

Migration Amendment Regulations 2002 (No. 10) 2002 No. 348

EXPLANATORY STATEMENT

STATUTORY RULES 2002 No. 348

Issued by the Minister for Immigration and Multicultural and Indigenous Affairs

Migration Act 1958

Migration Amendment Regulations 2002 (No. 10)

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

In addition, Regulations may be made pursuant to the powers listed in Attachment A.

The purpose of the Regulations is to amend the requirements for making valid visa applications for certain visa classes, amend the criteria for the grant of certain visa subclasses, introduce new visa classes and subclasses for business skills applicants, prescribe international passenger aircraft as a kind of aircraft in relation to which pre-arrival information must be provided, and require visa holders granted visas on the basis of Internet applications to show a passport as evidence of identity on entering Australia.

The Regulations effect changes to the Migration Regulations 1994 (the Migrations Regulations) to:

- amend the business skills visa provisions to:
 - introduce a scheme whereby the majority of applicants initially apply for a provisional business skills visa, and after providing satisfactory evidence of a specified level of business activity in Australia, may apply for a permanent business skills visa;
 - establish a new Business Skills (Provisional) (Class UR) visa and new Business Skills (Residence) (Class DF) visa, and prescribe how a valid application for a Class UR and Class DF visa may be made;
 - establish a new Business Skills - Business Talent (Migrant) (Class EA) visa, and prescribe how a valid application for a Class EA visa may be made. This visa gives direct permanent residence for high calibre business applicants;
 - establish a new Business Skills - Established Business (Residence) (Class BH) visa based on the current Business Skills (Residence) (Class BH) comprising only visa Subclass 845 (Established Business in Australia) and visa Subclass 846 (State/Territory Sponsored Regional Established Business in Australia); and
 - prevent the off-shore lodgement of an application for a Subclass 457 (Business (Long Stay)) visa, on the basis of being an "Independent Executive", and roll this option into the new two-stage processing arrangements [items 2101 - 2105, 2109, 2110, 2112, 2113, 2116, 2117, 2201 - 2208, 2211, 2303, 2308, 2330, 2333, 2354, 2355, 2359 - 2368];
- amend the bridging visa provisions to:

- ensure that an applicant can only be granted a Subclass 050 (Bridging (General)) visa if, in circumstances where the Minister has been asked to consider, or is considering whether to exercise ministerial intervention powers, the decision relates to a substantive visa application made in Australia [items 2301, 2302];
- provide an exemption from the interview requirement for certain non-citizens being considered for the grant of a Subclass 050 (Bridging (General)) visa under regulation 2.25 (dealing with the grant of Bridging E (Class WE) visas without application) [item 2111];
- clarify that a Bridging E (Class WE) visa cannot be granted pursuant to regulation 2.25 where the visa application would otherwise have been barred by a provision in the Act or Migration Regulations [item 2111];
- require an applicant for a Close Ties visa to have first entered Australia before the applicant turned 18 as a member of a family unit and to have entered Australia accompanied by the family unit of which they were a member [items 2356 - 2358];
- rectify incorrect references to provisions in paragraphs 1214(1)(b) of Schedule 1 and 685.221(2)(b) of Schedule 2 [items 2217, 2352];
- clarify that where there is a combined application for a Skilled - Australian-sponsored Overseas Student (Residence) (Class DE), Skilled - Independent Overseas Student (Residence) (Class DD), or Graduate - Skilled (Temporary) (Class UQ) visa, at least one member of the family unit must meet all the Schedule 1 requirements [items 2209, 2210, 2216];
- amend the student visa criteria to:
 - allow for the waiver of condition 8534 ("no further stay") in relation to nursing professionals who hold student visas and who seek a Subclass 457 (Business (Long Stay)) visa in order to work as a registered nurse in Australia [items 1206 - 2108]; and
 - clarify provisions relating to work rights for applicants seeking to meet the secondary criteria for a Subclass 574 (Masters and Doctorate Sector) visa [item 2335];
- provide limited work rights for persons granted Retirement visas, and to enable holders of Retirement visas granted without work rights to apply at nil cost for a further Retirement visa with limited work rights having the same expiry date as the previous visa [items 2218, 2309 - 2312];
- prescribe international passenger aircraft as the kind of aircraft in relation to which airlines must provide information about passengers and crew prior to the arrival of the aircraft in Australia [items 1101, 1102];
- require an applicant for an Entertainment visa to apply to an address specified in a Gazette Notice, and to enable the Minister to specify by Gazette Notice arts festivals in respect of which sponsored performers do not pay a visa application charge [items 2212 - 2215, 2314 - 2316, 2318, 2319, 2320];
- amend provisions in visa subclasses requiring visa applicants to have complied with the conditions of previous visas to also require compliance with bridging visas, to move provisions dealing with compliance with visa conditions from time of application criteria to time of decision criteria, and to make these provisions consistent in both primary and secondary criteria [items 2313, 2317, 2325, 2326 - 2329, 2332, 2334, 2336, 2343, 2351, 2353, 2401 - 2403, 2501, 2502];

- enable an applicant who holds a passport from a gazetted country and who is offshore to apply for a tourist short stay visa over the Internet, and to enable a computer program to grant the visa if certain visa criteria are met [items 2219 - 2221, 2337 - 2342, 2344 - 2350];
- require a visa holder granted a visa pursuant to an Internet application to show a clearance officer his or her passport as evidence of his or her identity on entering Australia instead of showing evidence of the visa [items 2114, 2115, 2701];
- require an applicant seeking a Business Long Stay visa on the basis of sponsorship by an Australian business to specify a proposed employer, and to provide evidence that the employer is an approved business sponsor or has applied for approval as a business sponsor in the application. Further, to require the employer specified in the visa application to be the same employer at the time of decision [items 2222, 2331]; and
- allow for the waiver of certain health requirements in relation to an applicant for a Former Resident visa, and to the members of their family unit, where the applicant completed 3 months Australian defence service, or was discharged before completing 3 months defence service on medical grounds [items 2305, 2306, 2307].

Details of the Regulations are set out in Attachment B.

A Regulation Impact Statement has been prepared and is set out in Attachment C.

Regulation 4 and Schedule 2 to these Regulations commence on 1 March 2003. Amendments to Migration Regulations are made 3 times per year. These changes constitute the "March Round". Having fixed commencement dates for each of the 3 "Rounds" minimises impact on clients and staff.

Regulations 1 to 3 and Schedule 1 to these Regulations commence on 5 January 2003. This enables these amendments to commence on the same day as the *Border Security Legislation Amendment Act 2002* which provides the power to make these regulations.

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ATTACHMENT A

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

In addition, the following provisions may apply:

- subsections 29(2) and (3) of the Act provide that the regulations may provide a period during which the holder of a visa may travel to, enter, re-enter and remain in Australia;
- subsection 31(1) of the Act provides that the regulations may prescribe classes of visas;
- subsection 31(3) of the Act provides that the regulations may prescribe criteria for a visa or visas of a specified class;
- subsection 31(4) of the Act provides that the regulations may prescribe whether visas of a class are visas to travel to and enter Australia, or to remain in Australia, or both;
- subsection 31(5) of the Act provides that the regulations may specify that a visa is a visa of a particular class;
- subsection 41(1) of the Act provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions;
- subsection 41(2) of the Act provides that, without limiting subsection 41(1), the regulations may provide that a visa, or visas of a specified class, are subject to a condition that the holder of the visa will not, after entering Australia, be entitled to be granted a substantive visa - other than a protection visa or a temporary visa of specified kind - while he or she remains in Australia;
- subsection 41(2A) of the Act provides that the Minister may, in prescribed circumstances, waive a visa condition;
- subsection 41(3) of the Act provides that, in addition to any conditions specified under subsection 41(1), the regulations may, for the purposes of this subsection, permit conditions which the Minister may specify that a visa is subject to;
- subsection 45B(1) of the Act provides that the amount of visa application charge is the amount, not exceeding the visa application charge limit, prescribed in relation to the application;
- subsection 45B(2) of the Act provides that the amount of visa application charge prescribed in relation to an application may be nil;
- subsection 45C(1) of the Act provides that the regulations may provide that the visa application charge may be payable in instalments, specify how those instalments are to be calculated, and specify when instalments are payable;
- subsection 46(2) of the Act provides that an application for a visa is valid if it is an application for a visa of class prescribed for the purposes of this subsection, and under the regulations, the application is taken to have been validly made;
- subsection 46(3) of the Act provides that the regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application;

- subsection 46(4) of the Act provides that, without limiting subsection 46(3), the regulations may also prescribe the circumstances that must exist for an application for a visa of a specified class to be a valid application, how and where an application for a visa of a specified class must be made, and where an applicant must be when an application for a visa of a specified class is made;
- subsection 71(1) of the Act provides that evidence of a visa must be given in a way prescribed for giving the evidence;
- subsection 71(2) of the Act provides that the regulations may provide that the way in which evidence of a visa or a visa of a class is to be given is to depend on the circumstances in which it is given;
- subsection 134(10) of the Act provides that *business visa* can mean a visa included in a class of visas, being a class that is prescribed and has the words "Business Skills" in its title;
- paragraph 166(1)(b) of the Act provides that a person, whether a citizen or a non-citizen, who enters Australia must without unreasonable delay give a clearance officer any information required to be given by this Act or the regulations;
- subsection 166(2) of the Act provides that a person is to comply with paragraph 166(1)(b) in a prescribed way; and
- proposed new subsection 245I(1) of the Act contained in item 9 of Schedule 6 to the *Border Security Legislation Amendment Act 2002* provides that the regulations may specify a kind of aircraft or ship to which proposed new Division 12B of the Act applies. This provision commences on 5 January 2003.

ATTACHMENT B

Regulation 1 - Name of Regulations

This regulation provides that these Regulations are the *Migration Amendment Regulations 2002 (No. 10)*.

Regulation 2 - Commencement

This regulation provides that regulations 1 to 3 and Schedule 1 to these Regulations commence on 5 January 2003, and regulation 4 and Schedule 2 to these Regulations commence on 1 March 2003.

Regulation 3 - Amendment of Migration Regulations 1994

This regulation provides that Schedules 1 and 2 amend the Migration Regulations 1994 (the Migration Regulations).

Regulation 4 - Transitional

Subregulation 4(1) provides that the amendments made by items [2309] to [2312], [2352] and [2360] apply in relation to a an application for a visa:

- made, but not finally determined (within the meaning of subsection 5(9) of the *Migration Act 1958* (the Act)), before 1 March 2003; or
- made on or after 1 March 2003.

Subregulation 4(2) provides that the amendments made by items [2101] to [2105], [2109], [2110], [2112], [2113], [2116], [2117], [2301] to [2308], [2313] to [2351], [2353] to [2359], [2361] to [2368], [2401] to [2403], [2501], [2502] and [2601] to [2603] apply in relation to an application for a visa made on or after 1 March 2003.

Subregulation 4(3) provides that the Migration Regulations, as in force immediately before 1 March 2003, continue to apply in relation to an application for a visa:

- made, but not finally determined (within the meaning of subsection 5(9) of the Act), before 1 March 2003; and
- that relied on satisfying the criteria in Part 127, 128, 129, 130, 131, 840, 841, 842, 843 or 844 of Schedule 2 to the Migration Regulations.

These Parts are repealed by these Regulations. Subregulation 4(3) ensures that the Migration Regulations as in force immediately before 1 March 2003 will continue to apply to a person who made an application for a visa before 1 March 2003 and who was seeking to satisfy the criteria set out in these Parts.

Schedule 1 - Amendments commencing on 5 January 2003

Item [1101] - After regulation 3.13

This item inserts new regulation 3.13A into Part 3 of the Migration Regulations.

New subregulation 3.13A(1) prescribes 'international passenger aircraft' as a kind of aircraft that is required by Division 12B of the Act to provide certain information on its passengers before

arrival in Australia. The specific information that is required to be reported is set out in an instrument as required by section 245J of the Act.

New subregulation 3.13A(2) defines an 'international passenger aircraft' to be an aircraft that is being used to provide a 'regular international passenger air service' or an 'international passenger charter air service'.

The definition of 'regular international passenger air service' ensures that the requirements to report on passengers under Division 12B of the Act apply to flights due to arrive in Australia that are conducted by international passenger airlines such as QANTAS.

The definition of international passenger charter air service ensures that the requirements to report on passengers under Division 12B of the Act apply to any charter flights also conducted by those international passenger airlines.

The Note inserted by this item summarises what is required by Division 12B so that a reader can see the purpose of prescribing 'international passenger aircraft' in the Regulations.

Item [1102] - Regulation 3.14, heading

This item substitutes the heading in regulation 3.14 to clarify that regulation 3.14 requires information on passengers upon arrival in Australia as distinct from new regulation 3.13A which requires information on passengers before arrival in Australia.

Schedule 2 - Amendments commencing on 1 March 2003

Part 1 - Amendments of Parts 1,2, 3 and 5

Item [2101] - Subregulation 1.11A(1)

This item makes consequential amendments to subregulation 1.11A to remove references to Parts 127, 128, 129, 130, 131, 840, 841, 842, 843 and 844 of Schedule 2 to the Migration Regulations, which are repealed by these Regulations. In their place, the item inserts references to Parts 132, 160, 161, 162, 163, 164, 165, 845, 846, 890, 891, 892 and 893 of Schedule 2 to the Migration Regulations. This updates the list of parts to which regulation 1.11A applies.

Item [2102] - Subregulation 1.20(2)

Item [2103] - Paragraph 1.20(2)(a)

Item [2104] - After subregulation 1.20(3)

These items make amendments that are consequential to amendments made by these Regulations which implement the new two-stage business skills migration scheme.

The amendment to subregulation 1.20(2), paragraph 1.20(2)(a) and the insertion of new subregulation 1.20(4) all clarify that the sponsorship obligations set out in regulation 1.20 do not apply to the business skills visas listed in new subregulation 1.20(4). This ensures that the State/Territory sponsorship of business skills visa holders does not invoke the sponsorship obligations under regulation 1.20.

Item [2105] - Subparagraph 1.41(3)(a)(v)

This item makes amendments that are consequential to the new two-stage business skills migration scheme implemented by these Regulations. It adds the new permanent business skills

visa classes to the list of classes to be disregarded when calculating statistics regarding the risk associated with granting student visas to particular applicants.

Item [2106] - After subregulation 2.05(5)

Condition 8534 prevents a visa holder from being granted a subsequent substantive visa, other than a protection visa, a student visa (the application for which must be made on form 157P or 157P (Internet)) or a Subclass 497 (Graduate-Skilled) visa, while the holder remains in Australia. Condition 8534 may only be waived in accordance with subregulations 2.05(4), 2.05(5) or 2.05(6)

Due to the shortage of nursing professionals in Australia, this item inserts new subregulation 2.05(6) in the Migration Regulations to enable condition 8534 to be waived for an applicant who is a registered nurse, or who satisfies the requirements for registration as a registered nurse, and who satisfies certain English language requirements. The English language requirements are that the person attains an Overall Band Score of 7.0 in an International English Language Testing System test or a pass in an Occupational English Test.

Item [2107] - Regulation 2.07AG, heading

This item substitutes the heading for regulation 2.07AG of the Migration Regulations, being "Applications for certain substantive visas by persons for whom condition 8534 has been waived under subregulation 2.05(5)".

This is a technical amendment, consequential to the insertion of new regulation 2.07AH in the Migration Regulations. This substitution ensures that the heading of regulation 2.07AG is consistent with the heading of regulation 2.07AH.

Item [2108] - After regulation 2.07AG

This item inserts new regulation 2.07AH in the Migration Regulations.

The amendments made to this item provide that nursing professionals who have had condition 8534 (a "no further stay" condition) waived under new subregulation 2.05(6) are only eligible to make a valid application for a Subclass 457 (Business (Long Stay)) visa if this is their first application for a substantive visa, following the waiver, while in Australia. The purpose of this change is to facilitate nursing professionals who wish to remain in Australia and to work as a registered nurse on a Subclass 457 (Business (Long Stay)) visa, to do so.

Item [2109] - Subparagraph 2.08B(1)(a)(vii)

Item [2110] - After subparagraph 2.08B(1)(a)(vii)

These items make amendments that are consequential to the new two-stage business skills migration scheme implemented by these Regulations. It adds the new Business Skills (Provisional) (Class UR) visa to the list of visa classes which allow a dependent child to be added to a temporary visa application, after the original application is made but before it is decided.

Item [2111] - Regulation 2.25

This item substitutes regulation 2.25 of the Migration Regulations, being about the grant of Bridging E (Class WE) visas without making an application.

The amendments made by this item make it explicit that the non-citizen must be unwilling or unable to make a valid application for a Bridging E (Class WE) visa, rather than just any visa prescribed in the Migration Regulations.

The amendments also make it explicit that where a non-citizen is unable to make a valid application for a Bridging E (Class WE) visa because of a statutory bar or restriction in a provision of the Act or Migration Regulations (apart from item 1305 of Schedule 1), the non-citizen cannot be granted a Bridging E (Class WE) visa under regulation 2.25.

The intention is to make it clear that a non-citizen who is subject to a statutory bar or restriction contained in, for example, sections 91E, 91K, 91P, 161, 164D and 501E of the Act cannot be granted a Bridging E (Class WE) visa under regulation 2.25.

It was never intended that regulation 2.25 should be used where a non-citizen was barred from making a valid application by provisions in the Act or Regulations. The practical effect of these amendments is to give effect to the policy intention that the words "unable to make a valid application" in regulation 2.25 only covers a non-citizen who is, for example:

- a minor;
- illiterate;
- physically, mentally or otherwise disabled so as to be incapable of completing an application;
- from a non-English speaking background and unable to complete an application for reason, for instance, of an interpreter not being available; or
- in a remote location without access to the means to make an application.

In addition, the amendments enable a non-citizen to whom regulation 2.25 applies to be granted a Subclass 050 (Bridging (General)) visa without necessarily being interviewed by an officer who is authorised by the Secretary for the purposes of subclause 050.222(1) of Schedule 2.

The interview requirement ensures that an unlawful non-citizen who is being considered for the grant of a Subclass 050 (Bridging (General)) visa has an opportunity to put forward reasons as to why they should be granted a visa and not be detained.

