that person, and that assurance has been accepted by the Minister; or
- (b) an assurance of support has been given in relation to the applicant, and has been accepted by the Minister.

101.326

If the applicant is the dependent child of a person who is a holder of a subclass 101 visa, the Minister is satisfied that the grant of the visa to the applicant would

not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

101.4—Circumstances applicable to grant

101.411

The applicant must be outside Australia when the visa is granted.

101.5—When visa is in effect

101.511

Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

101.6—Conditions

101.611

First entry must be made before a date specified by the Minister for the purpose.

101.612

Either or both of conditions 8515 and 8502 may be imposed.

101.7—Way of giving evidence

101.711

Visa label affixed to a valid passport.

Clause 102.111

Subclass 102—Adoption

102.1—Interpretation

102.111

In this Part:

adoptive parent, in relation to an applicant, means the person referred to in paragraph 102.211(2)(b);

child for adoption means an applicant referred to in clause 102.211(3);

prospective adoptive parent, in relation to an applicant, means the unmarried person referred to in subparagraph 102.211(3)(c)(i), or each of the spouses referred to in subparagraph 102.211(3)(c)(ii), as the case requires.

Note: *eligible New Zealand citizen* is defined in regulation 1.03, and *adoption* is defined in regulation 1.04.

102.2—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.

102.21—Criteria to be satisfied at time of application

102.211

- (1) The applicant meets the requirements of subclause (2) or (3).
- (2) An applicant meets the requirements of this subclause if:
 - (a) the applicant has not turned 18; and
 - (b) the applicant was adopted overseas by a person who:
 - (i) was, at the time of the adoption, an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
 - (ii) had been residing overseas for more than 12 months at the time of the application; and
 - (c) the Minister is satisfied that the residence overseas by the adoptive parent was not contrived to circumvent the requirements for entry to Australia of children for adoption; and
 - (d) the adoptive parent has lawfully acquired full and permanent parental rights by the adoption; and
 - (e) the relevant authorities of the overseas country have approved the departure of the applicant to Australia.
- (3) An applicant meets the requirements of this subclause if:

Clause 102.212

- (a) the applicant has not turned 18; and
 - (b) the applicant is resident in an overseas country; and
 - (c) either:
 - (i) an unmarried person who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen has undertaken in writing to adopt the applicant; or
 - (ii) spouses, at least one of whom is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen, have undertaken in writing to adopt the applicant; and
 - (d) the child welfare authorities of an Australian State or Territory have approved the prospective adoptive parent or parents as suitable adoptive parents for the applicant; and
 - (e) the relevant authorities of the overseas country have approved the departure of the applicant:
 - (i) for adoption in Australia; or
 - (ii) in the custody of the prospective adoptive parent or parents;
- as the case requires.

102.212

The applicant is sponsored by an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen who is:

- (a) in the case of an applicant who is a child for adoption—a prospective adoptive parent of the child; or
- (b) in the case of an applicant who is an adopted child—an adoptive parent of the child.

102.213

The laws relating to adoption of the country in which the child is normally resident have been complied with.

102.22—Criteria to be satisfied at time of decision

102.221

The applicant continues to satisfy the criteria specified in clauses 102.211 and 102.213.

102.222

The sponsorship referred to in clause 102.212 has been approved by the Minister and is still in force.

102.223

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

Clause 102.225

102.225

If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

102.226

- (1) Each member of the family unit of the applicant who is an applicant is a person who satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.
- (2) Each member of the family unit of the applicant who is not an applicant is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

102.227

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;made a combined application with the applicant;

the Minister is satisfied that the grant of a subclass 102 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

102.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

102.31—Criteria to be satisfied at time of application

102.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in subdivision 102.21.

102.312

The sponsorship referred to in clause 102.212 of the person who satisfies the primary criteria includes sponsorship of the applicant.

102.32—Criteria to be satisfied at time of decision

102.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 102 visa.

102.322

The sponsorship referred to in clause 102.312 has been approved by the Minister and is still in force.

102.323

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

102.325

If the Minister requires an assurance of support in respect of the person who satisfies the primary criteria:

- (a) the applicant is included in the assurance of support given in respect of that person, and that assurance has been accepted by the Minister; or
- (b) an assurance of support has been given in relation to the applicant, and has been accepted by the Minister.

102.326

If the applicant is the dependent child of a person who is a holder of a subclass 102 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

102.4—Circumstances applicable to grant

102.411

The applicant must be outside Australia when the visa is granted.

102.5—When visa is in effect

102.511

Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

Clause 102.611

102.6—Conditions

102.611

First entry must be made before a date specified by the Minister for the purpose.

102.612

Either or both of conditions 8515 and 8502 may be imposed.

102.7—Way of giving evidence

102.711

Visa label affixed to a valid passport.

Subclass 103—Parent

103.1—Interpretation

Note: *eligible New Zealand citizen, aged parent, close relative, guardian, parent, settled and spouse* are defined in regulation 1.03, and *balance of family test* is defined in regulation 1.05. There are no interpretation provisions specific to this Part.

103.2—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.

103.21—Criteria to be satisfied at time of application

103.211

The applicant is a parent of a person who is:

- (a) a settled Australian citizen; or
- (b) a settled Australian permanent resident; or
- (c) a settled eligible New Zealand citizen.

103.212

- (1) The applicant is sponsored in accordance with subclause (2) or (3).
- (2) If the child has turned 18, the applicant is sponsored by:
 - (a) the child; or
 - (b) the child's cohabiting spouse, if that spouse:
 - (i) has turned 18; and
 - (ii) is:
 - (A) a settled Australian citizen; or
 - (B) a settled Australian permanent resident; or
 - (C) a settled eligible New Zealand citizen.
- (3) If the child has not turned 18, the applicant is sponsored by:
 - (a) the child's cohabiting spouse, if that spouse:
 - (i) has turned 18; and
 - (ii) is:
 - (A) a settled Australian citizen; or
 - (B) a settled Australian permanent resident; or
 - (C) a settled eligible New Zealand citizen; or
 - (b) a person who:
 - (i) is a close relative or guardian of the child; and
 - (ii) has turned 18; and

Clause 103.213

- (iii) is:
 - (A) a settled Australian citizen; or
 - (B) a settled Australian permanent resident; or
 - (C) a settled eligible New Zealand citizen; or
- (c) if the child has a cohabiting spouse but the spouse has not turned 18—a person who:
 - (i) is a close relative or guardian of the child's spouse; and
 - (ii) has turned 18; and
 - (iii) is:
 - (A) a settled Australian citizen; or
 - (B) a settled Australian permanent resident; or
 - (C) a settled eligible New Zealand citizen; or
 - (d) a community organisation.
- (4) In this clause, *the child* means the settled Australian citizen, settled Australian permanent resident or settled eligible New Zealand citizen referred to in clause 103.211.

103.213

The applicant satisfies the balance of family test.

103.22—Criteria to be satisfied at time of decision

103.221

The applicant continues to satisfy the criterion specified in clause 103.211.

103.222

The sponsorship referred to in clause 103.212 has been approved by the Minister and is still in force.

103.223

The applicant continues to satisfy the balance of family test.

103.224

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

103.225

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

103.226

An assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

103.227

- (1) Each member of the family unit of the applicant who is an applicant is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

103.228

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;

made a combined application with the applicant; the Minister is satisfied that the grant of a subclass 103 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

103.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

103.31—Criteria to be satisfied at time of application

103.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in subdivision 103.21.

Clause 103.312

103.312

The sponsorship referred to in clause 103.212 of the person who satisfies the primary criteria includes sponsorship of the applicant.

103.32—Criteria to be satisfied at time of decision

103.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 103 visa.

103.322

The sponsorship referred to in clause 103.312 has been approved by the Minister and is still in force.

103.323

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

103.324

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

103.325

Either:

- (a) the applicant is included in the assurance of support given in respect of the person who satisfies the primary criteria, and that assurance has been accepted by the Minister; or
- (b) an assurance of support has been given in relation to the applicant, and has been accepted by the Minister.

103.326

If the applicant is the dependent child of a person who is a holder of a subclass 103 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

103.4—Circumstances applicable to grant

103.411

The applicant must be outside Australia when the visa is granted.

Note: Charges: Any applicable charge under the *Migration (Health Services) Charge Act 1991* must be paid before the visa can be granted.

103.5—When visa is in effect

103.511

Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

103.6—Conditions

103.611

First entry must be made before a date specified by the Minister for the purpose.

103.612

Either or both of conditions 8515 and 8502 may be imposed.

103.7—Way of giving evidence

103.711

Visa label affixed to a valid passport.

Clause 104.211

Subclass 104—Preferential Family

104.1—Interpretation

Note: *eligible New Zealand citizen, aged dependent relative, settled, special need relative, and spouse* are defined in regulation 1.03; *orphan relative* is defined in regulation 1.14; and *remaining relative* is defined in regulation 1.15. There are no interpretation provisions specific to this Part.

104.2—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.

104.21—Criteria to be satisfied at time of application

104.211

- (1) The applicant meets the requirements of subclause (2) or (3).
- (2) An applicant meets the requirements of this subclause if:
 - (a) the applicant is an aged dependent relative, or a remaining relative, of a person (in this subclause called *the Australian relative*) who is:
 - (i) an Australian citizen; or
 - (ii) an Australian permanent resident; or
 - (iii) an eligible New Zealand citizen; and
 - (b) the applicant is sponsored:
 - (i) if the Australian relative has turned 18 and is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen—by the Australian relative; or
 - (ii) by the spouse of the Australian relative, if the spouse:
 - (A) cohabits with the Australian relative; and
 - (B) is a settled Australian citizen or a settled Australian permanent resident or a settled eligible New Zealand citizen; and
 - (C) has turned 18.
- (3) An applicant meets the requirements of this subclause if:
 - (a) the applicant is an orphan relative, or a special need relative, of a person (in this subclause called *the Australian relative*) who is:
 - (i) an Australian citizen; or
 - (ii) an Australian permanent resident; or
 - (iii) an eligible New Zealand citizen; and
 - (b) the applicant is sponsored:
 - (i) if the Australian relative has turned 18—by the Australian relative; or

- (ii) by the spouse of the Australian relative, if the spouse:
 - (A) cohabits with the Australian relative; and
 - (B) is an Australian citizen or an Australian permanent resident or an eligible New Zealand citizen; and
 - (C) has turned 18.

104.22—Criteria to be satisfied at time of decision

104.221

The applicant continues to satisfy the criterion specified in clause 104.211.

104.222

The sponsorship referred to in clause 104.211 has been approved by the Minister and is still in force.

104.223

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

104.224

If the applicant:

- (a) has previously been in Australia; and
 - (b) is an aged dependent relative or a remaining relative;
- the applicant satisfies special return criteria 5001 and 5002.

104.224A

If the applicant:

- (a) has previously been in Australia; and
 - (b) is a special need relative;
- the applicant satisfies special return criterion 5001.

104.225

An assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

104.226

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 104 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and

Clause 104.227

- (b) in the case of an applicant who is an aged dependent relative or a remaining relative—satisfies special return criteria 5001 and 5002; or
 - (c) in the case of an applicant who is a special need relative—satisfies special return criterion 5001.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 104 visa is a person who:
- (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

104.227

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;made a combined application with the applicant;

the Minister is satisfied that the grant of a subclass 104 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

104.228

If the applicant is an orphan relative, the Minister is satisfied that the grant of the visa would not prejudice the rights and interests of any person who has custody or guardianship of, or access to, the applicant.

104.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

104.31—Criteria to be satisfied at time of application

104.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 104.21.

104.312

The sponsorship referred to in clause 104.211 of the person who satisfies the primary criteria includes sponsorship of the applicant.

104.32—Criteria to be satisfied at time of decision

104.321

The applicant continues to be a member of the family unit of a person who is the holder of a subclass 104 visa.

104.322

The sponsorship referred to in clause 104.312 has been approved by the Minister and is still in force.

104.323

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

104.324

If the applicant:

- (a) has previously been in Australia; and
- (b) is the member of a family unit of an aged dependent relative or a remaining relative;

the applicant satisfies special return criteria 5001 and 5002.

104.324A

If the applicant:

- (a) has previously been in Australia; and
- (b) is a special need relative;

the applicant satisfies special return criterion 5001.

104.325

Either:

- (a) the applicant is included in the assurance of support given in respect of the person who satisfies the primary criteria, and that assurance has been accepted by the Minister; or
- (b) an assurance of support has been given in relation to the applicant, and has been accepted by the Minister.

104.326

If the applicant is the dependent child of a person who is a holder of a subclass 104 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

Clause 104.411

104.4—Circumstances applicable to grant

104.411

The applicant must be outside Australia when the visa is granted.

Note: Charges: Any applicable charge under the *Migration (Health Services) Charge Act 1991* must be paid before the visa can be granted.

104.5—When visa is in effect

104.511

Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

104.6—Conditions

104.611

First entry must be made before a date specified by the Minister for the purpose.

104.612

Either or both of conditions 8515 and 8502 may be imposed.

104.7—Way of giving evidence

104.711

Visa label affixed to a valid passport.

Subclass 105—Concessional Family

105.1—Interpretation

105.11

In this Part:

usual occupation, in relation to an applicant, has the meaning set out in subregulation 2.26(5).

Note: *Occupations Requiring English List* is defined in regulation 1.19.

105.2—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.

105.21—Criteria to be satisfied at time of application

105.211

The applicant:

- (a) is a brother, sister, nephew, niece or parent; or
- (b) a natural or adopted child (other than a dependent child); of a person (in this clause called *the sponsor*) who has turned 18 and who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

105.212

The applicant is sponsored by the sponsor.

105.213

The applicant is of working age.

105.22—Criteria to be satisfied at time of decision

105.221

The sponsorship referred to in clause 105.212 has been approved by the Minister and is still in force.

105.222

The applicant has the qualifying score when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act.

Clause 105.223

Note: The Subdivision mentioned (ss. 92 to 96) provides for the application of a *points* system, under which applicants for relevant visas are given an assessed score based on the prescribed number of points for particular attributes, which is assessed against the relevant pool mark and pass mark. The prescribed points and the manner of their allocation are provided for in Division 2 of Part 2 (regulations 2.26 and 2.27), and Schedule 6, of these Regulations. In certain circumstances, attributes of the spouse of an applicant may be taken into account (regulation 2.27). Pool marks and pass marks are set from time to time by the Minister by notice in the Gazette (s. 96).

105.223

- (2) If the applicant satisfies the criterion specified in clause 105.222 by reason of the operation of regulation 2.27, the spouse of the applicant was, at the time of application, of working age.

105.224

- (1) Subject to subclause (2), if the usual occupation of the applicant is an occupation included in the Occupations Requiring English List, the applicant satisfies the Minister that the applicant has proficiency in English of at least the standard required for the award of 15 points on the language skill factor of the general points test specified in Part 3 of Schedule 6.
- (2) If:
- (a) the applicant satisfies the criterion specified in clause 105.222 by reason of the operation of regulation 2.27; and
 - (b) the usual occupation of the spouse of the applicant is an occupation included in the Occupations Requiring English List;
- the spouse of the applicant satisfies the Minister that the spouse of the applicant has proficiency in English of at least the standard required for the award of 15 points on the language skill factor of the general points test specified in Part 3 of Schedule 6.

105.225

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

105.226

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

105.227

If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

105.228

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 105 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 105 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

105.229

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18; andmade a combined application with the applicant;

the Minister is satisfied that the grant of a subclass 105 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

105.230

Approval of the application would not result in either:

- (a) the number of subclass 105 visas granted in a financial year exceeding the maximum number of subclass 105 visas, as determined by Gazette Notice, that may be granted in that financial year; or
- (b) the number of visas of particular classes (including subclass 105) granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in a financial year.

105.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

Clause 105.311

105.31—Criteria to be satisfied at time of application

105.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in subdivision 105.21.

105.312

The sponsorship referred to in clause 105.212 in respect of the person who satisfies the primary criteria includes sponsorship of the applicant.

105.32—Criteria to be satisfied at time of decision

105.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 105 visa.

105.322

The sponsorship referred to in clause 105.312 has been approved by the Minister and is still in force.

105.323

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4009 and 4010.

105.324

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

105.325

Either:

- (a) the applicant is included in any assurance of support required in respect of the person who satisfies the primary criteria, and that assurance has been accepted by the Minister; or
- (b) an assurance of support has been provided in relation to the applicant, and has been accepted by the Minister.

105.326

If the applicant is the dependent child of a person who is a holder of a subclass 105 visa, the Minister is satisfied that the grant of the visa to the applicant would

not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

105.4—Circumstances applicable to grant

105.411

The applicant must be outside Australia when the visa is granted.

Note: Charges: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa can be granted.

105.5—When visa is in effect

105.511

Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

105.6—Conditions

105.611

First entry must be made before a date specified by the Minister for the purpose.

105.612

If the applicant satisfies the secondary criteria, either or both of conditions 8514 and 8502 may be imposed.

105.7—Way of giving evidence

105.711

Visa label affixed to a valid passport.

Clause 106.111

Subclass 106—Regional family

106.1—Interpretation

106.111

In this Part:

- (a) *degree, diploma, relevant Australian authority, trade certificate* and *usual occupation*, in relation to an applicant, have the meanings respectively set out in subregulation 2.26(5); and
- (b) *designated area* means an area specified by Gazette Notice as a designated area for the purposes of item 6701 in Schedule 6; and
- (c) *medical practitioner* includes a specialist medical practitioner.

Note: *Occupations Requiring English List* is defined in regulation 1.19.

106.2—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.

106.21—Criteria to be satisfied at time of application

106.211

The applicant:

- (a) is a brother, sister, nephew, niece or parent; or
- (b) is a natural or adopted child (other than a dependent child);

of a person (in this Division called *the sponsor*) who has turned 18 and who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

106.212

The applicant is sponsored by the sponsor.

106.213

The sponsor:

- (a) is resident in a designated area; and
- (b) was resident in one or other of the designated areas throughout the period of 12 months immediately before Immigration receives the relevant sponsorship (except for short absences for the purposes of recreation or business); and
- (c) is not, at the time Immigration receives the relevant sponsorship, receiving a benefit under the *Student and Youth Assistance Act 1973* or any form of Australian social security benefit, allowance or pension, other than:

Clause 106.214

- (i) an age pension under the *Social Security Act 1991*; or
 - (ii) a family allowance, or family allowance supplement, under that Act;
or
 - (iii) a pension under the *Seamen's War Pensions and Allowances Act 1940*
or the *Veterans' Entitlements Act 1986*; and
- (d) is either:
- (i) a person who:
 - (A) is financially independent, engaged in paid employment or receiving a pension referred to in subparagraph (c)(i) or (iii);
and
 - (B) has not received, in respect of a period or periods amounting to more than 2 weeks during that period of 12 months, a job search allowance, a newstart allowance or a special benefit under the *Social Security Act 1991*; or
 - (ii) a person who:
 - (A) is not financially independent, engaged in paid employment or receiving a pension referred to in subparagraph (c)(i) or (iii); and
 - (B) does not have a spouse who has received, in respect of a period or periods amounting to more than 2 weeks during that period of 12 months, a job search allowance, a newstart allowance or a special benefit under the *Social Security Act 1991*.

106.214

- (1) The applicant meets the requirements of subclause (2) or (3).
- (2) The applicant meets the requirements of this subclause if the applicant:
 - (a) is less than 45 years of age; and
 - (b) does not have a usual occupation as a medical practitioner; and
 - (c) has not obtained a medical qualification within the period of 5 years immediately before the time of application.
- (3) The applicant meets the requirements of this subclause if the spouse of the applicant:
 - (a) is an applicant for a Subclass 106 visa; and
 - (b) is less than 45 years of age; and
 - (c) does not have a usual occupation as a medical practitioner; and
 - (d) has not obtained a medical qualification within the period of 5 years immediately before the time of application.

Clause 106.221

106.22—Criteria to be satisfied at time of decision

106.221

The sponsorship referred to in clause 106.212 has been approved by the Minister and is still in force.

106.222

The sponsor is still resident in a designated area.

