

## **Migration (1993) Regulations (Amendment) 1993 No. 88**

### **EXPLANATORY STATEMENT**

#### **STATUTORY RULES 1993 No. 88**

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

#### Migration Act 1958

#### Migration (1993) Regulations (Amendment)

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)(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)(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.

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

- paragraph 4(1A)(b) of the Act provides that the Regulations may prescribe the evidence which a person may provide to the Minister as evidence of the person's English language proficiency;
- 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 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;
- subsection 166JF(3) of the Act provides that the regulations may provide for the remuneration and allowances of members of the Refugee Review, Tribunal other than the Principal Member.

The purpose of the Regulations is:

- to introduce a new visa and entry permit - Class 213 (Displaced Burmese in Thailand). This new Class will enable the sponsorship for migration of displaced Burmese citizens resident in Thailand, who would face substantial discrimination if they were to return to Burma;
- to repeal retrospectively from 1 December 1992 provisions of the Migration (1989) Regulations and the Migration (1993) Regulations relating to the requirement that an applicant for the grant of resident status on skilled occupation grounds must not have been a prescribed non-citizen at any time within the previous ten years, preventing the grant of resident status on skilled occupation grounds to persons who are or had been in Australia as students in certain specified categories or as certain diplomatic or consular representatives of other countries before being granted temporary entry permits;

- to repeal retrospectively from 1 February 1993 the restriction on the grant of a Class 805 (skilled occupation) entry permit to exchange students, non-formal course students, and occupational trainees. This amendment was foreshadowed in the Government's response to the Industry Commission Report on Export of Education Services;
- to amend Schedule 4 (Public Interest Criteria) of the Migration (1993) Regulations as a consequence of the introduction into the Act, by the Migration (Offences and Undesirable Persons) Act 1992, of a new regime for refusing the grant of a visa or entry permit on "character" grounds;
- to restructure Part 801 of Schedule 2 of the Migration (1993) Regulations so that it correctly reflects the intended policy in relation to applicants for a Class 801 (spouse (after entry)) entry permit who are holders of a Class 300 (prospective marriage) entry permit; and further, to rectify a drafting error which prevented the grant of a Class 801 entry permit to these applicants if the Class 300 entry permit held at time of applying expired before the application was decided. These amendments do not involve any substantive changes in policy;
- to restructure Part 806 of Schedule 2 of the Migration (1993) Regulations so that it correctly implements the intended policy relating to the grant of a Class 806 (family and other close ties (after entry)) entry permit. These amendments do not involve any substantive changes in policy. As they rectify drafting errors in a way which is entirely beneficial to applicants and not disadvantageous to any applicant, their operation is made retrospective to 1 February 1993 (the date of commencement of the Migration (1993) Regulations);
- to correct a number of drafting errors, oversights and unintended effects in the Migration (1993) Regulations which prevent or impede their operation in accordance with the intended policy, and to make a number of other amendments which clarify the intended meaning of certain regulations.

Details of the Regulations are set out in the Attachment.

## ATTACHMENT

### Regulation 1 - Commencement

Subregulation 1.1 provides for subregulations 3.6 and 24.16 to operate retrospectively to 1 February 1993. These subregulations repeal provisions of the Migration (1993) Regulations relating to the requirement that an applicant for the grant of resident status on skilled occupation grounds must not have been a prescribed non-citizen at any time within the previous ten years. The effect of these subregulations, in conjunction with the new subregulation 8.2(111) inserted in the Migration (1993) Regulations by subregulation 21.2 of these Regulations, is to repeal the ten year prohibition with effect from 1 December 1992 (the date intended by policy for its cessation). See the notes, below, on the relevant subregulations for further details. Retrospectivity of this repeal is entirely beneficial to relevant applicants as it removes criteria to be met. It is not disadvantageous to any applicant and therefore does not offend the requirements of subsection 48(2) of the Acts Interpretation Act 1901;

Subregulation 1.1 also provides for subregulation 24.21 to have retrospective commencement from 1 February 1993. Subregulation 24.21 removes the restriction, contained in subparagraph 805.723(1)(b)(ii) of the Migration (1993) Regulations, on the grant of a Class 805 entry permit to exchange students, non-formal course students, and occupational trainees. See the notes, below, for further details of subregulation 24.21. Retrospective operation of this amendment is entirely beneficial and does not disadvantage any person as it in fact removes a restriction on the grant of a Class 805 entry permit to certain applicants. The provisions of subregulation 48(2) of the Acts Interpretation Act 1901 are therefore not infringed;

In addition, subregulation 1.1 provides for retrospective operation of subregulations 7.3, 11.3, 20.1, 20.2, 24.8, 24.9, 24.25, 24.26, 24.29, 24.30, 24.31, 24.33, 26.2, 31.2 and 38.1 from 1 February 1993. These amendments are intended to correct a number of drafting errors, oversights and other unintended effects flowing from the drafting of the Migration (1993) Regulations, which commenced on 1 February 1993. As a result, the relevant regulations of the Migration (1993) Regulations have not implemented the intended policy. The notes below on the specific retrospectively-operating subregulations provide details of why retrospective operation of the amendments is necessary. In each case, retrospectivity is entirely beneficial to the applicants concerned as it removes criteria which would otherwise have to be met or operates to remove other factors which were not intended to prevent eligibility. No applicants are disadvantaged by retrospectivity, and therefore the provisions of subsection 48(2) of the Acts Interpretation Act 1901 are not infringed.

Subregulation 1.2 provides for subregulations 40.2, 40.3 and 40.4 to operate retrospectively from 1 March 1993. These subregulations remove the requirement that certain applicants for business skills visas must have pre-enrolled in an English language course in Australia to receive higher scores on the assessment of their language ability. Since 1 March 1993 the Immigration (Education) Charge Regulations, made under the Immigration (Education) Act 1971, provide that where these applicants do not have functional English they must pay an English Language Charge to cover English tuition in Australia, which the Commonwealth is required by the Immigration (Education) Act 1971 to provide.

Pre-enrolment in an English language course therefore is no longer a relevant factor in the assessment of an applicant's language ability score after 1 March 1993. On removal of this requirement, applicants receive the maximum score without having to pre-enrol in an English course. The effect of retrospective operation of these amendments is therefore entirely beneficial to the applicants concerned, and is not disadvantageous to any applicant. Retrospectivity therefore will not offend subsection 48(2) of the Acts Interpretation Act 1901.

Subregulation 1.3 provides for regulations 36.1 and 36.2 to commence on 31 May 1993.

The remainder of these Regulations commence on gazettal.

## Regulation 2 - Amendment

This regulation provides for the Migration (1993) Regulations to be amended as set out in these Regulations.

### Regulation 3 - Regulation 1.3 (Interpretation)

This regulation makes the following amendments to the definitions given in regulation 1.3 of the Migration (1993) Regulations:

Subregulation 3.1 omits the definitions of "declared body" and "designated English language course". The definition of "declared body" is omitted as a consequence of the omission of regulation 1.18 by subregulation 5.1 of these Regulations, as it has ceased to have effect. The definition of "designated English language course" is also no longer required as amendments made to Schedule 8 (Business skills points test - attributes and points) by subregulations 40.2 and 40.3 of these Regulations remove the term from the Migration (1993) Regulations (see the notes on those subregulations, below).

Subregulation 3.2 makes an amendment to the definition of "designated industry sector" to clarify the definition.

Subregulation 3.3 amends the definition of "Education Minister" to reflect the alteration in the formal title of ministerial offices which removed the words "of State" from the titles of Ministers.

Subregulation 3.4 amends the definition of "Foreign Minister" to reflect that Minister's correct title following new administrative arrangements and the alteration in the formal title of ministerial offices which removed the words "of State" from the titles of Ministers.

Subregulation 3.5 amends the definition of "Immigration" following the change in the name of the Department as a result of new administrative arrangements.

Subregulation 3.6 omits the definition of "prescribed non-citizen". The term is no longer required as a result of the omission, with retrospective effect, of clause 805.721 of the Migration (1993) Regulations by these Regulations (subregulation 24.16 refers).

Previously, a person who was a "prescribed non-citizen" was ineligible for the grant of a Class 805 (skilled occupation) entry permit within ten years of being a "prescribed non-citizen". For the same reasons as outlined in respect of subregulation 24.16, the operation of this subregulation is made retrospective to 1 February 1993 (the date of commencement of the Migration (1993) Regulations).

Subregulation 3.7 amends the definition of "work" to clarify the intention that it applies to Group 2.3 (Visitor) and Group 2.4 (Visitor (short stay)) visas and entry permits.

### Regulation 4 - Regulation 1.6 (De facto spouse)

Subregulation 4.1 omits the words "(without being married to each other)" from paragraph 1.6(1)(a) of the Migration (1993) Regulations as they duplicate the provision in paragraph 1.6(1)(b).

#### Regulation 5 - Regulation 1.18 (Declared bodies)

Subregulation 5.1 omits regulation 1.18 from the Migration (1993) Regulations as regulation 1.18 ceased to have effect on 1 March 1993.

#### Regulation 6 - Regulation 2.8 (Notice of certain decisions refusing or terminating a visa or entry permit)

Subregulation 6.1 omits existing paragraph 2.8(2)(b) of the Migration (1993) Regulations to simplify the provisions relating to the giving of notice of certain decisions. The substantive effect of the provisions is not altered.

Subregulation 6.2 amends subregulation 2.8(3) of the Migration (1993) Regulations in consequence of the amendment -made by subregulation 6.1 of these Regulations.

#### Regulation 7 - Regulation 2.10 (Prescribed change in circumstances (paragraphs 36(1)(a) and 37 (2)(a) of Act))

Subregulation 7.1 amends subparagraph 2.10(f)(iii) of the Migration (1993) Regulations to correct the reference to a December 1989 (temporary) entry permit which was granted under the Migration (1989) Regulations but is not provided for under the Migration (1993) Regulations.

Subregulation 7.2 amends subparagraph 2.10(j)(iv) by removing the reference to the Class 823 extended eligibility (economic) entry permit - an entry permit available under the Migration (1989) Regulation but not under the Migration (1993) Regulations. The substantive effect of the subparagraph is not altered.

