

# Migration Amendment Regulations 1999 (No. 13) 1999 No. 259

## EXPLANATORY STATEMENT

### STATUTORY RULES 1999 NO. 259

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

#### *Migration Act 1958*

#### Migration Amendment Regulations 1999 (No. 13)

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 under provisions of the Act listed in Attachment A.

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

- create a revised and simplified structure of the Family stream of visa classes whereby:

- \* onshore and offshore visa classes are largely mirrored;
- \* the overall number of visa classes is reduced; and
- \* like visa subclasses are grouped together;

: (items 2124, 2207, 2212, 2214, 2215, 2226, 2309, 2310, 2312, 2313, 2351 and 2353);

- make various amendments to the concept of "dependency", including:

- \* amending the definition of "dependent" to apply to all circumstances except applications for visas in the refugee and humanitarian visa classes (items 2102 and 2106);
- \* amending the definition of "dependent child" by inserting a reference to a "step-child", removing the daily care and control requirement and clarifying the term "disability" (item 2103);
- \* creating a definition for "step-child" (item 2105); and
- \* amending various provisions in visa Subclasses 101 (Child) and 802 (Child) (items 2306, 2308 and 2348 to 2350);

- insert a custody criterion in relevant parts of Schedule 2 to the Migration Regulations as a result of the removal of the "daily care and control" requirement from the definition of "dependent child" (items 2311, 2314 to 2330, 2333 to 2335, 2337, 2339 to 2341 and 2345);

- clarify the Government's policy on the meaning of "remaining relative" following the Full Federal Court's judgement in *Hughes v Minister for Immigration and Multicultural Affairs* (unreported, FK, 31/3/99) (item 2109);

- clarify the Government's policy on the waiver of condition 8503 (item 2120);

- introduce additional prescribed forms for certain permanent visa applications, while maintaining the integrity of the bridging visa system (items 2122 and 2231 to 2233);
- make amendments to the general points test, including:
  - \* ensuring that the Migration Regulations fully reflect the recommendations of the Review of the Independent and Skilled-Australian Linked Categories (item 2128); and
  - \* providing for the award of 10 points to certain applicants who meet the requirements for the award of a doctorate by an Australian tertiary educational institution (item 2501);
- change the end of the time period applicable to the imposition or waiver of the post-decision fee for review by the Refugee Review Tribunal from 1 July 2002 to 1 July 2001 (item 2129); and
- make minor technical and consequential amendments (items 101 to 103, 2101, 2104, 2107, 2108, 2110 to 2119, 2121, 2123, 2125 to 2127, 2201 to 2206, 2208 to 2211, 2213, 2216 to 2224, 2225, 2227 to 2230, 2301 to 2305, 2331, 2332, 2336, 2338, 2342 to 2344, 2346, 2347, 2352 and 2401). Details of the Regulations are set out in Attachment B.

The Regulations will commence on 1 November 1999, other than regulations 1 to 3 (formal clauses) and Schedule 1. Schedule 1 amends the Migration Amendment Regulations 1999 (No. 11) to correct a minor technical error in those Regulations.

## **ATTACHMENT A**

### Migration Amendment Regulations 1999 (No. 13)

Regulations may be made under:

- 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 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, 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 46(2) of the Act which provides for prescribing a class of visa, an application for which maybe taken under the regulations to have been validly made;
- 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
- subsection 93(1) of the Act which provides that the Minister shall make an assessment by giving the applicant the prescribed number of points for each prescribed qualification that is satisfied in relation to the applicant.

## **ATTACHMENT B**

Migration Amendment Regulations 1999 (No. 13)

Regulation 1 - Name of Regulations

This regulation provides that these Regulations are the *Migration Amendment Regulations 1999 (No. 13)*.

Regulation 2 - Commencement

Paragraph 2(a) provides that regulations 1 to 3 and Schedule 1 commence on 31 October 1999.

Paragraph 2(b) provides that regulations 4 and 5 and Schedule 2 commence on 1 November 1999.

Regulation 3 - Amendment of *Migration Amendment Regulations 1999 (No. 11)*

This regulation provides that Schedule 1 amends the *Migration Amendment Regulations 1999 (No. 11)*

Regulation 4 - Amendment of *Migration Regulations 1994*

This regulation provides that Schedule 2 amends the *Migration Regulations 1994*.

Regulation 5 - Transitional

Subregulation 5(1) provides that amendments made by items listed in this subregulation apply in relation to an application for a visa made on or after 1 November 1999.

Subregulation 5(2) provides that the amendments made by items 2109, 2312, 2313 and 2501 of Schedule 2 to these Regulations apply in relation to an application made, but not finally determined (within the meaning of subsection 5(9) of the Act), before 1 November 1999 or made on or after 1 November 1999.

Subregulation 5(3) provides that the amendments made by items 2120 and 2121 of Schedule 2 to these Regulations apply only to a request for the waiver of condition 8503 made on or after 1 November 1999.

Subregulation 5(4) provides that the amendment made by item 2124 of Schedule 2 to these Regulations applies to applications made but not decided before 1 November 1999 or made on or after 1 November 1999.

Subregulation 5(5) provides that if an application for a visa of one of the classes listed in this subregulation was made before 1 November 1999, but was not finally determined (within the meaning of subsection 5(9) of the Act) before that date, the Migration Regulations as in force immediately before 1 November 1999 continue to apply in relation to that application.

Subregulation 5(6) provides that, if a person is taken to have applied for a visa of a particular class as an additional applicant under paragraph 2.08A(1)(e) and the original applicant applied for a visa of the kind mentioned in that paragraph before 1 November 1999, the Migration Regulations, as in force immediately before 1 November 1999, apply in relation to the application taken to have been made by the additional applicant.

Subregulation 5(7) provides that, if a dependent child is taken to have applied for a visa of a particular class under paragraph 2.08B(1)(e) and the original applicant applied for any of the visas listed in this subregulation before 1 November 1999, the Migration Regulations, as in force immediately before 1 November 1999, apply in relation to the application taken to have been made by the dependent child.

#### Schedule 1 - Amendments of *Migration Amendment Regulations 1999 (No. 11)*

Item 101 - Schedule 1, item [1203], new subregulation 1113(2)

Item 102 - Schedule 1, item [1206], new subregulation 1114A(2)

Item 103 - Schedule 1, item [1209], new subregulation 1121A(2)

These items correct a minor technical error in the *Migration Amendment Regulations 1999 (No. 11)*, by separating the relevant visa application charge into two instalments.

#### Schedule 2 - Amendments of *Migration Regulations 1994*

##### Part 1 - Amendments of Parts 1, 2 and 4

Item 2101 - Regulation 1.03, definition of *close relative*, paragraph (c)

This item makes a technical amendment to remove the reference to "adopted step-child" in the definition of "close relative" in regulation 1.03. The reference is superfluous as all children intended to be covered by the term "adopted step-child" fall within the meaning of "adopted child", which is referred to in the definition of "close relative".

Item 2102 - Regulation 1.03, definition of *dependent*

This item amends the definition of dependent so that it has the meaning given by new regulation 1.05A inserted by these Regulations at item 2106.

Item 2103 - Regulation 1.03, definition of *dependent child*

This item amends the definition of "dependent child" in regulation 1.03 by:

- \* inserting a reference to a "step-child" (as defined in amendments to regulation 1.03 made by these Regulations);
- \* removing the requirement that a child under 18 must be wholly or substantially in the daily care and control of another person to be a dependent child; and
- \* removing the current reference to subsection 4(1) of the *Disability Discrimination Act 1992* and replacing it with a requirement that the person must be incapacitated for work because of a total or partial loss of bodily or mental functions.,

Item 2104 - Regulation 1.03, definition of *long-term spouse relationship*, paragraph (a)

Currently, a spousal relationship between the visa applicant and another person that has continued for at least two years will be a "long-term spouse relationship" where there is a dependent child of both the visa applicant and that other person.

This item amends the definition of "long-term spouse relationship" so that a step-child is excluded from "dependent child" in assessing whether a relationship is a "long-term spouse

relationship". The amendment made by this item is consequential to the amendment, made by these Regulations, to the definition of dependent child to insert a reference to "step-child".

#### Item 2105 - Regulation 1.03, after definition of spouse

This item inserts a new definition of "step-child" into the Regulations. Under the new definition, a "stepchild", in relation to a parent, means a child who is not the natural or adopted child of the parent but who is either:

- \* the natural or adopted child of the parent's current spouse; or
- \* under 18 and the natural or adopted child of a former spouse of the parent and in relation to whom the parent has:
  - a residence order in force under the *Family Law Act 1975* ("the FLA");
  - a specific issues order in force under the FLA under which the parent is responsible for the child's long-term or day-to-day care, welfare and development; or
  - guardianship or custody, jointly or otherwise, under a Commonwealth, State or Territory law or a law in force in a foreign country.

