Migration Amendment Regulations 2003 (No. 11) 2003 No. 363

EXPLANATORY STATEMENT

STATUTORY RULES 2003 NO. 363

Issued by the Minister for Immigration and Multicultural and Indigenous Affairs

Migration Act 1958

Migration Amendment Regulations 2003 (No. 11)

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

In addition, regulations may be made pursuant to the provisions listed in Attachment A.

The purpose of Schedules 1 to 9 of the Regulations is to amend the *Migration Regulations 1994* (the Principal Regulations) to: amend the requirements for making a valid application for temporary business visas, temporary contributory parent visas and graduate-skilled visas; amend the criteria for the grant of temporary business visas, temporary retirement visas and permanent skilled sponsored visas; amend the requirements to provide evidence of a visa for temporary business visas; amend the period of stay for work and holiday visas; create three new visas relating to witness protection and student guardians; and make minor technical amendments.

The Regulations effect changes to the Principal Regulations to:

- amend certain temporary business long stay visa provisions to:

- require certain applicants to make their application in Australia; and

- allow holders of passports from certain low-risk countries to enter Australia without a visa label; and

- include visa condition 8403 (holder must visit Immigration to have evidence of visa placed in passport) as a discretionary condition that may be attached to a temporary business long stay visa;

- ensure that an application for a temporary contributory parent visa can only be made upon withdrawal of other parent visa applications;

- make amendments consequential to amendments made in July 2003 to:

- ensure that, in order to make a valid application for a temporary graduate-skilled visa, an applicant seeking to satisfy the primary criteria must give evidence that they have applied to the relevant assessing authority for an assessment of their skills; and

- ensure that the points that a spouse could receive for living and studying in regional Australia and low-population growth metropolitan areas can be counted towards an assessment of an applicant's pass or pool mark for certain permanent skilled sponsored visas;

- increase the financial thresholds for new retirement visa applicants;

- allow holders of work and holiday visas to extend their stay in Australia beyond the 12 months previously permitted by the visa;

- create two new visa classes, to be known as Witness Protection (Trafficking) (Temporary) (Class UM) and Witness Protection (Trafficking) (Permanent) (Class DH), for grant to applicants in Australia. These new visas provide a two-stage process which initially grants a two year temporary visa followed by permanent stay in Australia for persons who have made a significant contribution to, and cooperated with, an investigation or prosecution of persons alleged to have trafficked or exploited them or others, and who need to remain in Australia for their own protection;

- create a new visa subclass, to be known as Subclass 580 (Student Guardian), to enable student guardians (for example, parents or relatives) to enter and remain in Australia to provide accommodation, support and general welfare for a student, while the student is studying in Australia; and

- make minor technical amendments.

The purpose of Schedule 10 to the Regulations is to make technical amendments to the *Migration Amendment Regulations 2003 (No.9)* contained in Statutory Rules No. 296 to correct three "misdescribed" amendments in those Statutory Rules. These amendments are technical in nature and have no substantive effect.

Details of the Regulations are set out in Attachment B.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations commence on 1 January 2004.

0310520A-031204Z

ATTACHMENT A

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

In addition, the following provisions may apply:

- subsection 29(2) of the Act provides that the regulations may prescribe a period during which the holder of a visa may travel to, enter and remain in Australia;

- subsection 31(1) of the Act provides that the regulations are to prescribe classes of visas;

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

- subsection 31(4) of the Act provides that the regulations may prescribe whether visas of a particular class are visas to travel to and enter Australia, or to remain in Australia, or both;

- subsection 31(5) of the Act provides that the regulations specify that a visa is a visa of a particular class;

- subsection 40(1) of the Act provides that the regulations may provide that visas or visas of a specified class may only be granted in specified circumstances;

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

- paragraph 41(2)(a) of the Act provides that, without limiting subsection 41(1), the regulations may provide that a visa, or visas of a specified class, are subject to a condition that, despite anything else in the Act, the holder of the visa will not, after entering Australia, be entitled to be granted a substantive visa (other than a protection visa or a temporary visa of a specified kind), while he or she remains in Australia;

- subsection 41(2A) of the Act provides that the regulations prescribe the circumstances in which the Minister may, by writing, waive a condition of a kind described in paragraph 41(2)(a), to which a particular visa is subject under regulations made for the purposes of that paragraph or under subsection 41(3);

- section 46 of the Act deals with when an application for a visa is a valid application, and in particular:

- subsection 46(1) of the Act provides that subject to subsections 46(1A) and 46(2), an application for a visa is valid if, and only if it satisfies the criteria and requirements prescribed in the regulations under this section;

- subsection 46(2) provides that an application for a visa is valid if it is an application for a visa of a class prescribed for the purposes of this subsection and if under the regulations the application is taken to have been validly made;

- subsection 46(3) provides that the regulations may prescribe criteria that must be satisfied for an application for a visa of a specified class to be a valid application;

- paragraph 46(4)(a) provides that, without limiting subsection 46(3), the regulations may also prescribe the circumstances that must exist for an application for a visa of a specified class to be a valid application;

- paragraph 46(4)(b) provides that, without limiting subsection 46(3), the regulations may also prescribe how an application for a visa of a specified class must be made;

- paragraph 46(4)(c) provides that, without limiting subsection 46(3), the regulations may also prescribe where an application for a visa of a specified class must be made;

- paragraph 46(4)(d) provides that, without limiting subsection 46(3), the regulations may also prescribe where an applicant must be when an application for a visa of a specified class is made;

