Migration Amendment Regulations 2000 (No. 5) 2000 No. 259

EXPLANATORY STATEMENT

STATUTORY RULES 2000 No. 259

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

Migration Act 1958

Migration Reform Act 1992

Migration Amendment Regulations 2000 (No. 5)

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 particular, paragraph 504(1)(a) of the Act provides that the regulations may provide for the charging and recovery of fees in respect of any matter under the Act or regulations, and paragraph 504(1)(b) of the Act provides that the regulations may make provision for the remission, refund or waiver of fees which may be prescribed by the regulations, and for exempting persons from the payment of such fees.

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

- subsection 31(3) provides that the regulations may prescribe criteria for visas of a specified class;

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

- subsection 45(1) provides that the regulations may make provision in relation to applications for visas;

- 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 period which may also be prescribed. Failure by the Minister to make a decision on a prescribed application within the prescribed period results in the automatic grant of the visa to the applicant;

- paragraph 116(1)(g) provides that the Minister may cancel a visa where prescribed grounds apply to a visa holder;

- subsection 338(9) provides that a decision prescribed under that under subsection is a Migration Review Tribunal (MRT) reviewable decision;

- paragraph 349(2)(c) provides that if an MRT-reviewable decision relates to a prescribed matter, the MRT may remit the matter for reconsideration in accordance with directions or recommendations that are permitted by the regulations;

- paragraph 505(a) provides that the regulations may provide that the Minister is to get a specified person or organisation, or a person or organisation in the specified class, to give an opinion on a specified matter, make an assessment of a specified matter, make a finding about a specified matter, or make a decision about a specified matter; and

- paragraph 505(b) provides that the regulations may provide that the Minister is to have regard to that opinion, assessment, finding or decision in deciding whether the applicant satisfies the criterion for a visa of a class.

Section 42 of the *Migration Reform Act 1992* (the Reform Act) provides that the Governor General may make regulations prescribing matters required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Reform Act.

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

- subsection 40(7) provides that regulations may be made in respect of applications for visas or entry permits in a specified class which are taken to be applications for visas in a specified class under the amended *Migration Act 1958;* and

- paragraph 40(8)(a) provides for regulations to be made dealing with applications made before a specified date or other specified applications for visas which may continue to be dealt with as if the changes to the *Migration Act 1958* had not been enacted.

The purpose of the Regulations is to amend the *Migration Regulations 1994* ("the Regulations") and the *Migration Reform (Transitional Provisions) Regulations* to:

- ensure that the new definition of "remaining relative", introduced by the *Migration Amendment Regulations 1999 (No. 13),* applies to an application for a Preferential Relative (Migrant) (Class AY) visa made before 1 November 1999 but not finally determined before 1 November 2000;

- change two cancellation provisions in regulation 2.43 to reflect the changes to the "custody criterion" in Schedule 4 to the Regulations which commenced on 1 July 2000 (Statutory Rules 2000 No. 62 refers);

- enhance the integrity of the student visa program by introducing changes including adjustments to student visa conditions, a new public interest criterion and a new associated visa condition;

- strengthen and remove any ambiguity that surrounds the requirements of visa condition

8202, and to create a new condition which will ensure that certain student visa holders must keep their education providers informed of their current address;

- delete certain Special Assistance Category visa classes;

- make certain decisions on securities MRT-reviewable decisions and to change criteria in Subclass 050 so that a security can be requested at time of decision;

- allow the Minister to specify in a Gazette Notice the currencies that may be used to pay an instalment of the visa application charge in each country, including Australia, where Immigration is represented;

- allow a refund of the visa application charge, in respect of a valid application, to be made to the payer;

- allow applicants for a Subclass 300 Prospective Marriage visa, a Subclass 309 Spouse (Provisional) visa or a Subclass 310 Interdependency (Provisional) visa to be eligible to be granted a Subclass 303 Emergency (Temporary Visa Applicant) visa. The Regulations will provide a means for Subclass 300, 309 or 310 visa applicants to travel to Australia in emergency situations such as civil unrest or natural disaster before completing the usual health and character checks;

- provide flexibility in the application of the State / Territory Regional Established Business in Australia (REBA) points test by allowing the sponsoring State or Territory government body to put forward exceptional circumstances why the applicant should not have to meet the pass mark under the REBA points test;

- amend the definition of APEC *economy* to include Peru, Russia and Vietnam, as these countries joined APEC after the definition of APEC *economy* was initially inserted into the Regulations;

- replace the current methods of assessing domestic violence for migration purposes with an assessment made by the Commonwealth Service Delivery Agency;

- provide that a person who enters Australia on false documents may not be immediately eligible for the grant of a permanent protection visa;

- make amendments to Part 303 of Schedule 2 to cover secondary applicants, so that they are no longer required to satisfy all public interest criteria before they can be granted the emergency visa;

- make technical amendments to Parts 835, 836, 837 and 838 of Schedule 2 so that an applicant who holds a substantive visa (other than a Subclass 771 (Transit) visa) does not have to satisfy item 3002 of Schedule 3;

- delete references to outdated forms; and

- make minor technical amendments.