106.223

- (1) The applicant:
 - (a) meets the requirements of subclause (2); or
 - (b) does not meet those requirements but meets the requirements of subclause (3).
- (2) The applicant meets the requirements of this subclause if the applicant:
 - (a) met the requirements of subclause 106.214(2) at the time of the applicant's application; and
 - (b) has a usual occupation, other than as a medical practitioner, being an occupation for which, in Australia, a degree, diploma or trade certificate is required; and
 - (c) holds a degree, diploma or trade certificate that:
 - (i) is relevant to that usual occupation; and
 - (ii) is assessed by the relevant Australian authority as equivalent to the Australian standards for the occupation; and
 - (d) has English-language skills that meet the requirements of subclause (4).
- (3) The applicant meets the requirements of this subclause if:
 - (a) the applicant met the requirements of subclause 106.214(3) at the time of the applicant's application; and
 - (b) the applicant's spouse continues to meet the requirement of paragraph 106.214(3)(a); and
 - (c) the applicant's spouse has a usual occupation, other than as a medical practitioner, being an occupation for which, in Australia, a degree, diploma or trade certificate is required; and
 - (d) the applicant's spouse holds a degree, diploma or trade certificate that:
 - (i) is relevant to that usual occupation; and
 - (ii) is assessed by the relevant Australian authority as equivalent to the Australian standards for the occupation; and
 - (e) the applicant's spouse has English-language skills that meet the requirements of subclause (4).
- (4) The English-language skills of the applicant or the applicant's spouse, as relevant, meet the requirements of this subclause if:

- (a) the applicant or the applicant's spouse:
 - (i) has a usual occupation that is an occupation included in the Occupations Requiring English List; and
 - (ii) satisfies the Minister that the applicant or applicant's spouse, as relevant, has proficiency in English of at least the standard required for the award of 15 points on the language skill factor of the general points test specified in Part 3 of Schedule 6; or
- (b) the applicant or the applicant's spouse does not have a usual occupation that is an occupation included in the Occupations Requiring English List but has proficiency in English of at least the standard required for the award of 10 points on the language skill factor of the general points test specified in Part 3 of Schedule 6.

106.224

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

106.225

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

106.226

If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

106.227

Each member of the family unit of the applicant who is an applicant for a Subclass 106 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.

106.228

Each member of the family unit of the applicant who is not an applicant for a Subclass 106 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

Clause 106.229

106.229

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18; andmade a combined application with the applicant;

the Minister is satisfied that the grant of a Subclass 106 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

106.230

Approval of the application would not result in either:

- (a) the number of Subclass 106 visas granted in a financial year exceeding the maximum number of Subclass 106 visas, as determined by Gazette Notice, that may be granted in that financial year; or
- (b) the number of visas of particular classes (including Subclass 106) granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in a financial year.

106.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

106.31—Criteria to be satisfied at time of application

106.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in subdivision 106.21.

106.312

The sponsorship referred to in clause 106.212 in respect of the person who satisfies the primary criteria includes sponsorship of the applicant.

106.32—Criteria to be satisfied at time of decision

106.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 106 visa.

106.322

The sponsorship referred to in clause 106.312 has been approved by the Minister and is still in force.

106.323

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

106.324

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

106.325

Either:

- (a) the applicant is included in any assurance of support required in respect of the person who satisfies the primary criteria, and that assurance has been accepted by the Minister; or
- (b) an assurance of support has been provided in relation to the applicant, and has been accepted by the Minister.

106.326

If the applicant is the dependent child of a person who is a holder of a Subclass 106 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

106.4—Circumstances applicable to grant

106.411

The applicant must be outside Australia when the visa is granted.

Note: Charges: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa can be granted.

106.5—When visa is in effect

106.511

Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

Clause 106.611

106.6—Conditions

106.611

First entry must be made before a date specified by the Minister for the purpose.

106.612

If the applicant satisfies the secondary criteria, either or both of conditions 8502 and 8514 may be imposed.

106.7—Way of giving evidence

106.711

Visa label affixed to a valid passport.

Subclass 110—Interdependency

110.1—Interpretation

110.111

In this Part:

sponsor, in relation to an applicant who is the holder of a Subclass 310 (Interdependency (Provisional)) visa, means the person who sponsored the applicant for the grant of that visa.

Note: *long-term interdependent relationship* is defined in regulation 1.03. For *interdependent relationship* see regulation 1.09A.

110.2—Primary criteria

Note: The primary criteria must be satisfied by at least 1 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.

110.21—[No criteria to be satisfied at time of application]

110.22—Criteria to be satisfied at time of decision

110.221

- (1) The applicant meets the requirements of subclause (2), (3) or (4).
- (2) The applicant meets the requirements of this subclause if:
 - (a) the applicant is the holder of a Subclass 310 (Interdependency (Provisional)) visa; and
 - (b) the applicant is in an interdependent relationship with the sponsor; and
 - (c) subject to subclauses (5) and (6), at least 2 years have passed since the application was made.
- (3) The applicant meets the requirements of this subclause if the applicant:
 - (a) first entered Australia as the holder of a Subclass 310 (Interdependency (Provisional)) visa and continues to be the holder of that visa; and
 - (b) would meet the requirements of subclause (2) except that, after the applicant first entered Australia as the holder of that visa, the sponsor has died; and
 - (c) satisfies the Minister that the applicant would have continued to be in an interdependent relationship with the sponsor if the sponsor had not died.
- (4) The applicant meets the requirements of this subclause if:
 - (a) the applicant first entered Australia as the holder of a Subclass 310 (Interdependency (Provisional)) visa and continues to be the holder of that visa; and

Clause 110.222

- (b) the applicant would meet the requirements of subclause (2) except that the relationship between the applicant and the sponsor has ceased; and
- (c) after the applicant first entered Australia as the holder of that visa—either or both of the following:
 - (i) the applicant;
 - (ii) a member of the family unit of the sponsor or of the applicant; has suffered domestic violence committed by the sponsor.

Note: For special provisions relating to domestic violence, see Division 1.5.

- (5) Paragraph (2)(c) does not apply to an applicant who at the time of making the application was in a long-term interdependent relationship with the sponsor.
- (6) Nothing in paragraph (2)(c) prevents the Minister, less than 2 years after the application is made, from:
 - (a) refusing to grant a Subclass 110 visa; or
 - (b) granting a Subclass 110 visa to an applicant who meets the requirements of subclause (3) or (4).

110.222

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

110.223

If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

110.224

- (1) Each member of the family unit of the applicant who is an applicant for an Interdependency (Migrant) (Class BI) visa is a person who satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.
- (2) Each member of the family unit of the applicant who is not an applicant for an Interdependency (Migrant) (Class BI) visa is a person who satisfies:
 - (a) public interest criteria 4001, 4002, 4003 and 4004; and
 - (b) public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

110.225

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;

made a combined application with the applicant;
the Minister is satisfied that the grant of a Subclass 110 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

110.226

If at least 2 years have passed since the application was made and the applicant does not meet the requirements of subclause 110.221(3) or (4), the applicant is nominated for the grant of the Subclass 110 visa by the sponsor.

110.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

110.31—Criteria to be satisfied at time of application

110.311

The applicant is a member of the family unit of a person who has applied for an Interdependency (Migrant) (Class BI) visa, and the Minister has not decided to grant or refuse to grant a visa to the person.

110.32—Criteria to be satisfied at time of decision

110.321

The applicant is the holder of:

- (a) a Subclass 310 (Interdependency (Provisional)) visa; or
- (b) a Subclass 445 (Dependent Child) visa;

granted on the basis that the applicant was a member of the family unit of another person who was the holder of a Subclass 310 visa, and that other person has been granted a Subclass 110 visa.

110.322

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

110.323

If the Minister requires an assurance of support in respect of the person who satisfies the primary criteria:

- (a) the applicant is included in the assurance of support given in respect of that person, and that assurance has been accepted by the Minister;
or

Clause 110.324

- (b) an assurance of support has been given in relation to the applicant, and has been accepted by the Minister.

110.324

If the applicant is the dependent child of a person who is the holder of a Subclass 110 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

110.4—Circumstances applicable to grant

110.411

The applicant must be:

- (a) in Australia, but not in immigration clearance; or
(b) outside Australia;

when the visa is granted.

110.5—When visa is in effect

110.511

Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

110.6—Conditions

110.611

If the applicant is outside Australia at the time of grant, first entry must be made before a date specified by the Minister for the purpose.

110.612

If the applicant meets the primary criteria and is outside Australia at the time of grant, condition 8502 may be imposed before his or her first entry to Australia as the holder of the visa.

110.613

If the applicant meets the secondary criteria and is outside Australia at the time of grant, either or both of conditions 8502 and 8515 may be imposed before his or her first entry to Australia as the holder of the visa.

110.7—Way of giving evidence

110.711

Visa label affixed to a valid passport.

Clause 120.211

Subclass 120—Labour Agreement

120.1—Interpretation

Note: No interpretation provisions specific to this Part.

120.2—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.

120.21—Criteria to be satisfied at time of application

120.211

The applicant:

- (a) either:
 - (i) seeks to enter Australia to work in accordance with a labour agreement; and
 - (ii) has qualifications and experience that are suitable for the position to be taken by the applicant under the labour agreement; and
 - (iii) unless exceptional circumstances apply, has not turned 55; or
- (b) seeks to enter Australia in accordance with an RHQ agreement.

120.22—Criteria to be satisfied at time of decision

120.221

The Minister is satisfied that the applicant is to be employed or engaged in Australia in accordance with the standards for wages and working conditions under relevant Australian legislation and awards.

120.222

The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (b) if the applicant has previously been in Australia, satisfies special return criteria 5001 and 5002.

120.223

If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

120.224

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 120 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 120 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

120.225

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;made a combined application with the applicant;

the Minister is satisfied that the grant of a subclass 120 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

120.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

120.31—Criteria to be satisfied at time of application

120.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 120.21.

120.32—Criteria to be satisfied at time of decision

120.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 120 visa.

Clause 120.322

120.322

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

120.323

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

120.324

If an assurance of support is required in respect of the family unit member who is the holder of a subclass 120 visa, either:

- (a) the applicant is included in the assurance of support, and the assurance of support has been accepted by the Minister; or
- (b) an assurance of support has been provided in relation to the applicant, and has been accepted by the Minister.

120.325

If the applicant is the dependant child of a person who is the holder of a subclass 120 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

120.4—Circumstances applicable to grant

120.411

The applicant must be outside Australia when the visa is granted.

Note: Charges: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa can be granted.

120.5—When visa is in effect

120.511

Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from date of grant.

120.6—Conditions

120.611

First entry must be made before a date specified by the Minister for the purpose..

120.62

Condition 8502 may be imposed .

120.7—Way of giving evidence

120.711

Visa label affixed to a valid passport.

Subclass 121—Employer Nomination

121.1—Interpretation

Note: *approved appointment* is defined in regulation 5.19. No interpretation provisions specific to this Part.

121.2—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.

121.21—Criteria to be satisfied at time of application

121.211

- (1) The applicant meets the requirements of subclause (2) or (3).
- (2) An applicant meets the requirements of this subclause if:
 - (a) the applicant has been nominated by an employer in respect of an appointment in the business of that employer; and
 - (b) in accordance with subregulation 5.19(2), the appointment is an approved appointment; and
 - (c) the applicant is a highly skilled person (within the meaning of subregulation 5.19(3)) in relation to that approved appointment; and
 - (d) unless the approved appointment is exceptional, the applicant has not turned 55.
- (3) An applicant meets the requirements of this subclause if:
 - (a) the applicant has been nominated by an employer in respect of an appointment in the business of that employer; and
 - (b) in accordance with subregulation 5.19(4), the appointment is an approved appointment; and
 - (c) either:
 - (i) in the case of an applicant who is taken, under regulation 2.08C, to have applied for an Employer Nomination (Migrant) (Class AN) visa, the applicant:
 - (A) had not turned 45 at the time of the application for an Independent (Migrant) (Class AT) visa; and
 - (B) has functional English; and
 - (C) has a diploma (within the meaning of subregulation 2.26(5)), or higher qualification, that is, unless the approved appointment is exceptional, relevant to the approved appointment; or
 - (ii) in any other case, unless the approved appointment is exceptional, the applicant:

- (A) has not turned 45; and
- (B) has functional English; and
- (C) has a diploma (within the meaning of subregulation 2.26(5)), or higher qualification, that is relevant to the approved appointment.

121.212

- (1) The period that has elapsed since the approved appointment became an approved appointment does not exceed:
 - (a) 3 months; or
 - (b) if in a particular case the Minister allows a longer period under subclause (2), that longer period.
- (2) The Minister may in a particular case allow a longer time than 3 months under subclause (1) if the Minister is satisfied:
 - (a) on written application by the applicant, that there are exceptional circumstances affecting that applicant; or
 - (b) on written application by the employer, that, if the applicant for the visa were to take up the approved appointment, any 2 of the following results would occur:
 - (i) expansion of Australian business and export activity;
 - (ii) generation of employment in Australia;
 - (iii) introduction and transfer to Australia of new skills and technology;
 - (iv) improvement of employment and training opportunities for Australians.

121.22—Criteria to be satisfied at time of decision

121.221

The nomination referred to in clause 121.211 is still in force.

121.222

- (1) The period that has elapsed since the approved appointment became an approved appointment does not exceed:
 - (a) 12 months; or
 - (b) if in a particular case the Minister allows a longer period under subclause (2), that longer period.
- (2) The Minister may in a particular case allow a longer period than 12 months under subclause (1) if the Minister is satisfied:
 - (a) on written application by the applicant, that there are exceptional circumstances affecting that applicant; or

Clause 121.223

- (b) on written application by the employer, that, if the applicant for the visa were to take up the approved appointment, any 2 of the following results would occur:
- (i) expansion of Australian business and export activity;
 - (ii) generation of employment in Australia;
 - (iii) introduction and transfer to Australia of new skills and technology;
 - (iv) improvement of employment and training opportunities for Australians.

121.223

The Minister is satisfied that the approved appointment will provide the employment referred to in the relevant employer nomination.

121.224

The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (b) if the applicant has previously been in Australia, satisfies special return criteria 5001 and 5002.

121.225

If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

121.226

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 121 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 121 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

121.227

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or

- (b) a child who:
- (i) is usually resident with the applicant; and
 - (ii) has not turned 18;
- made a combined application with the applicant;
- the Minister is satisfied that the grant of a subclass 121 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

121.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria

121.31—Criteria to be satisfied at time of application

121.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 121.21.

121.32—Criteria to be satisfied at time of decision

121.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 121 visa.

121.322

The applicant satisfies

- (a) public interest criteria 4001 to 4004, 4009 and 4010; and
- (b) public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the applicant to undergo assessment in relation to that criterion.

121.323

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

121.324

If an assurance of support is required in respect of the person who satisfies the primary criteria, either:

- (a) the applicant is included in the assurance of support, and that assurance of support has been accepted by the Minister; or

Clause 121.325

- (b) an assurance of support has been provided in relation to the applicant, and has been accepted by the Minister.

121.325

If the applicant is the dependent child of a person who is the holder of a subclass 121 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to the applicant.

121.4—Circumstances applicable to grant

121.411

The applicant must be outside Australia when the visa is granted.

Note: Charges: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa can be granted.

121.5—When visa is in effect

121.511

Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

121.6—Conditions

121.611

First entry must be made before a date specified by the Minister for the purpose.

121.612

Condition 8502 may be imposed.

121.7—Way of giving evidence

121.711

Visa label affixed to a valid passport.

Subclass 124—Distinguished Talent (Australian Support)

124.1—Interpretation

Note: *eligible New Zealand citizen* is defined in regulation 1.03. No interpretation provisions specific to this Part.

124.2—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.

124.21—Criteria to be satisfied at time of application

124.211

The applicant produces a nomination, testifying to his or her standing in an occupation, profession or activity, from

- (a) an Australian citizen; or
- (b) an Australian permanent resident; or
- (c) an eligible New Zealand citizen; or
- (d) an Australian organisation.

having a national reputation in relation to that occupation, profession, or activity.

124.212

Either:

- (a) the applicant:
 - (i) has an exceptional record of achievement in an occupation, profession or activity; and
 - (ii) would be an asset to the Australian community; and
 - (iii) would have no difficulty in obtaining employment or in becoming established independently in Australia in that occupation, profession or activity; or
- (b) the applicant has a record of outstanding achievement, and is still prominent, in the arts or sport.

124.22—Criteria to be satisfied at time of decision

124.221

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

Clause 124.222

124.222

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

124.223

If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

124.224

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 124 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 124 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004 and 4010; and
 - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

124.225

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;made a combined application with the applicant;

the Minister is satisfied that the grant of a subclass 124 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

124.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

124.31—Criteria to be satisfied at time of application

124.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 124.21.

124.32—Criteria to be satisfied at time of decision

124.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 124 visa.

124.322

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4009 and 4010.

124.323

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

124.324

If an assurance of support is required in respect of the person who satisfied the primary criteria, either:

- (a) the applicant is included in the assurance of support, and that assurance has been accepted by the Minister; or
- (b) an assurance of support has been provided in relation to the applicant, and has been accepted by the Minister.

124.325

If the applicant is the dependent child of a person who is the holder of a subclass 124 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

124.4—Circumstances applicable to grant

124.411

The applicant must be outside Australia when the visa is granted.

Note: Charges: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa can be granted.

Clause 124.511

124.5—When visa is in effect

124.511

Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from date of grant.

124.6—Conditions

124.611

First entry must be made before a date specified by the Minister for the purpose.

124.612

Condition 8502 may be imposed.

124.7—Way of giving evidence

124.711

Visa label affixed to a valid passport.

Subclass 125—Distinguished Talent and Special Service (Independent)

125.1—Interpretation

Note: *eligible New Zealand citizen* is defined in regulation 1.03.

125.2—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.

125.21—Criteria to be satisfied at time of application

125.211

- (1) The applicant meets the requirements of subclause (2), (3) or (4).
- (2) An applicant meets the requirements of this subclause if he or she:
 - (a) has an exceptional record of achievement in an occupation or profession;
and
 - (b) would be an asset to the Australian community; and
 - (c) would have no difficulty obtaining employment or becoming established independently in Australia in that occupation or profession.
- (3) An applicant meets the requirements of this subclause if he or she has a record of outstanding achievement, and is still prominent in the arts or sport.
- (4) An applicant meets the requirements of this subclause if, in the opinion of the Minister acting on the advice of:
 - (a) the Minister responsible for an intelligence or security agency within the meaning of the *Australian Security Intelligence Organisation Act 1979*; or
 - (b) the Director-General of Security;the applicant has provided specialised assistance to the Australian Government in matters of security.

125.22—Criteria to be satisfied at time of decision

125.221

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

125.222

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

Clause 125.223

125.223

If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

125.224

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 125 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 125 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004 and 4010; and
 - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

125.225

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;

made a combined application with the applicant;
the Minister is satisfied that the grant of a subclass 125 visa to the child as a member of the family unit would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

125.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are family unit members of a person who satisfies the Primary Criteria

125.31—Criteria to be satisfied at time of application

125.311

The applicant is a member of the family unit of, and has made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 125.21.

125.32—Criteria to be satisfied at time of decision

125.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is a holder of a subclass 125 visa.

125.322

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

125.323

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

125.324

If an assurance of support is required in respect of the person who satisfies the primary criteria, either:

- (a) the applicant is included in the assurance of support, and that assurance has been accepted by the Minister; or
- (b) an assurance of support has been provided in relation to the applicant, and has been accepted by the Minister.

125.325

If the applicant is the dependent child of a person who is the holder of a subclass 125 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

125.4—Circumstances applicable to grant

125.411

The applicant must be outside Australia when the visa is granted.

Note: Charges: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa can be granted..

125.5—When visa is in effect

125.511

Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

Clause 125.611

125.6—Conditions

125.611

First entry must be made before a date specified by the Minister for the purpose.

125.612

Condition 8502 may be imposed.

125.7—Way of giving evidence

125.711

Visa label affixed to a valid passport.

Subclass 126—Independent

126.1—Interpretation

126.11—In this Part:

usual occupation, in relation to an applicant, has the meaning set out in subregulation 2.26 (5).

Note: *working age* is defined in regulation 1.03.

126.2—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.

126.21—Criteria to be satisfied at time of application

126.211

The applicant is of working age.

126.22—Criteria to be satisfied at time of decision

126.221

The applicant has the qualifying score when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act.

Note: The Subdivision of the Act mentioned (ss. 92 to 96) provides for the application of a *points* system under which applicants for relevant visas are given an assessed score based on the prescribed number of points for particular attributes, which is assessed against the relevant pool mark and pass mark. The prescribed points and the manner of their allocation are provided for in Division 2 of Part 2 (see regulation 2.26) and Schedule 6 of these Regulations. Pool marks and pass marks are set from time to time by the Minister by notice in the Gazette (s. 96 of the Act).

126.222

If the usual occupation of the applicant is an occupation included in the Occupations Requiring English List, the applicant satisfies the Minister that the applicant has proficiency in English of at least the standard required for the award of 15 points on the language skill factor of the general points test specified in Part 3 of Schedule 6.

