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Statutory Rules 1996 No. 1

211

Migration Regulations² (Amendment)

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia,
acting with the advice of the Federal Executive Council, make the
following Regulations under the *Migration Act 1958*.

Dated 1 1996. 25 September

1 WILLIAM DEBRIE
Governor-General

By His Excellency's Command,

1 PHILIP RUDDOCK
Minister for Immigration and Multicultural Affairs

PART 1—PRELIMINARY

1. Commencement

1.1 Parts 1 and 2, and Division 4.1 of Part 4, commence on
1 October 1996.

1.2 Part 3 and Division 4.2 of Part 4 commence on
1 November 1996.

2. Amendment

2.1 The Migration Regulations are amended as set out in these Regulations.

PART 2—AMENDMENTS COMMENCING ON 1 OCTOBER 1996

3. Regulation 1.03 (Interpretation)

3.1 Insert the following definitions:

“**member of the immediate family**’ has the meaning given by regulation 1.12AA;

‘**permanent humanitarian visa**’ means:

- (a) a Subclass 200, 201, 202, 203, 204, 205, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217 or 866 visa; or
- (b) a Group 1.3 or Group 1.5 (Permanent resident (refugee and humanitarian)) visa or entry permit within the meaning of the Migration (1993) Regulations; or
- (c) a humanitarian visa, or equivalent entry permit, within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa, within the meaning of the Migration Reform (Transitional Provisions) Regulations, being:
 - (i) such a visa granted on the basis of an application for a visa, or entry permit, of a kind specified in paragraph (b) or (c); or
 - (ii) a visa or entry permit of a kind specified in paragraph (b) or (c) having effect under those Regulations as a transitional (permanent) visa.”.

4. Regulation 1.05 (Balance of family test)

4.1 Subregulation 1.05 (2):

Omit the subregulation, substitute:

“(2) A parent satisfies the balance of family test if the number of children of the parent who are lawfully and permanently resident in Australia, or are holders of special category visas and are usually resident in Australia, is greater than the total number of children of the parent who are resident overseas.”.

5. New regulation 1.12AA

5.1 After regulation 1.12, insert:

Member of the immediate family

“**1.12AA.** A person ‘A’ is a member of the immediate family of another person ‘B’ if:

- (a) A is a spouse of B; or
- (b) A is a dependent child of B; or
- (c) A is a parent of B, and B has not turned 18.”.

6. Regulation 1.13 (Nominator)

6.1 Paragraph 1.13 (b):

Omit the paragraph, substitute:

- “(b) a person who proposes another person for entry to Australia as an applicant for a permanent humanitarian visa;”.

7. Regulation 1.20 (Sponsorship)

7.1 Paragraph 1.20 (1) (a):

Omit the paragraph, substitute:

- “(a) a person who proposes another person for entry to Australia as an applicant for a permanent humanitarian visa;”.

8. Regulation 2.07 (Application for visa—general)

8.1 Subparagraph 2.07 (2) (a) (ii):

Omit the subparagraph, substitute:

- “(ii) regulation 2.08, 2.08A or 2.08B; and”

9. New regulations 2.08A and 2.08B

9.1 After regulation 2.08, insert:

Addition of spouses and dependent children to certain applications for permanent visas

“2.08A (1) If:

- (a) a person (in this regulation called **‘the original applicant’**) applies for a permanent visa of a class for which Schedule 1 permits combined applications; and
- (b) after the application is made, but before it is decided, the Minister receives, in writing in accordance with Division 2.3, a request from the original applicant to have the spouse, or a dependent child, of the original applicant (in this regulation called **‘the additional applicant’**) added to the original applicant’s application; and
- (c) the request includes a statement that the original applicant claims that the additional applicant is the spouse or dependent child, as the case requires, of the original applicant; and
- (d) at the time when the Minister receives the request, the additional applicant satisfies the provisions of Schedule 1 that relate to the whereabouts of an applicant at the time of application and apply to a visa of the same class;

then:

- (e) the additional applicant is taken to have applied for a visa of the same class; and
- (f) the application of the additional applicant:
 - (i) is taken to have been made at the time when the Minister receives the request; and
 - (ii) is taken to be combined with the application of the original applicant; and
 - (iii) is taken to have been made at the same place as, and on the same form as, the application of the original applicant.

“(2) Despite any provision in Schedule 2, the additional applicant:

- (a) must be, at the time when the application is taken to be made under subparagraph (1) (f) (i), a person who satisfies the applicable secondary criteria to be satisfied at the time of application; and

- (b) must satisfy the applicable secondary criteria to be satisfied at the time of decision.

Addition of dependent children to certain applications for temporary visas

“2.08B (1) If:

- (a) a person (in this regulation called **‘the original applicant’**) applies for an Extended Eligibility (Temporary) (Class TK) visa or a Prospective Marriage (Temporary) (Class TO) visa; and
- (b) either:
 - (i) after the application is made but before it is decided; or
 - (ii) after a decision to grant the visa is made; the Minister receives, in writing in accordance with Division 2.3, a request from the original applicant to have a dependent child of the original applicant (in this regulation called **‘the dependent child’**) added to the original applicant’s application; and
- (c) the request includes a statement that the original applicant claims that the dependent child is the dependent child of the original applicant; and
- (d) at the time when the Minister receives the request, the dependent child satisfies the provisions of Schedule 1 that relate to the whereabouts of an applicant at the time of application and apply to a visa of the same class;

then:

- (e) the dependent child is taken to have applied for a visa of the same class; and
- (f) the application of the dependent child:
 - (i) is taken to have been made at the time when the Minister receives the request; and
 - (ii) is taken to be combined with the application of the original applicant; and
 - (iii) is taken to have been made at the same place as, and on the same form as, the application of the original applicant.

- “(2) Despite any provision in Schedule 2, the dependent child:
- (a) must be, at the time when the application is taken to be made under subparagraph (1) (f) (i), a person who satisfies the applicable secondary criteria to be satisfied at the time of application; and
 - (b) must satisfy the applicable secondary criteria to be satisfied at the time of decision.”.

10. Regulation 2.33 (Effect of assurance of support)

10.1 Paragraphs 2.33 (a), (b) and (c):

Omit the paragraphs, substitute:

- “(a) a widow allowance payable under Part 2.8A of the *Social Security Act 1991*; or
- (b) a job search allowance payable under Part 2.11 of that Act; or
- (c) a newstart allowance payable under Part 2.12 of that Act; or
- (d) a mature age allowance payable under Part 2.12B of that Act; or
- (e) a special benefit payable under Part 2.15 of that Act; or
- (f) a partner allowance payable under Part 2.15A of that Act; or
- (g) a parenting allowance payable under Part 2.18 of that Act; or
- (h) a youth training allowance payable under Part 8 of the *Student and Youth Assistance Act 1973*.”.

[NOTE: Regulation 2.33 was omitted, and a new regulation was substituted, by regulation 7 of Statutory Rules 1996 No. 75, which was disallowed by the Senate on 11 September 1996. By operation of subsection 48 (7) of the *Acts Interpretation Act 1901*, the previous regulation 2.33 revived on that date. Accordingly, this amendment relates to regulation 2.33 as so revived.]

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

11.1 Paragraphs 2.38 (1) (a) to (g):

Omit the paragraphs, substitute:

- “(a) a widow allowance payable under Part 2.8A of the *Social Security Act 1991*; or

- (b) a job search allowance payable under Part 2.11 of that Act; or
- (c) a newstart allowance payable under Part 2.12 of that Act; or
- (d) a mature age allowance payable under Part 2.12B of that Act; or
- (e) a special benefit payable under Part 2.15 of that Act; or
- (f) a partner allowance payable under Part 2.15A of that Act; or
- (g) a parenting allowance payable under Part 2.18 of that Act; or
- (h) a youth training allowance payable under Part 8 of the *Student and Youth Assistance Act 1973*;

[NOTE: Subregulation 2.38 (1) was omitted, and a new subregulation was substituted, by regulation 8 of Statutory Rules 1996 No. 75, which was disallowed by the Senate on 11 September 1996. By operation of subsection 48 (7) of the *Acts Interpretation Act 1901*, the previous subregulation 2.38 (1) revived on that date. Accordingly, this amendment relates to subregulation 2.38 (1) as so revived.]

12. Regulation 5.38 (Sponsorship fee)

12.1 Paragraph 5.38 (2) (b):

Omit the paragraph, substitute:

“(b) if more than 10 applications are lodged together by the sponsoring person or organisation—\$2,050.”.

13. Schedule 1 (Classes of visas)

13.1 Subitem 1104 (2):

Omit the subitem, substitute:

“(2) Fee: \$2,465.”.

13.2 Subitem 1104A (2):

Omit the subitem, substitute:

“(2) Fee: \$2,465.”.

13.3 Item 1116:

Omit the item.

13.4 Paragraph 1205 (2) (d):

Omit the paragraph, substitute:

“(d) If the application is made outside Australia and the applicant is a member of a sporting or entertainment body comprising not fewer than 10 applicants—a fee equal to \$1,450 divided by the number of applicants included in that body.”.

13.5 Paragraph 1301 (3) (c):

Omit the paragraph, substitute:

“(c) Either:

- (i) the applicant has made a valid application, in Australia, for a substantive visa that can be granted if the applicant is in Australia and that application has not been finally determined; or
- (ii) the applicant has applied, within statutory time limits, for judicial review of a decision to refuse a substantive visa that was applied for in Australia and can be granted if the applicant is in Australia and the judicial proceedings (including proceedings on appeal, if any) have not been completed.”.

13.6 Subitem 1302 (3):

After paragraph (b), insert:

“(baa) Either:

- (i) the applicant has made a valid application, in Australia, for a substantive visa that can be granted if the applicant is in Australia and that application has not been finally determined; or

- (ii) the applicant has applied, within statutory time limits, for judicial review of a decision to refuse a substantive visa that was applied for in Australia and can be granted if the applicant is in Australia and the judicial proceedings (including proceedings on appeal, if any) have not been completed.”.

13.7 Paragraph 1303 (3) (c):

Omit the paragraph, substitute:

“(c) Either:

- (i) the applicant has made a valid application, in Australia, for a substantive visa that can be granted if the applicant is in Australia and that application has not been finally determined; or
- (ii) the applicant has:
 - (A) applied, within statutory time limits, for judicial review of a decision to refuse a substantive visa that was applied for in Australia and can be granted if the applicant is in Australia and the judicial proceedings (including proceedings on appeal, if any) have not been completed; and
 - (B) held a bridging visa Class C granted on the basis of the refused application.”.

13.8 Subitem 1304 (3):

After paragraph (b), insert:

“(baa) If the applicant has attempted to make an application for a substantive visa, the attempt must have been made, in Australia, for a visa that can be granted if the applicant is in Australia.”.

13.9 Subitem 1305 (3):

After paragraph (ba), insert:

- “(bb) If the applicant has made or intends to make an application for a substantive visa, then either:
- (i) the applicant has made a valid application, in Australia, for a substantive visa that can be granted if the applicant is in Australia and that application has not been finally determined; or
 - (ii) the officer receiving the application is satisfied that the applicant intends, as soon as is practicable, to make an application in Australia for a substantive visa that can be granted if the applicant is in Australia; or
 - (iii) the applicant has applied, within statutory time limits, for judicial review of a decision to refuse a substantive visa that was applied for in Australia and can be granted if the applicant is in Australia and the judicial proceedings (including proceedings on appeal, if any) have not been completed.”.

13.10 Amendments as set out in the following table:

Provision	Omit	Substitute
Paragraph 1101 (2) (b)	\$560.	\$600.
Paragraph 1107 (2) (b)	\$415.	\$600.
Paragraph 1108 (2) (b)	\$560.	\$600.
Subitem 1110 (2)	\$560.	\$600.
Subitem 1112 (2)	\$560.	\$600.
Subitem 1114 (2)	\$560.	\$600.
Paragraph 1115 (2) (c)	\$415.	\$600.
Subitem 1117 (2)	\$560.	\$600.
Subitem 1118 (2)	\$560.	\$600.
Paragraph 1119 (2) (c)	\$415.	\$600.
Paragraph 1119 (2) (d)	\$415.	\$600.
Paragraph 1119 (2) (e)	\$875.	\$1,500.
Subitem 1120 (2)	\$560.	\$600.
Subitem 1120A (2)	\$560.	\$600.
Subitem 1121 (2)	\$560.	\$600.
Subitem 1124 (2)	\$560.	\$600.
Paragraph 1125 (2) (b)	\$560.	\$600.
Subitem 1129 (2)	\$560.	\$600.
Subitem 1215 (2)	\$560.	\$600.
Paragraph 1222 (2) (b)	\$145.	\$250.

14. Schedule 2, Part 100 (Spouse)

14.1 Clause 100.11:

Omit the clause, substitute:

“100.111 In this Part:

‘intended spouse’ means the Australian citizen referred to in subclause 100.211 (3).

[NOTE: ‘guardian’, ‘parent’, ‘permanent humanitarian visa’ and ‘spouse’ are defined in regulation 1.03.]

14.2 Subclause 100.211 (2):

Omit the subclause, substitute:

- “(2) The applicant meets the requirements of this subclause if:
- (a) the applicant is the spouse of an Australian citizen; or
 - (b) the application is made before 1 October 1997 and the applicant is the spouse of an Australian permanent resident who meets the requirements of subclause (2A).

[NOTE: ‘spouse’ includes a de facto spouse: see definition of ‘spouse’ in regulation 1.03.]

“(2A) An Australian permanent resident meets the requirements of this subclause if he or she:

- (a) holds a permanent visa granted on the basis of an application made before 3 July 1996; and
- (b) before that permanent visa was granted, was in a spouse relationship with the applicant of which Immigration was informed before that permanent visa was granted; and
- (c) is not, and has not been, the holder of a permanent humanitarian visa.”.

14.3 Paragraph 100.211 (3) (a):

Omit the paragraph, substitute:

- “(a) the applicant intends to marry an Australian citizen; and”.

14.4 Subparagraph 100.212 (1) (b) (ii):

Omit the subparagraph, substitute:

- “(ii) is an Australian citizen.”.

14.5 Subparagraph 100.212 (2) (b) (ii):

Omit the subparagraph, substitute:

- “(ii) is an Australian citizen.”.

14.6 Subclause 100.224 (1):

Omit “Australian citizen, Australian permanent resident or eligible New Zealand citizen”, substitute “Australian citizen or Australian permanent resident”.

14.7 Clause 100.227:

Omit “If so requested by the Minister, an assurance”, substitute “An assurance”.

14.8 Clause 100.325:

Omit the clause, substitute:

“100.325. Either:

- (a) an assurance of support that includes the applicant:
 - (i) has been given in relation to the person who satisfies the primary criteria; and
 - (ii) has been accepted by the Minister; or
- (b) an assurance of support in relation to the applicant has been given and has been accepted by the Minister.”.

[NOTE: The following note should be inserted after clause 100.411:

“[NOTE: Any applicable charge under the *Migration (Health Services) Charge Act 1991* must be paid before the visa can be granted]”.

15. Schedule 2, Part 101 (Child)

[NOTE: The note relating to division 101.1 should be altered by the insertion of “, ‘permanent humanitarian visa’ ” after “ ‘dependent child’ ”.]

15.1 Clause 101.212:

Omit the clause, substitute:

“101.212 (1) The applicant meets the requirements of subclause (2), (3), (4) or (5).

“(2) The applicant meets the requirements of this subclause if the applicant is sponsored by a person who:

- (a) is an Australian citizen who has turned 18; and
- (b) is either:
 - (i) the person referred to in subclause 101.211 (1) as an Australian citizen, Australian permanent resident or eligible New Zealand citizen; or
 - (ii) the cohabiting spouse of that person.

“(3) The applicant meets the requirements of this subclause if:

- (a) the applicant:
 - (i) was born outside Australia; and
 - (ii) has not turned 18; and

- (iii) is a dependent child of the person referred to in subclause 101.211 (1) as an Australian permanent resident or eligible New Zealand citizen (in this subclause called **‘the parent’**); and
 - (b) either:
 - (i) the parent:
 - (A) is an Australian permanent resident (other than an Australian permanent resident who is, or has been, the holder of a permanent humanitarian visa); and
 - (B) at the time the applicant was born, was the holder of a permanent visa; or
 - (ii) the parent is an eligible New Zealand citizen; and
 - (c) the applicant is sponsored by a person who has turned 18, being either the parent or a person who is:
 - (i) the cohabiting spouse of the parent; and
 - (ii) an Australian permanent resident (other than an Australian permanent resident who is, or has been, the holder of a permanent humanitarian visa) or an eligible New Zealand citizen.
- “(4) The applicant meets the requirements of this subclause if:
- (a) the applicant is a dependent child of the person referred to in subclause 101.211 (1) as an Australian permanent resident (in this subclause called **‘the parent’**); and
 - (b) the parent is an Australian permanent resident (other than an Australian permanent resident who is, or has been, the holder of a permanent humanitarian visa); and
 - (c) the applicant was included in the application of the parent that resulted in the grant of a permanent visa to the parent; and
 - (d) the applicant is sponsored by a person who has turned 18, being either the parent or a person who is:
 - (i) the cohabiting spouse of the parent; and
 - (ii) an Australian permanent resident (other than an Australian permanent resident who is, or has been, the holder of a permanent humanitarian visa) or an eligible New Zealand citizen.
- “(5) The applicant meets the requirements of this subclause if:
- (a) the applicant has not turned 18 and is a dependent child of the person referred to in subclause 101.211 (1) as an Australian permanent resident or an eligible New Zealand citizen (in this subclause called **‘the relevant parent’**); and

- (b) the relevant parent is:
 - (i) an Australian permanent resident (other than an Australian permanent resident who is, or has been, the holder of a permanent humanitarian visa); or
 - (ii) an eligible New Zealand citizen; and
- (c) either:
 - (i) the relevant parent is granted custody of the applicant (whether by an order of the Family Court of Australia or under the laws of another country); or
 - (ii) both:
 - (A) a parent of the applicant who is not the relevant parent dies or becomes incapable of caring for the applicant; and
 - (B) the Minister is satisfied that it is appropriate in the circumstances for the visa to be granted; and
- (d) the applicant is sponsored by a person who has turned 18, being either the relevant parent or a person who is:
 - (i) the cohabiting spouse of the relevant parent; and
 - (ii) an Australian permanent resident (other than an Australian permanent resident who is, or has been, the holder of a permanent humanitarian visa) or an eligible New Zealand citizen.”.

15.2 Clause 101.225:

Omit the clause, substitute:

“101.224 If the applicant is a dependent child who has not turned 18:

- (a) if so requested by the Minister, an assurance of support in relation to the applicant has been given; and
- (b) the assurance of support has been accepted by the Minister.

“101.225 If the applicant is not an applicant referred to in clause 101.224, an assurance of support in relation to the applicant has been given and has been accepted by the Minister.”.

15.3 Clause 101.325:

Omit “the Minister requires an assurance of support”, substitute “an assurance of support is requested under clause 101.224 or required under clause 101.225”.

[NOTE: The following note should be inserted after clause 101.411:

“[NOTE: Any applicable charge under the *Migration (Health Services) Charge Act 1991* must be paid before the visa can be granted].”]

16. Schedule 2, Part 102 (Adoption)

16.1 Clause 102.111 (definition of “child for adoption”):

Omit “clause 102.211 (3);”, substitute “subclause 102.211 (3) or (4);”.

16.2 Clause 102.111 (definition of “prospective adoptive parent”):

Omit the definition, substitute:

“**prospective adoptive parent**, in relation to an applicant, means:

- (a) the unmarried person referred to in subparagraph 102.211 (3) (c) (i) or 102.211 (4) (c) (i); or
- (b) each of the spouses referred to in subparagraph 102.211 (3) (c) (ii) or 102.211 (4) (c) (ii);

as the case requires.”.

16.3 Subclause 102.211 (1):

Omit “subclause (2) or (3).”, substitute “subclause (2), (3) or (4).”.

16.4 Paragraph 102.211 (2) (b):

Omit the paragraph, substitute:

“(b) the applicant was adopted overseas by a person who:

- (i) either:
 - (A) was, at the time of the adoption, an Australian citizen; or
 - (B) if the time of adoption was before 3 July 1996, was, at the time of adoption, an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
- (ii) had been residing overseas for more than 12 months at the time of the application; and”.

16.5 Paragraph 102.211 (3) (c):

Omit the paragraph, substitute:

“(c) either:

- (i) an unmarried person who is an Australian citizen has undertaken in writing to adopt the applicant; or

- (ii) spouses, at least one of whom is an Australian citizen, have undertaken in writing to adopt the applicant; and”.

16.6 After subclause 102.211 (3), insert:

- “(4) The applicant meets the requirements of this subclause if:
 - (a) the applicant has not turned 18; and
 - (b) the applicant is resident in an overseas country; and
 - (c) either:
 - (i) an unmarried person who is an Australian permanent resident or an eligible New Zealand citizen has undertaken in writing to adopt the applicant; or
 - (ii) spouses, at least one of whom is an Australian permanent resident or an eligible New Zealand citizen, have undertaken in writing to adopt the applicant; and
 - (d) before 3 July 1996, either:
 - (i) child welfare authorities of an Australian State or Territory had approved the prospective adoptive parent or parents as a suitable adoptive parent, or as suitable adoptive parents, for the applicant; or
 - (ii) the relevant authorities of the overseas country had approved the departure of the applicant:
 - (A) for adoption in Australia; or
 - (B) in the custody of the prospective adoptive parent or parents;
- as the case requires.”.

16.7 Clause 102.212:

Omit the clause, substitute:

- “102.212 The applicant is sponsored:
- (a) in the case of an applicant who is a child for adoption referred to in subclause 102.211 (3)—by an Australian citizen who is a prospective adoptive parent of the child; or
 - (b) in the case of an applicant who is a child for adoption referred to in subclause 102.211 (4)—by an Australian permanent resident or an eligible New Zealand citizen who is a prospective adoptive parent of the child; or
 - (c) in the case of an applicant who is an adopted child referred to in subclause 102.211 (2) who was adopted on or after 3 July 1996—by an Australian citizen who is an adoptive parent of the child; or

- (d) in the case of an applicant who is an adopted child referred to in subclause 102.211 (2) who was adopted before 3 July 1996—by an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen who is an adoptive parent of the child.”.

17. Schedule 2, Part 103 (Parent)

[NOTE: The note relating to Division 103.1 should be altered by the omission of the reference to “eligible New Zealand citizen”.]

17.1 Clause 103.211:

Omit the clause, substitute:

“103.211 The applicant is a parent of a settled Australian citizen.”.

17.2 After subclause 103.212 (1), insert:

“(1A) For the purposes of subclauses (2) and (3), **‘the child’** means the Australian citizen referred to in clause 103.211.”.

17.3 Subparagraph 103.212 (2) (b) (ii):

Omit the subparagraph, substitute:

“(ii) is a settled Australian citizen.”.

17.4 Subparagraph 103.212 (3) (a) (ii):

Omit the subparagraph, substitute:

“(ii) is a settled Australian citizen; or”.

17.5 Subparagraph 103.212 (3) (b) (iii):

Omit the subparagraph, substitute:

“(iii) is a settled Australian citizen; or”.

17.6 Subparagraph 103.212 (3) (c) (iii):

Omit the subparagraph, substitute:

“(iii) is a settled Australian citizen; or”.

17.7 Subclause 103.212 (4):

Omit the subclause.

18. Schedule 2, Part 104 (Preferential Family)

18.1 Subclause 104.211 (1):

Omit “subclause (2) or (3)”, substitute “subclause (2), (3) or (4)”.