Details of the Regulations are set out in the Attachment.

The Regulations will commence on 1 November 2000 other than Schedule 3. Schedule 3 is taken to have commenced on 1 November 1999. It contains an amendment that is minor and technical in nature, and relates to the use of a particular form for visa applications.

Schedule 3 is retrospective to 1 November 1999. The retrospectivity 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.* 5).

Regulation 2 - Commencement

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

* on 1 November 1999 - regulations 1 and 2, subregulation 5(1) and Schedule 3;

* on 1 November 2000 - the remainder of these Regulations.

Regulation 3 - Amendment of *Migration Amendment Regulations 1999 (No. 13)*

This regulation provides that Schedule 1 to these Regulations amends the *Migration Amendment Regulations 1999 (No. 13).*

Regulation 4 - Amendment of Migration Reform (Transitional Provisions) Regulations

This regulation provides that Schedule 2 to these Regulations amends the Migration Reform (Transitional Provisions) Regulations.

Regulation 5 - Amendment of *Migration Regulations 1994*

This regulation provides that Schedules 3 and 4 to these Regulations amend the *Migration Regulations 1994* ("the Regulations").

Regulation 6 - Transitional

Subregulation 6(1) provides that the items mentioned in that subregulation do not apply in relation to an application made before 1 November 2000 for a visa of a class listed in paragraphs (a) to (f).

Subregulation 6(2) provides for a spouse or dependent child to be added to an application mentioned in subregulation 6(1). If an application mentioned in subregulation 6(1) was made before 1 November 2000 and - before a decision is made on the application - the applicant makes a request (under paragraphs 2.08A(1)(b) and (c)) to add, the applicant's spouse or a dependent child to the application (even if the request is made before 1 November 2000), then the Regulations as in force prior to 1 November 2000 apply in relation to the application taken to have been made by the spouse or dependent child.

Subregulation 6(3) provides that the amendment made by item [4108] of Schedule 4 to these Regulations (relating to domestic violence) applies in relation to an application for a visa made on or after 1 November 2000, or an application for a visa that was made, but not finally determined, before 1 November 2000 and in relation to which the issue of whether a person has suffered domestic violence has not been raised.

Subregulation 6(4) provides that the amendments made by items [4113] and [4114] of Schedule 4 to these Regulations apply only in relation to a visa granted on or after 1 July 2000.

Subregulation 6(5) provides that the items mentioned in that subregulation apply to an application for a visa made on or after 1 November 2000. These amendments will not, therefore, affect applications made, but not finally determined, before 1 November 2000.

Subregulation 6(6) provides that the items mentioned in that subregulation apply in relation to an application for a visa made, but not finally determined, before 1 November 2000, or an application made on or after 1 November 2000.

Subregulation 6(7) provides that the amendments made by items [4327] and [4334] of Schedule 4 to these Regulations apply to an application for a Protection (Class XA) visa made on or after 1 November 2000. These amendments will not, therefore, affect applications made for a Protection (Class XA) visa made, but not finally determined, before 1 November 2000.

Subregulation 6(8) provides that the amendments made by items [4332] and [4333] of Schedule 4 to these Regulations apply in relation to both an application for a visa made, but not finally determined, before 1 November 2000, and to an application for a visa made on or after 1 November 2000.

Subregulation 6(9) provides that if a request for a refund of an instalment of the visa application charge was made before 1 November 2000 but the refund was not paid before 1 November 2000, regulations 2.12F, 2.12H, 2.121 and 2.12J of the Regulations as in force immediately prior to 1 November 2000 continue to apply in relation to such a request.

Schedule 1 - Amendment of *Migration Amendment Regulations 1999* (No. 13)

Item [1101] - After subregulation 5(7)

This item amends the *Migration Amendment Regulations 1999 (No.* 13), so that the new definition of "remaining relative", introduced by those Regulations, applies to an application for a Preferential Relative (Migrant) (Class AY) visa made before 1 November 1999 but not finally determined before 1 November 2000.

Schedule 2 - Amendments of *Migration Reform (Transitional Provisions) Regulations*

Item [2101] - Subregulation 23B(1), after definition of *the July 1995 amendments*

This item inserts a definition of *the November 2000 amendment* into subregulation 23B(1) of the *Migration Reform (Transitional Provisions) Regulations* as a consequence of the amendments made to regulations 23C and 23F.

Regulation 23C deals with certain applications under the Migration (1989) Regulations in relation to which domestic violence may be a relevant factor. Regulation 23F deals with certain applications under the Migration (1993) Regulations in relation to which domestic violence may be a relevant factor.

Item [2102] - Subparagraph. 23C(2)(a)(i)

The effect of the amendment made by this item is to insert a reference to "the November 2000 amendment" in subparagraph 23C(2)(a)(i) so that the new domestic violence provisions in Schedule 2 to these Regulations can operate in relation to certain applications for entry permits of certain classes under the Migration (1989) Regulations.

