Migration Regulations (Amendment) 1997 No. 263

EXPLANATORY STATEMENT

STATUTORY RULES 1997 No. 263

Issued by the Authority of the Minister for Immigration and Multicultural Affairs

Migration Act 1958

Migration Regulations (Amendment)

Section 504 of the *Migration Act 1958* ("the Act") provides that the Governor-General may make regulations, not inconsistent with the Act, to prescribe all matters which are required or permitted to be prescribed by the Act or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

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

- paragraph 504(1)(a) of the Act provides that the Regulations may provide for the charging and recovery of *fees in* respect of any matter under the Act or the Regulations.

In addition, regulations may be made; pursuant to the following powers:

- subsection 29(2) of the Act provides that the Regulations may prescribe a period during which the holder of a visa may travel to, enter and remain in Australia;

- subsection 29(3) of the Act provides that the Regulations may prescribe a period during which the holder of a visa may travel to, enter, re-enter and remain in Australia;

- subsection 31(1) of the Act provides that the Regulations are to prescribe classes of visas;

- subsection 31(3) of the Act provides that the Regulations may prescribe criteria for visas of a specified class;

- subsection 31(4) of the Act provides for the Regulations to prescribe whether visas are visas to travel to and enter, or remain in Australia, or both;

- subsection 33(2) of the Act provides for regulations to be made which prescribe status for the purpose of the grant of special purpose visas;

- subsection 40(1) of the Act provides that the Regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;

- section 41 of the Act provides that, without limiting the generality of the section, the Regulations may provide that visas or visas of a specified class are subject to specified conditions, including but not limited to a condition that a further visa cannot be granted and a condition restricting work rights;

- subsection 45(1) of the Act provides that a non-citizen who wants a visa must apply for a visa of a particular class;

- subsection 45(2) of the Act provides that, without limiting the generality of subsection 45(1), the Regulations may pro: scribe the way for making applications in specified circumstances, applications for: a visa of a specified class and applications for visas in specified circumstances for visas of a specified class;

- subsection 45(3) of the Act provides that, without limiting the generality of subsection 45(1), the Regulations may provide for the place in which an applicant must be when an application for a visa of a specified class is made;

- subsection 46(2) of the Act provides for prescribing a class of visas an application for which may be taken under the Regulations to have been validly made;

- subsection 71(1) of the Act provides for the Regulations to prescribe the way in which evidence of a visa is to be given;

- subsection 71(2)of the Act provides that the Regulations may provide that the way in which evidence of a visa is given is to depend on the circumstances in which it is given; and

- paragraph 116(1)(g) of the Act provides for the grounds for cancelling a visa to be prescribed.

The purposes of the Regulations are to amend the Migration Regulations to reflect recent Government decisions to introduce measures to ensure the effective operation of the Migration Program so that it accurately meets the Government's priorities for immigration in Australia. The Regulations also meet the Government's objective of streamlining requirements and make a number of procedural and minor technical amendments.

In particular, the Regulations:

- introduce a new special purpose visa in regulation 2.40 to ensure traditional Indonesian fishermen have continued lawful access to the Territory of Ashmore and Cartier Islands following the extension of the application of the Act to the of Ashmore and Cartier Islands. These regulations also exempt traditional Territory Indonesian fishermen from immigration clearance requirements (relations 3 and 4

- omit provisions relating to Subclass 205 (Camp clearance), Subclass 208 (East Timorese in Portugal, Macau or Mozambique), and Subclass 214 (Cambodian) visas, as a consequence of the repatriation or resettlement of those residing in camps in 1996 and the termination of several Special Assistance Categories (subregulations 5.1, 15.1-15.3 and regulations 6, 8 and 27-29);

- implement recommendations made by the Committee for Review of the Employer Nomination Scheme and Labour Agreements (subregulation 5.2, regulations 7, 13, 21-25 and 32);