#### Item 2106 - After regulation 1.05

New subregulation 1.05A(2) preserves the current definition of "dependent" in circumstances where an assessment of whether a person is "dependent" is required in relation to an application for a visa of a class specified in that paragraph. Broadly, the current definition of "dependent" is retained in respect of applications for visas in the refugee and humanitarian visa classes.

New subregulation 1.05A(1) inserts a definition of "dependent", which is applicable to every *other* situation in which a determination must be made about whether one person is "dependent" on another. That is, new subregulation 1.05A(1) creates a definition of "dependent" which is applicable to every situation other than an application for a class of visa listed in new subregulation 1.05A(2).

Under new subregulation 1.05A(1), a person will be "dependent" on another if:

- \* a at the time when it is necessary to assess dependency:
  - he or she is, and has been for a substantial period immediately before that time, wholly or substantially reliant on the other person for financial support to meet his or her basic needs for food, clothing and shelter; and
  - that reliance is greater than the person's reliance on any other person or source, for financial support to meet his or her basic needs for food, clothing and shelter; or
- \* he or she is wholly or substantially reliant on the other person for financial support because he or she is incapacitated for work due to a total or partial loss of his or her bodily or mental functions.

#### Item 2107 - Subparagraph 1.08 (b)(ii)

This item makes a minor consequential amendment to amendments made by *Migration Amendment Regulations 1999 (No. 11)*.

#### Item 2108 - Paragraph 1.09A(2)(d)

This item makes a consequential amendment to paragraph 1.09A(2)(d) as a result of the restructure of the Family stream of visa classes.

#### Item 2109 - Regulation 1.15

This item substitutes new regulation 1.15, which ensures that the evidentiary burden in respect of an assessment of whether a person is a "remaining relative", is borne by the applicant. The amendments result from the decision of *Hughes v MIMA* (unreported, Full Federal Court, 31 March 1999) and are intended to clarify the original policy position.

New subregulation 1.15(1) provides that an applicant for a visa is a "remaining relative" of another person who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen if the applicant satisfies the Minister that:

- \* the other person is a parent, brother, sister, step-parent, step-brother or step-sister of the applicant; and
- \* the other person is usually resident in Australia; and
- \* if the applicant or the applicant's spouse (if any) has an overseas near relative (defined in new subregulation 1.15(3) inserted by these Regulations):
  - the applicant and the applicant's spouse (if any) usually reside in a country, not being Australia, that is different to the country in which that relative resides; and
  - neither the applicant nor the applicant's spouse (if any) have had contact with that relative within a reasonable period before making the application; and
- \* the applicant and the applicant's spouse (if any) together have no more than 3 overseas near relatives; and
- \* if the applicant is a child who:
  - has not turned 18; and
  - has been adopted by an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen (the adoptive parent) while overseas

at the time of making an application, the adoptive parent has been residing overseas for a period of at least 12 months.

This item also amends the definition of "overseas near relative" currently defined in subregulation 1.15(3) of the Migration Regulations. As a result of amendments made by these Regulations, the term is now defined in new subregulation 1.15(2). The amendments to the definition of "overseas near relative" are consequential to amendments to the definition of "dependent child" made by these Regulations. The item removes the reference to "nondependent child" and to "non-dependent Stepchild". It also inserts a new provision, with the effect that a child (including a step-child) of the applicant or the applicant's spouse, will be an overseas near relative where the child:

- \* has turned 18 and is not a dependent child of the applicant or the applicant's spouse (if any); or

\* has not turned 18 and is not wholly or substantially in the daily care and control of the applicant or the applicant's spouse (if any).

New subregulation 1.15(3) provides that for the purposes of new paragraphs 1.15(1)(c) and (d), (which deal with the situation where the applicant or his or her spouse (if any) has an overseas near relative), the overseas near relative is taken to reside in his or her last known country of residence unless the applicant satisfies the Minister that the relative resides in another country. The insertion of new subregulation 1.15(3) ensures that where the whereabouts of an overseas near relative of an applicant or his or her spouse (if any) are unknown, the overseas near relative is taken to reside in his or her last known country of residence.

#### Items 2110 to 2119

These items make consequential amendments to various parts of Part 1 of the Migration Regulations as a result of the restructure of the Family stream of visa classes.

#### Item 2120 - Paragraph 2.05(4)(a)

Conditions 8503 provides that a visa holder will not, after entering Australia, be entitled to be granted a substantive visa, other than a protection visa, while the holder remains in Australia.

This item substitutes new paragraph 2.05(4)(a) which provides that the Minister may waive condition 8503 if, since the person was granted the visa that was subject to the condition, compelling and compassionate circumstances have developed:

\* over which the person had no control; and

\* that resulted in a major change to the person's circumstances.

#### Item 2121 - Paragraph 2.05(4)(b)

This item amends paragraph 2.05(4)(b) to clarify that "the circumstances" mentioned in paragraph 2.05(4)(b) refer to the compelling and compassionate circumstances referred to in paragraph 2.05(4)(a) (as amended by these Regulations).

#### Item 2122 - After regulation 2.07

This item inserts new regulation 2.07A, which provides that an application for a substantive visa made on a form mentioned in subitem 1301(1), 1303(1) or 1305(1) (as amended by these Regulations) is not a valid application for a Bridging A (Class WA), Bridging C (Class WC) or Bridging E (Class WE) visa, if the applicant was not in Australia when the application for the substantive visa was made, or the substantive visa is a visa of a kind that can only be granted if the applicant is outside Australia.

#### Item 2123 - Subparagraph 2.08B(1)(a)(v)

This item makes a minor consequential amendment to subparagraph 2.08B(1)(a)(v) as a result of the restructure of the Family stream of visa classes.

#### Item 2124 - After regulation 2.08D

This item inserts a deeming provision in relation to an applicant for a Prospective Marriage (Temporary) (Class TO) visa who marries before that application is decided.



New subregulation 2.08E(1) provides that visa classes Partner (Migrant) (Class BC) and Partner (Provisional) (Class UF) are prescribed for the purposes of subsection 46(2) of the Act. Subsection 46(2) provides for prescribing a class of visa, an application for which may be taken under the Regulations to have been validly made.

New subregulation 2.08E(2) inserts the deeming provision. This subregulation provides that, where an applicant for a Prospective Marriage (Temporary) (Class TO) visa marries the person nominated in that application before that application is decided, the person is taken instead to have validly applied for a Partner (Migrant) (Class BC) and a Partner (Provisional) (Class UF) visa (which are applied for simultaneously under the Migration Regulations). The marriage must be recognised as valid for the purposes of the Act.

New subregulation 2.08E(3) provides that, in cases where the deeming provision operates, the amount paid by the applicant as the first instalment of the visa application charge for the Prospective Marriage (Temporary) (Class TO) application is taken to be payment of the first instalment of the visa application charge for the Partner (Migrant) (Class BC) application.

Item 2125 - Paragraph 2.12(1)(o)

This item inserts a reference in paragraph 2.12(1)(o) to new visa class Child (Residence) (Class BT) for the purposes of section 48 of the Act, which limits further applications by a person whose visa has been cancelled, or whose application for a visa has been refused. This amendment is consequential to the restructure of the Family stream of visa classes.

Item 2126 - Paragraph 2.21A(1)(b)

These items make minor consequential amendments to paragraphs 2.12(1)(o) and 2.21A(1)(b) as a result of the restructure of the Family stream of visa classes.

Item 2127 - Paragraph 2.26A(4)(b)

This item makes a technical amendment consequential to the insertion of new paragraph 2.26A(4)(c).

Item 2128 - After paragraph 2.26A(4)(b)

This item inserts new paragraph 2.26A(4)(c) to clarify that, under the General Points System, (introduced by *Migration Amendment Regulations 1999* (No. 5)), points cannot be awarded to an applicant for work experience in lieu of suitable educational qualifications in relation to skilled occupations for which 50 or 40 points are available to the applicant. Consequently, the amendments made by this item make it clear that an applicant must hold a particular educational qualification for skilled occupations for which 50 or 40 points are available to the applicant.

Items 6A12 and 6A13 of Part 1 of Schedule 6A to the Migration Regulations allow an applicant to obtain 50 or 40 points, respectively, for a skilled occupation specified by Gazette Notice.

New paragraph 2.26A(4)(c) provides that the Minister must not give the applicant the prescribed number of points for item 6A12 or 6A13 unless:

\* in the case of item 6A12 (a. skilled occupation for which 50 points are available) the applicant is assessed by the relevant assessing authority as holding a degree that is equivalent to a degree of an Australian tertiary educational institution; and

\* in the case of item 6A13 (a. skilled occupation for which 40 points are available) the applicant is assessed by the relevant assessing authority as holding a diploma or advanced diploma that is equivalent to a diploma or advanced diploma of an Australian educational institution.

