

# Migration Regulations (Amendment) 1996 No. 75

## EXPLANATORY STATEMENT

### STATUTORY RULES 1996 No. 75

Issued by the Authority of the Minister for Immigration and Multicultural 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;
- paragraph 504(1)(c) of the Act provides that the regulations may make provision in relation to the furnishing of information by, and obtaining information with respect to, persons entering and leaving Australia and persons arriving or departing from an airport in Australia on an aircraft operated by an international air carrier.,
- paragraph 504(1)(g) of the Act provides that the regulations may require an assurance of support to be given in respect of an applicant for a visa to enter and remain in Australia, and may provide for the enforcement of assurances of support and the liabilities of an assurer;

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(4) of the Act provides for the regulations to prescribe whether visas are visas to travel to and enter, or remain in Australia, or both;
- 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(2) of the Act provides that, without limiting the generality of subsection 45(1), the regulations may prescribe the way for making applications for a visa of a specified class in specified circumstances, and in specified circumstances for a visa of a specified class;
- subsection 45(3) of the Act provides that, without limiting the generality of subsection 45(1), the regulations may provide for the place in which an applicant must be when an application for a visa of a specified class is made;
- subsection 52(1) of the Act provides for the way to be prescribed in which a visa applicant or interested person must communicate with the Minister;
- subsection 52(2) of the Act provides that the regulations may prescribe different ways in which a visa applicant or an interested person may communicate with the Minister. There is also provision for the regulations to specify the circumstances when communication is to be in a particular way;
- 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;
- subsection 71(2) of the Act provides that the regulations may provide that the way in which evidence of a visa is to be given is to depend on the circumstances in which it is given;
- 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;
- subsection 166(2) of the Act provides for prescribing the way in which a person is to comply with paragraphs 166(1)(a) and (b); and
- paragraph 398(1)(b) of the Act provides for the allowances which a Principal Member of the Immigration Review Tribunal is to be paid to be prescribed.

The purposes of the Regulations are to amend the Migration Regulations to reflect changes in policy to streamline requirements in line with the Government commitment to do so and to make a number of procedural and minor technical amendments. In particular, the Regulations:

- make minor technical amendments to the Working Holiday Maker scheme and to provide for the countries participating in the Working Holiday Maker scheme to be specified by Gazette notice (Part 1, Schedule 2);
- include a waiver provision regarding Schedule 3 requirements for unlawful noncitizens who apply onshore for residence on spouse or interdependency grounds (regulation 20; Part 2, Schedule 2, Clauses 10 and 11);
- simplify the operation of Special Return Criteria in Schedule 5 to the Regulations (including the deletion of some criteria) and make consequential amendments including the insertion of new Public Interest Criteria in Schedule 4 (to replace some of the deleted Special Return Criteria), and make numerous consequential amendments to visa subclasses in Schedule 2 to the Regulations (Regulation 3; Schedule 2, Part 2; Schedule 3; Schedule 4);
- omit regulation 4.22 of the Migration Regulations which prescribed an allowance of \$6,63 for each day or part of a day on which the Principal Member of the Immigration Review Tribunal attends his or her duties (Regulation 10);

- enable combined applications to the Refugee Review Tribunal (RRT) by persons of a family unit whose applications for Protection (Class AZ) visas have been refused where their primary applications were combined (Regulation 11);
- omit item 8521 which was a condition placed on Subclass 428 (Religious Worker) visas and which barred some holders from being granted a further visa (Regulations 16 and 19; Schedule 2, Part 2, clause 5);
- introduce a new type of visa - the Electronic Travel Authority (ETA) visa - to streamline applications and processing of visas for certain tourists and business visitors coming to Australia (Regulations 4, 5, 6, 9, 16, 17; Schedule 1, Part 2; Schedule 2, Part 3; Schedule 2, Part 4);
- facilitate the administration of the Assurance of Support Scheme by enabling the gazettal of relevant allowances or benefits rather than listing them individually in the Regulations (Regulations 7 and 8);
- include the Student (Temporary) (Class TU) visa within the classes of visas for which applications may be made at a visa application agency (Regulation 5);
- enable the grant of a further five Subclass 560 (Student) visas to Burmese students sponsored by AusAID (Schedule 2, Part 2, clause 7);
- require that applicants for humanitarian visas (subclasses 200 to 205 inclusive and 208 to 217 inclusive) be outside Australia at the time of application for the application to be valid (Schedule 1, Part 1);
- correct minor typographical errors and update the names of Departments and agencies (Schedule 5).

