

Migration Amendment Regulations 1999 (No. 5) 1999 No. 76

EXPLANATORY STATEMENT

STATUTORY RULES 1999 NO. 76

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

Migration Act 1958

Migration Amendment Regulations 1999 (No. 5)

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.

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

- 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)(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 for the liabilities of an assurer,
- 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 39(1) of the Act provides that regulations may prescribe criteria for visas of a class which limit the number of visas of that class granted in a particular financial year;
- 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 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, 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 46(2) of the Act provides for prescribing a class of visas an application for which may be under the regulations to have been validly made;
- subsection 7 1 (1) of the Act provides for the regulations to prescribe the way in which evidence of a visa is to be given;
- subsection 93(1) of the Act provides for the qualifications and number of points for each of those qualifications to be prescribe for the purposes of assessment of the applicant's score under the general points system; and
- paragraph 116(1)(g) of the Act provides for the grounds for cancelling a visa to be prescribed.

The purpose of the Regulations is to amend the *Migration Regulations 1994* to implement changes to points tested visas arising from the recommendations of the Review of the Independent and Skilled Australian Linked Categories, and to make other changes. In particular, the Regulations:

- establish two new visa classes: Skilled - Australian-sponsored (Migrant) (Class BQ) and Skilled -Independent (Migrant) (Class BN), and prescribe how a valid application for a Class BQ or Class BN visa may be made. New Classes BQ and BN will:
- require applicants to select their own skilled occupation against which they wish to be assessed for migration purposes; require applicants to have their skills assessed by relevant assessing authorities before they lodge their application; and introduce minimum threshold requirements for each of the core selection criteria of skills, age and English Language ability (items 1103 to 1105, 1109, 1121, 1123, 1203, 1206, 1207, 1301, 1303 and 1314);
- establish two new visa subclasses under visa Class BQ: visa Subclass 138 (Skilled Australian-sponsored), to parallel, but for the requirements listed above, and replace visa Subclass 105 (Skilled-Australian Linked), and visa Subclass 139 (Skilled - Regional sponsored), to parallel, but for the requirements listed above, and replace visa Subclass 106 (Regional Linked). Applicants for a new visa Subclass 139 will be able to meet the English language criterion if they:
- have vocational level English; or have functional level English, and pay a fee to a State/Territory government prior to visa grant to cover the cost of upgrading their English skills onshore. State or Territories which have acceptable arrangements in place for this purpose, will be gazetted by the Minister (item 1303);
- establish two new visa subclasses under visa Class BN: visa Subclass 136 (Skilled Independent), to parallel, but for the requirements listed above, and replace visa Subclass 126 (Independent), and visa Subclass 137 (Skilled - State/Territory-nominated Independent), to

parallel, but for the requirements listed above, and replace visa Subclass 135 (State/Territory Nominated Independent) (item 1303);

- establish a new points test in Schedule 6A to apply to post-1 July applicants for a Class BQ or BN visa (items 1101, 1102, 1121, 1123 and 1401);
- establish a new visa class to be known as Skill Matching (Migrant) (Class BR), and prescribe how a valid application for a Class BR visa may be made. Class BR will contain new visa Subclass 134 (Skill Matching), to parallel new visa Subclass 137 (Skilled - State/Territory-nominated Independent), but is not, however, a point-tested visa category (items 1127, 1201, 1202, 1204, 1301 and 1302);
- prescribe a new ground of cancellation for Business (Long Stay) (Subclass 457) visas and amend the criteria for the grant of such a visa (regulation 4, items 1124 to 1126, and 1304 to 1308);
- facilitate the entry of visitors as members of group tours under the People's Republic of China Approved Destination Status Scheme (regulation 4, items 1210, 1211, 1309 to 1313, 1501 and 1502);
- allow applications for Electronic Travel Authorities, to be made in Australia at the offices of approved agents (items 1107, 1108, 1110, 1208 and 1209); and
- make technical amendments (items 1106, 1108, 1111 11120, 1122, 1124, 1205 and 1314).

Details of the Regulations are set out in the Attachment.

The Regulations commence on 1 July 999.

ATTACHMENT

Regulation 1 - Name of regulations

This regulation provides that these regulations are the *Migration Amendment Regulations 1999* (No. 5).

Regulation 2 - Commencement

This regulation provides that these regulations commence on 1 July 1999.

Regulation 3 - Amendment of *Migration Regulations 1994*

This regulation provides that Schedule 1 to these regulations amends the *Migration Regulations 1994*.

Regulation 4 - Transitional

This regulation provides that the changes made to the criteria for the grant of a Subclass 676 (Tourist (Short Stay)) visa and a Subclass 457 (Business (Long Stay)) visa only apply to applications made on or after 1 July 1999.

Schedule 1 - Amendments

Part 1 - Amendments of Part 1, 2 and 5

Item 1101 - Regulation 1.03, after definition of *designated APEC economy*

This item inserts a definition for the new term "designated language" to mean a language that is specified by Gazette Notice as a designated language, and a definition for the new term "designated security" to mean an investment in a security specified under new regulation 2.26C. Both of these terms are relevant to new Schedule 6A.

Item 1102 - Regulation 1.03, after definition of *Migration (1993) Regulations*

This item inserts a definition for the new term "migration occupation in demand", relevant to new Schedule 6A, to mean a skilled occupation that is specified by Gazette Notice as a migration occupation in demand.

Item 1103 - Regulation 1.03, after definition of *relative*

This item inserts a definition for the new term "relevant assessing authority" to mean a person or body specified under new regulation 2.26B.

Item 1104 - Regulation 1.03, after definition of *settled*

This item inserts a definition for the new term "skilled occupation" to mean an occupation that is specified by Gazette Notice as a skilled occupation, for which a number of points specified in the Notice are available.

Item 1105 - Regulation 1.15B

This item amends the current definition of "vocational English" to have two definitions of vocational English, depending on the date a person lodged his or her visa application to migrate to Australia.

