

Migration Regulations (Amendment) 1995 No. 38

EXPLANATORY STATEMENT

STATUTORY RULES 1995 No. 38

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

Migration Act 1958

Migration Regulations (Amendment)

Section 504 of the *Migration Act 1958* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, to prescribe all matters which are required or permitted to be prescribed by the Act or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Without limiting the generality of section 504, particular provision is made for and in relation to the following matters:

- paragraph 504(1)(a) of the Act provides that the regulations may provide for the charging and recovery of fees in respect of any matter under the Act or the regulations;
- paragraph 504(1)(b) of the Act provides that the regulations may make provision for the remission, refund or waiver of fees which may be prescribed by the regulations, and for exempting persons from the payment of such fees;
- paragraph 504(1)(e) of the Act provides that regulations may be made in relation to the giving, lodging and serving of documents for the purposes of the Act on the Minister, the Secretary or any other person or body;

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

- paragraph 5(2)(b) of the Act provides for prescribing the evidence which a person may provide of English language proficiency to show that the person has functional English for the purposes of the Act;
- subsection 31(1) of the Act provides that there are to be prescribed classes of visas;
- subsection 31(3) of the Act provides that the regulations may prescribe criteria for visas of a specified class;
- subsection 31(4) of the Act provides that the regulations may prescribe whether visas are visas to travel to and enter, or to remain in Australia, or both;
- subsection 33(2) of the Act provides that a non-citizen is taken to have been granted a special purpose visa if the non-citizen has a prescribed status or is a member of a class of persons with a prescribed status;
- section 41 of the Act provides that, without limiting the generality of the section, the regulations may provide that visas or visas of a specified class are subject to specified conditions, including but not limited to a condition that a further visa cannot be granted and a condition restricting work rights;

- subsections 45(2) and (3) of the Act provide that the regulations may make provision in relation to applications for visas;
- section 48 of the Act provides that a non-citizen in the migration zone who does not hold a substantive visa and who either had certain visa applications refused or had a visa cancelled under certain powers may, subject to the regulations, apply only for a visa of a class prescribed;
- subsection 58(2) provides that a visa applicant must give additional information or comment on information (other than at an interview) pursuant to an invitation by the Minister under section 56 or section 57 of the Act within a period specified in the invitation, which is a prescribed period or a reasonable period if no period is prescribed;
- subsection 58(3) provides that an interview to which a visa applicant is invited by the Minister under section 56 or section 57 is to take place at a time and place specified in the invitation, which time and place are a prescribed time and place or a reasonable time and place if not prescribed;
- subsection 71(1) of the Act provides for the regulations to prescribe the way in which evidence of a visa is to be given;
- subsection 93(1) of the Act provides for the qualifications and number of points for each of those qualifications to be prescribed, for the purposes of assessment of the applicant's score under the general points system; and
- subsection 166(2) of the Act provides that, subject to section 167, a person is to comply with certain requirements of subsection 166(1) of the Act (relating to giving evidence to a clearance officer in immigration clearance) in a prescribed way.

The purpose of the Regulations is to:

- implement certain recommendations of the Business Skills Advisory Panel, by making provision for the grant of the existing business skills visas in Australia, creating a new investment-linked business skills visa which may be granted overseas and in Australia, and creating a new visa (established business in Australia) which may be granted only in Australia;
- restructure the provisions for the grant of visitor visas, by providing for all tourists, close family visitors and other visitors to be covered by two subclasses, depending on whether a long or short stay visit is intended, and creating a separate class for persons visiting Australia to undergo medical treatment or to accompany a person undergoing medical treatment;
- extend the group of persons who can hold a special purpose visa to persons in Indonesia who wish to travel to Christmas Island for a maximum of 5 days;
- extend the operation of the Sri Lankan visa and the Citizens of former Yugoslavia visa to 30 September 1995; and
- make a number of clarifying and technical amendments which do not affect the substantive operation of the Migration Regulations.

Part 3 of the Regulations commence on 3 April 1995. Regulations 2, 6 and 7 and subregulations 4.1 and 5.1 are retrospective to 1 September 1994, regulation 8 is retrospective to 12 December 1994, regulation 3 is retrospective to 9 January 1995 and subregulations 4.2, 4.3, 5.2 and 5.3 commence on 17 March 1995. None of those regulations which are retrospective will be prejudicial to any person. Retrospectivity will not therefore contravene subsection 48(2) of the Acts Interpretation Act 1901. Details of the Regulations are set out in the Attachment.

ATTACHMENT

PART 1 - PRELIMINARY

Regulation 1 - Commencement

This regulation provides for the Migration Regulations (Amendment) to commence on a number of different dates:

- subregulation 1.1 provides for regulation 2, subregulation 4.1 and 5.1 and regulations 6 and 7 to be retrospective to 1 September 1994;
- subregulation 1.2 provides for regulation 8 to be retrospective to 12 December 1994;
- subregulation 1.3 provides for regulation 3 to be retrospective to 9 January 1995;
- subregulation 1.4 provides for subregulations 4.2, 4.3, 5.2 and 5.3 to commence on 17 March 1995; and
- subregulation 1.5 provides for Part 3 (which contains the majority of the amendments) to commence on 3 April 1995.

Regulation 2 - Amendment

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

PART 2 - AMENDMENTS HAVING EFFECT BEFORE 3 APRIL 1995

Regulation 3 - Schedule 1 (Classes of visas)

Regulation 3 amends Item 1129A to correct an error in the class number of the Sri Lankan (Special Assistance) visa. The reference should have been to class BG rather than 13F. This amendment is retrospective to 9 January 1995, the date this class came into operation. This amendment is technical and retrospectivity is not prejudicial to any person. Retrospectivity will not, therefore, contravene subsection 48(2) of the *Acts Interpretation Act 1901*.

Regulation 4 - Schedule 2, Part 435 (Sri Lankan)

Subregulation 4.1 omits clause 435.213 and substitutes a new clause which corrects an error by referring to entry permits as well as visas.

In order to avoid disadvantage to some applicants, this amendment is retrospective to 1 September 1994, the date that the Migration Regulations came into operation. Retrospectivity will be entirely beneficial to the applicants concerned and will not be prejudicial to any person. Retrospectivity will not therefore contravene subsection 48(2) of the *Acts Interpretation Act 1901*.

Subregulations 4.2 and 4.3 amend clauses 435.214 and 435.511 respectively, to extend the operation of the subclass 435 visa from 31 March 1995 to 30 September 1995.

These provisions commence on 17 March 1995.

Regulation 5 - Schedule 2, Part 443 (Citizens-of Former Yugoslavia)

Subregulation 5.1 omits clause 443.213 and substitutes a new clause which corrects an error by referring to entry permits as well as visas.

In order to avoid disadvantage to some applicants, this amendment is retrospective to 1 September 1994, the date that the Migration Regulations came into operation. Retrospectivity will be entirely beneficial to the applicants concerned and will not be prejudicial to any person. Retrospectivity will not therefore contravene subsection 48(2) of the *Acts Interpretation Act 1901*.

Subregulations 5.2 and 5.3 amend clauses 443.214 and 443.511 respectively, to extend the operation of the subclass 443 visa from 31 March 1995 to 30 September 1995.

These provisions commence on 17 March 1995.

