

Migration (1993) Regulations 1992 No. 367

EXPLANATORY STATEMENT

STATUTORY RULES 1992 No. 367

Issued by the Authority of the minister for Immigration, Local Government and Ethnic Affairs

Migration Act 1958

Migration (1993) Regulations

Section 181 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 by the Act to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act. Without limiting the generality of section 181, particular provision is made for and in relation to the following matters:

- paragraph 181(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 181(1)(b) of the Act provides that the regulations may provide for the remission, refund or waiver of any fees which may be prescribed in the regulations, or for the exempting of persons from the payment of such fees;
- paragraph 181(1)(c) of the Act provides that the regulations may prescribe that information with respect to overseas passengers must be given or obtained;
- paragraph 181(1)(d) of the Act provides that the regulations may prescribe the use by persons outside the Department of information collected with respect to overseas passengers;
- paragraph 181(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, Secretary or any other person or body;
- paragraph 181(1)(g) of the Act provides that the regulations may prescribe the practice and procedure in relation to proceedings before a Commissioner or an authority prescribed under section 95 of the Act;
- paragraph 181(1)(h) of the Act provides that the regulations may require an assurance of support to be given in respect of an applicant for entry to Australia, and may prescribe the enforcement of assurances of support and the liabilities of an assurer;

- paragraph 181(1)(ja) of the Act provides that the regulations may provide that a person who has contravened section 50D of the Act may pay a prescribed penalty, not exceeding \$1,000, as an alternative to prosecution;
- paragraph 181(1)(j) of the Act provides that the regulations may provide that a person who has contravened section 76 of the Act may pay a prescribed penalty, not exceeding \$3,000, as an alternative to prosecution;
- paragraph 181(1)(k) of the Act provides that the regulations may prescribe penalties, not exceeding a fine of \$3,000 or imprisonment for 6 months, for offences against the regulations.

In addition, regulations are prescribed pursuant to the following powers:

- subsection 4(1) of the Act, paragraph (d) of the definition of "exempt non-citizen" provides inter alia that for the purposes of the paragraph, vessels and crew members may be prescribed;
- subsection 15(3) of the Act provides that a class of persons who are exempt from the operation of subsection 14(2) may be prescribed;
- subparagraph 20(1)(d)(i) of the Act provides that the regulations may prescribe diseases and physical or mental conditions which will result in a person becoming an illegal entrant if he or she enters Australia without an endorsed entry permit;
- subparagraph 20(1)(d)(vi) of the Act provides that the regulations may prescribe circumstances under which a person who has been excluded from another country will become an illegal entrant if he or she enters Australia without an endorsed entry permit;
- subsection 20(2) of the Act provides inter alia for the form of a notice for the purposes of section 20 to be prescribed;
- subsection 20(6) of the Act provides that without limiting the generality of regulation 181 the regulations may provide for visas and entry permits to be endorsed for the purposes of section 20 by using codes and abbreviations;
- section 22AB of the Act provides that the regulations may provide for the procedure for the determination of whether a person has refugee status;
- subsection 23(1) of the Act provides that, without limiting the generality of section 181, the regulations may provide for the granting and refusal of visas, including the granting of visas subject to conditions or to a limitation as to time. There is also provision for the regulations to provide for the recording and evidencing of visas, the effect and operation of visas and the cancellation of visas;
- subsection 23(2) of the Act provides that the regulations may provide for different classes of visas. The regulations may also provide that a person is entitled to be granted a visa of a particular class if the person satisfies all the criteria prescribed in relation to that class;

- subparagraph 24(3)(a)(ii) of the Act provides that the regulations may prescribe the period within which a person who receives notification that the Minister intends to grant a visa has to notify the Minister of any material change in the person's circumstances;
- subsection 24(10) the Act provides that the regulations may prescribe classes of visas which are exempt visas for the purposes of section 24;
- section 30 of the Act provides that the regulations may prescribe the qualifications and the number of points which an applicant is to receive for those qualifications, in determining an applicant's score under the points system;
- subsection 31(4) of the Act provides that the regulations may make provision for the Minister to reconsider an application that has been put aside under subsection 31(3) of the Act, for the reconsideration to involve comparing the applicant's score with the new passmark but not reassessing the score, and for reconsideration to occur a maximum number of times;
- subsection 33(1) of the Act provides that, without limiting the generality of section 181, the regulations may provide for the granting and refusal of entry permits, including the granting of entry permits subject to conditions or to a limitation as to time. There is also provision for the regulations to provide for the recording and evidencing of entry permits, the effect and operation of entry permits and the cancellation of entry permits;
- subsection 33(2) of the Act provides that the regulations may provide for different classes of entry permits. The regulations may also provide that a person is entitled to be granted an entry permit of a particular class if the person satisfies all the criteria prescribed in relation to that class;
- section 36 provides inter alia the power to prescribe the change in a person's circumstances necessary before that person is permitted to make a further application for an entry permit while remaining in Australia, after a review of a previous Application has been applied for;
- section 37 provides inter alia the power to prescribe the change in circumstances necessary before the person is permitted to make a further application for an entry permit while remaining in Australia, where a review has not been applied for;
- subsection 41(2) of the Act provides for the prescribing of points for each prescribed qualification in relation to applications for entry permits;
- section 52 of the Act provides the power to make regulations in relation to entry permits for statutory visitors;
- paragraph 54D(b) of the Act provides for the regulations to prescribe the period within which an unprocessed person must apply for an entry permit to avoid becoming a prohibited person;

- subsection 59(2) of the Act provides that the procedures to be followed by the Minister before ordering the mandatory deportation of a person under this subsection may be prescribed;
- subsection 60(1) of the Act provides that the regulations may prescribe the matters which are the only matters which the Minister must consider in deciding to exercise his or her power under this subsection to order the deportation of an illegal entrant;
- subsection 63(1) of the Act provides that the regulations may prescribe the matters which are the only matters which the Minister must consider in deciding to exercise his or her power under this subsection to revoke an order for the deportation of a person;
- subsection 68(14) of the Act provides for the form of search warrant issued pursuant to that subsection by the Secretary to be prescribed;
- subsection 82(1) of the Act provides inter alia for the regulations to prescribe matters which are the only matters which must be considered by the Minister before requiring an illegal entrant to leave Australia;
- subsection 90(4) of the Act provides for the form of search warrant issued pursuant to that section by the Secretary to be prescribed;
- subsection 112(3) of the Act provides for the regulations to make provision for the regulation of migrant centres;
- subsection 113(2) of the Act provides for the regulations to make provision for the regulation and operation of detention centres.