18.2 Subclauses 104.211 (2) and (3):

Omit the subclauses, substitute:

- “(2) An applicant meets the requirements of this subclause if:
- (a) the applicant is an aged dependent relative, or a remaining relative, of an Australian citizen (in this subclause called ‘**the Australian relative**’); and
 - (b) the applicant is sponsored:
 - (i) if the Australian relative has turned 18 and is a settled Australian citizen—by the Australian relative; or
 - (ii) in any other case—by the spouse of the Australian relative, if the spouse:
 - (A) cohabits with the Australian relative; and
 - (B) is a settled Australian citizen; and
 - (C) has turned 18.”.
- “(3) An applicant meets the requirements of this subclause if:
- (a) the applicant is an orphan relative, or a special need relative, of an Australian citizen (in this subclause called ‘**the Australian relative**’); and
 - (b) the applicant is sponsored:
 - (i) if the Australian relative has turned 18—by the Australian relative; or
 - (ii) by the spouse of the Australian relative, if the spouse:
 - (A) cohabits with the Australian relative; and
 - (B) is an Australian citizen; and
 - (C) has turned 18.
- “(4) The applicant meets the requirements of this subclause if:
- (a) the applicant is an orphan relative of a person (in this subclause called ‘**the Australian relative**’) who is an Australian permanent resident or an eligible New Zealand citizen; and
 - (b) the applicant is sponsored:
 - (i) if the Australian relative has turned 18—by the Australian relative; or
 - (ii) by the spouse of the Australian relative, if the spouse:
 - (A) cohabits with the Australian relative; and

- (B) is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
- (C) has turned 18; and
- (c) the Minister is satisfied that there are compelling compassionate circumstances that justify the grant of the visa.”.

19. Schedule 2, Part 110 (Interdependency)

[NOTE: The note relating to Division 110.1 should be replaced by the following note:

“[NOTE: ‘interdependent relationship’ is defined in regulation 1.09A. There are no interpretation provisions specific to this Part.]”.

19.1 Paragraph 110.211 (b):
Omit the paragraph, substitute:

“(b) is in an interdependent relationship with a person who has turned 18 and is an Australian citizen.”.

19.2 Clause 110.223:
Omit “citizen, Australian permanent resident or eligible New Zealand”.

19.3 Clause 110.226:
Omit “If so requested by the Minister, an assurance”, substitute “An assurance”.

19.4 Clause 110.325:
Omit the clause, substitute:

“110.325 Either:

- (a) an assurance of support that includes the applicant:
 - (i) has been given in relation to the person who satisfies the primary criteria; and
 - (ii) has been accepted by the Minister; or
- (b) an assurance of support in relation to the applicant has been given and has been accepted by the Minister.”.

[NOTE: The following note should be inserted after clause 110.411:

“[NOTE: Any applicable charge under the *Migration (Health Services) Charge Act 1991* must be paid before the visa can be granted].”]

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

20.1 Omit the Part.

21. Schedule 2, Part 200 (Refugee)

[NOTE: The note following the heading to Division 200.1 should be omitted and the following note substituted:

“[NOTE: ‘member of the family unit’, ‘member of the immediate family’ and ‘permanent humanitarian visa’ are defined in regulation 1.03.]”]

21.1 Insert in Division 200.1:

“200.111 For the purposes of this Part:

‘Subclass 200 visa’ means:

- (a) a Subclass 200 (Refugee) visa; or
- (b) a Class 200 (refugee) visa within the meaning of the Migration (1993) Regulations; or
- (c) a refugee visa (code number 200) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).”.

[NOTE: The note following the heading to Division 200.2 should be omitted and the following note substituted:

“[NOTE: The primary criteria must be satisfied by all applicants except certain applicants who are members of the family unit, or members of the immediate family, of certain applicants who satisfy the primary criteria. Those other applicants need satisfy only the secondary criteria.]”]

21.2 Clauses 200.211 and 200.212:

Omit the clauses, substitute:

“200.211 (1) The applicant:

- (a) is subject to persecution in the applicant’s home country and is living in a country other than the applicant’s home country; or

(b) meets the requirements of subclause (2).

“(2) The applicant meets the requirements of this subclause if:

- (a) the applicant’s entry to Australia has been proposed in accordance with approved form 681 by an Australian permanent resident (in this subclause called ‘**the proposer**’) who is, or has been, the holder of a Subclass 200 visa; and
- (b) on the date of grant of that visa, the applicant was a member of the immediate family of the proposer; and
- (c) the applicant continues to be a member of the immediate family of the proposer; and
- (d) on or before the date of grant of that visa, that relationship was declared to Immigration.”.

21.3 Clause 200.221:

Omit “criteria in clauses 200.211 and 200.212.”, substitute “criterion specified in clause 200.211.”.

[**NOTE:** The note following the heading to Division 200.3 should be omitted and the following note substituted:

“[**NOTE:** These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.]”.]

21.4 Clause 200.311:

Omit the clause, substitute:

“200.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 200.211 (1) (a); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 200.211 (1) (b).”.

21.5 Clause 200.321:

Omit the clause, substitute:

“200.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 200.211 (1) (a)), is the holder of a Subclass 200 visa; or

- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 200.211 (1) (b)), is the holder of a Subclass 200 visa.”.

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

[NOTE: The note following the heading to Division 201.1 should be omitted and the following note substituted:

“[NOTE: ‘member of the family unit’, ‘member of the immediate family’ and ‘permanent humanitarian visa’ are defined in regulation 1.03.]”.]

22.1 Insert in Division 201.1:

“201.111 For the purposes of this Part:

‘Subclass 201 visa’ means:

- (a) a Subclass 201 (In-country Special Humanitarian) visa; or
- (b) a Class 201 (in-country special humanitarian) visa within the meaning of the Migration (1993) Regulations; or
- (c) an in-country special humanitarian program visa (code number 201) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).”.

[NOTE: The note following the heading to Division 201.2 should be omitted and the following note substituted:

“[NOTE: The primary criteria must be satisfied by all applicants except certain applicants who are members of the family unit, or members of the immediate family, of certain applicants who satisfy the primary criteria. Those other applicants need satisfy only the secondary criteria.]”.]

22.2 Clauses 201.211 and 201.212:

Omit the clauses, substitute:

“201.211 (1) The applicant:

- (a) is subject to persecution in the applicant’s home country and is living in the applicant’s home country; or
- (b) meets the requirements of subclause (2).

“(2) The applicant meets the requirements of this subclause if:

- (a) the applicant’s entry to Australia has been proposed in accordance with approved form 681 by an Australian permanent resident (in this subclause called ‘**the proposer**’) who is, or has been, the holder of a Subclass 201 visa; and
- (b) on the date of grant of that visa, the applicant was a member of the immediate family of the proposer; and
- (c) the applicant continues to be a member of the immediate family of the proposer; and
- (d) on or before the date of grant of that visa, that relationship was declared to Immigration.”.

22.3 Clause 201.221:

Omit “criteria in clauses 201.211 and 201.212.”, substitute “criterion specified in clause 201.211.”.

[NOTE: The note following the heading to Division 201.3 should be omitted and the following note substituted:

“[NOTE: These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.]”.]

22.4 Clause 201.311:

Omit the clause, substitute:

“201.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 201.211 (1) (a); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 201.211 (1) (b).”.

22.5 Clause 201.321:

Omit the clause, substitute:

“201.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 201.211 (1) (a)), is the holder of a Subclass 201 visa; or

- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 201.211 (1) (b)), is the holder of a Subclass 201 visa.”.

23. Schedule 2, Part 202 (Global Special Humanitarian)

[NOTE: The note following the heading to Division 202.1 should be omitted and the following note substituted:

“[NOTE: ‘eligible New Zealand citizen’, ‘member of the family unit’, ‘member of the immediate family’ and ‘permanent humanitarian visa’ are defined in regulation 1.03.]”.

23.1 Insert in Division 202.1:

“202.111 For the purposes of this Part:

‘Subclass 202 visa’ means:

- (a) a Subclass 202 (Global Special Humanitarian) visa; or
- (b) a Class 202 (global special humanitarian program) visa within the meaning of the Migration (1993) Regulations; or
- (c) a global special humanitarian visa (code number 202) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c);

‘Subclass 866 visa’ means:

- (a) a Subclass 866 (Protection (Residence)) visa; or
- (b) a Class 817 (protection (permanent)) entry permit within the meaning of the Migration (1993) Regulations; or
- (c) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b).”.

[NOTE: The note following the heading to Division 202.2 should be omitted and the following note substituted:

“[NOTE: The primary criteria must be satisfied by all applicants except certain applicants who are members of the family unit, or members of the immediate family, of certain applicants who satisfy the primary criteria. Those other applicants need satisfy only the secondary criteria.]”.]

23.2 Clauses 202.211 and 202.212:

Omit the clauses, substitute:

“202.211 (1) The applicant:

- (a) is subject to substantial discrimination, amounting to gross violation of human rights, in the applicant’s home country and is living in a country other than the applicant’s home country; or
- (b) meets the requirements of subclause (2).

if: “(2) The applicant meets the requirements of this subclause

- (a) the applicant’s entry to Australia has been proposed in accordance with approved form 681 by an Australian permanent resident (in this subclause called ‘**the proposer**’); and
- (b) either:
 - (i) the proposer is, or has been, the holder of a Subclass 202 visa, and the applicant was a member of the immediate family of the proposer on the date of grant of that visa; or
 - (ii) the proposer is, or has been, the holder of a Subclass 866 (Protection (Residence)) visa, and the applicant was a member of the immediate family of the proposer on the date of application for that visa; and
- (c) the applicant continues to be a member of the immediate family of the proposer; and
- (d) on or before the date of grant of that visa, that relationship was declared to Immigration.”.

23.3 Clause 202.221:

Omit “criteria in clauses 202.211 and 202.212.”, substitute “criterion specified in clause 202.211.”.

[**NOTE:** The note following the heading to Division 202.3 should be omitted and the following note substituted:

“[**NOTE:** These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.]”.]

23.4 Clause 202.311:

Omit the clause, substitute:

“202.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 202.211 (1) (a); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 202.211 (1) (b).”.

23.5 Clause 202.321:

Omit the clause, substitute:

“202.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 202.211 (1) (a)), is the holder of a Subclass 202 visa; or
- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 202.211 (1) (b)), is the holder of a Subclass 202 visa.”.

24. Schedule 2, Part 203 (Emergency Rescue)

[NOTE: The note following the heading to Division 203.1 should be omitted and the following note substituted:

“[NOTE: ‘member of the family unit’, ‘member of the immediate family’ and ‘permanent humanitarian visa’ are defined in regulation 1.03.]”.

24.1 Insert in Division 203.1:

“203.111 For the purposes of this Part:

‘Subclass 203 visa’ means:

- (a) a Subclass 203 (Emergency Rescue) visa; or
- (b) a Class 203 (emergency rescue) visa within the meaning of the Migration (1993) Regulations; or
- (c) an emergency rescue visa (code number 203) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).”.

[NOTE: The note following the heading to Division 203.2 should be omitted and the following note substituted:

“[NOTE: The primary criteria must be satisfied by all applicants except certain applicants who are members of the family unit, or members of the immediate family, of certain applicants who satisfy the primary criteria. Those other applicants need satisfy only the secondary criteria.]”.]

24.2 Clause 203.211:

Omit the clause, substitute:

“203.211 (1) The applicant:

- (a) is subject to persecution in the applicant’s home country, whether the applicant is living in the applicant’s home country or in another country; or
- (b) meets the requirements of subclause (2).

if: “(2) The applicant meets the requirements of this subclause

- (a) the applicant’s entry to Australia has been proposed in accordance with approved form 681 by an Australian permanent resident (in this subclause called ‘**the proposer**’) who is, or has been, the holder of a Subclass 203 visa; and
- (b) on the date of grant of that visa, the applicant was a member of the immediate family of the proposer; and
- (c) the applicant continues to be a member of the immediate family of the proposer; and
- (d) on or before the date of grant of that visa, that relationship was declared to Immigration.”.

24.3 Clause 203.221:

Omit the clause, substitute:

“203.221 The applicant continues to satisfy the criterion specified in clause 203.211.”.

[NOTE: The note following the heading to Division 203.3 should be omitted and the following note substituted:

“[NOTE: These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.]”.]

24.4 Clause 203.311:

Omit the clause, substitute:

“203.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 203.211 (1) (a); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 203.211 (1) (b).”.

24.5 Clause 203.321:

Omit the clause, substitute:

“203.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 203.211 (1) (a)), is the holder of a Subclass 203 visa; or
- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 203.211 (1) (b)), is the holder of a Subclass 203 visa.”.

25. Schedule 2, Part 204 (Woman at Risk)

[NOTE: The note following the heading to Division 204.1 should be omitted and the following note substituted:

“[NOTE: ‘member of the family unit’, ‘member of the immediate family’ and ‘permanent humanitarian visa’ are defined in regulation 1.03.]”.

25.1 Insert in Division 204.1:

“204.111 For the purposes of this Part:

‘Subclass 204 visa’ means:

- (a) a Subclass 204 (Woman at Risk) visa; or
- (b) a Class 204 (woman at risk) visa within the meaning of the Migration (1993) Regulations; or
- (c) a woman at risk visa (code number 204) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).”.

[NOTE: The note following the heading to Division 204.2 should be omitted and the following note substituted:

“[NOTE: The primary criteria must be satisfied by all applicants except certain applicants who are members of the family unit, or members of the immediate family, of certain applicants who satisfy the primary criteria. Those other applicants need satisfy only the secondary criteria.]”.]

25.2 Clauses 204.211, 204.212, 204.221 and 204.222:

Omit the clauses, substitute:

“204.211 (1) The applicant:

(a) is a female person who is:

(i) subject to persecution or registered as being of concern to the United Nations High Commissioner for Refugees; and

(ii) living in a country other than her home country;
or

(b) is a person who meets the requirements of subclause (2).

“(2) The applicant meets the requirements of this subclause if:

(a) the applicant’s entry to Australia has been proposed in accordance with approved form 681 by an Australian permanent resident (in this subclause called ‘**the proposer**’) who is, or has been, the holder of a Subclass 204 visa; and

(b) on the date of grant of that visa, the applicant was a member of the immediate family of the proposer; and

(c) the applicant continues to be a member of the immediate family of the proposer; and

(d) on or before the date of grant of that visa, that relationship was declared to Immigration.

“204.221 The applicant continues to satisfy the criterion specified in clause 204.211.

“204.222 (1) The applicant:

(a) if the applicant meets the criterion specified in paragraph 204.211 (1) (a)—meets the requirements of subclause (2) and (3); or

(b) if the applicant meets the criterion specified in paragraph 204.211 (1) (b)—meets the requirements of subclause (3).

“(2) The applicant meets the requirements of this subclause if the Minister is satisfied that the applicant does not have the protection of a male relative and is in danger of victimisation, harassment or serious abuse because of her sex.

“(3) The applicant meets the requirements of this subclause if the Minister is satisfied that permanent settlement in Australia:

- (a) is the appropriate course for the applicant; and
- (b) would not be contrary to the interests of Australia.”.

25.3 Paragraph 204.224 (a):

Omit “her”, substitute “the applicant’s”.

[NOTE: The note following the heading to Division 204.3 should be omitted and the following note substituted:

“[NOTE: These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.]”.]

25.4 Clause 204.311:

Omit the clause, substitute:

“204.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 204.211 (1) (a); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of paragraph 204.211(1) (b).”.

25.5 Clause 204.321:

Omit the clause, substitute:

“204.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 204.211 (1) (a)), is the holder of a Subclass 204 visa; or
- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 204.211 (1) (b)), is the holder of a Subclass 204 visa.”.

26. Schedule 2, Part 205 (Camp Clearance)

26.1 Insert in Division 205.1:

“205.111 For the purposes of this Part:

‘Subclass 205 visa’ means:

- (a) a Subclass 205 (Camp Clearance) visa; or
- (b) a Class 205 (camp clearance) visa within the meaning of the Migration (1993) Regulations; or
- (c) a camp clearance visa (code number 205) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).”.

[NOTE: The note following the heading to Division 205.1 should be omitted and the following note substituted:

“[NOTE: ‘member of the family unit’, ‘member of the immediate family’ and ‘permanent humanitarian visa’ are defined in regulation 1.03.]”.

[NOTE: The note following the heading to Division 205.2 should be omitted and the following note substituted:

“[NOTE: The primary criteria must be satisfied by all applicants except certain applicants who are members of the family unit, or members of the immediate family, of certain applicants who satisfy the primary criteria. Those other applicants need satisfy only the secondary criteria.]”.]

26.2 Clauses 205.211, 205.212 and 205.213:

Omit the clauses, substitute:

“205.211 (1) The applicant meets the requirements of subclause (2) or (3).

“(2) The applicant meets the requirements of this subclause if the applicant:

- (a) is a citizen of the Socialist Republic of Vietnam; and
- (b) is living in a camp that is:
 - (i) maintained by the United Nations High Commissioner for Refugees or the Government of Hong Kong; and
 - (ii) situated in Hong Kong, Thailand, Indonesia, Malaysia or the Philippines; and
- (c) arrived in the country where the camp is situated:

- (i) if that country is Hong Kong—before 16 June 1988; or
- (ii) if that country is Thailand or Malaysia—before 14 March 1989; or
- (iii) if that country is Indonesia—before 17 March 1989; or
- (iv) if that country is the Philippines—before 21 March 1989.

- “(3) An applicant meets the requirements of this subclause if:
- (a) the applicant’s entry to Australia has been proposed in accordance with approved form 681 by an Australian permanent resident (in this subclause called ‘**the proposer**’) who is, or has been, the holder of a Subclass 205 visa; and
 - (b) on the date of grant of that visa, the applicant was a member of the immediate family of the proposer; and
 - (c) the applicant continues to be a member of the immediate family of the proposer; and
 - (d) on or before the date of grant of that visa, that relationship was declared to Immigration.”.

26.3 After clause 205.221, insert:

“205.221A If the applicant is an applicant who meets the requirements of paragraph 205.211 (3), the applicant continues to meet those requirements.”.

[NOTE: The note following the heading to Division 205.3 should be omitted and the following note substituted:

“[NOTE: These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.]”.

26.4 Clause 205.311:

Omit the clause, substitute:

“205.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of subclause 205.211 (2); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of subclause 205.211 (3).”.

26.5 Clause 205.321:

Omit the clause, substitute:

“205.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 205.211 (2)), is the holder of a Subclass 205 visa; or
- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 205.211 (3)), is the holder of a Subclass 205 visa.”.

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

27.1 After clause 208.111, insert:

“208.112 For the purposes of this Part, ‘**Subclass 208 visa**’ means:

- (a) a Subclass 208 (East Timorese in Portugal, Macau or Mozambique) visa; or
- (b) a Class 208 (East Timorese in Portugal (special assistance)) visa within the meaning of the Migration (1993) Regulations; or
- (c) an East Timorese in Portugal (special assistance) visa (code number 208) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).”.

[NOTE: The note following clause 208.111 should be omitted and the following note substituted:

“[NOTE: ‘eligible New Zealand citizen’, ‘member of the family unit’, ‘member of the immediate family’ and ‘permanent humanitarian visa’ are defined in regulation 1.03.]”.

27.2 Clauses 208.211, 208.212, 208.213 and 208.214:

Omit the clauses, substitute:

“208.211 (1) The applicant meets the requirements of subclause (2) or (3).

if: “(2) The applicant meets the requirements of this subclause

- (a) the applicant:
 - (i) was born in East Timor; and
 - (ii) was living in Portugal, Macau or Mozambique on 30 June 1994; and
 - (iii) lived continuously in 1 or more of Portugal, Macau and Mozambique from that date to the time of application; and
- (b) the Minister is satisfied that:
 - (i) the usual place of residence of the applicant in 1975 was East Timor; and
 - (ii) at the time of application, the applicant has better prospects of adapting to Australian society than to the society of whichever of Portugal, Macau or Mozambique the applicant has lived in for the greatest total time since 30 June 1994; and
- (c) the applicant has a parent, daughter, son, brother, sister, aunt, uncle, nephew or niece who:
 - (i) was an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen on 30 June 1993; and
 - (ii) continues to be an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
 - (iii) is usually resident in Australia.

“(3) An applicant meets the requirements of this subclause if:

- (a) the applicant’s entry to Australia has been proposed in accordance with approved form 681 by an Australian permanent resident (in this subclause called ‘**the proposer**’) who is, or has been, the holder of a Subclass 208 visa; and
- (b) on the date of grant of that visa, the applicant was a member of the immediate family of the proposer; and
- (c) the applicant continues to be a member of the immediate family of the proposer; and
- (d) on or before the date of grant of that visa, that relationship was declared to Immigration.”.

27.3 After clause 208.221, insert:

“208.221A If the applicant is an applicant who meets the requirements of paragraph 208.211 (3), the applicant continues to meet those requirements.”.

[NOTE: The note following the heading to Division 208.3 should be omitted and the following note substituted:

“[NOTE: These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.]”.]

27.4 Clauses 208.311 and 208.312:

Omit the clauses, substitute:

“208.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of subclause 208.211 (2); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of subclause 208.211 (3).”.

“208.312 The written undertaking made under subclause 208.215 in respect of the person referred to in paragraph 208.311 (a) or (b), as the case requires, includes the applicant.”.

27.5 Clause 208.321:

Omit the clause, substitute:

“208.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 208.211 (2)), is the holder of a Subclass 208 visa; or
- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of paragraph 208.211 (3)), is the holder of a Subclass 208 visa.”.

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

28.1 After clause 209.111, insert:

“209.112 For the purposes of this Part, ‘**Subclass 209 visa**’ means:

- (a) a Subclass 209 (Citizens of former Yugoslavia (displaced persons)) visa; or
- (b) a Class 209 (citizens of former Socialist Federal Republic of Yugoslavia—displaced persons (special assistance)) visa within the meaning of the Migration (1993) Regulations; or
- (c) a Croatians, Slovenians and Yugoslavs—displaced persons (special assistance) visa (code number 209) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).”.

[NOTE: The note following clause 209.111 should be omitted and the following note substituted:

“[NOTE: ‘eligible New Zealand citizen’, ‘member of the family unit’, ‘member of the immediate family’ and ‘permanent humanitarian visa’ are defined in regulation 1.03.]”.]

28.2 Clauses 209.211 and 209.212:

Omit the clauses, substitute:

“209.211 (1) The applicant meets the requirements of subclause (2) or (3).

“(2) The applicant meets the requirements of this subclause if:

- (a) the applicant is:
 - (i) a person who:
 - (A) was, on 19 June 1991, a citizen of the Socialist Federal Republic of Yugoslavia; and
 - (B) is usually resident in a place that, on 19 June 1991, formed part of the Socialist Federal Republic of Yugoslavia; or
 - (ii) a person who:
 - (A) was born on or after 20 June 1991; and
 - (B) is a dependent child of a person mentioned in subparagraph (i); and

- (b) the applicant is registered as a displaced person by the United Nations High Commissioner for Refugees, the International Committee of the Red Cross or an organisation that is accepted by the Minister:
 - (i) as an affiliate of that Committee; or
 - (ii) as having similar objectives and functions as the Committee or a body referred to in subparagraph (i) in relation to conflict in the former Socialist Federal Republic of Yugoslavia; and
 - (c) the Minister is satisfied that:
 - (i) the applicant has a well-founded fear of substantial discrimination because of the applicant's ancestry or ethnic or religious affiliation; and
 - (ii) the applicant is unable to resume living in the applicant's former home.
- “(3) An applicant meets the requirements of this subclause if:
- (a) the applicant's entry to Australia has been proposed in accordance with approved form 681 by an Australian permanent resident (in this subclause called **‘the proposer’**) who is, or has been, the holder of a Subclass 209 visa; and
 - (b) on the date of grant of that visa, the applicant was a member of the immediate family of the proposer; and
 - (c) the applicant continues to be a member of the immediate family of the proposer; and
 - (d) on or before the date of grant of that visa, that relationship was declared to Immigration.”.

28.3 Clause 209.213:

Omit “The applicant has a parent,”, substitute “The applicant has a spouse, parent,”.

28.4 Clauses 209.214, 209.215 and 209.221:

Omit the clauses, substitute:

“209.221 If the applicant is an applicant who meets the requirements of paragraph 209.211 (2) (c), the applicant continues to meet those requirements.

