

TRIPPLICATE COPY



Statutory Rules 1996 No. ¹h

276/

Administering Department: please include this copy in documents sent to Federal Executive Council Secretariat in connection with making of this legislation. Ex. Co. Secretariat: please complete this copy by insertion of signatures and date of making, and send to: Legislative Services Section, Office of Legislative Drafting, Attorney-General's Department.

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 ^h 1996.

11 December/

^h WILLIAM DEANE/
Governor-General

By His Excellency's Command,

^h
Minister for Immigration and Multicultural Affairs

PHILIP RUDDOCK/

PART 1—PRELIMINARY

1. Amendment

1.1 The Migration Regulations are amended as set out in Part 2.

[NOTE: These Regulations commence on gazettal: see *Acts Interpretation Act 1901*, s. 48.]

PART 2—AMENDMENTS**2. Regulation 1.03 (Interpretation)**

2.1 Definition of “member of the immediate family”:
Omit the definition.

3. Regulation 1.12AA (Member of the immediate family)

3.1 Omit the regulation.

4. Schedule 1 (Classes of visas)

4.1 Subitem 1116 (2):
Omit the subitem, substitute:

“(2) Fee: \$600.”.

4.2 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))”.

4.3 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))”.

5. Schedule 2, Part 100 (Spouse)

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

6. Schedule 2, Part 110 (Interdependency)

6.1 Omit the Part, substitute Part 110 set out in Part 2 of Schedule 1.

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

7.1 Paragraph 152.211 (b):

Omit the paragraph, substitute:

- “(b) is a member of the family unit (other than the spouse) of a New Zealand citizen who either:
- (i) is the holder of a special category visa and is usually resident in Australia; or
 - (ii) on entry to Australia, will be the holder of a special category visa and intends to be usually resident in Australia.”.

7.2 Clause 152.511:

Omit “4 years”, substitute “5 years”.

8. Schedule 2, new Parts 309 and 310

8.1 After Part 303, insert Part 309 and Part 310 set out in Part 3 of Schedule 1.

9. Schedule 2, Part 805 (Skilled)

[NOTE: The note relating to clause 805.411 should be omitted.]

10. Schedule 2, Part 820 (Spouse)

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

Omit the definition, substitute:

“**nominating spouse**’, means:

- (a) in relation to an applicant who is, or was, the holder of a prospective marriage (temporary) visa—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) in relation to any other applicant—the Australian citizen, Australian permanent resident or eligible New Zealand citizen 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;”.

10.2 Paragraph 820.211 (2) (a):

Omit the paragraph, substitute:

- “(a) the applicant is the spouse of a person who:
 - (i) is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
 - (ii) is not prohibited by subclause (2B) from being a nominating spouse; and”.

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

Omit the sub-subparagraph, substitute:

- “(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 (2A); and”.

10.4 Subclause 820.222 (3):

Omit the subclause.

10.5 Subclause 820.322 (3):

Omit the subclause.

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

[NOTE: The note following clause 833.411 should be altered by omitting “*Immigration (Education) Charge Act 1992* or”.]

12. Schedule 2, Part 840 (Business Owner)

[NOTE: The note relating to clause 840.411 should be omitted.]

13. Schedule 2, Part 841 (Senior Executive)

[NOTE: The note relating to clause 841.411 should be omitted.]

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

[NOTE: The note relating to clause 842.411 should be omitted.]

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

[NOTE: The note relating to clause 843.411 should be omitted.]

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

[NOTE: The note relating to clause 844.411 should be omitted.]

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

[NOTE: The note relating to clause 845.411 should be omitted.]

PART 3—TRANSITIONAL**18. Interpretation**

18.1 In this Part:

“Act” means the *Migration Act 1958*;

“commencement day” means the day on which these Regulations commenced;

“not finally determined” has the same meaning as in subsection 5 (9) of the Act.

19. Certain applications for Interdependency (Migrant) (Class BI) and Spouse (Migrant) (Class BC) visas made during October 1996

19.1 If an application for an Interdependency (Migrant) (Class BI) visa or a Spouse (Migrant) (Class BC) visa:

- (a) was made on or after 1 October 1996 and before 1 November 1996; and
- (b) was not finally determined before the commencement day;

Schedule 2 to the Migration Regulations, as in force on 30 September 1996, applies to that application, subject:

- (c) in the case of an application for an Interdependency (Migrant) (Class BI) visa—to regulation 20; and
- (d) in the case of an application for a Spouse (Migrant) (Class BC) visa—both to the modifications set out in Schedule 2 to these Regulations and to regulation 20.

