

Migration Regulations 1994 No. 268

EXPLANATORY STATEMENT

STATUTORY RULES 1994 No. 268

Issued by the Authority of the Minister for Immigration and Ethnic Affairs

Subject - Migration Act 1958

Migration Regulations

Amendments to the Migration Act 1958 (the Act) commence on 1 September 1994. These amendments include amendments which renumber the provisions of the Act. These Regulations are made to commence on 1 September 1994 to implement changes necessary as a result of the amendments to the Act. All references to the Act in this Explanatory Statement are to the renumbered provisions as they will exist on 1 September 1994.

The Act, as amended on 1 September, will provide the regulation making powers set out below which enable these regulations to be made. Where the powers are new regulation making powers, subsection 4(1) of the Acts Interpretation Act 1901 is relied upon. This subsection provides that where an amending Act amends a principal Act in such a way that the principal Act will confer power to make regulations, then the power may be exercised before the amendments come into operation as if they had come into operation.

Section 504 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, to prescribe all matters which are required or permitted to be prescribed by the Act or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act. Without limiting the generality of section 504, particular provision is made for and in relation to the following matters:

- paragraph 504(1)(a) of the Act provides that the regulations may provide for the charging and. recovery of fees in respect of any matter under the Act or the regulations;
- paragraph 504(1)(b) of the Act provides that the regulations may make provision for the remission, refund or waiver of fees which may be prescribed by the regulations, and for exempting persons from the payment of such fees;
- paragraph 504(1)(c) of the Act provides that the regulations may make provision in relation to the furnishing of information by, and obtaining information from, persons entering and leaving Australia and persons arriving or departing from an airport in Australia on an aircraft operated by an international air carrier;
- paragraph 504(1)(d) of the Act provides that the regulations may provide for the use by persons other than departmental officers, of information collected with respect to passengers;
- paragraph 504(1)(e) of the Act provides that regulations may be made in relation to the giving, lodging and serving of documents for the purposes of the Act by the Minister, the Secretary or any other person or body;
- paragraph 504(1)(f) of the Act provides that the regulations may prescribe the practice and procedure in relation to proceedings before the Commissioner or an authority prescribed under the Act;

- paragraph 504(1)(g) of the Act provides that the regulations may require an assurance of support to be given in respect of an applicant for a visa to Australia, and may. prescribe the enforcement of assurances of support and the liabilities of an assurer;
- paragraph 504(1)(i) of the Act provides that the regulations may provide that a person who has contravened section 137 may pay a prescribed penalty, not exceeding \$1,000, as an alternative to prosecution;
- paragraph 504(1)(j) of the Act provides that the regulations may provide that a person who has contravened section 229 or 230 may pay a prescribed penalty, not exceeding \$3,000, as an alternative to prosecution; and
- paragraph 504(1)(k) of the Act provides that the regulations may prescribe penalties not exceeding a fine of \$1,000 or imprisonment for six months in respect of offences against the regulations.

In addition, regulations may be made pursuant to the following powers:

- subsection 5(1) of the Act provides that circumstances in which a non-citizen has been excluded from another country may be prescribed for the purposes of the definition of 'behaviour concern noncitizen';
- subsection 5(1) of the Act provides that diseases and physical or mental conditions may be prescribed for the purposes of the definition of 'health concern non-citizen';
- paragraph 5(2)(b) of the Act provides for prescribing the evidence which a person may provide of English language proficiency to show that the person has functional English for the purposes of the Act;
- section 19 of the Act provides that the regulations may prescribe scales of expenses to be allowed to persons required to give information or produce documents concerning the immigration status of a person;
- subsection 29(2) of the Act provides that the regulations may prescribe a period during which the holder of a visa may travel to, enter and remain in Australia;

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- subsection 29(3) of the Act provides that the regulations may prescribe a period during which the holder of a visa may travel to, enter, re-enter and remain in Australia;
- subsection 29(4) of the Act provides that the regulations may provide for a visa being held by two or more persons;
- subsection 31(1) of the Act provides that the regulations are to prescribe classes of visas;
- subsection 31(3) of the Act provides that the regulations may prescribe criteria for visas of a specified class;
- subsection 31(4) of the Act provides for the regulations to prescribe whether visas are visas to travel to and enter, or to remain in Australia, or both;
- subsection 33(2) of the Act provides for regulations to be made which prescribe status for the purpose of the grant of special purpose visas;

- subsection 39(1) of the Act provides that regulations may prescribe criteria for visas of a class which limit the number of visas of that class granted in a particular financial year;
- subsection 40(1) of the Act provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- section 41 of the Act provides that, without limiting the generality of the section, the regulations may provide that visas or visas of a specified class are subject to specified conditions, including but not limited to a condition that a further visa cannot be granted and a condition restricting work rights;
- subsection 42(3) of the Act provides that the regulations may permit a person or a class of persons to travel to Australia without a valid visa;
- subsection 45(1) of the Act provides that the regulations may make provision in relation to applications for visas;
- subsection 45(2) of the Act provides that, without limiting the generality of subsection 45(1), the regulations may prescribe the way for making applications for visas of a specified class in specified circumstances, and in specified circumstances for visas of specified classes;
- subsection 45(3) of the Act provides that, without limiting the generality of subsection 45(1), the regulations may provide for the places in which an applicant must be when an application for a visa of a specified class is made;
- subsection 46(2) of the Act provides for prescribing a class of visas an application for which may be taken under the regulations to have been validly made;
- section 48 of the Act provides for prescribing classes of visas which are the only classes of visas for which a person whose visa has been cancelled, or whose application for a visa has been refused, may apply;
- subsection 52(1) of the Act provides for the way to be prescribed in which a visa applicant or interested person must communicate with the Minister;
- subsection 52(2) of the Act provides that the regulations may prescribe different ways in which a visa applicant or an interested person may communicate with the Minister. There is also provision for the regulations to specify the circumstances when communication is to be in a particular way;
- subsection 58(2) of the Act provides for a period to be prescribed within which additional information or comments are to be given in response to the Minister's invitation to respond otherwise than at an interview;
- subsection 58(4) of the Act provides that a period may be prescribed for which the Minister may extend the period within which a person is to respond to an invitation to give further information or comments otherwise than at an interview;
- subsection 58(5) of the Act provides for prescribing a period by which the period prescribed under subsection 58(4) may be extended;
- section 61 of the Act provides that the regulations may prescribe different time limits relating to responses to an invitation to give additional information or comment on an application;

- subsection 66(1) of the Act provides for the regulations to prescribe the way in which the Minister is to notify a decision to grant or refuse to grant a visa;
- subsection 68(4) of the Act provides for the regulations to make provision for the determination of which bridging visa held by an applicant is the most beneficial of the bridging visas held by the applicant;
- section 70 of the Act provides that the regulations may provide when an officer is not required to give a non-citizen evidence of the visa granted;
- subsection 71(1) of the Act provides for the regulations to prescribe the way in which evidence of a visa is to be given;
- subsection 71(2) of the Act provides that the regulations may provide that the way in which evidence of a visa is given is to depend on the circumstances in which it is given;
- section 72 of the Act provides that a class of persons may be prescribed who are 'eligible non-citizens' for the purposes of the grant of bridging visas;
- subsection 74(2) of the Act provides for the circumstances to be prescribed in which a further application for a bridging visa may be made by an applicant who is in immigration detention and whose previous application for a bridging visa was refused earlier than 30 days before making the further application;
- subsection 75(1) of the Act provides for classes of bridging visas to be prescribed for which an application, when made by an eligible non-citizen who is in immigration detention, must be decided by the Minister within a period which may also be prescribed. Failure by the Minister to make a decision on a prescribed application within the prescribed period results in the automatic grant of the visa to the applicant;
- paragraph 80(c) of the Act provides for a period to be prescribed within which a person is taken not to leave Australia if the person goes outside the migration zone on a vessel which does not go to a foreign country;
- subsection 93(1) of the Act provides for the qualifications and number of points for each of those qualifications to be prescribed, for the purposes of assessment of the applicant's score under the general points system;
- paragraph 109(1)(c) of the Act provides for circumstances to be prescribed, to which the Minister must have regard in deciding whether a visa granted on the basis of incorrect information provided by the applicant is to be cancelled;
- paragraph 116(1)(g) of the Act provides for the grounds for cancelling a visa to be prescribed;
- subsection 116(3) of the Act provides for prescribing the circumstances in which the Minister must cancel a visa, provided that circumstances prescribed pursuant to subsection 116(1) exist;
- subsection 121(2) of the Act provides that the regulations may prescribe a period within which the holder of a visa is to respond to an invitation, other than at an interview, to give comments regarding a proposal to cancel a visa;

