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Statutory Rules 1997 No. *h*¹

263/

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 *17 September* 1997.

WILLIAM DEANE
 Governor-General

By His Excellency's Command,

h

PHILIP RUDDOCK

Minister for Immigration and Multicultural Affairs

PART 1—PRELIMINARY

1. Commencement

1.1 Parts 1 and 2 are taken to have commenced on 7 July 1997.

1.2 Parts 3 and 5 commence on 1 November 1997.

1.3 Part 4 commences on 1 January 1998.

2. Amendment

2.1 The Migration Regulations are amended as set out in Parts 2, 3 and 4.

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

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

3.1 Subregulation 2.40 (1):

Add at the end:

“; (t) Indonesian traditional fishermen visiting the Territory of Ashmore and Cartier Islands.”.

3.2 Regulation 2.40:

Add at the end:

[Indonesian traditional fishermen]

“(16) A person included in the class of persons specified in paragraph (1) (t) has a prescribed status only if the person:

(a) is a traditional fisherman within the meaning of the Memorandum of Understanding made at Jakarta on 7 November 1974 between Australia and the Republic of Indonesia regarding the operations of Indonesian fishermen in areas of the Australian Exclusive Fishing Zone and Continental Shelf; and

- (b) when visiting the Territory of Ashmore and Cartier Islands, is engaged in an activity described in the Memorandum of Understanding, as varied by the 1989 Practical Guidelines for Implementation contained in the Annex to the Agreed Minutes of Meeting between officials of Australia and Indonesia on fisheries of 29 April 1989.

[NOTE: The Memorandum, as varied by the Guidelines, has the general effect of accommodating a traditional fisherman engaged in taking fish or marine sedentary organisms by a method that has been a traditional method over decades of time, who is:

- (a) actually taking fish or marine sedentary organisms; or
- (b) sheltering within the territorial sea of the Territory; or
- (c) on shore at the island known as West Islet, for the purpose only of getting fresh water.

Expressly excluded is fishing using a motorised, or motor-assisted, vessel or method.]”.

4. Schedule 9 (Special entry and clearance arrangements)

4.1 Part 2:

Add at the end:

“9. Indonesian traditional fishermen who have prescribed status under regulation 2.40”.

PART 3—AMENDMENTS COMMENCING ON 1 NOVEMBER 1997

5. Regulation 1.03 (Interpretation)

5.1 Definition of “permanent humanitarian visa” (paragraph (a)):

Omit the paragraph, substitute:

- “(a) a Subclass 200, 201, 202, 203, 204, 209, 210, 211, 212, 213, 215, 216, 217 or 866 visa; or”.

5.2 Insert the following definitions:

“**Hong Kong**’ means the Hong Kong Special Administrative Region of the People’s Republic of China;

‘**vocational English**’ has the meaning given in regulation 1.15B;”.

6. Regulation 1.13 (Nominator)

6.2 Paragraph 1.13 (c):

Omit “208, 209, 210, 211, 212, 213, 214,”, substitute “209, 210, 211, 212, 213,”.

7. New regulation 1.15B

7.1 After regulation 1.15A, insert:

Vocational English

“1.15B. A person has ‘**vocational English**’ if the person satisfies the Minister that the person has 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 specified in Part 3 of Schedule 6.”.

8. Regulation 1.20 (Sponsorship)

8.1 Paragraph 1.20 (1) (b):

Omit “208, 209, 210, 211, 212, 213, 214,”, substitute “209, 210, 211, 212, 213,”.

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

9.1 Omit “Schedule 2,”, substitute “Schedule 1,”.

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

10.1 Paragraph 2.26 (1) (b):

After “Subclass 126 (Independent)”, insert “, or Subclass 135 (State/Territory-Nominated Independent),”.

10.2 Subregulation 2.26 (5) (definition of “relevant Australian authority”, paragraph (b)):

Omit the paragraph, substitute:

“(b) the Department of Workplace Relations and Small Business; or”.

