

Migration Regulations (Amendment) 1996 No. 76

EXPLANATORY STATEMENT

STATUTORY RULES 1996 No. 76

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(3) of the Act provides that the regulations may prescribe criteria for visas of a specified class. 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(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;
- * subsection 40(1) of the Act provides that, the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- * 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 provide for the places in which an applicant must be when an application for a visa of a specified class is made;
- * 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 58(2) of the Act provides for a period to be prescribed within which additional information or comments are to be given in response to the Minister's invitation to respond otherwise than at interview;

- * paragraph 58(3)(b) provides for the period to be prescribed within which an interview is to take place;
- * 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 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.

The purpose of the Regulations is to amend the Migration Regulations to give effect to the Report by the Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists (the Report).

The Report recommended that streamlined processing be available for long term temporary entry of persons for temporary business purposes and that the primary principle for the entry of such persons is that there is a benefit to Australia. The recommendations of the Report are implemented by these Regulations as set out below.

Regulation 4 inserts Division 1.4A (Temporary business entry: sponsorship and nomination). The key provisions of the Division are:

- * a person can apply for approval as a pre-qualified business sponsor or standard business sponsor and the period that the approval is in effect (regulations 1.20C and 1.20D);
- * an approved pre-qualified business sponsor can have that approval renewed (regulation 1.20E);
- * an approved pre-qualified business sponsor or a standard business sponsor can have that approval revoked (regulation 1.20F); and
- * a business can nominate an activity for which they require a person to be employed and have a decision on that nomination (regulations 1.20G and 1.20H).

Regulations 5 to 31 inclusive are made as a result of amendments to other provisions of the Migration Regulations as a consequence of implementation of the recommendations of the Report.

Regulation 32 inserts new Part 457 into the Migration Regulations to prescribe criteria for a visa for temporary business purposes for longer than 3 months but less than 4 years (see the Schedule to these Regulations).

Regulations 33 to 40 inclusive are made as a result of amendments to other provisions of the Migration Regulations as a consequence of implementation of the recommendations of the Report.

Regulation 41 provides for transitional arrangements for applications under the old temporary business entry provisions that are not finally determined on commencement of these Regulations.

The Schedule to the Regulations inserts new Part 457 into Schedule 2 to the Migration Regulations. New Part 457 prescribes criteria based on the provisions above and also achieves rationalisation of the existing means of temporary entry into Australia for business purposes.

The Regulations commence on 1 August 1996.

Details of the Regulations are set out in the Attachment.

ATTACHMENT

This regulation provides that these Regulations commence on 1 August 1996.

Regulation 7 - Amendment

This regulation provides that the Migration Regulations are amended by these Regulations.

Regulation 1 - Regulation 1.08 (Compelling need to work)

This regulation amends the definition of "compelling need to work" in regulation 1.08 of the Migration Regulations consequential to amendments to the temporary business entry provisions made by these Regulations and allows certain applicants for the new Subclass 457 Business (Long Stay) visa to meet the definition. Persons who applied for a Business (Temporary) (Class TB) visa prior to its repeal by these Regulations may still meet the definition of "compelling need to work" after 1 August 1996 while their applications are not finally determined.

In order to maintain the relevant visa subclasses in the scope of the definition it is necessary to add references to certain applicants for an Educational (Temporary) (Class TH) visa and the new Medical Practitioner (Temporary) (Class UE) visa. The former Class includes Subclass 418 (Educational) and the latter includes Subclass 422 (Medical Practitioner), both of which were included in the Business (Temporary) (Class TB) visa prior to its repeal by these Regulations.

Regulation 4 - New Division 1.4A

This regulation inserts a new Division 1.4A (Temporary business entry: sponsorship and nomination) in Part 1 of the Migration Regulations. The new Division 1.4A comprises nine new regulations - 1.20A to 1.20I.

New regulation 1.20A (Object of this Division) sets out the object of the new Division 1.4A, which is to provide for:

- * the making of applications for approval as a business sponsor;
- * nominations by business sponsors of activities to be undertaken in Australia by prospective holders of Subclass 457 (Business (Long Stay)) visas;
- * approval of those applications and nominations; and
- * revocation of approvals as a business sponsor.

Approval as a business sponsor and approval of a nomination of an activity to be undertaken in Australia are required for the purposes of the new Part 457, inserted in Schedule 2 to the Migration Regulations by these Regulations. For further details of the new Part 457, see the notes below on the Schedule to these Regulations.

New regulation 1.20B (Interpretation) provides interpretations of the terms "key activity", "labour market testing", "person", "pre-qualified business sponsor" and "standard business sponsor", for the purposes of the new Division 1.4A.

New regulation 1.20D (Applications for approval as business sponsors) provides for applications to be made to the Minister by a person (which includes natural persons and corporate and unincorporated bodies) for approval as either a pre-qualified business sponsor or a standard business sponsor. The application must be on the approved form 1067. A fee of \$3,000 is

payable in respect of an application for approval as a pre-qualified business sponsor. There is no fee for an application for approval as a standard business sponsor.

New regulation 1.20D (Approval as business sponsors) provides for the Minister to approve an application for approval as a pre-qualified business sponsor or as a standard business sponsor. Regulation 1.20D also sets out the requirements for approval as either a pre-qualified business sponsor or a standard business sponsor.

Subregulation 1.20D(1) provides that subject to this Regulation, the Minister may, by instrument in writing, approve or reject an application for approval as a pre-qualified business sponsor or as a standard business sponsor.

Subregulation 1.20D(2) provides that the Minister must approve an application for approval as a pre-qualified business sponsor or as a standard business sponsor made in accordance with regulation 1.20C if the Minister is satisfied that the applicant is lawfully operating a business in Australia in which employment of a Subclass 457 visa holder would contribute to:

- * the creation or maintenance of employment for Australian citizens or Australian permanent residents; or
- * the expansion of Australian trade in goods or services; or
- * the improvement of Australian business links with international markets; or
- * competitiveness within sectors of the Australian economy.

