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Migration Amendment Regulations 2000 (No. 5)¹

Statutory Rules 2000 No. \sphericalangle ²

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I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Migration Act 1958* and the *Migration Reform Act 1992*.

Dated **8 SEP 2000** 2000

WILLIAM DEANE
 Governor-General

By His Excellency's Command

PHILIP RUDDOCK
 Minister for Immigration and Multicultural Affairs

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1 Name of Regulations

These Regulations are the *Migration Amendment Regulations 2000 (No. 1)*.

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2 Commencement

These Regulations commence, or are taken to have commenced, as follows:

- (a) on 1 November 1999 — regulations 1 and 2, subregulation 5 (1) and Schedule 3;
- (b) on 1 November 2000 — the remainder.

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

Schedule 1 amends the *Migration Amendment Regulations 1999 (No. 13)*.

4 Amendment of *Migration Reform (Transitional Provisions) Regulations*

Schedule 2 amends the *Migration Reform (Transitional Provisions) Regulations*.

5 Amendment of *Migration Regulations 1994*

- (1) Schedule 3 amends the *Migration Regulations 1994*.
- (2) Schedule 4 amends the *Migration Regulations 1994*.

6 Transitional

- (1) The amendments of the *Migration Regulations 1994* made by items [4103], [4104], [4105], [4106], [4107], [4201], [4204], [4206], [4306], [4307], [4308] and [4309] of Schedule 4 do not apply in relation to an application that is made before 1 November 2000 for any of the following visas:
 - (a) Burmese in Burma (Special Assistance) (Class AB) visa;
 - (b) Burmese in Thailand (Special Assistance) (Class AC) visa;
 - (c) Citizens of the Former Yugoslavia (Special Assistance) (Class AD) visa;
 - (d) Sudanese (Special Assistance) (Class BD) visa;
 - (e) Sri Lankan (Special Assistance) (Class BG) visa;
 - (f) Ahmadi (Special Assistance) (Class BJ) visa.
- (2) If:
 - (a) an application for a visa of a kind mentioned in subregulation (1) was made before 1 November 2000; and

- (b) after the application is made, but before it is decided, the applicant makes a request to the Minister, in accordance with paragraphs 2.08A (1)(b) and (c), to have the applicant's spouse, or a dependent child, added to the applicant's application (whether or not the request is made before 1 November 2000);

the *Migration Regulations 1994*, as in force immediately before 1 November 2000, apply in relation to the application taken to have been made by the spouse or dependent child.

- (3) The amendment of the *Migration Regulations 1994* made by item [4108] of Schedule 4 applies in relation to:
 - (a) an application for a visa that was made on or after 1 November 2000; or
 - (b) 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.
- (4) The amendments made by items [4113] and [4114] of Schedule 4 apply only in relation to a visa that is granted on or after 1 July 2000.
- (5) The amendments made by items [4116], [4117], [4118], [4119], [4301], [4303], [4304] and [4305] of Schedule 4 apply to an application for a visa made on or after 1 November 2000.
- (6) The amendments made by items [4310], [4311], [4312], [4317] and [4318] of Schedule 4 apply in relation to an application for a visa:
 - (a) made, but not finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*), before 1 November 2000; or
 - (b) made on or after 1 November 2000.
- (7) The amendments made by items [4327] and [4334] of Schedule 4 apply to an application for a Protection (Class XA) visa made on or after 1 November 2000.

- (8) The amendments made by items [4332] and [4333] of Schedule 4 apply in relation to an application for a visa:
- (a) made, but not finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*), before 1 November 2000; or
 - (b) made on or after 1 November 2000.
- (9) If a request for a refund of the amount paid by way of an instalment of visa application charge was made before 1 November 2000, but the refund was not paid before that date, regulations 2.12F, 2.12H, 2.12I and 2.12J of the *Migration Regulations 1994*, as in force immediately before 1 November 2000, continue to apply in relation to the request.

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

(regulation 3)

[1101] After subregulation 5 (7)

insert

- (8) Despite subregulation (5), the amendment made by item [2109] of Schedule 2 to these Regulations applies in relation to an application for a Preferential Relative (Migrant) (Class AY) visa made before 1 November 1999 but not finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*) before 1 November 2000.

Schedule 2 Amendments of Migration Reform (Transitional Provisions) Regulations

(regulation 4)

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

insert

the November 2000 amendment means the substitution, with effect from 1 November 2000, of a new Division 1.5 of the *Migration Regulations 1994*.

[2102] Subparagraph 23C (2) (a) (i)

substitute

- (i) provisions to the same effect as Division 1.5 inserted into the Migration Regulations by the July 1995 amendments had been inserted into the Migration (1989) Regulations and then substituted under the November 2000 amendment; and

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

substitute

- (i) provisions to the same effect as Division 1.5 inserted into the Migration Regulations by the July 1995 amendments had been inserted into the Migration (1989) Regulations and then substituted under the November 2000 amendment; and

Schedule 3 **Amendment of *Migration Regulations 1994* taken to have commenced on 1 November 1999**
(regulation 5)

[3101] Schedule 1, subitem 1215 (1)

substitute

(1) Form: 47 or 47SP.