- provide additional grounds for the cancellation of a visa whereby the Minister may cancel a temporary visa holders visa in certain circumstances where the Minister is asked, in writing, to cancel the visa (regulation 11);

- move certain requirements regarding bridging visa applications from Schedule 1 to Schedule 2 in response to a recent interlocutory Federal Court judgment. The requirements are that, if a bridging visa application is in respect of a substantive visa application, that substantive application has been made in Australia and is for a class of visa that can be granted if the applicant is in Australia (subregulations 15.5-15.9 and regulations 16-20);

- enable State and Territory Governments to nominate an applicant for entry to Australia if the applicant has skills which are in demand in that State or Territory (regulation 26 and 34, subregulation 10.1, 15.4 and the Schedule);

- expand eligibility for the Subclass 427 (Domestic Worker (Temporary) - Executive) visa (regulation 30);

- amend a criterion in respect of the Subclass 430 (Supported Dependent) visa to clarify the criteria applicants must meet in order to be granted a Subclass 430 visa (regulation 3 1);

- increase the visa application, charge for Business Skills visa classes from $2540 to $3040 (regulation 33); and

- make technical amendment (subregulations 5.2, 10.2 and regulations 9, 12 and 14).

Details of the Regulations are set out in the Attachment.

Parts 1 and 2 of the Regulations are taken to have commenced on 7 July 1997.

Parts 3 and 5 of the Regulations commence on 1 November 1997.

Part 4 of the Regulations commence on 1 January 1998.

Subregulation 1.1 in Part 1 provides or Parts 1 and 2 to be taken to have commenced on 7 July 1997. Regulations 3 and 4 in part 2 exempt traditional Indonesian fishermen from immigration clearance requirements they visit Ashmore and Cartier Islands and these regulations are retrospective to 7 July 1997. The retrospectivity is not prejudicial to any person and therefore does not contravene subsection 48(2) of the Acts Interpretation Act 1901.

ATTACHMENT

PART 1 - PRELIMINARY

Regulation 1 - Commencement

Subregulation 1.1 provides for Parts 1 and 2 to be taken to have commenced on 7 July 1997.

Subregulation 1.2 provides for Parts 5 and 5 to commence on 1 November 1997.

Subregulation 1.3 provides for Part 4, to commence on 1 January 1998.

Regulation 2 - Amendment

This regulation provides for the Migration Regulations to be amended as set out in Parts 2, 3 and 4 of the Regulations.

PART 2 - AMENDMENTS TAKEN TO HAVE COMMENCED ON 7 JULY 1997

Regulation 3 - Regulation 2.40 (Persons having a prescribed status - special purpose visas (Act, s. 33(2)(a))

Under the Memorandum of Understanding between Australia and the Republic of Indonesia made at Jakarta on 7 November 1974 ("the Memorandum of Understanding"), Indonesian traditional fishermen are permitted, in certain circumstances, to access the area of the Australian Exclusive Fishing Zone, including the Territory of Ashmore and Cattier Islands.

The *Environment, Sport and Territories Legislation Amendment Act* 1997 ("the ESTLAA") extended the application of the Migration Act 1958 ("the Act") to the Territory of Ashmore and Cattier Islands. These regulations ensure that Indonesian traditional fishermen retain access to the region and exempt them from immigration clearance requirements.

Subregulation 3.1 amends subregulation 2.40(1) by adding Indonesian traditional fishermen visiting the territory of Ashmore and Cartier Islands to the prescribed fist of persons who are taken to have been granted a special purpose visa under subsection 33(2) of the Act.

Subregulation 3.2 inserts new subregulation 2.40(16) which limits persons who qualify for the special purpose visa to Indonesian traditional fishermen covered by the Memorandum of Understanding as amended by the 1989 Practical Guidelines for Implementation contained in the Annex to the Agreed Minutes of Meeting of officials of Australia and Indonesia on fisheries dated 29 April 1989.