11. Regulation 2.43 (Grounds for cancellation of visa (Act, s. 116))**11.1 Paragraph 2.43 (1) (d):**

Omit “at some time before 1 September 1994 the holder”, substitute “that, at some time before 1 September 1994, the holder”.

11.2 Subregulation 2.43 (1):

Add at the end:

- “(g) in the case of a temporary visa held by a person other than a visa holder mentioned in paragraph (h)—that the visa holder asks the Minister, in writing, to cancel the visa;
- (h) in the case of a temporary visa held by a person who is under the age of 18 years and is not a spouse, a former spouse or engaged to be married—that:
 - (i) a person who is at least 18 years of age, and on whom the visa holder is dependent, asks the Minister, in writing, to cancel the visa; and
 - (ii) the Minister is 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.”.

12. Regulation 4.10 (Time for lodgment of application for review by the Tribunal)**12.1 Paragraph 4.10 (1) (a):**

Omit the paragraph, substitute:

- “(a) in the case of a primary decision of a kind mentioned in paragraph (a) of the definition of ‘Part 5 reviewable decision’ in section 337 of the Act:
 - (i) if the IRT-reviewable decision was made before 1 July 1997—28 days after the notification of that decision; and
 - (ii) if the IRT-reviewable decision was made on or after 1 July 1997—21 days after the notification of that decision; or”.

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

13.1 Paragraph 5.19 (2) (c):

Omit the paragraph, substitute:

“(c) the appointment will:

- (i) provide the employee with full-time employment; and
- (ii) be for a fixed term of at least 3 years, and not subject to any express exclusion of the possibility of renewal; and”.

13.2 Subregulation 5.19 (3):

Omit the subregulation, substitute:

“(3) A person is a ‘**highly skilled person**’ in relation to a proposed employment appointment if, in respect of work of the kind to be performed under that appointment:

- (a) the person has completed, over a period of at least 3 years, formal training or equivalent experience; and
- (b) unless the approved appointment is exceptional, the person has been employed in work of the kind for which he or she was trained, or in which he or she is experienced, for at least 3 years:
 - (i) after completing the training or experience referred to in paragraph (a); and
 - (ii) before making the application; and
- (c) if it is mandatory for work of that kind in Australia that a person be the holder of a qualification of a kind specified in subregulation (3A), the Minister is satisfied that the person is, or is eligible to become, the holder of that qualification.

“(3A) The qualifications referred to in paragraph (3) (c) are the following:

- (a) the holding of a licence of a particular kind;
- (b) registration of a particular kind;
- (c) membership (or membership of a particular kind) of a particular professional body.”.

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

14.1 Paragraph 5.40 (1) (b):

Omit "Department of Industrial Relations:", substitute "Department of Workplace Relations and Small Business:".

15. Schedule 1 (Classes of visas)

15.1 Item 1105:

Omit the item.

15.2 Item 1106:

Omit the item.

15.3 Item 1113:

Omit the item.

15.4 Subitem 1120 (4):

Omit the subitem, substitute:

"(4) Subclasses: 126 (Independent)
135 (State/Territory-Nominated Independent)".

15.5 Paragraph 1301 (3) (c):

Omit the paragraph, substitute:

"(c) Applicant:

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

15.6 Paragraph 1302 (3) (baa):

Omit the paragraph.

15.7 Paragraph 1303 (3) (c):
Omit the paragraph, substitute:

“(c) Either:

- (i) the applicant has made a valid application for a substantive visa that 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 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.”.

15.8 Paragraph 1304 (3) (baa):
Omit the paragraph.

15.9 Paragraph 1305 (3) (bb):
Omit the paragraph.

16. Schedule 2, Part 010 (Bridging Visa A)

16.1 Paragraph 010.211 (2) (a):
Omit the paragraph, substitute:

“(a) the applicant has made, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia; and”.

