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Migration Amendment Regulations 2002 (No. 5)¹

Statutory Rules 2002 No. ²

213

I, PETER JOHN HOLLINGWORTH, 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*.

Dated - 5 SEP 2002 2002

PETER HOLLINGWORTH
Governor-General

By His Excellency's Command

PHILIP RUDDOCK
Minister for Immigration and Multicultural and
Indigenous Affairs

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1 Name of Regulations

These Regulations are the *Migration Amendment Regulations 2002 (No. 1)*.

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2 Commencement

These Regulations commence on 1 November 2002.

3 Amendment of *Migration Regulations 1994*

Schedule 1 amends the *Migration Regulations 1994*.

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

Schedule 2 amends the *Migration Amendment Regulations 1999 (No. 13)*.

5 Transitional

- (1) The amendments made by items [1113], [1201] to [1206], [1301], [1304], [1309], [1310], [1317], [1318], [1324], [1325], [1330], [1331], [1337], [1338], [1344], [1345], [1351], [1352], [1357] and [1358] apply 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 2002; or
 - (b) made on or after 1 November 2002.
- (2) The amendments made by items [1101] to [1103], [1106] to [1112], [1207] to [1209], [1302], [1303], [1305] to [1308], [1311] to [1316], [1319] to [1323], [1326] to [1329], [1332] to [1336], [1339] to [1343], [1346] to [1350], [1353] to [1356], [1359] to [1375] and [1401] to [1418] apply to an application for a visa made on or after 1 November 2002.
- (3) The amendments made by items [1104] and [1105] apply to a nomination of an activity made on or after 1 November 2002.
- (4) The amendments made by items [1115] and [1501] apply to an airline crew member who enters Australia on or after 1 November 2002.
- (5) An airline crew member who is in Australia on 1 November 2002, who entered Australia before 1 November 2002 and who satisfied the requirements of subregulation 2.40 (10) as in force before 1 November 2002 is taken to satisfy the requirements of subregulation 2.40 (10) as in force on and after 1 November 2002.

Schedule 1 Amendments of *Migration Regulations 1994*

(regulation 3)

Part 1 Amendments of Parts 1, 2 and 4

[1101] Regulation 1.03, definition of *assessment level*

omit

a passport issued by a foreign country

insert

a kind of eligible passport, within the meaning of regulation 1.40,

[1102] Regulation 1.03, definition of *guest of Government*, paragraph (b)

omit

dependant

insert

dependent

[1103] Subregulation 1.20C (2)

omit

Application

insert

An application

[1104] After regulation 1.20G*insert***1.20GA Nomination of business activities — certified regional employment**

- (1) A person mentioned in subregulation (2) may nominate to the Minister an activity in which an individual is proposed to be employed by the person in Australia, if:
 - (a) the tasks of the nominated activity:
 - (i) correspond to the tasks of an occupation specified in a Gazette Notice for this paragraph; and
 - (ii) relate to a genuine full-time position that is necessary to the operation of the person's business; and
 - (iii) relate to a position that cannot reasonably be filled locally; and
 - (b) the nomination indicates that the individual will be paid at the level specified in the nomination; and
 - (c) that level will be not less than the level of remuneration provided for under relevant Australian legislation and awards; and
 - (d) the individual's working conditions will be no less favourable than working conditions provided for under relevant Australian legislation and awards; and
 - (e) a body, specified for this paragraph by Gazette Notice, certifies that the nomination meets the requirements of paragraphs (a) to (d).
- (2) The person is a pre-qualified business sponsor or a standard business sponsor, other than a sponsor whose business activities include recruitment or labour hire activities.
- (3) A nomination must be made in accordance with approved form 1068.
- (4) A nomination must be accompanied by a fee of \$235.

[1105] Subregulation 1.20H (1)

substitute

- (1) The Minister must approve a nomination of an activity made under regulation 1.20G or 1.20GA (a ***nomination***) if the nomination is in accordance with:
- (a) for a nomination under regulation 1.20G:
 - (i) subregulations 1.20G (1) and (3); and
 - (ii) if they are applicable — subregulations 1.20G (2), (4) and (5); or
 - (b) for a nomination under regulation 1.20GA — regulation 1.20GA.