The ESTLAA commenced on 7 July 1997. Consequently, the regulations providing for a special purpose visa for Indonesian traditional fishermen will operate retrospectively from 7 July 1997. The retrospectivity is wholly beneficial and does not prejudice any person. It, therefore, does not contravene subsection 48(2) of the Acts *Interpretation* Act 1901.

Regulation 4 - Schedule 9 (Special entry and clearance arrangements)

This regulation amends Part 2 of Schedule 9 by extending the existing categories of persons exempt from the need to comply with immigration clearance provisions to Indonesian traditional fishermen who, following amendments by these Regulations, have a prescribed status under regulation 2.40.

PART 3 - AMENDMENTS COMMENCING ON 1 NOVEMBER 1997

Regulation 5 - Regulation 1.03 (Interpretation)

Subregulation 5.1 omits references to Subclasses 205, 208 and 214 in the definition of "permanent humanitarian visa" in regulation 1.03, consequential to the repeal of Subclasses 205, 208 and 214 by these Regulations.

Subregulation 5.2 amends regulation 1.03 by inserting a new definition for "Hong Kong" to reflect that Hong Kong, as of 1 July 1997, formally became known as the "Hong Kong Special Administrative Region of the People's Republic of China".

Subregulation 5.2 also inserts a definition of "vocational English" into the Regulations (refer to regulation 7 for a detailed explanation of the new definition).

Regulation 6 - Regulation 1. 13 (Nominator)

Regulation 8 - Regulation 1.20 (Sponsorship)

Regulations 6 and 8 omit references to Subclasses 205, 208 and 214 in paragraphs 1.13(c) and 1.20(1)(b) respectively, consequential to the repeal of Subclasses 205, 208 and 214 by these Regulations.

Regulation 7 - New regulation 1.15B

Regulation 7 inserts a definition of "vocational English" into the Regulations, *which* requires a proficiency in English of at least the standard required for the award of 15 points in the language skill factor of the general points test in Part 3 of Schedule 6 to the Regulations. This level of English has been required in Subclasses 105 (Skilled-Australian Linked), 106 (Regional Linked) and 126 (Independent) but a specific term has not been used. As a result of amendments made by these Regulations, "vocational English" will also be required in Subclasses 121 (Employer Nomination) and 805 (Skilled) and new Subclass 135 (State/Territory-Nominated) inserted by these Regulations.

Regulation 9 - Regulation 2.25 (Grant of bridging visa E without application)

This regulation makes a technical amendment to amend a referencing error in regulation 2.25, so that Schedule 2 is omitted and Schedule 1 is substituted.

Regulation 10 - Regulation 2.26 (Prescribed qualifications and prescribed number of points)

Subregulation 10.1 adds a reference, to new Subclass 135 (State/Territory-Nominated Independent) to paragraph 2.26(1)(b) as a consequence of the introduction of that new Subclass by these Regulations.

Subregulation 10.2 amends paragraph 2.26(5)(b) to replace the reference to "the Department of Industrial Relations" with a reference to "the Department of Workplace Relations and Small Business". The amendment reflects the change in the name of that Department.

Regulation 11 - Regulation 2.43 (Grounds for cancellation of visa (Act, s. 116))

The purpose of regulation 11 is to allow the Minister to cancel a temporary visa at the request of the temporary visa holder where compassionate circumstances exist, for example, where a temporary visa holder is destitute and seeks assistance for their removal from Australia.

Subregulation 11.1 amends paragraph 2.43(1)(d) to make a minor grammatical amendment.

Subregulation 11.2 inserts two new prescribed ground in subregulation 2.43(1) for the purposes of paragraph 116(1)(g) of the Act whereby the Minister may cancel a person's visa. The prescribed grounds are contained in new paragraphs 2.43(1)(g) and 2.43(1)(h).

New paragraph 2.43(1)(g) provides that a temporary visa holder other than a temporary visa holder in paragraph (h) may write to the Minister requesting the cancellation of their temporary visa.

