

Migration Amendment Regulations 1999 (No. 11) 1999 No. 220

EXPLANATORY STATEMENT

STATUTORY RULES 1999 NO. 220

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

Migration Act 1958

Migration Amendment Regulations 1999 (No. 11)

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)(g) of the Act which 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;
- subsection 29(2) of the Act which provides that the regulations may prescribe a period during which the holder of a visa may travel to, enter and remain in Australia;
- subsection 31 (1) of the Act which provides that the regulations are to prescribe classes of visas;
- subsection 31(3) of the Act which provides that the regulations may prescribe criteria for visas of a specified class;
- subsection 31(4) of the Act which 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 which provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;
- subsection 41(1) of the Act which 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;
- subsection 45(1) of the Act which provides that the regulations may make. provision in relation to applications for visas;
- subsection 45(2) of the Act which 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 which 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 which 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 which provides that the regulations may provide that the visa application charge may be payable in instalments and specify how those instalments are to be calculated and specify when those instalments are payable;
- subsection 71(1) of the Act which provides for the regulations to prescribe the way in which evidence of a visa is to be given; and
- paragraph 116(1)(g) of the Act which provides for the grounds for cancelling a visa to be prescribed.

The purpose of the Regulations is to amend the *Migration Regulations 1994* ("the Migration Regulations") to:

- require the medical condition, for the purposes of the definition of "carer" in regulation 1.15AA, to cause physical, intellectual or sensory impairment of the ability of a person to attend to the practical aspects of daily life (Item 1101);
- prescribe, in respect of a Subclass 457 (Business (Long Stay)) visa, an additional ground for revocation of a person's business sponsorship where the sponsor gave the Minister incorrect information relating to the sponsorship application or any other matter relating to the sponsor (Item 1104);
- prescribe an additional ground for cancellation of a Subclass 457 (Business (Long Stay)) visa where the business sponsor does not continue to satisfy the requirements for approval as a business sponsor (Item 1105);
- separate the Employer Nomination Scheme and Regional Sponsored Migration Scheme into one new class and two new subclasses and separate the Labour Agreement and the Distinguished Talent categories of visa Subclass 805 (Skilled) into separate subclasses and new classes. (Items 1202, 1203, 1205 to 1206, 1209 to 1302, 1304, 1305, 1328);
- reduce the threshold for "net assets in business" from \$300,000 to \$200,000 for Subclasses 127 and 840 (Business Owner) visas and from \$200,000 to \$100,000 for visa Subclasses 129 and 842 (State/Territory Sponsored Business Owner) (Items 1307, 1308, 1325 and 1326);
- amend the Subclass 456 (Business (Short Stay)) visa to allow the discretionary imposition of condition 8503 (Item 1309);
- refine the amendments made to Part 560 (Student) in December 1998, following the Review of the Student Visa Program (Items 1310 to 1312, 1314, 1316 1319, 1402). In particular, the amendments:
 - allow applicants from Hong Kong and Taiwan to apply for a Subclass 560 (Student) visa ("Student, visa") onshore without establishing exceptional reasons for the grant of the visa (Item 1312);
 - provide that people from non-gazetted countries who do not hold a substantive visa must establish exceptional reasons for the grant of a Student visa (Item 1314); and

- provide that, for work rights to carry over to a further Student visa, the applicant must be in Australia at the time of grant (Item 1316);
- remove the requirement for a fixed minimum number of full-time employees in one component of the Business Skills points test (Item 1401);
- amends clause 449.612 to add condition 8104 as a discretionary condition that may be imposed on the holder of a Subclass 449 (Humanitarian Stay (Temporary)) visa (Item 2101);
- correct minor technical errors (Items 1102, 1304, 1321 to 1324 and 1327);
- make consequential amendments (Items 1103, 1201, 12045 1207, 1208, 1303, 1306, 1313, 1315, 1319 and 1320).

Details of the Regulations are set out in the Attachment.

The proposed Regulations will commence on 1 November 1999 other than regulations 1 to 3 (formal clauses), subregulation 4(3) and Schedule 2. Subregulation 4(3) and Schedule 2 relate to the addition of condition 8104 (limited work rights) as a discretionary condition that may be imposed on the holder of a Subclass 449 (Humanitarian Stay (Temporary) visa)). Regulations 1 to 3 and item 2101 commence on gazettal.

ATTACHMENT

Regulation 1 - Name of regulations

This regulation provides that these regulations are the *Migration Amendment Regulations 1999* (No. 11).

Regulation 2 - Commencement

Paragraph (a) of this Regulation provides that regulations 1 to 3, subregulation 4(3) and Schedule 2 commence on gazettal. Regulations 1 to 3 are formal clauses. Subregulation 4(3) and schedule 2 relate to item 2101 which adds condition 8104 (limited work rights) as a discretionary condition that may be imposed on the holder of a Subclass 449 (Humanitarian Stay (Temporary)) visa.

Paragraph (b) of this Regulation provides that the remainder of the regulations, being subregulations 4(1) and (2), regulation 5 and Schedule 1, commence on 1 November 1999.

Regulation 3 - Amendment of *Migration Regulations 1994*

This regulation provides that the *Migration Regulations 1994* are amended as set out in Schedules 1 and 2 to these Regulations.

Regulation 4 - Transitional

Subregulation 4(1) provides that amendments made by items 1101, 1102, 1302, 1303 and 1309 apply in relation to an application made on or after 1 November 1999.

Subregulation 4(2) provides that amendments made by items 1307, 1308, 1310 to 1319, 1325, 1326, 1401 and 1402 apply in relation to an application made on or after 1 November 1999 or made, but not finally determined (within the meaning of subsection 5(9) of the Act), before 1 November 1999.

Regulation 5 - Transitional - applications for Distinguished Talent (Migrant) (Class AL) visas and General (Residence) (Class AS) visas made before 1 November 1999

This regulation provides that an application for a Distinguished Talent (Migrant) (Class AL) visa or a General (Residence) (Class AS) visa that was made before 1 November 1999 and was not finally determined before that date will be considered under the Regulations as in force before that date.

Schedule 1 - Amendments commencing on 1 November 1999

Part 1 - Amendments of Parts 1 and 2

Item 1101 - Subparagrph 1.15AA(1)(b)(ii)

This item substitutes new subparagraph 1.15AA(1)(b)(ii) to require the medical condition, for the purposes of the definition of "carer" in regulation 1.15AA, to cause physical, intellectual or sensory impairment of the ability of the person mentioned in subparagraph 1.15AA(1)(b)(i) to attend to the practical aspects of daily life.

A 'carer', for the purposes of a an application for a Subclass 104 (Preferential Family) or Subclass 806 (Family) visa, is defined in regulation 1.15AA. The current definition of carer requires the person needing care to have a medical condition which causes physical impairment of the ability of that person to attend to the practical aspects of daily life. This item substitutes new subparagraph 1.15AA(1)(b)(ii) to give legislative effect to the policy intention that 'physical impairment' includes sensory and intellectual impairment.

Item 1102 - Subparagraph 1.15AA(1)(b)(iii)

This item makes a technical amendment to subparagraph 1.15AA(1)(b)(iii) as result of amendments to subparagraph 1.15AA(1)(b)(ii) made by these Regulations.