Subregulation 7.3 amends paragraph 2.10(k) of the Migration (1993) Regulations to include a reference to subsection 14(2A) of the Act. In order to correct an anomaly, the Migration Amendment Act (No 2) 1992 amended section 14 of the Act by rewriting subsection 14(2) as two subsections - 14(2) and 14(2A) - with effect from 30 June 1992. By oversight, a reference to this new subsection was not inserted in the Migration (1993) Regulations. The operation of subregulation 7.3 is made retrospective to 1 February 1993 (the date of commencement of the Migration (1993) Regulations). This is entirely beneficial to applicants who are illegal entrants by operation subsection 14(2A) as they are enabled to make a further application to regularise their status. Retrospectivity does not disadvantage any person.

#### Regulation 8 - Regulation 2.12 (Entitlement to be granted a visa)

Subregulation 8.1 makes a minor technical amendment to subregulation 2.12(1) of the Migration (1993) Regulations.

#### Regulation 9 - Regulation 2.15 (Special provision for grant Outside Australia of certain visas to former holders of corresponding temporary entry permits)

Subregulation 9.1 amends subregulation 2.15(2) of the Migration (1993) Regulations by omitting the reference to "temporary" visas as that term is not defined in the Migration (1993) Regulations.

Subregulation 9.2 omits paragraph 2.15(2)(a) of the Migration (1993) Regulations and substitutes a new paragraph 2.15(2)(a) in consequence of the amendment made by subregulation 9.1.

#### Regulation 10 - Regulation 2.22 (Effect and operation of visas)

Subregulation 10.4 amends paragraph 2.22(2)(e) of the Migration (1993) Regulations to include a reference to regulation 2.36, as visas may also be terminated by operation of that regulation.

#### Regulation 11 Regulation 2.29 (Applications for certain classes of entry Permits to have effect as applications for entry permits of certain other classes)

Subregulation 11.1 amends subparagraph 2.29(1)(a)(v) of the Migration (1993) Regulations to correct the title of the Class 806 (family and other close ties (after entry)) entry permit.

Subregulation 11.2 corrects an error in paragraph 2.29(1)(b) of the Migration (1993) Regulations.

Subregulation 11.3 amends paragraphs 2.29(1B)(a) to (h) of the Migration (1993) Regulations to make a number of corrections to the titles of the entry permits listed. In addition, subregulation 11.3 also adds the Class 808 (confirmatory) entry permit to the provisions of subregulation 2.29(1B). As a result of a drafting oversight a reference to Class 808 was not inserted when the Migration (1993) Regulations were made. These amendments implement the intended operation of subregulation 2.29(1B), and it is therefore appropriate to make the operation of subregulation 7.3 retrospective to 1 February 1993 (the date of commencement of the Migration (1993) Regulations). This is entirely beneficial to applicants for a Class 808 entry permit, and retrospectivity does not disadvantage any person.

#### Regulation 12 - Regulation 2.31 (Special criterion applicable to holders of visas granted under law in force before 19 December 1989)

Subregulation 12.1 amends subparagraph 2.31(e)(ii) of the Migration (1993) Regulations to correct the title of the Class 813 (special equivalent 1989 (permanent)) entry permit.

#### Regulation 13 - Regulation 2.35 (Effect and operation of entry permits)

Subregulation 13.1 amends paragraph 2.35(2)(e) of the Migration (1993) Regulations to clarify the intended meaning.

#### Regulation 14 - Regulation 3.3 (Provision by master of information regarding passengers)

Subregulation 14.1 amends subregulation 3.3(2) of the Migration (1993) Regulations to allow the certificate referred to in subregulation 3.3(2) to be signed by the medical officer as well as by the master of the vessel, rather than only by the master.

Subregulation 14.2 amends paragraph 3.3(2)(a) of the Migration (1993) Regulations in consequence of the amendment made by subregulation 14.1.

#### Regulation 15 - Regulation 7.1 (Service of documents generally)

Subregulation 15.1 makes a minor technical amendment to subparagraph 7.1(2)(b)(i) of the Migration (1993) Regulations by removing a duplicated reference to "place of residence".

#### Regulation 16 - Regulation 7.6 (Time when service takes effect)

Subregulation 16.1 corrects an anomaly in subregulation 7.6(2) of the Migration (1993) Regulations by removing the reference to subregulation (3). Subregulation (3) does not refer to service of a document by post, and there is no intention that the operation of subregulation (2) should be subject to subregulation (3).

#### Regulation 17 - Regulation 7.8 (Reconsideration of decisions to refuse to grant a visa or entry permit)

Subregulations 17.1 and 17.2 make minor typographical amendments to subparagraphs 7.8(2)(b)(i) and 7.8(2)(b)(ii) respectively of the Migration (1993) Regulations.

#### Regulation 18 - Regulation 7.8AA (Prescribed evidence - paragraph 4(1A)(b) of the Act)

Subregulations 18.1 and 18.2 make minor amendments to paragraphs 7.8AA(a), (b) and (c) respectively of the Migration (1993) Regulations to clarify the intended meaning.

Subregulation 18.3 corrects the reference to the "National Languages and Literacy Institute of Australia" in paragraph 7.8AA(d) of the Migration (1993) Regulations.

Subregulation 18.4 makes a minor technical amendment to paragraph 7.8AA(g) of the Migration (1993) Regulations.

Subregulation 18.5 amends the second-occurring subparagraph 7.8AA(h)(ii) of the Migration (1993) Regulations, to correct the error in numbering and to clarify the intended meaning.

#### Regulation 19 - Regulation 7.20A (Refugee Review Tribunal)

Subregulation 19.1 amends regulation 7.20A of the Migration (1993) Regulations to limit its operation to the first appointed member of the Refugee Review Tribunal.



Regulation 20 - Regulation 7.30 (Fee on application by person to whom subsection 14(2) or (2A) of the Act applies)

Subregulation 20.1 amends subregulation 7.30(1) of the Migration (1993) Regulations to include a reference to subsection 14(2A) of the Act. In order to correct an anomaly, the Migration Amendment Act (No 2) 1992 amended section 14 of the Act by rewriting subsection 14(2) as two subsections - 14(2) and 14(2A) - with effect from 30 June 1992. 'By oversight, a reference to new subsection 14(2A) was not included in the Migration (1993) Regulations. The amendment also makes it clear that the "notice" referred to in subregulation 7.30(1) is a notice by the Minister that the applicant is an illegal entrant because of subsection 14(2) or (2A) of the Act.

Subregulation 20.2 amends paragraph 7.30(2)(a) of the Migration (1993) Regulations to include a reference to subsection 14(2A) of the Act. See the above notes on subregulation 20.1, regarding the background to subsection 14(2A).

The operation of subregulations 20.1 and 20.2 is made retrospective to 1 February 1993 (the date of commencement of the Migration (1993) Regulations) as it has always been the intention that the applicants concerned should not have to pay a fee on application for an entry permit to regularise their status. Retrospectivity is therefore entirely beneficial to these applicants and does not disadvantage any person.

Regulation 21 - Regulation 8.2 (Saving)

Subregulation 21.1 amends subregulation 8.2(1) of the Migration (1993) Regulations to provide that the Migration (1989) Regulations continue to apply in the cases prescribed in paragraphs (a) to (d) inclusive, but subject to the new subregulations (1A) and (1B), inserted by subregulation 21.2 of these Regulations (see notes, below). The effect of this amendment is to retrospectively amend the Migration (1989) Regulations, from 30 June 1992 as provided for in the new subregulation (1A), and from 1 December 1992 as provided for in the new subregulation (1B).

Subregulation 21.2 inserts two new subregulations in the Migration (1993) Regulations. Details of these new subregulations are:

New subregulation 8.2(1A) retrospectively amends paragraphs 35AA(1A)(a), 40(1)(s) and 201A(2)(a) of the Migration (1989) Regulations to include a reference to subsection 14(2A) of the Act, with effect from 30 June 1992. In order to correct an anomaly, the Migration Amendment Act (No 2) 1992 amended section 14 of the Act by rewriting subsection 14(2) as two subsection - 14(2) and 14(2A) - with effect from 30 June 1992. By oversight, the Migration (1989) Regulations were not amended to include a reference to the new subsection 14(2A). The effect of these amendments is to allow applications for entry permits by certain persons who are illegal entrants by reason only of subsection 14(2A) to proceed, and also to provide that in certain cases there is no fee payable on the application. This amendment will affect only those applications to which the Migration (1989) Regulations continue to apply (see subregulation 8.2(1) of the Migration (1993) Regulations, as amended by these Regulations). Omission to make these amendments to the Migration (1989) Regulations diminished the purely beneficial operation of the regulations concerned, and therefore retrospectivity is entirely beneficial.

New subregulation 8.2(1B) repeals regulation 8A, subparagraph 128(1)(a)(i), subregulation 128(1A), subparagraph 139(1)(c)(i) and subregulation 139(1A) of the Migration (1989) Regulations, with effect from 1 December 1992. The repealed provisions related to the requirement that an applicant for the grant of resident status on skilled occupation grounds must not have been a prescribed non-citizen at any time within the previous ten years. The government decided that this requirement should cease as from 1 December 1992, but the Migration (1989) Regulations were not amended. Repeal of these provisions will affect only those applications to which the Migration (1989) Regulations continue to apply (see subregulation 8.2(1) of the Migration (1993) Regulations, as amended by these Regulations). It will be entirely beneficial to applicants who applied on or after 1 December 1992 for the grant of resident status on skilled occupation grounds as it removes criteria which would otherwise have to be satisfied. No applicants will be disadvantaged.

#### Regulation 22 - Schedule 1 (Classification of visas and entry permits)

Subregulation 22.1 inserts the new Class 213 (Displaced Burmese in Thailand (special assistance)) visa and entry permit, created by these Regulations, as item 1303A in Division 1.3 - Group 1.3 (Permanent resident (refugee and humanitarian)) of Schedule 1.

#### Regulation 23 - Schedule 2, Chapter 1.1 (Provisions with respect to the grant of migrant visas and entry permits)

##### *Part 101 - Class 101 (Child) visa and entry permit*

Subregulation 23.1 corrects the numbering of subdivision 101.52 and clause 101.521 of the Migration (1993) Regulations.

##### *Part 102 - Class 102 (Adoption) visa and entry permit*

Subregulation 23.2 makes a minor technical amendment to clause 102.335 of the Migration (1993) Regulations.

##### *Part 103 - Class 103 (Parent) visa and entry permit*

Subregulation 23.3 makes a minor technical amendment to subclause 103.336(1) of the Migration (1993) Regulations.

##### *Part 104 - Class 104 (Preferential family) visa and entry permit*

Subregulation 23.4 corrects the numbering of subdivision 104.52 and clause 104.521 of the Migration (1993) Regulations.