Regulation 2.25 is only used where it is not intended that the non-citizen be held in immigration detention. In this circumstance an interview is usually unnecessary. This amendment will ensure that a non-citizen may be granted a Subclass 050 (Bridging (General)) visa under regulation 2.25 in circumstances where conducting an interview is unnecessary, impossible, or impracticable.

Item [2112] - Regulation 2.29

This item makes amendments that are consequential to the new two-stage business skills migration scheme implemented by these Regulations. It omits regulation 2.29 which is an interpretation provision relating solely to Parts 127, 128, 129 and 130 of Schedule 2 which are repealed by other amendments in these Regulations.

Item [2113] - Subregulation 2.50(2)

This item makes amendments that are consequential to the new two-stage business skills migration scheme implemented by these Regulations. It adds the three new business skills visa classes (inserted by other amendments in these Regulations) to the definition of *business visa* for the purposes of subsection 134(10) and section 137 of the Act.

Item [2114] - After paragraph 3.03(2)(f)

Regulation 3.03 prescribes for the purpose of section 166 of the Act the information that is to be provided by a person entering Australia.

Paragraph 3.03(2)(g) requires a non-citizen to show a clearance officer his or her passport and evidence of a visa on entering Australia. However, a visa holder who is granted his or her visa on the basis of an Internet application is not issued with evidence of the visa, and cannot comply with paragraph 3.03(2)(g).

This item inserts new paragraph 3.03(2)(fa) requiring a non-citizen who holds a visa granted on the basis of an Internet application to show a clearance officer evidence of the person's identity as set out in Part 1 of Schedule 9 to the Regulations, and to give a clearance officer a completed passenger card.

New items 23 and 24 of Part 1 of Schedule 9 inserted by these Regulations require the holder of a visa granted on the basis of an Internet application to show his or her passport to a clearance officer when entering Australia.

Item [2115] - Paragraph 3.03(2)(g)

This item amends paragraph 3.03(2)(g) to insert a reference to new paragraph 3.03(2)(fa).

This amendment is consequential to the insertion of new paragraph 3.03(2)(fa) by these Regulations.

Item [2116] - Paragraph 5.17(h)

This item makes amendments that are consequential to the new two-stage business skills migration scheme implemented by these Regulations. It omits references to the Business Skills (Migrant) (Class AD) and Business Skills (Residence) (Class BH) visas and inserts a reference to the new Business Skills - Established Business (Residence) (Class BH) visa inserted by these Regulations. This ensures that an applicant for the new visa class must meet the English language proficiency requirement prescribed in paragraph 5.17(h) of the Migration Regulations.

Item [2117] - Paragraph 5.19A(2)(a)

This item is consequential to the new arrangements for investor visas implemented by these Regulations. It changes the term of a designated investment from 3 years to 4 years.

Part 2 - Amendments of Schedule 1

Item [2201] - Item 1104

This item repeals item 1104 of Schedule 1 to the Migration Regulations, containing Business Skills (Migrant) (Class AD), and inserts new visa class Business Skills - Business Talent (Migrant) (Class EA).

Class EA replaces Business Skills (Migrant) (Class AD), with amendments to reflect the new, more specific, use of this class to provide a direct path to migration for applicants with exceptional business skills.

The words "Business Skills" are in the title so that the visa class falls within the definition of *business visa* in subsection 134(10) of the Act. Subparagraph 134(10)(a)(i) of the Act specifies that a *business visa* is one that has the words "Business Skills" in its title.

Subitem 1104AA(1) lists the three forms to be completed for each applicant: 47BU, the general application form, 1213, the "Business Talent" profile form and 1224 which is the sponsorship form.

Paragraph 1104AA(2)(a) provides that the first instalment of the visa application charge for this class is \$3 385.

Paragraph 1104AA(2)(b) provides that a second instalment of the visa application charge is payable before grant of the visa for applicants who are at least 18 years old and who are assessed as not having functional English. If the applicant satisfies the primary criteria for the grant of a Subclass 132 (Business Talent) visa, the second instalment is \$4 980, and if the applicant satisfies the secondary criteria, the second instalment is \$2 485. There is no second instalment of the visa application charge for other applicants.

Paragraph 1104AA(3)(a) requires an application for the visa to be sent to one of the three processing centres, in Hong Kong, Taipei or Perth. The addresses of these offices will be specified by Gazette Notice. Applicants must lodge their applications at the correct office based on their residential address as provided using the general application form 47BU.

Paragraph 1104AA(3)(b) provides that an applicant may be in or outside Australia, but not in immigration clearance, when making an application.

Paragraph 1104AA(3)(c) provides that a member of the family unit of an applicant for a Business Skills - Business Talent (Migrant) (Class EA) visa may make a combined application at the same time and place as that applicant.

Paragraph 1104AA(3)(d) provides that an applicant seeking to satisfy the primary criteria for grant of a Subclass 132 (Business Talent) visa must be sponsored by a State or Territory, and that sponsorship must be evidenced by form 1224, signed by the Premier, Chief Minister or an authorised person of that State or Territory.

Subitem 1104AA(4) lists Subclass 132 (Business Talent) as the only subclass in this class.

Item [2202] - Item 1104A, heading

This item changes the title of item 1104A of Schedule 1 to the Migration Regulations from "Business Skills (Residence) (Class BH)" to "Business Skills - Established Business (Residence) (Class BH)".

This amendment reflects the narrower use of Class BH to provide a permanent migration path for applicants who do not come under the new two-stage business skills migration scheme, yet who have established a business in Australia.

Item [2203] - Subitem 1104A(1)

This item substitutes references to forms that are no longer required because they relate to subclasses which have been repealed by these Regulations. Two new forms are to be completed by applicants for Class BH: 47BU, the general application form, and 1138, the "Established Business" profile form.

Item [2204] - Sub-subparagraph 1104A(2)(b)(i)(C)

Item [2205] - Sub-subparagraph 1104A(2)(b)(ii)(C)

Item [2206] - Paragraph 1104A(3)(c)

These items make amendments that are consequential to the new two-stage business skills migration scheme implemented by these Regulations. They replace references to "Business Skills (Residence) (Class BH)" with references to "Business Skills - Established Business (Residence) (Class BH)", in relation to first and second instalments of the visa application charge and combined applications.

Item [2207] - Subitem 1104A(4)

This item substitutes the references to subclasses 840 to 846 (most of which are repealed by these Regulations) with references to subclasses 845 and 846 (which are the only two of the above listed subclasses that are being retained). Therefore, subclasses 845 and 846 are the only visas remaining in Business Skills - Established Business (Residence) (Class BH).

Item [2208] - After item 1104A

This item inserts new item 1104B in Schedule 1 to the Migration Regulations, containing new visa class Business Skills (Residence) (Class DF). This is the onshore permanent class of visa in the new two-stage business skills migration scheme implemented by these Regulations.

Subitem 1104B(1) provides for the forms that applicants seeking to meet the primary criteria for the grant of a Subclass 890 (Business Owner), Subclass 891 (Investor), Subclass 892 (State/Territory Sponsored Business Owner) or Subclass 893 (State/Territory Sponsored Investor) visa must complete. The relevant forms are the general application form 47BU, the profile form 1217 and the sponsorship form 949.

Paragraph 1104B(2)(a) provides that the first instalment of the visa application charge for Class DF is \$1 000.

Paragraph 1104B(2)(b) provides that a second instalment visa application charge of \$2 485 is payable before grant of the visa. This applies where applicants are at least 18 years old, are assessed as not having functional English, satisfy the secondary criteria for a Class DF visa and do not hold a Business Skills (Provisional) (Class UR) visa. There is no second instalment of the visa application charge in any other case.

Paragraphs 1104B(3)(a) to (c) deal with the requirements for making an application. Applications must be made in Australia and the applicant seeking to satisfy the primary criteria must also be in Australia. However, applicants seeking to satisfy the secondary criteria may be in or outside Australia. In all cases, neither the making of the application nor the applicant may be in immigration clearance.

Paragraph 1104B(3)(d) provides that if a person seeks to satisfy the primary criteria for the grant of a Subclass 890 (Business Owner) visa, he or she must hold a visa of a subclass included in Business Skills (Provisional) (Class UR). The visa must have been granted on the basis that the applicant, or the spouse or former spouse of the applicant, satisfied the primary criteria for the grant of the visa.

Paragraph 1104B(3)(e) provides that if a person seeks to satisfy the primary criteria for the grant of a Subclass 891 (Investor) visa, he or she must hold a Subclass 162 (Investor (Provisional)) visa granted on the basis that the applicant satisfied the primary criteria for the grant of the visa. Spouses, and other secondary applicants, are not able to become the main applicant at the permanent stage for the investor visas.

Paragraph 1104B(3)(f) provides that if a person seeks to satisfy the primary criteria for the grant of a Subclass 892 (State/Territory Sponsored Business Owner) visa, he or she must hold either (i) a visa of a subclass included in Business Skills (Provisional) (Class UR); or (ii) a Subclass 457 (Business (Long Stay)) visa granted on the basis that the applicant satisfied the primary criteria for the grant of the visa as an independent executive.

In relation to both types of a visa an applicant may hold, the visa must have been granted on the basis that the applicant, his or her spouse, or his or her former spouse, satisfied the primary criteria for the grant of the visa (or for Subclass 457, they must have satisfied subclause 457.223(7) or (7A)). This is to allow spouses who are involved in the business activities, to become the main applicant at the permanent visa stage.

Examples of how this provision will work can be demonstrated by the following:

- "A" and "B" are in a spousal relationship and they jointly manage businesses and investments in Hong Kong. They are granted a Subclass 160 (Business Owner (Provisional)) visa in which "A" was assessed against the primary criteria. When they lodge an application for a Business Skills (Residence) (Class DF) visa any combination of the following situations have occurred:
 - "B" has taken on primary responsibility for the business and "A" has not been resident in Australia for the required period and will no longer meet the primary criteria;
 - "A" and "B" have separated and both are making separate applications for a Class DF visa seeking to satisfy the primary criteria, in relation to two separate business activities;
 - "A" and "B" have separated and "A" has a new spouse "X" who was subsequently granted a Subclass 160 visa as "A's" spouse, and "X" has taken on primary responsibility for the business.

Paragraph 1104B(3)(g) provides that if a person seeks to satisfy the primary criteria for the grant of a Subclass 893 (State/Territory Sponsored Investor) visa, he or she must hold a Subclass 165 (State/Territory Sponsored Investor (Provisional)) visa. In addition, the visa must have been granted on the basis that the applicant satisfied the primary criteria for the grant of the visa. Spouses, and other secondary applicants, are not able to become the main applicant at the permanent stage for the investor visas.

Paragraph 1104B(3)(h) provides that a member of the family unit of a person seeking to satisfy the primary criteria may make a combined application at the same time and place as that person.

Paragraph 1104B(3)(i) provides that an applicant seeking to satisfy the primary criteria for the grant of a Subclass 892 (State/Territory Sponsored Business Owner) or Subclass 893 (State/Territory Sponsored Investor) visa, must be sponsored by an appropriate regional authority and the sponsorship must be evidenced by form 949, signed by an authorised officer.

Subitem 1104B(4) provides that the following subclasses are in Business Skills (Residence) (Class DF):

- 890 (Business Owner);
- 891 (Investor);
- 892 (State/Territory Sponsored Business Owner); and
- 893 (State/Territory Sponsored Investor).

Item [2209] - After paragraph 1128BA(3)(q)

This item inserts new paragraph 1128BA(3)(r).

New paragraph (r) clarifies the original policy intention that where a family unit makes a combined application for a Skilled - Australian-sponsored Overseas Student (Residence) (Class DE) visa, at least one applicant must meet all requirements set out in paragraphs (3)(a) to (pa).

These paragraphs contain requirements general to all applicants, and particular requirements relating to skills, age, and educational qualifications. Provided at least one family unit member meets all these requirements, the other applicants need meet only the general requirements (ie paragraphs (a) to (h) and (k) to (pa)) in order for their applications to be valid.

Item [2210] - After paragraph 1128CA(3)(n)

This item inserts new paragraph 1128CA(3)(o). New paragraph (o) clarifies the original policy intention that where a family unit makes a combined application for a Skilled - Independent Overseas Student (Residence) (Class DE) visa, at least one applicant must meet all requirements set out in paragraphs (3)(a) to (ma). These paragraphs contain requirements general to all applicants, and particular requirements relating to skills, age, and educational qualifications. Provided at least one family unit member meets all these requirements, the other applicants need meet only the general requirements (ie paragraphs (a) to (h) and (k) to (pa)) in order for their applications to be valid.

Item [2211] - After item 1201

This item inserts new item 1202A in Schedule 1 to the Migration Regulations, containing new visa class Business Skills (Provisional) (Class UR). This is the temporary class of visa in the new two-stage business skills migration scheme implemented by these Regulations.

Subitem 1202A(1) provides that all applicants should complete the general application form 47BT, and one of the three profile forms, 1136, 1137 or 1139. In addition, applicants seeking to satisfy the primary criteria for the grant of a Subclass 163 (State/Territory Sponsored Business Owner (Provisional)) visa, 164 (State/Territory Sponsored Senior Executive (Provisional)) visa or 165 (State/Territory Sponsored Investor (Provisional)) visa, should also complete the sponsorship form 949.

Paragraph 1202A(2)(a) provides that the first instalment of the visa application charge for Class UR is \$2 385.

Paragraph 1202A(2)(b) provides that a second instalment of the visa application charge is payable before grant of the visa for applicants who are at least 18 years old and who are assessed as not having functional English. If the applicant satisfies the primary criteria, the second instalment is \$4 980, and if the applicant satisfies the secondary criteria, the second instalment is \$2 485. There is no second instalment of the visa application charge in any other case.

Paragraph 1202A(3)(a) requires an application for the visa to be sent to one of the three processing centres, in Hong Kong, Taipei or Perth. The addresses of these offices will be specified by Gazette Notice. Applicants must lodge their applications at the correct office based on their residential address as provided using the general application form 47BT.

Paragraph 1202A(3)(b) provides that an applicant may be in or outside Australia, but not in immigration clearance, when they make an application.

Paragraph 1202A(3)(c) provides that a member of the family unit of an applicant for a Business Skills (Provisional) (Class UR) visa may make a combined application at the same time and place as that applicant.

Paragraph 1202A(3)(d) specifies that an applicant seeking to satisfy the primary criteria for grant of a Subclass 163 (State/Territory Sponsored Business Owner (Provisional)) visa, Subclass 164 (State/Territory Sponsored Senior Executive (Provisional)) visa or Subclass 165 (State/Territory Sponsored Investor (Provisional)) visa must be sponsored by an appropriate regional authority and the sponsorship must be evidenced by form 949, signed by an authorised officer.

Subitem 1202A(4) provides that the following subclasses are in Business Skills (Provisional) (Class UR):

- 160 (Business Owner (Provisional));
- 161 (Senior Executive (Provisional));
- 162 (Investor (Provisional));
- 163 (State/Territory Sponsored Business Owner (Provisional));
- 164 (State/Territory Sponsored Senior Executive (Provisional)); and
- 165 (State/Territory Sponsored Investor (Provisional)).

Item [2212] - Subparagraph 1205(2)(a)(i)

Subitem 1205(2) sets out the amount of the visa application charge in relation to an application for a Cultural/Social (Temporary) (Class TE) visa.

This item substitutes subparagraph 1205(2)(a)(i) providing that an applicant who applies outside Australia and who appears to the Minister on the basis of information contained in the application to:

- meet the requirements for the grant of a Subclass 411 (Exchange) visa; or
- meet the requirements of subparagraph 1205(2)(a)(iii)

pays a visa application charge of nil.

An applicant meets the requirements of subparagraph 1205(2)(a)(iii) if the application is made on the basis that the applicant is entered as an amateur participant in a sporting event, or is appointed or employed to assist at an amateur sporting event.

This amendment is consequential to the amendment made by Item 2213 of these Regulations which inserts a separate provision in relation to an applicant who is outside Australia at the time of application, in contrast to having applied for the visa outside Australia.

Item [2213] - After subparagraph 1205(2)(a)(i)

This item inserts subparagraph 1205(2)(ia) providing that an applicant who is outside Australia at the time of application, and who appears to the Minister, on the basis of information contained in the application, to meet the requirements of subparagraph 1205(2)(a)(ii), pays a visa application charge of nil.

An applicant meets the requirements of subparagraph 1205(2)(a)(ii) if the purpose of the visit is to perform as an entertainer, or to assist in performances, and other matters set out in the subparagraph are satisfied.

Item [2214] - Sub-subparagraph 1205(2)(a)(ii)(B)

This item substitutes sub-subparagraph 1205(2)(a)(ii)(B) with new sub-subparagraphs 1205(2)(a)(ii)(B) and (BA).

An applicant meets the requirements of new sub-subparagraph 1205(2)(a)(ii)(B) if the purpose of the applicant's visit is to perform as an entertainer, or to assist in performances, and the

applicant is sponsored to enter Australia for the purposes of performing at a festival approved by the Minister in a gazette notice.

The gazette notice mechanism in this provision replaces the current naming of 5 festivals in sub-subparagraph 1205(2)(a)(ii)(B).

New sub-subparagraph 1205(2)(a)(ii)(BA) is a technical amendment retaining an existing provision in sub-sub-subparagraph 1205(2)(a)(ii)(B)(VI) under which the Secretary may approve a festival for the purposes of the sub-subparagraph.

Item [2215] - Paragraphs 1205(3)(a),(b) and (c)

Subitem 1205(3) sets out where an application for a Cultural/Social (Temporary) (Class TE) visa must be made, where the applicant must be when making an application, and permits a person claiming to be the member of the family unit of an applicant to make a combined application with that applicant.

This item substitutes paragraphs 1205(3)(a), (b) and (c) with new paragraphs 1205(3)(a), (b), (c) and (d).

Paragraph 1205(3)(c) provides that an application by a person seeking to meet the criteria for the grant of a Subclass 420 (Entertainment) visa must be accompanied by a completed Form 148, and must be made by causing the application to be delivered to an address specified in a gazette notice.

The addresses to be specified in the gazette notice may be addresses in Australia.

The amendments to paragraphs 1205(3)(a) and (b) are consequential to paragraph 1205(3)(c).

New paragraph 1205(3)(d) retains the requirement previously set out in paragraph 1205(3)(c).

