



Statutory Rules 1994 No. 11¹

Migration (1993) Regulations² (Amendment)

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Migration Act 1958*.

Dated 28 January 1994.

BILL HAYDEN
Governor-General

By His Excellency's Command,

NICK BOLKUS
Minister for Immigration and Ethnic Affairs

1. Commencement

1.1 These Regulations commence on 1 March 1994.

2. Amendment

2.1 The Migration (1993) Regulations are amended as set out in these Regulations.

3. Regulation 1.3 (Interpretation)

3.1 Definition of “Australian permanent resident” (sub-paragraph (a) (ii) (B):

Omit “(permanent resident (refugee and humanitarian))”, substitute “(permanent resident (refugee and humanitarian) (offshore))”.

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

4.1 Paragraph 2.10 (d):

Omit the paragraph, substitute:

“(d) the person:

- (i) has been determined by the Minister to be a refugee; or
- (ii) is the holder of:
 - (A) a Class 784 (domestic protection (temporary)) entry permit; or
 - (B) a refugee (restricted) (code number 781) entry permit or refugee B (restricted) entry permit (code number 781) granted under the Migration (1989) Regulations; or
- (iii) is a member of the family unit of a person of a kind referred to in subparagraph (i) or (ii);”.

(da) the person:

- (i) is a citizen of PRC who:
 - (A) is shown by records kept by Immigration to have entered Australia on or before 20 June 1989; and
 - (B) on both 20 June 1989 and 1 November 1993, either was in Australia or was the holder of a return visa; or
- (ii) is, or has been, the holder of:
 - (A) a Class 437 (PRC (temporary)) entry permit; or
 - (B) a PRC (temporary) entry visa (code number 783) granted under the Migration (1989) Regulations; or

- (iii) a member of the family unit of a person of a kind referred to in subparagraph (i) or (ii);”.

4.2 After paragraph 2.10 (h), insert:

“(ha) the person:

(i) is a person who:

(A) had not turned 45 before 1 November 1993; and

(B) was granted a visa (of any class) overseas on or before 12 March 1992 and used that visa to travel to, and enter, Australia on or before 1 November 1993; and

(C) on 1 November 1993, was either in Australia or was the holder of a return visa; and

(D) on or before 1 November 1993, had applied for a determination that the applicant is a refugee (whether or not the application has been withdrawn, and whether or not the application, if not withdrawn, has been decided, and whether or not the decision, if made, was adverse to the applicant), or for a Class 435 (Sri Lankan (temporary)) or Class 443 (citizens of the former Socialist Federal Republic of Yugoslavia) (temporary) entry permit; and

(E) if the applicant had applied for an entry permit referred to in sub-subparagraph (D)—the application has not been decided but it appears to the Minister, on the basis only of the written application and any supporting documents lodged with it, that the applicant meets the requirements for the grant to him or her of an entry permit of the class applied for; or

(ii) is a member of the family unit of a person of a kind referred to in subparagraph (i);

- (hb) the person:
- (i) had not turned 45 before 1 November 1993; and
 - (ii) was granted a visa (of any class) overseas on or before 12 March 1992 and used that visa to travel to, and enter, Australia on or before 1 November 1993; and
 - (iii) on 1 November 1993, was either in Australia or was the holder of a return visa; and
 - (iv) on 1 November 1993:
 - (A) was enrolled at an Australian educational institution in either:
 - (I) an accredited postgraduate course; or
 - (II) in the case of a person who held an Australian bachelor's degree or an overseas qualification assessed by NOOSR as being comparable to an Australian bachelor's degree—an accredited course leading to the award of a bachelor's degree; or
 - (B) was undertaking further study, practical training or work experience required to obtain professional registration, licensing or admission; or
 - (C) was carrying out postgraduate or post-doctoral research as the holder of a full-time position at an Australian academic or research institution; or
- (hc) is a member of the family unit of a person of a kind referred to in paragraph (hb).”.

4.3 Add at the end:

“(2) In sub-subparagraphs (1) (da) (i) (B) and (1) (ha) (i) (C) and subparagraph (1) (hb) (iii), ‘**return visa**’ includes:

- (a) a visa granted in Australia that permits return travel to Australia; and

- (b) a visa granted overseas on the basis of a person's status in Australia immediately before the person's last departure from Australia.

“(3) In sub-subparagraph (1) (hb) (iv) (A):

‘accredited course’ means a course that is:

- (a) accredited as a tertiary course by a Commonwealth, State or Territory authority; or
- (b) offered and accredited by a tertiary institution that is authorised to accredit its own courses by a Commonwealth, State or Territory authority;

‘accredited postgraduate course’ means an accredited course that leads to the award of a graduate certificate, a graduate diploma, a master’s degree, a doctoral degree or a postgraduate bachelor’s degree.”.

5. Regulation 2.15 (Special provision for grant outside Australia of certain visas to former holders of corresponding temporary entry permits)

5.1 Subparagraph 2.15 (2) (a) (iii):

Omit “(permanent resident (refugee and humanitarian))”, substitute “(permanent resident (refugee and humanitarian) (offshore))”.

6. Regulation 2.17 (Application for visas on arrival)

6.1 Paragraph 2.17 (c):

Omit the paragraph, substitute:

“(c) Class 817 (protection (permanent)).”.

7. Regulation 2.21 (Recording and evidencing of visas)

7.1 Subparagraph 2.21 (1) (b) (ii):

Omit the subparagraph, substitute:

“(ii) subject to subregulation (1A), by fixing the visa in the passport or other travel document of the person to whom the visa is granted.”.

7.2 After subregulation 2.21 (1), insert:

“(1A) In the case of the grant of a Class 784 (domestic protection (temporary)) visa to a person who is taken to have applied for a Class 817 (protection (permanent)) entry permit, no documentary evidence of the grant of the Class 784 visa need be given to the applicant.”.

8. Regulation 2.28 (Applications for entry permits)

8.1 Subregulation 2.28 (2):

Omit the subregulation, substitute:

“(2) Subparagraph (1) (a) (iii) does not apply to an application for an entry permit of the following classes:

- (a) Class 437 (PRC (temporary));
- (b) Class 815 (PRC (permanent));
- (c) Class 816 (special (permanent));
- (d) Class 817 (protection (permanent));
- (e) Class 818 (highly qualified on-shore (permanent)).”

9. Regulation 2.29 (Applications for certain classes of entry permits to have effect as applications for entry permits of certain other classes)

9.1 After subregulation 2.29 (1B), insert:

“(1C) An application for an entry permit of any of the following classes also has effect as an application for a Class 830 (1 November 1993 (processing)) entry permit:

- (a) Class 815 (PRC (permanent));
- (b) Class 816 (special (permanent));
- (c) Class 818 (highly qualified on-shore (permanent)).

“(1D) An application for a Class 817 (protection (permanent)) entry permit (other than an application for a determination that the applicant is a refugee that has effect under clause 817.611 of Chapter 1.5 of Schedule 2 as an application before entry for an entry permit of that class) also has effect as an application for a Class 830 (1 November 1993 (processing)) entry permit.”

9.2 Subregulation 2.29 (2):

Omit “(refugee and humanitarian)”, substitute “(permanent resident (refugee and humanitarian) (offshore))”.

10. Regulation 2.34 (Recording and evidencing of entry permits)

10.1 Sub-subparagraph 2.34 (1) (b) (ii) (B):

Omit the sub-subparagraph, substitute:

“(B) subject to subregulation (2A), giving notice to the applicant, in a form approved by the Minister, that the permit has been granted.”.

10.2 After subregulation 2.34 (2), insert:

“(2A) In the case of the grant of a Class 784 (domestic protection (temporary)) entry permit to a person who is taken to have applied for a Class 817 (protection (permanent)) entry permit, no documentary evidence of the grant of the Class 784 entry permit need be given to the applicant.”.

11. Regulation 2A.2 (Making of applications)

11.1 After subregulation 2A.2 (1), insert:

“(1A) A refugee status application by a member of the family unit of an applicant for a determination of refugee status may be combined with, and lodged at the same time as, the application by that other applicant.”.

11.2 Add at the end:

“[NOTE: A refugee status application made by a person who has arrived in, but not entered, Australia also has effect as an application before entry for a Class 817 (protection (permanent)) visa and entry permit—see Schedule 2, Chapter 1.5, clauses 817.311 and 817.611.]”.

12. Regulation 2A.5 (Refugee status applications also effective as applications for domestic protection (temporary) visas)

12.1 Omit the regulation.

13. Regulation 7.18 (Prescribed matters (subsection 63 (1) of Act))

13.1 Paragraphs 7.18 (1) (h), (j), (k), (l) and (m):

Omit the paragraphs, substitute:

“(h) whether the person appears to the Minister, on the basis only of information contained in the records of Immigration, and (if the person has lodged an application for an entry permit) the information contained in that application and any supporting documents lodged with it, to satisfy the criteria for the grant of an entry permit of one of the following classes:

- (i) Class 815 (PRC (permanent));
- (ii) Class 816 (special (permanent));
- (iii) Class 817 (protection (permanent));
- (iv) Class 818 (highly qualified on-shore (permanent)).”.