##### *Part 124 - Class 124 (Distinguished talent (Australian support)) visa and entry permit*

Subregulations 23.5 and 23.6 amend clause 124.321 and subparagraph 124.322(a)(iii) of the Migration (1993) Regulations, respectively, to clarify the intended meaning.

*Part 125 - Class 125 (Distinguished talent and special service (independent) visa and entry permit*

Subregulation 23.7 amends clause 125.321 of the Migration (1993) Regulations, to clarify the intended meaning.

*Part 127 - Class 127 (Business skills) visa and entry permit and Part 128 - Class 128 (Business skills (senior executive)) visa and entry permit*

Subregulation 23.8 makes stylistic amendments to clauses 127.327 and 128.324 of the Migration (1993) Regulations.

Subregulation 23.9 makes a minor grammatical amendment to paragraph 127.511(b) of the Migration (1993) Regulations.

Subregulation 23.10 omits the reference in clause 128.331 of the Migration (1993) Regulations to clause 128.326, the criteria of which has to be satisfied at time of application only.

Subregulation 23.11 makes a minor grammatical amendment to paragraph 128.511(b) of the Migration (1993) Regulations.

*Part 129 - Class 129 (State/Territory sponsored business skills) visa and entry permit*

Subregulation 23.12 makes a stylistic amendment to clause 129.327 of the Migration (1993) Regulations.

Subregulation 23.13 inserts public interest criterion 4010 in paragraph 129.335(1)(a) of the Migration (1993) Regulations as this was omitted by oversight.

*Part 130 - Class 130 (State/Territory sponsored business skills (senior executive)) visa and entry permit*

Subregulation 23.14 makes a minor stylistic amendment to clause 130.324 of the Migration (1993) Regulations.

Subregulation 23.15 inserts public interest criterion 4010 in paragraph 130.335(1)(a) of the Migration (1993) Regulations as this was omitted by oversight.

Subregulation 23.16 makes a minor grammatical amendment to paragraph 130.511(b) of the Migration (1993) Regulations.

*Part 431 - Class 431 (Restricted passport) visa*

Subregulation 23.17 corrects an anomaly in paragraph 431.211 (b) of the Migration (1993) Regulations as it is intended that a Class 431 (restricted passport) visa is to be granted only as a travel-only visa.

Regulation 24 - Schedule 2, Chapter 1.2 (Permanent resident (after entry) visas and entry permits)

*Part 801 - Class 801 (Spouse (after entry)) entry permit*

Subregulation 24.1 makes a stylistic amendment to clause 801.131 of the Migration (1993) Regulations. Subregulation 24.1 also omits the note following clause 801.131.

Subregulation 24.2 inserts two new clauses 801.721 and 801.722 in subdivision 801.72 of the Migration (1993) Regulations, to provide for requirements to be met at the time of application for a Class 801 (spouse (after entry)) entry permit by applicants who hold a valid Class 300 (prospective marriage) entry permit. New clause 801.721 provides that an applicant who is the holder, as a primary person, of a Class 300 entry permit must have married the Australian citizen or permanent resident that the applicant entered Australia to marry, must have a genuine and continuing relationship with the Australian citizen or permanent resident, and must be nominated by that person.

New clause 801.722 provides for an application to be made by a person who is a dependent child of an applicant who satisfies the criteria of new clause 801.721. The effect of these new clauses is to prevent applications for a Class 801 entry permit by holders of a valid Class 300 entry permit unless the marriage has taken place and the marital relationship is genuine and continuing. This requirement is in accordance with the intended policy that holders of Class 300 entry permits should only be able to apply directly for a Class 801 (spouse (after entry)) entry permit if they have met their conditions of entry by marrying the Australian citizen or permanent resident they entered Australia to marry and then applying for a Class 801 entry permit within the period of validity of the Class 300 entry permit. As a valid Class 300 entry permit is now required to be held at the time of application, it is not necessary to continue to require an applicant to hold a valid Class 300 entry at the time of decision. Subregulation 24.6 of these Regulations omits this requirement. The effect of this amendment is beneficial to those applicants whose Class 300 entry permits expire during processing of the Class 801 application and who must be granted an entry permit of another class before the application is decided. (See also the notes below on subregulation 24.6.)

Subregulation 24.3 amends subclause 801.732(2) of the Migration (1993) Regulations to correct an error in the numbering of paragraph 801.732(2)(b).

Subregulation 24.4 makes a stylistic amendment to subclause 801.732(4) of the Migration (1993) Regulations.

Subregulation 24.5 makes an amendment to paragraph 801.732(5)(b) of the Migration (1993) Regulations to clarify the intended meaning.

Subregulations 24.6 and 24.7 amend subclauses 801.732(7), (7A), (8) and (10) of the Migration (1993) Regulations, respectively, so that to meet the requirements of those subclauses applicants must have met the criteria of the new clauses 801.721 and 801.722, inserted by subregulation 24.2 of these Regulations, as relevant. These subclauses are also amended so that they no longer require applicants to hold a Class 300 (prospective marriage) entry permit. Instead applicants may hold any section 47 temporary entry permit (as required under the existing clause 801.731). This amendment, in conjunction with the amendment made by subregulation 24.2 (see

notes above), is beneficial to those applicants who held a Class 300 (prospective marriage) entry permit at time of application for a Class 801 (spouse (after entry)) entry permit, but that entry permit expired during processing of the application. As there is no provision for the grant of a further Class 300 entry permit after entry beyond a total period of six months, applicants would have to be granted another class of section 47 temporary entry permit and would not therefore hold a Class 300 entry permit at the time the application was decided.

Subregulation 24.8 adds a new paragraph to subclause 801.732(11) of the Migration (1993) Regulations, to provide that a Class 801 (spouse (after entry)) entry permit may be granted prior to the expiry of two years after the relevant application is made to an applicant who was granted an extended eligibility (spouse) entry permit under the Migration (1989) Regulations prior to the introduction of the combined extended eligibility temporary entry permit/permanent entry permit after entry application form (that is, any applicant whose application was not made on approved form 887, which allows the combined application to be made).

These applicants commenced the process of applying for resident status as spouses of Australian citizens or permanent residents prior to the implementation on 15 April 1991 of policy changes which generally prevent the grant of a Class 801 entry permit until two years after the date of application. It was not the intention that these applicants should have to wait two years for the grant of the Class 801 entry permit. The operation of subregulation 24.8 is made retrospective to 1 February 1993 (the date of commencement of the Migration (1993) Regulations), as this provision was omitted from the Migration (1993) Regulations by oversight. The amendment is entirely beneficial to the applicants concerned and does not disadvantage any other applicants.

#### *Part 802 - Class 802 (Child (after entry)) entry permit*

Subregulation 24.9 amends clause 802.722 of the Migration (1993) Regulations to correct the criteria to be met by an applicant for a Class 802 entry permit (after entry) who is an illegal entrant. Criterion 6004 is omitted as it does not have to be met by these applicants. The operation of subregulation 24.9 is made retrospective to 1 February 1993 (the date of commencement of the Migration (1993) Regulations) as this provision was inserted in the Migration (1993) Regulations by oversight and did not reflect the policy intention. Retrospective operation of the amendment is entirely beneficial to all applicants as it removes a requirement which would otherwise have to be met. It is not disadvantageous to any applicant.

Subregulation 24.10 rewrites clause 802.735 of the Migration (1993) Regulations to ensure that the policy intention regarding the rights and interests of any person who has custody or guardianship of, or access to, an applicant or a dependent child of an applicant is reflected accurately.

Subregulation 24.11 omits from the Migration (1993) Regulations two clauses numbered 802.737. Neither clause with this number is necessary as the intended provision is adequately made in clause 802.735 (as amended by subregulation 24.10 of these Regulations).

Subregulation 24.12 makes a minor technical amendment to paragraph 802.821(a) of the Migration (1993) Regulations to clarify that any applicants for a Class 802 entry permit who fall within this provision would be holders of an extended eligibility (family) entry permit (code number 822) which was applied for and granted under the Migration (1989) Regulations.

Subregulation 24.13 amends subparagraph 802.821(b)(ii) of the Migration (1993) Regulations to clarify that specific references in that paragraph to classes of visas are references to classes of visas applied for and granted under the Migration (1989) Regulations.

*Part 804 - Class 804 (Aged parent (after entry)) entry permit*

Subregulation 24.14 corrects the reference to the relevant provision in the Act which occurs in the note following clause 804.736 of the Migration (1993) Regulations.

Subregulation 24.15 omits clause 804.738 of the Migration (1993) Regulations. This clause is unnecessary as the intended provision is adequately made in clause 804.739.

*Part 805- Class 805 (Skilled occupation) entry permit*

Subregulation 24.16 omits clause 805.721 of the Migration (1993) Regulations. The effect of this omission is to abolish the "ten-year rule" - previously contained in clause 805.721 - which prevented the grant of a Class 805 entry permit to certain applicants who had been prescribed non-citizens at any time within the previous ten years - ie, persons who are or had been in Australia as students in certain specified categories or as certain diplomatic or consular representatives of other countries before being granted temporary entry permits. The operation of subregulation 24.16 is made retrospective to 1 February 1993 (the date of commencement of the Migration (1993) Regulations). The policy intention was that the "ten-year rule" be abolished from 1 December 1992, but this policy was not implemented in the Migration (1993) Regulations when they were made. Retrospective operation of the proposed amendment is entirely beneficial to all applicants as the subregulation removes one of the criteria an applicant would otherwise be required to satisfy. (See also regulation 21 of these Regulations, which provides, inter alia, for retrospective removal of the "ten-year rule" from the Migration (1989) Regulations, with effect from 1 December 1992.)

Subregulations 24.17, 24.18, 24.19, and 24.20 make minor corrections to clause 805.722 of the Migration (1993) Regulations.

Subregulation 24.21 removes the restriction, contained in subparagraph 805.723(1)(b)(ii) of the Migration (1993) Regulations, on the grant of a Class 805 entry permit to exchange students, non-formal course students, and occupational trainees. The operation of subregulation 24.21 is made retrospective to 1 February 1993 (the date of commencement of the Migration (1993) Regulations). This accurately reflects the policy intention, as the amendment in question was foreshadowed in the Government's response to the Industry Commission Report on Export of Education Services and, but for the delayed commencement of the Migration (1993) Regulations, was to have been implemented by the end of 1992. It

was intended that it should be implemented in the Migration (1993) Regulations but this was not done when those Regulations were made. Retrospective operation of the amendment does not disadvantage any person as it removes a restriction on the grant of a Class 805 entry permit to certain applicants.