Item 2129 - Subregulation 4.31B(5)

This item amends subregulation 4.31B(5) to change the time period within which regulation 4.31B applies from 1 July 2002 to 1 July 2001. Regulation 4.31B relates to the imposition or waiver of the post-decision fee for review by the Refugee Review Tribunal.

Part 2 - Amendments of Schedule 1

Item 2201 - Item 110 1

This item omits item 1101, which relates to applications for Adoption (Migrant) (Class AA) visas. This change is consequential to the restructure of the Family stream of visa classes.

Item 2202 - Schedule 1, subitem 1104(1)

This item makes a technical amendment to subitem 1104(1) of Schedule 1 to the Migration Regulations.

Items 2203 to 2206

These items make consequential amendments to various parts of Schedule 1 to the Migration Regulations as a result of the restructure of the Family stream of visa classes.

Item 2207 - Item 1108

This item substitutes a revised version of item 1108, and inserts new item 1108A.

*Item 1108 - Child (Migrant) (Class AH)*

The changes to item 1108 include:

- \* adding form 47CH as a prescribed form;
- \* providing for the payment of the first and second instalments of the visa applicant charge by persons who might meet the criteria for the grant of a Subclass 117 (Orphan Relative) visa; and
- \* adding visa Subclasses 102 (Adoption) and 117 (Orphan Relative) to this visa class.

Visa Subclass 102 (Adoption) was previously contained within its own visa class (Adoption (Migrant) (Class AA)), which is omitted as part of the restructure of the Family stream of visa classes. Visa Subclass 117 (Orphan Relative) is created as a result of the disaggregation of Subclass 104 (Preferential Family).

*Item 11 08A - Child (Residence) (Class BT)*

This item sets out the requirements for making a valid application for a Child (Residence) (Class BT) visa. Those requirements include:

- the application form is 47CH or 887;

- the first instalment of the visa application charge payable is: Nil (where the applicant's brother or sister has made a simultaneous application for a Child (Residence) (Class BT) visa, and has paid the relevant amount, or under circumstances specified in subparagraph 1108A(2)(iii)); \$660 (where the applicant appears to be an orphan relative); or \$1,595 (in any other case);
- the second instalment of the visa application charge payable is: \$960 (where an assurance of support is required in relation to the applicant); or Nil (in any other case);
- the application must be made in Australia, but not in immigration clearance, and the applicant must be in Australia, but not in immigration clearance; and
- a combined application with the applicant's family unit member/s must be made at the same time and place as the applicant's application.

This item also provides that the class contains two visa subclasses, Subclass 802 (Child) and Subclass 837 (Orphan Relative). The criteria for the grant of a Subclass 802 (Child) visa remain as before. The criteria for the grant of a Subclass 837 (Orphan Relative) visa are inserted into Schedule 2 to the Migration Regulations by item 2353.

#### Items 2208 to 2211

These items make minor consequential amendments to various parts of Schedule 1 to the Migration Regulations as a result of the restructure of the Family stream of visa classes.

#### Item 2212 - Item 1119

This item omits item 1119, which relates to applications for General Residence (Class AS) visas. As a result of the Family stream visa class restructure, and the Skilled stream visa class restructure (the latter was introduced by *Migration Amendment Regulations 1999 (No. 11)*), visa class General Residence (Class AS) is left containing only visa Subclass 832 (Close Ties). However, the criteria relating to visa Subclass 832 (Close Ties) are also contained in visa class Family (Residence) (Class AO), which will remain after the restructures. Therefore, as part of the simplification of the Family stream of visa classes, visa class General Residence (Class AS) is omitted.

#### Item 2213 - Item 1120A

This item omits item 1120A, which relates to applications for Interdependency (Migrant) (Class BI) visas. This change is consequential to the restructure of the Family stream of visa classes.

#### Item 2214 -After item 1123

This item inserts new items 1123A and 1123B.

#### *Item 1123A - Other Family (Migrant) (Class BO)*

This item sets out the requirements for making a valid application for an Other Family (Migrant) (Class BO) visa. Those requirements include:

- the application form is 47 or 47017;
- the first instalment of the visa application charge payable is: \$660 (where the applicant appears to be a carer); or \$1,075 (in any other case);
- the second instalment of the visa application charge payable is: Nil (where an applicant is a carer and the Minister has waived the payment); or \$960 (in any other case);

the application must be made outside Australia;

- a combined application with the applicant's family unit member/s must be made at the same time and place as the applicant's application; and
- an application by a person claiming to be a carer must be accompanied by satisfactory evidence of a relevant medical assessment.

This item also provides that the class contains three visa subclasses, Subclass 114 (Aged Dependent Relative), Subclass 115 (Remaining Relative) and Subclass 116 (Carer). These subclasses are created as part of the disaggregation of Subclass 104 (Preferential Family) and the criteria for the grant of these subclasses are inserted into Schedule 2 to the Migration Regulations by item 2310.

#### Item 1123B - Other *Family (Residence)* (Class BU)

This item sets out the requirements for making a valid application for an Other Family (Residence) (Class BU) visa. Those requirements include:

- the application form is form 470F or 887;
- the first instalment of the visa application charge payable is: \$660 (where the applicant appears to be a carer); or \$1,595 (in any other case);
- the second instalment of the visa application charge payable is: Nil (where an applicant is a carer and the Minister has waived the payment); or \$960 (in any other case);
- the application must be made in Australia, but not in immigration clearance and the applicant must be in Australia, but not in immigration clearance;
- a combined application with the applicant's family unit member/s must be made at the same time and place as the applicant's application; and
- an application by a person claiming to be a carer must be accompanied by satisfactory evidence of a relevant medical assessment.

This item also provides that the class contains three visa subclasses, Subclass 835 (Remaining Relative), Subclass 836 (Carer) and Subclass 838 (Aged Dependent Relative). These subclasses are created as part of the disaggregation of Subclass 806 (Family) and the criteria for the grant of these subclasses are inserted into Schedule 2 to the Migration Regulations by item 2353.

Item 2215 - After item 1124

This item inserts new items 1124A and 1124B.

*Item 1124A - Aged Parent (Residence) (Class BP)*

This item sets out the requirements for making a valid application for an Aged Parent (Residence) (Class BP) visa. Those requirements include:

- the application form is form 47PA or 887;
- the first instalment of the visa application charge payable is \$1,595, and the second instalment of the visa application charge payable is \$960;
- the application must be made in Australia, but not in immigration clearance, and the applicant must be in Australia, but not in immigration clearance; and
- a combined application with the applicant's family unit member/s must be made at the same time and place as the applicant's application.

This item also provides that the class contains one visa subclass, Subclass 804 (Aged Parent). This visa subclass was formerly contained in visa classes General (Residence) (Class AS), Family (Residence) (Class AO) and Change in Circumstances (Residence) (Class AG).

*Item 1124B - Partner (Residence) (Class BS)*

This item sets out the requirements for making a valid application for a Partner (Residence) (Class BS) visa. Those requirements include:

- the application form is form 1002 (where the applicant is the holder of a Subclass 445 (Dependent Child) visa), or form 47SP or 887 (in any other case);
- the first instalment of the visa application charge payable is: Nil (where the applicant is the holder of a Subclass 445 (Dependent Child) visa); \$185 (where the applicant meets the description in subparagraph 1124B(2)(a)(ii)); \$520 (where the applicant meets the description in subparagraphs 1124B(2)(a)(v)); \$660 (where the applicant meets the description in subparagraphs 1124B(2)(a)(iii), (iv) or (vi)); or \$1,595 (in any other case).
- the second instalment of the visa application charge payable is Nil;
- the application must be made in Australia, but not in immigration clearance and the

applicant must be in Australia, but not in immigration clearance;

- a combined application with the applicant's family unit member/s must be made at the same time and place as the applicant's application.

This item also provides that the class contains two visa subclasses, Subclass 801 (Spouse) and Subclass 814 (Interdependency). These subclasses were formerly contained in visa class General (Residence) (Class AS).

#### Item 2216 - Item 1125

This item omits item 1125, which relates to applications for Preferential Relative (Migrant) (Class AY) visas. This change is consequential to the restructure of the Family stream of visa classes.

#### Item 2217 - Item 1129, heading

This item amends the heading to item 1129, by renaming the visa class to which this item relates Partner (Migrant) (Class BC). This change is consequential to the restructure of the Family stream of visa classes.

#### Items 2218 to 2220

These items make minor consequential amendments to various parts of Schedule 1 to the Migration Regulations as a result of the restructure of the Family stream of visa classes.

#### Item 2221 - Paragraph 1204 (3) (c)

This item amends paragraph 1204(3)(c) of Schedule 1 to the Migration Regulations to change an incorrect alpha code reference to an Emergency (Temporary) (Class TI) visa inserted by *Migration Amendment Regulations 1999 (No. 6)*.

