

Migration Regulations (Amendment) 1996 No. 211

EXPLANATORY STATEMENT

STATUTORY RULES 1996 No. 211

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.

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

- paragraph 504(1)(a) of the Act provides that the regulations may provide for the charging and recovery of fees in respect of any matter under the Act or the regulations;
- paragraph 504(1)(b) of the Act provides that the regulations may make provision for the remission, refund or waiver of fees which may be prescribed by the regulations, and for exempting persons from the payment of such fees; and
- 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(1) of the Act provides that the regulations are to prescribe classes of visas;
- subsection 31(3) of the Act provides that the regulations may prescribe criteria for visas of a specified class;
- subsection 31(4) of the Act provides for the regulations to prescribe whether visas are visas to travel to and enter, or remain in Australia, or both;
- subsection 39(1) of the Act provides that regulations may prescribe criteria for visas of a class which limit the number of visas of that class granted in a particular financial year;
- 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 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 46(2) of the Act provides for prescribing a class of visas an application for which may be taken under the regulations to have been validly made;
- 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
- subsection 93(1) of the Act provides that the Minister shall make an assessment by giving the applicant the prescribed number of points for each prescribed qualification.

The purposes of the Regulations are to amend the Migration Regulations to reflect changes in policy; to reflect the Government's decision, while maintaining its strong commitment to family migration, to introduce measures to ensure that the Migration Program does not exceed the planning levels; 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 will:

- introduce a new balance of family test which will require a majority of an applicant's family to be in Australia. This test is to apply to applicants sponsored/nominated as parents under Subclass 103 or aged parents under Subclass 804 (regulation 4);
- change the sponsorship requirements for preferential family categories of visa such that, in most cases, only Australian citizens may sponsor/nominate applicants for these categories of visa (see for example subregulations 14.4 and 14.5);
- provide for mandatory assurances of support for preferential family visas (subregulations 14.7, 14.8, 15.2, 15.3, 19.3, 19.4, 37.4, 37.5, 48.5, 48.6, 53.3, 53.4, 54.2, 54.4);
- align offshore spouse and interdependency migration with the existing onshore spouse and interdependency provisions. This will mean that there will be a two-stage process, where applicants will apply for both a temporary and permanent visa concurrently, and will be required to undergo a two year residency requirement (with some exceptions) before the grant of the permanent visa. As a consequence two new temporary classes of visas are introduced to achieve this two-stage process (subregulations 77.16 and 77.19 and regulation 119);
- allow humanitarian visa holders who are permanent residents to propose members of their immediate family for grant of a visa within the humanitarian program (regulations 21 to 36);

- introduce limitations for sponsorships or nominations for spouse, prospective spouse and interdependency applicants (regulation 67);
- provide transitional arrangements for outstanding applications for the Spouse (Migrant) (Class BC) and Interdependency (Migrant) (Class BI) visas as at 1 November 1996 (regulations 151 and 152);
- amend the Independent and Concessional Family classes in relation to English language requirements, recognition of bilingualism and measures to encourage regional settlement (regulations 74, 75, 84, 122, 142 and 146);
- implement changes arising from a review of resident return visas (regulations 78 to 117, 122 to 129, 132 to 141);
- increase fees to implement budget measures (subregulation 13.10);
- prevent application for bridging visas by onshore applicants applying for visas offshore (subregulations 13.5 to 13.9);
- amend condition 8201 to allow visitors to undertake formal as well as non-formal studies of less than 3 months duration (regulation 143);
- increase skills assessment fees and the application fee for temporary business entrants to increase cost recovery (subregulations 77.10 and 77.20);
- extend the sponsorship undertaking from 1 to 2 years. The sponsorship undertakes to assist an applicant to the extent necessary, financially and in respect of accommodation, including assistance to attend AMEP classes (subregulation 66.1);
- provide for oral applications for resident return visas (regulations 70 and 73);
- amend regulations 2.33 and 2.38 to update the allowances and benefits that can attract liability for an assurer under the Assurance of Support Scheme (regulations 10 and 11);
- prevent holders of Woman-at-Risk visas from sponsoring a former or undeclared spouse for a spouse visa for a period of 5 years from grant (subregulations 118.2 and 130.5 and Part 4 of Schedule 2); and
- correct minor typographical errors (regulation 12 and subregulations 13.1, 13.2 and 13.4).

Details of the Regulations are set out in the Attachment.

Parts 1 and 2 and Division 4.1 of Part 4 of the Regulations commence on 1 October 1996. Part 3 and Division 4.2 of Part 4 of the Regulations commence on 1 November 1996.

96R210

ATTACHMENT

PART 1- PRELIMINARY

Regulation 1 - Commencement

Subregulation 1.1 provides for Parts 1 and 2 and Division 4.1 of Part 4 to commence on 1 October 1996.

Subregulation 1.2 provides for Part 3 and Division 4.2 of Part 4 to commence on 1 November 1996.

Regulation 2 - Amendment

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

PART 2 - AMENDMENTS COMMENCING ON 1 OCTOBER 1996

Regulation 3 - Regulation 1.03 (Interpretation)

This regulation inserts a definition of "member of the immediate family". It has the meaning given at new regulation 1.12AA

This regulation also inserts a definition of "permanent humanitarian visa". The definition covers all the permanent visas and entry permits in the refugee and humanitarian program under the current Migration Regulations and under the previous sets of Migration Regulations (the Migration (1989) Regulations and the Migration (1993) Regulations). Transitional (permanent) visas under the Migration Reform (Transitional Provisions) Regulations are also covered.

Regulation 4 - Regulation 1.05 (Balance of family test)

This regulation amends the balance of family test in subregulation 1.05(2) to provide that a majority of the applicant's children must be resident in Australia in order to satisfy the balance of family test. For example, if a parent has four children, at least three must be resident in Australia. A parent having two out of four children resident in Australia would no longer meet the test as there would not be a "clear majority" of children resident in Australia.

Regulation 5 - New Regulation 1.12AA

This regulation inserts a definition of the "member of the immediate family". A person is a "member of the immediate family" of another person, if the person is the spouse or dependent child of that other person or a parent of that person, where that person is a child who is under 18.

Regulation 6 - Regulation 1.13 (Nominator)

This regulation amends the definition of "nominator" in relation to an application for a visa such that the definition does not include a person who proposes another person for the grant of a permanent humanitarian visa.

Regulation 7 - Regulation 1.20 (Sponsorship)

This regulation amends the definition of "sponsor" in relation to an application for a visa such that the definition does not include a person who proposes another person for the grant of a permanent humanitarian visa.

Regulation 8 - Regulation 2.07 (Application for visa - general)

This regulation makes a minor amendment to include reference to the new regulations 2.08A and 2.08B inserted by these Regulations.

Regulation 9 - New regulations 2.08A and 2.08B

This regulation adds two new regulations to the Migration Regulations:

- 2.08A - Addition of spouses and dependent children to certain applications for permanent visas; and
- 2.08B - Addition of dependent children to applications for certain temporary visas.

New regulation 2.08A provides for an applicant for a permanent visa to add their spouse or dependent child to their application. Details of the application are:

- the application is taken to be for the same visa class as the original applicant;
- the application is taken to have been made at the time when the request to include the spouse/dependent child is received;
- the application is taken to have been made at the same place as that of the original applicant and on the same form;
- there is no fee;
- the spouse/dependent child is required to meet the applicable Schedule 2 time of application secondary criteria at the time they are added to the application; and
- the spouse/dependent child is required to meet the applicable Schedule 2 time of decision secondary criteria.

New regulation 2.08B is similar to new regulation 2.08A except that it provides for an applicant for an Extended Eligibility (Temporary) (Class TK) visa or a Prospective Marriage (Temporary) (Class TO) visa to add a dependent child to their application, either before or after the decision to grant the visa is made.

Regulation 10 - Regulation 2.33 (Effect of assurance of support)

This regulation omits paragraphs 2.33(a), (b) and (c) and substitutes paragraphs (a) to (h) listing a number of allowances and a benefit payable by the Government. Receipt by a migrant to Australia of any of the allowances received, can attract liability for an assurer under the Assurance of Support scheme.

Regulation 11 - Regulation 2.38 (Liability of person giving assurance of support)

This regulation omits paragraphs 2.38(1)(a) to (g) and substitutes paragraphs (a) to (h) listing a number of allowances and a benefit payable by the Government. Receipt by a migrant to

Australia of any of the allowances received can attract liability for an assurer under the Assurance of Support scheme.

Regulation 12 - Regulation 5.38 (Sponsorship fee)

This regulation amends regulation 5.38 to correct a minor technical error.

Regulation 13 - Schedule 1 (Classes of visas)

Subregulation 13.1 amends subitem 1104(2) to correct a minor technical deficiency.

Subregulation 13.2 amends subitem 1104A(2) to correct a minor technical deficiency.

Subregulation 13.3 omits item 1116, the Family of NZ Citizen (Migrant)(Class AP) visa. Amendments made by these Regulations provide that (except in certain circumstances) only Australian citizens will be able to sponsor preferential family for permanent visas. Under the new requirements, the family of a New Zealand citizen will be required to be sponsored by an Australian citizen under another visa class.

Subregulation 13.4 amends paragraph 1205(2)(d) to correct a minor technical deficiency.

Subregulations 13.5 to 13.9 make amendments to items 1301, 1302, 1303, 1304 and 1305 respectively, the bridging visa classes. The purpose of these amendments is to prevent people applying for bridging visas while in Australia on the basis of applying for a visa at an overseas post where that visa can only be granted overseas.

It is intended that people can make applications at overseas posts while temporarily in Australia - for example, so that a business visitor can initiate migration processing prior to the completion of his/her stay. The Migration Regulations therefore allow a person in Australia to make an application to an overseas post for all but a small number of classes. It is not intended that such a person should be automatically entitled, through the grant of a bridging visa, to remain beyond the period of effect of his/her temporary substantive visa and for the duration of processing the offshore visa.

Subregulation 13.10 sets out a table which provides for specified fees to be amended as a result of an increase in the recovery of costs.

Regulation 14 - Schedule 2, Part 100 (Spouse)

Subregulation 14.1 substitutes a new definition of "intended spouse" which does not include an Australian permanent resident or an eligible New Zealand citizen.

Subregulation 14.2 substitutes a new subclause 100.211(2) and introduces a new subclause 100.211(2A). The purpose of these amendments is to require that the applicant must be the spouse of an Australian citizen with the exception that the applicant may be the spouse of a permanent resident if the permanent resident:

- applied for their permanent visa before 3 July 1996;
- informed the Department of the spouse relationship before their permanent visa was granted; and
- is not and has not been the holder of a permanent humanitarian visa.

There is a 12 month time limit on this provision, requiring the application to be made before 1 October 1997.

Subregulation 14.3 makes an amendment to the intention to marry criterion to require that the applicant intends to marry an Australian citizen. Intention to marry an Australian permanent resident or an eligible New Zealand citizen is no longer sufficient.

Subregulations 14.4 and 14.5 make amendments to require that where the sponsor is a parent or guardian of the applicant's spouse, the sponsor is an Australian citizen. Australian permanent residents and eligible New Zealand citizens are no longer eligible to be sponsors.

Subregulation 14.6 makes a consequential amendment to require an applicant to continue to be the spouse of the same Australian citizen or Australian permanent resident at the time of decision as at the time of application.

Subregulation 14.7 amends clause 100.227 to require a mandatory assurance of support. Previously an assurance of support was only necessary if requested by the Minister.

Subregulation 14.8 substitutes a new clause 100.325 which amends the assurance of support criterion for secondary applicants as a consequence of the amendment made to clause 100.227, requiring a mandatory assurance of support for primary applicants.

Regulation 15 - Schedule 2, Part 101 (Child)

Subregulation 15.1 substitutes a new clause 101.212. This clause prescribes who can sponsor a dependent child for a Subclass 101 (Child) visa as follows:

Subclause 101.212(2) provides that the child must be sponsored by an Australian citizen who has turned 18. The sponsor must be either:

- the parent (who is an Australian citizen, Australian permanent resident or eligible New Zealand citizen); or
- the cohabiting spouse of that parent.

Subclause 101.212(3) provides for a child born outside Australia and is under 18. A parent of the child must be either:

- an Australian permanent resident (but not the holder of a permanent humanitarian visa) who was an Australian permanent resident when the child was born; or
- an eligible New Zealand citizen.

The sponsor must be at least 18 and must be the parent or the cohabiting spouse of the parent. If the spouse is the sponsor, the spouse must be an Australian permanent resident (but not the holder of a permanent humanitarian visa) or an eligible New Zealand citizen.

Subclause 101.212(4) provides for a dependent child who:

- has a parent who is an Australian permanent resident (but not the holder of a permanent humanitarian visa); and
- was included in the parent's permanent visa application.

The sponsor must be at least 18 and must be the parent or cohabiting spouse of the parent. If the spouse is the sponsor, the spouse must be an Australian permanent resident (but not the holder of a permanent humanitarian visa) or an eligible New Zealand citizen.

Subclause 101.212(5) provides for a child under 18 with a parent who is either:

- an Australian permanent resident (but not the holder of a permanent humanitarian visa); or
- an eligible New Zealand citizen.

The parent:

- must have been granted custody of the child; or
- the child's other parent must have died or become incapable of caring for the child and the Minister must be satisfied that it is appropriate to grant the visa.

The sponsor must be at least 18 and must be the parent or cohabiting spouse of the parent. If the spouse is the sponsor, the spouse must be an Australian permanent resident (but not the holder of a permanent humanitarian visa) or an eligible New Zealand citizen.

Subregulation 15.2 omits clause 101.225 which provided for a discretionary assurance of support. New clauses 101.224 and 101.225 are substituted. They provide for a discretionary assurance of support where the applicant is under 18 years of age at the time of application and for a mandatory assurance of support where the applicant is 18 years of age or over at the time of application, respectively.

Subregulation 15.3 amends clause 101.325 as a consequence of the new clauses 101.224 and 101.225 inserted by these Regulations.

Regulation 16 - Schedule 2, Part 102 (Adoption)

The amendments made to Part 102 limit the situations in which a Subclass 102 (Adoption) visa can be granted in the event of an Australian permanent resident or eligible New Zealand citizen adopting a child overseas.

Subregulations 16.1, 16.2 and 16.3 make amendments consequential upon other amendments made by these Regulations.