A person who on or after 1 July 1999, being the date of commencement of these regulations, applies for a visa, a criterion for the grant of which is that the person has vocational English, will be considered to have vocational English if.

* the person satisfies the Minister that the person has achieved an International English Language Testing System (IELTS) score of at 1~ 5 for each of the 4 test components of speaking, reading, writing and listening in a test conducted not more than 12 months before the day on which the application was lodged, or during the processing of the application; or

* the Minister determines that it is not reasonably practicable, or not necessary, for the person to be tested using the IELTS test, and is satisfied that the person is proficient in English to a standard that is at least the standard required under the previous paragraph.

A person who before 1 July 1999 applies for a visa, a criterion for the grant of which is that the person has vocational English, will be subject to the same definition of vocational English as, currently exists in the regulations.

Item 1106 - Regulation 1. 19

This item is a technical amendment.

Item 1107 - Subregulation 2.07AB(1)

This item amends subregulation 2.07AB(1) to prescribe how an application for an Electronic Travel Authority (Class UD) may be validly made both inside and outside Australia.

Item 1108 - Paragraph 2.07AB(1)(g)

This item is a technical amendment.

Item 1109 -Regulations 2.08C and 2.08D

This item makes technical and other amendments to regulation 2.08C to provide that, in addition to Independent (Migrant) (Class AT) applicants, applicants for a Skilled Independent (Migrant) (Class BN) visa or a Skill Matching (Migrant) (Class BR) visa, who have been nominated by an employer in respect of an appointment in the business of that employer, are also taken to have applied for an Employer Nomination (Migrant) (Class AN) visa in certain circumstances.

These amendments are consequential to the creation of the new Skilled - Independent (Migrant) (Class BN) and Skill Matching (Migrant) (Class BR) visa classes.

This item also substitutes new regulation 2.08D allowing the Minister to invite applicants for an Independent (Migrant) (Class AT) visa or a Skilled - Australian-linked (Migrant) (Class AJ) visa to make a further first-instalment free application for a Skilled - Independent (Migrant) (Class BN) visa or a Skilled - Australian-sponsored (Migrant) (Class BQ) visa. The Minister may only do so if the following circumstances are met:

* on or after 1 July 1999, the Minister made an assessment under subsection 93(1) of the Act for the Class AT or Class AJ application; and

- * the application was refused, or put into a pool under paragraph 94(3)(b) of the Act; and
- * the Minister is satisfied that if the person had applied for a Class BN or Class BQ visa, it is likely that the application would have been granted.

A person invited to make a further application can only do so within 12 months after the day on which he or she receives the invitation.

Item 1110 - Subparagraph 2.10(1)(b)(i)

This item provides that an application for an Electronic Travel Authority (Class UD) made in Australia (but not in immigration clearance) must be made at an office of an approved agent.

Item 1111 - Regulation 2.26, heading

This item is a technical amendment to specify that regulation 2.26 outlines the prescribed qualifications and number of points applicable to Independent (Migrant) (Class AT) and Skilled - Australian-linked (Migrant) (Class AJ) visas.

Item 1112 - Before subregulation 2.26(1)

This item inserts new subregulation 2.26(1 A) specifying that regulation 2.26 applies to Independent (Migrant) (Class AT) or Skilled - Australian-linked (Migrant) (Class AJ) visa applicants.

Item 1113 - Subregulation 2.26(2),

This item is a technical amendment omitting the note under subregulation 2.26(2) given that it has become irrelevant.

Item 1114 - Paragraph 2.26(3)(a)

Item 1115 - Paragraph 2.26(3)(c)

Item 1116 - Paragraph 2.26(3)(d)

Item 1117 - Paragraph 2.26(4)(a)

These items are technical amendments which substitute references to "an applicant" with "the applicant".

Item 1118 - Paragraph 2.26(4)(a)

This item substitutes "and" with "or" so that only one of the paragraphs under subregulation 2.26(4) must be satisfied by the applicant.

Item 1119 - Subregulation 2.26(5), definition of *relevant Australian authority*, paragraph (a)

This item is a technical amendment.

Item 1120 - Paragraph 2.26(6)(b)

This item omits paragraph 2.26(6)(b) and substitutes new paragraph 2.26(6)(b). New paragraph 2.26(6)(b) no longer provides that, in relation to a step-relationship in Part 4 of Schedule 6, the applicant and the relevant step-relative must be members of the same family unit at the time of the relevant application. Where an applicant has a step-relationship, it will, therefore, be easier to establish under the points-tested classes.

Item 1121 -After regulation 2.26

This item inserts new regulation 2.26A, which deals with the prescribed qualifications and number of points in relation to new Skilled - Independent (Migrant) (Class BN) and Skilled Australiansponsored (Migrant) (Class BQ) visa classes.

New subregulation 2.26A(1) provides that new regulation 2.26A applies to Skilled Independent (Migrant) (Class BN) or Skilled - Australian-sponsored (Migrant) (Class BQ) visa applicants.

New subregulation 2.26A(2) prescribes certain qualifications in new Schedule 6A for subsection 93(1) of the Act, in relation to the grant, to the applicant, of a Subclass 136 (Skilled - Independent), Subclass 137 (Skilled - State/Territory-nominated Independent) or Subclass 138 (Skilled - Australian-sponsored) visa.

New subregulation 2.26A(3) provides that in relation to a prescribed qualification specified in column 2 of new Schedule 6A, the number of points specified in Column 3 are prescribed.

New subregulation 2.26A(4) provides certain restrictions in relation to numbers of points for prescribed qualifications in respect of an applicant for a Skilled - Independent (Migrant) (Class BN) or Skilled - Australian-sponsored (Migrant) (Class BQ) visa.

New subregulation 2.26A(5) is similar to existing subregulation 2.26(4). However, it does' not include a reference to the "ACCESS" test as only the IELTS test will be relevant in respect of applications for Skilled - Independent (Migrant) (Class BN) and Skilled Australian-sponsored (Migrant) (Class BQ) visas.