Item [2216] - After paragraph 1212A(3)(l)

This item inserts new paragraph 1212A(3)(m). New paragraph (m) clarifies the original policy intention that where a family unit makes a combined application for a Graduate - Skilled (Temporary) (Class UQ) visa, at least one applicant must meet all the requirements set out in paragraphs (3)(a) to (ka). These paragraphs contain requirements general to all applicants, and requirements relating to skills, age, and educational qualifications. Provided at least one family unit member meets all these requirements, the other applicants need meet only the general requirements (ie paragraphs (a) to (f) and (j) to (ka) in order for their applications to be valid).

Item [2217] - Paragraph 1214(1)(b)

This item makes a technical amendment by omitting reference to a repealed paragraph, paragraph (3)(aa) in paragraph 1214(1)(b), and substituting it with the correct reference, paragraph (3)(b).

Item 1214 of Schedule 1 contains the criteria for making a valid visa application for a Long Stay (Visitor) (Class TN) visa.

Item [2218] - Subitem 1217(2)

This item substitutes new subitem 1217(2) to provide a nil visa application charge for those applicants who hold a Subclass 410 (Retirement) visa granted before 1 March 2003 who apply for a new Subclass (Retirement) visa that would be in force for a period of time which is equivalent to the period remaining on their current retirement visa.

The purpose of this amendment is to allow applicants whose Subclass 410 (Retirement) visas were granted before 1 March 2003 (before the attachment of the mandatory no work condition was reviewed) to obtain a replacement visa with limited work rights free of charge. The new visa will only be valid until the expiry date of the current subclass 410 (Retirement) visa granted before 1 March 2003. Holders of a subclass 410 (Retirement) visa granted before 1 March 2003 who seek a new Subclass 410 (Retirement) visa valid for a further 2 years will need to pay the normal visa application charge.

Item [2219] - Subparagraph 1218(1)(a)(i)

This item substitutes subparagraph 1218(1)(a)(i) with new subparagraphs 1218(1)(a)(i) and (ia).

Subparagraph 1218(1)(a)(ia) requires an applicant making an Internet application to apply on form 48 (Internet).

A consequential amendment is made to subparagraph 1218(1)(a)(i) to the effect that an applicant falling within the subparagraph who is not making an Internet application, is to continue to apply on form 48G.

Item [2220] - Paragraph 1218(3)(a)

This item amends paragraph 1218(3)(a) by clarifying that the paragraph does not apply to Internet applications.

Item [2221] - After paragraph 1218(3)(ba)

This item inserts new paragraph 1218(3)(bb) providing that an Internet application may be made only if the applicant is outside Australia, and is the holder of a passport of a kind specified in a Gazette Notice made for this paragraph.

The gazette notice mechanism referred to in subparagraph 1218(3)(bb)(ii) enables the Minister to specify passports the holders of which may make an Internet application for a Short Stay (Visitor) (Class TR) visa.

Item [2222] - After paragraph 1223A(3)(c)

This item inserts new paragraph 1223A(3)(d) setting out requirements for making a valid application for a Temporary Business Entry (Class UC) visa.

Paragraph 1223A(3)(d) requires an applicant who is seeking to meet the primary criteria for the grant of a Subclass 457 Business (Long Stay) visa on the basis of satisfying clause 457.223(4), to specify the employer by whom he or she is proposed to be employed, and to provide evidence that the proposed employer is an approved pre-qualified business sponsor (PQBS), an approved standard business sponsor (SBS), or a person who has applied for approval as a PQBS or SBS.

Clause 457.223(4) sets out the criteria for an applicant seeking a Subclass 457 (Business) visa on the basis of sponsorship by an Australian business. Paragraph 457.223(4)(b) requires the proposed employer to be a PQBS or a SBS.

The purpose of the amendment is to prevent applicants who are seeking a Subclass 457 visa on the basis of sponsorship by an Australian business from making a valid application for a Class UC visa without at least specifying a proposed employer who is an approved business sponsor or who has applied for approval as a business sponsor at the time of making the visa application.

The intention of the amendment is to prevent applications for Class UC visas by applicants who do not have an approved SBS, an approved PQBS or a person who has applied for approval as a PQBS or SBS.

Part 3 - Amendments of Schedule 2

Item [2301] - Subclause 050.212(6)

This item substitutes subclause 050.212(6) of the Migration Regulations to limit the situations in which an applicant may be granted a Subclass 050 (Bridging (General)) visa on ministerial intervention grounds to where the original substantive visa application was made in Australia.

The amendments made by this item strengthen the general policy intention that a Subclass 050 bridging visa should be available for grant where the applicant is being assessed by an officer against the Minister's intervention guidelines or where the Minister is personally considering whether to intervene, only in respect of a substantive visa application onshore.

Item [2302] - Subparagraph 050.212(6A)(b)(i)

This item amends subparagraph 050.212(6A)(b)(i) of the Migration Regulations. The amendment strengthens the general policy intention that a Subclass 050 (Bridging (General)) visa should be available for grant with permission to work where the Minister is personally considering whether to intervene and substitute a more favourable decision only in respect of a substantive visa application made onshore.

The amendments made by this item mean that applicants who have been granted a Subclass 050 bridging visa before 1 March 2003, in relation to a substantive visa application made outside Australia, are prevented from being granted a further Subclass 050 visa with permission to work under this provision after 1 March 2003.

Item [2303] - Parts 127 to 131

These Regulations make amendments to implement the new two-stage business skills migration scheme.

The new scheme requires a person to hold a provisional business skills visa for a period of time before he or she can be eligible for a permanent business skills visa. For the majority of applicants, there is a new Business Skills (Provisional) (Class UR) visa, comprising six visa subclasses, and a new Business Skills (Residence) (Class DF) visa, comprising four visa subclasses.

The provisional visa class (Class UR) provides visas for business owners, senior executives and investors, with corresponding visas, offering significantly lower criteria in recognition of sponsorship by State or Territory Governments. The Subclass 457 (Business (Long Stay)) visa ceases to be available to Independent Executives applying offshore from 1 March 2003. Applicants who would be eligible for Subclass 457 as Independent Executives visa will generally be eligible under the State/Territory Sponsored Business Owner subclass.

At the second stage, the permanent visa class (Class DF) provides for business owners and investors, including State or Territory sponsored visas in each case. Both business owner and senior executive provisional visa holders are required to engage in business to obtain permanent residence at the second stage. Senior Executive provisional visa holders will also be eligible to apply for permanent residence under the Employer Nomination Scheme and Regional Sponsored Migrations Scheme visa categories should they receive an offer of highly skilled employment while in Australia.

There is also a path for giving direct permanent residence to high calibre business applicants sponsored by a State or Territory in the Business Skills - Business Talent (Migrant) (Class EA), Subclass 132 visa.

The new scheme provides significant benefits to Australia by:

- ensuring a better dispersal of the business migration intake by increasing the proportion of business people settling in regional and low growth areas of Australia through State and Territory sponsorship;
- increasing the number and proportion of business migrants who successfully engage in business in Australia; and
- improving the integrity of the category, by requiring business migrants to establish a business in Australia before obtaining the benefits of permanent residence.

The new scheme provides for an enhanced role for State and Territory Governments in sponsoring the numbers and skill level of business migrants they are seeking to attract to their jurisdiction by providing for:

- state sponsorship at both the provisional and permanent residence stages, with significantly lower requirements when sponsored, which will attract more business migrants to states and regions active in attracting business migrants;
- increased state sponsorship, which will improve linkages with State/Territory government business related services and thus provide the opportunities for assistance that will lead to more business migrants successfully engaging in business in Australia.

Item [2303] substitutes Parts 127 to 131 of Schedule 2 with new Part 132. Parts 127 to 131 set out the criteria for the grant of subclasses 127 to 131. As these Subclasses do not form part of the new two-stage business skills migration scheme, they are repealed by this item.

Subclass 132 - Business Talent

New part 132 inserts new visa Subclass 132 (Business Talent) in Schedule 2 to the Migration Regulations. This part specifies the criteria to be satisfied for the grant of a Subclass 132 (Business Talent) visa (Subclass 132).

This subclass is created to provide a direct path to permanent migration for applicants with exceptional business skills who are sponsored by a State or Territory. Applicants who do not meet the criteria in this subclass must proceed through the two-stage process of holding a provisional visa and then a permanent visa.

Division 132.1 - Interpretation

New Division 132.1 makes reference to a number of terms defined in the Migration Regulations. It also provides that there are no interpretation provisions specific to this Part.

Note 1 provides that definitions of *AUD*, *fiscal year*, *ownership interest* and *qualifying business* can be found in regulation 1.03, and that a definition of *main business* can be found in regulation 1.11. Note 2 provides that the meaning of beneficial ownership of an asset or ownership interest, are dealt with in regulation 1.11A. Note 3 provides that, as mentioned above, there are no interpretation provisions specific to this Part.

Division 132.2 - Primary criteria

New Division 132.2 sets out the primary criteria to be satisfied in respect of a Subclass 132 visa. The primary criteria must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

Subdivision 132.21 - Criteria to be satisfied at time of application.

New Subdivision 132.21 sets out the primary criteria that must be satisfied at the time of application for a Subclass 132 visa.

New clause 132.211 requires the applicant to show that overall their business career has been successful.

In particular, new clause 132.212 requires the applicant to have had a particular level of involvement in business in at least 2 of the 4 fiscal years immediately before their application is made. The applicant, his or her spouse or the applicant and his or her spouse together, must have had assets with a net value of at least AUD400 000 in the qualifying business or businesses that they have an ownership interest in. If the relevant business was operated by a publicly listed company, the applicant, or the applicant and their spouse, must have had a shareholding of at least 10% of the issued capital.

New clause 132.213 requires that, for at least 2 of the 4 fiscal years immediately before their application is lodged, the applicant's main business or businesses must also have had an annual turnover of at least AUD3 000 000.

New clause 132.214 deals with the assets, both business and personal, of the applicant, his or her spouse or the applicant and his or her spouse together. It requires that the assets have a net value of at least AUD1 500 000 which has been lawfully acquired and is available to be transferred to Australia within 2 years after they have been granted a Subclass 132 visa.

New clause 132.215 requires that the applicant must be less than 55 years old at the time the application is made, unless they are proposing to establish or participate in a business that their sponsoring State or Territory has determined is of exceptional economic benefit to the State or Territory.

New clause 132.216 requires that neither the applicant nor their spouse, if any, have been involved in business activities that would generally not be acceptable in Australia.

New clause 132.217 provides that the applicant must have a realistic commitment to establish or participate in a qualifying business in Australia, to maintain a substantial ownership interest in it and to maintain direct and continuous involvement in its management. The applicant must be involved in the management of the business from day to day and in decisions that affect the overall performance of the business in a manner that benefits the Australian economy.

New clause 132.218 requires the applicant to have formally agreed to their obligations as a holder of a Subclass 132 visa, by signing a declaration.

New Subdivision 132.22 - Criteria to be satisfied at time of decision

New Subdivision 132.22 sets out the primary criteria to be satisfied at the time of decision for a Subclass 132 visa.

New clause 132.221 requires the applicant to continue to satisfy certain time of application criteria. This is to ensure that nothing material has changed in the applicant's circumstances.

New clause 132.222 requires the applicant to satisfy certain public interest criteria. These criteria relate to the health and character of the applicant, and their commitment to establishing themselves permanently in Australia.

New clause 132.223 requires that the applicant's sponsorship by a State or Territory, which is required under Schedule 1 paragraph 1104AA(3)(d), has not been withdrawn.

New clause 132.224 requires that if the applicant had previously been in Australia, the applicant satisfies certain special return criteria relating to the applicant's conduct whilst they were last in Australia.

New clauses 132.225 and 132.226 specify the public interest and special return criteria that members of the family unit of the applicant must satisfy. Subclause 132.225(2) in particular requires that each member of the applicant's family unit who is not applying for a Subclass 132 visa must satisfy several public interest criteria which relate to health and character. The effect of this subclause is that if any member of the applicant's family unit fails to meet these criteria, the whole application fails, even if that person is not listed as an applicant.

Division 132.3 - Secondary criteria

New Division 132.3 sets out the secondary criteria for a Subclass 132 visa. The secondary criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

Subdivision 132.31 - Criteria to be satisfied at time of application

New Subdivision 132.31 sets out the secondary criteria that must be satisfied at the time of application for a Subclass 132 visa.

In particular, new clause 132.311 requires the applicant to be a member of the family unit of a person who satisfies the primary criteria that must be met at the time of application for a Subclass 132 visa, and that they must have made a combined application with that person.

Subdivision 132.32 - Criteria to be satisfied at time of decision

New Subdivision 132.32 sets out the secondary criteria that must be satisfied at the time of application for a Subclass 132 visa.

New clause 132.321 requires the applicant to continue to be a member of the family unit of the person who, having satisfied the primary criteria, is the holder of a Subclass 132 visa.

New clauses 132.322 to 132.324 require the applicant to satisfy certain public interest criteria relating to, amongst other things, health and character and certain special return criteria.

Division 132.4 - Circumstances applicable to grant

New Division 132.4 sets out the circumstances applicable to the grant of a Subclass 132 visa.

New clause 132.411 provides that all applicants must be outside Australia when the visa is granted, unless they satisfy the secondary criteria for the grant of the visa and they held a student visa at the time of application.

Division 132.5 - When visa is in effect

New Division 132.5 provides for when a Subclass 132 visa is in effect. Under new clause 132.511, a Subclass 132 visa is a temporary visa permitting the holder to travel to, enter and remain in Australia from grant until a date specified by the Minister.

Division 132.6 - Conditions

New Division 132.6 provides for the conditions that are to attach to the grant of a Subclass 132 visa.

New clause 132.611 requires that, if an applicant is outside Australia when the visa is granted, his or her first entry into Australia as a Subclass 132 holder must be made before a date specified by the Minister.

New clause 132.612 provides that, if an applicant is outside Australia when the visa is granted, either or both of conditions 8502 and 8515 may be imposed. Condition 8502 provides that the holder of the visa must not enter Australia before the entry to Australia of a person specified in the visa. Condition 8515 provides that the holder of the visa must not marry before entering Australia.

Division 132.7 - Way of giving evidence

New Division 132.7 provides for the way in which evidence of a Subclass 132 visa is to be given. New clause 132.711 requires that a Subclass 132 visa be evidenced by way of a visa label affixed to a valid passport.

Item [2304] - Division 151.1

This item inserts two new terms into Division 151.1 defining "defence service applicant" and "long residence applicant" for the purposes of Part 151.

A "defence service applicant" is an applicant who meets the criteria of subclause 151.211(3), and a "long residence applicant" is an applicant who meets the criteria of subclause 151.211(2).

The definitions are inserted into Part 151 as a short hand way of referring to applicants who meet the criteria of subclause 151.211(2) or (3).

Item [2305] - Clause 151.221

This item substitutes clause 151.221 with new subclauses 151.221(1) and (2).

New subclause 151.221(1) requires a long residence applicant to meet public interest criteria (PIC) 4001, 4002, 4003, 4004, **4005**, 4009 and 4010.

New subclause 151.221(2) requires a defence service applicant to meet PIC 4001, 4002, 4003, 4004, **4007**, 4009 and 4010.

PIC 4007 is similar to PIC 4005, except that PIC 4007 gives the Minister a discretion to waive certain health requirements common to PIC 4005 and 4007.

Long residence applicants are required to satisfy public interest criterion 4005 which does not provide for a waiver, while defence service applicants are required to satisfy PIC 4007 which provides for the waiver.

The amendment allows the Minister to exercise the health waiver in favour of defence service applicants and members of the family unit who may have medical conditions that would prevent them from satisfying PIC 4005.

Item [2306] - Clause 151.224

The "one fails all fails" health criteria requires members of the family unit of a primary applicant to meet specified health criteria. Should a member of the family unit fail to meet the health criteria, the primary applicant will fail the "one fails all fails" health criteria.

This item substitutes clause 151.224 with new provisions enabling a defence service applicant to satisfy the "one fails all fail" health criteria of Subclass 151 where members of his or her family unit meet public interest criteria (PIC) 4007.

Prior to this amendment members of the family unit of a primary applicant were required to meet PIC 4005.

PIC 4007 is similar to PIC 4005, except that PIC 4007 gives the Minister the power to waive certain health requirements contained in both PIC 4005 and 4007.

The requirements in relation to the "one fails all fails" health criteria are not changed in relation to long residence applicants. All family members of long residence applicants are required to meet PIC 4005 in order for the primary long residence applicant to satisfy the "one fails all fail" health criterion.

The amendment allows the Minister to exercise the health waiver in favour of defence service applicants and members of the family unit who may have medical conditions that would prevent them from satisfying PIC 4005.

Item [2307] - Clause 151.322

This item substitutes clause 151.322 with a new provision applying to applicants seeking to meet the secondary criteria for the grant of a Subclass 151 (Former Resident) visa.

Subclause 151.322(1) requires an applicant who is a member of the family unit of, and who has made a combined application with a long term residence applicant, to meet public interest criteria (PIC) 4001, 4002, 4003, 4004, **4005**, 4009 and 4010.

Subclause 151.322(2) requires an applicant who is a member of the family unit of, and who has made a combined application with a defence service applicant, to meet public interest criterion 4001, 4002, 4003, 4004, **4007**, 4009 and 4010.

PIC 4007 is similar to PIC 4005, except that PIC 4007 gives the Minister a discretion to waive certain health requirements common to PIC 4005 and 4007.

The amendment allows the Minister to exercise the health waiver in favour of defence service applicants and members of the family unit who may have medical conditions that would prevent them from satisfying PIC 4005.

[2308] - After Part 159

This item creates six new temporary subclasses, 160 - 165. There are two subclasses for applicants who are business owners (160 and 163), two subclasses for applicants who are senior executives (161 and 164) and two subclasses for applicants who are investors (162 and 165). Subclasses 163, 164 and 165 require the applicant to be sponsored by the appropriate regional authority of a State or Territory, and have lower level criteria than their unsponsored equivalents.

Subclass 160 - Business Owner (Provisional)

New part 160 inserts new visa Subclass 160 (Business Owner (Provisional)) in Schedule 2 to the Migration Regulations. This part specifies the criteria to be satisfied for the grant of a Subclass 160 (Business Owner (Provisional)) visa (Subclass 160).

