

# **Migration Regulations (Amendment) 1995 No. 117**

## **EXPLANATORY STATEMENT**

### **STATUTORY RULES 1995 No. 117**

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

*Migration Act 1958*

Migration Regulations (Amendment)

Section 504 of the *Migration Act 1958* (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. In addition, subsection 31(1) of the Act provides that the regulations are to prescribe classes of visas, and subsection 31(3) of the Act provides that the regulations may prescribe criteria for visas of a specified class.

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; and
- 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.

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

- 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;
- 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;
- 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(4) of the Act provides that the regulations may 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 purposes of the grant of special purpose visas;
- 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;

- section 45 of the Act provides for the regulations to make provision in relation to applications for visas;
- 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;
- 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;
- 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 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; and
- 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.

The purpose of the Regulations is to:

- insert a new visa Class - Interdependency (Migrant) (Class BI) for an application for permanent visa made overseas;
- insert a definition of interdependent relationship;
- extend the forms of evidence of domestic violence for certain visa applications;
- extend the visa classes to which the domestic violence provisions apply;
- give effect to the bilateral working holiday arrangements between Australia and the Republic of Korea;
- include recently introduced income support payments and the youth training allowance in the assurance of support scheme;
- increase the number of points deducted from the total number of points otherwise obtained by medical practitioners (including medical specialists) under the General Points Test from 10 points to 25 points;
- include spouses and dependent children of crew members of non-military ships as a class of persons taken to be granted special purpose visas;
- enable streamlined visa application procedures for short stay business visitors;
- allow persons holding passports (other than passports that purport to be official or diplomatic passports) issued by the authorities of Taiwan to transit Australia without a transit visa; and

- make a number of clarifying and technical amendments which do not affect the substantive operation of the Migration Regulations. Details of the Regulations are set out in the Attachment. The Regulations commence on 3 July 1995.

## ATTACHMENT

### Regulation 1 - Commencement

This regulation provides for these Regulations to commence on 3 July 1995.

### Regulation 2 - Amendment

This regulation provides for the Migration Regulations to be amended as set out in these Regulations.

### Regulation 3 Regulation 1.03 (Interpretation)

Subregulation 3.1 inserts a new definition of "interdependent relationship" which has the meaning given by regulation 1.09A. Regulation 1.09A is inserted into the Migration Regulations by Regulation 4 of these Regulations.

Subregulation 3.2 omits paragraph (a) of the definition of "relative" in regulation 1.03 and substitutes a new paragraph (a) which omits Subclass 305 (Interdependency (Temporary)), Subclass 826 (Extended Eligibility (Interdependency)) and Subclass 814 (Interdependency (Permanent)) visas from the definition. Subclass 305 will be repealed by these Regulations, and amendments to the criteria for Subclasses 814 and 826 remove the need for a definition of "relative" in these subclasses.

Subregulation 3.3 amends the definition of "transit passenger" by omitting paragraph (c). This amendment is a consequence of the amendment made to paragraph 2.40(1)(n) of the Migration Regulations by regulation 10 of these Regulations.

### Regulation 4 - New regulation 1.09A

This regulation inserts a new regulation 1.09A (Interdependent relationship) into the Migration Regulations.

This regulation defines an interdependent relationship as a relationship that is genuine and continuing between two persons:

- who are not within a prohibited degree of relationship;
- who have both turned 18;
- who have a mutual commitment to a shared life to the exclusion of any spouse relationships or any other interdependent relationships; and
- who live together, or do not live separately and apart on a permanent basis.

The regulation outlines the circumstances which the Minister must have regard to in forming an opinion that an interdependent relationship exists.

The characteristics of the interdependent relationship were contained, prior to this amendment, in relevant individual subclass criteria.

### Regulation 5 - New Division 1.5

This regulation inserts new Division 1.5 - Special provisions relating to domestic violence into the Migration Regulations.

#### Regulation 6 - New Regulation 2.07AA

This regulation inserts a new regulation 2.07AA (Application for certain visitor visas) into the Migration Regulations as part of the new nominated visitor scheme introduced by these Regulations. The scheme enables streamlined visa application procedures for short stay business visitors nominated by a State/Territory Government or a body approved by the Minister. New regulation 2.07AA provides that despite anything in regulation 2.07 of the Migration Regulations, an application for a Short Stay (Visitor) (Class TR) visa may be made on behalf of the applicant by an approved nominator, for the purposes of clause 672.111 of Part 672 of Schedule 2 of the Migration Regulations, if and only if the applicant is a person who seeks to visit Australia for business purposes. Clause 672.111 is inserted in the Migration Regulations by subregulation 28.1 of these Regulations.

#### Regulation 7 - Regulation 2.17 (Ways of giving evidence of a visa)

Previously, subregulation 2.17(6) provided for replacement evidence of a visa grant to be given to a non-citizen if the current evidence had been lost or destroyed. This regulation omits subregulation 2.17(6) and substitutes new subregulations (6) and (7) which contain the same provisions as the old subregulation 2.17(6). In addition, the circumstances in which replacement evidence may be given are broadened (in new subregulation 2.17(6)) to include where the visa evidence, or the passport, has been damaged, defaced, stolen, destroyed, or otherwise cannot, for good reason, be presented for travel purposes, or where the passport has expired, has been cancelled or is no longer applicable to that person. This broader range of circumstances is consistent with that included in regulation 2.18 of the Migration Regulations which applies to reevidencing of resident return visas.

