

# Migration Amendment Regulations 1998 (No. 8) 1998 No. 285

## EXPLANATORY STATEMENT

### STATUTORY RULES 1998 NO. 285

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

#### *Migration Act 1958*

#### Migration Amendment Regulations 1998 (No. 8)

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

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

- paragraph 504(1)(a) of the Act provides that the Regulations may provide for the charging and recovery of fees in respect of any matter under the Act or the Regulations;
- paragraph 504(1)(b) of the Act provides that the Regulations may make provision for the remission, refund or waiver of fees which may be prescribed by the Regulations, and for exempting persons from the payment of such fees; and
- paragraph 504(1)(g) of the Act provides that the Regulations may require an assurance of support to be given in respect of an applicant for a visa to enter and remain in Australia, and may provide for the enforcement of assurances of support and imposition of liabilities on an assurer.

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

- subsection 29(1) of the Act provides that the Minister may grant a visa to a non-citizen which permits the holder of the visa to travel to and enter, or remain in Australia;
- 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 40(1) of the Act provides that the Regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- section 41 of the Act provides that, without limiting the generality of the section, the Regulations may provide that visas or visas of a specified class are subject to specified conditions, including but not limited to a condition that a further visa cannot be granted and a condition restricting work rights;

- subsection 45(1) of the Act provides that the Regulations may make provision in relation to applications for visas;
- subsection 45(2) of the Act provides that, without limiting the generality of subsection 45(1), the Regulations may prescribe the way for making applications for a visa of a specified class in specified circumstances, and in specified circumstances for a visa of a specified class;
- subsection 45(3) of the Act provides that, without limiting the generality of subsection 45(1), the Regulations may provide for the place in which an applicant must be when an application for a visa of a specified class is made;
- section 45B of the Act provides that the amount of visa application charge is the amount ' not exceeding the visa application charge limit, prescribed in relation to the application;
- subsection 45C(1) of the Act provides that the Regulations may provide for visa application charge to be payable in instalments and specify how the instalments are to be calculated and when they are payable;
- subsection 45C(2) of the Act provides, amongst other things, that the Regulations may make provision for working out how much visa application charge is to be paid and the time the charge is to be paid;
- subsection 71(1) of the Act provides for the Regulations to prescribe the way in which evidence of a visa is to be given.

The purposes of the Regulations are to amend the Migration Regulations to reflect the Government's decision to strengthen the assurance of support scheme, and to amend the entry options for parents, retirees and aged dependent relatives with a view to minimising the costs to the Budget.

The Government has been concerned about the cost to the taxpayer associated with the large number of aged migrants seeking permanent residence in Australia:

- research has shown that older, less skilled migrants tend to be a net cost to the Budget; and
- unlike most other categories of migrants, this cost tends to rise over time.

Parents and other aged migrants make a major contribution to society in terms of the support they provide to their children, grandchildren and other relatives. Balancing the cost to the taxpayer of the entry of parents and other aged relatives and enabling overseas-born members of the community to be reunited with their parents has been an on-going challenge for successive Australian Governments. With the projected aging of Australia's population over the next 20 years and the grain that this will place on health and social services, the entry of parents and other aged relatives will progressively take on a more critical dimension.

It is against this background that on 8 April 1998, the Government announced changes to the arrangements for the entry of parents and other aged relatives. The changes to the Migration Regulations are designed to provide a range of entry options for potential sponsors and their parents to enable them to choose an option which best balances their family re-union needs against their capacity to meet the financial obligations incurred. The changes also recognise that there needs to be a fairer sharing of the costs associated with the entry of these people between the sponsors and applicants and the general taxpayers.

In particular, the Regulations:

- strengthen the assurance of support scheme by providing for income testing of assurers where the provision of an assurance is a mandatory criterion to be met for the grant of a visa (regulations 4 & 5);
- increase the assurance of support bond (regulation 6);
- replace existing entry options for parents and aged dependent relatives with new visa subclasses which streamline the requirements for visa grant (regulations 7 to 10, 12 and 13);
- create a permanent entry opportunity for self-funded retirees who are the parents of Australian children and have been the holder of a retirement visa for 10 years (subregulation 7.6 and regulation 13); and
- offset health costs of parent entry by increasing the existing once-off health charge for parents and aged dependent relatives - but only to a level which represents less than 20% of the average projected lifetime health costs to taxpayers in relation to females aged 61 years and males aged 65 years (subregulations 7.2, 7.3 and 7.6).