The purpose of the Regulations is to replace the existing Migration Regulations with a set of regulations which are plainer and easier to use, while at the same time maintaining existing policies and procedures. The main concept of the new structure is to set out in the one place all the criteria relating to the grant of a particular class of visa or entry permit. These criteria are now set out in Schedules 2 and 3 which are divided into Parts, each Part corresponding to a class of visa or entry permit.

If a criterion is applicable to all or a number of visa/entry permit classes, then the criterion is spelt out in detail in a separate Schedule and, where it is prescribed for the grant of a visa or entry permit it is referred to in the Part in Schedule 2 or 3 for that visa or entry permit. For example, public interest criteria which relate to all classes are set out in Schedule 6. (A detailed guide to the new structure is set out in the Reader's Guide which accompanies the Regulations and does not form part of them.)

A major objective in restructuring the Migration Regulations is to maintain the policies and procedures reflected in the current Regulations. Given the complexity of the current Regulations it proved necessary, however, to introduce some changes. In the main these changes fill up gaps in the existing Regulations, or remove unintended consequences. These changes are minor and essentially of a technical nature.

In addition there have been some changes in the law in order to achieve a more accurate reflection of Government policy, or to provide for the way in which the Regulations are administered where the Regulations are uncertain. With the exception of the four changes set out below these changes again have been minor and technical.

The first of these major changes has been to include in the criteria for the grant of a migrant or refugee and humanitarian group visa, the criteria that the application must be made overseas and the visa granted overseas.

Policy has always been to have distinct sets of criteria for persons applying for permanent entry to Australia from outside Australia and inside Australia. Through an oversight the existing Regulations allow for migrant and refugee and humanitarian visas to be applied for and granted in Australia.

In the absence of such a distinction it is extremely difficult to manage the migrant intake both in terms of numbers and the allocation of resources between Australia and overseas.

The second major change, which is essentially technical in nature, has been to regroup, the classes of visa and entry permits into a more logical structure. This regrouping has not involved any practical change, from the point of view of applicants, in the law governing the grant of visas and entry permits.

A third area of change has been a complete simplification and rationalisation of the additional criteria governing the grant of visas and entry permits to illegal entrants in Australia.

These criteria are currently mainly in regulations 35AA and 42, with criteria specific to certain classes elsewhere in the Regulations. The criteria themselves are complex and difficult to interpret largely as a result of having been amended on a number of occasions.

It is conceivable, therefore, in redrafting them, there could be some minor incidental changes in the Regulations. On the other hand the new draft - set out in Schedule 6 of the new Regulations - is an accurate reflection of Government policy, and is clear in terms of its application.

The fourth change reflects a simplification of procedures for granting permanent residence in Australia on family (other than spouse) or on economic grounds. Again these changes have not involved any changes in law or policy.

The Regulations commence on 1 February 1993. Given the completely new structure and style of the Regulations, this commencement date will allow a period during which users of the Regulations will be able to familiarise themselves with the new approach. In addition given the complexity of the current Regulations it is possible that some unintended consequences may emerge when the new Regulations are exposed to detailed scrutiny by users. In the event that such problems emerge, then it will be possible to resolve them before the Regulations become operative.

Details of the regulations are set out in the Attachment.

ATTACHMENT

PART 1 - PRELIMINARY

DIVISION 1 - INTRODUCTORY

Regulation 1.1 - Citation

This regulation provides that these Regulations may be cited as the Migration (1993) Regulations.

Regulation 1.2 - Commencement

This regulation provides for the Migration (1993) Regulations to commence on 1 February 1993.

DIVISION 2 - INTERPRETATION

Regulation 1.3 - Interpretation

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

Regulation 1.4 - Adoption

This regulation sets out the conditions under which a child under 18 years of age is taken to be adopted for the purposes of the Regulations.

Regulation 1.5 - 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 or an entry permit.

Regulation 1.6 - De facto spouse

This regulation defines the circumstances under which a person is the de facto spouse of another person for the purposes of the Migration Regulations.

Regulation 1.7 - Labour market requirements

This regulation prescribes the criteria which an applicant must satisfy to meet labour market requirements for the purposes of these Regulations.

Regulation 1.8 - Member of a family unit

This regulation provides a definitive interpretation of family unit for the purposes of applications for visas and entry permits made under these Regulations. The requirements for inclusion of a person in an applicant's family unit differ in relation to

applications for student visas/entry permits, and applications for all other visas/entry permits.

Regulation 1.9 - Net employment benefit

This regulation provides a definition of net employment benefit to Australia for the purposes of these Regulations.

Regulation 1.10 - Orphan relative

This regulation prescribes the circumstances under which a person is considered to be an orphan relative for the purposes of these Regulations.

Regulation 1.11 - Remaining relative

This regulation provides the definition of remaining relative for the purposes of these Regulations. Subregulation (1) defines the persons who are said to be remaining relatives. Subsections (2) and (3) qualify subsection (1) and extend the definition.

Regulation 1.12 - Visa and entry permit of a particular group or class

Subregulation (1) provides that, unless the contrary intention appears, a reference in these Regulations to the holder of a visa or entry permit of a particular group or class is also a reference to the holder of a visa or entry permit which was granted before the commencement of the Migration (1989) Regulations, provided that the visa or entry permit is substantially the same in nature or effect as the particular group or class.

Subregulation (2) provides that where these Regulations refer to a visa or an entry permit that is held by a person, or to the holder of a visa or an entry permit, the reference is to a visa or an entry permit that is valid within the meaning of the *Migration Act 1958*.

Regulation 1.13 - Vocational proficiency in English

This regulation prescribes the circumstances under which a person is taken to have vocational proficiency in English. The regulation also provides that the Minister may publish in the *Gazette* a list of occupations requiring vocational proficiency in English.

Regulation 1.14 - References to a class of visa or entry permit

Subregulation (1) provides that a class of visa or entry permit may be referred to by the word "Class" together with the number and title of the class as set out in Schedule 1, or simply by the word "Class" and the number of the class.

Subregulation (2) provides that a reference to a visa or entry permit of a group of a particular number is a reference to any visa or entry permit class within that group.

Subregulation (3) provides that a group of visas or entry permits may be referred to by the word "Group" together with the number and title of the group as set out in Schedule 1, or simply by the word "Group" and the number of the group.

Further, subregulation (4) provides that a reference to a group of visas or entry permits is to be taken as a reference to every class of visa or entry permit in that group.