The Minister must also be satisfied that:

- * each holder of a Subclass 457 visa granted to a person satisfying the primary criteria on the basis of business sponsorship by the applicant will be directly employed by the applicant (or by a related body corporate);
- * the applicant will introduce to, utilise, or create new or improved technology or business skills in Australia, or has a satisfactory record of, or demonstrated commitment, towards training Australian citizens or Australian permanent residents in the business's operations;
- * nothing adverse is known to the Department about the business background of the applicant;
- * the applicant has complied (where relevant) with Australia's immigration laws; and
- * the applicant is able to fulfil the undertakings of a business sponsor undertaken on approved form 1067 in relation to holders of Subclass 457 visas granted on the basis of business sponsorship by the applicant.

Subregulation 1.20D(3) provides that an instrument approving a person as a standard business sponsor must specify the maximum number of nominations of business activities that may be approved under regulation 1.20H. That number of nominations of business activities so determined cannot exceed the number proposed under regulation 1.20H in relation to the standard business sponsor while the approval is in effect.

Subregulation 1.20D(4) provides that as soon as practicable after deciding an application for approval as a pre-qualified business sponsor or a standard business sponsor, the Minister must

provide the applicant with a copy of the instrument approving or rejecting the application: and if the application is rejected, a statement of the reasons why the application was not approved.

Subregulation 1.20D(5) provides that unless renewed under the provisions of the new regulation 1.20E, that approval as a pre-qualified business sponsor has effect for 24 months commencing on the day approval is given or on revocation of the approval under regulation 1.20F whichever happens first. During the period of approval, a pre-qualified business sponsor may make any number of nominations of activities in which Subclass 457 visa holders are proposed to be employed in Australia by that prequalified business sponsor.

Subregulation 1.20D(6) provides that approval of a person as a standard business sponsor ceases to have effect whenever any of the following first occurs:

- * the number of Subclass 457 visas granted since giving of the approval, on the basis of the applicant satisfying the primary criteria and that person is the employer of those visa holders, is equal to the number of business nominations determined under subregulation (3);
- * at the end of the period of 12 months commencing on the day on which the approval was given; or
- * on revocation of the approval under regulation 1.20F.

New regulation 1.20E (Renewal of approvals as pre-qualified business sponsors) provides that:

- * the Minister may, by instrument in writing, renew or refuse to renew the approval of a person as a pre-qualified business sponsor for a period of 12 months after the expiry of the current period of approval;
- * approval of a person as a pre-qualified business sponsor must be renewed, subject to subregulation (3), by the Minister for 12 months on payment of a fee of \$1,000 by the person before the end of the previous approval period;
- * subregulation (3) provides that the Minister must not renew the approval unless the Minister is satisfied that the pre-qualified business sponsor continues to satisfy the requirements for approval as a pre-qualified business sponsor (see new regulation 1.20D) and has properly fulfilled the responsibilities of a pre-qualified business sponsor;
- * as soon as practicable after the Minister makes a decision to renew, or refuse to renew, the approval of a person as a pre-qualified business sponsor, the Minister must provide the person with:
 - a copy of the instrument renewing or refusing to renew the approval; and
 - if the Minister refuses to renew the approval, the reasons for the refusal.

New Regulation 120E (Revocation of approval as business sponsor) provides that without limiting the power of the Minister to revoke the approval of a person as a pre-qualified business sponsor or as a standard business sponsor, the Minister may, in particular, by instrument in writing, revoke the approval if the Minister is satisfied that the person has not complied, or is not complying with the undertakings given in accordance with approved form 1067 or does not continue to satisfy the requirements for approval as a pre-qualified business sponsor or as a standard business sponsor.

As soon as practicable after revoking the approval, the Minister must provide the person with a copy of the instrument revoking the approval and a statement of the reasons for the revocation.

New Regulation 1.20G (Nomination of business activities) provides that certain persons may nominate to the Minister an activity in which an individual is proposed to be employed by the person in Australia. The nomination must be made in accordance with approved form 1068. Unless the person is a party to a labour agreement or is a pre-qualified business sponsor, the nomination must be accompanied by a fee of \$205.

If a person (except a party to a labour agreement) nominates an activity that is not a key activity and proposes to employ a visa applicant in a position to perform the activity, the nomination must be accompanied by the results of labour market testing:

- * in the case of proposed employment for a period of more than 3, but not more than 12, months, where so required by the Minister; or
- * in the case of proposed employment for a period of more than 12 months.

New regulation 1.20H (Approval of nominations of business activities) provides that:

- * the Minister may, by instrument in writing, approve, or refuse to approve the nomination of an activity in which an individual is proposed to be employed in Australia;
- * subject to subregulation (3), the Minister must approve the nomination of an activity made in accordance with regulation 1.20G;
- * subregulation (3) provides that the Minister must not approve the nomination of an activity that is accompanied by the results of labour market testing unless the Minister is satisfied that those results indicate that a suitable qualified Australian citizen or permanent resident is not readily available to fill the position to which the nominated activity relates;
- * as soon as practicable after making the decision to approve, or to refuse to approve, the nomination of an activity, the Minister must provide the person with a copy of the instrument and a statement of the reasons for the decision; and
- * various times are prescribed when the nomination of an activity ceases to have effect.

New Regulation 1.20I (Exercise of Minister's powers under this Division) provides that in addition to being exercisable by the Minister or by a delegate of the Minister, the powers and functions of the Minister are exercisable by a person who is the holder of an office under the Act and is authorised in writing by the Minister to exercise those powers. When any of those powers or functions is exercised by such a person, that power or that function is taken to have been exercised by the Minister.

This regulation is to provide for the authority for persons authorised by the Minister, to participate in a scheme of administrative review of decisions under Division 1.4A which result in the refusal of an application, or the revocation of a grant, to a person. Advice has been obtained from the Attorney-General's Department that in order for a member of the Immigration Review Tribunal to participate in this scheme of review, it is necessary to empower, upon authorisation by the Minister, that member under this regulation.