• subsection 52(2) of the Act provides that the regulations may prescribe different ways of communicating with the Minister, and specify the circumstances when communication is to be in a particular way;

• section 70 of the Act provides that if a non-citizen is granted a visa, an officer is to give the non-citizen evidence of the visa, subject to the regulations;

• subsection 71(1) of the Act provides for the regulations to prescribe the way in which evidence of a visa is to be given;

• subsection 93(1) of the Act provides that the Minister shall make an assessment of an applicant's points score by giving the applicant the prescribed number of points for each prescribed qualification that is satisfied in relation to the applicant;

• subsection 116 of the Act provides that the Minister may cancel a visa in certain circumstances;

• section 166 of the Act provides that, subject to section 167, upon entering Australia, a non-citizen must without unreasonable delay show evidence of identity and of a visa in a prescribed way;

• subsection 245I(1) of the Act provides that the regulations may specify a kind of aircraft or ship to which Division 12B of the Act applies; and

• paragraph 504(1)(e) of the Act provides that the Governor-General may make regulations which make provision for and in relation to the giving of documents to, the lodging of documents with, or the service of documents on, the Minister, the Secretary or any other person or body, for the purposes of the Act.

ATTACHMENT B

Regulation 1 - Name of Regulations

This regulation provides that these regulations are the *Migration Amendment Regulations 2003 (No. 11)*.

Regulation 2 - Commencement

This regulation provides that these regulations commence on 1 January 2004.

Regulation 3 - Amendment of *Migration Regulations 1994*

This regulation provides that Schedules 1, 2, 3, 4, 5, 6, 7, 8 and 9 to these regulations amends the *Migration Regulations 1994* (the "Migration Regulations").

Regulation 4 - Amendment of *Migration Amendment Regulations 2003 (No.9)*

This regulation provides that Schedule 10 to these regulations amends the *Migration Amendment Regulations 2003 (No. 9).*

Regulation 5 - Transitional

Subregulation 5(1) provides that the amendment made by item [1] of Schedule 1 to these regulations applies in relation to an assessment for subsection 93(1) of the Act, on or after 1 January 2004.

Subregulation 5(2) provides that the amendments made by items [3], [4] and [15] of Schedule 2 to these regulations apply in relation to a person entering Australia on or after 1 January 2004 and who made an application for a visa on or after 1 January 2004.

Subregulation 5(3) provides that the amendments made by items [1], [4], [5], [8], [9], [10], [11], [12], [13], [14] and [15] of Schedule 5 to these regulations apply in relation to an application for a visa:

- made but not finally determined (within the meaning of subsection 5(9) of the *Migration Act 1958*, before 1 January 2004.

- made on or after 1 January 2004.

Subregulation 5(4) provides that the amendments made by item [2] of Schedule 1, items [5], [6], [7], [9], [10], [11], [12], [13] and [14] of Schedule 2, Schedule 3, items [2], [3], [6] and [7] of Schedule 5, Schedule 6, Schedule 7, Schedule 8 and Schedule 9 to these regulations apply in relation to an application for a visa made on or after 1 January 2004.

Schedule 1 - Amendments to regulation 2.27A and Schedule 1, paragraph 1212A(3)(h)

Item [1] - Paragraph 2.27A(2)(a)

This item amends paragraph 2.27A(2)(a) in Part 2 of the Migration Regulations in relation to the points a spouse can receive under Part 10 of Schedule 6A for the purpose of the sum of the points the primary applicant is taken to have received.

The old subclause 2.27A(2) provides that the primary applicant is taken to have received the pass or pool mark if the sum of the following points equals or exceeds the pass or pool mark:

- the points that the spouse could receive under Parts 1, 2, 3, 4, 5, 6, 7 and 8 of Schedule 6A;

- the points that the primary applicant receives under Part 9 of Schedule 6A.

Part 10 of Schedule 6A provides for additional points for living and studying in regional Australia and low-population growth metropolitan areas. Part 10 was inserted into Schedule 6A on 1 July 2003 by *the Migration Amendment Regulations 2003 (No 4),* but this consequential change was overlooked.

This regulation applies where the primary applicant for a Skilled - Australian-sponsored (Class BQ) visa or Skilled -- Australian-sponsored Overseas Student (Residence) (Class DE) visa, or an applicant for a Skilled -- New Zealand Citizen (Residence) (Class DB) visa who has been sponsored, does not receive the pass or pool mark under regulation 2.26A, and the spouse of the primary applicant is also an applicant for a visa of that class.

With the amendment to paragraph 2.27A(2)(a), a spouse who is eligible for additional points under Part 10 of Schedule 6A and is an applicant for a visa of the same class as the primary applicant, can have those points added to the primary applicant's points that go to an assessment of whether the primary applicant meets the pass or pool mark.

Item [2] - Schedule 1, Paragraph 1212A(3)(h)

This item amends paragraph 1212A(3)(h) in Schedule 1 to the Migration Regulations to rectify an omission from the requirements for a valid application for a Graduate -- Skilled (Temporary) (Class UQ) visa.

The item reinserts the requirement that an application by a person seeking to satisfy the primary criteria must be accompanied by satisfactory evidence that the applicant has applied to the relevant assessing authority for an assessment of the suitability of his or her skills for the skilled occupation nominated in his or her application. This requirement was inadvertently omitted when amendments were made to paragraph 1212A(3)(h) by the *Migration Amendment Regulations 2003 (No 4)* on 1 July 2003.

