Migration Amendment Regulations 2000 (No. 2) 2000 No. 62

EXPLANATORY STATEMENT

STATUTORY RULES 2000 No. 62

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

Migration Act 1958

Migration Amendment Regulations 2000 (No. 2)

Subsection 504(1) of the *Migration Act 1958* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

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

- section 29 provides that the regulations may prescribe a period during which the holder of a visa may travel to, enter, re-enter and remain in Australia and also that regulations may make provision for a visa being held by two or more persons;

- section 31 provides that the regulations are to prescribe classes of visas, and may prescribe criteria for visas of a specified class;

- subsection 33(2) provides for regulations to be made which prescribe status for the purpose of the grant of special purpose visas;

- subsection 40(1) provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;

- subsection 41 (1) provides that the regulations may provide that visas or visas of a specified class are subject to specified conditions;

- section 45 provides that the regulations may prescribe the way for making applications for visas;

- section 45B provides that the amount of visa application charge is the amount prescribed;

- subsection 45C(1) provides that the regulations may make provision for payment of the visa application charge in instalments;

- subsection 46(2) provides that an application for a visa is valid if it is an application for a visa of a class prescribed by the regulations;

- section 48 provides for prescribing classes of visas which are the only classes of visas for which a person whose visa has been cancelled, or whose application for a visa has been refused, may apply;

- subsection 71 (1) provides for the regulations to prescribe the way in which evidence of a visa is to be given;

- section 72 provides that a class of persons may be prescribed who are 'eligible noncitizens' for the purposes of the grant of bridging visas; and

- subsection 75(1) provides for classes of bridging visas to be prescribed for which an application, when made by an eligible non-citizen who is in immigration detention, must be decided by the Minister within a prescribed period.

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

- provide that applications for a Sri Lankan (Special Assistance) (Class BG) visa must be made on or before 28 April 2000;

- prescribe grounds for the cancellation of business sponsorships under section 137B of the Act;

- enable an applicant to be granted a Subclass 866 (Protection) visa where the Minister has made a determination under section 91L of the *Migration Act* 1958, provided that the applicant satisfies the other relevant criteria for grant of the visa. The applicants affected by this amendment are those who at some time have been offered temporary safe haven in Australia by the Australian Government;

- introduce certain provisions relating to the management of public health risk assessments;

- amend bridging visa provisions as a result of an evaluation of bridging visas. In particular, the amendments extend the situations in which a person can be granted a bridging visa. Other bridging visa amendments ensure that applications for certain substantive visas are no longer also applications for certain bridging visas;

- give clients the option of identifying themselves by quoting their client number when communicating with the Minister;

- make amendments relating to the rationalisation and restructure of Special Eligibility visa classes; limit sponsorship for overseas remaining relatives in certain circumstances; streamline certain student visa processing arrangements;

- amend Subclass 417 (Working Holiday) to implement recommendations of the Joint Standing Committee on Migration Report entitled *Working Holiday Makers: More than Tourists;*

- create a new sponsored visitor class, as recommended by the External Reference Group guiding the Review of Illegal Workers;

- amend custody provisions, which relate to whether the grant of a visa to a child would prejudice the rights and interests of certain persons, to provide a more objective test for decision-makers;

- introduce new criteria for a Temporary Business Entry (Class UC) visa;

- provide for the Minister to be able to cancel a person's visa where the person has been convicted of a people smuggling offence under the Act; amend provisions relating to special purpose visas and persons in transit;

- confirm that the People's Republic of China (PRC) is a Safe Third Country with respect to Vietnamese refugees who have settled there but who have subsequently entered Australia without lawful authority;

- define the phrase "a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia" for the purposes of Division 2.2;

- increase the penalties (as an alternative to prosecution) under subregulation 5.20(2). The amendment increases the penalty payable by a body corporate from $3000 to $5000; and

- make minor technical amendments.

Details of the Regulations are set out in the Attachment.

The Regulations commence on 1 July 2000 other than regulations 1 to 3, Schedule 1 and Schedule 2. Regulations 1 to 3 and Schedule 1 are taken to have commenced on 1 November 1999. Schedule 1 contains amendments that are minor and technical in nature and which are consequential to amendments made in Statutory Rules 1999 No. 259. The amendments in Schedule 2 commence on 28 April 2000.

The retrospectivity of regulations 1 to 3 and Schedule 1 is not prejudicial to any person and does not therefore contravene subsection 48 (2) of the Acts Interpretation *Act 1901.*

ATTACHMENT

Regulation 1 - Name of regulations

This regulation provides that these Regulations are the *Migration Amendment Regulations 2000 (No. 2).*

Regulation 2 - Commencement

This regulation provides that these Regulations commence, or are taken to have commenced, as follows:

- on 1 November 1999 - regulations 1, 2 and 3, and Schedule 1;

- on 28 April 2000 - Schedule 2; and

- on 1 July 2000 - regulation 4 and Schedule 3.

Regulation 3 - Amendment of *Migration Regulations 1994*

This regulation provides that Schedules 1 and 2 to these Regulations amend the

Migration Regulations 1994.

Regulation 4 - Transitional

Subregulation 4(1) provides that the amendments made by the items referred to in subregulation 4(1) apply only in relation to an application for a visa made on or after 1 July 2000.

Subregulation 4(2) provides that the amendments made by the items referred to in subregulation 4(2) apply to an application for a Temporary Business Entry (Class UC) visa made, but not finally determined, before 1 July 2000, or made on or after 1 July 2000.

Subregulation 4(3) provides that the amendment made by item [33032] applies in relation to an application for a Bridging E (Class WE) visa made but not finally determined before 1 July 2000, or made on or after 1 July 2000.

Subregulation 4(4) provides that the amendments referred to in subregulation 4(4) apply to an application for a visa made but not finally determined before 1 July 2000, or made on or after 1 July 2000.

Subregulation 4(5) provides that if an application for a visa of one of the classes listed at paragraphs (a) to (e) was made before 1 July 2000, but was not finally determined before that date, the Migration Regulations 1994, as in force immediately before 1 July 2000, continue to apply in relation to the application.

Furthermore, subregulation 4(6) provides that:

* if an application for a visa of a class mentioned in paragraph 4(5)(a) to (e) above was made before 1 July 2000; and

* after the application is made but before it is decided, the applicant makes a request to the Minister to have his or her spouse or a dependent child added to the application; and

* paragraph 2.08A(1)(e) of the *Migration Regulations 1994* applies,

then the *Migration Regulations 1994,* as in force immediately before 1 July 2000, apply in relation to the application taken to have been made by the additional applicant.

The reason for this amendment is because under paragraph 2.08A(1)(f), the application of the additional applicant is taken to have been made when the Minister receives the request. The amendment ensures that where such a request is made to the Minister on or after 1 July 2000 (but before the applicant's application is decided), the application by the spouse or dependent child, as mentioned above, is nonetheless a valid application.

Schedule 1 - Amendments taken to have commenced on 1 November 1999

Part 1.1 -Amendments

Item [1101] - Subregulation 1.15A(4)

This item omits references to paragraphs 3(aa) and 3(ac) from subregulation 1.15A(4). This is consequential to the omission of these paragraphs from subregulation 1.15A(3) by Statutory Rules 1999 No. 259.

Further, this item inserts a reference to paragraphs 3(af) and 3(ag) which were inserted into subregulation 1.15A(3) by Statutory Rules 1999 No. 259.

Item [1102] - Schedule 1, subitem 1124(1)

This item adds a reference to new application form 47PA in subitem 1124(1) so that an application for a Parent (Migrant) (Class AX) visa can also be made on that form.

Item [1103] - Schedule 2, par h 804.311 (a)

This item replaces paragraph 804.311 (a) with new paragraph 804.311 (a) so that under the new paragraph the applicant is a member of the family unit of a person who has applied for an Aged Parent (Residence) (Class BP) visa. This amendment is consequential to the amendment contained in Statutory Rules 1999 No. 259, which removed subclass 804 from items 1107 and 1115 and omitted item 1119 of Schedule 1 to the Migration Regulations 1994.

Item [1104] - Schedule 2, paragraph 832.311 (a)

This item replaces paragraph 832.311 (a) with new paragraph 832.311 (a) so that under the new paragraph an applicant seeking to satisfy the secondary criteria must be a member of the family unit of a person who has applied for a Family (Residence) (Class AO) visa. This amendment is consequential to the amendment contained in Statutory Rules 1999 No. 259, which omitted item 1119 of Schedule 1 to the Migration Regulations 1994.

Part 1.2 - Additional Amendments of Schedule 2

Item [1201] - Additional Amendments

This item makes several technical amendments that are consequential to the amendment contained in Statutory Rules 1999 No. 259, which omitted item 1119 of Schedule 1 to the Migration Regulations 1994.

Schedule 2 - Amendments commencing on 28 April 2000

Item [201] - Paragraph 1.20A(d)

This item substitutes new paragraph 1.20A(d). The new paragraph provides that an object of division 1.4A is to prescribe grounds for cancellation of approvals as a business sponsor.

Item [202] - Paragraph 1.20D(5)(b)

This item substitutes new paragraph 1.20D(5)(b). The new paragraph provides that approval of a person as a pre-qualified business sponsor ceases to have effect on cancellation of the approval under s 137B of the Act.

Item [203] - Paragraph 1.20D(6)(c)

This item substitutes new paragraph 1.20D(6)(c). The new paragraph provides that approval of a person as a standard business sponsor ceases to have effect on cancellation of the approval under s 137B of the Act.

Item [204] - Regulation 1.20F

This item substitutes new regulation 1.20F. The new regulation prescribes grounds for cancellation of approval as a business sponsor. For the purposes of subsection 137B(1) of the Act, the following grounds are prescribed;

a) the person has not complied, or is not complying, with the undertakings given

by the person in accordance with approved form 1067;

b) the person does not continue to satisfy the requirements for approval as a

pre-qualified business sponsor or standard business sponsor;

c) the person gave incorrect information to Immigration in relation to:

(i) the application under regulation 1.20C for approval as a pre-qualified business sponsor or a standard business sponsor; or

(ii) any other matter relating to the person.