“209.221A If the applicant is an applicant who meets the requirements of subclause 209.211 (3), the applicant continues to meet those requirements.”.

[NOTE: The note following the heading to Division 209.3 should be omitted and the following note substituted:

“[NOTE: These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.]”]

28.5 Clauses 209.311 and 209.312:

Omit the clauses, substitute:

“209.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of subclause 209.211 (2); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of subclause 209.211 (3).

“209.312 The written undertaking made under subclause 209.213, in respect of the person referred to in paragraph 209.311(a) or (b), as the case requires, includes the applicant.”.

28.6 Clause 209.321:

Omit the clause, substitute:

“209.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of subclause 209.211 (2)), is the holder of a Subclass 209 visa; or
- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of subclause 209.211 (3)), is the holder of a Subclass 209 visa.”.

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

29.1 After clause 210.111, insert:

“210.112 For the purposes of this Part, ‘Subclass 210 visa’ means:

- (a) a Subclass 210 (Minorities of Former USSR) visa; or
- (b) a Class 210 (minorities of former USSR (special assistance)) visa within the meaning of the Migration (1993) Regulations; or

- (c) a minorities of former USSR (special assistance) visa (code number 210) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).”.

[NOTE: The note following clause 210.111 should be omitted and the following note substituted:

“[NOTE: ‘eligible New Zealand citizen’, ‘member of the family unit’, ‘member of the immediate family’ and ‘permanent humanitarian visa’ are defined in regulation 1.03.]”.

[NOTE: The note following the heading to Division 210.2 should be omitted and the following note substituted:

“[NOTE: The primary criteria must be satisfied by all applicants except certain applicants who are members of the family unit, or members of the immediate family, of certain applicants who satisfy the primary criteria. Those other applicants need satisfy only the secondary criteria.]”.

29.2 Clauses 210.211, 210.212, 210.213 and 210.214:

Omit the clauses, substitute:

“210.211 (1) The applicant meets the requirements of subclause (2) or (3).

- “(2) The applicant meets the requirements of this subclause if:
 - (a) the applicant:
 - (i) was a citizen of the former Union of Soviet Socialist Republics; and
 - (ii) is usually resident in the former Union of Soviet Socialist Republics; and
 - (b) the applicant has a parent, daughter, son, brother, sister, aunt, uncle, nephew or niece who:
 - (i) was an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen on 1 January 1992; and
 - (ii) continues to be an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
 - (iii) is usually resident in Australia; and
 - (c) the Minister is satisfied that the applicant has suffered substantial discrimination or severe distress because of his or her ancestry or religious affiliation.

- “(3) An applicant meets the requirements of this subclause if:
- (a) the applicant’s entry to Australia has been proposed in accordance with approved form 681 by an Australian permanent resident (in this subclause called ‘**the proposer**’) who is, or has been, the holder of a Subclass 210 visa; and
 - (b) on the date of grant of that visa, the applicant was a member of the immediate family of the proposer; and
 - (c) the applicant continues to be a member of the immediate family of the proposer; and
 - (d) on or before the date of grant of that visa, that relationship was declared to Immigration.”.

29.3 Clause 210.221:

Omit the clause, substitute:

“210.221 If the applicant is an applicant who meets the requirements of subclause 210.211 (2) (c) or 210.211 (3), the applicant continues to meet those requirements.”.

[NOTE: The note following the heading to Division 210.3 should be omitted and the following note substituted:

“[NOTE: These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.]”.]

29.4 Clause 210.224:

Omit the clause, substitute:

“210.224 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.”.

29.5 Clauses 210.311 and 210.312:

Omit the clauses, substitute:

“210.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of subclause 210.211 (2); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of subclause 210.211 (3).

“210.312 The written undertaking made under clause 210.215, in respect of the person referred to in paragraph 210.311(a) or (b), as the case requires, includes the applicant.”.

29.6 Clause 210.321:

Omit the clause, substitute:

“210.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of subclause 210.211 (2)), is the holder of a Subclass 210 visa; or
- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of subclause 201.211 (3)), is the holder of a Subclass 210 visa.”.

30. Schedule 2, Part 211 (Burmese in Burma)

30.1 After clause 211.111, insert:

“211.112 For the purposes of this Part, ‘**Subclass 211 visa**’ means:

- (a) a Subclass 211 (Burmese in Burma) visa; or
- (b) a Class 211 (Burmese (special assistance)) visa within the meaning of the Migration (1993) Regulations; or
- (c) a Burmese (special assistance) visa (code number 211) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).”.

[NOTE: The note following clause 211.111 should be omitted and the following note substituted:

“[NOTE: ‘eligible New Zealand citizen’, ‘member of the family unit’, ‘member of the immediate family’ and ‘permanent humanitarian visa’ are defined in regulation 1.03.]”.]

[NOTE: The note following the heading to Division 211.2 should be omitted and the following note substituted:

“[NOTE: The primary criteria must be satisfied by all applicants except certain applicants who are members of the family unit, or members of the immediate family, of certain applicants who satisfy the primary criteria. Those other applicants need satisfy only the secondary criteria.]”.]

30.2 Clause 211.211:

Omit the clause, substitute:

“211.211 (1) The applicant meets the requirements of subclause (2) or (3).

“(2) The applicant meets the requirements of this subclause if the applicant is:

- (a) a citizen of Burma; and
- (b) resident in Burma; and
- (c) subject to substantial discrimination in Burma.

“(3) An applicant meets the requirements of this subclause if:

- (a) the applicant’s entry to Australia has been proposed in accordance with approved form 681 by an Australian permanent resident (in this subclause called ‘**the proposer**’) who is, or has been, the holder of a Subclass 211 visa; and
- (b) on the date of grant of that visa, the applicant was a member of the immediate family of the proposer; and
- (c) the applicant continues to be a member of the immediate family of the proposer; and
- (d) on or before the date of grant of that visa, that relationship was declared to Immigration.”.

30.3 After clause 211.221, insert:

“211.221A If the applicant is an applicant who meets the requirements of subclause 211.211 (3), the applicant continues to meet those requirements.”.

[NOTE: The note following the heading to Division 210.3 should be omitted and the following note substituted:

“[NOTE: These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.]”.

30.4 Clause 211.311:

Omit the clause, substitute:

“211.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of subclause 211.211 (2); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of subclause 211.211 (3).”.

30.5 Clause 211.312:

Omit the clause, substitute:

“211.312 The written undertaking made under clause 211.213, in respect of the person referred to in paragraph 211.311 (a) or (b), as the case requires, includes the applicant.”.

30.6 Clause 211.321:

Omit the clause, substitute:

“211.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of subclause 211.211 (2)), is the holder of a Subclass 211 visa; or
- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of subclause 211.211 (3)), is the holder of a Subclass 211 visa.”.

31. Schedule 2, Part 212 (Sudanese)

31.1 After clause 212.111, insert:

“212.112 For the purposes of this Part, ‘**Subclass 212 visa**’ means:

- (a) a Subclass 212 (Sudanese) visa; or
- (b) a Class 212 (Sudanese (special assistance)) visa within the meaning of the Migration (1993) Regulations; or
- (c) a Sudanese (special assistance) visa (code number 212) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).”.

[**NOTE:** The note following clause 212.111 should be omitted and the following note substituted:

“[**NOTE:** ‘eligible New Zealand citizen’, ‘member of the family unit’, ‘member of the immediate family’ and ‘permanent humanitarian visa’ are defined in regulation 1.03.]”.

[NOTE: The note following the heading to Division 212.2 should be omitted and the following note substituted:

“[NOTE: The primary criteria must be satisfied by all applicants except certain applicants who are members of the family unit, or members of the immediate family, of certain applicants who satisfy the primary criteria. Those other applicants need satisfy only the secondary criteria.]”.]

31.2 Clauses 212.211 and 212.212:

Omit the clauses, substitute:

“212.211 (1) The applicant meets the requirements of subclause (2) or (3).

“(2) The applicant meets the requirements of this subclause if:

- (a) the applicant is a citizen of the Republic of Sudan; and
- (b) the Minister is satisfied that the applicant has suffered substantial discrimination or severe distress because of his or her ethnic or religious affiliation.

“(3) An applicant meets the requirements of this subclause if:

- (a) the applicant’s entry to Australia has been proposed in accordance with approved form 681 by an Australian permanent resident (in this subclause called ‘**the proposer**’) who is, or has been, the holder of a Subclass 212 visa; and
- (b) on the date of grant of that visa, the applicant was a member of the immediate family of the proposer; and
- (c) the applicant continues to be a member of the immediate family of the proposer; and
- (d) on or before the date of grant of that visa, that relationship was declared to Immigration.”.

31.3 Clauses 212.213:

Omit “The applicant has a parent,”, substitute “The applicant has a spouse, parent,”.

31.4 After clause 212.221, insert:

“212.221A If the applicant is an applicant who meets the requirements of subclause 212.211 (3), the applicant continues to meet those requirements.”.

[NOTE: The note following the heading to Division 212.3 should be omitted and the following note substituted:

“[NOTE: These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.]”.]

31.5 Clauses 212.311 and 212.312:

Omit the clauses, substitute:

“212.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of subclause 212.211 (2); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of subclause 212.211 (3).

“212.312 The written undertaking referred to in clause 212.213, in respect of the person referred to in paragraph 212.311 (a) or (b), as the case requires, includes the applicant.”.

31.6 Clause 212.321:

Omit the clause, substitute:

“212.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of subclause 212.211 (2)), is the holder of a Subclass 212 visa; or
- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of subclause 212.211 (3)), is the holder of a Subclass 212 visa.”.

32. Schedule 2, Part 213 (Burmese in Thailand)

32.1 Insert in Division 213.1:

“213.111 For the purposes of this Part:

‘Subclass 213 visa’ means:

- (a) a Subclass 213 (Burmese in Thailand) visa; or
- (b) a Class 213 (displaced Burmese in Thailand (special assistance)) visa within the meaning of the Migration (1993) Regulations; or

- (c) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b).”.

[NOTE: The note following the heading to Division 213.1 should be omitted and the following note substituted:

“[NOTE: ‘member of the family unit’, ‘member of the immediate family’ and ‘permanent humanitarian visa’ are defined in regulation 1.03.]”.]

[NOTE: The note following the heading to Division 213.2 should be omitted and the following note substituted:

“[NOTE: The primary criteria must be satisfied by all applicants except certain applicants who are members of the family unit, or members of the immediate family, of certain applicants who satisfy the primary criteria. Those other applicants need satisfy only the secondary criteria.]”.]

32.2 Clause 213.212:

Omit the clause, substitute:

“213.211 (1) The applicant meets the requirements of subclause (2) or (3).

“(2) The applicant meets the requirements of this subclause if the applicant:

- (a) is a citizen of Burma; and
- (b) is resident in Thailand; and
- (c) is subject to substantial discrimination in Burma.

“(3) An applicant meets the requirements of this subclause if:

- (a) the applicant’s entry to Australia has been proposed in accordance with approved form 681 by an Australian permanent resident (in this subclause called ‘**the proposer**’) who is, or has been, the holder of a Subclass 213 visa; and
- (b) on the date of grant of that visa, the applicant was a member of the immediate family of the proposer; and
- (c) the applicant continues to be a member of the immediate family of the proposer; and
- (d) on or before the date of grant of that visa, that relationship was declared to Immigration.”.

32.3 After clause 213.221, insert:

“213.221A If the applicant is an applicant who meets the requirements of subclause 213.211 (3), the applicant continues to meet those requirements.”.

[NOTE: The note following the heading to Division 213.3 should be omitted and the following note substituted:

“[NOTE: These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.]”]

32.4 Clauses 213.311 and 213.312:

Omit the clauses, substitute:

“213.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of subclause 213.211 (2); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of subclause 213.211 (3).

“213.312 The written undertaking made under clause 213.213, in respect of the person referred to in paragraph 213.311 (a) or (b), as the case requires, includes the applicant.”

32.5 Clause 213.321:

Omit the clause, substitute:

“213.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of subclause 213.211 (2)), is the holder of a Subclass 213 visa; or
- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of subclause 213.211 (3)), is the holder of a Subclass 213 visa.”

33. Schedule 2, Part 214 (Cambodian)

33.1 After clause 214.111, insert:

“214.112 For the purposes of this Part, ‘**Subclass 214 visa**’ means:

- (a) a Subclass 214 (Cambodian) visa; or
- (b) a Class 214 (Cambodians (special assistance)) visa within the meaning of the Migration (1993) Regulations; or
- (c) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b).”

[NOTE: The note following clause 214.111 should be omitted and the following note substituted:

“[NOTE: ‘eligible New Zealand citizen’, ‘member of the family unit’, ‘member of the immediate family’ and ‘permanent humanitarian visa’ are defined in regulation 1.03.]”.

[NOTE: The note following the heading to Division 214.2 should be omitted and the following note substituted:

“[NOTE: The primary criteria must be satisfied by all applicants except certain applicants who are members of the family unit, or members of the immediate family, of certain applicants who satisfy the primary criteria. Those other applicants need satisfy only the secondary criteria.]”.

33.2 Clause 214.211:

Omit the clause, substitute:

“214.211 (1) The applicant meets the requirements of subclause (2) or (4).

- “(2) The applicant meets the requirements of this subclause if:
- (a) the applicant:
 - (i) is usually a resident of Cambodia; and
 - (ii) is experiencing hardship in Cambodia as a result of upheavals in that country over recent years; and
 - (b) either:
 - (i) the applicant has a near relative in Australia; or
 - (ii) the applicant meets the requirements of subclause (3).

“(3) An applicant meets the requirements of this subclause if the applicant:

- (a) arrived in Australia by boat, without a visa or other authority, between 28 November 1989 and 26 April 1991; and
- (b) before that arrival was usually a resident of Cambodia; and
- (c) was in detention under the Act for most of his or her stay in Australia; and
- (d) subsequently returned to Cambodia.

- “(4) The applicant meets the requirements of this subclause if:
- (a) the applicant’s entry to Australia has been proposed in accordance with approved form 681 by an Australian permanent resident (in this subclause called ‘**the proposer**’) who is, or has been, the holder of a Subclass 214 visa; and

- (b) on the date of grant of that visa, the applicant was a member of the immediate family of the proposer; and
- (c) the applicant continues to be a member of the immediate family of the proposer; and
- (d) on or before the date of grant of that visa, that relationship was declared to Immigration.”.

33.3 After clause 214.221, insert:

“214.221A If the applicant is an applicant who meets the requirements of subclause 214.211 (4), the applicant continues to meet those requirements.”.

[NOTE: The note following the heading to Division 214.3 should be omitted and the following note substituted:

“[NOTE: These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.]”.]

33.4 Clauses 214.311 and 214.312:

Omit the clauses, substitute:

“214.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of subclause 214.211 (2); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of subclause 214.211 (4).

“214.312 The written undertaking made under clause 214.212, in respect of the person referred to in paragraph 214.311 (a) or (b), as the case requires, includes the applicant.”.

33.5 Clause 214.321:

Omit the clause, substitute:

“214.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of subclause 214.211 (2)), is the holder of a Subclass 214 visa; or
- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of subclause 214.211 (4)), is the holder of a Subclass 214 visa.”.

34. Schedule 2, Part 215 (Sri Lankan (Special Assistance))

[NOTE: The following note should be inserted after clause 215.111:

“[NOTE: ‘eligible New Zealand citizen’, ‘member of the family unit’, ‘member of the immediate family’ and ‘permanent humanitarian visa’ are defined in regulation 1.03.]”.

[NOTE: The note following the heading to Division 215.2 should be omitted and the following note substituted:

“[NOTE: The primary criteria must be satisfied by all applicants except certain applicants who are members of the family unit, or members of the immediate family, of certain applicants who satisfy the primary criteria. Those other applicants need satisfy only the secondary criteria.]”.

34.1 Clauses 215.211, 215.212, 215.213 and 215.214:

Omit the clauses, substitute:

“215.211 (1) The applicant meets the requirements of subclause (2) or (3).

“(2) The applicant meets the requirements of this subclause if:

- (a) the applicant:
 - (i) is a citizen of Sri Lanka; and
 - (ii) is usually resident in Sri Lanka; and
 - (iii) is in Sri Lanka at the time of application; and
- (b) the applicant’s life has been seriously disrupted by fighting in Sri Lanka within the period of 18 months ending on the date of application; and
- (c) the applicant has suffered, and continues to suffer, substantial discrimination because of his or her ethnic origins or political beliefs; and
- (d) the Minister is satisfied that, at the time of application, the applicant is unable to live a normal life in Sri Lanka.

“(3) An applicant meets the requirements of this subclause if:

- (a) the applicant’s entry to Australia has been proposed in accordance with approved form 681 by an Australian permanent resident (in this subclause called ‘**the proposer**’) who is, or has been, the holder of a Subclass 215 visa; and
- (b) on the date of grant of that visa, the applicant was a member of the immediate family of the proposer; and
- (c) the applicant continues to be a member of the immediate family of the proposer; and

- (d) on or before the date of grant of that visa, that relationship was declared to Immigration.”.

34.2 Clause 215.215:

Omit “(being a parent,”, substitute “(being a spouse, parent,”.

34.3 After clause 215.221, insert:

“215.221A If the applicant is an applicant who meets the requirements of subclause 215.211 (3), the applicant continues to meet those requirements.”.

[NOTE: The note following the heading to Division 215.3 should be omitted and the following note substituted:

“[NOTE: These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.]”]

34.4 Clauses 215.311 and 215.312:

Omit the clauses, substitute:

“215.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of subclause 215.211 (2); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of subclause 215.211 (3).

“215.312 The written undertaking made under clause 215.215, in respect of the person referred to in paragraph 215.311 (a) or (b), as the case requires, includes the applicant.”.

34.5 Clause 215.321:

Omit the clause, substitute:

“215.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of subclause 215.211 (2)), is the holder of a Subclass 215 visa; or
- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of subclause 215.211 (3)), is the holder of a Subclass 215 visa.”.

35. Schedule 2, Part 216 (Ahmadi)

[NOTE: The note following the heading to Division 216.1 should be omitted and the following note substituted:

“[NOTE: ‘member of the family unit’, ‘member of the immediate family’ and ‘permanent humanitarian visa’ are defined in regulation 1.03.]”.

“[NOTE: The note following the heading to Division 216.2 should be omitted and the following note substituted:

“[NOTE: The primary criteria must be satisfied by all applicants except certain applicants who are members of the family unit, or members of the immediate family, of certain applicants who satisfy the primary criteria. Those other applicants need satisfy only the secondary criteria.]”.

35.1 Clauses 216.211 and 216.212:

Omit the clauses, substitute:

“216.211 (1) The applicant meets the requirements of subclause (2) or (3).

“(2) The applicant meets the requirements of this subclause if:

- (a) the applicant:
 - (i) is an Ahmadi; and
 - (ii) is a citizen of Pakistan; and
 - (iii) is usually resident in Pakistan; and
- (b) the Minister is satisfied that the applicant has suffered and continues to suffer substantial discrimination because of his or her religious affiliation.

“(3) An applicant meets the requirements of this subclause if:

- (a) the applicant’s entry to Australia has been proposed in accordance with approved form 681 by an Australian permanent resident (in this subclause called ‘**the proposer**’) who is, or has been, the holder of a Subclass 216 visa; and
- (b) on the date of grant of that visa, the applicant was a member of the immediate family of the proposer; and
- (c) the applicant continues to be a member of the immediate family of the proposer; and
- (d) on or before the date of grant of that visa, that relationship was declared to Immigration.”.

35.2 After clause 216.221, insert:

“216.221A If the applicant is an applicant who meets the requirements of subclause 216.211 (3), the applicant continues to meet those requirements.”.

[NOTE: The note following the heading to Division 216.3 should be omitted and the following note substituted:

“[NOTE: These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.]”.]

35.3 Clauses 216.311 and 216.312:

Omit the clauses, substitute:

“216.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of subclause 216.211 (2); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of subclause 216.211 (3).

“216.312 The written undertaking made under clause 216.213, in respect of the person referred to in paragraph 216.311 (a) or (b), as the case requires, includes the applicant.”.

35.4 Clause 216.321:

Omit the clause, substitute:

“216.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of subclause 216.211 (2)), is the holder of a Subclass 216 visa; or
- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of subclause 216.211 (3)), is the holder of a Subclass 216 visa.”.

36. Schedule 2, Part 217 (Vietnamese)

[NOTE: The note following the heading to Division 217.1 should be omitted and the following note substituted:

“[NOTE: ‘eligible New Zealand citizen’, ‘member of the family unit’, ‘member of the immediate family’ and ‘permanent humanitarian visa’ are defined in regulation 1.03.]”]

[NOTE: The note following the heading to Division 217.2 should be omitted and the following note substituted:

“[NOTE: The primary criteria must be satisfied by all applicants except certain applicants who are members of the family unit, or members of the immediate family, of certain applicants who satisfy the primary criteria. Those other applicants need satisfy only the secondary criteria.]”]

36.1 Clause 217.211:

Omit the clause, substitute:

“217.211 (1) The applicant meets the requirements of subclause (2) or (5).

“(2) The applicant meets the requirements of this subclause if the applicant:

- (a) is a citizen of Vietnam; and
- (b) meets the requirements of subclause (3) or (4).

“(3) The applicant meets the requirements of this subclause if the applicant:

- (a) has been continually resident in Germany since 1 January 1990; and
- (b) has no legal entitlement to remain permanently in Germany; and
- (c) faces repatriation to Vietnam.

“(4) The applicant meets the requirements of this subclause if the applicant:

- (a) at any time on or after 14 June 1989, has resided in a camp administered under the Comprehensive Plan of Action adopted by the International Conference on Indo-Chinese Refugees held at Geneva on 13 and 14 June 1989; and
- (b) has returned to Vietnam before 1 January 1996; and
- (c) is resident in Vietnam at the time of application.

- “(5) An applicant meets the requirements of this subclause if:
- (a) the applicant’s entry to Australia has been proposed in accordance with approved form 681 by an Australian permanent resident (in this subclause called **‘the proposer’**) who is, or has been, the holder of a Subclass 217 visa; and
 - (b) on the date of grant of that visa, the applicant was a member of the immediate family of the proposer; and
 - (c) the applicant continues to be a member of the immediate family of the proposer; and
 - (d) on or before the date of grant of that visa, that relationship was declared to Immigration.”.

36.2 Clause 217.212:

Omit “(being a parent,”, substitute “(being a spouse, parent,”.

36.3 After clause 217.221, insert:

“217.221A If the applicant is an applicant who meets the requirements of subclauses 217.211 (5), the applicant continues to satisfy those requirements.”.

[NOTE: The note following the heading to Division 217.3 should be omitted and the following note substituted:

“[NOTE: These criteria must be satisfied by applicants who are members of the family unit, or members of the immediate family, of certain persons who satisfy the primary criteria.]”.]

36.4 Clauses 217.311 and 217.312:

Omit the clauses, substitute:

“217.311 The applicant:

- (a) is a member of the family unit of, and made a combined application with, a person who meets, or has met, the requirements of subclause 217.211 (2); or
- (b) is a member of the immediate family of, and made a combined application with, a person who meets, or has met, the requirements of subclause 217.211 (5).

“217.312 The written undertaking made under clause 217.212, in respect of the person referred to in paragraph 217.311 (a) or (b), as the case requires, includes the applicant.”.

36.5 Clause 217.321:

Omit the clause, substitute:

“217.321 The applicant:

- (a) continues to be a member of the family unit of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of subclause 217.211 (2)), is the holder of a Subclass 217 visa; or
- (b) continues to be a member of the immediate family of a person who, having satisfied the primary criteria (and, in particular, having met the requirements of subclause 217.211 (5)), is the holder of a Subclass 217 visa.”.