Item 1103 - Paragraph 1.20F(1)(b)

This item makes a minor consequential amendment to paragraph 1.20F(1)(b) as a result of the insertion of new paragraph 1.20F(1)(c) by these Regulations.

Item 1104 - After paragraph 1.20F(1)(b)

Subregulation 1.20F(1) currently prescribes, in respect of a Subclass 457 (Business (Long Stay)) visa, the grounds on which the Minister may revoke the approval of a person as a standard business sponsor or a pre-qualified business sponsor.

This item inserts new paragraph 1.20F(1)(c) which prescribes an additional ground for revocation of a person's approval as a business sponsor where the sponsor gave the Minister incorrect information relating to the sponsorship application or any other matter relating to the sponsor.

Item 1105 - After subparagraph 2.43(1)(1)(i)

This item amends paragraph 2.43(1)(1) by providing that the Minister may cancel a Subclass 457 (Business (Long Stay)) visa on the additional ground that the visa holder's business sponsor does not continue to satisfy the requirements for approval as a business sponsor.

Part 2 - Amendments of Schedule 1

Item 1201 - Subitem 1112(1)

This item amends subitem 1112(1) to add form 47SV as a prescribed form for an application for a Distinguished Talent (Migrant) (Class AL) visa.

Item 1202 - Subitem 1112(4)

This item amends subitem 1112(4) to substitute Subclass 124 (Distinguished Talent) ("Subclass 124") as the relevant subclass for the Distinguished Talent (Migrant) (Class AL) visa.

Item 1203 - After item 1112

This item inserts new item 1113 after item 1112. New item 1113 contains new visa class Distinguished Talent (Residence) (Class BX) ("Class BX"). This item sets out the requirements for making a valid application for a Class BX visa. Those requirements are:

* the application form is 47SV or 887;

- * the visa application charge is \$1,595;
- * the application must be made in Australia but not in immigration clearance;
- * the applicant must be in Australia but not in immigration clearance; and
- * an application may be made by a person claiming to be a member of the family unit of an applicant for a Class BX visa at the same time and place as, and combined with, the application made by that person.

This item also provides that the class contains one subclass, Subclass 858 (Distinguished Talent) ("Subclass 858"). The criteria for the grant of a visa in this subclass are inserted into Schedule 2 to the Migration Regulations by item 1328.

Item 1204 - Subitem 1114(1)

This item amends subitem 1114(1) to add form 47ES as a prescribed form for an application for an Employer Nomination (Migrant) (Class AN) ("Class AN") visa.

Item 1205 - Subitem 1114(4)

This item adds Subclass 119 (Regional Sponsored Migration Scheme) ("Subclass 119") to the Class AN visa class.

Item 1206 -After item 1114

This item inserts new item 1114A after item 1114. New item 1114A contains new visa class Employer Nomination (Residence) (Class BW) ("Class BW"). This item sets out the requirements for making a valid visa application in the new class.

The requirements for making a valid application in the new Class BW are that:

- * the application form is 47ES or 887;
- * the visa application charge is \$1,595;
- * the application must be made in Australia but not in immigration clearance.,
- * the applicant must be in Australia but not in immigration clearance; and
- * an application may be made by a person claiming to be a member of the family unit of an applicant for a Class BW visa at the same time and place as, and combined with, the application made by that person.

This item also provides that Class BW contains two subclasses, Subclass 856 (Employer Nomination Scheme) and Subclass 857 (Regional Sponsored Migration Scheme). The criteria for the grant of a visa in these subclasses are inserted into Schedule 2 to the Migration Regulations by item 1328.

Item 1207 - Subitem 1119(4)

This item amends subitem 1119 (4) to omit visa Subclass 805 (Skilled) as a consequential amendment to the restructuring of this visa subclass in these Regulations.

Item 1208 - Subitem 1121(1)

This item amends subitem 1121 (1) to add form 47ES as a prescribed form for an application for a Labour Agreement (Migrant) (Class AU) visa.

Item 1209 -After item 1121

This item inserts new item 1121A after item 1121. New item 1121A contains new visa class Labour Agreement (Residence) (Class BV) ("Class BV"). This item sets out the requirements for making a valid visa application in the new class. Those requirements are:

- * the application form is 47ES or 887;
- * the visa application charge is \$1,595;
- * the application must be made in Australia but not in immigration clearance;
- * the applicant must be in Australia but not in immigration clearance; and
- * an application may be made by a person claiming to be a member of the family unit of an applicant for a Class BV visa at the same time and place as, and combined with, the application made by that person.

This item also provides that Class BV contains one subclass, Subclass 855 (Labour Agreement). The criteria for the grant of a visa in this subclass are inserted into Schedule 2 to the Migration Regulations by item 1328.

Part 3 - Amendments of Schedule 2

Item 1301 - After Part 110

New Part 119 inserts new visa Subclass 119 (Regional Sponsored Migration Scheme) ("Subclass 119") in Schedule 2 to the Migration Regulations.

New Division 119.1 provides that there are no interpretation provisions specific to new Part 119. It also makes reference to a number of terms defined in the Migration Regulations.

New Division 119.2 inserts the primary criteria to be satisfied in respect of a Subclass 119 visa. It is noted that the primary criteria must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

New Subdivision 119.21 sets out the primary criteria that must be Satisfied at the time of application in respect of a Subclass 119 visa. In particular, new subclause 119.211 (1) provides that an applicant must have been nominated by an employer in respect of an appointment in the business of that employer and either:

- * for an applicant who is taken, under regulation 2.08C, to have applied for a Class AN visa:
 - had not turned 45 at the time of the application for an Independent (Migrant) (Class AT) visa, a Skilled Independent (Migrant) (Class BN) visa or a Skill Matching (Migrant) (Class BR) visa; and

- for an Independent Migrant (Class AT) visa, has functional English and a diploma (within the meaning of subregulation 2.26 (5)) or higher qualification that, unless the appointment is exceptional, is relevant to the appointment; and
 - for a Skilled - Independent (Migrant) (Class BN) visa or a Skill Matching (Migrant) (Class BR) visa, has vocational English and a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification that, unless the appointment is exceptional, is relevant to the appointment; and
 - is, or is eligible to become, the holder of a qualification of a kind specified in subregulation 5.19 (3A) if it is mandatory in Australia, in respect of work of the kind to be performed under the appointment, that a person be the holder of the qualification; or
- * subject to new subclause 119.211(2) (that is, unless the application is exceptional), in any other case,
- has not turned 45;
 - has functional English; and
 - has a diploma (within the meaning of subregulation 2.26 (5)) or higher qualification that is relevant to the appointment; and
 - is, or is eligible to become, the holder of a qualification of a kind specified in subregulation 5.19 (3A) if it is mandatory in Australia, in respect of work of the kind to be performed under the appointment, that a person be the holder of the qualification.

New subclause 119.211(2) provides that new sub-subparagraphs (1) (b) (ii) (A), (B) and (C) inserted by these Regulations do not apply to an applicant if the appointment is exceptional.

