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## Migration Amendment Regulations 2002 (No. $\surd$ )<sup>1</sup>

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Statutory Rules 2002 No.  $\surd$ <sup>2</sup>

348

I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Migration Act 1958*.

Dated  $\surd$  2002

19 December

$\surd$  PETER HOLLINGWORTH  
Governor-General

By His Excellency's Command

PHILIP RUDDOCK  
Minister for Immigration and Multicultural and  
Indigenous Affairs

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**1 Name of Regulations**

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

10

**2 Commencement**

These Regulations commence as follows:

- (a) on 5 January 2003 — regulations 1, 2 and 3 and Schedule 1;
- (b) on 1 March 2003 — regulation 4 and Schedule 2.

**3 Amendment of *Migration Regulations 1994***

Schedules 1 and 2 amend the *Migration Regulations 1994*.

#### 4 Transitional

- (1) The amendments made by items [2309] to [2312], [2352] and [2360] apply in relation to an application for a visa:
  - (a) made, but not finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*), before 1 March 2003; or
  - (b) made on or after 1 March 2003.
- (2) 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.
- (3) The *Migration Regulations 1994*, as in force immediately before 1 March 2003, continue to apply in relation to an application for a visa:
  - (a) made, but not finally determined (within the meaning of subsection 5 (9) of the *Migration Act 1958*), before 1 March 2003; and
  - (b) 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 1994*.

## Schedule 1      Amendments commencing on 5 January 2003

(regulation 3)

### [1101]    After regulation 3.13

*insert*

#### 3.13A    Information about passengers and crew to be given before arrival of international passenger aircraft

- (1) For subsection 245I (1) of the Act, an international passenger aircraft is a kind of aircraft to which Division 12B of the Act applies.

*Note* The operator of an aircraft to which Division 12B applies that is due to arrive at an airport in Australia from a place outside Australia must, before the arrival of the aircraft, give the Department a report that includes particular information about passengers and crew aboard the aircraft (see section 245L of the Act).

- (2) In this regulation:

***international passenger aircraft*** means an aircraft that is being used to provide a regular international passenger air service or an international passenger charter air service.

***international passenger charter air service*** means a service of providing air transportation of persons from a place outside Australia to an airport in Australia that:

- (a) is provided:
- (i) by an airline operator that provides a regular international passenger air service; and
  - (ii) in return for a fee payable by persons using the service; and
- (b) is not conducted in accordance with an international airline licence granted under regulation 15 of the *Air Navigation Regulations 1947*.

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***regular international passenger air service*** means a service of providing air transportation of persons from a place outside Australia to an airport in Australia that:

- (a) is provided in return for a fee payable by persons using the service; and
- (b) is conducted in accordance with:
  - (i) an international airline licence granted under regulation 15 of the *Air Navigation Regulations 1947*; and
  - (ii) fixed schedules from fixed airports outside Australia over specific routes to fixed airports in Australia; and
- (c) is available to the general public on a regular basis.

**[1102] Regulation 3.14, heading**

*substitute*

**3.14 Information about overseas passengers to be given on arrival of inbound civilian vessel**

## **Schedule 2      Amendments commencing on 1 March 2003**

(regulation 3)

### **Part 1              Amendments of Parts 1, 2, 3 and 5**

#### **[2101]   Subregulation 1.11A (1)**

*omit*

127, 128, 129, 130, 131, 840, 841, 842, 843, 844, 845 and  
846

*insert*

132, 160, 161, 162, 163, 164, 165, 845, 846, 890, 891, 892  
and 893

#### **[2102]   Subregulation 1.20 (2)**

*omit*

The obligations

*insert*

Subject to subregulation (4), the obligations

#### **[2103]   Paragraph 1.20 (2) (a)**

*omit*

Business Skills (Migrant) (Class AD), Partner (Migrant)  
(Class BC), Business Skills (Residence) (Class BH),

*insert*

Partner (Migrant) (Class BC),

**[2104] After subregulation 1.20 (3)**

*insert*

- (4) This regulation does not apply to a visa in the following classes:
- (a) Business Skills (Migrant) (Class AD);
  - (b) Business Skills — Business Talent (Migrant) (Class EA);
  - (c) Business Skills — Established Business (Residence) (Class BH);
  - (d) Business Skills (Residence) (Class BH);
  - (e) Business Skills (Residence) (Class DF);
  - (f) Business Skills (Provisional) (Class UR).

**[2105] Subparagraph 1.41 (3) (a) (v)**

*omit*

Business Skills (Residence) (Class BH),

*insert*

Business Skills (Residence) (Class BH), Business Skills — Established Business (Residence) (Class BH), Business Skills (Residence) (Class DF), Business Skills — Business Talent (Migrant) (Class EA),

**[2106] After subregulation 2.05 (5)**

*insert*

- (6) For subsection 41 (2A) of the Act, further circumstances in which the Minister may waive condition 8534 in relation to a visa are that the holder of the visa:
- (a) is a registered nurse, or satisfies the requirements for registration as a registered nurse, in Australia; and
  - (b) in a test, taken less than 2 years before the date of the waiver of the condition, has achieved one of the following results:
    - (i) an Overall Band Score of at least 7.0 in an IELTS test;
    - (ii) a pass in an Occupational English Test.

*Note* Regulation 2.07AH makes provision about applications for visas by persons for whom condition 8534 has been waived under subregulation 2.05 (6).

**[2107] Regulation 2.07AG, heading**

*substitute*

**2.07AG Applications for certain substantive visas by persons for whom condition 8534 has been waived under subregulation 2.05 (5)**

**[2108] After regulation 2.07AG**

*insert*

**2.07AH Applications for certain substantive visas by persons for whom condition 8534 has been waived under subregulation 2.05 (6)**

For section 46 of the Act, if:

- (a) condition 8534 has been waived under subregulation 2.05 (6) in relation to a visa held by a person; and
- (b) the first application for a substantive visa that the person makes after the waiver of the condition is made in Australia;

the application is taken to have been validly made only if it is an application for a Subclass 457 (Business (Long Stay)) visa.

**[2109] Subparagraph 2.08B (1) (a) (vii)**

*omit*

visa; and

*insert*

visa; or



---

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

*insert*

- (viii) a Business Skills (Provisional) (Class UR) visa; and

**[2111] Regulation 2.25**

*substitute*

**2.25 Grant of Bridging E (Class WE) visas without application**

- (1) This regulation applies to:
- (a) a non-citizen who is in criminal detention; or
  - (b) a non-citizen who:
    - (i) is unwilling or unable to make a valid application for a Bridging E (Class WE) visa; and
    - (ii) is not barred from making a valid application for a Bridging E (Class WE) visa by a provision in the Act or these Regulations, other than in item 1305 of Schedule 1.
- (2) Despite anything in Schedule 1, the Minister may grant the non-citizen a Bridging E (Class WE) visa if the Minister is satisfied that, at the time of decision:
- (a) the non-citizen satisfies:
    - (i) the criteria set out in clauses 050.211, 050.212, 050.223, 050.224 and 050.411 of Schedule 2; and
    - (ii) the interview criterion; or
  - (b) the non-citizen satisfies the criteria set out in clauses 051.211, 051.212, 051.213, 051.221 and 051.411 of Schedule 2.
- (3) The non-citizen satisfies the *interview criterion* if an officer who is authorised by the Secretary for the purposes of subclause 050.222 (1) of Schedule 2 has either:
- (a) interviewed the non-citizen; or
  - (b) decided that it is not necessary to interview the non-citizen.

**[2112] Regulation 2.29**

*omit*

**[2113] Subregulation 2.50 (2)**

*substitute*

- (2) For paragraph (a) of the definition of *business visa* in subsection 134 (10) of the Act, the following classes of visas are prescribed:
- (a) Business Skills (Migrant) (Class AD);
  - (b) Business Skills — Business Talent (Migrant) (Class EA);
  - (c) Business Skills — Established Business (Residence) (Class BH);
  - (d) Business Skills (Residence) (Class BH);
  - (e) Business Skills (Provisional) (Class UR).

**[2114] After paragraph 3.03 (2) (f)**

*insert*

- (fa) in the case of a non-citizen who holds a visa granted on the basis of an Internet application:
- (i) show a clearance officer evidence of the person's identity, as specified in Part 1 of Schedule 9; and
  - (ii) give the clearance officer a completed passenger card; and

*Note* **Internet application** is defined in regulation 1.03.

**[2115] Paragraph 3.03 (2) (g)**

*omit*

(e) or (f):

*insert*

(e), (f) or (fa):

**[2116] Paragraph 5.17 (h)**

*omit*

a Business Skills (Migrant) (Class AD) or Business Skills (Residence) (Class BH) visa —

*insert*

a Business Skills — Established Business (Residence) (Class BH) visa —

**[2117] Paragraph 5.19A (2) (a)**

*omit*

3

*insert*

4

**Part 2 Amendments of Schedule 1**

**[2201] Item 1104**

*substitute*

**1104AA. Business Skills — Business Talent (Migrant)  
(Class EA)**

- (1) Forms: 47BU, 1213 and 1224.
- (2) Visa application charge:
  - (a) First instalment (payable at the time application is made): \$3 385
  - (b) Second instalment (payable before grant of visa):
    - (i) For each applicant who:
      - (A) was at least 18 years old at time of application; and
      - (B) is assessed as not having functional English; and
      - (C) satisfies the primary criteria for the grant of a Subclass 132 (Business Talent) visa: \$4 980

- (ii) For each applicant who:
    - (A) was at least 18 years old at time of application; and
    - (B) is assessed as not having functional English; and
    - (C) satisfies the secondary criteria for the grant of a Subclass 132 (Business Talent) visa: \$2 485
  - (iii) In any other case: Nil.
- (3) Other:
- (a) Application must be made:
    - (i) if the applicant's residential address, given using form 47BU, is in PRC, including Hong Kong or Macau — at the address in Hong Kong specified in a Gazette Notice for this subparagraph; or
    - (ii) if the applicant's residential address, given using form 47BU, is in Taiwan — at the address in Taipei specified in a Gazette Notice for this subparagraph; or
    - (iii) if subparagraphs (i) and (ii) do not apply — at the address in Perth specified in a Gazette Notice for this subparagraph.
  - (b) Applicant may be in or outside Australia, but not in immigration clearance.
  - (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Business Skills — Business Talent (Migrant) (Class EA) visa may be made at the same time and place as, and combined with, the application by that person.
  - (d) For applicant seeking to satisfy the primary criteria for the grant of a Subclass 132 (Business Talent) visa:
    - (i) applicant must be sponsored by a State or Territory; and
    - (ii) form 1224 must be signed by the Premier or Chief Minister, or by a person authorised by the Premier or Chief Minister, of that State or Territory.

- (4) Subclasses:  
132 (Business Talent)

**[2202] Item 1104A, heading**

*substitute*

**1104A. Business Skills — Established Business (Residence)  
(Class BH)**

**[2203] Subitem 1104A (1)**

*substitute*

- (1) Forms: 47BU and 1138.

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

*omit*

Business Skills (Residence) (Class BH):

*insert*

Business Skills — Established Business (Residence)  
(Class BH):

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

*omit*

Business Skills (Residence) (Class BH):

*insert*

Business Skills — Established Business (Residence)  
(Class BH):

**[2206] Paragraph 1104A (3) (c)**

*omit*

Business Skills (Residence) (Class BH)

*insert*

Business Skills — Established Business (Residence)  
(Class BH)

**[2207] Subitem 1104A (4)**

*substitute*

(4) Subclasses:

845 (Established Business in Australia)

846 (State/Territory Sponsored Regional Established  
Business in Australia)

**[2208] After item 1104A**

*insert*

**1104B. Business Skills (Residence) (Class DF)**

(1) Forms:

- (a) For applicant seeking to satisfy the primary criteria for the grant of a Subclass 890 (Business Owner) visa: 47BU and 1217
- (b) For applicant seeking to satisfy the primary criteria for the grant of a Subclass 891 (Investor) visa: 47BU
- (c) For applicant seeking to satisfy the primary criteria for the grant of a Subclass 892 (State/Territory Sponsored Business Owner) visa: 47BU, 1217 and 949
- (d) For applicant seeking to satisfy the primary criteria for the grant of a Subclass 893 (State/Territory Sponsored Investor) visa: 47BU and 949.