Item [2103] - Subparagraph 23F(2)(a)(i)

The effect of the amendment made by this item is to insert a reference to "the November 2000 amendment" in subparagraph 23F(2)(a)(i) so that the new domestic violence provisions in Schedule 2 to these Regulations can operate in relation to certain applications for entry permits of certain classes under the Migration (1993) Regulations.

Schedule 3 - Amendment taken to have commenced on 1 November 1999

Item [3101] - Schedule 1, subitem 1215 (1)

This item makes a retrospective amendment by inserting a reference to form 47SP in item 1215 of Schedule 1 to the Regulations. Form 47SP is a form that was available from 1 November 1999. This amendment ensures that no-one is detrimentally affected if they used form 47SP to make an application for a Prospective Marriage (Temporary) (Class TO) visa on or after 1 November 1999.

Schedule 4 - Amendments commencing on 1 November 2000

Part 1 - Amendments of Parts 1 to 5

Item [4101] - Regulation 1. 03, definition of *APEC economy*

This item substitutes a new definition of *APEC economy* in regulation 1.03 of the Regulations by listing the APEC economies, including Peru, the Russian Federation and Vietnam.

Item [4102] - Regulation 1.03, after definition of *condition*

This item inserts a definition of *contact* hours. Condition 8202, as amended by these Regulations, refers to the contact hours scheduled by an education provider.

Item [4103] - Regulation 1.03, definition of *sponsor*

This item omits "regulation 1.20" and inserts "subregulation 1.20(1)" in regulation 1.03 of the Regulations. It provides, in effect, that *sponsor* has the meaning given by amended subregulation 1.20(1) of the Regulations.

Item [4104] - Paragraphs 1.05A(2)(a), (b) and (c)

This item is a consequential amendment that omits the following paragraphs from the Regulations:

* 1.05A(2)(a) - a Burmese in Burma (Special Assistance)(Class AB) visa;

* 1.05A(2)(b) - a Burmese in Thailand (Special Assistance)(Class AC) visa; and

* 1.05A(2)(c) - a Citizens of the Former Yugoslavia (Special Assistance)(Class AI) visa.

Item [4105] - Paragraphs 1.05A(2)(f), (g) and (h)

This item is a consequential amendment that omits the following paragraphs of the Regulations:

* 1.05A(2)(f) - a Sudanese (Special Assistance)(Class BD) visa;

* 1.05A(2)(g) - a Sri Lankan (Special Assistance)(Class BG) visa; and

* 1.05A(2)(h) - an Ahmadi (Special Assistance)(Class BJ) visa.

Item [4106] - Regulation 1.13

This item substitutes new regulation 1.13. New regulation 1.13 defines the *nominator* of an applicant for a visa as a person who, on the relevant approved form, nominates another person as an applicant for a visa of a particular class. A *nominator,* however, does not include a person who proposes another person for entry to Australia as an applicant for a permanent humanitarian visa.

Item [4107] - Subregulation 1.20(1)

This item substitutes new subregulation 1.20(1), which defines the *sponsor* of an applicant for a visa to be a person who undertakes the obligations stated in subregulation 1.20(2) of the Regulations in relation to the applicant. It does not include, however, a **person who proposes on the** relevant form another person for entry to Australia as an applicant for a permanent humanitarian visa.

Item [4108] - Division 1.5

This item substitutes Division 1.5 of the *Migration Regulations 1994* with new Division 1.5, relating to the assessment of domestic violence for migration purposes. Under regulation 1.21, the definition of domestic violence is substantially similar to, and derived from, the definition of family violence in the *Family Law Act 1975,* which includes a threat of violence towards, or towards the property of, a member of a person's family. The domestic violence provisions in the Regulations allow former spouses and interdependent partners to remain eligible for permanent residence if they, or a member of their family unit, have suffered domestic violence and their relationship breaks down before a permanent visa is granted, provided that they satisfy the other criteria for the grant of the visa.

This amendment is intended to increase the integrity of the special provisions relating to domestic violence by allowing an independent, qualified service provider to assess domestic violence claims. The independent assessment will replace the system of assessment by the courts or "competent persons", which have been identified as not always involving a full investigation of the applicant's claims of domestic violence. This amendment will enable skilled service providers to provide Immigration with uniform assessment of cases.

The Commonwealth Services Delivery Agency, also known as Centrelink, has been identified as being able to provide the coverage and range of services required to meet the needs of both Immigration and clients in assessing claims of domestic violence. Assessment by Centrelink social workers will be undertaken after a written statement has been made to Immigration, or to the Migration Review Tribunal, in accordance with approved form 1040A and regulation 1.22.

In addition to making a statement about domestic violence, an applicant will be required to give permission for Immigration to disclose the information in approved form 1040A to Centrelink, and for Centrelink to disclose their assessment of the claim to Immigration. Under regulation 1.23, Centrelink will be asked to issue a report, which will be taken as prima facie evidence for migration purposes, of whether domestic violence has occurred.

Item [4109] - Subregulation 2.11(6)

This item makes a technical amendment by deleting the reference to the word "applicant", consequential to the insertion of new regulations 2.12F, 2.12H, 2.12I, 2.12J and 2.12K, below.