The Regulations commence on 1 August 1996 except for:

- regulation 10 which commences on Gazettal and which omits a prescribed allowance for the Principal Member of the Immigration Review Tribunal; and
- subregulation 12.1 and Part 1 of Schedule 1 which commence on Gazettal and which provide that applicants for humanitarian program visas must be outside Australia at the time of application.

subregulation 13.1 and Part 1 of Schedule 2 which commence on 1 July 1996 and which amend the working holiday maker scheme.

Details of the Regulations are set out in the Attachment.

## **ATTACHMENT**

### Regulation 1 - Commencement

Subregulation 1.1 provides for the proposed Regulations to commence on 1 August 1996 except for:

- regulation 10 (which commences on Gazettal) which omits a prescribed allowance for the Principal Member of the Immigration Review Tribunal; and
- subregulation 12.1 and Part 1 of Schedule 1 (which commences on Gazettal) which provide that applicants for humanitarian program visas must be outside Australia at the time of application.

Subregulation 1.2 provides for subregulation 13.1 and Part 1 of Schedule 2 to commence on 1 July 1996.

### Regulation 2 - Amendment

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

### Regulation 3 - Regulation 1.03 (Interpretation)

This regulation amends the definition of "public interest criterion" to allow for the insertion of a new Part in Schedule 4.

### Regulation 4 - New regulation 2.07AB

This regulation inserts a new regulation 2.07AB - Applications for Electronic Travel Authority visas - into the Migration Regulations. New regulation 2.07AB prescribes how and where an Electronic Travel Authority (ETA) application may be made. This regulation provides flexibility in relation to applications for an ETA. In particular, the new regulation:

- enables an application for an ETA visa to be made through an agent, who is approved in writing by the Minister for the purposes of receiving an ETA application, or at a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia; and
- does not require an ETA application to be on an approved form. An ETA application may be made in person, by telephone, by written communication (including facsimile message), by electronic transmission using a computer in any other manner approved in writing by the Minister.

### Regulation 5 - Regulation 2. 10 (Where application must be made)

Subparagraph 2.10(1)(a)(ii) of the Migration Regulations provides that, in relation to applications for visas that are to be made outside Australia, applications for certain specified classes of visas may be made at an office of a visa application agency approved in writing for that purpose by the Minister.

Subregulation 5.1 omits subparagraph 2.10(1)(a)(ii) and substitutes a new subparagraph to include the Student (Temporary) (Class TU) visa within the classes of visas for which applications may be made at a visa application agency.

Subregulation 5.1 also inserts a new subparagraph 2.10(1)(a)(iii) to provide for the new ETA visa, introduced by these Regulations. It provides that an application for an ETA visa may be made at a diplomatic, consular or migration office or at the office of an agent who is approved in writing by the Minister for the purposes of receiving ETA applications.

Subregulation 5.2 inserts new subregulation 2.10(2) into the Migration Regulations. New subregulation 2.10(2) is intended to put beyond doubt that applications for an ETA, in addition to being made in person, may also be made by telephone, by written communication (including facsimile message), by electronic transmission using a computer or by any other manner approved in writing by the Minister.

#### Regulation 6 - Regulation 2.13 (Communication with Minister)

This regulation adds an extra paragraph (d) to subregulation 2.13(3). It provides that a communication with the Minister concerning an application for an ETA visa may be oral.

#### Regulation 7 - Regulation 2.33 (Effect of assurance of support)

This regulation omits regulation 2.33 of the Migration Regulations and substitutes a new regulation 2.33. The new regulation does not list specific allowances or benefits covered by the Assurance of Support scheme but instead refers to "support of a kind specified by Gazette Notice". The new regulation facilitates the administration of the Assurance of Support scheme by allowing any changes to the list of relevant allowances or benefits to be made by Gazette Notice. Previously it was necessary to amend the Migration Regulations.

#### Regulation 8 - Regulation 2.38 (Liability of person giving assurance of support)

This regulation omits subregulation 2.38(1) of the Migration Regulations and substitutes a new subregulation 2.38(1). The new regulation does not list specific allowances or benefits covered by the Assurance of Support scheme but instead refers to "support of a kind specified by Gazette Notice". The new regulation facilitates the administration of the Assurance of Support scheme by allowing any changes to the list of relevant allowances or benefits to be made by Gazette Notice. Previously it was necessary to amend the Migration Regulations.