- subsection 121(4) of the Act provides for prescribing a further period for which the Minister may extend the period within which a holder of the visa is to respond to an invitation to give comments, other than at an interview, regarding a proposal to cancel a visa;
- section 122 of the Act provides that the regulations may prescribe different time limits relating to steps in considering the cancellation of a visa;
- subsection 127(1) of the Act provides that, when the Minister decides to cancel a visa, he or she is to notify the visa holder of the decision in the prescribed way;
- paragraph 129(1)(c) of the Act provides for prescribing the time within which the former holder of a visa which has been cancelled under section 128 of the Act is to be invited to show that the ground for cancellation does not exist or that there is a reason why the visa should not be cancelled;
- subsection 129(2) of the Act provides for prescribing the form of notice of visa cancellation for the purposes of subsection 129(1);
- section 130 of the Act provides that, without limiting the generality of the power in paragraph 129(1)(c), the regulations may prescribe different periods and specify when a particular period is to apply to different classes of visa holders and visas of a specified class;
- subsection 131(2) of the Act provides for the circumstances to be prescribed under which the Minister must not revoke the cancellation of a visa, if the visa is cancelled in prescribed circumstances under which it must be cancelled (see subsection 116(3));
- section 132 of the Act provides for prescribing the way in which the Minister is to notify the visa holder or the former visa holder of a decision under section 131 to revoke or not to revoke the cancellation of a visa;
- paragraph 166(1)(b) of the Act provides that the regulations may require information to be given to a clearance officer by persons who enter Australia;
- subsection 166(2) of the Act provides for prescribing the way in which a person is to comply with paragraphs 166(1)(a) and (b);
- subsection 167(2) of the Act provides for a place at which a person must comply with section 166 and a period for such compliance to be prescribed;
- subsection 168(2) of the Act provides for the regulations to prescribe a place at which an allowed inhabitant of a Protected Zone who leaves a protected area and enters the migration zone must comply with section 166, and the period within which such a person must comply;
- subsection 168(3) of the Act provides for a class of persons who are not required to comply with the requirements of section 166 to be prescribed;
- paragraph 170(a) of the Act provides for prescribing the evidence of identity which a clearance officer may require a person travelling on an overseas vessel to show;
- paragraph 175(b) of the Act provides that the regulations may provide for the information which a clearance officer may require from persons who depart Australia;
- subsection 223(4) of the Act provides for prescribing the way in which the Secretary is to cause a detainee to be served with a copy of a notice that his or her valuables are liable to be taken under section 223;

- subsection 223(14) of the Act provides for prescribing the form of a search warrant issued by the Secretary for the purposes of section 223;
- paragraph 231(1)(a) of the Act provides for prescribing the particulars of persons on board a vessel arriving in Australia that are to be given by the master;
- subsection 251(4) of the Act provides for prescribing the form of a search warrant issued by the Secretary for the purposes of section 251 (powers of entry and search of a vessel);
- paragraph 262(b) of the Act provides for a law, being a law relating to the control of fishing, to be prescribed for the purposes of paragraph 262(b);
- subsection 273(2) of the Act provides that the regulations may make provision in relation to the operation and regulation of detention centres;
- subsection 274(3) of the Act provides for prescribing the form of a document about a person to whom subsection 274(1) applies (ie, a person liable to be deported or removed from Australia, or who has been refused immigration clearance) which may be given to another person to facilitate the transportation of the person from Australia by air;
- paragraph 338(2)(d) of the Act provides for decisions reviewable by the Immigration Review Tribunal to be prescribed;
- paragraph 339(1)(b) of the Act provides the regulations to prescribe the place where, and the period within which, an application for internal review must be lodged;
- paragraph 339(1)(c) of the Act provides for the fee which is to accompany an application for internal review to be prescribed;
- subsection 339(4) of the Act provides that the regulations made for the purposes of paragraph 339(1)(b) may specify different periods in relation to different classes of internally reviewable decisions;
- paragraph 341(1)(c) provides for the regulations to prescribe a matter which a review officer may remit for reconsideration with such directions and recommendations as are permitted by the regulations;
- subsection 343(1) of the Act provides for the way in which a review decision is to be notified to be prescribed;
- paragraph 346(1)(d) of the Act provides for IRT-reviewable decisions to be prescribed;
- paragraph 347(1)(b) of the Act provides for the period within which an application for review of an IRT-reviewable decision must be given to the Tribunal to be prescribed;
- paragraph 347(1)(c) of the Act provides for the fee which is to accompany an application for review of an IRT-reviewable decision to be prescribed;
- subsection 347(5) of the Act provides that regulations made pursuant to paragraph 347(1)(b) may specify different periods in relation to different classes of IRT reviewable decisions;
- subsection 352(2) of the Act provides for the number of copies of a statement about the decision under review which must be given by the Secretary to the Registrar of the Immigration Review Tribunal to be prescribed;

- subsection 367(1) of the Act provides for the period in which the Tribunal is to notify the applicant of a decision on review of a primary decision covered by paragraph (c) or (d) of the definition of Part 5 reviewable decision to be prescribed;
- subsection 374(1) of the Act provides that the regulations may fix the fees, allowances and expenses to which a person, other than an applicant, summoned to appear before the Tribunal is entitled;
- subsection 391(4) of the Act provides that the regulations made for the purposes of paragraph 391(1)(b) may specify different periods in relation to different classes of decisions reviewable by the Refugee Review Tribunal;
- paragraph 394(b) of the Act provides for the maximum number of Senior Members of the Immigration Review Tribunal to be prescribed;
- paragraph 394(c) of the Act provides for the maximum number of other members of the Immigration Review Tribunal to be prescribed;
- paragraph 398(1)(b) of the Act provides for the allowances which the Principal Member of the Immigration Review Tribunal is to be paid to be prescribed;
- subsection 398(2) of the Act provides for the remuneration which the Principal Member of the Immigration Review Tribunal is to be paid in the specified circumstances to be prescribed;
- paragraph 412(1)(b) of the Act provides for the period within which an application for review of an RRT-reviewable decision must be given to the Tribunal to be prescribed;
- paragraph 412(1)(c) of the Act provides for the fee which is to accompany an application for review of an RRT-reviewable decision to be prescribed;
- subsection 418(2) of the Act provides for the number of copies of a statement about the decision under review which must be given by the Secretary to the Registrar of the Refugee Review Tribunal to be prescribed;
- subsection 436(1) of the Act provides that the regulations may fix the fees, allowances and expenses to which a person other than an applicant summoned to appear before the Refugee Review Tribunal is entitled;
- paragraph 458(b) of the Act provides for the maximum number of other members of the Refugee Review Tribunal to be prescribed;
- subsection 463(3) of the Act provides for the regulations to prescribe the remuneration and allowances of full and part-time members of the RRT, other than the Principal Member.

The purpose of the Regulations is threefold:

- to make the regulatory changes necessary to implement the changes to the Act which commence on 1 September 1994;
- to replace the existing Migration (1993) Regulations and Migration (Review) (1993) Regulations with a set of regulations which are plainer and easier to use; and
- to provide for a maximum fee of \$1400 for a Cultural/Social (Temporary) (Class TE) visa, where 10 or more applications are lodged together.

These regulations form part of a package of regulations which contain the regulatory changes required to reflect the changes to the Act. All of the regulations commence on 1 September 1994. Other regulations that are being made or amended are the Migration Reform (Transitional Provisions) Regulations, the Australian Citizenship Regulations, the Migration Agents Regulations, the Immigration Education (Charge) Regulations, the Migration (Iraq United Nations Security Council Resolutions) Regulations, the Migration (Yugoslavia (Serbia and Montenegro) - United Nations Security Council Resolutions) Regulations, and the Migration (Haiti - United Nations Security Council Resolutions) Regulations. The Migration Reform (Transitional Provisions) Regulations repeal the Migration (1993) Regulations and the Migration (Review) (1993) Regulations.

The amendments to the Act that commence on 1 September 1994 are designed to clarify aspects of the administration of migration legislation. The changes include:

- simplifying the legal basis of entry to and stay in Australia, and the status under the Act of noncitizens;
- providing a legislative basis for immigration clearance procedures;
- the creation of a system of bridging visas designed to allow a non-citizen to maintain lawful status during the processing of an application or while making arrangements to depart Australia;
- establishing codes of procedure relating to the making of certain decisions under the Act;
- expanding the range of decisions that are reviewable on their merits;
- establishing the Federal Court's jurisdiction to judicially review decisions under the Act in the Act itself, and specifying the grounds of review available. Many of these changes require significant regulatory provisions to support the scheme.

A key objective of the amendments to the Act is to simplify the legal basis for entry and stay in Australia. From 1 September 1994, one authority - the visa - will replace the three current authorities (the visa, the entry permit and the entry visa). The visa will be the sole authority for non-citizens to travel to, enter and stay in Australia.

The regulations make special provision for persons who are currently exempt from the visa and entry permit requirement to ensure that, in practice, the impact of the changes on the persons concerned is limited. Special purpose visa holders will be taken to hold the visa for the period of time they come within the scope of the regulations (refer regulation 2.40). Permanent Residents of Norfolk Island and New Zealand citizens who hold and produce a passport in force are not required to apply for a visa to travel to Australia (refer regulation 2.06).

Providing a legislative basis for immigration clearance requires regulatory support. The regulations dealing with immigration clearance can be found in Part 3 and Schedule 9 of the Regulations. The regulations set out the information and documentation that is required to be provided by all categories of person who may seek to enter Australia. The obligation to provide information and documentation applies to Australian citizens and permanent residents as well as to non-citizens. This is necessary to allow proper control over Australia's borders.

From 1 September 1994 the Act will provide that an 'unlawful non-citizen' is a non-citizen who does not have a visa that is in effect and who is, therefore, subject to obligatory detention and removal from Australia. Provision is made for the grant of a bridging visa to an unlawful non-citizen in a number of circumstances including during processing of an application for a substantive visa (refer Schedule 2). As the holder of a bridging visa the non-citizen is a lawful

non-citizen and not liable for detention or removal from Australia. To reflect the importance of processing applications for a bridging visa quickly where a person is in immigration detention, a two working day period is allowed for this purpose (refer regulation 2.24). Limitations are also placed on the time taken to process applications for review of a bridging visa refusal where the non-citizen is in detention (refer regulation 4.26).