Schedule 4 **Amendments of *Migration Regulations 1994* commencing on 1 November 2000**
(regulation 5)

Part 1 **Amendments of Parts 1 to 5**

[4101] Regulation 1.03, definition of *APEC economy*

substitute

APEC economy means each of the following:

- (a) Australia;
- (b) Brunei Darussalam;
- (c) Canada;
- (d) Chile;
- (e) PRC;
- (f) Hong Kong;
- (g) Indonesia;
- (h) Japan;

- (i) the Republic of Korea;
- (j) Malaysia;
- (k) Mexico;
- (l) New Zealand;
- (m) Papua New Guinea;
- (n) Peru;
- (o) the Republic of the Philippines;
- (p) the Russian Federation;
- (q) Singapore;
- (r) Taiwan;
- (s) Thailand;
- (t) the United States of America;
- (u) Vietnam.

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

insert

contact hours, for a course for a period, means the total number of hours in the period for which students enrolled in the course are scheduled to attend classes for teaching purposes, course-related information sessions, supervised study sessions and examinations.

[4103] Regulation 1.03, definition of *sponsor*

omit

regulation 1.20

insert

subregulation 1.20 (1)

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

omit

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

omit

[4106] Regulation 1.13

substitute

1.13 Meaning of *nominator*

- (1) The *nominator* of an applicant for a visa is a person who, on the relevant approved form, nominates another person as an applicant for a visa of a particular class.
- (2) However, a person who proposes another person for entry to Australia as an applicant for a permanent humanitarian visa is not the *nominator* of the other person.

[4107] Subregulation 1.20 (1)

substitute

- (1) The *sponsor* of an applicant for a visa is a person (except a person who proposes on the relevant approved form another person for entry to Australia as an applicant for a permanent humanitarian visa) who undertakes the obligations stated in subregulation (2) in relation to the applicant.

[4108] Division 1.5

substitute

**Division 1.5 Special provisions relating
to domestic violence**

1.21 Interpretation

In this Division:

Centrelink report means a report under regulation 1.23.

domestic violence means violence, or threatened violence, against a person (the **alleged victim**) or his or her property that causes the alleged victim, or a member of the family unit of the alleged victim, to fear for, or to be apprehensive about, the alleged victim's personal well-being or safety.

service provider means a person who:

- (a) is employed or engaged as a social worker by the Services Delivery Agency; and
- (b) is, or is eligible to be, a member of the Australian Association of Social Workers.

Services Delivery Agency means the Commonwealth Services Delivery Agency, otherwise known as Centrelink, established by the *Commonwealth Services Delivery Agency Act 1997*.

1.22 Statement about domestic violence

- (1) This regulation applies if:
 - (a) a person (the **maker of the statement**) gives to Immigration or the Migration Review Tribunal, in relation to an application for a visa for which domestic violence is a requirement or criterion, a statement in accordance with approved form 1040A, alleging that:
 - (i) the maker of the statement is the victim of domestic violence; or
 - (ii) another person is the victim of domestic violence; and
 - (b) the person alleged to have committed the domestic violence (the **alleged perpetrator**):
 - (i) is the former spouse of the maker of the statement; or

-
- (ii) was in an interdependent relationship with the maker of the statement.
- (2) For subparagraph (1) (a) (ii), the alleged victim must be:
- (a) a dependent child of:
 - (i) the alleged perpetrator; or
 - (ii) the maker of the statement; or
 - (b) a member of the family unit of the maker of the statement (except a dependent child of the maker of the statement) who has made a combined application for a visa with that maker of the statement.
- (3) A statement alleging that the maker of the statement is the victim of domestic violence must:
- (a) set out the allegation; and
 - (b) name the alleged perpetrator.
- (4) A statement alleging that another person is the victim of domestic violence must:
- (a) name the other person; and
 - (b) set out the allegation; and
 - (c) identify the relationship of the maker of the statement to the other person; and
 - (d) name the alleged perpetrator; and
 - (e) set out the evidence on which the allegation is based.

1.23 Centrelink report

- (1) If a person gives to Immigration a statement in accordance with regulation 1.22, the Minister must ask the Services Delivery Agency for a report that includes the information set out in this regulation.
- (2) If a person gives to the Migration Review Tribunal a statement in accordance with regulation 1.22, the

Migration Review Tribunal may ask the Services Delivery Agency for a Centrelink report.

- (3) The Services Delivery Agency may give to the Minister, or the Migration Review Tribunal, a Centrelink report in response to the request if there is an arrangement with Immigration under section 7 of the *Commonwealth Services Delivery Agency Act 1997* for giving the report.
- (4) The report must:
 - (a) state that, in the opinion of a service provider, domestic violence has, or has not, been suffered by a person named in the report (the *alleged victim*); and
 - (b) set out the evidence on which the service provider's opinion is based; and
 - (c) state the name of the person who committed, or did not commit, the domestic violence (the *alleged perpetrator*) and the relationship of that person to the alleged victim.
- (5) If the report states that domestic violence has been suffered, the report must also include:
 - (a) the history of domestic violence suffered by the alleged victim and committed by the alleged perpetrator; and
 - (b) an assessment of the risk to the alleged victim's safety.
- (6) The Centrelink report must be signed by the service provider and is prima facie evidence of the matters contained in the report.