Item [205] - Paragraph 4.02(4)(c)

This item substitutes new paragraph 4.02(4)(c). The new paragraph provides that a decision under s 137B of the Act to cancel the approval of a person as a business sponsor is reviewable by the Migration Review Tribunal (MRT).

Item [206] - Schedule 1, after paragraph 1129A(3)(b)

This item inserts a new paragraph 1129A(3)(c) into subitem 1129A(3). Paragraph 1129A(3)(c) provides an additional criterion for a valid application for a Sri Lankan (Special Assistance) (Class BG) visa. The additional criterion is that an application must be made on or before 28 April 2000. (An exception is provided for applications taken to be made under Regulation 2.08A. Regulation 2.08A provides for the addition of spouses and dependent children to certain applications for permanent visas.)

Item [207] - Schedule 2, clause 866.227

This amendment is consequential to the introduction of clause 866.227A below.

Item [208] - Schedule 2, after clause 866.227

This item inserts new clause 866.227A into part 866. In particular, the amendments enable an applicant to be granted a Subclass 866 (Protection) visa where the Minister has made a determination under section 91L of the *Migration Act* 1958, provided that the applicant satisfies the other relevant criteria for grant of the visa. The applicants affected by these amendments are those who have been offered (or whose family unit members have been offered) a temporary safe haven visa (or a temporary stay in Australia by the Australian Government for the purposes of regulation 2.07AC).

Schedule 3 - Amendments commencing on 1 July 2000

Part 3.1 - Amendments of Parts 1, 2, 4 and 5

Item [3101] - Regulation 1.03, after definition of *AusAID student*

This item inserts a definition of Australian child order into regulation 1.03 of the Regulations.

Item [3102] - Regulation 1.03, before definition of *close relative*

This item inserts a definition of "client number". A client number is the client identification number generated by Immigration's electronic system known as the Integrated Client Services Environment.

Item [3103] - Paragraph 1.15A(3)(ab)

This item is a consequential amendment reflecting the renaming of the Family Residence (Class AO) visa class as the Special Eligibility (Residence) (Class AO) visa class.

Item [3104] - Division 1.4B, heading

This item substitute a new heading for Division 1.4B of the *Migration Regulations 1994: Limitation on certain sponsorship and nominations.*

Item [3105] - After regulation 1.20J This item inserts new regulations 1.20K and 1.20L after regulation 1.20J.

Subregulation 1.20K(1) provides that the Minister must not grant a Subclass 115 visa to an applicant, if the Minister is satisfied that a Subclass 104 visa, a Subclass 115 visa, a Subclass 806 visa or a Subclass 835 visa has previously been granted:

* to the **person ("person S")** who is the sponsor of the applicant; or

* to another person on the basis of sponsorship or nomination by person S.

Subregulation 1.20K(2) is a mirror provision to subregulation 1.20K(l). It provides that the Minister must not grant a Subclass 835 visa to an applicant, if the Minister is satisfied that a Subclass 104 visa, a Subclass 115 visa, a Subclass 806 visa or a Subclass 835 visa has previously been granted:

* to the **person ("person N")** who is the nominator of the applicant; or

* to another person on the basis of sponsorship or nomination by person N.

Subregulation 1.20K(3) provides that a reference in regulation 1.20K to a Subclass 104 visa or a Subclass 806 visa is a reference to a Subclass 104 (Preferential Family) visa or a Subclass 806 (Family) visa, as the case requires, that could have been granted under the Migration Regulations, as in force immediately before 1 November 1999.

New regulation 1.20L sets out a limitation on the approval of sponsorships for the new Short Stay Sponsored (Visitor) (Class UL) visa class, which contains the following Subclasses:

* Subclass 459 (Sponsored Business Visitor (Short Stay)); and

* Subclass 679 (Sponsored Family Visitor (Short Stay)).

The new regulation prevents a sponsor who has previously sponsored another applicant for a Short Stay Sponsored (Visitor) (Class UL) ("the previous applicant") visa from sponsoring another applicant for a Short Stay Sponsored (Visitor) (Class UL) visa if

* subject to the two exceptions below, that visa is still in effect; or

* if that visa has ceased to be in effect:

* the previous applicant did not comply with a condition attached to their visa; and

* a period of 5 years has not passed since the grant of the visa.

Exception 1 -

Despite that visa still being in effect, the Minister may approve the sponsorship if satisfied that the previous applicant is the holder of a Subclass 459 visa; and (a) is proposing to travel to Australia at the same time, and for the same business purpose, as the previous applicant; or (b) is the spouse or dependent child of the previous applicant and is proposing to travel to Australia at the same time as the previous applicant.

Exception 2 -

Despite that visa still being in effect, the Minister may approve the sponsorship if satisfied that the previous applicant is the holder of a Subclass 679 visa; and (a) is a member of the family unit of the previous applicant; and (b) is proposing to travel to Australia for the same purpose as the previous applicant.

Item [3106] - After regulation 2.06

This item inserts new regulation 2.06A, which contains a definition of "a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia". The effect of the amendment is that a valid application for a visa cannot be made at a consular office headed by an honorary consul.

Item [3107] - After regulation 2. 10.

This item inserts new regulation 2. 10A into Division 2.2 of the Regulations.

This new regulation applies in the case of an application for a Bridging E (Class WE) visa that is made by, or on behalf of, an applicant in immigration detention. The person lodging the application must give written notice of the application to an officer of Immigration appointed by the Secretary to be a detention review officer in the State or Territory in which the applicant is detained.

Item [3108] - Paragraph 2.12(1)(a)

This item omits the reference to the Change in Circumstance (Residence) (Class AG) visa class, which is consequential to the omission of Class AG from Schedule 1 to the Regulations.

This item inserts into paragraph 2.12(1)(a) the Special Eligibility (Residence) (Class AO) visa class, to add to the list of visas prescribed for the purpose of section 48 of the Act.

Item [3109] - After regulation 2.12

This item inserts a new regulation 2.12A into the Regulations. This regulation, which prescribes PRC as a safe third country in relation to certain Vietnamese refugees, mirrors the current regulation 2.12BA, except that it refers to the most recent exchange of letters between Australia and PRC.

Item [3110] - Regulation 2.12BA

The omission of regulation 2.12BA is consequential to the insertion of the new regulation 2.12A which updates the reference to the exchange of letters between Australia and PRC. In any event, the effect of s 91D(4) of the Act is that the regulation ceases to have effect after 30 June 2000.

Item [3111] - Paragraph 2.13(4)(c)

This items allow for three forms of identification to be used in written communication with the Minister under paragraph 2.13 (4)(c). Under this paragraph an applicant must provide their client number, the Immigration file number or the number of the receipt issued by Immigration when the visa application was made.

Item [3112] - Paragraph 2.20(7)(b)

Item [3113] - Paragraph 2.20(8)(b)

Item [3114] - Paragraph 2.20(9)(b)

Item [3115] - Paragraph 2.20(10)(b)

These amendments broaden the application of subregulations 2.20(7) to (10) (inclusive) by enabling certain non-citizens to be eligible to be granted a bridging visa where the Minister applies for judicial review of a decision. That is, if the Minister applies for judicial review of a decision relating to a non-citizen's visa application as described in the items above, the non-citizen is eligible to be granted a bridging visa, provided that they satisfy the remainder of the relevant subregulation.

Item [3116] - After regulation 2.21A

This item inserts new regulation 2.21B into Part 2 of the Regulations. New regulation 2.21B provides that a non-citizen may, in certain circumstances, be granted a Bridging A (Class WA), Bridging C (Class WC) or Bridging E (Class WE) visa without having lodged an application.

New regulation 2.21 B applies to a non-citizen who is in Australia, but not in immigration clearance. It applies where that non-citizen has either made a valid visa application on forms 601 or 157P or has made a valid oral application for a Long Stay (Visitor) (Class TN) visa, which has not been finally determined. The bridging visa application has been delinked from these substantive visa applications as they have a high on-the-spot grant rate.

New regulation 2.21 B is being inserted to deal with the situation in which the substantive visa application is not granted on the spot or will be refused. It provides that despite anything in Schedule 1 to the Regulations, the Minister may grant a Bridging A (Class WA), Bridging C (Class WC) or Bridging E (Class WE) visa if satisfied that:

* at the time of decision, the non-citizen meets the criteria to be satisfied by an applicant for the visa at the time of application and at the time of decision; and

* the applicant meets the circumstances applicable to grant.

Item [3117] - Paragraph 2.22(1)(a)

This item adds "or criminal" to paragraph 2.22(1)(a) so that a person in criminal detention cannot be taken to have applied for a Bridging D (Class WD) visa under regulation 2.22.

Item [3118] - Paragraph 2.22(1)(d)

This item adds a reference to section 48 of the Act to paragraph 2.22(1)(d). Therefore, where section 48 applies to a person, such a person will not be able to be taken to have applied for a Bridging D (Class WD) visa under regulation 2.22.

Item [3119] - Paragraphs 2.40(1)(n) and (na)

This item replaces paragraphs 2.40 (1)(n) and (na) with new paragraph 2.40 (1)(n). Pursuant to paragraph 33 (2)(a) of the Act, new paragraph 2.40 (1)(n) provides that a person is taken

to have been granted a special purpose visa if the person is a transit passenger who is a citizen of a country specified in a gazette notice.

Item [3120] - Subregulation 2.40(11)

This amendment is consequential to the omission of paragraph 2.40 (1)(na) above.