Division 160.1 - Interpretation

New Division 160.1 makes reference to a number of terms defined in the Migration Regulations. It also provides that there are no interpretation provisions specific to this Part.

Note 1 provides that definitions of *appropriate regional authority*, *AUD*, *fiscal year*, *ownership interest* and *qualifying business* can be found in regulation 1.03, and that a definition of *main business* can be found in regulation 1.11. Note 2 provides that the meaning of beneficial ownership of an asset or ownership interest, are dealt with in regulation 1.11A. Note 3, as mentioned above, provides that there are no interpretation provisions specific to this Part.

Division 160.2 - Primary criteria

New Division 160.2 sets out the primary criteria to be satisfied in respect of a Subclass 162 visa. The primary criteria must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

Subdivision 160.21 - Criteria to be satisfied at time of application

New Subdivision 160.21 sets out the primary criteria that must be satisfied at the time of application for a Subclass 160 visa.

New clause 160.211 requires the applicant to show that overall their business career has been successful.

In particular new clauses 160.212 and 160.213 require the applicant to have had a particular level of involvement in business for at least 2 of the 4 fiscal years immediately before their application is lodged. Clause 160.212 requires that in those years the applicant, his or her spouse or the applicant and his or her spouse together, must have had net assets worth at least AUD200 000 in the qualifying business or businesses that they have an ownership interest in. If the relevant business was operated by a publicly listed company, the applicant, his or her spouse or the applicant and his or her spouse together, must have had a shareholding of at least 10% of the issued capital.

New clause 160.213 requires that the applicants main business or businesses had an annual turnover of at least AUD500 000.

New subclause 160.214(1) deals with the net assets, both business and personal, of the applicant, his or her spouse or the applicant and his or her spouse together. It requires that they have at least AUD500 000 which has been lawfully acquired and is available to be transferred to Australia within 2 years after they have been granted a Subclass 160 visa.

New subclause 160.214(2) requires the applicant, his or her spouse or the applicant and his or her spouse together to have business and personal assets that the Minister is satisfied are of a sufficient net value to settle in Australia. These must be held in addition to the assets mentioned in new subclause 160.214(1).

New clause 160.215 requires that the applicant must be less than 45 years old at the time the application is made.

New clause 160.216 requires that the applicant has English language skills of at least the level required to meet the definition of vocational English in regulation 1.15B.

New clause 160.217 relates to applicants who have been engaged, for at least 2 of the 4 fiscal years preceding the application, in a business providing professional, technical or trade services. These applicants must not have been engaged in providing those services, as opposed to managing the business, for more than half of the time they spent conducting the business. This is to ensure that the applicant has significant experience in managing a business.

New clause 160.218 requires that neither the applicant nor his or her spouse, if any, have been involved in business activities that would generally not be acceptable in Australia.

New clause 160.219 requires the applicant to have notified the appropriate regional authority of the state or territory in which they intend to operate, of their business history and their intention to develop a business in that state or territory.

New clause 160.219A provides that the applicant must have a realistic commitment to establish or participate in a qualifying business in Australia, to maintain a substantial ownership interest in it and to maintain direct and continuous involvement in its management. The applicant must be involved in the management of the business from day to day and in decisions that affect the overall performance of the business in a manner that benefits the Australian economy.

New clause 160.219B requires the applicant to demonstrate that there is a need to be temporarily resident in Australia to conduct or establish their proposed business activity.

New clause 160.219C requires the applicant to have formally agreed to their obligations as a holder of a Subclass 160 visa, by signing a declaration.

Subdivision 160.22 - Criteria to be satisfied at time of decision

New Subdivision 160.22 sets out the primary criteria to be satisfied at the time of decision for a Subclass 160 visa.

New clause 160.221 requires the applicant to continue to satisfy certain time of application criteria. This is to ensure that nothing material has changed in the applicant's circumstances.

New clause 160.222 requires the applicant to satisfy certain public interest criteria. These criteria relate to the health and character of the applicant, and their commitment to establishing themselves permanently in Australia.

New clause 160.223 requires that if the applicant had previously been in Australia, the applicant satisfies certain special return criteria relating to the applicant's conduct whilst they were last in Australia.

New clauses 160.224 and 160.225 specify the public interest and special return criteria that members of the family unit of the applicant must satisfy. Subclause 160.224(2) in particular requires that each member of the applicant's family unit who is not applying for a Subclass 160 visa to satisfy several public interest criteria which relate to health and character. The effect of this subclause is that if any member of the applicant's family unit fails to meet these criteria, the whole application fails, even if that person is not listed as an applicant.

Division 160.3 - Secondary criteria

New Division 160.3 sets out the secondary criteria for a Subclass 160 visa. The secondary criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

Subdivision 160.31 - Criteria to be satisfied at time of application

New Subdivision 160.31 sets out the secondary criteria that must be satisfied at the time of application for a Subclass 160 visa.

In particular, new clause 160.311 requires the applicant to be a member of the family unit of a person who satisfies the primary criteria that must be met at the time of application for a Subclass 160 visa.

Subdivision 160.32 - Criteria to be satisfied at time of decision

New Subdivision 160.32 sets out the secondary criteria that must be satisfied at the time of decision for a Subclass 160 visa.

New clause 160.321 requires the applicant to continue to be a member of the family unit of the person who, having satisfied the primary criteria, is the holder of a Subclass 160 visa.

New clauses 160.322 to 160.324 require the applicant to satisfy certain public interest criteria relating to, amongst other things, health and character and certain special return criteria.

Division 160.4 - Circumstances applicable to grant

New Division 160.4 sets out the circumstances applicable to the grant of a Subclass 160 visa.

New clause 160.411 provides that all applicants must be outside Australia when the visa is granted, unless they satisfy the secondary criteria for the grant of the visa and they held a student visa at the time of application.

Division 160.5 - When visa is in effect

New Division 160.5 provides for when a Subclass 160 visa is in effect. Under new clause 160.511, a Subclass 160 visa is a temporary visa permitting the holder to travel to, enter and remain in Australia from grant until a date specified by the Minister.

Division 160.6 - Conditions

New Division 160.6 provides for the conditions that are to attach to the grant of a Subclass 160 visa.

New clause 160.611 requires that, if an applicant is outside Australia when the visa is granted, his or her first entry into Australia as a Subclass 160 holder must be made before a date specified by the Minister.

New clause 160.612 provides that, if an applicant is outside Australia when the visa is granted, either or both of conditions 8502 and 8515 may be imposed. Condition 8502 provides that the holder of the visa must not enter Australia before the entry to Australia of a person specified in the visa. Condition 8515 provides that the holder of the visa must not marry before entering Australia.

Division 160.7 - Way of giving evidence

New Division 160.7 provides for the way in which evidence of a Subclass 160 visa is to be given. New clause 160.711 requires that a Subclass 160 visa be evidenced by way of a visa label affixed to a valid passport.

Subclass 161 - Senior Executive (Provisional)

New part 161 inserts new visa Subclass 161 (Senior Executive (Provisional)) in Schedule 2 to the Migration Regulations. This part specifies the criteria to be satisfied for the grant of a Subclass 161 (Senior Executive (Provisional)) visa (Subclass 161).

Division 161.1 - Interpretation

New clause 161.111 provides that in this Part, the term *major business* means a non-government business which has had a turnover of at least AUD50 000 000 in at least 2 of the 4 fiscal years immediately before the application is made.

Note 1 provides that definitions of *appropriate regional authority*, *AUD*, *fiscal year*, *ownership interest* and *qualifying business* can be found in regulation 1.03. Note 2 provides that the meaning of beneficial ownership of an asset or ownership interest, are dealt with in regulation 1.11A.

Division 161.2 - Primary criteria

New Division 161.2 sets out the primary criteria to be satisfied in respect of a Subclass 161 visa. The primary criteria must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

Subdivision 161.21 - Criteria to be satisfied at time of application.

New Subdivision 161.21 sets out the primary criteria that must be satisfied at the time of application for a Subclass 161 visa.

New clause 161.211 requires the applicant to show that overall their business career has been successful.

In particular new clause 161.212 requires that, in at least 2 of the 4 years immediately before the application is made, the applicant has been employed in one of the 3 highest levels of management of a major business and that they have been responsible for significant strategic policy development.

New subclause 161.213(1) deals with the assets, both personal and business, of the applicant, his or her spouse or the applicant and his or her spouse together. It requires that they have assets, with a net value of at least AUD500 000, which have been lawfully acquired and are available to be transferred to Australia within 2 years after they have been granted a Subclass 161 visa.

New subclause 161.213(2) requires the applicant, his or her spouse or the applicant and his or her spouse together to have business and personal assets that the Minister is satisfied are of a sufficient net value to settle in Australia. These must be held in addition to the assets mentioned in new subclause 161.213(1).

New clause 161.214 requires that the applicant must be less than 45 years old at the time the application is made.

New clause 161.215 requires that the applicant has English language skills of at least the level required to meet the definition of vocational English in regulation 1.15B.

New clause 161.216 provides that neither the applicant nor his or her spouse, if any, has been involved in business activities that would generally not be acceptable in Australia.

New clause 161.217 requires the applicant to have notified the appropriate regional authority of the state or territory in which they intend to operate, of their business history and their intention to develop a business in that state or territory.

New clause 161.218 provides that the applicant must have a realistic commitment to establish or participate in a qualifying business in Australia, to maintain a substantial ownership interest in it and to maintain direct and continuous involvement in its management. The applicant must be involved in the management of the business from day to day and in decisions that affect the overall performance of the business in a manner that benefits the Australian economy.

New clause 161.219 requires the applicant to demonstrate a need to be temporarily resident in Australia to conduct or establish the proposed business activity.

New clause 161.219A requires the applicant to have formally agreed to their obligations as a holder of a Subclass 161 visa, by signing a declaration.

Subdivision 161.22 - Criteria to be satisfied at time of decision

New Subdivision 161.22 sets out the primary criteria to be satisfied at the time of decision for a Subclass 161 visa.

New clause 161.221 requires the applicant to continue to satisfy certain time of application criteria. This is to ensure that nothing material has changed in the applicant's circumstances.

New clause 161.222 requires the applicant to satisfy certain public interest criteria. These criteria relate to the health and character of the applicant, and their commitment to establishing themselves permanently in Australia.

New clause 161.223 requires that if the applicant had previously been in Australia, the applicant satisfies certain special return criteria relating to the applicant's conduct whilst they were last in Australia.

New clauses 161.224 and 161.225 specify the public interest and special return criteria that members of the family unit of the applicant must satisfy. Subclause 161.224(2) in particular requires that each member of the applicant's family unit who is not applying for a Subclass 161 visa to satisfy several public interest criteria which relate to health and character. The effect of this subclause is that if any member of the applicant's family unit fails to meet these criteria, the whole application fails, even if that person is not listed as an applicant.

Division 161.3 - Secondary criteria

New Division 161.3 sets out the secondary criteria for a Subclass 161 visa. The secondary criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

Subdivision 161.31 - Criteria to be satisfied at time of application

New Subdivision 161.31 sets out the secondary criteria that must be satisfied at the time of application for a Subclass 161 visa.

New clause 161.311 requires the applicant to be a member of the family unit of a person who satisfies the primary criteria that must be met at the time of application for a Subclass 161 visa.

Subdivision 161.32 - Criteria to be satisfied at time of decision

New clause 161.321 requires the applicant to continue to be a member of the family unit of the person who, having satisfied the primary criteria, is the holder of a Subclass 161 visa.

New clauses 161.322 to 161.324 require the applicant to satisfy certain public interest criteria relating to, amongst other things, health and character and certain special return criteria.

Division 161.4 - Circumstances applicable to grant

New Division 161.4 sets out the circumstances applicable to the grant of a Subclass 161 visa.

New clause 161.411 provides that all applicants must be outside Australia when the visa is granted, unless they satisfy the secondary criteria and they held a student visa at the time of application.

Division 161.5 - When visa is in effect

New Division 161.5 provides for when a visa is in effect. Under new clause 161.511 a Subclass 161 visa is a temporary visa, permitting the holder to travel to, enter and remain in Australia from grant until a date specified by the Minister.

Division 161.6 - Conditions

New Division 161.6 provides for the conditions that are to attach to the grant of a Subclass 161 visa.

New clause 161.611 requires that, if an applicant is outside Australia when the visa is granted, his or her first entry into Australia as a Subclass 161 holder must be made before a date specified by the Minister.

New clause 161.612 provides that, if an applicant is outside Australia when the visa is granted, either or both of conditions 8502 and 8515 may be imposed. Condition 8502 provides that the holder of the visa must not enter Australia before the entry to Australia of a person specified in the visa. Condition 8515 provides that the holder of the visa must not marry before entering Australia.

Division 161.7 - Way of giving evidence

New Division 161.7 provides for the way in which evidence of a Subclass 161 visa is to be given. New clause 161.711 requires that a Subclass 161 visa be evidenced by way of a visa label affixed to a valid passport.

Subclass 162 - Investor (Provisional)

New part 162 inserts new visa Subclass 162 (Investor (Provisional)) in Schedule 2 to the Migration Regulations. This part specifies the criteria to be satisfied for the grant of a Subclass 162 (Investor (Provisional)) visa (Subclass 162).

Division 162.1 - Interpretation

New clause 162.111 provides that in this Part the term *designated investment* means an investment in a security specified by the Minister under the conditions in regulation 5.19A.

New clause 162.111 also provides that in this Part the term *eligible investment* for a person means an ownership in an investment which is owned for the purpose of returning income or capital gain to the person and is not held for personal use.

Note 1 provides that the definitions of *appropriate regional authority*, *AUD*, *fiscal year*, *ownership interest*, and *qualifying business* can be found in regulation 1.03. Note 2 provides that the meaning of beneficial ownership of an asset, eligible investment or ownership interest can be found in regulation 1.11A.

Division 162.2 - Primary criteria

New Division 162.2 sets out the primary criteria to be satisfied in respect of a Subclass 162 visa. The primary criteria must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

Subdivision 162.21 - Criteria to be satisfied at time of application.

New Subdivision 162.21 sets out the primary criteria that must be satisfied at the time of application for a Subclass 162 visa.

New clause 162.211 requires that the applicant has overall had a successful investment or business background.

New clause 162.212 requires the applicant to have had 3 years experience in managing qualifying businesses or eligible investments. More specifically, for at least 1 of the 5 fiscal years prior to lodging the application, the applicant must have been directly involved in managing either, a qualifying business in which they had at least a 10% ownership interest, or eligible investments which had a net value of AUD1 500 000.

For the 2 fiscal years prior to lodging the application, the applicant, his or her spouse or the applicant and his or her spouse together must have owned assets, personal and business, with a net value of at least AUD2 250 000.

New clause 162.213 requires that the applicant has a high level of skill in managing investments or businesses of the type referred to in this Part.

New clause 162.214 requires that the applicant must be less than 45 years old at the time the application is made.

New clause 162.215 requires that the applicant has English language skills of at least the level required to meet the definition of vocational English in regulation 1.15B.

New clause 162.216 provides that neither the applicant nor his or her spouse, if any, has been involved in business or investment activities that would generally not be acceptable in Australia.

New clause 162.217 requires the applicant to have notified the appropriate regional authority of the State or Territory in which they intend to lodge a designated investment, of their business and investment history and their intention to invest in that State or Territory.

New clause 162.218 provides that the applicant must have a realistic commitment to maintain a business or investment activity in Australia, after their designated investment has matured.

New clause 162.219 requires the applicant to have formally agreed to their obligations as a holder of a Subclass 162 visa, by signing a declaration.

Subdivision 162.22 - Criteria to be satisfied at time of decision

New Subdivision 162.22 sets out the primary criteria to be satisfied at the time of decision for a Subclass 162 visa.

New clause 162.221 requires the applicant to continue to satisfy certain time of application criteria. This is to ensure that nothing material has changed in the applicant's circumstances.

New clause 162.222 requires that the applicant must have made a designated investment of AUD1 500 000 in the applicant's name or in the names of the applicant and his or her spouse. The Minister must be satisfied that the funds invested were legally owned, unencumbered and accumulated from the qualifying business or eligible investment activities of the applicant, his or her spouse or the applicant and his or her spouse together.

New clause 162.223 requires that the applicant satisfies certain public interest criteria. These criteria relate to the health and character of the applicant, and their commitment to establishing themselves permanently in Australia.

New clause 162.224 requires that if the applicant had previously been in Australia, the applicant satisfies certain special return criteria relating to the applicant's conduct whilst they were last in Australia.

New clauses 162.225 and 162.226 specify the public interest and special return criteria that members of the family unit of the applicant must satisfy. Subclause 162.225(2) in particular requires that each member of the applicant's family unit who is not applying for a Subclass 162 visa must satisfy several public interest criteria which relate to health and character. The effect of this subclause is that if any member of the applicant's family unit fails to meet these criteria, the whole application fails, even if that person is not listed as an applicant.

Division 162.3 - Secondary criteria

New Division 162.3 sets out the secondary criteria for a Subclass 162 visa. The secondary criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

Subdivision 162.31 - Criteria to be satisfied at time of application

New Subdivision 162.31 sets out the secondary criteria that must be satisfied at the time of application for a Subclass 162 visa.

New clause 162.311 requires the applicant to be a member of the family unit of a person who satisfies the primary criteria that must be met at the time of application for a Subclass 162 visa.

Subdivision 162.32 - Criteria to be satisfied at time of decision

New Subdivision 162.32 sets out the secondary criteria that must be satisfied at the time of application for a Subclass 162 visa

New clause 162.321 requires the applicant to continue to be a member of the family unit of the person who, having satisfied the primary criteria, is the holder of a Subclass 162 visa.

New clauses 162.322 to 162.324 require the applicant to satisfy certain public interest criteria relating to, amongst other things, health and character and certain special return criteria.

Division 162.4 - Circumstances applicable to grant

New Division 162.4 sets out the circumstances applicable to the grant of a Subclass 162 visa.

New clause 162.411 provides that all applicants must be outside Australia when the visa is granted, unless they satisfy the secondary criteria and they held a student visa at the time of application.

Division 162.5 - When visa is in effect

New Division 162.5 provides for when a visa is in effect. Under new clause 162.511 a Subclass 162 visa is a temporary visa, permitting the holder to travel to, enter and remain in Australia from grant until a date specified by the Minister.