16.2 Paragraphs 010.211 (3) (a) and (b):
Omit the paragraphs, substitute:

“(a) the applicant has made, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia; and

- (aa) that application was refused; and
- (b) the applicant has applied, within statutory time limits, for judicial review of that refusal; and”.

16.3 Paragraph 010.211 (4) (a):

Omit the paragraph, substitute:

- “(a) the applicant holds a bridging visa Class A or B that:
 - (i) was granted as a result of a valid application, made in Australia, for a substantive visa of a kind that could be granted if the applicant was in Australia; and
 - (ii) is subject to conditions 8101, 8102, 8103, 8104, 8105, 8107, 8108 or 8111; and”.

16.4 Subparagraph 010.511 (b) (i):

Omit “on the grant”, substitute “the grant”.

17. Schedule 2, Part 020 (Bridging Visa B)

17.1 Clause 020.212:

Omit the clause, substitute:

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

- “(2) An applicant meets the requirements of this subclause if:
 - (a) the applicant has made, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia; and
 - (b) that application has not been finally determined; and
 - (c) the applicant wishes to leave and re-enter Australia during the processing of that application; and
 - (d) the Minister is satisfied that the applicant’s reasons for wishing to do so are substantial.
- “(3) An applicant meets the requirements of this subclause if:
 - (a) the applicant has made, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia; and
 - (b) that application was refused; and
 - (c) the applicant has applied, within statutory time limits, for judicial review of the decision to refuse to grant the substantive visa, and the judicial proceedings (including any proceedings on appeal) have not been completed; and

- (d) the applicant wishes to leave and re-enter Australia during the judicial proceedings; and
- (e) the Minister is satisfied that the applicant's reasons for wishing to do so are substantial."

17.2 Subparagraph 020.511 (b) (i):

Omit "on the grant", substitute "the grant".

18. Schedule 2, Part 030 (Bridging Visa C)

18.1 Paragraphs 030.212 (2) (b) and (c):

Omit the paragraphs, substitute:

- “(b) the applicant has made, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia; and
- (ba) that application was made at the same time, and on the same form, as the bridging visa application; and
- (c) that application has not been finally determined.”.

18.2 Paragraph 030.212 (2A) (b):

Omit the paragraph, substitute:

- “(b) the applicant has made, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia; and”.

18.3 Paragraph 030.212 (3) (a):

Omit the paragraph, substitute:

- “(a) the applicant holds a bridging visa Class C that:
 - (i) was granted as a result of a valid application, made in Australia, for a substantive visa of a kind that could be granted if the applicant was in Australia; and
 - (ii) is subject to condition 8101; and”.

18.4 Paragraphs 030.212 (5) (a) and (b):

Omit the paragraphs, substitute:

- “(a) the applicant has made, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia; and
- (aa) that application was refused; and

- (b) the applicant has applied, within statutory time limits, for judicial review of that refusal; and”.

18.5 Subparagraph 030.511 (b) (i):

Omit “on the grant”, substitute “the grant”.

19. Schedule 2, Part 040 (Bridging Visa (Prospective Applicant))

19.1 Paragraph 040.212 (b):

Omit the paragraph, substitute:

- “(b) the applicant has attended at an office of Immigration, in Australia, for the purpose of making an application for a substantive visa of a kind that can be granted if the applicant is in Australia.”.

19.2 Clause 040.213:

Omit the clause, substitute:

“040.213 The Minister is satisfied that the applicant:

- (a) has attempted to make, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia and is unable to do so; and
- (b) will, within 5 working days, be able to make, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia.”.

20. Schedule 2, Part 050 (Bridging Visa (General))

20.1 Subclause 050.212 (1):

After “(3),”, insert “(3A),”.