#### Items 2222 to 2224

These items make minor consequential amendments to various parts of Schedule 1 to the Migration Regulations as a result of the restructure of the Family stream of visa classes.

#### Item 2225 - Item 1213A

This item omits item 1213A, which relates to visa class Interdependency (Provisional) (Class UG). This change is consequential to the restructure of the Family stream of visa classes.

#### Item 2226 - After item 1214B

This item inserts new item 1214C. The item sets out the requirements for making a valid application for a Partner (Temporary) (Class UK) visa. Those requirements include:

- the application form is form 47SP or 887;
- the visa application charge payable is nil;
- the application must be made at the same time and place as an application for a Partner (Residence) (Class BS) visa;

- the application must be made in Australia, but not in immigration clearance and the applicant must be in Australia, but not in immigration clearance;
- where the applicant is the holder of a Subclass 300 (Prospective Marriage) visa and seeks to remain permanently in Australia as the spouse of the person nominated in the Subclass 300 application, the application for the Subclass 300 visa must have been made on or after 1 November 1996;
- a combined application, where the applicant is claiming to be a family unit member of the holder or former holder of a prospective marriage (temporary) visa who is an applicant for a Partner (Temporary) visa, must be made at the same time and place as the applicant's application; and
- a combined application with the applicant's dependent child/children must be made at the same time and place as the applicant's application.

This item also provides that the class contains two visa subclasses, Subclass 820 (Spouse) and Subclass 826 (Interdependency). These subclasses were formerly contained in visa class Extended Eligibility (Temporary) (Class TK).

#### Items 2227 to 2230

These items make minor consequential amendments to various parts of Schedule 1 to the Migration Regulations as a result of the restructure of the Family stream of visa classes.

#### Item 2231 - Item 1301, note

This item amends the note at the bottom of item 1301 to make a cross-reference to regulations 2.21A and 2.07A.

#### Item 2232 - Items 1303 and 1305, at the foot

This item inserts a note at the bottom of these items to make a cross-reference to regulation 2.07A.

#### Item 2233 - Additional amendments of Schedule 1 - forms

This item amends Schedule 1 to add references to specific variations of form 47 as prescribed application forms for relevant onshore and offshore visa applications in subitems 1104(1), 1104A(1), 1107(1), 1115(1), 1116(1), 1117(1), 1118(1), 1301(1), 1303(1) and 1305(1).

The amendment ensures that applicants apply on the correct form and is intended to reduce the extent to which decision-makers need to obtain further information and evidence from applicants.

#### Part 3 - Amendments of Schedule 2

## Items 2301 to 2304

These items make minor consequential amendments to various parts of Schedule 1 to the Migration Regulations as a result of the restructure of the Family stream of visa classes.

### Item 2305 -Division 101.1, note

This item makes a consequential amendment to the note in Division 101.1 to add a reference to the new definition of "step-child" inserted by these Regulations.

### Item 2306 - Clause 101.211

This item amends subclause 101.211(1) by inserting a reference to "step-child" and is consequential to the amendment of the definition of "dependent child" which adds a reference to "step-child" (at item 2103). As a result, a step-child can now qualify for the grant of a Subclass 101 (Child) visa ("Subclass 101 visa") by meeting the primary criteria for the grant of the visa.

This item also amends subclause 101.211(1) by inserting a requirement that an applicant seeking to meet the primary criteria for the grant of Subclass 101 visa must be under 25 years of age at the time of application. This requirement is subject to one exception provided for in new subclause 101.211(2), inserted by these Regulations.

This item also makes a technical amendment by collapsing existing paragraph 101.211(1)(b) and subclause 101.211(2) into new sub-paragraph 101.211(1)(c)(ii).

In addition, this item inserts new subclause 101.211(2), which provides for an exception to the requirement that an applicant seeking to meet the primary criteria for the grant of a Subclass 101 visa must be under 25 years of age at the time of application. New subclause 101.211(2) provides that the requirement does not apply to an applicant who, at the time of making the application, is a "dependent child" because he or she is wholly or substantially incapacitated for work because of a total or partial loss of bodily or mental functions.

### Item 2307 - After clause 101.212

This item inserts new clause 101.213, which must be met, at the time of application, by an applicant seeking to meet the primary criteria for the grant of a Subclass 101 visa. New clause 101.213 requires that any applicant who has turned 18 must:

\* not:

- be engaged;

- have a spouse; or

- ever have been married; and

\* not be engaged in full-time work; and

\* since turning 18, or within 6 months or a reasonable time after completing the equivalent of Year 12 in the Australian school system, have been undertaking a fulltime course of study leading to the award of a professional, trade or vocational qualification ("the fulltime study requirement"). The full time study requirement is subject to one exception inserted by these Regulations at new subclause 101.213(2).



New subclause 101.213(2) provides for an exception to the full-time study requirement. The full-time study requirement does not apply to an applicant who, at the time of making the application, is a "dependent child" because he or she is wholly or substantially incapacitated for work because of a total or partial loss of bodily or mental functions.

#### Item 2308 - Clause 101.221

Clause 101.221 currently requires an applicant to continue to meet existing clause 101.211 at the time of a decision in respect of a Subclass 101 visa. This item substitutes new subclause 101.221 (1), which provides that, where an applicant had not turned 18 at the time of the application, the applicant, at the time of decision:

- \* must continue to meet the requirements of clause 101.211 (as amended by these Regulations); or
- \* does not continue to meet the requirements of clause 101.211 (as amended by these Regulations) only because he or she has turned 18.

This amendment is intended to ensure that an applicant who turns 18 during the processing of the visa application, is not disqualified from the grant of the visa simply because of the change in age.

This item also inserts new subclause 101.221(2), which provides that, where an applicant had turned 18 at the time of the application, the applicant, at the time of decision:

- \* must continue to meet the requirements of clause 101.211 (as amended by these Regulations); or
- \* does not continue to meet the requirements of clause 101.211 (as amended by these Regulations) only because he or she has turned 25 (This amendment is intended to ensure that an applicant who turns 25 during the processing of the visa application is not disqualified from the grant of the visa simply because of the change in age); and
- \* must continue to meet the requirements of new clause 101.213.

#### Item 2309 - Part 104

This item omits Part 104, which relates to visa Subclass 104 (Preferential Family). As a result of the restructure of the Family stream of visa classes, Part 104 is disaggregated into its component categories, resulting in the introduction of new visa Subclasses 114 (Aged Dependent Relative), 115 (Remaining Relative), 116 (Carer) and 117 (Orphan Relative). The criteria relating to these new subclasses are inserted by item 2310 of these Regulations.

#### Item 2310 -After Part 110

##### *Part 114 -Aged Dependent Relative*

New Part 114 inserts new visa Subclass 114 (Aged Dependent Relative) ("Subclass 114") in Schedule 2 to the Migration Regulations.

New Division 114.1 makes reference to a number of terms defined in the Migration Regulations. It also provides that there are no interpretation provisions specific to new Part 114.

New Division 114.2 inserts the primary criteria to be satisfied in respect of a Subclass 114 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 114.21 sets out the primary criteria that must be satisfied at the time of application in respect of a Subclass 114 visa.

In particular, new clause 114.211 provides that the applicant must be an aged dependent relative of a person who is an Australian citizen, or an Australian permanent resident, or an eligible New Zealand citizen.

New clause 114.212 sets out the sponsorship provisions relating to Subclass 114.

New subclause 114.212(1) provides that the applicant must be sponsored:

\* if the Australian relative has turned 18 and is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen - by the Australian relative; or

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

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

New subclause 114.212(2) provides that, for the purposes of clause 114.212, the "Australian relative" means the person mentioned in new clause 114.211 of whom the applicant is an aged dependent relative.

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

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

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

New clause 114.223 provides that the applicant must satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 114.224 provides that if the applicant has previously been in Australia, he or she must satisfy special return criteria 5001 and 5002.

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

New subclause 114.226(1) provides that each member of the family unit of the applicant who is an applicant for a Subclass 114 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 114.226(2) provides that each member of the family unit of the applicant who is not an applicant for a Subclass 114 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 114.227 provides that if.

\* 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 114 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 114.3 sets out the secondary criteria for a Subclass 114 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 114 visa.

New Subdivision 114.31 sets out the secondary criteria to be satisfied at the time of application in respect of a Subclass 114 visa.

New clause 114.311 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 114.21.

New clause 114.312 provides that the sponsorship referred to in new clause 114.212 of the person who satisfies the primary criteria must include sponsorship of the applicant.

New Subdivision 114.32 sets out the secondary criteria to be satisfied at the time of decision in relation to a Subclass 114 visa.

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

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

New clause 114.323 provides that the applicant must satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

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

New clause 114.325 provides that either the applicant must be included in the assurance of support given in respect of the person who satisfies the primary criteria and that assurance of support has been accepted by the Minister, or an assurance of support must have been provided in relation to the applicant and must have been accepted by the Minister.