37. Schedule 2, Part 300 (Prospective Marriage)

37.1 Clause 300.111:

Omit the clause, substitute:

“300.111 In this Part:

‘prospective spouse’ means the Australian citizen referred to in clause 300.211;

‘the parties’ means the applicant and the prospective spouse.

[NOTE: ‘guardian’ and ‘parent’ are defined in regulation 1.03.]”.

37.2 Clause 300.211:

Omit the clause, substitute:

“300.211 The applicant intends to marry an Australian citizen.”.

37.3 Subparagraph 300.213 (b) (i):

Omit the subparagraph, substitute:

“(i) is an Australian citizen; and”.

37.4 Clause 300.225:

Omit “If so requested by the Minister, an assurance”, substitute “An assurance”.

37.5 Clause 300.325:

Omit the clause, substitute:

“300.325 Either:

- (a) an assurance of support that includes the applicant:
 - (i) has been given in relation to the person who satisfies the primary criteria; and
 - (ii) has been accepted by the Minister; or

- (b) an assurance of support in relation to the applicant has been given and has been accepted by the Minister.”.

[NOTE: The following note should be inserted after clause 300.411:

“[NOTE: Any applicable charge under the *Migration (Health Services) Charge Act 1991* must be paid before the visa can be granted]”.

38. Schedule 2, Part 302 (Emergency (Permanent visa applicant))

38.1 Clause 302.111:

Omit the clause, substitute:

“302.111 (1) In this Part:

‘**principal visa**’, in relation to an applicant for a Subclass 302 visa, means the visa for which he or she originally applied;

‘**remaining criteria**’, in relation to an applicant for, or holder of, a Subclass 302 visa, means:

- (a) the public interest criteria; and
- (b) the criteria requiring, or providing for the Minister to request, an assurance of support;

applicable to the class of permanent entry visa for which the applicant originally applied that have not been satisfied at the time of his or her application for a Subclass 302 visa.

“(2) In subclause (1), a reference to an applicant for a Subclass 302 visa is a reference to an applicant for an Emergency (Temporary) (Class TI) visa who is also an applicant for a permanent visa of a class for which applications must be made outside Australia.”.

39. Schedule 2, Part 417 (Working Holiday)

39.1 Subclause 417.214 (2):

Omit the subclause, substitute:

“(2) An applicant satisfies the requirements of this subclause if the applicant is a citizen of a country specified by Gazette Notice for the purposes of this subclause and either:

- (a) the applicant has turned 18 but has not turned 26; or
- (b) the applicant has turned 26 but has not turned 31 and the Minister is satisfied that the applicant’s entry to Australia would be of benefit to the applicant and to Australia.”.

40. Schedule 2, Part 418 (Educational)

40.1 Paragraph 418.324 (a):

Omit “4004 and 4006A; and”, substitute “4004, 4006A, 4013 and 4014; and”.

40.2 Clause 418.325:

Omit “5001, 5003, 5005 and 5007 to 5009.”, substitute “5001 and 5002.”.

41. Schedule 2, Part 419 (Visiting Academic)

41.1 Clause 419.225:

Omit “4005 and 4010.”, substitute “4005, 4010, 4013 and 4014.”.

41.2 Clause 419.227:

Omit “5001, 5003, 5005 and 5007 to 5009.”, substitute “5001 and 5002.”.

41.3 Paragraph 419.323 (a):

Omit the paragraph, substitute:

“(a) in all cases, satisfies public interest criteria 4001 to 4005, 4013 and 4014; and”.

41.4 Clause 419.324:

Omit “5001, 5003, 5005 and 5007 to 5009.”, substitute “5001 and 5002.”.

42. Schedule 2, Part 420 (Entertainment)

42.1 (17) Clause 420.226:

Omit “4005 and 4010.”, substitute “4005, 4010, 4013 and 4014.”.

42.2 Clause 420.228:

Omit “5001, 5003, 5005 and 5007 to 5009.”, substitute “5001 and 5002.”.

42.3 Paragraph 420.324 (a):

Omit the paragraph, substitute:

“(a) in all cases, satisfies public interest criteria 4001 to 4005, 4013 and 4014; and”.

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

43.1 Paragraph 675.221 (2) (e):

Omit the paragraph, substitute:

“(e) if the applicant is applying outside Australia and has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002; and”.

44. Schedule 2, Part 676 (Tourist (Short Stay))

44.1 Paragraph 676.221 (2) (f):

Omit the paragraph, substitute:

“(f) if the applicant is applying outside Australia and has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002; and”.

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

45.1 Paragraph 685.221 (2) (e):

Omit the paragraph, substitute:

“(e) if the applicant is applying outside Australia and has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002; and”.

46. Schedule 2, Part 686 (Tourist (Long Stay))

46.1 Paragraph 686.221 (2) (f):

Omit the paragraph, substitute:

“(f) if the applicant is applying outside Australia and has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002; and”.

47. Schedule 2, Part 773 (Border)

47.1 Paragraph 773.213 (2) (p):

Omit the paragraph.

48. Schedule 2, Part 802 (Child)

[NOTE: The note relating to division 802.1 should be replaced by the following note:

“[NOTE: ‘eligible New Zealand citizen’ and ‘permanent humanitarian visa’ are defined in regulation 1.03. No interpretation provisions specific to this Part.]”]

48.1 Paragraph 802.211 (d):

Omit the paragraph, substitute:

“(d) either:

- (i) has become a dependent child of an Australian citizen since last applying for an entry permit or a substantive visa; or
- (ii) meets the requirements of subclause (2).”

48.2 Clause 802.211:

Omit “If:”, substitute “(1) If:”.

48.3 Clause 802.211:

Add at the end:

“(2) The applicant meets the requirements of this subclause if:

- (a) the applicant has not turned 18 and was born outside Australia; and
- (b) since last applying for an entry permit or a substantive visa, has become a dependent child of:
 - (i) a person who both:
 - (A) is an Australian permanent resident (other than an Australian permanent resident who is, or has been, the holder of a permanent humanitarian visa); and
 - (B) at the time the applicant was born, was the holder of a permanent visa; or
 - (ii) an eligible New Zealand citizen.”

48.4 Clause 802.212:

Omit the clause, substitute:

“802.212 (1) The applicant is a dependent child of, and is nominated for the grant of the visa by, a person (in this clause called **‘the nominator’**) who:

- (a) is an Australian citizen; or
- (b) meets the requirements of subclause (2), (3) or (4).

- if: “(2) The nominator meets the requirements of this subclause
- (a) the applicant has not turned 18 and was born outside Australia; and
 - (b) the nominator:
 - (i) both:
 - (A) is an Australian permanent resident (other than an Australian permanent resident who is, or has been, the holder of a permanent humanitarian visa); and
 - (B) at the time the applicant was born, was the holder of a permanent visa; or
 - (ii) is an eligible New Zealand citizen.
- if: “(3) The nominator meets the requirements of this subclause
- (a) the nominator is an Australian permanent resident (other than an Australian permanent resident who is, or has been, the holder of a permanent humanitarian visa); and
 - (b) the applicant was included in the application for a permanent visa of the nominator.
- if: “(4) The nominator meets the requirements of this subclause
- (a) the applicant has not turned 18; and
 - (b) the nominator is:
 - (i) an Australian permanent resident (other than an Australian permanent resident who is, or has been, the holder of a permanent humanitarian visa); or
 - (ii) an eligible New Zealand citizen; and
 - (c) either:
 - (i) the nominator is granted custody of the applicant (whether by an order of the Family Court of Australia or under the laws of another country); or
 - (ii) both:
 - (A) a parent of the applicant who is not the nominator dies or becomes incapable of caring for the applicant; and
 - (B) the Minister is satisfied that it is appropriate in the circumstances for the visa to be granted.”.

48.5 Clause 802.222:

Omit the clause, substitute:

“802.222 If the applicant is a dependent child who has not turned 18:

- (a) if so requested by the Minister, an assurance of support in relation to the applicant has been given; and
- (b) the assurance of support has been accepted by the Minister.

“802.222A If the applicant is not an applicant referred to in clause 802.222, an assurance of support in relation to the applicant has been given and has been accepted by the Minister.”.

48.6 Clause 802.323:

Omit “an assurance of support has been requested by the Minister”, substitute “an assurance of support is requested under clause 802.222 or required under clause 802.222A”.

[NOTE: The following note should be inserted after clause 802.41:

“[NOTE: Any applicable charge under the *Migration (Health Services) Charge Act 1991* must be paid before the visa can be granted]”.]

49. Schedule 2, Part 804 (Aged Parent)

[NOTE: The note relating to division 804.1 should be replaced by the following note:

“[NOTE: ‘aged parent’ is defined in regulation 1.03.]”.

49.1 Paragraph 804.211 (d):

Omit “citizen, of an Australian permanent resident or of an eligible New Zealand”.

49.2 Clause 804.212:

Omit the clause, substitute:

“804.212 The applicant is nominated for the grant of the visa by an adult child of the applicant who is a settled Australian citizen.”.

49.3 Clause 804.221:

Omit “citizen, Australian permanent resident or eligible New Zealand”.

50. Schedule 2, Part 805 (Skilled)

[NOTE: The following note should be inserted after clause 805.411:

“[NOTE: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa can be granted.]”.]

51. Schedule 2, Part 806 (Family)

51.1 Clause 806.211:

Omit the clause, substitute:

“806.211 (1) If:

(a) the applicant:

- (i) was in Australia on 1 September 1994; and
- (ii) was, immediately before 1 September 1994, a person to whom section 37 of the Act as in force immediately before that date applied; and
- (iii) has not been granted a substantive visa on or after 1 September 1994; or

(b) the applicant is a person to whom section 48 of the Act applies;

the applicant:

- (c) has not been refused a visa or had a visa cancelled under section 501 of the Act; and
- (d) meets the requirements of subclause (2).

“(2) The applicant meets the requirements of this subclause if:

(a) the applicant has become an aged dependent relative, an orphan relative, a remaining relative or a special need relative of an Australian citizen since last applying for an entry permit or substantive visa; or

(b) both:

- (i) the applicant has become an orphan relative of an Australian permanent resident or an eligible New Zealand citizen since last applying for an entry permit or substantive visa; and
- (ii) the Minister is satisfied that there are compelling compassionate circumstances that justify the grant of the visa.”.

51.2 Clause 806.213:

Omit the clause, substitute:

“806.213 (1) The applicant meets the requirements of subclause (2) or (3).

“(2) The applicant meets the requirements of this subclause if the applicant is an aged dependent relative, an orphan relative, a remaining relative or a special need relative of another person who:

- (a) is a settled Australian citizen; and
- (b) is usually resident in Australia; and
- (c) has nominated the applicant for the grant of a visa.

“(3) The applicant meets the requirements of this subclause if:

- (a) the applicant is an orphan relative of another person who:
 - (i) is a settled Australian permanent resident or a settled eligible New Zealand citizen; and
 - (ii) is usually resident in Australia; and
 - (iii) has nominated the applicant for the grant of a visa; and
- (b) the Minister is satisfied that there are compelling compassionate circumstances that justify the grant of the visa.”.

52. Schedule 2, Part 808 (Confirmatory (Residence))

[NOTE: The following note should be inserted after clause 808.41:

“[NOTE: Any applicable charge under the *Migration (Health Services) Charge Act 1991* must be paid before the visa can be granted]”.

53. Schedule 2, Part 820 (Spouse)

53.1 Clause 820.111 (definition of “nominating spouse”):

Omit the definition, substitute:

“**“nominating spouse”**, in relation to:

- (a) an applicant who is, or was, the holder of a prospective marriage (temporary) visa—means the Australian citizen, Australian permanent resident, or eligible New Zealand citizen who was specified in the application for that visa as the person whom the applicant intended to marry after entry to Australia; or

- (b) any other applicant—means the Australian citizen or Australian permanent resident who nominated the applicant as his or her spouse when the application for the visa was made;

‘prospective marriage (temporary) visa’ means:

- (a) a Prospective Marriage (Temporary) (Class TO) visa; or
 (b) a Class 300 (prospective marriage) visa or entry permit within the meaning of the Migration (1993) Regulations; or
 (c) a prospective marriage visa (code number 300), or equivalent entry permit, within the meaning of the Migration (1989) Regulations; or
 (d) a transitional (temporary) visa, within the meaning of the Migration Reform (Transitional Provisions) Regulations, being:
 (i) such a visa granted on the basis of an application for a visa or entry permit of a kind specified in paragraph (b) or (c); or
 (ii) a visa or entry permit of such a kind having effect under those Regulations as a transitional (temporary) visa.”.

[NOTE: The note relating to division 820.1 should be replaced by the following note:

“[NOTE: ‘eligible New Zealand citizen’ and ‘permanent humanitarian visa’ are defined in regulation 1.03.]”.

53.2 Subclause 820.211 (2):

Omit the subclause, substitute:

- “(2) The applicant meets the requirements of this subclause if:
 (a) the applicant is the spouse of a person who:
 (i) is an Australian citizen; or
 (ii) if the application is made before 1 October 1997—meets the requirements of subclause (2A); and
 (b) the applicant is nominated by that person; and
 (c) in the case of an applicant who is not the holder of a substantive visa:
 (i) the applicant:
 (A) entered Australia as the holder of a Subclass 995 (Diplomatic) visa or as a special purpose visa holder who, at the time of entry, met the requirements of subclause (6); and
 (B) satisfies Schedule 3 criterion 3002; or

- (ii) the applicant satisfies Schedule 3 criteria 3001, 3003 and 3004, unless the Minister is satisfied that there are compelling reasons for not applying those criteria.

“(2A) A person meets the requirements of this subclause if:

- (a) the person holds a permanent visa that was applied for before 3 July 1996; and
- (b) the person is not, and has not been, the holder of a permanent humanitarian visa; and
- (c) before the person’s permanent visa was granted, the person was in a spouse relationship with the applicant of which Immigration was informed before the person’s permanent visa was granted.”.

53.3 Clause 820.222:

Omit the clause, substitute:

“820.222 (1) Unless the applicant is an applicant referred to in subclause (2), an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

- “(2) If:
- (a) the applicant last held a prospective marriage (temporary) visa; and
 - (b) the applicant is seeking to remain in Australia permanently on the basis of the applicant’s marriage to the nominating spouse;

then, if so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.”.

53.4 Clause 820.322:

Omit the clause, substitute:

“820.322 (1) Unless the applicant is an applicant referred to in paragraph (2) (a), either:

- (a) an assurance of support that includes the applicant:
 - (i) has been given in relation to the person who satisfies the primary criteria; and
 - (ii) has been accepted by the Minister; or
- (b) an assurance of support in relation to the applicant has been given and has been accepted by the Minister.

- “(2) If:
- (a) the applicant is a member of the family unit of a person who satisfies the primary criteria and who:
 - (i) last held a prospective marriage (temporary) visa; and

- (ii) is seeking to remain in Australia permanently on the basis of his or her marriage to the nominating spouse; and
 - (b) the Minister has requested an assurance of support in relation to the person who satisfies the primary criteria;
- then, either:
- (c) an assurance of support that includes the applicant:
 - (i) has been given in relation to the person who satisfies the primary criteria; and
 - (ii) has been accepted by the Minister; or
 - (d) an assurance of support in relation to the applicant has been given and has been accepted by the Minister.”.

[NOTE: The following note should be inserted after clause 820.411:

“[NOTE: Any applicable charge under the *Migration (Health Services) Charge Act 1991* must be paid before the visa can be granted]”.

54. Schedule 2, Part 826 (Interdependency)

[NOTE: The note relating to division 826.1 should be replaced by the following note:

“[NOTE: ‘interdependent relationship’ is defined in regulation 1.09A. There are no interpretation provisions specific to this Part.]”.

54.1 Subparagraph 826.212 (2) (b) (ii):
Omit the subparagraph, substitute:

“(ii) is an Australian citizen; and”.

54.2 Clause 826.222:

Omit “If so requested by the Minister, an assurance”, substitute “An assurance”.

54.3 Clause 826.322:

Omit the clause.

54.4 Clause 826.323:

Omit the clause, substitute:

“826.323 Either:

- (a) an assurance of support that includes the applicant:

- (i) has been given in relation to the person who satisfies the primary criteria; and
 - (ii) has been accepted by the Minister; or
- (b) an assurance of support in relation to the applicant has been given and has been accepted by the Minister.”.

[NOTE: The following note should be inserted after clause 826.411:

“[NOTE: Any applicable charge under the *Migration (Health Services) Charge Act 1991* must be paid before the visa can be granted].”.]

55. Schedule 2, Part 832 (Close Ties)

[NOTE: The note to clause 832.1 should be replaced by the following note:

“[NOTE: There are no interpretation provisions specific to this Part.]”.]

55.1 Paragraph 832.212 (5) (b):

Omit “150.21, 151.21 or 152.21.”, substitute “150.21 or 151.21.”.

[NOTE: The following note should be inserted after clause 832.411:

“[NOTE: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa can be granted.]”.]

56. Schedule 2, Part 833 (Certain Unlawful Non-Citizens)

[NOTE: The note following clause 833.411 should be omitted and the following note substituted:

“[NOTE: Any applicable charges under the *Immigration (Education) Charge Act 1992* or *Migration (Health Services) Charge Act 1991* must be paid before the visa can be granted.]”.]

57. Schedule 2, Part 840 (Business Owner)

[NOTE: The following note should be inserted after clause 840.411:

“[NOTE: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa can be granted.]”.]

58. Schedule 2, Part 841 (Senior Executive)

[NOTE: The following note should be inserted after clause 841.411:

“[NOTE: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa can be granted.]”.]

59. Schedule 2, Part 842 (State/Territory Sponsored Business Owner)

[NOTE: The following note should be inserted after clause 842.411:

“[NOTE: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa can be granted.]”.]

60. Schedule 2, Part 843 (State/Territory Sponsored Senior Executive)

[NOTE: The following note should be inserted after clause 843.411:

“[NOTE: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa can be granted.]”.]

61. Schedule 2, Part 844 (Investment-linked)

[NOTE: The following note should be inserted after clause 844.411:

“[NOTE: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa can be granted.]”.]

62. Schedule 2, Part 845 (Established Business in Australia)

[NOTE: The following note should be inserted after clause 845.411:

“[NOTE: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa can be granted.]”.]

**PART 3 —AMENDMENTS COMMENCING ON
1 NOVEMBER 1996****63. Regulation 1.03 (Interpretation)**

63.1 Definition of “Australian permanent resident”:

Omit the definition, substitute:

“**‘Australian permanent resident’** means:

- (a) in relation to an applicant for a Return (Residence) (Class BB) visa or a Resident Return (Temporary) (Class TP) visa—a non-citizen who is the holder of a permanent visa; or
- (b) in any other case—a non-citizen who, being usually resident in Australia, is the holder of a permanent visa;”.

63.2 Insert the following definitions:

“**‘long-term interdependent relationship’**, in relation to an applicant for a visa, means an interdependent relationship between the applicant and another person that has continued for not less than 5 years;

‘long-term spouse relationship’, in relation to an applicant for a visa, means a relationship between the applicant and another person, each as the spouse of the other, that has continued:

- (a) if there is a dependent child of both the applicant and the other person—for not less than 2 years; or
- (b) in any other case—for not less than 5 years;”.

64. Regulation 1.09A (Interdependent relationship)

64.1 Subregulation 1.09A (5):

After “(Class BI),” insert “ Interdependency (Provisional) (Class UG),”.

65. Regulation 1.15A (Spouse)

65.1 Subregulation 1.15A (3):

Omit all the words before paragraph (a), substitute:

“(3) In forming an opinion for the purposes of paragraph (1) (b) and (c) in relation to an application for:

(aa) an Extended Eligibility (Temporary) (Class TK) visa; or

(ab) a Family (Residence) (Class AO) visa; or

(ac) a General (Residence) (Class AS) visa; or

(ad) a Spouse (Migrant) (Class BC) visa; or

(ae) a Spouse (Provisional) (Class UF) visa;

the Minister must have regard to all of the circumstances of the relationship, including, in particular:”

65.2 Subregulation 1.15A (4):

Omit “of a subclass other than 100, 801, 820 or 831,”, substitute “of a class other than a class specified in paragraph (3) (aa), (ab), (ac), (ad) or (ae),”.

66. Regulation 1.20 (Sponsorship)

66.1 Paragraph 1.20 (2) (a):

Omit the paragraph, substitute:

“(a) if the application is for a permanent visa (other than a Business Skills (Migrant) (Class AD), Business Skills (Residence) (Class BH), Interdependency (Migrant) (Class BI) or Spouse (Migrant) (Class BC) visa)—the sponsor undertakes to assist the applicant, to the extent necessary, financially and in respect of accommodation, during the period of 2 years immediately following the applicant’s entry into Australia under that visa (including any period of participation by the applicant in the program known as the Adult Migrant English Program administered by Immigration that falls within that period);”.

66.2 Paragraph 1.20 (2) (b):

Omit “temporary visa”, substitute “temporary visa (other than a Spouse (Provisional) (Class UF) or Interdependency (Provisional) (Class UG) visa)”.

66.3 Subregulation 1.20 (2):

Add at the end:

- “; (c) if the application is a concurrent application for either:
- (i) a Spouse (Migrant) (Class BC) and a Spouse (Provisional) (Class UF) visa; or
 - (ii) an Interdependency (Migrant) (Class BI) and an Interdependency (Provisional) (Class UG) visa;
- the sponsor undertakes to assist the applicant, to the extent necessary, financially and in respect of accommodation, during the period of 2 years immediately following the applicant’s entry into Australia as the holder of any of those visas.”.

67. New Division 1.4B

67.1 After Division 1.4A, insert:

“Division 1.4B—Sponsorship and nomination: spouse, prospective spouse and interdependency visas

Limitation on approval of sponsorships and nominations—spouse, prospective spouse and interdependency visas

“1.20J. (1) Subject to subregulations (2) and (3), the Minister must not approve:

- (a) the sponsorship of an applicant for:
 - (i) a Spouse (Provisional) (Class UF) visa or a Prospective Marriage (Temporary) (Class TO) visa, as the spouse or prospective spouse of the sponsor; or
 - (ii) an Interdependency (Provisional) (Class UG) visa, as a person in an interdependent relationship with the sponsor; or
- (b) the nomination of an applicant for an Extended Eligibility (Temporary) (Class TK) visa as the spouse of, or as a person in an interdependent relationship with, the nominator;

unless the Minister is satisfied that:

- (c) not more than 1 other person has been granted a visa as the spouse or prospective spouse of, or as a person in an interdependent relationship with, the sponsor or nominator on the basis of a sponsorship or nomination; and
- (d) if another person has been granted a visa of a kind referred to in paragraph (c)—not less than 5 years has passed since the date of making the application for that visa; and
- (e) if the sponsor or nominator was granted a visa as the spouse or prospective spouse of, or as a person in an interdependent relationship with, another person on the basis of a sponsorship or nomination—not less than 5 years has passed since the date of making the application for that visa.

“(2) Despite subregulation (1), the Minister may approve the sponsorship or nomination of an applicant for a visa if the Minister is satisfied that there are compelling circumstances affecting the sponsor or nominator.

“(3) Subject to subregulation (4), this regulation applies in relation to an application for a visa made on or after 1 November 1996.

“(4) This regulation does not apply in relation to an application by a person who:

- (a) was the holder of a Subclass 300 visa that was granted on the basis of an application for a Prospective Marriage (Temporary) (Class TO) visa that was made before 1 November 1996; and
- (b) has applied for an Extended Eligibility (Temporary) (Class TK) visa; and
- (c) is seeking to remain permanently in Australia on the basis of the person’s marriage to the person who was specified as the intended spouse in the application that resulted in the grant of that Prospective Marriage (Temporary) (Class TO) visa.”.