The new requirements are inserted in paragraph 1212A(3)(h) so as to not affect the application of regulation 2.29C. Regulation 2.29C provides that Paragraph 1212A (3) (h) in Schedule 1, as in force immediately before 1 July 2003, continues to apply in relation to a person who:

- was undertaking full-time study in Australia on or before 31 March 2003; and

- applies for a Graduate - Skilled (Temporary) (Class UQ) visa on or after 1 July 2003 and before 1 April 2004.

Inserting the new requirement into paragraph 1212A(3)(h) in relation to making a valid application for a Graduate -- Skilled (Temporary) (Class UQ) visa means that the group covered by regulation 2.29C is not affected by this amendment. The amendment applies to applications made on or after 1 January 2004 by applicants who are not within the group covered by regulation 2.29C.

Schedule 2 - Amendments relating to Business (Long Stay) visas

Item [1] - Subparagraph 2.43(1)(l)(i)

This item amends subparagraph 2.43(1)(l)(i) of Part 2 of the Migration Regulations, by omitting the reference to form 1067 and replacing it with a reference to form 1067, 1196 or 1196 (internet).

Regulation 2.43 of Part 2 prescribes the grounds for cancellation of a visa in accordance with section 116 of the Act. Forms 1067, 1196 and 1196 (internet) are forms on which a business sponsor may provide undertakings.

New subparagraph 2.43(1)(l)(i) provides that the Minister may cancel a visa where the visa holder's current business sponsor has not complied with, or is not complying with the undertakings given by the business sponsor in accordance with approved form 1067, 1196 and 1196 (internet).

Item [2] - Subregulation 2.43(3), definition of *business sponsor,* paragraph (a)

This item amends paragraph (a) of the definition of "business sponsor" in subregulation 2.43(3) of Part 2 of the Migration Regulations, by inserting a reference to regulation 1.20DA of Part 1 of the Migration Regulations.

New paragraph (a) of the definition of business sponsor in subregulation 2.43 provides that a business sponsor means a person approved as a pre-qualified business sponsor or a standard business sponsor, in accordance with regulation 1.20D or 1.20DA (whether or not the approval has ceased to have effect).

Regulation 1.20D provides the circumstances in which the Minister may approve or reject an application for approval as a standard business sponsor. Regulation 1.20DA provides the circumstances in which the Minister may approve or reject an application for approval by an overseas business as a standard business sponsor.

The amendment made by this item broadens the definition of "business sponsor" to include those persons approved under regulation 1.20DA.

Item [3] - Paragraph 3.03(3)(g)

This item amends paragraph 3.03(3)(g) of Part 3 of the Migration Regulations by omitting the reference to subregulation 3.03(5) and replacing it with a reference to subregulation 3.03(5), (6) and (7).

This amendment is consequential to the insertion of subregulations 3.03(6) and (7) in Part 3 of the Migration Regulations, by these regulations.

Item [4] - After subregulation 3.03(5)

This item inserts subregulations 3.03(6) and (7) in Part 3 of the Migration Regulations.

Regulation 3.03 outlines the evidence of identity and visa that persons entering Australia must provide to a clearance officer in order to comply with section 166 of the Migration Act.

New subregulation 3.03(6) applies to a non-citizen who:

- holds a Subclass 457 (Business (Long Stay)) visa on the basis of meeting the requirements of subclause 457.223(2), (3), (4) or (10) of Schedule 2; and

- was outside Australia when he or she applied for a Temporary Business Entry (Class UC) visa; and

- is the holder of a passport from a specified country.

New subregulation 3.03(7) applies to a non-citizen:

- who holds a Subclass 457 (Business (Long Stay)) visa on the basis of satisfying the secondary criteria; and

- who was outside Australia when he or she applied for a Temporary Business Entry (Class UC) visa; and

- who is the holder passport from a specified country; and

- whose application for a Temporary Business Entry (Class UC) visa was made as a member of the family unit of a person who seeks, or has been granted, a Subclass 457 (Business (Long Stay)) visa on the basis of meeting the requirements of subclause 457.223(2), (3), (4) or (10) of Schedule 2.

Non-citizens who satisfy new subregulation 3.03(6) or (7) are required to show a clearance officer evidence of the person's identity, as specified in Part 1 of Schedule 9 and provide a clearance officer a completed passenger card, in accordance with paragraph 3.03(3)(g). A non-citizen who satisfies new subregulation 3.03(6) or (7) is not required to show a clearance officer evidence of a visa.

Item [5] - Schedule 1, paragraph 1223A(3)(aa)

This item amends paragraph 1223A(3)(aa) of Schedule 1 to the Migration Regulations by omitting the reference to paragraph 1223A(3)(ae) and replacing it with a reference to paragraphs 1223A(3)(ae), (af) and (ag).

This amendment is consequential to the insertion of paragraph 1223A(3)(af) and (ag) in Schedule 1 to the Migration Regulations, by these regulations.

Item [6] - Schedule 1, after paragraph 1223A(3)(ae)

This item inserts paragraph 1223A(3)(af) and (ag) in Schedule 1 to the Migration Regulations.

New paragraph 1223A(3)(af) provides that in the case of an applicant who:

- seeks a visa that will permit the applicant to travel to, enter and remain in Australia for a period, or periods, of more than 3 months; and

- seeks to meet the requirements of subclause 457.223(2), (3), (4) or (10) in Schedule 2;

the application must be made in Australia but not in immigration clearance, or as an Internet application.