126.223

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

Clause 126.224

126.224

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

126.225

If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

126.226

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 126 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 126 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

126.227

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;made a combined application with the applicant;

the Minister is satisfied that the grant of a subclass 126 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

126.228

Approval of the application would not result in either:

- (a) the number of subclass 126 visas granted in a financial year exceeding the maximum number of subclass 126 visas, as determined by Gazette Notice, that may be granted in that financial year; or
- (b) the number of visas of particular classes (including subclass 126) granted in a financial year exceeding the maximum number of visas of those

classes, as determined by Gazette Notice, that may be granted in a financial year.

126.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria

126.31—Criteria to be satisfied at time of application

126.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in subdivision 126.21.

126.32—Criteria to be satisfied at time of decision

126.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 126 visa.

126.322

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

126.323

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

126.324

Either:

- (a) the applicant is included in any assurance of support required in respect of the person who satisfies the primary criteria, and that assurance has been accepted by the Minister; or
- (b) an assurance of support has been provided in relation to the applicant, and has been accepted by the Minister.

126.325

If the applicant is the dependent child of a person who is a holder of a subclass 126 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

Clause 126.411

126.4—Circumstances applicable to grant

126.411

The applicant must be outside Australia when the visa is granted.

Note: Charges: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa can be granted.

126.5—When visa is in effect

126.511

Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

126.6—Conditions

126.611

First entry must be made before a date specified by the Minister for the purpose.

126.612

If the applicant satisfies the secondary criteria, either or both of conditions 8514 and 8502 may be imposed.

126.7—Way of giving evidence

126.711

Visa label affixed to a valid passport.

Subclass 127—Business Owner

127.1—Interpretation

Note: *appropriate regional authority*, *AUD*, *fiscal year*, *ownership interest* and *qualifying business* are defined in regulation 1.03; *main business* is defined in regulation 1.11; and *eligible business* is defined in s. 134 (10) of the Act. There are no interpretation provisions specific to this Part.

127.2—Primary criteria

Note: The primary criteria must be satisfied by at least 1 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. 127.21—Criteria to be satisfied at time of application

127.211

The applicant has, or has had in any 2 fiscal years in the 4 fiscal years immediately preceding the making of the application, an ownership interest in 1 or more qualifying businesses.

127.212

- (1) The applicant has overall had a successful business career.
- (2) In any 2 fiscal years in the 4 fiscal years immediately preceding the making of the application:
 - (a) the net assets of:
 - (i) the applicant; or
 - (ii) the applicant and his or her spouse together;in a qualifying business or qualifying businesses were not less than the equivalent of AUD300,000 in each of those years; and
 - (b) if a qualifying business referred to in paragraph (a) was operated by a publicly listed company, the shareholding of:
 - (i) the applicant; or
 - (ii) the applicant and his or her spouse together;was at least 10% of the total issued capital of the company.

127.213

In any 2 fiscal years in the 4 fiscal years immediately preceding the making of the application, the applicant, as the owner of an interest in a main business or main businesses, maintained direct and continuous involvement in management of that business or those businesses from day to day and in making decisions that affected the overall direction and performance of that business or those businesses.

Clause 127.214

127.214

If the applicant was engaged, for 2 or more of the 4 fiscal years immediately preceding the making of the application, in a business providing professional, technical or trade services, the applicant was directly engaged in the provision of the services, as distinct from the general direction of the operation of the business, for no more than half the time spent by the applicant from day to day in the conduct of the business.

127.215

The applicant has notified the appropriate regional authority of a State or Territory of:

- (a) the applicant's business history; and
- (b) the applicant's intention to develop a business in that State or Territory.

127.216

The applicant genuinely has a realistic commitment, after entry to Australia as the holder of a subclass 127 visa:

- (a) to either:
 - (i) establish an eligible business in Australia; or
 - (ii) participate in an existing eligible business in Australia; and
- (b) to maintain a substantial ownership interest in that business; and
- (c) to maintain direct and continuous involvement in management of that business from day to day and in making decisions that affect the overall direction and performance of the business in a manner that benefits the Australian economy.

127.217

The applicant does not have a history of involvement in business activities that are of a nature that is not generally acceptable in Australia.

127.218

The applicant signs a declaration in a form approved by the Minister that the applicant acknowledges the Government's requirements in relation to entry to Australia as the holder of a subclass 127 visa.

127.22—Criteria to be satisfied at time of decision

127.221

The applicant continues to satisfy the criteria specified in clauses 127.211 to 127.217.

127.222

- (1) The applicant's score on the business skills points test is not less than the number of points that is specified for the purposes of this paragraph by Gazette Notice.
- (2) For the purposes of sub-clause (1):
 - (a) an applicant's score on the business skills points test is the sum of the applicant's scores under:
 - (i) Division 1.1 of Part 1 of Schedule 7; and
 - (ii) Parts 2, 3 and 4 of that Schedule; and
 - (b) an applicant's score under a Subdivision or Part of Schedule 7 is the number of points specified in that Subdivision or Part in relation to the attribute described in the Subdivision or Part that relates to the applicant:
 - (i) in the case of an attribute specified in Part 3 of Schedule 7—at the time when the application is decided; and
 - (ii) in the case of any other attribute—at the time when the application is made;and if there is more than 1 attribute of that kind, the highest single number of points so specified; and
 - (c) in determining the score of an applicant under Part 4 of Schedule 7, only:
 - (i) assets in Australia; or
 - (ii) assets available for transfer, and capable of being transferred, to Australia within 2 years of grant of a business skills visa to the applicant;are to be taken into account.

127.223

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

127.224

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

127.225

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 127 visa:
 - (a) is a person who satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if the person has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
 - (2) Each member of the family unit of the applicant who is not an applicant for a subclass 127 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
-

Clause 127.226

- (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

127.226

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;made a combined application with the applicant;

the Minister is satisfied that the grant of the subclass 127 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

127.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

127.31—Criteria to be satisfied at time of application

127.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in subdivision 127.21.

127.32—Criteria to be satisfied at time of decision

127.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is a holder of a subclass 127 visa.

127.322

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

127.323

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

127.324

If the applicant is the dependent child of a person who is a holder of a subclass 127 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

127.4—Circumstances applicable to grant

127.411

The applicant must be outside Australia when the visa is granted.

Note: Charges: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa can be granted.

127.5—When visa is in effect

127.511

Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

127.6—Conditions

127.611

First entry must be made before a date specified by the Minister for the purpose.

127.612

Either or both of conditions 8502 and 8515 may be imposed.

127.7—Way of giving evidence

127.711

Visa label affixed to a valid passport.

Clause 128.111

Subclass 128—Senior Executive

128.1—Interpretation

128.111

In this Part:

major business means a business (other than a government business enterprise) the annual turnover of which was not less than the equivalent of AUD50,000,000 in each of any 2 of the 4 fiscal years immediately preceding the making of the application.

Note: *appropriate regional authority, AUD, eligible business, fiscal year* and *ownership interest* are defined in regulation 1.03.

128.2—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.

128.21—Criteria to be satisfied at time of application

128.211

The applicant has overall had a successful business career.

128.212

In any 2 of the 4 years immediately preceding the making of the application, the applicant:

- (a) occupied a position in the 3 highest levels of the management structure of a major business; and
- (b) was responsible for strategic policy development affecting a major component or a wide range of operations of that major business;

in each of those years.

128.213

The applicant has notified the appropriate regional authority of a State or Territory of:

- (a) the applicant's business history; and
- (b) the applicant's intention to develop a business in that State or Territory.

128.214

The applicant genuinely has a realistic commitment, after entry to Australia as the holder of a subclass 128 visa:

- (a) to either:
 - (i) establish an eligible business in Australia; or
 - (ii) participate in an existing eligible business in Australia; and
- (b) to maintain a substantial ownership interest in that business; and
- (c) to maintain direct and continuous involvement in management of that business from day to day and in making decisions that affect the overall direction and performance of the business in a manner that benefits the Australian economy.

128.215

The applicant does not have a history of involvement in business activities that are of a nature that is not generally acceptable in Australia.

128.216

The applicant signs a declaration in a form approved by the Minister, that the applicant acknowledges the Government's requirements in relation to entry to Australia as the holder of a subclass 128 visa.

128.22—Criteria to be satisfied at time of decision

128.221

The applicant continues to satisfy the criteria specified in clauses 128.211 to 128.215.

128.222

- (1) The applicant's score on the business skills points test is not less than the number of points that is specified for the purposes of this clause by Gazette Notice.
- (2) For the purposes of subclause (1):
 - (a) an applicant's score on the business skills points test is the sum of the applicant's scores under:
 - (i) Division 1.2 of Part 1 of Schedule 7; and
 - (ii) Parts 2, 3 and 4 of that Schedule; and
 - (b) an applicant's score under a Division or Part of Schedule 7 is the number of points specified in that Division or Part in relation to the attribute described in the Division or Part that relates to the applicant:
 - (i) in the case of an attribute specified in Part 3 of Schedule 7—at the time when the application is decided; and
 - (ii) in the case of any other attribute—at the time when the application is made;

Clause 128.223

and if there is more than 1 attribute of that kind, the highest single number of points so specified; and

- (c) in determining the score of an applicant under Part 4 of Schedule 7, only:
 - (i) assets in Australia; or
 - (ii) assets available for transfer, and capable of being transferred, to Australia within 2 years of grant of a business skills visa to the applicant;are to be taken into account.

128.223

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

128.224

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

128.225

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 128 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if the person has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 128 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

128.226

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;made a combined application with the applicant; and

the Minister is satisfied that the grant of a subclass 128 visa to the child as a member of the family unit of the applicant would not prejudice the rights and

interests of any other person who has custody or guardianship of, or access to, the child.

128.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

128.31—Criteria to be satisfied at time of application

128.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in subdivision 128.21.

128.3—Criteria to be satisfied at time of decision

128.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 128 visa.

128.322

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

128.323

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

128.324

If the applicant is the dependent child of a person who is a holder of a subclass 128 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant .

128.4—Circumstances applicable to grant

128.411

The applicant must be outside Australia when the visa is granted.

Note: Charges: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa is granted.

Clause 128.511

128.5—When visa is in effect

128.511

Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

128.6—Conditions

128.611

First entry must be made before a date specified by the Minister for the purpose.

128.612

Either or both of conditions 8502 and 8515 may be imposed.

128.7—Way of giving evidence

128.711

Visa label affixed to a valid passport.

Subclass 129—State/Territory Sponsored Business Owner

129.1—Interpretation

Note: *appropriate regional authority*, ‘AUD’, *fiscal year*, *ownership interest* and *qualifying business* are defined in regulation 1.03; *main business* is defined in regulation 1.11; and *eligible business* is defined in s. 134 (10) of the Act. There are no interpretation provisions specific to this Part.

129.2—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.

129.21—Criteria to be satisfied at time of application

129.211

The applicant has, or has had in any 2 fiscal years in the 4 fiscal years immediately preceding the making of the application, an ownership interest in 1 or more qualifying businesses.

129.212

- (1) The applicant has overall had a successful business career.
- (2) In any 2 fiscal years in the 4 fiscal years immediately preceding the making of the application:
 - (a) the net assets of:
 - (i) the applicant; or
 - (ii) the applicant and his or her spouse together;in a qualifying business or qualifying businesses were not less than the equivalent of AUD200,000 in each of those years; and
 - (b) if a qualifying business referred to in paragraph (a) was operated by a publicly listed company, the shareholding of:
 - (i) the applicant; or
 - (ii) the applicant and his or her spouse together;was at least 10% of the total issued capital of the company.

129.213

In any 2 fiscal years in the 4 fiscal years immediately preceding the making of the application, the applicant, as the owner of an interest in a main business or main businesses, maintained direct and continuous involvement in management of that business or those businesses from day to day and in making decisions that affected the overall direction and performance of that business or those businesses.

Clause 129.214

129.214

If the applicant was engaged, for 2 or more of the 4 fiscal years immediately preceding the making of the application, in a business providing professional, technical or trade services, the applicant was directly engaged in the provision of the services, as distinct from the general direction of the operation of the business, for no more than half the time spent by the applicant from day to day in the conduct of the business.

129.215

- (1) The applicant has notified the appropriate regional authority of a State or Territory of:
 - (a) the applicant's business history; and
 - (b) the applicant's intention to develop a business in that State or Territory.
- (2) The applicant submits a notification on approved form 950 from that appropriate regional authority that the authority will consider sponsoring the applicant.
- (3) The notification must:
 - (a) be signed by an officer of the appropriate regional authority who is authorised to sign a notification of that kind; and
 - (b) bear the seal of the authority.

129.216

The applicant genuinely has a realistic commitment, after entry to Australia as the holder of a subclass 129 visa:

- (a) to either:
 - (i) establish an eligible business in Australia; or
 - (ii) participate in an existing eligible business in Australia; and
- (b) to maintain a substantial ownership interest in that business; and
- (c) to maintain direct and continuous involvement in management of that business from day to day and in making decisions that affect the overall direction and performance of the business in a manner that benefits the Australian economy.

129.217

The applicant does not have a history of involvement in business activities that are of a nature that is not generally acceptable in Australia.

129.218

The applicant signs a declaration in a form approved by the Minister that the applicant acknowledges the Government's requirements in relation to entry to Australia as the holder of a subclass 129 visa.

129.22—Criteria to be satisfied at time of decision

129.221

The applicant continues to satisfy the criteria specified in clauses 129.211 to 129.217.

129.222

- (1) The applicant's score on the business skills points test is not less than the number of points that is specified for the purposes of this paragraph by Gazette Notice.
- (2) For the purposes of subclause (1):
 - (a) an applicant's score on the business skills points test is the sum of the applicant's scores under:
 - (i) Division 1.1 of Part 1 of Schedule 7; and
 - (ii) Parts 2, 3, 4 and 5 of that Schedule; and
 - (b) an applicant's score under a Division or Part of Schedule 7 is the number of points specified in that Division or Part in relation to the attribute described in the Division or Part that relates to the applicant:
 - (i) in the case of an attribute specified in Part 3 or Part 5 of Schedule 7—
at the time when the application is decided; and
 - (ii) in the case of any other attribute—at the time when the application is made;

and if there is more than 1 attribute of that kind, the highest single number of points so specified; and

- (c) in determining the score of an applicant under Part 4 of Schedule 7, only:
 - (i) assets in Australia; or
 - (ii) assets available for transfer, and capable of being transferred, to Australia within 2 years of grant of a business skills visa to the applicant;are to be taken into account.

129.223

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

129.224

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

129.225

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 129 visa is a person who:

Clause 129.226

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if the person has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 129 visa is a person who:
- (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

129.226

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;made a combined application with the applicant;

the Minister is satisfied that the grant of the subclass 129 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

129.227

- (1) The applicant has been sponsored (on approved form 949) by an appropriate regional authority.
- (2) The sponsorship must:
 - (a) be given by the authority that gave the notification referred to in subclause 129.215 (2); and
 - (b) be signed by an officer of the authority who is authorised to sign a sponsorship of that kind; and
 - (c) bear the seal of the authority; and
 - (d) be given to the Minister within 90 days after the Minister asks for it; and
 - (e) be the first sponsorship of that kind given by the applicant to the Minister.

129.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria

129.31—Criteria to be satisfied at time of application

129.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in subdivision 129.21.

129.312

A sponsorship given in respect of the person who satisfies the primary criteria includes sponsorship of the applicant.

129.32—Criteria to be satisfied at time of decision

129.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 129 visa.

129.322

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

129.323

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

129.324

If the applicant is the dependent child of a person who is a holder of a subclass 129 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

129.325

The sponsorship referred to in 129.312 is approved by the Minister and is still in force.

129.4—Circumstances applicable to grant

129.411

The applicant must be outside Australia when the visa is granted.

Note: Charges: Any applicable charges under the *Immigration (Education) Charge Act 1992* must be paid before the visa is granted.

Clause 129.511

129.5—When visa is in effect

129.511

Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

129.6—Conditions

129.611

First entry must be made before a date specified by the Minister for the purpose.

129.612

Either or both of conditions 8502 and 8515 may be imposed.

129.7—Way of giving evidence

129.711

Visa label affixed to a valid passport.

Subclass 130—State/Territory Sponsored Senior Executive

130.1—Interpretation

130.111

In this Part:

major business means a business (other than a government business enterprise) the annual turnover of which was not less than the equivalent of AUD10,000,000 in each of any 2 of the 4 fiscal years immediately preceding the making of the application.

Note: *appropriate regional authority, AUD, eligible business, fiscal year and ownership interest* are defined in regulation 1.03.

130.2—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 secondary criteria.

130.21—Criteria to be satisfied at time of application

130.211

The applicant has overall had a successful business career.

130.212

In any 2 of the 4 years immediately preceding the making of the application, the applicant:

- (a) occupied a position in the 3 highest levels of the management structure of a major business; and
 - (b) was responsible for strategic policy development affecting a major component or a wide range of operations of that major business;
- in each of those years.

130.213

- (1) The applicant has notified an appropriate regional authority of a State or Territory of:
 - (a) the applicant's business history; and
 - (b) the applicant's intention to develop a business in that State or Territory.
- (2) The applicant submits a notification, on approved form 950, from that appropriate regional authority stating that the authority will consider sponsoring the applicant.

Clause 130.214

- (3) The notification :
- (a) be signed by an officer of the authority who is authorised to sign a notification of that kind; and
 - (b) bear the seal of the authority.

130.214

The applicant genuinely has a realistic commitment, after entry to Australia as the holder of a subclass 130 visa:

- (a) to either:
 - (i) establish an eligible business in Australia; or
 - (ii) participate in an existing eligible business in Australia; and
- (b) to maintain a substantial ownership interest in that business; and
- (c) to maintain direct and continuous involvement in management of that business from day to day and in making decisions that affect the overall direction and performance of the business in a manner that benefits the Australian economy.

130.215

The applicant does not have a history of involvement in business activities that are of a nature that is not generally acceptable in Australia.

130.216

The applicant signs a declaration in a form approved by the Minister that the applicant acknowledges the Government's requirements in relation to entry to Australia as the holder of a subclass 130 visa.

130.22—Criteria to be satisfied at time of decision

130.221

The applicant continues to satisfy the criteria specified in clauses 130.221 to 130.215.

130.222

- (1) The applicant's score on the business skills points test is not less than the number of points that is specified for the purposes of this clause by Gazette Notice.
- (2) For the purposes of subclause (1):
 - (a) an applicant's score on the business skills points test is the sum of the applicant's scores under:
 - (i) Division 1.2 of Part 1 of Schedule 7; and
 - (ii) Parts 2,3 and 4 of that Schedule; and

Clause 130.223

- (b) an applicant's score under a Division or Part of Schedule 7 is the number of points specified in that Division or Part in relation to the attribute described in the Division or Part that relates to the applicant:
 - (i) in the case of an attribute specified in Part 3 of Schedule 7—at the time when the application is decided; and
 - (ii) in the case of any other attribute—at the time when the application is made; and if there is more than 1 attribute of that kind, the highest single number of points so specified; and
- (c) in determining the score of an applicant under Part 4 of Schedule 7, only:
 - (i) assets in Australia; or
 - (ii) assets available for transfer, and capable of being transferred, to Australia within 2 years of grant of a business skills visa to the applicant;are to be taken into account.

130.223

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

130.224

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

130.225

- (1) Each member of the family unit of the applicant who is also an applicant for a subclass 130 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if the person has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 130 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

130.226

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:

Clause 130.227

(i) is usually resident with the applicant; and
(ii) has not turned 18;
made a combined application with the applicant;
the Minister is satisfied that the grant of the subclass 130 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

130.227

- (1) The applicant has been sponsored (on approved form 949) by an appropriate regional authority.
- (2) The sponsorship must:
 - (a) be given by the authority that gave the notification referred to in subclause 130.213 (2); and
 - (b) be signed by an officer of the authority who is authorised to sign a sponsorship of that kind; and
 - (c) bear the seal of the authority; and
 - (d) be given to the Minister within 90 days after the Minister asks for it; and
 - (e) be the first sponsorship of that kind given by the applicant to the Minister.

130.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

130.31—Criteria to be satisfied at time of application

130.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in subdivision 130.21.

130.312

The sponsorship given in respect of the person who satisfies the primary criteria includes sponsorship of the applicant.

130.32—Criteria to be satisfied at time of decision

130.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 130 visa.

130.322

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

130.323

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

130.324

If the applicant is the dependent child of a person who is a holder of a subclass 130 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

130.325

The sponsorship referred to in 130.312 is approved by the Minister and is still in force.

130.4—Circumstances applicable to grant

130.411

The applicant must be outside Australia when the visa is granted.

Note: Charges: Any applicable charges under the *Immigration (Education) Charge Act 1992* must be paid before the visa is granted.

130.5—When visa is in effect

130.511

Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

130.6—Conditions

130.611

First entry must be made before a date specified by the Minister for the purpose.