DIVISION 3 - ADMINISTRATION

Regulation 1.15 - Delegation

This regulation provides that the Minister may, by writing, delegate to a person any of his or her powers under these Regulations.

This regulation also provides that the Secretary may, by writing, delegate to a person any of his or her powers under these Regulations.

Regulation 1.16 - Specification of matters by Gazette Notice

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

Regulation 1.17 - Approved forms

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

Regulation 1.18 - Declared bodies

This regulation provides that the Minister may by notice in writing declare an organisation or group of persons to be a declared body for the purposes of this regulation. Such a declaration will operate in conjunction with criterion 4002 of Schedule 4 (Public Interest Criteria) of these Regulations. The effect will be that where a person who is a member of a declared body is an applicant for a visa or entry permit for which criterion 4002 is a prescribed criterion, then before the visa or entry permit may be granted the applicant must satisfy the Minister, acting personally, that the applicant is unlikely to be involved in any criminal activity inside or outside Australia.

This regulation also provides that a notice by the Minister that an organisation or group of persons is a declared body is subject to the disallowance procedures under section 46A of the *Acts Interpretation Act* 1901. The regulation further provides that any notice made by the Minister under this regulation (or any previous regulation having the same provisions) ceases to have effect on and after 1 March 1993.

Regulation 1.19 - Entry Control Points

This regulation provides for the Minister to approve a place other than a port as an Entry Control Point (see also the definition of Entry Control Point in regulation 1.3).

DIVISION 4 - SPONSORSHIP

Regulation 1.20 - Sponsorship

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

PART 2 - VISAS AND ENTRY PERMITS

DIVISION 1 - CLASSES, CRITERIA, CONDITIONS ETC.

Regulation 2.1 - Classes and groups of visas and entry permits that may be granted

This regulation provides that for the purposes of subsections 23(2) and 33(2) of the Act, the classes of visas and entry permits that may be granted are as set out in Schedule 1 of these Regulations.

Regulation 2.2 - Criteria, conditions and other provisions applicable to individual classes of visas and entry permits

Subregulation (1) provides that for the purposes of subsection 23(2) of the Act, the prescribed criteria for the grant of a visa of a particular class to a primary person are as set out in this Part and the relevant Part of Schedule 2 or 3.

Subregulation (2) provides that for the purposes of subsection 33(2) of the Act, the prescribed criteria for the grant of an entry permit of a particular class to a primary person are as set out in this Part and the relevant Part of Schedule 2 or 3.

Subregulation (3) provides that for the purposes of subparagraph 23(1)(a)(i) of the Act, the conditions that may be imposed on a visa of a particular class are, in addition to those mentioned in subsection 23(4) of the Act, the conditions set out in Schedule 9 and as specified in the relevant Part of Schedule 2 or 3.

Subregulation (4) provides that for the purposes of subparagraph 23(1)(a)(ii) of the Act, the limitations as to the time the holder of a visa is to be authorised to remain in Australia (if any) are as specified in the relevant Part of Schedule 2 or 3.

Subregulation (5) provides that for the purposes of paragraph 33(1)(a) of the Act, the conditions that may be imposed on an entry permit of a particular class are, in addition to those mentioned in subsection 33(4) of the Act, the conditions set out in Schedule 9 and as specified in the relevant Part of Schedule 2 or 3.

Subregulation (6) provides that for the purposes of subparagraph 23(1)(a)(ii) of the Act, the limitations as to the time the holder of a visa is to be authorised to remain in Australia (if any) are as specified in the relevant Part of Schedule 2 or 3.

Subregulation (7) provides that where an application is required for a particular class of visa or entry permit, the manner and form of the application and the fees (if any) payable, are as set out in Schedule 2 or 3.

Regulation 2.3 - Section 20 of the Act - restriction on grant of visas and entry permits

Subregulation (1) provides that this regulation applies to a person who is applying for a visa or entry permit and to whom subsection 20(1) or (2) of the Act applies or would apply if the person entered Australia.

Subregulation (2) provides that for the grant of a visa or an entry permit to a person to whom subsection 20(2) or (3) of the Act applies, or would apply if the person entered Australia, it is a criterion that the Minister must be satisfied that it would be reasonable to excuse the fact that the applicant is a person referred to in subsections 20(1) or (2) of the Act.

Subregulation (3) provides that in deciding whether the applicant meets the criterion prescribed in subregulation (2), the Minister is to have regard to the matters prescribed in paragraphs (a) to (f), inclusive, of this subregulation.

Subregulation (4) sets out the codes which may be endorsed on a visa or entry permit granted pursuant to subsections 20(4) or (5) of the Act, to indicate that the person granting the visa or entry permit recognises that the applicant is a person referred to in the relevant provision of subsection 20(1) or (2) of the Act.

DIVISION 2 - PRESCRIBED QUALIFICATIONS: APPLICATION OF POINTS SYSTEM

Regulation 2.4 - Prescribed qualifications and prescribed number of points

For the purposes of subsections 30(1) and 41(2) of the Act, this regulation together with Schedule 7 specifies the number of points which an applicant for a Class 105 (concessional family) visa or a Class 126 (independent entrant) visa can obtain for the applicant's employment qualifications, age, language skill and relationship to sponsor. It also specifies the number of points which an applicant for a Class 105 (concessional family) visa can obtain for the sponsor's Australian citizenship and its duration, settlement qualifications and place and duration of residence.

Regulation 2.5 - 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 could obtain those points.

Regulation 2.6 - Reconsideration of application that is put aside

This regulation makes provision, pursuant to subsections 31(3) and (5) of the Act, that where an application is put into the pool and a new pass mark is Gazetted, the Minister shall reconsider the application by comparing the applicant's score with the new pass mark but not by reassessing the score. Reconsideration of an application under this provision may occur a maximum of 3 times.

DIVISION 3 - MISCELLANEOUS

Regulation 2.7 - Application for visa or entry permit in relation to person in custody

This regulation prescribes the procedures to be followed by a person in custody under the Act on lodging an application for a visa or entry permit.

Regulation 2.8 - Notice of certain decisions refusing or terminating a visa or entry permit

This regulation provides that where the Minister refuses to grant a visa or entry permit, other than one applied for at an Entry Control Point, or makes a determination that the holder of a visa or entry permit has failed to comply with a terminating condition, the Minister must notify that decision or determination to the applicant or holder in writing. The way in which notification is to be made is prescribed, thus avoiding any doubt that the notification has been made. In addition, the time at which notification is deemed to have been made is defined by reference to regulation 7.6 of these Regulations.