#### Regulation 8 - Regulation 2.26 (Prescribed qualifications and prescribed number of points)

This regulation amends paragraph 2.26(3)(c) of the Migration Regulations to provide for a deduction of 25 points, rather than 10, for Concessional Family and Independent applicants whose occupation is medical practitioner (including specialist medical practitioner). This amendment is in accordance with the Government's policy of limiting the number of overseastrained doctors entering the Australian medical workforce.

#### Regulation 9 - Regulation 2.38 (Liability of person giving assurance of support)

The *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994* and the *Student Assistance (Youth Training Allowance) Amendment Act 1994* changed or introduced four income support benefits:

- widow allowance under Part 2.8A of the *Social Security Act 1991*;
- partner allowance under Part 2.15A of the *Social Security Act 1991*;
- parenting allowance under Part 2.18 of the *Social Security Act 1991*;
- youth training allowance under Part 8 of the *Student and Youth Assistance Act 1973*.

These allowances are primarily an extension of existing benefits recoverable under the Assurance of Support Scheme.

This regulation amends subregulation 2.38(1) of the Migration Regulations to enable recovery of an amount equal to any amount paid under one of the above allowances if the subject of an assurance of support receives one of those allowances.

Regulation 10 - Regulation 2.40 (Persons having a prescribed status - special purpose visas (Act s.33 (2) (a)))

Regulation 2.40 of the Migration Regulations prescribes the classes of non-citizens who are, by operation of law, taken to have been granted special purpose visas. Subregulations 10.1 and 10.4 insert a new paragraph 2.40(1)(kaa) and new subregulations 2.40(8A) and 8(b) respectively to include the spouses and dependent children of members of the crew of non-military ships, so that they are also taken to have been granted special purpose visas.

Subregulation 10.2 omits paragraph 2.40(1)(n) and substitutes new paragraphs 2.40(1)(n) and (na) into the Migration Regulations. Paragraph (n) inserts the provisions of the omitted paragraph (n) and also refers to Part 3 of Schedule 9. This reference was previously in the interpretation of "transit passenger" in regulation 1.03 and has been moved to paragraph 2.40(1)(n) because of the necessity of including paragraph 2.40(1)(na). Paragraph 2.40(1)(na) provides that transit passengers who hold passports (other than passports that purport to be official or diplomatic passports) issued by the authorities of Taiwan, are taken to hold special purpose visas.

Subregulation 10.3 makes a consequential amendment to subregulation 2.40(4) to include reference to the new paragraph 2.40(1)(kaa) inserted by subregulation 10.1.

Subregulation 10.5 makes a consequential amendment to subregulation 2.40(11) of the Migration Regulations to include reference to the new paragraph 2.40(1)(na) inserted by subregulation 10.2.

Regulation 11 New Regulation 5.15A

This regulation inserts a new regulation 5.15A (Certain New Zealand citizens) into the Migration Regulations. The new regulation provides for the grant of a Special Category (Temporary) (Class TY) visa to a New Zealand citizen who is not a health concern non-citizen and who is a behaviour concern non-citizen only because of having been excluded from a country other than Australia in circumstances that, in the opinion of the Minister, do not warrant the exclusion of the person from Australia.

Regulation 12 - Regulation 5.17 (Prescribed evidence of English language proficiency (Act s.5 (2) (2)(b)))

Subregulations 12.1 and 12.2 omit paragraphs 5.17(a), (b), (c), (ca), (d), and (g) and subregulation 12.1 substitutes a new paragraph (a) which ensures consistency with the evidence required for the award of the language points under the General Points test in Part 3 of Schedule 6. This amendment will ensure that the same evidence is required for the establishment of functional English under both sets of provisions (and also under Part 3 of Schedule 7 which relates to the Business Skills Points Test).

Subregulation 12.3 omits references to paragraphs (a), (b), (c) or (d) in subregulation 5.17(j)(ii) and substitutes a reference to paragraph (a) as a consequence of the amendments made by subregulation 12.1 of these Regulations.

Regulation 13 - Regulation 5.40 (Fee for assessment of a person's work qualifications and

This regulation omits regulation 5.40 and substitutes a new regulation 5.40 in the Migration Regulations. This amendment retains the fee for assessment of a person's work qualifications and experience at \$100 if the assessment is conducted by the Department of Industrial Relations. It also sets a fee of \$120 if the assessment is conducted by the National Office of Overseas Skills Recognition (NOOSR).

## Regulation 14 - Schedule 1 (Classes of visas)

Subregulation 14.1 inserts a new item 1120A (Interdependency (Migrant) (Class BI)) into Schedule 1 of the Migration Regulations. Item 1120A provides for a new class of visa Interdependency (Migrant) (Class BI) - and prescribes the way an application must be made. An approved form 1035 must be completed, the application must be made outside Australia, and the applicant must be outside Australia. A fee of \$550 must be paid to make the application. As a result of a budgetary increase, \$550 will be the standard application fee for migration applications from 3 July 1995 (other fees are increased by regulation 47 of these Regulations). An application by a member of the family unit of a person who is an applicant may be made at the same time and place as, and combined with, that other person's application. The prescribed criteria for the grant of a visa of the new class is in Subclass 110 (Interdependency) inserted in Schedule 2 of the Migration Regulations by regulation 16 of these Regulations.