Subregulation 16.4 amends paragraph 102.211(2)(b) to require that the adoptive parent be an Australian citizen unless the applicant was adopted by an Australian permanent resident or an eligible New Zealand citizen before 3 July 1996.

Subregulation 16.5 substitutes a new paragraph 102.211(3)(c) to require that a prospective adoptive parent be an Australian citizen. Australian permanent residents and eligible New Zealand citizens will no longer be eligible.

Subregulation 16.6 inserts a new subclause 102.211(4) to enable a prospective adoptive parent to be an Australian permanent resident or an eligible New Zealand citizen if the prospective adoption had been approved by Australian authorities before 3 July 1996, or the departure of the child had been approved by overseas authorities prior to 3 July 1996.

Subregulation 16.7 substitutes a new clause 102.212 as a consequence of the change in sponsorship requirements. The sponsor is required to be an Australian citizen unless:

- the adoption occurred before 3 July 1996;
- the prospective adoption had been approved by Australian authorities before 3 July 1996; or
- the departure of the child for prospective adoption had been approved by overseas authorities prior to 3 July 1996;

in which case the sponsor can be an Australian permanent resident or an eligible New Zealand citizen.

Regulation 17 - Schedule 2, Part 103 (Parent)

Subregulation 17.1 substitutes anew clause 103.211 to provide that an applicant for the grant of a Subclass 103 (Parent) visa must be the parent of a settled Australian citizen. Parents of Australian permanent residents and eligible New Zealand citizens are no longer eligible.

Subregulations 17.2 to 17.7 make a number of amendments to require that the sponsor be an Australian citizen. Australian permanent residents and eligible New Zealand citizens are no longer eligible to be sponsors.

Regulation 18 - Schedule 2, Part 104 (Preferential Family)

Subregulation 18.1 amends subclause 104.211(1) as a consequence of the insertion of anew subclause 104.211(4) by these Regulations.

Subregulation 18.2 substitutes new subclauses 104.211(2) and (3) which require the applicant to be a relative of an Australian citizen and which require the sponsoring relative to be an Australian citizen.

Subregulation 18.2 also inserts a new subclause 104.211(4) which enables an applicant who is an orphan relative to be the relative of an Australian permanent resident or an eligible New Zealand citizen. The applicant must be sponsored by that relative or, if the relative is under 18, by the cohabiting spouse of the relative. If the spouse is the sponsor, the spouse must be an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen. In addition, the Minister must be satisfied that there are compelling compassionate circumstances that justify the grant of the visa.

Regulation 19 - Schedule 2, Part 110 (Interdependency)

Subregulation 19.1 substitutes a new paragraph 110.211(b) to provide that an applicant for the grant of a Subclass 110 (Interdependency) visa must be in an interdependent relationship with an Australian citizen. A person in an interdependent relationship with an Australian permanent resident or an eligible New Zealand citizen is no longer eligible.

Subregulation 19.2 amends clause 110.223 to require the applicant to continue to be in an interdependent relationship with the Australian citizen at the time of decision.

Subregulation 19.3 amends clause 110.226 to require a mandatory assurance of support. Previously an assurance of support was only necessary if requested by the Minister.

Subregulation 19.4 substitutes a new clause 110.325 which amends the assurance of support criterion for secondary applicants as a consequence of the amendment made to clause 110.226, requiring a mandatory assurance of support for primary applicants.

Regulation 20 - Schedule 2, Part 152 (Family of New Zealand Citizen)

These Regulations make a number of amendments to Subclasses in Schedule 2 to provide that (except in exceptional circumstances) only Australian citizens will be able to sponsor preferential family for permanent visas.

This regulation omits Part 152 as, under the new requirements, family of New Zealand citizens will be required to be sponsored by an Australian citizen under another visa class.

Regulation 21 - Schedule 2, Part 200 (Refugee)

Subregulation 21.1 inserts a new definition of "Subclass 200 visa" for the purposes of this Part in Division 200.1.

Subregulation 21.2 omits clauses 200.211 and 200.212 and substitutes a new clause 200.211. The purpose of this new clause is to retain the existing provisions in clauses 200.211 and 200.212 while also allowing a member of the immediate family of a permanent resident who is, or has been, a Subclass 200 visa holder to be proposed by their spouse, parent or child for a Subclass 200 visa, providing the relationship had previously been declared to Immigration.

Subregulation 21.3 is a consequential amendment to clause 200.221 to reflect the omission of clauses 200.211 and 200.212 and the insertion of a new clause 200.211.

Subregulation 21.4 substitutes a new clause 200.311 which retains the existing provisions in clause 200.311 while also allowing a member of the immediate family of a person being proposed for a Subclass 200 visa to satisfy the "at time of application" secondary criteria.

Subregulation 21.5 substitutes a new clause 200.321 which retains the existing provisions in clause 200.321 while also requiring a member of the immediate family of a person being proposed for a Subclass 200 visa to continue to be a member of the immediate family of that person at time of decision.

Regulation 22 - Schedule 2, Part 201 (In-country Special Humanitarian)

Subregulation 22.1 inserts a definition of "Subclass 201 visa" for the purposes of this Part in Division 201.1.

Subregulation 22.2 omits clauses 201.211 and 201.212 and substitutes a new clause 201.211. The purpose of the new clause is to retain the existing provisions in clauses 201.211 and 201.212 while also allowing a member of the immediate family of a permanent resident who is, or has been, a Subclass 201 visa holder to be proposed by their spouse, parent or child for a Subclass 201 visa, providing the relationship had previously been declared to Immigration.

Subregulation 22.3 is a consequential amendment to clause 201.221 to reflect the omission of clauses 201.211 and 201.212 and the insertion of a new clause 201.211.

Subregulation 22.4 substitutes a new clause 201.311 which retains the existing provisions in clause 201.311 while also allowing a member of the immediate family of a person being proposed for a Subclass 201 visa to satisfy the "at time of application" secondary criteria.

Subregulation 22.5 substitutes a new clause 201.321 which retains the existing provisions in clause 201.321 while also requiring a member of the immediate family of a person being proposed for a Subclass 201 visa to continue to be a member of the immediate family of that person at time of decision.

Regulation 23 - Schedule 2, Part 202 (Global Special Humanitarian)

Subregulation 23.1 inserts definitions of "Subclass 202 visa" and "Subclass 866 visa" for the purposes of this Part in Division 202.1.

Subregulation 23.2 omits clauses 202.211 and 202.212 and substitutes a new clause 202.211. The purpose of the new clause is to retain the existing provisions in clauses 202.211 and 202.212 while also allowing a member of the immediate family of a permanent resident who is, or has been, a Subclass 202 or Subclass 866 visa holder to be proposed by a member of their immediate family for a Subclass 202 visa, providing the relationship had previously been declared to Immigration.

Subregulation 23.3 is a consequential amendment to clause 202.221 to reflect the omission of clauses 202.211 and 202.212 and the insertion of a new clause 202.211.

Subregulation 23.4 substitutes a new clause 202.311 which retains the existing provisions in clause 202.311 while also allowing a member of the immediate family of a person being proposed for a Subclass 202 visa to satisfy the "at time of application" secondary criteria.

Subregulation 23.5 substitutes a new clause 202.321 which retains the existing provisions in clause 202.321 while also requiring a member of the immediate family of a person being proposed for a Subclass 202 visa to continue to be a member of the immediate family of that person at time of decision.

Regulation 24 - Schedule 2, Part 203 (Emergency Rescue)

Subregulation 24.1 inserts a definition of "Subclass 203 visa" for the purposes of this Part in Division 203.1.

Subregulation 24.2 substitutes a new clause 203.211 which retains the existing provisions in clauses 203.211 while also allowing a member of the immediate family of a permanent resident who is, or has been, a Subclass 203 visa holder to be proposed by their spouse, parent or child for a Subclass 203 visa, providing the relationship had previously been declared to Immigration.

Subregulation 24.3 is a consequential amendment to clause 203.221 to reflect the omission of clause 203.211 and the insertion of a new clause 203.211.

Subregulation 24.4 substitutes a new clause 203.311 which retains the existing provisions in clause 203.311 while also allowing a member of the immediate family of a person being proposed for a Subclass 203 visa to satisfy the "at time of application" secondary criteria.

Subregulation 24.5 substitutes a new clause 203.321 which retains the existing provisions in clause 203.321 while also requiring a member of the immediate family of a person being proposed for a Subclass 203 visa to continue to be a member of the immediate family of that person at time of decision.

Regulation 25 - Schedule 2, Part 204 (Woman at Risk)

Subregulation 25.1 inserts a definition of "Subclass 204 visa" for the purposes of this Part in Division 204.1.

Subregulation 25.2 omits clauses 204.211, 204.212, 204.221 and 204.222 and substitutes new clauses 204.211, 204.221 and 204.222. The purpose of the new clauses is to retain the existing provisions in clauses 204.211, 204.212, 204.221 and 204.222 while also allowing a member of the immediate family of a permanent resident who is, or has been, a Subclass 204 visa holder to

be proposed by their spouse, parent or child for a Subclass 204 visa, providing the relationship had previously been declared to Immigration.

Subregulation 25.3 amends paragraph 204.224(a) to reflect that an applicant can be either female or male if proposed by a holder of a Subclass 204 visa.

Subregulation 25.4 substitutes a new clause 204.311 which retains the existing provisions in clause 204.311 while also allowing a member of the immediate family of a person being proposed for a Subclass 204 visa to satisfy the "at time of application" secondary criteria.

Subregulation 25.5 substitutes a new clause 204.321 which retains the existing provisions in clause 204.321 while also requiring a member of the immediate family of a person being proposed for a Subclass 204 visa to continue to be a member of the immediate family of that person at time of decision.

Regulation 26 - Schedule 2, Part 205 (Camp Clearance)

Subregulation 26.1 inserts a definition of "Subclass 205 visa" for the purposes of this Part in Division 205.1.

Subregulation 26.2 omits clauses 205.211, 205.212 and 205.213 and substitutes a new clause 205.211. The purpose of the new clause is to retain the existing provisions in clauses 205.211, 205.212 and 205.213, while also allowing a member of the immediate family of a permanent resident who is, or has been, a Subclass 205 visa holder to be proposed by their spouse, parent or child for a Subclass 205 visa, providing the relationship had previously been declared to Immigration.

Subregulation 26.3 inserts a new clause 205.221A which requires an applicant who has applied for a Subclass 205 visa on the basis that they are immediate family of the holder of a Subclass 205 visa, to also be a member of that person's immediate family at time of decision.

Subregulation 26.4 substitutes a new clause 205.311 which retains the existing provisions in clause 205.311 while also allowing a member of the immediate family of a person being proposed for a Subclass 205 visa to satisfy the "at time of application" secondary criteria.

Subregulation 26.5 substitutes a new clause 205.321 which retains the existing provisions in clause 205.321 while also requiring a member of the immediate family of a person being proposed for a Subclass 205 visa to continue to be a member of the immediate family of that person at time of decision.

Regulation 27 - Schedule 2, Part 208 (East Timorese in Portugal, Macau or Mozambique)

Subregulation 27.1 inserts a definition of "Subclass 208 visa" for the purposes of this Part in a new clause 208.112.

Subregulation 27.2 omits clauses 208.211, 208.212, 208.213 and 208.214 and substitutes a new clause 208.211. The purpose of the new clause is to retain the existing provisions in clauses 208.211, 208.212, 208.213 and 208.214 while also allowing a member of the immediate family of a permanent resident who is, or has been, a Subclass 208 visa holder to be proposed by their spouse, parent or child for a Subclass 208 visa, providing the relationship had previously been declared to immigration.

Subregulation 27.3 inserts a new clause 208.221A which requires an applicant who has applied for a Subclass 208 visa on the basis that they are immediate family of the holder of a Subclass 208 visa, to also be a member of that person's immediate family at time of decision.

Subregulation 27.4 substitutes new clauses 208.311 and 208.312 which retain the existing provisions in clauses-208.311 and 208.312 while also allowing a member of the immediate family of a person being proposed for a Subclass 208 visa to satisfy the "at time of application" secondary criteria.

Subregulation 27.5 substitutes a new clause 208.321 which retains the existing provisions in clause 208.321 while also requiring a member of the immediate family of a person being proposed for a Subclass 208 visa to continue to be a member of the immediate family of that person at time of decision.

Regulation 28 - Schedule 2, Part 209 (Citizens of the Former Yugoslavia (Displaced Persons))

Subregulation 28.1 inserts a definition of "Subclass 209 visa" for the purposes of this Part in a new clause 209.112.

Subregulation 28.2 omits clauses 209.211 and 209.212 and substitutes a new clause 209.211. The purpose of the new clause is to retain the existing provisions in clauses 209.211, 209.212, 209.214 and 209.215 while also allowing a member of the immediate family of a permanent resident who is, or has been, a Subclass 209 visa holder to be proposed by their spouse, parent or child for a Subclass 209 visa, providing the relationship had previously been declared to Immigration.

Subregulation 28.3 inserts "spouse" into the definition of "near relative" in clause 209.213.

Subregulation 28.4 omits clauses 209.214, 209.215 and 209.221 and substitutes new clauses 209.221 and 209.221A. The content of clauses 209.214 and 209.215 are included in the new clause 209.211. The new clause 209.221 has the same effect as the present clause 209.221. The new clause 209.221A requires an applicant who has applied for a Subclass 209 visa on the basis that they are immediate family of the holder of a Subclass 209 visa, to also be a member of that person's immediate family at time of decision.

Subregulation 28.5 substitutes new clauses 209.311 and 209.312 which retain the existing provisions in clauses 209.311 and 209.312 while also allowing a member of the immediate family of a person being proposed for a Subclass 209 visa to satisfy the "at time of application" secondary criteria.

Subregulation 28.6 substitutes a new clause 209.321 which retains the existing provisions in clause 209.321 while also requiring a member of the immediate family of a person being proposed for a Subclass 209 visa to continue to be a member of the immediate family of that person at time of decision.

Regulation 29 - Schedule 2, Part 210 (Minorities of Former USSR)

Subregulation 29.1 inserts a definition of "Subclass 210 visa" for the purposes of this Part in a new clause 210.112.

Subregulation 29.2 omits clauses 210.211, 210.212, 210.213 and 210.214 and substitutes a new clause 210.211. The purpose of the new clause is to retain the existing provisions in clauses 210.211, 210.212, 210.213 and 210.214 while also allowing a member of the immediate family of a permanent resident who is, or has been, a Subclass 210 visa holder to be proposed by their spouse, parent or child for a Subclass 210 visa, providing the relationship had previously been declared to Immigration.