A temporary visa holder over the age of 18 and a temporary visa holder under the age of 18 who is a spouse, a former spouse or engaged to be married may therefore write to the Minister requesting the cancellation of their own temporary visa under paragraph 2.43(1)(g).

New paragraph 2.43(1)(h) provides that a person who is at least 18 years of age and on whom a temporary visa holder is dependent may write to the Minister requesting the cancellation of the visa holder's temporary visa where the visa holder is under the age of 18 years and is not a spouse, a former spouse, or engaged to be married. The person on whom the visa holder is dependent is not required to be present in Australia. In order to cancel the visa, the Minister must be satisfied that cancelling the visa will not prejudice the rights and interests of any person who has custody or guardianship of, or access to, the visa holder.

Regulation 12 - Regulation 4. 10 (Time for lodgment of application for review by the Tribunal)

This regulation amends paragraph 4.1l0(1)(a) to clarify that the "decision" referred to in subparagraphs 4.10(1)(a)(i) and (ii) is the IRT-reviewable decision.

Regulation 13 - Regulation 5.19 (Approved appointments (employer nomination))

Subregulation 13.1 substitutes a new paragraph 5.19(2)(c) to provide that all appointments (rather than just academic or scientific research appointments) are to be supported under an employment contract for a minimum of three years. The contract cannot expressly exclude the possibility of renewal. Previously appointments, other than academic and scientific research appointments, were required to be permanent positions. The requirement for full-time employment previously applied to all appointments.

The amendment was recommended by the Committee for Review of the Employer Nomination Scheme and Labour Agreements. The Committee considered that it is unrealistic that an employer be required to undertake to provide permanent employment and that it was anomalous with the provision for contract employment for academics and scientific researchers.

Subregulation 13.2 substitutes new subregulations 5.19(3) and 5.19(3A) which replace the previous requirement for average competence in paragraph 5.19(3)(c) with a requirement that the applicant meet any mandatory licensing or registration requirements or any mandatory membership of a professional body.

The amendment was recommended by the Committee for Review of the Employer Nomination Scheme and Labour Agreements. The Committee considered that the requirement for to "average competence" added little to the requirement that the position needs a highly skilled person. It suggested that rather than average competence, provision needs to be made in relation to any Australian licensing or registration requirements that may apply to a position.

Regulation 14 - Regulation 5.40 (Fee for assessment of a person's work qualifications and experience)

Regulation 14 amends paragraph 5.40(1)(b) to replace the reference to "the Department of Industrial Relations" with a reference to "the Department of Workplace Relations and Small Business". The amendment reflects the change in the name of that Department.

Regulation 15 - Schedule 1 (Classes of visas)

Subregulations 15.1, 15.2 and 15.3 omit items 1105, 1106 and 1113, repealing the Cambodian (Special Assistance)(Class AE), Camp Clearance (Migrant)(Class AF) and East Timorese in Portugal, Macau or Mozambique (Special Assistance)(Class AM) visa Classes respectively. These amendments are consequential to the repeal of Subclasses 205, 208 and 214 by these

Regulations. The Classes have been repealed in full, as the only Subclasses affected by visa Classes AE, AF and AM respectively are Subclasses 205, 208 and 214 respectively.

Subregulation 15.4 amends item 1120(4) to insert new Subclass 135 (State/Territory Nominated Independent) visa into the Migration Regulations.

Subregulations 15.5 to 15.9 are to reflect a recent interlocutory judgment of the Federal Court. The judgment found that certain amendments that had been made to Schedule 1 of the Migration Regulations for bridging visas in Statutory Rules 1996 No. 211 were not authorised by sections 45 and 46 of the Act as they did not relate to the making of a valid application. The court held that the inserted provisions were either criteria for the grant of a visa or circumstances applicable to the grant of a visa, pursuant to either section 31 or 40 of the Act respectively.