Subregulation 14.2 omits item 1213 - Interdependency (Temporary) (Class TND - as persons seeking to travel to and stay in Australia on interdependency grounds will now be able to apply for the new migrant visa class - Interdependency (Migrant) (Class BI).

Subregulation 14.3 omits Item 1218 - Short Stay (Visitor) (Class TR) - and substitutes a new Item 1218 with amendments to provide for the new nominated visitor scheme. The scheme provides for the nomination of certain short stay visitors by a State/Territory Government or a body approved by the Minister. Persons nominated under this scheme will not be required to complete an application as the nomination form will constitute the application.

The new item 1218 incorporates the old item 1218 with the addition of the following provisions for the nominated visitor scheme:

- form 1034 is the form to be used when an application is made through an approved nominator;
- a \$35 fee will apply to an application made by an approved nominator;
- the application is to be made in Australia by an approved nominator for the purposes of Part 672 of Schedule 2;
- in relation to nominated visitors, there will be no provision for combined applications;
- the person being nominated must be outside Australia.

The new item 1218 also has an increased fee, previously \$135, now \$140. This is a result of budget initiatives to increase fees by way of automatic fee indexation. Other fees are increased by regulation 47 of these Regulations.

The amendments made by this subregulation are related to the amendments made in regulation 28 of these Regulations to Schedule 2 Part 672 (Business Visitor (Short Stay)) of the Migration Regulations.

Subregulation 14.4 inserts paragraph (3)(e) into item 1305 of Schedule 1 of the Migration Regulations to require that where a Bridging E (Class WE) visa application is made at the same time and on the same form as an application for a substantive visa, the application for the substantive visa must be a valid application.

## Regulation 15 - Schedule 2, Part 050 (Bridging visa (General))

Subclause 050.213(1) requires the Minister to be satisfied that if a bridging visa is granted, the applicant will abide by the conditions (if any) imposed on it. Subclause 050.213(2) provides an

exception to this for an applicant who is not in immigration detention and who has applied for a substantive visa if the application has not been finally determined. While this exception enables expedited grant of a Bridging E visa, it also enables an applicant who has previously held a Bridging E visa and who has breached the conditions of that visa, to obtain a further Bridging E visa with the same conditions as the original visa. Consequently, subregulation 15.1 omits clause 050.213 and substitutes a new clause without the exception previously contained in subclause 050.213(2).

Subclauses 15.2 to 15.5 make a number of amendments to Part 050 with the intention of ensuring that, unless the applicant is already the holder of a Bridging E visa and does not wish to vary the conditions, the applicant is interviewed by an officer authorised by the Secretary.

#### Regulation 16 - Schedule 2, new Part 110

This regulation inserts a new Part 110 - Interdependency - into Schedule 2 of the Migration Regulations. The introduction of this subclass means that persons offshore who seek permanent residence in Australia on interdependency grounds will no longer be required to seek a temporary visa to travel to Australia and then face a two stage process to obtain permanent residence. Such persons will instead be able to apply for migrant entry directly from overseas.

#### Regulation 17 - Schedule 2, Part 211 (Burmese in Burma)

This regulation omits an inappropriate reference to criterion 5010 in clause 211.224 and paragraph 211.225(1)(b) of the Migration Regulations. Criterion 5010 sets out restrictions to apply to applicants who have previously been in Australia as subsidised students. It is considered that this criterion is not appropriate to applicants in this subclass.

#### Regulation 18 - Schedule 2, Part 214 (Cambodian)

This regulation omits an inappropriate reference to criterion 5010 in clause 214.226. Criterion 5010 sets out restrictions to apply to applicants who have previously been in Australia as subsidised students. It is considered that this criterion is not appropriate to applicants in this subclass.

#### Regulation 19 - Schedule 2, Part 300 (Prospective Marriage)

Subregulation 19.1 omits paragraph 300.215(b) of the Migration Regulations and substitutes a new paragraph 300.215(b) which requires the applicant to establish, at the time of application, that the parties intend that the marriage is to take place within the visa period.

Subregulation 19.2 omits clause 300.511 and substitutes a new clause 300.511 in the Migration Regulations. The new clause provides for the holder to travel to, enter and remain in Australia for 9 months from date of grant. This amendment provides more certainty and consistency.

#### Regulation 20 - Schedule 2, Part 303 (Emergency)

Subregulation 20.1 omits clauses 303.611 and 303.612 and substitutes a new clause 303.611 into the Migration Regulations. This new clause is the same as old clause 303.612 with the addition of condition 8302 which was previously in clause 303.611. The effect of this amendment is to make condition 8302 (after entry to Australia, all relevant members of the family unit must satisfy the relevant public interest criteria before the visa ceases) a discretionary rather than a mandatory condition. No mandatory conditions apply to this subclass of visa.