Regulation 2.9 - "Prescribed vessel" and "prescribed crew-member" - subsection 4(1) (definition of "exempt non-citizen")

This regulation provides definitions of the terms "prescribed vessel" and "prescribed crewmember" for the purposes of the definition of "exempt non-citizen" in subsection 4(1) of the Act. The definition of "prescribed vessel" is intended to cover pleasure craft, and "prescribed crew-member" is intended to cover persons who are not genuinely part of the crew (ie, persons who are passengers).

Regulation 2.10 - Prescribed change in circumstances (paragraphs 36(1)(a) and 37(2)(a) of the Act)

This regulation prescribes the circumstances in which a person is able to make a further application for an entry permit either after the person has applied for a review and section 36 has become applicable to that person or where the person has applied for and been refused an entry permit and section 37 of the Act applies to the person,

Regulation 2.11 - Unprocessed persons - prescribed period (paragraph 54D(b) of the Act)

This regulation provides that the prescribed period in paragraph 54D(b) of the Act is counted from the day that a notice of this period is handed to an unprocessed person. The prescribed period is 7 working days after the date of this notification.

VISAS - DIVISION 4

Regulation 2.12 - Entitlement to be granted a visa

This regulation provides that if an applicant satisfies the prescribed criteria for a particular class of visa, then the applicant is entitled to be granted that class of visa. This entitlement is subject to the provisions of Division 2 of Part 2 of the Act.

Regulation 2.13 - Application for visa outside Australia

This regulation prescribes the procedures by which an application for a visa may be lodged outside Australia.

Regulation 2.14 - Application for visa within Australia

This regulation prescribes the procedures by which an application may be lodged within Australia. Where an applicant is in custody, these provisions are subject to regulation 2.7.

Regulation 2.15 - Special provision for grant outside Australia of certain visas to former holders of corresponding temporary entry permit

Subregulation (1) makes special provision for the grant of certain temporary visas overseas to persons who were in Australia as holders of temporary entry permits of the equivalent class and departed before the expiry of the temporary entry permit but without a visa which would allow re-entry. Visas granted under this regulation will allow re-entry to Australia within the period for which the original temporary entry permit was valid.

Subregulation (2) prevents the grant under this regulation of group 2.5 (extended eligibility) visas because special additional criteria apply for the grant of visas of those classes overseas to persons who were in Australia with equivalent temporary entry permits but departed without holding visas which would allow their re-entry. The grant of Class 417 (working holiday), Class 437 (PRC (temporary)), Class 828 (processing (temporary)) and Class 829 (processing (residence)) visas is prevented under this regulation as these visas are not granted outside Australia to persons previously in Australia as holders of the equivalent temporary entry permits.

Regulation 2.16 - Application for certain classes of visas to have effect as application for visas of certain other classes

This regulation provides for applications for certain classes of visas to be deemed also applications for other specified visas. This interchangeability of applications allows the grant of a visa where the applicant may have inadvertently applied for a visa for which he or she is not eligible, or which is not the visa intended, but may still be eligible for another visa of the same group. This provision enables the grant of that other visa without the applicant having to make another application, subject only to the payment of any difference in the fee.

Regulation 2.17 - Application for visas on arrival

The purpose of this regulation is to prevent applications for visas being made by persons who have arrived in but have not technically entered Australia, except for applications for Class 158 (resident return (E)), Class 773 (border) and Class 784 (domestic protection (temporary)) visas.

Regulation 2.18 - Grant of visa

This regulation provides that a visa granted by the Minister is to be in a form approved by the Minister, is to specify the number of times on which the holder is

permitted to travel to Australia as specified in the Part of Schedule 2 or 3 relevant to the particular class of visa, and is to specify whether the visa is for permanent (resident) or temporary entry.

This regulation also provides that the conditions, if any, subject to which the visa is granted may be specified on the visa, either in full or by reference to the number of a condition in Schedule 9.

Regulation 2.19 - Prescribed notification - paragraph 24(3)(a) of Act

This regulation provides, pursuant to paragraph 24(3)(a) of the Act, that in the case of applications for other than an exempt visa (see regulation 2.20), after the Minister has notified an applicant that he or she intends to grant a visa to the applicant, the applicant has 30 days in which to notify the Minister of any material change in his or her circumstances.

Regulation 2.20 - Exempt visas - prescribed classes (subsection 24(10))

This regulation prescribes all classes of visas except Class 105 (concessional family) and Class 126 (independent entrant) visas, as "exempt visas" for the purposes of subsection 24(10) of the Act. The effect of this provision is that under subsection 24(10) of the Act if it appears to the Minister that an applicant meets the requirements of the regulations for the grant of a visa then the Minister must grant the visa, unless the application is for a Class 105 (concessional family) or a Class 126 (independent entrant) visa (see regulation 2.19).

Regulation 2.21 - Recording and evidencing of visas

Subregulation (1) prescribes the manner in which the grant of a visa is to be recorded, distinguishing between a visa which is issued manually and one which is issued by a computerised system.

Subregulation (2) provides that any clerical error in, or omission from the manual visa register or the computerised record may be corrected by an authorised officer.

Subregulation (3) provides that a record in relation to the grant of a visa, made or corrected in accordance with this regulation, is evidence that the visa was issued to the person on the date specified in the entry.

Regulation 2.22 - Effect and operation of visas

Subregulation (1) provides that a visa comes into force on the day specified in the visa, or if no day is specified, on the day the visa is granted.

Subregulation (2) prescribes the date on which a visa ceases to be in force. This date is dependent on the circumstances and conditions under which the visa was granted. It may be the expiry of the period for which the visa was granted, the date of the occurrence of an event which is to result in the invalidation of the visa, the date on which the visa is to lapse if the holder fails to meet a specified requirement by that date, the date of notification to the holder that the Minister has determined that the

holder has failed to comply with a terminating condition subject to which the visa was granted, or the date on which the visa is cancelled.

Regulation 2.23 - Termination of visas for breach of terminating condition

This regulation provides that the Minister may determine that the holder of a visa has failed to comply with a terminating condition to which the visa was subject. The regulation further provides that the visa is terminated when the holder is given notice of the determination in accordance with regulation 2.8 of these Regulations.

Regulation 2.24 - Certain visas to state period that holder may stay in Australia

This regulation provides that if a group 2.3 (visitor) visa is granted to a person who is affected by the risk factor referred to in public interest criterion 4011 in Schedule 4 (ie, if the applicant is a person who has the characteristics of a person likely to overstay the period that he or she is authorised to remain in Australia), then the period of stay authorised under the visa must not exceed 6 months or such lesser period as the Minister considers adequate to meet the needs of the applicant having regard to the reasons for and the circumstances of the grant of the visa.