20.2 Paragraphs 050.212 (3) (a) and (b):

Omit the paragraphs, substitute:

- “(a) the applicant has made, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia and that application has not been finally determined; or
- (b) the Minister is satisfied that the applicant will apply, in Australia, within a period allowed by the Minister for the purpose, for a substantive visa of a kind that can be granted if the applicant is in Australia.”.

20.3 Subclause 050.212 (4):

Omit the subclause, substitute:

- “(3A) An applicant meets the requirements of this subclause if:
- (a) the applicant has made, in Australia, a valid application for a substantive visa of a kind that can be granted if the applicant is in Australia; and
 - (b) either:
 - (i) the applicant has applied for merits review of a decision under section 501 of the Act to refuse to grant the visa; or
 - (ii) the applicant has applied for judicial review of a decision to refuse to grant the visa and the judicial proceedings (including any proceedings on appeal) have not been completed; or
 - (iii) the Minister is satisfied that the applicant will make an application of the kind referred to in subparagraph (i).
- “(4) An applicant meets the requirements of this subclause if:
- (a) the applicant has applied, within statutory time limits, for judicial review of a decision other than a decision in relation to the grant of a visa; or
 - (b) the applicant has applied for merits review of a decision to cancel a visa; or
 - (c) the Minister is satisfied that the applicant will make an application of a kind referred to in paragraph (b).”.

20.4 Paragraph 050.212 (8) (a):

Omit the paragraph, substitute:

- “(a) the applicant holds a bridging visa Class E that:
- (i) was granted as a result of a valid application, made in Australia, for a substantive visa of a kind that could be granted if the applicant was in Australia; and
 - (ii) is subject to condition 8101; and”.

20.5 Subparagraphs 050.511 (b) (i) and 050.512 (b) (i):

Omit “on the grant”, substitute “the grant”.

21. Schedule 2, Part 105 (Skilled—Australian Linked)

[NOTE: The note following clause 105.11 should be replaced by the following note:

“[NOTE: ‘Occupations Requiring English List’ is defined in regulation 1.19. For ‘vocational English’, see regulation 1.15B.]”]

21.1 Subclause 105.224 (1):

Omit the words after “English List,”, substitute “the applicant has vocational English.”.

21.2 Subclause 105.224 (2):

Omit the words after “English List;”, substitute “the spouse of the applicant has vocational English.”.

22. Schedule 2, Part 106 (Regional Linked)

[NOTE: The note following clause 106.111 should be replaced by the following note:

“[NOTE: ‘Occupations Requiring English List’ is defined in regulation 1.19. For ‘vocational English’, see regulation 1.15B.]”]

22.1 Subparagraph 106.223 (4) (a) (ii):

Omit the subparagraph, substitute:

“(ii) has vocational English; or”.

23. Schedule 2, Part 120 (Labour Agreement)

23.1 Subparagraph 120.211 (a) (iii):

Omit “55;”, substitute “45;”.

24. Schedule 2, Part 121 (Employer Nomination)

[NOTE: The note following the heading to Division 121.1 should be replaced by the following note:

“[NOTE: 1. ‘approved appointment’ is defined in regulation 5.19.

2. For ‘vocational English’, see regulation 1.15B.

3. There are no interpretation provisions specific to this Part.]”]

24.1 Paragraph 121.211 (2) (b):
Omit the paragraph.

24.2 Paragraph 121.211 (2) (c):
Omit “approved”.

24.3 Paragraph 121.211 (2) (d):
Omit the paragraph, substitute:

“(d) unless the appointment is exceptional, the applicant:
(i) has not turned 45; and
(ii) has vocational English.”.

24.4 Paragraph 121.211 (3) (b):
Omit the paragraph.

24.5 Sub-subparagraph 121.211 (3) (c) (i) (C):
Omit “approved” (twice occurring).

24.6 Subparagraph 121.211 (3) (c) (ii):
Omit “approved appointment is”, substitute “appointment is”.

24.7 Sub-subparagraph 121.211 (3) (c) (ii) (C):
Omit “approved”.

24.8 Clause 121.212:
Omit the clause, substitute:

“121.212 If the appointment is an approved appointment, the period that has elapsed since it became an approved appointment does not exceed 6 months.”.