13.2 Subregulations 7.18 (2) and (3):

Omit the subregulations.

14. Regulation 7.28 (Refund of fees)

14.1 Subregulation 7.28 (5):

Omit the subregulation.

15. Schedule 1 (Classification of visas and entry permits)

15.1 Division 1.2:

Omit the items, substitute:

“Division 1.2—Group 1.2 (Permanent resident (after entry))

| Column 1 | Column 2 | Column 3 |
|----------|------------------------|---|
| Item No. | Class number and title | Secondary person provision (Schedule 3) |

| Column 1 Item | Column 2 Class number and title | Column 3 Secondary person provision |
|------------------|--|--|
| 1201 | 804 (Aged parent (after entry)) <i>[Entry permit only]</i> | 012 |
| 1202 | 802 (Child (after entry)) <i>[Entry permit only]</i> | 012 |
| 1203 | 808 (Confirmatory) <i>[Entry permit only]</i> | — |
| 1204 | 812 (December 1989 (permanent)) <i>[Entry permit only]</i> | 012 |
| 1205 | 806 (Family and other close ties (after entry)) <i>[Entry permit only]</i> | 012 |
| 1206 | 818 (Highly qualified on-shore (permanent)) <i>[Entry permit only]</i> | — |
| 1207 | 814 (Interdependency (permanent)) <i>[Entry permit only]</i> | — |
| 1208 | 815 (PRC (permanent)) <i>[Entry permit only]</i> | — |
| 1209 | 805 (Skilled occupation (after entry)) <i>[Entry permit only]</i> | 012 |
| 1210 | 816 (Special (permanent)) <i>[Entry permit only]</i> | — |
| 1211 | 801 (Spouse (after entry)) <i>[Entry permit only]</i> | —”. |

15.2 Division 1.3 (heading):

Omit the heading, substitute:

“Division 1.3—Group 1.3 (Permanent resident (refugee and humanitarian) (offshore)”.

DRAFT ONLY

15.3 After Division 1.4, insert:

“*Division 1.5—Group 1.5 (Permanent resident (refugee and humanitarian) (on-shore))*”

| Column 1 Item No. | Column 2 Class number and title | Column 3 Secondary person provision (Schedule 3) |
|----------------------|---|---|
| 1501 | 817 (Protection (permanent)) | — |
| 1502 | 810 (Refugee (permanent)) <i>[Entry permit only]</i> | — |
| Column 1 Item No. | Column 2 Class number and title | Column 3 Secondary person provision (Schedule 3) |
| 1503 | 800 (Territorial asylum) <i>[Entry permit only]</i> | 015”. |

15.4 After item 2801A, insert:

“2801B 830 (1 November 1993 (processing)) *[Entry permit only]* —”.

16. Schedule 2, Chapter 1.2 (Permanent resident (after entry) entry permits)

16.1 Part 800:

Omit the Part.

16.2 Part 810:

Omit the Part.

16.3 Add at the end the Parts set out in Schedule 1.

17. Schedule 2, Chapter 1.3 (Permanent resident (refugee and humanitarian) visas and entry permits)

17.1 Omit the heading to the Chapter, substitute:

“CHAPTER 1.3—PERMANENT RESIDENT (REFUGEE AND HUMANITARIAN) (OFFSHORE) VISAS AND ENTRY PERMITS”.

17.2 Subdivisions 200.11 and 201.11:

Omit “(permanent resident (refugee and humanitarian))”, substitute “(permanent resident (refugee and humanitarian) (offshore))”.

17.3 Subdivision 202.11:

Omit “(permanent residence (refugee and humanitarian))”, substitute “(permanent resident (refugee and humanitarian) (offshore))”.

17.4 Subdivisions 203.11, 204.11, 205.11, 208.11, 209.11, 210.11, 212.11, 213.11, 214.11 and 215.11:

Omit “(permanent resident (refugee and humanitarian))”, substitute “(permanent resident (refugee and humanitarian) (offshore))”.

18. Schedule 2 (Provisions with respect to the grant of individual classes of visas and entry permits to primary persons)

18.1 After Chapter 1.4, insert the Chapter set out in Schedule 2.

19. Schedule 2, Chapter 2.6 (Refugee and humanitarian (temporary entry) visas and entry permits)

19.1 Divisions 437.5, 437.6, 437.7 and 437.8:

Omit the Divisions, substitute the Divisions set out in Schedule 3.

19.2 Paragraph 784.211 (a):

Omit “(including at the Entry Control Point);”, substitute “, but not at the Entry Control Point;”.

19.3 Subparagraph 784.211 (b) (i):

Omit “(either at the Entry Control Point or after entry)”.

19.4 Paragraph 784.221 (a):

Omit the paragraph.

19.5 Subclause 784.311 (1):

Omit the subclause, substitute:

“784.311 (1) Subject to subclauses (2) and (4), the application must be made in accordance with approved form 911.”.

19.6 Paragraphs 784.511 (b) and (c):

Omit the paragraphs, substitute:

“(b) after entry (if the application is made before 1 March 1994); or

(c) in accordance with subclause 784.711 (5) or (6).”.

19.7 Clause 784.521:

Omit the clause, substitute:

“784.521 A Class 784 entry permit has effect, subject to the Act and these Regulations:

(a) if the holder is an applicant for a Class 817 (protection (permanent)) entry permit, until a decision is made on that application and the applicant is notified in accordance with regulation 2.8; and

(b) in any other case, until the end of the period of 4 years from the relevant date.”.

19.8 Subclause 784.711 (1):

Omit “(2) and (4)”, substitute “(2), (4), (5) and (6)”.

19.9 Clause 784.711:

Add at the end:

“(5) If a person who is, or has been, the holder of a refugee (restricted) entry permit or a refugee B (restricted) entry permit (code number 781) granted under the Migration (1989) Regulations applies for a Class 817 (protection (permanent)) entry permit, the application for the Class 817 entry permit is taken to be also an application for a Class 784 entry permit.

“(6) If a person who is, or has been, the holder of a Class 784 entry permit applies for a Class 817 (protection (permanent)) entry permit, the application for the Class 817 entry permit is taken to be also an application for a further Class 784 entry permit.”.

20. Schedule 2, Chapter 2.8 (Miscellaneous visas and entry permits)

20.1 Add at the end the Part set out in Schedule 4.

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

21.1 Schedule 3 (heading):

Omit the heading, substitute:

SCHEDULE 3

PART 013—PERMANENT RESIDENT (REFUGEE AND HUMANITARIAN) (OFFSHORE) VISAS AND ENTRY PERMITS

21.2 Subdivision 013.11:

Omit “(permanent resident (refugee and humanitarian))”, substitute “(permanent resident (refugee and humanitarian) (offshore))”.

21.3 Divisions 013.2 and 013.3:

Omit “PERMANENT RESIDENT (REFUGEE AND HUMANITARIAN)”, substitute “PERMANENT RESIDENT (REFUGEE AND HUMANITARIAN) (OFFSHORE)”.

21.4 Division 013.4:

Omit “(Permanent resident (refugee and humanitarian))”, substitute “(Permanent resident (refugee and humanitarian) (offshore))”.

21.5 Divisions 013.5 and 013.6:

Omit “PERMANENT RESIDENT (REFUGEE AND HUMANITARIAN)”, substitute “PERMANENT RESIDENT (REFUGEE AND HUMANITARIAN) (OFFSHORE)”.

21.6 Division 013.7:

Omit “(Permanent resident (refugee and humanitarian))”, substitute “(Permanent resident (refugee and humanitarian) (offshore))”.

21.7 After Part 013, insert the Part set out in Schedule 5.

22. New Schedule 6.1

22.1 After Schedule 6, insert the Schedule set out in Schedule 6.

SCHEDULE 1

Subregulation 16.3

NEW PARTS 815, 816 AND 818 TO BE INSERTED IN
CHAPTER 1.2 OF SCHEDULE 2**PART 815—CLASS 815 (PRC (PERMANENT)) ENTRY
PERMIT****815.1 INTRODUCTION****815.11 Group:** 1.2 (permanent resident (after entry)).**815.12 Purpose of grant:** To provide for permanent residence in Australia by certain nationals of PRC and members of their family units.

[NOTE: In relation to Class 815 entry permits, all applicants are primary persons.]