Subregulations 15.5, 15.6 and 15.7 remove from Schedule 1 paragraphs 1301(3)(c), 1302(3)(baa), 1303(3)(c) respectively requiring that an application for a Bridging Visa A, B or C, is valid only if:

* the person has applied, in Australia, for a substantive visa that can be granted if the applicant is in Australia; or,

* an application has been made, within time, for judicial review of a decision to refuse to grant a substantive visa that was applied for in Australia and can be granted if the applicant is in Australia.

In addition, subregulations 15.5 and 15.7 reinstate the paragraphs as they were prior to the amendments made by Statutory Rules 1996 No. 211.

Subregulation 15.8 removes from Schedule 1 paragraph 1304(3)(baa) requiring that where an applicant who has attempted to make an application for a substantive visa, the application for a Bridging D (Class WD) visa is only valid if the attempt was made, in Australia, to make a valid application for a substantive visa that can be granted if the applicant is in Australia.

Subregulation 15.9 removes from Schedule 1 paragraph 1305(3)(bb) which requires that for a valid Bridging Visa (General) application where the applicant has made, or intends to make an application for a substantive visa, then either:

* the applicant has made, in Australia, a valid application for a substantive visa that can be granted if the applicant is in Australia; or

* an application has been made, within time, for judicial review of a refusal of a substantive visa that was applied for in Australia and granted if the applicant is in Australia.

These regulations otherwise retain existing requirements for the making of a valid application for each bridging visa subclass.

Regulations 16 to 20 - Schedule 2

Part 010 (Bridging Visa A),

Part 020 (Bridging Visa B)

Part 030 (Bridging Visa C)

Part 040 (Bridging Visa (Prospective Applicant))

Part 050 (Bridging Visa (General))

Regulations 16 to 20 ensure that the Regulations reflect the Federal Court decision discussed above (at subregulations 15.5 to 15.9), by amending the criteria to be satisfied at the time of application in respect of Bridging Visas A, B, C, Prospective Applicant and General. The amendments insert into Schedule 2, as criteria for grant, those requirements which have been omitted from Schedule 1 (subregulations 15.5 to 15.9 refer). The purpose of regulations 16 to 20 is to ensure that where a bridging visa application is made in respect of a substantive application has been made (or will be made), in Australia, and is for a class of visa that can be granted if the applicant is in Australia.

Specifically, subregulations 16.1, 18.1, 18.2 and 20.2 amend existing paragraphs 010.211(2)(a), 030.212(2)(b) and (c), 030.212(2A)(b), 050.212(3)(a) and (b) respectively. These amendments require that the applicant has made a valid application in Australia for a substantive visa that can be granted if the applicant is in Australia.

Subregulations 16.2 and 18.4 amend existing paragraphs 010.211(3)(a) and (b), and 030.212(5)(a) and (b) respectively. The amendments require that them judicial review application has been made in respect of a decision to refuse a substantive visa which was applied for in Australia and could be granted if the applicant was in Australia.

Subregulations 16.3, 18.3 and 20.4 amend existing paragraphs 010.211(4)(a), 030.212(3)(a) and 050.212(8)(a) respectively. The amendments require that the Bridging Visa A, C or General which is subject to work conditions, was granted in relation to an application made in Australia for a substantive visa that can be granted if the applicant is in Australia.

Subregulations 16.4, 17.2, 18.5 and 20.5 make minor technical amendments.

Subregulation 17.1 omits existing clause 020.212 and inserts three new subclauses, of which new subclause 020.212(2) has the same effect as amendments made at subregulations 16.1, 18.1, 18.2 and 20.2, that is, the new subclause relates to substantive visa applications which are not finally determined. New subclause 020.212(3) has the same effect as the amendments made at subregulations 16.2 and 18.4, that is, this new subclause relates to bridging visas associated with judicial review of decisions to refuse to grant the applicant a substantive visa.

Subregulation 19.1 amends existing paragraph 040.212(b) so that it can only be met by an applicant who has attended an office of Immigration in Australia in order to make a valid application for a substantive visa that be granted if the applicant is in Australia.