Subregulation 29.3 substitutes a new clause 210.221 which retains the existing provisions in clause 210.221 while also requiring an applicant who has applied for a Subclass 210 visa on the

basis that they are immediate family of the holder of a Subclass 210 visa, to also be a member of that person's immediate family at time of decision.

Subregulation 29.4 corrects a minor technical deficiency in a previous amendment to Part 210.

Subregulation 29.5 substitutes new clauses 210.311 and 210.312 which retain the existing provisions in clauses 210.311 and 210.312 while also allowing a member of the immediate family of a person being proposed for a Subclass 210 visa to satisfy the "at time of application" secondary criteria.

Subregulation 29.6 substitutes a new clause 210.321 which retains the existing provisions in clause 210.321 while also requiring a member of the immediate family of a person being proposed for a Subclass 210 visa to continue to be a member of the immediate family of that person at time of decision.

Regulation 30 - Schedule 2, Part 211 (Burmese in Burma)

Subregulation 30.1 inserts a definition of "Subclass 211 visa" for the purposes of this Part in a new clause 211.112.

Subregulation 30.2 substitutes a new clause 211.211 which retains the existing provisions in clause 211.211 while also allowing a member of the immediate family of a permanent resident who is, or has been, a Subclass 211 visa holder to be proposed by their spouse, parent or child for a Subclass 211 visa, providing the relationship had previously been declared to Immigration.

Subregulation 30.3 inserts a new clause 211.221A which requires an applicant who has applied for a Subclass 211 visa on the basis that they are immediate family of the holder of a Subclass 211 visa, to also be a member of that person's immediate family at time of decision.

Subregulation 30.4 substitutes a new clause 211.311 which retains the existing provisions in clause 211.311 while also allowing a member of the immediate family of a person being proposed for a Subclass 211 visa to satisfy the "at time of application" secondary criteria.

Subregulation 30.5 substitutes a new clause 211.312 which retains the existing provisions in clause 211.312 while also requiring a member of the immediate family of a person being proposed for a Subclass 211 visa to be included in a written undertaking.

Subregulation 30.6 substitutes a new clause 211.321 which retains the existing provisions in clause 211.321 while also requiring a member of the immediate family of a person being proposed for a Subclass 211 visa to continue to be a member of the immediate family of that person at time of decision.

Regulation 31 - Schedule 2, Part 212 (Sudanese)

Subregulation 31.1 inserts a definition of "Subclass 212 visa" for the purposes of this Part in a new clause 212.112.

Subregulation 31.2 omits clauses 212.211 and 212.212 and substitutes a new clause 212.211. The purpose of the new clause is to retain the existing provisions in clauses 212.211 and 212.212 while also allowing a member of the immediate family of a permanent resident who is, or has been, a Subclass 212 visa holder to be proposed by their spouse, parent or child for a Subclass 212 visa, providing the relationship had previously been declared to Immigration.

Subregulation 31.3 inserts "spouse" into the definition of "near relative" in clause 212.213.

Subregulation 31.4 inserts a new clause 212.221A which requires an applicant who has applied for a Subclass 212 visa on the basis that they are immediate family of the holder of a Subclass 212 visa, to also be a member of that person's immediate family at time of decision.

Subregulation 31.5 substitutes new clauses 212.311 and 212.312 which retain the existing provisions in clause 212.311 and 212.312 while also allowing a member of the immediate family of a person being proposed for a Subclass 212 visa to satisfy the "at time of application" secondary criteria.

Subregulation 31.6 substitutes a new clause 212.321 which retains the existing provisions in clause 212.321 while also requiring a member of the immediate family of a person being proposed for a Subclass 212 visa to continue to be a member of the immediate family of that person at time of decision.

Regulation 32 - Schedule 2, Part 213 (Burmese in Thailand)

Subregulation 32.1 inserts a definition of "Subclass 213 visa" for the purposes of this Part in a new clause 213.111.

Subregulation 32.2 omits clause 213.212 and inserts a new clause 213.211 which retains the existing provisions in clause 213.212 while also allowing a member of the immediate family of a permanent resident who is, or has been, a Subclass 213 visa holder to be proposed by their spouse, parent or child for a Subclass 213 visa, providing the relationship had previously been declared to Immigration.

Subregulation 32.3 inserts a new clause 213.221A which requires an applicant who has applied for a Subclass 213 visa on the basis that they are immediate family of the holder of a Subclass 213 visa, to also be a member of that person's immediate family at time of decision.

Subregulation 32.4 substitutes new clauses 213.311 and 213.312 which retain the existing provisions in clause 213.311 and 213.312 while also allowing a member of the immediate family of a person being proposed for a Subclass 213 visa to satisfy the "at time of application" secondary criteria.

Subregulation 32.5 substitutes a new clause 213.321 which retains the existing provisions in clause 213.321 while also requiring a member of the immediate family of a person being proposed for a Subclass 213 visa to continue to be a member of the immediate family of that person at time of decision.

Regulation 33 - Schedule 2, Part 214 (Cambodian)

Subregulation 33.1 inserts a definition of "Subclass 214 visa" for the purposes of this Part in a new clause 214.112.

Subregulation 33.2 substitutes a new clause 214.211 which retains the existing provisions in clause 214.211 while also allowing a member of the immediate family of a permanent resident who is, or has been, a Subclass 214 visa holder to be proposed by their spouse, parent or child for a Subclass 214 visa, providing the relationship had previously been declared to Immigration.

Subregulation 33.3 inserts a new clause 214.221A which requires an applicant who has applied for a Subclass 214 visa on the basis that they are immediate family of the holder of a Subclass 214 visa, to also be a member of that person's immediate family at time of decision.

Subregulation 33.4 substitutes new clauses 214.311 and 214.312 which retain the existing provisions in clause 214.311 and 214.312 while also allowing a member of the immediate family

of a person being proposed for a Subclass 214 visa to satisfy the "at time of application" secondary criteria.

Subregulation 33.5 substitutes a new clause 214.321 which retains the existing provisions in clause 214.321 while also requiring a member of the immediate family of a person being proposed for a Subclass 214 visa to continue to be a member of the immediate family of that person at time of decision.

Regulation 34 - Schedule 2 Part 215 (Sri Lankan (Special Assistance))

Subregulation 34.1 omits clauses 215.211, 215.212, 215.213 and 215.214 and substitutes a new clause 215.211. The purpose of the new clause is to retain the existing provisions in clauses 215.211, 215.212, 215.213 and 215.214 while also allowing a member of the immediate family of a permanent resident who is, or has been, a Subclass 215 visa holder to be proposed by their spouse, parent or child for a Subclass 215 visa, providing the relationship had previously been declared to Immigration.

Subregulation 34.2 inserts "spouse" into the definition of "near relative" in clause 215.215.

Subregulation 34.3 inserts a new clause 215.221A which requires an applicant who has applied for a Subclass 215 visa on the basis that they are immediate family of the holder of a Subclass 215 visa, to also be a member of that person's immediate family at time of decision.

Subregulation 34.4 substitutes new clauses 215.311 and 215.312 which retain the existing provisions in clause 215.311 and 215.312 while also allowing a member of the immediate family of a person being proposed for a Subclass 215 visa to satisfy the "at time of application" secondary criteria.

Subregulation 34.5 substitutes a new clause 215.321 which retains the existing provisions in clause 215.321 while also requiring a member of the immediate family of a person being proposed for a Subclass 215 visa to continue to be a member of the immediate family of that person at time of decision.

Regulation 35 - Schedule 2, Part 216 (Ahmadi)

Subregulation 35.1 omits clauses 216.211 and 216.212 and substitutes a new clause 216.211. The purpose of the new clause is to retain the existing provisions in clauses 216.211 and 216.212 while also allowing a member of the immediate family of a permanent resident who is, or has been, a Subclass 216 visa holder to be proposed by their spouse, parent or child for a Subclass 216 visa, providing the relationship had previously been declared to Immigration.

Subregulation 35.2 inserts a new clause 216.221A which requires an applicant who has applied for a Subclass 216 visa on the basis that they are immediate family of the holder of a Subclass 216 visa, to also be a member of that person's immediate family at time of decision.

Subregulation 35.3 substitutes new clauses 216.311 and 216.312 which retain the existing provisions in clause 216.311 and 216.312 while also allowing a member of the immediate family of a person being proposed for a Subclass 216 visa to satisfy the "at time of application" secondary criteria.

Subregulation 35.4 substitutes a new clause 216.321 which retains the existing provisions in clause 216.321 while also requiring a member of the immediate family of a person being proposed for a Subclass 216 visa to continue to be a member of the immediate family of that person at time of decision.

Regulation 36 - Schedule 2, Part 217 (Vietnamese)

Subregulation 36.1 substitutes a new clause 217.211 which retains the existing provisions in clause 217.211 while also allowing a member of the immediate family of a permanent resident who is, or has been, a Subclass 217 visa holder to be proposed by their spouse, parent or child for a Subclass 217 visa, providing the relationship had previously been declared to Immigration.

Subregulation 36.2 inserts "spouse" into the definition of "near relative" in clause 217.212.

Subregulation 36.3 inserts a new clause 217.221A which requires an applicant who has applied for a Subclass 217 visa on the basis that they are immediate family of the holder of a Subclass 217 visa, to also be a member of that person's immediate family at time of decision.

Subregulation 36.4 substitutes new clauses 217.311 and 217.312 which retain the existing provisions in clause 217.311 and 217.312 while also allowing a member of the immediate family of a person being proposed for a Subclass 217 visa to satisfy the "at time of application" secondary criteria.

Subregulation 36.5 substitutes a new clause 217.321 which retains the existing provisions in clause 217.321 while also requiring a member of the immediate family of a person being proposed for a Subclass 217 visa to continue to be a member of the immediate family of that person at time of decision.

Regulation 37 - Schedule 2, Part 300 (Prospective Marriage)

Subregulation 37.1 amends the definition of "prospective spouse" as a consequence of the amendment made by these Regulations to clause 300.211 to provide that an applicant for the grant of a Subclass 300 (Prospective Marriage) visa must intend to marry an Australian citizen.

Subregulation 37.2 substitutes a new clause 300.211 to provide that an applicant for the grant of a Subclass 300 visa must intend to marry an Australian citizen. Intention to marry an Australian permanent resident or eligible New Zealand citizen will no longer satisfy the requirements of this clause.

Subregulation 37.3 substitutes a new subparagraph 300.213(b)(i) to require that the sponsor be an Australian citizen. Australian permanent residents and eligible New Zealand citizens are no longer eligible to be sponsors.

Subregulation 37.4 amends clause 300.225 to require a mandatory assurance of support. Previously an assurance of support was only necessary if requested by the Minister.

Subregulation 37.5 substitutes a new clause 300.325 which amends the assurance of support criterion for secondary applicants as a consequence of the amendment made to clause 300.225, requiring a mandatory assurance of support for primary applicants.

Regulation 38 - Schedule 2 Part 302 (Emergency (Permanent visa applicant))

This regulation substitutes a new clause 302.111 which has an amended definition of "remaining criteria". This Subclass is for emergency permanent visa grant in situations where applicants have satisfied all criteria other than "remaining criteria", which previously included only public interest criteria. This amendment includes assurance of support criteria as "remaining criteria" so that applicants can be granted a Subclass 302 (Emergency (Permanent visa applicant)) visa without being required to complete an assurance of support before visa grant.

Regulation 39 - Schedule 2, Part 417 (Working Holiday)

This regulation corrects a minor technical deficiency in a previous amendment to Part 417.

Regulation 40 - Schedule 2, Part 418 (Educational)

This regulation corrects omissions from Statutory Rules 1996 No. 75 relating to amendments to various Parts of Schedule 2 consequential to changes to the Public Interest Criteria and simplification of the Special Return Criteria

Regulation 41 - Schedule 2, Part 419 (Visiting Academic)

Subregulation 41.1 and 41.2 correct omissions from Statutory Rules 1996 No. 75 relating to amendments to various Parts of Schedule 2 consequential to changes to the Public Interest Criteria and simplification of the Special Return Criteria.

Subregulation 41.3 also corrects a minor technical deficiency in a previous amendment to paragraph 419.323(a).

Regulation 42 - Schedule 2, Part 420 (Entertainment)

Subregulation 42.1 and 42.2 correct omissions from Statutory Rules 1996 No. 75 relating to amendments to various Parts of Schedule 2 consequential to changes to the Public Interest Criteria and simplification of the Special Return Criteria.

Subregulation 42.3 also corrects a minor technical deficiency in a previous amendment to paragraph 420.324(a).

Regulation 43 - Schedule 2, Part 675 (Medical Treatment (Short Stay))

This regulation corrects a minor technical deficiency in a previous amendment to Part 675.

Regulation 44 - Schedule 2, Part 676 (Tourist (Short Stay))

This regulation corrects a minor technical deficiency in a previous amendment to Part 676.

Regulation 45 - Schedule 2, Part 685 (Medical Treatment (Long Stay))

This regulation corrects a minor technical deficiency in a previous amendment to Part 685.

Regulation 46 - Schedule 2, Part 686 (Tourist (Long Stay))

This regulation corrects a minor technical deficiency in a previous amendment to Part 686.

Regulation 47 - Schedule 2, Part 773 (Border)

This regulation omits a reference to the Family of New Zealand Citizen (Migrant) visa which is omitted by these Regulations.

Regulation 48 - Schedule 2, Part 802 (Child)

Subregulation 48.1 substitutes a new paragraph 802.211(1)(d) which requires the child to have become a dependent child of an Australian citizen since last applying for a substantive visa, or to satisfy new subclause 802.211(2).

Subregulation 48.2 makes a technical amendment consequential upon other amendments made by this regulation.

Subregulation 48.3 adds a new subclause 802.211(2). This subclause enables a child, under 18 and born outside Australia, to have become the dependent child of

- an Australian permanent resident (but not the holder of a permanent humanitarian visa) who was a permanent resident when the child was born; or an eligible New Zealand citizen
- since last applying for a substantive visa.

Subregulation 48.4 substitutes a new clause 802.212. This clause prescribes who can nominate a dependent child for a Subclass 802 (Child) visa as follows:

Subclause 802.212(1) provides that the child must be nominated by an Australian citizen on whom the child is dependent. Alternatively, the nominator must satisfy subclause (2), (3) or (4).