[4109] Subregulation 2.11 (6)

substitute

- (6) If the first instalment of the visa application charge payable in relation to the further application is less than the actual amount paid in relation to the first application, no refund is payable in respect of the difference.

[4110] Regulation 2.12C, note

substitute

Note See regulation 5.36 in relation to the countries and currencies in which payment of an instalment of the visa application charge may be made.

[4111] Regulation 2.12F

substitute

2.12F Refund of first instalment of visa application charge

- (1) The Minister must refund the amount paid by way of the first instalment of the visa application charge in relation to an application for a visa if:
- (a) any of the circumstances mentioned in subregulation (2) exists; and
 - (b) the Minister receives a written request for a refund from:
 - (i) the person who paid the amount (the *payer*); or
 - (ii) if the payer has died, or the payer has a serious physical or mental incapacity, the payer's legal personal representative; or

- (iii) if the payer is a bankrupt within the meaning of the *Bankruptcy Act 1966*, the trustee of the estate of the payer.

Note See regulation 2.12K in relation to who is the person who pays an amount by way of an instalment of visa application charge.

- (2) For paragraph (1) (a), the circumstances are as follows:
- (a) the application is, for any reason, unnecessary;
 - (b) the application is made because of a mistake made by Immigration;
 - (c) the applicant dies before a decision is made on the application;
 - (d) the application is an application made in Australia for a Long Stay (Visitor) (Class TN), Medical Treatment (Visitor) (Class UB) or Short Stay (Visitor) (Class TR) visa by an applicant who:
 - (i) satisfies the Minister that the applicant meets the requirements of subclause 675.221 (4), 676.221 (4), 685.221 (6) or 686.221 (4) of Schedule 2; and
 - (ii) is granted the further visa referred to in that subclause.
- (3) The Minister may refund the amount paid by way of the first instalment of the visa application charge in relation to an application for a visa if:
- (a) the application was made because of a mistake by the applicant; and
 - (b) the applicant withdraws the application in writing; and
 - (c) after the withdrawal, the Minister receives a written request for a refund from:
 - (i) the person who paid the amount (the *payer*); or

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- (ii) if the payer has died, or the payer has a serious physical or mental incapacity, the payer's legal personal representative; or
 - (iii) if the payer is a bankrupt within the meaning of the *Bankruptcy Act 1966*, the trustee of the estate of the payer.
- (4) If the request for a refund is made on the basis that the applicant died before a decision was made on the application, the request must be accompanied by evidence, in a form that satisfies the requirements of the law in the place where the request is made, of the death of the applicant.
- (5) If the request for a refund is made by the legal personal representative of a payer who has died, the request must be accompanied by evidence, in a form that satisfies the requirements of the law in the place where the request is made, of the death of the payer.
- (6) A refund under this regulation must be paid to the person who made the request for the refund.
- (7) If:
- (a) in the opinion of the Minister, there is no doubt about the identity of the payer; and
 - (b) the Minister pays the amount of the refund to the payer or to a person mentioned in subparagraph (1) (b) (ii) or (iii), or subparagraph (3) (c) (ii) or (iii);
- a receipt that is given by the person to whom the refund is paid is, for all purposes, a valid discharge of any liability of the Commonwealth in relation to the payment of the amount of the refund.
- (8) A refund under this regulation may be paid:
- (a) in Australian currency; or

- (b) if the amount of the instalment in respect of which the refund is being paid was paid in another currency, in that other currency.

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

substitute

2.12H Refund of second instalment of visa application charge

- (1) The Minister must refund the amount paid by way of the second instalment of the visa application charge in relation to an application for a visa if:
- (a) any of the circumstances mentioned in subregulation (2) exists; and
 - (b) the Minister receives a written request for a refund from:
 - (i) the person who paid the amount (the *payer*); or
 - (ii) if the payer has died, or the payer has a serious physical or mental incapacity, the payer's legal personal representative; or
 - (iii) if the payer is a bankrupt within the meaning of the *Bankruptcy Act 1966*, the trustee of the estate of the payer.

Note See regulation 2.12K in relation to who is the person who pays an amount by way of an instalment of visa application charge.