Subregulations 24.22 and 24.23 make minor technical amendments to clause 805.724 of the Migration (1993) Regulations.

Subregulation 24.24 rewrites clause 805.738 of the Migration (1993) Regulations to ensure that the policy intention regarding the rights and interests of any person who has custody or guardianship of, or access to, a dependent child of an applicant is reflected accurately.

*Part 806 - Class 806 (Family and other close ties (after entry)) entry permit*

Subregulation 24.25 amends subclause 806.721(1) of the Migration (1993) Regulations to provide that, at the time of application, applicants who satisfy the requirements of the new subclauses (7) or (8) (both inserted by subregulation 24.29 of these Regulations - see notes below) may be either holders of valid temporary entry permits or, subject to the provisions of subclause 806.721(2) (as amended by subregulation 24.26 of these Regulations), illegal entrants. This subregulation is made to operate retrospectively from 1 February 1993 as it rectifies a drafting error made in the Migration (1993) Regulations from that date. As it permits an application by classes of applicants previously unable to meet the requirements, its effect is beneficial. No applicants are disadvantaged.

Subregulation 24.26 amends subparagraph 806.721(2)(b)(i) to provide that an illegal entrant who satisfies the requirements of new subclauses 806.721(7) or (8) (inserted by subregulation 24.29 of these Regulations) and also satisfies illegal entrant criteria 6001, 6002 and 6004, is able to meet the time of application criteria. The operation of this amendment is made retrospective to 1 February 1993 (the date of commencement of the Migration (1993) Regulations). Its effect is to permit an application by classes of illegal entrants who were previously unable to meet the time of application criteria. Retrospectivity is beneficial to those applicants, and is not detrimental to any applicant.

Subregulation 24.27 makes a correction to subparagraph 806.721(4)(a)(iv).

Subregulation 24.28 rephrases paragraph 806.721(4)(b) to clarify that, in order to satisfy this requirement, an applicant is required to have been an Australian permanent resident at any time within five years before being granted the visa referred to in paragraph 806.721(a), and to have subsequently become an illegal entrant.

Subregulation 24.29 inserts two new subclauses 806.721(7) and (8) in the Migration (1993) Regulations. As subdivision 806.72 was previously structured, an applicant was required to satisfy both subclauses 806.721 and 806.722. This was not in accordance with the policy intention and Was a result of a drafting error which occurred when the Migration (1993) Regulations were made. Subregulation 24.29 therefore incorporates the present clause 806.722 in a new subclause 806.721(7) as one of a number of alternatives to be satisfied. The new subclause 806.721(8)

provides, as an alternative requirement to be satisfied at time of application, the requirement formerly prescribed at subclause 806.731(4) as a requirement to be met at the time of decision. This is necessary to rectify a drafting error, because, as subdivisions 806.72 and 806.73 were previously drafted, an applicant who could satisfy the requirements of subclause 806.731(4) was unable to satisfy any corresponding criteria at time of application and was therefore effectively prevented from being granted the entry permit. The operation of this subregulation is made retrospective to 1 February 1993 (the date of commencement of the Migration (1993) Regulations). Its effect is to permit applications by classes of applicants who were previously ineligible. Retrospectivity is therefore entirely beneficial to those applicants and is not disadvantageous to any applicant.

Subregulation 24.30 omits clause 806.722 of the Migration (1993) Regulations as subregulation 24.29 of these Regulations correctly incorporates its provisions in clause 806.721. The operation of this subregulation is made retrospective to 1 February 1993. Retrospectivity of this amendment is for the same reasons, and has the same effect as, retrospectivity of subregulation 24.29 - see the notes, above, on that subregulation.

Subregulation 24.31 amends paragraph 806.731(4)(a) of the Migration (1993) Regulations as a consequence of the changes contained in subregulation 24.29 of these Regulations, which inserts a new subclause 806.721(8) to provide for threshold criteria to be met at the time of application. Consequently, these requirements are now omitted from that to be met at the time of decision. This amendment is made to operate retrospectively to 1 February 1993, with the same effect and for the same reasons as the retrospective operation of subregulation 24.29 - see the notes, above, on that subregulation.

Subregulation 24.32 makes a technical correction to paragraph 806.731(4)(c).

Subregulation 24.33 amends paragraph 806.731(5)(a) of the Migration (1993) Regulations to refer to new subclause 806.721(7), inserted by subregulation 24.29 of these Regulations. As this amendment is consequential upon the amendment made by subregulation 24.29, the operation of subregulation 24.33 is also made retrospective to 1 February 1993 (the date of commencement of the Migration (1993) Regulations). See the notes, above, on subregulation 24.29 for details of the reasons for and effect of retrospectivity.

Subregulation 24.34 makes a grammatical correction to paragraph 806.731(5)(c).

Subregulation 24.35 corrects, in the note following clause 806.731, the reference to the relevant provision in the Migration Act 1958.

Subregulation 24.36 makes a technical correction to paragraph 806.732(2)(b).

Subregulation 24.37 omits clause 806.733 as this clause is unnecessary in view of clause 806.734 (as amended by subregulation 24.38).



Subregulation 24.38 rewrites clause 806.734 to ensure that the policy intention regarding the rights and interests of any person who has custody or guardianship of, or access to, an applicant or a dependent child of an applicant is reflected accurately.

Subregulation 24.39 corrects the numbering of subdivision 806.82.

*Class 808 - Class 808 (Confirmatory) entry permit*

Subregulation 24.40 amends paragraph 808.722(d) of the Migration (1993) Regulations to clarify the intended meaning.

Subregulation 24.41 corrects a drafting error in clause 808.723 of the Migration (1993) Regulations.

*Part 812 - Class 812 (December 1989 (permanent) entry permit*

Subregulation 24.42 amends clause 812.721 to include illegal entrant criterion 6001. This criterion was omitted from the Migration (1993) Regulations by oversight.

Subregulations 24.43 and 24.44 make minor technical amendments to subclause 812.723(2).

Subregulation 24.45 amends subclause 812.723(5) to clarify the intended meaning.

Subregulation 24.46 makes a clarifying amendment to clause 812.732 of the Migration (1993) Regulations by incorporating the actual requirement contained in paragraph 812.722(e) in clause 812.732, rather than a mere reference to that paragraph.

Subregulation 24.47 omits clause 812.735 as this clause is unnecessary in view of clause 812.737 (as amended by subregulation 24.48 of these Regulations).

Subregulation 24.48 rewrites clause 812.737 to ensure that the policy intention regarding the rights and interests of any person who has custody or guardianship of, or access to, a dependent child of an applicant is reflected accurately.

Regulation 25 - Schedule 2. Chapter 1.3 (Permanent resident (refugee and humanitarian) visas and entry permits)

*Part 205 - Class 205 (Camp clearance) visa and entry permit*

Subregulation 25.1 makes a minor technical amendment to paragraph 205.322(b) of the Migration (1993) Regulations.

*Part 209 - Class 209 (Citizens of the former Socialist Federal Republic of Yugoslavia displaced persons (special assistance)) visa and entry permit*

Subregulation 25.2 amends paragraph 209.322(b) of the Migration (1993) Regulations to refer to "the former Socialist Federal Republic of Yugoslavia", instead of "Croatia, Slovenia or Yugoslavia".

*Part 211 - Class 211 (Burmese (special assistance)) visa and entry permit*

Subregulation 25.3 corrects the numbering of the paragraphs in subclause 211.321 of the Migration (1993) Regulations.

Subregulation 25.4 omits clause 211.324 of the Migration (1993) Regulations as this requirement is to be satisfied at the time of decision, not at the time of application (see also subregulation 25.5 of these Regulations).

Subregulation 25.5 inserts the requirement formerly contained in clause 211.324 of the Migration (1993) Regulations (and which was omitted by subregulation 25.4 of these Regulations) into subdivision 211.33 which sets out the criteria which are required to be satisfied at the time of decision.

*Part 212 - Class 212 (Sudanese (special assistance)) visa and entry permit*

Subregulation 25.6 makes a technical amendment to subdivision 212.12 of the Migration (1993) Regulations.

Subregulation 25.7 makes a grammatical correction to paragraph 212.323(d) of the Migration (1993) Regulations.

*Part 213 - Class 213 (Displaced Burmese in Thailand (special assistance)) visa and entry permit*

Subregulation 25.8 inserts a new Part 213 - Class 213 (Displaced Burmese in Thailand (special assistance)) visa and entry permit - into the Migration (1993) Regulations. The new Part will provide for travel to, and permanent residence in, Australia for citizens of Burma who are resident in Thailand and face substantial discrimination in Burma. It is a criterion for the grant of a Class 213 visa that applicants are supported by an organisation in Australia which is accepted by the Minister as representing the Burmese community in Australia, or by an established Community Refugee Settlement Scheme support group. The maximum number of Class 213 visas to be granted in a financial year is to be specified by Gazette Notice.

Regulation 26 - Schedule 2, Chapter 1,4 (Resident return (permanent entry) visas and entry permits)

*Part 154 - Class 154 (Resident return (A)) visa and entry permit*

Subregulation 26.1 amends subdivision 154.12 of the Migration (1993) Regulations to clarify the purpose of grant of the Class 154 (resident return (A)) visa and entry permit.

Subregulation 26.2 corrects an error in subclause 154.411(3) of the Migration (1993) Regulations. As this error was in subclause 154.411(3) from its commencement on 1 February 1993, the operation of subregulation 26.2 is made retrospective to that date. Retrospectivity does not disadvantage any applicant but is entirely beneficial to applicants for Group 1.2 (permanent resident (after entry)) entry permits, corresponding entry permits under the Migration (1989) Regulations, and permanent

entry permits granted prior to 19 December 1989, as the provision enables the application to be deemed also an application for a Class 154 (resident return (A)) visa so that a second application does not have to be lodged. This has always been the intended operation of the provision.

*Part 155 - Class 155 (Resident return (B)) visa and entry permit*

Subregulation 26.3 omits paragraph 155.321(3)(a) of the Migration (1993) Regulations and substitutes a new paragraph which clarifies the requirements to be satisfied in respect of the grant of a Class 155 visa overseas to a person employed outside Australia by the Commonwealth, a State or a Territory, or an authority thereof, or by an organisation having its principal office in Australia.