Item [3121] - Paragraph 2.43 (1)(c)

This amendment is consequential to the amendments to Schedules 010, 020, 030, 050 and 051, below, which provide that where an application for a substantive visa is determined to be invalid, the associated bridging visa will cease 28 days after notification by Immigration that the substantive visa application is invalid (see, for example, new subparagraph 010.511(b)(vi)). The amendments to paragraphs 2.43(1)(c) and 2.43(2)(a) (below) have the effect that the Minister will no longer cancel a person's bridging visa in the situation where that person made an application for a substantive visa which was accepted and receipted, but which was later discovered to be an invalid application.

Item [3122] - After subparagraph 2.43(1)(i)(i)

This item inserts Subclass 459 (Sponsored Business Visitor (Short Stay)) into the visas prescribed in paragraph 2.43(1)(i). Subregulation 2.43(1) deals with prescribed grounds for cancellation of a visa pursuant to section 116 of the Act. Under paragraph 2.43(1)(i), the Minister may cancel a visa listed in that paragraph if he is satisfied that the visa holder did not have, at the time of the grant of the visa, or has ceased to have, an intention only to stay in, or visit, Australia temporarily for business purposes.

Item [3123] - After subparagraph 2.43(1)(j)(i)

This item inserts Subclass 679 (Sponsored Family Visitor (Short Stay)) into the visas prescribed in paragraph 2.43(1)(j). Subregulation 2.43(1) deals with prescribed grounds for cancellation of a visa pursuant to section 116 of the *Migration Act 1958.*

Under paragraph 2.43(1)(j)(i), the Minister may cancel a visa listed in that paragraph if he is satisfied that the visa holder did not have, at the time of the grant of the visa, or has creased to have, an intention only to visit, or remain in Australia as a visitor temporarily for the purpose of visiting an Australian citizen, or Australian permanent resident, who is a parent, spouse, child, brother, or sister of the visa holder, or for another purpose, other than a purpose related to business or medical treatment.

Item [3124] - Sub-subparagraph 2.43(1)(1)(ii)(B)

This item is a consequential amendment arising from the insertion of new paragraph 2.43(1)(m)

Item [3125] - After paragraph 2.43(1)(1)

This item inserts a new paragraph 2.43(1)(m) into the Regulations. The new paragraph prescribes an additional ground under which the Minister may cancel a visa under s

116(1)(g) of the Act. The additional ground is that the Minister reasonably suspects that the holder of the visa has committed an offence under section 232A, 233, 233A, 234 or 236 of the Act.

Item [3126] - Paragraph 2.43(2)(a)

This amendment is consequential to the amendments to Schedules 010, 020, 030, 050 and 051, below, which provide that where an application for a substantive visa is determined to be invalid, the associated bridging visa will cease 28 days after notification by Immigration that the substantive visa application is invalid (see, for example, new subparagraph 010.511(b)(vi)). The amendments to paragraphs 2.43(1)(c) (above) and 2.43(2)(a) have the effect that the Minister will no longer cancel a person's bridging visa in the situation where that person made an application for a substantive visa which was accepted and receipted, but which was later discovered to be an invalid application.

Item [3127] - Paragraph 2.52(4)(c)

Item [3128] - Paragraph 2.53(3)(c)

These items allow for three forms of identification to be used in written communication with the Minister under paragraphs 2.52 (4)(c) and 2.53 (3)(c). Under these paragraphs an applicant must provide their client number, the Immigration file number or the number of the receipt issued by Immigration when the visa application was made.

Item [3129] - Subregulation 4.23(1)

This item inserts Subclass 679 (Sponsored Family Visitor (Short Stay)) into the visas specified in subregulation 4.23(1). Regulation 4.23 provides for expedited merits review of a visitor application where the applicant intended to come to Australia to visit a close family member.

Item [3130] - Subregulation 5.20(2)

This item substitutes new subregulation 5.20(2), which deals with penalties which may be paid as an alternative to prosecution for a contravention of section 229 or 230 of the Act. Sections 229 and 230 of the Act relate to the carriage of non-citizens to Australia without documentation, and the carriage of concealed persons to Australia. The amendment increases the penalty payable by a body corporate from $3,000 to $5,000 and is consequential to an amendment to paragraph 504(1)(j) of the Act, contained in the *Border Protection Legislation Amendment Act 1999.* That amendment increased the maximum penalty that can be prescribed pursuant to paragraph 504(1)(j) of the Act.

Item [3131] - Paragraph 5.38 (1)(a)

This item inserts Short Stay Sponsored (Visitor) (Class UL) into the visas specified in paragraph 5.38(1)(a) as a class of visa which is exempt from attracting a sponsorship fee.

Part 3.2 - Amendments of Schedule 1

Item [3201] - Item 1107

This item omits the Change in Circumstance (Residence) (Class AG) visa class from Schedule 1 to the Regulations. This visa class is being omitted because it contains only one subclass (Subclass 833) that will be merged into Subclass 832.

Item [3202] - Item 1115, heading

This item renames the Family (Residence) (Class AO) visa class as the Special Eligibility (Residence) (Class AO) visa class to better reflect its revised purpose.

Item [3203] - Items 1116 and 1117

This item omits the Family of New Zealand Citizen (Migrant) (Class AP) and Former Citizen (Migrant) (Class AQ) visa classes from Schedule 1 to the Regulations.

The repeal of Class AP is consequential to the repeal of Subclass 152 (Family of New Zealand Citizen) by these Regulations.

The repeal of Class AQ is consequential to the repeal of Subclass 150 (Former citizen) by these Regulations.

Item [3204] - Item 1118, heading

This item renames the Former Resident (Migrant) (Class AR) visa class as the Special Eligibility (Migrant) (Class AR) visa class. This change is to better reflect the purpose of the class, in view of amendments to Subclass 151 (Former Resident).

Item [3205] - Paragraph 1118(3)(b)

This item is a consequential amendment arising from the renaming of the Class AR visa class, above.

Item [3206] - After item 1217

This item inserts a new item 1217A into Schedule 1 to the Regulations. This new visa class is Short Stay Sponsored (Visitor) (Class UL). This class contains new Subclass 459 (Sponsored Business Visitor (Short Stay)) and new Subclass 679 (Sponsored Family Visitor (Short Stay)). The requirements for making a valid application are set out in new item 1217A. The requirements are that:

* the application is to be made on form 48R or 456;

* the visa application charge payable is $60 (first instalment). There will be no second instalment charge;

* the application must be made outside Australia;

* the applicant must be outside Australia;

* an application by the spouse or dependent child of an applicant ("the primary applicant") who appears to the Minister to meet the requirements of a Subclass 459 visa may be made at the same time and place as, and combined with, the application by the primary applicant;

* an application by a person included in the passport of another applicant who appears to the Minister the meet the requirements for a Subclass 679 visa may be made at the same time and place as, and combined with, the application by the primary applicant.

Item [3207] - Paragraph 1222(1)(a)

This item inserts a reference to new application form 157S in paragraph 1222(1)(a) which enables applicants outside Australia to apply for a Student (Temporary) (Class TU) visa on that form.

Item [3208] - Subparagraph 1222(1)(b)(iii)

This item inserts a reference to new application form 157S in subparagraph 1222(1)(b)(iii) which enables applicants within Australia who are not covered by subparagraph 1222(1)(b)(ii) or (iii) to apply for a Student (Temporary) (Class TU) visa on that form.

Item [3209] - Subparagraph 1223A(3)(ab)(ii)

This item substitutes new subparagraph 1223A(3)(ab)(ii) to the effect that the applicant proposes:

* to develop in Australia a business activity that will be conducted by the applicant as a principal and will be of benefit to Australia; or

* to be employed in Australia in an activity nominated by a person under paragraph 1.20G(1)(d).

This provision requires an applicant for a Class UC visa who is sponsored by an overseas business, to be outside of Australia at the time of application and to lodge his or her visa application overseas.

Item [3210] - Subitem 1225(1)

This item provides that a valid application for a working holiday visa can be made on Forms 147 or 1150. The new Form 1150 has been specifically designed as an application form for the working holiday visa.

Item [3211] - Paragraphs 1225(3)(a) and (b)

This item substitutes new requirements that:

(a) application must be made outside Australia; and

(b) the applicant must be outside Australia.

The effect of the amendment is that it will no longer be possible to make a valid working holiday visa application in Australia.

Item [3212] - Paragraph 1225(3)(c)

This item provides that each applicant for a working holiday visa must satisfy the primary criteria for the visa. There are no secondary criteria for this visa - all applicants are required to satisfy the primary criteria.

Item [3213] - Subitem 1301(1)

This item omits forms 157P and 601 from subitem 1301(1) so that an application for a visa on such a form is no longer also an application for a Bridging A (Class WA) visa.

This item also adds a reference to new application form 157S in subitem 1301(1) so that an applicant in Australia who makes an application for a Student (Temporary) (Class TU) visa onshore is also making an application for a Bridging A (Class WA) visa.

Item [3214] - Paragraph 1301(3)(c)

Item [3216] - Subparagraph 1303(3)(c)(ii)

The amendments made by these items enable an applicant to make a valid application for a Bridging A (Class WA) or Bridging C (Class WC) visa in the situation where the Minister has applied for judicial review of a decision in relation to the applicant's substantive visa application, in certain circumstances, and if the applicant satisfies the other relevant provisions of Item 1301 or Item 1303 of Schedule 1.

In addition, family unit members who combined their application for the substantive visa application with the applicant mentioned in these amendments will be able to make a valid application for a Bridging A (Class WA) or Bridging C (Class WC) visa if they satisfy the other relevant provisions of Item 1301 or Item 1303 of Schedule 1. This is because in order to satisfy new subparagraph (3)(c)(ii), an application must have been made, within statutory time limits, for judicial review of a decision *in relation to the applicant's substantive visa application* and the judicial review proceedings (including proceedings on appeal, if any) have not been completed. If a family unit member combined his or her application with the applicant's substantive visa application, then the judicial review proceedings nevertheless relate to their own substantive visa application, even if they are not a party to the judicial review proceedings.