24.9 Clauses 121.221 and 121.222:
Omit the clauses, substitute:

“121.221 The appointment for which the applicant has been nominated is an approved appointment in accordance with subregulation 5.19 (2) or (4).”.

25. Schedule 2, Part 126 (Independent)

[NOTE: The note following clause 126.11 should be replaced by the following note:

“[NOTE: ‘working age’ is defined in regulation 1.03. For ‘vocational English’, see regulation 1.15B.]”]

25.1 Clause 126.222:

Omit the words after “English List,”, substitute “the applicant has vocational English.”.

26. Schedule 2, new Part 135

26.1 After Part 131, insert the Part set out in the Schedule.

27. Schedule 2, Part 205 (Camp Clearance)

27.1 Omit the Part.

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

28.1 Omit the Part.

29. Schedule 2, Part 214 (Cambodian)

29.1 Omit the Part.

30. Schedule 2, Part 427 (Domestic Worker (Temporary)—Executive)

30.1 Subparagraph 427.222 (b) (iii):

Omit “(6) or (7).”, substitute “(2), (3), (4), (6), (7) or (9).”.

31. Schedule 2, Part 430 (Supported Dependent)

31.1 Clause 430.222:

Omit the clause, substitute:

“430.222 The Minister is satisfied that the applicant intends to stay temporarily in Australia.

“430.222A The applicant is a member of the family unit of a person who:

- (a) is:
 - (i) an Australian citizen; or
 - (ii) the holder of a permanent visa; or
 - (iii) the holder of a special category visa; or
 - (iv) a person who, on entry to Australia, will be the holder of a special category visa; and
- (b) the Minister is satisfied is usually resident outside Australia; and
- (c) the Minister is satisfied intends to remain temporarily in Australia; and
- (d) supports the application in writing.”.

32. Schedule 2, Part 805 (Skilled)

[NOTE: The note following the heading to Division 805.1 should be replaced by the following note:

- “[NOTE: 1. ‘approved appointment’ is defined in regulation 5.19.
 2. For ‘vocational English’, see regulation 1.15B.
 3. There are no interpretation provisions specific to this Part.]”.]

32.1 Paragraph 805.211 (1) (c):
 Omit “visa; or”, substitute “visa.”

32.2 Paragraph 805.211 (1) (d):
 Omit the paragraph.

32.3 Subclause 805.212 (2):
 Omit the subclause, substitute:

“(2) An applicant meets the requirements of this subclause if the applicant holds a qualifying visa within the meaning of subclause (2A).”.

32.4 Paragraph 805.213 (2) (c):
 Omit “55.”, substitute “45.”.

32.5 Paragraph 805.213 (3) (c):

Omit the paragraph, substitute:

- “(c) unless the appointment is exceptional, the applicant:
- (i) has not turned 45; and
 - (ii) has vocational English.”.

32.6 Paragraph 805.213 (4) (b):

Omit the paragraph.

32.7 Paragraph 805.213 (4) (c):

Omit “approved”.

32.8 After clause 805.213, insert:

“805.214 If the appointment is an approved appointment, the period that has elapsed since it became an approved appointment does not exceed 6 months.”.

PART 4—AMENDMENTS COMMENCING ON 1 JANUARY 1998

33. Schedule 1 (Classes of visas)

33.1 Paragraph 1104 (2) (a):

Omit “\$2,540”, substitute “\$3,040”.

33.2 Paragraph 1104A (2) (a):

Omit “\$2,540”, substitute “\$3,040”.

PART 5—TRANSITIONAL

34. Independent (Migrant) (Class AT) visa—addition of Subclass 135 (State/Territory-Nominated Independent)

34.1 The amendments made by subregulations 15.4 and 26.1 have effect in relation to an application for an Independent (Migrant) (Class AT) visa:

- (a) made, but not decided, before 1 November 1997; or
- (b) made on or after 1 November 1997.