815.13 Interpretation

815.131 In this Part:

“principal applicant” means an applicant who meets the requirements of subclause 815.721 (2) or (3);**“return visa”** includes:

- (a) a visa granted in Australia that permits return travel to Australia; and
- (b) a visa granted overseas on the basis of a person’s status in Australia immediately before the person’s last departure from Australia.

815.2-4 [No visa of this class]

SCHEDULE 1—continued

**815.5 PRC (PERMANENT) ENTRY PERMIT—
PRELIMINARY**

815.51 When and where may application and grant be made?

815.511 A Class 815 entry permit may be applied for and granted only after entry.

815.512 An application for a Class 815 entry permit must be made on or before 30 June 1994.

815.52 Period of validity (entry permit)

815.521 The entry permit has effect without limitation as to time.

**815.6 [PRC (permanent) entry permit not granted before
entry]**

**815.7 PRC (PERMANENT) ENTRY PERMIT (AFTER
ENTRY)**

[NOTE: The purpose of the grant of a Class 815 entry permit after entry is to authorise a further period of stay, unlimited as to time, in Australia for an eligible person.]

815.71 Application (entry permit—after entry)

815.711 (1) Subject to subclauses (2) and (3), the application must be made in accordance with approved form 1815.

(2) An application by a member of the family unit of an applicant for a Class 815 entry permit may be combined with, and lodged at the same time as, the application by that other applicant.

(3) An application by a person who:

- (a) is a dependent child of an applicant for a Class 815 entry permit; and
- (b) was born after the lodging of, and before the making of a decision on, the application by that other applicant;

SCHEDULE 1—continued

may be added to that other application.

[NOTE: 1. Before an application will be considered, it must be lodged in accordance with regulation 2.28 and the fee (if any) specified in clause 815.821 must be paid (Act, subsection 34 (1)).

2. An application for a Class 815 entry permit also has effect as an application for a Class 830 (1 November 1993 (processing)) entry permit—see subregulation 2.29 (1C).]

815.72 Criteria to be satisfied at time of application (entry permit—after entry)

815.721 (1)The applicant meets the requirements of subclause (2), (3) or (4).

(2)An applicant meets the requirements of this subclause if the applicant is, or has been, the holder of:

- (a) a Class 437 (PRC (temporary)) entry permit; or
- (b) a PRC (temporary) entry visa (code number 783) granted under the Migration (1989) Regulations.

(3)An applicant meets the requirements of this subclause if:

- (a) the applicant is a citizen of PRC; and
- (b) the applicant is shown by records kept by Immigration to have entered Australia on or before 20 June 1989; and
- (c) on 20 June 1989 the applicant either was in Australia or was the holder of a return visa.

(4)An applicant meets the requirements of this subclause if the applicant is a member of the family unit of a person who meets the requirements of subclause (2) or (3).

815.722 (1)If the applicant is a principal applicant, he or she is in Australia.

(2)If the applicant is not a principal applicant, he or she either is in Australia or is the holder of a return visa.

SCHEDULE 1—continued

815.723 If the applicant is a principal applicant, on 1 November 1993 he or she either was in Australia or was the holder of a return visa.

815.73 Criteria to be satisfied at time of decision (entry permit—after entry)

815.731 The applicant is the holder of a section 47 temporary entry permit.

815.732 (1) If the applicant is a principal applicant:

- (a) he or she satisfies public interest criteria 4001 to 4004, 4007 and 4008; and
- (b) each member of his or her family unit in Australia who is an applicant for a Class 815 entry permit satisfies public interest criteria 4001 to 4004, 4007 and 4008; and
- (c) each member of his or her family unit in Australia who is not an applicant for a Class 815 entry permit satisfies:
 - (i) public interest criteria 4001 to 4004; and
 - (ii) public interest criteria 4007 and 4008, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to those criteria.

(2) If the applicant is a member of the family unit of a principal applicant, the applicant satisfies public interest criteria 4001 to 4004, 4007 and 4008.

815.733 In the case of an applicant who is a child referred to in subclause 815.711 (3), the applicant was born in Australia.

815.734 The Minister is satisfied that the grant of the entry permit would not prejudice the rights of any person who has custody or guardianship of, or access to, a dependent child of the applicant.

SCHEDULE 1—continued

815.74 **Conditions (entry permit—after entry): Nil.**

815.8 **FEES**

815.81 **[No visa of this class]**

815.82 **Entry permit applications**

815.821 After entry (only):

- (a) in the case of an application by an applicant who is a member of the family unit of a person who is an applicant for a Class 815 entry permit, and that is combined with the application by that other person: Nil;
 - (b) in any other case: \$560.
-

SCHEDULE 1—continued

PART 816—CLASS 816 (SPECIAL (PERMANENT)) ENTRY PERMIT

816.1 INTRODUCTION

816.11 Group: 1.2 (permanent resident (after entry)).

816.12 Purpose of grant: To provide for permanent residence in Australia by:

- (a) certain persons who have applied for determinations that they are refugees; and
- (b) certain holders of, or applicants for, Class 435 (Sri Lankan (temporary)) or Class 443 (citizens of the former Socialist Federal Republic of Yugoslavia (temporary)) entry permits.

[NOTE: In relation to Class 816 entry permits, all applicants are primary persons.]

816.13 Interpretation

816.131 In this Part:

“**accredited course**” means a tertiary course that is:

- (a) accredited as a tertiary course by a Commonwealth, State or Territory authority; or
- (b) offered and accredited by a tertiary institution that is authorised to accredit its own courses by a Commonwealth, State or Territory authority;

“**principal applicant**” means an applicant who meets the requirements of paragraph 816.721 (1) (a);

“**return visa**” includes:

- (a) a visa granted in Australia that permits return travel to Australia; and
- (b) a visa granted overseas on the basis of a person’s status in Australia immediately before the person’s last departure from Australia;

SCHEDULE 1—continued

“trade certificate” means a certificate called by that name issued by:

- (a) a State or Territory training authority; or
- (b) a TAFE institution;

following initial trade training undertaken in conjunction with an apprenticeship or following non-apprenticed entry.

816.2-4 [No visa of this class]**816.5 SPECIAL (PERMANENT) ENTRY PERMIT—
PRELIMINARY****816.51 When and where may application and grant be made?**

816.511 A Class 816 entry permit may be applied for and granted only after entry.

816.512 An application for a Class 816 entry permit must be made on or before 1 August 1994.

816.52 Period of validity (entry permit)

816.521 The entry permit has effect without limitation as to time.

816.6 [Special (permanent) entry permit not granted before entry]**816.7 SPECIAL (PERMANENT) ENTRY PERMIT
(AFTER ENTRY)**

[NOTE: The purpose of the grant of a Class 816 entry permit after entry is to authorise a further period of stay, unlimited as to time, in Australia for an eligible person.]

SCHEDULE 1—continued

816.71 Application (entry permit—after entry)

816.711 (1) Subject to subclauses (2), (3) and (5), the application must be made in accordance with approved form 1816.

(2) An application by a member of the family unit of an applicant for a Class 816 entry permit may be combined with, and lodged at the same time as, the application by that other applicant.

(3) An application by a person who:

- (a) is the dependent child of an applicant for a Class 816 entry permit; and
- (b) was born after the lodging of, and before the making of a decision on, the application by that other applicant;

may be added to that other application.

(4) Despite regulation 2.28, an application for a Class 816 entry permit is taken to have been made when the application is made in accordance with approved form 1816 and:

- (a) the fee (if any) specified in clause 816.821 is paid; or
- (b) a request for a fee exemption under paragraph 816.821 (b) has been made.

(5) If:

- (a) an applicant for a Class 816 entry permit requests a fee exemption under paragraph 816.821 (b); and
- (b) the request is refused; and
- (c) the applicant does not pay the fee within 28 days of notice being given to him or her of the refusal;

the application is taken not to have been made.

[NOTE: 1. Before an application will be considered, it must be lodged in accordance with regulation 2.28 and the fee (if any) specified in clause 816.821 must be paid or an exemption sought and approved (Act, subsection 34 (1)).

2. An application for a Class 816 entry permit also has effect as an application for a Class 830 (1 November 1993 (processing)) entry permit—see subregulation 2.29 (1C).]

SCHEDULE 1—continued

816.72 Criteria to be satisfied at time of application (entry permit—after entry)

816.721 (1)The applicant is:

- (a) a person who:
 - (i) had not turned 45 before 1 November 1993; and
 - (ii) meets the requirements of subclause (2) or (3); and
 - (iii) meets the requirements of subclause (4) or (6); or
- (b) a member of the family unit of a person mentioned in paragraph (a).