130.612

Either or both of conditions 8502 and 8515 may be imposed.

Clause 130.711

130.7—Way of giving evidence

130.711

Visa label affixed to a valid passport.

Subclass 131—Investment-linked

131.1—Interpretation

131.111

In this Part:

designated investment means an investment in a security specified by the Minister under regulation 5.19A for the purposes of this Part;

eligible investment in relation to a person means:

- (a) an ownership interest in a business; or
- (b) a loan to a business; or
- (c) cash on deposit; or
- (d) stocks and bonds; or
- (e) real estate; or
- (f) gold or silver bullion;

that is owned by the person for the purposes of producing a return by way of income or capital gain and is not held for personal use.

Note: *AUD, fiscal year, ownership interest* and *qualifying business* are defined in regulation 1.03.

131.2—Primary criteria

Note: The primary criteria must be satisfied by at least 1 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.

131.21—Criteria to be satisfied at time of application

131.211

The Minister is satisfied that the applicant has demonstrated a high level of management skill in relation to the eligible investment or qualifying business activity.

131.212

The applicant has demonstrated overall a successful record of eligible investment or qualifying business activity.

131.213

- (1) The applicant has had a total of at least 3 years experience of direct involvement in managing 1 or more qualifying businesses or eligible investments.

Clause 131.214

- (2) Throughout at least 1 of the 5 fiscal years immediately preceding the making of the application:
- (a) the applicant maintained direct involvement in managing a qualifying business in which:
 - (i) the applicant; or
 - (ii) the applicant and his or her spouse together;had an ownership interest of at least 10% of the total value of the business; or
 - (b) the applicant maintained direct involvement in managing eligible investments of:
 - (i) the applicant; or
 - (ii) the applicant and his or her spouse together;the total net value of which was at least AUD1,000,000.
- (3) The total net value of the assets owned by:
- (a) the applicant; or
 - (b) the applicant and his or her spouse together;
- throughout the 2 fiscal years immediately preceding the making of the application was at least 50% more than the value of the funds to be deposited in the designated investment in the name of the applicant, or in the names of the applicant and members of his or her family unit, as the case requires.

131.214

Neither the applicant nor his or her spouse (if any) has a history of involvement in business or investment activities that are of a nature that is not generally acceptable in Australia.

131.215

The applicant genuinely has a realistic commitment, after entry to Australia as the holder of a Subclass 131 visa, to continue to maintain a business or investment activity in Australia after the designated investment made by the applicant, or the applicant and members of his or her family unit, has matured.

131.216

The applicant has signed a declaration in a form approved by the Minister that the applicant acknowledges the Government's requirements in relation to entry to Australia as the holder of a Subclass 131 visa.

131.22—Criteria to be satisfied at time of decision

131.221

The applicant continues to satisfy the criteria in clauses 131.211 to 131.215.

131.222

- (1) The applicant provides evidence that he or she has made a designated investment of an amount of AUD750,000, AUD1,000,000, AUD1,500,000 or AUD2,000,000.
- (2) The Minister is satisfied, based on the evidence provided by the applicant, that the funds invested were:
 - (a) legally owned by:
 - (i) the applicant; or
 - (ii) the applicant and his or her spouse together; and
 - (b) unencumbered; and
 - (c) accumulated from the qualifying business or eligible investment activities of:
 - (i) the applicant; or
 - (ii) the applicant and his or her spouse together.

131.223

- (1) The applicant's score on the business skills points test is not less than the number of points that is specified for the purposes of this subclause by Gazette Notice.
- (2) For the purposes of subclause (1):
 - (a) an applicant's score on the business skills points test is the sum of the applicant's scores under:
 - (i) Division 1.3 of Schedule 7; and
 - (ii) Parts 2 and 3 of that Schedule; and
 - (b) an applicant's score under a Subdivision or Part of Schedule 7 is the number of points specified in that Subdivision or Part in relation to the attribute described in the Subdivision or Part that relates to the applicant:
 - (i) in the case of an attribute specified in Part 1 or Part 3 of Schedule 7—at the time when the application is decided; and
 - (ii) in the case of an attribute specified in Part 2 of Schedule 7—at the time when the application is made;and if there is more than 1 attribute of either of those kinds, the highest single number of points so specified.

131.224

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

131.225

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

Clause 131.226

131.226

- (1) Each member of the family unit of the applicant who is an applicant for a Subclass 131 visa:
 - (a) is a person who satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if the person has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 131 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

131.227

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;made a combined application with the applicant;

the Minister is satisfied that the grant of the Subclass 131 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

131.3—Secondary Criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

131.31—Criteria to be satisfied at time of application

131.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in subdivision 131.21.

131.32—Criteria to be satisfied at time of decision

131.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is a holder of a Subclass 131 visa.

131.322

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

131.323

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

131.324

If the applicant is a dependent child of a person who is a holder of a Subclass 131 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

131.4—Circumstances applicable to grant

131.411

The applicant must be outside Australia when the visa is granted.

Note: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa can be granted.

131.5—When visa is in effect

131.511

Permanent visa permitting the holder to travel to, and enter, Australia for a period of 5 years from the date of grant.

131.6—Conditions

131.611

First entry must be made before a date specified by the Minister for the purpose.

131.612

Either or both of conditions 8502 and 8515 may be imposed.

131.7—Way of giving evidence

131.711

Visa label affixed to a valid passport.

Clause 150.211

Subclass 150—Former Citizen

150.1—Interpretation

Note: No interpretation provisions specific to this Part.

150.2—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.

150.21—Criteria to be satisfied at the time of application

150.211

The applicant:

- (a) has lost Australian citizenship because of section 17 or subsection 23 (1) of the *Australian Citizenship Act 1948* or section 20 of the *Nationality and Citizenship Act 1948*; and
- (b) resided in Australia as an Australian citizen for an aggregate period of not less than 2 years; and
- (c) either:
 - (i) has maintained business, cultural or personal ties with Australia; or
 - (ii) has family ties with Australia that are stronger than those with any other country.

150.212

If the applicant lost Australian citizenship because of section 17 of the *Australian Citizenship Act 1948*, the applicant acquired citizenship of another country:

- (a) to avoid significant hardship or detriment; or
- (b) in circumstances where the applicant was compelled to acquire that citizenship; or
- (c) being unaware that, by acquiring that citizenship, the applicant would lose Australian citizenship.

150.22—Criteria to be satisfied at time of decision

150.221

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

150.222

The applicant satisfies special return criteria 5001, 5002 and 5010.

150.223

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 150 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 150 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

150.224

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18; andmade a combined application with the applicant;

the Minister is satisfied that the grant of a subclass 150 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

150.226

If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

150.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are family unit members of a person who satisfies the primary criteria.

150.31—Criteria to be satisfied at time of application

150.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 150.21.

Clause 150.321

150.32—Criteria to be satisfied at time of decision.

150.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 150 visa.

150.322

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

150.323

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

150.324

If an assurance of support is required in respect of the person who satisfies the primary criteria, either:

- (a) the applicant is included in the assurance of support provided in relation to that person, and that assurance has been accepted by the Minister; or
- (b) an assurance of support has been provided in relation to the applicant and has been accepted by the Minister.

150.325

If the applicant is the dependent child of a person who is a holder of a subclass 150 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

150.4—Circumstances applicable to grant

150.411

The applicant must be outside Australia when the visa is granted.

Note: Charges: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa is granted.

150.5—When visa is in effect

150.511

Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from date of grant.

150.6—Conditions

150.611

First entry must be made by a date specified by the Minister for the purpose.

150.612

Condition 8205 may be imposed.

150.7—Way of giving evidence

150.711

Visa label affixed to a valid passport.

Clause 151.211

Subclass 151—Former Resident

151.1—Interpretation

Note: No interpretation provisions specific to this Part.

151.2—Primary criteria

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

151.21—Criteria to be satisfied at the time of application

151.211

The applicant:

- (a) spent the greater part of his or her life before the age of 18 in the migration zone as an Australian permanent resident; and
- (b) did not at any time acquire Australian citizenship; and
- (c) has maintained business, cultural or personal ties with Australia.

151.22—Criteria to be satisfied at time of decision

151.221

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

151.222

The applicant satisfies special return criteria 5001, 5002 and 5010.

151.223

If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

151.224

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 151 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if she or he has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.

- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 151 visa is a person who:
- (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo an assessment in relation to that criterion.

151.225

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;
made a combined application with the applicant;

the Minister is satisfied that the grant of a subclass 151 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

151.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

151.31—Criteria to be satisfied at the time of application

151.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in subdivision 151.21.

151.32—Criteria to be satisfied at the time of decision

151.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 151 visa.

151.322

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

Clause 151.323

151.323

If the applicant has previously been in the migration zone, the applicant satisfies special return criteria 5001, 5002 and 5010.

151.324

If an assurance of support is required in respect of the person who satisfies the primary criteria:

- (a) the applicant is included in the assurance of support provided in relation to that person, and the assurance has been accepted by the Minister; or
- (b) an assurance of support has been provided in relation to the applicant and has been accepted by the Minister.

151.325

If the applicant is the dependent child of the person who is a holder of a subclass 151 visa, the Minister is satisfied that the grant of the visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

151.4—Circumstances applicable to the grant

151.411

The applicant must be outside Australia when the visa is granted.

Note: Charges: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa is granted.

151.5—When visa is in effect

151.511

Permanent visa permitting the holder to travel to, and enter, Australia within 5 years of grant.

151.6—Conditions

151.611

First entry must be made before a date specified by the Minister for the purpose.

151.612

Condition 8205 may be imposed.

151.7—Way of giving evidence

151.711

Visa label affixed to a valid passport.

Subclass 152—Family of New Zealand Citizen

152.1—Interpretation

Note: No interpretation provisions specific to this Part.

152.2—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.

152.21—Criteria to be satisfied at time of application

152.211

The applicant:

- (a) is not a New Zealand citizen; and
- (b) is a member of the family unit (other than the spouse) of a New Zealand citizen who either:
 - (i) is the holder of a special category visa and is usually resident in Australia; or
 - (ii) on entry to Australia, will be the holder of a special category visa and intends to be usually resident in Australia.

152.22—Criteria to be satisfied at time of decision

152.221

The applicant continues to satisfy the criteria set out in clause 152.211.

152.222

The New Zealand citizen referred to in subclause 152.211 (b) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

152.223

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

152.224

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

152.225

If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

152.226

- (1) Each member of the family unit of the applicant who is an applicant is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

152.227

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;

made a combined application with the applicant;

the Minister is satisfied that the grant of a subclass 152 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

152.228

If the applicant has not turned 18, the Minister is satisfied that the grant of the visa would not prejudice the rights and interests of any person who has custody or guardianship of, or access to, the applicant.

152.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

Clause 152.311

152.31—Criteria to be satisfied at time of application

152.311

The applicant is a member of the family unit of, and made a combined application with, an applicant who satisfies the primary criteria in subdivision 152.21.

152.32—Criteria to be satisfied at time of decision

152.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 152 visa.

152.322

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010, 4009 and 4010.

152.323

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

152.324

If an assurance of support is required in respect of the person who satisfies the primary criteria, either:

- (a) the applicant is included in the assurance of support given in respect of that person and that assurance has been accepted by the Minister; or
- (b) an assurance of support has been given in relation to the applicant, and has been accepted by the Minister.

152.325

If the applicant is the dependent child of a person who is the holder of a subclass 152 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

152.4—Circumstances applicable to grant

152.411

The applicant must be outside Australia when the visa is granted.

152.5—When visa is in effect

152.511

Permanent visa permitting the holder to travel and enter Australia for a period of 5 years from the date of grant.

152.6—Conditions

152.611

First entry must be made before a date specified by the Minister for the purpose.

152.612

Either or both of conditions 8515 and 8502 may be imposed.

152.7—Way of giving evidence

152.71

Visa label affixed to a valid passport.

Clause 155.211

Subclass 155—Five Year Resident Return

155.1—Interpretation

Note: *Australian permanent resident* is defined in regulation 1.03.]

155.2—Primary criteria

Note: All applicants must meet the primary criteria.

155.21—Criteria to be satisfied at time of application

155.211

The applicant:

- (a) is an Australian permanent resident; or
- (b) immediately before last leaving Australia, was:
 - (i) an Australian permanent resident; or
 - (ii) an Australian citizen but has subsequently lost or renounced Australian citizenship.

155.212

- (1) The applicant meets the requirements of subclause (2), (3) or (4).
- (2) The applicant meets the requirements of this subclause if the applicant was lawfully present in Australia for a period of, or periods that total, not less than 2 years in the period of 5 years immediately before the application for the visa and, during that time, the applicant:
 - (a) was:
 - (i) the holder of a permanent visa or a permanent entry permit; or
 - (ii) an Australian citizen; and
 - (b) was not the holder of a temporary visa or a bridging visa.
- (3) The applicant meets the requirements of this subclause if the Minister is satisfied that the applicant:
 - (a) has substantial business, cultural, employment or personal ties with Australia which are of benefit to Australia; and
 - (b) if outside Australia, has not been absent from Australia for a continuous period of 5 years or more immediately before the application for the visa, unless there are compelling reasons for the absence.
- (4) The applicant meets the requirements of this subclause if the applicant is a member of the family unit of a person who:
 - (a) has been granted a Subclass 155 visa and that visa is still in effect; or
 - (b) meets the requirements of subclause (2) or (3) and has lodged either:

- (i) a combined application for a Return (Residence) (Class BB) visa with the applicant; or
- (ii) a separate application for a Return (Residence) (Class BB) visa.

155.22—Criteria to be satisfied at time of decision

155.221

If the application is made outside Australia, the applicant satisfies special return criterion 5001.

155.3—Secondary criteria: Nil.

Note: All applicants must satisfy the primary criteria.

155.4—Circumstances applicable to grant

155.411

If the application is made outside Australia, the applicant must be outside Australia at the time of grant.

155.412

If the application is made in Australia, the applicant must be in Australia, but not in immigration clearance, at the time of grant.

155.5—When visa is in effect

155.511

Permanent visa permitting the holder to travel to and enter Australia for:

- (a) a period of 5 years from the date of grant; or
- (b) a shorter period determined by the Minister.

155.6—Conditions: Nil.

155.7—Way of giving evidence

155.711

Visa label affixed to a valid passport.

Clause 157.211

Subclass 157—Three Month Resident Return

157.1—Interpretation

Note: *Australian permanent resident* is defined in regulation 1.03.

157.2—Primary criteria

Note: All applicants must satisfy the primary criteria.

157.21—Criteria to be satisfied at time of application

157.211

The applicant:

- (a) is an Australian permanent resident; or
- (b) immediately before last leaving Australia, was:
 - (i) an Australian permanent resident; or
 - (ii) an Australian citizen but has subsequently lost or renounced Australian citizenship.

157.212

- (1) The applicant meets the requirements of subclause (2) or (3).
- (2) The applicant meets the requirements of this subclause if the applicant:
 - (a) was lawfully present in Australia for a period of, or periods that total, not less than 1 day but less than 2 years in the period of 5 years immediately before the application for the visa and, during that time, the applicant:
 - (i) was:
 - (A) the holder of a permanent visa or a permanent entry permit;
or
 - (B) an Australian citizen; and
 - (ii) was not the holder of a temporary visa or a bridging visa; and
 - (b) either:
 - (i) has compelling and compassionate reasons for departing Australia; or
 - (ii) if outside Australia, had compelling and compassionate reasons for his or her last departure from Australia.
- (3) The applicant meets the requirements of this subclause if the applicant is a member of the family unit of a person who:
 - (a) has been granted a Subclass 157 visa and that visa is still in effect; or
 - (b) meets the requirements of subclause (2) and has lodged either:
 - (i) a combined application for a Return (Residence) (Class BB) visa with the applicant; or
 - (ii) a separate application for a Return (Residence) (Class BB) visa.

157.213

If the applicant is outside Australia, the applicant has not been absent from Australia for a continuous period of more than 3 months immediately before making the application for the visa, unless the Minister is satisfied that there are compelling and compassionate reasons for the absence.

157.22—Criteria to be satisfied at time of decision

157.221

If the application is made outside Australia, the applicant satisfies special return criterion 5001.

157.3—Secondary criteria: Nil.

Note: All applicants must satisfy the primary criteria.

157.4—Circumstances applicable to grant

157.411

If the application is made outside Australia, the applicant must be outside Australia at time of grant.

157.412

If the application is made in Australia, the applicant must be in Australia, but not in immigration clearance, at time of grant.

157.5—When visa is in effect

157.511

Permanent visa permitting the holder to travel to and enter Australia for a period of 3 months from the date of grant.

157.6—Conditions: Nil.

157.7—Evidence of grant

157.711

Visa label affixed to a valid passport.

Clause 159.211

Subclass 159—Provisional Resident Return

159.1—Interpretation

Note: *Australian permanent resident* is defined in regulation 1.03.

159.2—Primary criteria

Note: All applicants must satisfy the primary criteria.

159.21—Criteria to be satisfied at time of application

159.211

The applicant claims, but is unable to prove, that immediately before going overseas he or she was:

- (a) an Australian permanent resident; or
- (b) an Australian citizen who was usually resident in Australia.

159.212

If the applicant could prove that claim, the applicant would satisfy the criteria for the grant of a Subclass 155 or 157 visa.

159.212A

The Minister is satisfied that the applicant is not an Australian citizen.

159.213

The applicant gives the Minister a written statement that satisfies the Minister that:

- (a) the applicant has urgent and compelling reasons for travelling to Australia before proving the claim; and
- (b) entry of the applicant to Australia before the claim is proved will not prejudice the interests of Australia; and
- (c) there are reasonable grounds for believing that the claim can be proved.

159.22—Criteria to be satisfied at time of decision

159.221

There is no evidence that the applicant does not satisfy special return criteria 5001, 5002 and 5010.

159.3—Secondary criteria: Nil.

Note: All applicants must satisfy the primary criteria.

159.4—Circumstances applicable to grant

159.411

The applicant must be outside Australia when the visa is granted.

159.5—When visa is in effect

159.511

Temporary visa permitting the holder to travel to and enter Australia once only within 3 months of grant and to remain in Australia for 3 months.

159.6—Conditions

159.611

The holder must travel to and enter Australia within 3 months of grant of the visa.

159.7—Way of giving evidence

159.711

Visa label affixed to a valid passport.

Subclass 200—Refugee

200.1—Interpretation

Note: No interpretation provisions specific to this Part.

200.2—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.

200.21—Criteria to be satisfied at time of application

200.211

The applicant is subject to persecution in the applicant's home country.

200.212

The applicant is living in a country other than the applicant's home country.

200.22—Criteria to be satisfied at time of decision

200.221

The applicant continues to satisfy the criteria in clauses 200.211 and 200.212.

200.222

The Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a permanent visa, having regard to:

- (a) the degree of persecution to which the applicant is subject in the applicant's home country; and
- (b) the extent of the applicant's connection with Australia; and
- (c) whether or not there is any suitable country available, other than Australia, that can provide for the applicant's settlement and protection from persecution; and
- (d) the capacity of the Australian community to provide for the permanent settlement of persons such as the applicant in Australia.

200.223

The permanent settlement of the applicant in Australia would be consistent with the regional and global priorities of the Commonwealth in relation to the permanent settlement of persons in Australia on humanitarian grounds.

200.224

The Minister is satisfied that permanent settlement in Australia:

- (a) is the appropriate course for the applicant; and
- (b) would not be contrary to the interests of Australia.

200.225

Grant of the visa would not result in either:

- (a) the number of subclass 200 visas granted in a financial year exceeding the maximum number of subclass 200 visas, as determined by Gazette Notice, that may be granted in that financial year; or
- (b) the number of visas of particular classes (including subclass 200) granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.

200.226

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

200.227

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001.

200.228

If the family unit of the applicant includes a dependent child whose application was combined with the applicant's, the Minister is satisfied that the grant of the visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

200.229

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 200 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 200 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and

Clause 200.311

- (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

200.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

200.31—Criteria to be satisfied at time of application

200.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in Subdivision 200.21.

200.32—Criteria to be satisfied at time of decision

200.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 200 visa.

200.322

If the applicant is the dependent child of a person who is the holder of a subclass 200 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

200.323

The applicant:

- (a) satisfies public interest criteria 44001, 4002, 4003, 4004, 4007, 4009 and 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001.

200.4—Circumstances applicable to grant

200.411

The applicant must be outside Australia when the visa is granted.

200.5—When visa is in effect

200.511

Permanent visa permitting the holder to travel to and enter Australia within 5 years of grant.

200.6—Conditions

200.611

Entry must be made before the date specified by the Minister for the purpose.