New subregulation 2.26A(6) provides definitions of "degree", "diploma", and "trade qualification" for the purposes of Part 6 of new Schedule 6A.

New subregulation 2.26A(7) provides a definition of "employed" for the purposes of Parts 4, 5 and 8 of Schedule 6A.

New subregulation 2.26A(8) provides that a reference to adoption is a reference to an adoption occurring before the adopted person turned 18, and that a step-relationship is where the applicant and the relevant step-relative have been members of the same family unit for a reasonable period. This subregulation is relevant to Part 9 of Schedule 6A.

Item 1121 also inserts new regulation 2.26B allowing the Minister, by notice in the *Gazette*, to specify a person or body as the relevant assessing authority for a skilled occupation, provided the Minister or National Office of Overseas Skills Recognition has approved that person or body.

In addition, item 1121 inserts new regulation 2.26C allowing the Minister, by notice in the *Gazette*, to specify a security issued by a State or Territory government authority as a security in which an investment can be made for the purposes of receiving bonus points under Part 8 of Schedule 6A. This provision is closely modelled on existing regulation 5. 19A.

Item 1122 -Regulation 2.27,

This item is a technical amendment to provide that regulation 2.27 applies to applicants for a Skilled - Australian-linked, (Class AJ) visa.

Item 1123 - After regulation 2.27

This item inserts new regulations 2.27A and 2.27B.

New regulation 2.27A is similar to existing regulation 2.27, but applies in respect of applicants for Skilled - Australian-sponsored (Class BQ) visas. Generally, new regulation 2.27A provides for an applicant for a Skilled - Australian-sponsored (Class BQ) visa to be taken to have received the pass or pool mark if the sum of points that the applicant's spouse could receive, or has received, under certain Parts of new Schedule 6A equals or exceeds the pass or pool mark.

New regulation 2.27B provides for the Minister to request that a person have his or her skills assessed for another skilled occupation in certain circumstances. The regulation only applies in respect of a person who is an applicant for a Skilled - Independent (Migrant) (Class BN) or Skilled -Australian-sponsored (Migrant) (Class BQ) visa.

The provision allows the Minister, on an apparent incompatibility between an applicant's nominated occupation and an applicant's qualifications or work history, to require the applicant to have his or her skills assessed under a more appropriate occupational category. This provision will apply mainly to persons who work in occupations requiring registration or licensing (such as, for example, health professionals) but who nominate an occupation that does not require registration or licensing.

Item 1124 - Paragraph 2.43(1)(k)

This item is a technical amendment.

Item 1125 - After paragraph 2.43(1)(k)

This item inserts a new prescribed ground of cancellation for the purposes of section 116 of the Act. The new ground enables the Minister to cancel a Business (Long Stay) (Subclass 457) visa where the business sponsor has failed to comply with the sponsorship undertaking, or has given Immigration incorrect information in relation to the application for approval as a business sponsor (if one was provided) or any other matter relating to the business sponsor. The ground of cancellation applies whether or not the business sponsor's approval to be a business sponsor has ceased or is still in effect.

Item 1126 - After subregulation 2.43(2)

This item defines "business sponsor" for the purposes of subregulation 2.43(1) to mean:

- * a person approved as a Standard Business Sponsor or a Pre-qualified Business Sponsor (whether or not the approval has ceased); or
- * a person who has given a business sponsor's undertaking on form 1067.

Item 1127 - After regulation 5.41

This item inserts new regulation 5.42 to provide that a skill matching fee of \$150 is payable at the time an application is made for a Skill Matching (Migrant) (Class BR) visa.

Part 2 - Amendments of Schedule 1

Item 1201 - Subparagraph 1114(2)(b)(ii)

This item makes a technical amendment to subparagraph 1114(2)(b)(ii), consequential to new subparagraph 1114(2)(b)(iv)

Item 1202 - Subparagraph 1114(2)(b)(iv)

This item makes technical amendments to paragraph 1114(2)(b) and provides a new circumstance in subparagraph 1114(2)(b)(iv) for an Employer Nomination (Migrant) (Class AN) visa application to be valid. The amendments in new subparagraph 1114(2)(b)(iv) are consequential to the amendments to, new regulation 2.08C, above.

New subparagraph 1114(2)(b)(iv) provides that the second instalment of the visa application charge payable by an applicant for a Skill Matching (Migrant) (Class BR) visa who is taken, under regulation 2.08C, to have applied for a Class AN visa is \$1,060, in addition to any charge payable under paragraph 11 14(2)(b)(ii).

Item 1203 - After paragraph 1120(3)(b)

This item provides that an application for an Independent (Migrant) (Class AT) visa must be made before 1 July 1999. That is, on and after 1 July 1999, it will no longer be possible to apply for an Independent (Migrant) (Class AT) visa.

Item 1204 -After item 1128

This item inserts a new visa class into Schedule 1 to the Regulations, to be known as "Skill Matching (Migrant) (Class BR)". This Class contains new Subclass 134 (Skill Matching). The requirements for making a valid application for a Skill Matching (Migrant) (Class BR) visa are set out in new Item 1 128AA. The requirements are that the:

- * application is to be made on form 47SK;
 - * second instalment of the visa application charge (payable before grant of the visa) is \$1,060, and, in addition, for each applicant aged 18 or older at the time of application who is assessed as not having functional English, is \$2,240;
 - * application must be made outside Australia;
 - * application by a person claiming to be a member of the family unit of a person who is an applicant for a Skill Matching (Migrant) (Class BR) visa may be made at the same time and place as, and combined with, the application by that person;
- 0 application must be accompanied by satisfactory evidence that a relevant assessing authority has assessed the skills of the applicant for his or her nominated skilled occupation; and
- * application must be accompanied by satisfactory evidence that the applicant has provided the personal and occupational information required for inclusion in Immigration's skill matching database.