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

New Division 114.4 provides for the circumstances applicable to the grant of a Subclass 114 visa.

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

New Division 114.5 provides for when a Subclass 114 visa is in effect. New clause 114.511 provides that a Subclass 114 visa is a permanent visa permitting the holder to travel to and enter Australia for a period of 5 years from the date of grant.

New Division 114.6 provides for the conditions that are to attach to the grant of a Subclass 114 visa.

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

New clause 114.612 provides that either or both of conditions 8502 and 8515 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. Condition 8515 provides that the holder of the visa must not marry before entering Australia.

New Division 114.7 provides for the way in which evidence of a Subclass 114 visa is to be given.

New clause 114.711 requires that a Subclass 114 visa be evidenced by way of a visa label affixed to a valid passport.

#### *Part 115 - Remaining Relative*

New Part 115 inserts new visa Subclass 115 (Remaining Relative) ("Subclass 115") into the Migration Regulations.

New Division 115.1 makes a reference to a number of terms defined in the Migration Regulations. It also provides that there are no interpretation provisions specific to this Part.

New Division 115.2 sets out the primary criteria in respect of an application for a Subclass 115 visa. 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 115.21 sets out the primary criteria that must be satisfied at the time of application in respect of a Subclass 115 visa.

New subclause 115.211 (1) requires that the applicant is a remaining relative of an Australian relative of the applicant.

New subclause 115.211(2) clarifies that, for the purposes of clause 115.211, "Australian relative", in relation to an applicant, means a relative of the applicant who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

New clause 115.212 provides that the applicant must be sponsored:

\* if the Australian relative has turned 18 and is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen - by the Australian relative; or

- \* by the spouse of the Australian relative, if the spouse:
  - is over 18;
  - cohabits with the Australian relative; and
  - is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen.

New Subdivision 115.22 sets out the primary criteria to be satisfied at the time of decision by an applicant for a Subclass 115 visa.

Under new clause 115.221, the applicant must continue to satisfy the criterion in new clause 115.211.

Under new clause 115.222, the sponsorship referred to in new clause 115.212 must have been approved by the Minister and must be still in force.

New clause 115.223 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 115.224 provides that if the applicant has previously been in Australia, the applicant must satisfy special return criteria 5001 and 5002.

New clause 115.225 provides that an assurance of support in relation to the applicant must have been given and accepted by the Minister.

New subclause 115.226(1) requires that each member of the family unit of the applicant who is also an applicant for a Subclass 115 visa must satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010 and, if the member has previously been in Australia, he or she must also satisfy special return criteria 5001 and 5002.

New subclause 115.226(2) requires that each member of the family unit of the applicant who is not an applicant for a Subclass 115 visa must satisfy public interest criteria 4001, 4002, 4003 and 4004. The member is also required to satisfy 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 115.227 provides that if.

- \* 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 114 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 115.3 sets out the secondary criteria in relation to new Subclass 115. It provides that the criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

New Subdivision 115.31 sets out the secondary criteria that must be satisfied at the time of application in respect of a Subclass 115 visa. The secondary criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

New clause 115.311 requires that the applicant must be a member of the family unit of, and must have made a combined application with, a person who satisfies the primary criteria in new Subdivision 115.21.

New clause 115.312 provides that the sponsorship referred to in new clause 115.212 of the person who satisfies the primary criteria includes sponsorship of the applicant.

New Subdivision 115.32 sets out the secondary criteria to be satisfied at the time of decision in relation to a Subclass 115 visa.

New clause 115.321 provides that the applicant must continue to be a member of the family unit of a person who is the holder of a Subclass 115 visa.

New clause 115.322 provides that the sponsorship referred to in clause 115.312 must have been approved by the Minister and must be still in force.

New clause 115.323 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 40 10.

New clause 115.324 provides that if the applicant has previously been in Australia, the applicant must satisfy special return criteria 5001 and 5002.

New clause 115.325 requires that, either the applicant is included in the assurance of support given in respect of the person who satisfies the primary criteria, and that assurance has been accepted by the Minister, or an assurance of support has been given in relation to the applicant, and has been accepted by the Minister.

New clause 115.326 provides that if the applicant is a dependent child, the Minister is satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any other person who has custody or guardianship of, or access to, the applicant.

New Division 115.4 sets out the circumstances applicable to the grant of a Subclass 115 visa. Under new clause 115.411, the applicant must be outside Australia when the visa is granted. The note below clause 115.411 provides that the second instalment of the visa application charge must be paid before the visa can be granted.

New Division 115.5 provides for when a Subclass 115 visa is in effect. Under new clause 115.511, a Subclass 115 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 115.6 sets out the conditions attached to the grant of a Subclass 115 visa. Under new clause 115.611 first entry must, be made before a date specified by the Minister for the purpose. Under new clause 115.612 either or both of conditions 8502 and 8515 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. Condition 8515 provides that the holder of the visa must not marry before entering Australia

New Division 115.7 provides for the way of giving evidence of the grant of a Subclass 115 visa. According to new clause 115.711, the visa is evidenced by affixing a visa label to a valid passport.

## Part 116 - Carer

New Part 116 inserts new visa Subclass 116 (Carer) ("Subclass 116") in the Migration Regulations.

New Division 116.1 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 116.2 sets out the primary criteria for the grant of a Subclass 116 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 116.21 sets out the primary criteria that must be satisfied by an applicant at the time of application.

New subclause 116.211 (1) requires that the applicant must claim to be a carer of an Australian relative of the applicant.

New subclause 116.211(2) provides that Australian relative, in relation to an applicant, means a relative of the applicant who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

New clause 116.212 provides that the applicant must be sponsored:

- \* if the Australian relative has turned 18 and is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen - by the Australian relative; or
- \* by the spouse of the Australian relative, if the spouse:
  - is over 18;
  - cohabits with the Australian relative; and
  - is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen.

New Subdivision 116.22 sets out the primary criteria to be satisfied at the time of decision in respect of a Subclass 116 visa.

Under new clause 116.221, the applicant is a carer of the Australian relative mentioned in new clause 116.211.

Under new clause 116.222, the sponsorship referred to in clause 116.212 has been approved by the Minister and is still in force.

New clause 116.223 requires that the applicant satisfy public interest criteria set out in 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 116.224 provides that if the applicant has previously been in Australia, the applicant satisfies special return criterion 5001.

New clause 116.225 provides that an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

New clause 116.226 requires that each member of the family unit of the applicant who is also an applicant for a Subclass 116 visa must satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010 and if the member has previously been in Australia, he or she must satisfy special return criterion 5001.

New subclause 116.226(2) requires that each member of the family unit of the applicant who is not an applicant for a Subclass 116 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 116.227 provides that if the family unit of the applicant includes a dependent child who made a combined application with the applicant, or a child who is usually resident with the applicant, and has not turned 18, made a combined application with the applicant, 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 116.3 sets out the secondary criteria in respect of the new Subclass 116 visa. It is noted that if any member of a family unit satisfies the primary criteria.

New Subdivision 116.31 sets out the secondary criteria to be satisfied at the time of application.

New clause 116.311 provides that the applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 116.21.

New clause 116.312 provides that any sponsorship or nomination given in respect of that other person must include the applicant.

New Subdivision 116.32 sets out the secondary criteria to be satisfied at time of decision in respect of a Subclass 116 visa.

New clause 116.321 provides that the applicant continues to be a member of the family unit of a person who is the holder of a Subclass 116 visa.

New clause 116.322 provides that the sponsorship referred to in new clause 116.312 has been approved by the Minister and is still in force.

New clause 116.323 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 116.324 provides that the applicant has previously been in Australia, the applicant must satisfy special return criterion 5001.

New clause 116.325 provides that either the applicant is included in the assurance of support given in respect of the person who satisfies the primary criteria, and that assurance has been accepted by the Minister, or an assurance of support has been given in relation to the applicant, and has been accepted by the Minister.

New clause 116.326 provides that if the applicant is a dependent child, 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 116.4 sets out the circumstances applicable to the grant of a Subclass 116 visa. Under new clause 116.411, the applicant must be outside Australia when the visa is granted. It is noted that the second instalment of the visa application charge must be paid before the visa can be granted, unless the applicant is a person in relation to whom the Minister has determined that the second instalment of the visa application charge should not be paid because the Minister is satisfied that payment of the instalment has caused, or is likely to cause severe financial hardship to the applicant or to the person of whom the applicant is a carer.

New Division 116.5 provides when a Subclass 116 visa is in effect. Under new clause 116.511, 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 116.6 sets out the conditions of the visa. First entry must be made before a date specified by the Minister for the purpose. Either or both of conditions 8502 and 8515 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. Condition 8515 provides that the holder of the visa must not marry before entering Australia.