#### Regulation 9 - Regulation 3.03 (Evidence of identity of arriving person etc. (Act, s. 166))

This regulation omits paragraph 3.03(2)(e) of the Migration Regulations and substitutes new paragraphs (c) and (f).

New paragraph (e) provides that the holder of an ETA visa must, when entering Australia, show a clearance officer evidence of the person's identity as specified in Part 1 of Schedule 9 and give the clearance officer a completed passenger card. Part 1 of Schedule 9 is amended by these Regulations to require that the holder of an ETA visa present a passport indicating that the holder is a national of a country specified by Gazette Notice.

New paragraph (f) repeats the provisions of omitted paragraph (e) with the addition of a reference to new paragraph (c).

#### Regulation 10 - Regulation 4.22 (Prescribed allowances - section 398 of the Act)

Under section 398 of the Act, the Principal Member of the Immigration Review Tribunal (IRT) is to be paid such allowances as are prescribed. This regulation omits regulation 4.22 of the Migration Regulations which prescribed an allowance of \$6.63 for each day or part of a day on which the Principal Member attends his or her duties.

At the time the IRT was established, the Remuneration Tribunal determined both an annual salary and an "expense of office" allowance for public office holders. As the Remuneration Tribunal now makes determinations on the basis of a single remuneration item (the separate "expense of office" component has been rolled into the one salary component) regulation 4.22 is no longer appropriate.

#### Regulation 11 - New Regulation 4.31A

This regulation inserts a new regulation 4.31A - Combined applications for review by the Tribunal - into the Migration Regulations. The new regulation has the purpose of enabling combined applications to the Refugee Review Tribunal (RRT) by persons of the same family unit whose applications for Protection (Class AZ) visas have been refused and their primary applications were combined. The decisions to refuse Protection (Class AZ) visas must be RRT-reviewable decisions.

This amendment will align the provisions relating to the RRT with the provisions relating to the Immigration Review Tribunal (IRT) (see regulation 4.12 of the Migration Regulations).

The new provisions are to apply to applications for review made on or after 1 August 1996.

#### Regulation 12 - Schedule 1 (Classes of visas)

This regulation provides for amendments to Schedule 1 to the Migration Regulations to be set out in Parts 1 and 2 of Schedule 1 to these Regulations.

#### Regulation 13 - Schedule 2 (Provisions with respect to the grant of subclasses of visas)

This regulation provides for amendments to Schedule 2 to the Migration Regulations to be set out in Schedule 2 to these Regulations.

#### Regulation 14 - Schedule 4 (Public Interest Criteria)

This regulation provides for amendments to Schedule 4 to the Migration Regulations to be set out in Schedule 3 to these Regulations.

#### Regulation 15 - Schedule 5 (Special Return Criteria)

This regulation provides for amendments to Schedule 5 to the Migration Regulations to be set out in Schedule 4 to these Regulations.

#### Regulation 16 - Schedule 8 (Visa conditions)

Subregulation 16.1 omits item 8521 from Schedule 8 of the Migration Regulations. This item was a condition placed on Subclass 428 (Religious Worker) visas and applied to the holder if the visa authorised a stay of 6 months or less. It barred the holder from being granted a

substantive visa which would allow a total stay in Australia of more than 6 months and also barred the grant of a Subclass 805 (Skilled) visa.

Subregulation 16.2 inserts new conditions 8527 and 8528 into the Migration Regulations.

New condition 8527 requires that the holder be free from tuberculosis at the time of travel to, and entry into, Australia. New condition 8529 requires that the holder must not have one or

more criminal convictions, for which the sentence or sentences (whether served or not) are for a total period of 12 months duration or more, at the time of travel to, and entry into, Australia. These conditions are being mandatorily imposed on the Electronic Travel Authority (Class UD) visa.

#### Regulation 17 - Schedule 9 (Special entry and clearance arrangements)

Part 1 of Schedule 9 (Persons to whom special arrangements apply under section 166 of the Act) is amended by these Regulations to require that the holder of an Electronic Travel Authority (Class LTD) visa present a passport indicating that the holder is a national of a country specified by Gazette Notice for the purposes of item 1208A in Schedule 1. Item 1208A is the new Electronic Travel Authority (Class LTD) visa,

#### Regulation 18 - Minor and formal amendments of the Migration Regulations

This regulation amends the Migration Regulations as set out in Schedule 5. All but one of these amendments involve the correction of typographical errors or update the names of Departments and agencies.

The exception is the definition of AusAID which is amended to include AIDAB (which is the former name of that agency). This change is relevant to the operation of special return criterion 5010 which does not permit AusAID or AIDAB sponsored students to be granted certain classes of visa within 2 years after the completion of their sponsored courses.