A significant amendment made to the Act is to introduce codes of procedures governing the making of certain decisions under the Act. The codes of procedure extend to decisions of internal review officers. The procedures established are drawn from the current rules of procedural fairness and natural justice. They are designed to provide decision makers with clear guidance on the decision making process and to ensure that applicants have a clear understanding of their obligations. The regulations set out some details of the codes of procedure (the balance are contained in the Act itself).

From 1 September 1994 new rules governing cancellation of visas come into operation. Set procedures are required to be followed in determining whether or not a visa should be cancelled. Division 2.9 is relevant to those procedures.

The structure of these regulations simplifies that used in the Migration (1993) Regulations. An applicant for a visa applies for a class of visa. Significant details regarding classes of visa are set out in Schedule 1 - the form to be used, the fee applicable, and other requirements for the making of a valid application and the subclasses of which each class is comprised. An application for a visa of a class entitles the applicant to be considered against all subclasses listed for that class in Schedule 1. Schedule 2 contains the various visa subclasses. Each subclass incorporates the criteria to be satisfied, the circumstances applicable to the grant, when the visa is in effect, the applicable conditions and the way of giving evidence. Schedules 3 to 8 contain details of matters that are referred to in Schedule 2.

The levels of fees are the same as set in the Migration (1993) Regulations, except that a maximum fee of \$1400 is imposed in Schedule 1 for 10 or more applications for Cultural/Social (Temporary) (Class TE) visas lodged together. This class of visa includes the following subclasses: 414, 416, 420, 421, 423, 424 and 428. In respect of subclass 421 visa applications there is no change in the maximum fee. For subclass 420 visa applications the maximum fee is increased from \$1300 to \$1400. In respect of the other subclasses there is currently no maximum fee set.

Details of the Regulations are set out in the Attachment.

ATTACHMENT

PART 1 - PRELIMINARY

DIVISION 1.1 INTRODUCTORY

Regulation 1.01 Citation

This regulation provides that these Regulations may be cited as the Migration Regulations.

Regulation 1.02 - Commencement

This regulation provides for these Regulations to commence on 1 September 1994.

DIVISION 1.2 INTERPRETATION

Regulation 1.03 Interpretation

This regulation sets out a number of definitions that apply to the Regulations as a whole.

Regulation 1.04 - Adoption

This regulation sets out the circumstances in which a child under 18 years of age is taken to have been adopted for the purposes of the Regulations.

Regulation 1.05 - Balance of family test

This regulation sets out the circumstances under which an applicant who is a parent is able to satisfy the balance of family test, where this is a prescribed criterion to be met for the grant of a visa.

Regulation 1.06 - References to classes of visas

This regulation provides that a class of visas referred to in Schedule 1 may be referred to by the class code allotted to it in Schedule 1. This is a two letter alphabetical code unique to the class of visa. The regulation also provides that transitional visas may be referred to by the class codes BF for a transitional (permanent) visa, and UA for a transitional (temporary) visa.

Regulation 1.07 - References to subclasses of visas

This regulation sets out what is meant by references to 'a visa of a particular subclass' and 'an applicant for a visa of a particular subclass'. Schedule 1 sets out in respect of each class of visa the applicable subclasses.

Regulation 1.08 - Compelling need to work

This regulation defines when, for the purposes of the Regulations, a non-citizen is taken to have a

compelling need to work. This is relevant where a criterion for the grant of a bridging visa is that the

Minister is satisfied that the applicant has a compelling need to work.

Regulation 1.09 - Criminal detention

This regulation defines when a person is in criminal detention for the purposes of the Regulations. This is relevant to the grant of a bridging visa class E.

Regulation 1.10 - Labour market requirement

This regulation sets out the circumstances in which an application for a visa is taken to meet labour market requirements.

Regulation 1.11 - Main business

This regulation defines when a business is a main business in relation to an applicant for a visa.

Regulation 1.12 - Member of the family unit

This regulation sets out the circumstances in which a person is a member of the family unit of another person.

Regulation 1.13 - Nominator

This regulation provides a definition of 'nominator' in relation to an applicant for a visa, for the purposes of the Regulations.

Regulation 1.14 - Orphan relative

This regulation prescribes the circumstances in which an applicant for a visa is an orphan relative for the purposes of the Regulations.

Regulation 1.15 - Remaining relative

This regulation prescribes the circumstances in which an applicant for a visa is a remaining relative for the purposes of the Regulations.

DIVISION 1.3 - ADMINISTRATION

This Division sets out matters relevant to the administration of the Regulations.

Regulation 1.16 -Delegation

This regulation provides that the Minister may, by writing delegate to an officer any of his or her powers under the Regulations, other than the power of delegation. Similar provision is made for the Secretary to delegate his or her powers, other than the power of delegation. The term 'officer' is defined in section 5 of the Migration Act and includes some specified persons other than departmental officers (e.g., police and officers of Customs).

Regulation 1.17 - Specification of matters by Gazette Notice

This regulation provides that the Minister may publish a notice in the Gazette to specify matters that may be required by individual provisions of the Regulations.

Regulation 1.18 - Approved forms

This regulation provides for the Minister to approve forms used for the purposes of the Regulations.

Regulation 1.19 - Occupations Requiring English List

This regulation provides that the Minister may publish in the Gazette a list of occupations requiring proficiency in English. If the usual occupation of an applicant for a subclass 105 or subclass 126 visa appears on the Occupations Requiring English List, the Minister must be satisfied that the applicant has English language proficiency of at least the standard required for the award of 15 points on the language skill factor of the general points test (Part 3 of Schedule 6) (refer clauses 105.223 and 126.222 of Schedule 2). Occupations included on the Occupations Requiring English List are generally those where a high standard of English is required for health or safety reasons.

DIVISION 1.4 - SPONSORSHIP

Regulation 1.20 - Sponsorship

This regulation defines sponsorship and prescribes the obligations undertaken by a person who is the sponsor of an applicant.

PART 2 - VISAS

DIVISION 1 - CLASSES, CRITERIA, CONDITIONS ETC.

Regulation 2.01 - Classes of visas (Act, s.31)

This regulation provides that for the purposes of section 31 of the Act the prescribed classes of visa are such classes as are set out in Schedule 1 (other than those created by the Act), and the transitional (permanent) and transitional (temporary) classes.

Regulation 2.02 Subclasses

This regulation describes the division of Schedule 2 into separate Parts according to the visa subclass to which the Part relates, each Part being identified by a three digit number and the title of the subclass (refer subregulation (1)). This regulation also provides that a Part of Schedule 2 is relevant to a particular class of visa if the Part is listed in Schedule 1 as a subclass under the particular class (refer subregulation (2)).

Regulation 2.03 - Criteria applicable to classes of visas

This regulation provides that the prescribed criteria for the grant of a visa of a particular class are set out in Schedule 2 (refer subregulations (1) and (2)).

This regulation also sets out the circumstances in which a criterion that the applicant is the holder of a particular class or subclass of a visa can be satisfied by the holder of a transitional visa (refer subregulation (3)). The explanatory memorandum for the Migration (Transitional Provisions) Regulations, which also commence on 1 September 1994, sets out details of the transitional visas.

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

This regulation provides that the circumstances which must exist before an applicant who has satisfied the prescribed criteria may be granted a visa of a particular class are to be found in Schedule 2. These circumstances generally relate to where the applicant must be at the time of

grant. This regulation must be read in conjunction with section 65 of the Act which sets out other matters which must be satisfied for the grant of the visa.

Regulation 2.05 - Conditions applicable to visas

This regulation provides that the conditions to which a visa is subject are set out in Schedule 2, as is the period in which a visa holder may travel to, enter and remain in Australia. The reference in Schedule 2 to a condition is a reference to a four digit number beginning with 8 (eg, 8001). Schedule 8 sets out the details of the conditions.

There are two types of conditions, those which are imposed on the visa by operation of law and those which may be imposed on the visa at the discretion of the Minister.

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

This regulation provides that specified classes of non-citizen do not require a visa to travel to Australia. These non-citizens (most New Zealand citizens, and residents of Norfolk Island), while exempted from the requirement to make a separate application for a visa to travel to Australia, will require a visa to enter and stay in Australia. That visa is automatically applied for when the non-citizen presents the required passport and completed passenger card in immigration clearance.

DIVISION 2.2 APPLICATIONS

Regulation 2.07 Application for visa - general

This regulation deals with the making of an application for a visa. It provides that matters relevant to the making of the application for a visa, for example, the fee (if any) payable on the application and the approved form (if any) which is to be completed by the applicant, are set out in Schedule 1 (refer subregulation (1)). It also provides that where applications are permitted to be combined only one fee is payable (refer subregulation (2)). Subregulation (3) requires the applicant to complete an application form according to directions on the form.

Regulation 2.08 - Application by newborn child

This regulation deals with visa applications by newborn children. It provides that a child born to an applicant for a visa between the time of application and the time of decision is taken to have applied for a visa of the same class at birth (refer subregulation (1)). Given the special circumstances of a child born after an application is made, it is not possible for such a child to satisfy the criteria applicable at the time of application for the grant of a visa. This regulation requires the child to satisfy only the criteria to be satisfied at the time of decision and to be sponsored, nominated or proposed, if that is a requirement at the time of application (refer subregulation (2)). No fee is payable for the combined application (refer regulation 2.07).