(2) Visa application charge:

- (a) First instalment (payable at the time application is made): \$1 000

- 
- (b) Second instalment (payable before grant of visa):
- (i) For each applicant who:
    - (A) was at least 18 years old at time of application; and
    - (B) is assessed as not having functional English; and
    - (C) satisfies the secondary criteria for the grant of a visa of a subclass included in Business Skills (Residence) (Class DF); and
    - (D) is not the holder of a visa of a subclass included in Business Skills (Provisional) (Class UR): \$2 485
  - (ii) In any other case: Nil.
- (3) Other:
- (a) Application must be made in Australia, but not in immigration clearance.
  - (b) Applicant seeking to satisfy the primary criteria must be in Australia, but not in immigration clearance.
  - (c) Applicant seeking to satisfy the secondary criteria may be in or outside Australia, but not in immigration clearance.
  - (d) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 890 (Business Owner) visa must hold a visa of a subclass included in Business Skills (Provisional) (Class UR), 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.
  - (e) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 891 (Investor) visa 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.
  - (f) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 892 (State/Territory Sponsored Business Owner) visa must hold:
    - (i) a visa of a subclass included in Business Skills (Provisional) (Class UR), 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; or
- (ii) a Subclass 457 (Business (Long Stay)) visa, granted on the basis that the applicant, or the spouse or former spouse of the applicant, satisfied the criteria in subclause 457.223 (7) or (7A) for the grant of the visa.
  - (g) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 893 (State/Territory Sponsored Investor) visa must hold a Subclass 165 (State/Territory Sponsored Investor (Provisional)) visa granted on the basis that the applicant satisfied the primary criteria for the grant of the visa.
  - (h) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Business Skills (Residence) (Class DF) visa may be made at the same time and place as, and combined with, the application by that person.
  - (i) For applicant seeking to satisfy the primary criteria for the grant of a Subclass 892 (State/Territory Sponsored Business Owner) or 893 (State/Territory Sponsored Investor) visa:
    - (i) applicant must be sponsored by an appropriate regional authority; and
    - (ii) form 949 must be signed by an officer of the authority who is authorised to sign a sponsorship of that kind.
- (4) Subclasses:
- 890 (Business Owner)
  - 891 (Investor)
  - 892 (State/Territory Sponsored Business Owner)
  - 893 (State/Territory Sponsored Investor)

**[2209] After paragraph 1128BA (3) (q)**

*insert*

- (r) Applicant must:
  - (i) satisfy paragraphs (a) to (pa); or



- (ii) in the case of an applicant who:
  - (A) is a member of the family unit of an applicant who satisfies paragraphs (a) to (pa); and
  - (B) makes a combined application with that applicant;satisfy paragraphs (a) to (h) and (k) to (pa).

**[2210] After paragraph 1128CA (3) (n)**

*insert*

- (o) Applicant must:
  - (i) satisfy paragraphs (a) to (ma); or
  - (ii) in the case of an applicant who:
    - (A) is a member of the family unit of an applicant who satisfies paragraphs (a) to (ma); and
    - (B) makes a combined application with that applicant;satisfy paragraphs (a) to (h), (m) and (ma).

**[2211] After item 1201**

*insert*

**1202A. Business Skills (Provisional) (Class UR)**

- (1) Forms:
  - (a) 47BT and:
    - (i) 1136; or
    - (ii) 1137; or
    - (iii) 1139; and
  - (b) For applicant seeking to satisfy the primary criteria for the grant of:
    - (i) a Subclass 163 (State/Territory Sponsored Business Owner (Provisional)) visa; or
    - (ii) a Subclass 164 (State/Territory Sponsored Senior Executive (Provisional)) visa; or

- (iii) a Subclass 165 (State/Territory Sponsored Investor (Provisional)) visa:  
949.
- (2) Visa application charge:
- (a) First instalment (payable at the time application is made): \$2 385
- (b) Second instalment (payable before grant of visa):
- (i) For each applicant who:
- (A) was at least 18 years old at time of application; and
- (B) is assessed as not having functional English; and
- (C) satisfies the primary criteria for the grant of a visa of a subclass included in Business Skills (Provisional) (Class UR): \$4 980
- (ii) For each applicant who:
- (A) was at least 18 years old at time of application; and
- (B) is assessed as not having functional English; and
- (C) satisfies the secondary criteria for the grant of a visa of a subclass included in Business Skills (Provisional) (Class UR): \$2 485
- (iii) In any other case: Nil.
- (3) Other:
- (a) Application must be made:
- (i) if the applicant's residential address, given using form 47BT, is in PRC, including Hong Kong or Macau — at the address in Hong Kong specified in a Gazette Notice for this subparagraph; or
- (ii) if the applicant's residential address, given using form 47BT, is in Taiwan — at the address in Taipei specified in a Gazette Notice for this subparagraph; or
- (iii) if subparagraphs (i) and (ii) do not apply — at the address in Perth specified in a Gazette Notice for this subparagraph.

- (b) Applicant may be in or outside Australia, but not in immigration clearance.
- (c) Application by a person claiming to be a member of the family unit of a person who is an applicant for a Business Skills (Provisional) (Class UR) visa may be made at the same time and place as, and combined with, the application by that person.
- (d) For applicant seeking to satisfy the primary criteria for the grant of a Subclass 163 (State/Territory Sponsored Business Owner (Provisional)), 164 (State/Territory Sponsored Senior Executive (Provisional)) or 165 (State/Territory Sponsored Investor (Provisional)) visa:
  - (i) applicant must be sponsored by an appropriate regional authority; and
  - (ii) form 949 must be signed by an officer of the authority who is authorised to sign a sponsorship of that kind.

(4) Subclasses:

- 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))
- 165 (State/Territory Sponsored Investor (Provisional))

**[2212] Subparagraph 1205 (2) (a) (i)**

*substitute*

- (i) In the case of each applicant who applies outside Australia and who appears to the Minister, on the basis of the information contained in the application:
  - (A) to meet the requirements for the grant of a Subclass 411 (Exchange) visa; or
  - (B) subparagraph (iii): Nil

**[2213] After subparagraph 1205 (2) (a) (i)**

*insert*

- (ia) In the case of 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 (ii): Nil

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

*substitute*

- (B) the applicant is sponsored to enter Australia for the purpose of performing at a festival specified by the Minister in a Gazette Notice for this sub-subparagraph; or
- (BA) the applicant is sponsored to enter Australia for the purpose of performing at a festival approved by the Secretary for this sub-subparagraph; or

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

*substitute*

- (a) Application (other than an application by a person seeking to meet the criteria for the grant of a Subclass 420 (Entertainment) visa) may be made in or outside Australia, but not in immigration clearance.
- (b) Applicant (other than an applicant seeking to meet the criteria for the grant of a Subclass 420 (Entertainment) visa) must be in Australia to make an application in Australia.
- (c) 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:
  - (i) posting the application (with the correct pre-paid postage) to the post office box address specified in a Gazette Notice for this subparagraph; or

- (ii) having the application delivered by a courier service to the address specified in a Gazette Notice for this subparagraph; or
- (iii) having the application sent by facsimile to the address specified in a Gazette Notice for this subparagraph.

*Note* Form 148 is the approved sponsorship form for Subclass 420 (Entertainment) visa nominees other than for models and mannequins.

- (d) Application by a person claiming to be a member of the family unit of a person may be made at the same time and place as, and combined with, an application by any other member of the family unit seeking to satisfy either the primary or secondary criteria.

**[2216] After paragraph 1212A (3) (l)**

*insert*

- (m) Applicant must:
  - (i) satisfy paragraphs (a) to (ka); or
  - (ii) in the case of an applicant who:
    - (A) is a member of the family unit of an applicant who satisfies paragraphs (a) to (ka); and
    - (B) makes a combined application with that applicant;satisfy paragraphs (a) to (f) and (j) to (ka).

**[2217] Paragraph 1214 (1) (b)**

*omit*

(3) (aa),

*insert*

(3) (b),

**[2218] Subitem 1217 (2)**

*substitute*

- (2) Visa application charge:
- (a) First instalment (payable at the time application is made):
    - (i) In the case of an applicant who:
      - (A) is the holder of a Subclass 410 visa granted before 1 March 2003 (the *earlier visa*); and
      - (B) applies for a new Subclass 410 visa that would expire not later than the day on which the earlier visa would have expired: Nil
    - (ii) In any other case: \$160.
  - (b) Second instalment (payable before grant of visa): Nil.

**[2219] Subparagraph 1218 (1) (a) (i)**

*substitute*

- (i) if the applicant:
  - (A) is a citizen of PRC; and
  - (B) is intending to travel to Australia as a member of a tour organised by a travel agent specified in a Gazette Notice for paragraph 676.212A (b) of Schedule 2; and
  - (C) is not making an Internet application: 48G.
- (ia) if the applicant is making an Internet application: 48 (Internet).

**[2220] Paragraph 1218 (3) (a)**

*after*

Application

*insert*

(not being an Internet application)

---

**[2221] After paragraph 1218 (3) (ba)**

*insert*

- (bb) Internet application may be made if and only if the applicant:
- (i) is outside Australia; and
  - (ii) is the holder of a passport of a kind specified in a Gazette Notice for this paragraph; and

**[2222] After paragraph 1223A (3) (c)**

*insert*

- (d) If an applicant seeks to satisfy the primary criteria for the grant of a Subclass 457 (Business – Long Stay) visa on the basis that the applicant satisfies the requirements of subclause 457.223 (4) of Schedule 2, the application must:
- (i) specify the employer by whom the applicant proposes to be employed for subclause 457.223 (4); and
  - (ii) be accompanied by evidence that the proposed employer is:
    - (A) a pre-qualified business sponsor; or
    - (B) a standard business sponsor; or
    - (C) a person who has applied for approval under regulation 1.20C as a pre-qualified business sponsor or standard business sponsor but whose application has not yet been decided.

### **Part 3    Amendments of Schedule 2**

#### **[2301] Subclause 050.212 (6)**

*substitute*

- (6) An applicant meets the requirements of this subclause if:
- (a) the applicant has applied for a substantive visa in Australia and in relation to that application either:
    - (i) the applicant:
      - (A) is the subject of a decision for which the Minister has the power to substitute a more favourable decision under section 345, 351, 391, 417 or 454 of the Act; and
      - (B) is being assessed by an officer against the Minister's guidelines for the identification of decisions in relation to which the Minister may think that it is in the public interest to substitute a more favourable decision; and
      - (C) has not previously sought, or been the subject of a request by another person for, the exercise of the Minister's power under that section to substitute a more favourable decision for the decision; or
    - (ii) the Minister is personally considering whether to exercise, or to consider the exercise of, the Minister's powers to substitute a more favourable decision for a decision under section 345, 351, 391, 417 or 454 of the Act in relation to the applicant; or
  - (b) the Minister has decided, under section 345, 351, 391, 417 or 454 of the Act, to substitute a more favourable decision for the decision of a review authority but the applicant cannot, for the time being, be granted a substantive visa because of a determination under section 85 of the Act.



**[2302] Subparagraph 050.212 (6A) (b) (i)**

*before*

the Minister

*insert*

the applicant has applied for a substantive visa in Australia  
and in relation to that application

**[2303] Parts 127 to 131**

*substitute*

**Subclass 132 Business Talent**

**132.1 Interpretation**

*Note 1* **AUD, fiscal year, ownership interest** and **qualifying business** are defined in regulation 1.03 and **main business** is defined in regulation 1.11.

*Note 2* As to beneficial ownership of an asset or ownership interest, see regulation 1.11A.

