

Admin: F.R.L.I.
 1996B03552
 Department



Statutory Rules 1994 No. 280

Migration Regulations² (Amendment)

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Statutory Rules 1994 No. ^L1

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Migration 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 ^L 1994.

16 August/
^L BILL HAYDEN/
Governor-General

By His Excellency's Command,

^L
Minister for Immigration and Ethnic Affairs

NICK BOLKUS/

PART 1—PRELIMINARY

1. Commencement

1.1 Part 2 commences on 1 September 1994.

1.2 Part 3 commences on 1 October 1994.

[NOTE: The remainder of these Regulations commence on gazettal: see *Acts Interpretation Act 1901*, s. 48.]

2. Amendment

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

**PART 2—AMENDMENTS HAVING EFFECT ON
1 SEPTEMBER 1994****3. Regulation 1.03 (Interpretation)**

3.1 Definition of “Commonwealth forces member” (paragraph (b)):
Omit the paragraph, substitute:

“(b) is travelling to Australia, or is in Australia, in the course of his or her duty; and”.

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

4.1 Omit the regulation.

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

5.1 Subregulation 2.12 (1):

After paragraph 2.12 (1) (c), insert:

“(ca) subject to subregulation (3), Long Stay (Visitor) (Class TN);”.

5.2 Subregulation 2.12 (2):

Omit the subregulation, substitute:

“(2) Paragraph (1) (c) applies to a person who has previously applied for a Protection (Class AZ) visa if and only if:

(a) his or her earlier application for a visa of that class has been finally determined; and

(b) he or she:

(i) makes a new claim under the Refugees Convention (as amended by the Refugees Protocol); or

(ii) provides new evidence relating to a previously considered claim under that Convention (as amended by that Protocol); or

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- (iii) provides new information about the country from which he or she claims to be a refugee under that Convention (as amended by that Protocol) that indicates that there has been a change in conditions in that country of a kind that enhances his or her chances of making a successful claim under that Convention (as amended by that Protocol).

“(3) Paragraph (1) (ca) applies to a person if and only if he or she meets the requirements of subclause 685.212 (6) or (7) of Schedule 2.”.

6. Regulation 2.15 (Response to invitation to give information or comments—prescribed periods)

6.1 Paragraph 2.15 (1) (b):

Omit the paragraph, substitute:

“(b) in the case of an application made by a person who is in Australia, other than a person referred to in paragraph

(a):

(i) if the invitation is given at an interview—7 days after the interview; or

(ii) if the invitation is given otherwise than at an interview:

(A) in the case of an application for a Long Stay (Visitor) (Class TN) or Short Stay (Visitor) (Class TR) visa—7 days after the applicant is notified of the invitation; or

(B) in any other case—28 days after the applicant is notified of the invitation; or”.

7. Regulation 2.17 (Ways of giving evidence of a visa)**7.1 Subregulation 2.17 (6):**

Omit the subregulation, substitute:

“(6) If evidence of the grant of a visa (other than a transitional visa or a visa of a class referred to in regulation 2.18) to a non-citizen has been given to the non-citizen and then lost or destroyed:

- (a) replacement evidence is to be given to the non-citizen by a label that is affixed to the non-citizen’s passport by an officer; and
- (b) in the case of a substantive visa, the replacement evidence must include:
 - (i) a statement of the period for which the visa is in effect; and
 - (ii) a statement of the class and the subclass to which the visa belongs; and
 - (iii) if the visa allows the holder to travel to and enter Australia—a statement of that fact.”.

8. Regulation 2.20 (Eligible non-citizen (Act, s. 72))**8.1 Subregulation 2.20 (1):**

Omit “subregulation (2) to (5)”, substitute “subregulations (2) to (11)”.

8.2 Add at the end:

“(6) This subregulation applies to a non-citizen who:

- (a) either:
 - (i) bypassed immigration clearance on or after 1 September 1994 and has not subsequently been granted a visa; or
 - (ii) entered Australia without authority before 1 September 1994 and has not subsequently been granted a visa or entry permit; and
- (c) has remained in Australia since 1 September 1994; and
- (d) has not come to the notice of Immigration as an illegal entrant or an unlawful non-citizen within 45 days of entering Australia.