Subregulation 19.2 omits clause 040.213 and substitutes new clause 040.213 which provides that a Bridging Visa (Prospective Applicant) may only be granted to an applicant who:

* has attempted unsuccessfully to make, in Australia, a valid application for a substantive visa that can be granted if the applicant is in Australia; and

* will be able to validly make the application within 5 working days.

Subregulation 20.1 makes a consequential amendment to existing subclause 050.212(1) because of the addition of new subclause (3A).

Subregulation 20.3 omits subclause 050.212(4) and substitutes two new subclauses 050.212(3A) and (4) respectively. New, subclause 050.212(3A) requires the applicant to have made, in Australia, a valid application for a substantive visa that could be granted if the applicant is in Australia, and either, they:

* have sought merits review of a decision to refuse that substantive visa made under section 501 of the Act; or

* have applied for judicial review of a decision to refuse that substantive visa; or

* will make an application for merits review of a decision to refuse that substantive visa under section 501 of the Act.

New subclause 050.512(4) provides that an applicant may be granted a Bridging Visa (General) where they:

* have applied, within time, for judicial review of a decision other than a decision relating to the grant of a visa; or

* have applied for merits review of a decision to cancel a visa; or

* will make an application for merits review of a decision to cancel a visa.

Regulations 21.22 and 25 - Schedule 2,

Part 105 (Skilled - Australian Linked)

Part 106 (Regional Linked

Part 126 (Independent)

The amendments made by these Regulations are consequential to the introduction of the term "vocational English" which is inserted into the Migration Regulations by these Regulations, being defined at new regulation 1.15B. The new definition for "vocational English" is the same as the previous wording of these' provisions, requiring a proficiency in English of at least the standard required for the award of 15 points in the language skill factor of the general points test in Part 3 of Schedule 6.

Regulation 23 - Schedule 2. Part 120 (Labour Agreement)

This regulation decreases the maximum age for eligibility for application for a Subclass 120 (Labour Agreement) visa from 54 to 44. The amendment was recommended by the Committee for Review of the Employer Nomination Scheme and Labour Agreements. An exemption for exceptional circumstances is retained.

Regulation 24 - Schedule 2. Part 121 (Employer Nomination)

Subregulations 24.1 and 24.4 omit paragraphs 121.211(2)(b) and 121.211(3)(b) respectively which required the appointment for which an employer has nominated the applicant to be an approved appointment. These paragraphs are omitted because the requirement for the appointment to be approved has been moved from time of application to time of decision as a result of a recommendation from the Committee for Review of the Employer Nomination Scheme and Labour Agreements. Previously applicants could not apply for a visa until after the nomination had been approved. This barrier is removed so that applicants can apply for a Subclass 121 visa after the employment nomination has been lodged, but before it is approved, streamlining the process.

Subregulations 24.2, 24.5, 24.6 and 24.7 make amendments consequential upon the amendments made above to change the time when approval of the appointment is required from time of application to time of decision.

Subregulation 24.3 decreases the maximum age for eligibility for application for a Subclass 121 visa from 54 to 44 and introduces a requirement that the applicant have vocational English. An exemption for exceptional circumstances is retained. These amendments were recommended by the Committee for Review of the Employer Nomination Scheme and Labour Agreements.

Subregulation 24.8 omits the requirement for the application to be lodged within 3 months of the approval of the appointment because of moving the requirement for approval to time of decision.

A provision is substituted to provide that if the appointment is approved prior to the application being lodged, that application must be lodged within 6 months of the approval. The period of 6 months was recommended by the Committee for Review of the Employer Nomination Scheme and Labour Agreements as providing a balance between a reasonable time for employers to locate suitable applicants and the time in which labour market conditions could be expected to remain relatively stable.