#### Regulation 21 - Schedule 2, Part 305 (Interdependency)



This regulation omits Part 305 of Schedule 2 of the Migration Regulations. Persons who wish to travel to and remain in Australia on interdependency grounds will be able to apply offshore for a permanent visa - a new Interdependency (Migrant) (Class BI) visa. The criteria for the class is found in Subclass 110 (Interdependency), inserted by regulation 16 of these Regulations. This means that the Subclass 305 temporary visa is no longer necessary.

#### Regulation 22 - Schedule 2, Part 413 (Executive)

This regulation amends clause 413.224 and paragraph 413.324(a) to omit reference to "4005A" and substitute "4006A" as a consequence of the renumbering of this criterion by these Regulations. The amendment is purely technical and repeats the provisions of the former 4005A.

#### Regulation 23 - Schedule 2, Part 414 (Specialist)

This regulation amends clause 414.225 and paragraph 414.324(a) to omit reference to "4005A" and substitute "4006A" as a consequence of the renumbering of this criterion by these Regulations. The amendment is purely technical and repeats the provisions of the former 4005A.

#### Regulation 24 - Schedule 2, Part 417 (Working Holiday)

This regulation amends subclause 417.214(2) to add a reference to the Republic of Korea. This will enable certain citizens of the Republic of Korea to participate in the working holiday maker scheme.

#### Regulation 25 - Schedule 2, Part 418 (Educational)

This regulation amends clause 418.226 and paragraph 418.324(a) to omit reference to "4005A" and substitute "4006A" as a consequence of the renumbering of this criterion by these Regulations. The amendment is purely technical and repeats the provisions of the former 4005A.

#### Regulation 26 - Schedule 2, Part 427 (Domestic Worker (Temporary - Executive))

Subregulations 26.1 and 26.2 amend paragraphs 427.231(a) and (b) respectively of the Migration Regulations to correct cross-referencing errors in those paragraphs.

#### Regulation 27 - Schedule 2, Part 444 (Special Category)

This regulation omits Division 444.2 (Primary criteria). The criteria are set out in paragraph 32(2)(a) of the Act and in regulation 5.15A of the Migration Regulations inserted by these Regulations at regulation 11 and are not required to be restated.

#### Regulation 28 - Schedule 2, Part 672 (Business Visitor (Short Stay))

The amendments made to Part 672 by this regulation are to facilitate the nominated visitor scheme and are made as a consequence of the amendments to Item 1218 of Schedule 1 of the Migration Regulations by subregulation 14.3 of these Regulations. The scheme provides for the nomination of certain short stay visitors by a State/Territory Government or a body approved by the Minister. Persons nominated under this scheme will not be required to complete an application.

Subregulation 28.1 inserts clauses 672.111 and 672.112 into the Migration Regulations. Clause 672.111 provides that an "approved nominator" means a State/Territory Government or, a body approved in writing by the Minister for the purposes of Part 672. Clause 672.112 provides for an application that is made on the applicant's behalf by an approved nominator to be taken to be an application made outside Australia.

Subregulation 28.2 amends clause 672.511 of the Migration Regulations to provide for grant of a Business Visitor (Short Stay) visa in Australia to an applicant on behalf of whom an application was made by an approved nominator.

#### Regulation 29 - Schedule 2, Part 773 (Border)

Subclause 773.216(1) presently prevents the grant of a border visa to certain applicants who have been granted border visas within the previous 5 years. Subclause 773.216(2) sets out an exception to this - when the applicant is a passenger on a vessel that has entered Australia because of matters beyond the control of the person in charge of the vessel.

Subregulation 29.1 omits subclause 773.216(2) and substitutes a new subclause 773.216(2) into the Migration Regulations.

The new subclause 773.216(2) repeats the provisions of the omitted subclause and includes another exception - where there are compelling reasons for the grant of the visa, it would not be contrary to the interests of Australia, and the applicant has a good reason for not being the holder of a visa.

#### Regulation 30 - Schedule 2, Part 801 (Spouse)

Subregulation 30.1 omits paragraph 801.221(6)(c) and substitutes a new paragraph 801.221(6)(c) in the Migration Regulations. The new paragraph provides for circumstances where the applicant, or a dependent child of the nominating spouse, or of the applicant, or of both of them, has suffered domestic violence committed by the nominating spouse, or the applicant has custody or joint custody of at least one child in respect of whom a court has granted joint custody or access to the nominating spouse or the nominating spouse is subject to a formal maintenance obligation. New domestic violence provisions are inserted into the Migration Regulations by regulation 5 of these Regulations which inserts a new Division 1.5 Special provisions relating to domestic violence.

#### Regulation 31 - Schedule 2, Part 805 (Skilled)

Subregulation 31.1 omits clause 805.321 and substitutes a new clause 805.321 in the Migration Regulations. The new clause repeats the provisions of the omitted clause and inserts new subclauses (3) and (4). The new subclause 805.321(3) provides for the situation where the applicant is the spouse of the non-dependent holder; and the relationship has ceased; and any one of the applicant, or a member of the family unit of the applicant who has made a combined application with the non-dependent holder, or a dependent child of the non-dependent holder or the applicant has suffered domestic violence committed by the nondependent holder.