Item [3215] - Subitem 1303(1)

Item [3217] - Subitem 1305(1)

These items omit form 601 so that an application for a visa on such a form is no longer also an application for a Bridging C (Class WC) or Bridging E (Class WE) visa.

These items also add a reference to new application form 157S in subitems 1303(1) and 1305(1). The effect of these amendments is that an applicant in Australia who makes an

application for a Student (Temporary) (Class TU) visa onshore is also making an application for a Bridging C (Class WC) and a Bridging E (Class WE) visa.

Item [3218] - Paragraph 1305(3)(c)

This item is a consequential amendment arising from the introduction of regulation 2.10A, above.

Part 3.3 - Amendments of Schedule 2

Item [33001] -Paragraph 010.211(2)(d)

This item is an amendment consequential to the insertion of new regulation 2.21B.

Item [33002] - Paragraph 010.211(3)(b)

Item [33003] - Paragraph 010.211(6)(c)

The amendments made by these items expand the criteria to be satisfied at the time of application to provide that an applicant may also meet the criteria in the following situations:

* where the Minister has applied for judicial review; or

* where the applicant is a family unit member of a person whose substantive visa application is the subject of judicial review proceedings, provided that the applicant combined their substantive visa application with the person who is a party to the judicial review proceedings.

Item [33004] - Subparagraph 010.511(b)(vi)

This is a technical amendment.

Item [33005] -After subparagraph 010.511(b)(vi)

This item adds two subparagraphs to paragraph 010.511 (b). Clause 010.511 sets out when a Subclass 010 (Bridging A) visa is in effect in the case of a bridging visa granted to a non-citizen who has applied for a substantive visa.

New subparagraph 010.511(b)(vii) provides that the bridging visa is in effect until 28 days after Immigration notifies the bridging visa holder that the substantive visa application is invalid.

New subparagraph 010.511 (b)(viii) provides that the bridging visa remains in effect, if a review authority remits the application for the substantive visa to the Minister for reconsideration, until any of the situations in paragraph 010.511 (b) is satisfied. Therefore, for example, the bridging visa would remain in effect if the Minister refused to grant a visa and the bridging visa holder appealed to a merits review body and the merits review body once more remitted the matter to the Minister.

Item [33006] - Clause 010.513

This item amends clause 010.513, so that the clause sets out when a Subclass 010 (Bridging A) visa is in effect in the case of a bridging visa granted to a non-citizen on the basis of judicial review of a decision, rather than in the case of a visa granted to a noncitizen where the noncitizen has applied for judicial review of a decision.

This amendment is consequential to the amendments made to paragraph 010.513(b) and the addition of new paragraph 010.513(c) and new clause 010.514, below.

Item [33007] - Subparagraph 010.513(b)(i)

This item amends subparagraph 010.513(b)(i) so that the subparagraph is subject to new paragraph 010.513(c).

Item [33008] - Subparagraph 010.513(b)(iv)

This is a technical amendment.

Item [33009] - After paragraph 010.5

This item inserts new paragraph 010.513(c) after paragraph 010.513(b).

New subparagraph 010.513(c) provides that the bridging visa remains in effect, if a court remits a matter to which the judicial review proceedings relate to a review authority or the Minister for reconsideration, until any of the situations in paragraph 010.511 (b) are satisfied.

Item [33010] - After clause 010.513

This item inserts new clause 010.514 after clause 010.513.

New clause 010.514 provides for when a Subclass 010 (Bridging A) visa is in effect in the case of a non-citizen who was granted the bridging visa on the basis that he or she is a family unit member of a party to judicial review proceedings.

Item [33011] - Paragraphs 010.611(4)(a) and (b)

This item provides that, for the purposes of subclause 010.611(4), the conditions attaching to a visa granted under new regulation 2.21B, will be those conditions specified in subclause 010.611(4) that attach to the visa held by the holder at the time of decision.

New paragraph 010.611(4)(b) makes a technical amendment pursuant to the amendment, in this item, of paragraph 010.611(4)(a) and to the introduction new regulation 2.21B.

Item [33012] - Paragraph 020.212(3)(c)

Item [33013] - Paragraph 020.212(5)(c)

The amendments made by these items expand the criteria to be satisfied at the time of application to provide that an applicant may also meet the criteria in the following situations:

* where the Minister has applied for judicial review; or

* where the applicant is a family unit member of a person whose substantive visa application is the subject of judicial review proceedings, provided that the applicant combined their substantive visa application with the person who is a party to the judicial review proceedings.

Item [33014] - Subporagraph 020.511 (b)(vi)

This is a technical amendment.

Item [33015] - After subparagraph 020.511(b)(vi)

This item adds two subparagraphs to paragraph 020.511 (b). Clause 020.511 sets out when a Subclass 020 (Bridging B) visa is in effect in the case of a bridging visa granted to a non-citizen who has applied for a substantive visa.

New subparagraph 020.511 (b)(vii) provides that the bridging visa is in effect until 28 days after Immigration notifies the bridging visa holder that the substantive visa application is invalid.

New subparagraph 020.511 (b)(viii) provides that the bridging visa remains in effect, if a review authority remits the application for the substantive visa to the Minister for reconsideration, until any of the situations in paragraph 020.511(b) are satisfied. Therefore, for example, the bridging visa would remain in effect if the Minister refused to grant a visa and the bridging visa holder appealed to a merits review body and the merits review body once more remitted the matter to the Minister.

Item [33016] - Clause 020.512

This item amends clause 020.512, so that the clause sets out when a Subclass 020 (Bridging B) visa is in effect in the case of a bridging visa granted to a non-citizen on the basis of judicial review of a decision, rather than in the case of a visa granted to a non-citizen where the noncitizen has applied for judicial review of a decision.

This amendment is consequential to the amendments made to paragraph 020.512(b) and the addition of new paragraph 020.512(ba) and new clause 020.513, below.

Item [33017] - Subparagraph 020.512(b)(i)

This item amends subparagraph 020.512(b)(i) so that the subparagraph is subject to new paragraph 020.512(ba).

Item [33018] - After paragraph 020.512(b)

This item inserts new paragraph 020.512(ba) after paragraph 020.512(b).

New subparagraph 020.512(ba) provides that a Subclass 020 (Bridging B) visa remains in effect, if a court remits a matter to which the judicial review proceedings relate to a review authority or the Minister for reconsideration, until any of the situations in paragraph 020.511 (b) are satisfied.

Item [33019] - After clause 020.512

This item inserts new clause 020.513, which provides for when a Subclass 020 (Bridging B) visa is in effect in the case of a non-citizen who was granted the bridging visa on the basis that he or she is a family unit member of a party to judicial review proceedings.

Item [33020] - Paragraph 030.212(2)(ba)

This item is an amendment consequential to the insertion of new regulation 2.21 B.

Item [33021] - Paragraph 030.212(5)(b)

The amendments made by these items expand the criteria to be satisfied at the time of application to provide that an applicant may also meet the criteria in the following situations:

* where the Minister has applied for judicial review; or

* where the applicant is a family unit member of a person whose substantive visa application is the subject of judicial review proceedings, provided that the applicant combined their substantive visa application with the person who is a party to the judicial review proceedings.

Item [33022] - Subparagraph 030.511 (b)(v)

This is a technical amendment.

Item [33023] - After subparagraph 030.511(b)(v)

This item adds two subparagraphs to paragraph 030.511(b). Clause 030.511 sets out when a Subclass 030 (Bridging C) visa is in effect in the case of a bridging visa granted to a non-citizen who has applied for a substantive visa.

New subparagraph 030.511 (b)(vi) provides that the bridging visa is in effect until 28 days after Immigration notifies the bridging visa holder that the substantive visa application is invalid.

New subparagraph 030.511 (b)(vii) provides that the bridging visa remains in effect, if a review authority remits the application for the substantive visa to the Minister for reconsideration, until any of the situations in paragraph 030.511(b) are satisfied. Therefore, for example, the bridging visa would remain in effect if the Minister refused to grant a visa

and the bridging visa holder appealed to a merits review body and the merits review body once more remitted the matter to the Minister.

Item [33024] - Clause 030.512

This item amends clause 030.512, so that the clause sets out when a Subclass 030 (Bridging C) visa is in effect in the case of a bridging visa granted to a non-citizen on the basis of judicial review of a decision, rather than in the case of a visa granted to a non-citizen where the noncitizen has applied for judicial review of a decision.

This amendment is consequential to the amendments made to paragraph 030.512(b) and the addition of new paragraph 030.512(c) and new clause 030.513, below.

Item [33025] - Subparagraph 030.512(b)(i)

This item amends subparagraph 030.512(b)(i) so that the subparagraph is subject to new paragraph 030.512(c).

Item [33026] - Subparagraph 030.512(b)(iv)

This is a technical amendment.

Item [33027] - After paragraph 030.512(b)

This item inserts new paragraph 030.512(c) after paragraph 030.512(b).

New paragraph 030.512(c) provides that a Subclass 030 (Bridging C) visa remains in effect, if a court remits a matter to which the judicial review proceedings relate to a review authority or the Minister for reconsideration, until any of the situations in paragraph 030.511 (b) are satisfied.

Item [33028] - After clause 030.512

This item inserts new clause 030.513 after clause 030.512.

New clause 030.513 provides for when a Subclass 030 (Bridging C) visa is in effect in the case of a non-citizen who was granted the bridging visa on the basis that he or she is a family unit member of a party to judicial review proceedings.

Item [33029] - Subdivision 040.21, after heading

This item inserts a note in relation to regulation 2.22.

Item [33030] - Clause 040.212

This item omits clause 040.212. Clause 040.212 is no longer necessary, as a person is taken to have applied for a Bridging D (Class WD) visa under regulation 2.22 in certain circumstances, and clause 040.213 sufficiently covers the attempts of an applicant to make a valid application.