Regulation 6 - Schedule 2, Part 801 (Spouse)

Subregulations 6.1 and 6.2 amend clause 801.221 to insert a new subclause (8) which enables the grant of a subclass 801 visa after successful review. Subclause (8) enables the grant of a subclass 801 visa where the applicant held a subclass 820 visa which ceased on notification of a decision of the Minister to refuse a subclass 801 visa, and, following review, a review officer or the Immigration Review Tribunal (IRT) has determined that the applicant meets the prescribed criteria except that he or she does not hold a subclass 820 visa.

Subregulation 6.3 omits clause 801.321 and substitutes a new clause which re-inserts the previous criterion but additionally includes the dependent child of a person granted a subclass 801 visa pursuant to subclause 801.221(8) (see above). This gives a dependant child the same benefit conferred on a person referred to in subclause 801.221(8).

The amendments made by regulation 6 correct an anomalous situation so, in order to avoid disadvantage to some applicants, this amendment is retrospective to 1 September 1994, the date that the Migration Regulations came into operation. Retrospectivity will be entirely beneficial to the applicants concerned and will not be prejudicial to any person. Retrospectivity will not therefore contravene subsection 48(2) of the *Acts Interpretation Act 1901*.

Regulation 7 - Schedule 2, Part 814 (Interdependency)

Subregulations 7.1 and 7.2 amend clause 814.221 to add a new subclause (6) which enables the grant of a subclass 814 visa after successful review. Subclause (6) enables the grant of a subclass 814 visa where the applicant held a subclass 826 visa which ceased on notification of a decision of the Minister to refuse a subclass 814 visa, and, following review, a review officer or the IRT has determined that the applicant meets the prescribed criteria except that he or she does not hold a subclass 826 visa.

Subregulation 7.3 omits clause 814.321 and substitutes a new clause which re-inserts the previous criterion but additionally includes the dependent child of a person granted a subclass 814 visa pursuant to subclause 81.4.221(6) (see above). This gives a dependant child the same benefit conferred on a person referred to in subclause 814.221(6).

The amendments made by regulation 7 correct an anomalous situation so, in order to avoid disadvantage to some applicants, this amendment is retrospective to 1 September 1994, the date that the Migration Regulations came into operation. Retrospectivity will be entirely beneficial to the applicants concerned and will not be prejudicial to any person. Retrospectivity will not therefore contravene subsection 48(2) of the *Acts Interpretation Act 1901*.

Regulation 8 - Schedule 6 (General points test - qualifications and points)

This regulation omits items 6103 and 6105 of Schedule 6 and substitutes new items 6103 and 6105 as a consequence of the amendments made to items 6102 and 6104 by Statutory Rules No 376 of 1994. The intention of items 6103 and 6105 is to allow the award of 60 and 50 points respectively where the applicant is able to satisfy items 6102 or 6104 except for the time requirements in paragraphs 6.102(c), (e) or (f) or paragraphs 6104(c), (e) or (f).

In order to avoid disadvantage to some applicants, this amendment is retrospective to 12 December 1994, the date that Statutory Rules No. 376 of 1994 came into operation. Retrospectivity will be entirely beneficial to the applicants concerned and will not be prejudicial to any person. Retrospectivity will not therefore contravene subsection 48(2) of the *Acts Interpretation Act 1901*.

PART 3 - AMENDMENTS HAVING EFFECT ON 3 APRIL 1995

Regulation 9 - Regulation 1.03 (Interpretation)

This regulation amends the definition of "fiscal year" in Regulation, 1.03 by inserting the words "or investment" after the word "business" wherever occurring.

Regulation 10 - Regulation 1.20 (Sponsorship)

This regulation amends paragraph 11.20(2)(a) to include references to two new business skills subclasses which are inserted by these Regulations - Subclass 842 (State/Territory Sponsored Business Owner) and Subclass 843 (State/Territory Sponsored Senior Executive).

Regulation 11 - New regulation 2.06A

This regulation inserts a new regulation 2.06A into Division 2.1 - "Certain visas to state period that holder may stay in Australia". This regulation provides that Long Stay (Visitor) (Class TN) visas granted to applicants who have a risk factor referred to in public interest criterion 4011 must specify an authorised stay period of no more than 6 months. A shorter period may be specified if the Minister determines that a shorter period would be adequate to meet the needs of the visa holder. This regulation does not affect any provision imposing, or authorising the imposition of, conditions in relation to the grant of a visa.

Regulation 12 - Regulation 2.07A (Refund of application fee in certain circumstances)

Subregulation 12.1 amends paragraph 2.07A(a) by adding a reference to the "Medical Treatment (Visitor) (Class UB) visa". This is a new visa class, inserted into the Migration Regulations as part of the restructure of visitor visas implemented by these Regulations.

Subregulation 12.2 omits paragraph 2.07A(b) and substitutes a new paragraph which removes references to provisions which have been omitted by these Regulations and includes references to subclauses 676.221(4) and 686.221(4) which have been inserted into the Migration Regulations by these Regulations.

Regulation 13 - Regulation 2.10 (Where application must be made)

This regulation omits the reference to "Special Tourist (Visitor) (Class TS)" in subparagraph 2.10(1)(a)(ii) and substitutes "Medical Treatment (Visitor) (Class UB)". This amendment is necessary as a consequence of the restructure of visitor visas implemented by these Regulations.

Regulation 14 - Regulation 2.11 (Special provision for certain applications refused outside Australia)

This regulation inserts a new paragraph (e) in subregulation 2.11(2). The new paragraph provides that where a non-citizen has applied unsuccessfully for a Return (Residence) (Class BB) visa, which is a permanent visa, the Minister may invite a further application for a Resident Return (Temporary) (Class TP) visa. The effect of this amendment is that if a person applies for a permanent resident return visa but is unable to produce the required documentation supporting claims to be a permanent resident of Australia in time to meet travel commitments, a Resident Return (Temporary) visa may be granted without the need for a further application. The temporary visa allows the person to travel to Australia and to be granted a permanent visa after the required documentation is produced.

Regulation 15 - Regulation 2.12 (Certain non-citizens whose applications refused in Australia (Act s.48))

This regulation amends paragraph 2.12(1)(ca) by omitting the reference to "Long Stay (Visitor) (Class TN)" and substituting "Medical Treatment (Visitor) (Class UB)". This amendment is necessary as a consequence of the restructure of visitor visas implemented by these Regulations.

Regulation 16 - Regulation 2.15 (Response to invitation to give information or comments - prescribed periods)

Subregulation 16.1 amends sub-subparagraph 2.15(1)(b)(ii)(A) by adding a reference to die "Medical Treatment (Visitor) (Class UB)" visa. This amendment is necessary as a consequence of the restructure of visitor visas implemented by these Regulations.

Subregulation 16.2 amends subparagraph 2.15(3)(b)(i) by adding a reference to the "Medical Treatment (Visitor) (Class UB)" visa. This amendment is necessary as a consequence of the restructure of visitor visas implemented by these Regulations.

Regulation 17 - Regulation 2.40 (Persons having a prescribed status - special purpose visas (Act, a33(2)(a)))

Subregulation 17.1 inserts a new paragraph (r) in subregulation 2.40(1) to provide for an additional class of persons to have a prescribed status - Indonesian citizens visiting the casino on Christmas Island. The effect of this provision is that persons in this class are taken to have been granted a special purpose visa.