The Regulations require all decisions concerning Division 1.4A to be made under instrument. Advice has been received from the Attorney-General's Department regarding the operation of

subsection 33(3) of the Acts Interpretation Act 1901 (AIA). This scheme of administrative review is within the power to revoke instruments pursuant to subsection 33(3) of the AIA.

Regulation 5 - Regulation 2.07AA (Applications for certain visitor visas)

Subregulation 5.1 amends regulation 2.07AA of the Migration Regulations by omitting "visit" and substituting "enter" consequential to amendments by these Regulations to Part 456 (Business (Short Stay)) of Schedule 2 to the Migration Regulations.

Regulation 6 - Regulation 2.10 (Where application must be made)

Subregulation 6.1 omits subparagraph 2.10(1)(a)(1i) of the Migration Regulations and substitutes a new subparagraph consequential to the amendments to the temporary business entry provisions by these Regulations. The Temporary Business Entry (Class UC) visa will include a second and new Subclass 457 Business (Long Stay) visa in addition to the existing Subclass 456 Business (Short Stay) visa. This amendment ensures that the regulation only refers to persons seeking to satisfy the Subclass 456 visa criteria, and not the criteria for the new Subclass 457 visa.

Regulation 7 - Regulation 2.15 (Response to invitation to give information or comments - prescribed periods)

Subregulations 7.1 and 7.2 omit subparagraph 2.15(1)(b)(ii) and paragraph 2.15(3)(b) of the Migration Regulations and substitutes a new subparagraph and paragraph respectively, consequential to the amendments to the temporary business entry provisions by these Regulations. These amendments ensure that regulation 2.15 of the Migration Regulations only refers to persons seeking to satisfy criteria for the Subclass 456 (Business (Short Stay)) visa, and not the criteria for the new Subclass 457 (Business (Long Stay)) visa.

Regulation 8 - Regulation 4.08 (Response to invitation to give information or comments on internal review of decision - prescribed periods)

Subregulations 8.1 and 8.2 omit subparagraphs 4.08(1)(a)(i) and 4.08(3)(a)(i) of the Migration Regulations and substitute new subparagraphs respectively, consequential to the amendments to the temporary business entry provisions by these Regulations. These amendments ensure that regulation 4.08 of the Migration Regulations only refers to persons seeking to satisfy the criteria for the Subclass 456 (Business (Short Stay)) visa, and not the criteria for the new Subclass 457 (Business (Long Stay)) visa.

Regulation 9 - Schedule 1 (Classes of visas)

Subregulation 9.1 omits item 1202 - Business (Temporary) (Class TB) - of Schedule 1 to the Migration Regulations. This item is omitted because all business temporary entry is provided for in the Temporary Business Entry (Class UC) visa as amended by these Regulations.

Subregulation 9.2 omits paragraph 1205(2)(a) of Schedule 1 to the Migration Regulations and substitutes a new paragraph in order to provide that there is no fee where the applicant seeks to satisfy the requirements for a Subclass 411 (Exchange) visa. This subclass is inserted into the Cultural/Social (Temporary) (Class TE) visa by these Regulations consequential to the amendments to the temporary business entry provisions. Subclass 411 was previously a subclass of the Business (Temporary) (Class TB) visa that is omitted by these Regulations.

Subregulations 9.3, 9.4 and 9.5 make technical amendments to paragraph 1205(2)(b), subparagraph 1205(2)(b)(ii)(F) and paragraph 1205(2)(c) of Schedule 1 to the Migration Regulations respectively.

Subregulation 9.6 amends subitem 1205(4) of Schedule 1 to the Migration Regulations by omitting 414 (Specialist (overseas)) and substituting 411 (Exchange), consequential to the streamlining and simplification of temporary business entry. Subclass 411 was previously a subclass of the Business (Temporary) (Class TB) visa that is omitted by these Regulations. Subclass 414 is omitted by these Regulations.

Subregulation 9.7 omits subitem 1207(4) of Schedule 1 to the Migration Regulations and substitutes a new subitem. It makes a technical amendment to subitem 1207(4).

Subregulation 9.8 inserts a new item 1214AA (Medical Practitioner (Temporary) (Class UE)) in Schedule 1 to the Migration Regulations. The effect of the new item 1214AA is to prescribe a new class of visa, Medical Practitioner (Temporary) (Class UE). The new class of visa has only one subclass - Subclass 422 (Medical Practitioner) - the criteria for which remain prescribed in Part 422 of Schedule 2 to the Migration Regulations. Subclass 422 was formerly a subclass of the Business (Temporary) (Class TB) visa that is omitted by these Regulations as part of the rationalisation of temporary business visas.

New item 1214AA provides that applications for the new Medical Practitioner (Temporary) (Class UE) visa must be made on form 147 and the fee is \$145. The application may be made in or outside Australia but not in immigration clearance. Applicants must be in Australia to make an application in Australia. Applications by members of a family unit may be combined with the application of any other member of the same family unit.

Subregulation 9.9 omits subitem 1222(4) of Schedule 1 to the Migration Regulations and substitutes a new subitem. It makes a technical amendment to subitem 1222(4).

Subregulation 9.10 omits item 1223A of Schedule 1 to the Migration Regulations and substitutes a new item which inserts the provisions of the omitted item and adds a second subclass to the Temporary Business Entry (Class UC) visa. This is the new Subclass 457 (Business (Long Stay)) visa that is based on the former subclasses 412 (Independent Executive), 413 (Executive) and 414 (Specialist) which are omitted by these Regulations., The amended item combines the provisions for the existing Subclass 456 (Business (Short Stay)) visa and provisions for the new Subclass 457 visa. The amended item also provides for applications by persons who are, or who are expected to be, accorded certain privileges and immunities in Australia and who are expected to be recommended by the Foreign Minister for the grant of the visa.

Regulation 10 - Schedule 2, Part 303 (Emergency)

Regulation 10 amends Part 303 of Schedule 2 to the Migration Regulations.

Subregulation 10.1 omits the heading and substitutes a new heading.