[1106] Subregulation 1.41 (1)

omit

a passport issued by a foreign country,

insert

a kind of eligible passport,

[1107] Subregulation 1.41 (2)

omit

passports issued by the foreign country

insert

a kind of eligible passport

[1108] Paragraph 1.41 (3) (a)

omit

the foreign country:

insert

the kind of eligible passport:

[1109] Subregulation 1.41 (4)

omit

a passport issued by a foreign country:

insert

a kind of eligible passport:

[1110] Subregulation 1.43 (1)

omit

issued by different foreign countries,

[1111] Subregulation 2.05 (5)

omit

the circumstances

insert

further circumstances

[1112] Regulation 2.07AG, heading

substitute

2.07AG Applications for certain substantive visas

[1113] Regulation 2.08C

substitute

**2.08C Certain applicants taken to have applied also for
Employer Nomination (Migrant) (Class AN) visas and
Labour Agreement (Migrant) (Class AU) visas**

- (1) This regulation applies to a person (the *applicant*):
 - (a) who has applied for:
 - (i) an Independent (Migrant) (Class AT) visa; or

-
- (ii) a Skilled — Independent (Migrant) (Class BN) visa;
or
 - (iii) a Skill Matching (Migrant) (Class BR) visa; and
- (b) for whom the requirements mentioned in subregulation (2) are met.
- (2) The requirements are that:
- (a) the applicant was less than 45 years old at the time of the application for the Class AT, BN or BR visa; and
 - (b) a decision to grant, or refuse to grant, to the applicant a Subclass 126 (Independent), Subclass 134 (Skill Matching) or Subclass 136 (Skilled — Independent) visa has not been made; and
 - (c) for an applicant for a Class AT or BN visa — the applicant:
 - (i) has been assessed in relation to a Subclass 126 (Independent) or Subclass 136 (Skilled — Independent) visa under Subdivision B of Division 3 of Part 2 of the Act; and
 - (ii) was given an assessed score that was at least the applicable pool mark at the time the score was assessed; and
 - (d) the applicant:
 - (i) for a Class AT visa:
 - (A) has functional English; and
 - (B) has a diploma (within the meaning of subregulation 2.26 (5)) or higher qualification; and
 - (ii) for a Class BN visa:
 - (A) has vocational English; and
 - (B) has a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification; and
 - (iii) for a Class BR visa:
 - (A) has functional English; and
 - (B) has a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification.

-
- (3) Subregulation (4) applies to an applicant who has been nominated by an employer for an appointment in the business of the employer, if the appointment is an approved appointment in accordance with subregulation 5.19 (4).
 - (4) The applicant is taken also to have applied for an Employer Nomination (Migrant) (Class AN) visa on the day when Immigration receives the employer nomination.
 - (5) If subregulation (4) applies to an applicant for a Class AT, BN or BR visa:
 - (a) the applicant's application for an Employer Nomination (Migrant) (Class AN) visa is taken to have been made outside Australia; and
 - (b) any other person included in the applicant's application for a Class AT, BN or BR visa is taken also to be included in the applicant's application for an Employer Nomination (Migrant) (Class AN) visa.
 - (6) Subregulation (7) applies to an applicant who seeks to enter Australia in accordance with a labour agreement or an RHQ agreement, if Immigration has received evidence of the applicant's appointment by an employer authorised under the labour agreement or RHQ agreement to recruit persons.
 - (7) The applicant is taken also to have applied for a Labour Agreement (Migrant) (Class AU) visa on the day when Immigration receives the evidence mentioned in subregulation (6).
 - (8) If subregulation (7) applies to an applicant for a Class AT, BN or BR visa:
 - (a) the applicant's application for an Labour Agreement (Migrant) (Class AU) visa is taken to have been made outside Australia; and
 - (b) any other person included in the applicant's application for a Class AT, BN or BR visa is taken also to be included in the applicant's application for an Labour Agreement (Migrant) (Class AU) visa.

[1114] After regulation 2.08E

insert

2.08F Certain holders of Subclass 785 (Temporary Protection) visas taken to have applied for Protection (Class XC) visas

- (1) Subregulation (2) applies to a person only if:
 - (a) the person holds a Subclass 785 (Temporary Protection) visa that was granted before 19 September 2001; and
 - (b) the person is in Australia but is not in immigration clearance; and
 - (c) the visa has not been cancelled; and
 - (d) within 36 months after the date of grant of the visa, the person makes, or has made, an application for a Protection (Class XA) visa; and
 - (e) the application has not yet been finally determined.
- (2) The person is taken also to have applied for a Protection (Class XC) visa on the later of:
 - (a) the day when he or she makes, or made, the application mentioned in paragraph (1) (d); and
 - (b) 1 November 2002.

[1115] Subregulation 2.40 (10)

substitute

Operational aircrew members

- (10) A person included in a class of persons mentioned in paragraph (1) (m) has a prescribed status for 30 days, beginning when he or she disembarks from the aircraft on which he or she travelled to Australia, if and only if he or she:
 - (a) holds a passport that is in force; and
 - (b) holds a valid airline identity card issued by his or her employer; and
 - (c) is included in a list of crew members provided to Immigration by or for an international air carrier.