#### Regulation 19 - Transitional (Subclass 428)

The amendments made to clauses 428.224 and 428.611 of Part 428 of Schedule 2 to the Migration Regulations by these Regulations, apply to applications made on and after 1 August 1996.

Subregulation 19.1 provides that those amendments also apply to any applications made prior to 1 August 1996, that were not finally determined (within the meaning of subsection 5(9) of the Act) before that date.

Subregulation 19.2 provides that if a visa was granted before 1 August 1996, condition 8521 does not apply and is taken never to have applied- Condition 8521, which applied to a Subclass 428 (Religious Worker) visa, is omitted by these Regulations,

#### Regulation 20 - Transitional (Subclasses 820 and 8.26)

The amendments made to Parts 820 and 826 of Schedule 2 of the Migration Regulations by these Regulations apply to applications made on and after 1 August 1996. This regulation provides that those amendments also apply to any applications made prior to 1 August 1996, that were not finally determined (within the meaning of subsection 5(9) of the Act) before that date.

## **SCHEDULE 1 - AMENDMENTS OF SCHEDULE 1 TO THE MIGRATION REGULATIONS**

### **PART 1 - AMENDMENTS COMMENCING ON GAZETTAL**

This Part makes a number of amendments to Schedule 1 to require that applicants for humanitarian visas (Subclasses 200 to 205 inclusive and 208 to 217 inclusive) be outside Australia at the time of application for the application to be valid.

The humanitarian program is set up to assist refugees, and others suffering privation, for whom resettlement is the appropriate long-term solution. If applicants are already in Australia, they are

not in a situation of immediate danger and have access to onshore asylum procedures. It is intended that persons onshore who fear to return to their home, make application for a Protection (Class AZ) visa and not for a humanitarian visa.

## PART 2 - AMENDMENTS COMMENCING ON 1 AUGUST 1996

This regulation inserts a new item 1208A into Schedule 1 to the Migration Regulations. This item creates a new class - Electronic Travel Authority (Class UD) - and prescribes the way for making a valid application for an Electronic Travel Authority (Class LTD) visa.

An application for an Electronic Travel Authority (Class LTD) visa is not required to be made on an approved form.

- A fee of \$35 is prescribed in relation to an applicant who satisfies the requirements for a Subclass 956 (Electronic Travel Authority (Business Entrant - Long Validity)). In any other case there is no fee for the application.
- An application for an Electronic Travel Authority (Class UD) visa must be made outside Australia and the applicant must be outside Australia.
- An applicant must hold a valid passport indicating that he or she is a national of a country specified by Gazette Notice.
- An application by a person included in the passport of another person may be made at the same time and same place as, and combined with, the application by that person.
- The Electronic Travel Authority (Class UD) will comprise three subclasses:
  - \* Subclass 956 Electronic Travel Authority (Business Entrant - Long Validity);
  - \* Subclass. 976 Electronic Travel Authority (Visitor); and
  - \* Subclass 977 E1ectronic Travel Authority (Business Entrant - Short Validity).

## **SCHEDULE 2 - AMENDMENTS OF SCHEDULE 2 TO THE MIGRATION REGULATIONS**

### PART 1 - SCHEDULE 2: AMENDMENTS COMMENCING ON 1 JULY 1996

#### Clause 1 - Schedule 2. Part 417 (Working Holiday)

Subclause 1.1 omits clause 417.212 and substitutes a new clause 417.212. New clause 417.212 reflects the policy intention that:

- if an application for a Working Holiday (Class TZ) visa is made in the migration zone, the applicant must satisfy paragraphs 417.212 (a), (b) or (c) in addition to satisfying other clauses of Part 417;
- clauses 417.214 and 417.2 15 only apply to applications that are made outside Australia; and
- if an application is made in the migration zone, the applicant must satisfy clause 417.219.

Subclause 1.2 amends subclause 417.214(2) to enable the countries participating in the Working Holiday Maker scheme to be specified by Gazette Notice.



Subclause 1.3 amends paragraph 417.216(a) by inserting "or remain in" into the paragraph. This amendment reflects the policy intention that clause 417.216 applies to applications for Working Holiday (Class TZ) visas made outside Australia and to applications for Working Holiday (Class TZ) visas made in the migration zone.