20. Effect of certain Subclass 100 (Spouse), 110 (Interdependency) and 152 (Family of New Zealand Citizen) visas

20.1 Despite anything to the contrary in Schedule 2 to the Migration Regulations as in force at any time, a Subclass 100 (Spouse), 110 (Interdependency) or 152 (Family of New Zealand Citizen) visa is a permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant if:

- (a) the visa was granted on or after 7 November 1996 and before the commencement day; or
- (b) the visa was granted on the basis of an application that was not finally determined before the commencement day.

21. Certain applications for Interdependency (Provisional) (Class UG) and Spouse (Provisional) (Class UF) visas made on or after 1 November 1996 and before 7 November 1996

21.1 If an application for an Interdependency (Provisional) (Class UG) visa or a Spouse (Provisional) (Class UF) visa:

- (a) was made on or after 1 November 1996 and before 7 November 1996; and
- (b) was not finally determined before the commencement day;

Schedule 2 to the Migration Regulations, as in force on 6 November 1996, applies, subject to the modifications set out in Schedule 3 to these Regulations, to that application.

SCHEDULE 1

Regulations 5, 6 and 8

NEW PARTS FOR INSERTION IN SCHEDULE 2**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 person 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 1—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, after the applicant first entered Australia as the holder of that visa, 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) after the applicant first entered Australia as the holder of that visa—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 1—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 that permanent visa was granted, was in a spouse relationship with the applicant of which Immigration was informed before that permanent visa was granted.

(7) Nothing in paragraph (2) (c) prevents the Minister, less than 2 years after the application is made, from:

- (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

SCHEDULE 1—continued

prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

100.226 If at least 2 years have passed since the application was made and the applicant does not meet the requirements of 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.

SCHEDULE 1—continued**100.4 CIRCUMSTANCES APPLICABLE TO GRANT**

100.411 The applicant must be:

- (a) in Australia, but not in immigration clearance; or
- (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.

SCHEDULE 1—continued**PART 2—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, after the applicant first entered Australia as the holder of that visa, 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 1—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) after the applicant first entered Australia as the holder of that visa—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, from:
- (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 1—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 the requirements of 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 1—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 1—continued

PART 3—NEW PARTS 309 AND 310

SUBCLASS 309—SPOUSE (PROVISIONAL)

309.1 INTERPRETATION

309.111 In this Part:

“intended spouse” means the person referred to in subparagraph 309.211 (3) (a) (i), (ii), (iii) or (iv);

“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: “eligible New Zealand citizen”, “guardian”, “parent” 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 the applicant is the spouse of:

- (a) an Australian citizen; or
- (b) an Australian permanent resident; or
- (c) an eligible New Zealand citizen; or
- (d) a person who, on entry to Australia, will be the holder of a special category visa and intends to be usually resident in Australia.

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

SCHEDULE 1—continued

- (3) The applicant meets the requirements of this subclause if:
- (a) the applicant intends to marry:
 - (i) an Australian citizen; or
 - (ii) an Australian permanent resident; or
 - (iii) an eligible New Zealand citizen; or
 - (iv) a person who, on entry to Australia, will be the holder of a special category visa and intends to be usually resident in Australia; 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, an Australian permanent resident or an eligible New Zealand citizen.

SCHEDULE 1—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, an Australian permanent resident or an eligible New Zealand 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 the person referred to in paragraph 309.211 (2) (a), (b), (c), or (d) who was the applicant's spouse at the time of the application.

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 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.

- 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 1—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 1—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 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.

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.

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.

309.613 If the applicant meets the secondary criteria, either or both of conditions 8502 and 8515 may be imposed.

SCHEDULE 1—continued**309.7 WAY OF GIVING EVIDENCE**

309.711 Visa label affixed to a valid passport.

SCHEDULE 1—continued

SUBCLASS 310—INTERDEPENDENCY (PROVISIONAL)**310.1 INTERPRETATION**

[NOTE: “eligible New Zealand citizen” is defined in regulation 1.03 and “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, an Australian permanent resident or an eligible New Zealand 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, Australian permanent resident or eligible New Zealand 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.

