

# Migration Regulations (Amendment) 1995 No. 268

## EXPLANATORY STATEMENT

### STATUTORY RULES 1995 No. 268

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. In addition, subsection 31(1) of the Act provides that the regulations are to prescribe classes of visas, and subsection 31(3) of the Act provides that the regulations may prescribe criteria for visas of a specified class.

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; and
- 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.

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

- subsection 29(2) of the Act provides that the regulations may prescribe a period during which the holder of a visa may travel to, enter and remain in Australia;
- subsection 29(3) of the Act provides that the regulations may prescribe a period during which the holder of a visa may travel to, enter, re-enter and remain in Australia;
- subsection 31(1) of the Act provides that the regulations are to prescribe 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 for the regulations to prescribe whether visas are visas to travel to and enter, or to remain in Australia, or both;
- subsection 33(2) of the Act provides for regulations to be made which prescribe status for the purpose of the grant of special purpose visas;
- subsection 39(1) of the Act provides that regulations may prescribe criteria for visas of a class which limit the number of visas of that class granted in a particular financial year;
- 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;

- subsection 45(1) of the Act provides that the regulations may make provision in relation to applications for visas;
- subsection 45(3) of the Act provides that, without limiting the generality of subsection 45(1), the regulations may provide for the places in which an applicant must be when an application for a visa of a specified class is made;
- subsection 46(2) of the Act provides for prescribing a class of visas an application for which may be taken under the regulations to have been validly made;
- section 70 of the Act provides that the regulations may provide when an officer is not required to give a non-citizen evidence of the visa granted;
- subsection 71(1) of the Act provides for the regulations to prescribe the way in which evidence of a visa is to be given; and
- paragraph 166(1)(b) of the Act provides that the regulations may require information to be given to a clearance officer by persons who enter Australia.

The purpose of the Regulations is to:

- insert two new special assistance visa classes:
  - for Vietnamese in Germany and Vietnamese who have returned to Vietnam from regional camps of first asylum; and
  - for Ahmadis in Pakistan;
- insert a new visa class - Temporary Business Entry which replaces Subclasses 672 Business Visitor (Short Stay) and 682 - Business Visitor (Long Stay);
- enhance the criteria for Subclass 845 - Established Business in Australia;
- extend the operation of Sri Lankan (Temporary) (Class TT) and citizens of former Yugoslavia (Temporary) (Class TC) from 30 September 1995 to 31 July 1996; introduce a regional sponsored migration scheme;
- extend the Christmas Island casino special purpose visa scheme to persons who have the right to return to Indonesia;
- provide that a valid application for a Territorial Asylum (Residence) visa can only be made after the grant of territorial asylum by a Minister;
- ensure that protection visas can be granted to members of the family unit; simplify the health criteria;
- ensure that Schedule 3 covers those non-citizens who were covered by Schedule 6 prior to 1 September 1994;
- provide for the partial refund of the IRT fee where the application for review is withdrawn;
- provide for the use of a Gazette Notice in specifying the evidence of identity acceptable by persons travelling on an overseas vessel but who do not travel outside Australia;

- ensure that the execution of a search warrant in regulation 5.06 is subject to the use of reasonable force"; and
- make a number of clarifying and technical amendments which do not affect the substantive operation of the Migration Regulations.

Details of the Regulations are set out in the Attachment.

The Regulations commence on 1 November 1995 except for the regulations which extend the operation of subclass 435 (Sri Lankan (temporary)) and 443 (Citizens of former Yugoslavia) visas from 30 September 1995 to 1 July 1996. Those regulations commence on gazettal.

## ATTACHMENT

### **PART 1 - PRELIMINARY**

#### Regulation 1 - Commencement

This regulation provides for Parts 3 and 4 and the Schedules of the Migration Regulations (Amendment) to commence on 1 November 1995.

#### Regulation 2 - Amendment

This regulation provides for the Migration Regulations to be amended as set out in Parts 2 and 3 of these Regulations.

### **PART 2 - AMENDMENTS COMMENCING ON GAZETTAL**

#### Regulation 3 - Schedule 2, Part 435 (Sri Lankan)

This regulation amends clauses 435.214 and 435.511 of Part 435 of Schedule 2 of the Migration Regulations to allow certain citizens of Sri Lanka to apply for a Sri Lankan (Temporary) (Class TT) visa which will be in effect to 31 July 1996. Any current Sri Lankan (Temporary) (Class TT) visas will cease to be in effect on 30 September 1995.