Subregulation 10.2 omits paragraph 303.212(a) and substitutes a new paragraph consequential to the amendments to the temporary business entry provisions. The paragraph is restructured so that visa classes are listed in new subparagraph (i) and the new Medical Practitioner (Temporary) (Class UE) visa is added to this list. New subparagraph (ii) provides for applicants seeking to satisfy the criteria for the new Subclass 457 (Business (Long Stay)) visa which is inserted by these Regulations.

Regulation 11 - Schedule 2, Part 410 (Retirement)

Regulation 11 amends Part: 410 of Schedule 2 to the Migration Regulations.

Subregulation 11.1 omits paragraphs 410.211(2)(a) and (b) and substitutes new paragraphs (a) and (b) which have been restructured so that visa classes are listed in the new subparagraphs (i)

and visa subclasses are listed in the new subparagraphs (ii). Consequential to the amendments to the temporary business entry provisions, the subregulation adds the new Medical Practitioner (Temporary) (Class UE) visa to subparagraph (a)(i) and the new Subclass 457 (Business (Long Stay)) visa to subparagraph (a)(ii).

Consequential amendments are necessary where "Temporary Business Entry (Class UC)" is only intended to refer to the existing Subclass 456 (Business (Short Stay)) visa. Accordingly, in paragraph (b) reference is made to the Subclass 456 visa at subparagraph (ii)

Regulation 12 - Schedule 2, Part 411 (Exchange)

Subregulation 12.1 omits paragraphs 411.211 (a) and (b) of Schedule 2 to the Migration Regulations and substitutes new paragraphs (a) and (b) which have been restructured so that visa classes are listed in the new subparagraphs (i) and visa subclasses are listed in the new subparagraphs (ii). The effect of this regulation is the same as that referred to in subregulation 11.1 above.

Regulation 13 - Schedule 2, Part 412 (Independent Executive)

Subregulation 13.1 omits Part 412 (Independent Executive) of Schedule 2 to the Migration Regulations consequential to the simplification and streamlining of the temporary business entry provisions. Provisions of Part 412 have been incorporated into the new Subclass 457 (Business (Long Stay)) visa, inserted into the Migration Regulations by these Regulations.

Regulation 14 - Schedule 2, Part 413 (Executive)

Subregulation 14.1 omits Part 413 (Executive) of Schedule 2 to the Migration Regulations consequential to the simplification and streamlining of the temporary business entry provisions. Provisions of Part 413 have been incorporated into the new Subclass 457 (Business (Long Stay)) visa, inserted into the Migration Regulations by these Regulations.

Regulation 15 - Schedule 2, Part 414 (Specialist)

Subregulation 15.1 omits Part 414 (Specialist) of Schedule 2 to the Migration Regulations consequential to the simplification and streamlining of the temporary business entry provisions. Provisions of Part 414 have been incorporated into the new Subclass 457 (Business (Long Stay)) visa, inserted into the Migration Regulations by these Regulations.

Regulation 16 - Schedule 2, Part 415 (Foreign Government Agency)

Regulation 16 amends Part 415 of Schedule 2 to the Migration Regulations.

Subregulation 16.1 omits paragraphs 415.211 (a) and (b) and substitutes new paragraphs (a) and (b) which have been restructured so that visa classes are listed in the new subparagraphs (i) and visa subclasses are listed in the new subparagraphs (ii). The effect of this regulation is the same as that referred to in subregulation 11.1 above.

Subregulation 16.2 omits paragraph 415.229(1)(a) and substitutes a new paragraph (a) which has been restructured so that visa classes are listed in new subparagraph (i) and visa subclasses are listed in new subparagraph (ii). Consequential to the amendments to the temporary business entry provisions, the subregulation inserts the new Medical Practitioner (Temporary) (Class UE) visa in subparagraph (i).

Regulation 17 - Schedule 2, Part 416 (Special Program)

Subregulation 17.1 omits paragraphs 416.211 (a) and (b) of Schedule 2 to the Migration Regulations and substitutes new paragraphs (a) and (b) which have been restructured so that visa classes are listed in the new subparagraphs (i) and visa subclasses are listed in the new subparagraphs (ii). The effect of this regulation is the same as that referred to in subregulation 11.1 above.

Regulation 19 - Schedule 2, Part 418 (Education)

Regulation 18 amends Part 418 of Schedule 2 to the Migration Regulations.

Subregulation 18.1 omits paragraphs 418.211 (a) and (b) and substitutes new paragraphs (a) and (b) which have been restructured so that visa classes are listed in the new subparagraphs (i) and visa subclasses are listed in the new subparagraphs (ii). The effect of this regulation is the same as that referred to in subregulation 11.1 above.

Subregulation 18.2 omits paragraph 418.230(a) and substitutes a new paragraph (a) which has been restructured so that visa classes are listed in subparagraph (i) and visa subclasses are listed in subparagraph (ii). Consequential to the amendments to the temporary business entry provisions, the subregulation inserts the new Medical Practitioner (Temporary) (Class UE) visa in subparagraph (i), and the new Subclass 457 (Business (Long Stay)) visa in subparagraph (ii).

Subregulation 18.3 amends clause 418.231 consequential to the amendments to the temporary business entry provisions. As these Regulations add the new Subclass 457 (Business (Long Stay)) visa to the Temporary Business Entry (Class UC) visa, consequential amendments are necessary where reference to "Temporary Business Entry (Class UC)" is only intended to refer to the existing Subclass 456 (Business (Short Stay)) visa. Accordingly, in clause 418.231 reference is made to the Subclass 456 visa.

Regulation 19 - Schedule 2, Part 419 (Visiting Academic)

Subregulation 19.1 omits paragraphs 419.21 1(a) and (b) of Schedule 2 to the Migration Regulations and substitutes new paragraphs (a) and (b) which have been restructured so that visa classes are listed in the new subparagraphs (i) and visa subclasses are listed in the new subparagraphs (ii). The effect of this regulation is the same as that referred to in subregulation 11.1 above.

Regulation 70 - Schedule 2, Part 420 (Entertainment)

Subregulation 20.1 omits paragraphs 420.211 (a) and (b) of Schedule 2 to the Migration Regulations and substitutes new paragraphs (a) and (b) which have been restructured so that visa classes are listed in the new subparagraphs (i) and visa subclasses are listed in the new subparagraphs (ii). The effect of this regulation is the same as that referred to in subregulation 11.1 above.