Subregulation 26.4 omits paragraphs 155.421(3)(a) and (b) of the Migration (1993) Regulations and substitutes a new paragraph (a) which clarifies the requirements to be met for the grant of a Class 155 visa in Australia to a person who is, or is to be, employed outside Australia by the Commonwealth, a State or a Territory, or an authority thereof. The new paragraph 155.421(3)(a) also adds the provision that the person in question may be employed overseas by an organisation having its principal office in Australia.

*Part 157 - Class 157 (Resident return (D)) visa and entry permit*

Subregulation 26.5 corrects a grammatical error in subclause 157.411(2) of the Migration (1993) Regulations.

Regulation 27 - Schedule 2, Chapter 2.1 (Temporary resident visas and entry permits)

*Part 303 - Class 303 (Emergency (temporary entry)) visa and entry permits*

Subregulation 27.1 amends subdivision 303.12 of the Migration (1993) Regulations to provide that a Class 303 visa and entry permit may also be granted to certain applicants for Group 2.2 (student) visas. This amendment rectifies a drafting oversight and restores the position which existed under the Migration (1989) Regulations.

Subregulation 27.2 corrects an error in a reference in clause 303.223 of the Migration (1993) Regulations.

*Part 410 - Class 410 (Retirement) visa and entry permit*

Subregulation 27.3 omits subparagraphs 410.721(b)(i) and (ii) of the Migration (1993) Regulations and inserts new subparagraphs (i), (ii) and (iii). The effect of this amendment is to allow the holder of a Group 2.2 (student) entry permit also to apply for a Class 410 (retirement) entry permit after entry. This amendment rectifies a drafting oversight and restores the position which existed under the Migration (1989) Regulations.

*Part 412 - Class 412 (Independent executive) visa and entry permit*

Subregulation 27.4 corrects an error in the numbering of clause 412.734 of the Migration (1993) Regulations.

Subregulation 27.5 corrects a numbering error by inserting a new clause 412.333A in the Migration (1993) Regulations to replace clause 412.333 (second occurring).

*Part 413 - Class 413 (Executive (overseas)) visa and entry permit*

Subregulation 27.6 re-phrases clause 413.331 of the Migration (1993) Regulations to adopt the same style of wording as that used in similar provisions elsewhere in the Migration (1993) Regulations.

Subregulation 27.7 corrects an error in paragraph 413.335(b) of the Migration (1993) Regulations.

*Part 414 - Class 414 (Specialist (overseas)) visa and entry permit*

Subregulation 27.8 amends clause 414.324 of the Migration (1993) Regulations to clarify the policy intention that the sponsoring employer must be the intended employer of the applicant in the business enterprise in Australia in which the applicant has been offered a position.

Subregulation 27.9 corrects an error in paragraph 414.335(b) of the Migration 1993) Regulations.

Subregulation 27.10 corrects a minor error in paragraph 414.421(2)(a) of the Migration (1993) Regulations.

*Part 415 - Class 415 (Foreign government agency) visa and entry permit*

Subregulations 27.11 and 27.12 correct errors in paragraphs 415.322(c) and 415.336(b) respectively of the Migration (1993) Regulations.

*Part 418 - Class 418 (Educational) visa and entry permit*

Subregulations 27.13 and 27.14 correct errors in clause 418.333 and paragraph 418.336(b) respectively of the Migration (1993) Regulations.

*Part 419 - Class 419 (Visiting Academic) visa and entry permit*

Subregulation 27.15 inserts a new clause 419.322A into the Migration (1993) Regulations. This clause imposes certain criteria to be met by applicants for a Class 419 (visiting academic) visa seeking to enter Australia under an agreement between Australia and another country. These criteria were previously specified in paragraph 80(ba) of the Migration (1989) Regulations, but, by oversight, were not included in Part 419 of the Migration (1993) Regulations. It is the policy intention that these requirements should continue to be prescribed under the Migration (1993) Regulations.

*Part 420 - Class 420 (Entertainment) visa and entry permit*

Subregulation 27.16 corrects an error in clause 420.335 of the Migration (1993) Regulations.

Subregulation 27.17 makes a minor technical amendment to paragraph 420.421(2)(a) of the Migration (1993) Regulations.

*Part 421 - Class 421 (Sport) visa and entry permit*

Subregulation 27.18 corrects an error in subparagraph 421.321(2)(b)(i) of the Migration (1993) Regulations.

Subregulation 27.19 omits clause 421.322 from subdivision 421.32 of the Migration (1993) Regulations as the policy intention is that the requirements of this clause must be met at the time of decision, not at the time of application.

Subregulation 27.20 amends clause 421.335 of the Migration (1993) Regulations to remove a reference to clause 421.323. The inclusion of this reference was an error as no sponsorship is required under clause 421.323. (See also subregulation 27.22 of these Regulations.)

Subregulation 27.21 corrects an error in paragraph 421.335(b) of the Migration (1993) Regulations.

Subregulation 27.22 inserts a new clause 421.336 in the Migration (1993) Regulations. The provisions of this clause were previously contained in clause 421.322 as criteria to be met at the time of application for a Class 421 (sport) visa. Clause 421.322 is omitted by subregulation 27.19 of these Regulations, and this subregulation re-inserts the same criteria as a new clause 421.336 in subdivision 421.33, as criteria to be met at the time of decision. This accurately reflects the policy intention.

Subregulation 27.23 amends clause 421.725 of the Migration (1993) Regulations by adding a provision that an applicant for a Class 421 (sport) visa proposing a stay in Australia for more than four months does not require sponsorship if the applicant is an individual competitor, or is associated with an individual competitor or a team, known internationally and having a record of participation in international events.

Subregulations 27.24, 27.25 and 27.26 correct errors in subclauses 421.811(1), 421.811(2) and 421.822(1) respectively of the Migration (1993) Regulations.

*Part 422 - Class 422 (Medical practitioner) visa and entry permit*

Subregulation 27.27 amends clause 422.331 of the Migration (1993) Regulations to include a reference to clause 422.325, the requirements of which an applicant for a Class 422 (medical practitioner) visa must continue to meet at the time of decision. It is the policy intention that this criterion must continue to be met at the time of decision, but the requirement was previously omitted by oversight.

Subregulation 27.28 corrects an error in clause 422.335 of the Migration (1993) Regulations.

*Part 423 - Class 423 (Media and film staff) visa and entry permit*

Subregulation 27.29 amends paragraph 423.321(3)(c) to clarify the intended policy.

Subregulations 27.30, 27.31 and 27.32 correct errors in clause 423.331, paragraph 423.332(d) and paragraph 423.338(b) respectively of the Migration (1993) Regulations.

*Part 424 - Class 424 (Public lecturer) visa and entry permit*

Subregulations 27.33 and 27.34 correct errors in paragraph 424.335(b) and subparagraph 424.731(a)(ii) respectively of the Migration (1993) Regulations.

*Part 427 - Class 427 (Domestic worker (overseas executive)) visa and entry permit*

Subregulation 27.35 corrects an error in clause 427.335 of the Migration (1993) Regulations.

*Part 428 - Class 428 (Religious worker) visa and entry permit*

Subregulation 27.36 amends subdivision 428.12 of the Migration (1993) Regulations to reflect the policy that only religious organisations meeting certain requirements may sponsor an applicant for the grant of a Class 428 (religious worker) visa and entry permit.

Subregulation 27.37 amends clause 428.321 of the Migration (1993) Regulations in order to clarify the intended meaning.

Subregulation 27.38 amends clause 428.323 of the Migration (1993) Regulations, to add a requirement that an applicant for a Class 428 visa must be able to write simple statements in English about everyday matters.

Subregulation 27.39 corrects an error in clause 428.335 of the Migration (1993) Regulations.

*Part 432 - Class 432 (Expatriate) visa and entry permit*

Subregulation 27.40 amends clause 432.331 of the Migration (1993) Regulations to remove a reference to clause 432.327 as there is no clause of that number.

*Part 442 - Class 442 (Occupational trainee) visa and entry permit*

Subregulation 27.41 inserts a new clause 442.336 into the Migration (1993) Regulations to require that, if a nomination is lodged in respect of an application for a Class 442 visa, then the nomination must still be in force at the time the application is decided.

Subregulation 27.42 corrects an error in the numbering of clause 442.734 of the Migration (1993) Regulations.

## Regulation 28 - Schedule 2, Chapter 2.2 (Student visas and entry permits)

### *Part 560 - Class 560 (Student (category A)) visa and entry permit*

Subregulation 28.1 amends subparagraph 560.332(d)(ii) of the Migration (1993) Regulations to clarify that the student (formal course) visa or entry permit referred to was granted under the Migration (1989) Regulations.

### *Part 561 - Class 561 (Student (category B)) visa and entry permit*

Subregulation 28.2 amends subparagraph 561.332(c)(ii) of the Migration (1993) Regulations to clarify that the visas and entry permits referred to were granted under the Migration (1989) Regulations.

Subregulation 28.3 makes a technical amendment to paragraphs 561.811(a) and 561.822(a) to ensure consistency in the terminology used throughout the Migration (1993) Regulations.

## Regulation 29 - Schedule 2, Chapter 2.3 (Visitor visas and entry Permits)

### *Part 661 - Class 661 (Tourist (special arrangements)) visa and entry permit*

Subregulation 29.1 amends the heading of Part 661 of Schedule 2 of the Migration (1993) Regulations by omitting the words "(PRIMARY PERSON)". These words are included in the heading of Schedule 2 and are therefore not required in the heading of a particular Part.

### *Part 680 - Class 680 (Tourist) visa and entry permit*

Subregulation 29.2 amends clause 680.311 of the Migration (1993) Regulations to enable an application for a Class 680 visa (before entry) by a person who is included in the passport of another applicant to be combined with and lodged at the same time as the application by the other applicant.

Subregulation 29.3 amends clause 680.411 of the Migration (1993) Regulations to enable an application for a Class 680 visa (after entry) by a person who is included in the passport of another applicant, to be combined with and lodged at the same time as the application by the other applicant.

Subregulation 29.4 amends clause 680.711 of the Migration (1993) Regulations to enable an application for a Class 680 entry permit (after entry) by a person who is included in the passport of another applicant, to be combined with and lodged at the same time as the application by the other applicant.

Subregulation 29.5 makes a technical correction in paragraph 680.732(b) of the Migration (1993) Regulations.

Subregulation 29.6 amends clause 680.735 of the Migration (1993) Regulations to remove a reference to clause 680.724 as there is no clause of that number.