Subclause 1.4 omits clause 417.221 and substitutes a new clause 417.221 which more clearly outlines the criteria to be satisfied at time of decision for both applications made outside Australia and applications made in the migration zone. It is intended that, in addition to satisfying public interest criteria 4001 to 4005 and 4010, all applicants must continue to satisfy the criteria previously satisfied at time of application, as outlined in clauses 417.211 and 417.212.

Subclause 1.5 omits clause 417.223 because it is not required following the amendment to clause 417.221.

## PART 2 - SCHEDULE 2: GENERAL AMENDMENTS

### Clause 1 - Schedule 2, Part 10 1 (Child)

These amendments delete all references to special return criteria which apply to this subclass. Visa applicants in this subclass will no longer be subject to any of the restrictions imposed by those criteria.

### Clause 2 - Schedule 2, Part 102 (Adoption)

These amendments delete all references to special return criteria which apply to this subclass. Visa applicants in this subclass will no longer be subject to any of the restrictions imposed by those criteria.

### Clause 3 - Schedule 2, Part 103 (Parent)

These amendments are consequential to the regulations simplifying the operation of special return criteria. Existing clauses 103.225 and 103.324 and existing paragraph 103.227(1)(b) are amended to remove references to those criteria which have been deleted from Schedule 5 as part of the overall special return criteria simplification.

### Clause 4 - Schedule 2. Part 104 (Preferential Family)

Clauses 104.224 and 104.324 and paragraph 104.226(1)(b) are omitted and new clauses 104.224, 104.224A, 104.324 and 104.324A and paragraph 104.226(1)(b) are substituted. The amendments are intended to exclude orphan relatives from the restrictive operation of special return criteria. In addition, the amendments remove references to special return criteria that have been deleted from Schedule 5 as part of the overall special return criteria simplification.

### Clause 5 - Schedule 2, Part 428 (Religious Worker)

Subclause 5.1 omits clause 428.224 of Schedule 2 of the Migration Regulations which required an applicant to have a specified level of competency in English if the applicant wished to remain in Australia longer than six months. This will allow religious organisations to sponsor religious workers to undertake work in Australia for longer than 6 months without having to satisfy the competency in English requirement.

Subclause 5.2 omits clause 428.611 and substitutes a new clause 428.611 which does not include condition 8521. This condition, which is omitted by these Regulations, applied to the holder of a Subclass 428 (Religious Worker) visa if the visa authorised a stay of 6 months or less.

It barred the holder from being granted a substantive visa which would allow a total stay in Australia of more than 6 months and it barred the grant of a Subclass 805 (Skilled) visa.

Subclause 5.3 makes a technical amendment to clause 482.612.

Clause 6 - Schedule 2, Part 444 (Special Category)

Reference to the *Migration (Delayed Visa Applications) Tax Act 1992* is omitted from a note because that Act has been repealed.

Clause 7 - Schedule 2, Part 560 (Student)

In 1993/94 and 1994/95, a total of 20 displaced Burmese students in Thailand came to Australia for postsecondary study under the Australian aid program.

Subclause 7.1 makes amendments consequential upon the amendments made by subclauses 7.2 and 7.3 of these Regulations.

Subclause 7.2 omits subclause 560.224(4) and substitutes new subclauses (4) and (5).

New subclause (4) provides for the grant of further subclass 560 visas to Burmese students who are continuing their studies in Australia under this special program.

New subclause (5) enables the grant of a further five subclass 560 visas to Burmese students sponsored by AusAID. The applications are required to be made on or before 30 June 1997.

Subclause 7.3 omits clause 560.224A of the Migration Regulations as it no longer has effect.

Subclause 7.4 makes amendments consequential upon the amendments made by subclauses 7.2 and 7.3 of these Regulations.

Clause 8 - Schedule 2, Part 773 (Border)

This amendment ensures that the new public interest criteria 4013 and 4014 do *not* apply to the dependent children of Australian citizens, Australian permanent residents, eligible New Zealand citizens or persons who hold a visa of a class listed in subclause 773.213(2).

Clause 9 - Schedule 2, Part 804 (Aged Parent)

Reference to the *Migration (Delayed Visa Applications) Tax Act 1992* is omitted from a note because that Act has been repealed.

Clause 10 - Schedule 2, Part 820 (Spouse)

Subclause 10.1 omits paragraph 820.211(2)(d) of the Migration Regulations and substitutes a new paragraph which includes a waiver provision regarding the Schedule 3 requirements. The Schedule 3 requirements impose certain restrictions on unlawful non-citizens who apply onshore for residence on spouse grounds. The introduction of a waiver provision recognises the hardship that can result if an unlawful non-citizen wishing to remain in Australia on spouse grounds is obliged to leave Australia and apply from overseas. The waiver will provide greater flexibility for the Minister if and when compelling circumstances arise.