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

68.1 Paragraph 2.08B (1) (a):

Omit the paragraph, substitute:

“(a) a person (in this regulation called ‘**the original applicant**’) applies for an Extended Eligibility (Temporary) (Class TK) visa, an Interdependency (Provisional) (Class UG) visa, a Prospective Marriage (Temporary) (Class TO) visa or a Spouse (Provisional) (Class UF) visa; and”

69. New regulation 2.08C

69.1 After regulation 2.08B, insert:

Certain applicants for Independent (Migrant) (Class AT) visas taken to have applied also for Employer Nomination (Migrant) (Class AN) visas

“**2.08C. (1)** An applicant for an Independent (Migrant) (Class AT) visa who has been nominated by an employer in respect of an appointment in the business of that employer is taken also to have applied for an Employer Nomination (Migrant) (Class AN) visa on the day when Immigration receives the employer nomination, if each of the following requirements is satisfied as at that date:

- (a) the applicant was less than 45 years of age at the time of that application for an Independent (Migrant) (Class AT) visa;
- (b) a decision to grant, or refuse to grant, to the applicant a Subclass 126 (Independent) visa has not been made;
- (c) the applicant:
 - (i) has been assessed in relation to a Subclass 126 (Independent) visa under Subdivision B of Division 3 of Part 2 of the Act; and
 - (ii) was given an assessed score that is more than or equal to the applicable pool mark at the time when the score was assessed;
- (d) the appointment for which the applicant has been nominated is an approved appointment in accordance with subregulation 5.19 (4);
- (e) the applicant has functional English;
- (f) the applicant has a diploma (within the meaning of subregulation 2.26 (5)) or higher qualification.

“(2) If subregulation (1) applies to an applicant for an Independent (Migrant) (Class AT) visa:

- (a) the applicant’s application for an Employer Nomination (Migrant) (Class AN) visa is taken to have been made outside Australia, whether the employer nomination in relation to that applicant is received in or outside Australia; and
- (b) any other person included in the applicant’s application for an Independent (Migrant) (Class AT) visa is taken also to be included in the applicant’s application for an Employer Nomination (Migrant) (Class AN) visa.”.

70. Regulation 2.09 (Oral applications for visas)

70.1 Omit “If”, substitute “Subject to subregulation (2), if”.

70.2 Add at the end:

“(2) An oral application for a Return (Residence) (Class BB) visa may be made:

- (a) at an office of Immigration in Australia (whether specified by Gazette Notice for the purposes of subregulation (1) or not); and
- (b) only by attendance at that office.”.

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

71.1 Subregulation 2.11 (2):

Omit the subregulation, substitute:

“(2) An invitation made under subregulation (1) is to be an invitation:

- (a) if the first application was for a permanent visa—to make an application for a permanent visa; or
- (b) if the first application was for a temporary visa—to make an application for a temporary visa;

except that:

- (c) if the first application was for a Prospective Marriage (Temporary) (Class TO) visa, the Minister may invite the applicant to make a further application for both a Spouse (Provisional) (Class UF) visa and a Spouse (Migrant) (Class BC) visa; and

- (d) if the first application was for both a Spouse (Provisional) (Class UF) visa and a Spouse (Migrant) (Class BC) visa, the Minister may invite the applicant to make a further application for a Prospective Marriage (Temporary) (Class TO) visa; and
- (e) if the first application was for a Return (Residence) (Class BB) visa, the Minister may invite the applicant to make a further application for a Resident Return (Temporary) (Class TP) visa.”.

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

72.1 Subregulation 2.18 (2):

Omit the subregulation, substitute:

“(2) Subject to subregulation (2A), an application must be in accordance with either of approved forms 786 or 1085.

“(2A) An application made in Australia may also be made:

- (a) orally, by attending an office of Immigration in Australia and presenting a valid passport; or
- (b) in writing:
 - (i) delivered to an office of Immigration in Australia; and
 - (ii) accompanied by presentation of a valid passport.”.

72.2 Subregulation 2.18 (4):

Add at the end:

“; or (f) a Subclass 156 (One Year Return) visa.”.

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

73.1 Paragraph 2.19 (c):

Omit the paragraph, substitute:

“(c) if the visa:

- (i) is not a Return (Residence) (Class BB) visa; and
- (ii) is granted on the basis of an oral application.”.

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

74.1 Paragraph 2.26 (1) (a):

Omit “Part 1, 2, 4,”, substitute “Part 1, 2, 3, 4,”.

74.2 Paragraphs 2.26 (1) (a) and (b):

Omit “an applicant for”, substitute “the grant to the applicant of”.

75. Regulation 2.27 (Combination of scores—“points system”)

75.1 Paragraph 2.27 (c):

Omit “Parts 1 and 2”, substitute “Parts 1, 2 and 3”.

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

76.1 Omit the regulation, substitute:

Fee for assessment of a person’s work qualifications and experience

“**5.40. (1)** The fee payable on an application for assessment, for the purposes of the Act, of a person’s occupational qualifications or experience (or both) is:

(a) in the case of an assessment by NOOSR—\$300;

(b) in the case of an assessment by the Department of Industrial Relations:

(i) for a standard skills assessment—\$280; and

(ii) for an optional priority skills assessment—\$470.

“(2) The fee payable on an application for internal review of an assessment described in paragraph (1) (b) is \$280.

“(3) Subject to subregulation (4), if the review of an assessment is decided in favour of the applicant by a review authority, the fee paid under subregulation (2) is to be refunded.

“(4) A fee paid under subregulation (2) in respect of an application for review is not to be refunded if the applicant provided evidence for the purposes of the review that was not provided for the purposes of the application for assessment.”.

77. Schedule 1 (Classes of visas)**77.1 Subitem 1110 (4):**

Omit the subitem, substitute:

“(4) Subclasses: 105 (Concessional Family)
106 (Regional Family)”.

77.2 Subitems 1114 (1) and (2):

Omit the subitems, substitute:

“(1) Form: 47 (unless the applicant is taken, under regulation 2.08C, to have applied for an Employer Nomination (Migrant) (Class AN) visa, in which case no form is required).

(2) Fee: \$600 (unless the applicant is taken, under regulation 2.08C, to have applied for an Employer Nomination (Migrant) (Class AN) visa, in which case no fee is payable).”.

77.3 Paragraph 1115 (3) (c):

Omit the paragraph, substitute:

“(c) If the applicant is the holder of a Subclass 300 (Prospective Marriage) visa and seeks to remain in Australia permanently as the spouse of an Australian citizen, Australian permanent resident or eligible New Zealand citizen, the application may be made only if the application that resulted in the grant of that Subclass 300 visa was made:

- (i) before 1 November 1996; or
- (ii) in response to an invitation under subregulation 2.11 (1) in relation to an application for a Spouse (Migrant) (Class BC) visa that was made before 1 November 1996 and has been refused.

(d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Family (Residence) visa may be made at the same time and place as, and combined with, the application by that person.”.

77.4 Paragraph 1119 (2) (e):

Omit the paragraph, substitute:

- “(e) If the applicant is the holder of a Prospective Marriage (Temporary) (Class TO) visa, is married to the person who was specified as the applicant’s intended spouse in the application for that visa and seeks to remain in Australia permanently on the basis of that marriage: \$600.
- (f) If the applicant is not the holder of a substantive visa, entered Australia as the holder of a Prospective Marriage (Temporary) (Class TO) visa, ceased to hold that visa after marrying the Australian citizen whom the applicant entered Australia to marry and seeks to remain in Australia permanently on the basis of that marriage: \$600.
- (g) In any other case: \$1,500.”.

77.5 Item 1120A:

Omit the item, substitute:

“1120A. Interdependency (Migrant) (Class BI)

- “(1) Form:
 - (a) If the applicant is the holder of a Subclass 445 (Dependent Child) visa: 1002.
 - (b) In any other case: 1035.
- “(2) Fee:
 - (a) If the applicant is the holder of a Subclass 445 (Dependent Child) visa: Nil.
 - (b) In any other case: \$600.
- “(3) Other:
 - (a) Application (otherwise than by the holder of a Subclass 445 (Dependent Child) visa) must be made outside Australia.
 - (b) Application by the holder of a Subclass 445 (Dependent Child) visa may be made in or outside Australia, but not in immigration clearance.

- (c) Applicant (other than an applicant who is the holder of a Subclass 445 (Dependent Child) visa) must be outside Australia.
- (d) Applicant who is the holder of a Subclass 445 (Dependent Child) visa may be in or outside Australia, but not in immigration clearance.
- (e) Application by a person claiming to be a member of the family unit of a person who is an applicant for an Interdependency (Migrant) visa may be made at the same time and place as, and combined with, the application by that person.

“(4) Subclasses: 110 (Interdependency)”.

77.6 Subitem 1128 (1):

Omit the subitem, substitute:

“(1) Form: 1085 (unless the application is in accordance with paragraph (3) (ba), in which case no form is required).”.

77.7 After paragraph 1128 (3) (b), insert:

“(ba) An application made in Australia may be:

- (i) an oral application; or
- (ii) an application in writing, otherwise than in accordance with form 1085;

if accompanied by presentation of a valid passport.”.

77.8 Subitem 1128 (4):

Omit the subitem, substitute:

“(4) Subclasses: 155 (Five Year Resident Return)
157 (Three Month Resident Return)”.

77.9 Item 1129:

Omit the item, substitute:

“1129. Spouse (Migrant) (Class BC)

- “(1) Form: (a) If the applicant is the holder of a Subclass 445 (Dependent Child) visa: 1002.
(b) In any other case: 47.
- “(2) Fee: (a) If the applicant is the holder of a Subclass 445 (Dependent Child) visa: Nil.
(b) In any other case: \$600.
- “(3) Other: (a) Application (otherwise than by the holder of a Subclass 445 (Dependent Child) visa) must be made outside Australia.
(b) Application by the holder of a Subclass 445 (Dependent Child) visa may be made in or outside Australia, but not in immigration clearance.
(c) Applicant (other than an applicant who is the holder of a Subclass 445 (Dependent Child) visa) must be outside Australia.
(d) Applicant who is the holder of a Subclass 445 (Dependent Child) visa may be in or outside Australia, but not in immigration clearance.
(e) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Spouse (Migrant) visa may be made at the same time and place as, and combined with, the application by that person.
- “(4) Subclasses: 100 (Spouse)”.

77.10 Paragraph 1208A (2) (a):

Omit “\$35.”, substitute “\$45.”.

77.11 Paragraph 1211 (1) (a):

Omit “subclass”, substitute “Subclass 309 (Spouse (Provisional)), 310 (Interdependency (Provisional))”.

77.12 Subitem 1211 (2):

Omit the subitem, substitute:

- “(2) Fee:
- (a) If the application is made on form 918 and lodged outside Australia: \$110.
 - (b) Applicant:
 - (i) who applies as a dependent child of a holder of a Subclass 309, 310, 820 or 826 visa; and
 - (ii) whose brother or sister:
 - (A) applies as a dependent child of a holder of a Subclass 309, 310, 820 or 826 visa for an Extended Eligibility (Temporary) visa at the same time and place as the applicant; and
 - (B) has paid the fee specified in paragraph (a) on his or her application:
- Nil.
- (c) In any other case: Nil.”.

77.13 Paragraph 1211 (3) (a):

Omit the paragraph, substitute

- “(a) Application (other than by the dependent child outside Australia of the holder of a visa of Subclass 309 (Spouse (Provisional)), 310 (Interdependency (Provisional)), 820 or 826) must be made at the same time and place as an application for a General (Residence) (Class AS) visa.”.

77.14 Paragraph 1211 (3) (d):

Omit “subclass”, substitute “Subclass 309, 310,”.

77.15 Paragraph 1211 (3) (e):

Omit the paragraph, substitute:

- “(e) If the applicant is the holder of a Subclass 300 (Prospective Marriage) visa and seeks to remain in Australia permanently as the spouse of an Australian citizen, the application may be made only if the application that resulted in the grant of that Subclass 300 visa was made on or after 1 November 1996.
- (f) Application by a person claiming to be a dependent child of a person who is an applicant for an Extended Eligibility (Temporary) visa may be made at the same time and place as, and combined with, the application by that person.
- (g) Application by a person claiming to be a member of the family unit of the holder or former holder of a prospective marriage (temporary) visa (as defined in Schedule 2, Part 820) who is an applicant for an Extended Eligibility (Temporary) visa may be made at the same time and place as, and combined with, the application by that person.”.

77.16 After item 1212, insert:

“1213A. Interdependency (Provisional) (Class UG)

“(1) Form: 1035.

“(2) Fee: Nil.

“(3) Other: (a) Application must be made outside Australia.
 (b) Applicant must be outside Australia.
 (c) Application must be made at the same time and place as an application for an Interdependency (Migrant) (Class BI) visa.

- (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for an Interdependency (Provisional) visa may be made at the same time and place as, and combined with, the application by that person.

“(4) Subclasses: 310 (Interdependency (Provisional))”.

77.17 Subitem 1216 (1):
Omit “759”, substitute “1085”.

77.18 Subitem 1216 (4):
Omit the subitem, substitute:
“(4) Subclasses: 159 (Provisional Resident Return)”.

77.19 After item 1219, insert:
“**1220A. Spouse (Provisional) (Class UF)**

“(1) Form: 47.

“(2) Fee: Nil.

- “(3) Other:
- (a) Application must be made outside Australia.
 - (b) Applicant must be outside Australia.
 - (c) Application must be made at the same time and place as an application for a Spouse (Migrant) (Class BC) visa.
 - (d) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Spouse (Provisional) visa may be made at the same time and place as, and combined with, the application by that person.

“(4) Subclasses: 309 (Spouse (Provisional))”.

77.20 Sub-subparagraph 1223A (2) (a) (i) (A):
Omit “\$35.”, substitute “\$45.”.

78. Schedule 2, Part 100 (Spouse)

78.1 Omit the Part, substitute Part 100 set out in Part 1 of Schedule 2.

79. Schedule 2, Part 101 (Child)

79.1 Clause 101.511:

Omit “4 years”, substitute “5 years”.

80. Schedule 2, Part 102 (Adoption)

80.1 Clause 102.511:

Omit “4 years”, substitute “5 years”.

81. Schedule 2, Part 103 (Parent)

81.1 Clause 103.511:

Omit “4 years”, substitute “5 years”.

82. Schedule 2, Part 104 (Preferential Family)

82.1 Clause 104.511:

Omit “4 years”, substitute “5 years”.

83. Schedule 2, Part 105 (Concessional Family)

[NOTE: The following note should be inserted at the end of Division 105.1:

“[NOTE: “Occupations Requiring English List” is defined in regulation 1.19.]”.]

83.1 Clause 105.511:

Omit “4 years”, substitute “5 years”.

84. Schedule 2, new Part 106

84.1 After Part 105 of Schedule 2, insert Part 106 as set out in Part 2 of Schedule 2.

85. Schedule 2, Part 110 (Interdependency)

85.1 Omit the Part, substitute Part 110 set out in Part 3 of Schedule 2.

86. Schedule 2, Part 120 (Labour Agreement)

86.1 Clause 120.511:

Omit “4 years”, substitute “5 years”.

87. Schedule 2, Part 121 (Employer Nomination)

87.1 Paragraph 121.211 (3) (c):

Omit the paragraph, substitute:

“(c) either:

(i) in the case of an applicant who is taken, under regulation 2.08C, to have applied for an Employer Nomination (Migrant) (Class AN) visa, the applicant:

(A) had not turned 45 at the time of the application for an Independent (Migrant) (Class AT) visa; and

(B) has functional English; and

(C) has a diploma (within the meaning of subregulation 2.26 (5)), or higher qualification, that is, unless the approved appointment is exceptional, relevant to the approved appointment; or

(ii) in any other case, unless the approved appointment is exceptional, the applicant:

(A) has not turned 45; and

(B) has functional English; and

(C) has a diploma (within the meaning of subregulation 2.26 (5)), or higher qualification, that is relevant to the approved appointment.”.

87.2 Clause 121.511:

Omit “4 years”, substitute “5 years”.

88. Schedule 2, Part 124 (Distinguished Talent (Australian Support))

88.1 Clause 124.511:

Omit “4 years”, substitute “5 years”.

89. Schedule 2, Part 125 (Distinguished Talent and Special Service (Independent))

89.1 Clause 125.511:

Omit “4 years”, substitute “5 years”.

90. Schedule 2, Part 126 (Independent)

90.1 Clause 126.511:

Omit “4 years”, substitute “5 years”.

91. Schedule 2, Part 127 (Business Owner)

91.1 Clause 127.511:

Omit “4 years”, substitute “5 years”.

92. Schedule 2, Part 128 (Senior Executive)

92.1 Clause 128.511:

Omit “4 years”, substitute “5 years”.

93. Schedule 2, Part 129 (State/Territory Sponsored Business Owner)

93.1 Clause 129.511:

Omit “4 years”, substitute “5 years”.

94. Schedule 2, Part 130 (State/Territory Sponsored Senior Executive)

94.1 Clause 130.511:

Omit “4 years”, substitute “5 years”.

95. Schedule 2, Part 131 (Investment-linked)

95.1 Clause 131.511:

Omit “4 years”, substitute “5 years”.

96. Schedule 2, Part 150 (Former Citizen)

96.1 Clause 150.511:

Omit “4 years”, substitute “5 years”.

97. Schedule 2, Part 151 (Former Resident)

97.1 Clause 151.511:

Omit “4 years”, substitute “5 years”.

98. Schedule 2, Part 155 (Five Year Return)

98.1 Heading:

Omit the heading, substitute:

“SUBCLASS 155—FIVE YEAR RESIDENT RETURN”.

[NOTE: The note following Division 155.1 should be omitted and the following note substituted:

“[NOTE: ‘Australian permanent resident’ is defined in regulation 1.03.]”]

98.2 Clause 155.211:

Omit the clause, substitute:

“155.211 The applicant:

- (a) is an Australian permanent resident; or
- (b) immediately before last leaving Australia, was:
 - (i) an Australian permanent resident; or
 - (ii) an Australian citizen but has subsequently lost or renounced Australian citizenship.

“155.212 (1) The applicant meets the requirements of subclause (2), (3) or (4).

“(2) The applicant meets the requirements of this subclause if the applicant was lawfully present in Australia for a period of, or periods that total, not less than 2 years in the period of 5 years immediately before the application for the visa and, during that time, the applicant:

- (a) was:
 - (i) the holder of a permanent visa or a permanent entry permit; or
 - (ii) an Australian citizen; and
- (b) was not the holder of a temporary visa or a bridging visa.

“(3) The applicant meets the requirements of this subclause if the Minister is satisfied that the applicant:

- (a) has substantial business, cultural, employment or personal ties with Australia which are of benefit to Australia; and
- (b) if outside Australia, has not been absent from Australia for a continuous period of 5 years or more immediately before the application for the visa, unless there are compelling reasons for the absence.

“(4) The applicant meets the requirements of this subclause if the applicant is a member of the family unit of a person who:

- (a) has been granted a Subclass 155 visa and that visa is still in effect; or
- (b) meets the requirements of subclause (2) or (3) and has lodged either:

- (i) a combined application for a Return (Residence) (Class BB) visa with the applicant; or
- (ii) a separate application for a Return (Residence) (Class BB) visa.”.

98.3 Clause 155.511:

Omit the clause, substitute:

“155.511 Permanent visa permitting the holder to travel to and enter Australia for:

- (a) a period of 5 years from the date of grant; or
- (b) a shorter period determined by the Minister.”.

99. Schedule 2, Part 156 (One Year Return)

99.1 Omit the Part.

100. Schedule 2, Part 157 (Three Month Return)

100.1 Heading:

Omit the heading, substitute:

“SUBCLASS 157—THREE MONTH RESIDENT RETURN”.

[NOTE: The note following Division 157.1 should be omitted and the following note substituted:

“[NOTE: ‘Australian permanent resident’ is defined in regulation 1.03.]”.]

100.2 Clause 157.211:

Omit the clause, substitute:

“157.211 The applicant:

- (a) is an Australian permanent resident; or
- (b) immediately before last leaving Australia, was:
 - (i) an Australian permanent resident; or
 - (ii) an Australian citizen but has subsequently lost or renounced Australian citizenship.”.

100.3 Clause 157.212:

Omit the clause, substitute:

“157.212 (1) The applicant meets the requirements of subclause (2) or (3).

“(2) The applicant meets the requirements of this subclause if the applicant:

- (a) was lawfully present in Australia for a period of, or periods that total, not less than 1 day but less than 2 years in the period of 5 years immediately before the application for the visa and, during that time, the applicant:
 - (i) was:
 - (A) the holder of a permanent visa or a permanent entry permit; or
 - (B) an Australian citizen; and
 - (ii) was not the holder of a temporary visa or a bridging visa; and
- (b) either:
 - (i) has compelling and compassionate reasons for departing Australia; or
 - (ii) if outside Australia, had compelling and compassionate reasons for his or her last departure from Australia.

“(3) The applicant meets the requirements of this subclause if the applicant is a member of the family unit of a person who:

- (a) has been granted a Subclass 157 visa and that visa is still in effect; or
- (b) meets the requirements of subclause (2) and has lodged either:
 - (i) a combined application for a Return (Residence) (Class BB) visa with the applicant; or
 - (ii) a separate application for a Return (Residence) (Class BB) visa.”.

100.4 Clause 157.213:

Omit the clause, substitute:

“157.213 If the applicant is outside Australia, the applicant has not been absent from Australia for a continuous period of more than 3 months immediately before making the application for the visa, unless the Minister is satisfied that there are compelling and compassionate reasons for the absence.”.

101. Schedule 2, Part 159 (Resident Return)

101.1 Heading:

Omit the heading, substitute:

“SUBCLASS 159—PROVISIONAL RESIDENT RETURN”.

[NOTE: The note following Division 159.1 should be omitted and the following note substituted:

“[NOTE: ‘Australian permanent resident’ is defined in regulation 1.03.]”.]

101.2 Clause 159.212:

Omit “subclass 155, 156 or 157”, substitute “Subclass 155 or 157”.

102. Schedule 2, Part 200 (Refugee)

102.1 Clause 200.511:

Omit “4 years”, substitute “5 years”.

103. Schedule 2, Part 201 (In-country Special Humanitarian)

103.1 Clause 201.511:

Omit “4 years”, substitute “5 years”.

104. Schedule 2, Part 202 (Global Special Humanitarian)

104.1 Clause 202.511:

Omit “4 years”, substitute “5 years”.

105. Schedule 2, Part 203 (Emergency Rescue)

105.1 Clause 203.511:

Omit “4 years”, substitute “5 years”.

106. Schedule 2, Part 204 (Woman at Risk)

106.1 Clause 204.511:

Omit “4 years”, substitute “5 years”.

107. Schedule 2, Part 205 (Camp Clearance)

107.1 Clause 205.511:

Omit “4 years”, substitute “5 years”.

108. Schedule 2, Part 208 (East Timorese in Portugal, Macau or Mozambique)

108.1 Clause 208.511:

Omit “4 years”, substitute “5 years”.

109. Schedule 2, Part 209 (Citizens of the Former Yugoslavia (Displaced Persons))

109.1 Clause 209.511:

Omit “4 years”, substitute “5 years”.

110. Schedule 2, Part 210 (Minorities of Former USSR)

110.1 Clause 210.511:

Omit “4 years”, substitute “5 years”.

111. Schedule 2, Part 211 (Burmese in Burma)

111.1 Clause 211.511:

Omit “4 years”, substitute “5 years”.

112. Schedule 2, Part 212 (Sudanese)

112.1 Clause 212.511:

Omit “4 years”, substitute “5 years”.

113. Schedule 2, Part 213 (Burmese in Thailand)

113.1 Clause 213.511:

Omit “4 years”, substitute “5 years”.

114. Schedule 2, Part 214 (Cambodian)

114.1 Clause 214.511:

Omit “4 years”, substitute “5 years”.

115. Schedule 2, Part 215 (Sri Lankan (Special Assistance))

115.1 Clause 215.511:

Omit “4 years”, substitute “5 years”.

116. Schedule 2, Part 216 (Ahmadi)

116.1 Clause 216.511:

Omit “4 years”, substitute “5 years”.