- (2) For paragraph (1) (a), the circumstances are as follows:
- (a) the applicant withdraws the application in writing before the application is decided;
 - (b) the applicant dies before first entering Australia as the holder of the visa;
 - (c) the application has been finally determined within the meaning of subsection 5 (9) of the Act and the visa is not granted;

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- (d) the visa is granted, and later cancelled, before the applicant first enters Australia as the holder of the visa;
- (e) the visa is granted, and otherwise ceases, before the applicant first enters Australia as the holder of the visa.
- (3) For this regulation, an application is taken not to have been finally determined if, for any reason, a court remits the application to the Minister to be decided.
- (4) If the request for a refund is made on the basis that the applicant died before first entering Australia as the holder of the visa, the request must be accompanied by evidence, in a form that satisfies the requirements of the law in the place where the request is made, of the death of the applicant.
- (5) If the request for a refund is made by the legal personal representative of a payer who has died, the request must be accompanied by evidence, in a form that satisfies the requirements of the law in the place where the request is made, of the death of the payer.
- (6) A refund under this regulation must be paid to the person who made the request for the refund.
- (7) If:
- (a) in the opinion of the Minister, there is no doubt about the identity of the payer; and
- (b) the Minister pays the amount of the refund to the payer or to a person mentioned in subparagraph (1) (b) (ii) or (iii);
- a receipt that is given by the person to whom the refund is paid is, for all purposes, a valid discharge of any liability of the Commonwealth in relation to the payment of the amount of the refund.
- (8) A refund under this regulation may be paid:
- (a) in Australian currency; or

- (b) if the amount of the instalment in respect of which the refund is being paid was paid in another currency, in that other currency.

2.12I Partial refund of second instalment of visa application charge

- (1) The Minister must make a partial refund of the amount paid by way of the second instalment of the visa application charge in relation to an application for a visa if:
- (a) any of the circumstances mentioned in subregulation (2) exists; and
 - (b) the Minister receives a written request for a refund from:
 - (i) the person who paid the amount (the *payer*); or
 - (ii) if the payer has died, or the payer has a serious physical or mental incapacity, the payer's legal personal representative; or
 - (iii) if the payer is a bankrupt within the meaning of the *Bankruptcy Act 1966*, the trustee of the estate of the payer.

Note See regulation 2.12K in relation to who is the person who pays an amount by way of an instalment of visa application charge.

- (2) For paragraph (1) (a), the circumstances are as follows:
- (a) the applicant dies before commencing a course of English language tuition to which the applicant is entitled under section 4C of the *Immigration (Education) Act 1971*;
 - (b) the visa is granted, and later cancelled, before the applicant commences a course of English language tuition to which the applicant is entitled under section 4C of the *Immigration (Education) Act 1971*;

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- (c) subject to subregulation (3), the visa is granted, and ceases to have effect, before the applicant commences a course of English language tuition to which the applicant is entitled under section 4C of the *Immigration (Education) Act 1971*;
- (d) the obligation of the Commonwealth to the applicant under section 4C of the *Immigration (Education) Act 1971* has ceased, by operation of paragraph 4D (1) (a) of that Act, without the applicant receiving any English language tuition in an approved English course provided under that Act.
- (3) Paragraph (2) (c) does not apply if, before the visa ceases to have effect, the Commonwealth's obligation under section 4C of the *Immigration (Education) Act 1971*, in relation to the applicant, has ceased by operation of paragraph 4D (1) (b), (c) or (d) or subsection 4D (2) of that Act.
- (4) If the request for a refund is made on the basis that the applicant died before commencing a course of English language tuition to which the applicant was entitled under section 4C of the *Immigration (Education) Act 1971*, the request must be accompanied by evidence, in a form that satisfies the requirements of the law in the place where the request is made, of the death of the applicant.
- (5) If the request for a refund is made by the legal personal representative of a payer who has died, the request must be accompanied by evidence, in a form that satisfies the requirements of the law in the place where the request is made, of the death of the payer.
- (6) A refund under this regulation must be paid to the person who made the request for the refund.
- (7) The amount of the refund is the relevant amount set out in Schedule 8A.

(8) If:

- (a) in the opinion of the Minister, there is no doubt about the identity of the payer; and
- (b) the Minister pays the amount of the refund to the payer or to a person mentioned in subparagraph (1) (b) (ii) or (iii);

a receipt that is given by the person to whom the refund is paid is, for all purposes, a valid discharge of any liability of the Commonwealth in relation to the payment of the amount of the refund.

(9) A refund under this regulation may be paid:

- (a) in Australian currency; or
- (b) if the amount of the instalment in respect of which the refund is being paid was paid in another currency, in that other currency.

2.12J Refund of first and second instalments of visa application charge for Resolution of Status (Temporary) (Class UH) visas

- (1) Without limiting regulation 2.12F or 2.12H, the Minister must refund the amount paid by way of the first and second instalments of the visa application charge in relation to an application for a Resolution of Status (Temporary) (Class UH) visa if:
 - (a) the applicant is the holder of a permanent visa other than a Resolution of Status (Residence) (Class BL) visa; and
 - (b) at the time of the grant of the permanent visa, the person was the holder of a Subclass 450 (Resolution of Status — Family Member (Temporary)) visa, or a Subclass 850 (Resolution of Status (Temporary)) visa, that was granted on the basis of an application made after the application for that permanent visa; and

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- (c) the Minister receives a written request for a refund from:
- (i) the person who paid the amount (the *payer*); or
 - (ii) if the payer has died, or the payer has a serious physical or mental incapacity, the payer's legal personal representative; or
 - (iii) if the payer is a bankrupt within the meaning of the *Bankruptcy Act 1966*, the trustee of the estate of the payer.

Note See regulation 2.12K in relation to who is the person who pays an amount by way of an instalment of visa application charge.