Subregulation 17.2 amends subregulation 2.40(10) with the effect that operational crew members have a prescribed status (that is, are taken to hold special purpose visas) for 30 days from the time they disembark from the aircraft on which they travelled to Australia. The previous period of 5 working days was found to be often inadequate, for instance, in cases where the flight out of Australia is delayed by unforeseen circumstances.

Subregulation 17.3 inserts a new subregulation 2.40(14) which provides that persons in the class covered in the new paragraph 2.40(1)(r) (Indonesian citizens visiting the casino on Christmas Island) have a prescribed status (and therefore are taken to hold special purpose visas) only while they are travelling directly from Indonesia to Christmas Island and staying on Christmas Island. They must hold and produce an Indonesian passport that is in force and carry a valid invitation acceptable to the Minister to visit the casino. The prescribed status ceases five days after arrival on Christmas Island or upon departure from Christmas Island, whichever occurs first. The special purpose visa does not allow travel to mainland Australia.

Regulation 18 - Regulation 4.08 (Response to invitation to give information or comments on internal review of decision - prescribed periods)

This regulation adds references to the "Medical Treatment (Visitor) (Class UB)" visa in subparagraphs 4.08(1)(a)(i) and 4.08(3)(a)(i). These amendments are necessary as a consequence of the restructure of visitor visas implemented by these Regulations.

Regulation 19 - Regulation 4.23 (Expedited review (close family visit visas))

Regulation 4.23 of the Migration Regulations provides for expedited merits review of certain decisions to refuse to grant close family visit visas. This regulation omits regulation 4.23 and substitutes a new regulation. The substantive changes to regulation 4.23 provide that expedited review of decisions to refuse to grant certain close family visit visas continues to occur under the amended visitor visa structure which is implemented by these Regulations.

Regulation 4.23 is substantially re-inserted with the criteria which identify the visitor visa applications which are subject to expedited review being described in full rather than being crossreferenced.

Regulation 20 - Regulation 5.17 (Prescribed evidence of English language proficiency (Act, s.5(2)(b))

This regulation amends paragraph 5.17(h) by inserting a reference to the new Business Skills (Residence) (Class BH) visa (inserted by subregulation 22.3 of these regulations). The effect of this amendment is that evidence of a score of at least 20 points in Part 3 of the business skills points test in Schedule 7 (dealing, with the language ability of the applicant) by an applicant for the new Business Skills (Residence) (Class BH) visa is prescribed evidence of "functional English" for the purposes of paragraph 5(2)(b) of the Act.

Regulation 21 - New Regulation 5.19A

This regulation inserts a new regulation 5.19A (Designated investment) into the Migration Regulations. This regulation defines a designated investment which the applicant must make in Australia. The Minister may specify by Gazette Notice a security issued by an Australian State or Territory government authority as a security in which an investment is a designated investment for the purposes of a Part of Schedule 2. The designated investment must have the characteristics prescribed in subregulation 5.19A(2) to be able to be specified by the Minister.

Regulation 22 - Schedule 1 (Classes of visas)

Subregulation 22.1 amends subitem 1104(1) of Schedule 1 by omitting reference to form 927.

Subregulation 22.2 amends subitem 1104(4) of Schedule 1 to add the new subclass 131 (Investment-linked) to the Business Skills (Migrant) (Class AD) visa class.

Subregulation 22.3 inserts a new item 1104A into Schedule 1. This item creates a new class of visa -Business Skills (Residence) (Class BH) - and prescribes the way an application must be made. Approved form 1029 must be completed and the application must be made in Australia but not in immigration clearance. The applicant must also be in Australia but not in immigration clearance at the time of application. A fee of \$1715 must be paid for the application. An application by a member of the family unit of another applicant may be made at the same time and place as, and combined with, that other person's application. The prescribed criteria for the grant of a visa of the new class is in subclasses 840 (Business Owner), 841 (Senior Executive), 842 (State/Territory Sponsored Business Owner), 843 (State/Territory Sponsored Senior Executive), 844 (Investmentlinked) and 845 (Established Business in Australia), inserted in Schedule 2 by regulation 66 of, and the Schedule to, these Regulations. For further details of the new visa class, see the notes on regulation 66 and the Schedule below.

Subregulation 22.4 amends Item 1214 - Long Stay (Visitor) (Class TN) - by omitting subitem (4) and substituting a new subitem 1214(4). The subclasses in the new subitem 1214(4) are 682 (Business (Long Stay)) and 686 (Tourist (Long Stay)). This amendment is made as a consequence of the restructure of visitor visas implemented by these Regulations. Under the restructure, visa subclasses 680, 683 and 684 have been omitted and replaced by visa subclass 686. Visa subclass 685 has been moved to Item 1214A - Medical Treatment (Visitor) (Class UB) - inserted by these Regulations.

Subregulation 22.5 inserts a new item 1214A - Medical Treatment (Visitor) (Class UB). This new class of visa comprises the existing subclasses of 675 (Medical Treatment (Short Stay)) and 685 (Medical Treatment (Long Stay)) currently in items 1218 (Short Stay (Visitor) (Class TR)) and 1214 (Long Stay (Visitor) (Class TN)) respectively. This amendment is a consequence of the restructure of visitor visas implemented by these Regulations. The creation of a special visa class for medical treatment is recognition that there are different requirements for travel, entry and stay for medical treatment as opposed to tourism.

Subregulation 22.6 amends item 1218 - Short Stay (Visitor) (Class TR) - by omitting subitem (4) and substituting a new subitem 1218(4). The subclasses in the new subitem 1218(4) are 672 (Business (Short Stay)) and 676 (Tourist (Short Stay)). This amendment is made as a consequence of the restructure of visitor visas implemented by these Regulations. Under that restructure, visa subclasses 670, 673 and 674 have been omitted and replaced by visa subclass 676. Visa subclass 675 has been moved to Item 1214A - Medical Treatment (Visitor) (Class UB) inserted by these Regulations.

Subregulation 22.7 omits item 1220 - Special Tourist (Visitor) (Class TS) - as the only subclass (661 (Special tourist)) in this visa class has been omitted as a consequence of the restructure of visitor visas implemented by these Regulations.

Subregulation 22.8 amends paragraph 1303(3)(e) to include that the applicant must not have escaped from immigration detention or from criminal detention. Paragraph 1303(3)(e) requires that an applicant for a Bridging C (Class WC) visa not be in immigration detention or in criminal detention.

Subregulation 22.9 amends Item 12105 by inserting a new paragraph (ba) into subregulation (3) to require that an applicant for a Bridging E (Class WE) visa be an eligible non-citizen within the meaning of section 72 of the Act. The consequence of this is that an application for a Bridging E (Class WE) visa from a person who is not an eligible non-citizen will be invalid and, as it will not be a decision to refuse an application, it will not attract merits review.

Regulation 23 - Schedule 2, Part 100 (Spouse)

This regulation corrects a cross-referencing error in paragraph 100.228(1)(b).

Regulation 24 - Schedule 2, Part 102 (Adoption)

This regulation corrects a cross-referencing error in clause 102.224.