310.225 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

SCHEDULE 1—continued

310.226 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.

310.227 (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.

(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.

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.

310.312 The sponsorship referred to in clause 310.212 of the person who satisfies the primary criteria includes sponsorship of the applicant.

SCHEDULE 1—continued**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 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.

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.

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.

SCHEDULE 1—continued**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.

SCHEDULE 2

Regulation 19

**MODIFICATIONS OF SCHEDULE 2 TO THE MIGRATION
REGULATIONS (AS IN FORCE ON 30 SEPTEMBER 1996)
IN RELATION TO CERTAIN APPLICATIONS MADE
DURING OCTOBER 1996**

1. Part 100 (Spouse)

1.1 Clause 100.11 (definition of “intended spouse”):

Omit the definition, substitute:

“**intended spouse**’ means the person referred to in subparagraph 100.211 (3) (a) (i), (ii), (iii) or (iv).”.

1.2 Subclause 100.211 (2):

Add at the end:

“; or (d) a person who, on entry to Australia, will be the holder of a special category visa and intends to be usually resident in Australia.”.

1.3 Subparagraph 100.211 (3) (a) (iii):

Omit “; and”, substitute “; or”.

1.4 Paragraph 100.211 (3) (a):

Add at the end:

“(iv) a person who, on entry to Australia, will be the holder of a special category visa and intends to be usually resident in Australia; and”.

1.5 Subclause 100.224 (1):

Omit “the spouse of the Australian citizen, Australian permanent resident or eligible New Zealand citizen”, substitute “the spouse of the person referred to in paragraph 100.211 (2) (a), (b), (c) or (d)”.

SCHEDULE 3

Regulation 21

**MODIFICATIONS OF SCHEDULE 2 TO THE MIGRATION
REGULATIONS (AS IN FORCE ON 6 NOVEMBER 1996)
IN RELATION TO CERTAIN APPLICATIONS MADE
ON OR AFTER 1 NOVEMBER 1996 AND BEFORE
7 NOVEMBER 1996**

1. Part 309 (Spouse (Provisional))

1.1 Clause 309.111 (definition of “intended spouse”):

Omit the definition, substitute:

“**intended spouse**’ means the person referred to in subparagraph 309.211 (3) (a) (i), (ii), (iii) or (iv);”.

1.2 Subclauses 309.211 (2), (2A) and (3):

Omit the subclauses, substitute:

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

- (a) an Australian citizen; or
- (b) an Australian permanent resident; or
- (c) an eligible New Zealand citizen; or
- (d) a person who, on entry to Australia, will be the holder of a special category visa and intends to be usually resident in Australia.

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

- (a) the applicant intends to marry:
 - (i) an Australian citizen; or
 - (ii) an Australian permanent resident; or
 - (iii) an eligible New Zealand citizen; or
 - (iv) a person who, on entry to Australia, will be the holder of a special category visa and intends to be usually resident in Australia; and
- (b) the intended marriage will, if it takes place, be a valid marriage for the purposes of section 12 of the Act.”.

1.3 Subparagraph 309.213 (1) (b) (ii):

Omit the subparagraph, substitute:

“(ii) is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.”.

SCHEDULE 3—continued

1.4 Subparagraph 309.213 (2) (b) (ii):

Omit the subparagraph, substitute:

“(ii) is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.”.

1.5 Clause 309.223:

Omit the clause, substitute:

“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 the person referred to in paragraph 309.211 (2) (a), (b), (c) or (d) who was the applicant’s spouse at the time of the application.”.

1.6 Clause 309.227:

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

1.7 Clause 309.325:

Omit the clause, substitute:

“309.325 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.”.

2. Part 310 (Interdependency (Provisional))

2.1 Paragraph 310.211 (b):

Omit the paragraph, substitute:

“(b) is in an interdependent relationship with a person who has turned 18 and is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.”.

SCHEDULE 3—continued

2.2 Clause 310.223:

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

2.3 Clause 310.226:

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

2.4 Clause 310.325:

Omit the clause, substitute:

“310.325 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.”.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on *h* 1996. 11 December/
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, 198 and 211.