Division 162.6 - Conditions

New Division 162.6 provides for the conditions that are to attach to the grant of a Subclass 162 visa.

New clause 162.611 requires that, if an applicant is outside Australia when the visa is granted, his or her first entry into Australia as a Subclass 162 holder must be made before a date specified by the Minister.

New clause 162.612 provides that, if an applicant is outside Australia when the visa is granted, either or both of conditions 8502 and 8515 may be imposed. Condition 8502 provides that the holder of the visa must not enter Australia before the entry to Australia of a person specified in the visa. Condition 8515 provides that the holder of the visa must not marry before entering Australia.

Division 162.7 - Way of giving evidence

New Division 162.7 provides for the way in which evidence of a Subclass 162 visa is to be given. New clause 162.711 requires that a Subclass 162 visa be evidenced by way of a visa label affixed to a valid passport.

Subclass 163 - State/Territory Sponsored Business Owner (Provisional)

New part 163 specifies the criteria to be satisfied for grant of a Subclass 163 (State/Territory Sponsored Business Owner (Provisional)) visa. It also provides that there are no interpretation provisions specific to this Part.

Division 163.1 - Interpretation

Note 1 provides that definitions of *appropriate regional authority*, *AUD*, *fiscal year*, *ownership interest* and *qualifying business* can be found in regulation 1.03, and that a definition of *main business* can be found in regulation 1.11. Note 2 provides that the meaning of beneficial ownership of an asset or ownership interest, are dealt with in regulation 1.11A. Note 3 provides that there are no interpretation provisions specific to this Part.

Division 163.2 - Primary criteria

The note in this division provides that the primary criteria must be satisfied by at least 1 member of a family unit, and that other applicants, who are members of the family unit, need to satisfy only the secondary criteria.

Subdivision 163.21 - Criteria to be satisfied at time of application.

New clause 163.211 requires the applicant to show that overall their business career has been successful.

In particular new clause 163.212 requires the applicant to either, have had an ownership interest in a main business or businesses with an annual turnover of at least AUD300 000 for 2 of the 4 fiscal years prior to the application being made, or have a sound continuous employment record

in a senior management role in a qualifying business for at least 4 years immediately before the application is made, demonstrating a high level of management skill.

New clause 163.213 deals with the net value of the assets, both personal and business, of the applicant, his or her spouse or the applicant and his or her spouse together. It requires that they have a value of at least AUD250 000. These assets must be available for conducting business in Australia, and must have been lawfully acquired and be available to be transferred to Australia within 2 years after the applicant has been granted a Subclass 163 visa. In addition to this, the applicant must also have assets of a sufficient net value as determined by the appropriate regional authority to settle in Australia.

New clause 163.214 requires that the applicant must be less than 55 years old at the time the application is made, unless they are proposing to establish, or participate in, a business that the appropriate regional authority has determined is of exceptional economic benefit to the relevant State or Territory.

New clause 163.215 relates to applicants who have been engaged, for at least 2 of the 4 fiscal years preceding the application, in a business providing professional, technical or trade services. These applicants must not have been engaged in providing those services, as opposed to managing the business, for more than half of the time they spent conducting the business. This is to ensure that the applicant has significant experience in managing a business.

New clause 163.216 requires that neither the applicant nor their spouse, if any, have been involved in business activities that would generally not be acceptable in Australia.

New clause 163.217 provides that the applicant must have a realistic commitment to establish or participate in a qualifying business in Australia, to maintain an ownership interest in it and to maintain direct and continuous involvement in its management. The applicant must be involved in the management of the business from day to day and in decisions that affect the overall performance of the business in a manner that benefits the Australian economy.

New clause 163.218 requires the applicant to have demonstrated a need to be temporarily resident in Australia to establish or conduct their proposed business activity.

New clause 163.219 requires the applicant to have formally agreed to their obligations as a holder of a Subclass 163 visa, by signing a declaration.

Subdivision 163.22 - Criteria to be satisfied at time of decision

New Subdivision 163.22 sets out the primary criteria to be satisfied at the time of decision for a Subclass 163 visa.

New clause 163.221 requires that the applicant continues to satisfy certain time of application criteria. This is to ensure that nothing material has changed in the applicant's circumstances.

New clause 163.222 requires that the applicant's sponsorship by an appropriate regional authority, which is required under Schedule 1 paragraph 1202A(3)(d), has not been withdrawn.

New clause 163.223 requires that the applicant satisfies certain public interest criteria. These criteria relate to the health and character of the applicant, and their commitment to establishing themselves permanently in Australia.

New clause 163.224 requires that if the applicant had previously been in Australia, the applicant satisfies certain special return criteria relating to the applicant's conduct whilst they were last in Australia.

New clauses 163.225 and 163.226 specify the public interest and special return criteria that members of the family unit of the applicant must satisfy. Subclause 163.225(2) in particular requires that each member of the applicant's family unit who is not applying for a Subclass 163 visa must satisfy several public interest criteria which relate to character and health. The effect of this subclause is that if any member of the applicant's family unit fails to meet these criteria, the whole application fails, even if that person is not listed as an applicant.

Division 163.3 - Secondary criteria

New Division 163.3 sets out the secondary criteria for a Subclass 163 visa. The secondary criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

Subdivision 163.31 - Criteria to be satisfied at time of application

New Subdivision 163.31 sets out the secondary criteria that must be satisfied at the time of decision for a Subclass 163 visa.

New clause 163.311 specifies that the applicant must be a member of the family unit of a person who satisfies the primary criteria that must be met at the time of application for a Subclass 163 visa.

Subdivision 163.32 - Criteria to be satisfied at time of decision

New Subdivision 163.32 sets out the secondary criteria that must be satisfied at the time of decision for a Subclass 163 visa.

New clause 163.321 ensures that the applicant continues to be a member of the family unit of the person who has satisfied the primary criteria for grant of a Subclass 163 visa.

New clauses 163.322 to 163.324 require that the applicant must satisfy certain public interest and special return criteria.

Division 163.4 - Circumstances applicable to grant

New Division 163.4 sets out the circumstances applicable to the grant of a Subclass 163 visa.

New clauses 163.411 and 163.412 specify that all applicants must be outside Australia when the visa is granted, unless they satisfy the secondary criteria and they held a student visa at the time of application.

Division 163.5 - When visa is in effect

New Division 163.5 provides for when a Subclass 163 visa is in effect.

New clause 163.511 provides that the visa is a temporary visa, permitting the holder to travel to, enter and remain in Australia, valid from grant until a date specified by the Minister.

Division 163.6 - Conditions

New Division 163.6 provides for the conditions that are to attach to the grant of a Subclass 163 visa.

New clause 163.611 requires that, if an applicant is outside Australia when the visa is granted, his or her first entry into Australia as a Subclass 163 holder must be made before a date specified by the Minister.

New clause 163.612 provides that, if an applicant is outside Australia when the visa is granted, either or both of conditions 8502 and 8515 may be imposed. Condition 8502 provides that the holder of the visa must not enter Australia before the entry to Australia of a person specified in the visa. Condition 8515 provides that the holder of the visa must not marry before entering Australia.

Division 163.7 - Way of giving evidence

New Division 163.7 provides for the way in which evidence of a Subclass 163 visa is to be given. This division specifies that the visa will be evidenced by a label affixed to a valid passport.

Subclass 164 - State/Territory Sponsored Senior Executive (Provisional)

New Part 164 inserts new visa Subclass 164 (State/Territory Sponsored Senior Executive (Provisional)) in Schedule 2 to the Migration Regulations. This part specifies the criteria to be satisfied for the grant of a Subclass 164 (State/Territory Sponsored Senior Executive (Provisional)) visa (Subclass 164).

Division 164.1 - Interpretation

New clause 164.111 provides that in this Part, the term *major Business* means a non-government business which has had a turnover of at least AUD10 000 000 in at least 2 of the 4 fiscal years immediately before the application is made.

Note 1 provides that definitions of *appropriate regional authority*, *AUD*, *fiscal year*, *ownership interest* and *qualifying business* can be found in regulation 1.03. Note 2 provides that the meaning of beneficial ownership of an asset or ownership interest, are dealt with in regulation 1.11A.

Division 164.2 - Primary criteria

The note in this division provides that the primary criteria must be satisfied by at least 1 member of a family unit, and that other applicants, who are members of the family unit, need to satisfy only the secondary criteria.

Subdivision 164.21 - Criteria to be satisfied at time of application

New Subdivision 164.21 sets out the primary criteria that must be satisfied at the time of application for a Subclass 164 visa.

New clause 164.211 requires the applicant to show that overall their business career has been successful.

New clause 164.212 requires that, in at least 2 of the 4 years immediately before the application is made, the applicant has been employed in one of the 3 highest levels of management of a major business and that they have been responsible for significant strategic policy development.

New clause 164.213 deals with the net assets, both personal and business, of the applicant, his or her spouse or the applicant and his or her spouse together, if they have one. It requires that they have at least AUD250 000 which has been lawfully acquired and is available to be transferred to Australia within 2 years after they have been granted a Subclass 164 visa.

New clause 164.214 requires that the applicant must be less than 55 years old at the time the application is made, unless they are proposing to establish, or participate in, a business that the appropriate regional authority determines is of exceptional economic benefit to the relevant State or Territory.

New clause 164.215 provides that neither the applicant nor his or her spouse, if any, have been involved in business activities that would generally not be acceptable in Australia.

New clause 164.216 provides that the applicant must have a realistic commitment to establish or participate in a qualifying business in Australia, to maintain an ownership interest in it and to maintain direct and continuous involvement in its management. The applicant must be involved in the management of the business from day to day and in decisions that affect the overall performance of the business in a manner that benefits the Australian economy.

New clause 164.217 requires the applicant to have demonstrated a need to be temporarily resident in Australia to establish or conduct the proposed business activity.

New clause 164.218 requires the applicant to have formally agreed to their obligations as a holder of a Subclass 164 visa, by signing a declaration.

Subdivision 164.22 - Criteria to be satisfied at time of decision

New Subdivision 164.22 sets out the primary criteria to be satisfied at the time of decision for a Subclass 164 visa.

New clause 164.221 requires that the applicant continues to satisfy certain time of application criteria. This is to ensure that nothing material has changed in the applicant's circumstances.

New clause 164.222 requires that the applicant's sponsorship by an appropriate regional authority, which is required under Schedule 1 paragraph 1202A(3)(d), has not been withdrawn.

New clause 164.223 requires that the applicant satisfies certain public interest criteria. These criteria relate to the health and character of the applicant, and their commitment to establishing themselves permanently in Australia.

New clause 164.224 requires that if the applicant had previously been in Australia, the applicant satisfies certain special return criteria relating to the applicant's conduct whilst they were last in Australia.

New clauses 164.225 and 164.226 specify the public interest and special return criteria that members of the family unit of the applicant must satisfy. Subclause 164.225(2) in particular requires that each member of the applicant's family unit who is not applying for a Subclass 164 visa must satisfy several public interest criteria which relate to character and health. The effect of this subclause is that if any member of the applicant's family unit fails to meet these criteria, the whole application fails, even if that person is not listed as an applicant.

Division 164.3 - Secondary criteria

New Division 164.3 sets out the secondary criteria for a Subclass 164 visa. The secondary criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

Subdivision 164.31 - Criteria to be satisfied at time of application

New Subdivision 164.31 sets out the secondary criteria that must be satisfied at the time of application for a Subclass 164 visa.

New clause 164.311 specifies that the applicant must be a member of the family unit of a person who satisfies the primary criteria that must be met at the time of application for a Subclass 164 visa.

Subdivision 164.32 - Criteria to be satisfied at time of decision

New Subdivision 164.32 sets out the secondary criteria that must be satisfied at the time of decision for a Subclass 164 visa.

New clause 164.321 ensures that the applicant continues to be a member of the family unit of the person who has satisfied the primary criteria for grant of a Subclass 164 visa.

New clauses 164.322 to 164.324 require that the applicant must satisfy certain public interest and special return criteria.

Division 164.4 - Circumstances applicable to grant

New Division 164.4 sets out the circumstances applicable to the grant of a Subclass 164 visa.

New clauses 164.411 and 164.412 specify that all applicants must be outside Australia when the visa is granted, unless they satisfy the secondary criteria and they held a student visa at the time of application.

Division 164.5 - When visa is in effect

New Division 164.5 provides for when a visa is in effect. Under new clause 164.511 a Subclass 164 visa is a temporary visa, permitting the holder to travel to, enter and remain in Australia, and valid from grant until a date specified by the Minister.

Division 164.6 - Conditions

New Division 164.6 provides for the conditions that are to attach to the grant of a Subclass 164 visa.

New clause 164.611 requires that, if an applicant is outside Australia when the visa is granted, his or her first entry into Australia as a Subclass 164 holder must be made before a date specified by the Minister.

New clause 164.612 provides that, if an applicant is outside Australia when the visa is granted, either or both of conditions 8502 and 8515 may be imposed. Condition 8502 provides that the holder of the visa must not enter Australia before the entry to Australia of a person specified in the visa. Condition 8515 provides that the holder of the visa must not marry before entering Australia.

Division 164.7 - Way of giving evidence

New division 164.7 provides for the way in which evidence of a Subclass 161 visa is to be given. New clause 164.711 requires that a Subclass 164 visa be evidenced by way of a visa label affixed to a valid passport.

Subclass 165 - State/Territory Sponsored Investor (Provisional)

New Part 165 inserts new visa Subclass 165 (State/Territory Sponsored Investor (Provisional)) in Schedule 2 to the Migration Regulations. This part specifies the criteria to be satisfied for the grant of a Subclass 165 (State/Territory Sponsored Investor (Provisional)) visa (Subclass 165).

Division 165.1 - Interpretation

New clause 165.111 provides that for the purposes of this part the meaning of the term *designated investment* means an investment in a security issued by a State or Territory and specified by the Minister under the conditions in regulation 5.19A.

For the purposes of this part, an *eligible investment* for a person means an ownership in an investment which is owned for the purpose of returning income or capital gain to the person and is not held for personal use.

Note 1 and 2 indicate that the definitions of *appropriate regional authority*, *AUD*, *fiscal year*, *ownership interest*, and *qualifying business* are defined in regulation 1.03. Beneficial ownership of an asset and ownership interest can be found in regulations 1.11A.

Division 165.2 - Primary criteria

New Division 165.2 sets out the primary criteria must be satisfied by at least 1 member of a family unit, and that other applicants, who are members of the family unit, need to satisfy only the secondary criteria.

Subdivision 165.21 - Criteria to be satisfied at time of application

New Subdivision 165.21 sets out the primary criteria that must be satisfied at the time of application for a Subclass 165 visa.

New clause 165.211 requires that the applicant has overall had a successful business and investment background.

New clause 165.212 requires the applicant to have had 3 years experience in managing qualifying businesses or eligible investments. More specifically, for at least 1 of the 5 fiscal years prior to lodging the application, the applicant must have been directly involved in managing either, a qualifying business in which they had at least a 10% ownership interest, or eligible investments which had a net value of AUD750 000. For the 2 fiscal years prior to lodging the application, the applicant must have owned assets with a net value of at least AUD1 125 000. Each of these financial interests could have been held in the applicant's name or in the names of the applicant and their spouse.

New clause 165.213 requires that the applicant has a high level of skill in managing investments and businesses of the type referred to in this Part.

New clause 165.214 requires that the applicant must be less than 55 years old at the time the application is made, unless they are proposing to establish, or participate in, a business that the appropriate regional authority determines is of exceptional economic benefit to the relevant State or Territory.

New clause 165.215 provides that neither the applicant nor his or her spouse, if any, has been involved in business or investment activities that would generally not be acceptable in Australia.

New clause 165.216 provides that the applicant must have a realistic commitment to maintain a business or investment activity in Australia, after their designated investment has matured.

New clause 165.217 requires the applicant to have formally agreed to their obligations as a holder of a Subclass 165 visa, by signing a declaration.

Subdivision 165.22 - Criteria to be satisfied at time of decision

New Subdivision 165.22 sets out the primary criteria to be satisfied at the time of decision for a Subclass 165 visa.

New clause 165.221 requires that the applicant continues to satisfy certain time of application criteria. This is to ensure that nothing material has changed in the applicant's circumstances.

New clause 165.222 requires that the applicant must have made a designated investment of AUD750 000 in the applicant's name or in the names of the applicant, and his or her spouse in the relevant State or Territory. The Minister must be satisfied that the funds invested were legally owned, unencumbered and accumulated from the qualifying business or eligible investment activities of the applicant or the applicant and their together.

New clause 165.223 requires that the applicant's sponsorship by an appropriate regional authority, which is required under Schedule 1 paragraph 1202A(3)(d), has not been withdrawn.

New clause 165.224 requires that the applicant has a genuine intention to reside, for at least 2 years, in the State or Territory in which they have lodged a designated investment.

New clause 165.225 requires that the applicant satisfies certain public interest criteria. These criteria relate to the health and character of the applicant, and their commitment to establishing themselves permanently in Australia.

New clause 165.226 requires that if the applicant had previously been in Australia, the applicant satisfies certain special return criteria relating to the applicant's conduct whilst they were last in Australia.

New clauses 165.227 and 165.228 specify the public interest and special return criteria that members of the family unit of the applicant must satisfy. Subclause 165.227(2) in particular requires that each member of the applicant's family unit who is not applying for a Subclass 165 visa must satisfy several public interest criteria which relate to character and health. The effect of this subclause is that if any member of the applicant's family unit fails to meet these criteria, the whole application fails, even if that person is not listed as an applicant.

Division 165.3 - Secondary criteria

New Division 165.3 sets out the secondary criteria for a Subclass 165 visa. The secondary criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

Subdivision 165.31 - Criteria to be satisfied at time of application

New Subdivision 165.31 sets out the secondary criteria that must be satisfied at the time of application for a Subclass 165 visa.

New clause 165.311 specifies that the applicant must be a member of the family unit of a person who satisfies the primary criteria that must be met at the time of application for a Subclass 165 visa.

Subdivision 165.32 - Criteria to be satisfied at time of decision

New Subdivision 165.32 sets out the secondary criteria that must be satisfied at the time of decision for a Subclass 165 visa.

New clause 165.321 ensures that the applicant continues to be a member of the family unit of the person who has satisfied the primary criteria for grant of a Subclass 165 visa.