Regulation 25 - Schedule 2, Part 127 (Business Owner)

This regulation omits paragraph 127.222(2)(c) and substitutes a new paragraph. The new paragraph repeats the provisions of the omitted paragraph and inserts a provision that assets in Australia are to be taken into account in determining the score of an applicant under Part 4 of Schedule 7. This is necessary to ensure that the new onshore equivalent subclasses can work effectively.

Regulation 26 - Schedule 2, Part 128 (Senior Executive)

This regulation omits paragraph 128.222(2)(c) and substitutes a new paragraph. The new paragraph repeats the provisions of the omitted paragraph and inserts a provision that assets in Australia are to be taken into account in determining the score of an applicant under Part 4 of Schedule 7. This is necessary to ensure that the new onshore equivalent subclasses can work effectively.

Regulation 27 - Schedule 2, Part 129 (State/Territory Sponsored Business Owner)

Subregulation 27.1 amends subparagraph 129.222(2)(b)(i) by inserting a reference to "Part 5". The score that an applicant receives for sponsorship in Part 5 has been amended to be at the time of decision on the application rather than at the time of application.

Subregulation 27.2 omits paragraph 129.222(2)(c) and substitutes a new paragraph. The new paragraph repeats the provisions of the omitted paragraph and inserts a provision that assets in Australia are to be taken into account in determining the score of an applicant under Part 4 of Schedule 7. This is necessary to ensure that the new onshore equivalent subclasses can work effectively.

Subregulation 27.3 omits clause 129.2'27 and substitutes a new clause. The clause requires that the applicant has been sponsored by the appropriate regional authority. Previously the appropriate regional authority was only required to give an undertaking to sponsor the applicant.

Regulation 28 - Schedule 2, Part 130 State/Territory Sponsored Senior Executive)

Subregulation 28.1 omits paragraph 130.222(2)(c) and substitutes a new paragraph. The new paragraph repeats the provisions of the omitted paragraph and also provides that assets in Australia are to be taken into account in determining the score of an applicant under Part 4 of Schedule 7. This is necessary to ensure that the new onshore equivalent subclasses can work effectively.

Subregulation 28.2 omits clause 130.227 and substitutes a new clause. The clause requires that the applicant has been sponsored by the appropriate regional authority. Previously the appropriate regional authority was only required to give an undertaking to sponsor the applicant.

Regulation 29 - Schedule 2, new Part 131

This regulation provides for a new Part 131 to be inserted in Schedule 2, as set out in the Schedule to these Regulations.

Regulation 30 - Schedule 2, Part 155 (Five Year Return)

This regulation corrects a cross-referencing error.

Regulation 31 - Schedule 2, Part 411 (Exchange)

Previously, clause 411.221 required that if an application is made outside Australia, or in the migration zone by an applicant who does not already hold a subclass 411 visa, the applicant must satisfy clauses 411.222 to 411.227. However clause 411.227 relates to an applicant who is already the holder of a subclass 411 visa.

This regulation corrects the situation by requiring an applicant referred to in clause 411.221 to satisfy clauses 411.222 to 411.226 only.

Regulation 32 - Schedule 2, Part 413 (Executive)

This regulation corrects a cross-referencing error in paragraph 413.223(b) by omitting "regulation 7.27" and substituting "regulation 5.38". "Regulation 7.27" was a Migration (1993) Regulations reference. The corresponding provision in the Migration Regulations is regulation 5.38.

Regulation 33 - Schedule 2, Part 414 (Specialist)

This regulation corrects a cross-referencing error in paragraph 414.224(b) by omitting regulation 7.27" and substituting "regulation 5.38". "Regulation 7.27" was a Migration (1993) Regulations reference. The., corresponding provision in the Migration Regulations is regulation 5.38.

Regulation 34 - Schedule 2, Part 415 (Foreign Government Agency)

Previously, clause 415.221 required that if an application is made outside Australia, or in the migration zone by an applicant who does not already hold a subclass 415 visa, the applicant must satisfy clauses 415.222 to 41.5.231. However clause 415.231 relates to an applicant who is already the holder of a subclass 415 visa.

Subregulation 34.1 corrects the situation by requiring an applicant referred to in clause 415.221 to satisfy clauses 415.222 to 415.230 only.

Subregulation 34.2 corrects a cross-referencing error in paragraph 415.224(b) by omitting "regulation 7.27" and substituting "regulation 5.38". "Regulation 7.27" was a Migration (1993) Regulations reference. The corresponding provision in the Migration Regulations is regulation 5.38.

Regulation 35 - Schedule 2, Part 418 (Educational)

This regulation corrects a cross-referencing error in paragraph 418.224(b) by omitting "regulation 7.27" and substituting "regulation 5.38". "Regulation 7.27" was a Migration (1993) Regulations reference. The corresponding provision in the Migration Regulations is regulation 5.38.

Regulation 36 - Schedule 2, Part 420 (Entertainment)

Previously, clause 420.221 required that if an application is made outside Australia, or in the migration zone by an applicant who does not already hold a subclass 420 visa, the applicant must satisfy clauses 420.222 to 420.230. However clause 420.230 relates to an applicant who is already the holder of a subclass 420 visa.

Subregulation 36.1 corrects the situation by requiring an applicant referred to in clause 420.221 to satisfy clauses 420.222 to 420.229 only.

Subregulation 36.2 corrects a cross-referencing error in clause 420.224 by omitting "regulation 7.27" and substituting "regulation 5.38". "Regulation 7.27" was a Migration (1993) Regulations reference. The corresponding provision in the Migration Regulations is regulation 5.38.

Regulation 37 - Schedule 2, Part 422 (Medical Practitioner)

This regulation corrects a cross-referencing error in paragraph 422.222(d) by omitting "regulation 7.27" and substituting "regulation 5.38". "Regulation 7.27" was a Migration (1993) Regulations reference. The corresponding provision in the Migration Regulations is regulation 5.38.

Regulation 38 - Schedule 2, Part 423 (Media and Film Staff)

This regulation corrects a cross-referencing error in paragraph 423.223(b) by omitting "regulation 7.27" and substituting "regulation 5.38". "Regulation 7.27" was a Migration (1993) Regulations reference. The corresponding provision in the Migration Regulations is regulation 5.38.

Regulation 39 - Schedule 2, Part 424 (Public Lecturer)

Subregulation 39.1 corrects a cross-referencing error in paragraph 424.225(b) by omitting "regulation 7.27" and substituting "regulation 5.38". "Regulation 7.27" was a Migration (1993) Regulations reference. The corresponding provision in the Migration Regulations is regulation 5.38.

Subregulations 39.2 and 39.3 correct the special re-entry criteria in clauses 424.228 and 424.326 respectively by including criterion 5008 and omitting 5010.

Regulation 40 - Schedule 2, Part 426 (Domestic Worker (Temporary) - Diplomatic or Consul

Previously, clause 426.221 required that if an application is made outside Australia, or in the migration zone by an applicant who does not already hold a subclass 426 visa, the applicant must satisfy clauses 426.222 to 426.229. However clause 426.229 relates to an applicant who is already the holder of a subclass 426 visa.

This regulation corrects the situation by requiring an applicant referred to in clause 426.221 to satisfy clauses 426.222 to 426.228 only.

Regulation 41 - Schedule. 2, Part 427 (Domestic Worker (Temporary) - Executive)

This regulation corrects a cross-referencing error in clause 427.231 by omitting "regulation 7.27" and substituting "regulation 5.38". "Regulation 7.27" was a Migration (1993) Regulations reference. The corresponding provision in the Migration Regulations is regulation 5.38.