[1116] Paragraph 2.43 (1) (I)*omit*

business sponsor —

insert

business sponsor, and in respect of whom there is a nomination of an activity under regulation 1.20G or 1.20GA —

[1117] After paragraph 2.43 (1) (I)*insert*

- (1a) in the case of the holder of a Subclass 457 (Business (Long Stay)) visa who was granted the visa on the basis of being employed in Australia by a business sponsor, and in respect of whom there is a nomination of an activity under regulation 1.20GA — that the visa holder is living or working within an area specified in a Gazette Notice for this paragraph;

[1118] Subregulation 4.22 (1)*omit*

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insert

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[1119] Subregulation 4.22 (2)*omit*

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insert

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Part 2 Amendments of Schedule 1**[1201] Subparagraph 1114 (2) (b) (ii)***omit*

2.08C (2) (b)

insert

2.08C (5) (b)

[1202] Subparagraph 1114 (2) (b) (iv)*omit*

regulation 2.08C,

insert

subregulation 2.08C (4),

[1203] Subitem 1121 (1)*substitute*

- (1) Form: 47ES (unless the applicant is taken, under regulation 2.08C, to have applied for a Labour Agreement (Migrant) (Class AU) visa, in which case no form is required).

[1204] Paragraph 1121 (2) (a)*substitute*

- (a) First instalment (payable at the time application is made):
- (i) In the case of an applicant who is taken, under regulation 2.08C, to have applied for a Labour Agreement (Migrant) (Class AU) visa: Nil
 - (ii) In any other case: \$1 175

[1205] Subparagraph 1121 (2) (b) (ii)

omit

subparagraph (iii), in the case of each applicant who:

insert

subparagraph (iv), in the case of each applicant (including a person taken by paragraph 2.08C (8) (b) to be included in an application) who:

[1206] Subparagraph 1121 (2) (b) (v)

substitute

- (v) In the case of a Skill Matching (Migrant) (Class BR) visa applicant who is taken, under subregulation 2.08C (7), to have applied for a Labour Agreement (Migrant) (Class AU) visa: \$1 175
- (vi) In any other case: Nil.

[1207] Subparagraphs 1128BA (3) (c) (ii) and 1128CA (3) (d) (ii)

substitute

- (ii) for an applicant who is at least 16 years old — during the 12 months immediately before the day when the application is made, the Australian Federal Police completed a check of criminal records in relation to the applicant.

[1208] Sub-subparagraph 1222 (3) (ca) (iii) (B)

omit

levels 1 or 2

insert

level 1

[1209] After item 1402*insert***1403. Protection (Class XC)**

- (1) Form: Nil.
- (2) Visa application charge: Nil.
- (3) Other:
 - (a) Applicant must be a person:
 - (i) to whom regulation 2.08F applies; and
 - (ii) who is taken under regulation 2.08F to have applied for a Protection (Class XC) visa.
- (4) Subclasses:
 - 785 (Temporary Protection)

Note Regulation 2.08F provides that only certain visa applicants are taken to have applied for a Protection (Class XC) visa.

Part 3 Amendments of Schedule 2**[1301] Clause 119.211***substitute*

- 119.211
- (1) The applicant has been nominated by an employer for an appointment in the business of that employer.
 - (2) For an applicant who is taken, under regulation 2.08C, to have applied for an Employer Nomination (Migrant) (Class AN) visa:
 - (a) if the applicant applied for an Independent (Migrant) (Class AT) visa, the applicant:
 - (i) had not turned 45 at the time of the application for an Independent (Migrant) (Class AT) visa; and
 - (ii) has functional English; and

-
- (iii) has a diploma (within the meaning of subregulation 2.26 (5)) or higher qualification that is, unless the appointment is exceptional, relevant to the appointment; or
 - (b) if the applicant applied for a Skilled — Independent (Migrant) (Class BN) visa, the applicant:
 - (i) had not turned 45 at the time of the application for a Skilled — Independent (Migrant) (Class BN) visa; and
 - (ii) has vocational English; and
 - (iii) has a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification that is, unless the appointment is exceptional, relevant to the appointment; or
 - (c) if the applicant applied for a Skill Matching (Migrant) (Class BR) visa, the applicant:
 - (i) had not turned 45 at the time of the application for a Skill Matching (Migrant) (Class BR) visa; and
 - (ii) has functional English; and
 - (iii) has a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification that is, unless the appointment is exceptional, relevant to the appointment.
 - (3) If subclause (2) does not apply, the applicant:
 - (a) has not turned 45; and
 - (b) has functional English; and
 - (c) has a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification, that is relevant to the appointment.
 - (4) Subclause (3) does not apply to an applicant if the appointment is exceptional.
 - (5) The applicant is, or is eligible to become, the holder of a qualification of a kind mentioned in subregulation 5.19 (3A) if it is mandatory in Australia, for work of the kind to be performed under the appointment, that a person be the holder of the qualification.