200.612

Condition 8502 may be imposed.

200.7—Way of giving evidence

200.711

Visa label affixed to a valid passport.

Clause 201.211

Subclass 201—In-country Special Humanitarian

201.1—Interpretation

Note: No interpretation provisions specific to this Part.

201.2—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.

201.21—Criteria to be satisfied at time of application

201.211

The applicant is subject to persecution in the applicant's home country.

201.212

The applicant is living in the applicant's home country.

201.22—Criteria to be satisfied at time of decision

201.221

The applicant continues to satisfy the criteria in clauses 201.211 and 201.212.

201.222

The Minister is satisfied that there are compelling reasons for giving special consideration to granting to the applicant a permanent visa having regard to:

- (a) the degree of persecution to which the applicant is subject in the applicant's home country; and
- (b) the extent of the applicant's connection with Australia; and
- (c) whether or not there is any suitable country available, other than Australia, that can provide for the applicant's settlement and protection from persecution; and
- (d) the capacity of the Australian community to provide for the permanent settlement of persons such as the applicant in Australia.

201.223

The permanent settlement of the applicant in Australia would be consistent with the regional and global priorities of the Commonwealth in relation to the permanent settlement of persons in Australia on humanitarian grounds.

201.224

The Minister is satisfied that permanent settlement in Australia:

- (a) is the appropriate course for the applicant; and
- (b) would not be contrary to the interests of Australia.

201.225

Grant of the visa would not result in either:

- (a) the number of subclass 201 visas granted in a financial year exceeding the maximum number of subclass 201 visas, as determined by Gazette Notice, that may be granted in that financial year; or
- (b) the number of visas of particular classes, including subclass 201, granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.

201.226

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

201.227

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001.

201.228

If the family unit of the applicant includes a dependent child whose application was combined with the applicant's, the Minister is satisfied that the grant of the visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

201.229

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 201 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 201 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

Clause 201.311

201.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

201.31—Criteria to be satisfied at time of application

201.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 201.21.

201.32—Criteria to be satisfied at time of decision

201.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 201 visa.

201.322

If the applicant is the dependent child of a person who is the holder of a subclass 201 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

201.323

The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001.

201.4—Circumstances applicable to grant

201.411

The applicant must be outside Australia when the visa is granted.

201.5—When visa is in effect

201.511

Permanent visa permitting the holder to travel to and enter Australia within 5 years of grant.

201.6—Conditions

201.611

Entry must be made before the date specified by the Minister for the purpose.

201.612

Condition 8502 may be imposed.

201.7—Way of giving evidence

201.711

Visa label affixed to a valid passport.

Clause 202.111

Subclass 202—Global Special Humanitarian

202.1—Interpretation

Note: *eligible New Zealand citizen* is defined in regulation 1.03. No interpretation provisions specific to this Part.

202.111

202.2—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.

202.21—Criteria to be satisfied at time of application

202.211

The applicant is subject to substantial discrimination, amounting to gross violation of human rights, in the applicant's home country.

202.212

The applicant is living in a country other than the applicant's home country.

202.22—Criteria to be satisfied at time of decision

202.221

The applicant continues to satisfy the criteria in clauses 202.211 and 202.212.

202.222

The Minister is satisfied that there are compelling reasons for giving special consideration to granting to the applicant a permanent visa, having regard to:

- (a) the degree of discrimination to which the applicant is subject in the applicant's home country; and
- (b) the extent of the applicant's connection with Australia; and
- (c) whether or not there is any suitable country available, other than Australia, that can provide for the applicant settlement and protection from discrimination; and
- (d) the capacity of the Australian community to provide for the permanent settlement of persons such as the applicant in Australia.

202.223

The permanent settlement of the applicant in Australia would be consistent with the regional and global priorities of the Commonwealth in relation to the permanent settlement of persons in Australia on humanitarian grounds.

202.224

The Minister is satisfied that permanent settlement in Australia:

- (a) is the appropriate course for the applicant; and
- (b) would not be contrary to the interests of Australia.

202.225

The applicant is proposed for entry to Australia, in accordance with approved form 681, by:

- (a) a person who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; or
- (b) a body operating in Australia.

202.226

Grant of the visa would not result in either:

- (a) the number of subclass 202 visas granted in a financial year exceeding the maximum number of subclass 202 visas, as determined by Gazette Notice, that may be granted in that financial year; or
- (b) the number of visas of particular classes, including subclass 202, granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.

202.227

- (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.
- (2) If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001.

202.228

If the family unit of the applicant includes a dependent child whose application was combined with the applicant's, the Minister is satisfied that the grant of the visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

202.229

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 202 visa is a person who:

Clause 202.311

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 202 visa is a person who:
- (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

202.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

202.31—Criteria to be satisfied at time of application

202.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 202.21.

202.312

The proposal made under clause 202.225 in respect of the relevant person who satisfies the primary criteria includes the applicant.

202.32—Criteria to be satisfied at time of decision

202.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 202 visa.

202.322

If the applicant is the dependent child of a person who is the holder of a subclass 202 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

202.323

The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and

- (b) if he or she has previously been in Australia, satisfies special return criteria 5001.

202.4—Circumstances applicable to grant

202.411

The applicant must be outside Australia when the visa is granted.

202.5—When visa is in effect

202.511

Permanent visa permitting the holder to travel to and enter Australia within 5 years of grant.

202.6—Conditions

202.611

Entry must be made before the date specified by the Minister for the purpose.

202.612

Condition 8502 may be imposed.

202.7—Way of giving evidence

202.711

Visa label affixed to a valid passport.

Subclass 203—Emergency Rescue

203.1—Interpretation

Note: No interpretation provisions specific to this Part.

203.2—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.

203.21—Criteria to be satisfied at time of application

203.211

The applicant is subject to persecution in the applicant's home country, whether the applicant is living in the applicant's home country or in another country.

203.22—Criteria to be satisfied at time of decision

203.221

The applicant continues to be subject to persecution in the applicant's home country.

203.222

The Minister is satisfied that there are compelling reasons for giving special consideration to granting to the applicant a permanent visa, having regard to:

- (a) the degree of persecution to which the applicant is subject in the applicant's home country; and
- (b) the extent of the applicant's connection with Australia; and
- (c) whether or not there is any suitable country available, other than Australia, that can provide for the applicant settlement and protection from persecution; and
- (d) the capacity of the Australian community to provide for the permanent settlement of persons such as the applicant in Australia.

203.223

The permanent settlement of the applicant in Australia would be consistent with the regional and global priorities of the Commonwealth in relation to the permanent settlement of persons in Australia on humanitarian grounds.

203.224

The Minister is satisfied that:

- (a) there are urgent and compelling reasons for the applicant to travel to Australia; and
- (b) permanent settlement in Australia:
 - (i) is the appropriate course for the applicant; and
 - (ii) would not be contrary to the interests of Australia.

203.225

Grant of the visa would not result in either:

- (a) the number of subclass 203 visas granted in a financial year exceeding the maximum number of subclass 203 visas, as determined by Gazette Notice, that may be granted in that financial year; or
- (b) the number of visas of particular classes, including subclass 203, granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.

203.226

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

203.227

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001.

203.228

If the family unit of the applicant includes a dependent child whose application was combined with the applicant's, the Minister is satisfied that the grant of the visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

203.229

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 203 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 203 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and

Clause 203.311

- (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

203.3—Secondary criteria

Note: These criteria must be satisfied by applicants who members of the family unit of a person who satisfies the primary criteria.

203.31—Criteria to be satisfied at time of application

203.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 203.21.

203.32—Criteria to be satisfied at time of decision

203.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 203 visa.

203.322

If the applicant is the dependent child of a person who is the holder of a subclass 203 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

203.323

The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
(b) if he or she has previously been in Australia, satisfies special return criteria 5001.

203.4—Circumstances applicable to grant

203.411

The applicant must be outside Australia when the visa is granted.

203.5—When visa is in effect

203.511

Permanent visa permitting the holder to travel to and enter Australia within 5 years of grant.

203.6—Conditions

203.611

Entry must be made before the date specified by the Minister for the purpose.

203.612

Condition 8502 may be imposed.

203.7—Way of giving evidence

203.711 Visa label affixed to a valid passport.

Clause 204.211

Subclass 204—Woman at Risk

204.1—Interpretation

Note: No interpretation provisions specific to this Part.

204.2—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.

204.21—Criteria to be satisfied at time of application

204.211

The applicant is a female person who is:

- (a) subject to persecution; or
- (b) registered as being of concern to the United Nations High Commissioner for Refugees.

204.212

The applicant is living in a country other than her home country.

204.22—Criteria to be satisfied at time of decision

204.221

The applicant continues to satisfy the criteria in clauses 204.211 and 204.212.

204.222

The Minister is satisfied that:

- (a) the applicant does not have the protection of a male relative and is in danger of victimisation, harassment or serious abuse because of her sex; and
- (b) permanent settlement in Australia:
 - (i) is the appropriate course for the applicant; and
 - (ii) would not be contrary to the interests of Australia.

204.223

The permanent settlement of the applicant in Australia would be consistent with the regional and global priorities of the Commonwealth in relation to the permanent settlement of persons in Australia on humanitarian grounds.

204.224

The Minister is satisfied that there are compelling reasons for giving special consideration to granting to the applicant a permanent visa, having regard to:

- (a) the degree of persecution to which the applicant is subject in her home country; and
- (b) the extent of the applicant's connection with Australia; and
- (c) whether or not there is any suitable country available, other than Australia, that can provide for the applicant settlement and protection from persecution; and
- (d) the capacity of the Australian community to provide for the permanent settlement of persons such as the applicant in Australia.

204.225

Grant of the visa would not result in either:

- (a) the number of subclass 204 visas granted in a financial year exceeding the maximum number of subclass 204 visas, as determined by Gazette Notice, that may be granted in that financial year; or
- (b) the number of visas of particular classes, including subclass 204 granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.

204.226

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

204.227

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001.

204.228

If the family unit of the applicant includes a dependent child whose application was combined with the applicant's, the Minister is satisfied that the grant of the visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

204.229

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 204 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001.

Clause 204.311

- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 204 visa is a person who:
- (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

204.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

204.31—Criteria to be satisfied at time of application

204.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 204.21.

204.32—Criteria to be satisfied at time of decision

204.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 204 visa.

204.322

If the applicant is the dependent child of a person who is the holder of a subclass 204 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

204.323

The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001.

204.4—Circumstances applicable to grant

204.411

The applicant must be outside Australia when the visa is granted.

204.5—When visa is in effect

204.511

Permanent visa permitting the holder to travel to and enter Australia within 5 years of grant.

204.6—Conditions

204.611

Entry must be made before a date specified by the Minister for the purpose.

204.612

Condition 8502 may be imposed.

204.7—Way of giving evidence

204.711

Visa label affixed to a valid passport.

Clause 205.211

Subclass 205—Camp Clearance

205.1—Interpretation

Note: No interpretation provisions specific to this Part.

205.2—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.

205.21—Criteria to be satisfied at time of application

205.211

The applicant is a citizen of the Socialist Republic of Vietnam.

205.212

The applicant is living in a camp that is:

- (a) maintained by the United Nations High Commissioner for Refugees or the Government of Hong Kong; and
- (b) situated in Hong Kong, Thailand, Indonesia, Malaysia or the Philippines.

205.213

The applicant arrived in the country where the camp is situated:

- (a) if that country is Hong Kong—before 16 June 1988; or
- (b) if that country is Thailand or Malaysia—before 14 March 1989; or
- (c) if that country is Indonesia—before 17 March 1989; or
- (d) if that country is the Philippines—before 21 March 1989.

205.22—Criteria to be satisfied at time of decision

205.221

The Minister is satisfied that permanent settlement in Australia:

- (a) is the appropriate course for the applicant; and
- (b) would not be contrary to the interests of Australia.

205.222

Grant of the visa would not result in either:

Clause 205.223

- (a) the number of subclass 205 visas granted in a financial year exceeding the maximum number of subclass 205 visas, as determined by Gazette Notice, that may be granted in that financial year; or
- (b) the number of visas of particular classes, including subclass 205 visas, granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.

205.223

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

205.224

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

205.225

If the family unit of the applicant includes a dependent child whose application was combined with the applicant's, the Minister is satisfied that the grant of the visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

205.226

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 205 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 205 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

205.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria

Clause 205.311

205.31—Criteria to be satisfied at the time of application

205.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 205.21.

205.32—Criteria to be satisfied at the time of decision

205.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 205 visa.

205.322

The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.

205.323

If the applicant is the dependent child of a person who is the holder of a subclass 205 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

205.4—Circumstances applicable to grant

205.411

The applicant must be outside Australia when the visa is granted.

205.5—When visa is in effect

205.511

Permanent visa permitting the holder travel and entry to Australia within 5 years of grant.

205.6—Conditions

205.611

Entry must be made before the date specified by the Minister for the purpose.

205.612

Condition 8502 may be imposed.

205.7—Way of giving evidence

205.711

Visa label affixed to a valid passport.

Clause 208.111

Subclass 208—East Timorese in Portugal, Macau or Mozambique

208.1—Interpretation

208.111

- (1) For the purposes of this Part, *eligible New Zealand citizen* includes a person who, at all times between 1 September 1992 and 31 August 1994:
 - (a) was a New Zealand citizen; and
 - (b) was normally resident in Australia; and
 - (c) was an exempt non-citizen; and
 - (d) satisfied the requirements of subclauses (2) and (3).
- (2) A person satisfies the requirements of this subclause if he or she is not a person who:
 - (a) has been convicted of a crime and sentenced to death or to imprisonment, for at least 1 year; or
 - (b) has been convicted of 2 or more crimes and sentenced to imprisonment, for periods that add up to at least 1 year if:
 - (i) any period concurrent with part of a longer period is disregarded; and
 - (ii) any periods not disregarded that are concurrent with each other are treated as 1 period;whether or not:
 - (iii) the crimes were of the same kind; or
 - (iv) the crimes were committed at the same time; or
 - (v) the convictions were at the same time; or
 - (vi) the sentencings were at the same time; or
 - (vii) the periods were consecutive; or
 - (c) has been charged with a crime and either:
 - (i) found guilty of having committed the crime while of unsound mind; or
 - (ii) acquitted on the ground that the crime was committed while the person was of unsound mind;
 - (d) has been removed or deported from Australia or removed or deported from another country; or
 - (e) has been excluded from another country in the circumstances set out in regulation 7.12 of the Migration (1993) Regulations;where *sentenced to imprisonment* includes ordered to be confined in a corrective institution.
- (3) A person satisfies the requirements of this subclause if he or she is not a person who suffers from a disease or a physical or mental condition of a kind set out in regulation 7.11 of the Migration (1993) Regulations.

Note: *eligible New Zealand citizen* is defined in regulation 1.03.

208.2—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.

208.21—Criteria to be satisfied at time of application

208.211

The applicant:

- (a) was born in East Timor; and
- (b) was living in Portugal, Macau or Mozambique on 30 June 1994; and
- (c) lived continuously in 1 or more of Portugal, Macau and Mozambique from that date to the time of application.

208.212

The Minister is satisfied that the usual place of residence of the applicant in 1975 was East Timor.

208.213

The Minister is satisfied that, at the time of application, the applicant has better prospects of adapting to Australian society than to the society of whichever of Portugal, Macau or Mozambique the applicant has lived in for the greatest total time since 30 June 1994.

208.214

The applicant has a parent, daughter, son, brother, sister, aunt, uncle, nephew or niece who:

- (a) was an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen on 30 June 1993; and
- (b) continues to be an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
- (c) is usually resident in Australia.

208.215

- (1) The applicant has produced a written undertaking of the kind referred to in subclause (2) from an organisation that is accepted by the Minister as representing the East Timorese community in Australia.
- (2) The undertaking is a written undertaking to the Minister that specifies assistance:
 - (a) that the organisation will provide to the applicant, and the applicant's dependants, after their entry to Australia; and

Clause 208.221

- (b) that is acceptable to the Minister, having regard to the needs of the applicant in the period of 6 months following entry to Australia;
- with regard to the following matters:
- (c) food, clothing, accommodation and household goods;
 - (d) personal support;
 - (e) access to community and public services;
 - (f) obtaining employment;
 - (g) language interpretation and securing English language instruction;
 - (h) community involvement and self-reliance;
 - (i) reimbursing the Commonwealth for its costs (if any) in providing accommodation services to the applicant;

208.22—Criteria to be satisfied at time of decision

208.221

The Minister is satisfied that permanent settlement in Australia:

- (a) is the appropriate course for the applicant; and
- (b) would not be contrary to the interests of Australia.

208.222

Grant of the visa would not result in either:

- (a) the number of subclass 208 visas granted in a financial year exceeding the maximum number of subclass 208 visas, as determined by Gazette Notice, that may be granted in that financial year; or
- (b) the number of visas of particular classes, including subclass 208, granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.

208.223

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

208.224

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

208.225

If the family unit of the applicant includes a dependent child whose application was combined with the applicant's, the Minister is satisfied that the grant of the visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

208.226

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 208 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 208 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

208.227

The Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a visa.

208.3—Secondary criteria

Note: These criteria must be satisfied by applicants who members of the family unit of a person who satisfies the primary criteria.

208.31—Criteria to be satisfied at the time of application

208.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 208.21.

208.312

The written undertaking made under clause 208.215 in respect of a person who is a member of the family unit of the applicant and satisfies the primary criteria includes the applicant.

208.32—Criteria to be satisfied at the time of decision

208.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 208 visa.

Clause 208.322

208.322

If the applicant is the dependent child of a person who is the holder of a subclass 208 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

208.323

The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.

208.4—Circumstances applicable to grant

208.411

The applicant must be outside Australia when the visa is granted.

208.5—When visa is in effect

208.511

Permanent visa permitting the holder to travel to and enter Australia within 5 years of grant.

208.6—Conditions

208.611

First entry must be made before the date specified by the Minister for the purpose.

208.612

Condition 8502 may be imposed.

208.7—Way of giving evidence

208.711

Visa label affixed to a valid passport.

Subclass 209—Citizens of the Former Yugoslavia (Displaced Persons)

209.1—Interpretation

209.111

- (1) For the purposes of this Part, *eligible New Zealand citizen* includes a person who, at all times between 1 September 1992 and 31 August 1994:
 - (a) was a New Zealand citizen; and
 - (b) was normally resident in Australia; and
 - (c) was an exempt non-citizen; and
 - (d) satisfied the requirements of subclauses (2) and (3).
 - (2) A person satisfies the requirements of this subclause if he or she is not a person who:
 - (a) has been convicted of a crime and sentenced to death or to imprisonment, for at least 1 year; or
 - (b) has been convicted of 2 or more crimes and sentenced to imprisonment, for periods that add up to at least 1 year if:
 - (i) any period concurrent with part of a longer period is disregarded; and
 - (ii) any periods not disregarded that are concurrent with each other are treated as 1 period;whether or not:
 - (iii) the crimes were of the same kind; or
 - (iv) the crimes were committed at the same time; or
 - (v) the convictions were at the same time; or
 - (vi) the sentencings were at the same time; or
 - (vii) the periods were consecutive; or
 - (c) has been charged with a crime and either:
 - (i) found guilty of having committed the crime while of unsound mind; or
 - (ii) acquitted on the ground that the crime was committed while the person was of unsound mind;
 - (d) has been removed or deported from Australia or removed or deported from another country; or
 - (e) has been excluded from another country in the circumstances set out in regulation 7.12 of the Migration (1993) Regulations;where *sentenced to imprisonment* includes ordered to be confined in a corrective institution.
 - (3) A person satisfies the requirements of this subclause if he or she is not a person who suffers from a disease or a physical or mental condition of a kind set out in regulation 7.11 of the Migration (1993) Regulations.
-

Clause 209.211

Note: *eligible New Zealand citizen* is defined in regulation 1.03.

209.2—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.

209.21—Criteria to be satisfied at the time of application

209.211

The applicant is:

- (a) a person who:
 - (i) was, on 19 June 1991, a citizen of the Socialist Federal Republic of Yugoslavia; and
 - (ii) is usually resident in a place that, on 19 June 1991, formed part of the Socialist Federal Republic of Yugoslavia; or
- (b) a person who:
 - (i) was born on or after 20 June 1991; and
 - (ii) is a dependent child of a person mentioned in paragraph (a).

209.212

The applicant is registered as a displaced person by the United Nations High Commissioner for Refugees, the International Committee of the Red Cross or an organisation that is accepted by the Minister:

- (a) as an affiliate of that Committee; or
- (b) as having similar objectives and functions as the Committee or a body referred to in paragraph (a) in relation to conflict in the former Socialist Federal Republic of Yugoslavia.