- (2) If the request for a refund is made by the legal personal representative of a payer who has died, the request must be accompanied by evidence, in a form that satisfies the requirements of the law in the place where the request is made, of the death of the payer.
- (3) A refund under this regulation must be paid to the person who made the request for the refund.
- (4) If:
- (a) in the opinion of the Minister, there is no doubt about the identity of the payer; and
 - (b) the Minister pays the amount of the refund to the payer or to a person mentioned in subparagraph (1) (c) (ii) or (iii);
- a receipt that is given by the person to whom the refund is paid is, for all purposes, a valid discharge of any liability of the Commonwealth in relation to the payment of the amount of the refund.
- (5) A refund under this regulation of the amount of the second instalment of the visa application charge may be paid:
- (a) in Australian currency; or

- (b) if the amount of the instalment was paid in another currency, in that other currency.

2.12K Who is the person who pays an instalment of visa application charge

For regulations 2.12F, 2.12H, 2.12I and 2.12J, the person who pays an amount by way of an instalment of visa application charge in relation to an application for a visa is:

- (a) if the payment is made by an agent (whether or not a registered agent within the meaning of Part 3 of the Act) on behalf of the applicant — the applicant; and
- (b) in any other case:
- (i) if the payment is made by cheque — the drawer of the cheque; and
 - (ii) if the payment is made by a credit or debit card — the person named on the card; and
 - (iii) if the payment is made in cash — the person presenting the cash; and
 - (iv) if the payment is made by bank cheque, bank draft, money order, or other similar instrument:
 - (A) the person presenting the instrument; or
 - (B) if that person is not the person named on the instrument as the purchaser of the instrument (the *purchaser*), the purchaser.

[4113] Paragraph 2.43 (1) (e)

substitute

- (e) in the case of the holder of an Electronic Travel Authority (Class UD) visa who is under the age of 18 years:

-
- (i) both of the following apply:
 - (A) the law of the visa holder's home country did not permit the removal of the visa holder;
 - (B) at least 1 of the persons who could lawfully determine where the additional applicant is to live did not consent to the grant of the visa; or
 - (ii) the grant of the visa was inconsistent with any Australian child order in force in relation to the visa holder;

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

substitute

- (i) a person who is at least 18 years of age, and who can lawfully determine where the visa holder is to live, asks the Minister, in writing, to cancel the visa; and
- (ii) the Minister is satisfied that there is no compelling reason to believe that the cancellation of the visa would not be in the best interests of the visa holder;

[4115] Paragraph 2.43 (2) (b)

substitute

- (b) in the case of a Student (Temporary) (Class TU) visa, that the Minister is satisfied that the visa holder has not complied with:
 - (i) condition 8104 or 8105 (if the condition applies to the visa); or
 - (ii) condition 8202.

[4116] Paragraph 4.02 (4) (e)

omit

nominated position.

insert

nominated position;

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

insert

- (f) a decision that:
 - (i) relates to requiring a security; and
 - (ii) relates to the refusal to grant a visa, being a visa for which the Minister is to have regard to a criterion to the effect that if an authorised officer has required a security for compliance with any conditions that the officer has indicated to the applicant will be imposed on the visa if it is granted, the security has been lodged.

[4118] Regulation 4.15

omit

For the purposes of paragraph 349 (2) (c) of the Act

insert

- (1) For paragraph 349 (2) (c) of the Act

[4119] After paragraph 4.15 (b)

insert

- (2) For paragraph 349 (2) (c) of the Act, the requiring of a security that is mentioned in paragraph 4.02 (4) (f) is a prescribed matter.

-
- (3) If the MRT remits a prescribed matter that is mentioned in subregulation (2) to the primary decision-maker, the MRT may direct the primary decision-maker:
- (a) to indicate to the applicant that a condition specified by the MRT will be imposed on the visa if it is granted; and
 - (b) to require a security for compliance with the condition (whether or not a security has already been required).

[4120] Subregulation 5.36 (1)

substitute

- (1) Payment of a fee must be made:
- (a) in a place, being Australia or a foreign country, that is specified for the purposes of this paragraph by Gazette Notice; and
 - (b) in a currency that is specified for the purposes of this paragraph by Gazette Notice as a currency in which a fee may be paid in that place.

Note **Foreign country** is defined in paragraph 22 (1) (f) of the *Acts Interpretation Act 1901*.

- (1A) The amount of the payment is to be ascertained as follows:
- (a) if the currency in which the amount is to be paid is a currency for which an amount corresponding to the amount of the fee in Australian dollars is specified for the purposes of this paragraph by Gazette Notice — in accordance with the amount specified in the Gazette Notice that corresponds to the amount of the fee in Australian dollars;
 - (b) if the currency in which the amount is to be paid is any other currency — in accordance with the formula in subregulation (2).

Part 2 Amendments of Schedule 1

[4201] Items 1101A, 1102 and 1103

omit

[4202] Subitem 1104 (1)

substitute

- (1) Form 47BU and 1 of the following forms:
- (a) 1136;
 - (b) 1137;
 - (c) 1138;
 - (d) 1139.