[1302] Paragraphs 119.223 (b) and 119.225 (1) (b)*omit*

5001 and 5002.

insert

5001, 5002 and 5010.

[1303] Clause 119.323*omit*

5001 and 5002.

insert

5001, 5002 and 5010.

[1304] Clause 120.211*substitute*

120.211 (1) For an applicant, other than an applicant mentioned in subclause (2), the applicant:

(a) either:

- (i) seeks to enter Australia to work in accordance with a labour agreement; and
- (ii) has qualifications and experience that are suitable for the position to be taken by the applicant under the labour agreement; and
- (iii) unless exceptional circumstances apply, has not turned 45; or

(b) seeks to enter Australia in accordance with an RHQ agreement.

(2) For an applicant who, under regulation 2.08C, is taken to have applied for a Labour Agreement (Migrant) (Class AU) visa, and who seeks to enter Australia to work in accordance with a labour agreement, the applicant:

(a) has qualifications and experience that are suitable for the position to be taken by the applicant under the labour agreement; and

- (b) had not turned 45 at the time of the application for an Independent (Migrant) (Class AT) visa, a Skilled — Independent (Migrant) (Class BN) visa or a Skill Matching (Migrant) (Class BR) visa.

[1305] Paragraphs 120.222 (b) and 120.224 (1) (b)

omit

5001 and 5002.

insert

5001, 5002 and 5010.

[1306] Clause 120.323

omit

5001 and 5002.

insert

5001, 5002 and 5010.

[1307] Paragraphs 121.224 (b) and 121.226 (1) (b)

omit

5001 and 5002.

insert

5001, 5002 and 5010.

[1308] Clause 121.323

omit

5001 and 5002.

insert

5001, 5002 and 5010.

[1309] Clause 134.212*omit*

vocational

insert

functional

[1310] After clause 134.222B*insert*

134.222C (1) The applicant:

- (a) has vocational English; or
 - (b) has functional English and meets the requirements of subclause (2).
- (2) The requirements are that:
- (a) the applicant has been nominated under clause 134.222 by a State or Territory specified by a Gazette Notice for this paragraph as a State or Territory in which arrangements are established for suitable English language training for applicants to whom this paragraph applies; and
 - (b) the Minister is satisfied that the applicant has paid any fee or charge for that training.

[1311] Paragraph 457.223 (4) (f)*before*

the Minister

insert

for an applicant in respect of whom there is a nomination of an activity under regulation 1.20G —

[1312] After paragraph 457.223 (4) (f)*insert*

- (fa) for an applicant in respect of whom there is a nomination of an activity under regulation 1.20GA — the Minister is satisfied that:
- (i) the applicant will be paid at the level specified in the nomination; and
 - (ii) that level will be not less than the level of remuneration provided for under relevant Australian legislation and awards; and
 - (iii) the applicant's working conditions will be no less favourable than working conditions provided for under relevant Australian legislation and awards; and

[1313] Subclause 570.221 (1)*omit*

570.233.

insert

570.234.

[1314] Subparagraphs 570.221 (2) (b) (ii) and (3) (b) (ii)*omit*

570.233.

insert

570.234.

[1315] Paragraph 570.227 (b)*after*

level

insert

2,

[1316] After clause 570.233*insert*

570.234 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

[1317] Subclause 570.312 (1)*omit*

(3) or (4).

insert

(3), (4) or (5).

[1318] After subclause 570.312 (4)*insert*

- (5) An applicant meets the requirements of this subclause if:
- (a) the applicant does not hold a substantive visa; and
 - (b) the applicant is a member of the family unit of a person who holds a Subclass 560, 562 or 570 student visa, having satisfied the primary criteria for that visa.