Subclause 802.212(2) provides that the child must be under 18 and born outside Australia. The nominator must be either:

- an Australian permanent resident (but not the holder of a permanent humanitarian visa) who was a permanent resident when the child was born; or
- an eligible New Zealand citizen.

Subclause 802.212(3) requires:

- the nominator to be an Australian permanent resident (but not the holder of a permanent humanitarian visa); and
- the child to have been included in that parent's permanent resident application.

Subclause 802.212(4) provides for a child under 18 with a nominator who is either:

- an Australian permanent resident (but not the holder of a permanent humanitarian visa); or
- an eligible New Zealand citizen.

The nominator:

- must have been granted custody of the child; or
- the child's other parent must have died or become incapable of caring for the child and the Minister must be satisfied that it is appropriate to grant the visa.

Subregulation 48.5 omits clause 802.222 which provided for a discretionary assurance of support.

New clauses 802.222 and 802.222A provide for a discretionary assurance of support where the applicant is under 18 years of age at the time of application and for a mandatory assurance of support where the applicant is 18 years of age or over at the time of application, respectively.

Subregulation 48.6 amends clause 802.323 as a consequence of the new clauses 802.222 and 802.222A inserted by these Regulations.

Regulation 49 - Schedule 2, Part 804 (Aged Parent)

Subregulation 49.1 amends paragraph 804.211(d) to require the applicant to have become the aged parent of an Australian citizen. Becoming the aged parent of an Australian permanent resident or eligible New Zealand citizen will no longer satisfy the requirements of this clause.

Subregulation 49.2 substitutes a new clause 804.212 to require that the applicant be nominated by an Australian citizen. Australian permanent residents and eligible New Zealand citizens are no longer eligible to nominate.

Subregulation 49.3 amends clause 804.221 to provide that at the time of decision, the applicant continues to be the aged parent of the Australian citizen.

Regulation 50 - Schedule 2, Part 805 (Skilled)

A Note is inserted as a reminder that the Immigration (Education) Charge, if applicable, must be paid before the visa can be granted.

Regulation 51 - Schedule 2, Part 806 (Family)

Subregulation 51.1 substitutes a new clause 806.211 to require the aged dependent relative, the orphan relative, the remaining relative or the special need relative to be a relative of an Australian citizen. An orphan relative may be the relative of an Australian permanent resident or an eligible New Zealand citizen if the Minister is satisfied that there are compelling compassionate circumstances that justify granting the visa.

Subregulation 51.2 substitutes a new clause 806.213 to require the aged dependent relative, the orphan relative, the remaining relative or the special need relative to be nominated by their relative who is an Australian citizen. An orphan relative may be nominated by a relative who is an Australian permanent resident or an eligible New Zealand citizen if the Minister is satisfied that there are compelling compassionate circumstances that justify granting the visa.

Regulation 52 - Schedule 2, Part 808 (Confirmatory (Residence))

A Note is inserted as a reminder that the Migration (Health Services) Charge, if applicable, must be paid before the visa can be granted.

Regulation 53 - Schedule 2, Part 820 (Spouse)

Subregulation 53.1 amends the definition of a "nominating spouse" and adds the definition of "prospective marriage (temporary) visa" in clause 820.111. The amendment is necessary because fiancés will now obtain a permanent visa through the onshore spouse program, and will need to satisfy the criteria in this Part, and not Part 831. The new definition of "nominating spouse" integrates the existing definition with the definition found in Part 831 in relation to fiancés. The reference to "eligible New Zealand citizen" is omitted from the existing definition because amendments in these Regulations provide that such persons may no longer be nominators. The new definition of "prospective marriage (temporary) visa" describes fiancé visas under the Migration Regulations, the Migration (1993) Regulations, the Migration (1989) Regulations and similar visas under the Migration Reform (Transitional Provisions) Regulations.

Subregulation 53.2 substitutes a new subclause 820.211(2) and introduces a new subclause 820.211(2A). The purpose of these amendments is to require that the applicant must be the

spouse of, and nominated by, an Australian citizen. The applicant may be the spouse of, and nominated by, a permanent resident only if the application is made before 1 October 1997 and the applicant is the spouse of a permanent resident who:

- applied for their permanent visa before 3 July 1996;
- is not and has not been the holder of a permanent humanitarian visa; and
- informed the Department of the spouse relationship before their permanent visa was granted.

Subregulation 53.3 amends clause 820.222 to require a mandatory assurance of support for all applicants other than those who previously held a Subclass 300 visa or equivalent and do not hold a substantive visa. Previously an assurance of support was only necessary if requested by the Minister.

Subregulation 53.4 substitutes a new clause 820.322 which amends the assurance of support criterion for secondary applicants as a consequence of the amendment made to clause 820.222.

Regulation 54 - Schedule 2, Part 826 (Interdependency)

Subregulation 54.1 amends subparagraph 826.212(2)(b)(ii) to require the nominator to be an Australian citizen. Previously the nominator could be an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

Subregulation 54.2 amends clause 826.222 to require a mandatory assurance of support. Previously an assurance of support was only necessary if requested by the Minister.

Subregulation 54.3 omits clause 826.322 which is no longer required.

Subregulation 54.4 substitutes a new clause 826.323 which amends the assurance of support criterion for secondary applicants as a consequence of the amendment made to clause 826.222, requiring a mandatory assurance of support for primary applicants.

Regulation 55 - Schedule 2, Part 832 (Close Ties)

This regulation makes a minor amendment as a consequence of the omission of Part 152 (Family of New Zealand Citizen) by these Regulations.

Regulations 56 to 62 - Schedule 2;

Part 833 (Certain Unlawful Non-Citizens)

Part 840 (Business Owner)

Part 841 (Senior Executive)

Part 842 (State/Territory Sponsored Business Owner)

Part 843 (State/Territory Sponsored Senior Executive)

Part 844 (Investment-linked)

Part 845 (Established Business in Australia)

A Note is inserted as a reminder that the Immigration (Education) Charge, if applicable, must be paid before the visa can be granted.

PART 3 - AMENDMENTS COMMENCING ON 1 NOVEMBER 1996

Regulation 63 - Regulation 1.03 (Interpretation)

Subregulation 63.1 substitutes a new definition of "Australian permanent resident" in regulation 1.03. The new definition contains an additional provision which relates to an applicant for a Return (Residence) (Class BB) visa or a Resident Return (Temporary) (Class TP) visa, requiring the applicant to be a non-citizen who holds a permanent visa. Decision makers are no longer required to test whether an applicant for one of these classes of visa is "usually resident" in Australia.

Subregulation 63.2 inserts two new definitions as a consequence of changes to the criteria for spouse and interdependency visas:

- "long-term interdependent relationship" is an interdependent relationship between an applicant for a visa and another person that has existed for five years or more; and
- "long-term spouse relationship" is a spouse relationship between an applicant for a visa and another person that has existed for:
 - two years or more if there is a dependent child of both the applicant and the other person; or
 - five years or more, in any other case.

Regulation 64 - Regulation 1.09A (Interdependent relationship)

This regulation makes a consequential amendment to insert a reference to the new Interdependency (Provisional) (Class UG) visa. The provision is redrafted to ensure consistency in drafting style.

Regulation 65 - Regulation 1.15A (Spouse)

Subregulations 65.1 and 65.2 amend subregulations 1.15A(3) and (4) by inserting references to the new Spouse (Provisional) (Class UF) visa. These amendments are made consequentially. The provisions are also redrafted to ensure consistency in drafting style.

Regulation 66 - Regulation 1.20 (Sponsorship)

Subregulation 66.1 is a consequential amendment to paragraph 1.20(2)(a) to insert references to two migrant visas - Interdependency (Migrant) (Class BI) and Spouse (Migrant) (Class BC). The provision is redrafted to ensure consistency in drafting style.

Subregulation 66.1 also amends paragraph 1.20(2)(a) to change the period of sponsorship obligation from 12 months to 2 years. This aligns it with the 2 year waiting period for Social Security benefits and the 2 year obligation of assurers under the Assurance of Support Scheme. The amendment also explicitly provides that the sponsor's assistance is to include support if the applicant attends the Adult Migrant English Program (AMEP), during the period of the sponsorship undertaking.

Subregulation 66.2 is a consequential amendment to paragraph 1.20(2)(b) to insert reference to the two new provisional visas - Spouse (Provisional) (Class UF) and Interdependency (Provisional) (Class UG).

Subregulation 66.3 amends subregulation 1.20(2) by adding a new paragraph (c) that sets out the sponsor's undertakings in the case of concurrent applications for the offshore spouse and interdependency visas.

Regulation 67 - New Division 1.4B

This regulation inserts new Division 1.4B - Sponsorship and nomination: spouse, prospective spouse and interdependency visas. The effect of this new Division is to limit the number of times a person may sponsor or nominate an applicant for a Prospective Marriage (Temporary) (Class TO), Spouse (Provisional) (Class UF), Interdependency (Provisional) (Class UG) or Extended Eligibility (Temporary) (Class TK) visa as the case requires. The aim of this provision is to curtail abuse of the spouse, fiancé and interdependency migration programs.

New Division 1.4B contains a new regulation 1.207 - Limitation on approval of sponsorships and nominations - spouse, prospective spouse and interdependency visas. New subregulation 1.207(1) imposes a limitation on sponsorships and nominations of applicants for the relevant visas whereby:

- a sponsor or nominator will only be allowed to sponsor or nominate a maximum of two persons; and
- there must be at least a five year period, determined from time of application, between the two sponsorships or nominations; and
- if a sponsor had previously been sponsored or nominated as a spouse, prospective spouse or interdependent partner, at least five years has elapsed since the sponsor applied for such a visa.

New subregulation 1.207(2) will allow the Minister to approve sponsorships or nominations despite the limitation imposed under subregulation 1.207(1), if "compelling circumstances" exist. "Compelling circumstances" may include, but are not limited by, the following situations:

- the previous spouse or interdependent partner has died;
- the previous spouse or interdependent partner has abandoned the sponsor or nominator, and there are children requiring care and support;
- the new relationship is long-standing; or
- there are dependent children of the new relationship.

The purpose of new subregulation 1.20J(3), subject to new subregulation 1.20J(4) is that the limitation upon sponsorships or nominations is only to apply to applications for the relevant visas that are made on or after 1 November 1996.

New subregulation 1.20J(4) provides that the limitation on sponsorships and nominations is not to apply, if

- the applicant was the holder of a Prospective Marriage (Temporary) (Class TO) visa, which was granted as a result of an application made before 1 November 1996; and

- the applicant has applied for an Extended Eligibility (Temporary) (Class TK) visa to remain in Australia as the spouse of the same person who was specified as their intended spouse in the Prospective Marriage (Temporary) (Class TO) visa application.

Regulation 68 - 2.08B (Addition of dependent children to certain applications for temporary visas)

This regulation amends paragraph 2.08B(1)(a) by inserting a reference to the two new provisional visa classes - Spouse (Provisional) (Class UF) and Interdependency (Provisional) (Class UG). This provision is also re-drafted to ensure consistency in drafting style.

Regulation 69 - New regulation 2.08C

This regulation inserts a new regulation 2.08C (Certain applicants for independent (Migrant) (Class AT) visas taken to have applied also for Employer Nomination (Migrant) (Class AN) visas).

The new regulation provides that an applicant for an Independent (Migrant) (Class AT) visa is to be taken also to have applied for an Employer Nomination (Migrant) (Class AN) visa if an employment nomination of the applicant for an approved appointment under the Regional Migration Sponsorship Scheme (RSMS) is received before a decision has been made on the first application and the applicant satisfies the threshold requirements for the grant of a visa under the RSMS. The application is taken to have been made overseas (whether the employer nomination is received in Australia or overseas) and to include all persons who were included in the Independent (Migrant) (Class AT) visa application.

Regulation 70 - Regulation 2.09 (Oral applications for visas)

Subregulation 70.1 amends regulation 2.09 to provide that it is subject to the new subregulation (2) inserted by this regulation.

Subregulation 70.2 adds a new subregulation (2) to provide that an application for a Return (Residence) (Class BB) visa may be made orally by personal attendance at an office of Immigration in Australia.

Regulation 71 - Regulation 2.11 (Special provision for certain applications refused outside Australia)

This regulation amends subregulation 2.11(2) by inserting a reference to the new Spouse (Provisional) (Class UF) visa at paragraphs (c) and (d). The amendment is made because the new offshore spouse provisions require concurrent applications for a Spouse (Provisional) (Class UF) visa and a Spouse (Migrant) (Class BC) visa, and the invitations to apply for a visa provided for in this regulation will now reflect this. The subregulation is redrafted to make it clearer.

Regulation 72 - Regulation 2.18 (Re-evidencing of resident return visas)

Subregulation 72.1 substitutes a new subregulation (2) and inserts a new subregulation (2A).

The new subregulation 2.18(2) provides that an application for re-evidencing of a resident return visa can be made in accordance with approved form 1085 as well as approved form 786.

New subregulation (2A) provides that an application for re-evidencing of a Return (Residence) (Class BB) visa may be made:

- orally by personal attendance at an office of Immigration in Australia and on presentation of a valid passport; or

- in writing delivered to an office of Immigration in Australia and on presentation of a valid passport.

Subregulation 72.2 amends subregulation 2.18(4) as a consequence of the omission of the Subclass 156 (One year return) visa by these Regulations. This amendment will ensure that existing Subclass 156 visas may continue to be re-evidenced.

Regulation 73 - Regulation 2.19 (Evidence of visa need not be given in certain cases)

A new paragraph 2.19(c) is substituted to make a Return (Residence) (Class BB) visa granted as a result of an oral application an exception from other oral applications where evidence of the visa need not be given.

Regulation 74 - Regulation 2.26 (Prescribed qualifications and prescribed number of points)

Subregulation 74.1 amends paragraph 2.26(1)(a) to prescribe Part 3 (Language skill qualification) of Schedule 6 as a qualification relevant to determining the points score for grant of a Subclass 105 (Concessional Family) visa. The effect of this is that language skills will become a factor in the points test for a Subclass 105 (Concessional Family) visa.

Subregulation 74.2 amends paragraphs 2.26(1)(a) and (b) to make specific references to the grant to the applicant of Subclass 105 and 126 visas, respectively.