The purpose of new paragraph 1223A(3)(af) is to ensure that all applications for a Temporary Business Entry (Class UC) visa are made in Australia or via the Internet, where the applicant seeks to be granted a Subclass 457 (Business (Long Stay)) visa on the basis of meeting the requirements of subclause 457.223(2), (3), (4) or (10). New paragraph 1223A(3)(af) will expedite the processing of these applications by centralising processing in Australia.

New paragraph 1223A(3)(ag) provides that in the case of an applicant who:

- seeks a visa that will permit the applicant to travel to, enter and remain in Australia for a period, or periods, of more than 3 months; and

- seeks to meet the requirements of subclause 457.223(5) in Schedule 2

the application must be made outside Australia.

The purpose of new paragraph 1223A(3)(ag) is to ensure that all applications for a Temporary Business Entry (Class UC) visa are made outside Australia where the applicant seeks to be granted a Subclass 457 (Business (Long Stay)) visa and proposes to be employed by a person who does not operate a business activity in Australia (ie an overseas business).

New paragraph 1223A(3)(ag) will expedite the processing of these applications by ensuring that they are lodged at the nearest overseas post, who are best placed to assess the bona fides of an application.

Item [7] - Schedule 1, after paragraph 1223A(3)(c)

This item inserts paragraph 1223A(3)(ca) in Schedule 1 to the Migration Regulations.

New paragraph 1223A(3)(ca) provides that an application for a Temporary Business Entry (Class UC) visa by an applicant who:

- seeks to satisfy the secondary criteria for the grant of a Subclass 457 (Business (Long Stay)) visa; and

- claims to be a member of the family unit of an applicant who seeks to satisfy or has satisfied the requirements of subclause 457.223(2), (3), (4) or (10);

must be made in Australia but not in immigration clearance, or as an Internet application.

New paragraph 1223A(3)(ca) will expedite the processing of these applications by centralising processing in Australia.

Item [8] - Schedule 1, paragraph 1223A(3)(d)

This item amends paragraph 1223A(3)(d) in Schedule 1 to the Migration Regulations.

This item corrects a reference to the name of a Subclass 457 (Business (Long Stay)) visa.

Item [9] - Schedule 2, clause 457.221

This item amends clause 457.221 in Schedule 2 to the Migration Regulations.

New clause 457.221 provides that if the applicant is in Australia at the 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 visas.

The amendment to clause 457.221 is consequential to the insertion of paragraphs 1223A(3)(af) and (ca) in Schedule 1 to the Migration Regulations, by these regulations.

Item [10] - Schedule 2, paragraph 457.225(a)

This item substitutes paragraph 457.225(a) in Schedule 2 to the Migration Regulations, to clarify that clause 457.225 applies to an applicant who is outside Australia at the time of application.

The amendment to paragraph 457.225(a) is consequential to the insertion of paragraphs 1223A(3)(af), (ag) and (ca) in Schedule 1 to the Migration Regulations, by these regulations.

Item [11] - Schedule 2, clause 457.322

This item amends clause 457.322 in Schedule 2 to the Migration Regulations.

New clause 457.322 provides that if the applicant is outside Australia at the time of application and makes an application separately from that of the primary applicant, the primary applicant is, or is expected soon to be, in Australia.

The amendment to clause 457.322 is consequential to the insertion of paragraph 1223A(3)(ag) in Schedule 1 to the Migration Regulations, by these regulations.

Item [12] - Schedule 2, clause 457.323

This item amends clause 457.323 of Schedule 2 to the Migration Regulations.

New clause 457.323 provides that if the applicant is in Australia at the 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 visas.

The amendment to clause 457.323 is consequential to the insertion of paragraphs 1223A(3)(af) and (ca) in Schedule 1 to the Migration Regulations, by these regulations.

Item [13] - Schedule 2, paragraph 457.326(a)

This item substitutes paragraph 457.326(a) in Schedule 2 to the Migration Regulations, to clarify that clause 457.326 applies to an applicant who is outside Australia at the time of application.

The amendment to paragraph 457.326(a) is consequential to the insertion of paragraph 1223A(3)(ag) in Schedule 1 to the Migration Regulations, by these regulations.

Item [14] - Schedule 2, subclause 457.611(2)

This item amends subclause 457.611(2), by inserting condition 8403 as a condition that may be attached to a Subclass 457 (Business (Long Stay)) visa.

Condition 8403 provides that the holder must visit an Immigration office specified by the Minister for the purpose, within a the time specified by the Minister for the purpose, to have evidence of the visa placed in the holder's passport.

The policy intention is that whilst certain ETA - eligible passport holders granted a Subclass 457 (Business (Long Stay)) visa be permitted to enter Australia without a visa label evidencing the grant of the Subclass 457 visa, it may be necessary for them to obtain one after entering Australia. Hence in this case condition 8403 may be attached to these visas.

Item [15] - Schedule 9, Part 1, after item 26

This item inserts item 27 in Part 1 of Schedule 9 to the Migration Regulations.

Part 1 of Schedule 9 outlines the necessary evidence of identity that a person mentioned in subregulation 3.03 of Part 3 of the Migration Regulations must provide to a clearance officer in order to comply with section 166 of the Act.

New item 27 of Part 1 of Schedule 9 provides that a person who satisfies subregulation 3.03(6) or (7) must provide as evidence of identity a passport and a completed passenger card.

The purpose of new item 27 is to enable a person who satisfied subregulation 3.03(6) or (7) to enter Australia with a passport and a completed passenger card only. People who satisfy subregulation 3.03(6) or (7) are not required to provide a clearance officer with evidence of the grant of a visa. However, they may later be required to provide such evidence if condition 8403 is attached to their visa. See item [14] above for further details.