[1319] Clause 570.613*substitute*

- 570.613 (1) If the applicant:
- (a) satisfies the primary criteria; and
 - (b) is subject to assessment level 3, 4 or 5; and
 - (c) is seeking to undertake an ELICOS that is, or ELICOS that are together, of 10 months duration or less; and
 - (d) is not an applicant to whom subclause (2) applies; condition 8534.
- (2) If the applicant:
- (a) satisfies the primary criteria; and
 - (b) is subject to assessment level 3; and

- (c) gives to the Minister the evidence mentioned in subclause (3);
condition 8534 may be imposed.
- (3) For subclause (2), the evidence is:
- (a) evidence that the applicant has funds from an acceptable source that are sufficient to meet the following expenses for the period of 12 months after the full period:
- (i) living costs, within the meaning of subclause 5A104 (1);
 - (ii) school costs, within the meaning of subclause 5A104 (2); and
- (b) evidence that the applicant has a further \$12 000 in funds from an acceptable source; and
- (c) evidence that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.
- (4) For paragraphs (3) (a) and (b), the funds must be in addition to the funds for which the applicant provided evidence for subclause 5A208 (1).
- (5) If the applicant satisfies the secondary criteria as a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 570 visa that is subject to condition 8534, condition 8534.
- (6) In this clause:
full period has the meaning given by clause 5A101.
funds from an acceptable source has the meaning given by subclause 5A208 (2).

[1320] Subclause 571.221 (1)

omit

571.233.

insert

571.234.

[1321] Subparagraphs 571.221 (2) (b) (ii) and (3) (b) (ii)*omit*

571.233.

insert

571.234.

[1322] Paragraph 571.227 (b)*after*

level

insert

2,

[1323] After clause 571.233*insert*

571.234 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

[1324] Subclause 571.312 (1)*omit*

(3) or (4).

insert

(3), (4) or (5).

[1325] After subclause 571.312 (4)*insert*

- (5) An applicant meets the requirements of this subclause if:
- (a) the applicant does not hold a substantive visa; and
 - (b) the applicant is a member of the family unit of a person who holds a Subclass 560, 562 or 571 student visa, having satisfied the primary criteria for that visa.

[1326] Subclause 572.221 (1)

omit

572.232.

insert

572.233.

[1327] Subparagraphs 572.221 (2) (b) (ii) and (3) (b) (ii)

omit

572.232.

insert

572.233.

[1328] Paragraph 572.227 (b)

after

level

insert

2,

[1329] After clause 572.232

insert

572.233 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

[1330] Subclause 572.312 (1)

omit

(3) or (4).

insert

(3), (4) or (5).

[1331] After subclause 572.312 (4)*insert*

- (5) An applicant meets the requirements of this subclause if:
- (a) the applicant does not hold a substantive visa; and
 - (b) the applicant is a member of the family unit of a person who holds a Subclass 560, 562 or 572 student visa, having satisfied the primary criteria for that visa.

[1332] Clause 572.613*substitute*

- 572.613 (1) If the applicant:
- (a) satisfies the primary criteria; and
 - (b) is subject to assessment level 3, 4 or 5; and
 - (c) is seeking to undertake a course of study that is, or courses of study that are together, of 10 months duration or less; and
 - (d) is not an applicant to whom subclause (2) applies; condition 8534.
- (2) If the applicant:
- (a) satisfies the primary criteria; and
 - (b) is subject to assessment level 3; and
 - (c) gives to the Minister the evidence mentioned in subclause (3); condition 8534 may be imposed.
- (3) For subclause (2), the evidence is:
- (a) evidence that the applicant has funds from an acceptable source that are sufficient to meet the following expenses for the period of 12 months after the full period:
 - (i) living costs, within the meaning of subclause 5A104 (1);
 - (ii) school costs, within the meaning of subclause 5A104 (2); and
 - (b) evidence that the applicant has a further \$12 000 in funds from an acceptable source; and

(c) evidence that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.

(4) For paragraphs (3) (a) and (b), the funds must be in addition to the funds for which the applicant provided evidence for subclause 5A408 (1).

(5) If the applicant satisfies the secondary criteria as a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 572 visa that is subject to condition 8534, condition 8534.

(6) In this clause:

full period has the meaning given by clause 5A101.

funds from an acceptable source has the meaning given by subclause 5A408 (2).

[1333] Subclause 573.221 (1)

omit

573.232.

insert

573.233.

[1334] Subparagraphs 573.221 (2) (b) (ii) and (3) (b) (ii)

omit

573.232.

insert

573.233.

[1335] Paragraph 573.227 (b)

after
level
insert
2,

[1336] After clause 573.232

insert

573.233 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

[1337] Subclause 573.312 (1)

omit
(3) or (4).
insert
(3), (4) or (5).

[1338] After subclause 573.312 (4)

insert

- (5) An applicant meets the requirements of this subclause if:
- (a) the applicant does not hold a substantive visa; and
 - (b) the applicant is a member of the family unit of a person who holds a Subclass 560, 562 or 573 student visa, having satisfied the primary criteria for that visa.