[4203] Subitem 1104A (1)

substitute

- (1) Form 47BU and 1 of the following forms:
- (a) 1136;
 - (b) 1137;
 - (c) 1138;
 - (d) 1139.

[4204] Item 1109

omit

[4205] Subitem 1115 (1)

substitute

- (1) Form: 47SP or 47SV.

[4206] Items 1129A and 1130

omit

[4207] Additional Amendments

<i>Provision</i>	<i>omit</i>
Subitem 1108 (1)	47 or
Subitem 1108A (1)	or 887
Subitem 1112 (1)	47 or
Subitem 1113 (1)	or 887
Subitem 1114 (1)	47 or
Subitem 1114A (1)	or 887
Subitem 1118 (1)	47 or
Subitem 1121 (1)	47 or
Subitem 1121A (1)	or 887
Subitem 1123A (1)	47 or
Subitem 1123B (1)	or 887
Subitem 1124 (1)	47 or
Subitem 1124A (1)	or 887
Paragraph 1124B (1) (b)	or 887
Paragraph 1129 (1) (b)	47 or
Subitem 1214C (1)	or 887
Subitem 1215 (1)	47 or
Subitem 1220A (1)	47 or
Subitem 1301 (1)	887,
Subitem 1301 (1)	1029,
Subitem 1303 (1)	887,
Subitem 1305 (1)	887,

Part 3 Amendments of Schedule 2

[4301] Clauses 050.213 and 050.214

omit

[4302] Subdivision 050.22, heading

substitute

050.22 Criteria to be satisfied at time of decision

[4303] Clause 050.221

omit

to 050.214.

insert

and 050.212.

[4304] After clause 050.222

insert

050.223 The Minister is satisfied that, if a bridging visa is granted to the applicant, the applicant will abide by the conditions (if any) imposed on it.

050.224 If an authorised officer has required a security for compliance with any conditions that the officer has indicated to the applicant will be imposed on the visa if it is granted, the security has been lodged.

[4305] Paragraph 050.516 (b)

substitute

(b) 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 from the date of grant — 14 days from the date of grant.

[4306] Clause 202.111, before definition of *Subclass 202 visa*

insert

special assistance visa means any of the following:

- (a) Burmese in Burma (Special Assistance) (Class AB) visa;
- (b) Burmese in Thailand (Special Assistance) (Class AC) visa;
- (c) Cambodian (Special Assistance) (Class AE) visa;
- (d) Citizens of the Former Yugoslavia (Special Assistance) (Class AI) visa;
- (e) East Timorese in Portugal, Macau or Mozambique (Special Assistance) (Class AM) visa;
- (f) Minorities of the Former USSR (Special Assistance) (Class AV) visa;
- (g) Sudanese (Special Assistance) (Class BD) visa;
- (h) Sri Lankan (Special Assistance) (Class BG) visa;
- (i) Ahmadi (Special Assistance) (Class BJ) visa;
- (j) Vietnamese (Special Assistance) (Class BK) visa.

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

omit

application for that visa; and

insert

application for that visa; or

[4308] After subparagraph 202.211 (2) (b) (ii)*insert*

- (iii) the proposer is, or has been, the holder of a special assistance visa, and the applicant was a member of the immediate family of the proposer on the date of the application for that visa; and

[4309] Parts 209, 211, 212, 213, 215 and 216*omit***[4310] Clause 300.411***substitute*

- 300.411 (1) Subclause (2) applies to an applicant who:
- (a) holds a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; and
 - (b) has applied for a Prospective Marriage (Temporary) (Class TO) visa.
- (2) The applicant must be:
- (a) in Australia, but not in immigration clearance; or
 - (b) outside Australia;
- when the visa is granted.
- 300.412 In any other case, the applicant must be outside Australia when the visa is granted.

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

(Class TZ); or

insert(Class TZ);

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

insert

- (M) Partner (Provisional) (Class UF);
- (N) Prospective Marriage (Temporary) (Class TO); or

[4313] Subclause 303.221 (1)

after

criteria

insert

(except those listed in clause 303.227)

[4314] Clause 303.225

omit

public interest criteria 4013 and 4014 and

[4315] Clause 303.227

omit

criterion 4012.

insert

criteria 4012, 4013 and 4014.

[4316] Clause 303.323

substitute

303.323 The applicant:

- (a) has satisfied all criteria for the grant of a visa of one of the classes mentioned in paragraph 303.212 (a); or
- (b) has satisfied all criteria (including public interest criteria 4012, 4013 and 4014) for the grant of a

visa of one of those classes, other than the remaining criteria.

[4317] Clause 309.411

substitute

- 309.411 (1) Subclause (2) applies to an applicant who:
- (a) holds a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; and
 - (b) has applied for:
 - (i) a Partner (Provisional) (Class UF) visa; or
 - (ii) a Prospective Marriage (Temporary) (Class TO) visa.
- (2) The applicant must be:
- (a) in Australia, but not in immigration clearance; or
 - (b) outside Australia;
- when the visa is granted.
- 309.412 In any other case, the applicant must be outside Australia at the time of grant.