Item [4110] - Regulation 2.12C, note

This item amends the note following regulation 2.12C relating to the amount of the visa application charge as a consequence of the amendment made to regulation 5.36 below.

Item [4111] - Regulation 2.12F

Item [4112] - Regulations 2.12H, 2.12I and 2.12J

These items make various amendments to regulations 2.12F, 2.12H, 2.12I and 2.12J relating to refunds of the visa application charge for validly made visa applications. These regulations have been amended so that where a refund of the visa application charge can be paid it will no longer, in all cases, be paid to the applicant for the visa. This is because visa application charges are

often paid by someone other than the applicant, for example, a sponsor, relative or friend. The amendments made by these items will ensure that the person who paid the visa application charge ("the payer") may receive a refund of that charge under regulations 2.12F, 2.12H, 2.12I or 2.12J in certain circumstances. In particular, the amendments provide that the payer may receive a refund where:

- for subregulation 2.1217(3) and regulation 2.12H, the applicant has withdrawn his or her application in writing;

- the payer, or if the payer has died or is bankrupt, his or her legal personal representative or trustee in bankruptcy, requests that a refund be paid; and

- the other circumstances for payment of the refund are satisfied.

The effect of regulations 2.12F, 2.12H, 2.12I and 2.12J is that, first, they only apply to a refund that is payable under those regulations and, second, they require that such a refund be paid to the person who made the request for the refund. Subregulation 2.12F (1), for example, provides that the Minister must refund the amount paid by way of the first instalment of the visa application charge if certain circumstances exist (these are set out in subregulation 2.12F (2)), and the Minister receives a written request for a refund from a person mentioned in subparagraph (b) (i), (ii) or (iii) of subregulation (1). The effect of subregulations 2.1217 (1) and (6) is, therefore, that, if the circumstances stated in subregulation 2.1217 (1) are met in relation to a refund, the Minister must pay the refund to the person mentioned in subparagraph 2.12F (1) (b) (i), (ii) or (iii) who requested the refund. These comments apply equally to the operation of subregulations 2.12H (6), 2.12I (6) and 2.12J (3).

In addition, this item inserts new regulation 2.12K. This regulation -Provides the situations in which a person will be taken to have paid an instalment of the visa application charge and become eligible for a refund under the provisions mentioned above.

Item [4113] - Paragraph 2.43(1)(e)

This item replaces paragraph 2.43(1)(e) with new paragraph 2.43(1)(e).

New paragraph 2.43(1)(e) provides that, in the case of the holder of an Electronic Travel Authority (Class UD) visa, the visa may be cancelled if:

* the law of the visa holder's home country did not permit the removal of the visa holder; and

* each person who could lawfully determine where the visa holder was to live did not consent to the grant of the visa

or

* the grant of the visa was inconsistent with an Australian child order in force in relation to the visa holder.

New paragraph 2.43(1)(e) reflects the wording of the new custody provisions contained in public interest criteria 4015, 4016, 4017 and 4018 in Schedule 4 to the Regulations.

Public interest criteria 4015, 4016, 4017 and 4018 must be satisfied in relation to applications for certain visas. However, those public interest criteria do not apply in respect of an application for an Electronic Travel Authority (Class UD) visa. Therefore, as the custody issues cannot be considered in respect of a decision to grant an Electronic Travel Authority (Class UD) visa, this amendment provides a ground for the cancellation of an Electronic Travel Authority (Class UD) visa if custody issues are raised after the grant of the visa.

Item [4114] - Subparagraphs 2.43(1)(h)(i) and (ii)

This item replaces subparagraphs 2.43(1)(h)(i) and (ii) with new subparagraphs 2.43(1)(h)(i) and (ii).

New subparagraph 2.43(1)(h)(i) provides a ground for cancellation of a child's temporary visa. An adult person who can lawfully determine where a child visa holder is to live may ask the Minister to cancel the child's visa. Under new subparagraph 2.43(1)(h)(ii), the Minister can only do so in limited circumstances.

In particular, new subparagraph 2.43(1)(h)(i) has been amended to avoid using the word - dependent". The meaning of the word "dependent" is set out in regulation 1.05A and is not relevant to the cancellation power in paragraph 2.43(1)(h). Therefore, the amendment refers to an adult person who can "lawfully determine where the visa holder is to live".

New subparagraph 2.43(1)(h)(ii) reflects the wording of the new custody provisions contained in public interest criteria 4016 and 4018 in Schedule 4 to the Regulations. However, the public interest criteria are only relevant in relation to whether or not a visa should be granted. The amendments to subparagraph 2.43(1)(h)(ii) relate to whether a visa may be cancelled.

Item [4115] - Paragraph 2.43(2)(b)

This item substitutes new paragraph 2.43(2)(b) so that the Minister must cancel a Student (Temporary) (Class TU) visa if the Minister is satisfied that the visa holder has not complied with (where applicable) condition 8104, 8105 or 8202.

Item [4116] - Paragraph 4.02(4)(e)

This item contains a technical amendment, consequential to the insertion of new paragraph 4.02(4)(f), below.