117. Schedule 2, Part 217 (Vietnamese)

117.1 Clause 217.511:

Omit “4 years”, substitute “5 years”.

118. Schedule 2, Part 300 (Prospective Marriage)

118.1 Clause 300.111:

Insert the following definition:

“‘woman-at-risk visa’ means:

- (a) a Subclass 204 (Woman at Risk) visa; or
- (b) a Class 204 (woman at risk) visa within the meaning of the Migration (1993) Regulations; or
- (c) a woman at risk visa (code number 204) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).”.

118.2 After clause 300.211, insert:

“300.212 (1) The prospective spouse of the applicant is not prohibited by subclause (2) from being a sponsor.**“(2) The prospective spouse is prohibited from being a sponsor if:**

- (a) the prospective spouse is a woman who was granted a woman-at-risk visa within the 5 years immediately preceding the application; and
- (b) on the date of grant of that visa:
 - (i) the applicant was a former spouse of that woman, having been divorced from that woman; or
 - (ii) the applicant was the spouse of that woman and that relationship had not been declared to Immigration; or
 - (iii) the applicant was permanently separated from that woman.”.

118.3 Clause 300.214:

Omit the clause, substitute:

“300.214 The parties have met and are known to each other personally.”.

[NOTE: The following note should be inserted after clause 300.222:

“[NOTE: For limitations on the Minister’s discretion to approve sponsorships see regulation 1.20J.]”.]

119. Schedule 2, new Parts 309 and 310

119.1 After Part 303, insert Part 309 and Part 310 set out in Part 4 of Schedule 2.

120. Schedule 2, Part 445 (Dependent Child)

120.1 Paragraph 445.211 (b):

Omit the paragraph, substitute:

“(b) is a dependent child of a person who is the holder of a visa of one of the following classes:
(i) Extended Eligibility (Temporary) (Class TK);
(ii) Interdependency (Provisional) (Class UG);
(iii) Spouse (Provisional) (Class UF); and”.

120.2 Clause 445.511:

After “(Temporary)”, insert “(Class TK) visa, Interdependency (Provisional) (Class UG) visa or Spouse (Provisional) (Class UF)”.

121. Schedule 2, Part 773 (Border)

121.1 After paragraph 773.213 (3) (g), insert:

“(ga) Interdependency (Provisional) (Class UG);”.

121.2 After paragraph 773.213 (3) (j), insert:

“(ja) Spouse (Provisional) (Class UF);”.

122. Schedule 2, Part 800 (Territorial Asylum)

122.1 Clause 800.511:

Omit “4 years”, substitute “5 years”.

123. Schedule 2, Part 801 (Spouse)**123.1 Clause 801.11:**

Omit the clause, substitute:

“801.111 In this Part:

‘nominating spouse’, in relation to an applicant who is the holder of a Subclass 820 visa, means the person who nominated the applicant for the grant of that visa;

‘prospective marriage (temporary) visa’ means:

- (a) a Prospective Marriage (Temporary) (Class TO) visa; or
- (b) a Class 300 (prospective marriage) visa or entry permit within the meaning of the Migration (1993) Regulations; or
- (c) a prospective marriage visa (code number 300), or equivalent entry permit, within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (temporary) visa, within the meaning of the Migration Reform (Transitional Provisions) Regulations, being:
 - (i) such a visa granted on the basis of an application for a visa or entry permit of a kind specified in paragraph (b) or (c); or
 - (ii) a visa or entry permit of such a kind having effect under those Regulations as a transitional (temporary) visa.”.

[NOTE: The note following clause 801.111 should be omitted and the following Note substituted:

“[NOTE: ‘long-term spouse relationship’ is defined in regulation 1.03.]”.

123.2 Paragraph 801.221 (2) (d):

Omit “subclause (7),”, substitute “subclauses (6A) and (7),”.

123.3 Subparagraph 801.221 (6) (c) (ii):

Omit the subparagraph, substitute:

- “(ii) the applicant:
 - (A) has custody or joint custody of, or access to; or
 - (B) has a residence order or contact order made under the *Family Law Act 1975* relating to; at least 1 child in respect of whom the nominating spouse:
 - (C) has been granted joint custody or access by a court; or

- (D) has a residence order or contact order made under the *Family Law Act 1975*; or
- (E) has an obligation under a child maintenance order made under the *Family Law Act 1975*, or any other formal maintenance obligation.”.

123.4 After subclause 801.221 (6), insert:

“(6A) Paragraph (2) (d) does not apply to an applicant who at the time of making the application was in a long-term spouse relationship with the nominating spouse.”.

123.5 Paragraph 801.221 (7) (b):

Omit “granting a subclass 801 visa to an applicant who was granted a subclass 820 (Spouse) visa”, substitute “in the case of an application made before 1 November 1996, granting a Subclass 801 visa to an applicant who was granted a Subclass 820 (Spouse) visa”.

[NOTE: The note relating to Division 801.3 should be replaced by the following note:

“[NOTE: A dependent child, or member of the family unit, of an applicant who satisfies the primary criteria is also eligible for the grant of the visa if the child or member of the family unit satisfies the secondary criteria and his or her application is made before the Minister has decided to grant or refuse to grant the visa to the applicant meeting the primary criteria].”]

123.6 Clause 801.311:

Omit the clause, substitute:

“801.311 The applicant is:

- (a) a dependent child of a person who has applied for a General (Residence) (Class AS) visa; or
- (b) a member of the family unit of a person who:
 - (i) is the holder of, or has been the holder of, a prospective marriage (temporary) visa; and
 - (ii) has applied for a General (Residence) (Class AS) visa;

and the Minister has not decided to grant or refuse to grant a visa to the person.”.

123.7 Subparagraph 801.321 (a) (i):

After “the dependent child”, insert “, or a member of the family unit, as the case requires,”.

123.8 Subparagraph 801.321 (a) (ii):

After “a dependent child”, insert “or of whose family unit the applicant is a member”.

123.9 Clause 801.511:

Omit “4 years”, substitute “5 years”.

124. Schedule 2, Part 802 (Child)

124.1 Clause 802.51:

Omit the clause, substitute:

“802.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.”.

125. Schedule 2, Part 804 (Aged Parent)

125.1 Clause 804.511:

Omit “4 years”, substitute “5 years”.

126. Schedule 2, Part 805 (Skilled)

126.1 Clause 805.511:

Omit “4 years”, substitute “5 years”.

127. Schedule 2, Part 806 (Family)

127.1 Clause 806.511:

Omit “4 years”, substitute “5 years”.

128. Schedule 2, Part 808 (Confirmatory (Residence))

128.1 Clause 808.511:

Omit the clause, substitute:

“808.511 Visa granted on basis of satisfaction of paragraph 808.221(a) or (c): permanent visa.

“808.512 Visa granted on basis of satisfaction of paragraph 808.221 (b) or (d): permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.”.

129. Schedule 2, Part 814 (Interdependency)

[NOTE: The note following clause 814.111 should be omitted and the following Note substituted:

“[NOTE: ‘eligible New Zealand citizen’ and ‘long-term interdependent relationship’ are defined in regulation 1.03. For ‘interdependent relationship’ see regulation 1.09A.]”.

129.1 Paragraph 814.221 (3) (d):

Omit “subclause (6),”, substitute “subclauses (5A) and (6),”.

129.2 After subclause 814.221 (5), insert:

“(5A) Paragraph (3) (d) does not apply to an applicant who at the time of making the application was in a long-term interdependent relationship with the nominator.”.

129.3 Clause 814.511:

Omit “4 years”, substitute “5 years”.

130. Schedule 2, Part 820 (Spouse)

130.1 Clause 820.111:

Insert the following definition:

“**woman-at-risk visa**’ means:

- (a) a Subclass 204 (Woman at Risk) visa; or
- (b) a Class 204 (woman at risk) visa within the meaning of the Migration (1993) Regulations; or
- (c) a woman at risk visa (code number 204) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).”.

130.2 Paragraph 820.211 (1) (b):

Omit “(4) or (5)”, substitute “(4), (5), (6), (7), (8) or (9)”.

130.3 Paragraph 820.211 (2) (a):

Omit “a person who:”, substitute “a person who is not a person prohibited by subclause (2B) from being a nominating spouse and who:”.

130.4 Sub-subparagraph 820.211 (2) (d) (i) (A):

Omit “subclause (6)”, substitute “subclause (2A)”.

130.5 After subclause 820.211 (2), insert:

“(2A) An applicant meets the requirements of this subclause if:

- (a) the applicant is:
 - (i) a SOFA member; or
 - (ii) a SOFA forces civilian component member; or
- (b) the applicant:
 - (i) is a dependent child of a person referred to in paragraph (a); and
 - (ii) holds a valid national passport and certificate that he or she is a dependant of a SOFA forces member or a SOFA forces civilian component member, as the case requires.

[NOTE: ‘SOFA forces member’ and ‘SOFA forces civilian component member’ are defined in regulation 1.03. Broadly, a SOFA forces member is a member of the armed forces of Papua New Guinea, Singapore or the United States of America in Australia on official duty. A SOFA forces civilian component member is a person who is a member of the civilian component of one of those armed forces, in Australia on official duty.]

“(2B) The spouse of the applicant is prohibited from being a nominating spouse if:

- (a) the spouse is a woman who was granted a woman-at-risk visa within the 5 years immediately preceding the application; and
- (b) on the date of grant of that visa:
 - (i) the applicant was a former spouse of that woman, having been divorced from that woman; or
 - (ii) the applicant was the spouse of that woman and that relationship had not been declared to Immigration; or
 - (iii) the applicant was permanently separated from that woman.”.

[NOTE: The note following subclause 820.211 (6) should be omitted.]

130.6 Subclause 820.211 (6):

Omit the subclause, substitute:

“(6) An applicant meets the requirements of this subclause if the applicant:

- (a) is the holder of a Subclass 300 (Prospective Marriage) visa; and
- (b) has married the nominating spouse under a marriage that is recognised as valid for the purposes of the Act; and
- (c) is nominated by the nominating spouse; and
- (d) continues to be the spouse of the nominating spouse.

“(7) An applicant meets the requirements of this subclause if:

- (a) the applicant is the holder of a Subclass 300 (Prospective Marriage) visa; and
- (b) the applicant has married the nominating spouse under a marriage that is recognised as valid for the purposes of the Act; and
- (c) the nominating spouse has died; and
- (d) the applicant satisfies the Minister that the applicant would have continued to be the spouse of the nominating spouse if the nominating spouse had not died; and
- (e) the applicant has developed close business, cultural or personal ties in Australia.

“(8) An applicant meets the requirements of this subclause if:

- (a) the applicant is the holder of a Subclass 300 (Prospective Marriage) visa; and
- (b) the applicant has married the nominating spouse under a marriage that is recognised as valid for the purposes of the Act; and
- (c) the relationship between the applicant and the nominating spouse has ceased; and
- (d) any 1 or more of the following:
 - (i) the applicant;
 - (ii) a member of the family unit of the applicant who has made a combined application with the applicant;
 - (iii) a dependent child of the nominating spouse or of the applicant or of both of them;has suffered domestic violence committed by the nominating spouse.

“(9) An applicant meets the requirements of this subclause if:

- (a) the applicant is not the holder of a substantive visa; and

- (b) the applicant has been the holder of a Subclass 300 (Prospective Marriage) visa; and
- (c) while that visa was valid, the applicant married the nominating spouse under a marriage that is recognised as valid for the purposes of the Act; and
- (d) the relationship between the applicant and the nominating spouse has ceased; and
- (e) any 1 or more of the following:
 - (i) the applicant;
 - (ii) a member of the family unit of the applicant who has made a combined application with the applicant;
 - (iii) a dependent child of the nominating spouse or of the applicant or of both of them;
 has suffered domestic violence committed by the nominating spouse.

[NOTE: For special provisions relating to domestic violence, see Division 1.5.]”.

130.7 Subclause 820.221 (1):

Omit “(4) or (5)”, substitute “(4), (5), (6), (7), (8) or (9)”.

130.8 Paragraph 820.221 (2) (a):

Omit “(4) or (5)”, substitute “(4), (5) or (6)”.

130.9 Paragraph 820.221 (3) (a):

Omit “(4) or (5)”, substitute “(4), (5) or (6)”.

130.10 Subparagraph 820.221 (3) (b) (ii):

Omit the subparagraph, substitute:

“(ii) the applicant:

- (A) has custody or joint custody of, or access to; or
- (B) has a residence order or contact order made under the *Family Law Act 1975* relating to; at least 1 child in respect of whom the nominating spouse:
- (C) has been granted joint custody or access by a court; or
- (D) has a residence order or contact order made under the *Family Law Act 1975*; or
- (E) has an obligation under a child maintenance order made under the *Family Law Act 1975*, or any other formal maintenance obligation.”.

130.11 After clause 820.221, insert:

“820.221A Unless the applicant:

- (a) is, or has been, the holder of a prospective marriage (temporary) visa; and
- (b) is seeking to remain permanently in Australia on the basis of the applicant’s marriage to the person who was specified as the intended spouse in the application that resulted in the grant of that prospective marriage (temporary) visa;

the nomination of the applicant under clause 820.211 has been approved by the Minister.”.

[NOTE: For limitations on the Minister’s discretion to approve nominations see regulation 1.20J.]”.

130.12 Subclause 820.222 (1):

After “referred to in subclause (2),”, insert “and subject to subclause (3),”.

130.13 Clause 820.222:

Add at the end:

- “(3) An assurance of support is not required to be given if:
 - (a) on or after 1 October 1996 the applicant applied for, and was granted, a Prospective Marriage (Temporary) (Class TO) visa; and
 - (b) the applicant is seeking to remain in Australia permanently on the basis of the applicant’s marriage to the nominating spouse.”.

[NOTE: The note relating to Division 820.3 should be replaced by the following note:

“[NOTE: A dependent child, or a member of the family unit, of an applicant who satisfies the primary criteria is also eligible for the grant of the visa if the child or member of the family unit satisfies the secondary criteria.]”.]

130.14 Clause 820.311:

Omit the clause, substitute:

“820.311 The applicant is:

- (a) either:
 - (i) a dependent child of a person who has applied for a General (Residence) (Class AS) visa; or
 - (ii) a member of the family unit of a person who:

- (A) is the holder of, or has been the holder of, a prospective marriage (temporary) visa; and
- (B) has applied for a General (Residence) (Class AS) visa; and
- (b) the nomination (if any) in respect of that person includes the applicant; and
- (c) the Minister has not decided to grant or refuse to grant a visa to the person.”.

130.15 Clause 820.321:

After “dependent”, insert “, or of whose family unit the applicant is a member,”.

130.16 Subclause 820.322 (1):

After “referred to in paragraph 2 (a),”, insert “and subject to subclause (3),”.

130.17 Clause 820.322:

Add at the end:

“(3) An assurance of support is not required to be given if the applicant is a member of the family unit of a person who:

- (a) on or after 1 October 1996, applied for, and was granted, a Prospective Marriage (Temporary) (Class TO) visa; and
- (b) is seeking to remain in Australia permanently on the basis of his or her marriage to the nominating spouse.”.

131. Schedule 2, Part 826 (Interdependency)

131.1 After clause 826.221, insert:

“826.221A The nomination of the applicant under clause 826.212 has been approved by the Minister.

[NOTE: For limitations on the Minister’s discretion to approve nominations see regulation 1.20J.]”.

132. Schedule 2, Part 831 (Prospective Marriage Spouse)

132.1 Subclause 831.211 (1):

After “subclause (2), insert “(2A),”.

132.2 After subclause 831.211 (2), insert:

“(2A) An applicant meets the requirements of this subclause if:

- (a) the applicant is the holder of a Subclass 300 (Prospective Marriage) visa; and
- (b) the applicant has married the nominating spouse under a marriage that is recognised as valid for the purposes of the Act; and
- (c) the nominating spouse has died; and
- (d) the applicant satisfies the Minister that the applicant would have continued to be the spouse of the nominating spouse if the nominating spouse had not died; and
- (e) the applicant has developed close business, cultural or personal ties in Australia.”

132.3 Subparagraph 831.221 (4) (c) (ii):

Omit the subparagraph, substitute:

- “(ii) the applicant:
- (A) has custody or joint custody of, or access to; or
 - (B) has a residence order or contact order made under the *Family Law Act 1975* relating to; at least 1 child in respect of whom the nominating spouse:
 - (C) has been granted joint custody or access by a court; or
 - (D) has a residence order or contact order made under the *Family Law Act 1975*; or
 - (E) has an obligation under a child maintenance order made under the *Family Law Act 1975*, or any other formal maintenance obligation.”.

132.4 Clause 831.511:

Omit “4 years”, substitute “5 years”.

133. Schedule 2, Part 832 (Close Ties)

133.1 Clause 832.511:

Omit “4 years”, substitute “5 years”.

134. Schedule 2, Part 833 (Certain Unlawful Non-citizens)

134.1 Clause 833.511:

Omit “4 years”, substitute “5 years”.

135. Schedule 2, Part 840 (Business Owner)

135.1 Clause 840.511:

Omit “4 years”, substitute “5 years”.

136. Schedule 2, Part 841 (Senior Executive)

136.1 Clause 841.511:

Omit “4 years”, substitute “5 years”.

137. Schedule 2, Part 842 (State/Territory Sponsored Business Owner)

137.1 Clause 842.511:

Omit “4 years”, substitute “5 years”.

138. Schedule 2, Part 843 (State/Territory Sponsored Senior Executive)

138.1 Clause 843.511:

Omit “4 years”, substitute “5 years”.

139. Schedule 2, Part 844 (Investment-linked)

139.1 Clause 844.511:

Omit “4 years”, substitute “5 years”.

140. Schedule 2, Part 845 (Established Business in Australia)

140.1 Clause 845.511:

Omit “4 years”, substitute “5 years”.

141. Schedule 2, Part 866 (Protection (Residence))

141.1 Clause 866.511:

Omit “4 years”, substitute “5 years”.

142. Schedule 6 (General points test—qualifications and points)

142.1 Paragraph 6601 (b):

Omit “*Student Assistance Act 1973*”, substitute “*Student and Youth Assistance Act 1973*”.

142.2 Subparagraph 6601 (b) (i):

Omit “*Social Security Act 1947* or the”.

142.3 Subparagraph 6601 (b) (ii):
Omit “either of those Acts”, substitute “that Act”.

142.4 Sub-subparagraph 6601 (c) (i) (B):
Omit the sub-subparagraph, substitute:

“(B) has not received, in respect of a period or periods amounting to more than 4 weeks during that period of 2 years, a job search allowance, a newstart allowance or a special benefit under the *Social Security Act 1991*; or”.

142.5 Sub-subparagraph 6601 (c) (ii) (B):
Omit the sub-subparagraph, substitute:

“(B) does not have a spouse who has received, in respect of a period or periods amounting to more than 4 weeks during that period of 2 years, a job search allowance, a newstart allowance or a special benefit under the *Social Security Act 1991*”.

143. Schedule 8 (Visa conditions)

143.1 Item 8201:
Omit the item, substitute:

“8201. While in Australia the holder must not engage, for more than 3 months, in any studies or training.”.

PART 4—TRANSITIONAL

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

144. Transitional—certain applications made on or after 3 July 1996 and before 1 October 1996

144.1 Subject to regulation 145, if a person applied for a visa on or after 3 July 1996 and before 1 October 1996 and, in relation to that application, before 1 October 1996:

- (a) no decision to grant or refuse the application had been made; and

- (b) no written notice had been given to the applicant under section 64 of the Act;

the application is to be considered as if Parts 100, 101, 102, 103, 104, 110, 300, 802, 804, 806, 820 and 826 of Schedule 2 to the Migration Regulations, as in force on 30 September 1996, continue to apply, subject to the modifications set out in Schedule 1.

145. Transitional—certain applications refused outside Australia

145.1 If:

- (a) a person applied, before 3 July 1996, for a Prospective Marriage (Temporary) (Class TO) visa or a Spouse (Migrant) (Class BC) visa; and
- (b) under regulation 2.11, the Minister has invited the person to make an application (in this regulation called “**the further application**”) for a Prospective Marriage (Temporary) (Class TO) visa, or a Spouse (Migrant) (Class BC) visa, as the case requires;

the further application is to be considered as if the provisions of Schedule 2 to the Migration Regulations, as in force on 30 September 1996, continue to apply.

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

146. Transitional (Concessional Family (Migrant) (Class AJ) visa)

146.1 If a person applied, before 1 November 1996, for a Concessional Family (Migrant) (Class AJ) visa and that application is not finally determined, within the meaning of subsection 5 (9) of the Act, before that date, the application is to be considered as if:

- (a) subitem 1110 (4) of Schedule 1 to the Migration Regulations (as amended by regulation 77 of these Regulations), had been in force at all relevant times; and
- (b) Part 106 of Schedule 2 to the Migration Regulations (as amended by regulation 84 of these Regulations), had been in force at all relevant times.

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

147.1 Subject to subregulation 147.2, if a person applied, before 1 November 1996, for a Return (Residence) (Class BB) visa or a Resident Return (Temporary) (Class TP) visa, and that application is not finally determined, within the meaning of subsection 5 (9) of the Act, before that date, the application is to be considered as if:

- (a) the definition of "Australian permanent resident" in regulation 1.03 of the Migration Regulations (as amended and in force on 1 November 1996) had been in force at all relevant times; and
- (b) subitems 1128 (4) and 1216 (4) of Schedule 1 to the Migration Regulations (as amended and in force on 1 November 1996) had been in force at all relevant times; and
- (c) clauses 155.211, 155.212, 155.511, 157.211, 157.212, 157.213 and 159.212 of Schedule 2 to the Migration Regulations (as amended and in force on 1 November 1996) had been in force at all relevant times; and
- (d) Part 156 of Schedule 2 to the Migration Regulations in force immediately before 1 November 1996, had not been in force at all relevant times.

147.2 Despite subregulation 147.1, if:

- (a) an applicant referred to in that subregulation would have met the requirements for the grant of a Return (Residence) (Class BB) visa of a particular subclass under the Migration Regulations in force immediately before 1 November 1996; and
- (b) the Minister is satisfied that it would be more beneficial to the applicant if:
 - (i) the application were considered under the Migration Regulations in force immediately before 1 November 1996; and
 - (ii) a Return (Residence) (Class BB) visa of a particular subclass were granted to the applicant accordingly;

the Migration Regulations have effect, in relation to that applicant, as if the amendments made by regulations 63, 72, 77, 98, 99 and 100 of these Regulations had not been made.

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

148.1 The amendments specified in subregulation 148.2 apply in relation to applications for permanent visas made under the Migration Regulations that are not finally determined, within the meaning of subsection 5 (9) of the Act, before 1 November 1996 (as well as in relation to applications for permanent visas made under the Migration Regulations on or after that date).

148.2 The amendments referred to in subregulation 148.1 are the amendments made by:

- (a) regulations 79, 80, 81, 82, 83, 86, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 122, 124, 125, 126, 127, 128, 133, 134, 135, 136, 137, 138, 139, 140 and 141; and
- (b) subregulations 87.2, 123.9, 129.3, and 132.4.

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

149.1 The Migration Regulations as in force immediately before 1 November 1996 continue to apply to:

- (a) any invitation made or to be made by the Minister under subregulation 2.11 (1) in relation to an application for a Spouse (Migrant) (Class BC) visa or a Prospective Marriage (Temporary) (Class TO) visa that was made before 1 November 1996 and has been refused; and
- (b) any further application for a visa made in response to an invitation referred to in paragraph (a).

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

150.1 The amendment made by subregulation 132.3 applies in relation to applications for Family (Residence) (Class AO) visas that are not finally determined, within the meaning of subsection 5 (9) of the Act, before 1 November 1996 (as well as in relation to applications for visas of that class made on or after that date).

150.2 The amendments made by subregulations 123.2, 123.3, 123.4, 129.1 and 129.2 apply in relation to applications for General (Residence) (Class AS) visas that are not finally determined, within the meaning of subsection 5 (9) of the Act, before 1 November 1996 (as well as in relation to applications for visas of that class made on or after that date).