Regulation 21 - Schedule 2, Part 421 (Sport)

Subregulation 21.1 omits paragraphs 421.211 (a) and (b) of Schedule 2 to the Migration Regulations and substitutes new paragraphs (a) and (b) which have been restructured so that visa classes are listed in the new subparagraphs (i) and visa subclasses are listed in the new subparagraphs (ii). The effect of this regulation is the same as that referred to in subregulation 11.1 above.

Regulation '77. - Schedule 2, Part 422 (Medical Practitioner)

Regulation 22 amends Part 422 of Schedule 2 to the Migration Regulations.

Subregulation 22.1 omits paragraphs 422.211 (a) and (b) and substitutes new paragraphs (a) and (b) which have been restructured so that visa classes are listed in the new subparagraphs (i) and visa subclasses are listed in the new subparagraphs (ii). The effect of this regulation is the same as that referred to in subregulation 11.1 above.

Subregulation 22.2 amends subclause 422.227(4) consequential to the amendments to the temporary business entry provisions. The effect of this regulation is the same as that referred to in subregulation 18.3 above.

Regulation 23 - Schedule 2, Part 423 (Media and Film Staff)

Regulation 23 amends Part 423 of Schedule 2 to the Migration Regulations.

Subregulation 23.1 omits paragraphs 423.211 (a) and (b) and substitutes new paragraphs (a) and (b) which have been restructured so that visa classes are listed in the new subparagraphs (i) and visa subclasses are listed in the new subparagraphs (ii). The effect of this regulation is the same as that referred to in subregulation 11.1 above.

Subregulation 23.2 omits paragraph 423.229(a) and substitutes a new paragraph (a) which has been restructured so that visa classes are listed in the new subparagraph (i) and visa subclasses are listed in the new subparagraph (ii). Consequential to the amendments to the temporary business entry provisions, the subregulation inserts in subparagraph (i) the new Medical Practitioner (Temporary) (Class UE) visa, and in subparagraph (ii) the new Subclass 457 (Business (Long Stay)) visa.

Regulation 24 - Schedule 2, Part 424 (Public Lecturer)

Regulation 24 amends Part 424 of Schedule 2 to the Migration Regulations.

Subregulation 24.1 omits paragraphs 424.211 (a) and (b) and substitutes new paragraphs (a) and (b) which have been restructured so that visa classes are listed in the new subparagraphs (i) and visa subclasses are listed in the new subparagraphs (ii). The effect of this regulation is the same as that referred to in subregulation 11.1 above.

Subregulation 24.2 omits paragraph 424.229(a) and substitutes a new paragraph (a) which has been restructured so that visa classes are listed in the new subparagraph (i) and visa subclasses are listed in the new subparagraph (ii). The effect of this regulation is the same as that referred to in subregulation 23.2 above.

Regulation 25 - Schedule 2, Part 425 (Family Relationship)

Subregulation 25.1 omits paragraphs 425.211 (a) and (b) of Schedule 2 to the Migration Regulations and substitutes new paragraphs (a) and (b) which have been restructured so that visa classes are listed in the new subparagraphs (i) and visa subclasses are listed in the new subparagraphs (ii). The effect of this regulation is the same as that referred to in subregulation 11.1 above.

Regulation 26 - Schedule 2, Part 427 (Domestic Worker (Temporary) - Executive)

Regulation 26 amends Part 427 of Schedule 2 to the Migration Regulations.

Subregulation 26.1 omits paragraphs 427.211 (a) and (b) and substitutes new paragraphs (a) and (b) which have been restructured so that visa classes are listed in the new subparagraphs (i) and visa subclasses are listed in the new subparagraphs (ii). The effect of this regulation is the same as that referred to in subregulation 11.1 above.

Subregulation 26.2 omits paragraph 427.222(b) and substitutes a new paragraph consequential to amendments to the temporary business entry provisions. The amended paragraph adds the new Subclass 457 Business (Long Stay) visa (granted on the basis of the holder meeting certain requirements) to the existing visa subclasses that are listed in this paragraph. Executives who hold a Subclass 412 (Independent Executive) visa or a Subclass 413 (Executive) visa will continue to be the subject of this paragraph after the repeal of 9 those subclasses by these Regulations until that visa ceases to be in effect.

Regulation 27 - Schedule 2, Part 428 (Religious Worker)

Subregulation 27.1 omits paragraphs 428.211 (a) and (b) of Schedule 2 to the Migration Regulations and substitutes new paragraphs (a) and (b) which have been restructured so that visa classes are listed in the new subparagraphs (i) and visa subclasses are listed in the new subparagraphs (ii). The effect of this regulation is the same as that referred to in subregulation 11.1 above.

Regulation 28 - Schedule 2, Part 430 (Supported Dependent)

Subregulation 28.1 omits paragraphs 430.211 (a) and (b) of Schedule 2 to the Migration Regulations and substitutes new paragraphs (a) and (b) which have been restructured so that visa classes are listed in the new subparagraphs (i) and visa subclasses are listed in the new subparagraphs (ii). The effect of this regulation is the same as that referred to in subregulation 11.1 above.

Regulation 29 - Schedule 2, Part 432 (Expatriate (Temporary))

Subregulation 29.1 omits paragraphs 432.211 (a) and (b) of Schedule 2 to the Migration Regulations and substitutes new paragraphs (a) and (b) which have been restructured so that visa classes are listed in the new subparagraphs (i) and visa subclasses are listed in the new subparagraphs (ii). The effect of this regulation is the same as that referred to in subregulation 11.1 above.

Regulation 30 - Schedule 2, Part 442 (Occupational Trainee)

Subregulation 30.1 omits paragraphs 442.211 (a) and (b) of Schedule 2 to the Migration Regulations and substitutes new paragraphs (a) and (b) which have been restructured so that visa classes are listed in the new subparagraphs (i) and visa subclasses are listed of the new subparagraphs (ii). The effect of this regulation is the same as that referred to in subregulation 11.1 above.