It is expected that the waiver will be exercised only where there are reasons of a "strongly compassionate" nature such as:

- where there are Australian-citizen children from the relationship; or
- where the applicant and his or her nominator are already in a long-standing relationship which has been in existence for two years or longer.

In these circumstances, waiver may be justified by the hardship which could result if the Schedule 3 criteria were not waived.

Subclause 10.2 makes an amendment similar to that made by subclause 10.1 to clause 820.312 of the Migration Regulations, which applies to persons seeking to satisfy secondary criteria.

#### Clause 11 - Schedule 2, Part 826 (Interdependency)

Subclause 11.1 omits subparagraph 826.212(2)(e)(5) of the Migration Regulations and substitutes a new subparagraph which includes a waiver provision regarding the Schedule 3 requirements. The Schedule 3 requirements impose certain restrictions on unlawful noncitizens who apply on-shore for residence on interdependency grounds. The introduction of a waiver provision recognises the hardship that can result if an unlawful non-citizen wishing to remain in Australia on interdependency grounds is obliged to leave Australia and apply from overseas. The waiver will provide greater flexibility for the Minister if and when compelling circumstances arise.

It is expected that the waiver will be exercised only where there are reasons of a "strongly compassionate" nature such as where the applicant and his or her nominator are already in a long-standing relationship which has been in existence for two years or longer

Subclause 11.2 makes an amendment similar to that made by subclause 11.1 to clause 826.312 of the Migration Regulations, which applies to secondary applicants.

#### Clause 12 - Schedule 2, Part 833 (Certain Unlawful Non-Citizens)

Reference to the *Migration (Delayed Visa Applications) Tax Act 1992* is omitted from a note because that Act has been repealed.

#### Clause 13 - Schedule 2

A number of notes are omitted. They all refer to the *Migration (Delayed Visa Applications) Tax Act 1992* which has been repealed.

### PART 3 - SCHEDULE 2: ELECTRONIC TRAVEL AUTHORITY (CLASS UD) VISA NEW PARTS 956, 976 AND 977 TO BE INSERTED AFTER PART 866

Three new subclasses are inserted into Schedule 2 of the Migration Regulations..

Subclass 956 Electronic Travel Authority (Business Entrant - Long Validity); Subclass 976 Electronic Travel Authority (Visitor); and Subclass 977 Electronic Travel Authority (Business Entrant - Short Validity).

These subclasses comprise the new visa - the Electronic Travel Authority (Class UD), also inserted into the Migration Regulations by these Regulations.

At the time of decision, an applicant for an Electronic Travel Authority (Class LTD) visa will be required to lawfully hold a passport which indicates that he or she is a national of a country specified by Gazette Notice, satisfy public interest criteria 4002, 4003, 4004, 4005, 4013 and 4014 and, if the applicant has previously been in Australia, satisfy special return criteria 5001 and 5002. A criterion of the primary criteria for Subclass 956 and Subclass 977 visas will require that

an applicant states an intention to visit Australia temporarily for business purposes. A criterion for the primary criteria for a Subclass 976 visa will require that an applicant states an intention to visit Australia temporarily for tourism.

There will be no secondary criteria for Subclass 976 - Electronic Travel Authority (Visitor). The secondary criteria for Subclass 956 - Electronic Travel Authority (Business Entrant Long Validity) and Subclass 977 - Electronic Travel Authority (Business Entrant - Short Validity) will require that an applicant is included in the passport of a person who satisfies the primary criteria, states an intention only to visit Australia temporarily, satisfies public interest criteria 4002, 4003, 4004, 4005, 4013 and 4014, and, if the applicant has previously been in Australia, satisfies special return criteria 5001 and 5002.

In all three subclasses, the applicants must be outside Australia when the visa is granted.

In all three subclasses, the holder may remain in Australia for up to three month periods. Holders of subclass 956 visas will be, able to travel to, and enter, Australia on multiple occasions for the life of the holder's passport. Holders of Subclass 976 visas will be able to travel to, and enter, Australia on multiple occasions within 12 months from the date of grant of the visa, or within the life of the holder's passport, whichever is the shorter. Holders of a Subclass 977 visa will be able to travel to and enter Australia on one or more occasions, as specified by the Minister, within 12 months from the date of grant of the visa, or the life of the passport if that is shorter.