Details of the Regulations are set out in the Attachment.

The Regulations commence on 1 November 1998.

## ATTACHMENT

### Regulation 1 -Name of regulation

This regulation provides that these Regulations are the *Migration Amendment Regulations 1998 (No. 8)*.

### Regulation 2 - Commencement

This regulation provides that these Regulations commence on 1 November 1998.

### Regulation 3 - Amendment

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

### Regulation 4 - Regulation 2.36 (Form and duration of assurance of support)

This regulation provides that an assurance of support must include an undertaking to provide direct or indirect financial assistance that is sufficient to ensure that the applicant will not rely on any form of support listed in subregulation 2.38(1).

The relevant support is payable under the *Social Security Act 1991* and the *Student and Youth Assistance Act 1997*, and includes job search allowance, newstart allowance, special benefit, widow allowance, partner allowance, parenting allowance, youth training allowance, parenting payment (partnered) allowance, mature age allowance, youth allowance and Austudy payments.

### Regulation 5 - New regulation 2.36A.

The purpose of this regulation is to provide a specific income test for assurers where an assurance of support is a mandatory criterion for the grant of a visa and the relevant visa application was made after 1 November 1998.

The objective of the test is to ensure that persons proposing to give an assurance of support are in fact capable of complying with the undertakings required of an assurer. It is a more certain test of an assurer's financial capacity to provide support than the existing requirement that the assurer not be in receipt of defined social security benefits.

New regulation 2.36A. provides that the assurer must be employed, self-employed or otherwise generating taxable income.

The assurer must also provide evidence that for the two financial years preceding the giving of the assurance he or she has generated taxable income which is at least equal to the income free area under point 1069-H28 of the *Social Security Act 1991* (which is used for the purposes of assessing eligibility for obtaining Family Allowance at the maximum rate). The income free area device in that Act includes a mechanism for adjusting the level for the number of people that are dependent on the person being assessed.

### Regulation 6 - Regulation 2.39 (Bond (required assurances))

This regulation retains the current bond payable by a person who gives an assurance of support in respect of a visa applicant who has turned 18 where the application was made prior to 1 November 1998, and increases the bond in relation to applications made on or after 1 November 1998.

The increase in the amount of the bond is intended to bring it to approximately that level which it would have been had it been indexed from the time it was introduced in 1991.

The bond payable in relation to a visa applicant who is over 18 years of age and who satisfies the primary criteria for the grant of a visa is increased from \$3,500 to \$4,000. The bond payable in relation to an applicant who is over 18 years of age who satisfies the secondary criteria is increased from \$1,500 to \$2,000.

#### Regulation 7 - Schedule 1 (Classes of visas)

Subregulation 7.1 is a technical amendment which is consequential to the omission of Part 804 (Aged parent) of Schedule 2 to the Regulations (see regulation 11).

Subregulation 7.2 inserts new item 1123A after item 1123. New item 1123A contains a new visa Class: "Other Family (Migrant) (Class BO)".

The requirements for making a valid application in the new visa class "Other Family (Migrant) (Class BO)" are that:

- \* applications are to be made on form 47;
- \* the first instalment of the visa application charge is \$1,060;
- \* the second instalment of the visa application charge payable by an applicant:
  - who was 18 years or more at the time of application is \$5,000 (this charge represents less than 20% of the average projected lifetime health costs to taxpayers in relation to females aged 61 years and males aged 65 years); and
  - in any other case is \$945;
- \* applications must be made outside Australia;
- \* the applicants must be outside Australia; and
- \* applications by a member of the family unit may be made at the same time and place as, and combined with, the application of the applicant who must satisfy the primary criteria.

The class contains one subclass, Subclass 114 (Aged Dependent Relative). The criteria for the grant of a visa in this subclass are inserted into Schedule 2 of the Migration Regulations by regulation 10.

Subregulation 7.3 amends item 1124, in relation to the visa application charge for the Parent (Migrant) (Class AX) visa Class.

New subitem 1124(2) provides that:

- \* the first instalment of the visa application charge is:
  - "Nil" in relation to an aged parent who, prior to 1 November 1998, made a valid application for a Parent (Migrant) (Class AX) visa, consisting of Subclass 103 (Parent), in relation to which no primary decision to grant, or refuse to grant, has been made; and
  - \$1,060 in any other case;
- \* the second instalment of the visa application charge payable by an applicant:

- who was 18 years or more at the time of application is \$5,000; and
- in any other case is \$945.