New Division 116.7 provides for the way of giving evidence of the grant of the visa. Under new clause 116.711, a Subclass 116 visa is evidenced by affixing a visa label to a valid passport.

#### *Part 117 - Orphan Relative*

New Part 117 inserts visa Subclass 117 (Orphan Relative) ("Subclass 117").

New Division 117.1 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 117.2 sets out the primary criteria in respect of a Subclass 117 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 117.21 sets out the time of application primary criteria.

New subclause 117.211 (1) requires the applicant to be an orphan relative of an Australian relative of the applicant.

New subclause 117.211(2) provides that Australian relative, in relation to an applicant, means a relative of the applicant who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

New clause 117.212 provides that the applicant must be sponsored:

- \* if the Australian relative has turned 18 and is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen - by the Australian relative; or
- \* by the spouse of the Australian relative, if the spouse:
  - is over 18;
  - cohabits with the Australian relative; and

- is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen.

New Subdivision 117.22 sets out the criteria to be satisfied at the time of decision in respect of a Subclass 117 visa.

Under new clause 117.221, the applicant must continue to satisfy the criterion in new clause 117.211 or does not continue to satisfy that criterion only because the applicant has turned 18.

Under new clause 117.222 the sponsorship referred to in new clause 117.212 has been approved by the Minister and is still in force.

New clause 117.223 requires that the applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 117.224 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 117.225(1) requires that each member of the family unit of the applicant who is also an applicant for a Subclass 117 visa must satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New subclause 117.225(2) requires that each member of the family unit of the applicant who is not an applicant for a Subclass 117 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 117.226 provides that if the family unit of the applicant includes a dependent child who made a combined application with the applicant, or a child who is usually resident with the applicant and has not turned 18 made a combined application with the applicant, the Minister must be satisfied that the grant of a Subclass 117 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 clause 117.227 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.

New Division 117.3 sets out the secondary criteria in relation to Subclass 117 visa. The criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

New Subdivision 117.31 sets out the secondary criteria to be satisfied at the time of application.

New clause 117.311 requires that the applicant is a member of the family unit of, and has made a combined application with, a person who satisfies the primary criteria in new Subdivision 117.21.

New clause 117.312 provides that any sponsorship referred to in new clause 117.212 of the person who satisfies the primary criteria includes sponsorship of the applicant.

New Subdivision 117.32 sets out the secondary criteria to be satisfied at the time of decision in respect of a Subclass 117 visa.

New clause 117.321 provides that the applicant must continue to be a member of the family unit of a person who is the holder of a Subclass 117 visa.

New clause 117.322 requires that sponsorship referred to in new clause 117.312 has been approved by the Minister and is still in force.

New clause 117.323 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 117.324 provides that the applicant is included in the assurance of support given in respect of the person who satisfies the primary criteria, and that assurance has been accepted by the Minister, or an assurance of support has been given in relation to the applicant, and has been accepted by the Minister.

Under new clause 117.325, if the applicant is a dependent child, 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 117.4 sets out the circumstances applicable to the grant of a Subclass 117 visa. Under new clause 117.411, the applicant must be outside Australia when the visa is granted.

New Division 117.5 provides for when a Subclass 117 visa is in effect. Under new clause 117.511, a Subclass 117 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 117.6 sets out the conditions of the visa. Under new clause 117.611, first entry must be made before a date specified by the Minister for the purpose. Either or both of conditions 8502 and 8515 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. Condition 8515 provides that the holder of the visa must not marry before entering Australia

New Division 117.7 provides for the way of giving evidence of the grant of the visa. Under new clause 117.711, a Subclass 117 visa is evidenced by a visa label being affixed to a valid passport.

Item 2311 -After clause 303.324

This item inserts a new criterion that must be satisfied, at the time of decision, by an applicant seeking to meet the secondary criteria for the grant of the visa. The new criterion provides that if the visa applicant is under 18, the Minister must be satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any person who has custody or guardianship or, or access to, the applicant.

Item 2312 - Clause 309.511

This item amends clause 309.511 to remove the 30 month time limit on the travel facility component of the Subclass 309 (Spouse (Provisional)) visa. The revised validity provision means that a Subclass 309 (Spouse (Provisional)) visa now permits the holder to travel to, enter and remain in Australia until the end of the day on which the holder is notified that their application for a Spouse (Migrant) (Class BC) visa or a Partner (Migrant) (Class BC) visa has been decided, or until that application is withdrawn.

Item 2313 - Clause 310.511

This item amends clause 310.511 to remove the 30 month time limit on the travel facility component of the Subclass 310 (Interdependency (Provisional)) visa. The revised validity provision means that a Subclass 310 (Interdependency (Provisional)) visa now permits the

holder to travel to, enter and remain in Australia until the end of the day on which the holder is notified that their application for an Interdependency (Migrant) (Class BI) visa or a Partner (Migrant) (Class BC) visa has been decided, or until that application is withdrawn.

Items 2314 to 2330

These items insert a new criterion that must be satisfied, at the time of decision, by an applicant seeking to meet the secondary criteria for the grant of the visa. The new criterion provides that if the visa applicant is under 18, the Minister must be satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any person who has custody or guardianship or, or access to, the applicant.

Item 2331 - Subparagraph 445.211(b)(iii)

Item 2332 - Clause 445.511

These items make minor consequential amendments to various parts of the Migration Regulations as a result of the restructure of the Family stream of visa classes.

Item 2333 - After clause 448.225

This item inserts a new criterion that must be satisfied, at the time of decision, by an applicant seeking to meet the primary criteria for the grant of a visa. The new criterion provides that if the visa applicant is under 18, the Minister must be satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any person who has custody or guardianship or, or access to, the applicant.

Item 2334 - After clause 448.323

Item 2335 - After clause 449.322

These items insert a new criterion that must be satisfied, at the time of decision, by an applicant seeking to meet the secondary criteria for the grant of the visa. The new criterion provides that if the visa applicant is under 18, the Minister must be satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any person who has custody or guardianship or, or access to, the applicant.

Item 2336 - Subclause 560.320(1)

This item makes an amendment consequential to amendments made by item 2337.

Item 2337 - After clause 560.328

This item inserts a new criterion that must be satisfied, at the time of decision, by an applicant seeking to meet the secondary criteria for the grant of the visa. The new criterion provides that if the visa applicant is under 18, the Minister must be satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any person who has custody or guardianship or, or access to, the applicant.

Item 2338 - Subclause 563.220(1)

This item makes an amendment consequential to amendments made by item 2339.

Items 2339 to 2341

These items insert a new criterion that must be satisfied, at the time of decision, by an applicant seeking to meet the primary criteria for the grant of a visa. The new criterion provides that if the visa applicant is under 18, the Minister must be satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any person who has custody or guardianship or, or access to, the applicant.

#### Items 2342 to 2344

These items make minor consequential amendments to various parts of Part 773 of Schedule 2 to the Migration Regulations as a result of the restructure of the Family stream of visa classes.

#### Item 2345 - After clause 773.225

This item inserts a new criterion that must be satisfied, at the time of decision, by an applicant seeking to meet the primary criteria for the grant of a visa. The new criterion provides that if the visa applicant is under 18, the Minister must be satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any person who has custody or guardianship or, or access to, the applicant.

#### Item 2346 - Paragraph 801.221(7)(c)

This item amends paragraph 801.221(7)(c) to add reference to approved form 47SP and is consequential to the amendment made by item 2215, which adds form 47SP as an additional prescribed form for making an application for a Partner (Residence) (Class BS) visa. As part of the restructure of the Family stream of visa classes, visa Subclass 801 is transferred to visa class Partner (Residence) (Class BS).

#### Item 2347 - Paragraph 801.311 (a)

This item makes minor consequential amendments to Part 801 of Schedule 2 to the Migration Regulations as a result of the restructure of the Family stream of visa classes.

#### Item 2348 - Clause 802.212

This item amends clause 802.212 by adding a requirement that an applicant seeking to meet the primary criteria for the grant of a Subclass 802 (Child) visa ("Subclass 802 visa") must be under 25 years of age at the time of application.

In addition, this item inserts new subclause 802.212(2), which provides for an exception to the requirement that an applicant seeking to meet the primary criteria for the grant of a Subclass 802 visa must be under 25 years of age at the time of application. New subclause 802.212(2) provides that the requirement does not apply to an applicant who, at the time of making the application, is a "dependent child" because he or she is wholly or substantially incapacitated for work because of a total or partial loss of bodily or mental functions.