The new subclause 805.321(4) provides for the situation where the applicant is a member of the family unit of the spouse of the non-dependent holder who has made a combined application with the non-dependent holder and the spouse has satisfied the requirements of subclause (3) and been granted a Subclass 805 visa.

New domestic violence provisions are inserted into the Migration Regulations by regulation 5 of these Regulations which inserts a new Division 1.5 - Special provisions relating to domestic violence.

#### Regulation 32 - Schedule 2, Part 814 (Interdependency)

Subregulation 32.1 makes a minor technical correction to clause 814.111.

Subregulation 32.2 omits clause 814.221 and substitutes a new clause 814.221 into the Migration Regulations. New clause 814.221 includes the subclauses contained in the previous clause

814.221 with amendments to allow the term "interdependent relationship" to be inserted to replace the paragraphs which had previously described a relationship of interdependency. The definition of "interdependent relationship" is inserted in Regulation 1.03 of the Migration Regulations by regulation 3 of these Regulations.

In addition new clause 814.221 contains 3 new subclauses 814.221(2), 814.221(5) and 814.221(8).

New subclause 814.221(2) provides that the applicant meets the requirements of this subclause if the applicant has held a Subclass 305 visa (or the equivalent under the Migration (1993) Regulations or the Migration (1989) Regulations) and the applicant has been granted a Subclass 826 visa and continues to be in an interdependent relationship with and to be nominated by the nominator.

Previous subclause 814.221(4) which is now new subclause 814.221(5) has been amended to include reference to the new subclause 814.221(2).

New subclause 814.221(8) provides that the applicant meets the requirements of the subclause if the applicant is the holder of a subclass 826 visa and the applicant would meet the requirements of subclause 814.221(2) or (3) except that the relationship between the applicant and the nominator has ceased and that the applicant or a dependent child of the applicant or of the nominator has suffered domestic violence committed by the nominator.

New domestic violence provisions are inserted into the Migration Regulations by regulation 5 of these Regulations which inserts a new Division 1.5 - Special provisions relating to domestic violence.

#### Regulation 33 - Schedule 2, Part 820 (Spouse)

Subregulation 33.1 makes a minor grammatical amendment to subclause 820.221(3) of the Migration Regulations.

Subregulation 33.2 makes a minor consequential grammatical change to paragraph 820.221(3)(a) of the Migration Regulations as a result of the amendment made by subregulation (1).

Subregulation 33.3 omits paragraph 820.221(3)(b) and inserts a new paragraph 820.221(3)(b) into the Migration Regulations. New paragraph 820.221(3)(b) provides for the situation where the applicant, or the dependent child of the nominating spouse, of the applicant, or of both of them, has suffered domestic violence committed by the nominating spouse.

New domestic violence provisions are inserted into the Migration Regulations by regulation 5 of these Regulations which inserts a new Division 1.5 - Special provisions relating to domestic violence.

#### Regulation 34 - Schedule 2, Part 826 (Interdependency)

Subregulation 34.1 omits clause 826.211 and substitutes two clauses 826.211 and 826.212 into the Migration Regulations. These amendments allow the newly defined term "interdependent relationship" to be inserted to replace the paragraphs which had previously described a relationship of interdependency. The definition of "interdependent relationship" is inserted in Regulation 1.03 of the Migration Regulations by regulation 3 of these Regulations.

Subregulation 34.2 amends subclause 826.221(1) of the Migration Regulations to include reference to subclause (4) inserted into the Migration Regulations by these Regulations.

Subregulation 34.3 inserts subclause 826.221(4) into the Migration Regulations. The effect of the new subclause in this Part is the same as the amendment to Part 820 by the new provisions relating to domestic violence referred to in subregulation 33.3 above.

Regulation 35 - Schedule 2, Part 831 (Prospective Marriage Spouse)

Subregulation 35.1 omits clause 831.211 and substitutes a new clause 831.211 in the Migration Regulations. The new clause repeats the provisions of the omitted clause and inserts a new provision. The effect of the new clause in this Part is the same as the amendment to Part 805 by the new provisions relating to domestic violence referred to in Regulation 31 above.

Subregulation 35.2 omits paragraphs 831.221(4)(b) and (d) and substitutes new paragraphs 831.221(4)(b) and (c). The effect of these new paragraphs is the same as the amendment to Part 820 by the new provisions relating to domestic violence referred to in subregulation 33.3 above.

Regulation 36 - Schedule 2, Part 840 (Business Owner)

Subregulation 36.1 omits clause 840.321 and substitutes a new clause 840.321 into the Migration Regulations. The new clause repeats the provisions of the omitted clause and inserts new provisions. The effect of the new provisions in this Part is the same as the amendment to Part 805 by the new provisions relating to domestic violence referred to in Regulation 31 above.

Regulation 37 - Schedule 2, Part 841 (Senior Executive)

Subregulation 37.1 omits clause 841.321 and substitutes a new clause 841.321 into the Migration Regulations. The effect of the new provisions in this Part is the same as the amendment to Part 805 by the new provisions relating to domestic violence referred to in Regulation 31 above.