New clause 119.212 requires that if the appointment is an approved appointment, the period that has elapsed since it became an approved appointment does not exceed 6 months. New subdivision 119.22 sets out the primary criteria to be satisfied at the time of decision.

New clause 119.221 provides that the appointment mentioned in paragraph 119.211 (1) (a) must be an approved appointment.

New clause 119.222 provides that the Minister must be satisfied that the approved appointment will provide the employment referred to in the relevant employer nomination.

New clause 119.223 provides that the applicant must satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010 and, if the applicant has previously been in Australia, he or she must satisfy special return criteria 5001 and 5002.

New clause 119.224 provides that, if requested by the Minister, an assurance of support in relation to the applicant has been given and has been accepted by the Minister.

New subclause 119.225(1) provides that each member of the family unit of the applicant who is an applicant for a Subclass 119 visa must satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010 and, if the applicant has previously been in Australia, he or she must satisfy special return criteria 5001 and 5002.

New subclause 119.225(2) provides that each member of the family unit of the applicant who is not an applicant for a Subclass 119 visa must satisfy public interest criteria 4001, 4002, 4003 and 4004. The relevant member of the family unit must also satisfy public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

New clause 119.226 provides that if either:

- * the family unit of the applicant includes a dependent child who made a combined application with the applicant; or

- * a child under 18, who is usually resident with the applicant, made a combined application with the applicant

the Minister must be satisfied that the grant of a Subclass 119 visa to that child as a member of the family unit of the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the child.

New Division 119.3 sets out the secondary criteria for a Subclass 119 visa, which must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria in respect of a Subclass 119 visa.

New Subdivision 119.31 sets out the secondary criteria to be satisfied at the time of application in respect of a Subclass 119 visa.

New clause 119.311 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 new Subdivision 119.21.

New Subdivision 119.32 sets out the secondary criteria to be satisfied at the time of decision in relation to a Subclass 119 visa.

New clause 119.321 provides that the applicant must, at the time of decision, continue to be a member of the family unit of a person who, having satisfied the primary criteria, holds a Subclass 119 visa.

New clause 119.322 provides that the applicant must satisfy public interest criteria 4001, 4002, 4003, 4004, 4009 and 4010. The applicant must also satisfy public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the applicant to undergo assessment in relation to that criterion.

New clause 119.323 provides that if the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.

New clause 119.324 provides that, if an assurance of support is required in respect of the person who satisfies the primary criteria, either the applicant is included in the assurance of support and that assurance of support has been accepted by the Minister, or an assurance of support has been provided in relation to the applicant and has been accepted by the Minister.

New clause 119.325 requires that if the applicant is a dependent child of the holder of a Subclass 119 visa, the Minister must be satisfied that the grant of a Subclass 119 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 119.4 provides for the circumstances applicable to the grant of a Subclass 119 visa.

New clause 119.411 requires that the applicant must be outside Australia when the visa is granted. The Note below clause 119.411 provides that the second instalment of the visa application charge must be paid before the visa can be granted.

New Division 119.5 provides for when a Subclass 119 visa is in effect. New clause 119.511 provides that a Subclass 119 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 119.6 provides for the conditions that are to attach to the grant of a Subclass 119 visa.

New clause 119.611 requires that an applicant's first entry as the holder of a Subclass 119 visa must be made before a date specified by the Minister.

New clause 119.612 provides that condition 8502 may be imposed. Condition 8502 provides that the holder of the visa must not enter Australia before the entry to Australia of a person specified in the visa.

New Division 119.7 provides for the way in which evidence of a valid Subclass 119 visa is to be given.

New clause 119.711 requires that a Subclass 119 visa be evidenced by way of a visa label affixed to a passport.

Item 1302 - Clause 121.211

This item replaces the existing clause 121.211 to provide that the applicant for a Subclass 121 (Employer Nomination) visa must:

- * have been nominated by an employer in respect of an appointment in the business of that employer; and
- * be a highly skilled person (within the meaning of subregulation 5.19(3)) in relation to that appointment; and
- * not have turned 45 and must have vocational English, unless the appointment is exceptional.

Item 1303 - Clause 121.221

The amendment made by this item is technical and consequential to the amendment made by item 1302. above.

Item 1304 - Part 124, heading

This item makes a technical amendment to Schedule 2, Part 124 by replacing the existing title with a new title. The new title of Subclass 124 is "Distinguished Talent". Item 1305 - Clauses 124.211 and 124.212

This item amalgamates Parts 124 and 125 of the existing Regulations into new Subclass 124 (Distinguished Talent) ("Subclass 124").

New subclause 124.211 (1) provides that the applicant must meet the requirements of new subclause 124.211(2) (3) or (4), inserted by these Regulations.

New subclause 124.211(2) provides that, for the applicant to meet the requirements of this subclause, the applicant:

- * must have an exceptional record of achievement in an occupation, profession or activity;
- * would be an asset to the Australian community;
- * would have no difficulty in obtaining employment or in becoming established independently in Australia in that occupation, profession or activity; and
- * must produce a nomination testifying to the applicant's standing in that occupation, profession or activity from an:
 - Australian citizen, permanent resident or organisation; or
 - eligible New Zealand citizen

that has a national reputation in relation to that occupation, profession or activity.

New subclause 124.211(3) provides that the applicant must:

- * have a record of outstanding achievement and be still prominent in the area of arts or sport; and
- * produce a nomination testifying to the applicant's achievement and standing in the relevant area from:
 - an Australian citizen, permanent resident or organisation;
 - or an eligible New Zealand citizen

that has a national reputation in relation to the applicant's field of the arts or sport.

New subclause 124.211(4) provides that the applicant meets this criterion if the Minister is of the opinion, acting on certain advice, that the applicant has provided specialised assistance to the Australian Government in matters of security.

Item 1306 -Part 125

This item omits Part 125 as a consequence of amendments made by these Regulations to combine the criteria for Subclasses 124 and 125 into Subclass 124.

Item 1307 - Paragraph 127.212(2)(a)

This item amends paragraph 127.212(2)(a) to require that, in any 2 fiscal years in the 4 fiscal years immediately preceding the making of the application for a visa, the net assets of the applicant (or the applicant and his or her spouse together), in a qualifying business or qualifying businesses were not less than the equivalent of AUD200,000 in each of those years.

The effect of the amendment is to reduce the minimum amount of net assets that must be held by the applicant (or the applicant and his or her spouse together) in a qualifying business or businesses over the relevant period from the equivalent of AUD300,000 to the equivalent of AUD200,000.

Item 1308 - Paragraph 129.212(2)(a)

This item amends paragraph 129.212(2)(a) to require that, in any 2 fiscal years in the 4 fiscal years immediately preceding the making of the application for a visa, the net assets of the applicant (or the applicant and his or her spouse together), in a qualifying business or qualifying businesses were not less than the equivalent of AUD100,000 in each of those years.

The effect of the amendment is to reduce the minimum amount of net assets that must be held by the applicant (or the applicant and his or her spouse together) in a qualifying business or businesses over the relevant period from the equivalent of AUD200,000 to the equivalent of AUD100,000.