In relation to the second instalment of the visa application charge mentioned above, if a combined application is made, for example, \$1,060 is payable once in relation to that application.

However, if more than one person also meets subparagraph 1128AA(2)(b)(ii), then \$2,240 is payable in respect of each person who meets that subparagraph, despite the fact that only one application has been made.

Immigration's skill matching database is a database which enables State and Territory Governments to identify potential migrants with skills that are in demand.

New Class BR gives effect to the Government's objective of encouraging the migration of highly skilled people to regional or low growth areas within Australia.

Item 1205 - Subitem 1128A(2), note

This item is a technical amendment.

Item 1206 - After paragraph 1128A(3)(b)

This item provides that an application for a Skilled - Australian Linked (Migrant) (Class Ai) visa must be made before 1 July 1999. That is, on and after 1 July 1999, it will no longer be possible to apply for a Skilled - Australian Linked (Migrant) (Class AJ) visa.

Item 1207 -After item 1128A

This item inserts new items 1128B and 1128C into Schedule 1 to the Regulations, to be known as "Skilled - Australian-sponsored (Migrant) (Class BQ)" and "Skilled - Independent (Migrant) (Class BN)" respectively.

The two new points-tested visa classes replace existing Independent (Migrant) (Class AT) and Skilled-Australian Linked (Migrant) (Class AJ) visa classes, for which it will not be possible to lodge an application on or after 1 July 1999.

New item 1128B contains new Subclass 138 (Skilled - Australian-sponsored) and new Subclass 139 (Skilled - Regional-sponsored). In particular, new Item 1128B provides that:

- * applications are to be made on Form 47SK;
- * the first instalment of the visa application charge is \$1,060, except where an applicant has applied under regulation 2.081) for a Skilled - Australian-sponsored (Migrant) (Class BQ) visa;
- * the second instalment of the visa application charge is nil, except in respect of each applicant who was age 18 or older at the time of application and who is assessed as not having functional English. In this circumstance, the visa application charge is \$2,240;
- * applications must be made outside Australia;

- * application by a person claiming to be a member of the family unit of a person who is an applicant for a Skilled - Australian-sponsored (Migrant) (Class BQ) visa may be made at the same time and place as, and combined with, the application by that person; and
- * applications must be accompanied by satisfactory evidence that a relevant assessing authority has assessed the skills of the applicant, or his or her spouse, for his or her nominated occupation.

New item 1128C contains new Subclass 136 (Skilled - Independent) and new Subclass 137 (Skilled - State/Territory-nominated Independent). In particular, new Item 1128C provides that:

- * applications are to be made on Form 47SK;
- * the first instalment of the visa application charge is \$1,060, except where an applicant has applied under regulation 2.081) for a Skilled - Independent (Migrant) (Class BN) visa;
- * the second instalment of the visa application charge is nil, except in respect of each applicant who was age 18 or older at the time of application and who is assessed as not having functional English. In this circumstance, the visa application charge is \$2,240;
- * applications must be made outside Australia;
- * application by a person claiming to be a member of the family unit of a person who is an applicant for a Skilled - Independent (Migrant) (Class BN) visa may be made at the same time and place as, and combined with, the application by that person; and
- * applications must be accompanied by satisfactory evidence that a relevant assessing authority has assessed the skills of the applicant for his or her nominated occupation.

Item 1208 - Paragraph 1208A(3)(a)

This item provides that an application for an Electronic Travel Authority (Class LTD) may be validly made in or outside Australia.

Item 1209 -Paragraph 1208A(3)(ba)

This item provides that an applicant for an Electronic Travel Authority (Class UD) must be outside Australia at the time of application, unless the application is made while in immigration clearance.

Item 12 10 - Paragraph 1218(1)(a)

This item provides that Form 48G is applicable where the applicant is outside Australia, a citizen of the PRC, and is intending to travel to Australia as a member of a tour organised by a travel agent specified in a Gazette Notice ("an ADSS applicant"). The Approved Destination Status Scheme (ADSS) is a scheme of the PRC. Essentially China only permits its citizens to travel as tourists to certain approved countries. Australia is now part of that scheme, following the ratification of an agreement between the PRC and Australia.

Item 1211 - After paragraph 1218(3)(b)

This item inserts new paragraph 1218(3)(ba) which provides that an ADSS applicant must be in the PRC and make their application at a diplomatic or consular office maintained by, or on behalf of, the Commonwealth in the PRC.

Part 3 - Amendments of Schedule 2

Item 1301 - Sub-subparagraphs 121.211(3)(c)(i)(A), (B) and (C)

This item makes technical and other amendments to subparagraph 121.211(3)(c)(i).

The changes to subparagraph 121.211(3)(c)(i) include the following:

- * new sub-subparagraph 121.211(3)(c)(i)(A) includes references to the Skilled - independent (Migrant) (Class BN) visa and to the new Skill Matching (Migrant) (Class BR) visa;
- * the criteria in new sub-subparagraph 121.211(3)(c)(i)(B) only apply in respect of the Independent (Migrant) (Class AT) visa Class; and
- * new sub-subparagraph 121.211(3)(c)(i)(C) provides new criteria in respect of Class BN or BR visas.

Item 1302 -After Part 131

This item inserts new Part 134 (Skill Matching) into Schedule 2 to the Regulations, consequential to the Government's recent review of the points test.

The points test does not apply in respect of new Subclass 134 (Skill Matching). Rather, new Subclass 134 provides a low cost alternative to certain points-tested visas and will attract applications from people who meet certain threshold criteria such as skill, language and age but who are unable to meet the prevailing pass mark in respect of the points test.

Subclass 134 -Skill Matching

New clause 134.111 provides for the definition of "completed" to include having met the requirements for award of a degree, diploma or trade qualification. The clause also refers to provisions of the Regulations which set out the meanings of "degree", "diploma", "employed" and "trade qualification".