Regulation 75 - Regulation 2.27 (Combination of scores - "points system")

This regulation amends paragraph 2.27(c) to provide that the points which the spouse of an applicant for a Subclass 105 (Concessional Family) visa could receive under Part 3 (Language skill qualification) of Schedule 6 may be relevant to determining whether the applicant has received the pass mark or the pool mark. The effect of this is that where a spouse is contributing points for skill and age, language skills will become a factor also in the points test for a Subclass 105 (Concessional Family) visa,

Regulation 76 - Regulation 5.40 (Fee for assessment of a person's work qualifications and experience)

This regulation omits regulation 5.40 and substitutes a new regulation 5.40.

The \$120 fee payable on an application for assessment of a person's occupational qualifications or experience by NOOSR (National Office of Overseas Skills Recognition) is replaced by a new fee of \$300 which represents increased recovery of costs incurred in making the assessment.

The \$100 fee payable on an application for assessment of a person's occupational qualifications or experience by the Department of Industrial Relations (DIR) is replaced by two new fees (standard skills assessment - \$280; and optional priority skills assessment - \$470) which represent an increase in the recovery of costs incurred in making the assessment.

A fee of \$280 is also introduced for conducting an internal review of a DIR assessment.

Provision is made to refund the internal review fee if the review results in a decision in favour of the applicant and if no new evidence was supplied for the review by the applicant.

Regulation 77 - Schedule 1 (Classes of visas)

Subregulation 77.1 substitutes a new subitem 1110(4) which includes the new Subclass 106 (Regional Family) visa, inserted in Schedule 2 by these Regulations, as a subclass of the Concessional Family (Migrant) (Class AJ) visa.

Subregulation 77.2 substitutes new subitems 1114(1) and (2) to make it clear that there is no form or fee required in respect of an application for an Employer Nomination (Migrant) (Class AN) visa arising under the new regulation 2.08C inserted by these Regulations.

Subregulation 77.3 adds a new paragraph to subitem 1115(3) to allow those persons who:

- applied for a Prospective Marriage (Temporary) (Class TO) visa before 1 November 1996; or
- were invited to apply for such a visa under subregulation 2.11(1) because of an application made before 1 November 1996 which has been refused,

to apply for a Family (Residence) (Class AO) visa. The amendment ensures that these applicants will not be affected by changes which would otherwise require them to wait two years for the grant of a permanent spouse visa. Existing paragraph (c) is redrafted to become new paragraph (d) to ensure consistency in drafting style.

Subregulation 77.4 amends subitem 1119(2) by adding two new paragraphs. The amendment is made because holders and former holders of a Prospective Marriage (Temporary) (Class TO) visa will now obtain a permanent visa via the onshore spouse provisions. Because they will have already paid a fee for the Prospective Marriage (Temporary) (Class TO) visa, they will not be required to pay the same fee as other applicants. Existing paragraph (e) is redrafted to become new paragraph (g) to ensure consistency in drafting style.

Subregulations 77.5 and 77.9 amend items 1120A and 1129 respectively so that the holder of a Subclass 445 (Dependent Child) visa can apply for either visa class. A Subclass 445 (Dependent Child) visa will be held by a dependent child of a parent who in turn holds either a new Interdependency (Provisional) (Class UG) or a Spouse (Provisional) (Class UF) visa, where the parent has sponsored the child to come to Australia during the two years before the parent can be granted the corresponding permanent visa. These amendments will allow the child to apply for the same permanent visa as the parent with a view to meeting the relevant secondary criteria. These amendments align the new provisions with the equivalent onshore provisions for sponsorship of dependent children. The items are omitted and substituted so that the new provisions can be incorporated into the existing provisions. The new provisions for holders of a Subclass 445 (Dependent Child) visa applying for either visa class are:

- form 1002 is to be used;
- no fee is payable;
- the application must be made outside Australia or in Australia, but not in immigration clearance; and
- the applicant must be outside Australia or in Australia, but not in immigration clearance, at the time of application.

Subregulation 77.6 substitutes a new subitem 1128(1) to change the application form for a Return (Residence) (Class BB) visa from approved form 759 to approved form 1085 unless the

application is in accordance with the new paragraph 1128(3)(ba) which is inserted by these Regulations.

Subregulation 77.7 inserts a new paragraph 1128(3)(ba) which will enable applicants in Australia to apply orally or in writing other than in accordance with form 1085. An applicant from outside Australia will only be able to apply on form 1085.

Subregulation 77.8 substitutes a new subitem 1128(4) to:

- reflect the change in names of subclasses 155 and 157 made by these Regulations; and
- omit reference to subclass 156 which is omitted by these Regulations.

Subregulation 77.10 increases the fee in paragraph 1208A(2)(a) from \$35 to \$45 to reflect an increase in the recovery of costs. The increased fee is for an application for a Subclass 956 (Electronic Travel Authority (Business Entrant - Long Validity)) visa.

Subregulations 77.11, 77.13 and 77.14 amend paragraphs 1211(1)(a), 1211(3)(a) and (d) respectively, by inserting references to the two new temporary visas, Spouse (Provisional) (Class UF) and Interdependency (Provisional) (Class UG). The purpose of these amendments is to provide for an application for an Extended Eligibility (Temporary) (Class TK) visa by a dependent child of the holder of either of the new visas. This allows the parent to sponsor the child to come to Australia during the two years before the parent can be granted the relevant permanent visa. The amendments align the new provisions with the equivalent onshore provisions for sponsorship of dependent children.

Subregulation 77.12 amends subitem 1211(2) by redrafting the existing provisions to ensure consistency of drafting style and include Subclasses 309 and 310 in subparagraph (b)(i) and subparagraph (b)(ii)(A).

Subregulation 77.15 amends subitem 1211(3) by adding a new paragraph (e) that will allow persons who applied for, and were granted, a Prospective Marriage (Temporary) (Class TO) visa on or after 1 November 1996 to apply for an Extended Eligibility (Temporary) (Class TK) visa. This amendment will ensure that the holders of such visas will apply for permanent stay in Australia via the onshore spouse provisions, Existing paragraph (e) is redrafted to become new paragraph (f) to ensure consistency in drafting style. Paragraph (g) is added to allow for combined applications by members of the family unit of holders, or former holders, of Prospective Marriage (Temporary) (Class TO) visas.

Subregulations 77.16 and 77.19 introduce two new items - 1213A and 1220A - to create two new temporary visa classes - Interdependency (Provisional) (Class UG) visa and Spouse (Provisional) (Class UF) visa respectively. The purpose of these visas is to enable holders to travel to, enter and remain temporarily in Australia before they are eligible for a permanent visa. These new visa classes will be the equivalents of the Extended Eligibility (Temporary) (Class TK) visa for the onshore interdependency and spouse provisions. These items describe the requirements for making a valid application for either visa class which are that:

- form 1035 is to be used for an Interdependency (Provisional) (Class UG) visa application and form 47 for a Spouse (Provisional) (Class UF) visa application;
- no fee is required;
- an application must be made outside Australia, and the applicant must be outside Australia at the time of application;

- an application for the corresponding permanent visa - either an Interdependency (Migrant) (Class BI) visa or a Spouse (Migrant) (Class BC) visa - must be made concurrently;
- members of the family unit of the applicant may make an application at the same time and at the same place as the applicant; and
- each class contains one subclass - Subclass 310 (Interdependency (Provisional)) and Subclass 309 (Spouse (Provisional)) respectively.

Subregulation 77.17 amends subitem 1216(1) to change the application form for a Resident Return (Temporary) (Class TP) visa from approved form 759 to approved form 1085.

Subregulation 77.18 substitutes a new subitem 1216(4) to reflect the change in name of subclass 159 made by these Regulations.

Subregulation 77.20 increases the fee in sub-subparagraph 1223A(2)(a)(i)(A) from \$35 to \$45 to reflect an increase in the recovery of costs. The increased fee is for an application for a Temporary Business Entry (Class UC) visa where the applicant is outside Australia and seeks a visa which allows more than one entry or which is for a period of more than one month.

Regulations 78 and 85 - Schedule 2, Part 100 (Spouse) and Part 110 (Interdependency)

Regulations 78 and 85 omit Parts 100 and 110 respectively and substitute a new Part 100 and new Part 110 respectively that are set out in Part 1 and Part 3 of Schedule 2 respectively. The purpose of these amendments is to redraft Parts 100 and 110 to reflect the policy decision that these visas will be granted two years after application (with some exceptions), and will only be granted after the applicant has first held either of the two new corresponding temporary visas that are inserted by these Regulations. The new Parts will be the equivalents of Parts 801 and 814 in the onshore spouse and interdependency provisions.

Regulation 79-83 - Schedule 2

Part 101 (Child)

Part 102 (Adoption)

Part 103 (Parent)

Part 104 (Preferential Family)

Part 105 (Concessional)

These regulations all amend the clauses relating to "When the visa is in effect" to increase the multiple entry travel facility on permanent visas granted both onshore and offshore from four years to five years.

Regulation 84 - Schedule 2, new Part 106

This regulation inserts a new Part 106 (Subclass 106 - Regional Family) in Schedule 2. The new Part 106 is set out in Schedule 2 to these Regulations.

Regulation 85 - Schedule 2, Part 110 (Interdependency)

See comments on Regulation 78 - Part 100 (Spouse).

Regulation 86 - Schedule 2, Part 120 (Labour Agreement)

This regulation amends clause 120.511 to increase the multiple entry travel facility on permanent visas granted both onshore and offshore from four years to five years.

Regulation 87 - Schedule 2, Part 121 (Employer Nomination)

Subregulation 87.1 substitutes a new paragraph 121.211(3)(c) which prescribes criteria requiring that in the case of an application for an Employer Nomination (Migrant) (Class AN) visa which arises under the new regulation 2.08C inserted by these Regulations, the applicant must have been under 45 years at the time of making the relevant Independent (Migrant) (Class AT) visa application, must have functional English and must have a diploma or higher qualification relevant to the approved appointment. All other applicants for an Employer Nomination (Migrant) (Class AN) visa application, unless the approved appointment is exceptional, must have been under 45 when the Employer Nomination (Migrant) (Class AN) visa application was made, must have functional English and must have a diploma or higher qualification which is relevant to the approved appointment.

Subregulation 87.2 amends clause 121.511 to increase the multiple entry travel facility on permanent visas granted both onshore and offshore from four years to five years.

Regulation 88 to 97 - Schedule 2

Part 124 (Distinguished Talent (Australian Support))

Part 125 (Distinguished Talent and Special Service (Independent))

Part 126 (Independent)

Part 127 (Business Owner)

Part 128 (Senior Executive)

Part 129 (State/Territory Sponsored Business Owner)

Part 130 (State/Territory Sponsored Senior Executive)

Part 131 (Investment-linked)

Part 150 (Former Citizen)

Part 151 (Former Resident)

These regulations all amend the clauses relating to "When the visa is in effect" to increase the multiple entry travel facility on permanent visas granted both onshore and offshore from four years to five years.

Regulation 98 - Schedule 2, Part 155 (Five Year Return)

Subregulation 98.1 changes the heading for Part 155 from "Subclass 155 - Five year return" to "Subclass 155 - Five Year Resident Return".

Subregulation 98.2 omits clause 155.211 and substitutes new clauses 155.211 and 155.212.

New clause 155.211 requires an applicant to be an Australian permanent resident or to have been so before last leaving Australia. In addition, persons who were Australian citizens prior to last leaving Australia and who subsequently lost or renounced Australian citizenship will be able to meet this criterion.

New subclause 155.212(1) requires an applicant to satisfy subclause (2), (3) or (4).

Subclause 155.212(2) requires an applicant to satisfy a residency requirement of 2 years in the 5 years immediately before application. Periods as the holder of a temporary visa or a bridging visa are excluded.

Subclause 155.212(3) enables an applicant to meet the requirements of the subclause if the Minister is satisfied that the person:

- (i) has substantial business, cultural, employment or personal ties with Australia which are of benefit to Australia; and
- (ii) has not been absent from Australia for a continuous period of 5 years or more unless there were compelling circumstances for the absence.

Subclause 155.212(4) makes provision for family unit members of certain persons. In order to ensure that all family unit members are able to obtain the same kind of visa, the family unit members are not required to satisfy subclauses (2) and (3) if the "family head" does so. This is the situation whether a combined application or a separate application from the family head is lodged.

Subregulation 98.3 amends clause 155.511 to omit reference to subclause 155.211(5) which is omitted by these Regulations. Subclause 155.211(5) was a transitional clause and is no longer required because all visas to which this subclause relates ceased to be in effect on 17 September 1996.

Regulation 99 - Schedule 2, Part 156 (One Year Return)

This regulation omits Part 156 of Schedule 2.

Regulation 100 - Schedule 2, Part 157 (Three Month Return)

Subregulation 100.1 changes the heading for Part 157 from "Subclass 157 - Three month return" to "Subclass 157 - Three Month Resident Return".

Subregulation 100.2 omits clause 157.211 and substitutes a new clause 157.211.

New clause 157.211 requires an applicant to be an Australian permanent resident or to have been so before last leaving Australia. In addition, persons who were Australian citizens prior to going overseas and who subsequently lost or renounced Australian citizenship will be able to meet this criterion.

Subregulation 100.3 omits clause 157.212 as it is intended that there be no limit on the number of times a person can be granted a Subclass 157 visa.

A new clause 157.212 is substituted. The intention of this clause is to allow people who are unable to meet the criteria for the more beneficial Five Year Resident Return Visa to still leave and re-enter Australia with their permanent resident status intact in compelling and compassionate situations.

New subclause 157.212(1) requires an applicant to satisfy subclause (2) or (3).

The residency requirement in paragraph 157.212(2)(a) is more than 1 day but less than 2 years in the 5 years immediately before application. Periods as the holder of a temporary visa or a bridging visa are excluded.

Paragraph 157.212(2)(b) requires the applicant to have compelling and compassionate reasons for departing Australia or, if overseas, for his or her last departure.

Subclause 157.212(3) makes provision for family unit members of certain persons. In order to ensure that family unit members are able to travel together, the family unit members are not required to satisfy subclause (1) if the "family head" does so. This is the situation whether a combined application or a separate application from the family head is lodged.

Subregulation 100.4 amends clause 157.213 to provide for a "waiver" where the decision maker is satisfied that there were compelling and compassionate circumstances for absences exceeding 3 months.