Item [4117] - After paragraph 4.02(4)(e)

This item inserts new paragraph 4.02(4)(f). A decision under new paragraph 4.02(4)(f) is an MRT-reviewable decision.

New paragraph 4.02(4)(f) provides that a decision about requiring a security which is connected to a broader decision to refuse to grant a visa is an MRT-reviewable decision. However, requiring a security (as described in subparagraph 4.02(4)(f)(ii)) must be mentioned in the subclass in relation to which the visa refusal decision was made.

Therefore, if a decision to require a security is made more generally under section 269 of the Act, such a decision is not MRT-reviewable.

For example, even when:

* a security is required for compliance with conditions that will be imposed on a visa (ie, if the visa is granted);

* the grant of the visa is refused (eg, because the applicant does not satisfy certain criteria); and

* requiring a security (as described in subparagraph 4.02(4)(f)(ii)) is not mentioned in the criteria that must be satisfied in order for the visa to be granted;

the decision to require the security is not MRT-reviewable.

Item [4118] - Regulation 4.15

This item contains a technical amendment, consequential to the insertion of new subregulations 4.15(2) and (3), below.

Item [4119] - After paragraph 4.15(b)

This item inserts new subregulations 4.15(2) and 4.15(3).

New subregulation 4.15(2) provides that the requiring of a security mentioned in new paragraph 4.02(4)(f) is a prescribed matter for the purposes of paragraph 349(2)(c) of the Act. The effect of the amendment is that the MRT may remit such a matter to the primary decision-maker for reconsideration. That is, a decision about requiring a security that is made as part of a broader decision to refuse to grant a visa (as described in new paragraph 4.02(4)(t)) is a matter that can be remitted by the MRT for reconsideration.

New subregulation 4.15(3) provides that where a matter mentioned above is remitted, the MRT may give directions that:

* a certain condition is to be imposed on the visa if the visa is granted. The applicant must be advised that the condition will be imposed if the visa is granted; and

* a security is required for compliance with the condition (whether or not a security has already been required).

Item [4120] - Subregulation 5.36(1)

Regulation 5.36 has created banking difficulties at overseas posts as it provides that the visa application charge can be paid in either Australian currency, or in any other currency in an amount calculated by Gazette Notice or a statutory formula. This means that any one overseas post may have to bank various currencies at once. This item amends subregulation 5.36(1) by providing for a Gazette Notice to specify the currencies in which a person can pay the visa application charge in each country where the visa application charge may be paid. It is intended that the currencies specified for each country in the Gazette Notice will be those that are readily accessible to the public and easily banked by the post. The amendment made by this item, therefore, will enable all Immigration revenue to be banked promptly without causing detriment to clients.

Part 2 - Amendments of Schedule 1

[4201] - Items 1101A, 1102 and 1103

This item omits items 1101 A, 1102 and 1103 from Schedule 1 to the Regulations. That is, the following visa classes are deleted:

* Ahmadi (Special Assistance)(Class BJ);

* Burmese in Burma (Special Assistance)(Class AB); and

* Burmese in Thailand (Special Assistance)(Class AC).

Item [4202] - Subitem. 1104(1)

Item [4203] - Subitem 1104A(1)

These items omit references to outdated forms and insert references to new forms in subitems 1104(1) and 1104A(1) of Schedule 1 to the Regulations. Generally, one form is listed against

each visa class in Schedule 1 to the Regulations as the form on which an application must be made for a visa of that class. Where two forms are listed against a visa class in Schedule 1, one is usually an old form and the other is usually a new form. An application for a visa of that class can therefore be made on either of the two forms.

After an interim period, the reference to the old form is omitted and all applications must be made on the new form. This item omits references to old forms 47, 926, 928 and 1029.

Unlike most other items in Schedule 1, the amendments result in an applicant having to make an application on more than one form when applying for a:

* Business Skills (Migrant) (Class AO); or

* Business Skills (Residence) (Class BH)

visa. The amendments ensure that, in relation to the business visa classes mentioned above, an applicant provides more information at the time of application.

Item [4204] - Item 1109

This item omits item 1109 from Schedule 1 to the Regulations, that is, it deletes the Citizens of the Former Yugoslavia (Special Assistance)(Class AJ) visa class.

Item [4205] - Subitem 1115(1)

This item amends subitem 1115(1) to delete the reference to outdated form 887. Generally, one form is listed against each visa class in Schedule 1 to the Regulations as the form on which an application must be made for a visa of that class. Where two forms are listed against a visa class in Schedule 1, one is usually an old form and the other is usually a new form. An application for a visa of that class can therefore be made on either of the two forms. After an interim period, the reference to the old form is omitted and all applications must be made on the new form. This item therefore omits the reference to old form 887.

Item [4206] - Items 1129A and 1130

This item omits items 1129A and 1130 from Schedule 1 to the Regulations, that is, it deletes the following classes of visa:

* Sri Lankan (Special Assistance)(Class BG); and

* Sudanese (Special Assistance)(Class BD).