(2)An applicant meets the requirements of this subclause if, on 1 November 1993:

- (a) the applicant in Australia had obtained, or had completed the requirements of, a post-secondary educational qualification following an accredited course leading to a trade certificate, advanced certificate, associate diploma, diploma, degree or higher degree; or
- (b) the applicant:
 - (i) held an overseas technical qualification or general academic qualification that is assessed by NOOSR as being comparable to an Australian associate diploma, diploma, degree, or higher degree; or
 - (ii) held an overseas trade qualification, or had work experience, that is assessed as meeting Australian education or training standards for that trade:
 - (A) by the Department of Industrial Relations; or
 - (B) if that Department is unable to make an assessment, by the State or Territory authority that the Minister decides is appropriate; or

SCHEDULE 1—continued

(C) if neither that Department nor that State or Territory authority is able to make an assessment, by the Minister; or

(c) the applicant:

- (i) had been enrolled during the 1993 academic year in an accredited course leading to a trade certificate, advanced certificate, associate diploma, diploma, degree or higher degree; and
- (ii) had met the academic progress requirements of the institution at which he or she was enrolled.

(3) An applicant meets the requirements of this subclause if, throughout the period from 2 November 1992 to 1 November 1993 (both dates inclusive), the applicant owned:

- (a) an interest (whether as a sole proprietor or as a member of a partnership) in a business that meets the requirements set out in Schedule 6.1; or
- (b) an interest as a shareholder to the extent of at least 25% of the issued capital in a corporation that owns (whether directly or through an intermediary) a business that meets the requirements set out in Schedule 6.1.

(4) An applicant meets the requirements of this subclause if:

- (a) the applicant applied in accordance with subclause (5) for a determination that the applicant was a refugee (whether or not the application has been withdrawn, and whether or not the application, if not withdrawn, has been decided, and whether or not the decision, if made, was adverse to the applicant); or
- (b) the applicant was granted a Class 435 (Sri Lankan (temporary)) or 443 (citizens of the former Socialist Federal Republic of Yugoslavia (temporary)) entry permit on or before 1 November 1993.

SCHEDULE 1—continued

(5) For the purposes of paragraph (4) (a), an application for a determination that the applicant is a refugee:

- (a) must have been recorded by Immigration as having been received by Immigration on or before 1 November 1993; and
- (b) if the application was recorded by Immigration as having been received on or after 1 February 1993—must have been made on the approved form.

(6) An applicant meets the requirements of this subclause if:

- (a) the applicant applied, on or before 1 November 1993, for a Class 435 (Sri Lankan (temporary)) or Class 443 (citizens of the former Socialist Federal Republic of Yugoslavia (temporary)) entry permit; and
- (b) the application has not been decided; and
- (c) as at 1 November 1993, the applicant appeared to the Minister, on the basis only of the written application and any supporting documents lodged with it, to meet the requirements for the grant of a Class 435 or 443 entry permit.

816.722 (1) If the applicant is a principal applicant, he or she is in Australia.

(2) If the applicant is not a principal applicant, he or she either is in Australia or is the holder of a return visa.

816.723 If the applicant is a principal applicant, on 1 November 1993 he or she either was in Australia or was the holder of a return visa.

816.724 (1) Subject to subclause (2), if the applicant is a principal applicant, he or she:

- (a) was granted a visa (of any class) overseas on or before 12 March 1992; and

SCHEDULE 1—continued

- (b) used that visa to travel to, and enter, Australia on or before 1 November 1993.

(2)If an applicant:

- (a) travelled to, and entered, Australia on or before 1 November 1993 using a visa granted on or before 12 March 1992; and
- (b) subsequently left Australia and returned using a visa other than the visa referred to in paragraph (1) (a);

the applicant is taken to meet the requirements of this clause only if the visa used to return to Australia was a return visa.

816.73 Criteria to be satisfied at time of decision (entry permit—after entry)

816.731 The applicant is the holder of a section 47 temporary entry permit.

816.732 (1)If the applicant is a principal applicant, he or she has the ability to communicate in English in a mix of social and work situations, demonstrated by evidence of the kind set out in:

- (a) subclause (2); or
- (b) subclause (3).

(2)The evidence mentioned in paragraph (1) (a) is evidence that the applicant:

- (a) has successfully completed in Australia at least 1 year of full-time study or equivalent part-time study towards a post-secondary qualification for which the primary language of instruction was English; or
- (b) holds an overseas qualification:
 - (i) that is assessed by NOOSR as comparable to an Australian associate diploma, diploma, degree or higher degree; and
 - (ii) for which the primary language of instruction was English; or

SCHEDULE 1—continued

- (c) has passed, within the period of 2 years before the date of the application, at a level that satisfies the Minister that the applicant has the ability to communicate in English in a mix of social and work situations, one of the following English proficiency tests:
- (i) the Occupational English Test conducted by the National Languages and Literacy Institute of Australia;
 - (ii) the Australian Assessment of Communicative English Skills Test;
 - (iii) the International English Language Testing System test.

(3)The evidence referred to in paragraph (1) (b) is evidence that the applicant has, not later than 31 October 1995, successfully undertaken, at the first or second attempt, and at a time and place nominated by the Minister, a test of proficiency in English nominated by the Minister.

(4)If under subclause (3) the Minister has nominated a test to be undertaken by an applicant, and the applicant has failed to undertake that test for a reason acceptable to the Minister, the Minister may nominate a further test to be undertaken by the applicant at a time and place nominated by the Minister.

816.733 If the applicant is a child referred to in subclause 816.711 (3), the applicant was born in Australia.

816.734 (1)If the applicant is a principal applicant:

- (a) he or she satisfies public interest criteria 4001 to 4004, 4007 and 4008; and
- (b) each member of his or her family unit in Australia who is an applicant for a Class 816 entry permit satisfies public interest criteria 4001 to 4004, 4007 and 4008; and
- (c) each member of his or her family unit in Australia who is not an applicant for a Class 816 entry permit satisfies:
 - (i) public interest criteria 4001 to 4004; and

SCHEDULE 1—continued

- (ii) public interest criteria 4007 and 4008, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to those criteria.

(2) If the applicant is a member of the family unit of a principal applicant, the applicant satisfies public interest criteria 4001 to 4004, 4007 and 4008.

816.735 The Minister is satisfied that the grant of the entry permit would not prejudice the rights of any person who has custody or guardianship of, or access to, a dependent child of the applicant.

816.74 Conditions (entry permit—after entry): Nil.

816.8 FEES

816.81 [No visa of this class]

816.82 Entry permit applications

816.821 After entry (only):

- (a) if the applicant is an applicant who meets the criterion in subclause 816.721 (1) (b) and the application is combined with, and lodged at the same time as, an application for a Class 816 entry permit on which a fee has been paid: Nil;
- (b) if, at the time of application:
 - (i) the applicant appears to the Minister, on the basis only of the information contained in the application and any supporting documents lodged with it, to meet the criteria for the grant of the entry permit; and
 - (ii) the applicant is not the subject of an assurance of support; and
 - (iii) the applicant is not engaged in any activity that normally attracts remuneration; and

SCHEDULE 1—continued

- (iv) the applicant:
 - (A) does not have a relative (including spouse, child, parent, brother, sister, aunt, uncle, or relative-in-law in any degree of that relationship) in Australia who is not dependent on him or her; or
 - (B) has a relative of the kind referred to in subparagraph (A) who:
 - (I) is dependent on him or her; and
 - (II) is also an applicant for a Class 816 entry permit; and
 - (III) meets the requirements of this paragraph; and
 - (v) the applicant has not received a loan from a bank or other financial institution; and
 - (vi) the applicant is not eligible to receive a loan from a bank or other financial institution; and
 - (vii) the applicant does not receive a government benefit, pension or allowance; and
 - (viii) the applicant produces evidence that:
 - (A) he or she received welfare or charitable assistance from a registered charitable agency throughout a continuous period of at least 4 weeks during the period from 1 November 1993 to 1 February 1994 (both dates inclusive); and
 - (B) that assistance significantly contributed to the applicant's ability to obtain basic food and shelter:
- Nil; or
- (c) in any other case: \$830.
-

SCHEDULE 1—continued

**PART 818—CLASS 818 (HIGHLY QUALIFIED ON-SHORE
(PERMANENT)) ENTRY PERMIT**

818.1 INTRODUCTION

818.11 Group: 1.2 (permanent resident (after entry)).

818.12 Purpose of grant: To provide for permanent residence in Australia by certain persons who hold, or have undertaken study towards, higher educational qualifications.

[NOTE: In relation to Class 818 entry permits, all applicants are primary persons.]