*Note 3* There are no interpretation provisions specific to this Part.

**132.2 Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 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.

**132.21 Criteria to be satisfied at time of application**

132.211 The applicant has overall had a successful business career.

132.212 For at least 2 of the 4 fiscal years immediately before the application is made:

- (a) the net value of the assets of:
  - (i) the applicant; or
  - (ii) the applicant's spouse; or

- (iii) the applicant and his or her spouse together; in a qualifying business or qualifying businesses in which the applicant had an ownership interest was at least AUD400 000; and
- (b) if a qualifying business mentioned in paragraph (a) was operated by a publicly listed company, the shareholding of:
  - (i) the applicant; or
  - (ii) the applicant's spouse; or
  - (iii) the applicant and his or her spouse together; was at least 10% of the total issued capital of the company.
- 132.213 For at least 2 of the 4 fiscal years immediately before the application is made, the applicant's main business, or the applicant's main businesses together, had an annual turnover of at least AUD3 000 000.
- 132.214 The business and personal assets of the applicant, the applicant's spouse, or the applicant and his or her spouse together:
  - (a) have a net value of at least AUD1 500 000; and
  - (b) are lawfully acquired and available for transfer, and capable of being transferred, to Australia within 2 years after the grant of a Subclass 132 visa.
- 132.215 The applicant:
  - (a) is less than 55 years old; or
  - (b) is proposing to establish or participate in a business that the sponsoring State or Territory has determined is of exceptional economic benefit to the State or Territory.
- 132.216 Neither the applicant nor his or her spouse (if any) has a history of involvement in business activities that are of a nature that is not generally acceptable in Australia.
- 132.217 The applicant genuinely has a realistic commitment, after entry to Australia as the holder of a Subclass 132 visa:
  - (a) either:
    - (i) to establish a qualifying business in Australia; or

- 
- (ii) to participate in an existing qualifying business in Australia; and
- (b) to maintain a substantial ownership interest in that business; and
- (c) to maintain direct and continuous involvement in management of that business from day to day and in making decisions that affect the overall direction and performance of the business in a manner that benefits the Australian economy.
- 132.218 The applicant has signed a declaration that the applicant understands his or her obligations as the holder of a Subclass 132 visa.

**132.22 Criteria to be satisfied at time of decision**

- 132.221 The applicant continues to satisfy the criteria in clauses 132.211, 132.214, 132.216 and 132.217.
- 132.222 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- 132.223 The applicant's sponsor for paragraph 1104AA (3) (d) of Schedule 1 has not withdrawn the sponsorship.
- 132.224 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 132.225 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 132 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
- (b) if he or she has previously been in Australia — satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 132 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and

- (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

132.226 If a person:

- (a) is a member of the family unit of the applicant; and
- (b) has not turned 18; and
- (c) made a combined application with the applicant;

public interest criteria 4015 and 4016 are satisfied in relation to the person.

### **132.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **132.31 Criteria to be satisfied at time of application**

132.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 132.21.

#### **132.32 Criteria to be satisfied at time of decision**

132.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 132 visa.

132.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.

132.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

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

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## 132.4 Circumstances applicable to grant

132.411 The applicant may be in or outside Australia, but not in immigration clearance.

*Note* The second instalment of the visa application charge must be paid before the visa can be granted.

## 132.5 When visa is in effect

132.511 Permanent visa permitting the holder to travel to and enter Australia for 5 years from the date of grant.

## 132.6 Conditions

132.611 If the applicant is outside Australia when the visa is granted, first entry must be made before a date specified by the Minister for the purpose.

132.612 If the applicant is outside Australia when the visa is granted, either or both of conditions 8502 and 8515 may be imposed.

## 132.7 Way of giving evidence

132.711 Visa label affixed to a valid passport.

## [2304] Division 151.1

*substitute*

## 151.1 Interpretation

In this Part:

***defence service applicant*** means an applicant who meets the requirements of subclause 151.211 (3).

***long residence applicant*** means an applicant who meets the requirements of subclause 151.211 (2).

**[2305] Clause 151.221**

*substitute*

- 151.221 (1) For a long residence applicant, the applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- (2) For a defence service applicant, the applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

**[2306] Clause 151.224**

*substitute*

- 151.224 (1) For a long residence applicant, each member of the family unit of the applicant who is an applicant for a Subclass 151 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010; and
  - (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (1A) For a defence service applicant, each member of the family unit of the applicant who is an applicant for a Subclass 151 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010; and
  - (b) if he or she has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010.
- (2) For a long residence applicant, each member of the family unit of the applicant who is not an applicant for a Subclass 151 visa is a person who:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo an assessment in relation to that criterion.

(2A) For a defence service applicant, each member of the family unit of the applicant who is not an applicant for a Subclass 151 visa is a person who:

- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4007, unless the Minister is satisfied that it would be unreasonable to require the person to undergo an assessment in relation to that criterion.

**[2307] Clause 151.322**

*substitute*

- 151.322 (1) For an applicant who is a member of the family unit of, and made a combined application with, a long residence applicant, the applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4009 and 4010.
- (2) For an applicant who is a member of the family unit of, and made a combined application with, a defence service applicant, the applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

**[2308] After Part 159**

*insert*

**Subclass 160 Business Owner (Provisional)**

**160.1 Interpretation**

*Note 1* *appropriate regional authority, AUD, fiscal year, ownership interest* and *qualifying business* are defined in regulation 1.03 and *main business* is defined in regulation 1.11.

*Note 2* As to beneficial ownership of an asset or ownership interest, see regulation 1.11A.

*Note 3* There are no interpretation provisions specific to this Part.

## **160.2 Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 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.

### **160.21 Criteria to be satisfied at time of application**

- 160.211 The applicant has overall had a successful business career.
- 160.212 For at least 2 of the 4 fiscal years immediately before the application is made:
- (a) the net value of the assets of:
    - (i) the applicant; or
    - (ii) the applicant's spouse; or
    - (iii) the applicant and his or her spouse together;  
in a qualifying business or qualifying businesses in which the applicant had an ownership interest was at least AUD200 000; and
  - (b) if a qualifying business mentioned in paragraph (a) was operated by a publicly listed company, the shareholding of:
    - (i) the applicant; or
    - (ii) the applicant's spouse; or
    - (iii) the applicant and his or her spouse together;  
was at least 10% of the total issued capital of the company.
- 160.213 For at least 2 of the 4 fiscal years immediately before the application is made, the applicant's main business, or the applicant's main businesses together, had an annual turnover of at least AUD500 000.
- 160.214 (1) The business and personal assets of the applicant, the applicant's spouse, or the applicant and his or her spouse together:
- (a) have a net value of at least AUD500 000; and
  - (b) are lawfully acquired and available for transfer, and capable of being transferred, to Australia within 2 years after the grant of a Subclass 160 visa.



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- (2) The applicant, the applicant's spouse, or the applicant and his or her spouse together, have business and personal assets, in addition to the assets mentioned in subclause (1), that the Minister is satisfied are of a sufficient net value to settle in Australia.
- 160.215 The applicant is less than 45 years old.
- 160.216 The applicant has vocational English within the meaning given by regulation 1.15B.
- 160.217 If the applicant was engaged, for at least 2 of the 4 fiscal years immediately before the application is made, in a business providing professional, technical or trade services, the applicant was directly engaged in the provision of the services, as distinct from the general direction of the operation of the business, for no more than half the time spent by the applicant from day to day in the conduct of the business.
- 160.218 Neither the applicant nor his or her spouse (if any) has a history of involvement in business activities that are of a nature that is not generally acceptable in Australia.
- 160.219 The applicant has notified the appropriate regional authority of a State or Territory of:
- (a) the applicant's business history; and
  - (b) the applicant's intention to develop a business in that State or Territory.
- 160.219A The applicant genuinely has a realistic commitment, after entry to Australia as the holder of a Subclass 160 visa:
- (a) either:
    - (i) to establish a qualifying business in Australia; or
    - (ii) to participate in an existing qualifying business in Australia; and
  - (b) to maintain a substantial ownership interest in that business; and
  - (c) to maintain direct and continuous involvement in management of that business from day to day and in making decisions that affect the overall direction and performance of the business in a manner that benefits the Australian economy.

160.219B The applicant demonstrates that there is a need for the applicant to be temporarily resident in Australia to conduct or establish the proposed business activity.

160.219C The applicant has signed a declaration that the applicant understands his or her obligations as the holder of a Subclass 160 visa.

**160.22 Criteria to be satisfied at time of decision**

160.221 The applicant continues to satisfy the criteria in clauses 160.211, 160.214, 160.218, 160.219A and 160.219B.

160.222 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010.

160.223 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

160.224 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 160 visa:

- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
- (b) if he or she has previously been in Australia — satisfies special return criteria 5001, 5002 and 5010.

(2) Each member of the family unit of the applicant who is not an applicant for a Subclass 160 visa:

- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.

160.225 If a person:

- (a) is a member of the family unit of the applicant; and
- (b) has not turned 18; and
- (c) made a combined application with the applicant;

public interest criteria 4015 and 4016 are satisfied in relation to the person.

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### **160.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **160.31 Criteria to be satisfied at time of application**

160.311 The applicant is a member of the family unit of a person who satisfies the primary criteria in Subdivision 160.21.

#### **160.32 Criteria to be satisfied at time of decision**

160.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 160 visa.

160.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010.

160.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

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

### **160.4 Circumstances applicable to grant**

- 160.411 (1) If the applicant:
- (a) satisfies the secondary criteria; and
  - (b) holds a student visa at the time of application;
- the applicant may be in or outside Australia, but not in immigration clearance, when the visa is granted.
- (2) In any other case, the applicant must be outside Australia when the visa is granted.

*Note* The second instalment of the visa application charge must be paid before the visa can be granted.

### **160.5 When visa is in effect**

160.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

### **160.6 Conditions**

160.611 If the applicant is outside Australia when the visa is granted, first entry must be made before a date specified by the Minister for the purpose.

160.612 If the applicant is outside Australia when the visa is granted, either or both of conditions 8502 and 8515 may be imposed.

### **160.7 Way of giving evidence**

160.711 Visa label affixed to a valid passport.

## **Subclass 161 Senior Executive (Provisional)**

### **161.1 Interpretation**

161.111 In this Part:

*major business* means a business (other than a government business enterprise) the annual turnover of which was at least AUD50 000 000 for at least 2 of the 4 fiscal years immediately before the application is made.

*Note 1 appropriate regional authority, AUD, fiscal year, ownership interest and qualifying business* are defined in regulation 1.03.

*Note 2* As to beneficial ownership of an asset or ownership interest, see regulation 1.11A.

### **161.2 Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 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.

#### **161.21 Criteria to be satisfied at time of application**

161.211 The applicant has overall had a successful business career.

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- 161.212 For a total of at least 2 years in the 4 years immediately before the application is made, the applicant:
- (a) occupied a position in the 3 highest levels of the management structure of a major business; and
  - (b) was responsible for strategic policy development affecting a major component or a wide range of operations of that major business.
- 161.213 (1) The business and personal assets of the applicant, the applicant's spouse, or the applicant and his or her spouse together:
- (a) have a net value of at least AUD500 000; and
  - (b) are lawfully acquired and available for transfer, and capable of being transferred, to Australia within 2 years after the grant of a Subclass 161 visa to the applicant.
- (2) The applicant, the applicant's spouse, or the applicant and his or her spouse together, have business and personal assets, in addition to the assets mentioned in subclause (1), that the Minister is satisfied are of a sufficient net value to settle in Australia.
- 161.214 The applicant is less than 45 years old.
- 161.215 The applicant has vocational English within the meaning given by regulation 1.15B.
- 161.216 Neither the applicant nor his or her spouse (if any) has a history of involvement in business activities that are of a nature that is not generally acceptable in Australia.
- 161.217 The applicant has notified the appropriate regional authority of a State or Territory of:
- (a) the applicant's business history; and
  - (b) the applicant's intention to develop a business in that State or Territory.
- 161.218 The applicant genuinely has a realistic commitment, after entry to Australia as the holder of a Subclass 161 visa:
- (a) either:
    - (i) to establish a qualifying business in Australia; or
    - (ii) to participate in an existing qualifying business in Australia; and

- (b) to maintain a substantial ownership interest in that business; and
  - (c) to maintain direct and continuous involvement in management of that business from day to day and in making decisions that affect the overall direction and performance of the business in a manner that benefits the Australian economy.
- 161.219 The applicant demonstrates that there is a need for the applicant to be temporarily resident in Australia to conduct or establish the proposed business activity.
- 161.219A The applicant has signed a declaration that the applicant understands his or her obligations as the holder of a Subclass 161 visa.
- 161.22 Criteria to be satisfied at time of decision**
- 161.221 The applicant continues to satisfy the criteria in clauses 161.211, 161.213, 161.216, 161.218 and 161.219.
- 161.222 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010.
- 161.223 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 161.224 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 161 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
  - (b) if he or she has previously been in Australia — satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 161 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.