Subregulation 24.9 requires the appointment for which an employer has nominated the applicant to be an approved appointment. The requirement has been moved from time of application to time of decision as a result of a recommendation from the Committee for Review of the Employer Nomination Scheme and Labour Agreements.

Regulation 26 - Schedule 2, new Part 135

This regulation inserts a new Part 135 into Schedule 2 as set out in the Schedule to these Regulations. The new Part enables State and Territory Governments to nominate an applicant for entry to Australia if the applicant has skills which are in demand in that State or Territory.

Regulations 27 to 29 - Schedule 2

Part 205 (Camp clearance)

Part 208 (East Timorese in Portugal, Macau or Mozambique)

Part 214 (Cambodian)

Regulations 27 to 29 omit Parts 205, 208 and 214 in Schedule 2 to the Regulations, repealing Subclasses 205 (Camp clearance), 208 (East Timorese in Portugal, Macau or Mozambique) and 214 (Cambodian).

Subclass 205 (Camp clearance) visas came within the general allocation of visa places for the IndoChinese Program and involved the resettling in Australia of refugees from camps where Indo-Chinese refugees were temporarily accommodated under the International Comprehensive Plan of Action for Indo-Chinese refugees ("the CPA"). The CPA was established in 1989 and concluded in 1996, with the repatriation or resettlement of those persons residing in the camps. Subclass 205 is being removed as a consequence of the conclusion of the CPA.

Subclasses 208 (East Timorese in Portugal, Macau or Mozambique) and 214 (Cambodian) form part of the Special Assistance Category ("SAC"), a component of Australia's Humanitarian Program. The East Timorese SAC for persons in Portugal, Macau and Mozambique and the Cambodian SAC have achieved their original purpose. These SACs are therefore being terminated.

Regulation 30 - Schedule 2, Part 427 (Domestic Worker (Temporary) - Executive

This regulation expands eligibility for! a Subclass 427 (Domestic Worker (Temporary) Executive) visa to persons intending full time domestic employment with executives who hold a Subclass 457 (Business (Long Stay)) visa on the basis of:

* a labour agreement;

* a regional headquarters agreement;

* sponsorship by an Australian business for key activities;

* being a person accorded certain privileges and immunities;

* sponsorship by an overseas business; or

* being an independent executive.

Previously, the only persons eligible were those seeking domestic employment by executives holding a Subclass 457 visa on the basis of the last two categories in the above list.

The amendment does not extend to persons who intend domestic employment with executives who hold a Subclass 457 visa by virtue of being service sellers or non-key activity entrants. This is because service sellers and non-key activity entrants are not considered to have the same degree of representational and entertainment responsibilities as the other categories of executives covered by the Subclass 457 visa.

Regulation 31 - Schedule 2, Part 430 (Supported Dependent)

This regulation omits clause 430.222 and substitutes new clauses 430.222 and 430.222A to better reflect the policy intention of the Subclass 430 (Supported Dependent) visa. The purpose of Subclass 430 is to allow for certain non-citizens to accompany a family member, where that family member, who has an existing right of entry to Australia, is usually resident overseas but intends temporarily returning to Australia.

Regulation 32 - Schedule 2, Part 805 (Skilled)

Subregulation 32.1 makes a technical amendment as a consequence of the amendment made by subregulation 32.2.

Subregulation 32.2 omits paragraph 805.211(1)(d) which prevented certain applicants holding a temporary residence Subclass 457 (Business (Long Stay)) visa from being eligible for the grant of a permanent residence Subclass 805 (Skilled) visa. The amendment was recommended by the Committee for Review of the Employer Nomination Scheme and Labour Agreements. The Committee recommended that applicants holding temporary resident visas issued under Pre-Qualified Business 11 Sponsor (PQBS) arrangements be permitted to change status in Australia to that of permanent resident under visa Subclass 805. This means that PQBS applicants will be treated in exactly the same way as other applicants.