209.213

The applicant has a parent, daughter, son, brother, sister, aunt, uncle, nephew or niece (in this clause called a *near relative*) who:

- (a) was an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen on 30 June 1993; and
- (b) continues to be an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
- (c) is usually resident in Australia; and
- (d) gives a written undertaking to the Minister that specifies assistance:
 - (i) that the near relative will provide to the applicant, and the applicant's dependants, after their entry to Australia; and
 - (ii) that is acceptable to the Minister, having regard to the needs of the applicant in the period of 6 months following entry to Australia;with regard to the following matters:
 - (iii) food, clothing, accommodation and household goods;

- (iv) personal support;
- (v) access to community and public services;
- (vi) obtaining employment;
- (vii) language interpretation and securing English language instruction;
- (viii) community involvement and self-reliance;
- (ix) reimbursing the Commonwealth for its costs (if any) in providing accommodation services to the applicant.

209.214

The Minister is satisfied that the applicant has a well-founded fear of substantial discrimination because of the applicant's ancestry or ethnic or religious affiliation.

209.215

The Minister is satisfied that the applicant is unable to resume living in the applicant's former home.

209.22—Criteria to be satisfied at time of decision

209.221

The applicant continues to satisfy the criteria in clauses 209.214 and 209.215.

209.222

The Minister is satisfied that permanent settlement in Australia:

- (a) is the appropriate course for the applicant; and
- (b) would not be contrary to the interests of Australia.

209.223

Grant of the visa would not result in either:

- (a) the number of subclass 209 visas granted in a financial year exceeding the maximum number of subclass 209 visas, as determined by Gazette Notice, that may be granted in that financial year; or
- (b) the number of visas of particular classes (including subclass 209) granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.

209.224

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

Clause 209.225

209.225

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

209.226

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 209 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 209 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

209.227

If the family unit of the applicant includes a dependent child whose application was combined with the applicant's, the Minister is satisfied that the grant of the visa to the child would not prejudice the rights and interests of any other person who has custody of, or access to, the child.

209.228

The Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a visa.

209.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

209.31—Criteria to be satisfied at time of application

209.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 209.21.

209.312

- (1) The undertaking, made under clause 209.213 in respect of a person who is a member of the family unit of the applicant and satisfies the primary criteria, includes the applicant.

209.32—Criteria to be satisfied at time of decision

209.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 209 visa.

209.322

The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.

209.323

If the applicant is the dependent child of a person who is the holder of a subclass 209 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

209.4—Circumstances applicable to grant

209.411

The applicant must be outside Australia when the visa is granted.

209.5—When visa is in effect

209.511

Permanent visa, permitting the holder to travel to and enter Australia within 5 years of grant.

209.6—Conditions

209.611

Entry must be made before the date specified by the Minister for the purpose.

Schedule 2 Provisions with respect to the grant of Subclasses of visas
Subclass 209 Citizens of the Former Yugoslavia (Displaced Persons)

Clause 209.612

209.612

Condition 8502 may be imposed.

209.7—Way of giving evidence

209.711

Visa label affixed to a valid passport.

Subclass 210—Minorities of Former USSR

210.1—Interpretation

210.111

- (1) For the purposes of this Part, *eligible New Zealand citizen* includes a person who, at all times between 1 September 1992 and 31 August 1994:
 - (a) was a New Zealand citizen; and
 - (b) was normally resident in Australia; and
 - (c) was an exempt non-citizen; and
 - (d) satisfied the requirements of subclauses (2) and (3).
- (2) A person satisfies the requirements of this subclause if he or she is not a person who:
 - (a) has been convicted of a crime and sentenced to death or to imprisonment, for at least 1 year; or
 - (b) has been convicted of 2 or more crimes and sentenced to imprisonment, for periods that add up to at least 1 year if:
 - (i) any period concurrent with part of a longer period is disregarded; and
 - (ii) any periods not disregarded that are concurrent with each other are treated as 1 period;whether or not:
 - (iii) the crimes were of the same kind; or
 - (iv) the crimes were committed at the same time; or
 - (v) the convictions were at the same time; or
 - (vi) the sentencings were at the same time; or
 - (vii) the periods were consecutive; or
 - (c) has been charged with a crime and either:
 - (i) found guilty of having committed the crime while of unsound mind; or
 - (ii) acquitted on the ground that the crime was committed while the person was of unsound mind;
 - (d) has been removed or deported from Australia or removed or deported from another country; or
 - (e) has been excluded from another country in the circumstances set out in regulation 7.12 of the Migration (1993) Regulations;where *sentenced to imprisonment* includes ordered to be confined in a corrective institution.
- (3) A person satisfies the requirements of this subclause if he or she is not a person who suffers from a disease or a physical or mental condition of a kind set out in regulation 7.11 of the Migration (1993) Regulations.

Clause 210.211

Note: If there is more than 1 applicant for a visa of this Subclass in a family, at least 1 of those applicants must satisfy the primary criteria. Members of his or her family unit need satisfy only the secondary criteria. If 1 person in a family already holds a visa of this Subclass, members of his or her family unit need satisfy only the secondary criteria.

210.2—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.

210.21—Criteria to be satisfied at time of application

210.211

The applicant was a citizen of the former Union of Soviet Socialist Republics.

210.212

The applicant is usually resident in the former Union of Soviet Socialist Republics.

210.213

The applicant has a parent, daughter, son, brother, sister, aunt, uncle, nephew or niece who:

- (a) was an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen on 1 January 1992; and
- (b) continues to be an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
- (c) is usually resident in Australia.

210.214

The Minister is satisfied that the applicant has suffered substantial discrimination or severe distress because of his or her ancestry or religious affiliation.

210.215

The Federation of Australian Jewish Welfare Societies or an organisation that is accepted by the Minister as representing the Molokan community in Australia:

- (a) states in writing to the Minister that it supports the application; and
- (b) gives a written undertaking to the Minister that specifies assistance:
 - (i) that the body will provide to the applicant, and the applicant's dependants, after their entry to Australia; and
 - (ii) that is acceptable to the Minister, having regard to the needs of the applicant in the period of 6 months following the applicant's entry into Australia;

with regard to the following matters:

- (iii) food, clothing, accommodation and household goods;
- (iv) personal support;
- (v) access to community and public services;
- (vi) obtaining employment;
- (vii) language interpretation and securing English language instruction;
- (viii) community involvement and self-reliance;
- (ix) reimbursing the Commonwealth for its costs (if any) in providing accommodation services to the applicant.

210.22—Criteria to be satisfied at time of decision

210.221

The applicant continues to satisfy the criterion set out in clause 210.214.

210.222

The Minister is satisfied that permanent settlement in Australia:

- (a) is the appropriate course for the applicant; and
- (b) would not be contrary to the interests of Australia.

210.223

Grant of the visa would not result in either:

- (a) the number of subclass 210 visas granted in a financial year exceeding the maximum number of subclass 210 visas, as determined by Gazette Notice, that may be granted in that financial year; or
- (b) the number of visas of particular classes (including subclass 210) granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.

210.224

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

210.225

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

210.226

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 210 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and

Clause 210.227

- (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 210 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

210.227

If the family unit of the applicant includes a dependent child whose application was combined with the applicant's, the Minister is satisfied that the grant of the visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

210.228

The Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a visa.

210.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

210.31—Criteria to be satisfied at time of application

210.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 210.21.

210.312

The written undertaking made under paragraph 210.215(b), in respect of a person who is a member of the same family unit as the applicant satisfies the primary criteria includes the applicant.

210.32—Criteria to be satisfied at time of decision

210.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 210 visa.

210.322

The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.

210.323

If the applicant is the dependent child of a person who is the holder of a subclass 210 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

210.4—Circumstances applicable to grant

210.411

The applicant must be outside Australia when the visa is granted.

210.5—When visa is in effect

210.511

Permanent visa, permitting the holder to travel to and enter Australia within 5 years of grant.

210.6—Conditions

210.611

Entry must be made before the date specified by the Minister for the purpose.

210.612

Condition 8502 may be imposed.

210.7—Way of giving evidence

210.711

Visa label affixed to a valid passport.

Subclass 211—Burmese in Burma

211.1—Interpretation

211.111

- (1) For the purposes of this Part, *eligible New Zealand citizen* includes a person who, at all times between 1 September 1992 and 31 August 1994:
 - (a) was a New Zealand citizen; and
 - (b) was normally resident in Australia; and
 - (c) was an exempt non-citizen; and
 - (d) satisfied the requirements of subclauses (2) and (3).
- (2) A person satisfies the requirements of this subclause if he or she is not a person who:
 - (a) has been convicted of a crime and sentenced to death or to imprisonment, for at least 1 year; or
 - (b) has been convicted of 2 or more crimes and sentenced to imprisonment, for periods that add up to at least 1 year if:
 - (i) any period concurrent with part of a longer period is disregarded; and
 - (ii) any periods not disregarded that are concurrent with each other are treated as 1 period;whether or not:
 - (iii) the crimes were of the same kind; or
 - (iv) the crimes were committed at the same time; or
 - (v) the convictions were at the same time; or
 - (vi) the sentencings were at the same time; or
 - (vii) the periods were consecutive; or
 - (c) has been charged with a crime and either:
 - (i) found guilty of having committed the crime while of unsound mind; or
 - (ii) acquitted on the ground that the crime was committed while the person was of unsound mind;
 - (d) has been removed or deported from Australia or removed or deported from another country; or
 - (e) has been excluded from another country in the circumstances set out in regulation 7.12 of the Migration (1993) Regulations;where *sentenced to imprisonment* includes ordered to be confined in a corrective institution.
- (3) A person satisfies the requirements of this subclause if he or she is not a person who suffers from a disease or a physical or mental condition of a kind set out in regulation 7.11 of the Migration (1993) Regulations.

Note: *eligible New Zealand citizen* is defined in regulation 1.03.

211.2—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.

211.21—Criteria to be satisfied at time of application.

211.212

The applicant is:

- (a) a citizen of Burma; and
- (b) resident in Burma; and
- (c) subject to substantial discrimination in Burma.

211.213

- (1) The applicant has produced a written undertaking of the kind specified in subclause (2) from:
 - (a) an organisation that is accepted by the Minister as representing the Burmese community in Australia; or
 - (b) an established Community Refugee Settlement Scheme support group.
- (2) The undertaking is a written undertaking to the Minister that specifies assistance:
 - (a) that the organisation will provide to the applicant after the applicant's entry to Australia; and
 - (b) that is acceptable to the Minister, having regard to the needs of the applicant in the period of 6 months following entry to Australia;with regard to the following matters:
 - (c) food, clothing, accommodation and household goods;
 - (d) personal support;
 - (e) access to community and public services;
 - (f) obtaining employment;
 - (g) language interpretation and securing English language instruction;
 - (h) community involvement and self-reliance;
 - (i) reimbursing the Commonwealth for its costs (if any) in providing accommodation services to the applicant;

211.22—Criteria to be satisfied at time of decision

211.221

The Minister is satisfied that permanent settlement in Australia:

- (a) is the appropriate course for the applicant; and
- (b) would not be contrary to the interests of Australia.

Clause 211.222

211.222

- (1) If the applicant has a near relative in Australia, grant of the visa would not result in the number of subclass 211 visas granted to applicants with a near relative in Australia exceeding the maximum number of subclass 211 visas specified, by Gazette Notice, for the purposes of this subclause in respect of that financial year.
- (2) If the applicant does not have a near relative in Australia, approval of the application would not result in the number of subclass 211 visas granted to applicants without a near relative in Australia exceeding the maximum number of subclass 211 visas specified, by Gazette Notice, for the purposes of this subclause in respect of that financial year.
- (3) For the purposes of this clause, an applicant has a near relative in Australia if the applicant has a parent, daughter, son, brother, sister, aunt, uncle, nephew or niece who:
 - (a) was an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen on 1 July 1992; and
 - (b) continues to be an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
 - (c) is usually resident in Australia.

211.223

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

211.224

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

211.225

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 211 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 211 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

211.226

If the family unit of the applicant includes a dependent child whose application was combined with the applicant's, the Minister is satisfied that the grant of the visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

211.227

The Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a visa.

211.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.

211.31—Criteria to be satisfied at the time of application

211.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 211.21.

211.312

The written undertaking made under clause 211.213 in respect of a person who is a member of the same family unit as the applicant, and who satisfies the primary criteria, includes the applicant.

211.32—Criteria to be satisfied at the time of decision

211.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 211 visa.

211.323

The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.

211.324

If the applicant is the dependent child of a person who is the holder of a subclass 211 visa, the Minister is satisfied that the grant of the visa to the applicant would

Clause 211.411

not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

211.4—Circumstances applicable to grant

211.411

The applicant must be outside Australia when the visa is granted.

211.5—When visa is in effect

211.511

Permanent visa, permitting the holder to travel to and enter Australia within 5 years of grant.

211.6—Conditions

211.611

First entry must be made before the date specified by the Minister for the purpose.

211.612

Condition 8502 may be imposed.

211.7—Way of giving evidence

211.711

Visa label affixed to a valid passport.

Subclass 212—Sudanese

212.1—Interpretation

212.111

- (1) For the purposes of this Part, *eligible New Zealand citizen* includes a person who, at all times between 1 September 1992 and 31 August 1994:
 - (a) was a New Zealand citizen; and
 - (b) was normally resident in Australia; and
 - (c) was an exempt non-citizen; and
 - (d) satisfied the requirements of subclauses (2) and (3).
- (2) A person satisfies the requirements of this subclause if he or she is not a person who:
 - (a) has been convicted of a crime and sentenced to death or to imprisonment, for at least 1 year; or
 - (b) has been convicted of 2 or more crimes and sentenced to imprisonment, for periods that add up to at least 1 year if:
 - (i) any period concurrent with part of a longer period is disregarded; and
 - (ii) any periods not disregarded that are concurrent with each other are treated as 1 period;whether or not:
 - (iii) the crimes were of the same kind; or
 - (iv) the crimes were committed at the same time; or
 - (v) the convictions were at the same time; or
 - (vi) the sentencings were at the same time; or
 - (vii) the periods were consecutive; or
 - (c) has been charged with a crime and either:
 - (i) found guilty of having committed the crime while of unsound mind; or
 - (ii) acquitted on the ground that the crime was committed while the person was of unsound mind;
 - (d) has been removed or deported from Australia or removed or deported from another country; or
 - (e) has been excluded from another country in the circumstances set out in regulation 7.12 of the Migration (1993) Regulations;where *sentenced to imprisonment* includes ordered to be confined in a corrective institution.
- (3) A person satisfies the requirements of this subclause if he or she is not a person who suffers from a disease or a physical or mental condition of a kind set out in regulation 7.11 of the Migration (1993) Regulations.

Note: *eligible New Zealand citizen* is defined in regulation 1.03.

Clause 212.211

212.2—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.

212.21—Criteria to be satisfied at time of application

212.211

The applicant is a citizen of the Republic of Sudan.

212.212

The Minister is satisfied that the applicant has suffered substantial discrimination or severe distress because of his or her ethnic or religious affiliation.

212.213

The applicant has a parent, daughter, son, brother, sister, aunt, uncle, nephew or niece (in this clause called *the near relative*), who:

- (a) was an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen on 1 January 1992; and
- (b) continues to be an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
- (c) is usually resident in Australia; and
- (d) gives a written undertaking to the Minister that specifies assistance:
 - (i) that the near relative will provide to the applicant, and the applicant's dependents after their entry to Australia; and
 - (ii) that is acceptable to the Minister, having regard to the needs of the applicant in the period of 6 months following the applicant's entry to Australia;

with regard to the following matters:

- (iii) food, clothing, accommodation and household goods;
- (iv) personal support;
- (v) access to community and public services;
- (vi) obtaining employment;
- (vii) language interpretation and securing English language instruction;
- (viii) community involvement and self-reliance.
- (ix) reimbursing the Commonwealth for its costs (if any) in providing accommodation services to the applicant.

212.22—Criteria to be satisfied at time of decision

212.221

The Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a visa.

212.222

The Minister is satisfied that:

- (a) the applicant has not effectively become re-established elsewhere; and
- (b) permanent settlement in Australia:
 - (i) is the appropriate course for the applicant; and
 - (ii) would not be contrary to the interests of Australia.

212.223

Grant of the visa would not result in either:

- (a) the number of subclass 212 visas granted in a financial year exceeding the maximum number of subclass 212 visas, as determined by Gazette Notice, that may be granted in that financial year; or
- (b) the number of visas of particular classes, including subclass 212, granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.

212.224

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

212.225

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

212.226

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 212 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 212 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

212.227

If the family unit of the applicant includes a dependent child whose application was combined with the applicant's, the Minister is satisfied that the grant of the

Clause 212.311

visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

212.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria

212.31—Criteria to be satisfied at time of application

212.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 212.21.

212.312

- (1) The written undertaking required under clause 212.213 in respect of a person who is a member of the same family unit as the applicant; and who satisfies the primary criteria, includes the applicant.

212.32—Criteria to be satisfied at time of decision

212.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 212 visa.

212.322

The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.

212.323

If the applicant is the dependent child of a person who is the holder of a subclass 212 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

212.4—Circumstances applicable to grant

212.411

The applicant must be outside Australia when the visa is granted.

212.5—When visa is in effect

212.511

Permanent visa, permitting the holder to travel to and enter Australia within 5 years of grant.

212.6—Conditions

212.611

Entry must be made before the date specified by the Minister for the purpose.

212.612

Condition 8502 may be imposed.

212.7—Way of giving evidence

212.711

Visa label affixed to a valid passport.

Subclass 213—Burmese in Thailand

213.1—Interpretation

Note: No interpretation provisions specific to this Part.

213.2—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.

213.21—Criteria to be satisfied at time of application

213.212

The applicant is:

- (a) a citizen of Burma; and
- (b) resident in Thailand; and
- (c) subject to substantial discrimination in Burma.

213.213

- (1) The applicant has produced a written undertaking of the kind described in subclause (2) from:
 - (a) an organisation that is accepted by the Minister as representing the Burmese community in Australia; or
 - (b) an established Community Refugee Settlement Scheme support group.
- (2) The undertaking is a written undertaking given to the Minister that specifies assistance:
 - (a) that the organisation will provide to the applicant, and the applicant's dependants, after their entry to Australia; and
 - (b) that is acceptable to the Minister, having regard to the needs of the applicant and his or her dependants in the period of 6 months following entry to Australia;

with regard to the following matters:

- (c) food, clothing, accommodation and household goods;
- (d) personal support;
- (e) access to community and public services;
- (f) obtaining employment;
- (g) language interpretation and securing English language instruction;
- (h) community involvement and self-reliance;
- (i) reimbursing the Commonwealth for its costs (if any) in providing accommodation services to the applicant;

213.22—Criteria to be satisfied at time of decision

213.221

The Minister is satisfied that permanent settlement in Australia:

- (a) is the appropriate course for the applicant; and
- (b) would not be contrary to the interests of Australia.

213.222

Grant of the visa would not result in the number of subclass 213 visas granted in a financial year exceeding the maximum number of subclass 213 visas specified, by Gazette Notice, for the purposes of this clause in respect of that financial year.

213.223

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

213.224

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

213.225

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 213 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 213 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

213.226

If the family unit of the applicant includes a dependent child whose application was combined with the applicant's, the Minister is satisfied that the grant of the visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

Clause 213.227

213.227

The Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a visa.

213.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

213.31—Criteria to be satisfied at the time of application

213.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 213.21.

213.312

The undertaking made under clause 213.213 in respect of the person who is a member of the same family unit as the applicants, and who satisfies the primary criteria, includes the applicant.

213.32—Criteria to be satisfied at the time of decision

213.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 213 visa.

213.323

The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.

213.324

If the applicant is the dependent child of a person who is the holder of a subclass 213 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

213.4—Circumstances applicable to grant

213.411

The applicant must be outside Australia when the visa is granted.

213.5—When visa is in effect

213.511

Permanent visa, permitting the holder to travel to and enter Australia within 5 years of grant.

213.6—Conditions

213.611

First entry must be made before the date specified by the Minister for the purpose.

213.612

Condition 8502 may be imposed.

213.7—Way of giving evidence

213.711

Visa label affixed to a valid passport.