- 161.225 If a person:
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant;
- public interest criteria 4015 and 4016 are satisfied in relation to the person.

### **161.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **161.31 Criteria to be satisfied at time of application**

- 161.311 The applicant is a member of the family unit of a person who satisfies the primary criteria in Subdivision 161.21.

#### **161.32 Criteria to be satisfied at time of decision**

- 161.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 161 visa.
- 161.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010.
- 161.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 161.324 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

### **161.4 Circumstances applicable to grant**

- 161.411 (1) If the applicant:
- (a) satisfies the secondary criteria; and
  - (b) holds a student visa at the time of application;
- the applicant may be in or outside Australia, but not in immigration clearance, when the visa is granted.

(2) In any other case, the applicant must be outside Australia when the visa is granted.

*Note* The second instalment of the visa application charge must be paid before the visa can be granted.

### **161.5 When visa is in effect**

161.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

### **161.6 Conditions**

161.611 If the applicant is outside Australia when the visa is granted, first entry must be made before a date specified by the Minister for the purpose.

161.612 If the applicant is outside Australia when the visa is granted, either or both of conditions 8502 and 8515 may be imposed.

### **161.7 Way of giving evidence**

161.711 Visa label affixed to a valid passport.

## **Subclass 162 Investor (Provisional)**

### **162.1 Interpretation**

162.111 In this Part:

*designated investment* means an investment in a security specified by the Minister under regulation 5.19A for this Part.

*eligible investment*, for a person, means:

- (a) an ownership interest in a business; or
- (b) a loan to a business; or
- (c) cash on deposit; or
- (d) stocks and bonds; or
- (e) real estate; or



(f) gold or silver bullion;

that is owned by the person for the purpose of producing a return by way of income or capital gain and is not held for personal use.

*Note 1* **appropriate regional authority, AUD, fiscal year, ownership interest and qualifying business** are defined in regulation 1.03.

*Note 2* As to beneficial ownership of an asset, eligible investment or ownership interest, see regulation 1.11A.

## 162.2 Primary criteria

*Note* The primary criteria must be satisfied by at least 1 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.

### 162.21 Criteria to be satisfied at time of application

162.211 The applicant has demonstrated overall a successful record of eligible investment activity or qualifying business activity.

162.212 (1) The applicant has had a total of at least 3 years experience of direct involvement in managing 1 or more qualifying businesses or eligible investments.

(2) Throughout at least 1 of the 5 fiscal years immediately before the application is made:

- (a) the applicant maintained direct involvement in managing a qualifying business in which:
- (i) the applicant; or
  - (ii) the applicant and his or her spouse together;
- had an ownership interest of at least 10% of the total value of the business; or
- (b) the applicant maintained direct involvement in managing eligible investments of:
- (i) the applicant; or
  - (ii) the applicant's spouse; or
  - (iii) the applicant and his or her spouse together;
- the total net value of which was at least AUD1 500 000.

(3) Throughout the 2 fiscal years immediately before the application is made, the net value of the business and personal assets of the applicant, the applicant's spouse, or the applicant and his or her spouse together, was at least AUD2 250 000.

162.213 The applicant has demonstrated a high level of management skill in relation to an eligible investment or qualifying business activity.

162.214 The applicant is less than 45 years old.

162.215 The applicant has vocational English within the meaning given by regulation 1.15B.

162.216 Neither the applicant nor his or her spouse (if any) has a history of involvement in business or investment activities that are of a nature that is not generally acceptable in Australia.

162.217 The applicant has notified the appropriate regional authority of a State or Territory of:

- (a) the applicant's business and investment history; and
- (b) the applicant's intention to lodge a designated investment in that State or Territory.

162.218 The applicant genuinely has a realistic commitment, after entry to Australia as the holder of a Subclass 162 visa, to continue to maintain business or investment activity in Australia after the designated investment made by the applicant, or by the applicant and his or her spouse, has matured.

162.219 The applicant has signed a declaration that the applicant understands his or her obligations as the holder of a Subclass 162 visa.

**162.22 Criteria to be satisfied at time of decision**

162.221 The applicant continues to satisfy the criteria in clauses 162.211, 162.213, 162.216 and 162.218.

162.222 (1) The applicant has made a designated investment of an amount of AUD1 500 000 in the name of the applicant or in the names of the applicant and his or her spouse.

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- (2) The Minister is satisfied that the funds mentioned in subclause (1) were:
- (a) legally owned by:
    - (i) the applicant; or
    - (ii) the applicant's spouse; or
    - (iii) the applicant and his or her spouse together; and
  - (b) unencumbered; and
  - (c) accumulated from the qualifying business or eligible investment activities of:
    - (i) the applicant; or
    - (ii) the applicant's spouse; or
    - (iii) the applicant and his or her spouse together.
- 162.223 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010.
- 162.224 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 162.225 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 162 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
  - (b) if he or she has previously been in Australia — satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 162 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.
- 162.226 If a person:
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and

- (c) made a combined application with the applicant;  
public interest criteria 4015 and 4016 are satisfied in relation to the person.

### **162.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **162.31 Criteria to be satisfied at time of application**

- 162.311 The applicant is a member of the family unit of a person who satisfies the primary criteria in Subdivision 162.21.

#### **162.32 Criteria to be satisfied at time of decision**

- 162.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 162 visa.
- 162.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010.
- 162.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 162.324 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

### **162.4 Circumstances applicable to grant**

- 162.411 (1) If the applicant:
- (a) satisfies the secondary criteria; and
  - (b) holds a student visa at the time of application;
- the applicant may be in or outside Australia, but not in immigration clearance, when the visa is granted.
- (2) In any other case, the applicant must be outside Australia when the visa is granted.

*Note* The second instalment of the visa application charge must be paid before the visa can be granted.

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## **162.5 When visa is in effect**

162.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

## **162.6 Conditions**

162.611 If the applicant is outside Australia when the visa is granted, first entry must be made before a date specified by the Minister for the purpose.

162.612 If the applicant is outside Australia when the visa is granted, either or both of conditions 8502 and 8515 may be imposed.

## **162.7 Way of giving evidence**

162.711 Visa label affixed to a valid passport.

## **Subclass 163 State/Territory Sponsored Business Owner (Provisional)**

### **163.1 Interpretation**

*Note 1* *appropriate regional authority, AUD, fiscal year, ownership interest and qualifying business* are defined in regulation 1.03 and *main business* is defined in regulation 1.11.

*Note 2* As to beneficial ownership of an asset or ownership interest, see regulation 1.11A.

*Note 3* There are no interpretation provisions specific to this Part.

### **163.2 Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 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.

#### **163.21 Criteria to be satisfied at time of application**

163.211 The applicant has overall had a successful business career.

- 163.212 The applicant:
- (a) has, for at least 2 of the 4 fiscal years immediately before the application is made, had an ownership interest in a main business or businesses that had an annual turnover of at least AUD300 000; or
  - (b) has had 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 and has demonstrated a high level of management skill.
- 163.213 (1) The business and personal assets of the applicant, the applicant's spouse, or the applicant and his or her spouse together:
- (a) have a net value of at least AUD250 000 that is available for the conduct or establishment of a business in Australia; and
  - (b) are lawfully acquired and available for transfer, and capable of being transferred, to Australia within 2 years after the grant of a Subclass 163 visa.
- (2) The applicant, the applicant's spouse, or the applicant and his or her spouse together, have business and personal assets, in addition to the assets mentioned in subclause (1), that the appropriate regional authority is satisfied are of a sufficient net value to settle in Australia.
- 163.214 The applicant:
- (a) is less than 55 years old; or
  - (b) is proposing to establish or participate in a business that the appropriate regional authority has determined is of exceptional economic benefit to the State or Territory where the authority is located.
- 163.215 If the applicant was engaged, for at least 2 of the 4 fiscal years immediately before the application is made, in a business providing professional, technical or trade services, the applicant was directly engaged in the provision of the services, as distinct from the general direction of the operation of the business, for no more than half the time spent by the applicant from day to day in the conduct of the business.

- 
- 163.216 Neither the applicant nor his or her spouse (if any) has a history of involvement in business activities that are of a nature that is not generally acceptable in Australia.
- 163.217 The applicant genuinely has a realistic commitment, after entry to Australia as the holder of a Subclass 163 visa:
- (a) either:
    - (i) to establish a qualifying business in Australia; or
    - (ii) to participate in an existing qualifying business in Australia; and
  - (b) to maintain a substantial ownership interest in that business; and
  - (c) to maintain direct and continuous involvement in management of that business from day to day and in making decisions that affect the overall direction and performance of the business in a manner that benefits the Australian economy.
- 163.218 The applicant demonstrates that there is a need for the applicant to be temporarily resident in Australia to conduct or establish the proposed business activity.
- 163.219 The applicant has signed a declaration that the applicant understands his or her obligations as the holder of a Subclass 163 visa.
- 163.22 Criteria to be satisfied at time of decision**
- 163.221 The applicant continues to satisfy the criteria in clauses 163.211, 163.213 and 163.216 to 163.218.
- 163.222 The applicant's sponsor for paragraph 1202A (3) (d) of Schedule 1 has not withdrawn the sponsorship.
- 163.223 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010.
- 163.224 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

- 163.225 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 163 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
  - (b) if he or she has previously been in Australia — satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 163 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.
- 163.226 If a person:
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant;
- public interest criteria 4015 and 4016 are satisfied in relation to the person.

### **163.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **163.31 Criteria to be satisfied at time of application**

- 163.311 The applicant is a member of the family unit of a person who satisfies the primary criteria in Subdivision 163.21.

#### **163.32 Criteria to be satisfied at time of decision**

- 163.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 163 visa.
- 163.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010.



163.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

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

#### **163.4 Circumstances applicable to grant**

163.411 (1) If the applicant:

- (a) satisfies the secondary criteria; and
- (b) holds a student visa at the time of application;

the applicant may be in or outside Australia, but not in immigration clearance, when the visa is granted.

(2) In any other case, the applicant must be outside Australia when the visa is granted.

*Note* The second instalment of the visa application charge must be paid before the visa can be granted.

#### **163.5 When visa is in effect**

163.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

#### **163.6 Conditions**

163.611 If the applicant is outside Australia when the visa is granted, first entry must be made before a date specified by the Minister for the purpose.

163.612 If the applicant is outside Australia when the visa is granted, either or both of conditions 8502 and 8515 may be imposed.

#### **163.7 Way of giving evidence**

163.711 Visa label affixed to a valid passport.

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

### 164.1 Interpretation

164.111 In this Part:

*major business* means a business (other than a government business enterprise) the annual turnover of which was at least AUD10 000 000 in at least 2 of the 4 fiscal years immediately before the application is made.

*Note 1 appropriate regional authority, AUD, fiscal year, ownership interest and qualifying business* are defined in regulation 1.03.

*Note 2* As to beneficial ownership of an asset or ownership interest, see regulation 1.11A.