Subregulation 29.7 inserts a new clause 680.738 in the Migration (1993) Regulations to provide that the Minister may require an assurance of support to be given in relation to an applicant for a Class 680 entry permit made after entry.

Subregulation 29.8 amends subclause 680.811(1) of the Migration (1993) Regulations to provide that there is no fee for an application for a Class 680 visa which is combined with another application on which the fee is paid.

Subregulation 29.9 omits paragraph 680.822(b) of the Migration (1993) Regulations and substitutes a new paragraph (b) to provide that there is no fee for an application for a Class 680 entry permit made after entry which is combined with another application on which the fee is paid. The subregulation also inserts a new paragraph (c) which retains the provision of the omitted paragraph (b).

*Part 682 - Class 682 (Business visitor) visa and entry permit*

Subregulation 29.10 amends clause 682.311 of the Migration (1993) Regulations to enable an application for a Class 682 visa (before entry) by a person who is included in the passport of another applicant, to be combined with and lodged at the same time as the application by the other applicant.

Subregulation 29.11 omits clause 682.336 from the Migration (1993) Regulations. This criterion is not appropriate for a Class 682 (business visitor) visa, which is not granted to a dependent child.

Subregulation 29.12 amends clause 682.411 of the Migration (1993) Regulations to enable an application for a Class 682 visa (after entry) by a person who is included in the passport of another applicant, to be combined with and lodged at the same time as the application by the other applicant.

Subregulation 29.13 amends clause 682.711 of the Migration (1993) Regulations to enable an application for a Class 682 entry permit (after entry) by a person who is included in the passport of another applicant, to be combined with and lodged at the same time as the application by the other applicant.

Subregulation 29.14 inserts a new clause 682.737 in the Migration (1993) Regulations to provide that the Minister may require an assurance of support to be given in relation to an application for a Class 682 entry permit (after entry).

Subregulation 29.15 amends subclause 682.811(1) of the Migration (1993) Regulations to provide that there is no fee for an application for a Class 682 visa which is combined with another application on which the fee is paid.

Subregulation 29.16 omits paragraph 682.822(b) of the Migration (1993) Regulations and substitutes a new paragraph (b) to provide that there is no fee for an application for a Class 682 entry permit (after entry) which is combined with another application on which the fee is paid. The subregulation also inserts a new paragraph (c) which retains the provision of the omitted paragraph (b).

*Part 683 - Class 683 (Close family visitor) visa and entry permit*



Subregulation 29.17 amends clause 683.311 of the Migration (1993) Regulations to enable an application for a Class 683 visa (before entry) by a person who is included in the passport of another applicant, to be combined with and lodged at the same time as the application by the other applicant.

Subregulation 29.18 amends clause 683.411 of the Migration (1993) Regulations to enable an application for a Class 683 visa (after entry) by a person who is included in the passport of another applicant, to be combined with and lodged at the same time as the application by the other applicant.

Subregulation 29.19 amends clause 683.711 of the Migration (1993) Regulations to enable an application for a Class 683 entry permit (after entry) by a person who is included in the passport of another applicant, to be combined with and lodged at the same time as the application by the other applicant.

Subregulation 29.20 inserts a new clause 683.738 in the Migration (1993) Regulations to provide that the Minister may require an assurance of support to be given in relation to an application for a Class 683 entry permit (after entry).

Subregulation 29.21 amends subclause 683.811 (1) of the Migration (1993) Regulations to provide that there is no fee for an application for a Class 683 visa which is combined with another application on which the fee is paid.

Subregulation 29.22 omits paragraph 683.822(b) of the Migration (1993) Regulations and substitutes a new paragraph (b) to provide that there is no fee for an application for a Class 683 entry permit (after entry) which is combined with another application on which the fee is paid. The subregulation also inserts a new paragraph (c) which retains the provision of the omitted paragraph (b).

#### *Part 684 - Class 684 (Visitor (other)) visa and entry permit*

Subregulation 29.23 amends clause 684.311 of the Migration (1993) Regulations to enable an application for a Class 684 visa (before entry) by a person who is included in the passport of another applicant, to be combined with and lodged at the same time as the application by the other applicant.

Subregulation 29.24 corrects a minor error in subclause 684.321(5) of the Migration (1993) Regulations.

Subregulation 29.25 amends clause 684.411 of the Migration (1993) Regulations to enable an application for a Class 684 visa (after entry) by a person who is included in the passport of another applicant, to be combined with and lodged at the same time as the application by the other applicant.

Subregulation 29.26 amends clause 684.711 of the Migration (1993) Regulations to enable an application for a Class 684 entry permit (after entry) by a person who is included in the passport of another applicant, to be combined with and lodged at the same time as the application by the other applicant.

Subregulation 29.27 amends subparagraph 684.731(1)(b)(ii) of the Migration (1993) Regulations to amend a drafting error by including a reference to subclause (4) as an additional criterion to be satisfied by certain applicants. This reference was omitted by oversight.

Subregulation 29.28 amends subclause 684.811 (1) of the Migration (1993) Regulations to provide that there is no fee for an application for a Class 684 visa which is combined with another application on which the fee is paid.

Subregulation 29.29 omits paragraph 684.822(b) of the Migration (1993) Regulations and substitutes a new paragraph (b) to provide that there is no fee for an application for a Class 684 entry permit (after entry) which is combined with another application on which the fee is paid. The subregulation also inserts a new paragraph (c) which retains the provision of the omitted paragraph (b).

*Pan 685 - Class 685 (Medical treatment) visa and entry permit*

Subregulation 29.30 amends clause 685.311 of the Migration (1993) Regulations to enable an application for a Class 685 visa (before entry) by a person who is included in the passport of another applicant, to be combined with and lodged at the same time as the application by the other applicant.

Subregulation 29.31 corrects a minor error in paragraph 685.321(2)(d) of the Migration (1993) Regulations.

Subregulation 29.32 corrects an error in clause 685.337 of the Migration (1993) Regulations.

Subregulation 29.33 amends clause 685.411 of the Migration (1993) Regulations to enable an application for a Class 685 visa (after entry) by a person who is included in the passport of another applicant, to be combined with and lodged at the same time as the application by the other applicant.

Subregulation 29.34 amends clause 685.711 of the Migration (1993) Regulations to enable an application for a Class 685 entry permit (after entry) by a person who is included in the passport of another applicant, to be combined with and lodged at the same time as the application by the other applicant.

Subregulation 29.35 amends subclause 685.811(1) of the Migration (1993) Regulations to provide that there is no fee for an application for a Class 685 visa which is combined with another application on which the fee is paid.

Subregulation 29.36 omits paragraph 685.822(b) of the Migration (1993) Regulations and substitutes a new paragraph (b) to provide that there is no fee for an application for a Class 685 entry permit (after entry) which is combined with another application on which the fee is paid. The subregulation also inserts a new paragraph (c) which retains the provision of the omitted paragraph (b).

Regulation 30 - Schedule 2, Chapter 2.4 (Visitor (short stay) visas and entry permits)

*Part 670 - Class 670 (Tourist (short stay)) visa and entry permit*

Subregulation 30.1 corrects an error in the note following clause 670.711 of the Migration (1993) Regulations.

*Part 672 - Class 672 (Business visitor (short. stay)) visa and entry permit*

Subregulation 30.2 omits clauses 672.336 and 672.736 from the Migration (1993) Regulations. The criteria prescribed by these clauses are not appropriate for a Class 672 visa, which is not granted to a dependent child.

Subregulation 30.3 corrects an error in the note following clause 672.711 of the Migration (1993) Regulations.

*Part 673 - Class 673 (Close family visitor (short stay)) visa and entry permit*

Subregulation 30.4 corrects a minor technical error in the note following subdivision 673.12 of the Migration (1993) Regulations.

Subregulation 30.5 corrects an error in paragraph 673.421(2)(a) of the Migration (1993) Regulations.

Subregulations 30.6 corrects an error in the note following clause 673.711 of the Migration (1993) Regulations.

*Part 674 - Class 674 (Visitor (other) (short stay)) visa and entry permit*

Subregulations 30.7 corrects an error in the note following clause 674.711 of the Migration (1993) Regulations.

*Part 675 - Class 675 (Medical treatment (short stay)) visa and entry permit*

Subregulations 30.8, 30.9 and 30.10 correct minor errors in paragraphs 675.321(2)(d), 675.336(b) and 675.336(c) respectively of the Migration (1993) Regulations.

Subregulation 30.11 corrects an error in the note following clause 675.711 of the Migration (1993) Regulations.

Regulation 31 - Schedule , Chapter 2.5 (Extended eligibility visas and entry permits)

*Part 820 - Class 820 (Extended eligibility (spouse)) visa and entry permit*

Subregulation 31.1 amends clause 820.521 to provide that a Class 820 entry permit, the application for which is constituted by the making of another application of a kind referred to in subclause 820.711(3), has effect until the applicant is notified that the application for the Class 801 (spouse (after entry)) entry permit has been decided.

Subregulation 31.2 amends paragraph 820.721(5)(b) to remove the requirement that the relevant entry permit must have authorised a stay in Australia of three months. This provision is intended to continue the policy in paragraph 42(1C)(ba) of the

Migration (1989) Regulations but the qualification regarding the period of stay was not made in that paragraph and was erroneously added to paragraph 820.721(5)(b) when the Migration (1993) Regulations were drafted. As it was always the policy intention that the position under the Migration (1989) Regulations would continue unchanged under the Migration (1993) Regulations, the operation of subregulation 31.2 is made retrospective to 1 February 1993 (the date of commencement of the Migration (1993) Regulations). Retrospective operation of the proposed amendment is entirely beneficial as it removes a restriction on the applicants who are eligible for a Class 820 entry permit, and no applicants are disadvantaged.

Subregulation 31.3 makes a technical amendment to sub-subparagraph 820.731(3)(b)(iv)(B) to ensure consistency in the terminology used throughout the Migration (1993) Regulations.

Subregulation 31.4 makes a typographical correction to clause 820.821 of the Migration (1993) Regulations.

*Part 826 - Class 826 (Extended eligibility (interdependency)) visa and entry permit*

Subregulation 31.5 amends clause 826.521 of the Migration (1993) Regulations to provide that a Class 826 entry permit, the application for which is constituted by the making of another application of a kind referred to in subclause 826.711(3), has effect until the applicant is notified that the application for the Class 814 (interdependency (permanent)) entry permit has been decided.