Regulation 38 - Schedule 2, Part 842 (State/Territory Sponsored Business Owner)

Subregulation 38.1 omits clause 842.321 and substitutes a new clause 842.321 into the Migration Regulations. The effect of the new provisions in this Part is the same as the amendment to Part 805 by the new provisions relating to domestic violence referred to in Regulation 31 above.

Regulation 39 - Schedule 2, Part 843 (State/Territory Sponsored Senior Executive)

Subregulation 39.1 omits clause 843.321 and substitutes a new clause 843.321 into the Migration Regulations. The effect of the new provisions in this Part is the same as the amendment to Part 805 by the new provisions relating to domestic violence referred to in Regulation 31 above. .

Regulation 40 - Schedule 2, Part 844 (Investment - Linked)

Subregulation 40.1 omits clause 844.321 and substitutes a new clause 844.321 into the Migration Regulations. The effect of the new provisions in this Part is the same as the amendment to Part 805 by the new provisions relating to domestic violence referred to in Regulation 31 above.

Regulation 41- Schedule 2, Part 845 (Established Business in Australia)

Subregulation 41.1 omits clause 845.321 and substitutes a new clause 845.321 into the Migration Regulations. The effect of the new provisions in this Part is the same as the amendment to Part 805 by the new provisions relating to domestic violence referred to in Regulation 31 above.

Regulation 42 - Schedule 2, Part 866 (Protection (Residence))

This regulation amends clause 866.225 to omit the requirement that the applicant satisfies public interest criterion 4004. Criterion 4004 requires that the applicant not have outstanding debts to the Commonwealth unless the Minister is satisfied that appropriate arrangements have been made for payment. It is considered that this criterion is not appropriate to applicants in this subclass.

#### Regulation 43 - Schedule 4 (Public interest criteria)

In December 1994, public interest criterion 4005A was introduced into Schedule 4. It was intended as a relaxed health criterion for temporary entry classes 413 (Executive), 414 (Specialist) and 418 (Educational) with the relevant employer giving an undertaking to meet certain medical costs if they arose. However, 4005A was inadvertently included in a number of other classes that had criteria listed as 4001 to 4006.

This regulation omits item 4005A and reinserts it as item 4006A which overcomes the problem. Parts 413, 414 and 418 of the Migration Regulations are amended by these Regulations to change the reference. This amendment only applies to applications made on or after 3 July 1995.

#### Regulation 44 - Schedule 8 (Visa conditions)

Subregulation 44.1 omits items 8519 and 8520 and inserts new items 8519 and 8520 into the Migration Regulations. The new items are new conditions providing:

- that the holder must enter into the marriage in relation to which the visa was granted within the visa period; and
- that, where the holder satisfies the secondary criteria as a member of the family unit, the person who satisfies the primary criteria enters the marriage (in relation to which the visa was granted) within the visa period.

This amendment complements the amendment made by regulation 19 of these Regulations to Schedule 2, Part 300 (Prospective Marriage) of the Migration Regulations to ensure that the marriage can take place at any time within the period in which the visa is in effect.

#### Regulation 45 - Schedule 9, Part 1 (Persons to whom Special arrangements apply under section 166 of the Act)

Subregulation 45.1 omits item 3 (Guests of Government) from Part 1 of Schedule 9 of the Migration Regulations. In order to streamline entry arrangements, it has been decided that guests of Government should not be required to give information under section 166 of the Act (ie. produce a passport and complete a passenger card). Consequently, guests of Government are omitted from Part 1 and included in Part 2 of Schedule 9 by subregulation 46.2 of these Regulations.

Subregulation 45.2 inserts a new item 16A into Part 1 of Schedule 9 of the Migration Regulations as a consequence of the amendment made to regulation 2.40 by regulation 10 of the Regulations. These amendments enable the spouses and dependent children of members of the crew of nonmilitary ships, to be taken to have been granted special purpose visas.

#### Regulation 46 - Schedule 9, Part 2 (Persons not required to comply with section 166 of the Act)

Subregulation 46.1 omits clause 1 and substitutes a new clause 1 in Schedule 9 of the Migration Regulations. The new clause exempts transit passengers who are citizens of a country listed in Part 3 or who hold passports (other than passports that purport to be official or diplomatic passports) issued by the authorities of Taiwan, and who do not leave the transit lounge except to continue their journey, from the requirement to hold a transit visa. This amendment is a

consequence of the new paragraph 2.40(1)(na) inserted into the Migration Regulations by regulation 10 of these Regulations which provides that these transit passengers are taken to hold special purpose visas.

Subregulation 46.2 adds a new clause 8 - Guests of Government. As explained in the notes to subregulation 45.1 above, this clause has been omitted from Part 1, and added to Part 2.

#### Regulation 47 - Amendments of fees

This regulation sets out a table which increases certain visa fees in the Migration Regulations, primarily as a result of fee indexation (due to rounding, not all fees have increased). Exceptions to this are the migration application fee which has increased from \$400 to \$550 and the application fee for permanent business skills classes which has increased from \$1715 to \$2430 as a result of 1995/96 budgetary increases.