Regulation 31 - Schedule 2, Part 456 (Business (Short Stay))

Regulation 31 amends Part 456 of Schedule 2 to the Migration Regulations.

Subregulation 31.1 omits clause 456.211 and substitutes a new clause. The substituted clause reflects the objective of the Part to provide for a short stay visa subclass for business entrants, and distinguishes the subclass from the new Subclass 457 Business (Long Stay) visa. The amendment reflects a recommendation of the Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists (the Roach Committee).

Subregulation 31.2 omits clause 456.212 and substitutes a new clause to reflect a recommendation of the Roach Committee.

Subregulation 31.3 amends paragraph 456.221(2)(b) consequential to amendments to the temporary business entry provisions. The words "visit Australia" are replaced by words which more accurately describe the business purpose of the visa.

Subregulation 31.4 omits paragraph 456.221(2)(c) and substitutes a new paragraph. The new paragraph is required because non-citizens who are, or who are expected to be, accorded certain privileges and immunities in Australia, and who are recommended by the Foreign Minister for grant of a visa will be exempt from the requirement to satisfy health criteria.

Subregulation 31.5 amends paragraph 456.221(3)(b) consequential to amendments to the temporary business entry provisions. The words "visit Australia" are replaced by words which more accurately describe the business purpose of the visa.

Subregulation 31.6 omits paragraph 456.221(3)(e) and substitutes a new paragraph. The new paragraph is required because non-citizens who are, or who are expected to be, accorded certain privileges and immunities in Australia, and who are recommended by the Foreign Minister for grant of a visa will be exempt from the requirement to satisfy health criteria.

Subregulation 31.7 amends clause 456.221 by adding a new subclause which describes the non-citizens who will be exempt from the requirement to satisfy health criteria.

Subregulation 31.8 omits clause 456.311 and substitutes a new clause consequential to the amendments to the temporary business entry provisions. As these Regulations add the new Subclass 457 (Business (Long Stay)) visa to the Temporary Business Entry (Class UC) visa, consequential amendments are necessary where reference to "Temporary Business Entry (Class UC)" is only intended to refer to the existing Subclass 456 (Business (Short Stay)) visa. Accordingly, the clause is amended so that it only refers to people seeking to satisfy the criteria for the Subclass 456 visa.

Subregulation 31.9 omits clause 456.323 and substitutes a new clause because the exemption from the requirement to satisfy health criteria, which is inserted by this Regulation, is also extended to the spouse and dependent children of those persons.

Subregulation 31.10 omits paragraph 456.51 1(b) and substitutes a new paragraph consequential to the new provisions for non-citizens who are, or who are expected to be, accorded certain privileges and immunities in Australia, and who are recommended by the Foreign Minister for grant of a visa. The spouse and dependent children of those persons are already covered by clause 456.514.

Subregulation 31.11 omits paragraph 456.512(a) and substitutes a new paragraph consequential to the new provisions for non-citizens who are, or who are expected to be, accorded certain privileges and immunities in Australia, and who are recommended by the Foreign Minister for grant of a visa. The spouse and dependent children of those persons are already covered by clause 456.514.

Regulation 32 - Schedule 2, new Part 457

Subregulation 32.1 inserts new Part 457 into Schedule 2 to the Migration Regulations. The new Part is set out in the Schedule to these Regulations.

Regulation 33 - Schedule 2, Part 560 (Student)

Regulation 33 amends Part 560 of Schedule 2 to the Migration Regulations.

Subregulations 33.1 and 33.2 omit paragraphs 560.212(1)(a) and 560.212(3)(a) respectively and substitute new paragraphs (a) which are restructured so that:

- * lists of visa classes are provided for in new subparagraphs (i);
- * certain holders or former holders of Diplomatic (Temporary) (Class TF) visas are provided for in new subparagraphs (ii);
- * holders or former holders of special purpose visas are provided for in new subparagraphs (iii); and
- * lists of visa subclasses are provided for in new subparagraphs (iv).

Consequential to the amendments to the temporary business entry provisions, the subregulation inserts in new subparagraphs (i) the new Medical Practitioner (Temporary) (Class UE) visa.

Subregulation 33.3 omits paragraph 560.228(1)(b) and substitutes a new paragraph (b) which is restructured. Subparagraphs (i) and (ii) refer to the holder of a Subclass 560 visa granted on the basis that the applicant satisfied the secondary criteria for that visa and the holder of a Subclass 563 (Iranian Postgraduate Student Dependant) visa. The remaining subparagraphs provide that any previous visas held by applicants who hold either of the above visas were not:

- * of a visa class listed in new subparagraph (iii); or
- * Diplomatic (Temporary) (Class TF) visas granted to certain persons, as provided for in new subparagraph (iv); or
- * special purpose visas, as provided by new subparagraph (v); or
- * of a visa subclass listed in new subparagraph (vi).

Consequential to the amendments to the temporary business entry provisions, the subregulation inserts in new subparagraph (iii) the new Medical Practitioner (Temporary) (Class UE) visa.

Subregulation 33.4 omits paragraph 560.230(b) and substitutes a new subparagraph (b) which is restructured so that:

- * a list of visa classes is provided for in new subparagraph (i);
- * a special purpose visa is provided for in new subparagraph (ii); and
- * a list of visa subclasses is provided for in new subparagraph (iii).

Consequential to the amendments to the temporary business entry provisions, the subregulation inserts in new subparagraph (i) the *new Medical Practitioner (Temporary) (Class UE) visa.

Subregulation 33.5 omits paragraph 560.312(1)(a) and substitutes a new paragraph (a) which is restructured so that:

- * a list of visa classes is provided for in new subparagraph (i);

- * certain holders of Diplomatic (Temporary) (Class TF) visas are provided for in new subparagraph (ii);
- * special purpose visas are provided for in new subparagraph (iii); and
- * a list of visa subclasses is provided for in new subparagraph (iv).