New clauses 165.322 to 165.324 require that the applicant must satisfy certain public interest and special return criteria.

Division 165.4 - Circumstances applicable to grant

New Division 165.4 sets out the circumstances applicable to the grant of a Subclass 165 visa.

New clauses 165.411 and 165.412 specify that all applicants must be outside Australia when the visa is granted, unless they satisfy the secondary criteria and they held a student visa at the time of application.

Division 165.5 - When visa is in effect

New Division 165.5 provides for when a Subclass 165 visa is in effect. Under new clause 165.511, a Subclass 165 visa is a temporary visa, permitting the holder to travel to, enter and remain in Australia, valid from grant until a date specified by the Minister.

Division 165.6 - Conditions

New Division 165.6 provides for the conditions that are to attach to the grant of a Subclass 165 visa.

New clause 165.611 requires that the visa holder must first enter Australia before a date specified by the Minister.

New clause 165.612 provides that the applicant may be required to enter Australia only after another specified person enters Australia, and that they may be prohibited from marrying before entering Australia.

Division 165.7 - Way of giving evidence

New Division 165.7 provides for the way in which evidence of a Subclass 165 visa is to be given. New clause 165.711 specifies that the visa will be evidenced by a label affixed to a valid passport.

Item [2309] - Subdivision 410.22

This item substitutes Subdivision 410.22 to omit clauses 410.222 to 410.227 and insert new subclauses 410.221(3) to (10).

New subclause 410.221(1) is inserted to provide a distinction between those holders of a Subclass 410 (Retirement) visa granted before 1 March 2003 seeking a new Subclass 410 (Retirement) visa, which is exempt from a visa application charge, and those applicants seeking a new Subclass 410 (Retirement) visa for a fee. New subclause 410.221(1) provides that the applicants for the new Subclass 410 (Retirement) visa which is exempt from the application fee are not required to satisfy the normal time of decision criteria.

The purpose of this amendment is to provide that applicants whose Subclass 410 (Retirement) visas were granted before 1 March 2003 (before attachment of the mandatory no work condition was reviewed) and who applied for a replacement visa with limited work rights free of charge are not required to satisfy the normal time of decision criteria. The new visa will only be valid until the expiry date of the current Subclass 410 (Retirement) visa granted before 1 March 2003.

This item deletes paragraphs 410.222(1)(b) and 410.222(2)(b) so that an applicant for a Retirement visa and the applicant's spouse are no longer required to satisfy the Minister that they do not intend to take employment in Australia. These amendments are consequential to amendments made by these regulations to clause 410.611 which replace the no work condition with a "limited work rights" condition.

This item omits clauses 410.222, 410.223, 410.224, 410.225, 410.226, and 410.227 and inserts subclauses 410.221(3), (4), (5), (6), (7), (8), (9) and (10). Apart from clauses 410.222 and 410.224 the content of these provisions remain exactly the same, only the structure is amended to accommodate new subclause 410.221(1) mentioned above.

New subclause 410.221(6) maintains the effect of clause 410.224 except that it has been amended to achieve consistency with amendments made by these regulations to other visa subclasses. These amendments required an applicant to comply substantially with the conditions of the last held substantive visa and any intervening bridging visa.

Item [2310] - Subdivision 410.32

This item substitutes Subdivision 410.32 to omit clauses 410.322 to 410.326 and insert new subclauses 410.321(3) to (8).

New subclause 410.321(1) is inserted to provide a distinction between an applicant who is the spouse of a holder of a Subclass 410 (Retirement) visa granted before 1 March 2003 seeking the new Subclass 410 (Retirement) visa, which is exempt from an application fee and an applicant who is the spouse of a person seeking a new Subclass 410 (Retirement) visa for a fee. This item also provides that an applicant who is the spouse of an applicant seeking the new retirement visa which is exempt from the application fee is not required to satisfy the normal time of decision criteria.

This item omits clauses 410.322, 410.323, 410.323, 410.324, 410.325 and 410.326 and inserts new subclauses 410.321(3), (4), (5), (6), (7) and (8). Apart from clauses 410.322 and 410.324 the content of these provisions remain exactly the same, only the structure is amended to accommodate new subclause 410.321(1) mentioned above.

New subclause 410.321(5) maintains the effect of clause 410.324 except that it has been amended to achieve consistency with amendments made by these regulations to other visa subclasses. These amendments required an applicant to substantially comply with the conditions of the last held substantive visa and any intervening bridging visa.

Item [2311] - Paragraphs 410.511(a) and (b)

This item substitutes paragraphs 410.511(a) and (b) with new paragraphs 410.511(a), (b) and (c) to provide that the expiry date of a new Retirement visa, granted for no charge to the holder of a Retirement visa granted before 1 March 2003, is the expiry date of the last held Retirement visa. The expiry date for all other Subclass 410 (Retirement) visas is unchanged.

Item [2312] - Clause 410.611

This item omits the no work condition 8101 and inserts condition 8104 which provides that the visa holder is allowed to work up to 20 hours per week.

Regulation 1.03 of Part 1 of the Regulations defines "work" as "an activity that in Australia normally attracts remuneration". The effect of this definition is that when undertaking even unpaid, voluntary work, a Subclass 410 (Retirement) visa holder may be in breach of condition 8101 if that work would normally attract remuneration.

Therefore condition 8104 is imposed to allow the Subclass 410 (Retirement) visa holder to undertake up to 20 hours of work per week. The work may be of any nature, voluntary, unpaid or paid or managing investments, all of which have been of interest to retirees, to date.

Item [2313] - Paragraph 411.224(a)

This item substitutes paragraph 411.224(a) with a new provision requiring an applicant to have complied substantially with the conditions of the last held substantive visa and any subsequently held bridging visa.

The purpose of the amendment is to ensure that a decision maker can consider compliance with conditions of the last held substantive visa and any subsequently held bridging visa.

Item [2314] - Clause 420.211

This item amends clause 420.211 to provide that if, at the time of application, the applicant is in the migration zone, the applicant is required to hold a visa of a kind set out in the clause.

This amendment is consequential to amendments made to subitem 1205(3) by these Regulations requiring an application by an applicant seeking a Subclass 420 (Entertainment) visa to be made to a specified address, which may be an address in Australia, regardless of where the applicant is located.

Item [2315] - Clause 420.221

This item substitutes clause 420.221 to provide that if the applicant is outside Australia at the time of the application, or the applicant is in the migration zone at the time of the application and does not hold a Subclass 420 (Entertainment) visa, the applicant must satisfy clauses 420.222 to 420.229.

This amendment is consequential to amendments made by these Regulations to subitem 1205(3) requiring an application by an applicant seeking a Subclass 420 (Entertainment) visa to be made to a specified address, which may be an address in Australia, regardless of where the applicant is located.

Item [2316] - Clause 420.228

This item amends clause 420.228 consequentially to amendments made to subitem 1205(3) by these Regulations.

New paragraph 1205(3)(c) inserted by these Regulations requires an applicant for a Cultural/Social (Temporary)(Class TE) visa who is seeking to meet the criteria for a Subclass 420 (Entertainment) visa to cause his or her application to be delivered to an address specified in a gazette notice, which may be an address in Australia, regardless of where the applicant is at the time of application.

The amendment made by this item is technical, replacing a reference to the place of the application with reference to the place of the applicant at the time of the application. The provision retains the former distinction between applicants who applied in Australia and those who applied outside Australia, except that the distinction is expressed as between applicants who are in Australia at the time of application, and applicants who are outside Australia at the time of application but apply to an address in Australia.

Item [2317] - Clause 420.229

This item substitutes clause 420.229 to provide that if the applicant is in the migration zone at the time of application, then the applicant must have complied substantially with the conditions of the last held substantive visa and any subsequently held bridging visa.

The purpose of the amendment is to ensure that a decision maker can consider compliance with conditions of the last held substantive visa and any subsequently held bridging visa.

Item [2318] - Clause 420.230

Item [2319] - Clause 420.312

Item [2320] - Clause 420.313

Item [2321] - Clause 420.325

Item [2322] - Clause 420.411

Item [2323] - Clause 420.412

These items amend clauses 420.230, 420.312, 420.313, 420.325, 420.411 and 420.412 consequentially to amendments made to subitem 1205(3) by these Regulations.

New paragraph 1205(3)(c) inserted by these Regulations requires an applicant for a Cultural/Social (Temporary) (Class TE) visa who is seeking to meet the criteria for a Subclass 420 (Entertainment) visa to cause his or her application to be delivered to an address specified in a gazette notice, which may be an address in Australia, regardless of where the applicant is at the time of application.

The amendments made by these items are technical, replacing a reference to the place of the application with a reference to the place of the applicant at the time of the application. The provisions retain the former distinction between applicants who applied in Australia and those who applied outside Australia, except that the distinction is expressed as between applicants who are in Australia at the time of application, and applicants who are outside Australia at the time of application but apply to an address in Australia.

Item [2324] - Clause 420.711

This item substitutes clause 420.711 to provide that if evidence of the visa is given, it is to be given by visa label affixed to a valid passport.

Item [2325] - Subclause 422.227(2)

This item substitutes subclause 422.227(2) to provide that the applicant meets the requirements of this subclause if he or she has complied substantially with the conditions that apply to the last held substantive visa and any subsequently held bridging visa.

The purpose of the amendment is to ensure that a decision-maker can consider compliance with conditions of the last held substantive visa and any subsequently held bridging visa.

Item [2326] - Clause 424.230

Item [2327] - Clause 426.225

Item [2328] - Clause 428.228

These items substitute clauses 424.230, 426.225 and 428.228 requiring an applicant to have complied substantially with the conditions of the last held substantive visa and any subsequently held bridging visa.

The purpose of the amendment is to ensure that a decision maker can consider compliance with conditions of the last held substantive visa and any subsequently held bridging visa.

Item [2329] - Clause 457.221

This item substitutes clause 457.221 to require, if the application is made in Australia, the applicant to have complied substantially with the conditions of the last held substantive visa and any subsequently held bridging visa.

The purpose of the amendment is to ensure that a decision maker can consider compliance with conditions of the last held substantive visa and any subsequently held bridging visa.

[2330] - Subclause 457.223(1)

This item removes the reference to subclause 457.223(7), which relates to independent executives, from the criterion that sets out which clauses an applicant must meet in order to be eligible for the grant of a Subclass 457 visa. This ensures that after 1 March 2003 subclause 457.223(7) is not a basis for an application for a Subclass 457 visa.

Item [2331] - Paragraph 457.223(4)(b)

Subclause 457.223(4) sets out the criteria for an applicant seeking a Subclass 457 visa on the basis of sponsorship by an Australian business. Paragraph 457.223(4)(b) requires the proposed employer to be a pre-qualified business sponsor (PQBS) or a standard business sponsor (SBS).

This item substitutes paragraph 457.223(4)(b) requiring the proposed employer to be a PQBS or SBS, and to be the same employer specified by the visa applicant in his or her application for the Temporary Business Entry (Class UC) visa.

The purpose of the amendment is to prevent a visa applicant from either shopping around for a new sponsor or changing sponsors between making the application and the time when the visa is decided.

Item [2332] - Clause 457.323

This item substitutes clause 457.323 to require, if the application is made in Australia, the applicant to have complied substantially with the conditions of the last held substantive visa and any subsequently held bridging visa.

The purpose of the amendment is to ensure that a decision-maker can consider compliance with conditions of the last held substantive visa and any subsequently held bridging visa.

[2333] - Subclause 457.611(1)

This item removes the reference to subclause 457.223(7), which relates to independent executives, from subclause 457.611. This is consequential to an amendment made by these Regulations which removes subclause 457.223(7) from the criterion to be met for the grant of a Subclass 457 visa.

Item [2334] - Clause 461.225

This item substitutes clause 457.225 to require, if the application is made in Australia, the applicant to have complied substantially with the conditions of the last held substantive visa and any subsequently held bridging visa.

The purpose of the amendment is to ensure that a decision-maker can consider compliance with conditions of the last held substantive visa and any subsequently held bridging visa.

Item [2335] - Clause 574.617

This item substitutes clause 574.617 to provide that condition 8101 will not be imposed on a student visa if:

- the applicant satisfied the secondary criteria; and
- the application is made in Australia; and
- at the time of application the applicant met the requirements of subclause 574.312(4) or was the holder of a Subclass 560, 563, or 574 visa that was not subject to condition 8101 or 8105.

The effect of the amendments made by this item is that applicants who meet the secondary criteria for a Subclass 574 visa will have condition 8101 (the "no work condition") imposed on their visa under the requirements in paragraph 574.616(1)(d) of Schedule 2, unless they meet clause 574.617. This includes applicants who:

- meet the secondary criteria for a Subclass 574 (Masters and Doctorate Sector) visa; and
- applied in Australia; and
- were previously the holder of a Subclass 560, 563 or 574 visa (as a person who met the primary criteria) that was subject to condition 8101 or condition 8105. Condition 8105 permits the visa holder to engage in work in Australia for up to 20 hours a week during any week when the holder's course of study or training is in session.

Item [2336] - Paragraph 675.216(c)

This item substitutes paragraph 675.216(c) to require the applicant to have complied substantially with the conditions of the last held substantive visa and any subsequently held bridging visa.

The time of decision criteria in Subclass 675 also requires the applicant to continue to satisfy the time of application criteria substituted by this item.

The purpose of the amendment is to ensure that a decision-maker can consider compliance with conditions of the last held substantive visa and any subsequently held bridging visa.

Item [2337] - Division 676.1, note

This item substitutes a new Note into Division 676.1 setting out that an Internet application is defined in regulation 1.03.

Item [2338] - Before clause 676.211

This item inserts new clause 676.211A into the time of application criteria for persons seeking to meet the criteria for the grant of a Subclass 676 (Tourist (Short Stay)) visa.

New clause 676.211A is consequential to the insertion by these Regulations of the new Internet application specific criteria contained in clauses 676.214 and 676.215.

New subclause 676.211A(1) provides that if an application is not an Internet application, the applicant must meet the requirements of clauses 676.211, 676.212, 676.212A and 676.213.

New subclause 676.211A(2) provides that if the application is an Internet application, the applicant must meet the criteria of clause 676.214 or 676.215.

Item [2339] - Clause 676.211

Item [2340] - Clause 676.212

Item [2341] - Clause 676.212A

Item [2342] - Clause 676.213

These items make minor technical amendments to the above clauses consequential to the insertion by these Regulations of new subclause 676.211A.

The amendments clarify that an applicant meets the requirements of the clause if the applicant satisfies the matters set out in the clause.

Item [2343] - Paragraph 676.213(b)

This item substitutes paragraph 676.213(b) with new provisions requiring the applicant to have complied substantially with the conditions of the last held substantive visa and any subsequently held bridging visa.

The time of decision criteria in Subclasses 676 also require the applicant to continue to satisfy the time of application criteria substituted by these items.

The purpose of the amendment is to ensure that a decision maker can consider compliance with conditions of the last held substantive visa and any subsequently held bridging visa.

Item [2344] - After clause 676.213

This item inserts new clauses 676.214 and 676.215 setting out the time of application criteria for persons who have made an Internet application and who are seeking to meet the criteria for the grant of a Subclass 676 (Tourist (Short Stay)) visa.

An applicant meets the criteria in clause 676.214 if the application is an Internet application, and the applicant meets public interest criteria 4001, 4002, 4003, 4004, 4005 and 4011, and states in the application that:

- he or she seeks to visit or remain in Australia for the purposes of visiting an Australian citizen or permanent resident who is a parent, spouse, child, brother or sister of the applicant, or for a purpose other than a purpose relating to business or medical treatment;
- he or she has adequate funds or access to adequate funds for personal support during the period of the visit;
- the proposed period of stay does not exceed 3 months;
- he or she and any other person included in the applicant has turned 18 years of age;
- he or she has not been refused a visa and has not had a visa cancelled; and
- he or she has not left Australia as an unlawful non-citizen.

If an Internet application meets the requirements of clause 676.214, then subject to paragraph 676.221(6)(a) which requires the applicant to continue to meet the above criteria at the time of decision, a computer program the use of which has been arranged by the Minister under subsection 495A(1) of the Act and which is under the control of the Minister, will make a decision to grant the visa.

A decision made by a computer program is taken by subsection 495A(2) of the Act to be a decision of the Minister.

If the Internet application does not meet the requirements of clause 676.214, the application is referred for processing by a human decision-maker against the criteria of clause 676.215.

New clause 676.215 provides that an applicant meets the requirements of clause 676.215 if:

- the application is an Internet application that does not meet the requirements of clause 676.214;
- the applicant meets the requirements of 676.211; and
- the period of stay stated in the application does not exceed 3 months.

Item [2345] - Paragraph 676.221(1)(b)

This item amends paragraph 676.221(1)(b) consequential to the insertion of new subclause 676.221(6) by these Regulations.

The item is technical, inserting a reference to new subclause 676.221(6) into paragraph 676.221(1)(b).

Item [2346] - After subclause 676.221(5)

This item inserts new subclause 676.221(6) specific to Internet applications into the time of decision criteria of Subclass 676 (Tourist (Short Stay)).

Paragraph 676.221(6)(a) applies in relation to an Internet application that met the requirements of clause 676.214, and requires the applicant to continue to satisfy the criteria of that clause at the time of decision.

If the applicant satisfies paragraph 676.221(6)(a) a computer program the use of which has been arranged by the Minister under subsection 495A(1) of the Act and which is under the control of the Minister, will automatically grant the visa.

A decision made by a computer program is taken by subsection 495A(2) of the Act to be a decision of the Minister.

Paragraph 676.221(6)(b) applies in relation to an Internet application that met the requirements of clause 676.215, and requires the applicant to:

- meet the requirements of paragraphs 676.221(2)(c), (d) and (e);
- continue to meet the requirements of paragraphs 676.215(c) and (d); and
- if the applicant has previously been in Australia, to satisfy special return criteria 5001 and 5002.

An Internet application assessed against clause 676.215 and paragraph 676.221(6)(b) is assessed by a human decision-maker.

The criteria set out in paragraphs 676.221(2)(c), (d) and (e) are the same criteria that apply to an applicant who has made a paper based application. Similarly the requirement that an applicant continue to meet the requirements of paragraphs 676.215(c) and (d) are the same

criteria set out in paragraphs 676.221(2)(a) and (b) that apply to an applicant who has made a paper based application.