Schedule 3 - Amendments relating to Student Guardian visas

Item [1] - Regulation 1.03, definition of *student visa*

This item substitutes the definition of student visa to mean a Subclass 560, 562, 563, 570, 571, 572, 573, 574, 575 or 576 visa, whenever granted.

The definition specifically excludes Subclass 580 (Student Guardian) visa, which is inserted by these regulations, so that wherever `student visa' is mentioned in the regulations it does not include a reference to a Subclass 580 (Student Guardian) visa. This is because while Subclass 580 is a subclass within visa Class TU (Student (Temporary)), and fits within the general student visa regime, it does not have the typical characteristics of a student visa.

Item [2] - Regulation 2.07AF, heading

This item substitutes a new heading for regulation 2.07AF.

This amendment is consequential to the insertion of a new Subclass 580 (Student Guardian) visa into Class TU (Student (Temporary)) by these regulations, and to the amendment of the definition of `student visa' by the above item.

Item [3] - Subregulation 2.07AF(3)

This item amends subregulation 2.07AF(3) by inserting a reference to form 157G, which is the application form to be completed when applying for a Subclass 580 (Student Guardian) visa.

The purpose of the amendment is to ensure that an application for a Subclass 580 (Student Guardian) visa must include:

- the name, date of birth and citizenship of each person who is a member of the family unit of the applicant at the time of the application; and

- details of the relationship between the person and the applicant.

Items [4], [5], [6] and [7] outline what is required for an application for a Subclass 580 (Student Guardian) visa to be a valid application.

Item [4] - Schedule 1, after paragraph 1222(1)(c)

This item inserts new paragraph 1222(1)(ca) into the Migration Regulations to provide that, in the case of an application by a person who seeks a Subclass 580 (Student Guardian) visa, the form is 157G.

Item [5] - Schedule 1, paragraph 1222(3)(aa)

This item amends paragraph 1222(3)(aa) to include a reference to form 157G, which is the application form to be completed when applying for a Subclass 580 (Student Guardian) visa.

The purpose of the amendment is to specify that, despite regulation 2.10, which deals with where an application for a visa must be made, an application made on form 157A or 157G by an applicant who is included in a class of persons specified in a Gazette Notice for this paragraph must be made by:

(i) posting the application (with the correct pre-paid postage) to the post office box address specified by the Minister; or

(ii) having the application delivered by a courier service to the address specified by the Minister.

The class of persons currently covered by the relevant Gazette Notice is a person who is outside Australia and:

(a) is a citizen of the People's Republic of China in either:

(i) the People's Republic of China; or

(ii) New Zealand; and

(b) who is not the holder of a Hong Kong Special Administrative Region of the People's Republic of China passport or Macau Special Administrative Region of the People's Republic of China passport.

Item [6] - Schedule 1, after paragraph 1222(3)(e)

This item inserts new paragraphs 1222(3)(f), 1222(3)(g) and 1222(3)(h) into the Migration Regulations.

Paragraph 1222(3)(f) provides that, to be a valid application, an application for a Subclass 580 (Student Guardian) visa (which should be made on form 157G) must be accompanied by a form 157N. Form 157N is a nomination form, to be completed by a person who is nominating the applicant for a Subclass 580 (Student Guardian) visa.

New paragraph 1222(3)(g) provides that, to be a valid application for a Subclass 580 (Student Guardian) visa, where the applicant has not, before the date of application, held a Subclass 580 (Student Guardian) visa, the applicant must be outside Australia and make the application outside Australia. This provision ensures that only when the applicant is either the holder of, or has previously been the holder of, a Subclass 580 (Student Guardian) visa, can the holder make an application in Australia.

New paragraph 1222(3)(h) provides that, for an application for a Subclass 580 (Student Guardian) visa to be validly made in Australia, the applicant must meet the requirements of subitem (3A), inserted by these regulations.

Item [7] - Schedule 1, after subitem 1222(3)

This item inserts subitem 1222(3A) into the Migration Regulations, and provides that the requirements for new paragraph 1222(3)(h), that is where an application for a Subclass 580 (Student Guardian) visa is made in Australia, are:

- if the person who nominated the applicant for a Subclass 580 (Student Guardian) visa on the form 157N mentioned in paragraph (3) (f) has not turned 18, the applicant must hold a Subclass 580 (Student Guardian) visa, or if the applicant does not hold a substantive visa:

- the substantive visa last held by the applicant was a Subclass 580 (Student Guardian) visa; and

- the application is made within 28 days (or a longer period specified in a Gazette Notice for this part) after the last substantive visa mentioned above ceased to have effect; or

• if the person who nominated the applicant for a Subclass 580 (Student Guardian) visa on the form 157N mentioned in paragraph (3) (f) has turned 18, the applicant must hold a Subclass 580 (Student Guardian) visa that was granted on the basis that the applicant met the requirements of new subclause 580.222 (3) (inserted by these regulations), or if the applicant does not hold a substantive visa:

- the substantive visa last held by the applicant was a Subclass 580 (Student Guardian) visa that was granted on the basis that the applicant met the requirements of subclause 580.222 (3); and

- the application is made within 28 days (or a longer period specified in a Gazette Notice for this part) after the last substantive visa mentioned above ceased to have effect; or

• if the applicant seeks to meet the requirements of new subclause 580.222 (4) (inserted by these regulations), the applicant must hold a Subclass 580 (Student Guardian) visa that was granted on the basis that the applicant met the requirements of subclause 580.222 (4), or if the applicant does not hold a substantive visa:

- the substantive visa last held by the applicant was a Subclass 580 (Student Guardian) visa that was granted on the basis that the applicant met the requirements of subclause 580.222 (4); and

- the application is made within 28 days (or a longer period specified in a Gazette Notice for this part) after the substantive visa mentioned above ceased to have effect.