Subregulation 7.4 inserts new paragraph 1124(3)(aa) which requires that an applicant for a Parent Migrant) (Class AX) visa must be outside Australia at the time of application,

Subregulation 7.5 omits Part 103 (Parent) and substitutes new Part 113 (Aged Parent) of Schedule 2 to the Regulations. Part 113 of Schedule 2 is inserted by regulation 10.

Subregulation 7.6 inserts new item 1124A which contains a new visa Class "Parent (Residence) (Class BP)".

The requirements for making a valid application in the new visa Class "Parent (Residence) (Class BP)" are that:

- \* applications are to be made on form 1083;
- \* the first instalment of the visa application charge is:
  - "Nil" in relation to an aged parent who, prior to 1 November 1998, made a valid application for a Family (Residence) (Class AO) or General (Residence) (Class AS) visa, in relation to which no primary decision to grant, or refuse to grant, has been made; and
  - \$1,570 in any other case;
- \* the second instalment of the visa application charge is:
  - "Nil" in the case of each applicant who held a Subclass 410 (Retirement) visa at the time of application; and
  - in any other case:
    - \* if the applicant was 18 years or more at the time of application \$5,000; or
    - \* if the applicant was under 18 years at the time of application - \$945;
    - \* applications must be made in Australia but not in immigration clearance;
    - \* the applicants must be in Australia but not in immigration clearance;
    - \* an application by a member of the family unit may be made at the same time and place as, and combined with, the application of the applicant seeking to satisfy the primary criteria;
    - \* an application must be accompanied by satisfactory evidence that:
      - the applicant is the aged parent of an Australian citizen, Australian permanent resident or eligible New Zealand citizen; and - either:
        - \* the applicant is the holder of a Subclass 410 (Retirement) visa; or
        - \* the applicant has made a valid application for a Family (Residence) (Class AO) or General (Residence) (Class AS) visa prior to 1 November 1998, and no primary decision to grant, or refuse to grant, has been made on that visa application.

The class contains one subclass, Subclass 819 (Aged Parent).

Subregulation 7.7 amends subitems 1301(1), 1303(1) and 1305(1) of Schedule 1 to the Regulations to include a reference to the application form for the new visa Class "Parent (Residence) (Class BP)", which is form 1083.

This ensures that an application made in Australia on that form is automatically an application for a Bridging Visa A, C and E. Grant of a bridging visa will ensure that the applicants for the new visas will be lawful while their applications are being assessed.

#### Regulation 8 - Schedule 2. Part 103 (Parent)

This regulation omits Part 103 (Parent) of Schedule 2 to the Regulations. This is a result of the Government's decision to establish new arrangements for the entry to Australia of parents and other aged relatives.

#### Regulation 9 - Schedule 2, Part 104 (Preferential Family)

This regulation makes a technical amendment to the Note following the heading to Division 104.1, consequential to the amendments to Part 104, outlined below.

Subregulations 9.1 and 9.2 amend paragraphs 104.211(2)(a), 104.224(b), 104.226(1)(b) and 104.324(b) to delete references to aged dependent relatives.

#### Regulation 10 - Schedule 2, New Parts 113 and 114

This regulation inserts new Parts 113 and 114 of Schedule 2 to the Migration Regulations. The new parts 113 and 114 are set out in Schedule 1 of these Regulations.

#### Regulation 11 - Schedule 2, Part 804 (Aged Parent)

This regulation omits Part 804 (Aged Parent) as a result of the Government's decision to make changes to the arrangements for the entry into Australia of parents and other aged relatives.

#### Regulation 12 - Schedule 2, Part 806 (Family)

This regulation makes a technical amendment to the Note following the heading to Division 806.1, consequential to the amendments to Part 806, outlined below.

Subregulations 12.1 and 12.2 amend paragraph 806.211(2)(d) and clause 806.213, respectively, to delete references to aged dependent relatives.

#### Regulation 13 - Schedule 2, new Part 819

This regulation inserts new Part 819 into Schedule 2, which is set out in Schedule 2 to these Regulations.