Item 1309 - After clause 456.611

This item inserts new clause 456.612 to give the Minister a discretion to impose condition 8503 on the grant of a Subclass 456 (Business (Short Stay)) visa. Condition 8503 provides that the holder of the visa will not, after entering Australia, be entitled to be granted a substantive visa, other than a protection visa, while the holder remains in Australia.

Item 1310 - Paragraph 560.212(4)(c)

This item amends paragraph 560.212(4)(c) to provide that AusAID and secondary school exchange students may provide evidence to the Minister of having commenced a full time course of study, rather than a registered course, to meet the requirements of this paragraph. Other students will need to produce evidence of having commenced a registered course.

Item 1311 - Paragraph 560.212(5)(c)

This item amends paragraph 560.212(5)(c) in a similar way to the amendments to paragraph 560.212(4)(c) above, so that AusAED and secondary school exchange students may provide evidence to the Minister of enrolment in a full time course of study, rather than a registered course.

Item 1312 - Paragraph 560.230(b)

This item amends paragraph 560.230(b) to provide that, for an applicant for a Student visa to not have to provide exceptional reasons for the grant of that visa, the applicant can be either a citizen of a nongazetted country or a person who is normally resident in, and has an unlimited right of entry to, a country specified by Gazette Notice.

This amendment will allow persons from Hong Kong and Taiwan to apply for a Student visa onshore without having to establish exceptional reasons for the grant of the visa, following the specification of these two countries in a Gazette Notice.

Item 1313 - Sub-paragraph 560.230(c)(iii)(B)

The amendment made by this item is technical, and consequential to the amendment made by item 1314 below.

Item 1314 - After subparagraph 560.230(c)(iii)

This item inserts new subparagraph 560.230(c)(iv) to provide that an applicant for a Student visa who was not, at the time of application, the holder of a substantive visa and whose last substantive visa was the kind mentioned in subparagraph (i), (ii) or (iii) of paragraph 560.230(c), must establish exceptional reasons for the grant of the Student visa.

Item 1315 - Paragraph 560.312(3)(d)

The amendment made by this item is technical, and consequential to the amendments made by items 1310 and 1311 above.

Item 1316 -Paragraph 560.611(1)(c)

This item amends paragraph 560.611(1)(c) to provide that, where an application for a Student visa was made in Australia, the applicant must be in Australia at the time of grant for work rights previously held to carry over to a further Student visa. Previously, the applicant had to be in Australia at the time of application.

Item 1317 - Subclause 560.611(1A)

This item amends subclause 560.611 (1A) to require that condition 8206 will not apply to a Student visa granted to an applicant if the visa is not the applicant's first Student visa. It is a requirement however, that the application must be made in Australia, and that the applicant's last Student visa was not subject to condition 8206.

Condition 8206 provides that the holder of a Student visa must not change his or her educational provider for the first 12 months of a course, or for the duration of the course if it is for less than 12 months.

This amendment is in keeping with the Review of the Student Visa Program, which recommended that condition 8206 apply to the first Student visa only.

Item 1318 - Subclauses 560.613(1A), (1B) and (1C)

The amendments made by this item are mainly consequential to the amendments made by items 1310 and 1311 above. The amendments also provide that, for the exception to condition 8 101 (no work rights) to apply, the application must be made in Australia.

Item 1319 - Paragraph 563.211A(d)

The amendment made by this item is consequential to the amendments made by items 1310 and 1311 above.

Item 1320 -Part 805

The amendment made by this item is consequential to the restructuring of Subclass 805 which is made by these Regulations.

Item 1321 - Clause 808.221

This item amends clause 808.221 to correct a reference to "subparagraph 808.211 (b) (ii)", as Statutory Rules 1999 No. 81 renumbered clause 808.221 to become 808.211.

Item 1322 - Clause 808.221

This item amends clause 808.221 to change an incorrect alpha code reference inserted by Statutory Rules 1999 No. 81 to Confirmatory (Residence) (Class AK).

Item 1323 - Clause 808.511

This item amends clause 808.511 to correct a reference to "paragraph 808.211 (a)", as Statutory Rules 1999 No. 81 renumbered clause 808.221 to become 808.211.

Item 1324 - Clause 808.512

This item amends clause 808.512 to correct a reference to "paragraph 808.211 (b)", as Statutory Rules 1999 No. 81 renumbered clause 808.221 to become 808.211.

Item 1325 - Paragraph 840.213(2)(a)

This item amends paragraph 840.213(2)(a) to require that, in any 2 periods of 1 fiscal year in the 4 fiscal years immediately preceding the making of the application, the net assets of the applicant (or the applicant and his or her spouse together), in a qualifying business or qualifying businesses were not less than the equivalent of AUD200,000 in each of those years.

The effect of the amendment is to reduce the minimum amount of net assets that must be held by the applicant (or the applicant and his or her spouse together) in a qualifying business or businesses over the relevant periods from the equivalent of AUD300,000 to the equivalent of AUD200,000.

Item 1326 - Paragraph 842.213(2)(a)

This item amends paragraph 842.213(2)(a) to require that, in any 2 periods of 1 fiscal year in the 4 fiscal years immediately preceding the making of the application for a visa, the net assets of the applicant (or the applicant and his or her spouse together), in a qualifying business or qualifying businesses were not less than the equivalent of AUD 100,000 in each of those years.

The effect of the amendment is to reduce the minimum amount of net assets that must be held by the applicant (or the applicant and his or her spouse together) in a qualifying business or businesses over the relevant periods from the equivalent of AUD200,000 to the equivalent of AUD100,000.

Item 1327 - Sub-subparagraphs 844.212 (b) (i) (D), (E), (F), (G) and (H)

This item amends sub-subparagraphs 844.212(b)(i)(D), (E), (F) and (H) to omit the unnecessary article 'V' or "an" before the references to each class of visa. This item also amends sub-subparagraph 844.212(b)(i)(G) to change the word "Dependent" to "Dependant", as Statutory Rules 1999 No. 81 incorrectly referred to sub-subparagraph 844.211 (b)(i)(G) when making this change.

Item 1328 - After Part 851

This item inserts four new Parts into Schedule 2 to the Migration Regulations, being Part 855 (Labour Agreement), Part 856 (Employer Nomination Scheme), Part 857 (Regionally Sponsored Migration Scheme) and Part 858 (Distinguished Talent).

Part 855 Labour Agreement

New Part 855 inserts new visa subclass 855 (Labour Agreement) ("Subclass 855") into the Migration Regulations.

New Division 855.1 provides that there are no interpretation provisions specific to this Part. It also makes a reference to a number of terms defined in the Migration Regulations.

New Division 855.2 sets out the primary criteria in respect of an application for a Subclass 855 visa. The primary criteria must be satisfied by at least one member of the family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

New Subdivision 855.21 sets out the primary criteria that must be satisfied at the time of application in respect of a Subclass 855 visa.

New subclause 855.211(1) requires that the applicant must not be the holder of one of the types of visas set out in new paragraphs 855.211(1)(a) to (c).

New subclause 855.211(2) provides that if the applicant is not the holder of a substantive visa, he or she has to satisfy criteria 3001, 3003 and 3004. It further lists the subclasses of visa, which, if last held by the applicant, will disqualify him or her from the grant of a Subclass 855 visa.