Subclass 214—Cambodian

214.1—Interpretation

214.111

- (1) For the purposes of this Part, *eligible New Zealand citizen* includes a person who, at all times between 1 September 1992 and 31 August 1994:
 - (a) was a New Zealand citizen; and
 - (b) was normally resident in Australia; and
 - (c) was an exempt non-citizen; and
 - (d) met the requirements of subclauses (2) and (3).
- (2) A person meets the requirements of this subclause if he or she is not a person who:
 - (a) has been convicted of a crime and sentenced to death or to imprisonment, for at least 1 year; or
 - (b) has been convicted of 2 or more crimes and sentenced to imprisonment, for periods that add up to at least 1 year if:
 - (i) any period concurrent with part of a longer period is disregarded; and
 - (ii) any periods not disregarded that are concurrent with each other are treated as 1 period;whether or not:
 - (iii) the crimes were of the same kind; or
 - (iv) the crimes were committed at the same time; or
 - (v) the convictions were at the same time; or
 - (vi) the sentencings were at the same time; or
 - (vii) the periods were consecutive; or
 - (c) has been charged with a crime and either:
 - (i) found guilty of having committed the crime while of unsound mind; or
 - (ii) acquitted on the ground that the crime was committed while the person was of unsound mind;
 - (d) has been removed or deported from Australia or removed or deported from another country; or
 - (e) has been excluded from another country in the circumstances set out in regulation 7.12 of the Migration (1993) Regulations;where *sentenced to imprisonment* includes ordered to be confined in a corrective institution.
- (3) A person meets the requirements of this subclause if he or she is not a person who suffers from a disease or a physical or mental condition of a kind set out in regulation 7.11 of the Migration (1993) Regulations.

Note: *eligible New Zealand citizen* is defined in regulation 1.03.

214.112

For the purposes of this Part, an applicant has a near relative in Australia if the applicant has a parent, daughter, son, brother, sister, aunt, uncle, nephew or niece who:

- (a) was an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen on 1 October 1993; and
- (b) continues to be an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
- (c) is usually resident in Australia.

214.2—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.

214.21—Criteria to be satisfied at time of application

214.211

- (1) The applicant:
 - (a) is usually a resident of Cambodia and is experiencing hardship in Cambodia as a result of upheavals in that country over recent years; and
 - (b) meets the requirements of subclause (2) or (3).
- (2) An applicant meets the requirements of this subclause if he or she has a near relative in Australia.
- (3) The applicant:
 - (a) arrived in Australia by boat, without a visa or other authority, between 28 November 1989 and 26 April 1991; and
 - (b) before that arrival was usually a resident of Cambodia; and
 - (c) was in detention under the Act for most of his or her stay in Australia; and
 - (d) subsequently returned to Cambodia.

214.212

The applicant has produced a written undertaking of the kind described in subclause (2) from:

- (a) a person mentioned in paragraph 214.211 (2); or
 - (b) a community organisation; or
 - (c) another group in Australia that is accepted by the Minister as having close links to the applicant.
- (2) The undertaking is an undertaking given to the Minister that specifies assistance:
- (a) that the person, organisation or group will provide to the applicant, and the applicant's dependants, after their entry to Australia; and

Clause 214.221

(b) that is acceptable to the Minister, having regard to the needs of the applicant and his or her dependants in the period of 6 months following entry to Australia;

with regard to the following matters:

- (c) food, clothing, accommodation and household goods;
- (d) personal support;
- (e) access to community and public services;
- (f) obtaining employment;
- (g) language interpretation and securing English language instruction;
- (h) community involvement and self-reliance;
- (i) reimbursing the Commonwealth for its costs (if any) in providing accommodation services to the applicant;

214.22—Criteria to be satisfied at time of decision

214.221

The Minister is satisfied that permanent settlement in Australia:

- (a) is the appropriate course for the applicant; and
- (b) would not be contrary to the interests of Australia.

214.222

The applicant, and each member of the family unit of the applicant born before the lodging of the application who is also an applicant for a subclass 214 visa, has been resident in Cambodia for a period of 12 months immediately before the time of decision.

214.224

Grant of the visa would not result in the number of subclass 214 visas granted in a financial year exceeding the maximum number of subclass 214 visas specified, by Gazette Notice, for the purposes of this clause in respect of that financial year.

214.225

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

214.226

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

214.227

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 214 visa is a person who:

Clause 214.228

- (a) satisfies public interest 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 214 visa is a person who:
- (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

214.228

If the family unit of the applicant includes a dependent child whose application was combined with the applicant's, the Minister is satisfied that the grant of the visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

214.229

The Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a visa.

214.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

214.31—Criteria to be satisfied at the time of application

214.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 214.21.

214.312

The undertaking, made under clause 214.212 in respect of a person who is a member of the same family unit as the applicant; and who satisfies the primary criteria, includes the applicant.

214.32—Criteria to be satisfied at the time of decision

214.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 214 visa.

Clause 214.322

214.322

Each member of the family unit of the applicant who was born before the lodging of the application, who is also an applicant for a subclass 214 visa, has been resident in Cambodia for a period of 12 months immediately before the time of decision.

214.323

The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.

214.324

If the applicant is the dependent child of a person who is the holder of a subclass 214 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

214.4—Circumstances applicable to grant

214.411

The applicant must be outside Australia when the visa is granted.

214.5—When visa is in effect

214.511

Permanent visa, permitting the holder to travel to and enter Australia within 5 years of grant.

214.6—Conditions

214.611

First entry must be made before the date specified by the Minister for the purpose.

214.612

Condition 8502 may be imposed.

214.7—Way of giving evidence

214.711

Visa label affixed to a valid passport.

Subclass 215—Sri Lankan (Special Assistance)

215.1—Interpretation

215.111

- (1) For the purposes of this Part, eligible New Zealand citizen includes a person who, at all times between 1 September 1992 and 31 August 1994:
 - (a) was a New Zealand citizen; and
 - (b) was normally resident in Australia; and
 - (c) was an exempt non-citizen; and
 - (d) met the requirements of subclauses (2) and (3).
- (2) A person meets the requirements of this subclause if he or she is not a person who:
 - (a) has been convicted of a crime and sentenced to death or to imprisonment, for at least 1 year; or
 - (b) has been convicted of 2 or more crimes and sentenced to imprisonment, for periods that add up to at least 1 year if:
 - (i) any period concurrent with part of a longer period is disregarded; and
 - (ii) any periods not disregarded that are concurrent with each other are treated as 1 period;whether or not:
 - (iii) the crimes were of the same kind; or
 - (iv) the crimes were committed at the same time; or
 - (v) the convictions were at the same time; or
 - (vi) the sentencings were at the same time; or
 - (vii) the periods were consecutive; or
 - (c) has been charged with a crime and either:
 - (i) found guilty of having committed the crime while of unsound mind; or
 - (ii) acquitted on the ground that the crime was committed while the person was of unsound mind;
 - (d) has been removed or deported from Australia or removed or deported from another country; or
 - (e) has been excluded from another country in the circumstances set out in regulation 7.12 of the Migration (1993) Regulations; where **sentenced to imprisonment** includes ordered to be confined in a corrective institution.
- (3) A person satisfies the requirements of this subclause if he or she is not a person who suffers from a disease or a physical or mental condition of a kind set out in regulation 7.11 of the Migration (1993) Regulations.

215.2—Primary criteria

Note: The primary criteria must be satisfied by at least 1 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.

215.21—Criteria to be satisfied at time of application

215.211

The applicant:

- (a) is a citizen of Sri Lanka; and
- (b) is usually resident in Sri Lanka; and
- (c) is in Sri Lanka at the time of application.

215.212

The applicant's life has been seriously disrupted by fighting in Sri Lanka within the period of 18 months ending on the date of application.

215.213

The applicant has suffered, and continues to suffer, substantial discrimination because of his or her ethnic origins or political beliefs.

215.214

The Minister is satisfied that, at the time of application, the applicant is unable to live a normal life in Sri Lanka.

215.215

The applicant has a near relative (being a parent, daughter, son, brother, sister, aunt, uncle, nephew or niece of the applicant) who:

- (a) was an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen on 1 January 1994; and
- (b) continues to be an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
- (c) is usually resident in Australia; and
- (d) gives the Minister a written undertaking that specifies assistance:
 - (i) that the near relative will provide to the applicant and the applicant's dependants after their entry to Australia; and
 - (ii) that is acceptable to the Minister, having regard to the needs of the applicant in the period of 6 months following the applicant's entry to Australia;

with regard to the following matters:

- (iii) food, clothing, accommodation and household goods;
- (iv) personal support;

Clause 215.221

- (v) access to community and public services;
- (vi) obtaining employment;
- (vii) language interpretation and securing English language instruction;
- (viii) community involvement and self-reliance;
- (ix) reimbursing the Commonwealth for its costs (if any) in providing accommodation services to the applicant.

215.22—Criteria to be satisfied at time of decision

215.221

The Minister is satisfied that permanent settlement in Australia:

- (a) is the appropriate course for the applicant; and
- (b) would not be contrary to the interests of Australia.

215.222

The Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a visa.

215.223

Grant of the visa would not result in either:

- (a) the number of subclass 215 visas granted in a financial year exceeding the maximum number of subclass 215 visas, as determined by Gazette Notice, that may be granted in that financial year; or
- (b) the number of visas of particular classes, including subclass 215, granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.

215.224

The Minister is satisfied, on the basis of the information contained in the application, that the applicant is not eligible for a permanent visa of any other class.

215.225

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

215.226

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

215.227

- (1) Each member of the family unit of the applicant who is an applicant for a subclass 215 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.
- (2) Each member of the family unit of the applicant who is not an applicant for a subclass 215 visa is a person who:
 - (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

215.228

If the family unit of the applicant includes a dependent child whose application was combined with the applicant's, the Minister is satisfied that the grant of the visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

215.3—Secondary Criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

215.31—Criteria to be satisfied at the time of application

215.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 215.21.

215.312

The written undertaking made under clause 215.215 in respect of a person who is a member of the family unit of the applicant and satisfies the primary criteria includes the applicant.

215.32—Criteria to be satisfied at the time of decision

215.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 215 visa.

Clause 215.322

215.322

The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.

215.323

If the applicant is the dependent child of a person who is the holder of a subclass 215 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

215.4—Circumstances applicable to grant

215.411

The applicant must be outside Australia when the visa is granted.

215.5—When visa is in effect

215.511

Permanent visa permitting the holder to travel to and enter Australia within 5 years of grant.

215.6—Conditions

215.611

First entry must be made before the date specified by the Minister for the purpose.

215.612

Condition 8502 may be imposed.

215.7—Way of giving evidence

215.711

Visa label affixed to a valid passport.

Subclass 216—Ahmadi

216.1—Interpretation

Note: No interpretation provisions specific to this Part.

216.2—Primary criteria

Note: The primary criteria must be satisfied by at least 1 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.

216.21—Criteria to be satisfied at time of application

216.211

The applicant:

- (a) is an Ahmadi; and
- (b) is a citizen of Pakistan; and
- (c) is usually resident in Pakistan.

216.212

The Minister is satisfied that the applicant has suffered and continues to suffer substantial discrimination because of his or her religious affiliation.

216.213

The Ahmadiyya Muslim Association of Australia:

- (a) states in writing that it supports the application; and
- (b) gives a written undertaking to the Minister that specifies assistance:
 - (i) that the organisation will provide to the applicant, and the applicant's dependants, after their entry into Australia; and
 - (ii) that is acceptable to the Minister, having regard to the needs of the applicant and the applicant's dependants, in the period of 6 months following the applicant's entry to Australia;

with regard to the following matters:

- (iii) food, clothing, accommodation and household goods; and
- (iv) personal support; and
- (v) access to community and public services; and
- (vi) obtaining employment; and
- (vii) language interpretation and securing English language instruction; and
- (viii) community involvement and self-reliance; and
- (ix) reimbursing the Commonwealth for its costs (if any) in providing accommodation services to the applicant.

Clause 216.221

216.22—Criteria to be satisfied at time of decision

216.221

The Minister is satisfied that permanent settlement in Australia:

- (a) is the appropriate course for the applicant; and
- (b) would not be contrary to the interests of Australia.

216.222

The Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a visa.

216.223

Grant of the visa would not result in either:

- (a) the number of Subclass 216 visas granted in a financial year exceeding the maximum number of Subclass 216 visas, as determined by Gazette Notice, that may be granted in that financial year; or
- (b) the number of visas of particular classes, including Subclass 216, granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.

216.224

The Minister is satisfied, on the basis of the information contained in the application, that the applicant is not eligible for a permanent visa of any other class.

216.225

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

216.226

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

216.227

- (1) Each member of the family unit of the applicant who is an applicant for a Subclass 216 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.

- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 216 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

216.228

If the family unit of the applicant includes a dependent child whose application was combined with the applicant's, the Minister is satisfied that the grant of the visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

216.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

216.31 Criteria to be satisfied at the time of application

216.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 216.21.

216.312

The written undertaking given under clause 216.213 in respect of a person who is a member of the family unit of the applicant, and who satisfies the primary criteria, includes the applicant.

216.32—Criteria to be satisfied at the time of decision

216.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 216 visa.

216.322

The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.

Clause 216.323

216.323

If the applicant is the dependent child of a person who is the holder of a Subclass 216 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

216.4—Circumstances applicable to grant

216.411

The applicant must be outside Australia when the visa is granted.

216.5—When visa is in effect

216.511

Permanent visa permitting the holder to travel to and enter Australia within 5 years of grant.

216.6—Conditions

216.611

First entry must be made before the date specified by the Minister for the purpose.

216.612

Condition 8502 may be imposed.

216.7—Way of giving evidence

216.711

Visa label affixed to a valid passport.

Subclass 217—Vietnamese

217.1—Interpretation

217.111

- (1) For the purposes of this Part, *eligible New Zealand citizen* includes a person who, at all times between 1 September 1992 and 31 August 1994:
 - (a) was a New Zealand citizen; and
 - (b) was normally resident in Australia; and
 - (c) was an exempt non-citizen; and
 - (d) met the requirements of subclauses (2) and (3).
- (2) A person meets the requirements of this subclause if he or she is not a person who:
 - (a) has been convicted of a crime and sentenced to death or to imprisonment, for at least 1 year; or
 - (b) has been convicted of 2 or more crimes and sentenced to imprisonment, for periods that add up to at least 1 year if:
 - (i) any period concurrent with part of a longer period is disregarded; and
 - (ii) any periods not disregarded that are concurrent with each other are treated as 1 period;whether or not:
 - (iii) the crimes were of the same kind; or
 - (iv) the crimes were committed at the same time; or
 - (v) the convictions were at the same time; or
 - (vi) the sentencings were at the same time; or
 - (vii) the periods were consecutive; or
 - (c) has been charged with a crime and either:
 - (i) found guilty of having committed the crime while of unsound mind; or
 - (ii) acquitted on the ground that the crime was committed while the person was of unsound mind;
 - (d) has been removed or deported from Australia or removed or deported from another country; or
 - (e) has been excluded from another country in the circumstances set out in regulation 7.12 of the Migration (1993) Regulations;where *sentenced to imprisonment* includes ordered to be confined in a corrective institution.
- (3) A person satisfies the requirements of this subclause if he or she is not a person who suffers from a disease or a physical or mental condition of a kind set out in regulation 7.11 of the Migration (1993) Regulations.

Clause 217.211

217.2—Primary criteria

Note: The primary criteria must be satisfied by at least 1 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.

217.21—Criteria to be satisfied at time of application

217.211

- (1) The applicant:
 - (a) is a citizen of Vietnam; and
 - (b) meets the requirements of subclause (2) or (3).
- (2) An applicant meets the requirements of this subclause if the applicant:
 - (a) has been continually resident in Germany since 1 January 1990; and
 - (b) has no legal entitlement to remain permanently in Germany; and
 - (c) faces repatriation to Vietnam.
- (3) An applicant meets the requirements of this subclause if the applicant:
 - (a) at any time on or after 14 June 1989, has resided in a camp administered under the Comprehensive Plan of Action adopted by the International Conference on Indo-Chinese Refugees held at Geneva on 13 and 14 June 1989; and
 - (b) has returned to Vietnam before 1 January 1996; and
 - (c) is resident in Vietnam at the time of application.

217.212

The applicant has a near relative (being a parent, daughter, son, brother, sister, aunt, uncle, nephew or niece of the applicant) who:

- (a) was an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen on 1 January 1994; and
- (b) continues to be an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
- (c) is usually resident in Australia; and
- (d) gives the Minister a written undertaking that specifies assistance:
 - (i) that the near relative will provide to the applicant and the applicant's dependants after their entry to Australia; and
 - (ii) that is acceptable to the Minister, having regard to the needs of the applicant in the period of 6 months following the applicant's entry to Australia;

with regard to the following matters:

- (iii) food, clothing, accommodation and household goods; and
- (iv) personal support; and
- (v) access to community and public services; and
- (vi) obtaining employment; and

- (vii) language interpretation and securing English language instruction; and
- (viii) community involvement and self-reliance; and
- (ix) reimbursing the Commonwealth for its costs (if any) in providing accommodation services to the applicant.

217.22—Criteria to be satisfied at time of decision

217.221

The Minister is satisfied that permanent settlement in Australia:

- (a) is the appropriate course for the applicant; and
- (b) would not be contrary to the interests of Australia.

217.222

The Minister is satisfied that there are compelling reasons for giving special consideration to granting the applicant a visa.

217.223

Grant of the visa would not result in either:

- (a) the number of Subclass 217 visas granted in a financial year exceeding the maximum number of Subclass 217 visas, as determined by Gazette Notice, that may be granted in that financial year; or

Clause 217.224

- (b) the number of visas of particular classes, including Subclass 217, granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in that financial year.

217.224

The Minister is satisfied, on the basis of the information contained in the application, that the applicant is not eligible for a permanent visa of any other class.

217.225

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

217.226

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

217.227

- (1) Each member of the family unit of the applicant who is an applicant for a Subclass 217 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 217 visa is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

217.228

If the family unit of the applicant includes a dependent child whose application was combined with the applicant's, the Minister is satisfied that the grant of the visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

217.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

217.31—Criteria to be satisfied at the time of application

217.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 217.21.

217.312

The written undertaking given under paragraph 217.212(d) in respect of a person who is a member of the family unit of the applicant, and who satisfies the primary criteria, includes the applicant.

217.32—Criteria to be satisfied at the time of decision

217.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 217 visa.

217.322

The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.

217.323

If the applicant is the dependent child of a person who is the holder of a Subclass 217 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

217.4—Circumstances applicable to grant

217.411

The applicant must be outside Australia when the visa is granted.

217.5—When visa is in effect

217.511

Permanent visa permitting the holder to travel to and enter Australia within 5 years of grant.

Clause 217.611

217.6—Conditions

217.611

First entry must be made before the date specified by the Minister for the purpose.

217.612

Condition 8502 may be imposed.

217.7—Way of giving evidence

217.711

Visa label affixed to a valid passport.

Subclass 300—Prospective Marriage

300.1—Interpretation

300.111

In this Part:

prospective spouse means the Australian citizen, Australian permanent resident or eligible New Zealand citizen referred to in clause 300.211;

the parties means the applicant and the prospective spouse.

woman-at-risk visa means:

- (a) a Subclass 204 (Woman at Risk) visa; or
- (b) a Class 204 (woman at risk) visa within the meaning of the Migration (1993) Regulations; or
- (c) a woman at risk visa (code number 204) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).

Note: *eligible New Zealand citizen, guardian* and *parent* are defined in regulation 1.03.

300.2—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.

300.21—Criteria to be satisfied at time of application

300.211

The applicant intends to marry a person who is:

- (a) an Australian citizen; or
- (b) an Australian permanent resident; or
- (c) an eligible New Zealand citizen.

300.212

- (1) The prospective spouse of the applicant is not prohibited by subclause (2) from being a sponsor.
- (2) The prospective spouse is prohibited from being a sponsor if:
 - (a) the prospective spouse is a woman who was granted a woman-at-risk visa within the 5 years immediately preceding the application; and
 - (b) on the date of grant of that visa:

Clause 300.213

- (i) the applicant was a former spouse of that woman, having been divorced from that woman; or
- (ii) the applicant was the spouse of that woman and that relationship had not been declared to Immigration; or
- (iii) the applicant was permanently separated from that woman.

300.213

The applicant is sponsored by:

- (a) if the prospective spouse has turned 18—the prospective spouse; or
- (b) if the prospective spouse has not turned 18—a person who:
 - (i) is:
 - (A) an Australian citizen; or
 - (B) an Australian permanent resident; or
 - (C) an eligible New Zealand citizen; and
 - (ii) is a parent or guardian of the prospective spouse; and
 - (iii) has turned 18.

300.214

The parties have met and are known to each other personally.

300.215

The applicant establishes:

- (a) that the parties genuinely intend to marry; and
- (b) that the marriage is intended by the parties to take place within the visa period.

300.216

The Minister is satisfied that the parties genuinely intend to live together as spouses.

300.22—Criteria to be satisfied at time of decisions

300.221

The applicant continues to satisfy the criteria in clause 300.211 and clauses 300.214 to 300.216.