#### Regulation 4 - Schedule 2, Part 443 (Citizens of Former Yugoslavia)

Subregulation 4.1 makes a minor technical amendment to clause 443.211 to insert a comma after the word "cancelled" which was inadvertently omitted from the original inclusion of this clause in the Migration Regulations.

Subregulation 4.2 amends clauses 443.214 and 443.511 of Part 443 of the Migration Regulations to allow certain citizens of the former Yugoslavia to apply for a Citizens of Former Yugoslavia (Temporary) (Class TC) visa which will be effect to 31 July 1996. Any current Citizens of Former Yugoslavia (Temporary) (Class TC) visas will cease to be in effect on 30 September 1995.

### **PART 3 - AMENDMENTS COMMENCING ON 1 NOVEMBER 1995**

#### Regulation 5 - Regulation 1.03 (Interpretation)

This regulation amends regulation 1.03 of the Migration Regulations.

Subregulation 5.1 omits the definition of "AIDAB". This change is a consequence of the Government's recent decision to change the name of the agency known as "AIDAB" to "AusAID", which is an acronym for Australian Agency for International Development.

Subregulation 5.2 makes a minor and technical amendment to the definition of "approved appointment" by omitting a reference to subregulation 5.16(1) and substituting a reference to subregulation 5.19(1).

Subregulation 5.3 amends the definition of "assisted student" by omitting "AIDAB" and substituting "AusAID". This is a consequence of the change of name of the agency.

Subregulation 5.4 inserts new definitions of "AusAID", "Commonwealth Medical Officer" and "Medical Officer of the Commonwealth" into the Migration Regulations. "AusAID" refers to the "Australian Agency for International Development within Foreign Affairs", the new definition of Commonwealth Medical Officer provides that it means a medical practitioner employed by the Australian government, and the new definition of Medical Officer of the Commonwealth provides

that it means a medical practitioner appointed by the Minister under regulation 1.16AA. Regulation 1.16AA is inserted into the Migration Regulations by Regulation 7 of these Regulations.

#### Regulation 6 - Regulation 1.13 (Nominator)

This regulation amends regulation 1.13 of the Migration Regulations to include references to new Parts 216 and 217 and existing Part 215. The additional references to Parts 216 and 217 are a consequence of the insertion of new Parts 216 and 217 into Schedule 2 of the Migration Regulations by these Regulations. The inclusion of Part 215 is consequential upon the insertion of Part 215 in the Regulations by Statutory Rules 1994 No. 452. The effect of this regulation is to make it clear that the undertakings provided as a requirement for these classes of visas do not constitute "nominations" for the purposes of the Migration Regulations.

#### Regulation 7 - New Regulation 1.16AA (Appointment of Medical Officer of the Commonwealth)

This regulation inserts a new regulation 1.16AA into the Migration Regulations. This regulation provides that the Minister may by writing appoint a medical practitioner to be a Medical Officer of the Commonwealth for the purposes of these Regulations.

#### Regulation 8 - Regulation 1.20 (Sponsorship)

This regulation amends regulation 1.20 of the Migration Regulations to include references to new Parts 216 and 217 and existing Part 215. The additional references to Parts 216 and 217 are a consequence of the insertion of new Parts 216 and 217 into Schedule 2 of the Migration Regulations by these Regulations. The inclusion of Part 215 is consequential upon the insertion of Part 215 in the Regulations by Statutory Rules 1994 No. 452. The effect of this regulation is to make it clear that the undertakings provided as a requirement for these classes of visas do not constitute "sponsorships" for the purposes of the Migration Regulations.

#### Regulation 9 - New Division 2.5A

This regulation inserts new Division 2.5A - Special provisions relating to certain health criteria - into the Migration Regulations as set out in Schedule 1 of these Regulations.

#### Regulation 10 - Regulation 2.40 (Persons having a prescribed status - special purpose visas (Act, s.33(2)(aa)))

Subregulation 10.1 amends paragraph 2.40(1)(r) of the Migration Regulations to provide that a person who is the holder of a passport, and who is visiting the casino on Christmas Island, is taken to hold a special purpose visa if he or she has a right to return to Indonesia.

Subregulation 10.2 omits paragraph 2.40(14)(c) of the Migration Regulations and substitutes a new paragraph. The new paragraph inserts the provisions of the omitted paragraph and provides that the visa giving the right to return to Indonesia must be exercisable for at least 10 days after arrival on Christmas Island.

#### Regulation 11 - Regulation 3.09 (Evidence of identity - domestic travel on overseas vessels)

Subregulation 11.1 amends paragraph 3.09(3)(c) of the Migration Regulations by inserting new subparagraph 3.09(3)(c)(iii). New subparagraph 3.09(3)(c)(iii) allows identity cards, issued to an officer or employee of a body that is specified for the purpose of this paragraph by Gazette Notice, to be accepted as evidence of identity for a domestic passenger travelling on an overseas vessel.