### 164.2 Primary criteria

*Note* The primary criteria must be satisfied by at least 1 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.

#### 164.21 Criteria to be satisfied at time of application

164.211 The applicant has overall had a successful business career.

164.212 For a total of at least 2 years in the 4 years immediately before the application is made, the applicant:

- (a) occupied a position in the 3 highest levels of the management structure of a major business; and
- (b) was responsible for strategic policy development affecting a major component or a wide range of operations of that major business.

164.213 (1) The business and personal assets of the applicant, the applicant's spouse, or the applicant and his or her spouse together:

- (a) have a net value of at least AUD250 000 that is available for the conduct or establishment of a business in Australia; and

- 
- (b) are lawfully acquired and available for transfer, and capable of being transferred, to Australia within 2 years after the grant of a Subclass 164 visa to the applicant.
- (2) The applicant, the applicant's spouse, or the applicant and his or her spouse together, have business and personal assets, in addition to the assets mentioned in subclause (1), that the appropriate regional authority is satisfied are of a sufficient net value to settle in Australia.
- 164.214 The applicant:
- (a) is less than 55 years old; or
  - (b) is proposing to establish or participate in a business that the appropriate regional authority has determined is of exceptional economic benefit to the State or Territory where the authority is located.
- 164.215 Neither the applicant nor his or her spouse (if any) has a history of involvement in business activities that are of a nature that is not generally acceptable in Australia.
- 164.216 The applicant genuinely has a realistic commitment, after entry to Australia as the holder of a Subclass 164 visa:
- (a) either:
    - (i) to establish a qualifying business in Australia; or
    - (ii) to participate in a qualifying business in Australia; and
  - (b) to maintain a substantial ownership interest in that business; and
  - (c) to maintain direct and continuous involvement in management of that business from day to day and in making decisions that affect the overall direction and performance of the business in a manner that benefits the Australian economy.
- 164.217 The applicant demonstrates that there is a need for the applicant to be temporarily resident in Australia to conduct or establish the proposed business activity.
- 164.218 The applicant has signed a declaration that the applicant understands his or her obligations as the holder of a Subclass 164 visa.

### **164.22 Criteria to be satisfied at time of decision**

- 164.221 The applicant continues to satisfy the criteria in clauses 164.211, 164.213 and 164.215 to 164.217.
- 164.222 The applicant's sponsor for paragraph 1202A (3) (d) of Schedule 1 has not withdrawn the sponsorship.
- 164.223 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010.
- 164.224 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 164.225 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 164 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
  - (b) if he or she has previously been in Australia — satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 164 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.
- 164.226 If a person:
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant;
- public interest criteria 4015 and 4016 are satisfied in relation to the person.

### **164.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

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**164.31 Criteria to be satisfied at time of application**

164.311 The applicant is a member of the family unit of a person who satisfies the primary criteria in Subdivision 164.21.

**164.32 Criteria to be satisfied at time of decision**

164.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 164 visa.

164.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010.

164.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

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

**164.4 Circumstances applicable to grant**

164.411 (1) If the applicant:

- (a) satisfies the secondary criteria; and
- (b) holds a student visa at the time of application;

the applicant may be in or outside Australia, but not in immigration clearance, when the visa is granted.

(2) In any other case, the applicant must be outside Australia when the visa is granted.

*Note* The second instalment of the visa application charge must be paid before the visa can be granted.

**164.5 When visa is in effect**

164.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

## 164.6 Conditions

- 164.611 If the applicant is outside Australia when the visa is granted, first entry must be made before a date specified by the Minister for the purpose.
- 164.612 If the applicant is outside Australia when the visa is granted, either or both of conditions 8502 and 8515 may be imposed.

## 164.7 Way of giving evidence

- 164.711 Visa label affixed to a valid passport.

## Subclass 165 State/Territory Sponsored Investor (Provisional)

### 165.1 Interpretation

- 165.111 In this Part:

*designated investment* means an investment in a security specified by the Minister under regulation 5.19A for this Part.

*eligible investment*, for a person, means:

- (a) an ownership interest in a business; or
- (b) a loan to a business; or
- (c) cash on deposit; or
- (d) stocks and bonds; or
- (e) real estate; or
- (f) gold or silver bullion;

that is owned by the person for the purpose of producing a return by way of income or capital gain and is not held for personal use.

*Note 1* *appropriate regional authority*, *AUD*, *fiscal year*, *ownership interest* and *qualifying business* are defined in regulation 1.03.

*Note 2* As to beneficial ownership of an asset, eligible investment or ownership interest, see regulation 1.11A.

## 165.2 Primary criteria

*Note* The primary criteria must be satisfied by at least 1 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.

### 165.21 Criteria to be satisfied at time of application

165.211 The applicant has demonstrated overall a successful record of eligible investment activity or qualifying business activity.

165.212 (1) The applicant has had a total of at least 3 years experience of direct involvement in managing 1 or more qualifying businesses or eligible investments.

(2) Throughout at least 1 of the 5 fiscal years immediately before the application is made:

(a) the applicant maintained direct involvement in managing a qualifying business in which:

(i) the applicant; or

(ii) the applicant and his or her spouse together;

had an ownership interest of at least 10% of the total value of the business; or

(b) the applicant maintained direct involvement in managing eligible investments of:

(i) the applicant; or

(ii) the applicant's spouse; or

(iii) the applicant and his or her spouse together;

the total net value of which was at least AUD750 000.

(3) Throughout the 2 fiscal years immediately before the application is made, the net value of the business and personal assets of the applicant, the applicant's spouse, or the applicant and his or her spouse together, was at least AUD1 125 000.

165.213 The applicant has demonstrated a high level of management skill in relation to the eligible investment or qualifying business activity.

165.214 The applicant:

(a) is less than 55 years old; or

- (b) is proposing to establish or participate in business or investment activity that the appropriate regional authority has determined is of exceptional economic benefit to the State or Territory where the authority is located.

165.215 Neither the applicant nor his or her spouse (if any) has a history of involvement in business or investment activities that are of a nature that is not generally acceptable in Australia.

165.216 The applicant genuinely has a realistic commitment, after entry to Australia as the holder of a Subclass 165 visa, to continue to maintain business or investment activity in Australia after the designated investment made by the applicant, or by the applicant and his or her spouse, has matured.

165.217 The applicant has signed a declaration that the applicant understands his or her obligations as the holder of a Subclass 165 visa.

**165.22 Criteria to be satisfied at time of decision**

165.221 The applicant continues to satisfy the criteria in clauses 165.211, 165.213, 165.215 and 165.216.

165.222 (1) The applicant has made a designated investment of an amount of AUD750 000, in the name of the applicant or in the names of the applicant and his or her spouse, in the State or Territory in which the appropriate regional authority that sponsored the applicant is located.

(2) The Minister is satisfied that the funds mentioned in subclause (1) were:

- (a) legally owned by:
  - (i) the applicant; or
  - (ii) the applicant's spouse, or
  - (iii) the applicant and his or her spouse together; and
- (b) unencumbered; and



- 
- (c) accumulated from the qualifying business or eligible investment activities of:
- (i) the applicant; or
  - (ii) the applicant's spouse; or
  - (iii) the applicant and his or her spouse together.
- 165.223 The applicant's sponsor for paragraph 1202A (3) (d) of Schedule 1 has not withdrawn the sponsorship.
- 165.224 The applicant has a genuine intention to reside, for at least 2 years, in the State or Territory where he or she has lodged the designated investment.
- 165.225 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010.
- 165.226 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.
- 165.227 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 165 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010; and
  - (b) if he or she has previously been in Australia — satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 165 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
  - (b) satisfies public interest criterion 4005, unless the Minister is satisfied that it would be unreasonable to require the person to undergo assessment for that criterion.
- 165.228 If a person:
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant;
- public interest criteria 4015 and 4016 are satisfied in relation to the person.

### **165.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **165.31 Criteria to be satisfied at time of application**

165.311 The applicant is a member of the family unit of a person who satisfies the primary criteria in Subdivision 165.21.

#### **165.32 Criteria to be satisfied at time of decision**

165.321 The applicant continues to be a member of the family unit of a person who, having satisfied the primary criteria, is the holder of a Subclass 165 visa.

165.322 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4010.

165.323 If the applicant has previously been in Australia, the applicant satisfies special return criteria 5001, 5002 and 5010.

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

### **165.4 Circumstances applicable to grant**

- 165.411 (1) If the applicant:
- (a) satisfies the secondary criteria; and
  - (b) holds a student visa at the time of application;
- the applicant may be in or outside Australia, but not in immigration clearance, when the visa is granted.
- (2) In any other case, the applicant must be outside Australia when the visa is granted.

*Note* The second instalment of the visa application charge must be paid before the visa can be granted.

### **165.5 When visa is in effect**

165.511 Temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

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## **165.6 Conditions**

- 165.611 If the applicant is outside Australia when the visa is granted, first entry must be made before a date specified by the Minister for the purpose.
- 165.612 If the applicant is outside Australia when the visa is granted, either or both of conditions 8502 and 8515 may be imposed.

## **165.7 Way of giving evidence**

- 165.711 Visa label affixed to a valid passport.

## **[2309] Subdivision 410.22**

*substitute*

### **410.22 Criteria to be satisfied at the time of decision**

- 410.221 (1) Either:
- (a) the applicant is a person to whom subparagraph 1217 (2) (a) (i) of Schedule 1 applies; or
  - (b) if paragraph (a) does not apply, the applicant satisfies subclauses (2) to (9).
- (2) The applicant has turned 55.
- (3) If the applicant intends to reside in Australia with his or her spouse, the family unit of the applicant does not include any other person dependent on the applicant or the applicant's spouse.
- (4) If the applicant intends to reside in Australia without a spouse, the family unit of the applicant does not include a person dependent on the applicant.
- (5) If the application was made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- (6) If the application was made in Australia, the applicant has complied substantially with the conditions that apply or applied

to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

(7) The Minister is satisfied that the applicant intends to comply with any conditions subject to which the visa is granted.

(8) If the applicant is an established applicant, both the applicant and the applicant's spouse (if any) satisfy public interest criteria 4001, 4002, 4003, 4004, 4013 and 4014.

(9) If the applicant is not an established applicant:

(a) either:

(i) the resources of the applicant, or (if the applicant has a spouse) the combined resources of the applicant and the applicant's spouse (if any), available for transfer to Australia, are not less than:

(A) \$650 000; or

(B) if the applicant is the parent of an Australian citizen who is usually resident in Australia, an Australian permanent resident or an eligible New Zealand citizen — \$600 000; or

(ii) the resources of the applicant, or (if the applicant has a spouse) the combined resources of the applicant and the applicant's spouse, available for transfer to Australia are not less than \$200 000, and the applicant and the applicant's spouse (if any) have:

(A) pension rights; or

(B) capital for investment; or

(C) both pension rights and capital for investment;

being in total money and entitlements sufficient to provide an annual income of not less than \$45 000; or

(iii) the applicant is the parent of an Australian citizen who is usually resident in Australia, an Australian permanent resident or an eligible New Zealand citizen and the resources of the applicant, or (if the applicant has a spouse) the combined resources of the applicant and the applicant's spouse, available

for transfer to Australia are not less than \$180 000, and the applicant and the applicant's spouse (if any) have:

- (A) pension rights; or
- (B) capital for investment; or
- (C) both pension rights and capital for investment;

being in total money and entitlements sufficient to provide an annual income of not less than \$42 000; and

- (b) both the applicant and the applicant's spouse (if any) satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014; and
- (c) if the applicant is an AusAID student or an AusAID recipient — the applicant has the support of the AusAID Minister for the grant of the visa; and
- (d) the applicant produces to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.