Regulation 42 - Schedule 2, Part 428 (Religious Worker)

This regulation corrects a cross-referencing error in clause 428.222 by omitting "regulation 7.27" and substituting "regulation 5.38". "Regulation 7.27" was a Migration (1993) Regulations reference. The corresponding provision in the Migration Regulations is regulation 5.38.

Regulation 43 - Schedule 2, Part 661 (Special Tourist)

This regulation omits Part 661 of Schedule 2. This subclass was established to enable grant of visas to applicants who seek to visit Australia and whose application is made in a country in which special arrangements for grant of tourist visas apply. Those special arrangements are no longer necessary under the restructure of visitor visas implemented by these Regulations and persons who would have applied under subclass 661 will be able to apply for a new subclass 676 Tourist (Short Stay) visa which is inserted by these Regulations.

Regulation 44 - Schedule 2, Part 670 (Tourist (Short Stay))

This regulation omits Part 670 of Schedule 2. In order to simplify the visitor visa system, four subclasses of short stay visitors, including subclass 670 Tourist (Short Stay), are being omitted by these Regulations and are replaced by one new subclass - Part 676 - Tourist (Short Stay). The criteria for the new subclass will be an amalgam of the omitted subclasses, so, in effect, a person who would have applied for a subclass 670 Tourist (Short Stay) visa will have to meet the same criteria as before.

Regulation 45 - Schedule 2, Part 673 (Close Family Visitor (Short Stay))

This regulation omits Part 673 of Schedule 2. In order to simplify the visitor visa system, four subclasses of short stay visitors, including subclass 673 Close Family Visitor (Short Stay), are being omitted by these Regulations and will be replaced by one new subclass 676 Tourist (Short Stay). The criteria for the new subclass will be an amalgam of the omitted subclasses, so, in effect, a person who would have applied for a subclass 673 Close Family Visitor (Short Stay) visa will have to meet the same criteria as before.

Regulation 46 - Schedule 2, Part 674 (Visitor Other (Short Stay))

This regulation omits Part 674 of Schedule 2. In order to simplify the visitor visa system, four subclasses of short stay visitors, including Visitor Other (Short Stay), are being omitted by these Regulations and will be replaced by one new subclass Part 676 Tourist (Short Stay). The criteria for the new subclass will be an amalgam of the omitted subclasses, so, in effect, a person who would have applied for a subclass 674 Visitor Other (Short Stay) visa will have to meet the same criteria as before.

Regulation 47 - Schedule 2, Part 675 (Medical Treatment (Short Stay))

Subregulations 47.1, 47.3, 47.6 and 47.7 amend Part 675 so that an applicant for a subclass 675 Medical Treatment (Short Stay) visa will have to meet certain criteria when the application is decided, rather than when the application is made. These criteria require the applicant to satisfy the Minister that arrangements have been made for the payment of expenses related to the medical treatment for which the visa is sought and that payment of the costs will not be a charge on the public. It is more reasonable to require that these criteria are met when the decision is made rather than when the application is made.

Subregulations 47.2 and 47.5 make consequential amendments as a result of the omission of paragraphs 675.212(3)(c) and (d) and 675.212(4)(c) and (d) by subregulations 47.3 and 47.6 of these Regulations, respectively.

Subregulation 47.4 amends paragraph 675.212(4)(a) to omit the requirement that the applicant seeks to travel to Australia to give emotional and other support, as a visa is for both travel to and stay in Australia.

Subregulation 47.8 amends paragraph 675.221(3)(c) to exempt the applicant from the requirement to satisfy paragraph (c) of criterion 4005. Paragraph (c) is inconsistent with the requirement in paragraph 675.221(3)(b) that the applicant has compelling personal reasons for the grant of the visa.

Regulation 48 - Schedule 2, new Part 676

This regulation provides for a new Part 676, set out in the Schedule to these Regulations, to be inserted into Schedule 2 to create a new visa subclass 676 - Tourist (Short Stay). This new visa subclass is being inserted in order to simplify the visitor visa system and will replace four subclasses of short stay visitors which are being omitted by these Regulations.

The criteria for this new subclass will be an amalgam of the abolished subclasses and, in effect, short stay visitors will have to meet the same criteria as before.

Regulation 49 - Schedule 2, Part 680 (Tourist (Long Stay))

This regulation omits Part 680 of Schedule 2. In order to simplify the visitor visa system, three subclasses of long stay visitors, including subclass 680 Tourist (Long Stay), are being omitted by these Regulations and will be replaced by one new subclass 686 Tourist (Long Stay). The criteria

for the new subclass, will be an amalgam of the omitted subclasses, so, in effect, a person who would have applied for a subclass 680 Tourist (Long Stay) visa will have to meet the same criteria as before.

Regulation 50 - Schedule 2, Part 683 (Close Family Visitor (Long Stay))

This regulation omits Part 683 of Schedule 2. In order to simplify the visitor visa system, three subclasses of long stay visitors, including Close Family Visitor (Long Stay), are being omitted by these Regulations and will be replaced by one new subclass 686 Tourist (Long Stay). The criteria for the new subclass will be an amalgam of the omitted subclasses, so, in effect, a person who would have applied for a subclass 683 Close Family Visitor (Long Stay) visa will have to meet the same criteria as before.

Regulation 51 - Schedule 2, Part 684 (Visitor Other (Long Stay))

This regulation omits Part 684 of Schedule 2. In order to simplify the visitor visa system, three subclasses of long stay visitors, including Visitor Other (Long Stay), are being omitted by these Regulations and will be replaced by one new subclass 686 Tourist (Long Stay). The criteria for the new subclass will be an amalgam of the omitted subclasses, so, in effect, a person who would have applied for a subclass 684 Visitor Other (Long Stay) visa will have to meet the same criteria as before.

Regulation 52 - Schedule 2, Part 685 (Medical Treatment (Long Stay))

Subregulations 52.1, 52.3 and 52.6 amend paragraphs 685.212(2)(a), (3)(a) and (4)(a) respectively to omit the requirement that the applicant seeks to travel to Australia to give emotional and other support, as a visa is for both travel to and stay in Australia.

Subregulations 52.2, 52.5, 52.8 and 52.10 amend Part 685 so that an applicant for a Medical Treatment (Long Stay) visa will have to meet certain criteria when the application is decided, rather than when the application is made. These criteria require the applicant to satisfy the Minister that arrangements have been made for the payment of expenses related to the medical treatment for which the visa is sought and that payment of the costs will not be a charge on the public. It is more reasonable to require that these criteria are met when the decision is made rather than when the application is made.

Subregulations 52.4 and 52.7 make consequential amendments as a result of the omission of paragraphs 685.212(3)(c) and (d) and 685.212(4)(c) and (d) by subregulations 52.5 and 52.8 of these Regulations, respectively.

Subregulation 52.9 inserts two new subparagraphs (ia) and (ib) into paragraph 685.212 (6)(c) to enable persons who applied for a section 47 temporary entry permit within the meaning of the Migration (1993) Regulations or an extended eligibility, entry permit within the meaning of the Migration (1989) Regulations and who meet all requirements other than health to apply for an extension of stay as a visitor.