New Subdivision 134.21 sets out the primary criteria to be satisfied at time of application. In particular, the applicant must:

- * be less than 45 years of age;
- * have vocational English within the meaning of regulation 1. 15B;
- * have nominated a skilled occupation within the meaning of regulation 1.03;
- * have received a suitable skills assessment, carried out by a relevant assessing authority within the meaning of regulations 1.03 and 2.26B;
- * have been employed in any skilled occupation for a total of at least 6 months in the 12 months immediately before the day on which the application was lodged (except where the

applicant has completed a certain type of qualification in the 6 months before making the application); and

- * have provided certain information for inclusion in Immigration's skill matching database.

New Subdivision 134.22 sets out the primary criteria to be satisfied at time of decision. In particular, the applicant must:

- * not have evidence against him or her of false or misleading information given or used as part of the assessment mentioned in paragraph 1128AA(3)(c); and
- * be nominated by a State or Territory government agency within 2 years of the applicant having been assessed as meeting the primary criteria to be satisfied at time of application_ The nomination must be made on Form 1100 and lodged at an office of Immigration.

Applicants for a Subclass 134 (Skill Matching) visa will be subject to the same public interest, special return and secondary criteria, circumstances applicable to grant, length of time visa is in effect, conditions, and way of giving evidence as applicants for a Subclass 135 (State/Territory Nominated Independent) visa.

Item 1303 - After Part 135 -

This item inserts new Parts 136 (Skilled - Independent), 137 (Skilled - State/Territory nominated Independent), 138 (Skilled - Australian-sponsored) and 139 (Skilled - Regional sponsored) into Schedule 2 to the Regulations.

Subclass 136 - Skilled - Independent

New Part 136 makes provision for the grant of a Subclass 136 (Skilled - Independent) visa to skilled applicants who meet the pass mark when assessed against the points test. New Subclass 136 replaces Subclass 126 (Independent), and is intended to provide for the migration of young, highly skilled people who do not necessarily have close links to Australia but who will quickly make a contribution to Australia's economy.

New clause 136.111 provides for the definition of "complete" to include having met the requirements for award of a degree, diploma or trade qualification. The clause also refers to provisions of the Regulations which set out the meanings of "degree", "diploma", "employed" and "trade qualification".

New Subdivision 136.21 sets out the primary criteria to be satisfied at time of application. in particular, the applicant must:

- * be less than 45 years of age;
- * have nominated a skilled occupation within the meaning of regulation 1.03; and
- * have been employed in any skilled occupation for: - a total of at least 12 months in the 18 months immediately before the day on which the application was lodged, where 60 points are specified by Gazette Notice as available for the skilled occupation nominated in the application; or - a total of at least 24 months in the 36 months, immediately before the day on which the application was lodged, where 46 or 50 points are specified by Gazette Notice as available for the skilled occupation nominated in the application unless in the 6 months immediately before the day on which the application was lodged, as a result of at least 1 year of full-time study in

Australia, the applicant has completed a degree, diploma or trade qualification for award by an Australian educational institution.

New Subdivision 136.22 sets out the primary criteria to be satisfied at time of decision. In particular, the applicant must:

- * if regulation 2.27B applies (regarding skills assessments for skilled occupations), have provided the skills assessment mentioned in subregulation 2.27B(4);
- * have received a suitable skills assessment, carried out by a relevant assessing authority within the meaning of regulation 1.03;
- * have a score that is equal to or more than the applicable pass mark when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act (the points system);
- * have vocational English within the meaning of regulation 1.15B; and
- * not have evidence against him or her of false or misleading information given or used as part of his or her skills assessment.

Applicants for a Subclass 136 (Skilled - Independent) visa will be subject to the same public interest, special return, assurance of support and secondary criteria, circumstances applicable to grant, length of time visa is in effect, conditions, and way of giving evidence as applicants for a Subclass 126 (Independent) visa.

Subclass 137 - Skilled - State/Territory-nominated Independent

Item 1303 also inserts new Part 137 (Skilled - State/Territory-nominated Independent) into Schedule 2 to the Regulations.

New Subclass 137 (Skilled-State/Territory-nominated Independent) is one of two points tested subclasses contained in new visa class Skilled-Independent (Migrant) (Class BN), and is intended to replace visa Subclass 135 (State/Territory-Nominated Independent).

The criteria under new Subclass 137 are similar to the criteria under Subclass 135 (State/Territory Nominated Independent), with the exception of certain threshold requirements.

New clause 137.111 provides for the definition of "completed" to include having met the requirements for award of a degree, diploma or trade qualification. The clause also refers to provisions of the Regulations which set out the meanings of "degree", "diploma", "employed!" and "trade qualification".

New Subdivision 137.21 sets out the primary criteria to be satisfied at time of application. In particular, the applicant must:

- * be less than 45 years of age;
- * have nominated a skilled occupation within the meaning of regulation 1.03;
- * have received a suitable skills assessment, carried out by a relevant assessing authority within the meaning of regulations 1.03 and 2.26B; and
- * have been employed in any skilled occupation for:

- a total of at least 12 months in the 18 months, immediately before the day on which the application was lodged, where 60 points are specified by Gazette Notice as available for the skilled occupation nominated in the application; or

- a total of at least 24 months in the 36 months, immediately before the day on which the application was lodged where 40 or 50 points are specified by Gazette Notice as available for the skilled occupation nominated in the application; unless in the 6 months immediately before the day on which the application was lodged, as a result of at least 1 year of full-time study in Australia, the applicant has completed a degree, diploma or trade qualification for award by an Australian educational institution.

New Subdivision 137.22 sets out the primary criteria to be satisfied at time of decision. In particular, the applicant must:

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

* have vocational English within the meaning of regulation 1.1511;

* not have evidence against him or her of false or misleading information given or used as part of the assessment mentioned in paragraph 1128C(3)(c); and

0 be nominated by a State or Territory government agency. The nomination must be made on Form 1100 and lodged at an office of Immigration.