- “(7) This subregulation applies to a non-citizen:
- (a) who, on or after 1 September 1994:
 - (i) was refused immigration clearance; or
 - (ii) bypassed immigration clearance and came to the notice of Immigration as an unlawful non-citizen within 45 days of entering Australia; and
 - (b) who has, on or after 1 September 1994:
 - (i) made a protection (Class AZ) visa application that has not been finally determined; or
 - (ii) applied for judicial review of a decision to refuse a protection (Class AZ) visa; and
 - (c) who has not turned 18; and
 - (d) in respect of whom a child welfare authority of a State or Territory has certified that release from detention is in the best interests of the non-citizen; and
 - (e) in respect of whom the Minister is satisfied that:
 - (i) arrangements have been made between the non-citizen and an Australian citizen, Australian permanent resident or eligible New Zealand citizen for the care and welfare of the non-citizen; and
 - (ii) those arrangements are in the best interests of the non-citizen; and
 - (iii) the grant of a visa to the non-citizen would not prejudice the rights and interests of any person who has, or may reasonably be expected to have, custody or guardianship of, or access to, the non-citizen.
- “(8) This subregulation applies to a non-citizen:
- (a) who, on or after 1 September 1994:
 - (i) was refused immigration clearance; or
 - (ii) bypassed immigration clearance and came to the notice of Immigration as an unlawful non-citizen within 45 days of entering Australia; and
 - (b) who has, on or after 1 September 1994:
 - (i) made a protection (Class AZ) visa application that has not been finally determined; or
 - (ii) applied for judicial review of a decision to refuse a protection (Class AZ) visa; and
 - (c) who has turned 75; and

- (d) in respect of whom the Minister is satisfied that adequate arrangements have been made for his or her support in the community.
- “(9) This subregulation applies to a non-citizen:
- (a) who, on or after 1 September 1994:
 - (i) was refused immigration clearance; or
 - (ii) bypassed immigration clearance and came to the notice of Immigration as an unlawful non-citizen within 45 days of entering Australia; and
 - (b) who has, on or after 1 September 1994:
 - (i) made a protection (Class AZ) visa application that has not been finally determined; or
 - (ii) applied for judicial review of a decision to refuse a protection (Class AZ) visa; and
 - (c) who has a special need (based on health or previous experience of torture or trauma) in respect of which a medical specialist appointed by Immigration has certified that the non-citizen cannot properly be cared for in a detention environment; and
 - (d) in respect of whom the Minister is satisfied that adequate arrangements have been made for his or her support in the community.
- “(10) This subregulation applies to a non-citizen:
- (a) who, on or after 1 September 1994:
 - (i) was refused immigration clearance; or
 - (ii) bypassed immigration clearance and came to the notice of Immigration as an unlawful non-citizen within 45 days of entering Australia; and
 - (b) who has, on or after 1 September 1994:
 - (i) made a protection (Class AZ) visa application that has not been finally determined; or
 - (ii) applied for judicial review of a decision to refuse a protection (Class AZ) visa; and
 - (c) who is the spouse of an Australian citizen, Australian permanent resident or eligible New Zealand citizen; and
 - (d) in relation to whom the Minister is satisfied that the non-citizen’s relationship with that Australian citizen, Australian permanent resident or eligible New Zealand citizen is genuine and continuing; and

- (e) who is nominated by that Australian citizen, Australian permanent resident or eligible New Zealand citizen.

“(11) This subregulation applies to a non-citizen who is a member of the family unit of a non-citizen to whom subregulation (10) applies.”.

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

9.1 Add at the end:

“(5) If a non-citizen holds 2 or more Bridging E visas, the one that is granted later or latest is taken to be the more or most beneficial.”.

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

10.1 Subregulation 2.24 (2):

Omit the subregulation, substitute:

“(2) For the purposes of paragraph 75 (1) (b) of the Act (which deals with the time in which the Minister must make a decision on a bridging visa application), the prescribed period is:

- (a) in the case of an application by:
 - (i) a non-citizen who has been immigration cleared; or
 - (ii) a non-citizen who is an eligible non-citizen referred to in subregulation 2.20 (6);
2 working days; or
- (b) in any other case—28 days.”.

11. Regulation 2.25 (Grant of bridging visa E without application)

11.1 Paragraph 2.25 (a):

Omit the paragraph, substitute:

- “(a) a non-citizen is:
 - (i) in criminal detention; or
 - (ii) unwilling or unable to make a valid application; and”.

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

12.1 Paragraph 2.40 (1) (k):

Omit the paragraph, substitute:

- “(k) members of the crew of non-military ships (other than ships being imported into Australia);
- (ka) members of the crew of ships being imported into Australia;”.

12.2 Subregulation 2.40 (4):

After “(k),” insert “(ka),”.

12.3 Subregulation 2.40 (7):

Omit “paragraph (1) (k)”, substitute “paragraph (1) (k) or (ka)”.