New subclause 855.212(1) provides that, subject to new subclause 855.212(2), the applicant has to meet new subclause 855.212(3), (5), (6) or (7) listed below.

Under new subclause 855.212(2), new subclause 855.212(1) does not apply to an applicant who does not hold a substantive visa if he or she would have satisfied the requirements of that subclause if the application had been made immediately before his or her substantive visa ceased.

New subclause 855.212(3) provides that the applicant meets the requirements of this subclause if he or she holds a qualifying visa. "Qualifying visa" is defined in subclause 855.212(4), inserted by these Regulations.

New subclause 855.212(5) provides that the applicant meets the requirements of this new subclause if he or she:

- * held one or more Group 2.6 (refugee and humanitarian (temporary entry)) entry permits under the Migration (1993) Regulations which permitted temporary residence in Australia for a total period of more than twelve months; and

- * is taken to hold a transitional (temporary) visa under the Migration Reform (Transitional Provisions) Regulations on the basis that he or she had held a group 2.6 (refugee and humanitarian (temporary entry)) entry permit under the Migration (1993) Regulations immediately before 1 September 1994.

New subclause 855.212(6) provides that the applicant satisfies the requirements of this subclause if.

- * he or she is the holder of a Student (Temporary) (Class TU) visa granted in relation to an award course at associate diploma level or above completed by the applicant while he or she

was the holder of that visa and, subject to new subclause 855.212(8) inserted by these Regulations, is not an assisted student; or

* he or she is :

- the holder of a Group 2.2 (student) entry permit granted under the Migration (1993) Regulations in relation to a formal course or category A course, which was completed by the applicant while he or she was the holder of that permit; and
- the applicant is not a category B student for the purposes of the Migration (1993) Regulations or, subject to new subclause 855.212(8), is not an "assisted student".

New subclause 855.212(7) provides that the applicant meets the requirements of this subclause if he or she is the holder of a Working Holiday (Temporary) (ClassTZ) visa.

New subclause 855.212(8) provides that, for the purposes of subparagraphs 855.212(6)(a)(ii) and (b)(ii) inserted by these Regulations, an "assisted student" excludes a person granted entry to Australia to study or train under the Subsidised Overseas Students Program.

New clause 855.213 provides that the applicant must be nominated by an employer in respect of a permanent appointment in an industry for which there is a labour agreement, must have qualifications and experience that are suitable for the position to be taken by the applicant under the labour agreement and, unless exceptional circumstances apply, must not have turned 45.

New Subdivision 855.22 sets out the primary criteria to be satisfied at the time of decision by an applicant for a Subclass 855 visa.

Under new clause 855.221, the appointment mentioned in new paragraph 855.213 (a), inserted by these Regulations, has been approved.

Under new subclause 855.222, the Minister must be satisfied that the appointment mentioned in new paragraph 855.213(a) will provide the employment referred to in the relevant nomination.

New clause 855.223 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 855.224 provides that if the Minister so requests, an assurance of support in relation to the applicant must have been given, and accepted, by the Minister.

New subclause 855.225(1) requires that each member of the family unit of the applicant who is also an applicant for a Subclass 855 visa must satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New subclause 855.225(2) requires that each member of the family unit of the applicant who is not an applicant for a Subclass 855 visa must satisfy public interest criteria 4001, 4002, 4003 and 4004. The applicant is also required to meet criterion 4005, unless the Minister is satisfied that it is unreasonable to require the applicant to undergo assessment against that criterion.

New subclause 855.226 provides that the Minister must be satisfied that the grant of the visa would not prejudice the rights of any person who has custody or guardianship of, or access to, a dependent child of the applicant.

New Division 855.3 sets out the secondary criteria in relation to new Subclass 855. It is noted that if any member of a family unit satisfies the primary criteria, the other members of the family unit are eligible for the grant of the visa if they satisfy the secondary criteria and their applications are made before the Minister has decided the first person's visa application.

New Subdivision 855.31 sets out the secondary criteria that must be satisfied at the time of application in respect of a Subclass 855 visa.

New clause 855.311 requires that the person be a member of the family unit of a person who has applied for a Labour Agreement (Residence) (Class BV) visa who appears to satisfy the requirements of new Subdivision 855.21, in circumstances where the Minister has not decided to grant or refuse to grant the visa to that other person.

New clause 855.312 provides that any sponsorship or nomination given in respect of that other person must include the applicant.

New Subdivision 855.32 sets out the secondary criteria to be satisfied at the time of decision in relation to a Subclass 855 visa.

New subclause 855.321 (1) provides that the applicant must meet the requirements of new subclause 855.321(2), (3) or (4).

New subclause 855.321(2) provides that the applicant meets the requirement of this subclause if the applicant is a member of the family unit of the non-dependent holder of a Subclass 855 visa (that is, a person who, having satisfied the primary criteria, is the holder of a Subclass 855 visa).

If the applicant is the spouse of the non-dependent holder and the relationship has ceased, the applicant meets the requirements of new subclause 855.321(3) if.

- * the applicant; .
- * a member of the family unit of the applicant who has made a combined application with the non-dependent holder; or
- * a dependent child of the applicant or of the non-dependent holder

has suffered domestic violence committed by the non-dependent holder.

New subclause 855.321(4) provides that the applicant meets the requirements of this subclause if the applicant is a member of the family unit of the spouse of the non-dependent holder, the spouse meets the requirements of new subclause 855.321(3), the applicant has made a combined application with the non-dependent holder and the spouse has been granted a Subclass 855 visa. It is noted that special provisions relating to domestic violence are contained in Division 1.5 of the Migration Regulations.

New subclause 855.322 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New subclause 855.323 provides that, if an assurance of support has been requested by the Minister in relation to the relevant person who satisfies the primary criteria, an assurance of support in relation to that person, that includes the applicant, has been given, and has been accepted by the Minister, or an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

According to new clause 855.324 the Minister is required to be satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

New Division 855.4 sets out the circumstances applicable to the grant of a subclass 855 visa. Under new clause 855.411 the applicant must be in Australia, but not in immigration clearance, when the visa is granted.

New Division 855.5 provides for when a Subclass 855 visa is in effect. Under new clause 855.511, a Subclass 855 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 855.6 sets out the conditions attached to the grant of a Subclass 855 visa. Under new Division 855.6, there are no conditions.

New Division 855.7 provides for the way of giving evidence of the grant of a Subclass 855 visa. According to new clause 855.711, the visa is evidenced by affixing a visa label to a passport.

Part 856 Employer Nomination Scheme

New Part 856 inserts new visa Subclass 856 (Employer Nomination Scheme) ("Subclass 856") in the Migration Regulations.

New Division 856.1 provides that there are no interpretation provisions specific to this Part. It makes a reference to a number of terms defined in the Migration Regulations.

New Division 856.2 sets out the primary criteria for the grant of a Subclass 856 visa. The primary criteria must be satisfied by at least one member of the family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

New Subdivision 856.21 sets out the primary criteria that must be satisfied by an applicant at the time of application.

New subclause 856.211 (1) requires that the applicant must not be the holder of one of the types of visas set out in new paragraphs 856.211 (1)(a) to (c).