Applicants for a Subclass 137 (Skilled - State/Territory-nominated Independent) visa will be subject to the same public interest, special return and secondary criteria, circumstances applicable to grant, length of time visa is in effect, conditions, and way of giving evidence as applicants for a Subclass 135 (State/Territory-Nominated Independent) visa.

Subclass 138 - Skilled - Australian-sponsored

New Part 138 makes provision for the grant of a Subclass 138 (Skilled - Australian sponsored) visa to skilled applicants who meet the pass mark when assessed against the points test. New visa Subclass 1,38 replaces visa Subclass 105 (Skilled-Australian Linked), and is intended to provide for the migration of young, highly skilled people with close links to Australia, and who will quickly make a contribution to Australia's economy.

New clause 138.111 provides for the definition of "completed" to include having met the requirements for award of a degree, diploma or trade qualification. The clause also refers to provisions of the Regulations which set out the meanings of "degree", "diploma", "employed" and "trade qualification".

New Subdivision 138.21 sets out the primary criteria to be satisfied at time of application. In particular, the applicant must: have one of the following relationships to the sponsor who has turned 18 and is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen: - a parent (within the meaning of regulation 1.03);

- a child (natural, adoptive or step other than a dependent child);

- a brother or sister (natural, adoptive or step); or

- a nephew or niece (natural, adoptive or step);

be sponsored by the sponsor;

have an assurance of support which has been accepted by the Minister,

be less than 45 years of age;

have nominated a skilled occupation within the meaning of regulation 1.03;

have been employed in any skilled occupation for:

- a total of at least 12 months in the 18 months, immediately before the day on which the application was lodged, where 60 points are specified by Gazette Notice as available for the skilled occupation nominated in the application; or

- a total of at least 24 months in the 36 months, immediately before the day on which the application was lodged, where 40 or 50 points are specified by Gazette Notice as available for the skilled occupation nominated in the application;

unless in the 6 months immediately before the day on which the application was lodged, as a result of at least 1 year of full-time study in Australia, the applicant has completed a degree, diploma or trade qualification for award by an Australian educational institution.

New Subdivision 13 8.22 sets out the primary criteria to be satisfied at time of decision. In particular, the applicant must: continue to be sponsored by the sponsor, and the sponsorship must have been approved by the Minister, continue to have an assurance of support which is acceptable to the Minister; if regulation 2.27B applies (regarding the assessment of skills for skilled occupations), have provided the skills assessment mentioned in subregulation 2.27B(4); have received a suitable skills assessment, carried out by a relevant assessing authority within the meaning of regulation 1.03; . have a score that is equal to or more than the applicable pass mark when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act (the points system); have vocational English within the meaning of regulation 1.15B; not have evidence against him or her of false or misleading information given or used as part of his or her skills assessment; and if he or she meets the applicable pass mark because of the operation of regulation 2.27A (regarding the combination of the applicant's and his or her spouse's score), have a spouse who: - is less than 45 years of age; - has nominated a skilled occupation within the meaning of regulation 1.03; - has been employed in any skilled occupation for: a total of at least 12 months in the 18 months, immediately before the day on which the application was lodged, where 60 points are specified by Gazette Notice as available for the skilled occupation nominated in the application; or a total of at least 24 months in the 36 months, immediately before the day m which the application was lodged, where 40 or 50 points are specified by Gazette Notice as available for the skilled occupation nominated in the application; unless in the 6 months immediately before the day on which the application was lodged, as a result of at least 1 year of full-time study in Australia, the applicant has completed a degree, diploma or trade qualification for award by an Australian educational institution; - if regulation 2.27B applies, has provided the skills assessment mentioned in subregulation 2.27B(4);

- has received a suitable skills assessment, carried out by a relevant assessing authority

within the meaning of regulation 1.03;

- has vocational English within the meaning of regulation 1.15B; and

- does not have evidence against him or her of false or misleading information given or used as part of his or her skills assessment.

Applicants for a Subclass 138 (Skilled - Australian-sponsored) visa will be subject to the same public interest, special return and secondary criteria, circumstances applicable to grant, length of time visa is in effect, conditions, and way of giving evidence as applicants for a Subclass 105 (Skilled-Australian Linked) visa.

Subclass 139 - Skilled - Regional-sponsored

New Part 139 makes provision for the grant of a Subclass 139 (Skilled - Regional-sponsored) visa to skilled applicants but who are not required to be assessed against the points test. New visa Subclass 139 replaces visa Subclass 106 (Regional Linked), and is intended to provide for the migration to regional Australia of young, highly skilled people with close links to Australia, and who will quickly make a contribution to Australia's economy.

New clause 139.111 provides for the definition of "completed" to include having met the requirements for award of a degree, diploma or trade qualification. The clause also refers to provisions of the Regulations which set out the meanings of "degree", "designated area", "diploma", "employed" and "trade qualification".

New Subdivision 139.21 sets out the primary criteria to be satisfied at time of application. In particular, the applicant must:

- * have one of the following relationships to the sponsor who has turned 18 and is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen:
 - a parent (within the meaning of regulation 1.03);
 - a child (natural, adoptive or step other than a dependent child);
 - a brother or sister (natural, adoptive or step);
 - a nephew or niece (natural, adoptive or step); or
 - a grandchild or first cousin;
- * be sponsored by the sponsor who is resident in a designated area, and who was resident in one or other of the designated areas throughout the 12 months immediately before Immigration received the relevant sponsorship (except for short absences due to business or recreation),.
- * have an assurance of support which has been accepted by the Minister;
- * be less than 45 years of age;
- * have nominated a skilled occupation within the meaning of regulation 1.03; and
- * have been employed in any skilled occupation for: - a total of at least 6 months in the 12 months, immediately before the day on which the application was lodged, where 60 points are specified by Gazette Notice as available for the skilled occupation nominated in the application; or - a total of at least 12 months in the 18 months, immediately before the day on which the

application was lodged, where 40 or 50 points are specified by Gazette Notice as available for the skilled occupation nominated in the application; unless in the 6 months immediately before the day on which the application was lodged, as a result of at least 1 year of full-time study in Australia, the applicant has completed a degree, diploma or trade qualification for award by an Australian educational institution.