12.4 Subregulation 2.40 (8):

Omit the subregulation, substitute:

[*Crew members of imported ships*]

“(8) A person included in a class of persons specified in paragraph (1) (ka) has a prescribed status:

- (a) if and only if the ship of whose crew he or she is a member enters Australia at:
 - (i) a proclaimed port; or
 - (ii) a port other than a proclaimed port, if permission for it to do so has been given in advance by the Australian Customs Service under section 58 of the *Customs Act 1901*; and
- (b) for 5 working days after an agreement is made between the person and the ship’s master under section 46 of the *Navigation Act 1912*.”.

13. Regulation 4.17 (Time limits etc. in relation to other evidence—bridging visa decisions)

13.1 Subregulation 4.17 (3):

Omit “sent”, substitute “received at a registry of the Tribunal”.

14. Regulation 5.02 (Service of document on person in immigration detention)

14.1 Omit the regulation, substitute:

“5.02. For the purposes of the Act and these Regulations, a document to be served on a person in immigration detention may be served by giving it to the person himself or herself, or to another person authorised by him or her to receive documents on his or her behalf.”.

15. Regulation 5.03 (Time of receipt of document that is sent)

15.1 Omit the regulation, substitute:

Time of receipt of document etc. that is sent

“5.03. (1) For the purposes of these Regulations, and subject to specific provision elsewhere in these Regulations, a document that is sent by the Minister or a Tribunal is taken to be received:

- (a) if the document is sent from a place in Australia to an address in Australia—7 days after the date of the document; or
- (b) if the document is sent from:
 - (i) a place outside Australia to an address in Australia; or
 - (ii) a place in Australia to an address outside Australia; or
 - (iii) a place outside Australia to an address outside Australia;

21 days after the date of the document.

“(2) Subregulation (1) does not apply to a document unless it is sent within 7 days after the date of the document.”.

16. Schedule 1 (Classes of visas)

16.1 Item 1128 (Return (Residence) (Class BB)):

Paragraph 1128 (2) (a):

Omit “\$60”, substitute “\$65”.

16.2 Item 1215 (Prospective Marriage (temporary) (Class TO)):

Subitem 1215 (2):

Omit “\$395”, substitute “\$400”.

16.3 Item 1302 (Bridging B (Class WB)):

After paragraph 1302 (3) (b), insert:

- “(ba) Applicant must be:
- (i) a person who is immigration cleared; or
 - (ii) an eligible non-citizen referred to in subregulation 2.20 (6).”.

16.4 Item 1303 (Bridging C (Class WC)):

After paragraph 1303 (3) (c), insert:

- “(ca) Applicant must be:
- (i) a person who is immigration cleared; or
 - (ii) an eligible non-citizen referred to in subregulation 2.20 (6).”.

16.5 Item 1304 (Bridging D (Class WD)):

After paragraph 1304 (3) (b), insert:

- “(ba) Applicant must be:
- (i) a person who is immigration cleared; or
 - (ii) an eligible non-citizen referred to in subregulation 2.20 (6).”.

16.6 Item 1305 (Bridging E (Class WE)):

Subitem 1305 (4):

Omit the subitem, substitute:

- “(4) Subclasses: 050 (Bridging visa (General))
 051 (Bridging visa (Protection visa applicant)).”.

17. Schedule 2, Part 010 (Bridging visa A)

17.1 Subclause 010.211 (1):

Omit “subclause (2), (3), (4), (5) or (6)”, substitute “subclause (2), (3) or (4)”.

17.2 Subclause 010.211 (2):

Omit the subclause, substitute:

- “(2) An applicant meets the requirements of this subclause if:
- (a) he or she has made a valid application for a substantive visa; and
 - (b) that application has not been finally determined; and
 - (c) he or she held a substantive visa at the time that application was made; and
 - (d) he or she has applied for a bridging visa in respect of that application.”.

17.3 Subclauses 010.211 (5) and (6):

Omit the subclauses.

17.4 Clause 010.512:

Omit the clause.

17.5 Subclause 010.611 (1):

Omit the subclause, substitute:

“(1) In the case of a visa other than a visa granted to a non-citizen who:

- (a) is an applicant for a protection (Class AZ) visa; or
- (b) satisfies the criteria in subclause 010.211 (4);

whichever of conditions 8101, 8102, 8103, 8104, 8105, 8107, 8108 and 8111 applies to:

- (c) the visa held by the holder at the time of application; or
- (d) if that visa has ceased, the last Bridging visa A or Bridging visa B held by the holder.”.

17.6 Subclause 010.611 (2):

Omit the subclause, substitute:

- “(2) In the case of a visa granted to a non-citizen who:
- (a) satisfies the criterion in subclause 010.211 (4); or
 - (b) is an applicant for a Protection (Class AZ) visa:

Nil.”.