Holders of Subclass 956 and 977 visas will have mandatory conditions 8112, 8201, 8205, 8527 and 8528. Holders of Subclass 976 visas will have mandatory conditions 8101, 8201, 8205, 8527 and 8528.

Conditions 8527 and 8528 are new conditions inserted into the Migration Regulations by subregulation 16.2 of these Regulations).

#### PART 4 - SCHEDULE 2: CONSEQUENTIAL AMENDMENTS - ELECTRONIC TRAVEL AUTHORITY (CLASS UD) VISA

Subclause 1.1 makes a number of amendments to Schedule 2 of the Migration Regulations to insert references to the new Electronic Travel Authority (Class UD) visa. This new visa is inserted into the Migration Regulations by these Regulations.

Subclauses 1.2 and 1.3 amend Subclass 456 - Business (Short Stay) - to include references to the three new subclasses inserted into the Migration Regulations by these Regulations:

Subclass 956 Electronic Travel Authority (Business Entrant - Long Validity); Subclass 976 Electronic Travel Authority (Visitor); and Subclass 977 Electronic Travel Authority (Business Entrant - Short Validity).

Subclauses 1.4, 1.5 and 1.6 amends Subclass 560 - Student - to insert references to the new Electronic Travel Authority (Class UD) visa. This new visa is inserted into the Migration Regulations by these Regulations.

Subclause 1.7 amends Subclass 805 - Skilled - to insert references to the new Electronic Travel Authority (Class UD) visa. This new visa is inserted into the Migration Regulations by these Regulations.

#### PART 5 - SCHEDULE 2: CONSEQUENTIAL AMENDMENTS - SPECIAL RETURN CRITERIA

This Part lists the provisions of Schedule 2 of the Regulations which are amended as a consequence of the amendments made by these Regulations to Special Return Criteria (SRC) (in Schedule 5) and Public Interest Criteria (PIC) (in Schedule 4).

The scheme of consequential amendments is largely mechanical:

- all existing references to SRC 5003, 5004, 5005, 5006, 5007 and 5008 are deleted.
- references to SRC 5010 are removed from Subclasses 300, 771 and 773 and from the secondary criteria in subclasses 121 and 412.
- an extra reference is included to SRC 5010 in Subclass 124.
- a new reference to SRC 5002 is inserted wherever an existing reference to SRC 5003 is deleted, except where there is already a reference to SRC 5002 in the same clause.
- new references to both PIC 4013 and 4014 are inserted where references are deleted to SRC 5004 to 5007.

### **SCHEDULE 3 - AMENDMENTS OF SCHEDULE 4 TO THE MIGRATION REGULATIONS**

New Public Interest Criteria (PIC) 4013 and 4014 are inserted into Schedule 4.

- These new criteria are only prescribed for temporary visa classes, contain no new criteria that do not currently exist in Special Return Criteria (SRC) 5004 to 5007, and incorporate a standard 3 year time limit within which the risk factors apply; however, not all criteria in existing SRC 5004 to 5007 have been incorporated in PIC 4013 and 4014 so they will apply in fewer circumstances than at present.

A visa application will normally be refused if the applicant's circumstances meet the criteria for a risk factor included in PIC 4013 (which contains 4 risk factors related to breaching conditions of previous visas or entry permits) or PIC 4014 (which contains 2 risk factors related to staying unlawfully in Australia for more than 28 days after a visa or entry permit had ceased to be in effect).

Both criterion 4013 and criterion 4014 include identical waiver provisions which allow the Minister or his delegate to treat the PIC as not applying to the application if there are compelling circumstances affecting the interests of Australia, or that there are compassionate or compelling circumstances affecting the interests of an Australian citizen, Australian permanent resident or an eligible New Zealand citizen.

New criterion 4013 provides that a visa applicant will be subject to a risk factor if fewer than 3 years have passed since any one of the following events occurred:

- a visa that was held by the visa applicant was cancelled under section 116 of the Migration Act for breaching a condition applying to the visa with respect to work, study or health insurance. Part 2 of Schedule 4 lists visa subclasses and the relevant condition that must have been breached to bring a person within this risk factor.
- a temporary entry permit that was held by the visa applicant was cancelled under section 35 of the Migration Act before 1 September 1994 (when the Act was amended and renumbered).
- a temporary entry permit that was held by the visa applicant ceased to be in force before 1 September 1994 because the Minister or his delegate had made a written determination that the person had failed to comply with a terminating condition of the entry permit.
- the Minister or his delegate had made, before 1 September 1994, a written determination under regulation 3.38 of the Migration (1993) Regulations that the visa applicant had failed to comply with a condition of an entry permit.