#### Regulation 48 - Transitional - certain applications not finally determined on 3 July 1995

Subregulation 48.1 provides that, for the purposes of this regulation, an application is finally determined when it is finally determined within the meaning of subsection 5(9) of the Act and a decision that has been made in respect of the application is not, or is no longer, subject to review under Part 8 of the Act.

Subregulation 48.2 provides that this regulation applies to an application for a Business Skills (Residence) (Class BH), an Extended Eligibility (Temporary) (Class TK), a Family (Residence) (Class AO) or a General (Residence) (Class AS) visa that was made on or after 1 September 1994 on which no decision had been made before 3 July 1995, or that had not been finally determined on 3 July 1995.

Subregulation 48.3 provides that for the purposes of an application to which this regulation applies, the Migration Regulations have effect as if the criteria to the same effect as those inserted into Part 801, 805, 814, 820, 826, 831, 840, 841, 842, 843, 844 or 845, as the case requires, of Schedule 2 to those Regulations by regulations 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 or 41 had been inserted into those Regulations before the application was made, and as if those criteria and Division 1.5 inserted into those Regulations by regulation 5 of these Regulations had been in force at all relevant times.

### **SCHEDULE 1 NEW DIVISION 1.5 TO BE INSERTED IN THE MIGRATION REGULATIONS**

Schedule 1 of these Regulations inserts a new Division 1.5 - Special provisions relating to domestic violence - into the Migration Regulations.

#### Regulation 1.21 - Interpretation

New regulation 1.21 (Interpretation) is inserted into Division 1.5 of the Migration Regulations.

New regulation 1.21 inserts a definition of a "competent person" into the Migration Regulations. A "competent person" is a person who, in relation to domestic violence committed against a person, provides an opinion as to whether domestic violence has occurred and is required to set out the basis for their assessment in the form of a statutory declaration. New regulation 1.21 provides that a "competent person" in relation to domestic violence committed against an adult includes:

- a medical practitioner registered under a law of a State or Territory; or
- a psychologist registered under the law of a State or Territory; or

- a registered nurse within the meaning of section 3 of the *Health Insurance Act 1973* and who is performing the duties of a registered nurse; or
- a member of the Australian Association of Social Workers or a person who is recognised by that Association as a person who is eligible to be a member of that Association, and who is performing the duties of a social worker; or
- a court counsellor under the *Family Law Act 1975*; or
- a manager or coordinator of a women's refuge or a specialised domestic violence crisis and counselling service or, where there is a collective decision-making structure, an individual with decision-making responsibility for a women's refuge or a specialised domestic violence crisis and counselling service and responsibility for matters concerning domestic violence in relation to that refuge or crisis and counselling service. It is not intended that Migrant Resource Centres are such specialist crisis and counselling services.

In relation to domestic violence committed against a child, new regulation 1.21 provides that a 'competent person' includes, any of the above persons, or an officer of the child welfare or child protection authorities of a State or Territory.

New regulation 1.21 also defines a "statutory declaration" as a statutory declaration under the *Statutory Declarations Act 1959*; and defines "violence" to include a threat of violence.

#### Regulation 1.22 - References to person having suffered or committed domestic violence

New regulation 1.22 (References to person having suffered or committed domestic violence) is inserted into Division 1.5 of the Migration Regulations.

New subregulation 1.22(1) provides that a reference in these Regulations to a person having suffered domestic violence is a reference to a person being taken, under new regulation 1.23, to have suffered domestic violence.

New subregulation 1.22(2) provides that a reference in these Regulations to a person having committed domestic violence in relation to a person is a reference to a person being taken, under new regulation 1.23, to have committed domestic violence in relation to that person.

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

New regulation 1.23 (When is a person taken to have suffered or committed domestic violence?) is inserted into Division 1.5 of the Migration Regulations.

New regulation 1.23 provides that, for the purposes of these Regulations, a person is taken to have suffered domestic violence ("the alleged victim"), and a person is taken to have committed domestic violence ("the alleged perpetrator") if.

- the alleged victim of domestic violence has applied for, and been granted, an injunction under paragraph 114(1)(a), (b) or (c) of the *Family Law Act 1975* against the alleged perpetrator; or
- a court has made an order under a law of a State or Territory against the alleged perpetrator for the protection of the alleged victim from violence (including threatened violence); or
- a court has convicted or found the alleged perpetrator guilty of an offence of violence (including threatened violence) against the alleged victim; or

- the alleged victim and alleged perpetrator have made a joint undertaking to a court in relation to proceedings in which an allegation is before the court that the alleged perpetrator has committed an act of violence against the alleged victim; or
- if the alleged victim is a person referred to in subregulation (2) - the alleged victim, or another person on his or her behalf, presents evidence in accordance with regulation 1.24 that the alleged victim has suffered relevant domestic violence committed by the alleged perpetrator.

New paragraph 1.23(2)(a) of Schedule 1 of these Regulations provides that the persons referred to in paragraph 1.23(1)(g) are:

- (i) a spouse of the alleged perpetrator; or
- (ii) a dependent child of.
  - (A) the alleged perpetrator; or
  - (B) the spouse of the alleged perpetrator; or
  - (C) both the alleged perpetrator and his or her spouse; or
  - (D) a person in an interdependent relationship with the alleged perpetrator;
- (iii) a member of the family unit of the spouse of the alleged perpetrator (being a member of the family unit who has made a combined application for a visa with the spouse); or
- (iv) a person who is in an interdependent relationship with the alleged perpetrator.