300.221A

Subject to clause 300.221B, there is no impediment to the marriage in Australian law.

300.221B

- (1) If the applicant or the prospective spouse is under 18:
 - (a) the Minister is satisfied that the applicant or the prospective spouse, as the case requires, is due to turn 18 before the end of the period within which the intended marriage is to take place; or
 - (b) a Judge or magistrate has made an order under section 12 of the *Marriage Act 1961* authorising the applicant to marry the prospective spouse, or the prospective spouse to marry the applicant, as the case requires, and that order is in force.
- (2) If paragraph (1) (b) applies, the Minister is satisfied that the marriage will take place.

Note: Under s 12(5) of the *Marriage Act 1961*, an order made under section 12 of that Act ceases to be in force 3 months after it is made, if the marriage contemplated by the order has not taken place.

300.222

The sponsorship of the applicant under clause 300.213 has been approved by the Minister and is still in force.

Note: For limitations on the Minister's discretion to approve sponsorships see regulation 1.20J.

300.223

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

300.224

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

300.225

If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

300.226

- (1) Each member of the family unit of the applicant who is an applicant is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
 - (b) if the person has previously been in Australia, satisfies special return criteria 5001 and 5002.

Clause 300.227

- (2) Each member of the family unit of the applicant who is not an applicant is a person who:
- (a) satisfies public interest criteria 4001 to 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

300.227

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;made a combined application with the applicant;

the Minister is satisfied that the grant of a subclass 300 visa to the child as a family unit member of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

300.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

300.31—Criteria to be satisfied at time of application

300.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in clauses 300.211 to 300.212 and 300.214 to 300.216.

300.312

The sponsorship referred to in clause 300.213 in respect of the person who satisfies the primary criteria includes sponsorship of the applicant.

300.32—Criteria to be satisfied at time of decision

300.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 300 visa.

300.322

The sponsorship referred to in clause 300.312 has been approved by the Minister and is still in force.

300.323

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

300.324

If the applicant has previously been in Australia, the applicant satisfies the special return criteria 5001 and 5002.

300.325

If an assurance of support is required in respect of the person who satisfies the primary criteria, either:

- (a) the applicant is included in the assurance of support given in respect of that person and that assurance has been accepted by the Minister; or
- (b) an assurance of support has been given in relation to the applicant, and has been accepted by the Minister.

300.326

If the applicant is a dependent child of a person who is a holder of a subclass 300 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any person who has custody or guardianship of, or access to, the applicant.

300.4—Circumstances applicable to grant

300.411

The applicant must be outside Australia when the visa is granted.

300.5—When visa is in effect

300.511

Temporary visa permitting the holder to travel to, enter and remain in Australia for 9 months from date of grant.

300.6—Conditions

300.611

First entry must be made before a date specified by the Minister for the purpose.

300.612

If the applicant satisfies the primary criteria, conditions 8515 and 8519.

Clause 300.613

300.613

If the applicant satisfies the primary criteria, condition 8502 may be imposed.

300.614

If the applicant satisfies the secondary criteria, condition 8520.

300.615

If the applicant satisfies the secondary criteria, either or both of conditions 8515 and 8502 may be imposed.

300.7—Way of giving evidence

300.71

Visa label affixed to a valid passport.

Subclass 302—Emergency (Permanent visa applicant)

302.1—Interpretation

302.111

- (1) In this Part:

principal visa, in relation to an applicant for a Subclass 302 visa, means the visa for which he or she originally applied;

remaining criteria, in relation to an applicant for, or holder of, a Subclass 302 visa, means:

- (a) the public interest criteria; and
- (b) the criteria requiring, or providing for the Minister to request, an assurance of support;

applicable to the class of permanent entry visa for which the applicant originally applied that have not been satisfied at the time of his or her application for a Subclass 302 visa.

- (2) In subclause (1), a reference to an applicant for a Subclass 302 visa is a reference to an applicant for an Emergency (Temporary) (Class TI) visa who is also an applicant for a permanent visa of a class for which applications must be made outside Australia.

302.2—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.

302.21 Criteria to be satisfied at time of application

302.211

- (1) If the application is made outside Australia:
- (a) the principal visa is a permanent visa of a class for which applications must be made outside Australia; and
 - (b) the applicant has satisfied all of the criteria for the grant of the principal visa other than the remaining criteria.

Note: One of the primary criteria for the grant of a permanent visa is that all members of the family unit satisfy the relevant public interest criteria. Therefore, the applicant who must satisfy the primary criteria for the permanent visa can satisfy those criteria only if he or she and all members of the family unit satisfy the remaining criteria.

Clause 302.212

302.212

If the applicant is in Australia, the applicant is the holder of a subclass 302 visa, and has not yet satisfied the remaining criteria.

302.22—Criteria to be satisfied at time of decision

302.221

The applicant continues to satisfy the criterion in clause 302.211.

302.222

If the application is made outside Australia, the Minister is satisfied that the applicant has urgent and compelling reasons for travelling to Australia before the remaining criteria have been satisfied.

302.223

If the application is made in Australia, the Minister is satisfied that it was not possible for the applicant to satisfy the remaining criteria before the expiry of the period specified in the subclass 302 visa held by the applicant.

302.224

If the application is made in Australia, the Minister is satisfied that it would be unreasonable to require the person to leave Australia.

302.225

The Minister is satisfied that it is likely that the remaining criteria will be satisfied by the applicant and all members of the applicant's family unit after entry to Australia or during a further period of temporary stay in Australia.

302.226

The Minister is satisfied that the entry to, or continued stay in Australia of, the applicant before the remaining criteria have been satisfied would not be contrary to the interests of Australia.

302.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.)

302.31—Criteria to be satisfied at time of application

302.311

The applicant is a member of the family unit of, and has made a combined application with, a person who satisfies or has satisfied the primary criteria in subdivision 302.21.

302.312

If the application is made in Australia, the applicant has substantially complied with the conditions to which the visa held by the applicant was granted.

302.32—Criteria to be satisfied at time of decision

302.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 302 visa.

302.322

If the application is lodged outside Australia:

- (a) the principal visa is a permanent visa of a class for which applications must be lodged outside Australia; and
- (b) the applicant:
 - (i) has satisfied all criteria for the grant of that visa; or
 - (ii) has satisfied all criteria for the grant of that visa other than the remaining criteria.

302.323

If the applicant is the dependent child of a person who is the holder of a subclass 302 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

302.4—Circumstances applicable to grant

302.411

If the application is made outside Australia, the applicant must be outside Australia at time of grant.

302.412

If the application is made in Australia, the applicant must be in the migration zone at time of grant.

Clause 302.511

302.5—When visa is in effect

302.511

Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister for the purpose.

302.6—Conditions

302.611

Condition 8301 or 8302 may be imposed.

302.612

Any other condition may be imposed that could be applied to the principal visa.

302.7—Way of giving evidence

302.711

Visa label affixed to a valid passport.

Subclass 303—Emergency (temporary visa applicant)

303.1—Interpretation

303.111

In this Part:

principal visa, in relation to an applicant for a subclass 303 visa, means the visa referred to in paragraph 303.212 (a); and

remaining criteria, in relation to an applicant for a subclass 303 visa, means the criteria referred to in paragraph 303.212 (b) as not having been satisfied.

303.2—Primary criteria

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

303.21—Criteria to be satisfied at time of application

303.211

The applicant is not an Australian permanent resident.

303.212

The applicant:

(a) is:

- (i) an applicant for a visa of one of the following classes:
 - (A) Business (Temporary) (Class TB);
 - (B) Cultural/Social (Temporary) (Class TE);
 - (C) Domestic Worker (Temporary) (Class TG);
 - (D) Educational (Temporary) (Class TH);
 - (E) Expatriate (Temporary) (Class TJ);
 - (F) Family Relationship (Temporary) (Class TL);
 - (G) Interdependency (Temporary) (Class TM);
 - (H) Medical Practitioner (Temporary) (Class UE);
 - (I) Retirement (Temporary) (Class TQ);
 - (J) Student (Temporary) (Class TU);
 - (K) Supported Dependent (Temporary) (Class TW);
 - (L) Working Holiday (Temporary) (Class TZ); or
- (ii) an applicant for a Temporary Business Entry (Class UC) visa who seeks a visa to remain in Australia (whether or not also a visa to travel

Clause 303.213

- to and enter Australia) for a period, or periods, of more than 3 months;
and
- (b) has satisfied all of the criteria for the grant of that visa other than:
 - (i) public interest criteria; or
 - (ii) criteria that can be satisfied only after the applicant has entered Australia.

303.213

If the application is made in the migration zone the applicant is either:

- (a) the holder of a subclass 303 visa; or
- (b) not the holder of a substantive visa and:
 - (i) the last substantive visa held was of a kind specified in paragraph (a);
and
 - (ii) the applicant satisfies whichever of schedule 6 criteria 6004, 6005 and 6006 applies to the principal visa.

303.22—Criteria to be satisfied at time of decision

303.221

- (1) The applicant seeks, by request to the Minister in accordance with subclause (2), to travel to Australia before the remaining criteria have been satisfied.
- (2) The request referred to in subclause (1):
 - (a) must be in writing; and
 - (b) must include a written statement of the applicant's urgent and compelling reasons for travelling to Australia before the remaining criteria have been satisfied.

303.222

The Minister, on consideration of the request referred to in clause 303.221, is satisfied that the applicant has urgent and compelling reasons for travelling to Australia before the remaining criteria are satisfied for the purposes of granting the principal visa.

303.223

The Minister is satisfied that the applicant's entry to Australia before the remaining criteria have been satisfied would not be contrary to the interests of Australia.

303.224

The Minister is satisfied that the applicant is reasonably likely to satisfy the remaining criteria for the purposes of granting the principal visa after the applicant's entry to Australia.

303.225

If the application was made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002 and public interest criteria 4013 and 4014.

303.226

If the application was made in the migration zone:

- (a) the applicant establishes that it was not possible to satisfy the remaining criteria before the visa that he or she holds ceases; and
- (b) the applicant applies to remain in Australia in circumstances where the remaining criteria have not been satisfied; and
- (c) the Minister is satisfied that it would be unreasonable to require the applicant to leave Australia.

303.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

303.31—Criteria to be satisfied at time of application

303.311

The applicant is a member of the family unit of a person who has applied for a subclass 303 visa.

303.312

If the application is made outside Australia and the application is made separately from that of the person satisfying the primary criteria:

- (a) the person satisfying the primary criteria is, or is expected soon to be, in Australia; and
- (b) the applicant intends to stay temporarily in Australia as a member of the family unit of the person satisfying the primary criteria.

303.313

If the application is made in the migration zone the applicant has complied substantially with the conditions that apply to:

- (a) any visa held by the applicant; or
- (b) any visa held by the applicant before becoming an unlawful non-citizen.

Clause 303.321

303.32—Criteria to be met at time of decision

303.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a subclass 303 visa.

303.322

The person who satisfies the primary criteria produces to the Minister evidence of adequate means to support the applicant during the period of stay applied for by the applicant, taking into account the working rights of both that person and the applicant.

303.323

The applicant:

- (a) in all cases, satisfies public interest criteria 4001 to 4005, 4013 and 4014; and
- (b) in the case of an applicant who seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010.

303.324

If the application is made outside Australia and if the applicant has previously been in Australia, satisfies special return criteria 5001 and 5002.

303.4—Circumstances applicable to grant

303.411

If the application is made in the migration zone, the applicant must be in the migration zone at the time of grant.

303.412

If the application is made outside Australia, the applicant must be outside Australia at the time of grant.

303.5—When visa is in effect

303.511

Temporary visa permitting the holder to travel to, enter and remain in Australia until the a date specified by the Minister.

303.6—Conditions

303.611

Any 1 or more of conditions 8106, 8107, 8301, 8302, 8303, 8501, 8502, 8503, 8516, 8522, 8525 and 8526 may be imposed.

303.7—Way of giving evidence

303.711

Visa label affixed to valid passport.

Subclass 309—Spouse (Provisional)

309.1—Interpretation

309.111

In this Part:

intended spouse means the person referred to in subparagraph 309.211(3)(a)(i), (ii), (iii) or (iv);

woman-at-risk visa means:

- (a) a Subclass 204 (Woman at Risk) visa; or
- (b) a Class 204 (woman at risk) visa within the meaning of the Migration (1993) Regulations; or
- (c) a woman at risk visa (code number 204) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).

Note: *eligible New Zealand citizen, guardian, parent* and *spouse* are defined in regulation 1.03.

309.2—Primary criteria

Note: The primary criteria must be satisfied by at least 1 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.

309.21—Criteria to be satisfied at time of application

309.211

- (1) The applicant meets the requirements of subclause (2) or (3).
- (2) The applicant meets the requirements of this subclause if the applicant is the spouse of:
 - (a) an Australian citizen; or
 - (b) an Australian permanent resident; or
 - (c) an eligible New Zealand citizen; or
 - (d) a person who, on entry to Australia, will be the holder of a special category visa and intends to be usually resident in Australia.

Note: *spouse* includes a de facto spouse: see definition of *spouse* in regulation 1.03.

- (3) The applicant meets the requirements of this subclause if:
 - (a) the applicant intends to marry:
 - (i) an Australian citizen; or
 - (ii) an Australian permanent resident; or

Clause 309.212

- (iii) an eligible New Zealand citizen; or
- (iv) a person who, on entry to Australia, will be the holder of a special category visa and intends to be usually resident in Australia; and
- (b) the intended marriage will, if it takes place, be a valid marriage for the purposes of section 12 of the Act.

Note: If the applicant is an applicant referred to in subclause 309.211(3), the marriage must have taken place before the applicant can be granted a visa of this subclass: see clause 309.224.

309.212

- (1) The spouse, or intended spouse, of the applicant is not prohibited by subclause (2) from being a sponsor.
- (2) The spouse, or intended spouse, is prohibited from being a sponsor if:
 - (a) the spouse, or intended spouse, is a woman who was granted a woman-at-risk visa within the 5 years immediately preceding the application; and
 - (b) on the date of grant of that visa:
 - (i) the applicant was a former spouse of that woman, having been divorced from that woman; or
 - (ii) the applicant was the spouse of that woman and that relationship had not been declared to Immigration; or
 - (iii) the applicant was permanently separated from that woman.

309.213

- (1) If the applicant is an applicant referred to in subclause 309.211(2), the applicant is sponsored:
 - (a) if the applicant's spouse has turned 18—by that spouse; or
 - (b) if the applicant's spouse has not turned 18—by a parent or guardian of that spouse who:
 - (i) has turned 18; and
 - (ii) is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.
- (2) If the applicant is an applicant referred to in subclause 309.211(3), the applicant is sponsored:
 - (a) if the applicant's intended spouse has turned 18—by that intended spouse; or
 - (b) if the applicant's intended spouse has not turned 18—by a parent or guardian of that intended spouse who:
 - (i) has turned 18; and
 - (ii) is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

Clause 309.221

309.22—Criteria to be satisfied at time of decision

309.221

The applicant continues to satisfy the criterion in clause 309.211.

309.222

The sponsorship referred to in clause 309.213 has been approved by the Minister and is still in force.

Note: For limitations on the Minister's discretion to approve sponsorships see regulation 1.20J.

309.223

In the case of an applicant who meets the requirements of subclause 309.211(2), the applicant continues to be the spouse of the person referred to in paragraph 309.211(2)(a), (b), (c), or (d) who was the applicant's spouse at the time of the application.

309.224

If the applicant is an applicant referred to in subclause 309.211(3), the marriage referred to in that subclause has taken place and the applicant continues to be the spouse of the intended spouse.

309.225

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

309.226

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

309.227

If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

309.228

- (1) Each member of the family unit of the applicant who is an applicant is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.

-
- (2) Each member of the family unit of the applicant who is not an applicant is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

309.229

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;

made a combined application with the applicant;

the Minister is satisfied that the grant of a Subclass 309 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

309.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

309.31—Criteria to be satisfied at time of application

309.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in subdivision 309.21.

309.312

The sponsorship referred to in clause 309.213 of the person who satisfies the primary criteria includes sponsorship of the applicant.

309.32—Criteria to be satisfied at time of decision

309.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 309 visa.

Clause 309.322

309.322

The sponsorship referred to in clause 309.312 has been approved by the Minister and is still in force.

Note: For limitations on the Minister's discretion to approve sponsorships see regulation 1.20J.

309.323

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

309.324

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

309.325

If the Minister requires an assurance of support in respect of the person who satisfies the primary criteria:

- (a) the applicant is included in the assurance of support given in respect of that person, and that assurance has been accepted by the Minister; or
- (b) an assurance of support has been given in relation to the applicant, and has been accepted by the Minister.

309.326

If the applicant is the dependent child of a person who is the holder of a Subclass 309 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

309.4—Circumstances applicable to grant

309.411

The applicant must be outside Australia when the visa is granted.

309.5—When visa is in effect

309.511

Temporary visa permitting the holder:

- (a) to travel to and enter Australia for a period of 30 months from the date of application; and
- (b) to remain in Australia until the end of the day on which:

- (i) the holder is notified that the holder's application for a Spouse (Migrant) (Class BC) visa has been decided; or
- (ii) that application is withdrawn.

309.6—Conditions

309.611

First entry must be made before a date specified by the Minister for the purpose.

309.612

If the applicant meets the primary criteria, condition 8502 may be imposed.

309.613

If the applicant meets the secondary criteria, either or both of conditions 8502 and 8515 may be imposed.

309.7—Way of giving evidence

309.711

Visa label affixed to a valid passport.

Subclass 310—Interdependency (Provisional)

310.1—Interpretation

Note: *eligible New Zealand citizen* is defined in regulation 1.03 and *interdependent relationship* is defined in regulation 1.09A. There are no interpretation provisions specific to this Part.]

310.2—Primary criteria

Note: The primary criteria must be satisfied by at least 1 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.

310.21—Criteria to be satisfied at time of application

310.211

The applicant:

- (a) has turned 18; and
- (b) is in an interdependent relationship with a person who has turned 18 and who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

Clause 310.212

310.212

The person referred to in paragraph 310.211(b) has sponsored the applicant.

310.22—Criteria to be satisfied at time of decision

310.221

The applicant continues to satisfy the criterion in clause 310.211.

310.222

The sponsorship referred to in clause 310.212 has been approved by the Minister and is still in force.

Note: For limitations on the Minister's discretion to approve sponsorships see regulation 1.20J.

310.223

The applicant continues to be in an interdependent relationship with the Australian citizen, Australian permanent resident or eligible New Zealand citizen with whom the applicant was in an interdependent relationship at the time of the application.

310.224

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

310.225

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

310.226

If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

310.227

- (1) Each member of the family unit of the applicant who is an applicant is a person who:
 - (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009; and
 - (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.
- (2) Each member of the family unit of the applicant who is not an applicant is a person who:

-
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
 - (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

310.228

If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;made a combined application with the applicant;

the Minister is satisfied that the grant of a Subclass 310 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

310.3—Secondary criteria

Note: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

310.31—Criteria to be satisfied at time of application

310.311

The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in subdivision 310.21.

310.312

The sponsorship referred to in clause 310.212 of the person who satisfies the primary criteria includes sponsorship of the applicant.

310.32—Criteria to be satisfied at time of decision

310.321

The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 310 visa.

310.322

The sponsorship referred to in clause 310.312 has been approved by the Minister and is still in force.

Clause 310.323

Note: For limitations on the Minister's discretion to approve sponsorships see regulation 1.20J.

310.323

The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

310.324

If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

310.325

If the Minister requires an assurance of support in respect of the person who satisfies the primary criteria:

- (a) the applicant is included in the assurance of support given in respect of that person, and that assurance has been accepted by the Minister; or
- (b) an assurance of support has been given in relation to the applicant, and has been accepted by the Minister.

310.326

If the applicant is the dependent child of a person who is the holder of a Subclass 310 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

310.4—Circumstances applicable to grant

310.411

The applicant must be outside Australia when the visa is granted.

310.5—When visa is in effect

310.511

Temporary visa permitting the holder:

- (a) to travel to and enter Australia for a period of 30 months from the date of application; and
- (b) to remain in Australia until the end of the day on which:
 - (i) the holder is notified that the holder's application for an Interdependency (Migrant) (Class BI) visa has been decided; or
 - (ii) that application is withdrawn.

310.6—Conditions

310.611

First entry must be made before a date specified by the Minister for the purpose.

310.612

If the applicant meets the primary criteria, condition 8502 may be imposed.

310.613

If the applicant meets the secondary criteria, either or both of conditions 8502 and 8515 may be imposed.

310.7—Way of giving evidence

310.711

Visa label affixed to a valid passport.