#### Schedule 1

##### New Parts 113 and 114 for insertion in Schedule 2

This Schedule contains new Parts 113 and 114 of Schedule 2 to the Regulations.

##### Subclass 113 - Aged Parent

The purpose of new Part 113 is to make provision for the grant of a Subclass 113 visa to an aged parent, to a working age parent with a minor dependent child in Australia, or to members of the family unit of an aged parent who satisfies the primary criteria.

New Division 113.2 provides for the primary criteria which must be satisfied by an applicant for the grant of a Subclass 113 visa.

New Subdivision 113.21 sets out the primary criteria to be satisfied at the time of application. In particular new clause 113.211 provides that an applicant meets the requirements of.

- \* subclause (2) - if the applicant is a working age parent with an under 18 year old dependent child in Australia who is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; and

- \* subclause (3) - if the applicant is an aged parent of a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen.

New. clause 113.212 requires that, if the applicant meets the requirements of subclause 113.211(2), the applicant is to be sponsored:

- \* by a settled dependent child of the applicant who has turned 18; or

- \* if the applicant has no settled dependent child who has turned 18:

- by a person who:

- \* is a close relative or guardian of a settled dependent child of the applicant who has not turned 18; and

- \* has turned 18; and

- \* is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; or

- by a community organisation.

New subclause 113.212(2) provides that "settled dependent child" means a dependent child of the applicant who is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen.

New clause 113.213 requires that, if the applicant meets the requirements of subclause 113.211(3), the applicant is to be sponsored:

- \* if the relevant child has turned 18, by:

- that child; or

- that child's cohabiting spouse, if that spouse:

- \* has turned 18; and

- \* is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; or

- \* if the relevant child has not turned 18, by:

- that child's cohabiting spouse, if that spouse:

- \* has turned 18; and

- \* is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; or



- a person who:

\* is a close relative or guardian of the relevant child; and

\* has turned 18; and

\* is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; or

- if the relevant child has a cohabiting spouse but the spouse has not turned 18 - a person who:

\* is a close relative or guardian of the relevant child's spouse; and

\* has turned 18; and

\* is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; or

- a community organisation.

New clause 113.213(4) provides that "relevant child" means the settled Australian citizen, settled Australian permanent resident or settled eligible New Zealand citizen.

New clause 113.214 requires the applicant to satisfy the balance of family test. The balance of family test is defined at regulation 1.03 of the Migration Regulations.

New Subdivision 113.22 sets out the primary criteria to be satisfied at the time of decision.

New clause 113.221 provides that the applicant must continue to satisfy the criterion specified in clause 113.211.

New clause 113.222 provides that the sponsorship referred to in clause 113.212 or

113.213 must be approved by the Minister and be still in force. 1

New clause 113.223 provides that the applicant must continue to satisfy the balance of family test.

New clause 113.224 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 113.225 requires that, if the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

New clause 113.226 requires that an assurance of support in relation to the applicant has been given and been accepted by the Minister.

New subclause 113.227(1) requires each member of the family unit of the applicant who is an applicant for a Subclass 113 visa to satisfy: public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and special return criteria 5001, 5002 and 5010, if the applicant has previously been in Australia.

New subclause 113.227(2) requires each member of the family unit of the applicant who is not an applicant for a Subclass 113 visa to satisfy:

- public interest criteria 4001, 4002, 4003 and 4004; and

- public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo such assessment.

New subclause 113.228 requires that if a combined application with the applicant is made by:

- a dependent child; or
- a child under 18, usually resident with the applicant;

the Minister must be satisfied that the grant of a Subclass 113 visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

New Division 113.3 provides for the secondary criteria which must be satisfied for the grant of a Subclass 113 visa.

New Subdivision 113.31 sets out the secondary criteria to be satisfied at the time of application.

New clause 113.311 provides that the applicant, at the time of application, must be a member of the family unit of, and have made a combined application with, a person who satisfies the primary criteria in Subdivision 113.21.

New clause 113.312 requires that, at the time of application, the sponsorship referred to in clauses 113.212 and 113.213 of the person who satisfies the primary criteria includes sponsorship of the applicant.

New Subdivision 113.32 sets out the secondary criteria to be satisfied at the time of decision.

New clause 113.321 provides that the applicant must continue to be a member of the family unit of a person who, having satisfied the primary criteria, holds a Subclass 113 visa.

New clause 113.322 provides that the sponsorship referred to in clause 113.312 must be approved by the Minister and be still in force.