New subclause 856.211(2) provides that, if the applicant is not the holder of a substantive visa, he or she has to satisfy criteria 3001, 3003 and 3004. It further lists the subclasses of visa, which, if last held by the applicant, will disqualify him or her from the grant of a Subclass 856 visa.

New subclause 856.212(1) provides that, subject to new subclause 856.212(2), the applicant has to meet the requirements of subclause 856.212(3), (5), (6) or (7) listed below.

Under new subclause 856.212(2), new subclause 856.212(1) does not apply to an applicant who does not hold a substantive visa if he or she would have satisfied the requirements of that subclause if the application had been made immediately before his or her substantive visa ceased.

New subclause 856.212(3) provides that the applicant meets the requirements of this subclause if he or she holds a qualifying visa. "Qualifying visa" is defined in new subclause 856.212(4).

New subclause 856.212(5) provides that the applicant meets the requirements of this new subclause if he or she:

- * held one or more Group 2.6 (refugee and humanitarian (temporary entry)) entry permits under the Migration (1993) Regulations which permitted temporary residence in Australia for a total period of more than twelve months; and

- * is taken to hold a transitional (temporary) visa under the Migration Reform (Transitional Provisions) Regulations on the basis that he or she had held a Group 2.6 (refugee and humanitarian (temporary entry)) entry permit under the Migration (1993) Regulations immediately before 1 September 1994.

New subclause 856.212(6) provides that the applicant satisfies the requirements of this subclause if:

- * he or she is the holder of a Student (Temporary) (Class TU) visa granted in relation to an award course at associate diploma level or above completed by the applicant while he or she was the holder of that visa and, subject to new subclause 856.212(8) inserted by these Regulations, is not an assisted student; or

- * he or she is :

- the holder of a Group 2.2 (student) entry permit granted under the Migration (1993) Regulations in relation to a formal course or category A course, which was completed by the applicant while he or she was the holder of that permit; and

- the applicant is not a category B student for the purposes of the Migration (1993) Regulations or, subject to new subclause 856.212(8), is not an "assisted student".

New subclause 856.212(7) provides that the applicant meets the requirements of this subclause if he or she is the holder of a Working Holiday (Temporary) (Class TZ) visa.

New subclause 856.212(8) provides that for the purposes of subparagraphs 856.212(6)(a)(ii) and (b)(ii), inserted by these Regulations, "assisted student" does not include a person granted entry to Australia to study or train under the Subsidised Overseas Students Program.

New clause 856.213 provides that the applicant must:

- * have been nominated in accordance with subregulation 5.19(2) by an employer in respect of an appointment in the business of that employer; and

- * be a highly skilled person (within the meaning of subregulation 5.19) in relation to that appointment; and

- * not have turned 45 and must have vocational English, unless the appointment is exceptional.

New clause 856.214 provides that if the appointment is an approved appointment, the period that has elapsed since it became an approved appointment does not exceed 6 months.

New Subdivision 856.22 sets out the primary criteria to be satisfied at the time of decision in respect of a Subclass 856 visa.

Under new clause 856.221, the appointment mentioned in new paragraph 856.213(a) must have been approved.

Under new subclause 856.222, the Minister must be satisfied that the appointment mentioned in new paragraph 856.213(a) will provide the employment referred to in the relevant employer nomination.

New clause 856.223 requires that the applicant satisfy public interest criteria set out in 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 856.224 provides that if the Minister so requests, an assurance of support in relation to the applicant has been given and has been accepted by the Minister.

New subclause 856.225(1) requires that each member of the family unit of the applicant who is also an applicant for a Subclass 856 visa must satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New subclause 856.225(2) requires that each member of the family unit of the applicant who is not an applicant for a Subclass 856 visa must satisfy public interest criteria 4001, 4002, 4003 and 4004. The applicant is also required to meet public interest criterion 4005, unless the Minister is satisfied that it is unreasonable to require the person to undergo assessment in relation to that criterion.

New clause 856.226 provides that the Minister must be satisfied that the grant of the visa would not prejudice the rights of any person who has custody or guardianship of, or access to, a dependent child of the applicant.

New Division 856.3 sets out the secondary criteria in respect of the new Subclass 856 visa. It is noted that if any member of a family unit satisfies the primary criteria, the other members of the family unit are eligible for the grant of the visa if they satisfy the secondary criteria where their applications are made before the Minister has decided the first person's application.

New Subdivision 856.31 sets out the secondary criteria to be satisfied at the time of application.

New clause 856.311 provides that the applicant must be a member of the family unit of a person who has applied for a Employer Nomination (Residence) (Class BW) visa who appears to satisfy the requirements of Subdivision 856.21 and the Minister has not decided to grant or refuse to grant the visa to that other person.

New clause 856.312 provides that any sponsorship or nomination given in respect of that other person must include the applicant.

New Subdivision 856.32 sets out the secondary criteria to be satisfied at time of decision in respect of a Subclass 856 visa.

New subclause 856.321(1) provides that the applicant must meet the requirements of subclause 856.321(2), (3) or (4).

New subclause 856.321(2) provides that the applicant meets the requirement of this subclause if the applicant is a member of the family unit of the non-dependent holder of a Subclass 856 visa (that is, a person who, having satisfied the primary criteria, is the holder of a Subclass 856 visa).

If the applicant is the spouse of the non-dependent holder and the relationship has ceased, the applicant meets the requirements of new subclause 856.321(3) if.

- * the applicant;
- * a member of the family unit of the applicant who has made a combined application with the non-dependent holder; or
- * a dependent child of the applicant or of the non-dependent holder

has suffered domestic violence committed by the non-dependent holder.

New subclause 856.321(4) provides that the applicant meets the requirements of this subclause if the applicant is a member of the family unit of the spouse of the non-dependent holder, the spouse meets the requirements of new subclause 856.321(3), the applicant has made a combined application with the non-dependent holder, and the spouse has been granted a Subclass 856 visa. It is noted that special provisions relating to domestic violence are contained in Division 1.5 of the Migration Regulations.

New clause 856.322 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 856.323 provides that if an assurance of support has been requested by the Minister in relation to the relevant person who satisfies the primary criteria, an assurance of support in relation to that person, that includes the applicant, has been given, and has been accepted by the Minister, or an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

Under new clause 856.324, the Minister is required to be satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

New Division 856.4 sets out the circumstances applicable to the grant of a Subclass 856 visa. Under new clause 856.411, the applicant must be in Australia, but not in immigration clearance, when the visa is granted.

New Division 856.5 provides when a Subclass 856 visa is in effect. Under new clause 856.511, the visa is a permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of the grant.

New Division 856.6 sets out the conditions of the visa. Under new Division 856, there are no conditions attached to the grant of a Subclass 856 visa.

New Division 856.7 provides for the way of giving evidence of the grant of the visa. Under new clause 856.711, a Subclass 856 visa is evidenced by affixing a visa label to a passport.

Part 857 Regional Sponsored Migration Scheme

New Part 857 inserts visa Subclass 857 (Regional Sponsored Migration Scheme) ("Subclass 857").

New Division 857.1 provides that there are no interpretation provisions specific to this Part. It makes a reference to a number of terms defined in the Migration Regulations.