Subregulation 32.3 substitutes a new subclause 805.212(2) which requires an applicant to hold a qualifying visa of a type described in subclause 2A without the need to have such a visa for more than 12 months. The amendment was recommended by the Committee for Review of the Employer Nomination Scheme and Labour Agreements who wished to retain the concept of qualifying visas, but did not consider that the length of time such a visa must be held should be specified.

Subregulations 32.4 and 32.5 decrease the maximum age for eligibility for application for a Subclass 805 visa from 54 to 44. The amendment was recommended by the Committee for Review of the Employer Nomination Scheme and Labour Agreements. An exemption for exceptional circumstances is retained.

Subregulation 32.5 also introduces a requirement that the applicant have vocational English. An exemption for exceptional circumstances is retained. These amendments were recommended by the Committee for Review of the Employer Nomination Scheme and Labour Agreements.

Subregulations 32.6 and 32.7 omit paragraph 805.213(4)(b) and make an amendment to paragraph 805.213(4)(c) respectively. These provisions required the appointment for which an employer has nominated the applicant to be an approved appointment. This paragraph is omitted because the requirement for the appointment to be approved is no longer to be included at time of application, only at time of decision. This amendment is a recommendation from the Committee for Review of the Employer Nomination Scheme and Labour Agreements.

Subregulation 32.8 adds a criterion to require that if the appointment is approved prior to the application being lodged, that application must be lodged within 6 months of the approval. The period of 6 months was recommended by the Committee for Review of the Employer Nomination

Scheme and Labour Agreements as providing a balance between a reasonable time for employers to locate suitable applicants and the time in which labour market conditions could be expected to remain relatively stable.

PART 4 - AMENDMENTS COMMENCING ON 1 JANUARY 1998

Regulation 33 - Schedule L (Classes of visas)

Subregulations 33.1 and 33.2 amend paragraphs 1104(2)(a) and 1104A(2)(a) respectively to increase the first instalment of the visa application charge for Business Skills visa classes from $2540 to $3040. The increase is the second stage of an increase approved in the 1997-98 Budget process.

PART 5 - TRANSITIONAL

Regulation 34 - Independent (Migrant) (Class AT) visa - addition of Subclass 135 (State/TerritoryNominated Independent

This regulation ensures that applications for Independent (Migrant) (Class AT) visas made, but not decided, before 1 November 1997 or made on or after 1 November 1997, are considered under the new Subclass 135 (State/Territory-Nominated Independent) visa.

Schedule

New Subclass 135 will enable State and Territory Governments to nominate an applicant for entry to Australia if the applicant has skills which are in demand in that State or Territory. The new Subclass is closely modelled on the Subclass 126 (Independent) visa. Details of the new Subclass are as follows: At time of application, the only criterion is that the applicant is less than 45 years of age. At time of decision, the applicant must:

* have a degree, diploma, trade certificate or higher qualification within the meaning of subregulation 2.26(5), but:

(a) does not have a usual occupation as a medical practitioner, and

(b) has not obtained a medical qualification within a period of 5 years immediately before the time of the application;

* have been nominated by a State or Territory Government agency; on an approved form which was lodged at a DIMA office in the relevant State or Territory;

* the nomination is not to exceed the Gazetted number set for nominations for that State or Territory,

* have a score that is equal to or more than the applicable pool mark when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act;

* if his or her usual occupation is on the Occupations Requiring English List, have vocational English;

* if his or her usual occupation is not on the Occupations Requiring English List, have functional English;

* have an assurance of support if requested by the Minister.

In addition, the Minister must be satisfied that the grant of the visa:

* would not prejudice the rights and interests of any other person who has custody or guardianship of a dependent child; and

* grant of the visa would not exceed the quota for the year.

Applicants for a Subclass 135 (State/Territory-Nominated Independent) visa will be subject to the same *public* interest and special return criteria, Secondary Criteria, Circumstances Applicable to Grant, When visa is in effect, Conditions and Way of giving evidence as applicants for a Subclass 126 (Independent) visa.