#### Item 2349 - After clause 802.213

This item inserts new clause 802.214, which must be met, at the time of application, by an applicant seeking to meet the primary criteria for the grant of a Subclass 802 visa. New clause 802.214 requires that any applicant who has turned 18 must:

- \* not:
- be engaged;

- have a spouse; or
- ever have been married; and
- \* not be engaged in full-time work; and
- \* since turning 18, or within 6 months or a reasonable time after completing the equivalent of Year 12 in the Australian school system, have been undertaking a fulltime course of study leading to the award of a professional, trade or vocational qualification ("the full-time study requirement"). The full time study requirement is subject to one exception inserted by these Regulations at new subclause 802.214(2).

New subclause 802.214(2) provides for an exception to the full-time study requirement. The full-time study requirement does not apply to an applicant who, at the time of making the application, is a "dependent child" because he or she is wholly or substantially incapacitated for work because of a total or partial loss of bodily or mental functions.

#### Item 2350 - Clause 802.221

Clause 802.221 currently requires an applicant to continue to meet existing clause 802.212 at the time of a decision in respect of a Subclass 802 visa. This item substitutes new subclause 802.221(1), which provides that, where an applicant is under 18 at the time of the application, the applicant, at the time of decision:

- \* must continue to meet the requirements of clause 802.212 (as amended by these Regulations); or
- \* does not continue to meet the requirements of clause 802.212 (as amended by these Regulations) only because he or she has turned 18.

This amendment is intended to ensure that an applicant who turns 18 during the processing of the visa application, is not disqualified from the grant of the visa simply because of the change in age.

This item also inserts new subclause 802.221(2), which provides that, where an applicant had turned 18 at the time of the application, the applicant, at the time of decision:

- \* must continue to meet the requirements of clause 802.212 (as amended by these Regulations); or
- \* does not continue to meet the requirements of clause 802.212 (as amended by these Regulations) only because he or she has turned 25 (This amendment is intended to ensure that an applicant who turns 25 during the processing of the visa application, is not disqualified from the grant of the visa simply because of the change in age); and
- \* must continue to meet the requirements of new clause 802.214.

#### Item 2351 - Part 806

This item omits Part 806 of Schedule 2, which relates to visa Subclass 806 (Family). As a result of the restructure of the Family stream of visa classes, Part 806 is disaggregated into its component categories, resulting in the introduction of new visa Subclasses 835 (Remaining Relative), 836 (Carer), 837 (Orphan Relative) and 838 (Aged Dependent Relative). The criteria relating to these new subclasses are inserted by item 2353 of these Regulations.

## Item 23 52 - Clause 814.311

These items make consequential amendments to various parts of the Migration Regulations as a result of the restructure of the Family stream of visa classes.

## Item 2353 - After Part 834

This item inserts four new Parts into Schedule 2 to the Migration Regulations, being Part 835 (Remaining Relative), Part 836 (Carer), Part 837 (Orphan Relative) and Part 838 (Aged Dependent Relative).

### *Part 835 - Remaining Relative*

New Part 835 inserts new visa Subclass 835 (Remaining Relative) ("Subclass 835") into the Migration Regulations.

New Division 835.1 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 835.2 sets out the primary criteria in respect of an application for a Subclass 835 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 Subclass 835 visa need only satisfy the secondary criteria.

New Subdivision 835.21 sets out the primary criteria that must be satisfied at the time of application in respect of a Subclass 835 visa.

New clause 835.211 requires the applicant to satisfy Schedule 3 criterion 3002 and either:

- \* the applicant must be the holder of a substantive visa other than a Subclass 771 (Transit) visa; or
- \* if the applicant is not the holder of a substantive visa, immediately before ceasing to hold a substantive visa the applicant was not the holder of a Subclass 771 (Transit) visa.

New clause 835.212 requires the applicant to be a remaining relative of a person who is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen and who is usually resident in Australia and who has nominated the applicant for the grant of the visa.

New Subdivision 835.22 sets out the primary criteria to be satisfied at the time of decision by an applicant for a Subclass 835 visa.

New clause 835.221 requires the applicant to continue to satisfy the criterion in clause 835.212.

New clause 835.222 requires that an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

New clause 835.223 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New subclause 835.224(1) requires each member of the family unit of the applicant who is an applicant for a Subclass 835 visa to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New subclause 835.224(2) requires each member of the family unit of the applicant who is not an applicant for a Subclass 835 visa to satisfy public interest criteria 4001, 4002, 4003, 4004. The applicant is also required to meet 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 835.225 requires the Minister to be satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any person who has custody or guardianship of, or access to, the applicant or a dependent child of the applicant.

New Division 835.3 sets out the secondary criteria in relation to a new Subclass 835 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 to grant or refuse to grant the visa to that first person.

New Subdivision 835.31 sets out the secondary criteria that must be satisfied at the time of application for a Subclass 835 visa.

New clause 835.311 requires the applicant to be a member of the family unit of a person who has applied for an Other Family (Residence) (Class BU) visa and who, on the basis of the information provided in the application, appears to satisfy the criteria in new Subdivision 835.21, and that the Minister has not decided to grant or refuse to grant the visa to that person.

New Subdivision 835.32 sets out the secondary criteria to be satisfied at the time of decision in relation to a Subclass 835 visa.

New clause 835.321 requires the applicant to continue to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 835 visa.

New clause 835.322 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 835.323 requires that, an assurance of support in relation to the relevant person who satisfies the primary criteria, that includes the applicant, has been given and has been accepted by the Minister, or that an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

According to new clause 835.324 if the applicant is a dependent child 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 835.4 sets out the circumstances applicable to the grant of a Subclass 835 visa. New clause 835.411 provides that, when the visa is granted, the applicant must be in Australia, but not in immigration clearance. The note below clause 835.411 provides that the second instalment of the visa application charge must be paid before the visa can be granted.

New Division 835.5 provides for when a Subclass 835 visa is in effect. Under new clause 835.511, a Subclass 835 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 835.6 sets out the conditions attached to the grant of a Subclass 835 visa. Under new Division 835.6 there are no such conditions.

New Division 835.7 provides for the way of giving evidence of the grant of a Subclass 835 visa. According to new clause 835.711, the visa is evidenced by affixing a visa label to a passport.



## Part 836 - Carer

New Part 836 inserts new visa Subclass 836 (Carer) ("Subclass 836") into the Migration Regulations.

New Division 836.1 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 836.2 sets out the primary criteria in respect of an application for a Subclass 836 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 Subclass 836 visa need satisfy only the secondary criteria.

New Subdivision 836.21 sets out the primary criteria that must be satisfied at the time of application for a Subclass 836 visa.

New clause 836.211 requires the applicant to satisfy Schedule 3 criterion 3002 and either:

- \* the applicant must be the holder of a substantive visa other than a Subclass 771 (Transit) visa; or
- \* if the applicant is not the holder of a substantive visa, immediately before ceasing to hold a substantive visa the applicant was not the holder of a Subclass 771 (Transit) visa.

New clause 836.212 provides that the applicant claims to be a carer of a person who is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen and who is usually resident in Australia and who has nominated the applicant for the grant of the visa.

New Subdivision 836.22 sets out the primary criteria to be satisfied at the time of decision by an applicant for a Subclass 836 visa.

New clause 836.221 requires the applicant to be a carer of a person referred to in clause 836.212.

New clause 836.222 requires that an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

New clause 836.223 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New subclause 836.224(1) requires each member of the family unit of the applicant who is an applicant for a Subclass 836 visa to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New subclause 836.224(2) requires each member of the family unit of the applicant who is not an applicant for a Subclass 836 visa to satisfy public interest criteria 4001, 4002, 4003, 4004. The applicant is also required to meet 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 836.225 requires the Minister to be satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any person who has custody or guardianship of, or access to, the applicant or a dependent child of the applicant.

New Division 836.3 sets out the secondary criteria in relation to a new Subclass 836 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 to grant or refuse to grant the visa to that first person.

New Subdivision 836.31 sets out the secondary criteria that must be satisfied at the time of application in respect of a Subclass 836 visa.

New clause 836.311 requires the applicant to be a member of the family unit of a person who has applied for an Other Family (Residence) (Class BU) visa and who, on the basis of the information provided in the application, appears to satisfy the criteria in new Subdivision 836.21, and that the Minister has not decided to grant or refuse to grant the visa to that person.

New Subdivision 836.32 sets out the secondary criteria to be satisfied at the time of decision in relation to a Subclass 836 visa.

New clause 836.321 requires the applicant to continue to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 836 visa.

New clause 836.322 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 836.323 requires that, an assurance of support in relation to the relevant person who satisfies the primary criteria, that includes the applicant has been given and has been accepted by the Minister, or that an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

Under new clause 836.324, if the applicant is a dependent child 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 836.4 sets out the circumstances applicable to the grant of a Subclass 836 visa. New clause 836.411 provides that, when the visa is granted, the applicant must be in Australia, but not in immigration clearance. It is further noted that the second instalment of the visa application charge must be paid before the visa can be granted, unless the applicant is a person in relation to whom the Minister has determined that the second instalment of the visa application charge should not be paid because the Minister is satisfied that payment of the instalment has caused or is likely to cause, severe financial hardship to the applicant or to the person of whom the applicant is a carer.