150.3 The amendment made by subregulation 130.10 applies in relation to applications for Extended Eligibility (Temporary) (Class TK) visas that are not finally determined, within the meaning of subsection 5 (9) of the Act, before 1 November 1996 (as well as in relation to applications for visas of that class made on or after that date).

151. Applications for Spouse (Migrant) (Class BC) visas made before 1 November 1996

151.1 Despite the amendments made by regulations 66 and 78 of these Regulations, regulation 1.20 and Part 100 of Schedule 2 to the Migration Regulations as in force immediately before 1 November 1996 continue to apply in relation to an application for a Spouse (Migrant) (Class BC) visa made before that date.

152. Applications for Interdependency (Migrant) (Class BI) visas made before 1 November 1996

152.1 Despite the amendments made by regulations 66 and 85 of these Regulations, regulation 1.20 and Part 110 of Schedule 2 to the Migration Regulations as in force immediately before 1 November 1996 continue to apply in relation to an application for an Interdependency (Migrant) (Class BI) visa made before that date.

SCHEDULE 1

Regulation 144

**MODIFICATIONS OF SCHEDULE 2 TO THE MIGRATION
REGULATIONS (AS IN FORCE ON 30 SEPTEMBER 1996)
IN RELATION TO APPLICATIONS TO WHICH
REGULATION 144 APPLIES**

1. Part 100 (Spouse)

1.1 Clause 100.221:

Omit the clause.

1.2 Clause 100.222:

Omit the clause, substitute:

“100.222 (1) The sponsorship of the applicant:

- (a) is by the same sponsor as at the time of application; and
- (b) is by a person who is:
 - (i) an Australian citizen; or
 - (ii) an Australian permanent resident who meets the requirements of subclause (2); and
- (c) has been approved by the Minister and is still in force.

“(2) An Australian permanent resident meets the requirements of this subclause if he or she:

- (a) holds a permanent visa granted on the basis of an application made before 3 July 1996; and
- (b) before that permanent visa was granted, was in a spouse relationship with the applicant of which Immigration was informed before that permanent visa was granted; and
- (c) is not, and has not been, the holder of a permanent humanitarian visa.”.

1.3 Clause 100.224:

Omit the clause, substitute:

“100.224 (1) In the case of an applicant who meets the requirements of subclause 100.211 (2):

- (a) the applicant continues to be the spouse of the person who was the applicant’s spouse at the time of the application; and
- (b) that person is:
 - (i) an Australian citizen; or
 - (ii) an Australian permanent resident who meets the requirements of subclause 100.222 (2).

SCHEDULE 1—continued

“(2) In the case of an applicant who meets the requirements of subclause 100.211 (3):

- (a) the applicant is the spouse of the person who was the applicant’s intended spouse at the time of the application; and
- (b) that person is an Australian citizen.”.

2. Part 101 (Child)**2.1 Clause 101.222:**

Omit the clause, substitute:

“101.222 (1) The applicant meets, or continues to meet, the requirements of subclause (2), (3), (4) or (5).

“(2) The applicant meets the requirements of this subclause if the sponsorship of the applicant:

- (a) is the sponsorship referred to in clause 101.212; and
- (b) is by an Australian citizen; and
- (c) has been approved by the Minister and is still in force.

“(3) The applicant meets the requirements of this subclause if:

- (a) the applicant was born outside Australia and is under 18 years of age; and
- (b) the applicant is a dependent child of the person referred to in subclause 101.211 (1) as an Australian permanent resident or an eligible New Zealand citizen (in this subclause called ‘**the parent**’); and
- (c) either:

(i) the parent:

- (A) is an Australian permanent resident (other than an Australian permanent resident who is, or has been, the holder of a permanent humanitarian visa); and
- (B) at the time the applicant was born, was the holder of a permanent visa; or

(ii) the parent is an eligible New Zealand citizen; and

(d) the applicant is sponsored by a person who has turned 18, being either the parent or a person who is:

- (i) the cohabiting spouse of the parent; and
- (ii) an Australian permanent resident (other than an Australian permanent resident who is, or has been, the holder of a permanent humanitarian visa) or an eligible New Zealand citizen; and

SCHEDULE 1—continued

- (e) the sponsorship of the applicant has been approved by the Minister and is still in force.
- “(4) The applicant meets the requirements of this subclause if:
- (a) the applicant is a dependent child of the person referred to in subclause 101.211 (1) as an Australian permanent resident (in this subclause called **‘the parent’**); and
 - (b) the parent is an Australian permanent resident (other than an Australian permanent resident who is, or has been, the holder of a permanent humanitarian visa); and
 - (c) the applicant was included in the application of the parent that resulted in the grant of a permanent visa to the parent; and
 - (d) the applicant is sponsored by a person who has turned 18, being either the parent or a person who is:
 - (i) the cohabiting spouse of the parent; and
 - (ii) an Australian permanent resident (other than an Australian permanent resident who is, or has been, the holder of a permanent humanitarian visa) or an eligible New Zealand citizen; and
 - (e) the sponsorship of the applicant has been approved by the Minister and is still in force.
- “(5) The applicant meets the requirements of this subclause if:
- (a) the applicant has not turned 18 and is a dependent child of the person referred to in subclause 101.211 (1) as an Australian permanent resident or an eligible New Zealand citizen (in this subclause called **‘the relevant parent’**); and
 - (b) the relevant parent is:
 - (i) an Australian permanent resident (other than an Australian permanent resident who is, or has been, the holder of a permanent humanitarian visa); or
 - (ii) an eligible New Zealand citizen; and
 - (c) either:
 - (i) the relevant parent is granted custody of the applicant (whether by an order of the Family Court of Australia or under the laws of another country); or
 - (ii) both:
 - (A) a parent of the applicant who is not the relevant parent dies or becomes incapable of caring for the applicant; and

SCHEDULE 1—continued

- (B) the Minister is satisfied that it is appropriate in the circumstances for the visa to be granted; and
- (d) the applicant is sponsored by a person who has turned 18, being either the relevant parent or a person who is:
 - (i) the cohabiting spouse of the relevant parent; and
 - (ii) an Australian permanent resident (other than an Australian permanent resident who is, or has been, the holder of a permanent humanitarian visa) or an eligible New Zealand citizen; and
- (e) the sponsorship of the applicant has been approved by the Minister and is still in force.”.

3. Part 102 (Adoption)

3.1 Clause 102.221:

Omit the clause, substitute:

“102.221 The applicant continues to satisfy the criteria in clause 102.213 and meets the requirements of subclause (2), (3) or (4).

- “(2) The applicant meets the requirements of this subclause if:
 - (a) the applicant has not turned 18; and
 - (b) the applicant was adopted overseas by a person who:
 - (i) either:
 - (A) was, at the time of the adoption, an Australian citizen; or;
 - (B) if the time of adoption was before 3 July 1996, was, at the time of adoption, an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
 - (ii) had been residing overseas for more than 12 months at the time of the application; and
 - (c) the Minister is satisfied that the residence overseas by the adoptive parent was not contrived to circumvent the requirements for entry to Australia of children for adoption; and
 - (d) the adoptive parent has lawfully acquired full and permanent parental rights by the adoption; and
 - (e) the relevant authorities of the overseas country have approved the departure of the applicant to Australia.
- “(3) An applicant meets the requirements of this subclause if:
 - (a) the applicant has not turned 18; and

SCHEDULE 1—continued

- (b) the applicant is resident in an overseas country; and
 - (c) either:
 - (i) an unmarried person who is an Australian citizen has undertaken in writing to adopt the applicant; or
 - (ii) spouses, at least one of whom is an Australian citizen, have undertaken in writing to adopt the applicant; and
 - (d) the child welfare authorities of an Australian State or Territory have approved the prospective adoptive parent or parents as a suitable adoptive parent, or suitable adoptive parents, for the applicant; and
 - (e) the relevant authorities of the overseas country have approved the departure of the applicant:
 - (i) for adoption in Australia; or
 - (ii) in the custody of the prospective adoptive parent or parents;
 as the case requires.
- “(4) The applicant meets the requirements of this subclause if:
- (a) the applicant has not turned 18; and
 - (b) the applicant is resident in an overseas country; and
 - (c) either:
 - (i) an unmarried person who is an Australian permanent resident or an eligible New Zealand citizen has undertaken in writing to adopt the applicant; or
 - (ii) spouses, at least one of whom is an Australian permanent resident or an eligible New Zealand citizen, have undertaken in writing to adopt the applicant; and
 - (d) before 3 July 1996, either:
 - (i) child welfare authorities of an Australian State or Territory had approved the prospective adoptive parent or parents as suitable adoptive parents for the applicant; or
 - (ii) the relevant authorities of the overseas country had approved the departure of the applicant:
 - (A) for adoption in Australia; or
 - (B) in the custody of the prospective adoptive parent or parents;
 as the case requires.”.

SCHEDULE 1—continued

3.2 Clause 102.222:

Omit the clause, substitute:

“102.222 The sponsorship of the applicant is:

- (a) in the case of an applicant who is a child for adoption referred to in subclause 102.221 (3)—by an Australian citizen who is a prospective adoptive parent of the child; or
- (b) in the case of an applicant who is a child for adoption referred to in subclause 102.221 (4)—by an Australian permanent resident or an eligible New Zealand citizen who is a prospective adoptive parent of the child; or
- (c) in the case of an applicant who is an adopted child referred to in subclause 102.221 (2) who was adopted on or after 3 July 1996—by an Australian citizen who is an adoptive parent of the child; or
- (d) in the case of an applicant who is an adopted child referred to in subclause 102.221 (2) who was adopted before 3 July 1996—by an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen who is an adoptive parent of the child.”.

4. Part 103 (Parent)

4.1 Clause 103.221:

Omit the clause, substitute:

“103.221 The applicant is the parent of a person who is a settled Australian citizen.”.

4.2 Clause 103.222:

Omit the clause, substitute:

“103.222 The sponsorship of the applicant:

- (a) is the sponsorship referred to in clause 103.212; and
- (b) is by a settled Australian citizen; and
- (c) has been approved by the Minister and is still in force.”.

4.3 Clause 103.223:

Omit the clause, substitute:

“103.223 The applicant satisfies the balance of family test in regulation 1.05 as in force on 1 October 1996.”.

SCHEDULE 1—continued

5. Part 104 (Preferential Family)

5.1 Clause 104.221:

Omit the clause, substitute:

“104.221 (1) The applicant meets, or continues to meet, the requirements of subclause (2), (3) or (4).

“(2) The applicant meets the requirements of this subclause if:

- (a) the applicant is an aged dependent relative, or a remaining relative, of a person (in this subclause called **‘the Australian relative’**) who is an Australian citizen; and
- (b) the applicant is sponsored:
 - (i) if the Australian relative has turned 18 and is a settled Australian citizen—by the Australian relative; or
 - (ii) in any other case—by the spouse of the Australian relative, if the spouse:
 - (A) cohabits with the Australian relative; and
 - (B) is a settled Australian citizen; and
 - (C) has turned 18.

“(3) The applicant meets the requirements of this subclause if:

- (a) the applicant is an orphan relative, or a special need relative, of a person (in this subclause called **‘the Australian relative’**) who is an Australian citizen; and
- (b) the applicant is sponsored:
 - (i) if the Australian relative has turned 18—by the Australian relative; or
 - (ii) in any other case—by the spouse of the Australian relative, if the spouse:
 - (A) cohabits with the Australian relative; and
 - (B) is an Australian citizen; and
 - (C) has turned 18.

“(4) The applicant meets the requirements of this subclause if:

- (a) the applicant is an orphan relative of a person (in this subclause called **‘the Australian relative’**) who is an Australian permanent resident or an eligible New Zealand citizen; and
- (b) the applicant is sponsored:
 - (i) if the Australian relative has turned 18—by the Australian relative; or
 - (ii) in any other case—by the spouse of the Australian relative, if the spouse:

SCHEDULE 1—continued

- (A) cohabits with the Australian relative; and
 - (B) is an Australian permanent resident or an eligible New Zealand citizen; and
 - (C) has turned 18; and
- (c) the Minister is satisfied that there are compelling compassionate circumstances that justify the grant of the visa.”.

6. Part 110 (Interdependency)

6.1 Clause 110.221:

Omit the clause, substitute:

“110.221 The applicant is in an interdependent relationship with an Australian citizen who has turned 18.”.

6.2 Clause 110.222:

Omit the clause, substitute:

“110.222 The sponsorship of the applicant:
(a) is by the same sponsor as at the time of application; and
(b) is by an Australian citizen; and
(c) has been approved by the Minister and is still in force.”.

6.3 Clause 110.223:

Omit the clause, substitute:

“110.223 The applicant continues to be in an interdependent relationship with the person with whom the applicant was in an interdependent relationship at the time of application, and that person is an Australian citizen.”.

7. Part 300 (Prospective Marriage)

7.1 Clause 300.221:

Omit the clause, substitute:

“300.221 The applicant intends to marry the person who was the applicant’s prospective spouse at the time of application, and that person is an Australian citizen.

“300.221AA The applicant continues to satisfy the criteria in clauses 300.214, 300.215 and 300.216.”.

SCHEDULE 1—continued**7.2 Clause 300.222:**

Omit the clause, substitute:

“300.222 The sponsorship of the applicant:

- (a) is the sponsorship referred to in clause 300.213; and
- (b) is by an Australian citizen; and
- (c) has been approved by the Minister and is still in force.”.

8. Part 802 (Child)**8.1 Clause 802.221:**

Omit the clause, substitute:

“802.221 (1) The applicant is a dependent child of, and is nominated for the grant of the visa by, a person (in this clause called **‘the nominator’**) who:

- (a) is an Australian citizen; or
- (b) meets the requirements of subclause (2), (3) or (4).

“(2) The nominator meets the requirements of this subclause if:

- (a) the applicant has not turned 18 and was born outside Australia; and
- (b) the nominator:
 - (i) both:
 - (A) is an Australian permanent resident (other than an Australian permanent resident who is, or has been, the holder of a permanent humanitarian visa); and
 - (B) at the time the applicant was born, was the holder of a permanent visa; or
 - (ii) is an eligible New Zealand citizen.

“(3) The nominator meets the requirements of this subclause if:

- (a) the nominator is an Australian permanent resident (other than an Australian permanent resident who is, or has been, the holder of a permanent humanitarian visa); and
- (b) the applicant was included in the application for a permanent visa of the nominator.

SCHEDULE 1—continued

- if: “(4) The nominator meets the requirements of this subclause
- (a) the applicant has not turned 18; and
 - (b) the nominator is:
 - (i) an Australian permanent resident (other than an Australian permanent resident who is, or has been, the holder of a permanent humanitarian visa); or
 - (ii) an eligible New Zealand citizen; and
 - (c) either:
 - (i) the nominator is granted custody of the applicant (whether by an order of the Family Court of Australia or under the laws of another country); or
 - (ii) both:
 - (A) a parent of the applicant who is not the nominator dies or becomes incapable of caring for the applicant; and
 - (B) the Minister is satisfied that it is appropriate in the circumstances for the visa to be granted.”.

9. Part 804 (Aged Parent)

9.1 Clauses 804.221 and 804.222:

Omit the clauses, substitute:

“804.221 The applicant is nominated for the grant of the visa by a person (in this clause called **‘the nominator’**) who is:

- (a) a settled Australian citizen; and
- (b) an adult child of the applicant;

and the applicant is an aged parent of the nominator.”.

9.2 Clause 804.223:

Omit the clause, substitute:

“804.223 The applicant satisfies the balance of family test in regulation 1.05 as in force on 1 October 1996.”.

10. Part 806 (Family)

10.1 Clause 806.221:

Omit the clause, substitute:

“806.221 (1) The applicant meets, or continues to meet, the requirements of subclause (2) or (3).

SCHEDULE 1—continued

“(2) The applicant meets the requirements of this subclause if the applicant is an aged dependent relative, an orphan relative, a remaining relative or a special need relative of another person who:

- (a) is a settled Australian citizen; and
- (b) is usually resident in Australia; and
- (c) has nominated the applicant for the grant of a visa.

“(3) The applicant meets the requirements of this subclause if:

- (a) the applicant is an orphan relative of another person who:
 - (i) is a settled Australian permanent resident or a settled eligible New Zealand citizen; and
 - (ii) is usually resident in Australia; and
 - (iii) has nominated the applicant for the grant of a visa; and
- (b) the Minister is satisfied that there are compelling compassionate circumstances that justify the grant of the visa.”.

11. Part 820 (Spouse)**11.1 Clause 820.221:**

Omit the clause, substitute:

“820.221 (1) In the case of an applicant referred to in subclause 820.211 (2), the applicant:

- (a) is:
 - (i) the spouse of an Australian citizen; or
 - (ii) the spouse of a person who meets the requirements of subclause (2); or
- (b) meets the requirements of subclause (4) or (5).

“(2) A person meets the requirements of this subclause if:

- (a) the person holds a permanent visa granted on the basis of an application made before 3 July 1996; and
- (b) before the person’s permanent visa was granted, the person was in a spouse relationship with the applicant of which Immigration was informed before the person’s permanent visa was granted; and
- (c) the person is not, and has not been, the holder of a permanent humanitarian visa.

SCHEDULE 1—continued

“(3) In the case of an applicant referred to in subclause 820.211 (3), (4) or (5), the applicant:

- (a) continues to meet the requirements of the applicable subclause; or
- (b) meets the requirements of subclause (4) or (5).

“(4) The applicant meets the requirements of this subclause if the applicant:

- (a) would meet the requirements of subclause (1) or continue to meet the requirements of subclause 820.211 (3), (4) or (5) except that the nominating spouse has died; and
- (b) satisfies the Minister that the applicant would have continued to be the spouse of the nominating spouse if the nominating spouse had not died; and
- (c) has developed close business, cultural or personal ties in Australia.

“(5) An applicant meets the requirements of this subclause if:

- (a) the applicant would meet the requirements of subclause (1), or continue to meet the requirements of subclause 820.211 (3), (4) or (5), except that the relationship between the applicant and the nominating spouse has ceased; and
- (b) either or both of the following circumstances applies:
 - (i) either or both of the following:
 - (A) the applicant;
 - (B) a dependent child of the nominating spouse or of the applicant or of both of them; has suffered domestic violence committed by the nominating spouse;
 - (ii) the applicant has custody or joint custody of at least 1 child in respect of whom:
 - (A) a court has granted joint custody or access to the nominating spouse; or
 - (B) the nominating spouse is subject to a formal maintenance obligation.”.

SCHEDULE 1—continued**12. Part 826 (Interdependency)**

12.1 Subclause 826.221 (2):

Omit the subclause, substitute:

“(2) Subject to subclause (2A), the applicant meets the requirements of this subclause if he or she continues to meet the requirements in subclause 826.212 (2).

“(2A) The applicant does not meet the requirements of subclause (2) unless the nominator of the applicant is an Australian citizen.”.

12.2 Paragraph 826.221 (3) (a):

Omit “continue to meet the requirements specified in subclause 826.212 (2)”, substitute “meet the requirements of subclause (2)”.

SCHEDULE 2

Regulations 78, 84, 85
and 119

**NEW PARTS FOR INSERTION IN SCHEDULE 2 OF THE
MIGRATION REGULATIONS FROM 1 NOVEMBER 1996**

PART 1—NEW PART 100

SUBCLASS 100—SPOUSE

100.1 INTERPRETATION

100.111 In this Part:

“sponsoring spouse”, in relation to an applicant, means the Australian citizen or Australian permanent resident who was specified as the applicant’s spouse or intended spouse in the application that resulted in the grant of the Subclass 309 (Spouse (Provisional)) visa referred to in paragraph 100.221(2) (a), (3) (a) or (4) (a), as the case requires.

[NOTE: “long-term spouse relationship” and “permanent humanitarian visa” are defined in regulation 1.03.]

100.2 PRIMARY CRITERIA

[NOTE: The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.]

100.21 [No criteria to be satisfied at time of application.]

100.22 Criteria to be satisfied at time of decision

100.221 (1) The applicant meets the requirements of subclause (2), (3) or (4).

- (2) The applicant meets the requirements of this subclause if:
 - (a) the applicant is the holder of a Subclass 309 (Spouse (Provisional)) visa; and
 - (b) the applicant is the spouse of the sponsoring spouse; and
 - (c) subject to subclauses (5), (6) and (7), at least 2 years have passed since the application was made.

SCHEDULE 2—continued

(3) The applicant meets the requirements of this subclause if the applicant:

- (a) first entered Australia as the holder of a Subclass 309 (Spouse (Provisional)) visa and continues to be the holder of that visa; and
 - (b) would meet the requirements of subclause (2) except that the sponsoring spouse has died; and
 - (c) satisfies the Minister that the applicant would have continued to be the spouse of the sponsoring spouse if the sponsoring spouse had not died.
- (4) The applicant meets the requirements of this subclause if:
- (a) the applicant first entered Australia as the holder of a Subclass 309 (Spouse (Provisional)) visa and continues to be the holder of that visa; and
 - (b) the applicant would meet the requirements of subclause (2) except that the relationship between the applicant and the sponsoring spouse has ceased; and
 - (c) either or both of the following circumstances applies:
 - (i) either or both of the following:
 - (A) the applicant;
 - (B) a member of the family unit of the sponsoring spouse or of the applicant or of both of them; has suffered domestic violence committed by the sponsoring spouse;
 - (ii) the applicant:
 - (A) has custody or joint custody of, or access to; or
 - (B) has a residence order or contact order made under the *Family Law Act 1975* relating to; at least 1 child in respect of whom the sponsoring spouse:
 - (C) has been granted joint custody or access by a court; or
 - (D) has a residence order or contact order made under the *Family Law Act 1975*; or
 - (E) has an obligation under a child maintenance order made under the *Family Law Act 1975*, or any other formal maintenance obligation.

[NOTE: For special provisions relating to domestic violence, see Division 1.5.]

SCHEDULE 2—continued

(5) Paragraph (2) (c) does not apply to an applicant who at the time of making the application was in a long-term spouse relationship with the sponsoring spouse.

(6) Paragraph (2) (c) does not apply to an applicant whose sponsoring spouse:

- (a) is, or was, the holder of a permanent humanitarian visa; and
- (b) before arriving in Australia for the first time as the holder of that visa, was the applicant's spouse.

(7) Nothing in paragraph (2) (c) prevents the Minister, less than 2 years after the application is made:

- (a) refusing to grant a Subclass 100 visa; or
- (b) granting a Subclass 100 visa to an applicant who meets the requirements of subclause (3) or (4).

100.222 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

100.223 If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

100.224 (1) Each member of the family unit of the applicant who is an applicant is a person who satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

(2) Each member of the family unit of the applicant who is not an applicant is a person who satisfies:

- (a) public interest criteria 4001, 4002, 4003 and 4004; and
- (b) 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.

100.225 If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:

- (i) is usually resident with the applicant; and
- (ii) has not turned 18;

made a combined application with the applicant;

the Minister is satisfied that the grant of a Subclass 100 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

SCHEDULE 2—continued

100.226 If at least 2 years have passed since the application was made and the applicant does not meet subclause 100.221 (3) or (4), the applicant is nominated for the grant of the Subclass 100 visa by the sponsoring spouse.

100.3 SECONDARY CRITERIA

[NOTE: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.]

100.31 Criteria to be satisfied at time of application

100.311 The applicant is a member of the family unit of a person who has applied for a Spouse (Migrant) (Class BC) visa, and the Minister has not decided to grant or refuse to grant a visa to the person.

100.32 Criteria to be satisfied at time of decision

100.321 The applicant is the holder of:

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

granted on the basis that the applicant was a member of the family unit of another person who was the holder of a Subclass 309 visa, and that other person has been granted a Subclass 100 visa.

100.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

100.323 If the Minister requires an assurance of support in respect of the person who satisfies the primary criteria:

- (a) the applicant is included in the assurance of support given in respect of that person, and that assurance has been accepted by the Minister; or
- (b) an assurance of support has been given in relation to the applicant, and has been accepted by the Minister.