Item [4207] - Additional Amendments

This item amends various items in Schedule 1 to the Regulations to delete references to outdated forms. Generally, one form is listed against each visa class in Schedule 1 to the Regulations as the form on which an application must be made for a visa of that class. Where two forms are listed against a visa class in Schedule 1, one is usually an old form and the other is usually a new form. An application for a visa of that class can therefore be made on either of the two forms. After an interim period, the reference to the old form is omitted and all applications must be made on the new form. This item omits references to old forms 47, 887 and 1029.

Part 3 - Amendments of Schedule 2

Item [4301] - Clauses 050.213 and 050.214

This item contains a technical amendment, consequential to the insertion of new clauses 050.223 and 050.224, below.

Item [4302] - Subdivision 050.22, heading

This item contains a technical amendment to the heading of Subdivision 050.22.

Item [4303] - Clause 050.221

This item contains a technical amendment, consequential to the omission of clauses 050.213 and 050.214, and the insertion of clauses 050.223 and 050.224.

Item [4304] - After clause 050.222

This item inserts new clauses 050.223 and 050.224.

New clause 050.223 is the same as clause 050.213, which has been omitted by these Regulations. Unlike clause 050.213, the new clause must be satisfied at the time of decision rather than at the time of application.

New clause 050.224 rephrases clause 050.214, which has been omitted by these Regulations. Unlike clause 050.214, the new clause must be satisfied at the time of decision rather than at the time of application.

New clause 050.224 takes into account the decision in *Tutugri v Minister for Immigration and Multicultural Affairs* (17 December 1999). As a result of this amendment, if a security is required, the applicant is made aware of the conditions to be imposed on the visa before he or she lodges the security.

Item [4305] - Paragraph 050.516(b)

This item substitutes paragraph 050.516(b) with new paragraph 050.516(b). The amendment provides that if the Minister is satisfied within 5 days from the date of grant that the visa holder has made acceptable arrangements to depart Australia within 14 days of the grant of the visa, then the visa is instead in effect for 14 days from the date of grant.

This amendment fixes a loophole whereby a person was able to present, for example, a ticket to leave Australia with a departure date several months after the Subclass 050 visa would cease to be in effect. The amendment ensures that the visa holder must have made acceptable arrangements to depart Australia within 14 days from the date of grant of the Subclass 050 visa. For example, an acceptable arrangement to depart Australia would be for the visa holder to have booked and paid for an aeroplane ticket in his or her own name to leave Australia with a departure date within 14 days of the grant of the Subclass 050 visa.

Item [4306] - Clause 202.111, before definition of *Subclass 866 visa*

This item inserts in the interpretation clause of Part 202 (Global Special Humanitarian) a definition of a *special assistance visa* to mean any of the following:

* Burmese in Burma (Special Assistance) (Class AC) visa;

* Burmese in Thailand (Special Assistance) (Class AC) visa;

* Cambodian (Special Assistance) (Class AE) visa;

* Citizens of the Former Yugoslavia (Special Assistance) (Class AI) visa;

* East Timorese in Portugal, Macau or Mozambique (Special Assistance) (Class AM) visa;

* Minorities of the Former USSR (Special Assistance) (Class AV) visa;

* Sudanese (Special Assistance) (Class BD) visa;

* Sri Lankan (Special Assistance) (Class BG) visa;

* Ahmadi (Special Assistance) (Class BJ) visa; and

* Vietnamese (Special Assistance) (Class BK) visa.

Item [4307] - Subparagraph 202.211(2)(b)(ii)

This item is consequential to the insertion, by item 4308 of new subparagraph 202.211(2)(b)(iii) to Schedule 2 to the Regulations.

Item [4308] - Schedule 2, after subparagraph 202.211(2)(b)(ii)

This item inserts after subparagraph 202.211(2)(b)(ii) new subparagraph 202.211(2)(b)(iii) to the effect that:

* the proposer (as defined) is, or has been the holder of a special assistance visa (as defined by item 4306 above); and

* the applicant was a member of the immediate family of the proposer on the date of the application for that visa.

In effect, it provides the new criteria that need be satisfied at time of application for a Subclass 202 (Global Special Humanitarian) visa.

Item [4309] - Parts 209, 211, 212, 213, 215 and 216

This item omits Parts 209, 211, 212, 213, 215 and 216 from Schedule 2 to the Regulations. That is, it removes the following visa Subclasses:

* Subclass 209 (Citizens of the Former Yugoslavia (Displaced Persons));

* Subclass 211 (Burmese in Burma);

* Subclass 212 (Sudanese);

* Subclass 213 (Burmese in Thailand);

* Subclass 215 (Sri Lankan (Special Assistance)); and

* Subclass 216 (Ahmadi).

Special Assistance Categories ("SACs") are the third and lowest tier of the offshore component of the Humanitarian Program. SACs cater for people whose humanitarian needs for resettlement are less urgent and compelling than that of people who meet the criteria of the Refugee and Special Humanitarian categories. In accordance with the Government's objective of refocussing the Humanitarian Program on those whose humanitarian need for resettlement is the greatest, the SACs above have been closed as they have come to the end of their productive lifespan.