Item [2347] - Clause 676.511

This item substitutes clause 676.511 with a new clause setting out when a visa granted outside Australia, or on the basis of an Internet application that met the requirements of clauses 676.215, is in effect.

New clause 676.511 continues to give discretions to the Minister to specify a date by which the visa holder must travel to Australia, and to specify a period for which, or a date until which, the holder may remain in Australia.

A visa falling within the above categories will be a temporary visa permitting the holder to travel to and enter Australia on 1 or more occasions until a date specified by the Minister, and to remain in Australia for a period (not longer than 3 months after the date of each entry) specified by the Minister, or until a date (not later than 3 months after the date of each entry) specified by the Minister.

Item [2348] - After clause 676.511

This item inserts new clause 676.511A providing that a visa granted on the basis of an Internet application that met the requirements of clause 676.214 is a temporary visa permitting the holder to travel to and enter Australia on 1 or more occasions until a date 12 months from the date of the grant, and to remain in Australia for a period not longer than 3 months after the date of each entry.

Visas granted on the basis of meeting clause 676.214 are granted by a computer program under the control of the Minister.

New clause 676.511A provides that there is no discretion to specify a date by which the visa holder must travel to Australia, or to specify a period for which, or a date until which, the holder may remain in Australia as is the case for Subclass 676 visa granted otherwise than by a computer program.

Item [2349] - After clause 676.612

This item inserts new clause 676.612A setting out the conditions that apply to a visa granted by a computer program under the control of the Minister to an applicant who met the requirements of clause 676.214.

The conditions applying to a visa of this kind are conditions 8101, 8201, and 8205.

Item [2350] - Clause 676.711

This item substitutes clause 676.711 with new clauses 676.711 and 676.712 setting out the evidence that is required to be given to a visa holder.

Clause 676.711 provides that no evidence need be given if the visa is granted on the basis of an Internet application.

Clause 676.712 provides that if evidence is given, it is to be given by visa label attached to a valid passport.

Item [2351] - Paragraph 685.216(1)(c)

This item substitutes paragraph 685.216(1)(c) with new provisions requiring the applicant to have complied substantially with the conditions of the last held substantive visa and any subsequently held bridging visa.

The time of decision criteria in Subclass 685 require the applicant to continue to satisfy the time of application criteria substituted by this item.

The purpose of the amendment is to ensure that a decision maker can consider compliance with conditions of the last held substantive visa and any subsequently held bridging visa.

Item [2353] - Paragraph 686.211(4)(b)

This item substitutes paragraph 686.211(4)(b) to require the applicant to have complied substantially with the conditions of the last held substantive visa and any subsequently held bridging visa.

The time of decision criteria in Subclass 686 requires the applicant to continue to satisfy the time of application criteria substituted by this item.

The purpose of the amendment is to ensure that a decision-maker can consider compliance with conditions of the last held substantive visa and any subsequently held bridging visa.

Item [2352] - Paragraph 685.211(2)(b)

Clause 685.221 of Schedule 2 sets out some of the criteria to be satisfied at the time of decision by a person seeking to meet the primary criteria, for the grant of a Subclass 685 (Medical Treatment (Long Stay)) visa.

This item makes a technical amendment by omitting a reference to clause 684.215 in paragraph 685.221(2)(b), and substituting it with the correct reference, clause 685.215.

[2353] - Paragraph 686.211(4)(b)

[2354] - After paragraph 773.213(2)(l)

[2355] - After paragraph 773.213(3)(a)

These items insert references to three new business skills visa classes into a criterion to be met for the grant of a Subclass 773 (Border) visa. This ensures that an applicant meets that criteria for the grant of Subclass 773 (Border) visa if they are the dependent child of a holder of one of the new business skills visas listed in those paragraphs. Subclause 773.213(2) lists permanent visas and subclause 773.213(3) lists temporary visas.

Item [2356] - Paragraph 832.211(3)(c)

Paragraph 832.211(3)(c) of Schedule 2 to the Migration Regulations sets out some of the criteria to be satisfied at the time of application by a person seeking to meet the primary criteria for the grant of a Subclass 832 (Close Ties) visa.

This item substitutes paragraph 832.211(3)(c) to add additional time of application criteria. These criteria are that the applicant first entered Australia before the applicant turned 18 as a member of a family unit, and that the applicant's family unit accompanied the applicant when he or she first entered Australia.

Paragraph 832.211(3)(c) also requires an applicant at time of application to have turned 18 and spent, before turning 18, the greater part of his or her formative years in Australia. An applicant

must also have ceased to hold an entry permit or substantive visa before turning 18, and immediately before ceasing to hold a substantive visa must not have held a Subclass 771 (Transit) visa. In addition, the applicant must no longer be a member of, nor reside with, the family unit with which the applicant first entered Australia.

The amendments made by this item ensure that only applicants who first arrived in Australia with the family unit of which they were a member are eligible for a Subclass 832 (Close Ties) visa. This reflects the original policy intention underpinning the grant of a Subclass 832 (Close Ties) visa under the "innocent illegals" provisions.

Item [2357] - Subclause 832.212(4)

Subclause 832.212(4) of Schedule 2 to the Migration Regulations sets out some of the criteria to be satisfied at the time of application by a person seeking to meet the primary criteria for the grant of a Subclass 832 (Close Ties) visa.

This item substitutes subclause 832.212(4) to add additional time of application criteria. These criteria are that the applicant first entered Australia before the applicant turned 18 as a member of a family unit, and that the applicant's family unit accompanied the applicant when he or she first entered Australia.

Subclause 832.212(4) also requires an applicant at time of application to have turned 18 and spent, before turning 18, the greater part of his or her formative years in Australia. An applicant must also have ceased to hold an entry permit or substantive visa before turning 18, and must no longer be a member of, nor reside with, the family unit with which the applicant first entered Australia.

The amendments made by this item ensure that only applicants who first arrived in Australia with the family unit of which they were a member are eligible for a Subclass 832 (Close Ties) visa. This reflects the original policy intention underpinning the grant of a Subclass 832 (Close Ties) visa under the "innocent illegals" provisions.

Item [2358] - Paragraph 832.221(3)(b)

Paragraph 832.211(3)(b) of Schedule 2 to the Migration Regulations sets out some of the criteria to be satisfied at the time of decision by a person seeking to meet the primary criteria for the grant of a Subclass 832 (Close Ties) visa.

This item substitutes paragraph 832.211(3)(b) to ensure that an applicant referred to in subclause 832.211(3) or 832.212(4) continues, at the time of decision, to no longer be a member of, nor reside with, the family unit with which he or she first entered Australia.

Item [2359] - Parts 840 to 844

This item omits Parts 840 to 844 of the Migration Regulations. These Parts contain the Schedule 2 requirements for Subclass 840 (Business Owner), 841 (Senior Executive), 842 (State/Territory Sponsored Business Owner), 843 (State/Territory Sponsored Senior Executive) and 844 (Investment-linked) visas. These Parts are omitted as visa subclasses 841 to 844 are repealed by these Regulations.

Item [2360] - Subparagraph 845.222(2)(b)(i)

This item makes a technical amendment to correct a typographical error in subparagraph 845.222(2)(b)(i).

Item [2361] - Paragraph 845.311(a)

Item [2362] - Subparagraph 846.222(2)(c)(ii)

Item [2363] - Paragraph 846.311(a)

These items make amendments that are consequential to other amendments made by these Regulations that change the name of the Business Skills (Residence) (Class BH) visa to 'Business Skills - Established Business (Residence) (Class BH)'.

Item [2364] - Paragraph 856.212(4)(d)

Item [2365] - After paragraph 856.212(4)(d)

Item [2366] - Paragraph 857.212(4)(d)

Item [2367] - After paragraph 857.212(4)(d)

These items make amendments that are consequential to amendments made by these Regulations that insert new Subclass 161 (Senior Executive (Provisional)) visa and new Subclass 164 (State/Territory Sponsored Senior Executive (Provisional)) visa into the Migration Regulations.

The amendments made by these items add references to new subclasses 161 and 164 to the list of qualifying visas an applicant must hold, to meet one of the criteria for the grant of a Subclass 856 (Employer Nomination Scheme) visa or Subclass 857 (Regional Sponsored Migration Scheme) visa.

Item [2368] - After Part 882

This item inserts four new parts in Schedule 2 to the Migration Regulations. The new parts contain permanent visa subclasses 890 to 893. There are two visa subclasses for applicants who are business owners (890 and 892) and two visa subclasses for applicants who are investors (891 and 893). Subclasses 890 and 893 require the applicant to be sponsored by the appropriate regional authority of a State or Territory, and have lower financial requirements than their unsponsored equivalents.

Subclass 890 - Business Owner

New Part 890 inserts new visa Subclass 890 (Business Owner) in Schedule 2 to the Migration Regulations. This Part specifies the criteria to be satisfied for the grant of a Subclass 890 (Business Owner) visa (Subclass 890).

Division 890.1 - Interpretation

New Division 890.1 makes reference to a number of terms defined in the Migration Regulations. It also provides that there are no interpretation provisions specific to this Part.

Note 1 provides that definitions of *AUD*, *ownership interest* and *qualifying business* can be found in regulation 1.03, and a definition of *main business* can be found in regulation 1.11. Note 2 provides that the meaning of beneficial ownership of an asset or ownership interest are dealt with in regulation 1.11A. Note 3, as mentioned above, provides that there are no interpretation provisions specific to this Part.

Division 890.2 - Primary criteria

New Division 890.2 sets out the primary criteria to be satisfied in respect of a Subclass 890 visa. The primary criteria must be satisfied by at least one member of a family unit. The other

members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

Subdivision 890.21 - Criteria to be satisfied at time of application

New Subdivision 890.21 sets out the primary criteria that must be satisfied at the time of application for a Subclass 890 visa.

In particular, new clause 890.211 requires the applicant to have an ownership interest in one or more actively operating main businesses in Australia for at least 2 years before lodging the application. For these businesses, an Australian Business Number must have been obtained, and all Business Activity Statements required during the above period must have been submitted to the Australian Taxation Office. These statements must be included in the application.

New clause 890.212 deals with the net assets in the main business, or main businesses, in Australia of the applicant, his or her spouse, or the applicant and his or her spouse. It requires that they have had at least AUD100 000 net value in the main business, or businesses, throughout the 12 months immediately before lodging the application.

New clause 890.213 requires that in the 12 months immediately before the application is lodged, the applicant's main business, or main businesses together, had an annual turnover of at least AUD300 000.

New clause 890.214 requires the applicant, his or her spouse, or the applicant and his or her spouse together, to have employed two full-time employees or the equivalent in the main business, or main businesses, throughout the 12 months immediately before lodging the application. The employees must not be the applicant or a member of the family unit of the applicant, and must be an Australian citizen, Australian permanent resident or a New Zealand passport holder.

New clause 890.215 deals with the net assets in Australia, both business and personal, of the applicant, his or her spouse, or the applicant and his or her spouse together. It requires that they have, and have had in the 12 months immediately before lodging the application, a net value in those assets of at least AUD250 000.

New clause 890.216 requires that neither the applicant nor his or her spouse, if any, have been involved in business activities that would generally not be acceptable in Australia.

New clause 890.217 requires the applicant to have been in Australia as the holder of a visa of a subclass included in Business Skills (Provisional) (Class UR), as specified in paragraph 1104B(3)(d) of Schedule 1, for a total of at least 1 year in the 2 years immediately before the application is made.

Subdivision 890.22 - Criteria to be satisfied at time of decision

New Subdivision 890.22 sets out the primary criteria to be satisfied at the time of decision for a Subclass 890 visa.

New clause 890.221 requires the applicant to continue to satisfy certain time of application criteria. This is to ensure that nothing material has changed in the applicant's circumstances.

New clause 890.222 requires the applicant to satisfy certain public interest criteria. These criteria relate to, among other things, the health and character of the applicant.

New clauses 890.223 and 890.224 specify the public interest criteria that members of the family unit of the applicant must satisfy relating to, among other things, health and character. The

effect of these clauses is that if any member of the applicant's family unit fails to meet these public interest criteria, the whole application fails, even if that person is not listed as an applicant.

Division 890.3 - Secondary criteria

New Division 890.3 sets out the secondary criteria for a Subclass 890 visa. The secondary criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

Subdivision 890.31 - Criteria to be satisfied at time of application

New Subdivision 890.31 sets out the secondary criteria that must be satisfied at the time of application for a Subclass 890 visa.

In particular, new clause 890.311 requires the applicant to be a member of the family unit of, and have made a combined application with, a person who satisfies the primary criteria in Subdivision 890.21.

Subdivision 890.32 - Criteria to be satisfied at time of decision

New Subdivision 890.32 sets out the secondary criteria that must be satisfied at the time of decision for a Subclass 890 visa.

New clause 890.321 requires the applicant to continue to be a member of the family unit of the person (i) with whom a combined application was made; and (ii) who, having satisfied the primary criteria, is the holder of a Subclass 890 visa.

New clauses 890.322 and 890.323 require the applicant to satisfy certain public interest criteria relating to, among other things, health and character.

Division 890.4 - Circumstances applicable to grant

New Division 890.4 sets out the circumstances applicable to the grant of a Subclass 890 visa.

New subclause 890.411(1) provides that if the applicant satisfies the primary criteria, he or she must be inside Australia, but not in immigration clearance, when the visa is granted.

New subclause 890.411(2) provides that if the applicant satisfies the secondary criteria, he or she may be in or outside Australia, but not in immigration clearance, when the visa is granted.

The note below subclause 890.411(2) provides that the second instalment of the visa application charge must be paid before the visa is granted.

Division 890.5 - When visa is in effect

New Division 890.5 provides for when a Subclass 890 visa is in effect. Under new clause 890.511, a Subclass 890 visa is a permanent visa permitting the holder to travel to and enter Australia for five years from the date of grant.

Division 890.6 - Conditions

New Division 890.6 provides for the conditions that are to attach to the grant of a Subclass 890 visa.

New clause 890.611 requires that, if an applicant is outside Australia when the visa is granted and the applicant satisfies the secondary criteria, his or her first entry as the holder of a Subclass 890 visa must be made before a date specified by the Minister. In addition, condition 8515 may be imposed. Condition 8515 provides that the holder of the visa must not marry before entering Australia.

Division 890.7 - Way of giving evidence

New Division 890.7 provides for the way in which evidence of a Subclass 890 visa is to be given. New clause 890.711 requires that a Subclass 890 visa be evidenced by way of a visa label affixed to a valid passport.

Subclass 891 - Investor

New Part 891 inserts new visa Subclass 891 (Investor) in Schedule 2 to the Migration Regulations. This Part specifies the criteria to be satisfied for the grant of a Subclass 891 (Investor) visa (Subclass 891).

Division 891.1 - Interpretation

New Division 891.1 makes reference to a number of terms defined in the Migration Regulations. It also specifies the interpretation provisions specific to this Part.

New clause 891.111 provides that, for the purposes of this Part, the meaning of the term *designated investment* is an investment in a security specified by the Minister under regulation 5.19A.

Note 1 provides that definitions of *AUD*, *fiscal year*, *ownership interest* and *qualifying business* can be found in regulation 1.03. Note 2 provides that the meaning of beneficial ownership of an asset or ownership interest are dealt with in regulation 1.11A.

Division 891.2 - Primary criteria

New Division 891.2 sets out the primary criteria to be satisfied in respect of a Subclass 891 visa. The primary criteria must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

Subdivision 891.21 - Criteria to be satisfied at time of application

New Subdivision 891.21 sets out the primary criteria that must be satisfied at the time of application for a Subclass 891 visa.

In particular, new clause 891.211 requires that neither the applicant nor his or her spouse, if any, have been involved in business or investment activities that would generally not be acceptable in Australia.

New clause 891.212 requires the applicant to have been in Australia as the holder of a Subclass 162 (Investor (Provisional)) visa for a total of at least 2 years in the 4 years immediately before the application is made.

New clause 891.213 provides that the applicant must genuinely have a realistic commitment to continue to maintain a business or investment activity in Australia.

Subdivision 891.22 - Criteria to be satisfied at time of decision

New Subdivision 891.22 sets out the primary criteria to be satisfied at the time of decision for a Subclass 891 visa.

New clause 891.221 requires the applicant to continue to satisfy certain time of application criteria. This is to ensure that nothing material has changed in the applicant's circumstances.

New clause 891.222 requires the designated investment made by the applicant, for the purpose of satisfying a requirement for the grant of a Subclass 162 (Investor (Provisional)) visa, to have been held continuously for at least 4 years in the applicant's name, or in the applicant and his or her spouse's names together.

New clause 891.223 requires the applicant to satisfy certain public interest criteria. These criteria relate to, among other things, the health and character of the applicant.

New clauses 891.224 and 891.225 specify the public interest criteria that members of the family unit of the applicant must satisfy relating to, among other things, health and character. The effect of these clauses is that if any member of the applicant's family unit fails to meet these public interest criteria, the whole application fails, even if that person is not listed as an applicant.

Division 891.3 - Secondary criteria

New Division 891.3 sets out the secondary criteria for a Subclass 891 visa. The secondary criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

Subdivision 891.31 - Criteria to be satisfied at time of application

New Subdivision 891.31 sets out the secondary criteria that must be satisfied at the time of application for a Subclass 891 visa.

In particular, new clause 891.311 requires the applicant to be a member of the family unit of, and have made a combined application with, a person who satisfies the primary criteria in Subdivision 891.21.

Subdivision 891.32 - Criteria to be satisfied at time of decision

New Subdivision 891.32 sets out the secondary criteria that must be satisfied at the time of decision for a Subclass 891 visa.

New clause 891.321 requires the applicant to continue to be a member of the family unit of the person (i) with whom a combined application was made; and (ii) who, having satisfied the primary criteria, is the holder of a Subclass 891 visa.

New clauses 891.322 and 891.323 require the applicant to satisfy certain public interest criteria relating to, among other things, health and character.

Division 891.4 - Circumstances applicable to grant

New Division 891.4 sets out the circumstances applicable to the grant of a Subclass 891 visa.

New subclause 891.411(1) provides that if the applicant satisfies the primary criteria, he or she must be inside Australia, but not in immigration clearance, when the visa is granted.