Relevant domestic violence is defined in new paragraph 1.23(2)(b) of Schedule 1 of these Regulations as violence against the alleged victim or his or her property that causes the alleged victim, or a member of the alleged victim's family, to fear for, or be apprehensive about, the alleged victim's personal well-being or safety.

#### Regulation 1.24 - Evidence

New regulation 1.24 (Evidence) is inserted into Division 1.5 of the Migration Regulations.

New subregulation 1.24(1) provides that for the purpose of paragraph 1.23(1)(g), evidence includes:

- a statutory declaration under regulation 1.25, together with a statutory declaration under 1.26 and a copy of a record of assault on the alleged victim allegedly committed by the alleged perpetrator being a record kept by a police service of a State or Territory of the Commonwealth; or
- a statutory declaration under regulation 1.25, together with two statutory declarations under regulation 1.26.

New subregulation 1.24(2) provides that a person must not submit, for the purposes of an application that relies on newly inserted Division 1.5, two statutory declarations by competent persons both of whom have a qualification specified in the same subparagraph of the definition of competent person.

#### Regulation 1.25 - Statutory declaration by alleged victim etc.



New regulation 1.25 (Statutory declaration by alleged victim etc. ) is inserted into Division 1.5 of the Migration Regulations.

New subregulation 1.25(1) provides that a statutory declaration made under this regulation must be made by the spouse of the alleged perpetrator or, where the alleged perpetrator is in an interdependent relationship with the alleged victim or a member of the family unit of the alleged victim, the person with whom the alleged victim is in the interdependent relationship.

New subregulation 1.25(2) provides that a statutory declaration made under this regulation by a person who alleges he or she has been the victim of relevant domestic violence must state that allegation and name the person alleged to have committed the relevant domestic violence.

New subregulation 1.25(3) provides that a statutory declaration made under this regulation by a person which alleges that another person has been the victim of relevant domestic violence must:

- name the alleged victim; and
- set out the allegation; and
- identify the relationship of the alleged victim to the maker of the statutory declaration; and
- name the person alleged to have committed the relevant domestic violence; and
- set out the evidence on which the allegation is based.

#### Regulation 1.26 - Statutory declaration by competent person

New regulation 1.26 (Statutory declaration by competent person) is inserted into Division 1.5 of the Migration Regulations.

New subregulation 1.26 provides that a statutory declaration under this regulation must:

- be made by a competent person; and
- set out the basis of the competent person's claim to be a competent person for the purposes of Division 1.5; and
- state that, in the competent person's opinion, relevant domestic violence has been suffered by a person; and
- name the person who, in the opinion of the competent person, has suffered relevant domestic violence; and
- name the person who, in the opinion of the competent person, committed that relevant domestic violence; and
- set out the evidence on which the competent person's opinion is based.

#### Regulation 1.27 - Statutory declaration not admissible in evidence

New regulation 1.27 (Statutory declaration not admissible in evidence) is inserted into Division 1.5 of the Migration Regulations.

New regulation 1.27 provides that a statutory declaration made for the purposes of regulation 1.25 or 1.26 is not admissible in evidence before a court or tribunal other than in a prosecution of the maker of the statutory declaration under section 11 of the Statutory Declarations Act 1959.

## **SCHEDULE 2**

NEW PART 110 TO BE INSERTED IN SCHEDULE 2 TO THE MIGRATION REGULATIONS.

### **SUBCLASS 110 - INTERDEPENDENCY**

The Schedule sets out new Part 110 to be inserted in Schedule 2 of the Migration Regulations.

Part 110 - Interdependency - is the only subclass in the new class of visa Interdependency (Migrant) (Class BI) inserted into Schedule 1 of the Migration Regulations by these Regulations at regulation 14. This additional subclass is created by regulation 16 of these Regulations.

The creation of this subclass will enable persons seeking to apply to travel to, enter and remain in Australia on interdependency grounds to apply directly for migrant entry whereas they previously were required to enter Australia on a temporary visa and then go through a two stage process to obtain permanent residence.

To satisfy the criteria for this new subclass, at the time of application an applicant must:

- have turned 18 years; and
- be in an interdependent relationship with an Australian citizen, Australian permanent resident or eligible New Zealand citizen who has sponsored them.

At the time of decision, the sponsorship must have been approved by the Minister and still be in force and the applicant must:

- continue to satisfy the requirements listed above;
- satisfy public interest criteria;
- if they have previously been in Australia, satisfy special return criteria;
- provide, if requested, an assurance of support; and
- if they are members of the applicant's family, meet certain public interest criteria and if appropriate special return criteria.

Criteria are also prescribed for applicants who are members of the family unit of a person who satisfies the primary criteria.

Applicants must be outside Australia at the time when the visa is granted. The visa permits the holder to travel to and enter Australia as a permanent resident for a period of 4 years from the date of grant, subject to the condition that the holder must first enter Australia by a date specified by the Minister.