New Division 857.2 sets out the primary criteria in respect of a Subclass 857 visa. It is noted that the primary criteria must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

New Subdivision 857.21 sets out the time of application primary criteria.

New subclause 857.211(1) requires that the applicant must not be the holder of one of the types of visa set out in new paragraphs 857.211(1)(a) to (c).

New subclause 857.211(2) provides that, if the applicant is not the holder of a substantive visa, he or she has to satisfy the criteria 3001, 3003 and 3004. It further lists the subclasses of visa, which, if last held by the applicant, will disqualify him or her from the grant of a Subclass 857 visa.

New subclause 857.212(1) provides that, subject to new subclause 857.212(2) inserted by these Regulations, the applicant has to meet subclause 857.212(3), (5), (6) or (7) listed below.

Under new subclause 857.212(2), new subclause 857.212(1) does not apply to an applicant who does not hold a substantive visa if he or she would have satisfied the requirements of that subclause if the application had been made immediately before his or her substantive visa ceased.

New subclause 857.212(3) provides that the applicant meets the requirements of this subclause if he or she holds a qualifying visa. "Qualifying visa" is defined in new subclause 857.212(4).

New subclause 857.212(5) provides that the applicant meets the requirements of this new subclause if he or she:

- * held one or more Group 2.6 (refugee and humanitarian (temporary entry)) entry permits under the Migration (1993) Regulations which permitted temporary residence in Australia for a total period of more than twelve months; and

- * is taken to hold a transitional (temporary) visa under the Migration Reform (Transitional Provisions) Regulations on the basis that he or she had held a Group 2.6 (refugee and humanitarian (temporary entry)) entry permit under the Migration (1993) Regulations immediately before 1 September 1994.

New subclause 857.212(6) provides that the applicant satisfies the requirements of this subclause if.

- * he or she is the holder of a Student (Temporary) (Class TU) visa granted in relation to an award course at associate diploma level or above completed by the applicant while he or she was the holder of that visa and, subject to new subclause 857.212(8) inserted by these Regulations, is not an assisted student; or

- * he or she is :

- the holder of a Group 2.2 (student) entry permit granted under the Migration (1993) Regulations in relation to a formal course or category A course, which was completed by the applicant while he or she was the holder of that permit; and

- is not a category B student for the purposes of the Migration (1993) Regulations or, subject to new subclause 857.212(8), is not an "assisted student".

New subclause 857.212(7) provides that the applicant meets the requirements of this subclause if he or she is the holder of a Working Holiday (Temporary) (Class TZ) visa.

New subclause 857.212(8) provides that, for the purposes of subparagraphs 857.212(6)(a)(ii) and (b)(ii), "assisted student" does not include a person granted entry to Australia to study or train under the Subsidised Overseas Students Program.

New clause 857.213 provides that the applicant:

* must be nominated by an employer in respect of an appointment in the business, of that employer; and

* unless the appointment is exceptional, has:

- not turned 45;

- functional English; and

- a diploma or higher qualification within the meaning of regulation 5.19, in relation to that appointment; and

* is or is eligible to become, the holder of a qualification of a kind specified in subregulation 5.19(3A) if it is mandatory in Australia, in respect of work of the kind to be performed under the appointment, that a person be the holder of the qualification.

New clause 857.214 provides that, if the appointment is an approved appointment, the period that has elapsed since it became an approved appointment does not exceed 6 months.

New Subdivision 857.22 sets out the criteria to be satisfied at the time of decision in respect of a Subclass 857 visa.

Under new clause 857.221, the appointment mentioned in new paragraph 857.213(a) must be an approved appointment.

Under new clause 857.222, the Minister must be satisfied that the appointment mentioned in new paragraph 857.213(a) will provide the employment referred to in the relevant employer nomination.

New clause 857.223 requires that the applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 857.224 provides that, if so requested by the Minister, an assurance of support in relation to the applicant has been given and has been accepted by the Minister.

New subclause 857.225(1) requires that each member of the family unit of the applicant who is also an applicant for a Subclass 857 visa must satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New subclause 857.225(2) requires that each member of the family unit of the applicant who is not an applicant for a subclass 857 visa must satisfy public interest criteria 4001, 4002, 4003 and

4004. The applicant is also required to meet criterion 4005, unless the Minister is satisfied that it is unreasonable to require the applicant to undergo assessment against that criterion.

New clause 857.226 provides that Minister must be satisfied that the grant of a visa would not prejudice the rights of any person who has custody or guardianship of, or access to, a dependent child of the applicant.

New Division 857.3 sets out the secondary criteria in relation to Subclass 857 visa. It is noted that if any member of a family unit satisfies the primary criteria, the other members of the family unit are eligible for the grant of the visa if they satisfy the secondary criteria and their applications are made before the Minister has decided the first person's application.

New Subdivision 857.31 sets out the secondary criteria to be satisfied at the time of application.

New clause 857.311 requires that the applicant be a member of the family unit of a person who has applied for an Employer Nomination (Residence) (Class BW) visa and who appears to satisfy the requirements of Subdivision 857.21. The Minister must not have decided to grant or refuse to grant the visa to that other person.

New clause 857.312 provides that any sponsorship or nomination given in respect of that other person must include the applicant.

New Subdivision 857.32 sets out the secondary criteria to be satisfied at the time of decision in respect of a Subclass 857 visa.

New subclause 857.321(1) provides that the applicant must meet the requirements of subclause 857.321(2), (3) or (4).

New subclause 857.321(2) provides that the applicant meets the requirement of this subclause if the applicant is a member of the family unit of the non-dependent holder of a Subclass 857 visa (that is, a person who, having satisfied the primary criteria, is the holder of a Subclass 857 visa).

If the applicant is the spouse of the non-dependent holder and the relationship has ceased, the applicant meets the requirements of subclause 857.321(3) if.

- * the applicant;
- * a member of the family unit of the applicant who has made a combined application with the nondependent holder; or
- * a dependent child of the applicant or of the non-dependent holder

has suffered domestic violence committed by the non-dependent holder.

New subclause 857.321(4) provides that the applicant meets the requirements of this subclause if the applicant is a member of the family unit of the spouse of the non-dependent holder, the spouse meets the requirements of new subclause 857.321(3), the applicant has made a combined application with the non-dependent holder and the spouse has been granted a Subclass 857 visa. It is noted that special provisions relating to domestic violence are contained in Division 1.5 of the Migration Regulations.

New clause 857.322 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 857.323 provides that, if an assurance of support has been requested by the Minister in relation to the relevant person who satisfies the primary criteria, an assurance of support in relation to that person, that includes the applicant, has been given, and has been accepted by the Minister or an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

Under new clause 857.324, the Minister must be satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

New Division 857.4 sets out the circumstances applicable to the grant of a Subclass 857 visa. Under new clause 857.411, the applicant must be in Australia, but not in immigration clearance, when the visa is granted.

New Division 857.5 provides when a Subclass 857 visa is in effect. Under new clause 857.511, a Subclass 857 visa is a permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of the grant.

New Division 857.6 sets out the conditions of the visa. Under new Division 857.6, there are no conditions.