Regulation 2.09 - Application taken to have been validly made (Act, s. 46(2))

Subsection 46(2) of the Act provides that a visa application is a valid application if it is an application for a prescribed class of visa and is taken under the Regulations to have been validly made. This regulation prescribes all classes of visas that may be applied for in Australia (refer paragraph (a)). The application is taken to be validly made if it is made in the circumstances set out in paragraph 2.22(c) (refer paragraph (b)).

Regulation 2.10 - Where application must be made

This regulation prescribes the places where an application for a visa must be made.

Regulation 2.11 - Special provision for certain applications refused -outside Australia

Where an application for a visa made outside Australia is refused, this regulation provides that the Minister may, in the circumstances specified in the regulation, invite the applicant to make a further application (refer subregulation (1)). The right to make such an invitation is limited to invitations to apply for visas of the same type as the visa refused, except in the circumstances specified in subregulation (2). A review authority may not invite a further application (refer subregulation (3)).

The regulation also sets out the periods in which further applications must be made and sets out what happens where the fee for the further application differs from that for the first application (refer subregulations (4), (5) and (6)). Where the fee for the further application is less than the fee for the original application, the non-citizen is not entitled to a refund. The fee paid was for the Minister's consideration of the first application and that has occurred. The purpose of this regulation is to allow applicants who apparently mistakenly apply for the wrong class of visa outside Australia to make a further, correct, application. This second application will be at no additional cost to that payable if they had applied for the apparently correct class in the first place.

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

Section 48 of the Act limits in specified circumstances the right of a non-citizen in Australia to make a further application for a visa after having had a visa refused or cancelled. The further application may only be made for a prescribed class of visa. This regulation sets out the prescribed classes of visa (refer subregulation (1)). One of those classes is a Protection (Class AZ) visa. Where an applicant has previously applied for a visa of this class, this regulation imposes certain additional requirements that must be satisfied before the non-citizen may make a further application for a visa of this class (refer subregulation (2)).

DIVISION 2.3 COMMUNICATION BETWEEN APPLICANT AND MINISTER

Regulation 2.13 Communication with Minister

This regulation prescribes the ways in which applicants and interested persons must communicate with the Minister. An interested person is a person who wants, or is requested, to give information about the applicant to the Minister (refer subsection 52(4) of the Act).

Regulation 2.14 - Where written communication must be sent

This regulation provides that a written communication to the Minister about an application, from the applicant or from an interested person, must be sent or left at the office at which the application was made, or at another office of which the Minister has notified the applicant in writing.

Regulation 2.15 - Response to invitation to give information or comments - prescribed periods

Section 58 of the Act provides that where a person is invited to give additional information or comments in relation to a visa application, these are to be given within a prescribed period or, if no period is prescribed, a reasonable period. Where the invitation is to provide information or comments at an interview, the interview is required to take place within a prescribed period or, if no period is prescribed, a reasonable period. Provision is made for extension of the prescribed periods for a further prescribed period.

This regulation sets out the prescribed periods for the purpose of section 58. They commence when the applicant is notified of the invitation to provide information or comment. The further

prescribed periods also commence when the applicant is notified. For information regarding when notification is taken to occur, regard should be had to the explanation of the operation of regulation 5.03.

Regulation 2.16 - Notification of decision on visa application

This regulation prescribes the ways in which the Minister must notify the applicant of the decision on the visa application.

DIVISION 2.4 EVIDENCE OF VISAS

Regulation 2.17 - Ways of giving evidence of a visa

This regulation prescribes the ways in which the grant of a visa may be evidenced and sets out what must be included in the evidence provided. It also allows for replacement evidence of the grant of a visa (other than a visa referred to in regulation 2.18; see below) to be provided where the evidence of the grant of a visa previously provided has been lost or destroyed (refer subregulation (6)).

Regulation 2.18 - Re-evidencing of resident return visa

This regulation provides for the re-evidencing of resident return visas (as defined in subregulation (4) for the purposes of the regulation) in specified circumstances (refer subregulation (1)). The regulation prescribes the approved form for an application for re-evidencing (refer subregulation (2)) and also prescribes the fee (refer subregulation (3)).

Regulation 2.19 - Evidence of visa need not be given in certain cases

This regulation sets out the circumstances in which no evidence of a visa needs to be given.

DIVISION 2.5 - BRIDGING VISAS

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

An eligible non-citizen may be granted a bridging visa (refer section 73 of the Act). This regulation prescribes the classes of people who have not been immigration cleared and who are eligible noncitizens. Section 72 also provides for classes of persons who have not been immigration cleared to be prescribed as 'eligible non-citizens'.

Regulation 2.21 - Most beneficial bridging visas (Act, s.68(4)(b)(ii))

Section 68 of the Act provides for a bridging visa that has ceased to be in effect to come into effect again in specified circumstances. If the person does not hold a substantive visa that is in effect and holds more than one bridging visa, the most beneficial bridging visa is reactivated.

This regulation sets out what is the most beneficial bridging visa. The order of classes from most to least beneficial is B, A, C, D, and E. Where two or more bridging visas of the same class are held, it is the visa that provides better work rights that is most beneficial. Where bridging visas of the same class confer the same work rights the most beneficial is the earlier granted visa.

Regulation 2.22 - Invalid application for substantive visa

This regulation provides that where a non-citizen who is not in immigration detention applies for a substantive visa other than by lodging it personally, and that application is invalid, the non-citizen is taken to have applied for a Bridging D (Class WD) visa.

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

This regulation prescribes the circumstances under which a further application for a bridging visa may be made by an eligible non-citizen in immigration detention who has had an application for a bridging visa refused less than 30 days earlier. Where the prescribed circumstances exist, the 30 day time restriction that would otherwise prevent a further application for a bridging visa, does not apply. For details regarding this time limitation see subsection 74(2) of the Act.

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

Section 75 of the Act provides for the automatic grant of a prescribed class of visa to a person in immigration detention if a decision on the application is not made within the prescribed period. This regulation provides that the prescribed class of visa is a bridging visa E (Class WE). The regulation also provides that the prescribed period is two working days in relation to an application for a bridging visa E (Class WE).

Regulation 2.25 - Grant of bridging visa E without application

This regulation provides for the grant of a bridging visa E (Class WE) to a person who has not applied for this visa if the Minister is satisfied that the non-citizen meets the criteria for the grant of the visa. The purpose of this regulation is to ensure that a person who is either incapable of making an application, illiterate, below the age of majority, in criminal detention, unwilling, or who has insufficient command of English to make a valid application, can be granted a bridging visa. The grant of the bridging visa without an application avoids the operation of sections 189 and 198 of the Act which respectively require that an unlawful non-citizen (ie a non-citizen without a visa) must be detained, and must be removed from Australia as soon as reasonably practicable.

DIVISION 2.6 - PRESCRIBED QUALIFICATIONS - APPLICATIONS OF POINTS SYSTEM

Regulation 2.26 - Prescribed qualifications and prescribed number of point

This regulation prescribes, by reference to Schedule 6, the qualifications relevant to the assessment of the points score of an applicant for a subclass 105 or 126 visa (refer subregulation (1)). It also sets out the number of points for each qualification and makes provisions governing how the points are to be applied (refer subregulations (2)-(4)). Relevant terms for the purpose of Schedule 6 are defined in subregulation (5).

Regulation 2.27 - Qualification - eligibility of spouse

This regulation makes provision in the Regulations for the allocation to a person sponsored by relatives in Australia of certain points which could be received by a spouse, if the person sponsored cannot obtain sufficient points to be allowed to migrate but the spouse of the person being sponsored is also an applicant and could obtain those points.

Regulation 2.28 - Notice of putting application aside

This regulation prescribes the procedure to be followed when notifying an applicant that his or her application has been 'put into a pool' for the purposes of paragraph 94 (3) (a) of the Act. The regulation provides that the notice must set out the decision and the reason for the decision together with information in respect of review.

Regulation 2.29 - Interpretation - Schedule 7

This regulation defines the meaning of references to applicants for visas of subclasses 127, 128, 129 and 130 in Schedule 7. In each case, the reference is to an applicant for a Business Skills (Migrant) (Class AD) visa who satisfies certain prescribed criteria in Parts 127, 128, 129 and 130 of Schedule 2, respectively.

DIVISION 2.7 - ASSURANCES OF SUPPORT

SUBDIVISION 2.7.1 - ASSURANCES OF SUPPORT GIVEN IN RELATION TO APPLICATIONS LODGED BEFORE 20 DECEMBER 1991

Regulation 2.30 - Interpretation

This regulation defines the term 'assurance of support' for the purposes of this Subdivision. The term includes a maintenance guarantee given on or before 18 December 1989 and expressed to have effect after 19 December 1991.

Regulation 2.31 - Form of certain assurances of support

This regulation requires that assurances of support given under this Subdivision must be in the form approved by the Minister.

Regulation 2.32 - Duration of assurances of support

This regulation sets out the duration of assurances of support given in relation to applications lodged before 20 December 1991.

Regulation 2.33 - Effect of assurances of support

This regulation provides that if a person in respect of whom an assurance of support is in operation after 19 December 1991 receives a job search allowance, a newstart allowance or a special benefit under the Social Security Act 1991, the amount received 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.

Regulation 2.34 - Earlier liabilities not affected

This regulation provides that this Subdivision does not affect liabilities incurred before 20 December 1991.

SUBDIVISION 2.7.2 - ASSURANCES OF SUPPORT GIVEN IN RELATION TO APPLICATIONS LODGED ON OR AFTER 19 DECEMBER 1991

Regulation 2.35 - Interpretation

This regulation defines the terms 'assurance of support', 'required assurance' and 'relevant visa' for the purposes of this Subdivision.