Consequential to the amendments to the temporary business entry provisions, the subregulation inserts in new subparagraph (i) the new Medical Practitioner (Temporary) (Class UE) visa.

Regulation 34 - Schedule 2, Part 773 (Border)

Regulation 34 amends Part 773 of Schedule 2 to the Migration Regulations.

Subregulations 34.1 and 34.2 omit sub-subparagraph 773.213(1)(d)(i)(C) and subparagraph 773.213(1)(e)(i) and substitute a new sub-subparagraph and a new subparagraph respectively, consequential to amendments to subclause 773.213(3) made by subregulation 34.4 of these Regulations.

Subregulation 34.3 omits subparagraph 773.213(1)(g)(iii) and substitutes a new subparagraph consequential to the amendments to the temporary business entry provisions. As these Regulations add a new subclass to the Temporary Business Entry (Class UC) visa, consequential amendments are necessary where reference to "Temporary Business Entry (Class UC)" is only intended to refer to the existing Subclass 456 (Business (Short Stay)) visa. Accordingly, in new sub-subparagraph (C) reference is made to the Subclass 456 visa at new subparagraph (iii). Technical amendments are also made to the subparagraph.

Subregulation 34.4 omits subclause 773.213(3) and substitutes a new subclause (3) and new subclause (4). Subclause (3) provides for a list of visa classes and new subclause.(4) provides for a list of visa subclasses. Consequential to the amendments to the temporary business entry provisions, the subregulation, inserts the new Medical Practitioner (Temporary) (Class UE) visa in subclause (3) and the new Subclass 457 (Business (Long Stay)) visa in new subclause (4).

Regulation 35 - Schedule 2, Part 805 (Skilled)

Regulation 35 amends Part 805 of Schedule 2 to the Migration Regulations.

Subregulation 35.1 omits subclause 805.211 (1) and substitutes a new subclause which is restructured so that:

- * a list of visa classes is provided for in paragraph (a);
- * a special purpose visa is provided for in paragraph (b);
- * a Subclass 456 (Business (Short Stay) visa is provided for in paragraph (c); and
- * certain holders of the new Subclass 457 (Business (Long Stay)) visa are provided for in paragraph (d). This subclass is inserted by these Regulations and this amendment is made to exclude certain holders of Subclass 457 visas who are not eligible for the grant of a Subclass 805 visa.

Subregulation 35.2 omits paragraph 805.211(2)(b) and substitutes a new paragraph which is restructured so that:

- * a list of visa classes is provided for in subparagraph (i);
- * a special purpose visa is provided for in subparagraph (ii);
- * a Subclass 456 (Business (Short Stay) visa is provided for in subparagraph (iii); and
- * certain holders of the new Subclass 457 (Business (Long Stay)) visa are provided for in subparagraph (iv). This Subclass is inserted by these Regulations and this amendment is made to exclude certain holders of Subclass 457 visas who are not eligible for the -grant of a Subclass 805 visa.

Subregulation 35,3 omits subclause 805.212(2) and substitutes a new subclause (2) and (2A) to restructure the omitted subclause. New subclause (2) requires that the applicant holds a "qualifying visa" and has held one or more qualifying visas for an aggregate period of more than 12 months. New subclause (2A) defines "qualifying visas" and provides for:

- * a list of visa classes in paragraph (a);
- * certain holders of the new Subclass 457 (Business (Long Stay)) visa in paragraph (b). This subclass is inserted by these Regulations and this amendment is made to exclude certain other holders of Subclass 457 visas who are not eligible for the grant of a Subclass 805 visa, and
- * certain holders of Confirmatory (Temporary)(Class TD) visas in paragraph (c).

Consequential to the amendments to the temporary business entry provisions the new Medical Practitioner (Temporary) (Class UE) visa is added to the list of visa classes in paragraph (a).

Regulation 36 - Schedule 2, Part 840 Business Owner)

Subregulation 36.1 omits paragraph 840.211 (1)(b) of Schedule 2 to the Migration Regulations and substitutes a new paragraph which is restructured so that:

- * a list of visa classes is provided for in subparagraph (i);
- * the new Subclass 457 (Business (Long Stay)) visa is provided for in subparagraph (ii). This subclass is inserted by these Regulations and this amendment is made consequentially; and
- * certain transitional (temporary) visas are provided for in subparagraph (iii).

Regulation 37 - Schedule 2, Part 841 (Senior Executive)

Regulation 37 amends Part 841 of Schedule 2 to the Migration Regulations.

Subregulation 37.1 omits paragraph 841.211 (1)(b) and substitutes a new paragraph which is restructured. This has the same effect as the amendment made by regulation 36 of these Regulations.

Regulation 38 - Schedule 2, Part 842 (State/Territory Sponsored Business Owner)

Regulation 38 amends Part 842 of Schedule 2 to the Migration Regulations.

Subregulation 38.1 omits paragraph 842.21 1(1)(b) and substitutes a new paragraph which is restructured. This has the same effect as the amendment made by regulation 36 of these Regulations.

Regulation 39 - Schedule 2, Part 843 (State/Territory Sponsored Senior Executive)

Subregulation 39.1 omits paragraph 843.21 1(1)(b) and substitutes a new paragraph which is restructured. This is the same amendment as that made by regulation 36 of these Regulations.

Regulation 40 - Schedule 2, Part 844 (Investment-linked)

Subregulation 40.1 omits paragraph 844.212(b) and substitutes a new paragraph which is restructured. This has the same effect as the amendment made by regulation 36 of these Regulations.

Regulation 41 - Transitional (Applications for Class TB visas)

This regulation is made to provide for non-citizens who applied for a Business (Temporary) (Class TB) visa, where that application is not finally determined (within the meaning of subsection 5 (9) of the Act) upon commencement of these Regulations.

Subregulation 41.2 saves the criteria that applied to the application immediately before commencement of these Regulations. However, if the Minister or a review authority decides to grant the visa, then the visa that will be granted will reflect the new temporary business entry provisions.

Subregulation 41.3, which includes a table, sets out which class and subclass of visa will be granted under the new temporary business entry provisions, where the application was made under the old temporary business entry provisions.