Item [33031] - Subclause 050.212(1)

This amendment is consequential to the insertion of new subclause 050.212(4AA), below.

Item [33032] - Paragraph 050.212(3A)(b)

This item amends paragraph 050.212(3A)(b) so that a person who has been the subject of a section 501 decision is not entitled to be granted a subclass 050 bridging visa. This amendment ensures consistency between section 501E of the Act and the Regulations.

In addition, this item substitutes new subparagraph 050.212(3A)(b)(ii). The effect of this amendment is that an applicant will be able to meet subclause 050.212(3A) if the applicant satisfies paragraph 050.212(3A)(a) and if the Minister has applied for judicial review of a decision in relation to a refusal to grant the applicant's substantive visa, as described in the new subparagraph. Previously an applicant could not meet the requirements of subclause 050.212(3A) if the Minister had initiated the judicial review proceedings.

Item [33033] - After paragraph 050.212(4)(a)

This item inserts new paragraph 050.212(4)(aa). The effect of the amendment is that an applicant will be able to meet subclause 050.212(4) if the Minister has applied for judicial review of a decision in relation to the applicant's substantive visa application, other than a decision relating to a refusal to grant the substantive visa. Previously an applicant could not meet the requirements of subclause 050.212(4) if the Minister had initiated the judicial review proceedings.

Item [33034] - After subclause 050.212(4)

This item inserts new subclause 050.212(4AA). Generally, the effect of this amendment is to allow an applicant, in certain circumstances, to be eligible to be granted a Subclass 050 (Bridging (General)) visa if the applicant made a substantive visa application that was combined with the substantive visa application of a family unit member and that family member is a party to certain judicial review proceedings (except for where those proceedings are "class action" or representative proceedings).

Item [33035] - Paragraph 050.212(9)(c)

The amendments made by these items expand the criteria to be satisfied at the time of application to provide that an applicant may also meet the criteria in the following situations:

* where the Minister has applied for judicial review; or

* where the applicant is a family unit member of a person whose substantive visa application is the subject of judicial review proceedings, provided that the applicant combined their substantive visa application with the person who is a party to the judicial review proceedings and the applicant or family unit member does not satisfy paragraph 010.211(6)(c).

Item [33036] - Paragraph 050.222(3)(a)

This item provides that where an officer authorised by the Secretary has not interviewed an applicant at the time of application, or where new regulation 2.21B applies, at time of decision, the criterion for paragraph 050.222(3)(a) is met.

Item [33037] - Paragraph 050.511 (a)

Item [33039] - Subparagraph 050.511(b)(v)

These are technical amendments.

Item [33038] - Sub-subparagraph 050.511(b)(iii)(B)

This is a technical amendment which corrects an error.

Item [33040] - After subparagraph 050.511 (b)(v)

This item adds two subparagraphs to paragraph 050.511(b).

Clause 050.511 sets out when a Subclass 050 (Bridging (General)) visa is in effect in the case of a bridging visa granted to a non-citizen (other than a non-citizen to whom subclause 050.222(3) applies) who has applied for a substantive visa.

New subparagraph 050.511(b)(vi) provides that the bridging visa is in effect until 28 days after Immigration notifies the bridging visa holder that the substantive visa application is invalid.

New subparagraph 050.511 (b)(vii) provides that the bridging visa remains in effect, if a review authority remits the application for the substantive visa to the Minister for reconsideration, until any of the situations in paragraph 050.511 (b) are satisfied. Therefore, for example, the bridging visa would remain in effect if the Minister refused to grant a visa and the bridging visa holder appealed to a merits review body and the merits review body once more remitted the matter to the Minister.

Item [33041] - After clause 050.511

This item adds new clause 050.511 A at the end of clause 050.511.

New clause 050.511 A provides for when a Subclass 050 (Bridging (General)) visa is in effect in the case of a non-citizen who was granted the bridging visa on the basis that he or she is a family unit member of a party to judicial review proceedings.

Item [33042] - Clause 050.212

This item is consequential to the amendment of paragraph 050.212(3A)(b) above.

Item [33043] - Paragraph 050.512(a)

This is a technical amendment which corrects an error.

Item [33044] - Subparagraph 050.512(b)(ii)

This item amends subparagraph 050.512(b)(ii) so that the subparagraph is subject to new paragraph 050.512(c).

Item [33045] - Subparagraph 050.512(b)(iv)

This is a technical amendment.

Item [33046] - After paragraph 050.512(b)

This item inserts new paragraph 050.512(c) after paragraph 050.512(b).

New paragraph 050.512(c) provides that a Subclass 050 (Bridging (General)) visa remains in effect, if a court remits a matter to which the judicial review proceedings relate to a review authority or the Minister for reconsideration, until any of the situations in paragraph 050.511(b) are satisfied.

Item [33047] - Paragraph 050.611 (a)

This item is an amendment consequential to the insertion of new regulation 2.21 B.

Item [33048] - Paragraph 050.611 (c)

This item makes a technical amendment to paragraph 050.611 (c) and is consequential to the introduction of regulation 2.21 B above.

Item [33049] - Paragraph 050.611B(a)

This item amends paragraph 050.611B(a) to provide that condition 8401 must be imposed. This paragraph has been amended due to concerns that condition 8401 may be interpreted as being discretionary rather than mandatory.

Item [33050] - Clause 050.612A

This item amends clause 050.612A and applies to an applicant who meets one or more of subparagraphs 050.612A(1)(a)(i) to (viii) and who does not meet the requirements of subclause 050.212(6A).

The amendment requires that condition 8 101 must be imposed and allows the discretionary imposition of conditions 8201, 8401, 8403, 8505, 8506, 8507, 8508, 8510, 8511 and 8512. Paragraph 050.612A(2)(a) has been amended due to concerns that condition 8 101 may be interpreted as being discretionary rather than mandatory.

In addition, paragraph 050.612A(2)(a) has been amended to add references to new subparagraph 050.212(3A)(b)(ii), new paragraph 050.212(4)(aa) and new subclause 050.212(4AA).

Item [33051] - Paragraph 051.213(b)

This item provides that the amendments made to the health criteria of Subclass 866 visa applications will also apply to Subclass 050 applications. This has been done to ensure consistency between the health criteria of Subclass 050 and Subclass 866 visa applications.

Item [33052] - Paragraph 051.511 (d)

This is a technical amendment.

Item [33053] -After paragraph 051.511 (d)

This item adds two paragraphs to clause 051.511. Clause 051.511 sets out when a Subclass 051 (Bridging (Protection Visa Applicant)) visa is in effect in the case of a bridging visa granted to a non-citizen who has applied for a protection visa.

New paragraph 051.511 (e) provides that the bridging visa is in effect until 28 days after Immigration notifies the bridging visa holder that the substantive visa application is invalid.

New paragraph 051.511 (f) provides that the bridging visa remains in effect, if a review authority remits the application for the protection visa to the Minister for reconsideration, until any of the situations in clause 051.511(f) are satisfied. Therefore, for example, the bridging visa would remain in effect if the Minister refused to grant the protection visa and the bridging visa holder appealed to a merits review body and the merits review body once more remitted the matter to the Minister.

Item [33054] - Clause 051.512

This item amends clause 051.512, so that the clause sets out when a Subclass 051 (Bridging (Protection Visa Applicant)) visa is in effect in the case of a bridging visa granted to a non-citizen on the basis of judicial review of a decision to refuse a protection visa application, rather than in the case of a bridging visa granted to a non-citizen who has lodged an application for judicial review of a decision to refuse a protection visa.

This amendment is consequential to the amendments made to paragraph 051.512(b) and the addition of new paragraph 051.512(d) below.

Item [33055] - Paragraph 051.512(b)

This item amends paragraph 051.512(b) so that the paragraph is subject to new paragraph 051.512(d).

Item [33056] - Paragraph 051.512(c)

This is a technical amendment.

Item [33057] - After paragraph 051.512(c)

This item inserts new paragraph 051.512(d).

New paragraph 051.512(d) provides that a Subclass 051 (Bridging (Protection Visa Applicant)) visa remains in effect, if a court remits a matter to which the judicial review proceedings relate to a review authority or the Minister for reconsideration, until any of the situations in clause 051.511 are satisfied.

Item [33058] - Division 101.1

This item inserts a new definition of *New Zealand citizen* for the purposes of Subclass 101 (Child). The new definition includes an eligible New Zealand citizen and a New Zealand citizen who intends to be usually resident in Australia and, on entry to Australia, will be the holder of a Special Category (Temporary) (Class TY) visa.

The new (expanded) definition will accommodate a New Zealand citizen who intends to migrate to Australia with a dependent child who is not a New Zealand citizen. Under the definition of *eligible New Zealand citizen* the dependent child would not be eligible for a Subclass 101 as they would not be able to satisfy the criteria that they are the dependent child of a New Zealand citizen who is usually resident in Australia.

This amendment is consequential to the repeal of Subclass 152 (Citizen of New Zealand Citizen). Subclass 152 provided for migration processing of family members of New Zealand citizens who are non-New Zealand citizens and intend to migrate to Australia.

Item [33059] - Paragraph 101.211(1)(a)

Item [33060] - Subparagraph 101.211(1)(c)(i)

Item [33061] - Subparagraph 101.211 (1)(c)(ii)

item [33062] - Paragraph 101.212(b)

item [33063] - Paragraph 101.212(c)

These items are consequential to the insertion of the definition of *New Zealand citizen* for the purposes of Subclass 101, and the omission of Subclass 152 (Family of New Zealand Citizen).

Item [33064] - Paragraph 115.212(a)

This item replaces paragraph 115.212 (a) with new paragraph 115.212 (a). Under new paragraph an Australian relative who is sponsoring an applicant for Subclass 115 (Remaining Relative) must have turned 18 and be a settled Australian citizen, a settled Australian permanent resident or a settled eligible New Zealand citizen. This amendment is consequential to the amendment contained in Statutory Rules 1999 No. 259, which inserted new visa Subclass 115 (Remaining Relative) into the Migration Regulations 1994.