Regulation 2.36 - Form and duration of assurance of support

This regulation provides that an assurance of support must be in the form approved by the Minister, be of two years duration and, if it is a required assurance, have the bond required by regulation 2.39 lodged before it is taken to have been given.

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

This regulation provides that a person may give assurances of support in relation to no more than two persons at one time. This, however, does not include persons under 18 years of age who are included in an assurance of support given in respect of another person.

Regulation 2.38 - Liability of person giving assurance of support

This regulation provides that if a person in respect of whom an assurance of support is in effect receives a job search allowance, a newstart allowance or a special benefit under the Social Security Act 1991, the person who gave the assurance is liable to pay the Commonwealth the amount of the allowance or benefit (refer subregulation (1)). Where a bond has been given under regulation 2.39, there is no liability to pay the amount until all reasonable steps have been taken by the Commonwealth to enforce the bond and the liability is reduced by the amount so recovered (refer subregulations (2) and (3)).

Regulation 2.39 - Bond (required assurances)

This regulation provides a person who gives a required assurance in respect of a visa applicant who has turned 18 must lodge a bond (refer subregulations (1) and (2)). The regulation also provides for the form of the bond (refer subregulation (3)), and prescribes the amount of the bond (refer subregulation (4)).

DIVISION 2.8 - SPECIAL PURPOSE VISAS

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

This regulation prescribes the classes of non-citizens who are, by operation of law, taken to have been granted special purpose visas. These are groups of people who have special circumstances which are incompatible with the usual requirement to apply for a specific class of visa, for example, transit passengers. The special purpose visa is held for the time the non-citizen maintains the status prescribed in this regulation. The classes of persons who will receive a special purpose visa equate broadly to the classes of persons who were previously exempt non-citizens. Exceptions include most New Zealand citizens who are eligible for special category visas and permanent residents of Norfolk Island who are eligible for subclass 834 visas.

DIVISION 2.9 - VISA CANCELLATION

SUBDIVISION 2.9.1 - CANCELLATION UNDER SUBDIVISION C OF DIVISION 3 OF PART 2 OF THE ACT

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

Subdivision C of Division 3 of Part 2 of the 'Act imposes certain obligations on a visa holder regarding the provision of correct information and gives the Minister a discretion to cancel a visa where incorrect information has been provided. In considering whether to cancel a visa for failure to meet these obligations, the Minister is required to have regard to prescribed circumstances. These circumstances are set out in this regulation.

Regulation 2.42 - Notice of decision to cancel visa under s. 109

This regulation provides that if the Minister decides to cancel a visa under section 109 of the Act because incorrect information was provided, he or she must notify the former holder in writing that the visa has been cancelled. The notification must set out the ground for cancellation.

SUBDIVISION 2.9.2 - CANCELLATION GENERALLY

This Subdivision deals with cancellation on specified grounds. Section 116 of the Act lists the circumstances in which the Minister may, cancel a visa, and provides for prescribing circumstances in which such a visa cannot be cancelled and the circumstances in which it must be cancelled. The Act provides for two different procedures to be adopted in dealing with the particular case.

The standard procedure to be followed in a case where the Minister proposes to cancel a visa, is set out in sections 119 to 127 of the Act. This procedure covers such matters as notice to the visa holder of the proposed cancellation and the information to be given to the visa holder. This procedure may apply regardless of whether the visa holder is in or outside Australia. The regulations relevant to the standard cancellation procedure are regulations 2.44 and 2.45.

Sections 128 to 133 of the Act provide for an alternative procedure to be followed which allows cancellation of a visa without prior notice to the visa holder. This procedure can only be used if the visa holder is outside Australia, and is intended to be used where there is a risk that a visa holder may respond to the notice by travelling to Australia in the belief that it is then more difficult for the visa to be cancelled. The regulations relevant to this alternative procedure are regulations 2.46 to 2.49.

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

Subsection 116(1) of the Act provides a number of grounds for cancellation of a visa, including cancellation on prescribed grounds (refer paragraph 116(1)(g)). Subregulation (1) prescribes four circumstances in which the Minister may cancel a visa.

Subsection 116(2) of the Act provides that the Minister must not cancel a visa in prescribed circumstances. There are no circumstances prescribed.

Subsection 116(3) of the Act provides that if the Minister may cancel a visa under subsection (1), the Minister must cancel the visa in prescribed circumstances. Subregulation (2) prescribes the circumstance in which the Minister must cancel the visa on the grounds prescribed.

Regulation 2.44 - Invitation to comment - response

Subsection 121(2) of the Act provides that where a person is given an invitation to comment and a response is not to be given at an interview, the response must be given in a prescribed period. This regulation prescribes periods which vary depending on whether or not the visa holder is in Australia and, if not in Australia, where the cancellation is being considered (see subregulations (1) and (2)). Subsection 121(4) of the Act provides that the time in which to respond may be extended by a prescribed period. This regulation prescribes five working days as the period allowed for an extension of the prescribed period (see subregulation (3)).

Regulation 2.45 - Notification of decision (Act, s. 127)

When the Minister decides to cancel a visa, the visa holder is required to be notified in the prescribed way. This regulation provides that the prescribed way is in writing.

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

Where the Minister has cancelled a visa held by a person outside Australia without prior notice to the visa holder, the former holder must be invited to show within a prescribed time that the ground for cancellation does not exist or that there is a reason why the visa should not have been cancelled. This regulation prescribes the periods within which the former visa holder must

respond. If the former visa holder is outside Australia when given the notice of cancellation, he or she has 28 days to respond (refer paragraph (a)). If the former visa holder travels to Australia after cancellation of the visa and is given the notice of cancellation on arrival, if he or she wishes the cancellation to be reconsidered while the former visa holder is in Australia he or she has five minutes to respond (refer subparagraph (b)(i)). However, if the former visa holder departs Australia as soon as possible after being given the notice of cancellation, he or she has 28 days to respond (refer subparagraph (b)(ii)).

Regulation 2.47 - Notice of cancellation (Act, s. 129)

Where a visa is cancelled without prior notice to the visa holder, notice of the cancellation is to be given in the prescribed way. This regulation provides that the prescribed way is in writing.

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

If, after considering any response to a notice of cancellation referred to in regulations 2.46 and 2.47, the Minister is not satisfied that there was a ground for cancellation or is satisfied that there is another reason why the cancellation should be revoked, the Minister must revoke the cancellation. The Minister is not, however, permitted to revoke the cancellation where there is a prescribed circumstance that prevents revocation. This regulation provides that the prescribed circumstances preventing revocation of cancellation are the same circumstances as the prescribed circumstances that require cancellation to occur under subsection 116(3) of the Act (refer subregulation 2.43(2) above).

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

When the Minister decides whether or not to revoke the cancellation of a visa, the visa holder or former visa holder is to be notified of the decision in the prescribed way. This regulation provides that the prescribed way is in writing.

PART 3 - IMMIGRATION CLEARANCE AND COLLECTION OF INFORMATION

DIVISION 3.1 - INFORMATION TO BE GIVEN BY ARRIVING PERSONS

Regulation 3.01 - Provision of information (general requirement)

This regulation provides that persons arriving or departing Australia, other than those persons exempted by operation of this regulation from the obligation to do so, must complete passenger cards in relation to themselves and any other person in their care in accordance with directions on the card. This regulation further provides that an officer may require those persons to provide further information regarding specified matters.

Limited classes of persons are exempt from the obligation to complete a passenger card. These classes are referred to in paragraphs (2)(c) and (d). There is no general exemption for Australian citizens and Australian permanent residents. Requiring that Australian citizens and Australian permanent residents complete passenger cards is necessary to facilitate the overall control of Australia's borders and entry into Australia by non-citizens.

Regulation 3.02 - Passenger card

This regulation specifies the general format of the questions that must be included in a passenger card. It does not, however, prescribe the precise words or order in which those questions must be asked or numbered. This regulation further provides that the card may include instructions for completing it.

Regulation 3.03 - Evidence of identity of arriving persons etc. (Act, s. 166)

Section 166 of the Act imposes a general requirement on persons entering Australia to show a clearance officer certain documentation and to provide a clearance officer with certain information. This obligation applies, subject to certain exceptions, to all persons entering Australia including Australian citizens. For information regarding exceptions to this general obligation see sections 167, 168 and 169 of the Act and regulations 3.05 and 3.06.

This regulation provides that the information that is required to be provided is that set out on the passenger card and imposes the obligation to provide a completed passenger card and to show specified evidence of identity and nationality. The particular documentation required to be provided depends on the status of the person entering Australia.

Reference is made in the regulation to Part 1 of Schedule 9. This Part sets out the obligation that is imposed on non-citizens who are taken to hold a special purpose visa to show specified evidence of identity and, where indicated, to provide a completed passenger card to a clearance officer.

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

This regulation applies to a person who enters Australia otherwise than at a port. It prescribes the places at, and times by which, the person must provide the completed passenger card and other necessary documentary evidence to a clearance officer. The obligation to provide information and documentation must be fulfilled within two working days after the person has entered Australia.

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

Allowed inhabitants of the Protected Zone who enter a protected area in connection with the performance of traditional activities (refer subsections 168(1) and (2) of the Act) are given an exemption from the general obligation to provide information and documentation to a clearance officer under section 166 of the Act. When such a person leaves the protected area and remains in the migration zone he or she becomes subject to the obligation to provide a completed passenger card and necessary documentary evidence to a clearance officer. This regulation prescribes the places and times at which this must be done. The time allowed is five working days.