818.13 Interpretation

818.131 In this Part:

“accredited course” means a tertiary course that is:

- (a) accredited as a tertiary course by a Commonwealth, State or Territory authority; or
- (b) offered and accredited by a tertiary institution that is authorised to accredit its own courses by a Commonwealth, State or Territory authority;

“postgraduate course” means an accredited course that leads to the award of a graduate certificate, a graduate diploma, a master’s degree, a doctoral degree or a postgraduate bachelor’s degree;

“principal applicant” means an applicant who meets the requirements of paragraph 818.721 (1) (a);

“return visa” includes:

- (a) a visa granted in Australia that permits return travel to Australia; and
- (b) a visa granted overseas on the basis of a person’s status in Australia immediately before the person’s last departure from Australia.

818.2-4 [No visa of this class]

SCHEDULE 1—continued

818.5 HIGHLY QUALIFIED ON-SHORE (PERMANENT) ENTRY PERMIT—PRELIMINARY**818.51 When and where may application and grant be made?**

818.511 A Class 818 entry permit may be applied for and granted only after entry.

818.512 An application for a Class 818 entry permit must be made on or before 1 August 1994.

818.52 Period of validity (entry permit)

818.521 The entry permit has effect without limitation as to time.

818.6 [Highly qualified on-shore (permanent) entry permit not granted before entry]**818.7 HIGHLY QUALIFIED ON-SHORE (PERMANENT) ENTRY PERMIT (AFTER ENTRY)**

[NOTE: The purpose of the grant of a Class 818 entry permit after entry is to authorise a further period of stay, unlimited as to time, in Australia for an eligible person.]

818.71 Application (entry permit—after entry)

818.711 (1) Subject to subclauses (2) and (3), the application must be made in accordance with approved form 1818.

(2) An application by a member of the family unit of an applicant for a Class 818 entry permit may be combined with, and lodged at the same time as, the application by that other applicant.

(3) An application by a person who:

- (a) is a dependent child of an applicant for a Class 818 entry permit; and

SCHEDULE 1—continued

(b) was born after the lodging of, and before the making of a decision on, the application by that other applicant; may be added to that other application.

[NOTE: 1. Before an application will be considered, it must be lodged in accordance with regulation 2.28 and the fee (if any) specified in clause 818.821 must be paid (Act, subsection 34 (1)).

2. An application for a Class 818 entry permit also has effect as an application for a Class 830 (1 November 1993 (processing)) entry permit—see subregulation 2.29 (1C).]

818.72 Criteria to be satisfied at time of application (entry permit—after entry)

818.721 (1)The applicant is:

- (a) a person who:
 - (i) had not turned 45 before 1 November 1993; and
 - (ii) meets the requirements of subclause (2), (3), (4) or (5); or
- (b) a member of the family unit of a person mentioned in paragraph (a).

(2)An applicant meets the requirements of this subclause if, on 1 November 1993, the applicant:

- (a) had been enrolled for the 1993 academic year at an Australian post-secondary educational institution in a postgraduate course; and
- (b) had satisfied the academic progress requirements of that educational institution.

(3)An applicant meets the requirements of this subclause if, on 1 November 1993, the applicant:

- (a) held an Australian bachelor's degree or an overseas qualification that is assessed by NOOSR as being comparable to an Australian bachelor's degree; and

SCHEDULE 1—continued

- (b) had been enrolled for the 1993 academic year at an Australian post-secondary educational institution in an accredited course for a bachelor's degree; and
- (c) had satisfied the academic progress requirements of that educational institution.

(4) An applicant meets the requirements of this subclause if, before 1 November 1993, the applicant had completed the requirements of a bachelor's degree or higher degree in Australia, and:

- (a) during the 1993 academic year, had completed; or
- (b) on 1 November 1993, was undertaking;

further study, practical training or work experience required to obtain professional registration, licensing or admission.

(5) An applicant meets the requirements of this subclause if, on 1 November 1993, the applicant:

- (a) was carrying out postgraduate or post-doctoral research as the holder of a full-time position in an Australian academic or research institution; and
- (b) that position was awarded to the applicant on the basis of a postgraduate or post-doctoral qualification awarded to the applicant in Australia.

818.722 If the applicant is a principal applicant, the applicant was not financially assisted by either:

- (a) the Commonwealth; or
- (b) the government of another country;

to undertake the study leading to the qualification referred to in subclause 818.721 (2), paragraph 818.721 (3) (b), subclause 818.721 (4) or paragraph 818.721 (5) (b) in Australia.

818.723 (1) Subject to subclause (2), if the applicant is a principal applicant, he or she:

- (a) was granted a visa (of any class) overseas on or before 12 March 1992; and

SCHEDULE 1—continued

- (b) used that visa to travel to, and enter, Australia on or before 1 November 1993.

(2)If an applicant:

- (a) travelled to, and entered, Australia on or before 1 November 1993 using a visa granted on or before 12 March 1992; and
- (b) subsequently left Australia and returned using a visa other than the visa referred to in paragraph (1) (a);

the applicant is taken to meet the requirements of this clause only if the visa used to return to Australia was a return visa.

818.724 (1)If the applicant is a principal applicant, he or she is in Australia.

(2)If the applicant is not a principal applicant, he or she either is in Australia or is the holder of a return visa.

818.725 If the applicant is a principal applicant, on 1 November 1993 he or she either was in Australia or was the holder of a return visa.

818.73 Criteria to be satisfied at time of decision (entry permit—after entry)

818.731 The applicant is the holder of a section 47 temporary entry permit.

818.732 (1)If the applicant is a principal applicant:

- (a) he or she satisfies public interest criteria 4001 to 4004, 4007 and 4008; and
- (b) each member of his or her family unit in Australia who is an applicant for a Class 818 entry permit satisfies public interest criteria 4001 to 4004, 4007 and 4008; and
- (c) each member of his or her family unit in Australia who is not an applicant for a Class 818 entry permit satisfies:
 - (i) public interest criteria 4001 to 4004; and

SCHEDULE 1—continued

- (ii) public interest criteria 4007 and 4008, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to those criteria.

(2) If the applicant is a member of the family unit of a principal applicant, the applicant satisfies public interest criteria 4001 to 4004, 4007 and 4008.

818.733 If the applicant is a child referred to in subclause 818.711 (3), the applicant was born in Australia.

818.734 The Minister is satisfied that the grant of the entry permit would not prejudice the rights of any person who has custody or guardianship of, or access to, a dependent child of the applicant.

818.735 Approval of the application would not result in the number of Class 818 entry permits granted in a financial year exceeding the number of Class 818 entry permits specified by Gazette Notice for the purposes of this clause in respect of that financial year.

818.74 Conditions (entry permit—after entry): Nil.

818.8 FEES

818.81 [No visa of this class]

818.82 Entry permit applications

818.821 After entry (only):

- (a) if the applicant is an applicant who meets the criterion in subclause 818.721 (1) (b) and the application is combined with, and lodged at the same time as, an application for a Class 818 entry permit on which a fee has been paid: Nil;
- (b) in any other case: \$830.

SCHEDULE 1—continued

SCHEDULE 2

Subregulation 18.1

NEW CHAPTER 1.5 OF SCHEDULE 2

CHAPTER 1.5—(PERMANENT RESIDENT (REFUGEE AND HUMANITARIAN) (ON-SHORE)) VISAS AND ENTRY PERMITS

PART 800—CLASS 800 (TERRITORIAL ASYLUM) ENTRY PERMIT

(PRIMARY PERSON)

800.1 INTRODUCTION

800.11 Group: 1.5 (permanent resident (refugee and humanitarian) (on-shore)).

800.12 Purpose of grant to primary persons: To provide for permanent residence in Australia by certain persons who have been granted territorial asylum in Australia.

[NOTE: For provisions relating to secondary persons, see Part 015 of Schedule 3.]

800.2-4 [No visa of this class]

800.5 TERRITORIAL ASYLUM ENTRY PERMIT—PRELIMINARY

800.51 When and where may application and grant be made?

800.511 A Class 800 entry permit may be applied for, and granted, only after entry.

SCHEDULE 2—continued

800.52 Period of validity (entry permit)

800.521 The entry permit has effect without limitation as to time.

800.6 [Territorial asylum entry permit not granted before entry]

800.7 TERRITORIAL ASYLUM ENTRY PERMIT (AFTER ENTRY)

[NOTE: The purpose of the grant of a Class 800 entry permit is to authorise a further period of stay, unlimited as to time, in Australia for an eligible person.]

800.71 Application (entry permit—after entry)

800.711 An application for a Class 800 entry permit is an effective application if it is made by or on behalf of the applicant in a manner approved by a Minister.

[NOTE: Before an application will be considered, it must be lodged in accordance with regulation 2.28 (Act, subsection 34 (1)).]

800.72 Criteria to be satisfied at time of application (entry permit—after entry)

800.721 The applicant has been granted territorial asylum in Australia by instrument of a Minister.

800.73 Criteria to be satisfied at time of decision (entry permit—after entry)

800.731 The applicant continues to satisfy the criterion specified in clause 800.721.

800.732 The applicant satisfies public interest criteria 4001 to 4006 and 4009.

SCHEDULE 2—continued

800.733 (1) Each person who is a member of the family unit of the applicant and is also an applicant for a Class 800 entry permit satisfies public interest criteria 4001 to 4006 and 4009.