100.324 If the applicant is the dependent child of a person who is the holder of a Subclass 100 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

100.4 CIRCUMSTANCES APPLICABLE TO GRANT

100.411 The applicant must be:

- (a) in Australia, but not in immigration clearance; or

SCHEDULE 2—continued

(b) outside Australia;
when the visa is granted.

100.5 WHEN VISA IS IN EFFECT

100.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

100.6 CONDITIONS

100.611 If the applicant is outside Australia at the time of grant, first entry must be made before a date specified by the Minister for the purpose.

100.612 If the applicant meets the primary criteria and is outside Australia at the time of the grant, condition 8502 may be imposed before the applicant's first entry to Australia as the holder of the visa.

100.613 If the applicant meets the secondary criteria and is outside Australia at the time of the grant, either or both of conditions 8502 and 8515 may be imposed before the applicant's first entry to Australia as the holder of the visa.

100.7 WAY OF GIVING EVIDENCE

100.711 Visa label affixed to a valid passport.

PART 2—NEW PART 106

SUBCLASS 106—REGIONAL FAMILY

106.1 INTERPRETATION

106.111 In this Part:

- (a) **“degree”, “diploma”, “relevant Australian authority”, “trade certificate”** and **“usual occupation”**, in relation to an applicant, have the meanings respectively set out in subregulation 2.26 (5); and
- (b) **“designated area”** means an area specified by Gazette Notice as a designated area for the purposes of item 6701 in Schedule 6; and

SCHEDULE 2—continued

- (c) **“medical practitioner”** includes a specialist medical practitioner.

[NOTE: “Occupations Requiring English List” is defined in regulation 1.19.]

106.2 PRIMARY CRITERIA

[NOTE: The primary criteria must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.]

106.21 Criteria to be satisfied at time of application

106.211 The applicant:

- (a) is a brother, sister, nephew, niece or parent; or
- (b) is a natural or adopted child (other than a dependent child);

of a person (in this Division called **“the sponsor”**) who has turned 18 and who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

106.212 The applicant is sponsored by the sponsor.

106.213 The sponsor:

- (a) is resident in a designated area; and
- (b) was resident in one or other of the designated areas throughout the period of 12 months immediately before Immigration receives the relevant sponsorship (except for short absences for the purposes of recreation or business); and
- (c) is not, at the time Immigration receives the relevant sponsorship, receiving a benefit under the *Student and Youth Assistance Act 1973* or any form of Australian social security benefit, allowance or pension, other than:
 - (i) an age pension under the *Social Security Act 1991*; or
 - (ii) a family allowance, or family allowance supplement, under that Act; or
 - (iii) a pension under the *Seamen’s War Pensions and Allowances Act 1940* or the *Veterans’ Entitlements Act 1986*; and
- (d) is either:
 - (i) a person who:

SCHEDULE 2—continued

- (A) is financially independent, engaged in paid employment or receiving a pension referred to in subparagraph (c) (i) or (iii); and
- (B) has not received, in respect of a period or periods amounting to more than 2 weeks during that period of 12 months, a job search allowance, a newstart allowance or a special benefit under the *Social Security Act 1991*; or
- (ii) a person who:
 - (A) is not financially independent, engaged in paid employment or receiving a pension referred to in subparagraph (c) (i) or (iii); and
 - (B) does not have a spouse who has received, in respect of a period or periods amounting to more than 2 weeks during that period of 12 months, a job search allowance, a newstart allowance or a special benefit under the *Social Security Act 1991*.

106.214 (1) The applicant meets the requirements of subclause (2) or (3).

(2) The applicant meets the requirements of this subclause if the applicant:

- (a) is less than 45 years of age; and
- (b) does not have a usual occupation as a medical practitioner; and
- (c) has not obtained a medical qualification within the period of 5 years immediately before the time of application.

(3) The applicant meets the requirements of this subclause if the spouse of the applicant:

- (a) is an applicant for a Subclass 106 visa; and
- (b) is less than 45 years of age; and
- (c) does not have a usual occupation as a medical practitioner; and
- (d) has not obtained a medical qualification within the period of 5 years immediately before the time of application.

106.22 Criteria to be satisfied at time of decision

106.221 The sponsorship referred to in clause 106.212 has been approved by the Minister and is still in force.

106.222 The sponsor is still resident in a designated area.

SCHEDULE 2—continued

- 106.223 (1) The applicant:
- (a) meets the requirements of subclause (2); or
 - (b) does not meet those requirements but meets the requirements of subclause (3).
- (2) The applicant meets the requirements of this subclause if the applicant:
- (a) met the requirements of subclause 106.214 (2) at the time of the applicant's application; and
 - (b) has a usual occupation, other than as a medical practitioner, being an occupation for which, in Australia, a degree, diploma or trade certificate is required; and
 - (c) holds a degree, diploma or trade certificate that:
 - (i) is relevant to that usual occupation; and
 - (ii) is assessed by the relevant Australian authority as equivalent to the Australian standards for the occupation; and
 - (d) has English-language skills that meet the requirements of subclause (4).
- (3) The applicant meets the requirements of this subclause if:
- (a) the applicant met the requirements of subclause 106.214 (3) at the time of the applicant's application; and
 - (b) the applicant's spouse continues to meet the requirement of paragraph 106.214 (3) (a); and
 - (c) the applicant's spouse has a usual occupation, other than as a medical practitioner, being an occupation for which, in Australia, a degree, diploma or trade certificate is required; and
 - (d) the applicant's spouse holds a degree, diploma or trade certificate that:
 - (i) is relevant to that usual occupation; and
 - (ii) is assessed by the relevant Australian authority as equivalent to the Australian standards for the occupation; and
 - (e) the applicant's spouse has English-language skills that meet the requirements of subclause (4).
- (4) The English-language skills of the applicant or the applicant's spouse, as relevant, meet the requirements of this subclause if:
- (a) the applicant or the applicant's spouse:
 - (i) has a usual occupation that is an occupation included in the Occupations Requiring English List; and

SCHEDULE 2—continued

- (ii) satisfies the Minister that the applicant or applicant's spouse, as relevant, has proficiency in English of at least the standard required for the award of 15 points on the language skill factor of the general points test specified in Part 3 of Schedule 6; or
- (b) the applicant or the applicant's spouse does not have a usual occupation that is an occupation included in the Occupations Requiring English List but has proficiency in English of at least the standard required for the award of 10 points on the language skill factor of the general points test specified in Part 3 of Schedule 6.

106.224 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

106.225 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

106.226 If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

106.227 Each member of the family unit of the applicant who is an applicant for a Subclass 106 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.

106.228 Each member of the family unit of the applicant who is not an applicant for a Subclass 106 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

106.229 If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18; andmade a combined application with the applicant;

SCHEDULE 2—continued

the Minister is satisfied that the grant of a Subclass 106 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

- 106.230 Approval of the application would not result in either:
- (a) the number of Subclass 106 visas granted in a financial year exceeding the maximum number of Subclass 106 visas, as determined by Gazette Notice, that may be granted in that financial year; or
 - (b) the number of visas of particular classes (including Subclass 106) granted in a financial year exceeding the maximum number of visas of those classes, as determined by Gazette Notice, that may be granted in a financial year.

106.3 SECONDARY CRITERIA

[NOTE: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.]

106.31 Criteria to be satisfied at time of application

106.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in subdivision 106.21.

106.312 The sponsorship referred to in clause 106.212 in respect of the person who satisfies the primary criteria includes sponsorship of the applicant.

106.32 Criteria to be satisfied at time of decision

106.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 106 visa.

106.322 The sponsorship referred to in clause 106.312 has been approved by the Minister and is still in force.

106.323 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

106.324 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

SCHEDULE 2—continued

- 106.325 Either:
- (a) the applicant is included in any assurance of support required in respect of the person who satisfies the primary criteria, and that assurance has been accepted by the Minister; or
 - (b) an assurance of support has been provided in relation to the applicant, and has been accepted by the Minister.

106.326 If the applicant is the dependent child of a person who is a holder of a Subclass 106 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

106.4 CIRCUMSTANCES APPLICABLE TO GRANT

106.411 The applicant must be outside Australia when the visa is granted.

[NOTE: Charges: Any applicable charge under the *Immigration (Education) Charge Act 1992* must be paid before the visa can be granted.]

106.5 WHEN VISA IS IN EFFECT

106.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

106.6 CONDITIONS

106.611 First entry must be made before a date specified by the Minister for the purpose.

106.612 If the applicant satisfies the secondary criteria, either or both of conditions 8502 and 8514 may be imposed.

106.7 WAY OF GIVING EVIDENCE

106.711 Visa label affixed to a valid passport.

SCHEDULE 2—continued**PART 3—NEW PART 110****SUBCLASS 110—INTERDEPENDENCY****110.1 INTERPRETATION**

110.111 In this Part:

“**sponsor**”, in relation to an applicant who is the holder of a Subclass 310 (Interdependency (Provisional)) visa, means the person who sponsored the applicant for the grant of that visa.

[NOTE: “long-term interdependent relationship” is defined in regulation 1.03. For “interdependent relationship” see regulation 1.09A.]

110.2 PRIMARY CRITERIA

[NOTE: The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.]

110.21 [No criteria to be satisfied at time of application.]**110.22 Criteria to be satisfied at time of decision**

110.221 (1) The applicant meets the requirements of subclause (2), (3) or (4).

- (2) The applicant meets the requirements of this subclause if:
- (a) the applicant is the holder of a Subclass 310 (Interdependency (Provisional)) visa; and
 - (b) the applicant is in an interdependent relationship with the sponsor; and
 - (c) subject to subclauses (5) and (6), at least 2 years have passed since the application was made.

(3) The applicant meets the requirements of this subclause if the applicant:

- (a) first entered Australia as the holder of a Subclass 310 (Interdependency (Provisional)) visa and continues to be the holder of that visa; and
- (b) would meet the requirements of subclause (2) except that the sponsor has died; and
- (c) satisfies the Minister that the applicant would have continued to be in an interdependent relationship with the sponsor if the sponsor had not died.

SCHEDULE 2—continued

- (4) The applicant meets the requirements of this subclause if:
- (a) the applicant first entered Australia as the holder of a Subclass 310 (Interdependency (Provisional)) visa and continues to be the holder of that visa; and
 - (b) the applicant would meet the requirements of subclause (2) except that the relationship between the applicant and the sponsor has ceased; and
 - (c) either or both of the following:
 - (i) the applicant;
 - (ii) a member of the family unit of the sponsor or of the applicant;has suffered domestic violence committed by the sponsor.

[NOTE: For special provisions relating to domestic violence, see Division 1.5.]

(5) Paragraph (2) (c) does not apply to an applicant who at the time of making the application was in a long-term interdependent relationship with the sponsor.

(6) Nothing in paragraph (2) (c) prevents the Minister, less than 2 years after the application is made:

- (a) refusing to grant a Subclass 110 visa; or
- (b) granting a Subclass 110 visa to an applicant who meets the requirements of subclause (3) or (4).

110.222 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

110.223 If so requested by the Minister, an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

110.224 (1) Each member of the family unit of the applicant who is an applicant for an Interdependency (Migrant) (Class BI) visa is a person who satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

(2) Each member of the family unit of the applicant who is not an applicant for an Interdependency (Migrant) (Class BI) visa is a person who satisfies:

- (a) public interest criteria 4001, 4002, 4003 and 4004; and
- (b) 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.

SCHEDULE 2—continued

110.225 If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;made a combined application with the applicant;

the Minister is satisfied that the grant of a Subclass 110 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

110.226 If at least 2 years have passed since the application was made and the applicant does not meet subclause 110.221 (3) or (4), the applicant is nominated for the grant of the Subclass 110 visa by the sponsor.

110.3 SECONDARY CRITERIA

[NOTE: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.]

110.31 Criteria to be satisfied at time of application

110.311 The applicant is a member of the family unit of a person who has applied for an Interdependency (Migrant) (Class BI) visa, and the Minister has not decided to grant or refuse to grant a visa to the person.

110.32 Criteria to be satisfied at time of decision

110.321 The applicant is the holder of:

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

granted on the basis that the applicant was a member of the family unit of another person who was the holder of a Subclass 310 visa, and that other person has been granted a Subclass 110 visa.

110.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

110.323 If the Minister requires an assurance of support in respect of the person who satisfies the primary criteria:

- (a) the applicant is included in the assurance of support given in respect of that person, and that assurance has been accepted by the Minister; or

SCHEDULE 2—continued

- (b) an assurance of support has been given in relation to the applicant, and has been accepted by the Minister.

110.324 If the applicant is the dependent child of a person who is the holder of a Subclass 110 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

110.4 CIRCUMSTANCES APPLICABLE TO GRANT

110.411 The applicant must be:

- (a) in Australia, but not in immigration clearance; or
- (b) outside Australia;

when the visa is granted.

110.5 WHEN VISA IS IN EFFECT

110.511 Permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

110.6 CONDITIONS

110.611 If the applicant is outside Australia at the time of grant, first entry must be made before a date specified by the Minister for the purpose.

110.612 If the applicant meets the primary criteria and is outside Australia at the time of grant, condition 8502 may be imposed before his or her first entry to Australia as the holder of the visa.

110.613 If the applicant meets the secondary criteria and is outside Australia at the time of grant, either or both of conditions 8502 and 8515 may be imposed before his or her first entry to Australia as the holder of the visa.

110.7 WAY OF GIVING EVIDENCE

110.711 Visa label affixed to a valid passport.

SCHEDULE 2—continued

PART 4—NEW PARTS 309 AND 310

SUBCLASS 309—SPOUSE (PROVISIONAL)

309.1 INTERPRETATION

309.111 In this Part:

“intended spouse” means the Australian citizen referred to in subclause 309.211 (3).

“woman-at-risk visa” means:

- (a) a Subclass 204 (Woman at Risk) visa; or
- (b) a Class 204 (woman at risk) visa within the meaning of the Migration (1993) Regulations; or
- (c) a woman at risk visa (code number 204) within the meaning of the Migration (1989) Regulations; or
- (d) a transitional (permanent) visa granted on the basis of an application for a visa of a kind referred to in paragraph (b) or (c).”.

[NOTE: “guardian”, “parent”, “permanent humanitarian visa” and “spouse” are defined in regulation 1.03.]

309.2 PRIMARY CRITERIA

[NOTE: The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.]

309.21 Criteria to be satisfied at time of application

309.211 (1) The applicant meets the requirements of subclause (2) or (3).

- (2) The applicant meets the requirements of this subclause if:
 - (a) the applicant is the spouse of an Australian citizen; or
 - (b) the application is made before 1 October 1997 and the applicant is the spouse of an Australian permanent resident who meets the requirements of subclause (2A).

[NOTE: ‘spouse’ includes a de facto spouse: see definition of ‘spouse’ in regulation 1.03.]

SCHEDULE 2—continued

(2A) An Australian permanent resident meets the requirements of this subclause if he or she:

- (a) holds a permanent visa granted on the basis of an application made before 3 July 1996; and
 - (b) before that permanent visa was granted, was in a spouse relationship with the applicant of which Immigration was informed before that permanent visa was granted; and
 - (c) is not, and has not been, the holder of a permanent humanitarian visa.
- (3) The applicant meets the requirements of this subclause if:
- (a) the applicant intends to marry an Australian citizen; and
 - (b) the intended marriage will, if it takes place, be a valid marriage for the purposes of section 12 of the Act.

[NOTE: If the applicant is an applicant referred to in subclause 309.211 (3), the marriage must have taken place before the applicant can be granted a visa of this subclass: see clause 309.224.]

309.212 (1) The spouse, or intended spouse, of the applicant is not prohibited by subclause (2) from being a sponsor.

“(2) The spouse, or intended spouse, is prohibited from being a sponsor if:

- (a) the spouse, or intended spouse, is a woman who was granted a woman-at-risk visa within the 5 years immediately preceding the application; and
- (b) on the date of grant of that visa:
 - (i) the applicant was a former spouse of that woman, having been divorced from that woman; or
 - (ii) the applicant was the spouse of that woman and that relationship had not been declared to Immigration; or
 - (iii) the applicant was permanently separated from that woman.”.

309.213 (1) If the applicant is an applicant referred to in subclause 309.211 (2), the applicant is sponsored:

- (a) if the applicant’s spouse has turned 18—by that spouse; or
- (b) if the applicant’s spouse has not turned 18—by a parent or guardian of that spouse who:
 - (i) has turned 18; and
 - (ii) is an Australian citizen.

SCHEDULE 2—continued

(2) If the applicant is an applicant referred to in subclause 309.211 (3), the applicant is sponsored:

- (a) if the applicant's intended spouse has turned 18—by that intended spouse; or
- (b) if the applicant's intended spouse has not turned 18—by a parent or guardian of that intended spouse who:
 - (i) has turned 18; and
 - (ii) is an Australian citizen.

309.22 Criteria to be satisfied at time of decision

309.221 The applicant continues to satisfy the criterion in clause 309.211.

309.222 The sponsorship referred to in clause 309.213 has been approved by the Minister and is still in force.

[NOTE: For limitations on the Minister's discretion to approve sponsorships see regulation 1.20J.]

309.223 In the case of an applicant who meets the requirements of subclause 309.211 (2), the applicant continues to be the spouse of:

- (a) the Australian citizen who was the applicant's spouse at the time of the application; or
- (b) the Australian permanent resident who satisfies subclause 309.211 (2A).

309.224 If the applicant is an applicant referred to in subclause 309.211 (3), the marriage referred to in that subclause has taken place and the applicant continues to be the spouse of the intended spouse.

309.225 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

309.226 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

309.227 An assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

309.228 (1) Each member of the family unit of the applicant who is an applicant is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.

SCHEDULE 2—continued

(2) Each member of the family unit of the applicant who is not an applicant is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies 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.

309.229 If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;made a combined application with the applicant;

the Minister is satisfied that the grant of a Subclass 309 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

309.3 SECONDARY CRITERIA

[NOTE: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.]

309.31 Criteria to be satisfied at time of application

309.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in subdivision 309.21.

309.312 The sponsorship referred to in clause 309.213 of the person who satisfies the primary criteria includes sponsorship of the applicant.

309.32 Criteria to be satisfied at time of decision

309.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 309 visa.

309.322 The sponsorship referred to in clause 309.312 has been approved by the Minister and is still in force.

[NOTE: For limitations on the Minister's discretion to approve sponsorships see regulation 1.20J.]

SCHEDULE 2—continued

309.323 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

309.324 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

309.325 Either:

- (a) an assurance of support that includes the applicant:
 - (i) has been given in relation to the person who satisfies the primary criteria; and
 - (ii) has been accepted by the Minister; or
- (b) an assurance of support has been given in relation to the applicant and has been accepted by the Minister.

309.326 If the applicant is the dependent child of a person who is the holder of a Subclass 309 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

309.4 CIRCUMSTANCES APPLICABLE TO GRANT

309.411 The applicant must be outside Australia when the visa is granted.

[NOTE: Any applicable charge under the *Migration (Health Services) Charge Act 1991* must be paid before the visa can be granted.]

309.5 WHEN VISA IS IN EFFECT

309.511 Temporary visa permitting the holder:

- (a) to travel to and enter Australia for a period of 30 months from the date of application; and
- (b) to remain in Australia until the end of the day on which:
 - (i) the holder is notified that the holder's application for a Spouse (Migrant) (Class BC) visa has been decided; or
 - (ii) that application is withdrawn.

309.6 CONDITIONS

309.611 First entry must be made before a date specified by the Minister for the purpose.

309.612 If the applicant meets the primary criteria, condition 8502 may be imposed.

SCHEDULE 2—continued

309.613 If the applicant meets the secondary criteria, either or both of conditions 8502 and 8515 may be imposed.

309.7 WAY OF GIVING EVIDENCE

309.711 Visa label affixed to a valid passport.

SUBCLASS 310—INTERDEPENDENCY (PROVISIONAL)

310.1 INTERPRETATION

[NOTE: “interdependent relationship” is defined in regulation 1.09A. There are no interpretation provisions specific to this Part.]

310.2 PRIMARY CRITERIA

[NOTE: The primary criteria must be satisfied by at least 1 member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.]

310.21 Criteria to be satisfied at time of application

310.211 The applicant:

- (a) has turned 18; and
- (b) is in an interdependent relationship with a person who has turned 18 and who is an Australian citizen.

310.212 The person referred to in paragraph 310.211 (b) has sponsored the applicant.

310.22 Criteria to be satisfied at time of decision

310.221 The applicant continues to satisfy the criterion in clause 310.211.

310.222 The sponsorship referred to in clause 310.212 has been approved by the Minister and is still in force.

[NOTE: For limitations on the Minister’s discretion to approve sponsorships see regulation 1.20J.]

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

310.224 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

SCHEDULE 2—continued

310.225 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

310.226 An assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

310.227 (1) Each member of the family unit of the applicant who is an applicant for an Interdependency (Provisional) (Class UG) visa:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009; and
- (b) if he or she has previously been in Australia, satisfies special return criteria 5001 and 5002.

(2) Each member of the family unit of the applicant who is not an applicant for an Interdependency (Provisional) (Class UG) visa satisfies:

- (a) public interest criteria 4001, 4002, 4003 and 4004; and
- (b) public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require that person to undergo assessment in relation to that criterion.

310.228 If either:

- (a) the family unit of the applicant includes a dependent child who made a combined application with the applicant; or
- (b) a child who:
 - (i) is usually resident with the applicant; and
 - (ii) has not turned 18;made a combined application with the applicant;

the Minister is satisfied that the grant of a Subclass 310 visa to the child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

310.3 SECONDARY CRITERIA

[NOTE: These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.]

310.31 Criteria to be satisfied at time of application

310.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in subdivision 310.21.

SCHEDULE 2—continued

310.312 The sponsorship referred to in clause 310.212 of the person who satisfies the primary criteria includes sponsorship of the applicant.

310.32 Criteria to be satisfied at time of decision

310.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 310 visa.

310.322 The sponsorship referred to in clause 310.312 has been approved by the Minister and is still in force.

[NOTE: For limitations on the Minister's discretion to approve sponsorships see regulation 1.20J.]

310.323 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007 and 4009.

310.324 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

310.325 Either:

- (a) an assurance of support that includes the applicant:
 - (i) has been given in relation to the person who satisfies the primary criteria; and
 - (ii) has been accepted by the Minister; or
- (b) an assurance of support has been given in relation to the applicant and has been accepted by the Minister.

310.326 If the applicant is the dependent child of a person who is the holder of a Subclass 310 visa, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

310.4 CIRCUMSTANCES APPLICABLE TO GRANT

310.411 The applicant must be outside Australia when the visa is granted.

[NOTE: Any applicable charge under the *Migration (Health Services) Charge Act 1991* must be paid before the visa can be granted.]

SCHEDULE 2—continued**310.5 WHEN VISA IS IN EFFECT**

310.511 Temporary visa permitting the holder:

- (a) to travel to and enter Australia for a period of 30 months from the date of application; and
- (b) to remain in Australia until the end of the day on which:
 - (i) the holder is notified that the holder's application for an Interdependency (Migrant) (Class BI) visa has been decided; or
 - (ii) that application is withdrawn.

310.6 CONDITIONS

310.611 First entry must be made before a date specified by the Minister for the purpose.

310.612 If the applicant meets the primary criteria, condition 8502 may be imposed.

310.613 If the applicant meets the secondary criteria, either or both of conditions 8502 and 8515 may be imposed.

310.7 WAY OF GIVING EVIDENCE

310.711 Visa label affixed to a valid passport.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on *h* 1996. *30 September*
2. Statutory Rules 1994 No. 268 as amended by 1994 Nos. 280, 322, 376 and 452; 1995 Nos. 3, 38, 117, 134, 268, 302 and 411; 1996 Nos. 12, 75, 76, 108, 121, 135 and 198.