SCHEDULE

Regulation 26

**NEW PART 135 FOR INSERTION IN SCHEDULE 2 TO THE
MIGRATION REGULATIONS**

**SUBCLASS 135—STATE/TERRITORY-NOMINATED
INDEPENDENT**

135.1 INTERPRETATION

135.111 In this Part:

“**medical practitioner**” includes a specialist medical practitioner;
“**usual occupation**”, in relation to an applicant, has the meaning set
out in subregulation 2.26 (5).

[NOTE: “working age” is defined in regulation 1.03 and “vocational English” is
defined in regulation 1.15B.]

135.2 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.]

135.21 Criteria to be satisfied at time of application

135.211 The applicant is less than 45 years of age.

135.22 Criteria to be satisfied at time of decision

135.221 The applicant has a degree, diploma or trade certificate
(within the meaning of subregulation 2.26 (5)) or a higher
qualification, 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 application.

135.222 (1) The applicant has been nominated by a State or
Territory government agency and the nomination has been accepted
by the Minister.

- (2) A nomination made under subclause (1) must be:
 - (a) made on the approved form; and

SCHEDULE—continued

- (b) lodged at an office of Immigration in the relevant State or Territory.

(3) The Minister must not accept a nomination if its acceptance would result in the number of Subclass 135 visa nominations made in a financial year, for a State or Territory, exceeding the maximum number of Subclass 135 visa nominations, as determined by Gazette Notice, that may be accepted, for that State or Territory, in that financial year.

135.223 The applicant has a score that is equal to, or more than, the pool mark specified in relation to this Subclass when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act.

[NOTE: The Subdivision of the Act mentioned (ss. 92 to 96) provides for the application of a “points” system under which applicants for relevant visas are given an assessed score based on the prescribed number of points for particular attributes, which is assessed against the relevant pool mark and pass mark. The prescribed points and the manner of their allocation are provided for in Division 2.6 (see regulation 2.26) and Schedule 6 of these Regulations. Pool marks and pass marks are set from time to time by the Minister by notice in the *Gazette* (s. 96 of the Act).]

135.224 (1) If the usual occupation of the applicant is an occupation included in the Occupations Requiring English List, the applicant has vocational English.

(2) If the usual occupation of the applicant is an occupation that is not included in the Occupations Requiring English List, the applicant has functional English.

135.225 The applicant:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
(b) if the applicant has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.

135.226 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.

SCHEDULE—continued

135.227 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 135 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.

(2) Each member of the family unit of the applicant who is not an applicant for a Subclass 135 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.

135.228 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 135 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.

135.229 Approval of the application would not result in the number of visas of particular classes (including Subclass 135) 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.

135.3 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.]

135.31 Criteria to be satisfied at time of application

135.311 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 135.21.

SCHEDULE—continued

135.32 Criteria to be satisfied at time of decision

135.321 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 135 visa.

135.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

135.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

135.324 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.

135.325 If the applicant is the dependent child of a person who is a holder of a Subclass 135 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 child.

135.4 CIRCUMSTANCES APPLICABLE TO GRANT

135.411 The applicant must be outside Australia when the visa is granted.

[NOTE: The second instalment of the visa application charge must be paid before the visa can be granted.]

135.5 WHEN VISA IS IN EFFECT

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

135.6 CONDITIONS

135.611 First entry must be made before a date specified by the Minister for the purpose.

SCHEDULE—continued

135.612 If the applicant satisfies the secondary criteria, either or both of conditions 8502 and 8514 may be imposed.

135.7 WAY OF GIVING EVIDENCE

135.711 Visa label affixed to a valid passport.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on *h* 24 September / 1997.
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, 211 and 276; 1997 Nos. 17, 64, 91, 92, 109, 137, 184, 185 and 216.