The applicant is taken to have satisfied the age, nominated skilled occupation and work experience requirements if the applicant's spouse satisfies each, and every, of those 3 requirements.

New Subdivision 139.22 sets out the primary criteria to be satisfied at time of decision. In particular, the applicant must:

- * continue to be sponsored by the sponsor, and the sponsorship must have been approved by the Minister;
- * have a sponsor who is still resident in a designated area;
- * continue to have an assurance of support which is acceptable to the Minister;
- * if regulation 2.27B applies (regarding the assessment of skills for skilled occupations), have provided the skills assessment mentioned in subregulation 2.27B(4);
- * have received a suitable skills assessment, carried out by a relevant assessing authority within the meaning of regulation 1.03;
- * have vocational English or: - have a proficiency in English of at least the standard required by item 6311 of Part 3 of Schedule 6; and - have a sponsor who lives in a State or Territory specified by Gazette Notice as a State or Territory in which arrangements for suitable English-language training are established; and - satisfy the Minister that he or she has paid any fee for that training; and
- * not have evidence against him or her of false or misleading information given or used as part of his or her skills assessment.

The applicant is taken to have satisfied the 2.27B, suitable skills assessment, vocational English, or less than vocational English, and genuine skills assessment requirements if the applicant's spouse:

- * satisfied the age, nominated skilled occupation and work experience requirements at time of application, and continues to satisfy those requirements; and
- * satisfies each, and every, of the 2.27B, suitable skills assessment, vocational English, or less than vocational English, and genuine skills assessment requirements.

Applicants for a Subclass 139 (Skilled - Regional-sponsored) visa will be subject to the same public interest, special return and secondary criteria, circumstances applicable to grant, length of time visa is in effect, conditions, and way of giving evidence as applicants for a Subclass 106 (Regional Linked) visa.

Item 1304 - Clause 457.211

This item amends the time of application criteria for a Business (Long Stay) (Subclass 457) visa to ensure that the requirement to be the holder of a particular type of visa at time of application applies only to applicants who are in Australia at time of application.

Item 1305 - After clause 457.211

This item inserts new clause 457.212 into the criteria to be met at time of application for the grant of a Subclass 457 visa. The clause requires an applicant who holds a student visa to have completed his or her course and, if the student is a private subsidised student, the Minister must be satisfied that granting the visa would not be detrimental to Australia's overseas students policies. The requirement does not apply to applicants applying under a Regional Headquarters agreement.

New clause 457.212 is substantially the same as old clause 457.222 (which is omitted by these regulations), which applied at time of decision,. However, the new clause applies at time of application and applies whether the application is made in Australia or outside Australia.

Item 1306 - Clause 457.222

This clause omits clause 457.222.

Item 1307 - After paragraph 457.223(5)(e)

This item inserts new paragraph 457.223(5)(ea) as a new requirement for the grant of a Subclass 457 visa. The new requirement applies to sponsorships by Australian businesses where the activity which the applicant is to perform is a non-key activity. New paragraph 457.223(5)(ea) gives the Minister a discretion to require the applicant to demonstrate that he or she has the skills necessary to perform the activity where the application is for a stay of 12 months or less.

Item 1308 - After clause 457.327

This item inserts new clause 457.328 which contains a new secondary criterion to be met at time of decision for the grant of a Subclass 457 visa. New clause 457.328 provides that the Minister must be satisfied that the grant of the visa would not prejudice the rights and interests of any person who has custody or guardianship of, or access to, the applicant.

Item 1309 - After clause 676.212

This item inserts new clause 676.212A as a new "time of application" criterion for the grant of a Subclass 676 (Tourist) (Short Stay) visa. New clause 676.212A provides that a citizen of the PRC who is intending to travel to Australia as a member of a tour organised by a travel agent specified in a Gazette Notice ("an ADSS applicant") must:

- * be a resident of an area in the PRC specified in a Gazette Notice for the purposes of this paragraph;
- * intend to visit Australia as a member of a tour organised by a travel agent specified in a Gazette Notice for the purposes of this paragraph; and
- * provide a written statement of the details of the tour arrangements.

Item 1310 - Subclause 676.221(1)

This item provides that an ADSS applicant must meet the "time of decision" criterion contained in new subclause 676.221(5).

Item 1311 - After subclause 676.221(4)

This item inserts new subclause 676.221(5) which provides that an ADSS applicant must satisfy the following criteria:

- * the applicant continues to satisfy the criteria in clauses 676.211, 676.212 and 676.212A;
- * the tour arrangements provided at the time of application are approved by the Minister;
- * the Minister is satisfied that the expressed intention of the applicant only to visit Australia is genuine;
- * the Minister is satisfied that the grant of the visa would not prejudice the rights and interests of any person who has custody or guardianship of, or access to, the applicant; and
- * the applicant satisfies the following public interest and special return criteria - 4001 to 4005, 4011, 4013, 4014, 5001 and 5002.

Item 1312 - Schedule 2, after clause 676.411

This item inserts new clause 676.41 1A which provides that an ADSS applicant must be in the PRC at the time the visa is granted.

Item 1313 - Division 676.6

This item makes technical amendments to Division 676.6, and provides that a Subclass 676 visa granted to an ADSS applicant will be subject to mandatory conditions 8101, 8207, 8503 and 8530.

Item 1314 -Paragraph 773.213(2)(zg)

This item amends subregulation 773.213(2) to include a reference, under visa Subclass 773 (Border), to two new visa classes: Skilled - Independent (Migrant) (Class BN) and Skilled Australiansponsored (Migrant) (Class BQ).