New Division 857.7 provides for the way of giving evidence of the grant of the visa. Under new clause 857.711, a Subclass 857 visa is evidenced by a visa label being affixed to a passport.

Part 858 Distinguished Talent

New Part 858 inserts new Subclass 858 (Distinguished Talent) ("Subclass 858 visa").

New Division 858.1 provides that there are no interpretation provisions specific to this Part.

New Division 858.2 sets out the primary criteria in respect of a Subclass 858 visa. It is noted that the primary criteria must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

New Subdivision 858.21 sets out the primary criteria to be satisfied at time of application in respect of a Subclass 858 visa.

New subclause 858.211(1) requires that the applicant is not the holder of one of the types of visa set out in new paragraphs 858.211(1)(a) to (c).

New subclause 858.211(2) provides that, if the applicant is not the holder of a substantive visa, he or she has to satisfy the criteria 3001, 3003 and 3004. It further lists the subclasses of visa, which, if last held by the applicant, will disqualify him or her from the grant of a Subclass 858 visa.

New subclause 858.212(1) provides that the applicant must meet the requirements of new subclause 858.212(2), (3) or (4).

New subclause 858.212(2) provides that the applicant:

- * must have an exceptional record of achievement in an occupation, profession or activity;

- * would be an asset to the Australian community;
- * would have no difficulty in obtaining employment or in becoming established independently in Australia in that occupation, profession or activity; and
- * must produce a nomination testifying to the applicant's standing in that occupation, profession or activity from an:
 - Australian citizen, permanent resident or organisation; or
 - eligible New Zealand citizen;

that has a national reputation in relation to that occupation, profession or activity.

New subclause 818.212(3) provides that the applicant:

- * must have a record of outstanding achievement and be still prominent in the area of arts or sport; and
- * must produce a nomination testifying to the applicant's achievement and standing in the relevant area from:
 - an Australian citizen, permanent resident or organisation; or
 - an eligible New Zealand citizen

that has a national reputation in relation to the applicant's field of the arts or sport.

New subclause 858.212(4) provides that the applicant meets the requirements of this subclause if, in the opinion of the Minister, acting on certain advice, the applicant has provided specialised assistance to the Australian Government in matters of security.

New Subdivision 858.22 sets out the primary criteria to be satisfied at the time of a decision in respect a Subclass 858 visa.

New clause 858.221 requires that the applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

Clause 858.222 provides that, if so requested by the Minister, an assurance of support in relation to the applicant has been given and has been accepted by the Minister.

Subclause 858.223(1) requires that each member of the family unit of the applicant who is also an applicant for a Subclass 858 visa must satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

Subclause 858.223(2) requires that each member of the family unit of the applicant who is not an applicant for a Subclass 858 visa must satisfy public interest criteria 4001, 4002, 4003 and 4004. The applicant is also required to meet criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

Subclause 858.224 provides that the Minister must be satisfied that the grant of the visa would not prejudice the rights of any person who has custody or guardianship of, or access to, a dependent child of the applicant.

Division 858.3 provides for the secondary criteria in respect of a Subclass 858 visa. It is noted that if any member of a family unit satisfies the primary criteria, the other members of the family unit are eligible for the grant of the visa if they satisfy the secondary criteria and their applications are made before the Minister has decided the first person's application.

New Subdivision 858.31 sets out the criteria to be satisfied at the time of an application in respect of a Subclass 858 visa.

New clause 858.311 requires that the applicant must be a member of the family unit of a person who has applied for a Distinguished Talent (Residence) (Class BX) visa who appears to satisfy the requirements of Subdivision 858.21. In addition, the Minister must not have decided to grant or refuse to grant the visa to that other person.

New clause 858.312 provides that any sponsorship or nomination given in respect of that person must include the applicant.

New Subdivision 858.32 sets out the secondary criteria to be satisfied at time of a decision in relation to a Subclass 858 visa.

New subclause 858.321(1) provides that the applicant must meet the requirements of new subclause 858.321(2), (3) or (4) inserted by these Regulations.

New subclause 858.321(2) provides that the applicant meets the requirement of this subclause if the applicant is a member of the family unit of the non-dependent holder of a Subclass 858 visa (that is, a person who, having satisfied the primary criteria, is the holder of a Subclass 858 visa).

If the applicant is the spouse of the non-dependent holder and the relationship has ceased, the applicant meets the requirements of new subclause 858.321(3) if.

- * the applicant;
- * a member of the family unit of the applicant who has made a combined application with the nondependent holder; or
- * a dependent child of the applicant or of the non-dependent holder

has suffered domestic violence committed by the non-dependent holder.

New subclause 858.321(4) provides that the applicant meets the requirements of this subclause if the applicant is a member of the family unit of the spouse of the non-dependent holder, the spouse meets the requirements of new subclause 858.321(3), the applicant has made a combined application with the non-dependent holder and the spouse has been granted a Subclass 858 visa.

It is noted that special provisions relating to domestic violence can be found in Division 1.5 of the Migration Regulations.

New subclause 858.322 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New subclause 858.323 provides that, if an assurance of support has been requested by the Minister in relation to the relevant person who satisfies the primary criteria, an assurance of support in relation to that person, that includes the applicant, has been given, and has been

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

Under new clause 858.324, the Minister must be satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

New Division 858.4 sets out the circumstances applicable to the grant of a Subclass 858 visa. Under new clause 858.411, the applicant must be in Australia, but not in immigration clearance, when the visa is granted.

New Division 858.5 provides when the visa is in effect. Under new clause 858.511, a Subclass 858 visa is a permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of the grant.

New Division 858.6 sets out the conditions attached to the grant of a Subclass 858 visa. Under new Division 858.6, there are no conditions.

New Division 858.7 provides for the way of giving evidence of the grant of a Subclass 858 visa. Under new clause 858.711, a Subclass 858 visa is evidenced by affixing a visa label to a passport.

Part 4 - Amendments of Schedules 7 and 8

Item 1401 - Schedule 7, Subdivision 1.1.1

This item amends Subdivision 1.1.1 of Schedule 7 to remove the requirement that in each of any 2 of the 4 fiscal years immediately preceding the making of the application for a visa, the applicant's main business, or the applicant's main businesses together, employed not fewer than a fixed number of full-time employees.

Item 1402 - Schedule 8, condition 8202

The amendments made by this item are mainly consequential to the amendments made by items 1310 and 1311 above. The amendments also provide that the holder of a Subclass 442 (Occupational Trainee) visa ("Subclass 442") must satisfy the requirements of the course of occupational training approved by the Minister under subclause 442.222(1). The other requirements in amended condition 8202 do not apply to holders of Subclass 442 visas.

Schedule 2 - Amendment commencing on gazettal

Item 2101 - Schedule 2, clause 449.612

This item amends clause 449.612 to add condition 8104 as a discretionary condition that may be imposed on the holder of a Subclass 449 (Humanitarian Stay (Temporary)) visa.

Condition 8104 provides that the holder must not engage in work for more than 20 hours a week while the holder is in Australia.

The effect of the amendment is that condition 8101 (no work rights) and condition 8104 will never be imposed together on the one visa.