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

Subsection 168(3) of the Act provides that persons in a prescribed class are not required to comply with section 166. This regulation prescribes that certain special purpose visa holders are not required to provide completed passenger cards and necessary documentary evidence to a clearance officer. The classes of persons are set out in Part 2 of Schedule 9.

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

Section 80 of the Act provides that certain persons who leave Australia for a short time (the prescribed period) and do not go to a foreign country other than to transit, are taken not to leave Australia. Section 169 of the Act provides that such a person is not, on re-entering Australia, required to comply with the obligation to provide information and documentation to a clearance officer but may be directed to do so. This regulation provides that the prescribed period for the purpose of section 80 of the Act is 30 days.

Regulation 3.08 - Offence: failure to complete a passenger card

This regulation provides that it is an offence for a person to fail to comply with the requirement to complete a passenger card. The penalty is 10 penalty units.

Regulation 3.09 - Evidence of identity - domestic travel on overseas vessels

This regulation provides that a person who is travelling, or who appears to be travelling, on a domestic sector of an international flight or voyage by sea, may be required to produce evidence of identity to a clearance officer. It further specifies the kind of documents that are acceptable for that purpose. The terms 'boarding pass', 'officer' and 'overseas vessel' are defined for the purpose of the regulation.

Regulation 3.10 - Use of information

This regulation authorises the use of information collected from passenger cards or, passports, or contained in notified data bases (or both) which is concerned with specified matters. Where it is used for non-departmental purposes the prior approval of the Minister is required. Such approval may be for use of the information on a single or on a number of occasions (refer subregulations (1) and (2)).

Subregulation (3) provides for specified information (see subregulation (4)) to be provided to immigration authorities of other countries in specified circumstances. Information may only be provided to immigration authorities of another country where the Commonwealth has entered into an agreement with that country in relation to the provision of information concerning specified matters. Subregulation (5) provides for the Minister to publish notice of the Commonwealth entering into such an agreement in the Gazette. The publication of the Gazette notice is a precondition to the provision of the information pursuant to the agreement.

Regulation 3.11 - Production of deportee or removee

This regulation provides that where a deportee or removee is on a vessel, the master may be required to produce that person to an officer before the vessel departs Australia. The regulation also provides that the master must not, without reasonable excuse, fail to comply with the request.

Regulation 3.12 - Offences by master of vessel

This regulation makes it an offence for the master of a vessel to refuse or neglect to afford all reasonable facilities to an officer for the performance of his or her duties. It also makes it an offence to deliver to an officer a list or a statement that is incorrect in a material particular.

DIVISION 3.2 INFORMATION ABOUT PASSENGERS AND CREW ON OVERSEAS VESSELS

Regulation 3.13 Interpretation

This regulation defines the terms 'civilian vessel' and 'master' for the purposes of this Division.

Regulation 3.14 - Information about overseas passengers - inbound civilian vessel

This regulation specifies the information which the master of a civilian vessel arriving at a port in Australia carrying overseas passengers may be required to provide in respect of passengers on the vessel (refer subregulations (1) to (4)). The regulation also imposes an obligation to provide up to six copies of a document containing particulars requested (refer subregulation (5)).

Regulation 3.15 - Medical certificate

This regulation provides that where the last port entered by the vessel was outside Australia, the medical officer of the vessel (or the master if there is no medical officer) must provide certification regarding prescribed matters relating to the health of the passengers on board. Where there is no medical officer, the master of the vessel is only required to provide the information to the best of his or her knowledge and belief. Where an officer has required copies of documents to be provided under regulation 3.14 the same number of copies are required under this regulation.

Regulation 3.16 - Information about overseas passengers - outbound civilian vessel

This regulation specifies information which the master of a civilian vessel leaving a port in Australia for overseas is to provide in respect of the overseas passengers on the vessel. The regulation also provides that up to six copies of documents containing information requested are required to be provided on request.

Regulation 3.17 - Information about crew

This regulation specifies information which the master of a civilian vessel arriving at a port in Australia is required to provide and also may be requested to provide in respect of the crew at any port of call.

PART 4 - REVIEW OF DECISIONS

DIVISION 4.1 - REVIEW OF DECISIONS OTHER THAN DECISIONS RELATING TO REFUGEE STATUS

Regulation 4.01 - Interpretation

This regulation provides that expressions used in this Part have the same meanings as in Part 5 of the Act except for the terms 'nominated' and 'sponsored'.

Regulation 4.02 - Application for internal review

Subregulations (1) and (2), respectively, prescribe, for the purposes of paragraph 339(1)(b) of the Act, the place at which, and the period within which, an application for internal review must be given to the Secretary. Different periods apply in respect of different kinds of internally reviewable decisions. Subregulation (3) prescribes the matters that an application for internal review must set out.

Regulation 4.03 - Combined application for internal review

This regulation sets out the circumstances in which a combined application for internal review may be made.

Regulation 4.04 - Internal review - prescribed fee and waiver

This regulation prescribes a fee of \$200 for internal review (subregulation (1)) and further provides that only one fee is payable in respect of a combined application (subregulation (2)). Subregulation (3) specifies the circumstances in which the Secretary may determine that the fee should not be paid.

Regulation 4.05 - Refund of fee for internal review

This regulation sets out the circumstances in which a fee paid in respect of an application for internal review is to be refunded.

Regulation 4.06 - Review officer's power to give directions

Section 341 of the Act provides that where a decision relates to a prescribed matter a review officer may remit the matter for reconsideration in accordance with such directions as are permitted by the regulations. This regulation prescribes decisions on applications for a visa or entry permit made on or after 19 December 1989. It also provides that a permissible direction is that the applicant must be taken to have satisfied a specific criterion for the visa or entry permit.

Regulation 4.07 - Notification of decision of review officer

This regulation prescribes the way in which a review officer must notify an applicant of a review decision (subregulation (1)) and the information that the notice must set out (subregulation (2)). It further provides that the review officer must notify the applicant not later than 10 days after making the decision (subregulation (3)).

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

This regulation is similar in effect to regulation 2.15 which applies to primary decisions. This regulation sets out the periods prescribed in relation to the provision of additional information or comments and the attendance at interviews. It also sets out the further prescribed periods for responding to requests for information or comments. The periods run from when the applicant is given the invitation to provide information, comment, or attend an interview. The further prescribed period for providing information or comment extends this initial period for 7 days in the case of a review application regarding a decision made in Australia and 28 days if made outside Australia. This regulation must be read in conjunction with regulation 5.03 which deals with the time when an invitation that is sent by post is taken to have been received.

Regulation 4.09 - IRT-reviewable decisions

This regulation prescribes the decisions that are IRT-reviewable decisions for the purposes of paragraphs 338(2)(d) and 346(1)(d) of the Act.

Regulation 4.10 - Time for lodgement of application for review by the Tribunal

This regulation specifies the time within which an application for review must be given to the Immigration Review Tribunal. The time allowed varies according to whether or not the applicant is in immigration detention and also depends on the nature of the decision. Except where stated, the period runs from the time the person is notified of the IRT-reviewable decision (subregulations (1) and (2)). This regulation must be read in conjunction with regulation 5.03 which deals with when an applicant is taken to have been notified of an IRT reviewable decision.

This regulation also provides when a notice is taken to be given to the Tribunal (subregulations (3), (5) and (6)) and prescribes the matters that the application must set out (subregulation (4)).

Regulation 4.11 - Giving the application to the Tribunal

This regulation prescribes the ways in which an application must be given to the Tribunal.

Regulation 4.12 - Combined applications for review by the Tribunal

This regulation sets out the circumstances in which a combined application for review by the Tribunal may be made.

Regulation 4.13 - Review by the Tribunal - prescribed fee and waive

This regulation prescribes a fee of \$300 for review by the Tribunal (subregulation (1)). It further provides that, in certain circumstances, no fee is payable (subregulation (2)), and that in respect of a combined application only one fee is payable (subregulation (3)). Subregulation (4) sets out the circumstances in which the Registrar or the Deputy Registrar may determine that the fee should not be paid.

Regulation 4.14 - Refund of fee for review by Tribunal

This regulation sets out the circumstances in which a fee paid in respect of an application for review by the Tribunal is to be refunded.

Regulation 4.15 - Tribunal's power to give direction

This regulation has the same effect in respect of the Tribunal's power to give directions as regulation 4.06 of these Regulations has in respect of a review officer's power to give directions.

Regulation 4.16 - Statement about decision under review

Section 352 of the Act requires that the Secretary provide the Registrar of the Tribunal with the prescribed number of copies of a statement about the decision under review. This regulation provides that the prescribed number of copies is one.

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

This regulation provides that a person who is required to provide other evidence to the Tribunal in connection with a review of a refusal to grant a bridging visa, or a decision to cancel a bridging visa held by a non-citizen who is in immigration detention as a result of a decision to refuse to grant, is allowed two working days to provide such evidence.

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

This regulation applies to a review of decisions other than the decisions referred to in regulation 4.17 of these Regulations and prescribes the periods allowed for compliance with the Tribunal's request to provide further evidence.

Regulation 4.19 - Summons to attend before the Tribunal

This regulation prescribes the ways in which a summons to appear before the Tribunal to give evidence or to produce documents may be served on a person.

Regulation 4.20 - Fees for persons giving evidence

This regulation provides that a person summoned to give evidence before the Tribunal is to be paid such fees and allowances as determined by the presiding member of the Tribunal according to the scale in Schedule 2 to the Administrative Appeals Tribunal Regulations.