18. Schedule 2, Part 020 (Bridging visa B)

18.1 Subparagraph numbered 020.512 (b) (iii) (second occurring):

Omit “(iii)”, substitute “(iv)”.

19. Schedule 2, Part 041 (Bridging visa (Non-applicant))

19.1 Clause 041.611:

Omit the clause, substitute:

“041.611 Conditions 8101 and 8401.”.

20. Schedule 2, Part 042 (Bridging visa (Prospective protection visa applicant))

20.1 Clause 042.211:

Omit the clause, substitute:

“042.211 The applicant does not hold a substantive visa.”.

20.2 Clause 042.611:

Omit the clause, substitute:

“042.611 Condition 8101.”.

21. Schedule 2, Part 050 (Bridging visa E)

21.1 Heading:

Omit “**BRIDGING VISA E**”, substitute “**BRIDGING VISA (GENERAL)**”.

21.2 Clause 050.211:

Omit the clause, substitute:

“050.211 (1) The applicant is:
(a) an unlawful non-citizen; or
(b) the holder of a Bridging E visa.

“(2) The applicant is not an eligible non-citizen of the kind set out in subregulation 2.20 (7), (8), (9), (10) or (11).”.

21.3 Subparagraph 050.515 (1) (c) (iii):

Omit the subparagraph.

21.4 After paragraph 050.515 (1) (c), insert:

“(ca) subject to subclause (2), in the case of a non-citizen who is subject to an order for periodic detention—the completion of the period of periodic detention imposed by that order; or”.

21.5 Subclause 050.515 (2):

Omit “Subparagraphs (1) (b) (ii) and (iii) apply”, substitute “Subparagraph (1) (c) (ii) and paragraph (1) (ca) apply”.

21.6 Subclause 050.614:

Omit “8501”, substitute “8510”.

22. Schedule 2, new Part 051

22.1 After Schedule 2, Part 050, insert Part 051 set out in the Schedule to these Regulations.

23. Schedule 2, Part 155 (Five year return)

23.1 Subclause 155.211 (1):

Omit “(2), (3) or (5)”, substitute “(2), (2A), (3) or (5)”.

23.2 Clause 155.211:

After subclause 155.211 (2), insert:

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

- (a) is a person who lost or renounced Australian citizenship;
and
- (b) was, during the period of 3 years immediately before the application for the visa:
 - (i) an Australian permanent resident; or
 - (ii) an Australian citizen who was usually resident in Australia; or
 - (iii) at different times either:
 - (A) an Australian permanent resident; and
 - (B) an Australian citizen who was usually resident in Australia;

for a period of, or periods that total, not less than 2 years.”.

23.3 Subclause 155.211 (3):

Omit the clause, substitute:

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

- (a) was an Australian permanent resident at some time in the period of 5 years immediately before the application for the visa; or
- (b) is not an Australian citizen but, at some time in the period of 5 years immediately before the application for the visa, was an Australian citizen who was usually resident in Australia;

and is:

- (c) a person who is employed outside Australia by:
 - (i) the Commonwealth, a State or a Territory; or
 - (ii) a Commonwealth, State or Territory authority; or
 - (iii) an organisation that has its principal office in Australia;
 and the Minister is satisfied that the person was usually employed by that employer immediately before the person departed Australia; or
- (d) a member of the family unit of a person referred to in paragraph (c); or
- (e) a person who:
 - (i) has established, or is taking part in, a business in Australia that has done, or is likely to do, any of the following:
 - (A) create or maintain employment in Australia;
 - (B) introduce into Australia new or improved technology for the production of goods or the provision of services;
 - (C) produce goods, or provide services, in Australia for export;
 - (D) produce goods, or provide services to replace imported goods or services; and
 - (ii) is required to travel outside Australia in the interests of that business; or
- (f) a person who:
 - (i) is a member of the same family unit (within the meaning of subclause (4)) as an Australian citizen; and
 - (ii) has accompanied, or is to accompany, the citizen overseas; or

- (g) a person who is, or is to be, employed overseas by an international organisation to which the *International Organizations (Privileges and Immunities) Act 1963* applies, within the meaning of subsection 3 (1) of that Act.”.

24. Schedule 2, Part 156 (One year return)

24.1 Clause 156.211:

Omit the clause, substitute:

“156.211 (1) The applicant meets the requirements of subclause (2) or (3).

“(2) An applicant meets the requirements of this subclause if he or she:

- (a) is, or was immediately before going overseas, an Australian permanent resident; and
- (b) was an Australian permanent resident for a period of, or periods that total, at least 1 year, but not more than 2 years, during the period of 3 years immediately before the application was made.