Item [33065] - Subclause 117.211(2)

Item [33066] - Subparagraph 117.212(b)(ii)

These items make amendments to Subclass 117 (Orphan Relative) to accommodate a New Zealand citizen who intends to migrate to Australia with an orphan relative who is not a New Zealand citizen. These items identify, in addition to eligible New Zealand citizen, a New Zealand citizen who intends to be usually resident in Australia and, on entry to Australia, will be the holder of a Special Category (Temporary) (Class TY) visa. Under the definition of *eligible New Zealand citizen* the applicant would not be eligible for a Subclass 117 as they would not be able to satisfy the criteria that they are the orphan relative of a New Zealand citizen who is usually resident in Australia.

These amendments are consequential to the repeal of Subclass 152 (Citizen of New Zealand Citizen). Subclass 152 provided for migration processing of family members of New Zealand citizens who are non-New Zealand citizens and intend to migrate to Australia.

Item [33067] - Part 150

This item omits Subclass 150 (Former citizen), other options, primarily resumption of Australian citizenship and Resident Return visas are available.

Item [33068] - Clause 151.211

This item substitutes clause 151.211 with new clause 151.211. In particular, new clause 151.211 provides that an applicant must be under 45 years of age at time of application.

In addition, further time of application criteria have been added so that an applicant can meet the requirements of subclause (3) if the applicant has completed at least 3 months continuous Australia defence service, or was discharged as being medically unfit before completing 3 months Australian defence service. The term "Australian defence service" has been defined in clause 151.211. These provisions have been inserted to deal with applications from former war veterans who may be ineligible to return under existing provisions.

Item [33069] - Clause 151.612

This clause corrects an earlier drafting error by replacing discretionary condition 8205 with condition 8502.

Item [33070] - Part 152

This item omits Subclass 152 (Family of New Zealand Citizen).

Item [33070A] - Subclause 302.111(1), definition of remaining criteria, paragraph (a)

This item makes minor amendments, consequential to the amendments of Schedule 4 in Part 3.5 of these Regulations.

Item [33071] - Division 417.1

This item inserts a definition of a "working holiday visa" for the purposes of Part 417 of Schedule 2 to the Migration Regulations. It provides that a "working holiday visa" means a visa or an entry permit of any of the following classes or kinds:

(a) a visa that:

(i) was issued under the Migration (1989) Regulations; and

(ii) contained an endorsement describing the visa as a working holiday visa (code T18) or a working holiday visa (code number 417);

(b) a class 417 (working holiday) visa and entry permit within the meaning of the Migration (1993) Regulations;

(c) a working holiday (temporary) visa (class TZ);

(d) a visa that was granted:

(i) before 19 December 1989; and

(ii) in accordance with the law in force at the time; and

(iii) for the same purpose as a visa or permit mentioned in paragraphs (a), (b) or (c).

The effect of the amendment will be to implement the policy intention that all applicants who have previously held a working holiday visa on which they entered Australia are ineligible for grant of a further working holiday visa. At present, the regulations only limit those applicants who have previously held a Subclass 417 visa from being eligible for grant of a further working holiday visa. Without the amendment, an applicant who has previously entered Australia as a working holiday maker on a pre-Subclass 417 working holiday visa is technically eligible for grant of a further working holiday visa.

Item [33072] - Clauses 417.211 and 417.212

This item omits clauses 417.211 and 417.212. These clauses are no longer relevant as working holiday visa applications will no longer be able to be lodged in Australia.

Item [33073] - Clause 417.214

This item substitutes a new provision to the effect that an applicant meets the requirements of this clause if..

(a) the applicant has turned 18 but has not turned 31; and

(b) the applicant is a citizen of a country specified by a Gazette Notice mentioned

in paragraph 417.215(a) or 417.215(b).

It will therefore no longer be necessary for an applicant aged 26 years or more (but not more that 31) to satisfy the Minister that his or her entry into Australia is beneficial to the applicant and to Australia.

The amendment also ensures that applicants from countries with which Australia does not have reciprocal working holiday arrangements will not satisfy the criteria for grant of a working holiday visa.

Item [33074] - Clause 417.215

This item substitutes new clause 417.215 which provides that the application is made:

(a) if the applicant is a citizen of a country specified by Gazette Notice for the purpose of this paragraph - in any country (except Australia); and

(b) if the applicant is a citizen of a country specified by Gazette Notice for the purpose of this paragraph - in the country of which the applicant is a citizen.

This amendment allows for flexibility in terms of where applicants may apply. At present, citizens of the UK, Ireland, the Netherlands and Canada are permitted to apply at any Australian mission (outside Australia). Citizens of other agreement countries must apply in their countries of citizenship. As additional countries sign reciprocal working holiday agreements with Australia, they will be added to the appropriate Gazette list, depending on the terms of the agreement concluded with each of them.

Item [33075] - Paragraph 417.216(c)

This item makes a consequential amendment by removing the word "and" at the end of the paragraph.

Item [33076] - Paragraph 417.216(d)

This item omits paragraph 417.216(d).

The effect of these amendments is to allow working holiday visa holders to engage in study or training for up to three months (currently they are not permitted to undertake any studies in Australia other than an English language course). This brings the working holiday visa in line with conditions that apply to visitor visa and electronic travel authority (ETA) holders.

Item [33077] - Clause 417.217

This item omits the reference to a Subclass 417 visa and substitutes the wider expression "working holiday visa".

Item [33078] - Clauses 417.218 and 417.219

This item omits clauses 417.218 and 417.219, as the applicants will no longer be permitted to make applications in Australia.

Item [33079] - Clause 417.221

This item substitutes a new criterion that the applicant continues to satisfy the criteria in clauses 417.213 and 417.215 to 417.217 and that he or she also satisfies the public interest criteria 4001 to 4005 and 4010, 4013 and 4014.

Item [33080] - Clause 417.222

This item omits the expression "If the application is lodged outside Australia", as under the new Part 417 it will no longer be possible to make a valid application for a working holiday visa onshore.

Item [3308 1] - Clauses 417.411 and 417.412

This item provides that the applicant must be outside Australia at the time of the grant. It is a consequential to the amendment of paragraphs 1225(3)(a) and (b) in that it will no longer be possible to make a valid application for a working holiday visa in Australia.

Item [33082] - Clause 417.611.

This item provides that conditions 8108 and 8201 may be imposed on the working holiday visa.

The effect of these amendments is to allow working holiday visa holders to engage in study or training for up to three months (currently they are not permitted to undertake any studies in Australia other than an English language course). This brings the working holiday visa in line with conditions that apply to visitor visa and ETA holders.

Item [33083] - Paragraph 457.223(4)(e)

This item substitutes new paragraphs 457.223(4)(e) and (f) to the effect that:

* the applicant demonstrates (if so required by the Minister) that he or she has the skills necessary to perform the activity; and

* the applicant has personal attributes and an employment background that are relevant to, and consistent with, the nature of the activity to be performed.

This provision allows an assessment to be made as to whether the visa applicant sponsored for a key activity has the skills and attributes needed to undertake the position to which he or she has been sponsored.

Item [33084] - After paragraph 457.223(5)(ea)

This item inserts a new criterion 457.223(5)(eb) to the effect that the applicant has personal attributes and an employment background that are relevant to, and consistent with, the nature of the activity to be performed.

This provision applies to Class UC visa applicants sponsored for employment to a non-key activity in an Australian business. It allows an assessment to be made as to whether the visa applicant has personal attributes and an employment background needed to undertake the position to which he or she has been sponsored.

Item [33085] - Paragraphs 457.223(6)(d) and (e)

This item substitutes three criteria:

* the applicant demonstrates (if so required by the Minister) that he or she has the skills necessary to perform the activity; and

* the applicant has personal attributes and an employment background that are relevant to and consistent with, the nature of the activity to be performed; and

* where the activity is not a key activity, the Minister is satisfied that the position to be filled by the applicant has not been created only for the purposes of securing the entry of the applicant to Australia.

This provision applies to an applicant for a Class UC visa that was sponsored for employment in Australia on behalf of an overseas business. It allows an assessment to be made as to whether the visa applicant has the skills and attributes needed to undertake the position to which he or she has been sponsored.

Item [33086] - After Part 457

This item inserts new Subclass 459 (Sponsored Business Visitor (Short Stay)) into Schedule 2 to the Regulations, consequential to the recommendation by the External Reference Group guiding the recent Review of Illegal Workers.

New Subclass 459 is intended for applicants who may otherwise be refused a Subclass 456 Business (Short Stay) visa. In contrast to Subclass 456, it includes a mandatory 'no further stay' condition, and where necessary, lodgement of a security bond.

New Subdivision 459.21 sets out the primary criteria to be satisfied at the time of application. In particular, the applicant must:

* seek to enter Australia temporarily for business purposes;

* have personal attributes and business background relevant to the nature of the applicant's proposed business in Australia;

* demonstrate that there is a need for the applicant to be in Australia for business purposes;

* propose to remain in Australia for not more than 3 months;

* have adequate funds for personal support for the proposed visit;

* not intend to engage any course of study (other than a language training program) or any activity that will have adverse consequences for employment or training opportunities, or conditions of employment, for Australian citizens or Australian permanent residents;

* be sponsored by either:

* a Commonwealth government agency or instrumentality or a State or Territory government agency or instrumentality; or

* a settled Australian citizen or a settled Australian permanent resident who is either:

* a member of the Commonwealth or State Parliament; or

* a member of the Legislative Assembly of the Australian Capital Territory or the Northern Territory; or

* a person who holds the office of mayor.