Subregulation 11.2 omits paragraph 3.09(3)(e) from the Migration Regulations. Paragraph 3.09(3)(e) sets out a list of Government Business Enterprises that could issue documents which could be used as evidence of a person's identity for the purposes of paragraph 3.09(2)(b). Paragraph 3.09(3)(e) is no longer required as a consequence of the insertion of new subparagraph 3.09(3)(c)(iii) into the Migration Regulations.

#### Regulation 12 - Regulation 3.15 (Medical certificate)

This regulation omits paragraphs 3.15(1)(c), (d) and (e) of the Migration Regulations and substitutes new paragraphs 3.15(1)(c), (d) and (c). These new paragraphs mirror the amendments made to the health criteria contained in clauses 4005, 4006A and 4007 of Schedule 4 of the Migration Regulations. Clauses 4005, 4006A and 4007 are amended by regulation 33 of these Regulations.

#### Regulation 13 - Regulation 4.14 (Refund of fee for review by Tribunal)

This regulation inserts new subregulation 4.14(3) into the Migration Regulations. New subregulation 4.14(3) provides for a refund of 50% of the application fee to applicants who withdraw their applications for review, otherwise than for a reason specified in subregulation 4.14(2), before the end of the notice period referred to in subsection 361(2) of the Act.

#### Regulation 14 - Regulation 5.06 (Arrest of witness failing to Wear)

This regulation amends subregulation 5.06(3) of the Migration Regulations by inserting a requirement that any force used to execute a warrant in connection with a proposed deportation under section 203 of the Act must be "necessary and reasonable". The role of the Senate Standing Committee on Regulations and Ordinances is acknowledged in formulating this amendment.

#### Regulation 15 - Regulation 5.19 (Approved appointments (employer nomination))

This regulation amends regulation 5.19 of the Migration Regulations.

Subregulation 15.1 amends subregulation 5.19(1) to include reference to new subregulation 5.19(4) inserted into the Migration Regulations by subregulation 15.4 of these Regulations.

Subregulation 15.2 amends paragraph 5.19(2)(b) by inserting the term "(within the meaning of subregulation (3))". This amendment clarifies that there is a definition of "highly skilled person" in subregulation (3).

Subregulation 15.3 amends subregulation 5.19(3) by clarifying that the definition of "highly skilled person" refers back to subregulation (2).

Subregulation 15.4 inserts into the Migration Regulations new subregulation 5.19(4) which prescribes the requirements of an employer nomination which must be satisfied in order to qualify under this subregulation.

#### Regulation 16 - Regulation 5.37 (Employer nomination fee)

This regulation omits regulation 5.37 of the Migration Regulations and substitutes a new regulation.

New subregulation 5.37(1) provides that the fee payable for an employer nomination under subregulation 5.19(2) is \$270, and that this fee must be paid at the time the nomination is lodged.

New subregulation 537(2) makes it clear that there is no fee payable under new subregulation 5.19(4) which is inserted by subregulation 15.4 of these Regulations.

#### Regulation 17 - Schedule 1 (Classes of visas)

Subregulation 17.1 inserts new item 1101A in Schedule 1 of the Migration Regulations. This item creates a new class of visa - Ahmadi (Special Assistance) (Class B1) - and prescribes the way an application must be made. Approved form 917 must be completed and the application must be made outside Australia. There is no fee for the application. An application must be accompanied by a written undertaking of support from the Ahmadiyya Muslim Association of Australia. 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 are contained in Part 216 - Ahmadi - inserted into Schedule 2 by these Regulations.

Subregulation 17.2 amends item 1131 by inserting a new paragraph (aa) into subitem (3). New paragraph 1131(3)(aa) requires that an application for a Territorial Asylum (Residence) (Class BE) visa must be accompanied by documentation, issued by or on behalf of the Commonwealth, which evidences the grant by a Minister to the applicant of territorial asylum in Australia. The effect of this amendment is to render invalid an application for this class of visa in cases where an applicant would be unable to satisfy the criteria for grant prescribed in Part 800 of Schedule 2 of the Migration Regulations.

Subregulation 17.3 inserts a new item 1132 in Schedule 1 of the Migration Regulations.

This item creates a new class of visa - Vietnamese (Special Assistance) (Class BK) - and prescribes the way an application must be made. Approved form 917 must be completed and the application must be made outside Australia. There is no fee 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 located in Part 217 - Vietnamese - inserted into Schedule 2 of the Migration Regulations by these Regulations.