Regulation 101 - Schedule 2, Part 159 (Resident Return)

Subregulation 101.1 changes the heading for Part 159 from "Subclass 159 - Resident return" to "Subclass 159 - Provisional Resident Return".

Subregulation 101.2 amends clause 159.212 to omit reference to Subclass 156 which is omitted by these Regulations.

Regulations 102 to 117 - Schedule 2:

Part 200 (Refugee)

Part 201 (In-country Special Humanitarian)

Part 202 (Global Special Humanitarian)

Part 203 (Emergency Rescue)

Part 204 (Woman at Risk)

Part 205 (Camp Clearance)

Part 208 (East Timorese in Portugal Macau or Mozambique)

Part 209 (Citizens of the Former Yugoslavia (Displaced Persons))

Part 210 (Minorities of Former USSR)

Part 211 (Burmese in Burma)

Part 212 (Sudanese)

Part 213 (Burmese in Thailand)

Part 214 (Cambodian)

Part 215 (Sri Lankan (Special Assistance))

Part 216 (Ahmadi)

Part 217 (Vietnamese)

These regulations all amend the clauses relating to "When the visa is in effect" to increase the multiple entry travel facility on permanent visas granted both onshore and offshore from four years to five years.

Regulation 118 - Schedule 2, Part 300 (Prospective Marriage)

Subregulation 118.1 inserts a definition of "woman-at-risk visa" in clause 300.111

which includes both the Subclass 204 (Woman at Risk) visa and equivalent subclasses under previous Migration Regulations.

Subregulation 118.2 inserts a new clause 300.212 which prevents a woman, who has been granted a woman-at-risk visa, from sponsoring a person for a Subclass 300 visa who at the time of grant of the woman-at-risk visa was:

- a former spouse;
- not declared as a spouse to Immigration; or
- a person from whom they were permanently separated:

for a period of five years from date of grant of their "woman-at-risk visa".

Subregulation 118.3 amends clause 300.214 by substituting a clause that requires that the parties to the proposed marriage have met and are known to each other personally. The purpose of this amendment is to curtail abuse of the previous provision for arranged marriages.

Regulation 119 - Schedule 2, new Parts 309 and 310

This regulation inserts new Parts 309 and 310 as set out in Part 4 of Schedule 2. The purpose of these two new Parts is to set out criteria for two new temporary visas for the new offshore spouse and interdependency provisions. The new Parts will be the equivalents of Parts 820 and 826 in the onshore spouse and interdependency provisions.

Regulation 120 - Schedule 2, Part 445 (Dependent Child)

Subregulations 120.1 and 120.2 amend paragraph 445.211(b) and clause 445.511 respectively by inserting references to the two new temporary visa classes - Interdependency (Provisional) (Class UG) and Spouse (Provisional) (Class UF). The purpose of these amendments is to allow a parent who holds one of these visas to sponsor a child to come to Australia during the two years before the parent can be granted the corresponding permanent visa. The amendments align the new provisions with the equivalent onshore provisions for sponsorship of dependent children.

Regulation 121 - Schedule 2, Part 773 (Border)

Subregulations 121.1 and 121.2 insert references to the two new temporary visas - Interdependency (Provisional) (Class UG) and Spouse (Provisional) (Class UF) - into subclause

773.213(3) to allow a dependent child of the holder of either visa to apply for, and be granted, a Border (Temporary) (Class TA) visa.

Regulation 122 - Schedule 2, Part 800 (Territorial Asylum)

This regulation amends clause 800.511 to increase the multiple entry travel facility from four years to five years.

Regulation 123 - Schedule 2, Part 801 (Spouse)

Subregulation 123.1 omits clause 801.11 and substitutes a new clause that:

- reinserts a redrafted definition of "nominating spouse" to ensure consistency in drafting style; and
- inserts a definition of "prospective marriage (temporary) visa". This definition includes the Prospective Marriage (Temporary) (Class TO) visa and equivalent visas under other migration regulations.

Subregulation 123.2 amends paragraph 801.221(2)(d) by omitting "subclause (7)" and substituting "subclauses (6A) and (7)". This amendment is made consequentially.

Subregulation 123.3 amends subparagraph 801.221(6)(c)(ii) to expand the circumstances in which an applicant can be granted a Subclass 801 (Spouse) visa even though the spousal relationship has ended. The new circumstances are where an applicant has access to at least one child in respect of whom the ex spouse has certain rights or obligations. To improve clarity the subparagraph has also been redrafted and new orders made under the *Family Law Act 1975* since 11 June 1996 have been added. The same drafting is also inserted in Parts 100, 820 and 831 at new subparagraph 100.221(4)(c)(ii), and existing subparagraphs 820.221(3)(b)(ii) and 831.221(4)(c)(ii) respectively.

Subregulation 123.4 inserts new subclause 801.221(6A) to allow the Minister to disregard the two year temporary residency requirement if at the time of application the applicant is in a "long-term spouse relationship" with the nominating spouse. The definition of a "long-term spouse relationship" is inserted in regulation 1.03 by these Regulations. This aligns the onshore provisions with the new equivalent offshore provisions that are inserted by these Regulations.

Subregulation 123.5 amends paragraph 801.221(7)(b) in order to limit the Minister's power in paragraph (b) to grant a visa less than 2 years after the application is made. The amendment inserts a time limitation so that the power will only be available where the application was made before 1 November 1996.

Subregulation 123.6 omits clause 801.311 and substitutes a new clause that combines the existing clause with a new provision for members of the family unit of a person who holds, or held, a "prospective marriage (temporary) visa". This term is inserted in new clause 801.111 by these Regulations.

Subregulations 123.7 and 123.8 make consequential amendments to subparagraphs 801.321(a)(i) and 801.321(a)(ii) respectively.

Subregulation 123.9 amends clause 801.511 to increase the multiple entry travel facility from four years to five years.

Regulations 124 to 128 - Schedule 2:

Part 802 (Child)

Part 804 (Aged Parent)

Part 805 (Skilled)

Part 806 (Family)

Part 808 (Confirmatory (Residence))

These regulations all amend the clauses relating to "When the visa is in effect" to increase the multiple entry travel facility on permanent visas granted both onshore and offshore from four years to five years.

Regulation 129 - Schedule 2, Part 814 (Interdependency)

Subregulation 129.1 amends paragraph 814.221(3)(d) to include reference to new subclause (5A).

Subregulation 129.2 inserts new subclause 814.221(5A) to allow the Minister to disregard the two year temporary residency requirement if at the time of application the applicant is in a "long-term interdependent relationship" with the nominator. The definition of a "long-term interdependent relationship" is inserted in regulation 1.03 by these Regulations. This aligns the onshore provisions with the new equivalent offshore provisions that are inserted by these Regulations.

Subregulation 129.3 amends clause 814.511 to increase the multiple entry travel facility from four years to five years.

Regulation 130 - Schedule 2, Part 820 (Spouse)

Subregulation 130.1 inserts a new definition of "woman-at-risk visa" at clause 820.111 which includes both the Subclass 204 (Woman at Risk) visa and equivalent subclasses under previous Migration Regulations.

Subregulation 130.2 amends paragraph 820.211(1)(b) by inserting four new subclauses - (6), (7), (8) and (9). This amendment is made consequentially.

Subregulation 130.3 amends paragraph 820.211(2)(a) by inserting a reference to a person who is not prohibited by subclause (2B) from being a nominating spouse.

Subregulation 130.4 amends sub-subparagraph 820.211(2)(d)(i)(A) by omitting "subclause (6)" and substituting "subclause (2A)". This amendment is made to simplify the drafting style.

Subregulation 130.5 redrafts existing clause 820.211(6) as 820.211(2A) and inserts a new clause 820.211(2B) which prevents a woman, who has been granted a woman-at-risk visa, from sponsoring a person for a Subclass 820 visa who, at the time of grant of the woman-at-risk visa, was:

- a former spouse;
- not declared as a spouse to Immigration; or
- a person from whom they were permanently separated,

for a period of five years from date of grant of the woman-at-risk visa.

Subregulation 130.6 inserts four new subclauses. Subclauses 820.211(6), (8) and (9) are copied from existing subclauses 83 1.211(2), (3) and (4) respectively, with a few minor drafting improvements. These new subclauses provide for fiancés to obtain a temporary Subclass 820 visa, until the grant of a permanent visa after two years has elapsed unless exceptions apply. New subclause (7) is added so that the holder of a Subclass 300 visa may, in certain circumstances, still satisfy the onshore spouse criteria where, after marriage but before a visa application is made, the nominator dies.

Subregulations 130.7, 130.8 and 130.9 make consequential amendments to subclause 820.221(1), and paragraphs 820.221(2)(a) and (3)(a).

Subregulation 130.10 amends subparagraph 820.221(3)(b)(ii) in the same manner and for the same reasons as for subparagraph 801.221(6)(c)(ii) which is explained above at regulation 123.

Subregulation 130.11 inserts a new clause 820.221A to provide that the nomination has been approved by the Minister, except if the applicant holds or has held a prospective marriage (temporary) visa. This provision will allow the Minister to implement the limitations on serial nominations that are inserted by these Regulations.

Subregulation 130.12 makes a consequential amendment to subclause 820:222(1).

Subregulation 130.13 inserts a new subclause 820.222(3) so that an assurance of support is not required if on or after 1 October 1996 the applicant applied for, and was granted, a Prospective Marriage (Temporary) (Class TO) visa.

Subregulation 130.14 substitutes a new clause 820.311 that combines the existing clause with a reference to members of the family unit of holders, or former holders, of "prospective marriage (temporary) visas". This term is inserted into Part 820 by these Regulations. The amendment is made as a consequence of the policy decision that fiancés will now obtain a permanent visa via the onshore spouse provisions.

Subregulation 130.15 amends clause 820.321 by inserting a reference to members. of the family unit. This amendment is made consequentially.

Subregulation 130.16 makes a consequential amendment to subclause 820.322(1).

Subregulation 130.17 adds a new subclause to clause 820.322. The amendment ensures that no assurance of support is required in relation to applicants who will have already been subject to a mandatory assurance of support in satisfying criteria for the grant of a Prospective Marriage (Temporary) (Class TO) visa.

Regulation 131 - Schedule 2, Part 826 (Interdependency)

This regulation inserts new subclause 826.221 A, to provide that in all cases the nomination of the applicant must be approved by the Minister. This provision will allow the Minister to implement the limitations on serial nominations that are inserted by these Regulations.

Regulation 132 - Schedule 2, Part 831 (Prospective Marriage Spouse)

Subregulation 132.1 amends subclause 831.211(1) to include reference to new subclause (2A).

Subregulation 132.2 inserts new subclause 831.211(2A) to provide that the holder of a Subclass 300 visa may, in certain circumstances, still satisfy the criteria where, after marriage but before a

visa application is made, the nominator dies. From 1 November 1996, Part 831 will only be used to assess persons who applied for a Prospective Marriage (Temporary) (Class TO) visa before that date. This new clause aligns this criterion with the new criterion in the Part 820 which will apply where the fiancé applied for Prospective Marriage (Temporary) (Class TO) after 1 November 1996.

Subregulation 132.3 amends subparagraph 831.221(4)(c)(ii) in the same manner and for the same reasons as for subparagraph 801.221(6)(c)(ii) which is explained above at regulation 123.

Subregulation 132.4 amends clause 831.511 to increase the multiple entry travel facility from four years to five years.

Regulations 133 to 141 - Schedule 2

Part 832 (Close Ties)

Part 833 (Certain Unlawful Non-citizens)

Part 840 (Business Owner)

Part 841 (Senior Executive)

Part 842 (State/Territory Sponsored Business Owner)

Part 843 (State/Territory Sponsored Senior Executive)

Part 844 (Investment-linked)

Part 845 (Established Business in Australia)

Part 866 (Protection (Residence))

These regulations all amend the clauses relating to "When the visa is in effect" to increase the multiple entry travel facility on permanent visas granted both onshore and offshore from four years to five years.

Regulation 142 - Schedule 6 (General points test - qualifications and points)

Subregulation 142.1 amends paragraph 6601(b) of Schedule 6 to correct a reference to the *Student and Youth Assistance Act 1973*.

Subregulations 142.2 and 142.3 amend subparagraphs 6601(b)(i) and 6601(b)(ii) of Schedule 6, respectively, to omit references to the *Social Security Act 1947*. That Act was repealed in 1991 and since that date the relevant benefits been paid under the *Social Security Act 1991*.

Subregulations 142.4 and 142.5 amend sub-subparagraphs 6601(c)(i)(B) and 6601(c)(ii)(B) of Schedule 6, respectively, to omit references to benefits paid under the *Social Security Act 1947*. That Act was repealed in 1991 and since that date the relevant benefits have been paid under the *Social Security Act 1991*.

Regulation 143 - Schedule 8 (Visa conditions)

This regulation substitutes item 8201 with a condition prohibiting certain visa holders from studying or training in Australia for more than 3 months.

PART 4 - TRANSITIONAL

Division 4.1- Transitional provisions relating to amendments commencing on 1 October 1996

Regulation 144 - Transitional - certain applications made on or after 3 July 1996 and before 1 October 1996

This regulation makes transitional provisions (subject to regulation 145 of these Regulations) in relation to applications for certain visas.

Subregulation 144.1 specifies the visa applications to which this regulation applies, being those applications made between 3 July 1996 (the day on which the Government announced changes to the migration program) and 1 October 1996 (the date of commencement of provisions of these Regulations which amend the relevant regulations) and in respect of which, before 1 October 1996:

- no decision to grant or refuse the application had been made; and
- no written notice had been given to the applicant under section 64 of the Migration Act 1958.

If this regulation applies to an application, Parts 100, 101, 102, 103, 104, 110, 300, 802, 804, 806, 820 and 826 of Schedule 2 of the Migration Regulations as in force on 30 September 1996 continue to apply, subject to the modifications set out in Schedule 1 to these Regulations.

Regulation 145 - Transitional - certain applications refused outside Australia

This regulation provides for certain applications to be considered as if the provisions of Schedule 2 of the Migration Regulations as in force on 30 September 1996 continue to apply notwithstanding that the application may be made on or after 1 October 1996. The applications to which this regulation applies are further applications made where:

- a person applied before 3 July 1996 for a Prospective Marriage (Temporary) (Class TO) visa or a Spouse (Migrant) (Class BC) visa; and
- under regulation 2.11, the Minister has invited the person to make an application for a Prospective Marriage (Temporary) (Class TO) visa or a Spouse (Migrant) (Class BC) visa.