It is intended that the first application for a Subclass 580 (Student Guardian) visa be made outside Australia and assessed by decision makers who have a good knowledge of local customs and the conditions of that country. Certain subsequent applications may be made in Australia. Unless the nominating student already holds a student visa, it is expected that the application will be made at the same time and place as nominating student's application for a student visa.

New subclause 580.222(3) provides that, where a nominating student has turned 18, the Minister is satisfied that there are exceptional reasons why the nominating student needs the Student Guardian visa applicant to reside with the nominating student in Australia. New subclause 580.222(4) provides that the Minister is satisfied that the grant of the visa to the applicant will significantly benefit the relationship between the government of Australia and the government of a foreign country.

Item [8] - Schedule 1, subitem 1222(4)

This item amends subitem 1222(4) by inserting a reference to the new `580 Student Guardian' visa, introduced by these regulations.

The purpose of the amendment is to include the Subclass 580 (Student Guardian) visa as a visa subclass within the Student (Temporary) (Class TU) visa class.

Item [9] - Schedule 2, after Part 576

This item inserts Part 580 of Schedule 2 into the Migration Regulations

The purpose of this amendment is to insert the Schedule 2 provisions for the new Subclass 580 (Student Guardian) visa.

Division 580.1 - Interpretation

Division 580.1 inserts, through new clauses 580.111, 580.112 and 580.113, a number of definitions of terms relevant to new Part 580 Student Guardian.

"*acceptable individual*"

New clause 580.111 provides that for Part 580 of Schedule 2 to the Migration Regulations, `acceptable individual' means one or more of the following:

- the applicant;
- the applicant's spouse;
- the nominating student;
- the nominating student's spouse;
- a parent of the nominating student;
- a grandparent of the nominating student;
- a brother or sister of the selected nominating student;
- an aunt or uncle of the nominating student, if the aunt or uncle is usually resident in Australia and is an Australian citizen, an Australian permanent resident, or an eligible New Zealand citizen.

The term `acceptable individual' appears in the definition of `funds from an acceptable source' in new clause 580.112, which relates to an assessment of an applicant's financial capacity, as covered by the provisions in new clause 580.226.

"*financial institution*"

New clause 580.111 provides that for Part 580 of Schedule 2 to the Migration Regulations, `financial institution' means a body corporate that, as part of its normal activities:

- takes money on deposit and makes advances of money; and
- does so under a regulatory regime, governed by the central bank (or its equivalent) of the country in which it operates, that the Minister is satisfied provides effective prudential assurance.

This definition is consistent with the definition of `financial institution' in Schedule 5A to the Migration Regulations.

"*first 12 months*"

New clause 580.111 provides that for Part 580 of Schedule 2 to the Regulations, `first 12 months', for an applicant, means the period that begins:

- if the application is made outside Australia -- on the day of the applicant's expected arrival in Australia; or
- if the application is made in Australia -- on the day that the visa is expected to be granted to the applicant;

and ends on the earlier of the following:

- the day 12 months after the beginning of the period;

- the last day of the applicant's proposed stay in Australia.

The term `first 12 months' appears in new subclause 580.226(5) in relation to an applicant's financial capacity where the nominating student was, at the time his or her visa was granted, subject to assessment level 1 or 2. This definition is consistent with the definition of `first 12 months' in Schedule 5A to the Migration Regulations.

"*first 24 months*"

New clause 580.111 provides that for Part 580 of Schedule 2 to the Regulations, `first 24 months', for an applicant, means the period that begins:

- if the application is made outside Australia -- on the day of the applicant's expected arrival in Australia; or

- if the application is made in Australia -- on the day that the visa is expected to be granted to the applicant;

and ends on the earlier of the following:

- the day 24 months after the beginning of the period;

- the last day of the applicant's proposed stay in Australia.

The term `first 24 months' appears in new subclause 580.226(4) in relation to an applicant's financial capacity where the nominating student was, at the time his or her visa was granted, subject to assessment level 3. This definition is consistent with the definition of `first 24 months' in Schedule 5A to the Migration Regulations.

"*first 36 months*"

New clause 580.111 provides that for Part 580 of Schedule 2 to the Regulations, `first 36 months', for an applicant, means the period that begins:

- if the application is made outside Australia -- on the day of the applicant's expected arrival in Australia; or

- if the application is made in Australia -- on the day that the visa is expected to be granted to the applicant;

and ends on the earlier of the following:

- the day 36 months after the beginning of the period;

- the last day of the applicant's proposed stay in Australia.

The term `first 36 months' appears in new subclause 580.226(3) in relation to an applicant's financial capacity where the nominating student was, at the time his or her visa was granted, subject to assessment level 4. This definition is consistent with the definition of `first 36 months' in Schedule 5A to the Migration Regulations.

"*full period*"

New clause 580.111 provides that for Part 580 of Schedule 2 to the Regulations, `full period', for an applicant, means the period that begins:

- if the application is made outside Australia -- on the day of the applicant's expected arrival in Australia; or

- if the application is made in Australia -- on the day that the visa is expected to be granted to the applicant;

and ends on the last day of the applicant's proposed stay in Australia.