Subregulation 17.4 omits clause 1218 of Schedule 1 of the Migration Regulations and inserts a new clause 1218 - Short Stay (Visitor) (Class TR). New clause 1218 prescribes the forms to be used by an applicant for this visa class, the fee payable, the circumstances in which an application may be made and the subclasses of visa within the visa class. The new clause differs from the omitted clause in that provision is no longer made for applications by approved nominators on behalf of an applicant. The creation of a new Temporary Business Entry (Class UC) visa by subregulation 17.5 of these Regulations means that it is no longer necessary to make this provision in this visa class. The new clause also differs from the omitted clause in that it omits reference to Subclass 672 (Business (Short Stay)). Subclass 672 (Business (Short Stay)) is no longer necessary as that Subclass is being omitted by these Regulations.

Subregulation 17.5 inserts a new clause 1223A into Schedule 1 of the Migration Regulations. This clause creates a new class of visa - Temporary Business Entry (Class UC). It prescribes the forms that must be used, the fees that are payable, the circumstances in which an application may be made and the subclasses within this class of visa. There is only one subclass of visa within this class - 456 (Business (Short Stay)). This subclass is inserted into Schedule 2 of the Migration Regulations by regulation 20 of these Regulations. An application for this subclass of visa may be made by an "approved nominator" on behalf of the applicant as well as by an applicant. The term "approved nominator" is defined in clause 456.111. The spouse and dependent children of an applicant may be included in an\* application made on the applicant's behalf by an approved nominator.

#### Regulation 18 - Schedule 2, Part 121 (Employer Nomination)

This regulation omits clause 121.211 in Part 121 of the Migration Regulations and substitutes a new clause.

The amendments establish the Regional Sponsored Migration Scheme (RSMS) which is aimed at drawing migrants away from metropolitan centres to regional or rural Australia. The intention of the scheme is to facilitate economic development in regional Australia. Particular Regional Development Organisations (RDOs) will be targeted to participate in the scheme, or where RDOs are not available, a State or Territory Government authority. RDOs are responsible for expending funds provided by the Government through the Regional Economic Development Program (DHRD). In relation to the RSMS, the role of the RDO or authority is to nominate a potential applicant for the scheme, based on relevant criteria. The scheme is intended to operate as a pilot scheme during its first 12 months of operation, after which it will be reviewed.

#### Regulation 19 - Schedule 2 - new Parts 216 and 217

This regulation provides for new Parts 216 and 217 to be inserted into Schedule 2 of the Migration Regulations, as set out in Schedule 2 of these, Regulations.

#### Regulation 20 - Schedule 2, new Part 456

This regulation provides for a new Part 456 to be inserted into Schedule 2 of the Migration Regulations, as set out in Schedule 3 of these Regulations.

#### Regulation 21 - Schedule 2, Part 672

This regulation omits Part 672 of the Migration Regulations.

#### Regulation 22 - Schedule 2, Part 675 (Medical Treatment (Short Stay))

Subregulation 22.1 omits subparagraph 675.221(2)(f)(i) of the Migration Regulations and substitutes a new subparagraph. New subparagraph 675.221(2)(f)(i), which relates to an applicant who is coming to Australia for an organ transplant, mirrors amendments made to paragraphs 4005(b), 4006A(1)(b) and 4007(1)(b) of Schedule 4 of the Migration Regulations by regulation 33 of these Regulations.

Subregulation 22.2 omits subparagraphs 675.221(2)(g)(i), (ii) and (iii) of the Migration Regulations and substitutes new subparagraphs. These new subparagraphs mirror the amendments made to the health criteria contained in clauses 4005, 4006A and 4007 of Schedule 4 of the Migration Regulations by regulation 33 of these Regulations. These subparagraphs provide that an applicant, who is coming to Australia for the purposes of donating an organ for transplant, fails the health criteria in circumstances where they have a disease or condition that is normally unrelated to donating an organ for transplant.

#### Regulation 23 - Schedule 2, Part 682

This regulation omits Part 682 of the Migration Regulations.

#### Regulation 24 - Schedule 2, Part 685 (Medical Treatment (Long Stay))

Subregulation 24.1 omits subparagraph 685.221(2)(f)(i) of the Migration Regulations and substitutes a new subparagraph. New subparagraph 685.221(2)(f)(i), which relates to an applicant who is coming to Australia for an organ transplant, mirrors amendments made to paragraphs 4005(b), 4006A(1)(b) and 4007(1)(b) of Schedule 4 of the Migration Regulations by regulation 33 of these Regulations.