[4318] Clause 310.411

substitute

- 310.411 (1) Subclause (2) applies to an applicant who:
- (a) holds a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; and
 - (b) has applied for a Partner (Provisional) (Class UF) visa.

-
- (2) The applicant must be:
- (a) in Australia, but not in immigration clearance;
or
 - (b) outside Australia;
- when the visa is granted.

310.412 In any other case, the applicant must be outside Australia at the time of grant.

[4319] Paragraph 560.222 (a)

omit

evidence of enrolment

insert

confirmation of enrolment

[4320] Paragraph 560.225 (a)

omit

4012,

insert

4012A,

[4321] Subparagraph 560.322 (a) (i)

omit

4012,

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

substitute

- (i) conditions 8202, 8501, 8532 and 8533;
and

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

substitute

- (i) conditions 8501 and 8533; and
- (ii) subject to paragraph (ba) and subclauses (1A), (1B) and (1C), condition 8101; and

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

insert

- (ba) if the application was made in Australia and, at the time of application, the applicant held a Student (Temporary) (Class TU) visa that was subject to condition 8104, condition 8104; and

[4325] Clause 562.222

omit

evidence of enrolment

insert

confirmation of enrolment

[4326] Clause 562.611

omit

8506 and 8517.

insert

8517 and 8533.

[4327] Clause 785.212

omit

[4328] Clause 835.211

substitute

835.211 The applicant is:

- (a) the holder of a substantive visa (other than a Subclass 771 (Transit) visa); or
- (b) a person who:
 - (i) is not the holder of a substantive visa; and
 - (ii) immediately before ceasing to hold a substantive visa, was not the holder of a Subclass 771 (Transit) visa; and
 - (iii) satisfies Schedule 3 criterion 3002.

[4329] Clause 836.211

substitute

836.211 The applicant is:

- (a) the holder of a substantive visa (other than a Subclass 771 (Transit) visa); or
- (b) a person who:
 - (i) is not the holder of a substantive visa; and
 - (ii) immediately before ceasing to hold a substantive visa, was not the holder of a Subclass 771 (Transit) visa; and
 - (iii) satisfies Schedule 3 criterion 3002.

[4330] Clause 837.212

substitute

837.212 The applicant is:

- (a) the holder of a substantive visa (other than a Subclass 771 (Transit) visa); or

- (b) a person who:
 - (i) is not the holder of a substantive visa; and
 - (ii) immediately before ceasing to hold a substantive visa, was not the holder of a Subclass 771 (Transit) visa; and
 - (iii) satisfies Schedule 3 criterion 3002.

[4331] Clause 838.211

substitute

838.211 The applicant is:

- (a) the holder of a substantive visa (other than a Subclass 771 (Transit) visa); or
- (b) a person who:
 - (i) is not the holder of a substantive visa; and
 - (ii) immediately before ceasing to hold a substantive visa, was not the holder of a Subclass 771 (Transit) visa; and
 - (iii) satisfies Schedule 3 criterion 3002.

[4332] Subclause 846.222 (1)

substitute

(1) The applicant meets the requirements of subclause (1A) or (1B).

(1A) An applicant meets the requirements of this subclause if the applicant's score on the business skills points test is not less than the number of points that is specified for the purposes of this subclause by Gazette Notice.

(1B) An applicant meets the requirements of this subclause if:

- (a) the applicant's score on the business skills points test is less than the number of points that

is specified for the purposes of subclause (1A) by Gazette Notice; and

- (b) the regional authority mentioned in subclause 846.218 (2) satisfies the Minister that there are exceptional circumstances that justify the grant of the Subclass 846 visa to the applicant.

[4333] Subclause 846.222 (2)

omit

subclause (1):

insert

subclauses (1A) and (1B):

[4334] After clause 866.212

insert

- 866.213 (1) The applicant meets the requirements of subclause (2) or (3).
- (2) The applicant meets the requirements of this subclause if the applicant:
- (a) has been granted a Subclass 785 (Temporary Protection) visa (whether or not the applicant still holds the visa); and
- (b) has not left Australia since the grant of that visa.
- (3) The applicant meets the requirements of this subclause if, at the time of the applicant's last entry to Australia:
- (a) the applicant was the holder of a visa that:
- (i) was granted in the applicant's name; and
- (ii) was in effect; and
- (iii) was not counterfeit; and
- (iv) had not been altered by someone who did not have authority to do so; and

- (v) had not been obtained using a fraudulent document; and
 - (b) in the case of an applicant who held a valid passport — the passport was issued in the applicant's name.
- (4) For subclause (3):
- fraudulent document*** means a document that:
- (a) purports to have been, but was not, issued in respect of the applicant; or
 - (b) is counterfeit or has been altered by a person who does not have authority to do so.

Part 4 Amendment of Schedule 4

[4401] After clause 4012

insert

4012A In the case of an applicant:

- (a) who has not turned 18; and
- (b) who will be in the company of none of his or her parents or guardians during his or her intended stay in Australia; and
- (c) who is not an AusAID student; and
- (d) whose application expresses an intention to stay in Australia with a person other than:
 - (i) a relative of the applicant who is aged at least 18; or
 - (ii) another person who is aged at least 18 and is nominated by 1 or more of the applicant's parents or guardians;

a signed statement is given to the Minister by the education provider for the course in which the applicant is enrolled confirming that appropriate arrangements have been made for the applicant's accommodation, support and general welfare during the applicant's stay in Australia.