New Subdivision 459.22 sets out the primary criteria to be satisfied at the time of decision. In particular, the applicant must:

* continue to satisfy primary criteria to be satisfied at time of application;

* be the subject of an approved sponsorship that is still in force and, if requested by an officer authorised under section 269 of the Migration Act 1958, the requested security has been lodged acknowledging that the amount will be forfeited if the sponsored applicant fails to comply with section 269 of the Act (which deals with security for compliance with the Act or Regulations);

* satisfy the AusAID student criterion;

* have satisfied the Minister that they intend to comply with any conditions subject to which the visa is granted;

* satisfy the following public interest and special return criteria - 4001, 4002, 4003, 4004, 4005, 4011, 4013, 4014, 5001 and 5002.

New Subdivision 459.31 sets out the secondary criteria to be satisfied at the time of application. In particular, the applicant must:

* be the spouse or dependent child of a person who is an applicant for a Short Stay Sponsored (Visitor) (Class UL) visa who seeks to remain in Australia for a period of 3 months or less;

* be included in the same sponsorship as the applicant satisfying the primary criteria;

* not intend to engage in any course of study (other than a language training program).

New Subdivision 459.32 sets out the secondary criteria to be satisfied at the time of decision. In particular, the applicant must:

* be the spouse or dependent child of a person who, having satisfied the primary criteria, is the holder of a Subclass 459 visa;

* continue to be included in the same sponsorship as the applicant satisfying the primary criteria which has been approved by the Minister and is still in force and, if requested by an officer authorised under section 269 of the *Migration Act* 1958, the requested security has been lodged acknowledging that the amount will be forfeited if the sponsored applicant fails to comply with section 269 of the Act (which deals with security for compliance with the Act or Regulations);

* produce evidence to the Minister of adequate means of support during the proposed visit;

* satisfy the Minister that the expressed intention of the applicant only to visit Australia is genuine;

* satisfy the AusAID student criterion and the custody criterion;

* satisfy the following public interest and special return criteria - 4001, 4002, 4003, 4004, 4005, 4011, 4013, 4014, 5001 and 5002.

New Subdivision 459.4 sets out circumstances applicable to grant. The applicant must be outside Australia when the visa is granted.

New Subdivision 459.5 sets out when the visa is in effect. A Subclass 459 visa is a temporary visa permitting the holder to travel to and enter Australia on one occasion until a date specified by the Minister; and remain in Australia for a period (not longer than 3 months) specified by the Minister.

New Subdivision 459.6 sets out the conditions relevant for Subclass 459. If the applicant:

* satisfies the primary criteria - conditions 8112, 8205, 8503, 8531 and discretionary condition 8106;

* is the spouse of the person who satisfies the primary criteria - conditions 8 101, 8205,8503,8531.

* is the dependent child of the person who satisfies the primary criteria - conditions 8205, 8503, 8531 and discretionary condition 8101.

Item [33087] - Paragraphs 676.221(2)(d) and (5)(d)

This item substitutes paragraphs 676.221(2)(d) and (5)(d) with references to the new custody criterion contained in Schedule 4 to the Regulations (public interest criteria).

The item provides that public interest criteria 4017 and 4018 must be satisfied in relation to the applicant if they have not reached 18 years of age.

Item [33088] - Paragraph 676.611 (a)

This item amends paragraph 676.611 (a) to provide that conditions 8201 and 8205 must be imposed. This paragraph has been amended due to concerns that conditions 8201 and 8205 may be interpreted as being discretionary rather than mandatory.

Item [33089] - Paragraph 676.613(a)

This item amends paragraph 676.613(a) to provide that conditions 8101, 8202 and 8205 must be imposed. This paragraph has been amended due to concerns that conditions 8101, 8202, and 8205 may be interpreted as being discretionary rather than mandatory.

Item [33090] - After Part 676

This item inserts new Subclass 679 (Sponsored Family Visitor (Short Stay)) into Schedule 2 to the Regulations, consequential to the recommendation by the External Reference Group guiding the recent Review of Illegal Workers.

New Subclass 679 is intended for applicants who may otherwise be refused a Subclass 676 Tourist (Short Stay) visa. In contrast to Subclass 676, it includes a mandatory 'no further stay' condition, and where necessary, lodgement of a security bond.

New Subdivision 679.21 sets out the primary criteria to be satisfied at the time of application. All applicants must satisfy the primary criteria. In particular, the applicant must:

* seek to visit Australia for the purpose of visiting an Australian citizen, or Australian permanent resident, who is a parent, spouse, child, brother or sister of the applicant; or for a purpose other than a purpose related to business or medical treatment;

* have adequate funds for personal support for the proposed visit;

* propose to remain in Australia for not more than 3 months;

* be sponsored by either:

* a Commonwealth government agency or instrumentality or a State or Territory government agency or instrumentality; or

* a settled Australian citizen or a settled Australian permanent resident who is either:

* the relative (over the age of 18 years) of the applicant or a member of the applicant's family unit who is also an applicant for a Subclass 679 and intends travelling together; or

* a member of the Commonwealth or State Parliament; or

* a member of the Legislative Assembly of the Australian Capital Territory or

* the Northern Territory; or a person who holds the office of mayor.

New Subdivision 679.22 sets out the primary criteria to be satisfied at the time of decision. In particular, the applicant must:

* continue to satisfy primary criteria to be satisfied at time of application;

* be the subject of an approved sponsorship that is still in force. If all applicants who are the relative of the Australian citizen or permanent resident sponsor are ultimately refused Subclass 679 visas, then all applications by persons included in the same sponsorship only on the basis that they are a member of the family unit will fail.

* if requested by an officer authorised under section 269 of the *Migration Act 1958,* the requested security must have been lodged acknowledging that the amount will be forfeited if the sponsored applicant fails to comply with section 269 of the Act (which deals with security for compliance with the Act or Regulations);

* satisfy the Minister that the expressed intention only to visit Australia is genuine;

* satisfy the AusAID student criterion and the custody criterion;

* have satisfied the Minister that they intend to comply with any conditions subject to which the visa is granted;

* satisfy the following public interest and special return criteria - 4001, 4002, 4003, 4004, 4005, 4011, 4012, 4013, 4014, 5001 and 5002.

New Subdivision 679.4 sets out circumstances applicable to grant. The applicant must be outside Australia when the visa is granted.

New Subdivision 679.5 sets out when the visa is in effect. A Subclass 679 is a temporary visa permitting the holder to travel to and enter Australia on one occasion until a date specified by the Minister; and remain in Australia for a period (not longer than 3 months) specified by the Minister.

New Subdivision 679.6 sets out the conditions relevant for Subclass 679. All applicants will have the following conditions - 8101, 8205, 8503 and 8531.

Item [33091] - Paragraph 686.221(2)(d)

This item substitutes paragraph 686.221(2)(d) with a reference to the new custody criterion contained in Schedule 4 to the Regulations (public interest criteria).

The item provides that public interest criteria 4017 and 4018 must be satisfied in relation to the applicant if they have not reached 18 years of age.

Item [33092] - Paragraphs 773.213(2)(m) and (n)

This item is a consequential amendment arising from the renaming of the Former Resident (Migrant) (Class AR) visa class as the Special Eligibility (Migrant) (Class AR) visa class

Item [33093] - Paragraphs 773.213(2)(p) and (r)

This item omits paragraphs 773.213(2)(p) and 773.213(2)(r). The amendments are consequential to:

* the repeal of the Family of New Zealand Citizen (Migrant) (Class AP) visa class; and

* the repeal of the Change in Circumstance (Residence) (Class AG) visa class.

Item [33094] - Paragraph 773.213(2)(t)

This item is a consequential amendment arising from the renaming of the Family (Special Residence) (Class AO) visa class as the Special Eligibility (Residence) (Class AO) visa class.

Item [33095] - Paragraph 773.213(2)(zg)

This is a technical amendment which corrects an error.

Item [33096] - Clause 785.224

This item broadens the range of medical practitioners authorised to conduct medical examinations of subclass 785 visa applicants. Instead of only a Commonwealth Medical Officer conducting these examinations, the following range of practitioners will be authorised to conduct them:

- Medical Officer of the Commonwealth;

- Medical practitioner approved by the Minister;

- Medical practitioner employed by an organisation approved by the Minister

This change has been made to allow greater flexibility in conducting these medical examinations

Item [33097] - Paragraph 785.225(b)

This item is a consequential amendment arising from the broadening of the range of medical practitioners authorised to conduct medical examinations under the amended clause 785.224.

Item [33098] - Subparagraph 785.225(c)(i)

This item is a consequential amendment arising from the broadening of the range of medical practitioners authorised to conduct medical examinations under the amended clause 785.224.

Item [33099] - After clause 785.225

This item inserts additional time of decision criteria for Subclass 785 applicants. The amendments made by the insertion of clauses 785.225A and 785.22513 require a medical assessment of the visa applicant to determine whether the applicant poses a health risk to the community. If the applicant does pose a health risk, the amendments require health management arrangements to be put in place.

Item [33100] - Paragraph 802.311 (a)

This item is a consequential amendment arising from:

* the repeal of the Change in Circumstance (Residence) (Class AG) visa class; and

* the renaming of the Family (Residence) (Class AO) visa class as the Special Eligibility (Class AO) visa class.

Item [33101] - Paragraph 831.311 (a)

This is a consequential amendment arising from the renaming of the Family (Residence) (Class AO) visa class as the Special Eligibility (Residence) (Class AO) visa class.

Item [33102] - Division 832. 1, note

This item amends the note in clause 832.1 to refer to a definition of "entry permit". This is a consequential amendment arising from the amendments to the criteria in Subclass 832 (Close Ties).

Item [33103] - Clause 832.211.

This item amends the criteria to be satisfied at the time of application in Subclass 832 (Close Ties). The amendments absorb the criteria in clauses 833.211 and 833.212 into Subclass 832, in view of the repeal of Subclass 833 (Certain Unlawful Non-Citizens).