Subregulation 24.2 omits subparagraphs 685.221(2)(g)(i), (ii) and (iii) of the Migration Regulations and substitutes new subparagraphs. These new subparagraphs mirror the amendments made to the health criteria contained in clauses 4005, 4006A and 4007 of Schedule 4 of the Migration Regulations by regulation 33 of these Regulations. These subparagraphs provide that an applicant, who is coming to Australia for the purposes of donating an organ for transplant, fails the health criteria in circumstances where they have a disease or condition that is normally unrelated to donating an organ for transplant.

#### Regulation 25 - Schedule 2, Part 802 (Child)

This regulation omits clause 802.211 of the Migration Regulations and substitutes a new clause. The new clause retains the reference to an applicant to whom section 48 of the Act applies, and extends the application of the criteria to include an applicant who was in Australia on 1 September 1994, was immediately before that date a person to whom section 37 of the Act as then in force applied, and has not since been granted a substantive visa.

The new clause repeats the provisions of the omitted clause that the applicant has not been refused a visa or had a visa cancelled under section 501 of the Act, and has become a dependent child of an Australian citizen, Australian permanent resident or eligible New Zealand citizen since last applying for an entry permit or substantive visa.

#### Regulation 26 - Schedule 2, Part 804 (Aged Parent)

This regulation omits clause 804.211 of the Migration Regulations and substitutes a new clause. The new clause retains the reference to an applicant to whom section 48 of the Act applies, and extends the application of the criteria to include an applicant who was in Australia on 1 September 1994, was immediately before that date a person to whom section 37 of the Act as then in force applied, and has not since been granted a substantive visa.

The new clause repeats the provisions of the omitted clause that the applicant has not been refused a visa or had a visa cancelled under section 501 of the Act, and has become an aged parent of an Australian citizen, Australian permanent resident or eligible New Zealand citizen since last applying for an entry permit or substantive visa.

#### Regulation 27 - Schedule 2, Part 805 (Skilled)

This regulation amends Part 805 of Schedule 2 of the Migration Regulations. The effect of the amendment is the same in relation to this visa subclass as the amendments made by regulation 18 in relation to subclass 121 visa.

#### Regulation 28 - Schedule 2, Part 806 (Family)

This regulation omits clause 806.211 of the Migration Regulations and substitutes a new clause. The new clause retains the reference to an applicant to whom section 48 of the Act applies, and extends the application of the criteria to include an applicant. who was in Australia on 1 September 1994, was immediately before that date a person to whom section 37 of the Act as then in force applied, and has not since been granted a substantive visa.

The new clause repeats the provisions of the omitted clause that the applicant has not been refused a visa or had a visa cancelled under section 501 of the Act, and has become an aged dependent relative, an orphan relative, a remaining relative or a special need relative of an Australian citizen, Australian permanent resident or eligible New Zealand citizen since last applying for an entry permit or substantive visa.

#### Regulation 29 - Schedule 2, Part 833 (Certain Unlawful Non-Citizens)

This regulation omits clause 833.211 of the Migration Regulations and substitutes a new clause. The new clause retains the reference to an applicant to whom section 48 of the Act applies, and extends the application of the criteria to include an applicant who was in Australia on 1 September 1994, was immediately before that date a person to whom section 37 of the Act as then in force applied, and has not since been granted a substantive visa.

The new clause repeats the provisions of the omitted clause that the applicant has not been refused a visa or had a visa cancelled under section 501 of the Act, and has become a person who meets the requirements of clause 833.212 since last applying for an entry permit or substantive visa. That is, the person has turned 18 and before turning 18 ceased to hold a substantive visa, and had not before holding that visa held a Subclass 771 (Transit) visa, and before turning 18 had spent the greater part of the period the Minister regards as the applicant's formative years in Australia.

#### Regulation 30 - Schedule 2, Part 845 (Established Business in Australia)

This regulation omits clauses 845.214 and 845.215 of the Migration Regulations and substitutes new clauses.

New clause 845.214 repeats the requirements of omitted clause 845.214 with the additional requirement that the total value of the net assets in Australia of the applicant (or the applicant and the applicant's spouse together) must have been held by the applicant (or the applicant and the applicant's spouse together) for 12 months immediately preceding the date of the application.

New clause 845.215 repeats the requirements of omitted clause 845.215 with the additional requirement that the main business or main businesses must be in Australia. New clause 845.215 is intended to clarify that it is the total value of the net assets in Australia owned by the applicant (or the applicant and the applicant's spouse together) in the main business or businesses which must be AUD100,000 and not the total net assets of the business or businesses.