New criterion 4014 provides that a visa applicant will be subject to a risk factor if fewer than 3 years have passed since either of the following events occurred:

- the person left Australia before 1 September 1994 after the expiry of the period of grace that applied to persons who had stayed beyond the period specified in their visas or entry permits; but a person who would otherwise be affected by this risk factor will not be affected if the person had made a review application and left Australia within 7 days of being notified of the result of a review application.
- the person left Australia as an unlawful non-citizen, or as the holder of a bridging visa that was granted while the person had been an unlawful non-citizen for more than 28 days when the bridging visa was granted.

New Part 2 of Schedule 4 lists those visa subclasses and the associated conditions which must have been breached if a visa applicant is to come within the risk factor specified at paragraph 4013 (2)(b) of the Regulations (see above under the 1st dash point under criterion 4013).

#### **SCHEDULE 4 - AMENDMENTS OF SCHEDULE 5 TO THE MIGRATION REGULATIONS**

Subclause 1.1 amends the heading of Schedule 5 of the Regulations to omit the existing reference to Part 1. This reference is no longer needed because Part 2 is being deleted as a consequence of the deletion of existing Special Return Criteria (SRC) 5004 and 5005.

Subclause 1.2 amends SRC 5001 to include a further ground that brings a visa applicant within the SRC, namely that the visa applicant is a person whose visa has been cancelled under subsection 501(1) of the Migration Act because the Minister or his delegate has decided that 9 the person is not of good character because of the person's criminal conduct. This amendment ensures that a person whose visa has been cancelled under section 501 of the Act on account of criminal conduct will be subject to the same conditions of exclusion from Australia as a person who is *deported* for criminal conduct: that is, the intention is that people who are required to leave Australia on account of their criminal conduct will be treated equally when they apply for visas. The wording of the amendment has been designed to match exactly the special circumstances in subparagraph 50 1 (2)(a)(i) of the Migration Act and is not intended to cover any of the other circumstances in which a visa may be cancelled under subsection 501(1).

Subclause 1.3 amends SRC 5002 to simplify it by including some, but not all, of the existing grounds in existing SRC 5002 and 5003. The principal change is to reduce the period in which a person may not apply for a visa to 1 year (from the existing 30 months in SRC 5002 and 5 years in SRC 5003). As a consequence of prescribing a uniform 1 year period, existing references to the Migration Act prior to 1 September 1994 are irrelevant to the working of the SRC and are deleted. SRC 5002 is also amended to provide that the conditions for waiver will be precisely the same as for Public Interest Criteria 4013 and 4014.

Subclause 1.4 omits SRC 5003 to 5009.

- SRC 5003 is no longer needed because amended SRC 5002 will cover the same circumstances.
- SRC 5004 to 5007 are no longer needed because they are replaced by new Public Interest Criteria 4013 and 4014.
- SRC 5008 and 5009 are deleted because the passage of time means that very few potential visa applicants now come within the circumstances covered by those provisions. Deletion of these SRC will also act as an incentive for persons who came within the ambit of deleted SRC 5007 and 5008 and who are unlawfully in Australia to leave Australia voluntarily and apply for a

visa overseas (if they are eligible) since no exclusion period will then apply to them if they are otherwise satisfy the criteria for the grant of a visa.

Subclause 1.5 amends paragraph 5010(1)(c) to limit the grounds for waiver to the same circumstances as for amended clause 5002.

Subclause 1.6 amends SRC 50 10 to remove references to all students other than those who are sponsored by AusAID. This change is in conformity with changed Department of Employment Education Training and Youth Affairs policy and leaves only AusAID-sponsored students within the ambit of SRC 5010.

Subclause 1.7 omits Part 2 of Schedule 5 of the Migration Regulations as it is no longer needed with the omission of clauses 5004 and 5005 by these Regulations.

## **SCHEDULE 5 - MINOR AND FORMAL AMENDMENTS OF THE MIGRATION REGULATIONS**

This schedule sets out a number of amendments to the Migration Regulations. All but one of these amendments involve the correction of typographical errors or. update the names of Departments and agencies.

The exception is the definition of AusAID which is amended to include AIDAB (the former name of that agency). This change is relevant to the operation of special return criterion 5010 which does not permit AusAID or AIDAB sponsored students to be granted certain classes of visa within 2 years after the completion of their sponsored courses.