Regulation 2.25 - Breach of a condition of a visa

This regulation provides that if the holder fails or refuses to comply with any condition to which the visa is subject, then that breach of the condition is a ground for cancellation of the visa.

Regulation 2.26 - Mandatory conditions for grant of visa

This regulation provides that where the relevant Part of Schedule 2 or 3 specifies that a condition is a mandatory condition in relation to a particular class of visa, that visa is granted subject to that condition. The effect of this regulation is that a relevant mandatory condition is automatically imposed by law on the visa when it is granted.

DIVISION 5 - ENTRY PERMITS

Regulation 2.27 - Entitlement to be granted an entry permit

This regulation provides that if an applicant satisfies the prescribed criteria for a particular class of entry permit, then the applicant is entitled to be granted that class of entry permit. This entitlement is subject to the provisions of Division 3 of Part 2 of the Act.

Regulation 2.28 - Applications for entry permits

Subregulation (1) prescribes the requirements to be met for an application for an entry permit to be in accordance with these Regulations. A distinction is made between applications made after the applicant has entered Australia and applications made before the applicant has entered Australia, with different procedural requirements.

Subregulation (2) permits an application for a Class 437 (PRC (temporary)) entry permit to be made after entry without the applicant having to produce the passport or other document produced on entry to Australia, or another valid travel document. Under subregulation (1), an applicant for an entry permit after entry would otherwise be required to produce this documentation.

Subregulations (3), (4), (5) and (6) provide for a person who is exempt under the Act from holding a visa, but not from holding an entry permit, to apply for an entry permit on arrival. Under subregulation (1), an application for an entry permit on arrival would otherwise require the presentation of a visa.

Regulation 2.29 - Application for certain classes of entry permits to have effect as application for entry permits of certain other classes

This regulation provides for applications for certain classes of entry permits to be deemed also applications for other specified entry permits. This interchangeability of certain applications allows the grant of an entry permit where the applicant may have inadvertently applied for an entry permit for which he or she is not eligible, or which is not the entry permit intended, but may still be eligible for another entry permit of the same group or type. This provision enables the grant of that other entry permit without the applicant having to make another application, subject only to the payment of any difference in the fee.

Regulation 2.30 - Grant of entry permits at the Entry Control Point to holders of travel only visas

This regulation prescribes the criteria to be met by the holder of a travel-only visa who has presented the visa at the Entry Control Point to constitute an application for an entry permit before entry, in accordance with paragraph 2.28(1)(b) of these Regulations.

Regulation 2.31 - Special criterion applicable to holders of visas granted under law in force before 19 December 1989

This regulation prevents the grant of an entry permit under regulation 2.30 to the holder of a visa granted or applied for before 19 December 1989 or granted in accordance with the Migration Regulations, unless the Minister is satisfied that the entry permit is substantially equivalent to the visa or is, a Class 304 (special equivalent 1989 (temporary)) or a Class 813 (special equivalent (permanent)) entry permit.

Regulation 2.32 - Lodgment in Australia of application for entry permit

This regulation prescribes the procedures by which an application for an entry permit may be lodged within Australia. These provisions are subject to regulation 2.7 in relation to an application made by a person who is in custody.

Regulation 2.33 - Grant of entry permit

This regulation provides that an entry permit granted by the Minister is to be in a form approved by the Minister and is to be expressed to permit the holder to enter Australia (entry permit - before entry) or to remain in, Australia (entry permit - after entry) as specified in the Part of Schedule 2 or 3 relevant to the particular entry permit. This regulation also provides that the conditions, if any, subject to which the entry permit is granted may be specified on the entry permit, either in full or by reference to the number of a condition in Schedule 9. If the entry permit is a temporary entry permit it may also specify the period the holder is to be permitted to remain in Australia, and may authorise the holder to remain only for that period.

Regulation 2.34 - Recording and evidencing of entry permits

Subregulation (1) prescribes the manner in which the grant of an entry permit is to be recorded, distinguishing between an entry permit which is issued manually and one which is issued by a computerised system.

Subregulation (2) provides that documentary evidence of the issue of an entry permit may be provided to the applicant by stamping the entry permit in the applicant's passport or travel document, or by giving the applicant a separate notice in writing setting out the details of the entry permit. This subregulation further provides that a notation made on a person's inwards passenger card may be in the form of a facsimile of the entry permit stamped in the person's passport or travel document, or where the entry permit is evidenced by a notice in writing, it may take the form of a copy of the notice attached to or endorsed on the card.

Subregulation (3) provides that any clerical error in, or omission from the manual visa register or the computerised record may be corrected by an authorised officer.

Subregulation (4) provides that a record in relation to the grant of an entry permit, made 9

or corrected in accordance with this regulation, is evidence that the entry permit was issued to the person on the date specified in the entry.

Regulation 2.35 - Effect and operation of entry permits

Subregulation (1) provides that an entry permit comes into force on the day specified in the visa, or if no day is specified, on the day the entry permit is granted.

Subregulation (2) prescribes the date on which an entry permit ceases to be in force. This date is dependent on the circumstances and conditions under which the entry permit was granted. It may be the expiry of the period for which the entry permit was granted, the date of the occurrence of an event which is to result in the invalidation of the entry permit, the date on which the entry permit is to lapse if the holder fails to meet a specified requirement by that date, the date of notification to the holder that the Minister has determined that the holder has failed to comply with a terminating condition subject to which the entry permit was granted, or the date on which the entry permit is cancelled.

Regulation 2.36 - Termination of entry permits for breach of terminating condition

This regulation provides that the Minister may determine that the holder of an entry permit has failed to comply with a terminating condition to which the entry permit was subject. The regulation further provides that the entry permit is terminated when the holder is given notice of the determination in accordance with regulation 2.8 of these Regulations.

Regulation 2.37 - Mandatory conditions for grant of entry permit

This regulation provides that where the relevant Part of Schedule 2 or 3 specifies that a condition is a mandatory condition in relation to a particular class of entry permit then an entry permit of that class is granted subject to that condition. The effect of this regulation is that a relevant mandatory condition is automatically imposed on the entry permit when it is granted.

Regulation 2.38 - Breach of a condition of an entry permit

This regulation provides that if the holder fails or refuses to comply with any condition to which the entry permit is subject, then that breach of the condition is a ground for cancellation of the entry permit.