“(3) An applicant meets the requirements of this subclause if he or she:

- (a) is a person who has lost or renounced Australian citizenship; and
- (b) was, during the period of 3 years immediately before the application for the visa:
 - (i) an Australian permanent resident; or
 - (ii) an Australian citizen who was usually resident in Australia; or
 - (iii) at different times either:
 - (A) an Australian permanent resident; and
 - (B) an Australian citizen who was usually resident in Australia;

for a period of, or periods that total, at least 1 year but not more than 2 years.”.

25. Schedule 2, Part 157 (Three month return)

25.1 Clause 157.211:

Omit the clause, substitute:

“157.211 (1) The applicant meets the requirements of subclause (2) or (3).

“(2) An applicant meets the requirements of this subclause if he or she:

- (a) is, or was immediately before going overseas, an Australian permanent resident; and
- (b) was an Australian permanent resident for a period of, or periods that total, less than 1 year, during the period of 3 years immediately before the application was made; and
- (c) establishes substantial reasons for leaving and re-entering Australia.

“(3) An applicant meets the requirements of this subclause if he or she:

- (a) is a person who has lost or renounced Australian citizenship; and
- (b) was, during the period of 3 years immediately before the application for the visa:
 - (i) an Australian permanent resident; or
 - (ii) an Australian citizen who was usually resident in Australia; or
 - (iii) at different times either:
 - (A) an Australian permanent resident; and
 - (B) an Australian citizen who was usually resident in Australia;
- (c) establishes substantial reasons for leaving and re-entering Australia.”.

26. Schedule 2, Part 159 (Resident return)

26.1 Clause 159.211:

Omit the clause, substitute:

“159.211 The applicant claims, but is unable to prove, that immediately before going overseas he or she was:

- (a) an Australian permanent resident; or

- (b) an Australian citizen who was usually resident in Australia.”.

26.2 After clause 159.212, insert:

“159.212A The Minister is satisfied that the applicant is not an Australian citizen.”.

27. Schedule 2, Part 424 (Public lecturer)

27.1 Clauses 424.611 and 424.612:

Omit the clauses, substitute:

“424.611 If the applicant satisfies the primary criteria, condition 8107.

424.612 Any 1 or more of conditions 8106, 8301, 8303, 8501, 8502, 8503, 8516, 8522, 8525 and 8526 may be imposed.”.

28. Schedule 2, Part 560 (Student)

28.1 Subparagraph 560.229 (b) (iii):

Omit the subparagraph, substitute:

- “(iii) undertaking a course of study paid for wholly or in part by:
- (A) the Commonwealth or the government of a State or Territory; or
 - (B) the government of the applicant’s home country; or
 - (C) an intergovernmental agency; and”.

28.2 Paragraph 560.327 (b):

Omit the paragraph, substitute:

- “(b) undertaking a course of study paid for wholly or in part by:
- (i) the Commonwealth or the government of a State or Territory; or
 - (ii) the government of the principal person’s home country; or
 - (iii) an intergovernmental agency; or”.

28.3 Subparagraph 560.327 (c) (ii):

Omit the subparagraph, substitute:

- “(ii) is not undertaking a course of study paid for wholly or in part by:
 - (A) the Commonwealth or the government of a State or Territory; or
 - (B) the government of the principal person’s home country; or
 - (C) an intergovernmental agency; and”.

28.4 Paragraph 560.613 (1) (c):

After “person”, insert “(in this paragraph called ‘the principal person’)”.

28.5 Subparagraphs 560.613 (1) (c) (iii):

Omit the subparagraph, substitute:

- “(iii) is not undertaking a course of study paid for wholly or in part by:
 - (A) the Commonwealth or the government of a State or Territory; or
 - (B) the government of the principal person’s home country; or
 - (C) an intergovernmental agency:”.

29. Schedule 2, Part 672 (Business visitor (short stay))**29.1 Paragraph 672.221 (2) (f):**

Omit the paragraph, substitute:

- “(f) if the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5003, 5005 and 5007 to 5009; and”.

30. Schedule 2, Part 673 (Close family visitor (short stay))**30.1 Paragraph 673.221 (3) (b):**

Omit “paragraphs 673.221 (2) (c) and (d)”, substitute “paragraph 673.221 (2) (c)”.

30.2 Clauses 673.611 and 673.612:

Omit the clauses, substitute:

“673.611 Conditions 8101, 8201 and 8205.

“673.612 Condition 8503 may be imposed.”.

31. Schedule 2, Part 832 (Close ties)

31.1 Paragraph 832.212 (5) (b):

Omit the paragraph, substitute:

“(b) the criteria set out in subdivision 150.21, 151.21 or 152.21.”.