Division 4.2 - Transitional provisions relating to amendments commencing on 1 November 1996

Regulation 146 - Transitional (Concessional Family (Migrant) (Class AJ) visa)

This regulation is a transitional provision in relation to applications for Concessional Family (Migrant) (Class AJ) visas which were made before 1 November 1996 and were not finally determined before that date. Those applications are to be considered on and after 1 November 1996 as if the new Subclass 106 (Regional Family) visa had been a subclass of the Concessional Family (Migrant) (Class AJ) visa at the time the application was made. The relevant applicants are therefore to be considered under the criteria for both the Subclass 105 (Concessional Family) and Subclass 106 (Regional Family) visas.

Regulation 147 - Applications made before 1 November 1996 for Return (Residence) (Class BB) and Resident Return (Temporary) (Class TP) visas

Subregulation 147.1 provides for the amendments made in relation to Resident Return visas by these Regulations to apply to applications made before 1 November 1996 if they have not been

finally determined before that date. All such amendments made by these Regulations are intended to be beneficial to applicants.

Subregulation 147.2 is essentially a safety net which provides that, despite subregulation 147.1, the Migration Regulations as they were prior to 1 November 1996 will apply to an application made and not finally determined before that date if they are more beneficial than the Migration Regulations as amended on 1 November 1996.

Regulation 148 - Certain amendments to apply in relation to applications for permanent visas not finally determined before 1 November 1996

Subregulation 148.1 provides for the amendments made by those regulations specified in subregulation 148.2 to apply to applications made before 1 November 1996 if those applications have not been finally determined before that date. Each of the amendments specified in subregulation 148.2 increase the multiple entry travel facility on permanent visas granted both onshore and offshore from four years to five years.

Regulation 149 - Invitations under subregulation 2.11(1) in relation to applications made before 1 November 1996 for Spouse (Migrant) (Class BC) and Prospective Marriage (Temporary) (Class TO) visas

This regulation is a transitional provision, providing that the Migration Regulations, as in force immediately before 1 November 1996, apply to those applicants who:

- are, or were, invited by the Minister under subregulation 2.11(1), to apply for either a Prospective Marriage (Temporary) (Class TO) or a Spouse (Migrant) (Class BC) visa; and
- any further applications made as a result of the abovementioned invitation.

Regulation 150 - Applications for Family (Residence) (Class AO), General (Residence) (Class AS) and Extended Eligibility (Temporary) (Class TK) visas not finally determined before 1 November 1996

Subregulations 150.1, 150.2 and 150.3 insert three transitional regulations which extend the following benefits to applications for certain visas not finally determined on 1 November 1996:

- the expanded circumstances in which an applicant can be granted a visa even though the spouse relationship has ended (see comments for subparagraph 801.221(6)(c)(ii) at regulation 123; and
- the provision to allow the Minister to disregard the two year temporary residency requirement if at the time of application the applicant is in a "long-term interdependent relationship" or "long-term spouse relationship" with the nominator.

Regulation 151 - Applications for Spouse (Migrant) (Class BC) visas made before 1 November 1996 and Regulation 152 - Applications for Interdependency (Migrant) (Class BI) visas made before 1 November 1996

Regulations 151.1 and 152.1 provide that the Migration Regulations as they were prior to 1 November 1996 will apply to an application for a Spouse (Migrant) (Class BC) visa and an Interdependency (Migrant) (Class BI) visa respectively made prior to 1 November 1996.

Schedule 1 - Modifications of Schedule 2 to the Migration Regulations (as in force on 30 September 1996) in relation to applications to which regulation 144 applies

This Schedule sets out the modifications to the criteria in Schedule 2 in relation to the applications referred to in regulation 144 of these Regulations. These modifications affect visa subclasses in the Preferential Family Category of the Migration Program.

The main effect of the modifications is to require that at the time of decision the relevant applicants must be family relatives of, and must be sponsored or nominated by, Australian citizens. There are some exceptions which allow certain applicants to be the family relatives of, and to be sponsored or nominated by, certain Australian permanent residents or eligible New Zealand citizens. Family relatives of holders of humanitarian and protection visas are not included in these exceptions because provision is made by these Regulations for certain immediate family members of holders of these visas to be granted visas under the Humanitarian Program.

Details of the modifications made to particular Parts in Schedule 2 are as follows:

Item 1 - Part 100 (Spouse)

This item omits clause 100.221 and substitutes new clauses 100.222 and 100.224. The modified criteria require that at the time of decision an applicant must be the spouse of the person who was the applicant's spouse or intended spouse at the time of application, and that person must be:

- an Australian citizen; or
- an Australian permanent resident (other than the holder of a permanent humanitarian visa) who holds a permanent visa granted on the basis of an application made before 3 July 1996, who was in a spouse relationship with the applicant before that visa was granted and Immigration was informed of that relationship.

Item 2 - Part 101 (Child)

This item substitutes a new clause 101.222. The modified criteria require that at the time of decision an applicant must be the dependent child of:

- an Australian citizen; or
- an Australian permanent resident (other than the holder of a permanent humanitarian visa) who held a permanent visa at the time the child was born, or an eligible New Zealand citizen, and the applicant is under 18 years and was born outside Australia; or
- an Australian permanent resident (other than the holder of a permanent humanitarian visa) and the applicant was included in the application which resulted in the grant of a permanent visa to the parent; or
- an Australian permanent resident (other than the holder of a permanent humanitarian visa) or an eligible New Zealand citizen, if the child is under 18 years and that parent has been granted custody of the child, or the other parent has died or become incapable of caring for the child and the Minister is satisfied that it is appropriate in the circumstances for the visa to be granted.

Item 3 - Part 102 (Adoption)

This item substitutes new clauses 102.221 and 102.222. The modified criteria require that at the time of decision an applicant must be aged under 18 years, and:

- the applicant was adopted overseas by an Australian citizen (or if the adoption took place before 3 July 1996, an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen); or
- the adoption of the applicant by an Australian citizen (or Australian citizen spouses) in Australia has been approved by the relevant Australian child welfare and overseas authorities; or
- the adoption of the applicant by an Australian permanent resident or eligible New Zealand citizen (or spouses who are Australian permanent residents or eligible New Zealand citizens) in Australia was approved by the relevant Australian child welfare or overseas authorities before 3 July 1996.

The applicant must be sponsored by the adoptive parent or the prospective adoptive parent, as the case requires.

Item 4 - Part 103 (Parent)

This item substitutes new clauses 103.221, 103.222 and 103.223. The modified criteria require that at the time of decision an applicant must:

- be sponsored by a settled Australian citizen who sponsored the applicant at the time of application; and
- meet the balance of family test in regulation 1.05 of the Migration Regulations as amended by these Regulations on and from 1 October 1996.

Item 5 - Part 104 (Preferential Family)

This item substitutes a new clause 104.221. The modified criteria require that at the time of decision an applicant must be:

- an aged dependent relative or a remaining relative of an Australian citizen; or
- an orphan relative or special need relative of an Australian citizen; or
- an orphan relative of an Australian permanent resident or eligible New Zealand citizen, provided the Minister is satisfied that there are compelling compassionate circumstances that justify the grant of the visa.

Item 6 - Part 110 (Interdependency)

This item substitutes new clauses 110.221, 110.222 and 110.223. The modified criteria require that at the time of decision an applicant must:

- be in an interdependent relationship with an Australian citizen who has turned 18; and
- be sponsored by the same sponsor as at the time of application, and that sponsor must be an Australian citizen; and
- continue to be in an interdependent relationship with the same person as at the time of application, and that person must be an Australian citizen.

Item 7 - Part 300 (Prospective Marriage)

This item substitutes new clauses 300.221 and 300.222 and adds a new clause 300.221AA. The modified criteria require that at the time of decision an applicant must:

- intend to marry the person who was the prospective spouse at the time of application, and that person must be an Australian citizen; and
- continue to meet the time of application criteria relating to the genuineness of the relationship and intention to marry; and
- be sponsored by the same sponsor as at the time of application, and that sponsor must be an Australian citizen.

Item 8 - Part 802 (Child)

This item substitutes a new clause 802.221. The modified criteria require that at the time of decision an applicant must be a dependent child of, and be nominated by:

- an Australian citizen; or
- an Australian permanent resident (other than the holder of a permanent humanitarian visa) who held a permanent visa at the time the child was born, or an eligible New Zealand citizen, and the applicant is under 18 years and was born outside Australia; or
- an Australian permanent resident (other than the holder of a permanent humanitarian visa) and applicant was included in the application which resulted in the grant of a permanent visa to the parent; or
- an Australian permanent resident (other than the holder of a permanent humanitarian visa) or an eligible New Zealand citizen, if the child is under 18 years and that parent has been granted custody of the child, or the other parent has died or become incapable of caring for the child and the Minister is satisfied that it is appropriate in the circumstances for the visa to be granted.

Item 9 - Part 804 (Aged Parent)

This item substitutes new clauses 804.221 and 804.223 and omits clause 804.222. The modified criteria require that at the time of decision:

- the applicant must be an aged parent of an adult child who is an Australian citizen, and must be nominated by that Australian citizen; and
- the applicant must satisfy the balance of family test set out in regulation 1.05 of the Migration Regulations, as amended by these Regulations on and from 1 October 1996.

Item 10 - Part 806 (Family)

This item substitutes a new clause 806.221. The modified criteria require that at the time of decision an applicant must be:

- an aged dependent relative, an orphan relative, a remaining relative or a special need relative of a settled Australian citizen who is usually resident in Australia and who has nominated the applicant; or
- an orphan relative of a settled Australian permanent resident or a settled eligible New Zealand citizen relative who is usually resident in Australia and who has nominated the applicant,

and the Minister is satisfied that there are compelling compassionate circumstances that justify the grant of the visa.

Item 11 - Part 820 (Spouse)

This item substitutes a new clause 820.221. The modified criteria require that at the time of decision an applicant must be the spouse of the person who is:

- an Australian citizen; or
- an Australian permanent resident (other than the holder of a permanent humanitarian visa) who holds a permanent visa granted on the basis of an application made before 3 July 1996, who was in a spouse relationship with the applicant before that visa was granted and Immigration was informed of that relationship.

Provision is also continued for the grant of the visa to certain applicants who entered Australia for the purpose of marrying Australian citizens, Australian permanent residents or eligible New Zealand citizens and then married their sponsors but failed to obtain a permanent visa.

Provision is also continued for the grant of the visa to certain applicants whose nominating spouses have died, or whose relationships have broken down in certain domestic violence and custody situations.

Item 12 - Part 826 (Interdependency)

This item substitutes a new subclause 826.221(2), inserts a new subclause 826.221(2A) and amends paragraph 826.221(3)(a). The modified criteria require that at the time of decision an applicant must:

- continue to be in an interdependent relationship with the same person as at the time of application, and that person must be an Australian citizen who has turned 18; and
- be nominated by that Australian citizen.

Provision is also continued for the grant of the visa to an applicant whose nominator has died or whose relationship with the nominator has ceased in certain domestic violence and custody situations. These provisions are available to these applicants only if the nominator was an Australian citizen.

Schedule 2 - New Parts for insertion in Schedule 2 of the Migration Regulations from 1 November 1996

Part 1 - New Part 100

Subclass 100 - Spouse

New Part 100 includes a criterion that at least two years must have passed since the application, with some exceptions, and thus becomes the second stage visa in the new offshore spouse provisions. The first stage visa is the Spouse (Provisional) (Class UF) visa that contains Subclass 309. This aligns the provisions for offshore spouse migration with the provisions for onshore spouse migration. The new Part integrates some existing provisions of Part 100 with new provisions. In general terms, the existing provisions of Part 100 that are not included in the new Part 100 have been incorporated into the criteria for the first stage visa at new Part 309.

The new provisions are explained below.

A definition of a "sponsoring spouse" is inserted in Division 100.1. This provides a short term to describe the spouse or intended spouse of the applicant in the first stage visa - the Spouse (Provisional) (Class UF) visa. This ensures that the same spouse is referred to in both the first and second stage visas.

There are no criteria to be satisfied at the time of application. The applicant will only be required to satisfy the criteria at time of application for the first stage visa - the Spouse (Provisional) (Class UF) visa.

New subclause 100.221(1) provides that the applicant must satisfy the requirements of subclause (2), (3) or (4).

New subclause 100.221(2) provides that the applicant satisfies the subclause if the applicant:

- is the holder of a Subclass 309 (Spouse (Provisional)) visa;
- is the spouse of the sponsoring spouse; and
- at least two years have passed since the application was made unless certain exceptions apply.

New subclause 100.221(3) provides for the situation where the applicant would meet subclause 100.221(2) except that the sponsoring spouse has died. This subclause aligns the offshore spouse provisions with the existing onshore provisions.

New subclause 100.221(4) provides for the situation where the applicant would meet subclause 100.221(2) except that the relationship with the sponsoring spouse has ceased and the sponsoring spouse has committed domestic violence against the applicant or a member of the family unit of the applicant, or there are specified court orders or other formal obligations relating to children of the relationship. The drafting of new subparagraph 100.221(4)(c)(ii) is the same as the new drafting for subparagraph 801.221(6)(c)(ii) that is explained above in relation to regulation 123. This aligns the offshore spouse provisions and the onshore spouse provisions.

New subclause 100.221(5) provides that if the applicant is in a long-term spouse relationship with the sponsoring spouse at the time of application then the two year residency requirement at paragraph 100.221(2)(c) does not apply. A definition of "long-term spouse relationship" is inserted by these Regulations.

New subclause 100.221(6) provides that the two year residency requirement does not apply if the sponsoring spouse is or was the holder of a "permanent humanitarian visa" and before arriving in Australia for the first time as the holder of a permanent humanitarian visa, was the applicant's spouse. A definition of permanent humanitarian visa is inserted by these Regulations.

New subclause 100:221(7) provides that the two year residency requirement in paragraph 100.221(2)(c) does not prevent the Minister less that two years after the application from refusing to grant a visa or granting a visa to an applicant who meets the requirements of subclause (3) or (4).

New clause 100.223 provides that if so requested by the Minister an assurance of support is to be given for the applicant.

New clause 100.226 provides that the applicant must be nominated by the sponsoring spouse if at least two years has passed since the application had been made, unless subclauses 100.221(3) or (4) apply.