(10) The Minister may waive the requirements of paragraph (9) (c) if the Minister is satisfied that, in the particular case, waiver is justified by:

- (a) compelling circumstances that affect the interests of Australia; or
- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

**[2310] Subdivision 410.32**

*substitute*

**410.32 Criteria to be satisfied at the time of decision**

410.321(1) Either:

- (a) the applicant is the spouse of a person to whom subparagraph 1217 (2) (a) (i) of Schedule 1 applies; or

- (b) if paragraph (a) does not apply, the applicant satisfies subclauses (2) to (7).
- (2) The applicant continues to be the spouse of a person who, having satisfied the primary criteria, is the holder of a Subclass 410 visa.
- (3) If the applicant is the spouse of an established applicant, the applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4013 and 4014.
- (4) If the applicant is not the spouse of an established applicant, the applicant:
- (a) gives to the Minister evidence of:
- (i) adequate means to support the applicant; and
  - (ii) adequate arrangements in Australia for health insurance;
- during the period of the applicant's intended stay in Australia; and
- (b) satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013 and 4014.
- (5) If the application was made in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.
- (6) If the application is made outside Australia and the applicant has previously been in Australia, the applicant satisfies special return criteria 5001 and 5002.
- (7) If the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister for the grant of the visa.
- (8) The Minister may waive the requirements of subclause (7) if the Minister is satisfied that, in the particular case, waiver is justified by:
- (a) compelling circumstances that affect the interests of Australia; or

- (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

**[2311] Paragraphs 410.511 (a) and (b)**

*substitute*

- (a) in the case of a visa granted to an applicant (other than an applicant mentioned in paragraph 410.221 (1) (a) or 410.321 (1) (a)) who holds, or whose last substantive visa was, a Subclass 410 visa or an equivalent visa — for 2 years from the date of the grant; or
- (b) in the case of a visa granted to an applicant to whom subparagraph 1217 (2) (a) (i) of Schedule 1 applies — until the day on which the earlier visa mentioned in that subparagraph would have expired; or
- (c) in any other case — until a date specified by the Minister.

**[2312] Clause 410.611**

*omit*

8101.

*insert*

8104.

**[2313] Paragraph 411.224 (a)**

*substitute*

- (a) the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa; and

**[2314] Clause 420.211**

*omit*

If the application is made in

*insert*

If, at the time of application, the applicant is in

**[2315] Clause 420.221**

*substitute*

420.221 If:

- (a) the applicant is outside Australia at the time of application; or
- (b) the applicant is in the migration zone at the time of application and the applicant does not hold a Subclass 420 (Entertainment) visa;

the applicant satisfies the criteria in clauses 420.222 to 420.229.

**[2316] Clause 420.228**

*omit*

If the application is made outside Australia

*insert*

If the applicant was outside Australia at the time of application

**[2317] Clause 420.229**

*substitute*

420.229 If the applicant is in the migration zone at time of application, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.



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**[2318] Clause 420.230**

*omit*

If the application is made in the migration zone

*insert*

If the applicant was in the migration zone at the time of application

**[2319] Clause 420.312**

*omit*

If the application is made outside Australia and the application is

*insert*

If the applicant was outside Australia at the time of application and the application was

**[2320] Clause 420.313**

*omit*

If the application is made in the migration zone,

*insert*

If the applicant was in the migration zone at the time of application,

**[2321] Clause 420.325**

*omit*

If the application is made outside Australia

*insert*

If the applicant was outside Australia at the time of application

**[2322] Clause 420.411**

*omit*

If the application is made in the migration zone,

*insert*

If the applicant was in the migration zone at the time of application,

**[2323] Clause 420.412**

*omit*

If the application is made outside Australia,

*insert*

If the applicant was outside Australia at the time of application,

**[2324] Clause 420.711**

*substitute*

420.711 If evidence is given, to be given by visa label affixed to a valid passport.

**[2325] Subclause 422.227 (2)**

*substitute*

(2) The applicant meets the requirements of this subclause if he or she has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

**[2326] Clause 424.230**

*substitute*

424.230 The applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

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**[2327] Clause 426.225**

*substitute*

426.225 The applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

**[2328] Clause 428.228**

*substitute*

428.228 The applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

**[2329] Clause 457.221**

*substitute*

457.221 If the application is made in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

**[2330] Subclause 457.223 (1)**

*omit*

(7),

**[2331] Paragraph 457.223 (4) (b)**

*substitute*

(b) the employer is:

(i) a pre-qualified business sponsor or standard business sponsor; and

(ii) the employer mentioned in subparagraph 1223A (3) (d) (i); and

**[2332] Clause 457.323**

*substitute*

457.323 If the application is made in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

**[2333] Subclause 457.611 (1)**

*substitute*

(1) If the applicant satisfies the primary criteria, condition 8107 applies unless the applicant meets the requirements of subclause 457.223 (7A).

**[2334] Clause 461.225**

*substitute*

461.225 If the application is made in Australia, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

**[2335] Clause 574.617**

*substitute*

574.617 Condition 8101 is not imposed on a student visa if:

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

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**[2336] Paragraph 675.216 (c)**

*substitute*

- (c) the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa; and

**[2337] Division 676.1, note**

*substitute*

*Note* **Internet application** is defined in regulation 1.03. There are no interpretation provisions specific to this Part.

**[2338] Before clause 676.211**

*insert*

676.211A (1) If the application is not an Internet application, the applicant meets the requirements of clauses 676.211, 676.212, 676.212A and 676.213.

(2) If the application is an Internet application, the applicant meets the requirements of clause 676.214 or 676.215.

**[2339] Clause 676.211**

*after*

The applicant

*insert*

meets the requirements of this clause if the applicant

**[2340] Clause 676.212**

*after*

outside Australia,

*insert*

the applicant meets the requirements of this clause if

**[2341] Clause 676.212A**

*after*

Schedule 1

*insert*

, the applicant meets the requirements of this clause if

**[2342] Clause 676.213**

*after*

in Australia

*insert*

, the applicant meets the requirements of this clause if

**[2343] Paragraph 676.213 (b)**

*substitute*

- (b) the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa; and

**[2344] After clause 676.213**

*insert*

676.214 The applicant meets the requirements of this clause if:

- (a) the application is an Internet application; and  
(b) the applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005 and 4011; and  
(c) the applicant states in the application that the applicant seeks to visit Australia, or remain in Australia, as a visitor:  
(i) for the purpose of visiting an Australian citizen, or Australian permanent resident, who is a parent, spouse, child, brother or sister of the applicant; or  
(ii) for a purpose other than a purpose related to business or medical treatment; and

- (d) the applicant states in the application that:
  - (i) the applicant has adequate funds, or access to adequate funds, for personal support during the period of the visit; and
  - (ii) the proposed period of stay in Australia does not exceed 3 months; and
- (e) the applicant states in the application that:
  - (i) the applicant, and any other person included in the application, have turned 18 years of age; and
  - (ii) the applicant has not been refused a visa, and has not had a visa cancelled, under the Act; and
  - (iii) the applicant has not left Australia as an unlawful non-citizen.

- 676.215 The applicant meets the requirements of this clause if:
- (a) the application is an Internet application; and
  - (b) the applicant does not meet the requirements of clause 676.214; and
  - (c) the applicant meets the requirements of clause 676.211; and
  - (d) the period of stay in Australia stated in the application does not exceed 3 months.

**[2345] Paragraph 676.221 (1) (b)**

*omit*

(2), (3) or (4).

*insert*

(2), (3), (4) or (6).

**[2346] After subclause 676.221 (5)**

*insert*

- (6) The applicant meets the requirements of this subclause if:
  - (a) in the case of an Internet application that met the requirements of clause 676.214 — the applicant continues to satisfy the criteria in that clause; and
  - (b) in the case of an Internet application that met the requirements of clause 676.215:
    - (i) the applicant meets the requirements of paragraphs 676.221 (2) (c), (d) and (e); and
    - (ii) the applicant continues to meet the requirements of paragraphs 676.215 (c) and (d); and
    - (iii) if the applicant has previously been in Australia — the applicant satisfies special return criteria 5001 and 5002.

**[2347] Clause 676.511**

*substitute*

- 676.511 If the visa was granted outside Australia, or on the basis of an Internet application that met the requirements of clause 676.215 — temporary visa permitting the holder:
- (a) to travel to, and enter, Australia on 1 or more occasions until a date specified by the Minister for the purpose; and
  - (b) to remain in Australia:
    - (i) for a period (not longer than 3 months after the date of each entry) specified by the Minister for the purpose; or
    - (ii) until a date (not later than 3 months after the date of each entry) specified by the Minister for the purpose.



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**[2348] After clause 676.511**

*insert*

676.511A If the visa is granted on the basis of an Internet application that met the requirements of clause 676.214 — temporary visa permitting the holder:

- (a) to travel to, and enter, Australia on 1 or more occasions until a date 12 months from the date of grant; and
- (b) to remain in Australia for a period not longer than 3 months after the date of each entry.

**[2349] After clause 676.612**

*insert*

676.612A In the case of a visa granted to an applicant who meets the requirements of clause 676.214: conditions 8101, 8201 and 8205.

**[2350] Clause 676.711**

*substitute*

- 676.711 No evidence need be given if the visa is granted on the basis of an Internet application.
- 676.712 If evidence is given, to be given by visa label attached to a valid passport.

**[2351] Paragraph 685.216 (1) (c)**

*substitute*

- (c) the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

**[2352] Paragraph 685.221 (2) (b)**

*omit*

684.215;

*insert*

685.215;

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

*substitute*

- (b) the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.

**[2354] After paragraph 773.213 (2) (I)**

*insert*

- (a) Business Skills — Business Talent (Migrant) (Class EA);  
(b) Business Skills — Established Business (Residence) (Class BH);  
(c) Business Skills (Residence) (Class DF);

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

*insert*

- (aa) Business Skills (Provisional) (Class UR);

**[2356] Paragraph 832.211 (3) (c)**

*substitute*

- (c) the applicant:  
(i) first entered Australia before the applicant turned 18, as a member of a family unit; and  
(ii) was accompanied by the family unit when the applicant first entered Australia; and  
(iii) has turned 18; and

- (iv) before turning 18, spent the greater part of the period that the Minister regards as the applicant's formative years in Australia; and
- (v) ceased to hold an entry permit or a substantive visa before turning 18; and
- (vi) immediately before ceasing to hold a substantive visa, did not hold a Subclass 771 (Transit) visa; and
- (vii) is no longer a member of, and does not reside with, the family unit with which the applicant first entered Australia.

**[2357] Subclause 832.212 (4)**

*substitute*

- (4) An applicant meets the requirements of this subclause if the applicant:
  - (a) first entered Australia before the applicant turned 18, as a member of a family unit; and
  - (b) was accompanied by the family unit when the applicant first entered Australia; and
  - (c) has turned 18; and
  - (d) before turning 18, spent the greater part of the period that the Minister regards as the applicant's formative years in Australia; and
  - (e) ceased to hold an entry permit or a substantive visa before turning 18; and
  - (f) is no longer a member of, and does not reside with, the family unit with which the applicant first entered Australia.

**[2358] Paragraph 832.221 (3) (b)**

*substitute*

- (b) the applicant is no longer a member of, and does not reside with, the family unit with which the applicant first entered Australia; and

**[2359] Parts 840 to 844**

*omit*

**[2360] Subparagraph 845.222 (2) (b) (i)**

*omit*

Division 1.3

*insert*

Division 3.1

**[2361] Paragraph 845.311 (a)**

*omit*

Business Skills (Residence) (Class BH) visa; and

*insert*

Business Skills — Established Business (Residence)  
(Class BH) visa; and

**[2362] Subparagraph 846.222 (2) (c) (ii)**

*omit*

Business Skills (Residence) (Class BH) visa

*insert*

Business Skills — Established Business (Residence) (Class  
BH) visa

**[2363] Paragraph 846.311 (a)**

*omit*

Business Skills (Residence) (Class BH) visa; and

*insert*

Business Skills — Established Business (Residence)  
(Class BH) visa; and

**[2364] Paragraph 856.212 (4) (d)**

*omit*

visa.