32. Schedule 4 (Public interest criteria)

32.1 Subparagraph 4007 (2) (b) (iv):

Omit the subparagraph.

32.2 Paragraph 4007 (2) (c):

Omit the paragraph, substitute:

“(c) the Minister is satisfied that the granting of the visa would be unlikely to result in:

(i) undue harm or undue cost to the Australian community; or

(ii) undue prejudice to the access to health care or community services of any Australian citizen or Australian permanent resident.”.

32.3 Subparagraph 4008 (2) (b) (iv):

Omit the subparagraph.

32.4 Paragraph 4008 (2) (c):

Omit the paragraph, substitute:

“(c) the Minister is satisfied that the granting of the visa would be unlikely to result in:

(i) undue harm or undue cost to the Australian community; or

(ii) undue prejudice to the access to health care or community services of any Australian citizen or Australian permanent resident.”.

33. Schedule 9

33.1 Omit the heading, substitute:

“SCHEDULE 9Regulations 3.02, 3.03
and 3.06**SPECIAL ENTRY AND CLEARANCE ARRANGEMENTS”.**

33.2 Part 1 (Persons to whom special arrangements apply under section 166 of the Act):

Items 12 and 13:

Omit the items, substitute:

12	Foreign armed forces dependants who arrive at an airport that is not a proclaimed port	A passport and either: (a) movement orders; or (b) a certificate that the person is a spouse or dependant of a member of the armed forces, or the civilian component of the armed forces of the relevant country, and is accompanying or joining that member	No
13	Foreign armed forces dependants who arrive at an airport that is a proclaimed port	A passport and either: (a) movement orders; or (b) a certificate that the person is a spouse or dependant of a member of the armed forces, or the civilian component of the armed forces of the relevant country, and is accompanying or joining that member	Yes

33.3 Part 3 (Countries whose citizens, when transit passengers, are not required to comply with section 166 of the Act):

After “Netherlands”, insert “New Zealand”.

34. Schedule 10

34.1 Omit the heading, substitute:

“SCHEDULE 10

Regulation 1.03

PRESCRIBED FORMS”.

**PART 3—AMENDMENTS HAVING EFFECT ON
1 OCTOBER 1994**

35. Regulation 1.03 (Interpretation)

35.1 Insert the following definitions:

“ **‘Industry Minister’** means the Minister for Industry, Science and Technology; ✓

“ **‘RHQ agreement’** means an agreement referred to in regulation 1.16A;”.

36. New regulation 1.16A

36.1 After regulation 1.16, insert:

Regional headquarters agreements

“1.16A. If an organisation that has its head office outside Australia wishes to establish a regional headquarters in Australia, the Minister and the Industry Minister may enter into an agreement with the organisation to provide for the entry to, and stay in, Australia of staff members of the organisation for the purposes of the regional headquarters.”.

37. Schedule 2, Part 120 (Labour agreement)

37.1 Clause 120.211:

Omit the clause, substitute:

“120.211 The applicant:

(a) either:

- (i) seeks to enter Australia to work in accordance with a labour agreement; and
- (ii) has qualifications and experience that are suitable for the position to be taken by the applicant under the labour agreement; and

- (iii) unless exceptional circumstances apply, has not turned 55; or
- (b) seeks to enter Australia in accordance with an RHQ agreement.”.

38. Schedule 2, Part 413 (Executive)

38.1 Subclause 413.221 (1):

Omit “(2), (3) or (4)”, substitute “(2), (3), (4) or (5)”.

38.2 After subclause 413.221 (4), insert:

“(5) An applicant meets the requirements of this subclause if he or she seeks to enter Australia in accordance with an RHQ agreement.”.

38.3 Clause 413.222:

Omit the clause, substitute:

“413.222 (1) Subject to subclause (2), the applicant produces a statement by the company that employs him or her that satisfies the Minister that the employment of the applicant in Australia would be of benefit to Australia.

“(2) Subclause (1) does not apply to an applicant who meets the requirements of subclause 413.221 (5).”.

38.4 Subclause 413.228:

Omit the subclause, substitute:

“413.228 (1) Subject to subclause (2), if at the time of application the applicant was the holder of a Student (Temporary) visa:

- (a) the applicant has successfully completed a course in Australia at associate diploma level or above; and
- (b) the applicant has special occupational or professional skills (or both); and
- (c) if sponsorship is a requirement, the intended employer establishes that a person with those skills is not reasonably available in Australia; and
- (d) if the applicant is a private subsidised student:
 - (i) if sponsorship is a requirement, the sponsor establishes a strong case on economic grounds for the grant of the visa; and

- (ii) the Minister is satisfied that it would not be detrimental to Australia's policies in respect of overseas students to grant the visa; and
- (e) if the applicant is a student under a scholarship scheme or training program approved by AIDAB, the applicant has the support of AIDAB for the grant of the visa.