Subregulation 52.11 amends paragraph 685.221(3)(c) to exempt the applicant from the requirement to satisfy paragraph (c) of criterion 4005. Paragraph (c) is inconsistent with the requirement in paragraph 685.221(3)(b) that the applicant has compelling personal reasons for the grant of the visa.

Regulation 53 - Schedule 2, new Part 686

This regulation provides for a new Part 686, set out in the Schedule to these Regulations, to be inserted into Schedule 2 to create a new visa subclass 686 Tourist (Long Stay). This new visa subclass is being introduced in order to simplify the visitor visa system and will replace three

subclasses of long stay visitors which are being abolished by these Regulations. The criteria for this new subclass will be an amalgam of the abolished subclasses and, in effect, long stay visitors will have to meet the same criteria as before.

Regulation 54 - Schedule 2, Part 773 (Border)

As a consequence of the restructure of visitor visas implemented by these Regulations, item 1220 of Schedule 1 - the Special Tourist (Visitor) (Class TS) visa - has been omitted by these Regulations. This regulation makes a consequential amendment to Part 773 to omit the reference in subparagraph 773.213 (1)(g)(iii) to the Special Tourist (Visitor) (Class TS) visa.

The regulation also provides for the grant of a border visa to a person who, due to unforeseen circumstances, is forced to transit through Australia beyond the eight-hour transit provisions and, except for the fact they are in Australia, would be eligible for a transit visa.

Regulation 55 - Schedule 2, Part 801 (Spouse)

This regulation omits Subdivision 801.31 and substitutes a new Subdivision with a new clause 801.311 which clarifies that the secondary criteria must be satisfied by an applicant who is a dependent child of an applicant (who appears to satisfy the primary criteria at time of application for a subclass 801 visa) for a General (Residence) (Class AS) visa before the Minister has decided to grant or refuse the applicant's visa. The reason for this clause is to avoid the possibility of a dependent child applying separately and only having to satisfy the secondary criteria, after the person on whom they are dependent has been granted a General (Residence) (Class AS) visa.

Regulation 56 - Schedule 2, Part 802 (Child)

Subregulation 56.1 omits clause 802.311 and substitutes a new clause which clarifies that the secondary criteria must be satisfied by an applicant who is a member of the family unit of an applicant who has applied for a Change in Circumstance (Residence) (Class AG) visa or a Family (Residence) (Class AO) visa and who appears to satisfy the primary criteria at the time of application for a subclass 802 visa, and before the Minister has decided to grant or refuse that visa. The reason for this is to avoid the possibility of a family unit member applying separately, and only having to meet secondary criteria, after the person who is assessed against the primary criteria has been granted a visa.

Subregulation 56.2 omits clause 802.321 and substitutes a new clause requiring the applicant to be the member of a family unit of a person who is the holder of a subclass 802 visa after satisfying the primary criteria. The purpose of this amendment is to ensure that the primary applicant is granted the visa before the secondary applicant.

Regulation 57 - Schedule 2, Part 804 (Aged Parent)

Subregulation 57.1 omits clause 804.311 and substitutes a new clause which clarifies that the secondary criteria must be satisfied by an applicant who is a member of the family unit of an applicant who has applied for a Change in Circumstance (Residence) (Class AG) visa, a Family (Residence) (Class AO) visa or a General (Residence) (Class AS) visa and who appears to satisfy the primary criteria at the time of application for a subclass 804 visa, and before the Minister has decided to grant or refuse that visa. The reason for this is to avoid the possibility of a family unit member applying separately, and only having to meet secondary criteria, after the person who is assessed against the primary criteria has been granted a visa.

Subregulation 57.2 omits clause 804.321 and substitutes a new clause requiring the applicant to be the member of a family unit of a person who is the holder of a subclass 804 visa after satisfying the primary criteria. The purpose of this amendment is to ensure that the primary applicant is granted the visa before the secondary applicant.

Regulation 58 - Schedule 2, Part 805 (Skilled)

Subregulation 58.1 amends subclause 805.212(1) by including reference to the new subclause (1A) inserted by subregulation 58.2 of these Regulations.

Subregulation 58.2 inserts a new subclause 805.212(1A) which provides that subclause (1) does not apply to an applicant who does not hold a substantive visa if he or she would have satisfied the requirements of subclause (1) if the application had been made immediately before the substantive visa ceased.

Subregulation 58.3 omits subclause 805.212(3) and inserts a new subclause. The new subclause reflects the policy intention that the applicant has not only held one or more of the specified visa/entry permits but that he or she continues to hold one (or a transitional visa on the basis of having held one of these entry permits).

Subregulation 58.4 omits subclause 805.212(8). The criterion that was contained in subclause (8) is now included in subclause (1A) which is inserted by subregulation 58.2 of these Regulations.

Subregulation 58.5 omits clause 805.311 and substitutes a new clause which clarifies that the secondary criteria must be satisfied by an applicant who is a member of the family unit of an applicant who has applied for a General (Residence) (Class AS) visa and who appears to satisfy the primary criteria at the time of application for a subclass 805 visa, and before the Minister has decided to grant or refuse that visa. The reason for this is to avoid the possibility of a family unit member applying separately, and only having to meet secondary criteria, after the person who is assessed against the primary criteria has been granted a visa.

This subregulation also omits clause 805.312 and substitutes a new clause which requires the family unit member to be included on any sponsorship or nomination given.

Subregulation 58.6 omits clause 805.321 and substitutes a clause requiring the applicant to be the member of a family unit of a person who is the holder of a subclass 805 visa after satisfying the primary criteria. The purpose of this amendment is to ensure that the primary applicant is granted the visa before the secondary applicant.

Regulation 59 - Schedule 2, Part 806 (Family)

Subregulation 59.1 omits clause 806.311 and substitutes a new clause which clarifies that the secondary criteria must be satisfied by an applicant who is a member of the family unit of an applicant who has applied for a Change in Circumstance (Residence) (Class AG) visa, a Family (Residence) (Class AO) visa or a General (Residence) (Class AS) visa and who appears to satisfy the primary criteria at the time of application for a subclass 806 visa, and before the Minister has decided to grant or refuse that visa. The reason for this is to avoid the possibility of a family unit member applying separately, and only having to meet secondary criteria, after the person who is assessed against the primary criteria has been granted a visa.

Subregulation 59.2 omits clause 806.321 and substitutes a new clause requiring the applicant to be the member of a family unit of a person who is the holder of a subclass 806 visa after satisfying the primary criteria. The purpose of this amendment is to ensure that the primary applicant is granted the visa before the secondary applicant.

Regulation 60 - Schedule 2, Part 814 (Interdependency)

This regulation omits Subdivision 814.31 and substitutes a new Subdivision with a new clause 814.311 which clarifies that the secondary criteria must be satisfied by an applicant who is a

dependent child of another applicant (who must satisfy the primary criteria) for a General (Residence) (Class AS) visa and before the Minister has decided to grant or refuse that visa.

The reason for this clause is to avoid the possibility of a dependent child applying separately and only having to meet the secondary criteria, after the person on who, they are dependent has been granted a General (Residence) (Class AS) visa.