Subregulation 41.4 provides that when a visa is granted in these circumstances then the relevant provisions regarding "circumstances applicable to grant", "when visa is in effect", "conditions" and "way of giving evidence" are those under the new temporary business entry provisions.

Schedule

The Schedule inserts new Part 457 in Schedule 2 to the Migration Regulations.

The purpose of the new Part 457 is to prescribe criteria for grant of a Subclass 457 (Business (Long Stay)) visa to persons who satisfy the primary criteria and members of their family units who satisfy the secondary criteria. This subclass is inserted as an additional subclass in item 1223A (Temporary Business Entry (Class UC)) of Schedule 1 to the Migration Regulations by these Regulations.

Applicants satisfying the criteria of new Part 457 will be eligible for grant of a temporary visa which permits the holder to remain in Australia for a specified period of more than 3 months but not exceeding 4 years, and to travel to and enter Australia on multiple occasions until the end of that period.

The criteria of the new Subclass 457 include (with certain modifications) some of the provisions for temporary business entry formerly in Subclasses 412 (Independent Executive), 413 (Executive) and 414 (Specialist), which are omitted from the Migration

Regulations by these Regulations. The new Subclass 457, in conjunction with the new Division 1.4A (Temporary business entry: sponsorship and nomination) inserted in the Migration Regulations by these Regulations, also introduces new provisions for temporary business entry. The purpose of these provisions is to rationalise the arrangements for the temporary entry of

business people and highly qualified specialists, to simplify procedures, and to introduce a degree of self-regulation for certain employers of holders of Subclass 457 visas.

The criteria-of Subclass 457, which were formerly included in certain subclasses omitted by these Regulations, include provision for the temporary entry of business people and highly qualified specialists who:

- * are to be employed to perform an activity that is the subject of an approved business nomination (as provided for in the new regulations 1.20G and 1.20H inserted in the Migration Regulations by these Regulations) and seek temporary entry for employment in an activity which is the subject of a labour agreement as defined in regulation 1.03 of the Migration Regulations (provision for temporary entry under a labour agreement was formerly in omitted Subclass 414);
- * seek temporary entry for employment in an activity which is the subject of a Regional Headquarters (RHQ) agreement as defined in regulation 1.16A of the Migration Regulations (provision for temporary entry under a RHQ agreement was formerly in omitted Subclasses 413 and 414); and
- * seek temporary entry as independent executives (provision for temporary entry as an independent executive was formerly in omitted Subclass 412).

The new provisions introduced by the new Subclass 457 (in conjunction with the new Division 1AA) feature streamlined procedures to enable employers in Australia to be approved as standard business sponsors or pre-qualified business sponsors prior to nominating an activity.

Procedures are further simplified and a degree of self-regulation by employers is introduced by not requiring any labour market testing (as defined for the purposes of new Division 1AA) for employment in a key activity or where the proposed employer is a party to a labour agreement. Labour market testing is optional (at the Minister's discretion) where the proposed employment is in an activity which is not a key activity and the proposed period of stay is for less than 12 months. Labour market testing is a mandatory requirement where the proposed period of stay is more than 12 months and the activity is not a key activity. The results of labour market testing (where required) is a factor relevant to the Minister's decision under new regulation 1.20H to approve a business nomination.

Subclass 457 visa applicants proposing to be employed for less than 12 months are not required to demonstrate that they have the skills necessary to perform the activity. If the proposed employment is in a key activity for more than 12 months, the Minister has the discretion to require a skills assessment if the proposed employer is a standard business sponsor.

If the activity is not a key activity and the period of stay is for more than 12 months, applicants are required to demonstrate that they have the skills necessary to perform the activity. If the employer is a standard business sponsor, the Minister must also be satisfied that the position was not created only for the purposes of securing the entry of the applicant to Australia.

In detail, the new provisions enable the temporary entry of Subclass 457 visa holders to Australia for:

- * employment by an Australian business in a key activity, where the activity is the subject of an approved business nomination and the employer is a prequalified business sponsor or a standard business sponsor. Where the employer is a standard business sponsor and the period of stay is 12 months or more, the Minister may require the applicant to demonstrate that he or she has the skills necessary for the employment;

* employment by an Australian business in a non-key activity, where the activity is the subject of an approved business nomination and the employer is a pre-qualified business sponsor or a standard business sponsor. Where the period of stay is 12 months or more, the applicant must demonstrate that he or she has the skills necessary for the employment; in addition, where the employer is a standard business sponsor the Minister must be satisfied that the position was not created only for the purposes of securing the applicant's entry to Australia; and

* employment in Australia by an overseas business which does not operate in Australia but apart from that would be likely to meet the requirements for approval as a standard business sponsor and undertakes the relevant undertakings of a business sponsor. The applicant must have a genuine and realistic commitment to establishing a business in Australia with overseas connections, or to fulfilling contractual obligations to the employer, that will be of benefit to Australia. Where employment is to be in a key activity and the period of stay is 12 months or more, the applicant must demonstrate that he or she has the skills necessary for the employment. Where employment is to be in a non-key activity for 12 months or more, the applicant must demonstrate that he or she has the skills necessary for the employment and the Minister must be satisfied that the position was not created only for the purposes of securing the applicant's entry to Australia.

Provisions are also made for persons representing an overseas supplier of services in Australia, involving negotiations for the sale of services or entering into agreements to sell services; and persons who the Minister for Foreign Affairs has advised the Minister for Immigration and Multicultural Affairs are persons to whom privileges and immunities are or are expected to be accorded under the International Organizations (Privileges and Immunities) Act 1963 or the Overseas Missions (Privileges and Immunities) Act 1995 and has recommended in writing that the applicant should be granted the visa.

The new Part 457 also sets out the Public Interest Criteria and Special Return Criteria to be satisfied by applicants for a Subclass 457 visa. Part 457 also provides for a mandatory condition to be placed on certain Subclass 457 visas, and the discretionary conditions which may be placed on the visa. Evidence of the visa may be given in the form of a visa label affixed to a valid passport.