*insert*

visa; or

**[2365] After paragraph 856.212 (4) (d)**

*insert*

(e) a Subclass 161 (Senior Executive (Provisional)) visa; or

(f) a Subclass 164 (State/Territory Sponsored Senior Executive (Provisional)) visa.

**[2366] Paragraph 857.212 (4) (d)**

*omit*

visa.

*insert*

visa; or

**[2367] After paragraph 857.212 (4) (d)**

*insert*

(e) a Subclass 161 (Senior Executive (Provisional)) visa; or

(f) a Subclass 164 (State/Territory Sponsored Senior Executive (Provisional)) visa.

**[2368] After Part 882**

*insert*

**Subclass 890 Business Owner**

**890.1 Interpretation**

*Note 1* *AUD*, *ownership interest* and *qualifying business* are defined in regulation 1.03 and *main business* is defined in regulation 1.11.

*Note 2* As to beneficial ownership of an asset or ownership interest, see regulation 1.11A.

*Note 3* There are no interpretation provisions specific to this Part.

## **890.2 Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 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.

### **890.21 Criteria to be satisfied at time of application**

- 890.211 (1) The applicant has had, and continues to have, an ownership interest in 1 or more actively operating main businesses in Australia for at least 2 years immediately before the application is made.
- (2) For each business to which subclause (1) applies:
- (a) an Australian Business Number has been obtained; and
  - (b) all Business Activity Statements required by the Australian Taxation Office (the *ATO*) for the period mentioned in subclause (1) have been submitted to the ATO and have been included in the application.
- 890.212 The net value of the assets of the applicant, the applicant's spouse, or the applicant and his or her spouse together, in the main business or main businesses in Australia is, and has been throughout the 12 months immediately before the application is made, at least AUD100 000.
- 890.213 In the 12 months immediately before the application is made, the applicant's main business, or main businesses together, had an annual turnover of at least AUD300 000.
- 890.214 Throughout the 12 months immediately before the application is made, the main business or main businesses of the applicant, the applicant's spouse, or the applicant and his or her spouse together, employed at least 2 full-time employees (or a number of part-time employees working an equivalent number of hours), each of whom:
- (a) is not the applicant or a member of the family unit of the applicant; and

(b) is an Australian citizen, an Australian permanent resident or a New Zealand passport holder.

890.215 The net value of the business and personal assets in Australia of the applicant, the applicant's spouse, or the applicant and his or her spouse together, is, and has been throughout the 12 months immediately before the application is made, at least AUD250 000.

890.216 Neither the applicant nor his or her spouse (if any) has a history of involvement in business activities that are of a nature that is not generally acceptable in Australia.

890.217 The applicant has been in Australia as the holder of 1 of the visas mentioned 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.

**890.22 Criteria to be satisfied at time of decision**

890.221 The applicant continues to satisfy the criteria in clauses 890.211, 890.215 and 890.216.

890.222 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

890.223 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 890 visa satisfies public interest criteria 4001, 4002, 4003, 4004, 4009 and 4010.

(2) Each member of the family unit of the applicant who is not an applicant for a Subclass 890 visa satisfies public interest criteria 4001, 4002, 4003 and 4004.

(3) Each member of the family unit of the applicant who, at the time of the applicant's application, was not the holder of a visa of a subclass included in Business Skills (Provisional) (Class UR) satisfies public interest criterion 4005.

(4) Each member of the family unit of the applicant who, at the time of the applicant's application, was the holder of visa of a subclass included in Business Skills (Provisional) (Class UR) satisfies public interest criterion 4007.

890.224 If a person:

(a) is a member of the family unit of the applicant; and

- (b) has not turned 18; and
  - (c) made a combined application with the applicant;
- public interest criteria 4015 and 4016 are satisfied in relation to the person.

### **890.3 Secondary criteria**

*Note* The secondary criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **890.31 Criteria to be satisfied at time of application**

- 890.311 The applicant is a member of the family unit of, and has made a combined application with, a person who satisfies the primary criteria in Subdivision 890.21.

#### **890.32 Criteria to be satisfied at time of decision**

- 890.321 The applicant is a member of the family unit of a person who:

- (a) is the person with whom a combined application was made; and
- (b) having satisfied the primary criteria, is the holder of a Subclass 890 visa.

- 890.322 (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4009 and 4010.

(2) If the applicant, at the time of application, was not the holder of a visa of a subclass included in Business Skills (Provisional) (Class UR), the applicant satisfies public interest criterion 4005.

(3) If the applicant, at the time of application, was the holder of a visa of a subclass included in Business Skills (Provisional) (Class UR), the applicant satisfies public interest criterion 4007.

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



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## 890.4 Circumstances applicable to grant

890.411 (1) If the applicant satisfies the primary criteria, the applicant must be inside Australia, but not in immigration clearance, when the visa is granted.

(2) If the applicant satisfies the secondary criteria, the applicant may be in or outside Australia, but not in immigration clearance, when the visa is granted.

*Note* The second instalment of the visa application charge must be paid before the visa can be granted.

## 890.5 When visa is in effect

890.511 Permanent visa permitting the holder to travel to and enter Australia for 5 years from the date of grant.

## 890.6 Conditions

890.611 If the applicant is outside Australia when the visa is granted and the applicant satisfies the secondary criteria:

- (a) first entry must be made before a date specified by the Minister for the purpose; and
- (b) condition 8515 may be imposed.

## 890.7 Way of giving evidence

890.711 Visa label affixed to a valid passport.

## Subclass 891 Investor

### 891.1 Interpretation

891.111 In this Part:

*designated investment* means an investment in a security specified by the Minister under regulation 5.19A for this Part.

*Note 1* *AUD, fiscal year, ownership interest* and *qualifying business* are defined in regulation 1.03.

*Note 2* As to beneficial ownership of an asset or ownership interest, see regulation 1.11A.

## **891.2 Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 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.

### **891.21 Criteria to be satisfied at time of application**

- 891.211 Neither the applicant nor his or her spouse (if any) has a history of involvement in business or investment activities that are of a nature that is not generally acceptable in Australia.
- 891.212 The applicant has 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.
- 891.213 The applicant genuinely has a realistic commitment, after the grant of a Subclass 891 visa, to continue to maintain business or investment activity in Australia.

### **891.22 Criteria to be satisfied at time of decision**

- 891.221 The applicant continues to satisfy the criteria in clauses 891.211 and 891.213.
- 891.222 The designated investment made by the applicant for the purpose of satisfying a requirement for the grant of a Subclass 162 (Investor (Provisional)) visa has been held continuously in the name of the applicant, or in the names of the applicant and his or her spouse together, for at least 4 years.
- 891.223 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.
- 891.224 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 891 visa satisfies public interest criteria 4001, 4002, 4003, 4004, 4009 and 4010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 891 visa satisfies public interest criteria 4001, 4002, 4003 and 4004.

(3) Each member of the family unit of the applicant who, at the time of the applicant's application, was not the holder of a Subclass 162 (Investor (Provisional)) visa satisfies public interest criterion 4005.

(4) Each member of the family unit of the applicant who, at the time of the applicant's application, was the holder of a Subclass 162 (Investor (Provisional)) visa satisfies public interest criterion 4007.

891.225 If a person:

- (a) is a member of the family unit of the applicant; and
- (b) has not turned 18; and
- (c) made a combined application with the applicant;

public interest criteria 4015 and 4016 are satisfied in relation to the person.

### **891.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **891.31 Criteria to be satisfied at time of application**

891.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 891.21.

#### **891.32 Criteria to be satisfied at time of decision**

891.321 The applicant is a member of the family unit of a person who:

- (a) is the person with whom a combined application was made; and
- (b) having satisfied the primary criteria, is the holder of a Subclass 891 visa.

- 891.322 (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4009 and 4010.
- (2) If the applicant, at the time of application, was not the holder of a Subclass 162 (Investor (Provisional)) visa, the applicant satisfies public interest criterion 4005.
- (3) If the applicant, at the time of application, was the holder of a Subclass 162 (Investor (Provisional)) visa, the applicant satisfies public interest criterion 4007.
- 891.323 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

#### **891.4 Circumstances applicable to grant**

- 891.411 (1) If the applicant satisfies the primary criteria, the applicant must be inside Australia, but not in immigration clearance, when the visa is granted.
- (2) If the applicant satisfies the secondary criteria, the applicant may be in or outside Australia, but not in immigration clearance, when the visa is granted.

*Note* The second instalment of the visa application charge must be paid before the visa can be granted.

#### **891.5 When visa is in effect**

- 891.511 Permanent visa permitting the holder to travel to and enter Australia for 5 years from the date of grant.

#### **891.6 Conditions**

- 891.611 If the applicant is outside Australia when the visa is granted and the applicant satisfies the secondary criteria:
- (a) first entry must be made before a date specified by the Minister for the purpose; and
  - (b) condition 8515 may be imposed.

#### **891.7 Way of giving evidence**

- 891.711 Visa label affixed to a valid passport.

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## Subclass 892                      State/Territory Sponsored Business Owner

### 892.1 Interpretation

*Note 1* *appropriate regional authority, AUD, ownership interest* and *qualifying business* are defined in regulation 1.03 and *main business* is defined in regulation 1.11.

*Note 2* As to beneficial ownership of an asset or ownership interest, see regulation 1.11A.

*Note 3* There are no interpretation provisions specific to this Part.

### 892.2 Primary criteria

*Note* The primary criteria must be satisfied by at least 1 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.

#### 892.21 Criteria to be satisfied at time of application

892.211 (1) The applicant has had, and continues to have, an ownership interest in 1 or more actively operating main businesses in Australia for at least 2 years immediately before the application is made.

(2) For each business to which subclause (1) applies:

- (a) an Australian Business Number has been obtained; and
- (b) all Business Activity Statements required by the Australian Taxation Office (the *ATO*) for the period mentioned in subclause (1) have been submitted to the ATO and have been included in the application.

892.212 Unless the appropriate regional authority has determined that there are exceptional circumstances, the applicant meets at least 2 of the following requirements:

- (a) throughout the 12 months immediately before the application is made, the main business or main businesses of the applicant, the applicant's spouse, or the applicant and his or her spouse together, employed at least 1 full-time employee (or a number of part-time

employees working an equivalent number of hours) who:

- (i) is not the applicant or a member of the family unit of the applicant; and
  - (ii) is an Australian citizen, an Australian permanent resident or a New Zealand passport holder;
- (b) the net value of the business and personal assets in Australia of the applicant, the applicant's spouse, or the applicant and his or her spouse together, is, and has been throughout the 12 months immediately before the application is made, at least AUD250 000;
- (c) the total value of the net assets owned by the applicant, the applicant's spouse, or the applicant and his or her spouse together, in the main business or main businesses in Australia is, and has been throughout the 12 months immediately before the application is made, at least AUD75 000.

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

892.214 Neither the applicant nor his or her spouse (if any) has a history of involvement in business activities that are of a nature that is not generally acceptable in Australia.

892.215 The applicant has been in Australia as the holder of 1 of the visas mentioned in paragraph 1104B (3) (f) of Schedule 1 for a total of at least 1 year in the 2 years immediately before the application is made.

## **892.22 Criteria to be satisfied at time of decision**

892.221 The applicant:

- (a) continues to satisfy the criteria in clauses 892.211 and 892.214; and
- (b) if the applicant met the requirements of paragraph 892.212 (b), continues to meet those requirements.

892.222 The applicant's sponsor for paragraph 1104B (3) (i) of Schedule 1 has not withdrawn the sponsorship.

- 
- 892.223 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.
- 892.224 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 892 visa satisfies public interest criteria 4001, 4002, 4003, 4004, 4009 and 4010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 892 visa satisfies public interest criteria 4001, 4002, 4003 and 4004.
- (3) Each member of the family unit of the applicant who, at the time of the applicant's application, was not the holder of either:
- (a) a visa of a subclass included in Business Skills (Provisional) (Class UR); or
  - (b) a Subclass 457 (Business (Long Stay)) visa;
- satisfies public interest criterion 4005.
- (4) Each member of the family unit of the applicant who, at the time of the applicant's application, was the holder of:
- (a) a visa of a subclass included in Business Skills (Provisional) (Class UR); or
  - (b) a Subclass 457 (Business (Long Stay)) visa;
- satisfies public interest criterion 4007.
- 892.225 If a person:
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant;
- public interest criteria 4015 and 4016 are satisfied in relation to the person.