#### Regulation 31 - Schedule 2, Part 866 (Protection (Residence))

Under the current criteria in Part 866 and the definition of "member of the family unit" in regulation 1.12, the "family head" must be a person to whom Australia has protection obligations before the other members of a family unit can be granted a protection visa (assuming they are not persons to whom Australia has protection obligations in their own right). If a person other than the family head is the only family member to whom Australia has protection obligations, the other members of their family cannot be granted protection visas.

All applicants for a protection visa are primary applicants. The amendments to Part 866 are to reflect the policy intention that if a member of the family unit other than the "family head" is a person to whom Australia has protection obligations under the Refugees Convention, then all other members of the same family unit (including the "family head") who have a valid application for a protection visa may be granted a protection visa.

Subregulation 31.1 inserts a new clause 866.112 into Part 866. This clause sets out whether a person is a member of "the same family unit" as another person for the purposes of Part 866.

Subregulation 31.2 omits the requirement to be a member of the family unit of a refugee (ie. the family head must be a refugee) and substitutes a requirement that the person simply be a member of the same family unit as a person who is a refugee (ie. any member of the family unit may be the refugee).

Subregulation 31.3 omits clauses 866.221 and 866.222 and substitutes new clauses. New clause 866.221 makes a technical amendment by the inclusion of "that". New clause 866.222 makes an amendment similar to that made by subregulation 31.2 above.

Regulation 32 - Schedule 3 (Additional criteria applicable to unlawful non-citizens and certain bridging visa holders)

Subregulation 32.1 omits item 3001 of the Migration Regulations and substitutes a new item. The new item extends the application of the item to include an applicant who, before 1 September 1994, became an illegal entrant, or who, on or after 1 September 1994, entered Australia unlawfully. The criteria previously only applied to an applicant who ceased to be the holder of a substantive visa.

The amendment clarifies the policy intention of the item that the application be validly made within 28 days of an applicant becoming, before 1 September 1994, an illegal entrant or, on or after 1 September 1994, a person without a substantive visa,

Subregulation 32.2 omits item 3002 of the Migration Regulations and substitutes a new item. The new item extends the application of the item to include an applicant who, before 1 September 1994, became an illegal entrant, or who, on or after 1 September 1994, entered Australia unlawfully. The criteria previously only applied to an applicant who ceased to be the holder of a substantive visa.

The amendment clarifies the policy intention of the item that the application be validly made within 12 months of an applicant becoming, before 1 September 1994, an illegal entrant or, on or after 1 September 1994, a person without a substantive visa.

Subregulation 32.3 omits item 3003 of the Migration Regulations and substitutes a new item. The new item extends the application of the item to include any applicant who became an illegal entrant before 1 September 1994 and who remains a person without a substantive visa. It includes also an applicant who became a person without a substantive visa on 1 September 1994 because their entry permit was not valid beyond 31 August 1994. The criteria previously only applied to an applicant who held an entry permit that expired before 1 September 1994.

The item repeats the provisions of the omitted item and amends one paragraph to ensure that an applicant is not able to meet the criterion if he or she is the holder of an entry permit subject to a condition that the holder would not, after entering Australia, be entitled to be granted an entry permit, or a further entry permit, while the holder remained in Australia. That paragraph in the omitted item previously had the opposite effect to that intended.

Subregulation 32.4 omits item 3004 of the Migration Regulations and substitutes a new item. The new item extends the application of the item to an applicant who entered Australia unlawfully and has not since been granted a substantive visa, and to a person who has ceased to hold a criminal justice visa. The criteria previously applied only to an applicant who ceased to hold a substantive visa.

The item repeats the provisions of the omitted item but additionally provides for an applicant who entered Australia unlawfully to be included in the subparagraph relating to earlier entitlement to the visa and, similarly, to the amendment to item 3003, amends that part relating to the holder of a visa subject to a condition that the holder would not, after entering Australia, be entitled to be granted an entry permit, or a further entry permit, while the holder remained in Australia.

### Regulation 33 - Schedule 4 (Public interest criteria)

This regulation omits clauses 4005, 4006, 4006A, 4007 and 4008 from Schedule 4 of the Migration Regulations and substitutes new clauses in the Migration Regulations.

Subregulation 33.1 omits clause 4005 from Schedule 4 of the Migration Regulations and substitutes a new clause. New clause 4005 provides that the applicant must satisfy basic health requirements. These requirements are satisfied if the applicant is free from tuberculosis, is free from a disease or condition that is a threat to public health or a danger to members of the Australian community and is free from a disease or condition that is likely to:

- result in a significant cost on the Australian community in the areas of health care or community services; or
- prejudice the access of an Australian citizen or permanent resident to health care or community services; and

if requested by a Medical Officer of the Commonwealth, has provided an undertaking to present himself or herself to a health authority in a State or Territory of Australia for a follow-up medical assessment.