New subclause 891.411(2) provides that if the applicant satisfies the secondary criteria, he or she may be in or outside Australia, but not in immigration clearance, when the visa is granted.

The note below subclause 891.411(2) provides that the second instalment of the visa application charge must be paid before the visa is granted.

Division 891.5 - When visa is in effect

New Division 891.5 provides for when a Subclass 891 visa is in effect. Under new clause 891.511, a Subclass 891 visa is a permanent visa permitting the holder to travel to and enter Australia for five years from the date of grant.

Division 891.6 - Conditions

New Division 891.6 provides for the conditions that are to attach to the grant of a Subclass 891 visa.

New clause 891.611 requires that, if an applicant is outside Australia when the visa is granted and the applicant satisfies the secondary criteria, his or her first entry as the holder of a Subclass 891 visa must be made before a date specified by the Minister. In addition, condition 8515 may be imposed. Condition 8515 provides that the holder of the visa must not marry before entering Australia.

Division 891.7 - Way of giving evidence

New Division 891.7 provides for the way in which evidence of a Subclass 891 visa is to be given. New clause 891.711 requires that a Subclass 891 visa be evidenced by way of a visa label affixed to a valid passport.

Subclass 892 - State/Territory Sponsored Business Owner

New Part 892 inserts new visa Subclass 892 (State/Territory Sponsored Business Owner) in Schedule 2 of the Migration Regulations. This Part specifies the criteria to be satisfied for the grant of a Subclass 892 (State/Territory Sponsored Business Owner) visa (Subclass 892).

Division 892.1 - Interpretation

New Division 892.1 makes reference to a number of terms defined in the Migration Regulations. It also provides that there are no interpretation provisions specific to this Part.

Note 1 provides that definitions of *appropriate regional authority*, *AUD*, *ownership interest* and *qualifying business* can be found in regulation 1.03, and a definition of *main business* can be found in regulation 1.11. Note 2 provides that the meaning of beneficial ownership of an asset or ownership interest are dealt with in regulation 1.11A. Note 3, as mentioned above, provides that there are no interpretation provisions specific to this Part.

Division 892.2 - Primary criteria

New Division 892.2 sets out the primary criteria to be satisfied in respect of a Subclass 892 visa. The primary criteria must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

Subdivision 892.21 - Criteria to be satisfied at time of application

New Subdivision 892.21 sets out the primary criteria that must be satisfied at the time of application for a Subclass 892 visa.

In particular, new clause 892.211 requires the applicant to have an ownership interest in one or more actively operating main businesses in Australia for at least 2 years before lodging the application. For these businesses, an Australian Business Number must have been obtained, and all Business Activity Statements required during the above period must have been submitted to the Australian Taxation Office. These statements must be included in the application.

New clause 892.212 requires the applicant, or the applicant and his or her spouse, to meet two of the following requirements, unless the appropriate regional authority has determined that there are exceptional circumstances:

- to have employed at least one full-time employee, or the equivalent, in the main business or businesses throughout the 12 months immediately prior to the lodging of the application. The employee must not be the applicant or a member of the family unit of the applicant, and must be an Australian citizen, permanent resident or a New Zealand passport holder;
- to have, and have had in the 12 months immediately prior to the lodging of the application, a net value in business and personal assets in Australia of at least AUD250 000; or
- to have, and have had in the 12 months immediately prior to the lodging of the application, a total value of net assets in the main business or businesses in Australia of at least AUD75 000.

New clause 892.213 requires that in the 12 months immediately before the application is made, the applicant's main business, or the main businesses together, had an annual turnover of at least AUD200 000.

New clause 892.214 requires that neither the applicant nor his or her spouse, if any, have been involved in business activities that would generally not be acceptable in Australia.

New clause 892.215 requires the applicant to have been in Australia as the holder of either a Business Skills (Provisional) (Class UR) visa or a Subclass 457 (Business (Long Stay)) visa, as specified in paragraph 1104B(3)(e) of Schedule 1, for a total of at least 1 year in the 2 years immediately before the application is made.

Subdivision 892.22 - Criteria to be satisfied at time of decision

New Subdivision 892.22 sets out the primary criteria to be satisfied at the time of decision by an applicant for a Subclass 892 visa.

New clause 892.221 requires that the applicant continues to satisfy certain time of application criteria. This is to ensure that nothing material has changed in the applicant's circumstances.

New clause 892.222 requires that the sponsorship given with the applicant's application under paragraph 1104B(3)(i) of Schedule 1 has not been withdrawn.

New clause 892.223 requires that the applicant satisfies certain public interest criteria. These criteria relate to, among other things, the health and character of the applicant.

New clauses 892.224 and 892.225 specify the public interest criteria that members of the family unit of the applicant must satisfy, relating to, among other things, health and character. The effect of these clauses is that if any member of the applicant's family unit fails to meet these public interest criteria, the whole application fails, even if that person is not listed as an applicant.

Division 892.3 - Secondary criteria

New Division 892.3 sets out the secondary criteria in relation to new Subclass 892. The secondary criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

Subdivision 892.31 - Criteria to be satisfied at time of application

New Subdivision 892.31 sets out the secondary criteria that must be satisfied at the time of application in respect of a Subclass 892 visa.

New clause 892.311 requires that the applicant must be a member of the family unit of, and must have made a combined application with, a person who satisfies the primary criteria in Subdivision 892.21.

Subdivision 892.32 - Criteria to be satisfied at time of decision

New Subdivision 892.32 sets out the secondary criteria that must be satisfied at the time of decision in respect of a Subclass 892 visa.

New clause 892.321 requires the applicant to continue to be a member of the family unit of the person (i) with whom a combined application was made; and (ii) who, having satisfied the primary criteria, is the holder of a Subclass 892 visa.

New clauses 892.322 and 892.323 require the applicant to satisfy certain public interest criteria, relating to, among other things, health and character.

Division 892.4 - Circumstances applicable to grant

New Division 892.4 sets out the circumstances applicable to the grant of a Subclass 892 visa.

New subclause 892.411(1) provides that if the applicant satisfies the primary criteria, he or she must be inside Australia, but not in immigration clearance, when the visa is granted.

New subclause 892.411(2) provides that if the applicant satisfies the secondary criteria, he or she may be in or outside Australia, but not in immigration clearance, when the visa is granted.

The note below subclause 892.411(2) provides that the second instalment of the visa application charge must be paid before the visa is granted.

Division 892.5 - When visa is in effect

New Division 892.5 provides for when a Subclass 892 visa is in effect. Under new clause 892.511, a Subclass 892 visa is a permanent visa, which permits the holder to travel to and enter Australia for five years from the date of grant.

Division 892.6 - Conditions

New Division 892.6 provides for the conditions that are to attach to the grant of a Subclass 891 visa.

New clause 892.611 requires that, if an applicant is outside Australia when the visa is granted and the applicant satisfies the secondary criteria, his or her first entry as the holder of a Subclass 891 visa must be made before a date specified by the Minister. In addition, condition 8515 may be imposed. Condition 8515 provides that the holder of the visa must not marry before entering Australia.

Division 892.7 - Way of giving evidence

New Division 892.7 provides for the way of giving evidence of the grant of a Subclass 892 visa. According to new clause 892.711, the visa is evidenced by affixing a visa label to a valid passport.

Subclass 893 - State/Territory Sponsored Investor

New Part 893 inserts new visa Subclass 893 (State/Territory Sponsored Investor) into the Migration Regulations. This Part specifies the criteria to be satisfied for the grant of a Subclass 893 (State/Territory Sponsored Investor) visa (Subclass 893).

Division 893.1 - Interpretation

New Division 893.1 specifies the interpretation provisions specific to this Part. It also makes a reference to a number of terms defined in the Migration Regulations.

New clause 893.111 provides that, for the purposes of this Part, the meaning of the term *designated investment* is an investment in a security specified by the Minister under regulation 5.19A.

Note 1 provides that definitions of *appropriate regional authority*, *AUD*, *fiscal year*, *ownership interest* and *qualifying business* can be found in regulation 1.03. Note 2 provides that the meaning of beneficial ownership of an asset or ownership interest, are dealt with in regulation 1.11A.

Division 893.2 - Primary criteria

New Division 893.2 sets out the primary criteria in respect of an application for a Subclass 893 visa. The primary criteria must be satisfied by at least one member of the family unit. Other applicants, who are members of the family unit, need to satisfy only the secondary criteria.

Subdivision 893.21 - Criteria to be satisfied at time of application

New Subdivision 893.21 sets out the primary criteria that must be satisfied at the time of application for a Subclass 893 visa.

New clause 893.211 requires that neither the applicant nor his or her spouse, if any, have been involved in business or investment activities that would generally not be acceptable in Australia.

New clause 893.212 requires the applicant to have been resident in the State or Territory in which the appropriate regional authority that sponsors the applicant is situated. The applicant must be so resident, as the holder of a Subclass 162 (Investor (Provisional)) visa, for a total of at least 2 years in the 4 years immediately before the application is made.

New clause 893.213 provides that the applicant must genuinely have a realistic commitment to continue to maintain a business or investment activity in Australia.

Subdivision 893.22 - Criteria to be satisfied at time of decision

New Subdivision 893.22 sets out the primary criteria to be satisfied at the time of decision by an applicant for a Subclass 893 visa.

New clause 893.221 requires that the applicant continues to satisfy certain time of application criteria. This is to ensure that nothing material has changed in the applicant's circumstances.

New clause 893.222 requires that the sponsorship given with the applicant's application under paragraph 1104B(3)(i) of Schedule 1 has not been withdrawn.

New clause 893.223 requires the designated investment made by the applicant, or by the applicant and his or her spouse, for the purpose of satisfying a requirement for the grant of a Subclass 165 (State/Territory Sponsored Investor (Provisional)) visa, to have been held continuously for at least 4 years in the applicant's name, or in the applicant and his or her spouse's name.

New clause 893.224 requires that the applicant satisfies certain public interest criteria. These criteria relate to, among other things, the health and character of the applicant.

New clauses 893.225 and 893.226 specify the public interest criteria that members of the family unit of the applicant must satisfy, relating to, among other things, health and character. The effect of these clauses is that if any member of the applicant's family unit fails to meet these public interest criteria, the whole application fails, even if that person is not listed as an applicant.

Division 893.3 - Secondary criteria

New Division 893.3 sets out the secondary criteria in relation to new Subclass 893. The secondary criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

Subdivision 893.31 - Criteria to be satisfied at time of application

New Subdivision 893.31 sets out the secondary criteria that must be satisfied at the time of application in respect of a Subclass 893 visa.

New clause 893.311 requires that the applicant must be a member of the family unit of, and must have made a combined application with, a person who satisfies the primary criteria in Subdivision 893.21.

Subdivision 893.32 - Criteria to be satisfied at time of decision

New Subdivision 893.32 sets out the secondary criteria that must be satisfied at the time of decision in respect of a Subclass 893 visa.

New clause 893.321 requires the applicant to continue to be a member of the family unit of the person (i) with whom a combined application was made; and (ii) who, having satisfied the primary criteria, is the holder of a Subclass 893 visa.

New clauses 893.322 and 893.323 require the applicant to satisfy certain public interest criteria, relating to, among other things, health and character.

Division 893.4 - Circumstances applicable to grant

New Division 893.4 sets out the circumstances applicable to the grant of a Subclass 893 visa.

New subclause 893.411(1) provides that if the applicant satisfies the primary criteria, he or she must be inside Australia, but not in immigration clearance, when the visa is granted.

New subclause 893.411(2) provides that if the applicant satisfies the secondary criteria, he or she may be in or outside Australia, but not in immigration clearance, when the visa is granted.

The note below subclause 893.411(2) provides that the second instalment of the visa application charge must be paid before the visa is granted.

Division 893.5 - When visa is in effect

New Division 893.5 provides for when a Subclass 893 visa is in effect. Under new clause 893.511, a Subclass 893 visa is a permanent visa, which permits the holder to travel to and enter Australia for five years from the date of grant.

Division 893.6 - Conditions

New Division 893.6 provides for the conditions that are to attach to the grant of a Subclass 893 visa.

New clause 893.611 requires that, if an applicant is outside Australia when the visa is granted and the applicant satisfies the secondary criteria, his or her first entry as the holder of a Subclass 893 visa must be made before a date specified by the Minister. In addition, condition 8515 may be imposed. Condition 8515 provides that the holder of the visa must not marry before entering Australia.

Division 893.7 - Way of giving evidence

New Division 893.7 provides for the way of giving evidence of the grant of a Subclass 893 visa. According to new clause 893.711, the visa is evidenced by affixing a visa label to a valid passport.

Part 4 - Additional amendments of Schedule 2

Item [2401] - Amendments relating to secondary criteria to be satisfied at the time of application

This item omits clauses 411.313, 415.313, 416.313, 418.313, 419.313, 420.313, 421.313, 422.313, 423.313, 424.313, 425.313, 426.313, 427.313, 428.313, 430.313, 432.313, and 442.313, being time of application provisions requiring an applicant to have complied with the conditions of a visa held by the applicant.

Provisions requiring applicants to have complied with visa conditions of the last held substantive visa, and any subsequently held bridging visa, are inserted by these Regulations into the time of decision criteria of the visa subclasses referred to above.

Item [2402] - Amendments relating to secondary criteria to be satisfied at time of decision

This item inserts new clauses 411.325A, 415.325A, 416.324A, 418.325A, 419.324A, 420.325A, 421.325A, 422.326A, 423.325A, 424.326A, 425.324A, 426.326A, 427.325A, 428.324A, 430.324A, 432.324A, and 442.324A into the time of decision criteria for applicants seeking to meet the secondary criteria for the grant of a visa of the subclasses referred to above.

These clauses require that, if the application was made in the migration zone, the applicant has complied substantially with the conditions of the last held substantive visa and any subsequently held bridging visa.

These amendments ensure that there is consistency in the requirements for applicants seeking to meet the primary criteria and applicants seeking to meet the secondary criteria in the above visa subclasses.

Item [2403] - Amendments relating to primary criteria to be satisfied at time of decision

This item substitutes clauses 415.230, 416.226, 418.228, 419.228, 421.228, 423.228, 425.227, 427.232, 430.226, 432.230 and 442.228 with new provisions providing that if the application is made in the migration zone, the applicant must have complied substantially with the conditions of the last held substantive visa and any subsequently held bridging visa.

These amendments ensure consistency for applicants seeking to meet the primary or secondary criteria in relation to the requirement to have complied with the conditions of earlier held visas.

Part 5 - Amendments of Schedule 3

Item [2501] - Paragraph 3003(e)

Schedule 3 contains additional criteria applicable to unlawful non-citizens and certain bridging visa holders.

This item substitutes paragraph 3003(e) requiring that an applicant who after 1 September 1994 has not held a substantive visa, and who on 31 August 1994 was an illegal entrant or the holder of an entry permit not valid beyond 31 August 1994, has complied substantially with the conditions of the last held entry permit (other than a breach of a condition arising solely from the expiry of the entry permit) and any subsequently held bridging visa.

The purpose of the amendment is to ensure that applicants who are required to satisfy the criteria set out in paragraph 3003(e) are required to have complied with the conditions of any subsequently held bridging visa. The intention is that the requirements relating to substantial compliance with earlier held visas in item 3003 are consistent with criteria in Schedule 2 to the Regulations.

Item [2502] - Paragraph 3004(e)

Schedule 3 contains additional criteria applicable to unlawful non-citizens and certain bridging visa holders.

This item substitutes paragraph 3004(e) requiring an applicant to have complied substantially with the conditions of:

- the last held entry permit (other than a breach of a condition arising solely from the expiry of the entry permit), and any subsequently held bridging visa; and
- the last of any substantive visa (other than a breach of a condition arising solely because the visa ceased to be in effect), and any subsequently held bridging visa.

The purpose of the amendment is to ensure that applicants who are required to satisfy the criteria set out in paragraph 3004(e) are also required to have complied with the conditions of any subsequently held bridging visa.

Part 6 - Amendments of Schedule 7

Item [2601] - Divisions 1.1, 1.2 and 1.3

This item omits Divisions 1.1, 1.2 and 1.3 of Schedule 7 to the Migration Regulations (Business Skills Points Test - Attributes and Points). This is a technical amendment, which is consequential to the repeal of visa subclasses 127 to 131 and 840 to 844 by these Regulations.

Item [2602] - Division 3.1, heading

This item omits the heading to Division 3.1 of Schedule 7 to the Migration Regulations (Business Skills Points Test - Attributes and Points) and inserts in its place a new heading. This is a technical amendment, which is consequential to the repeal of visa subclasses 127 to 130 and 840 to 843 by these Regulations.

Item [2603] - Division 3.2

This item omits Division 3.2 of Schedule 7 to the Migration Regulations (Business Skills Points Test - Attributes and Points). This is a technical amendment, which is consequential to the repeal of visa subclasses 131 and 844 by these Regulations.

Part 7 - Amendment of Schedule 9

Item [2701] - Part 1, after item 22

Paragraph 3.03(2)(fa) inserted by these Regulations sets out for the purposes of subsection 166(2) of the Act (which deals with the way in which a person entering Australia must give information) that a non-citizen who holds a visa granted on the basis of an Internet application must show a clearance officer evidence of the person's identity as set out in Part 1 of Schedule 9 to the Regulations, and give a clearance officer a completed passenger card.

This item inserts new items 23 and 24 into Part 1 of Schedule 9 to the Regulations.

New item 23 sets out that a person who holds a visa granted on the basis of an Internet application, and who holds a passport of a kind specified by Gazette Notice for paragraph 1218(3)(bb) of Schedule 1 to the Regulations, or for paragraph 417.211(3)(a) of Schedule 2 to the Regulations, must show a clearance officer the passport mentioned in the respective Gazette Notice.

New item 23 applies to a person granted a Short Stay (Visitor) (Class TR) visa, or a Working Holiday (Temporary) (Class TZ) visa, granted on the basis of an Internet application.

New item 24 provides that persons holding a visa granted on the basis of an Internet application, and who are included in a class of person specified in a Gazette Notice for subparagraph 1222(1)(a)(iii) of Schedule 1 to the Regulations, must show a clearance officer a passport.

New item 24 applies to a person granted a Student (Temporary) (Class TU) visa granted on the basis of an Internet application.