Part 4 - New Schedule 6A

Item 1401 - After Schedule 6

This item inserts new Schedule 6A - General points test-qualifications and points. Schedule 6A applies to all post- 1 July 1999 visa applications for a Skilled - Australian sponsored (Migrant) (Class BQ) and a Skilled - Independent (Migrant) (Class BN) visa. Applications lodged prior to 1 July 1999 for an Independent (Migrant) (Class AT) or a Skilled - Australian Linked (Migrant) (Class AJ) visa will continue to be assessed against Schedule 6.

New Part 1 outlines the qualifications and points available for the applicant's skill. In particular:

- * the applicant is eligible for 60 points where his or her nominated occupation is specified by Gazette Notice as a skilled occupation for which 60 points are available;

* the applicant is eligible for 50 points where his or her nominated occupation is specified by Gazette Notice as a skilled occupation for which 50 points are available;

* the applicant is eligible for 40 points where his or her nominated occupation is specified by Gazette Notice as a skilled occupation for which 40 points are available;

New Part 2 outlines the qualifications and points available for the applicant's age. In particular..

* applicants aged between 18 and 29 at time of application receive 30 points;

* applicants aged between 30 and 34 at time of application receive 25 points;

* applicants aged between 35 and 39 at time of application receive 20 points;

* applicants aged between 40 and 44 at time of application receive 15 points.

New Part 3 outlines the qualifications and points available for the applicant's English

language ability. In particular:

* the applicant is eligible for 20 points in cases where the applicant provides evidence of having..
-achieved an IELTS test score of at least 6.0 on each of the 4 test components of speaking, reading, writing and listening in a test conducted either not more than 12 months before lodging the relevant application to migrate, or during the processing of the application; or - passed the Occupational English Test either not more than 12 months before lodging the relevant application to migrate, or during the processing of the application;

* the applicant is eligible for 15 points where the applicant provides evidence of having achieved an IELTS test score of at least 5 on each of the 4 test components of speaking, reading, writing and listening in a test conducted either not more than 12 months before lodging the relevant application to migrate, or during the processing of the application.

New Part 4 outlines the qualifications and points available for the applicant's employment

experience. In particular:

* an applicant is eligible for 10 points where he or she has been employed in the nominated skilled occupation, or a closely related skilled occupation, being an occupation specified by Gazette Notice as a skilled occupation for which 60 points are available, for a total of at least 36 months in the period 48 months immediately before the day on which the application was lodged;

* an applicant is eligible for 5 points where he or she has been employed in any skilled occupation for a total of at least 36 months in the period 48 months immediately before the day on which the application was lodged.

New Part 5 outlines the qualification and points available for the applicant's spouse's skills.

Under this Part, 5 points will be awarded where the spouse of the applicant meets the

following threshold requirements:

* is under 45 years of age at the time application;

- * has vocational English,
- * has nominated a skilled occupation at the time of application;
- * has been assessed by the relevant assessing authority, within the meaning of regulation 1.03, as having suitable skills for the nominated occupation; and
- * unless in the 6 months immediately before the day on which the application was lodged, as a result of at least 1 year of full-time study in Australia, he or she has completed a degree, diploma or trade qualification for award by an Australian educational institution, the spouse is required to have been employed in his or her nominated skilled occupation for at least: - 12 of the 18 months immediately prior to lodging his or her application in cases where the spouse's nominated skilled occupation has been gazetted as one in relation to which 60 points are available; or - 24 of the 36 months immediately prior to lodging his or her application in cases where the spouse's nominated skilled occupation has been gazetted as one in relation to which 40 or 50 points are available in cases where regulation 2.27A is operating, the "spouse" for the purposes of new Part 5 is the "applicant", as the applicant must be the relative of the sponsor.

New Part 6 outlines the points available for the applicant's Australian educational qualification. Under this Part, 5 points are awarded where an applicant has met the requirements for an award (e.g. an Australian degree, higher degree, diploma or trade certificate) obtained after a period of at least 1 year of full-time study in Australia.

New Part 7 outlines the qualifications and points available where the applicant has nominated a migration occupation in demand (within the meaning of regulation 1.03). In particular.

- * an applicant whose nominated occupation is a migration occupation in demand, and who has received a full-time job offer for that occupation, or a closely related occupation, in an organisation which has employed at least 10 people at all times on a full-time basis throughout the 24 months immediately before the day on which the application was lodged, is eligible for 10 points;
- * an applicant whose nominated occupation is a migration occupation in demand is eligible for 5 points.

New Part 8 outlines the bonus points qualifications. Under this Part, an applicant is eligible for 5 points where:

- * he or she has deposited at least \$100,000 in a designated security for a period of at least 12 months; or
- * he or she has been employed in Australia in a skilled occupation for a total of at least 6 months in the 48 months immediately before the day on which the application was lodged. The employment must have been gained while the applicant held a substantive visa allowing him or her to work in Australia; or
- * he or she has obtained a university qualification (equivalent to an Australian degree or higher qualification), where tuition of that qualification was conducted in a designated language or
- * he or she is accredited as a professional interpreter or translator, level 3, by the National Accreditation Authority for Translators and Interpreters.

New Part 9 outlines the points available for the applicant's relationship to his or her sponsor.

Under this Part, an applicant is eligible for 15 points if sponsored by his or her:

- * parent; or
- * brother or sister (natural, adoptive or step); or
- * aunt or uncle (natural, adoptive or step); or
- * child (natural adoptive or step other than a dependent child).

Part 5 - Amendments of Schedule 8

Item 150 1 - After item 8206

This item inserts new condition 8207 that provides that the holder must not engage in any studies or training in Australia.

Item 1502 - After item 8529

This item inserts new condition 8530 that provides that the holder must not discontinue or deviate from the tour arrangements approved by the Minister under paragraph 676.221(5)(b).