Subregulation 33.2 omits clause 4006 from Schedule 4 of the Migration Regulations.

Subregulation 33.3 omits clause 4006A from Schedule 4 of the Migration Regulations and substitutes a new clause. New subclause 4006A(1) mirrors the amendments made to clause 4005 by regulation 33 of these Regulations.

Subclauses 4006A(2) and (3) are similar to omitted subclauses 4006A(2) and (3). Subclause 4006A(2) enables the Minister to waive the requirements under paragraph 4006A(1)(c) where the Minister is given a written undertaking from the applicant's employer (the "relevant employer") to meet the costs related to the disease or condition. Subclause 4006A(3) defines "relevant employer".

Subregulation 33.4 omits clause 4007 from Schedule 4 of the Migration Regulations and substitutes a new clause. New subclause 4007(1) mirrors the amendments made to clause 4005 by subregulation 33.1 of these Regulations. New subclause 4007(2) enables the Minister to waive the requirements of paragraph 4007(1)(c) in circumstances where the applicant satisfies all other relevant criteria and the grant of the visa would be unlikely to result in undue cost or undue prejudice to access to health care or community services of an Australian citizen or permanent resident.

Subregulation 33.5 omits clause 4008 from Schedule 4 of the Migration Regulations.

### Regulation 34 - Schedule 7

This regulation amends item 7170 of Schedule 7 of the Migration Regulations by omitting the word "During" and substituting the word "Throughout". This regulation is intended to clarify that the employment of the required number of employees must have been at all times throughout the period of 12 months immediately preceding the making of the application.

### Regulation 35 - Schedule 8 (Visa conditions)

This regulation inserts a new clause 8112 which contains a new condition 8112. This condition provides that the holder must not engage in work in Australia which may otherwise be carried out by an Australian citizen or Australian permanent resident.

Regulation 36 - Schedule 9, Part 1 (Persons to whom special arrangements apply under section 166 of the Act)

This regulation makes a consequential amendment to item 19 of Part 1 of Schedule 9 of the Migration Regulations. The amendment is a consequence of the amendment made to regulation 2.40 of the Migration Regulations by these Regulations.

Regulation 37 - Consequential amendments (AusAID)

This regulation omits "AIDAB" and substitutes "AusAID" in the relevant subclasses in Schedule 2 and Schedule 5 of the Migration Regulations.

Regulation 38 - Consequential amendments (health criteria)

This regulation provides for consequential amendments to Schedule 4 of the Migration Regulations, as set out in Schedule 4 of these Regulations.

Regulation 39 - Consequential amendments (Temporary Business Entry (Class UC) visa)

This regulation provides for consequential amendments to the Migration Regulations, as set out in Schedule 5 of these Regulations.

**PART 4 - TRANSITIONAL**

Regulation 40 - Transitional (Subclass 866)

Subregulation 40.1 provides transitional provisions in relation to certain applications for Protection (Class AZ) visas which are not finally determined before 1 November 1995.

Regulation 41 - Transitional (Temporary Business Entry (class UC) visa)

This regulation provides transitional provisions in relation to the use of certain approved forms after 1 November 1995.

**SCHEDULE 1**

This Schedule inserts a new Division - Division 2.5A - entitled "Special provisions relating to certain health criteria" into the Migration Regulations.

Regulation 2.25A provides that the Minister must, in certain circumstances, seek the opinion of a Medical Officer of the Commonwealth on whether a person meets the requirements of certain public interest criteria as set out in clauses 4005, 4006A and 4007 of Schedule 4 of the Migration Regulations.

Regulation 2.25B provides for a test to be applied by the Medical Officer of the Commonwealth in relation to determining whether or not a person's disease or condition would be likely to result in a significant cost to, or prejudice the access to health care or community services of, an Australian citizen or permanent resident.

**SCHEDULE 2**

This Schedule - New Parts 216 and 217 to be inserted in Schedule 2 to the Migration Regulations - sets out new Parts 216 and 217 to be inserted into the Migration Regulations which prescribe the criteria to be met by an applicant for an Ahmadi (Special Assistance) (Class BJ) or a Vietnamese (Special Assistance) (Class BK) permanent visa created by these Regulations.

The prescribed criteria for an Ahmadi (Special Assistance) (Class BJ) visa provide that to be eligible for grant of the visa, an applicant must be an Ahmadi who is a citizen of Pakistan, who is usually resident in Pakistan and who has suffered, and continues to suffer, substantial discrimination because of his or her religious affiliation.