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

This regulation prescribes the number of Senior Members and of members of the Tribunal for the purposes of paragraphs 394(b) and (c) of the Act respectively.

Regulation 4.22 - Prescribed allowances - section 398 of the Act

This regulation prescribes the Principal Member's allowance for the purposes of section 398 of the Act.

Regulation 4.23 - Expedited review (close family visit visas)

Subregulation (1) provides that, in specified circumstances, an application for review of a decision to refuse a Short Stay (Visitor) (Class TR) visa or a Long Stay (Visitor) (Class TN) visa must be reviewed immediately by a review officer on receipt of an application for internal review. Subregulation (2) provides that a decision of a review officer must be reviewed immediately by the Tribunal on receipt of an application for review of the decision.

Subregulation (3) provides that a review authority must give notice of its decision to the applicant as soon as practicable.

Regulation 4.24 - Expedited review (decision to cancel visa)

This regulation provides that a decision to cancel a visa (other than a decision to cancel a bridging visa held by a non-citizen who is in immigration detention because of that cancellation) must be reviewed immediately by the Tribunal on receipt of an application for review of the decision (subregulation (1)), and the Tribunal must give notice of its decision to the applicant as soon as practicable (subregulation (2)).

Regulation 4.25 - Expedited review (certain applicants in immigration detention)

This regulation provides that a decision to refuse a substantive visa to an applicant who is in immigration detention when the review application is made must be reviewed immediately by the Tribunal on receipt of the application (subregulation (1)), and the Tribunal must give notice of its decision to the applicant as soon as practicable (subregulation (2)).

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

This regulation prescribes seven working days as the period the Tribunal is allowed to make a decision on review of a decision to refuse to grant a bridging visa, or a decision to cancel a bridging visa held by a non-citizen who is in immigration detention because of that refusal or cancellation.

Regulation 4.27 - Delegation by Secretary

This regulation provides that the Secretary may delegate his or her powers under this Division to a review officer.

DIVISION 4.2 - REFUGEE REVIEW TRIBUNAL AND DECISIONS RELATING TO PROTECTION VISAS

SUBDIVISION 4.2.1 - INTRODUCTORY

Regulation 4.28 - Interpretation

This regulation provides that expressions used in this Division and in Part 7 of the Act have the same meanings.

SUBDIVISION 4.2.2 - TRIBUNAL MEMBERS

Regulation 4.29 - Membership

This regulation provides that the prescribed number of members other than the Principal Member is 100.

Regulation 4.30 - Remuneration and allowances

This regulation prescribes the remuneration and allowances for the first full-time member (other than the Principal Member) to be appointed.

SUBDIVISION 4.2.3 - GENERAL

Regulation 4.31 - Applications

This regulation sets out the periods within which an application for review of an RRT reviewable decision must be given to the Tribunal (subregulations (1) and (2)). The regulation also provides where and in what manner an application must be lodged (subregulation (3)), and that an application posted to, or transmitted by electronic facsimile to, a registry of the Tribunal is not to be taken to have been lodged until received at a registry of the Tribunal (subregulation (4)).

Regulation 4.32 - Notice of lodgment of application - person in immigration detention

This regulation provides that a person in immigration detention must give a notice of lodgment of an application for review of an RRT-reviewable decision to a detention review officer (subregulations (1) and (2)). Subregulation (3) provides that the notice must be given to the officer on the day on which the application is lodged, and that it must state a number of specified matters. Failure to comply with this regulation does not affect the validity of an application for review (subregulation (4)).

Regulation 4.33 - Powers of Tribunal

Section 415 of the Act provides that, if a decision relates to a prescribed matter, the Tribunal may remit it with directions permitted by the regulations. This regulation provides that, for the purposes of paragraph 415(2)(c) of the Act, an application for a Protection (Class AZ) visa is prescribed (subregulation (1)). It further provides that 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.

Regulation 4.34 - Statement about decision under review - number of copies

Section 418 of the Act requires the Secretary to provide the Tribunal with a prescribed number of copies of a statement about the decision under review. This regulation provides that the prescribed number of copies is one.

Regulation 4.35 - Time limit for providing evidence

Where a person is required by the Tribunal to give evidence (in circumstances where review 'on the papers' is not available), the evidence must be given within a prescribed period. This regulation sets out the prescribed periods which vary depending on how the evidence is to be provided. It also requires the Tribunal to specify how the evidence is to be provided.

Regulation 4.36 - Duties, powers and functions of officers of Tribunal

This regulation sets out the duties, powers and functions of each officer of the Tribunal.

Regulation 4.37 - Fees and allowances for persons giving, evidence

This regulation provides that the fees and allowances payable to a person summoned to appear before the Tribunal are those determined by the Principal Member in accordance with the scale in Schedule 2 of the Administrative Appeals Tribunal Regulations.

DIVISION 4.3 - SERVICE OF DOCUMENTS

Regulation 4.38 - Interpretation

This regulation makes it clear that, in this Division, 'Tribunal' means the Immigration Review Tribunal or the Refugee Review Tribunal.

Regulation 4.39 - Address for service

This regulation defines the phrase 'lodge an address for service' (subregulation (1)), and provides that an applicant may lodge an address for service in a review and, at any time after doing so, lodge a new address for service in that review (subregulation (2)). Subregulation (3) sets out the consequences of, and the applicant's obligations in relation to, the lodging of a new address for service, while subregulation (4) states that an address for service may be, but need not be, the applicant's residential address.

Regulation 4.40 - Notice of decision of Tribunal

Subregulation (1) sets out the ways in which 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. Subregulations (2) and (3), respectively, make special provision in relation to the provision of facsimile or certified copies and in relation to any postage required.

Regulation 4.41 - Service of documents

Subregulation (1) sets out the ways in which, if no other provision as to the manner of giving or serving the document is made by the Act or these Regulations, a document may be given or served. Subregulations (2) and (3), respectively, make special provision in relation to the provision of facsimile or certified copies and in relation to any postage required. Subregulation (4) provides that a document posted is taken to be received at a time worked out as set out in regulation 5.01.

PART 5 - MISCELLANEOUS

DIVISION 5.1 -SERVICE OF DOCUMENTS

Regulation 5.01 - Interpretation

This regulation defines the term 'document' for the purpose of this Division.

Regulation 5.02 - Service on a person in immigration detention

This regulation prescribes the form of a notice to be served on a person in immigration detention and the manner in which it is to be served. It further provides the time when the person is taken to have received the notice by reference to regulation 5.03 (below).

Regulation 5.03 - Time of receipt of notice etc. that is sent

This regulation sets out when a notice that is sent by the Minister or a Tribunal is taken to have been received. If sent within Australia to an address in Australia, the notice is taken to be received 7 days after the date of the notice unless the notice was not in fact sent in that period. Notices sent to an address outside Australia, and notices sent from outside Australia, will be taken to have been received 21 days after the date of the notice unless not actually sent within 7 days of date of notice.

The use of a set period (eg 7 days from the date of the notice) ensures that applicants can be told exactly when their review rights expire. In the past, it is possible that some applicants may have inadvertently missed out on review rights because they misunderstood notification provisions that required an applicant to calculate the relevant period from the date of postage. Regulation 5.03 will ensure that the Minister, clients, representatives, and review bodies, will know exactly when review rights expire.

In addition, applicants in Australia will hold bridging visas providing them with lawful status until they are granted a substantive visa or until 28 days after they are notified that their application has been refused. If review rights are exercised, the bridging visa will continue to provide lawful status until 28 days after notification of the review decision. The specific notification period enables decision makers to tell applicants exactly when their bridging visa will cease, thereby ensuring that non-citizens do not inadvertently become unlawful and liable for detention.

To ensure that the Department holds a verifiable record of each notice sent, administrative procedures will require that all notices of visa refusals and requests for comment on adverse

information provided by third parties are to be sent by certified mail or the equivalent. The regulation makes it clear that if the notice is not sent within 7 days, notification will not have taken place and will need to be effected. Any consequences in relation to review rights and the bridging visa period will rest on notification in accordance with these provisions.

DIVISION 5.2 - PROCEDURE OF COMMISSIONERS AND PRESCRIBED AUTHORITIES

Regulation 5.04 - Power of Commissioner to send for witnesses and documents

This regulation enables a Commissioner appointed under subsection 203(4) of the Act (for the purpose of considering and reporting on the case for deportation of a person) to require a person by summons to attend at a specified time and place, to give evidence and to produce specified documentation.

Regulation 5.05 - Duty of witness to continue in attendance

This regulation provides that a person summoned by the Commissioner to attend as a witness must attend as required by the Commissioner. The penalty for failure to do so is 10 penalty units.

Regulation 5.06 - Arrest of witness failing to appear

This regulation provides that the Commissioner may, in specified circumstances, issue a warrant for the arrest of a person summoned to appear who fails to do so. The warrant is to authorise the person's arrest and bringing before the Commissioner, and the detention of the person.

Regulation 5.07 - Witnesses' fees

This regulation provides that a person summoned to attend before a Commissioner may be paid such fees and travelling expenses as the Commissioner sees fit, subject to the scale in Schedule 2 of the Public Works Committee Regulations.

Regulation 5.08 - Power to examine on oath or affirmation

This regulation enables a Commissioner to administer an oath to a person attending as a witness, or to require the person to make an affirmation.

Regulation 5.09 - Offences by witnesses

This regulation makes it an offence for a person to fail without reasonable excuse to attend when summoned, to refuse to take an oath or make an affirmation when required, and to fail without reasonable excuse to produce specified documentation when required. The prescribed penalty is 10 penalty units.