New Division 836.5 provides for when a Subclass 836 visa is in effect. Under new clause 836.511, a Subclass 836 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 836.6 sets out the conditions attached to the grant of a Subclass 836 visa. Under new Division 836.6 there are no such conditions.

New Division 836.7 provides for the way of giving evidence of the grant of a Subclass 836 visa. According to new clause 836.711, the visa is evidenced by affixing a visa label to a passport.

### *Part 837 - Orphan Relative*

New Part 837 inserts new visa Subclass 837 (Orphan Relative) ("Subclass 837") into the Migration Regulations.

New Division 837.1 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 837.2 sets out the primary criteria in respect of an application for a Subclass 837 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 Subclass 837 visa need only satisfy the secondary criteria.

New Subdivision 837.21 sets out the primary criteria that must be satisfied at the time of application for a Subclass 837 visa.

New clause 837.211 requires that if the applicant is a person to whom section 48 of the Act applies, the applicant has not been refused a visa or had a visa cancelled under section 501 of the Act and has become an orphan relative of an Australian citizen, of an Australian permanent resident or of an eligible New Zealand citizen since last applying for an entry permit or a substantive visa.

New clause 837.212 requires the applicant to satisfy Schedule 3 criterion 3002 and either:

- \* the applicant must be the holder of a substantive visa other than a Subclass 771 (Transit) visa; or

- \* if the applicant is not the holder of a substantive visa, immediately before ceasing to hold a substantive visa the applicant was not the holder of a Subclass 771 (Transit) visa.

New clause 837.213 requires the applicant to be an orphan relative of a person who is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen and who is usually resident in Australia and who has nominated the applicant for the grant of the visa.

New Subdivision 837.22 sets out the primary criteria to be satisfied at the time of decision by an applicant for a Subclass 837 visa.

New clause 837.221 requires the applicant to continue to satisfy the criterion in new clause 837.213 unless the applicant does not to continue that criterion only because the applicant has turned *18*.

New clause 837.222 requires that an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

New clause 837.223 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New subclause 837.224(1) requires each member of the family unit of the applicant who is an applicant for a Subclass 836 visa to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New subclause 837.224(2) requires each member of the family unit of the applicant who is not an applicant for a Subclass 837 visa to satisfy public interest criteria 4001, 4002, 4003, 4004. The applicant is also required to meet 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 837.225 requires the Minister to be satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any person who has custody or guardianship of, or access to, the applicant or a dependent child of the applicant.

New Division 837.3 sets out the secondary criteria in relation to a new Subclass 837 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 to grant or refuse to grant the visa to that first person.

New Subdivision 837.31 sets out the secondary criteria that must be satisfied at the time of application for a Subclass 837 visa.

New clause 837.311 requires the applicant to be a member of the family unit of a person who has applied for a Child (Residence) (Class BT) visa and who, on the basis of the information provided in the application, appears to satisfy the criteria in new Subdivision 83 7.21, and that the Minister has not decided to grant or refuse to grant the visa to that person.

New Subdivision 837.32 sets out the secondary criteria to be satisfied at the time of decision in relation to a Subclass 837 visa.

New clause 837.321 requires the applicant to continue to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 837 visa.

New clause 837.322 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 837.323 requires that, an assurance of support in relation to the relevant person who satisfies the primary criteria, that includes the applicant has been given and has been accepted by the Minister, or that an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

Under new clause 837.324, if the applicant is a dependent child 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 837.4 sets out the circumstances applicable to the grant of a Subclass 837 visa. New clause 83 7.411 provides that, when the visa is granted, the applicant must be in Australia, but not in immigration clearance. It is further noted that the second instalment of the visa application charge must be paid before the visa can be granted.

New Division 837.5 provides for when a Subclass 837 visa is in effect. Under new clause 837.511, a Subclass 837 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 837.6 sets out the conditions attached to the grant of a Subclass 837 visa. Under new Division 837.6 there are no such conditions.

New Division 837.7 provides for the way of giving evidence of the grant of a Subclass 837 visa. According to new clause 837.711, the visa is evidenced by affixing a visa label to a passport.

### *Part 838 Aged Dependent Relative*

New Part 838 inserts new visa Subclass 838 (Aged Dependent Relative) ("Subclass 838") into the Migration Regulations.

New Division 838.1 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 838.2 sets out the primary criteria in respect of an application for a Subclass 838 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 Subclass 838 visa need satisfy only the secondary criteria.

New Subdivision 838.21 sets out the primary criteria that must be satisfied at the time of application for a Subclass 838 visa.

New clause 838.211 requires the applicant to satisfy Schedule 3 criterion 3002 and either:

- \* the applicant must be the holder of a substantive visa other than a Subclass 771 (Transit) visa; or

- \* if the applicant is not the holder of a substantive visa, immediately before ceasing to hold a substantive visa the applicant was not the holder of a Subclass 771 (Transit) visa.

New clause 838.212 requires the applicant be an aged dependent relative of a person who is a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen and who is usually resident in Australia and who has nominated the applicant for the grant of the visa.

New Subdivision 838.22 sets out the primary criteria to be satisfied at the time of decision by an applicant for a Subclass 838 visa.

New clause 838.221 requires the applicant to continue to satisfy the criteria in new clause 838.212.

New clause 838.222 requires that an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

New clause 838.223 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New subclause 838.224(1) requires each member of the family unit of the applicant who is an applicant for a Subclass 838 visa to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New subclause 838.224(2) requires each member of the family unit of the applicant who is not an applicant for a Subclass 836 visa to satisfy public interest criteria 4001, 4002, 4003, 4004. The applicant is also required to meet 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 838.225 requires the Minister to be satisfied that the grant of the visa to the applicant would not prejudice the rights and interests of any person who has custody or guardianship of, or access to, the applicant or a dependent child of the applicant.

New Division 838.3 sets out the secondary criteria in relation to a new Subclass 838 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 to grant or refuse to grant the visa to that first person.

New Subdivision 838.31 sets out the secondary criteria that must be satisfied at the time of application for a Subclass 838 visa.

New clause 838.311 requires the applicant to be a member of the family unit of a person who has applied for an Other Family (Residence) (Class BU) visa and who, on the basis of the information provided in the application, appears to satisfy the criteria of new Subdivision 838.21, and that the Minister has not decided to grant or refuse to grant the visa to that person.

New Subdivision 838.32 sets out the secondary criteria to be satisfied at the time of decision in relation to a Subclass 838 visa.

New clause 838.321 requires the applicant to continue to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 838 visa.

New clause 838.322 requires the applicant to satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

New clause 838.323 requires that, an assurance of support in relation to the relevant person who satisfies the primary criteria, that includes the applicant has been given and has been accepted by the Minister, or that an assurance of support in relation to the applicant has been given, and has been accepted by the Minister.

According to new clause 838.324 if the applicant is a dependent child 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 838.4 sets out the circumstances applicable to the grant of a Subclass 838 visa. New clause 838.411 provides that, when the visa is granted, the applicant must be in Australia, but not in immigration clearance. It is further noted that the second instalment of the visa application charge must be paid before the visa can be granted.

New Division 838.5 provides for when a Subclass 838 visa is in effect. Under new clause 838.511, a Subclass 838 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 838.6 sets out the conditions attached to the grant of a Subclass 838 visa. Under new Division 838.6, there are no such conditions.

New Division 838.7 provides for the way of giving evidence of the grant of a Subclass 838 visa. According to new clause 838.711, the visa is evidenced by affixing a visa label to a passport.

#### Part 4 - Amendment of Schedule 4

##### Item 2401 - Paragraph 4014(4)(b)

This item amends paragraph 4014(4)(b) of Schedule 4 to the Migration Regulations to change an incorrect alpha code reference to a Bridging D (Class WD) visa inserted by *Migration Amendment Regulations 1999 (No. 6)*.

#### Part 5 - Amendment of Schedule 6A

##### Item 2501 - Part 6, item 6A61

This item substitutes new items 6A61 and 6A62.

New item 6A61 provides that an applicant who has met the requirements for the award of a doctorate by an Australian tertiary educational institution after a period of at least 12 months full-time study in Australia will be awarded 10 points.

These points will not be in addition to the 5 points available under item 6A62 to a person who has met the requirements for the award of an Australian qualification that is a degree, diploma or trade qualification, as paragraph 2.26A(4)(a) of the Migration Regulations provides that the Minister must not give the applicant a prescribed number of points for more than one prescribed qualification in each Part of Schedule 6A.

New item 6A62 replicates current item 6A61 in Schedule 6A to provide that an applicant who has met the requirements for the award of a degree, diploma or trade qualification by an Australian educational institution after a period of at least 12 months full-time study in Australia will be awarded 5 points.