(2) Each person who is a member of the family unit of the applicant and is not an applicant for a Class 800 entry permit satisfies public interest criteria 4005 and 4006, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to those criteria.

800.734 If:

- (a) the applicant has a dependent child who is an applicant, as a secondary person, for a Class 800 entry permit; and
- (b) the applicant is the relevant primary person in relation to that application;

the Minister is satisfied that the grant of the entry permit to the child would not prejudice the rights and interests of any person who has custody or guardianship of, or access to, the child.

800.74 **Conditions (entry permit—after entry):** Nil.

800.8 **FEES:** Nil.

SCHEDULE 2—continued

PART 810—CLASS 810 (REFUGEE (PERMANENT)) ENTRY PERMIT

810.1 INTRODUCTION

810.11 Group: 1.5 (permanent resident (refugee and humanitarian) (on-shore)).

810.12 Purpose of grant: To provide for the grant of permanent residence to certain persons who hold a refugee (temporary) entry permit.

[NOTE: In relation to Class 810 entry permits, all applicants are primary persons.]

810.2-4 [No visa of this class]

810.5 REFUGEE (PERMANENT) ENTRY PERMIT—PRELIMINARY

810.51 When and where may application and grant be made?

810.511 A Class 810 entry permit may be applied for and granted only after entry.

810.52 Period of validity (entry permit)

810.521 The entry permit has effect without limitation as to time.

810.6 [Refugee (permanent) entry permit not granted before entry]

SCHEDULE 2—continued

810.7 REFUGEE (PERMANENT) ENTRY PERMIT (AFTER ENTRY)

[NOTE: The purpose of the grant of a Class 810 entry permit after entry is to authorise a further period of stay, unlimited as to time, in Australia for an eligible person.]

810.71 Application (entry permit—after entry)

810.711 An application for a Class 810 entry permit is an effective application if it is made by or on behalf of the applicant in a manner approved by the Minister.

[NOTE: Before an application will be considered, it must be lodged in accordance with regulation 2.28 and the fee (if any) specified in clause 810.821 must be paid (Act, subsection 34 (1)).]

810.72 Criteria to be satisfied at time of application (entry permit—after entry)

810.721 The applicant is the holder of a refugee (temporary) entry permit (code number 438) granted under the Migration (1989) Regulations or of a Class 827 (refugee (transitional)) entry permit.

810.73 Criteria to be satisfied at time of decision (entry permit—after entry)

810.731 The applicant continues to satisfy the criterion specified in clause 810.721.

810.732 The applicant has undergone a medical examination carried out by a medical officer of the Australian Government Health Service.

810.733 The applicant has undergone a chest X-ray examination carried out by a medical practitioner who is qualified as a radiologist in Australia.

810.734 The applicant satisfies public interest criteria 4001 to 4004 and 4009.

SCHEDULE 2—continued

810.74 **Conditions (entry permit—after entry): Nil.**

810.8 **FEES**

810.81 **[No visa of this class]**

810.82 **Entry permit applications**

810.821 After entry (only):

- (a) if the applicant is the spouse or a dependent child of a person who is the holder of, or an applicant for, a Class 810 entry permit: Nil;
 - (b) in any other case: \$50.
-

SCHEDULE 2—continued

**PART 817—CLASS 817 (PROTECTION (PERMANENT))
VISA AND ENTRY PERMIT****817.1 INTRODUCTION**

817.11 Group: 1.5 (permanent resident (refugee and humanitarian) (on-shore)).

817.12 Purpose of grant: To provide for permanent residence in Australia by:

- (a) certain persons in Australia determined to be refugees, and members of their family units; and
- (b) certain persons who hold, or have held, a Class 784 (domestic protection (temporary)) entry permit, or its equivalent under the Migration (1989) Regulations, and members of their family units.

[NOTE: In relation to Class 817 visas and entry permits, all applicants are primary persons.]

**817.2 PROTECTION (PERMANENT) VISA—
PRELIMINARY****817.21 When and where may application and grant be made?**

817.211 A Class 817 visa may be applied for and granted:

- (a) only in Australia before entry; and
- (b) only as a travel-only visa.

817.22 Validity (visa)

817.221 Journey(s) to Australia: One only.

817.222 Time limits for use: As determined by the Minister in the particular case.

SCHEDULE 2—continued

817.3 PROTECTION (PERMANENT) VISA (BEFORE ENTRY)

[NOTE: The purpose of the grant of a Class 817 visa before entry is to serve on arrival as an application for a Class 817 entry permit.]

817.31 Application (visa—before entry)

817.311 A person is taken to have applied for a Class 817 visa before entry if, and only if:

- (a) he or she applies, on or after 1 March 1994 (whether or not the application is combined with an application by another person) for a determination that he or she is a refugee; or
- (b) he or she applied, on or before 28 February 1994 (whether or not the application is combined with an application by another person) for a determination that he or she is a refugee, and:
 - (i) that application has not been withdrawn; and
 - (ii) no decision has been made on it.

817.312 An application for a Class 817 visa may be made only after arrival in Australia but before entry.

817.32 Criteria to be satisfied at time of application (visa—before entry)

817.321 The applicant has arrived in, but not entered, Australia.

817.33 Criteria to be satisfied at time of decision (visa—before entry)

817.331 The applicant has been determined by the Minister to be a refugee.

817.332 The applicant has undergone a medical examination carried out by a Commonwealth medical officer.

SCHEDULE 2—continued

817.333 The applicant:

- (a) has undergone a chest X-ray examination conducted by a medical practitioner who is qualified as a radiologist in Australia; or
- (b) is below the age of 16 years and is not a person in respect of whom a Commonwealth medical officer has requested such an examination.

817.334 The applicant satisfies public interest criteria 4001 to 4004.

817.335 The Minister is satisfied that the grant of the visa is in the national interest.

817.34 Conditions (visa—before entry): Nil.

817.4 [Protection (permanent) visa not granted after entry]

**817.5 PROTECTION (PERMANENT) ENTRY PERMIT—
PRELIMINARY**

817.51 When and where may application and grant be made?

817.511 A Class 817 entry permit may be applied for and granted:

- (a) in Australia before entry; or
- (b) after entry.

817.52 Period of validity (entry permit)

817.521 The entry permit has effect without limitation as to time.

**817.6 PROTECTION (PERMANENT) ENTRY PERMIT
(BEFORE ENTRY)**

[NOTE: The purpose of the grant before entry of a Class 817 entry permit is to permit the entry to Australia of an eligible person.]

SCHEDULE 2—continued

817.61 Application (entry permit—before entry)

817.611 A person is taken to have applied for a Class 817 entry permit before entry if, and only if, he or she is taken to have applied for a Class 817 visa before entry.

817.612 An application for a Class 817 entry permit before entry may be made only after arrival in Australia but before entry.

817.62 Criteria to be satisfied at time of application (entry permit—before entry)

817.621 The applicant has arrived in, but not entered, Australia.

817.63 Criteria to be satisfied at time of decision (entry permit—before entry)

817.631 The applicant holds a Class 817 visa.

817.7 PROTECTION (PERMANENT) ENTRY PERMIT (AFTER ENTRY)

[NOTE: The purpose of the grant of a Class 817 entry permit after entry is to authorise a period or further period of stay, unlimited as to time, in Australia for an eligible person.]

817.71 Application (entry permit—after entry)

817.711 (1) Subject to subclauses (2), (3) and (4), an application for a Class 817 entry permit after entry must be made on:

- (a) approved form 819 (if the applicant holds, or has held, a Class 784 (domestic protection (temporary)) entry permit, or a refugee (restricted) or a refugee B (restricted) entry permit (code number 781) granted under the Migration (1989) Regulations); or
- (b) approved form 866 (if the applicant is in custody); or
- (c) approved form 830 (in any other case).

SCHEDULE 2—continued

(2) An application by an applicant who is a member of the family unit of another applicant for a Class 817 entry permit may be combined with, and lodged at the same time as, the application by that other applicant.

(3) An application by a person who:

- (a) is the dependent child of an applicant for a Class 817 entry permit; and
- (b) was born after the lodging of, and before the making of a decision on, the application by that other applicant;

may be added to that other application.

(4) An application for a Class 784 entry permit that has not been decided at the commencement of this clause also has effect as an application for a Class 817 entry permit.

[NOTE: 1. Before an application will be considered, it must be lodged in accordance with regulation 2.28 and the fee (if any) specified in clause 817.821 must be paid (Act, subsection 34 (1)).