The term `full period' appears in new clause 580.226 in relation to an applicant's financial capacity. This definition is consistent with the definition of `full period' in Schedule 5A to the Migration Regulations.

"*living costs*"

New clause 580.111 provides that for Part 580 of Schedule 2 to the Regulations, `living costs' means $12,000 per year. The term `living costs' appears in new clause 580.226 in relation to the applicant's financial capacity. This definition is consistent with the definition of living costs in Schedule 5A to the Migration Regulations.

"*money deposit*"

New clause 580.111 provides that for Part 580 of Schedule 2 to the Regulations, `money deposit' means a money deposit with a financial institution. Financial institution is also defined in this clause. The term `money deposit' appears in new clause 580.226 in relation to the applicant's financial capacity. This definition is consistent with the definition of money deposit in Schedule 5A to the Migration Regulations.

"*nominating student*"

New clause 580.111 provides that for Part 580 of Schedule 2 to the Regulations, `nominating student', for an applicant for a Subclass 580 (Student Guardian) visa, means a person who:

- nominates the applicant on form 157N; and

- at the time of decision for the applicant, holds a student visa that was granted on the basis that the person met the primary criteria for the grant of the student visa; and

- if, a the time of decision for an applicant, there is more than 1 person who meets the requirements of the above paragraphs, is the person mentioned in a written communication given to the Minister by the applicant in accordance with Division 2.3 of the Migration Regulations (which deals with communication between an applicant and the Minister).

The intention is that an application for a Subclass 580 (Student Guardian) visa will be supported by a nomination from a person who nominates the applicant and is the holder of a student visa (having met the primary criteria for the grant of that visa) at the time that a decision is made on the Subclass 580 (Student Guardian) visa application. It is also intended that, where, at the time of decision, an applicant for a Subclass 580 (Student Guardian) visa is supported by more than one nominator, the applicant will advise the department in writing which nominator they would like to have their application considered against, under the new Part 580 regulations.

"*scholarship*"

New clause 580.111 provides that for Part 580 of Schedule 2 to the Regulations, `scholarship' means a scholarship that:

- is awarded to a student by his or her education provider or proposed education provider; and

- is awarded on the basis of merit and an open selection process; and

- is awarded to a student who is enrolled in a course leading to a Certificate IV qualification or a higher qualification; and

- is awarded to the greater of:

  -not more than 10% of overseas students in a course intake; and

  -not more than 3 overseas students in a course intake.

This definition is consistent with the definition of scholarship in Schedule 5A to the Migration Regulations.

"*travel costs*"

New clause 580.111 provides that for Part 580 of Schedule 2 to the Regulations, `travel costs', for an applicant for a Subclass 580 (Student Guardian) visa means the sum of:

- if the applicant is not in Australia when the application is made -- the cost of travelling to Australia; and

- the cost of returning to the applicant's home country at the end of his or her stay in Australia.

The term `travel costs' appears in new clause 580.226 in relation to the applicant's financial capacity. This definition is consistent with the definition of travel costs in Schedule 5A to the Migration Regulations.

"*funds from an acceptable source*"

New clause 580.112 provides that, for the purposes of new subclause 580.226(3) of Schedule 2 to the Migration Regulations, where the nominating student was, at the time his or her visa was granted, subject to assessment level 4, `funds from an acceptable source' means one or more of the following:

- a money deposit that an acceptable individual has held for at least the 6 months immediately before the date of the application;

- a loan from a financial institution made to, and held in the name of, an acceptable individual;

- a loan from the government of the home country of the applicant or of the nominating student;

• a scholarship awarded to the nominating student by his or her education provider or proposed education provider;

• financial support from:

- the Commonwealth Government, or the government of a State or Territory; or

- the government of a foreign country; or

- unless the nominating student holds a Subclass 570 (Independent ELICOS Sector) visa -- a corporation that:

§ conducts commercial activities outside the country in which it is based; and

§ employs the nominating student in a role in relation to which the nominating student's principal course is directly relevant; or

- a multilateral agency; or

- a provincial or state government in a foreign country, provided with the written support of the government of that country; or

- an organisation specified by the Minister in a Gazette notice for new subparagraph 580.112(e)(vi).

New subclause 580.112 incorporates the definitions of money deposit, acceptable individual, financial institution, scholarship, and nominating student, inserted by new clause 580.111.

An applicant's funds must be funds from an acceptable source for the applicant to meet the financial capacity requirement in accordance with new subclause 580.226(3).

The requirements are consistent with Schedule 5A requirements for Assessment Level 4 students.

New clause 580.113 provides that for the purposes of new subclause 580.226(4) of Schedule 2 to the Regulations, `funds from an acceptable source' means one or more of the following:

• a money deposit that the applicant or an individual who is providing support to the applicant has held for at least the 3 months immediately before the date of the application;

• a loan from a financial institution made to, and held in the name of, the applicant or of an individual who is providing support to the applicant;

• a loan from the government of the home country of the applicant or of the nominating student;

• a scholarship awarded to the nominating student by his or her education provider or proposed education provider;

• financial support from:

- the Commonwealth Government, or the government of a State or Territory; or

- the government of a foreign country; or

- a corporation that conducts commercial activities outside the country in which it is based and employs the nominating student in a role in relation to which the nominating student's principal course is directly relevant; or

- a multilateral agency;

- a provincial or state government in a foreign country, provided with the written support of the government of that country; or

- an organisation specified by the Minister in a Gazette notice for new subparagraph 580.113(e)(vi).

This subclause uses the definitions of money deposit, financial institution, scholarship, and nominating student, inserted by new clause 580.111.