[1339] Clause 573.613

substitute

- 573.613 (1) If the applicant:
- (a) satisfies the primary criteria; and
 - (b) is subject to assessment level 3, 4 or 5; and

-
- (c) is seeking to undertake a course of study that is, or courses of study that are together, of 10 months duration or less; and
 - (d) is not an applicant to whom subclause (2) applies; condition 8534.
- (2) If the applicant:
- (a) satisfies the primary criteria; and
 - (b) is subject to assessment level 3; and
 - (c) gives to the Minister the evidence mentioned in subclause (3);
- condition 8534 may be imposed.
- (3) For subclause (2), the evidence is:
- (a) evidence that the applicant has funds from an acceptable source that are sufficient to meet the following expenses for the period of 12 months after the full period:
 - (i) living costs, within the meaning of subclause 5A104 (1);
 - (ii) school costs, within the meaning of subclause 5A104 (2); and
 - (b) evidence that the applicant has a further \$12 000 in funds from an acceptable source; and
 - (c) evidence that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.
- (4) For paragraphs (3) (a) and (b), the funds must be in addition to the funds for which the applicant provided evidence for subclause 5A508 (1).
- (5) If the applicant satisfies the secondary criteria as a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 573 visa that is subject to condition 8534, condition 8534.
- (6) In this clause:
full period has the meaning given by clause 5A101.

funds from an acceptable source has the meaning given by subclause 5A508 (2).

[1340] Subclause 574.221 (1)

omit

574.232.

insert

574.233.

[1341] Subparagraphs 574.221 (2) (b) (ii) and (3) (b) (ii)

omit

574.232.

insert

574.233.

[1342] Paragraph 574.227 (b)

after

level

insert

2,

[1343] After clause 574.232

insert

574.233 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

[1344] Subclause 574.312 (1)

omit

(3) or (4).

insert

(3), (4) or (5).

[1345] After subclause 574.312 (4)

insert

- (5) An applicant meets the requirements of this subclause if:
 - (a) the applicant does not hold a substantive visa; and
 - (b) the applicant is a member of the family unit of a person who holds a Subclass 560, 562 or 574 student visa, having satisfied the primary criteria for that visa.

[1346] Clause 574.613

substitute

- 574.613
- (1) If the applicant:
 - (a) satisfies the primary criteria; and
 - (b) is subject to assessment level 3, 4 or 5; and
 - (c) is seeking to undertake a course of study that is, or courses of study that are together, of 10 months duration or less; and
 - (d) is not an applicant to whom subclause (2) applies; condition 8534.
 - (2) If the applicant:
 - (a) satisfies the primary criteria; and
 - (b) is subject to assessment level 3; and
 - (c) gives to the Minister the evidence mentioned in subclause (3); condition 8534 may be imposed.
 - (3) For subclause (2), the evidence is:
 - (a) evidence that the applicant has funds from an acceptable source that are sufficient to meet the following expenses for the period of 12 months after the full period:
 - (i) living costs, within the meaning of subclause 5A104 (1);
 - (ii) school costs, within the meaning of subclause 5A104 (2); and
 - (b) evidence that the applicant has a further \$12 000 in funds from an acceptable source; and

(c) evidence that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.

(4) For paragraphs (3) (a) and (b), the funds must be in addition to the funds for which the applicant provided evidence for subclause 5A608 (1).

(5) If the applicant satisfies the secondary criteria as a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 574 visa that is subject to condition 8534, condition 8534.

(6) In this clause:

full period has the meaning given by clause 5A101.

funds from an acceptable source has the meaning given by subclause 5A608 (2).

[1347] Subclause 575.221 (1)

omit

575.232

insert

575.233.

[1348] Subparagraphs 575.221 (2) (b) (ii) and (3) (b) (ii)

omit

575.232.

insert

575.233.

[1349] Paragraph 575.227 (b)

after

level

insert

2,

[1350] After clause 575.232

insert

575.233 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

[1351] Subclause 575.312 (1)

omit

(3) or (4).

insert

(3), (4) or (5).

[1352] After subclause 575.312 (4)

insert

- (5) An applicant meets the requirements of this subclause if:
- (a) the applicant does not hold a substantive visa; and
 - (b) the applicant is a member of the family unit of a person who holds a Subclass 560, 562 or 575 student visa, having satisfied the primary criteria for that visa.

[1353] Clause 575.613

substitute

- 575.613 (1) If the applicant:
- (a) satisfies the primary criteria; and
 - (b) is subject to assessment level 3, 4 or 5; and

(c) is seeking to undertake a course of study that is, or courses of study that are together, of 10 months duration or less; and

(d) is not an applicant to whom subclause (2) applies; condition 8534.

(2) If the applicant:

(a) satisfies the primary criteria; and

(b) is subject to assessment level 3; and

(c) gives to the Minister the evidence mentioned in subclause (3);

condition 8534 may be imposed.