Item [4310] - Clause 300.411

This item amends the Subclass 300 visa criteria to provide that, at the time of grant of the Subclass 300 visa, an applicant who holds a Subclass 303 visa and has applied for a Prospective Marriage (Temporary) (Class TO) visa, may be in or outside Australia, but not in immigration clearance.

Item [4311] - Sub-subparagraph 303.212(a)(i)(L)

This item introduces a technical amendment.

Item [4312] - After sub-subparagraph 303.212(a)(i)(L)

This item amends the Subclass 303 criteria with the effect that an applicant for a Partner (Provisional) (Class UF) or a Prospective Marriage (Temporary) (Class TO) visa is eligible to be granted a Subclass 303 visa.

Item [4313] - Subclause 303.221 (1)

This item excludes the remaining criteria (but not those set out in clause 303.227 of the Regulations) from the criteria that are required to be satisfied by the primary applicant. In effect, a Subclass 303 (Emergency (Temporary Visa Applicant)) visa may be granted before the primary applicant satisfies the remaining criteria other than 4012, 4013 and 4014.

item [4314] - Clause 303.225

This item amends clause 303.225 to remove the requirement that, at the time of decision, the applicant satisfies the public interest criteria 4013 and 4014.

Item [4315] - Clause 303.227

This item amends clause 303.227 by adding to the existing criterion 4012 the requirement that, at the time of decision, the applicant also satisfies the remaining criteria 4013 and 4014.

Item [4316] - Clause 303.323

This item substitutes a new clause 303.323 requiring a secondary visa applicant, to either satisfy at the time of decision all criteria for the grant of that visa, or all criteria other than the remaining criteria.

Item [4317] - Clause 309.411

This item amends the Subclass 309 visa criteria to provide that, at the time of grant of the Subclass 309 visa, an applicant who holds a Subclass 303 visa and has applied for a Partner (Provisional) (Class UF) or a Prospective Marriage (Temporary) (Class TO) visa, may be in or outside Australia, but not in immigration clearance.

Item [4318] - Clause 310.411

This item amends the Subclass 3 10 visa criteria to provide that, at the time of grant of the Subclass 310 visa, an applicant who holds a Subclass 303 visa and has applied for a Partner (Provisional) (Class UF) visa, may be in or outside Australia, but not in immigration clearance.

Item [4319] - Paragraph 560.222(a)

This item contains a technical amendment. Effectively, the word "evidence" is replaced with the word "confirmation" in paragraph 560.222(a).

Item [4320] - Paragraph 560.225(a)

This item amends paragraph 560.225(a) so that, at the time of decision, certain Subclass 560 (Student) visa applicants must satisfy the new public interest criterion 4012A relating to their accommodation, support and general welfare in Australia.

Item [4321] - Subparagraph 560.322(a)C1

This item amends subparagraph 560.322(a)(i) to remove the requirement that, at the time of decision, secondary applicants for a Subclass 560 (Student) visa have to satisfy clause 4012 relating to accommodation, support and general welfare.

Item [4322] - Subparagraph 560.611 (1)(a)(i)

This item amends subparagraph 560.611 (1)(a)(i) to insert references to new conditions 8532 and 8533, and to remove the reference to condition 8506.

A student who has new visa condition 8533 imposed on his or her visa instead of condition 8506 will be able to more easily abide by condition 8533 than condition 8506. This is because condition 8506 requires the visa holder to notify Immigration of any changes in the holder's address, whereas new condition 8533 requires the holder to notify the education provider of any change in address. Because of the pastoral care and financial nature of the relationship between the education provider and the student visa holder, the student is likely to have to inform the education provider with details of their address in any case.

Item [4323] - Subparagraphs 560.613(1)(a)(i) and (ii)

This item replaces the reference to condition 8506 with a reference to new condition 8533.

A student who has new visa condition 8533 imposed on his or her visa instead of condition 8506 will be able to more easily abide by condition 8533 than condition 8506. This is because condition 8506 requires the visa holder to notify Immigration of any changes in the holder's address, whereas new condition 8533 requires the holder to notify the education provider of any change in address. Because of the pastoral care and financial nature of the relationship between the education provider and the student visa holder, the student is likely to have to inform the education provider with details of their address in any case.

This item also substitutes new subparagraph 560.613(1)(a)(ii) so that the visa of a secondary visa applicant contains condition 8 10 1, subject to new paragraph 560.613(1)(ba) relating to limited work rights.

Item [4324] - After paragraph 560.613(1)(b)

This item inserts new paragraph (ba) into the secondary Subclass 560 (Student) visa conditions relating to compliance with a condition allowing limited work rights.

Item [4325] - Clause 562.222

This item contains a technical amendment. Effectively, the word "evidence" is replaced with the word "confirmation" in clause 562.222.

Item [4326] - Clause 562.611

This item removes the reference to condition 8506 and inserts a reference to new condition 8533.