This item also inserts into subparagraph 832.211(2)(e)(ii) a reference to the applicant ceasing to hold an *entry permit.* The reference to an entry permit has been made because most applicants eligible under this subclause would have entered Australia under an entry permit rather than a substantive visa.

Item [33104] - Subclause 832.212(1)

This item is consequential to the amendments to the criteria to be satisfied at the time of application in Subclass 832 (Close Ties).

Item [33105] - Subclause 832.212(3)

This item omits subclause 832.212(3), as subclause 832.212(3) duplicates entitlements available under Subclass 155 (Five Year Resident Return), Subclass 157 (Three Month Resident Return) and Subclass 159 (Provisional Resident Return).

Item [33106] - Paragraph 832.212(4)(b)

This item inserts a reference to an *entry permit* in paragraph 832.212(4)(b). The reference to entry permit has been made because most applicants eligible under this subclause would have entered Australia under an entry permit rather than a substantive visa.

lItem [33107] - Paragraph 832.212(5)(b)

This item is consequential to the repeal of Subclasses 150 (Former Citizen) and 152 (New Zealand Citizen).

Item [33108] - Paragraph 832.221(2)(a)

This item is consequential to the omission of subclause 832.212(3).

Item [33109] - Paragraph 832.221(3)(a)

This item is consequential to the amendments to the criteria to be satisfied at the time of decision in Subclass 832 (Close Ties).

Item [33110] - Clause 832.223

This item substitutes clause 832.223 with a reference to the new custody criterion contained in Schedule 4 to the Regulations (public interest criteria).

The item provides that public interest criteria 4015 and 4016 must be satisfied if the person (the additional applicant) is a member of a family unit of the applicant, has not turned 18 and made a combined application with the applicant.

The item also provides that public interest criteria 4017 and 4018 must be satisfied in relation to the applicant if they have not reached 18 years of age.

Item [33111 Paragraph 832.311 (a)

This is a consequential amendment arising from the renaming of the Class AO visa class from Family (Residence) to Special Eligibility (Residence).

Item [33112] - Part 833

This item omits Subclass 833 (Certain Unlawful Non Citizens). The criteria contained in that Subclass has been absorbed into Subclass 832 (Close Ties).

Item [33113] - Clause 835.225

This item substitutes clause 835.225 with a reference to the new custody criterion contained in Schedule 4 to the Regulations (public interest criteria).

The item provides that public interest criteria 4015 and 4016 must be satisfied if the person (the additional applicant) is a member of a family unit of the applicant, has not turned 18 and made a combined application with the applicant.

The item also provides that public interest criteria 4017 and 4018 must be satisfied in relation to the applicant if they have not reached 18 years of age.

Item [33114] - Clause 836.225

This item substitutes clause 836.225 with a reference to the new custody criterion contained in Schedule 4 to the Regulations (public interest criteria).

The item provides that public interest criteria 4015 and 4016 must be satisfied if the person (the additional applicant) is a member of a family unit of the applicant, has not turned 18 and made a combined application with the applicant.

The item also provides that public interest criteria 4017 and 4018 must be satisfied in relation to the applicant if they have not reached 18 years of age.

Item [33115] - Clause 838.225

This item substitutes clause 838.225 with a reference to the new custody criterion contained in Schedule 4 to the Regulations (public interest criteria).

The item provides that public interest criteria 4015 and 4016 must be satisfied if the person (the additional applicant) is a member of a family unit of the applicant, has not turned 18 and made a combined application with the applicant.

The item also provides that public interest criteria 4017 and 4018 must be satisfied in relation to the applicant if they have not reached 18 years of age.

Item [33116] - Subparagraphs 855.211 (1)(a)(iii), (iv) and (v)

item [33117] - Sub-subparagraphs 855.211(2)(b)(i)(C),(D) and (E)

item [33118] - Subparagraphs 856.211(1)(a)(iii), (iv) and (v)

Item [33119] - Sub-subparagraphs, 856.211(2)(b)(i)(C),(D) and (E)

Item [33120] - Subparagraphs 857.211 (1)(a)(iii), (iv) and (v)

Item [33121] - Sub-subparagraphs 857.211(2)(b)(i)(C), (D) and (E)

Item [33122] - Subparagraphs 858.211(1)(a)(iii)(iv) and (v)

Item [33123] - Sub-subparagraphs 858.211(1)(b)(i)(C),(D) and (E)

These items insert a reference to Short Stay Sponsored (Visitor) (Class UL) so that any such applicant is not able to satisfy time of application criteria on the basis that they hold a Short Stay Sponsored (Visitor) (Class UL) visa.

Item [33124] - Clause 866.223

This item broadens the range of medical practitioners authorised to conduct medical examinations of subclass 866 visa applicants. Instead of only a Commonwealth Medical Officer conducting these examinations, the following range of practitioners will be authorised to conduct them:

- Medical Officer of the Commonwealth;

- Medical practitioner approved by the Minister;

- Medical practitioner employed by an organisation approved by the Minister

Item [33125] - Paragraph 866.224(b)

This item is a consequential amendment arising from the broadening of the range of medical practitioners authorised to conduct medical examinations under the amended clause 866.223.

Item [33126] - Subparagraph 866.224(c)(i)

This item is a consequential amendment arising from the broadening of the range of medical practitioners authorised to conduct medical examinations under the amended clause 866.223.

Item [33127] - After clause 866.224

This item inserts additional time of decision criteria for Subclass 866 applicants. The amendments made by the insertion of clauses 866.224A and 866.224B require a medical assessment of the visa applicant to determine whether the applicant poses a health risk to the community. If the applicant does pose a health risk, the amendments require health management arrangements to be put in place.

Part 3.4 - Amendments of Schedule 2

Item [3401] - Amendments relating to custody criterion - primary criteria

This item provides that the clauses mentioned in subitem (2) are to be substituted with references to the new custody criterion contained in Schedule 4 to the Regulations (public interest criteria).

The item provides that public interest criteria 4015 and 4016 must be satisfied if the person (the additional applicant) is a member of a family unit of the applicant, has not turned 18 and made a combined application with the applicant.

Item [3402] - Amendments relating to custody criterion - secondary criteria

This item provides that the clauses mentioned in subitem (2) are to be substituted with references to the new custody criterion contained in Schedule 4 to the Regulations (public interest criteria).

The item provides that public interest criteria 4017 and 4018 must be satisfied if the applicant has not turned 18.

Part 3.5 - Amendments of Schedule 4

Item [3501] - Subclause 4013(1)

This item is consequential to the insertion of subclause 4013(1A) made by item [3502].

Item [3502] - After subclause 4013(1)

This item inserts a new subclause 4013(1A) that provides a visa applicant is affected by a risk factor if the person previously had a visa cancelled under sections 109 or 128, or paragraph 116(1)(d) of the Act.

Item [3503] - Subclause 4013(2)

This item amends subclause 4013(2) by providing that a person is affected by a risk factor if the person previously had a visa cancelled under either s 116 or s 128 of the Act. This will ensure that identical consequences result whether a visa is cancelled onshore or offshore.

Item [3504] - Paragraph 4013(2)(c)

This item is a consequential amendment arising from the insertion of paragraph 4013(2)(d).

Item [3505] - After paragraph 4013(2)(c)

This item inserts new paragraph 4013(2)(d) to include a risk factor that a person had a visa cancelled under s 116 because the Minister was satisfied that a ground prescribed by paragraph 2.43(1)(i),(j),(k) or (m) applied to the person. These grounds provide for cancellation if a person lacks bona fides or has engaged in people smuggling.

Item [3506] - After clause 4014

This item inserts the new custody criterion into public interest criteria 4015, 4016, 4017 and 4018. The new custody criterion provides a more objective test for decision-makers.

New public interest criterion 4015 provides that the Minister must be satisfied of one of the following:

* the law of the additional applicant's home country permits the removal of the additional applicant;

* each person who can lawfully determine where the additional applicant is to live consents to the grant of the visa;

* the grant of the visa would be consistent with any Australian child order in force in relation to the additional applicant.

New public interest criterion 4016 is met if the Minister is satisfied that there is no compelling reason to believe that the grant of the visa would not be in the best interests of the additional applicant.

New public interest criterion 4017 provides that the Minister must be satisfied of one of the following:

* the law of the applicant's home country permits the removal of the applicant;

* each person who can lawfully determine where the applicant is to live consents to the grant of the visa;

* the grant of the visa would be consistent with any Australian child order in force in relation to the applicant.

New public interest criterion 4018 is met if the Minister is satisfied that there is no compelling reason to believe that the grant of the visa would not be in the best interests of the applicant.

Part 3.6 - Amendments of Schedules 8, 8A, 9, 11 and 12

Item [3601] - Schedule 8, after clause 8530

This item inserts new condition 8531 into Schedule 8 to the Regulations. New condition 8531 provides that the visa holder must not remain in Australia after the period of stay permitted by the visa.

Item [3602] - Schedule 8A, definition of *Type B payment,* paragraphs (e) and (f)

This item is consequential to the repeal of the Family of New Zealand Citizen (Migrant) (Class AP) visa class and the Former Citizen (Migrant) (Class AQ) visa class.

Item [3603] - Schedule 9, Part 2, paragraph 1 (a)

This amendment is consequential to the introduction of new paragraph 2.40 (1)(n) above.

Item [3604] - Schedule 9, Part 3

This item omits Part 3 of Schedule 9 of the Regulations and is consequential to the introduction of new regulation 2.40 (1)(n) above.

Item [3605] - Schedule 11, heading

This item is consequential to the insertion of the new regulation 2.12A. The amendment relates the "memorandum of understanding" to the new subregulation 2.12A(3).

Item [3606] - Schedule 12

This item is consequential to the insertion of the new regulation 2.12A. The amendment relates the "exchange of letters" to the new subregulation 2.12A(3).