“(2) Subclause (1) does not apply to an applicant who meets the requirements of subclause 413.221 (5).”.

38.5 Subclause 413.229 (2):

After “subclause 413.221 (2)”, insert “or (5)”.

38.6 Clause 413.230:

Omit the clause, substitute:

“413.230 (1) Subject to subclause (2), if, at the time of application, the applicant was the holder of a Long Stay (Visitor), Short Stay (Visitor) or Working Holiday (Temporary) visa:

- (a) the applicant:
 - (i) is sponsored by the intended employer; or
 - (ii) is intending to set up a branch in Australia of an overseas company and has the support in writing of that overseas company; and
- (b) the Minister is satisfied that:
 - (i) it has not been possible to find an employee in Australia who is suitable for the position; or
 - (ii) in the circumstances, the employer should not be required to seek a suitable employee in Australia.

“(2) Subclause (1) does not apply to an applicant who meets the requirements of subclause 413.221 (5).”.

39. Schedule 2, Part 414 (Specialist)

39.1 Subparagraph 414.221 (b) (vii):

Omit the subparagraph, substitute:

- “(vii) the intended employer has a satisfactory record of, or demonstrates commitment towards, training in its business operations in Australia; or
- (c) seeks to enter Australia in accordance with an RHQ agreement.”.

39.2 Clauses 414.222 and 414.223:

Omit the clauses, substitute:

“414.222 If the applicant is not an applicant who meets the requirements of paragraph 414.221 (c), he or she produces a statement by the intended employer that satisfies the Minister that the employment of the applicant in Australia would be of benefit to Australia.

“414.223 If:

- (a) the application is made outside Australia; and
- (b) is in respect of a stay in Australia of more than 4 months; and
- (c) the applicant is not an applicant who meets the requirements of paragraph 414.221 (c);

the applicant is sponsored by the intended employer of the applicant in the business enterprise in Australia in which he or she has been offered a position.”.

39.3 Clauses 414.228 and 414.229:

Omit the clauses, substitute:

“414.228 (1) If the application is made in the migration zone:

- (a) the applicant has complied substantially with the conditions to which the visa (if any) held, or last held, by the applicant is, or was, subject; and
- (b) subject to subclause (2), if, at the time of application, the applicant was the holder of a Student (temporary) visa:
 - (i) the applicant has successfully completed a course in Australia at Associate Diploma level or above; and
 - (ii) the Minister is satisfied that:
 - (A) it has not been possible to find a person who is suitable for the position in which the applicant’s intended employer proposes to employ the applicant; or
 - (B) in the circumstances of the case, the intended employer should not be required to seek a suitable employee in Australia; and
 - (iii) the applicant is sponsored by an intended employer that is able to establish that a person with those skills is not reasonably available in Australia; and
 - (iv) if the applicant is a private subsidised student:
 - (A) the sponsor establishes a strong case on economic grounds for the grant of the visa; and

- (B) the Minister is satisfied that it would not be detrimental to Australia's policies in respect of overseas students to grant the visa; and
- (v) if the applicant is a student under a scholarship scheme or training program approved by AIDAB, the applicant has the support of AIDAB for the grant of the visa.

“(2) Paragraph (1) (b) does not apply to an applicant who meets the requirements of paragraph 414.221 (c).

“414.229 (1) Subject to subclause (3), if:

- (a) the applicant was, at the time of application, the holder of:
 - (i) a Business, Cultural/Social, Educational, Expatriate, Family Relationship, Interdependency, Retirement, Supported Dependant, subclass 303, subclass 773 or subclass 427 visa; or
 - (ii) the holder of a Confirmatory visa which was granted on the grounds that the applicant satisfied the criteria for one of the visas specified in subparagraph (i); and
- (b) the grant of the visa would allow the applicant a total period of stay in Australia of more than 4 months as a temporary resident;

the applicant is sponsored by an intended employer.

“(2) Subject to subclause (3), if, at the time of application, the applicant was the holder of a Long Stay (Visitor), Short Stay (Visitor) or Working Holiday visa, the applicant is sponsored by the intended employer.

“(3) Subclauses (1) and (2) do not apply to an applicant who meets the requirements of paragraph 414.221 (c).”