New clause 113.323 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 113.324 requires that, if the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

New clause 113.325 requires that either:

- the applicant must be included in the assurance of support given in relation to the person who satisfies the primary criteria, and that the assurance has been accepted by the Minister; or
- an assurance of support in relation to the applicant has been given to, and been accepted by, the Minister.

New clause 113.326 requires that if the applicant is a dependent child, the Minister must be satisfied that the grant of a Subclass 113 visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

New clause 113.411 requires that the applicant must be outside Australia when the visa is granted. The Note remarks that the second instalment of the visa application charge must be paid before the visa can be granted.

New clause 113.511 provides that a Subclass 113 visa is a permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

New clause 113.611 requires that an applicant's first entry as the holder of a Subclass 113 visa must be made before a date specified by the Minister.

New clause 113.612 specifies that either or both of conditions 8502 and 8515 may be imposed.

New clause 113.711 requires that the visa be evidenced by way of a visa label affixed to a valid passport.

#### Subclass 114 - Aged Dependent Relative

The purpose of new Part 114 is to make provision for the grant of a Subclass 114 visa to an aged dependent relative, or to members of the family unit of an aged dependent relative who satisfies the primary criteria.

New Division 114.2 provides for the primary criteria which must be satisfied by an applicant for the grant of a Subclass 114 visa.

New Subdivision 114.21 sets out the primary criteria to be satisfied at the time of application.

New clause 114.211 provides that the applicant must be an aged dependent relative of a person (called the "Australian relative") who is an Australian citizen, an Australian permanent resident, or an eligible New Zealand citizen.

New clause 114.212 provides that the applicant must be sponsored by:

\* the Australian relative, if the Australian relative:

- has turned 18; and
- is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; or

\* the spouse of the Australian relative, if the spouse:

- cohabits with the Australian relative;
- is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen; and
- has turned 18.

New Subdivision 114.22 sets out the primary criteria to be satisfied at the time of decision.

New clause 114.221 provides that the applicant must continue to satisfy the criterion specified in clause 114.211.

New clause 114.222 provides that the sponsorship referred to in clause 114.212 must be approved by the Minister and be still in force.

New clause 114.223 requires the applicant to satisfy public interest criteria 400 1, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 114.224 requires that, if the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

New clause 114.225 requires that an assurance of support in relation to the applicant has been given and been accepted by the Minister.

New subclause 114.226(1) requires each member of the family unit of the applicant who is an applicant for a Subclass 114 visa to satisfy:

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

New subclause 114.226(2) requires each member of the family unit of the applicant who is not an applicant for a Subclass 114 visa to satisfy:

- public interest criteria 4001, 4002, 4003 and 4004; and
- public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo such assessment.

New clause 114.227 requires that if a combined application with the applicant is made by:

- a dependent child; or
- a child under 18, usually resident with the applicant;

the Minister must be satisfied that the grant of a Subclass 114 visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

New Division 114.3 provides for the secondary criteria which must be satisfied for the grant of a Subclass 114 visa.

New Subdivision 114.31 sets out the secondary criteria to be satisfied at the time of application.

New clause 114.311 provides that the applicant must be a member of the family unit of, and have made a combined application with, a person who satisfies the primary criteria in Subdivision 114.21.

New clause 114.312 requires that the sponsorship referred to in clause 114.212 of the person who satisfies the primary criteria includes sponsorship of the applicant.

New Subdivision 114.32 sets out the secondary criteria to be satisfied at the time of decision.

New clause 114.321 provides that the applicant must continue to be a member of the family unit of a person who holds a Subclass 114 visa.

New clause 114.322 provides that the sponsorship referred to in clause 114.312 must be approved by the Minister and be still in force.

New clause 114.323 requires the applicant to satisfy public interest criteria 400 1, 4002, 4003, 4004, 4005, 4009 and 40 10.

New clause 114.324 requires that, if the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

'New clause 114.325 requires that either:

- the applicant must be included in the assurance of support given in relation to the person who satisfies the primary criteria, and that the assurance has been accepted by the Minister; or

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

New clause 114.326 requires that if the applicant is a dependent child, the Minister must be satisfied that the grant of a Subclass 114 visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

New clause 114.411 requires that the applicant must be outside Australia when the visa is granted. The note remarks that the second instalment of the visa application charge must be paid before the visa can be granted.