Regulation 5.10 - Statements of person not admissible in evidence against the person

This regulation provides that statements or disclosures by a person to a Commissioner are not admissible as evidence in any criminal or civil proceedings against the person, except in proceedings in respect of a false answer or relating to the deportation of the person.

Regulation 5.11 - Representation by counsel etc.

This regulation provides that in an investigation by a Commissioner, a person summoned to appear and the Minister may each be represented by a barrister or solicitor or an agent approved

by the Commissioner. The representing barrister, solicitor or agent may examine or cross-examine witnesses and address the Commissioner.

Regulation 5.12 - Offences in relation to Commissioners

This regulation makes specified types of behaviour towards a Commissioner an offence. The prescribed penalty is 10 penalty units.

Regulation 5.13 - Protection of Commissioners, barristers and witnesses

This regulation extends to Commissioners the same protection and immunity as a Justice of the High Court. It also extends to barristers, solicitors and approved agents, the same protection and immunity as afforded to barristers appearing before the High Court, and to witnesses the same protection as witnesses in proceedings before the High Court.

Regulation 5.14 - Procedure of prescribed authorities

This regulation provides that this Part applies to prescribed authorities under section 255 of the Act and their proceedings under section 253 of the Act, in the same way as it applies to a Commissioner.

DIVISION 5.3 GENERAL

Regulation 5.15 Behaviour concern non-citizen

Section 5 of the Act defines the term 'behaviour concern non-citizen'. One of the bases on which a person is a behaviour concern non-citizen is if he or she has been excluded from another country in prescribed circumstances. This regulation prescribes those circumstances. The term 'behaviour concern non-citizen' is relevant to New Zealand citizens. A New Zealand citizen who becomes a 'behaviour concern non-citizen' is no longer eligible for a special category visa: see subsection 32(2) of the Act.

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

Section 32 of the Act provides that a New Zealand citizen is eligible for the grant of a special category visa if he or she is not a 'health concern non-citizen', i.e. if he or she is not suffering from a prescribed disease or a prescribed physical or mental condition: see subsection 5(1) of the Act.

This regulation prescribes the disease for the purposes of the definition of 'health concern non-citizen'. No physical or mental condition is prescribed.

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

This regulation prescribes the range of evidence that will be accepted as evidence of an applicant having functional English for the purpose of paragraph 5(2)(b) of the Act,

Evidence of functional English is relevant to the grant of a visa in circumstances where the applicant would be liable to pay the English Education Charge (refer paragraph 64(3)(c) of the Act).

Regulation 5.18 - Prescribed laws relating to control of fishing (Act, s262(b))

This regulation prescribes laws for the purposes of paragraph 262(b) of the Act. This paragraph renders a noncitizen liable to repay costs to the Commonwealth if a prescribed law is broken. The prescribed laws relate to the control of fishing.

Regulation 5.19 - Approved appointments (employment nomination)

This regulation provides that a proposed appointment is an approved appointment if it is the subject of an employer nomination that meets the requirements of this regulation.

DIVISION 5.4 - PRESCRIBED PENALTIES

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

This regulation prescribes the penalties which a person alleged to have contravened sections 137, 229 and 230 of the Act may pay to the Commonwealth as an alternative to prosecution.

DIVISION 5.5 - INFRINGEMENT NOTICES

Regulation 5.21 - Interpretation

This regulation provides definitions of the terms 'authorised officer', 'business visa', 'infringement notice', 'offence' and 'prescribed penalty' for the purpose of the Division.

Regulation 5.22 - When can an infringement notice be served

This regulation prescribes the circumstances in which an infringement notice may be served.

Regulation 5.23 - What must an infringement notice contain?

This regulation prescribes those matters that an infringement notice must contain. This regulation also provides that an infringement notice may contain any other particulars considered necessary.

Regulation 5.24 - Can the time for payment be extended?

This regulation provides that the period for payment of the penalty prescribed in an infringement notice may be extended.

Regulation 5.25 - What happens if the prescribed penalty is paid?

This regulation provides that when an infringement notice is withdrawn or the person specified in the notice pays the prescribed penalty within the prescribed period, any liability of the person is discharged. In these circumstances no further proceedings may be taken in respect of the alleged offence and the person is not taken to have been convicted.

Regulation 5.26 - Can an infringement notice be withdrawn?

This regulation prescribes the circumstances in which an infringement notice can be withdrawn.

Regulation 5.27 - Refund of prescribed penalty if notice withdrawn

This regulation provides that if a person has paid the prescribed penalty according to the notice and the notice is subsequently withdrawn, the person must receive a refund of an amount equal to the amount so paid.

Regulation 5.28 - Evidence

This regulation provides that at the hearing of a prosecution for an offence specified in an infringement notice, a certificate signed by an authorised officer as to specified matters is evidence of those matters.

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

This regulation provides that more than one infringement notice may be served on a person for the same offence but that only one penalty is incurred.

Regulation 5.30 - What if payment is made by cheque?

This regulation provides that payment by cheque of an amount specified in an infringement notice, is not taken to have been made unless the cheque is honoured upon presentation.

Regulation 5.31 - Infringement notice not compulsory

This regulation provides that nothing in this Division requires the service of an infringement notice, or affects the liability of the person to be prosecuted, or limits the fine that may be imposed, if the person is convicted.

DIVISION 5.6 - MISCELLANEOUS

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

This regulation prescribes the form for search warrants issued under subsections 223(14) and 251(4) of the Act. These are forms 1 and 2 respectively, and are set out in Schedule 10.

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

This regulation prescribes the form for a document for the purposes of paragraph 274(3)(a) of the Act. The form prescribed is form 3 that is set out in Schedule 10.

Regulation 5.34 - Offences

This regulation provides that it is an offence for a person to contravene or fail to comply with any provision of these Regulations that applies to that person. The effect of the regulation is to change the existing penalty from \$100 and 3 months imprisonment to 10 penalty units with no alternative period of imprisonment.

Regulation 5.35 - Medical treatment of persons in detention under the Act

This regulation prescribes the circumstances in which the Secretary of the Department may authorise the giving of medical treatment to a person in immigration detention. Further, the regulation provides definitions of 'detainee' and 'medical treatment' for the purposes of the regulation.

DIVISION 5.7- FEES

Regulation 5.36 - Payment of fees in foreign currencies

This regulation provides that a payment in a foreign country of a fee payable under the Regulations may be made by payment of the amount in Australian dollars or by payment of a corresponding amount in foreign currency, as specified in the Gazette. If the currency is not specified in the Gazette, the corresponding amount of foreign currency must be ascertained in accordance with the formula provided.

Regulation 5.37 - Employer nomination fee

This regulation prescribes the fee payable in respect of an employer nomination as \$260.

Regulation 5.38 - Sponsorship fee

This regulation prescribes the circumstances in which a fee is payable in respect of a sponsorship.

Regulation 5.39 - Refund of fees

This regulation specifies the circumstances in which a fee that has already been paid can be refunded under the regulations.

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

This regulation prescribes the fee for assessment of a person's work qualifications and experience at \$100.

SCHEDULE 1

This schedule is divided into three parts: permanent visas, temporary visas and bridging visas. In respect of each part the classes of visa are set out in alphabetical order. Each class of visa has a two letter unique alphabetical code. In respect of each class the following information is provided: the number of the relevant application form, the applicable fee (if any), requirements regarding where the application must be made, requirements (if any) regarding where the applicant must be to make an application, and a comprehensive list of the subclasses that constitute the class.

SCHEDULE 2

This schedule sets out in respect of each subclass the criteria that must be satisfied for grant of a visa, the circumstances applicable to grant, information regarding when the visa is in effect, applicable conditions and the way evidence of the decision is given. Each subclass has a unique three digit code. The various subclasses are listed in numerical order.

The criteria applicable include criteria that are referred to by four digit codes commencing with a 3, 4 or 5 eg. 4001, 5001. These are references to criteria listed in Schedules 3, 4 or 5. The conditions applicable are generally listed with a four digit code commencing with the number 8. This is a reference to the conditions set out in Schedule 8.

SCHEDULE 3

This schedule lists additional criteria applicable to unlawful non-citizens and certain bridging visa holders. The criteria are listed by a unique four digit code beginning with the number three.

SCHEDULE 4

This schedule lists the public interest criteria. The criteria are listed by a unique four digit code beginning with the number four.

SCHEDULES

This schedule lists special return criteria that are applicable to non-citizens who have previously departed Australia. The criteria are listed by a unique four digit code beginning with the number five.

SCHEDULE 6

This schedule lists the qualifications and relevant points that are used in the General Points Test.

SCHEDULE 7

This schedule lists the attributes and relevant points that are used in the business skills points test.

SCHEDULE 8

This schedule lists the applicable visa conditions. The conditions are listed by a unique four digit code beginning with the number 8.

SCHEDULE 9

This schedule is relevant to the obligation to provide information and documentation when entering Australia: refer Part 3 of the Regulations. Part 1 of the Schedule lists persons to whom special arrangements regarding the provision of evidence of identity and passenger cards apply.

Part 2 of the Schedule lists persons who are not required to provide evidence of identity and passenger cards. Part 3 of the Schedule sets out the countries whose citizens are, when transit passengers, not required to provide evidence of identity and passenger cards. For a definition of 'transit passenger' see regulation 1.03.

SCHEDULE 10

This schedule sets out prescribed forms for the purposes of the regulations.