### **892.3 Secondary criteria**

*Note* The secondary criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

**892.31 Criteria to be satisfied at time of application**

892.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 892.21.

**892.32 Criteria to be satisfied at time of decision**

- 892.321 The applicant is a member of the family unit of a person who:
- (a) is the person with whom a combined application was made; and
  - (b) having satisfied the primary criteria, is the holder of a Subclass 892 visa.
- 892.322 (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4009 and 4010.
- (2) If the applicant, at the time of application, was not the holder of either:
- (a) a visa of a subclass included in Business Skills (Provisional) (Class UR); or
  - (b) a Subclass 457 (Business (Long Stay)) visa;
- the applicant satisfies public interest criterion 4005.
- (3) If the applicant, at the time of application, was the holder of:
- (a) a visa of a subclass included in Business Skills (Provisional) (Class UR); or
  - (b) a Subclass 457 (Business (Long Stay)) visa;
- the applicant satisfies public interest criterion 4007.
- 892.323 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

**892.4 Circumstances applicable to grant**

892.411 (1) If the applicant satisfies the primary criteria, the applicant must be inside Australia, but not in immigration clearance, when the visa is granted.



(2) If the applicant satisfies the secondary criteria, the applicant may be in or outside Australia, but not in immigration clearance, when the visa is granted.

*Note* The second instalment of the visa application charge must be paid before the visa can be granted.

## **892.5 When visa is in effect**

892.511 Permanent visa permitting the holder to travel to and enter Australia for 5 years from the date of grant.

## **892.6 Conditions**

892.611 If the applicant is outside Australia when the visa is granted and the applicant satisfies the secondary criteria:

- (a) first entry must be made before a date specified by the Minister for the purpose; and
- (b) condition 8515 may be imposed.

## **892.7 Way of giving evidence**

892.711 Visa label affixed to a valid passport.

## **Subclass 893 State/Territory Sponsored Investor**

### **893.1 Interpretation**

893.111 In this Part:

*designated investment* means an investment in a security specified by the Minister under regulation 5.19A for the purposes of this Part.

*Note 1 appropriate regional authority, AUD, fiscal year, ownership interest and qualifying business* are defined in regulation 1.03.

*Note 2* As to beneficial ownership of an asset or ownership interest, see regulation 1.11A.

## **893.2 Primary criteria**

*Note* The primary criteria must be satisfied by at least 1 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.

### **893.21 Criteria to be satisfied at time of application**

- 893.211 Neither the applicant nor his or her spouse (if any) has a history of involvement in business or investment activities that are of a nature that is not generally acceptable in Australia.
- 893.212 The applicant has been resident, as the holder of a Subclass 165 (State/Territory Sponsored Investor (Provisional)) visa, in the State or Territory in which the appropriate regional authority that sponsors the applicant is located for a total of at least 2 years in the 4 years immediately before the application is made.
- 893.213 The applicant genuinely has a realistic commitment, after the grant of a Subclass 893 visa, to continue to maintain business or investment activity in Australia.

### **893.22 Criteria to be satisfied at time of decision**

- 893.221 The applicant continues to satisfy the criteria in clauses 893.211 and 893.213.
- 893.222 The applicant's sponsor for paragraph 1104B (3) (i) of Schedule 1 has not withdrawn the sponsorship.
- 893.223 The designated investment made by the applicant for the purpose of satisfying a requirement for the grant of a Subclass 165 (State/Territory Sponsored Investor (Provisional)) visa has been held continuously in the name of the applicant, or in the names of the applicant and his or her spouse together, for at least 4 years.
- 893.224 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4009 and 4010.

- 893.225 (1) Each member of the family unit of the applicant who is an applicant for a Subclass 893 visa satisfies public interest criteria 4001, 4002, 4003, 4004, 4009 and 4010.
- (2) Each member of the family unit of the applicant who is not an applicant for a Subclass 893 visa satisfies public interest criteria 4001, 4002, 4003 and 4004.
- (3) Each member of the family unit of the applicant who, at the time of the applicant's application, was not the holder of a Subclass 165 (State/Territory Sponsored Investor (Provisional)) visa satisfies public interest criterion 4005.
- (4) Each member of the family unit of the applicant who, at the time of the applicant's application, was the holder of a Subclass 165 (State/Territory Sponsored Investor (Provisional)) visa satisfies public interest criterion 4007.
- 893.226 If a person:
- (a) is a member of the family unit of the applicant; and
  - (b) has not turned 18; and
  - (c) made a combined application with the applicant;
- public interest criteria 4015 and 4016 are satisfied in relation to the person.

### **893.3 Secondary criteria**

*Note* These criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

#### **893.31 Criteria to be satisfied at time of application**

- 893.311 The applicant is a member of the family unit of, and made a combined application with, a person who satisfies the primary criteria in Subdivision 893.21.

#### **893.32 Criteria to be satisfied at time of decision**

- 893.321 The applicant is a member of the family unit of a person who:
- (a) is the person with whom a combined application was made; and

- (b) having satisfied the primary criteria, is the holder of a Subclass 893 visa.
- 893.322 (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4009 and 4010.
- (2) If the applicant, at the time of application, was not the holder of a Subclass 165 (State/Territory Sponsored Investor (Provisional)) visa, the applicant satisfies public interest criterion 4005.
- (3) If the applicant, at the time of application, was the holder of a Subclass 165 (State/Territory Sponsored Investor (Provisional)) visa, the applicant satisfies public interest criterion 4007.
- 893.323 If the applicant has not turned 18, public interest criteria 4017 and 4018 are satisfied in relation to the applicant.

#### **893.4 Circumstances applicable to grant**

- 893.411 (1) If the applicant satisfies the primary criteria, the applicant must be inside Australia, but not in immigration clearance, when the visa is granted.
- (2) If the applicant satisfies the secondary criteria, the applicant may be in or outside Australia, but not in immigration clearance, when the visa is granted.
- Note* The second instalment of the visa application charge must be paid before the visa can be granted.

#### **893.5 When visa is in effect**

- 893.511 Permanent visa permitting the holder to travel to and enter Australia for 5 years from the date of grant.

#### **893.6 Conditions**

- 893.611 If the applicant is outside Australia when the visa is granted and the applicant satisfies the secondary criteria:
- (a) first entry must be made before a date specified by the Minister for the purpose; and
- (b) condition 8515 may be imposed.

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**893.7 Way of giving evidence**

893.711 Visa label affixed to a valid passport.

**Part 4 Additional amendments of  
Schedule 2**

**[2401] Amendments relating to secondary criteria to be  
satisfied at time of application**

The following clauses are omitted:

- 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
- 442.313.

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

- (1) In each of the places specified in column 1 of the table in subitem (2), a clause is inserted with:
  - (a) the corresponding clause number specified in column 2 of the table; and

(b) the following text:

‘If the application is made in the migration zone, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.’.

(2) Table for paragraph (1) (a):

<i>Insert after clause</i>	<i>Clause number</i>
411.325	411.325A
415.325	415.325A
416.324	416.324A
418.325	418.325A
419.324	419.324A
420.325	420.325A
421.325	421.325A
422.326	422.326A
423.325	423.325A
424.326	424.326A
425.324	425.324A
426.326	426.326A
427.325	427.325A
428.324	428.324A
430.324	430.324A
432.324	432.324A
442.324	442.324A

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

- (1) For each of the clauses specified in subitem (2), a clause is substituted with the same clause number and the following text:

‘If the application is made in the migration zone, the applicant has complied substantially with the conditions that apply or applied to the last of any substantive visas held by the applicant, and to any subsequent bridging visa.’.

- (2) The clauses amended are:

- 415.230
- 416.226
- 418.228
- 419.228
- 421.228
- 423.228
- 425.227
- 427.232
- 430.226
- 432.230
- 442.228.

**Part 5 Amendments of Schedule 3**

**[2501] Paragraph 3003 (e)**

*substitute*

- (e) the applicant has complied substantially with the conditions that apply or applied to:
- (i) the last of any entry permits held by the applicant (other than a condition of which the applicant was in breach solely because of the expiry of the entry permit); and
  - (ii) any subsequent bridging visa; and

**[2502] Paragraph 3004 (e)**

*substitute*

- (e) the applicant has complied substantially with:
- (i) the conditions that apply or applied to:
    - (A) the last of any entry permits held by the applicant (other than a condition of which the applicant was in breach solely because of the expiry of the entry permit); and
    - (B) any subsequent bridging visa; or
  - (ii) the conditions that apply or applied to:
    - (A) the last of any substantive visas held by the applicant (other than a condition of which the applicant was in breach solely because the visa ceased to be in effect); and
    - (B) any subsequent bridging visa; and

**Part 6 Amendments of Schedule 7**

**[2601] Divisions 1.1, 1.2 and 1.3**

*omit*

**[2602] Division 3.1, heading**

*substitute*

**Division 3.1 Language ability of applicant  
(Subclasses 845 and 846)**

**[2603] Division 3.2**

*omit*



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**Part 7** **Amendment of Schedule 9**

**[2701] Part 1, after item 22**

*before the note, insert*

23	Persons holding: (a) a visa granted on the basis of an Internet application; and (b) a passport of a kind specified by Gazette Notice for paragraph 1218 (3) (bb) of Schedule 1 or paragraph 417.211 (3) (a) or (b) of Schedule 2	The passport mentioned in column 2	Yes
24	Persons who: (a) hold a visa granted on the basis of an Internet application; and (b) are included in a class of persons specified by Gazette Notice for subparagraph 1222 (1) (a) (iii) of Schedule 1	Passport	Yes

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**Notes**

1. These Regulations amend Statutory Rules 1994 No. 268, as amended by 1994 Nos. 280, 322, 376 and 452; 1995 Nos. 3, 38, 117, 134, 268, 302 and 411; 1996 Nos. 12, 75 (regulations 7 and 8 were disallowed by the Senate on 11 September 1996), 76, 108, 121, 135, 198, 211 (regulations 4, 10, 11, 13.3, 14-37, 47-49, 51, 53-55, 74, 77.16, 77.19, 78, 85, 119 and 114 were disallowed by the Senate on 7 November 1996) and 276; 1997 Nos. 17, 64, 91, 92, 109, 137, 184, 185, 216, 263, 279, 288, 301 and 354; 1998 Nos. 36, 37, 104 (regulation 15 was disallowed by the Senate on 2 July 1998), 139, 210, 214, 284, 285 (disallowed by the Senate on 31 March 1999), 304, 305, 306 and 322; 1999 Nos. 8, 58, 64, 68 (as amended by 1999 Nos. 81 and 132), 76 (as amended by 1999 Nos. 81 and 132), 81 (as amended by 1999 No. 132), 82, 132, 155, 198, 220 (as amended by 1999 Nos. 259 and 321), 243, 259 (as amended by 2000 No. 259 and 2002 No. 213), 260 (as amended by 1999 No. 321), 321 and 325; 2000 Nos. 52, 62, 108, 192, 259 (as amended by 2000 No. 284) (item [4108] of Schedule 4 was disallowed by the Senate on 1 November 2000), 284 and 335; 2001 Nos. 27, 47, 86, 142, 162, 206, 239, 246, 283, 284, 285 and 291; Act No. 128, 2001; Statutory Rules 2001 No. 344; 2002 Nos. 10, 86, 121, 129 (disallowed by the Senate on 19 June 2002), 213, 230 ~~and 299~~
2. Notified in the *Commonwealth of Australia Gazette* on          2002.

, , 323 and 347  
20 December