2. An application for a Class 817 entry permit (other than an application for a declaration that the applicant is a refugee that is taken, under clause 817.611, to be an application for a Class 817 entry permit before entry) also has effect as an application for a Class 830 (1 November 1993 (processing)) entry permit—see subregulation 2.29 (1D).]

817.72 Criteria to be satisfied at time of application (entry permit—after entry)

817.721 The applicant is:

- (a) the holder of, or a person who has held, a Class 784 entry permit; or
- (b) a person who either has applied for a determination that he or she is, or has been determined by the Minister to be, a refugee; or
- (c) a member of the family unit of a person who:
 - (i) is an applicant for a Class 817 entry permit; and
 - (ii) meets the requirements of paragraph (a) or (b).

SCHEDULE 2—continued

817.722 The applicant has entered Australia.

817.73 Criteria to be satisfied at time of decision (entry permit—after entry)

817.731 The applicant holds a section 47 temporary entry permit.

817.732 If the applicant is a child referred to in subclause 817.711 (3), the applicant was born in Australia.

817.733 If the applicant is an applicant referred to in paragraph 817.721 (b), the applicant has been determined by the Minister to be a refugee.

817.734 In the case of an applicant referred to in paragraph 817.721 (c), the applicant of whose family unit the first-mentioned applicant is a member has been granted a Class 817 entry permit.

817.735 The applicant has undergone a medical examination carried out by a Commonwealth medical officer.

817.736 The applicant:

- (a) has undergone a chest X-ray examination conducted by a medical practitioner who is qualified as a radiologist in Australia; or
- (b) is below the age of 16 years and is not a person in respect of whom a Commonwealth medical officer has requested such an examination.

817.737 The applicant satisfies public interest criteria 4001 to 4004.

817.738 The Minister is satisfied that the grant of the entry permit is in the national interest.

817.74 Conditions (entry permit—after entry): Nil.

SCHEDULE 2—continued

817.8 FEES**817.81 Visa applications:** Nil.**817.82 Entry permit applications**

817.821 Before entry: Nil.

817.822 After entry:

- (a) application referred to in subclause 817.711 (1): \$30;
 - (b) application that under subclause 817.711 (4) is taken to have been made: Nil;
 - (c) application made on the same form as, and combined with, another application on which a fee has been paid, or on which no fee is payable: Nil.
-

SCHEDULE 3

Subregulation 19.1

NEW DIVISIONS 437.5, 437.6, 437.7 AND 437.8 TO BE
SUBSTITUTED FOR EXISTING DIVISIONS 437.5, 437.6, 437.7
AND 437.8 IN PART 437 OF CHAPTER 2.6 OF SCHEDULE 2

**437.5 PRC (TEMPORARY) ENTRY PERMIT—
PRELIMINARY**

437.51 When and where may application and grant be made?

437.511 A Class 437 entry permit may be applied for and granted either:

- (a) at the Entry Control Point before entry, if the person is the holder of a Class 437 visa that was granted as a travel-only visa; or
- (b) after entry.

437.52 Period of validity (entry permit—after entry): Subject to the Act and these Regulations:

- (a) if the holder is an applicant for a Class 815 (PRC (permanent)) entry permit—until a decision is made on that application, and the holder has been notified in accordance with regulation 2.8; or
- (b) in any other case—until the end of 30 June 1994.

437.6 PRC (TEMPORARY) ENTRY PERMIT (BEFORE ENTRY): As provided by regulation 2.30.

437.7 PRC (TEMPORARY) ENTRY PERMIT (AFTER ENTRY)

[NOTE: The purpose of the grant of a Class 437 entry permit after entry is to authorise a limited period of stay in Australia for an eligible person.]

SCHEDULE 3—continued

437.71 Application (entry permit—after entry)

437.711 (1) Subject to subclause (2), the application must be made in accordance with:

- (a) approved form 889 (if the applicant is a person described in subclause 437.721 (2)); or
- (b) approved form 889A (if the applicant is a person described in subclause 437.721 (3)).

(2) If a person is the holder of a Class 437 entry permit and applies for a Class 815 (PRC (permanent)) entry permit, the application for the Class 815 entry permit is taken to be an application for a further Class 437 entry permit.

[NOTE: Before an application will be considered, it must be lodged in accordance with regulation 2.28 and the fee (if any) specified in clause 437.822 must be paid (Act, subsection 34 (1)).]

437.72 Criteria to be satisfied at time of application (entry permit—after entry)

437.721 (1) The applicant meets the requirements of subclause (2), (3) or (4).

(2) An applicant meets the requirements of this subclause if:

- (a) the applicant is:
 - (i) a citizen of PRC; and
 - (ii) described in the applicant's inwards passenger card, being the card in respect of which the entry permit was issued, as a citizen of PRC; and
 - (iii) described in the applicant's passport or other travel document on entry as a citizen of PRC; and
 - (iv) shown by records kept by Immigration to have entered Australia on or before 20 June 1989 and to have been in Australia on that day; and

SCHEDULE 3—continued

- (b) the Minister is satisfied that the applicant:
 - (i) is not entitled to reside in a place outside PRC;
and
 - (ii) is not a citizen of a country other than PRC.

(3) An applicant meets the requirements of this subclause if:

- (a) the applicant is in Australia; and
- (b) the applicant is the spouse, or a dependent child, of a principal holder; and
- (c) if the applicant is the spouse of the principal holder:
 - (i) the applicant became the spouse of the principal holder before 23 July 1992; and
 - (ii) the relationship is a genuine and continuing marital relationship.

(4) An applicant meets the requirements of this subclause if the applicant:

- (a) holds or has held a Class 437 entry permit that has not been cancelled; and
- (b) is an applicant for a Class 815 (PRC (permanent)) entry permit.

437.722 The applicant is not an applicant for a visa or entry permit of another class other than Class 437 or 815.

437.723 The applicant is not a person who previously held a Class 437 entry permit that ceased to be in force because of the cancellation or termination of the entry permit as a result of breach of a condition to which the entry permit was subject.

437.73 Criteria to be satisfied at time of decision (entry permit—after entry)

437.731 The applicant continues to satisfy the criteria specified in clauses 437.721 to 437.723.

SCHEDULE 3—continued

437.732 In the case of an applicant referred to in subclause 437.721 (2) or (3), the applicant has undergone a medical examination carried out by a Commonwealth medical officer.

437.733 In the case of an applicant referred to in subclause 437.721 (2) or (3), the applicant:

- (a) has undergone a chest X-ray examination conducted by a medical practitioner who is qualified as a radiologist in Australia; or
- (b) is a person below the age of 16 years in respect of whom a Commonwealth medical officer has not requested such an examination.

437.734 In the case of an applicant referred to in subclause 437.721 (2) or (3), the applicant satisfies public interest criteria 4001 to 4004 and 4010.

437.735 In the case of an applicant referred to in subclause 437.721 (2) or (3) who has previously been in Australia, the applicant meets special re-entry criteria 5001, 5003, 5005, 5007, 5009 and 5010.

437.74 Conditions (entry permit—after entry)

437.741 Mandatory conditions:

- (a) in the case of an entry permit granted to an applicant referred to in subclause 437.721 (2): 9113, 9114 and 9203; and
- (b) in the case of an entry permit granted to an applicant referred to in subclause 437.721 (3): 9113, 9203 and 9223; and
- (c) in the case of an applicant referred to in subclause 437.721 (4): nil.

[NOTE: 1. Conditions 9113 and 9114 are terminating conditions—see regulation 2.36.

SCHEDULE 3—continued

2. Condition 9203 prevents the holder of a Class 437 entry permit from obtaining permanent residence in Australia without first obtaining a temporary entry permit that is valid for the purposes of section 47 of the Act.]

437.742 Discretionary conditions:

- (a) in the case of an applicant referred to in subclause 437.721 (2) or (3): any other applicable conditions set out in Schedule 9; and
- (b) in the case of an applicant referred to in subclause 437.721 (4): nil.

437.8 FEES

437.81 Visa applications

437.811 Before or after entry: \$30 (payable, if the application is by an applicant to whom subclause 437.322 (2) or (3) applies, at the time of initial lodgment in Australia of the relevant nomination).

437.82 Entry permit applications

437.821 Before entry: Nil.

437.822 After entry:

- (a) if the applicant is the spouse or a dependent child of a person who holds, or is a fee-paying applicant for, a Class 437 entry permit: Nil;
- (b) if the applicant is an applicant referred to in subclause 437.721 (4): Nil;
- (c) in any other case: \$30.

SCHEDULE 4

Subregulation 20.1

NEW PART 830 OF CHAPTER 2.8 OF SCHEDULE 2

**PART 830—CLASS 830 (1 NOVEMBER 1993 (PROCESSING))
ENTRY PERMIT****830.1 INTRODUCTION****830.11 Group:** Group 2.8 (Miscellaneous).**830.12 Purpose of grant:** To provide for temporary residence in Australia by persons who have applied for certain classes of permanent entry permit.