(3) For subclause (2), the evidence is:

(a) evidence that the applicant has funds from an acceptable source that are sufficient to meet the following expenses for the period of 12 months after the full period:

(i) living costs, within the meaning of subclause 5A104 (1);

(ii) school costs, within the meaning of subclause 5A104 (2); and

(b) evidence that the applicant has a further \$12 000 in funds from an acceptable source; and

(c) evidence that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.

(4) For paragraphs (3) (a) and (b), the funds must be in addition to the funds for which the applicant provided evidence for subclause 5A708 (1).

(5) If the applicant satisfies the secondary criteria as a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 575 visa that is subject to condition 8534, condition 8534.

(6) In this clause:

full period has the meaning given by clause 5A101.

funds from an acceptable source has the meaning given by subclause 5A708 (2).

[1354] Subclause 576.221 (1)

omit

576.230.

insert

576.231.

[1355] Subparagraphs 576.221 (2) (b) (ii) and (3) (b) (ii)

omit

576.230.

insert

576.231.

[1356] After clause 576.230

insert

576.231 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

[1357] Subclause 576.312 (1)

omit

(3) or (4).

insert

(3), (4) or (5).

[1358] After subclause 576.312 (4)

insert

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

(a) the applicant does not hold a substantive visa; and

- (b) the applicant is a member of the family unit of a person who holds a Subclass 560, 562 or 576 student visa, having satisfied the primary criteria for that visa.

[1359] Paragraph 576.611 (1) (a)

omit

8517 and 8533;

insert

8517, 8533 and 8535;

[1360] Paragraph 576.611 (1) (d)

omit

any 1 or more of conditions 8303, 8523, 8534 and 8535

insert

one or both of conditions 8303 and 8523

[1361] Subparagraph 773.213 (1) (g) (iii)

substitute

(iii) appears to the Minister, from information in the application, to be a person:

- (A) who is eligible for the grant of a Long Stay (Visitor) (Class TN) visa; or
- (B) who is eligible for the grant of a Short Stay (Visitor) (Class TR) visa; or
- (C) who is, apart from the requirements of paragraph 1223A (3) (a) of Schedule 1 and clause 456.411 of this Schedule, eligible for the grant of a Subclass 456 (Business (Short Stay)) visa; or
- (D) who is, apart from the requirements of subitem 1224 (3) of Schedule 1 and clause 771.411 of this Schedule, eligible for the grant of a Transit (Temporary) (Class TX) visa.

[1362] Clauses 773.214 and 773.215

omit

773.213 (c),

insert

773.213 (1) (c),

[1363] Subclause 773.216 (1)

omit

773.213 (e),

insert

773.213 (1) (c),

[1364] Clause 773.217

omit

773.213 (d).

insert

773.213 (1) (d).

[1365] Clause 785.511

substitute

785.511 Temporary visa permitting the holder to remain in, but not re-enter, Australia until:

(a) for the holder of a Subclass 785 (Temporary Protection) (Class XA) visa:

(i) if the holder applies for a Protection (Class XA) visa after the temporary visa is granted and within 36 months after the grant — the day when the application is finally determined or withdrawn; and

(ii) in any other case — the end of the 36 months; or

- (b) for the holder of a Subclass 785 (Temporary Protection) (Class XC) visa — the day when the application mentioned in paragraph 2.08F(1)(d) is finally determined or withdrawn.

[1366] After clause 855.212

insert

855.212A The applicant satisfies special return criterion 5010 (whether or not the applicant has previously been in Australia).

[1367] After subclause 855.225 (1)

insert

(1A) Each member of the family unit of the applicant who is an applicant for a Subclass 855 visa satisfies special return criterion 5010 (whether or not the member has previously been in Australia).

[1368] After clause 855.312

insert

855.313 The applicant satisfies special return criterion 5010 (whether or not the applicant has previously been in Australia).

[1369] After clause 856.212

insert

856.212A The applicant satisfies special return criterion 5010 (whether or not the applicant has previously been in Australia).

[1370] After subclause 856.225 (1)

insert

(1A) Each member of the family unit of the applicant who is an applicant for a Subclass 856 visa satisfies special return criterion 5010 (whether or not the member has previously been in Australia).

[1371] After clause 856.312

insert

856.313 The applicant satisfies special return criterion 5010 (whether or not the applicant has previously been in Australia).

[1372] After clause 857.212

insert

857.212A The applicant satisfies special return criterion 5010 (whether or not the applicant has previously been in Australia).

[1373] After subclause 857.225 (1)

insert

(1A) Each member of the family unit of the applicant who is an applicant for a Subclass 857 visa satisfies special return criterion 5010 (whether or not the member has previously been in Australia).