The prescribed criteria provide that the Alimadiyya Muslim Association of Australia must state in writing that it supports the application and must give an undertaking to provide specified assistance to the applicant and his or her dependants after their entry to Australia. The Minister must be satisfied that permanent settlement in Australia is the appropriate course for the applicant and would not be contrary to the interests of Australia. The Minister must also be satisfied that there are compelling reasons for giving special consideration to granting a visa to the applicant.

The prescribed criteria provide for the grant of a visa to members of the family unit of an applicant where the applications of members of the family unit were combined with that of the applicant. The applicant and members of the applicant's family unit are required to meet certain public interest and special return criteria.

The prescribed criteria provide that an applicant who is eligible for the grant of, any other permanent visa is not eligible to be granted the new subclass 216 visa. This provision ensures that the limited places available in the special assistance category program are not taken by applicants who are eligible under the normal migration program.

The prescribed criteria provide that the maximum number of visas available in a financial year is to be limited to a number specified by the Minister in a Gazette Notice.

The prescribed criteria provide that applicants must be outside Australia at the time the visa is granted. The visa permits the applicant 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 date specified by the Minister.

The prescribed criteria for the Vietnamese (Special Assistance) (Class BK) visa provide that to be eligible for grant of the visa, an applicant must be a citizen of Vietnam who either:

- (i) has been continually resident in Germany since 1 January 1990, has no legal entitlement to remain permanently in Germany and faces repatriation to Vietnam; or
- (ii) has resided in a camp administered under the Comprehensive Plan of Action adopted by the International Conference on Indo-Chinese Refugees held at Geneva on 13 and 14 June 1989 at any time on or after 14 June 1989, has returned to Vietnam before 1 January 1996, and is resident in Vietnam at the time of application.

The prescribed criteria provide that the applicant must have a near relative (that is, a parent, daughter, son, brother, sister, aunt, uncle, nephew or niece) who is an Australian citizen or permanent resident or an eligible New Zealand citizen, who is usually resident in Australia, and who gives a written undertaking to provide specified assistance to the applicant and his or her dependants after their entry to Australia. The Minister must be satisfied that permanent settlement in Australia is the appropriate course for the applicant and would not be contrary to the interests of Australia. The Minister must also be satisfied that there are compelling reasons for giving special consideration to granting a visa to the applicant.

The prescribed criteria provide for the grant of a visa to members of the family unit of an applicant where the applications of members of the family unit were combined with that of the applicant. The applicant and members of the applicant's family unit are required to meet certain public interest and special return criteria.

The prescribed criteria provide that an applicant who is eligible for the grant of any other permanent visa is not eligible to be granted the new subclass 217 visa. This provision ensures that the limited places available in the special assistance category program are not taken by applicants who are eligible under the normal migration program.

The prescribed criteria provide that the maximum number of visas available in a financial year is to be limited to a number specified by the Minister in a Gazette Notice.

The prescribed criteria provide that applicants must be outside Australia at the time the visa is granted. The visa permits the applicant 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 date specified by the Minister.

### **SCHEDULE 3**

This Schedule - New Part 456 to be inserted in Schedule 2 to the Migration Regulations sets out new Part 456 - Business (Short Stay) of Schedule 2 of the Migration Regulations. It specifies the criteria that are required to be satisfied by an applicant, the circumstances applicable to the grant of the visa, when the visa is in effect, the conditions which must be imposed, and the way that evidence is given.

New Subclass 456 will replace Subclass 672 - Business Visitor (Short Stay) and Subclass 682 Business Visitor (Long Stay) which shall be omitted by these Regulations.

The criteria for this new Subclass are similar to the criteria of the omitted subclasses. New Subclass 456 differs from the omitted subclasses in that new Subclass 456 has a different fee structure and different visa stay and visa validity periods. New Subclass 456 also differs from the omitted subclasses by providing that new condition 8112 must be imposed on the grant of this visa. This condition is inserted by regulation 35 of these regulations and provides that the holder must not engage in work in Australia which may otherwise be carried out by an Australian citizen or Australian permanent resident.

### **SCHEDULE 4**

This Schedule - Consequential amendments - health criteria - provides for amendments to Schedule 2 of the Migration Regulations. These amendments are consequential on the amendments to the health criteria inserted by regulation 33 of these Regulations.

### **SCHEDULE 5**

This Schedule - Consequential amendments - Temporary Business Entry (Class UC) visa provides for amendments to the Migration Regulations. The amendments are consequential on the creation of new visa class Temporary Business Entry (Class UC).