A student who has new visa condition 8533 imposed on his or her visa instead of condition 8506 will be able to more easily abide by condition 8533 than condition 8506. This is because condition 8506 requires the visa holder to notify Immigration of any changes in the holder's

address, whereas new condition 8533 requires the holder to notify the education provider of any change in address. Because of the pastoral care and financial nature of the relationship between the education provider and the student visa holder, the student is likely to have to inform the education provider with details of their address in any case.

Item [4327] - Clause 785.212

This item omits clause 785.212 which relates to being immigration cleared.

Item [4328] - Schedule 2, clause 835.211

Item [4329] - Schedule 2, clause 836.211

Item [4330] - Schedule 2, clause 837.212

Item [4331] - Schedule 2, clause 838.211

These items make technical amendments to clauses 835.211, 836.211, 837.212 and 83 8.211 to correct an anomaly. The amendments ensure that, in relation to the above clauses, an applicant who holds a substantive visa (other than a Subclass 771 (Transit) visa) does not have to satisfy item 3002 of Schedule 3 to the Regulations.

These amendments correct a minor error in those clauses whereby both paragraphs (a) and (b) had to be satisfied by the applicant. Paragraph (a) stated that the applicant had to satisfy item 3002 of Schedule 3. However, item 3002 refers to the situation where a person is unlawful at the time of application (and therefore does not hold a substantive visa). Paragraph (b) referred to the applicant holding a substantive visa.

Item [4332] - Subclause 846.222(1)

This item substitutes three new subclauses: (1), (1A) and (1B). Subclause 846.222(1) states that the applicant meets the requirements of subclauses 846.222(1A) or 846.222(1B).

Subclause 846.222(1A) provides that the applicant meets the requirements of the subclause if his or her score on the business skill points test is not less than the number of points that is specified for the purposes of this subclause by Gazette Notice.

Subclause 846.222(1B) provides that the applicant meets the requirements of this subclause if:

* his or her score on the business skills points test is less than the number of points specified for the purposes of subclause 846.222(1A) by Gazette Notice; and

* the regional authority satisfies the Minister that there are exceptional circumstances that justify the grant of the Subclass 846 visa to the applicant.

The effect of subclause 846.222(1B) is to allow flexibility to grant a Subclass 846 visa in exceptional circumstances where an applicant does not have the required points test score but does have strong support from his or her sponsoring regional authority.

Item [4333] - Subclause 846.222(2)

This item omits the references to "subclause (1)" and inserts the words "subclauses (1A) and (1B)". This amendment is consequential to the amendments made by item 4332 of these Regulations.

Item [4334] -After clause 866.212

This item inserts new clause 866.213 concerning eligibility for a Subclass 866 (Protection) visa. Clause 866.213 has been inserted so that someone who enters Australia on false documents and applies for a protection visa will not be eligible for a Subclass 866 visa immediately. They will only be eligible for a Subclass 785 visa in the first instance. It provides that at the time of application for a protection visa the applicant either:

* had entered Australia on a valid passport in their own name holding a valid visa in their own name which was not counterfeit, altered or obtained by making misleading statements or presenting false documents; or

* that they had been granted a Subclass 785 visa.

Part 4 - Amendment of Schedule 4

Item [4401] - After clause 4012

This item inserts into Schedule 4 the new public interest criterion 4012A relating to the accommodation, support and general welfare of certain student visa applicants.

Part 5 - Amendments of Schedule 8

Item. [4501] - Clause 8105

This item substitutes a new visa condition 8105 limiting to 20 hours the amount a visa holder is permitted to work during certain weeks of the year. The limit of 20 hours does not, however, apply to work that was specified as a requirement of the visa holder's course when the course particulars were entered in the Commonwealth Register of Institutions and Courses for Overseas Students.

Item [4502] - Clause 8202

This item substitutes new clause 8202 in Schedule 8 to the Regulations. The effect of the amendment is to strengthen and remove any ambiguity that may surround the requirement in condition 8202 whereby certain visa holders have to attend for at least 80 percent of classes and tutorials. Instead, the visa holders must have attended for 80 percent of the scheduled contact hours during a specific academic period. "Contact hours" is defined in regulation 1.03 and is more specific than "classes and tutorials". In addition, and importantly, the amendment requires that the Minister must be satisfied that the holder has attended for 80 percent of the scheduled contact hours.

For example, if the education provider stated that the visa holder had attended 80 percent of scheduled contact hours, but the Minister had clear evidence to the contrary, the Minister would not be satisfied that the holder had attended for 80 percent of the scheduled contact hours.

The amendment removes the non payment of tuition fees from Immigration's assessment of whether or not the visa holder is meeting course requirements. This recognises that payment of tuition fees is a commercial arrangement between the education provider and student only and that Immigration has no role in this aspect of that relationship.

Item [4503] - Clause 8206

This item substitutes new visa condition 8206 relating to the requirement for a visa holder to maintain enrolment for a defined period of time with the visa holder's education provider.

Item [4504] - After clause 8531

This item inserts new visa condition 8532 concerning a student visa holder's accommodation, support and general welfare.

This item also inserts new clause 8533. The new condition is intended to be applied to certain student visas. The new condition ensures that a student who has this condition on his or her visa will keep his or her education provider informed of their current Australian address.