PART 3 - COLLECTION OF INFORMATION WITH RESPECT TO PERSONS ON VESSELS

Regulation 3.1 - Provision of information (general requirement)

This regulation provides that a person arriving in or departing from Australia may be required to complete and furnish a passenger card. This regulation also prescribes the range of information which a person may be required to give in completing a passenger card.

Regulation 3.2 - Use of information

This regulation provides that information collected from passenger cards, notified data bases or passports may be used for specified purposes. However, such information is not to be used unless with the approval of the Minister.

The regulation also provides that where the Commonwealth has entered into an agreement with another country in relation to the provision of information concerning international movements of air traffic and passengers on international flights, the Minister may release the information to that other country provided notice of the agreement is published in the *Gazette*.

Regulation 3.3 - Provision by master of information regarding passengers

This regulation specifies information which the master of a vessel arriving at a port in Australia in the course of or at the conclusion of an overseas voyage or flight is obliged to provide in respect of passengers on the vessel. This regulation also provides that the medical officer of the vessel (or the master if there is no medical officer) must certify that none of the passengers are suffering from a prescribed

disease or prescribed physical or mental condition, or supply a list and description of passengers for whom this certification cannot be given.

Regulation 3.4 - Provision by master of information regarding crew

This regulation requires masters of vessels (other than vessels of the armed forces of recognised governments) to provide specified information in respect of their crews.

Regulation 3.5 - Production of deportee

This regulation provides that the master of a vessel leaving Australia may be required at any time to produce any person who is on the vessel and being deported from Australia.

Regulation 3.6 - Offences by master of vessel

This regulation makes it an offence for the master of a vessel not to provide facilities to enable an officer to perform his duties under these Regulations. It also makes it an offence to provide information required by these Regulations that is incorrect in a material particular.

PART 4 - PROCEDURE OF COMMISSIONERS AND PRESCRIBED AUTHORITIES

Regulation 4.1 - Power of Commissioner to send for witnesses and document

This regulation enables a Commissioner appointed under subsection 57(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, to give evidence and to produce specified documentation.

Regulation 4.2 - Duty of witness to continue in attendance

This regulation provides that a person summoned by a Commissioner to attend as a witness must attend as required by the Commissioner.

Regulation 4.3 - Arrest of witness failing to appear

This regulation provides that a Commissioner may issue a warrant for the arrest and detention of any person who has been summoned to attend and fails to do so.

Regulation 4.4 - 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 4.5 - 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 4.6 - Offences by witnesses

This regulation makes it an offence for a person to fail to attend when summoned, to refuse to take an oath or make an affirmation when required, and to fail to produce specified documentation when required.

Regulation 4.7 - Statements of witness not admissible in evidence against the witness

This regulation provides that statements by witnesses before a Commissioner are not admissible as evidence in any criminal or civil proceedings against the witness. However, if the witness is the person to whom the investigation relates, the evidence is admissible against the person in proceedings relating to his or her deportation.

Regulation 4.8 - 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 4.9 - Offences in relation to Commissioners

This regulation makes specified types of behaviour towards a Commissioner an offence.

Regulation 4.10 - 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 4.11 - Procedure of prescribed authorities

This regulation provides that this Part applies to prescribed authorities under section 95 of the Act and their proceedings under sections 92 or 93 of the Act, in the same way as it applies to a Commissioner.

PART 5 - ASSURANCES OF SUPPORT

DIVISION 1 - ASSURANCES OF SUPPORT GIVEN IN RELATION TO APPLICATIONS LODGED BEFORE 20 DECEMBER 1991

Regulation 5.1 - Interpretation

This regulation defines an "assurance of support" for the purposes of this Division.

Regulation 5.2 - Form of certain assurances of support

This regulation requires that assurances of support given under this Division after 19 December 1991 must be in a form approved by the Minister.

Regulation 5.3 - Duration of assurances of support

This regulation provides that the maximum period for the operation of an assurance of support given in relation to an application lodged before 20 December 1991 is two years.

Regulation 5.4 - 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 or newstart allowance or 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.

Regulation 5.5 - Earlier liabilities not affected

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

DIVISION 2 - ASSURANCES OF SUPPORT GIVEN IN RELATION TO APPLICATIONS LODGED ON OR AFTER 19 DECEMBER 1991

Regulation 5.6 - Interpretation

This regulation defines the terms "assurance of support", "required assurance" and "relevant entry permit" for the purposes of this Division.

Regulation 5.7 - Form and duration of assurance of support

This regulation provides that an assurance of support must be in the form approved by the Minister, is of two years duration, and if it is a required assurance does not operate until the bond required by regulation 5.10 (below) has been paid.

Regulation 5.8 - 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 2 persons at one time. This does not include however persons who are dependants under 18 years old.

Regulation 5.9 - Liability of person giving assurance 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 or newstart allowance or

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.

Regulation 5.10 - Bond (required assurances)

This regulation provides that where an assurance of support is unconditionally required to be given to meet the relevant criteria of Schedule 2 or Schedule 3, the person giving the assurance of support must provide a bond of \$3500 in respect of a non-dependent person in relation to whom the assurance is given, and \$1500 in respect of each dependant (if any) of that person before a decision may be made on the application to which the assurance relates.

PART 6 - MIGRANT CENTRES

Regulation 6.1 - Control of migrant centres

This regulation provides that each migrant centre is to be managed and controlled by a Director on behalf of the Commonwealth. The regulation also gives the Director specified powers for the control of the Centre.

Regulation 6.2 - Canteen services in migrant centres

This regulation provides that a Director may provide a canteen service in a migrant centre, and that in doing so the Director does not need to comply with State or Territory liquor licensing requirements.

PART 7 - MISCELLANEOUS

DIVISION 1 - LODGMENT AND SERVICE OF DOCUMENTS'

Regulation 7.1 - Service of documents generally

This regulation prescribes the general procedures for a document to be taken to have been duly served on or given to a person, where other specific provisions of the Regulations do not apply. Documents may be given to the person personally or to an agent authorised by the person, or may be posted to the person's last-known address. In addition, the regulation provides that where a person is reasonably believed to be an illegal entrant the document may be published in a newspaper in the person's last-known place of residence or place of embarkation, or nationally.

Regulation 7.2 - Service outside Australia

This regulation provides that a document may be taken as duly served on a person outside Australia if it is posted to the person's last-known place of residence or business outside Australia.

Regulation 7.3 - Service on owner, agent, charterer or master of vessel

This regulation provides that a document is duly served on the owner, agent or charterer of a vessel if it is sent by certified post to the person's place of business, or

left at that place with an employee aged 16 years or more. The regulation further provides that a document may be served on the master of a vessel by giving it to the master personally or by leaving it on the vessel with an officer of the vessel.