Part 5**Amendments of Schedule 8****[4501] Clause 8105***substitute*

8105 (1) Subject to subclause (2), the holder must not engage in work in Australia for more than 20 hours a week during any week when the holder's course of study or training is in session.

(2) Subclause (1) does not apply to work that was specified as a requirement of the course when the course particulars were entered in the Commonwealth Register of Institutions and Courses for Overseas Students.

[4502] Clause 8202*substitute*

8202 (1) The holder must satisfy the requirements of subclause (3).

(2) If the holder is not an occupational trainee, the holder must also satisfy the requirements of subclause (4).

(3) A holder satisfies the requirements of this subclause if:

- (a) in the case of an occupational trainee, the holder satisfies the requirements of the course of occupational training approved by the Minister under subclause 442.222 (1); or
- (b) in the case of a holder of a Subclass 560 visa who is an AusAID or secondary school exchange student, the holder is enrolled in a full-time course of study; or

- (c) in any other case, the holder is enrolled in a registered course.
- (4) A holder satisfies the requirements of this subclause if:
 - (a) in the case of a holder whose education provider keeps attendance records, the Minister is satisfied that the holder attends for at least 80 percent of the contact hours scheduled:
 - (i) for a course that runs for less than a semester — for the course; or
 - (ii) for a course that runs for at least a semester — for each term and semester of the course; or
 - (b) in the case of a holder whose education provider does not keep attendance records, the holder achieves an academic result that is certified by the education provider to be at least satisfactory.

[4503] Clause 8206

substitute

- 8206 (1) Subject to subclause (2), the holder must not change his or her enrolment from enrolment in a course offered by an education provider (the *first education provider*) to enrolment in a course offered by another education provider:
- (a) if the course offered by the first education provider is for 12 months or more — within the first 12 months of that course; or
 - (b) if the course offered by the first education provider is for less than 12 months — before the end of that course.
- (2) If the course in which the holder is enrolled is undertaken by the holder as a prerequisite for another course (the *principal course*), the holder must not

change his or her enrolment to enrolment in a course offered by another education provider:

- (a) if the principal course is for 12 months or more — before the end of the first 12 months of the principal course; or
- (b) if the principal course is for less than 12 months — before the end of the principal course.

[4504] After clause 8531

insert

8532

If the holder is a person who:

- (a) has not turned 18; and
- (b) is not an AusAID student; and
- (c) is staying in Australia with a person other than:
 - (i) a parent or guardian of the holder; or
 - (ii) a relative of the holder who is aged at least 18; or
 - (iii) another person who is aged at least 18 and is nominated by 1 or more of the holder's parents or guardians;

the holder must maintain arrangements, approved by the education provider for the course to which the holder's visa relates, for the holder's accommodation, support and general welfare.

8533

The holder must:

- (a) in the case of a holder who was outside Australia when the visa was granted, notify the education provider of the holder's residential address in Australia within 7 days after arriving in Australia; and
- (b) in all cases, notify the education provider of any change in the holder's residential address in Australia within 7 days after the change occurs.

Notes

1. *↙* These Regulations *↙* amend *↙* Statutory Rules 1994 No. 268, as amended by 1994 Nos. 280, 322, 376 and 452; 1995 Nos. 3, 38, 117, 134, 268, 302 and 411; 1996 Nos. 12, 75 (regulations 7 and 8 were disallowed by the Senate on 11 September 1996), 76, 108, 121, 135, 198, 211 (regulations 4, 10, 11, 13.3, 14-37, 47-49, 51, 53-55, 74, 77.16, 77.19, 78, 85, 119 and 114 were disallowed by the Senate on 7 November 1996) and 276; 1997 Nos. 17, 64, 91, 92, 109, 137, 184, 185, 216, 263, 279, 288, 301 and 354; 1998 Nos. 36, 37, 104 (regulation 15 was disallowed by the Senate on 2 July 1998), 139, 210, 214, 284, 285 (disallowed by the Senate on 31 March 1999), 304, 305, 306 and 322; 1999 Nos. 8, 58, 64, 68 (as amended by 1999 Nos. 81 and 132), 76 (as amended by 1999 Nos. 81 and 132), 81 (as amended by 1999 No. 132), 82, 132, 155, 198, 220 (as amended by 1999 Nos. 259 and 321), 243, 259, 260 (as amended by 1999 No. 321), 321 and 325; 2000 Nos. 52, 62, 108 and 192. *also
(in Schedules 3
and 4)*
2. Notified in the *Commonwealth of Australia Gazette* on *↙* 2000. *15 September*

These Regulations amend (in Schedule 1) Statutory Rules 1999 No. 259.

These Regulations also amend (in Schedule 2) Statutory Rules 1994 No. 261, as amended by 1994 Nos. 281 and 377; 1995 Nos. 40, 135 and 266; 1996 Nos. 11, 77 and 214.