Subregulation 31.6 makes a minor technical amendment to the reference in subparagraph 826.722(2)(e)(ii) of the Migration (1993) Regulations to a Class 305 (interdependency (temporary)) entry permit.

Subregulation 31.7 makes a typographical correction to clause 826.821 of the Migration (1993) Regulations.

Subregulation 31.8 makes a clarifying amendment to clause 826.822 of the Migration (1993) Regulations, by inserting the words "by an applicant" in paragraph (a).

Regulation 32 - Schedule 2, Chapter 2.6 (Refugee and humanitarian (temporary entry) visas and entry permits)

*Part 435 - Class 435 (Sri Lankan (temporary)) entry permit*

Subregulation 32.1 corrects the note following clause 435.711 of the Migration (1993) Regulations by replacing the reference to non-existent clause 435.822 with the correct reference to clause 435.821.

Subregulation 32.2 corrects a drafting error by amending paragraph 435.732(a) of the Migration (1993) Regulations to refer to a medical examination conducted by a Commonwealth medical officer, not a medical practitioner who is qualified as a radiologist in Australia.

*Part 443 - Class 443 (Citizens of the former Socialist Federal Republic of Yugoslavia (temporary)) entry permit*

Subregulation 32.3 corrects a typographical error in subdivision 443.12.

Subregulation 32.4 corrects the note following clause 443.711 of the Migration (1993) Regulations by replacing the reference to non-existent clause 443.822 with the correct reference to clause 443.821.

Subregulation 32.5 makes a minor technical correction to clause 443.731.

*Part 490 - Class 490 (Evacuation) entry permit*

Subregulation 32.6 amends clause 490.735 of the Migration (1993) Regulations to correct the public interest criteria *which* are intended by policy to be prescribed in relation to an applicant for a Class 490 entry permit.

*Part 784 - Class 784 (Domestic protection (temporary)) visa and entry permit*

Subregulation 32.7 amends subparagraphs 784.131(c)(iii) and (iv) of the Migration (1993) Regulations to clarify the intended meaning of the term "relevant date" in relation to a refugee (restricted) (code number 781) visa or entry permit granted under the Migration (1989) Regulations.

Subregulation 32.8 amends clause 784.131 of the Migration (1993) Regulations by omitting subparagraphs 784.131(d)(iii) and (iv) and replacing them with a new subparagraph 784.131(d)(iii), which clarifies the intended meaning of the term "relevant date" in relation to a refugee (restricted) (code number 781) visa or entry permit granted under the Migration (1989) Regulations.

Subregulation 32.9 corrects a reference in the note following clause 784.411, as the fee referred to is prescribed in clause 784.812, not clause 784.811.

Subregulation 32.10 makes a minor technical correction to paragraph 784.511(b).

Regulation 33 - Schedule 2, Chapter 2.7 (Provisional visas and entry permits)

*Part 300 - Class 300 (Prospective marriage) visa and entry permit*

Subregulation 33.1 corrects a typographical error in subdivision 300.12 of the Migration (1993) Regulations.

Subregulations 33.2 and 33.3 correct the numbering of clauses 300.221 and 300.222 respectively of the Migration (1993) Regulations.

Subregulation 33.4 corrects the provisions in subdivision 300.82 of the Migration (1993) Regulations in relation to fees for applications for Class 300 entry permits.

*Part 301 - Class 301 (Australian requirement) visa and entry permit*

Subregulation 33.5 inserts a provision in paragraph 301.211 (a) of the Migration (1993) Regulations to the effect that the Class 301 (Australian requirement) visa and entry permit may not be granted at the entry control point.

*Part 302 - Class 302 (Emergency (permanent entry)) visa and entry permit*

Subregulation 33.6 corrects typographical errors in clause 302.322 of the Migration (1993) Regulations.

Subregulation 33.7 corrects a reference in the note following clause 302.711 of the Migration (1993) Regulations, as the fee referred to is prescribed in clause 300.822, not clause 300.812.

Regulation 34 - Schedule 2, Chapter 2.8 (Miscellaneous visas and entry permits)

*Part 771 - Class 771 (Transit) visa and entry permit*

Subregulation 34.1 amends clause 771.334 of the Migration (1993) Regulations to amend a drafting error and to correctly state the special re-entry criteria intended by policy to be prescribed in relation to applicants for a Class 771 visa. This amendment restores the position which existed under the Migration (1989) Regulations.

Subregulation 34.2 amends clause 771.341 of the Migration (1993) Regulations to correctly prescribe the mandatory conditions intended by policy to be imposed on a Class 771 visa. This amendment restores the position which existed under the Migration (1989) Regulations.

Subregulation 34.3 corrects the reference, in note 2 following clause 771.341 of the Migration (1993) Regulations, to a particular class of visa.

*Part 773 - Class 773 (Border) visa and entry permit*

Subregulation 34.4 amends clause 773.333 of the Migration (1993) Regulations to amend a drafting error and to correctly state the special re-entry criteria intended by policy to **be prescribed in** relation to applicants for a Class 773 visa. This amendment restores the position which existed under the Migration (1989) Regulations.

*Part 828 - Class 828 (Processing (temporary)) visa and entry permit*

Subregulation 34.5 corrects the reference, in the note following clause 828.411 of the Migration (1993) Regulations, to a particular clause in Part 828.

Subregulation 34.6 amends paragraph 828.421(a) of the Migration (1993) Regulations by adding a provision to the effect that an applicant for a Class 828 visa (after entry) may also be the holder of a processing entry permit (code number 825) granted under the Migration (1989) Regulations for which the application was constituted by an application for a temporary entry permit.

*Part 829 - Class 829 (Processing (residence)) visa and entry permit*

Subregulation 34.7 amends clause 829.131 of the Migration (1993) Regulations by inserting a reference to a Class 808 (confirmatory) entry permit into the list of applications considered as "principal applications" for the purposes of Part 829.

Subregulation 34.8 corrects the reference, in the note following clause 829.411 of the Migration (1993) Regulations, to a particular clause in Part 829.

Subregulation 34.9 amends clause 829.421(a) of the Migration (1993) Regulations so that it correctly implements the policy intention that an applicant for a Class 829 visa granted in Australia may be the holder of a Class 829 entry permit, or, in certain specified circumstances, the holder of a processing entry permit (code number 825) granted under the Migration (1989) Regulations.

Subregulations 34.10 and 34.11 make a number of typographical corrections to the note following clause 829.711 of the Migration (1993) Regulations. Subregulation 34.11 also adds the Class 808 (confirmatory) entry permit to the provisions referred to in the note. This is in line with the amendment made by subregulations 11.3 and 34.7 of these Regulations in relation to applications for Class 808 entry permits (see notes, above).

Regulation 35 - Schedule 3 (Provisions with respect to the grant of visas and entry permits included in certain groups to secondary persons)

*Part 012 - Permanent resident (after entry) entry permits*

Subregulation 35.1 corrects an error of punctuation in paragraph 012.711(b) of the Migration (1993) Regulations.

*Part 013 - Permanent resident (refugee and humanitarian) visas and entry permits*

Subregulation 35.2 corrects a minor error in subparagraph 013.333(b)(i) of the Migration (1993) Regulations.

Subregulation 35.3 corrects a number of minor technical errors in paragraph 013.334(a) of the Migration (1993) Regulations.

Subregulation 35.4 amends paragraph 013.334(b) of the Migration (1993) Regulations to remove reference to special re-entry criterion 5002 as it is not the policy intention that this criterion should have to be satisfied by applicants covered by paragraph 013.334(b). This amendment restores the position as it existed under the Migration (1989) Regulations.

*Part 021 - Temporary resident visas and entry permits*

Subregulation 35.5 omits paragraphs 021.341(b) and (c) of the Migration (1993) Regulations and substitutes new paragraphs (b) and (c) which repeat the provisions of the omitted paragraphs, but also correct a number of minor technical errors. In addition, condition 9101 is prescribed in respect of a Class 432 (expatriate) visa. This correctly reflects the policy intention and restores the position which existed under the Migration (1989) Regulations.

Subregulation 35.6 makes a minor technical correction to clause 021.433 of the Migration (1993) Regulations.

Subregulation 35.7 corrects a number of minor technical errors in paragraphs 021.441(b), (c) and (d) of the Migration (1993) Regulations. In addition, the condition 9101 is prescribed in respect of a Class 432 (expatriate) visa. This correctly reflects the policy intention and restores the position which existed under the Migration (1989) Regulations.

Subregulations 35.8 and 35.9 make minor technical corrections to clause 021.722 and paragraph 021.741(b) respectively of the Migration (1993) Regulations.

Subregulation 35.10 omits paragraph 021.741(d) of the Migration (1993) Regulations and substitutes a new paragraph (d) which repeats the provisions of the omitted paragraph, but corrects a minor technical error and additionally prescribes condition 9101 in respect of a

Class 432 (expatriate) entry permit. This correctly reflects the policy intention and restores the position which existed under the Migration (1989) Regulations.

#### *Part 022 - Student visas and entry permits*

Subregulation 35.11 amends the definition of "type C circumstances" in clause 022.121 of the Migration (1993) Regulations to clarify the policy intention that "type C circumstances" do not apply to an application to which any of the type B circumstances (as defined in clause 022.121) apply. That is, a relevant primary person who is normally resident in, and has an unlimited right of re-entry to, a country specified by Gazette Notice for the purposes of paragraph (b) of the definition of "type B circumstances", cannot also be a person in type C circumstances.

Subregulation 35.12 corrects an error of punctuation in subclause 022.311(1) of the Migration (1993) Regulations.

Subregulation 35.13 amends paragraph 022.333(a) of the Migration (1993) Regulations to clarify the policy intention that an applicant for a Class 561 (student (category B)) visa as a secondary person, whose relevant primary person is normally resident in, and has unlimited right of reentry to, a country specified by Gazette Notice for the purposes of paragraph (b) of the definition of "type B circumstances" in clause 022.121, meets the criteria of clause 022.333.

Subregulation 35.14 amends subparagraph 022.333(c)(i) to clarify the policy intention that the applicants referred to in paragraph 022.333(a), as amended by subregulation 35.13 of these Regulations (see notes above), are not required to meet the criteria at paragraph (c).

Subregulation 35.15 amends paragraph 022.741(1)(a) of the Migration (1993) Regulations to omit references to conditions 9201 and 9202, which are conditions to be imposed on visas, and to substitute a reference to condition 9203, which is the corresponding condition to be imposed on entry permits. This amendment corrects a drafting error.