Regulation 61 - Schedule 2, Part 820 (Spouse)

This regulation omits clause 820.311 and substitutes a new clause which clarifies that the secondary criteria must be satisfied by an applicant who is the dependent children of a person who has applied for a General (Residence) (Class AS) visa and the nomination includes the applicant and the Minister has not yet decided to grant or refuse that visa.

(Residence) (Class AS) visa and 62 - Schedule 2, Part 826 (Interdependency)

This regulation omits clause 826.311 and substitutes a new clause which clarifies that the secondary criteria must be satisfied by an applicant who is the dependent children of a person who has applied for a General (Residence) (Class AS) visa and the nomination includes the applicant and the Minister has not yet decided to grant or refuse that visa.

(Residence) (Class AS) visa and 63 - Schedule 2, Part 831 (Prospective Marriage Spouse)

This regulation omits clause 831.311 and substitutes a new clause which clarifies that the secondary criteria must be satisfied by an applicant who is a member of the family unit of an applicant who has applied for a Family (Residence) (Class AO) visa and who appears to satisfy the primary criteria at the time of application for a subclass 831 visa, and before the Minister has decided to grant or refuse that visa. The reason for this is to avoid the possibility of a family unit member applying separately, and only having to meet secondary criteria, after the person who is assessed against the primary criteria has been granted a visa.

Regulation 64 - Schedule 2, Part 832 (Close Ties)

Subregulation 64.1 omits clause 832.311 and substitutes a new clause which clarifies that the secondary criteria must be satisfied by an applicant who is a member of the family unit of an applicant who has applied for a Family (Residence) (Class AO) visa or a General (Residence) (Class AS) visa and who appears to satisfy the primary criteria at the time of application for a subclass 832 visa, and before the Minister has decided to grant or refuse that visa. The reason for this is to avoid the possibility of a family unit member applying separately, and only having to meet secondary criteria, after the person who is assessed against the primary criteria has been granted a visa.

Subregulation 64.2 makes a minor technical correction to clause 832.321.

Regulation 65 - Schedule 2, Part 833 (Certain Unlawful Non-Citizens)

This regulation omits clause 833.311 and substitutes a clause which clarifies that the secondary criteria must be satisfied by an applicant who is a member of the family unit of an applicant who has applied for a Change in Circumstance (Residence) (Class AG) visa and who appears to satisfy the primary criteria at the time of application for a subclass 833 visa, and before the Minister has decided to grant or refuse that visa. The reason for this is to avoid the possibility of a family unit member applying separately, and only having to meet secondary criteria, after the person who is assessed against the primary criteria has been granted a visa.

Regulation 66 - Schedule, new Parts 840 to 845

This regulation provides for Parts 840, 841, 842, 843, 844 and 845 to be inserted in Schedule 2, as set out in the Schedule to these Regulations. Detailed notes on the new Parts are included below in the discussion of the Schedule to these Regulations.

Regulation 67 - Schedule 2, Part 866 (Protection (Residence))

This regulation corrects a typographical error in clause 866.411.

Regulation 68 - Schedule 5, Part 2 (Conditions applicable to certain subclasses of visas for the purposes of clauses 5004 and 5005)

This regulation inserts two new items 14A and 19A into Part 2 of Schedule 5 as a consequence of the insertion of two new visa subclasses - subclass 676 Tourist (Short Stay) and subclass 686 Tourist (Long Stay) - by these Regulations. Conditions 8101 and 8201 are prescribed for these subclasses for the purposes of clauses 5004 and 5005 of Schedule 5.

Regulation 69 - Schedule 6 (General points test - qualifications and points)

This regulation amends item 6311 as a result of a policy change to lower the score required in the International English Language Testing System (IELTS) test from 5.0 to 4.5 to obtain a score of 10 points.

Regulation 70 - Schedule 7, Part 1 (Business skills points test - attributes and points)

This regulation omits Parts 1, 2 and 3 of Schedule 7 and substitutes new Parts 1, 2 and 3.

PART 1 - BUSINESS ATTRIBUTES

Division 1.1 (Applicant's main business or main businesses (Subclass 127, 129, 840 and 842 visas)) re-inserts the provisions of omitted Division 1.1 and includes reference to subclass 840 and subclass 842 visas which are inserted into the Migration Regulations by these Regulations.

Division 1.2 (Business employing the applicant (Subclass 128, 130, 841 and 843 visas)) reinserts the provisions of the omitted Division 1.2 and includes reference to subclass 841 and subclass 843 visas which are inserted into the Migration Regulations by these Regulations.

A new Division 1.3 (Business attributes (investment-linked) (Subclass 131 and 844 visas)) is inserted. It lists the attributes and relevant points used in the business skills points test for subclass 131 and subclass 844 visas which are inserted into the Migration Regulations by these Regulations.

A new Division 1.4 (Established business in Australia (Subclass 845 visas)) is inserted. It lists the attributes to gain 60 points in the business skills points test for subclass 845 visas which are inserted into the Migration Regulations by these Regulations.

PART 2 - AGE OF APPLICANT AT TIME OF APPLICATION

The provisions of the omitted Part 2 are re-inserted with amendments to items 7203 and 7205 to omit "25 years" and substitute "20 years". This gives an applicant aged between 20 and 25 years 20 points whereas the applicant was awarded no points prior to this amendment.

PART 3 - LANGUAGE ABILITY OF APPLICANT

The new Part 3 has two Divisions - Division 3.1 (Language ability of applicant (Subclasses 127130, 840-843 and 845)) and Division 3.2 (Language ability of applicant (Subclasses 131 and 844)). These Divisions prescribe the points an applicant is awarded for various levels of ability in

the English language and include reference to the new subclasses 131 and 840 to 845 which are inserted by these Regulations. Applicants for subclass 131 and subclass 844 visas are awarded 5 points extra for each level of English proficiency than applicants for the other classes.

Regulation 71 - Schedule 8 (Visa conditions)

This regulation amends item 8108 to require that a person must not be employed in Australia by any one employer for more than 3 months without the permission in writing of the Secretary. This discretion for the Secretary to grant permission did not previously apply to item 8108.

Regulation 72 - Schedule 9 (Special entry and clearance arrangements)

This regulation omits items 16 and 17 of Part 1 of Schedule 9 and substitutes new items 16, 17 and 18.

Item 16 is re-inserted with a correction to an incorrect reference to subclause AA1(2). Item 17 is reinserted with an addition to include a reference to the Act. Item 18 is a consequential amendment as a result of regulation 17 of these Regulations, inserted to provide that Indonesian citizens visiting the casino on Christmas Island are required to produce, as evidence of identity, an Indonesian passport and the invitation to visit the casino.

Regulation 73 - Transitional

This regulation provides for Regulation 4.23 as in force prior to the commencement of these Regulations to continue to apply to applications for Long Stay (Visitor) (Class TN) or Short Stay (Visitor) (Class TR) visas made before the commencement of these Regulations.

Schedule

The Schedule sets out new Parts to be inserted in Schedule 2 - Parts 131, 676, 686, 840, 841, 842, 843, 844 and 845 .

The Schedule sets out the new Part 131 - Investment-Linked - inserted in Schedule 2 of the Migration Regulations by these Regulations. The new Part 131 prescribes the criteria for an additional subclass for a Business Skills (Migrant) (Class AD) permanent visa. This additional subclass is created by these Regulations (see the notes on subregulation 29 of these Regulations).