[1374] After clause 857.312

insert

857.313 The applicant satisfies special return criterion 5010 (whether or not the applicant has previously been in Australia).

[1375] Clause 866.228*substitute*

- 866.228 If the applicant holds a Subclass 785 (Temporary Protection) visa, the applicant has held that visa, or that visa and another Subclass 785 (Temporary Protection) visa, for the lesser of:
- (a) a continuous period of 30 months; and
 - (b) a shorter period specified in writing by the Minister in relation to the applicant.

Part 4 Amendments of Schedule 5A**[1401] Subparagraph 5A204 (c) (ii)***omit*

less than

insert

less than

[1402] Subclause 5A205 (2), definition of *acceptable individual*, paragraph (d)*substitute*

- (d) the applicant's grandparents;
- (e) the applicant's brothers and sisters.

[1403] Subclause 5A208 (2), definition of *acceptable individual*, paragraph (d)*substitute*

- (d) the applicant's grandparents;
- (e) the applicant's brothers and sisters.

[1404] Subclause 5A305 (2), definition of *acceptable individual*, paragraph (d)

substitute

- (d) the applicant's grandparents;
- (e) the applicant's brothers and sisters.

[1405] Subclause 5A405 (2), definition of *acceptable individual*, paragraph (d)

substitute

- (d) the applicant's grandparents;
- (e) the applicant's brothers and sisters.

[1406] Subparagraph 5A407 (d) (ii)

omit

has,

insert

had,

[1407] Subclause 5A408 (2), definition of *acceptable individual*, paragraph (d)

substitute

- (d) the applicant's grandparents;
- (e) the applicant's brothers and sisters.

[1408] Subparagraph 5A504 (d) (ii)

omit

has,

insert

had,

[1409] Subclause 5A505 (2), definition of *acceptable individual*, paragraph (d)

substitute

- (d) the applicant's grandparents;
- (e) the applicant's brothers and sisters.

[1410] Subparagraph 5A507 (d) (ii)

omit

has,

insert

had,

[1411] Subparagraph 5A604 (2) (c) (i)

substitute

- (i) is fully funded or holds an International Postgraduate Research Scholarship funded by the Commonwealth Government; and

[1412] Subparagraph 5A604 (2) (d) (ii)

omit

less that

insert

less than

[1413] Subclause 5A605 (2), definition of *acceptable individual*, paragraph (d)

substitute

- (d) the applicant's grandparents;
- (e) the applicant's brothers and sisters.

[1414] Subparagraph 5A607 (2) (c) (i)

substitute

- (i) is fully funded or holds an International Postgraduate Research Scholarship funded by the Commonwealth Government; and

[1415] Subparagraphs 5A607 (2) (d) (ii) and 5A704 (d) (ii)

omit

less than

insert

less than

[1416] Subclause 5A705 (2), definition of *acceptable individual*, paragraph (d)

substitute

- (d) the applicant's grandparents;
(e) the applicant's brothers and sisters.

[1417] Subparagraph 5A707 (d) (ii)

omit

less than

insert

less than

[1418] Subclause 5A708 (2), definition of *acceptable individual*, paragraph (d)

substitute

- (d) the applicant's grandparents;
(e) the applicant's brothers and sisters.

Part 5 Amendment of Schedule 9**[1501] Part 1, item 14, column 3***substitute*

Passport that is in force and valid airline identity card

Schedule 2 **Amendment of *Migration
Amendment Regulations 1999
(No. 13)***
(regulation 4)

[2101] After subregulation 5 (8)


insert

- (9) Despite subregulation (5), the amendment made by item [2109] of Schedule 2 to these Regulations applies in relation to the criteria to be satisfied at the time of decision for an application for 1 of the following visas made before 1 November 1999 but not finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*) before 1 November 2002:
- (a) Family (Residence) (Class AO);
 - (b) Change in Circumstances (Residence) (Class AG).

Notes

1. These Regulations amend (in Schedule 1) 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 (as amended by 2000 No. 259), 260 (as amended by 1999 No. 321), 321 and 325; 2000 Nos. 52, 62, 108, 192, 259 (as amended by 2000 No. 284) (item [4108] of Schedule 4 was disallowed by the Senate on 1 November 2000), 284 and 335; 2001 Nos. 27, 47, 86, 142, 162, 206, 239, 246, 283, 284, 285 and 291; Act No. 128, 2001; Statutory Rules 2001 No. 344; 2002 Nos. 10, 86, 121 and 129 (disallowed by the Senate on 19 June 2002).

These Regulations also amend (in Schedule 2) Statutory Rules 1999 No. 259.

2. Notified in the *Commonwealth of Australia Gazette* on  2002. *12 September*