Regulation 7.4 - Service of notice on bank or other financial institution (subsection 68(2) of Act)

This regulation provides that where a notice is served on a detained illegal entrant or deportee under subsection 68(2) of the Act (ie, a notice to the effect that the person's valuables are liable to be taken to cover the amount of a debt to the Commonwealth), a copy of the notice is taken to be duly served on a bank or other financial institution if it is faxed to the head office of the bank or institution in Australia.

Regulation 7.5 - Summons to attend as witness

This regulation provides that a summons to attend as witness will be taken as duly served if it is given to the person personally, sent by certified mail to the person's last-known address, or left at the person's last-known address with an occupant aged 16 years or more.

Regulation 7.6 - Time when service takes effect

This regulation prescribes the time at which a document is taken to have been received by the person on whom it is served. The time depends on how service is effected, according to the procedures prescribed under regulations 7.1, 7.2 and 7.3 (that is, given to the person or another person, posted to the person or published in a newspaper).

Regulation 7.7 - Saving

This regulation provides that the provisions of this Division are subject to any other requirement of these Regulations or of the *Acts Interpretation Act* 1901 relating to the service of documents.

DIVISION 2 - RECONSIDERATION OF DECISIONS

Regulation 7.8 - Reconsideration of decisions to refuse to grant a visa or entry permit

This regulation enables review by the Minister of certain decisions to refuse applications for visas and entry permits made before 19 December 1989, in circumstances where the applicant did not take up a right of review of the decision at that time and lost access to review as a result of amendments to the Act on 19 December 1989. A review may be sought only in respect of applications for specified visas and entry permits. The review must have been applied for by 31 August 1990 or within 28 days (if the applicant is in Australia) or 70 days (if the applicant is outside Australia) of notification of the decision, whichever is the later.

DIVISION 3 - GENERAL

Regulation 7.9 - Prescribed persons (subsection 15(3) of the Act)

This regulation prescribes a class of persons for the purposes of subsection 15(3) of the Act.

Regulation 7.10 - Approved appointments (employer nomination)

This regulation sets down the requirements to be met for a proposed appointment which is the subject of an employer nomination to be considered an approved appointment for the purposes of the Regulations. An applicant must be nominated for an approved appointment to satisfy the prescribed criteria in respect of a Class 121 (employer nomination) visa and a Class 805 (skilled occupation) entry permit (if the application is made on the basis of an employer nomination). The effect of this provision is to separate approval of the position for which a person is sought, from approval of an applicant for the position.

Regulation 7.11 - Prescribed diseases (subparagraph 20(1) (d) (i) of Act)

This regulation prescribes the diseases and conditions which, if a person suffering from one or more of them enters Australia without an endorsed entry permit, will result in the person becoming an illegal entrant under subsection 14(2) of the Act. Subsections 20(3), (4) and (5) of the Act provide that a person affected by a prescribed disease or condition may disclose that fact and may be granted a visa or an entry permit endorsed to the effect that the person is recognised as a person suffering from the disease or condition.

Regulation 7.12 - Prescribed circumstances (subparagraph 20(1)(d)(vi) of Act)

This regulation prescribes the circumstances in relation to the exclusion of a person from a foreign country which, if a person to whom one or more of the circumstances applies enters Australia without an endorsed entry permit, will result in the person becoming an illegal entrant under subsection 14(2) of the Act. Subsections 20(3), (4) and (5) of the Act provide that a person to whom a prescribed circumstance applies may disclose that fact and may be granted a visa or an entry permit endorsed to the effect that the person is recognised as a person to whom the prescribed circumstance applies.

Regulation 7.13 - Section 20 notice

This regulation prescribes the form to be used for giving a notice under subsection 20(3) of the Act. The form prescribed is form 1 which is set out in Schedule 6 of these Regulations.

Regulation 7.14 - Prescribed procedures (subsection 59(2) of Act)

This regulation prescribes the procedures to be followed by the Minister before the mandatory deportation of an illegal entrant under subsection 59(2) of the Act.

Regulation 7.15 - Prescribed matters (subsections 60(1) and 82(1) of Act)

This regulation prescribes those matters which must be considered by the Minister (which are the only matters which may be considered by the Minister) in deciding to

exercise his or her powers under subsection 60(1) of the Act (in relation to the deportation of an illegal entrant) and subsection 82(1) of the Act (in relation to requiring an illegal entrant to leave Australia).

Regulation 7.16 - Section 76 of Act - prescribed penalty

This regulation prescribes a penalty of \$1000, which a person who is alleged to have committed an offence under section 76 of the Act may pay to the Commonwealth as an alternative to prosecution. See also regulation 7.17 of these Regulations.

Regulation 7.17 - Infringement notices - offences against section 76 of the Act

This regulation prescribes the procedures under which a person who is alleged to have committed an offence under section 76 of the Act may pay the Commonwealth, as an alternative to prosecution, a penalty of \$1,000. (Note: The penalty is prescribed by regulation 7.16.)

Regulation 7.18 - Prescribed matters (subsection 63(1) of Act)

This regulation prescribes those matters which must be considered by the Minister (which are the only matters which may be considered by the Minister) in deciding to exercise his or her powers under subsection 63(1) of the Act in relation to the revocation of a deportation order against a person.

Regulation 7.19 - Search warrants (subsections 68(14) and 90(4) of Act)

This regulation prescribes the form for search warrants issued under subsections 68(14) and 90(4) of the Act. They are forms 3 and 2, respectively, which are set out in Schedule 6.

Regulation 7.20 - Document for purposes of subsection 114(2) of Act

This regulation prescribes the form for a document for the purposes of subsection 114(2) of the Act. The form prescribed is form 4 which is set out in Schedule 6.

Regulation 7.21 - Offences

This regulation provides that it is an offence for a person to contravene or fail to comply with any provision of these Regulations which applies to that person. The regulation prescribes a penalty of \$100 or imprisonment for 3 months for this offence.

Regulation 7.22 - Detention centres - medical treatment

This regulation enables the Secretary of the Department, acting on medical advice, to use reasonable force to cause a person in a detention centre to accept medical treatment, when the detainee has refused or failed to consent to the treatment, or is not reasonably capable of giving consent to the treatment, and in the absence of such treatment there would be serious risk to the life or health of the detainee.

Regulation 7.23 - Consent by Secretary to medical treatment of persons in custody

This regulation prescribes the circumstances under which the Secretary of the Department may consent to the giving of medical treatment to a person in custody.