[NOTE: In relation to Class 830 entry permits, all applicants are primary persons.]

830.13 Interpretation

830.131 In this Part:

“**principal application**”, in relation to an application for a Class 830 entry permit, means an application made for an entry permit of one of the following classes:

- (a) Class 815 (PRC (permanent));
- (b) Class 816 (special (permanent));
- (c) Class 817 (protection (permanent));
- (d) Class 818 (highly qualified on-shore (permanent)).

SCHEDULE 4—continued

830.2 -4 [No visa of this class]

830.5 1 NOVEMBER 1993 (PROCESSING) ENTRY PERMIT—PRELIMINARY

830.51 When and where may application and grant be made?

830.511 A Class 830 entry permit may be applied for and granted only after entry.

830.52 Period of validity (entry permit)

830.521 Until:

- (a) a decision is made on the applicant's principal application, and the applicant is notified in accordance with regulation 2.8; or
- (b) the principal application is withdrawn.

830.6 [1 November 1993 (processing) entry permit not granted before entry]

830.7 1 NOVEMBER 1993 (PROCESSING) ENTRY PERMIT (AFTER ENTRY)

[NOTE: The purpose of the grant of a Class 830 entry permit after entry is to authorise a further period of stay for a person whose principal application for permanent residence in Australia has not been decided.]

830.71 Application (entry permit—after entry)

830.711 As provided by subregulations 2.29 (1C) and (1D).

[NOTE: Before an application will be considered, it must be lodged in accordance with regulation 2.28 (Act, subsection 34 (1)).]

SCHEDULE 4—continued

830.72 Criteria to be satisfied at time of application (entry permit—after entry)

830.721 The applicant is not the holder of a Class 771 (transit) visa or entry permit.

830.73 Criteria to be satisfied at time of decision (entry permit—after entry)

830.731 The applicant is an applicant for an entry permit of one of the following classes:

- (a) Class 815 (PRC (permanent));
- (b) Class 816 (special (permanent));
- (c) Class 817 (protection (permanent));
- (d) Class 818 (highly qualified on-shore (permanent)).

830.732 Except in the case of an applicant who is an applicant for a Class 817 entry permit and holds a Class 784 entry permit, any entry permit held by the applicant:

- (a) has expired; or
- (b) may expire before a decision is made on the principal application.

830.733 If the applicant is an applicant for a Class 815 entry permit, the applicant:

- (a) satisfies the criteria specified in clauses 815.721 and 815.722; or
- (b) is a member of the family unit of a person who:
 - (i) satisfies those criteria; and
 - (ii) has been granted a Class 830 entry permit.

830.734 If the applicant is an applicant for a Class 816 entry permit, the applicant:

- (a) satisfies the criteria specified in:
 - (i) subparagraph 816.721 (1) (a) (i), subclause 816.722 (1) and clauses 816.723 and 816.724; and

SCHEDULE 4—continued

- (ii) either subclause 816.721 (4) or both of paragraphs 816.721 (6) (a) and (b); or
- (b) is a member of the family unit of a person who:
 - (i) satisfies those criteria; and
 - (ii) has been granted a Class 830 entry permit.

830.735 If the applicant is an applicant for a Class 817 entry permit:

- (a) if the applicant is lawfully in Australia at the time of application, the applicant:
 - (i) satisfies the criteria specified in clauses 817.721 and 817.722; and
 - (ii) is not the holder of a permanent entry permit; or
- (b) if the applicant is an illegal entrant at the time of application—the applicant meets all the requirements for the grant of a Class 817 entry permit other than the requirement that he or she holds a section 47 temporary entry permit.

830.736 If the applicant is an applicant for a Class 818 entry permit, the applicant:

- (a) satisfies the criteria specified in subparagraph 818.721 (1) (a) (i) and clauses 818.723, 818.724 and 818.725; or
- (b) is a member of the family unit of a person who:
 - (i) satisfies those criteria; and
 - (ii) has been granted a Class 830 entry permit.

830.74 Conditions (entry permit—after entry): Nil.

830.8 FEES

830.81 [No visa of this class]

SCHEDULE 4—continued

830.82 **Entry permit applications:** Nil.

SCHEDULE 5

Subregulation 21.1

NEW PART 015 OF SCHEDULE 3

PART 015—PERMANENT RESIDENT (REFUGEE AND HUMANITARIAN) (AFTER ENTRY) ENTRY PERMITS**(SECONDARY PERSONS)****015.1 INTRODUCTION**

015.11 Purpose of grant to secondary persons: To provide for permanent residence in Australia by certain members of the family units of persons who, as primary persons, are applicants for Group 1.5 (permanent resident (refugee and humanitarian) (after entry)) entry permits of classes that are available for grant to secondary persons.

[**NOTE:** For provisions relating to primary persons, see relevant Parts of Schedule 2.]

015.12 Interpretation

015.121 In this Part:

“relevant class”, in relation to a visa or entry permit that, in connection with an application by a secondary person for an entry permit, is required to be applied for, or held by, a primary person, means the class in which the entry permit applied for by the secondary person is included;

“relevant primary person”, in relation to an application by a secondary person for a entry permit, means the primary person upon whose application for, or holding of, a visa or entry permit of the relevant class the secondary person’s application depends.

015.2-4 [No visas in this Group available to secondary persons]

SCHEDULE 5—continued

015.5 PERMANENT RESIDENT (REFUGEE AND HUMANITARIAN) (AFTER ENTRY) ENTRY PERMITS—PRELIMINARY**015.51 When and where may application and grant be made?**

015.511 A Group 1.5 entry permit that is available for grant to secondary persons may be applied for by, and granted to, a secondary person only after entry.

015.52 Period of validity (entry permit)

015.521 The entry permit has effect without limitation as to time.

015.6 [Permanent resident (refugee and humanitarian) (after entry) entry permits not granted before entry]**015.7 PERMANENT RESIDENT (REFUGEE AND HUMANITARIAN) (AFTER ENTRY) ENTRY PERMITS (AFTER ENTRY)**

[NOTE: The purpose of the grant of a Group 1.5 entry permit after entry is to authorise a stay in Australia, unlimited as to time, for an eligible person.]

015.71 Application (entry permit—after entry)

015.711 (1) Subject to subclause (2), an application by a secondary person must be made by or on behalf of the applicant in a manner approved by a Minister.

(2) An application by or on behalf of a secondary person may be combined with, and lodged at the same time as, the application by the relevant primary person or the application by another applicant who is a secondary person in relation to the relevant primary person.

[NOTE: Before an application will be considered, it must be lodged in accordance with regulation 2.28 (Act, subsection 34 (1)).]

SCHEDULE 5—continued

015.72 Criteria to be satisfied at time of application (entry permit—after entry)

015.721 The applicant is a member of the family unit of a person who, as a primary person, is an applicant for an entry permit of the relevant class.

015.73 Criteria to be satisfied at time of decision (entry permit—after entry)

015.731 The relevant primary person is the holder, as a primary person, of an entry permit of the relevant class.

015.732 The applicant satisfies the public interest criteria required to be satisfied for the grant to a primary person of an entry permit of the relevant class.

015.733 If the applicant is a dependent child, the Minister is satisfied that the grant of the entry permit to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

015.74 Conditions (entry permit—after entry): Nil.

015.8 FEES: Nil.

SCHEDULE 6

Subregulation 22.1

NEW SCHEDULE 6.1

SCHEDULE 6.1

Schedule 2, Chapter 1.2
(subclause 816.721 (3))

REQUIREMENTS FOR A BUSINESS FOR THE PURPOSES OF
SUBCLAUSE 816.721 (3)

6101. The business was established on or before 1 November 1992.
6102. Throughout the period from 2 November 1992 to 1 November 1993 (both dates inclusive), the business:
- (a) operated regularly and continuously; and
 - (b) carried on a lawful trading activity; and
 - (c) complied with any relevant legal requirements.
6103. Subject to this clause, throughout the period from 2 May 1993 to 1 November 1993 (both dates inclusive), the business provided employment (whether full-time or part-time or both) equivalent to a total of 2886 person-hours of work for persons other than:
- (a) the applicant;
 - (b) the applicant's spouse;
 - (c) a child or parent of the applicant.
6104. The terms (including salary or wages) on which the business employs staff members are in accordance with any law or industrial award that applies to an employee of the business.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 4 February 1994.

2. Statutory Rules 1992 No. 367 as amended by 1993 Nos. 19, 29, 88, 169, 175, 218, 235, 253, 267, 283 309, 310, 329, 363 and 371.

DRAFT ONLY