SCHEDULE

Regulation 22

NEW PART 051 FOR INSERTION IN SCHEDULE 2**SUBCLASS 051—BRIDGING VISA (PROTECTION VISA APPLICANT)****051.1 INTERPRETATION**

[NOTE: 1. “Compelling need to work” and “criminal detention” are defined in regulation 1.03. For “eligible non-citizen” see regulation 2.20. No interpretation provisions specific to this Part.

2. A bridging visa subclass 051 may also be granted without application.]

051.2 PRIMARY CRITERIA

[NOTE: All applicants must satisfy the primary criteria.]

051.21 Criteria to be met at time of application

051.211 The applicant is an eligible non-citizen referred to in subregulation 2.20 (7), (8), (9), (10) or (11).

051.212 (1) The applicant meets the requirements of subclause (2) or (3).

- (2) An applicant meets the requirements of this subclause if:
 - (a) the Minister is satisfied that the applicant meets the health and public interest criteria for the grant of a protection visa; and
 - (b) the applicant or a person acting on his or her behalf has signed an undertaking acceptable to the Minister that, if the applicant’s application for a protection visa is refused, the applicant will depart Australia, or present himself or herself to Immigration for removal:
 - (i) within 28 days after the applicant is notified of final determination of the applicant’s protection visa application; or
 - (ii) if the applicant applies for judicial review of the refusal—28 days after completion of judicial review proceedings (including proceedings on appeal, if any); or

SCHEDULE—continued

- (iii) if the applicant withdraws his or her protection visa application, or application (if any) for judicial review—28 days after that withdrawal.

(3) An applicant meets the requirements of this subclause if the applicant has applied for judicial review of a decision to refuse a protection visa application and the judicial review proceedings (including proceedings on appeal, if any) have not been completed.

051.22 Criteria to be met at the time of decision

051.221 The applicant continues to satisfy the criteria in clauses 051.211 and 051.212.

051.3 SECONDARY CRITERIA: Nil.

[NOTE: All applicants must satisfy the primary criteria.]

051.4 CIRCUMSTANCES APPLICABLE TO GRANT

051.411 The applicant must be in Australia but not in immigration clearance.

051.5 WHEN VISA IS IN EFFECT

051.511 In the case of a visa granted to a non-citizen who has applied for a protection visa—bridging visa coming into effect on grant, permitting the holder to remain in Australia until:

- (a) either:
 - (i) if the Minister's decision in respect of the protection visa application is to grant a visa—the grant of the protection visa; or
 - (ii) if the Minister's decision in respect of that application is to refuse to grant a visa—28 days after the holder is notified of that refusal; or
- (b) if that application is refused and the holder applies for merits review of that decision—28 days after notification of the decision of the final review authority appealed to; or
- (c) the grant of a further bridging visa to the holder in respect of his or her protection visa application; or
- (d) if the holder withdraws the application for the protection visa or for review—28 days after that withdrawal.

SCHEDULE—continued

051.512 In the case of a visa granted to a non-citizen who has lodged an application for judicial review of a decision to refuse a protection visa application—bridging visa coming into effect on grant and permitting the applicant to remain in Australia until:

- (a) if another bridging visa is granted to the holder in respect of his or her application for judicial review—the grant of that bridging visa; or
- (b) 28 days after the judicial review proceedings (including proceedings on appeal, if any) have been completed; or
- (c) if the applicant withdraws the application for judicial review—28 days after that withdrawal.

051.513 In the case of a visa that is taken to have been granted by operation of section 75 of the Act—bridging visa coming into effect on grant and permitting the applicant to remain in Australia until:

- (a) either:
 - (i) if the Minister's decision in respect of the protection visa application is to grant a visa—the grant of the visa; or
 - (ii) if the Minister's decision in respect of that application is to refuse to grant a visa—28 days after the holder is notified of that refusal; or
- (b) if the protection visa application is refused and the holder applies for merits review of that decision—28 days after notification of the decision of the final review authority appealed to; or
- (c) the grant of a further bridging visa to the holder in respect of his or her protection visa application; or
- (d) if the holder withdraws the application for the protection visa or for review—28 days after that withdrawal.

051.6 CONDITIONS

051.611 In the case of a visa that is taken to have been granted by operation of section 75 of the Act—conditions 8101, 8201, 8402, 8506 and 8513.

051.612 In any other case—any 1 or more of conditions 8101, 8104, 8201, 8401, 8403, 8505, 8506, 8507, 8508, 8510, 8511 and 8512 may be imposed.

SCHEDULE—continued

051.7 WAY OF GIVING EVIDENCE

051.711 No evidence need be given unless the visa holder asks for it.

051.712 If evidence is given, to be given by a visa label attached to a passport.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on
2. Statutory Rules 1994 No. 268.

L 1994. 17 August/