New clause 114.511 provides that a Subclass 114 visa is a permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

New clause 114.611 requires that an applicant's first entry as the holder of a Subclass 114 visa must be made before a date specified by the Minister.

New clause 114.612 specifies that either or both of conditions 8502 and 8515 may be imposed.

New clause 114.711 requires that the visa is to be evidenced by way of a visa label affixed to a valid passport.

## Schedule 2

New Part 819 for insertion in Schedule 2

This Schedule contains new Part 819 of Schedule 2 to the Regulations.

### Subclass 819 - Aged Parent

The purpose of new Part 819 is to make provision for the grant of a Subclass 819 visa to an aged parent, or to members of the family unit of an aged parent who satisfies the primary criteria.

New Division 819.2 provides for the primary criteria which must be satisfied by an applicant for the grant of a Subclass 819 visa.

New Subdivision 819.21 sets out the primary criteria to be satisfied at the time of application.

New clause 819.211 requires that the applicant must be nominated for the grant of a Subclass 819 visa by a child of the applicant who has turned 18 and who is a settled Australian citizen, a settled Australian permanent resident, or a settled eligible New Zealand citizen.

New clause 819.212 requires that an applicant who is a Subclass 410 visa holder must satisfy the requirement that they have held a Subclass 410 (Retirement) visa, or equivalent visa or entry permit, for a period of 10 years from the date of the grant of their first Subclass 410 visa or equivalent visa or entry permit.

New clause 819.213 provides that if the applicant is not the holder of a substantive visa, the applicant must satisfy Schedule 3 criterion 3002.

New Subdivision 819.22 sets out the primary criteria to be satisfied at the time of decision.

New clause 819.221 requires the applicant to be an aged parent of the Australian citizen, Australian permanent resident or eligible New Zealand citizen of the person who nominated the applicant for the grant of the visa.

New clause 819.222 provides that the applicant must continue to satisfy the criterion specified in clause 819.211.

New clause 819.223 requires that, in the case of an applicant who made a valid application for a Family (Residence) (Class AO) or a General (Residence) (Class AS) visa in relation to which no primary decision to grant, or refuse to grant, has been made:

- the applicant must satisfy the balance of family test; and
- . an assurance of support in relation to the applicant must be given to, and be accepted by, the Minister.

New clause 819.224 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New subclause 819.225(1) requires each member of the family unit of the applicant who is an applicant for a Subclass 819 visa to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New subclause 819.225(2) requires each member of the family unit of the applicant who is not an applicant for a Subclass 819 visa to satisfy:

- public interest criteria 4001, 4002, 4003 and 4004; and
- public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo such assessment.

New clause 819.226 requires the Minister to be satisfied that the grant of a Subclass 819 visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, a dependent child of the applicant.

Division 819.3 provides for the secondary criteria which must be satisfied for the grant of a Subclass 819 visa.

New Subdivision 819.31 sets out the secondary criteria to be satisfied at the time of application.

New clause 819.311 provides that the applicant must be either:

- the spouse of an applicant for a Subclass 819 visa who meets the requirements of clause 819.212; or
- a member of the family unit of an applicant for a Subclass 819 visa who meets the requirements of clause 819.223;

and the Minister must not have decided to grant, or refuse to grant, the visa to that other applicant.

New Subdivision 819.32 sets out the secondary criteria to be satisfied at the time of decision.

New clause 819.321 provides that the person referred to in clause 819.311 of whom the applicant is the spouse, or of whose family unit the applicant is a member, must be the holder of a Subclass 819 visa, having satisfied the primary criteria.

New clause 819.322 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 819.323 provides that, if an assurance of support is required, either:

- an assurance of support in relation to the relevant person who satisfies the primary criteria, including the applicant, has been given, and been accepted by the Minister; or

- an assurance of support in relation to the applicant has been given to, and been accepted by, the Minister.

New subclause 819.324 requires that if the applicant is a dependent child, the Minister must be satisfied that the grant of a Subclass 819 visa to the child would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

New clause 819.411 requires that the applicant must be in Australia, but not in immigration clearance, when the visa is granted.

New clause 819.511 provides that a Subclass 819 visa is a permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

New Division 819.6 provides that there are no conditions attached to visas of this Subclass.

New clause 819.711 required that the visa be evidenced by way of a visa label affixed to a passport.