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

- have demonstrated high level of investment management skill in relation to the eligible investment;
- have demonstrated overall a successful record of eligible investment or qualifying business activity;
- have had at least 3 years experience in maintaining direct involvement in the management of a qualifying business or eligible investment;
- have had, for at least 1 of the 5 fiscal years immediately preceding the application:
 - direct involvement of the management of a qualifying business of which at least 10% of the total value of the business is owned by the applicant or the applicant and his or her spouse together; or

- direct involvement in management of eligible investments of the applicant or his or her spouse together the total value of which is at least AUD 1,000,000;
- throughout the period of 2 fiscal years immediately preceding an application, have owned, either by himself or herself or together with his or her spouse, a total net value of assets of at least 50% more than the value of funds to be deposited in the designated investment in the name of the applicant, or in the names of the applicant and the members of his or her family unit, as the case requires;
- not, nor must his or her spouse, have a history of involvement in business or investment activities that is of a nature that is not generally acceptable in Australia;
- genuinely have a realistic commitment, after entry to Australia as the holder of a subclass 131 visa, to continue to maintain a business or investment activity in Australia after the designated investment in Australia has matured; and sign a declaration form approved by the Minister.

At the time of decision the applicant must:

- continue to satisfy the requirements listed above;
- provide evidence of the designated investment in the sums prescribed and that the funds invested:
 - is legally owned by the applicant or the applicant and his or her spouse together and
 - is unencumbered and
 - was accumulated from the qualifying business or eligible investment activities of the applicant or the applicant and his or her spouse together;
- have a score on the business skills points test that is not less than that which is specified by Gazette Notice; and
- and, members of the applicant's family unit must, meet certain public interest criteria and special return criteria.

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

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

This Schedule sets out the new Parts 676 - Tourist (Short Stay) - and 686 - Tourist (Long Stay) to be inserted into Schedule 2 creating two new visa subclasses. For details, see regulations 48 and 53 of these Regulations.

The Schedule sets out the new Part 840 - Business Owner - inserted in Schedule 2 of the Migration Regulations by these Regulations. The new Part 840 prescribes the criteria for a subclass of Business Skills (Residence) (Class BH) permanent visa. The Business Skills (Residence) (Class BH) visa is created by these Regulations (see the notes on subregulation 22.3 of these Regulations).

The Schedule sets out the new Part 841 - Senior Executive - inserted in Schedule 2 of the Migration Regulations by these Regulations. The new Part 841 prescribes the criteria for a subclass of Business Skills (Residence) (Class BH) permanent visa referred to above.

The Schedule sets out the new Part 842 - State/Territory Sponsored Business Owner inserted in Schedule 2 of the Migration Regulations by these Regulations. The new Part 842 prescribes the criteria for a subclass of Business Skills (Residence) (Class BH) permanent visa referred to above.

The Schedule sets out the new Part 843 - State/Territory Sponsored Senior Executive inserted in Schedule 2 of the Migration Regulations by these Regulations. The new Part 843 prescribes the criteria for a subclass of Business Skills (Residence) (Class BH) permanent visa referred to above.

New Parts 840, 841, 842 and 843 are generally identical in prescribed criteria to those in Parts 127, 128, 129 and 130 respectively in Schedule 2 of the Migration Regulations. The differences in prescribed criteria are:

- applicants for subclass 840, 841, 842 and 843 are not required to meet special return criteria (Schedule 5 criteria). Applicants for subclass 127, 128, 129 and 130 must meet prescribed special return criteria.
- Applicants for subclass 840, 841, 842 and 843 must be in Australia, but not in immigration clearance at the time of grant. Applicants for subclass 127, 128, 129 and 130 must be outside Australia at the time of grant.
- Applicants for subclass 840, 841, 842 and 843 are exempt from liability for the English Education Charge. Applicants for subclass 127, 128, 129 and 130 are liable for payment of the English Education Charge if applicable to them.
- Applicants who satisfy the prescribed criteria for subclass 840, 841, 842 and 843 do not have any Schedule 6 conditions attach to the grant of a visa. Applicants who satisfy the prescribed criteria for subclass 127, 128, 129 and 130 do have Schedule 6 conditions attach to the grant of a visa.

The Schedule sets out the new Part 844 - Investment-Linked - inserted in Schedule 2 of the Migration Regulations by these Regulations. The new Part 844 prescribes the criteria for a subclass of Business Skills (Residence) (Class BH) permanent visa. The Business Skills (Residence) (Class BH) visa is created by these Regulations (see the notes on subregulation 22.3 of these Regulations).

The criteria for this Part are generally the same as the new Investment - Linked - subclass inserted in Part 131 of the Migration Regulations by regulation 27 of these Regulations (see notes on Part 131 above). The differences between Part 131 and Part 844 are:

- applicants for subclass 844 are not required to meet any special return criteria in Schedule 5 whereas applicants for subclass 131 must meet prescribed special return criteria;
- applicants for subclass 844 must be in Australia and not in immigration clearance when the visa is granted. Applicants for subclass 131 must be outside Australia at the date of grant;
- applicants for subclass 844 are to be exempted from liability for the English Education Charge. Applicants for subclass 131 are liable for payment of the English Education Charge if applicable to them; and
- applicants who satisfy the prescribed criteria for subclass 844 do not have any Schedule 6 conditions attach to the grant of the visa. Applicants who satisfy the prescribed criteria for subclass 131 do have Schedule 6 conditions attach to the grant of the visa.

The Schedule sets out the new Part 845 - Established Business In Australia - inserted in Schedule 2 of the Migration Regulations by these Regulations. The new Part 845 prescribes the criteria for a subclass of Business Skills (Residence) (Class BH) permanent visa. The Business Skills (Residence) (Class BH) visa is created by these Regulations (see the notes on subregulation 22.3 of these Regulations).

To satisfy the main criteria for this new subclass, at the time of application an applicant must: hold a temporary substantive visa other than a special purpose visa;

- have been in Australia as the holder of a temporary substantive visa for at least 9 months during the period of 12 months immediately preceding the making of the application;
- have had an ownership interest in a main business or main businesses in Australia for the period of 18 months immediately preceding the application and continue to have the interest;
- have the total value of the nett assets of the applicant and the applicant's spouse in Australia at least AUD 250,000;
- have the total nett value of the nett assets of the main business or main businesses owned by the applicant, or the applicant and the applicant's spouse together, currently, and for the 12 months immediately preceding the date of the application, at least AUD 100,000;
- in the 12 months immediately preceding the making of the application, the applicant, as the owner of an interest in a main business or main businesses in Australia, maintained direct and continuous involvement in the management of that business or those businesses from day to day and in making decisions that *affected the* overall direction and performance of that business or those businesses;
- overall have had a successful business career;
- not, nor his or her spouse (if any), have a history of involvement in business or investment activities of a nature that is not generally acceptable in Australia; and
- sign a declaration form approved by the Minister.

At the time of decision the applicant must:

- continue to satisfy the requirements listed above;
- have a score on the business skills points test that is not less than that which is specified by Gazette Notice;
- and members of the applicant's family unit must meet certain public interest criteria.

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

Applicants must be in Australia, but not in immigration clearance, at the time when the visa is granted. The visa permits the holder to travel to and enter Australia as a permanent resident on any number of occasions for 4 years from the date of grant.