Subregulation 35.16 corrects a minor technical error in paragraph 022.741(1)(b) of the **Migration** (1993) Regulations.

*Part 027 - Provisional visas and entry permits*

Subregulations 35.17 and 35.18 amend subclauses 027.221(1) and 027.221(2) of the Migration (1993) Regulations, respectively, to correct a drafting error by reversing the order of the subregulations.

Subregulation 35.19 amends clause 027.221 of the Migration (1993) Regulations by adding a further provision to clarify that subclauses 027.221(1) and (2) only apply in relation to applicants for Class 300 (prospective marriage) visas. New subclause 027.221(3) provides that the period of validity for the Class 301 (Australian requirement) visa and the Class 302 (emergency (permanent entry)) visa continue to be as individually determined by the Minister.

Subregulation 35.20 corrects a typographical error in clause 027.337 of the Migration (1993) Regulations.

Subregulation 35.21 omits paragraphs 027.441(a), (b) and (c) of the Migration (1993) Regulations and substitutes new paragraphs (a), (b), (c) and (d). The purpose of this amendment is to correctly state the mandatory conditions which it is intended by policy to be imposed on the grant, after entry, to a secondary person of the following visas: Class 300 (prospective marriage), Class 301 (Australian requirement) and Class 302 (emergency (permanent entry)).

Regulation 36 - Schedule 4 (Public interest criteria)

Subregulations 36.1 and 36.2 are to come into effect on 31 May 1993.

Subregulation 36.1 amends clause 4001 of the Migration (1993) Regulations as a consequence of the introduction of a new regime for refusing the grant of a visa or entry permit on "character" grounds into the Act itself. The Migration (Offences and Undesirable Persons) Act 1992 amended the Act, inter alia, by inserting section 180A which confers on the Minister power to cancel or refuse to grant a visa or entry permit if the Minister is satisfied that the holder of, or the applicant for (as the case may be), the visa or entry permit is not of good character, or that various related matters exist.

Clause 4001 is amended to reflect the new character regime by providing that it is a prescribed requirement in respect of the grant of a visa or entry permit that the Minister have regard to section 180A of the Act and decide

that there is no evidence to suggest that the applicant's circumstances fall within paragraph 180A(1)(b) or subsection 180A(2) of the Act; or

that, while there is some evidence to that effect, that evidence is insufficient to satisfy the Minister that the applicant's circumstances do in fact fall within paragraph 180A(1)(b) or subsection 180A(2) of the Act; or

that, although there is sufficient evidence to satisfy the Minister that the applicant's circumstances fall within paragraph 180A(1)(b) or subsection 180A(2) of the Act, the Minister decides not to exercise the power contained in section 180A of the Act.

In order to allow the Minister to ascertain any evidence necessary for the purposes of section 180A, clause 4001 provides that the relevant decisions are to be made by the Minister after making appropriate enquiries and considering all available evidence.

Subregulation 36.2 repeals clause 4002 of the Migration (1993) Regulations and replaces it with a new clause 4002 which prescribes the requirement that the applicant has not been assessed by the competent authorities as posing a risk to Australia's security.

Subregulations 36.3, 36.4, 36.5 and 36.6 correct typographical errors in subclause 4007(2), subparagraph 4007(2)(b)(iii), subclause 4008(2), and subparagraph 4008(2)(b)(iii) respectively of the Migration (1993) Regulations.

Subregulation 36.7 inserts the word "permanent" before "residence" in paragraph 4011(2)(a) as this was an unintended omission from the Migration (1993) Regulations.

#### Regulation 37 - Schedule 5 (Special re-entry criteria)

Subregulation 37.1 amends paragraph 5004(a) of the Migration (1993) Regulations to clarify the meaning of the paragraph and to avoid possible ambiguity.

Subregulations 37.2 and 37.3 make minor grammatical amendments to paragraphs 5006(a) and 5007(a), and paragraphs 5006(b) and 5007(b) respectively of the Migration (1993) Regulations.

Subregulation 37.4 amends paragraphs 5009(c) and 5010(c) of the Migration (1993) Regulations to clarify the references to applications for specific entry permits granted under the Migration (1989) Regulations.

#### Regulation 38 - Schedule 6 (Illegal entrant criteria)

Subregulation 38.1 amends clause 6001 of the Migration (1993) Regulations to ensure that reference is made to both subsections 14(2) and 14(2A) of the Act. For the reasons, and with the effect, outlined in the notes above in respect of subregulation 7.3 of these Regulations, the operation of subregulation 38.1 is made retrospective to 1 February 1993 (the date of commencement of the Migration (1993) Regulations).

Subregulation 38.2 amends clause 6002 of the Migration (1993) Regulations by omitting the word "arrested" and substituting the term "detained in custody", as this reflects the wording used in sections 92 and 93 of the Act.

Subregulation 38.3 amends paragraphs 6002(a) and (b) of the Migration (1993) Regulations by omitting the words "so arrested" and substituting the words "so detained", as this reflects the wording used in sections 92 and 93 of the Act.

Subregulation 38.4 makes a minor technical amendment to clause 6003 of the Migration (1993) Regulations.

Subregulation 38.5 corrects a typographical error in clause 6006 of the Migration (1993) Regulations.

#### Regulation 39 - Schedule 7 (General points test - qualifications and points)

Subregulation 39.1 makes minor technical amendments to subparagraphs 7102(e)(i) and 7104(e)(i) of the Migration (1993) Regulations.

Subregulation 39.2 makes a clarifying amendment to subparagraph 7105(b)(ii) of the Migration (1993) Regulations.

Subregulation 39.3 corrects a typographical error in paragraph 7601(b) of the Migration (1993) Regulations.

#### Regulation 40 - Schedule 8 (Business skills points test - attributes and points)

Subregulation 40.1 amends clauses 8204 and 8205 of the Migration (1993) Regulations to make clear the ages at which applicants are to receive the respective scores. This amendment involves no change in policy.

Subregulations 40.2 and 40.3 amend clauses 8303 and 8304 of the Migration (1993) Regulations to remove the requirement that certain applicants must have enrolled in a designated English course in Australia to receive the prescribed scores. Subregulation 40.4 amends clause 8305 to remove the reference to "low" English ability, because, following the amendment made by subregulation 40.3, all applicants' with "low" ability will automatically receive 10 points. Thus, only applicants with no English ability will now come under clause 8305 and so receive nil points.

Subregulations 40.2, 40.3 and 40.4 are made to operate retrospectively from 1 March 1993. From that date, the Immigration (Education) Charge Regulations, made under the Immigration (Education) Act 1971, impose an English Education Charge on certain applicants (including all applicants assessed under the factors of Schedule 8 of the Migration (1993) Regulations) who do not have functional English. Under the provisions of the Immigration (Education) Act 1971, the Commonwealth has an obligation to provide specified English language tuition to these applicants. In these circumstances, statutory provision is now made for the provision of English tuition to all relevant applicants, and pre-enrolment in an English language course is therefore no longer an appropriate basis for the award of scores on the language ability factor. Retrospectivity is entirely beneficial to the applicants concerned as the effect of these subregulations is to remove the requirement for pre-enrolment and to award the maximum scores to all applicants who would otherwise have had to pre-enrol to receive that score. The position of applicants having no English ability is unaffected in that they continue to receive nil points, as they did before the amendments were made. Retrospectivity therefore does not disadvantage any applicant.

#### Regulation 41 - Schedule 9 (Visa and entry permit conditions)

Subregulation 41.1 makes a technical correction to clause 9227 of the Migration (1993) Regulations.

#### Regulation 42 Schedule 11 (Prescribed forms)

Subregulation 42.1 amends references in prescribed forms 1, 2, 3 and 4 to reflect the current Departmental name of "Department of Immigration and Ethnic Affairs" following changes made in administrative arrangements.

Subregulation 42.2 corrects the reference in the prescribed form 1 to "Migration (1993) Regulations" to avoid ambiguity.

#### Regulation 43 - Schedule 12 (Repealed Statutory Rules)

Subregulation 43.1 adds Statutory Rules 1993 No. 17 to the Statutory Rules which are repealed by operation of Schedule 12 of the Migration (1993) Regulations. The effect of Statutory Rules 1993 No. 17 was to make a retrospective amendment to the Migration (1989) Regulations, and, this amendment having now been made, the continued operation of the Statutory Rule is no longer required.

#### Regulation 44 - Transitional

Subregulation 44.1 makes amendments to paragraphs 801.732(7)(a), (7A)(a), (8)(a) and (10)(a) of the Migration (1993) Regulations, to provide that applicants for a Class 801 (spouse (after entry)) entry permit who come under these provisions may hold a Class 300 (prospective marriage) entry at the time the decision is made on the application, or may have held such an entry permit at the time of application (ie, they may hold another class of section 47 valid entry permit at the time of decision). These amendments are necessary to rectify a drafting error which requires these applicants to hold a Class 300 entry permit at the time of decision. The policy intention is that a Class 300 entry permit must be held at the time the Class 801 entry permit is applied for. However, the Class 300 entry permit may expire during processing of the Class 801 application and there is generally no provision for the grant of a further Class 300 entry permit. The applicant may be granted another class of section 47 valid entry permit, but at the time the application is decided will no longer hold a Class 300 entry permit. It was not the policy intention that applicants in this situation should become ineligible for grant of a Class 801 entry permit.

The amendments are to operate retrospectively from the date of commencement of the Migration (1993) Regulations (that is, from 1 February 1993) until the date of amendment of those Regulations by subregulations 24.6 and 24.7 of these Regulations (that is, the date of gazettal of these Regulations). Regulation 24 of these Regulations makes a number of amendments to Part 801 of Schedule 2 of the Migration (1993) Regulations, the purpose of which is to more precisely implement the intended policy with regard to applicants who are the holders Class 300 (prospective marriage) entry permits. These amendments will remove the problem which retrospective operation of subregulation 44.1 of these Regulations is intended to rectify. Therefore, the amendment made by subregulation 44.1 is expressed to operate only until the commencement of subregulations 24.6 and 24.7 of these Regulations.

Retrospective operation of subregulation 44.1 will therefore be entirely beneficial to applicants who are in the situation outlined above, because otherwise they will not be able to be granted a Class 801 entry permit although their eligibility is intended by policy. Retrospectivity will not disadvantage any applicant, and will not, therefore, infringe the provisions of subsection 48(2) of the Acts Interpretation Act 1901.