DIVISION 4 - FEES

Regulation 7.24 - Fees in respect of applications for visas and entry permit

This regulation provides that the fee, if any, prescribed in the relevant Part of Schedule 2 or Schedule 3 is payable in respect of an application for a visa or entry permit unless there is a provision to the contrary elsewhere in this Division.

Regulation 7.25 - Payment of fees in foreign currencies

This regulation is intended to minimise administrative problems due to fluctuating exchange rates by providing that fees may be paid overseas either in Australian dollars or at the exchange rate specified for the relevant currency in Schedule 10 of these Regulations. Where no exchange rate is specified for a particular currency, the regulation provides a formula for determining currency equivalents based on the current commercial exchange rate.

Regulation 7.26 - Employer nomination fee

This regulation prescribes the fee payable in respect of an employer nomination as \$250.

Regulation 7.27 - Sponsorship fee

This regulation prescribes the fee payable in respect of the lodgment of a sponsorship, where a sponsorship is a requirement for the grant of certain visas and temporary entry permits.

Regulation 7.28 - Refund of fee

This regulation specifies the circumstances in which a fee which has already been paid may be refunded.

Regulation 7.29 - Fee on application for reconsideration of a decision

This regulation prescribes the fee payable in respect of an application for review **made under** the provisions of regulation 7.8. The regulation also provides that where the review is successful and an entry permit or visa is granted, the fee may be refunded.

Regulation 7.30 - Fee on application by person to whom subsection 14(2) of Act applies

This regulation provides that despite any other provision of these Regulations, no fee is payable in respect on an entry permit application made by a person who is an illegal entrant pursuant to subsection 14(2) of the Act but has either not been given a notice

by the Minister to that effect or makes the application within 7 days of being given such a notice.

PART 8 - REPEAL AND SAVING

Regulation 8.1 - Repeal of Migration Regulations

This regulation provides that the Statutory Rules set out in Schedule 12 of these Regulations are repealed.

Regulation 8.2 - Saving

Subregulation (1) provides that the Statutory Rules repealed by regulation 8.1 of these Regulations continue to apply to an application for the grant of a visa or an entry permit made before the commencement of these Regulations, and to proceedings commenced before the commencement of these Regulations for a review of a decision on an application for the grant of a visa or an entry permit, or certain proceeding relating to the detention or deportation of a person.

Subregulation (2) provides for notices made under regulation 3B of the Migration Regulations to continue in force despite the repeal of those regulations by regulation 8.1 of these Regulations. (See also regulation 1.18 of these Regulations.)

Subregulation (3) provides that the repeal and saving effected by subregulations (1) and (2) is subject to the specified provisions of the *Acts Interpretation Act 1901*.

Schedule 1 - Classification of Visas and Entry Permits

This schedule contains a table dividing visas and entry permits into broad "policy" groups:

Group 1.1 (Migrant)

Group 1.2 (Permanent resident (after entry))

Group 1.3 (Permanent resident (refugee and humanitarian))

Group 1.4 (Resident return (permanent entry))

Group 2.1 (Temporary resident)

Group 2.2 (Student)

Group 2.3 (Visitor)

Group 2.4 (Visitor (short stay))

Group 2.5 (Extended eligibility)

Group 2.6 (Refugee and humanitarian (temporary entry))

Group 2.7 (Provisional)

Group 2.8 (Miscellaneous)

Schedule 2 - Provisions With Respect of the Grant of Individual Classes of Visas and Entry Permits to Primary Persons

This schedule lists the prescribed criteria for the grant of each class of visa and entry permit to primary applicants. The criteria for each visa and entry permit are further divided into criteria to be met for a visa before entry and after entry to Australia, and criteria to be met for an entry permit before entry and after entry to Australia. It is also specified whether the criteria are to be met at time of application or at time of decision.

The schedule sets out the forms to be used and fees (if any) to be paid. The schedule also specifies the conditions and periods of time (if any) which are applicable to the visa or entry permit.

Schedule 3 - Provisions with Respect to the Grant of Individual Classes of Visas and Entry Permits to Secondary Persons

This schedule lists the prescribed criteria for the grant of classes of visas and entry permits to secondary applicants. The criteria are structured in a similar manner to those in Schedule 2.

Schedule 4 - Public Interest Criteria

This schedule contains the public interest criteria. This includes the character requirements, the health requirements and the risk factor in relation to applications for visit visas. These requirements were previously incorporated in regulations 2 (definitions of "public interest criteria" and "good character") and 9A (risk factor) and in Schedule 1 (items H and H1- health criteria) of the previous Migration Regulations.

The prescribed criteria for each visa and entry permit specify which of these public interest criteria are to apply for that visa or entry permit.

Schedule 5 - Special Re-Entry Criteria

This schedule lists the special re-entry criteria that apply to persons who have previously been in Australia and become illegal entrants, have been deported, have not complied with conditions of previous visas or entry permits or have commenced subsidised courses. The reentry criteria were contained in regulation 36 of the previous regulations.

The prescribed criteria for each visa and entry permit specify which of these re-entry criteria are to apply for that visa or entry permit.

Schedule 6 - Illegal Entrant Criteria

This schedule contains the criteria which applicants who are illegal entrants may have to satisfy for grant of an entry permit. The prescribed criteria for each entry permit specify which of these criteria are to be satisfied by an applicant who is an illegal entrant.

These criteria were formerly mainly in regulations 35AA and 42(1C) of the previous Regulations.

Schedule 7 - General Points Test - Qualifications and Point

This schedule lists the qualifications and points allocated for the purposes of regulation 2.4.

Schedule 8 - Business Skills Points Test - Attributes and Points

This schedule lists the business attributes and points allocated for the purposes of the business skills points test. Applicants for a class 127 (Business skills) or a class 128 (Business skills (senior executive)) visa or entry permit have to achieve a certain amount of points in this test.

Schedule 9 - Visa and Entry Permit Conditions

This schedule contains the conditions which may be applied to a visa or entry permit. Part 1 lists the terminating conditions and Part 2 lists other conditions.

The particular Parts of Schedules 2 and 3 for each visa and entry permit specify which of these conditions are to apply for that visa or entry permit.

Schedule 10 - Amounts of Fees in Certain Currencies

This schedule sets out equivalent amounts to the Australian dollar in thirteen other currencies.

Schedule 11 - Prescribed Forms

This schedule contains the prescribed forms.

Schedule 12 - Repealed Statutory Rules

This schedule lists the repealed statutory rules.