New clause 100.311 provides that an applicant satisfies the requirements of this subclause if they are the members of the family unit of a person who applied for a Spouse (Migrant) (Class BC) visa, and the Minister has not decided to grant or refuse to grant a visa to that person.

New clause 100.321 provides that an applicant satisfies this subclause if the applicant holds either:

- a Subclass 309 (Spouse (Provisional)) Visa; or
- a Subclass 445 (Dependent Child) visa

which was granted on the basis that they were members of the family unit of the person who was granted a Subclass 309 visa and that person has subsequently been granted a Spouse (Migrant) (Class BC) visa. The reference to holders of a Subclass 445 visa means that a dependent child who has been brought to Australia during the parent's two years temporary stay, can satisfy the secondary criteria for the permanent visa. This aligns the offshore spouse provisions with the onshore spouse provisions.

New clause 100.323 provides that if the Minister has requested an assurance of support for the person who satisfies the primary criteria, then an assurance of support is required for the persons who satisfy the secondary criteria.

New clause 100.411 provides that a visa may be granted to an applicant if the applicant is either outside Australia or in Australia, but not in immigration clearance.

New clause 100.511 provides that the visa is a permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

New clauses 100.611, 100.612 and 100.613 qualify the existing conditions of Part 100 because the new Subclass 100 visa can be granted in or outside Australia. The new conditions will only be applicable where the applicant is outside Australia at the time of grant.

Part 2 - New Part 106

Subclass 106 - Regional Family

This Schedule sets out the new Part 106 (Subclass 106 - Regional Family) which is inserted in Schedule 2 by these Regulations.

Subclass 106 prescribes criteria to be met by applicants for a Concessional Family (Migrant) (Class AJ) visa. The main primary criteria to be satisfied are that an applicant:

- is sponsored by a brother, sister, parent, aunt or uncle who has turned 18, is an Australian citizen, permanent resident or eligible New Zealand citizen living in a designated area, and who is not in receipt of specified social security benefits;
- is aged less than 45 at the time of applying;
- is not a medical practitioner or the holder of medical qualifications obtained within the 5 years immediately before the time of application;
- has a usual occupation for which a degree, diploma or trade certificate is required in Australia;

- holds a degree, diploma or trade certificate that is relevant to the usual occupation and is assessed by the relevant Australian authority as equivalent to the Australian standards for the occupation; and
- has English language skills of a specified standard.

An applicant may be taken to meet the criteria relating to age, occupation, qualifications and language skills if the applicant's spouse (rather than the applicant) is able to satisfy those criteria, is not a medical practitioner and does not hold a medical qualification obtained within the 5 years immediately before the time of application.

Members of the family unit of a person who satisfies the primary criteria are eligible for the grant of a visa if they satisfy the secondary criteria.

Part 3 -New Part 110

Subclass 110 - Interdependency

New Part 110 includes a criterion that two years have passed since the application, with some exceptions, and thus becomes the second stage visa in the new offshore interdependency provisions. The first stage visa is the Interdependency (Provisional) (Class UG) visa that contains Subclass 310. This aligns the provisions for offshore interdependency migration with the provisions for onshore interdependency migration. The new Part integrates some existing provisions of Part 110 with new provisions. In general terms, the existing provisions of Part 110 that are not included in the new Part 110 have been incorporated into the criteria for the first stage visa at new Part 310.

The new provisions are explained below.

A definition of a "sponsor" is inserted in Division 110.1. This provides a short term to describe the sponsor of the applicant in the first stage visa - the Interdependency (Provisional) (Class UG) visa. This ensures that the same sponsor is referred to in both the first and second stage visas.

There are no criteria to be satisfied at the time of application. The applicant will only be required to satisfy the criteria at time of application for the first stage visa - the Interdependency (Provisional) (Class UG) visa.

New subclause 110.221(1) provides that the applicant must satisfy the requirements of subclause (2), (3), or (4).

New subclause 110.221(2) provides that the applicant satisfies the subclause if the applicant:

- is the holder of a Subclass 310 (Interdependency (Provisional)) visa;
- is in an interdependent relationship with the sponsor, and
- at least two years have passed since the application was made unless certain exceptions apply.

New subclause 110.221(3) provides for the situation where the applicant would meet subclause 110.221(2) except that the sponsor has died. This subclause aligns the offshore interdependency provisions with the existing onshore interdependency provisions:

New subclause 110.221(4) provides for the situation where the applicant would meet subclause 110.221(2) except that the relationship with the sponsor has ceased and the sponsor has

committed domestic violence against the applicant or a member of the family unit of the applicant or the sponsor. This aligns the offshore spouse provisions and the onshore spouse provisions.

New subclause 110.221(5) provides that if the applicant is in a "long-term interdependent relationship" with the sponsor at the time of application then the two year residency requirement at paragraph 110.221(2)(c) does not apply. A definition of "long-term interdependent relationship" is inserted by these Regulations.

New subclause 110.221(6) provides that the two year residency requirement in paragraph 110.221(2)(c) does not prevent the Minister less that two years after the application from refusing to grant a visa or granting a visa to an applicant who meets the requirements of subclause (3) or (4).

New clause 110.223 is the same as clause 100.223 (Part 1 of Schedule 2).

New clause 110.226 provides that the applicant must be nominated by the sponsor if at least two years has passed since the application had been made, unless subclauses 110.221(3) or (4) apply.

New clause 110.311 provides that an applicant satisfies the requirements of this subclause if they are the members of the family unit of a person who applied for an Interdependency (Migrant) (Class BI) visa, and the Minister has not decided to grant or refuse to grant a visa to that person.

New clause 110.321 provides that an applicant satisfies this subclause if the applicant holds either:

- a Subclass 310 (Interdependency (Provisional)) visa; or
- a Subclass 445 (Dependent Child) visa

that was granted on the basis that they were members of the family unit of the person who was granted a Subclass 310 visa and that person has subsequently been granted an Interdependency (Migrant) (Class BI) visa. The reference to holders of a Subclass 445 visa means that a dependent child who has been brought to Australia during the parent's two years temporary stay, can satisfy the secondary criteria for the permanent visa. This aligns the offshore interdependency provisions with the onshore interdependency provisions.

New clauses 110.323, 110.411, 110.511, 110.611, 110.612, and 110.613 are the same as clauses 100.323, 100.411, 100.511, 100.611, 100.612 and 100.613 (Part 1 of Schedule 2) respectively.

Part 4 - New Parts 309 and 310

Subclass 309 - Spouse (Provisional)

New Part 309 establishes criteria for a first stage visa in the new offshore spouse provisions. The second stage visa is the amended Spouse (Migrant) (Class BC) visa that includes Subclass 100. This aligns the offshore spouse provisions with the onshore spouse provisions.

Definitions of "intended spouse" and "woman-at-risk visa" are set out in new clause 309.111. The definition of "woman-at-risk visa" includes both the current visa Subclass and equivalent Subclasses under the Migration Regulations since the commencement of the Migration (1989) Regulations.

New subclause 309.211(1) requires that the applicant must satisfy the requirements of either new subclause (2) or (3).

New subclause 309.211(2) requires the applicant to be the spouse of an Australian citizen, or an Australian permanent resident who meets the requirements of subclause (2A) if the application is made before 1 October 1997. This latter provision ensures continuity with the new sponsorship requirements that are inserted by these Regulations and commence on 1 October 1996.

New subclause 309.211(2A) applies the 12 month concession for sponsorship by an Australian permanent resident that is inserted by these Regulations into Part 100 commencing on 1 October 1996.

New subclause 309.211(3) establishes a requirement for the situation where the applicant intends to marry an Australian citizen and that the intended marriage, will, if it takes place, be a valid marriage recognized under the Act.

Clause 309.212 prevents a woman, who has been granted a "woman-at-risk visa", from sponsoring a person for a Subclass 309 visa who, at the time of grant of the visa, was:

- a former spouse;
- not declared as a spouse to Immigration; or
- a person from who they were permanently separated,

for a period of five years from date of grant of the "woman-at-risk visa".

New clause 309.213 imposes sponsorship requirements.

New clause 309.221 provides that the applicant continues to satisfy the requirements of clause 309.211.

New clause 309.222 provides that the sponsorship requirements of clause 309.213 have been approved by the Minister and that the sponsorship is still in force.

New clause 309.223 provides that the applicant continues to be the spouse of the relevant person.

New clause 309.224 provides that the intended marriage referred to in subclause 309.211(3) must have taken place.

New clause 309.225 provides that the applicant must satisfy public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009. These are standard public interest criteria for spouse and children visas.

New clause 309.226 provides that if the applicant has previously been in Australia they must satisfy special return criteria 5001 and 5002. These are standard special return criteria for all preferential family visa categories.

New clause 309.227 provides for a mandatory assurance of support, which is standard for all preferential family visa categories.

New subclause 309.228(1) provides that each member of the family unit who is an applicant for a Spouse (Provisional) (Class UF) visa must satisfy:

- public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009; and
- if they have previously been in Australia special return criteria 5001 and 5002.

New subclause 309.228(2) provides that each member of the family unit who is not an applicant for a Spouse (Provisional) (Class UF) visa must satisfy public interest criteria 4001, 4002, 4003 and 4004, as well as public interest criterion 4007 (unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to this public interest criterion). This clause is standard for all permanent visas.

New clause 309.229 provides that where there is a combined application which includes either a dependent child or a child who is not yet 18 years old and is usually resident in the same household as the applicant, that the Minister is to be satisfied that the grant of the visa would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child. This clause is standard for all visa classes where a child can be granted a visa.

New clause 309.311 provides that an applicant satisfies the requirements of this subclause if they are the members of the family unit of, and made a combined application with, a person who satisfies the primary criteria.

New clause 309.312 provides that person seeking to satisfy the secondary criteria is included in the sponsorship of the person who satisfies the primary criteria.

New clause 309.321 requires that an applicant continues to be the a member of the family unit of a person who has been granted a Spouse (Provisional) (Class UF) visa.

New clause 309.322 provides that the sponsorship of the applicant seeking to satisfy the secondary criteria has been approved by the Minister and is still in force.

New clause 309.323 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009. These are standard public interest criteria for spouse and children visas.

New clause 309.324 requires the applicant to satisfy special return criteria 5001 and 5002 if they had previously been in Australia. These are standard special return criteria for all preferential family visa categories.

New clause 309.325 establishes a mandatory assurance of support in relation to the applicant satisfying secondary criteria which is standard for all preferential family visa categories.

New clause 309.326 provides that if the applicant is a dependent child of the holder of a Subclass 309 visa the Minister is to be satisfied that the grant of the visa would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child. This clause is standard for all visa classes where a child can be granted a visa.

New clause 309.411 provides that the applicant must be outside Australia at time of visa grant.

New clause 309.511 provides that the visa is a temporary visa which allows the holder to travel to, and enter, Australia for a period of thirty months from the date of application, and to remain in Australia until the end of the day on which a decision is made to grant or refuse to grant the visa, or until the applicant withdraws the visa application.

New clause 309.611 provides that initial entry must be made by a date specified by the Minister.

New clause 309.612 provides that if the applicant satisfies the primary criteria, condition 8502 may be imposed.

New clause 309.613 provides that if the applicant satisfies the secondary criteria, conditions 8502 and 8515 may be imposed.

New clause 309.711 provides that the visa must be affixed to a valid passport.

Subclass 310 - Interdependency (Provisional)

New Part 310 establishes criteria for a first stage visa in the new offshore interdependency provisions. The second stage visa is the amended Interdependency (Migrant) (Class BI) visa that includes Subclass 110. This aligns the offshore interdependency provisions with the onshore interdependency provisions.

New subclause 310.211 requires that the applicant is 18 years or more and is in an interdependent relationship with a person who is an Australian citizen and who has turned 18.

New subclause 310.212 imposes a sponsorship requirement.

New clause 310.221 provides that the applicant continues to satisfy the requirements of clause 310.211.

New clause 310.222 provides that the sponsorship requirements of clause 310.212 have been approved by the Minister and that the sponsorship is still in force.

New clause 310.223 provides that the applicant continues to be in an interdependent relationship with the Australian citizen with whom the applicant was in an interdependent relationship with at the time of application.

New clauses 310.224, 310.225 and 310.226 are the same as clauses 309.225, 309.226 and 309.227 (Part 309) respectively.

New subclause 310.227(1) provides that each member of the family unit who is an applicant for a Interdependency (Provisional) (Class UG) visa must satisfy:

- public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009; and
- if they have previously been in Australia special return criteria 5001 and 5002.

New subclause 310.227(2) provides that each member of the family unit who is not an applicant for a Interdependency (Provisional) (Class UG) visa must satisfy public interest criteria 4001, 4002, 4003 and 4004, as well as public interest criterion 4007 (unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion). This clause is standard for all permanent visas.

New clause 310.228 provides that where there is a combined application which includes either a dependent child or a child who is not yet 18 years old and is usually resident in the same household as the applicant, the Minister is to be satisfied that the grant of the visa would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child. This clause is standard for all visa classes where a child can be granted a visa.

New clause 310.311 provides that an applicant satisfies the requirements of this subclause if they are the members of the family unit of, and made a combined application with, a person who satisfies the primary criteria in subdivision 310.21.

New clause 310.312 provides that the sponsorship referred in clause 310.212 for the person who satisfies the primary criteria also includes the sponsorship of the member of the family unit.

New clause 310.321 provides that an applicant satisfies this subclause if they continue to be the a member of the family unit of a person who is granted a Interdependency (Provisional) (Class UG) visa.

New clause 310.322 provides that the sponsorship referred to in 310.312 must be approved by the Minister and must be still in force.

New clauses 310.323, 310.324 and 310.325 are the same as clauses 309.323, 309.324, and 309.325 (Part 309) respectively.

New clause 310.326 provides that if the applicant is a dependent child of the holder of a Subclass 310 visa the Minister is to be satisfied that the grant of the visa would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child. This clause is standard for all visa classes where a child can be granted a visa.

New clause 310.411 is the same as clause 309.411 (Part 309).

New clause 310.511 provides that the visa is a temporary visa which allows the holder to travel to, and enter, Australia for a period of thirty months from the date of application, and to remain in Australia until the end of the day on which a decision is made to grant or refuse to grant the visa, or the applicant withdraws their visa application.

New clauses 310.611, 310.612, 310.613 and 310.711 are the same as clauses 309.611, 309.612, 309.613 and 309.711 (Part 309) respectively.