An applicant's funds must be funds from an acceptable source for the applicant to meet the financial capacity requirement in accordance with paragraph 580.226(4).

New clause 580.114 provides that, for the purposes of new subclause 580.226(5) of Schedule 2 to the Regulations, `funds from an acceptable source' does not include the value of an item of property. An applicant must meet new subclause 580.226(5) if the nominating student was, at the time his or her visa was granted, subject to assessment level 1 or 2.

Division 580.2 - Primary Criteria

New division 580.2 sets out the primary criteria to be satisfied by an applicant for a Subclass 580 (Student Guardian) visa. New division 580.3 notes that there are no secondary criteria for this visa subclass, meaning that all applicants for a Subclass 580 (Student Guardian) visa are required to meet the primary criteria in order to be granted one of these visas.

Subdivision 580.21 - Criteria to be satisfied at time of application

New subdivision 580.21 sets out the primary criteria to be satisfied at time of application. The note in this subdivision specifies that there are no criteria to be satisfied at the time of application. The criteria for grant of the visa are set out in new subdivision 580.22.

Subdivision 580.22 - Criteria to be satisfied at time of decision

New subdivision 580.22 sets out the criteria to be satisfied at the time of decision for an applicant to be granted a Subclass 580 (Student Guardian) visa.

New subclause 580.221(1) provides that, if the application is made in Australia and the nominating student had turned 18 at the time of application, either:

- the applicant holds a Subclass 580 (Student Guardian) visa that was granted on the basis that the applicant met the requirements of new subclause 580.222 (3); or

- if the applicant does not hold a substantive visa:

- the substantive visa last held by the applicant was a Subclass 580 (Student Guardian) visa that was granted on the basis that the applicant met the requirements of subclause 580.222 (3); and

- the application is made within 28 days (or a longer period specified in a Gazette Notice for this subparagraph) after the visa mentioned in new subparagraph 580.221(1)(b)(i) ceased to have effect.

The purpose of the amendment is to provide that, where a holder or previous holder of a Subclass 580 (Student Guardian) visa makes a further application in Australia on a particular basis, their previous application was granted on the same basis. In the case of this amendment, the relevant basis is that outlined in new subclause 580.222(3); that is, where the nominating student has turned 18 and the Minister is satisfied that there are exceptional reasons why the nominating student needs the applicant to reside with the student in Australia.

New subclause 580.221(2) provides that, if the application is made in Australia and the applicant seeks to meet the requirements of new subclause 580.222 (4), either:

- the applicant holds a Subclass 580 (Student Guardian) visa that was granted on the basis that the applicant met the requirements of subclause 580.222 (4); or

- if the applicant does not hold a substantive visa:

- the substantive visa last held by the applicant was a Subclass 580 (Student Guardian) visa that was granted on the basis that the applicant met the requirements of subclause 580.222 (4); and

- the application is made within 28 days (or a longer period specified in a Gazette Notice for this subparagraph) after the visa mentioned in new subparagraph 580.221(2)(b)(i) ceased to have effect.

As for the previous amendment, the purpose of the amendment is to provide that, where a holder of previous holder of a Subclass 580 (Student Guardian) visa makes a further application in Australia on a particular basis, their previous application was granted on the same basis. In the case of this amendment, the relevant basis is that outlined in new subclause 580.222(4); that is, where the Minister is satisfied that the grant of the visa to the applicant will significantly benefit the relationship between the Australian government and that of a foreign country.

New subclause 580.222(1) provides that the applicant can meet new clause 580.222 in one of three ways, depending on the age of the nominating student and whether the grant of the visa is in the interest of the relationship between the Australian government of Australia and that of a foreign country.

New subclause 580.222(2) provides that the applicant meets the requirements of this subclause if:

- the nominating student has not turned 18; and

- the applicant is able to provide appropriate arrangements for the accommodation and support for the nominating student as well as their general welfare; and

- the applicant is either a parent of the nominating student, a person who has custody of the nominating student, or a person who is a relative of the nominating student who has turned 21 and whose nomination is supported in writing by a parent of the nominating student or a person who has custody of the nominating student.

The term `relative' is defined in regulation 1.03 of the Migration Regulations, and that definition will apply when determining whether an applicant satisfies new subclause 580.222(2).

New subclause 580.222(3) provides that the applicant meets the requirements of this subclause if:

- the nominating student has turned 18; and

- the Minister is satisfied that there are exceptional reasons why the nominating student needs the applicant to stay with the nominating student in Australia

- `Exceptional reasons' are to be defined in policy guidelines, but are intended to encompass situations where the nominating student would have needed a guardian to stay with them if they were studying in their home country. It is intended that a decision maker outside Australia assess these reasons as they are more directly exposed to and therefore have a deeper appreciation of local customs and conditions, and would therefore be in a better position to assess what might constitute exceptional reasons; and

- similar requirements regarding accommodation, support and welfare arrangements, as for the previous amendment; and

- similar requirements regarding the relationship between the applicant and the nominating student, as for the previous amendment. The only difference is that, as the nominating student has turned 18, there is no requirement that the nomination of the applicant is supported in writing by a parent or custodian.

New subclause 580.222(4) provides that an applicant meets the requirements of this subclause if:

- the Minister is satisfied that the grant of the visa to the applicant will significantly benefit the relationship between the government of Australia and the government of a foreign country; and

- the applicant has turned 21, and

- if the nominating student has not turned 18, the nomination of the applicant is supported in writing either by a parent of the nominating student or by a person who has custody of the nominating student.

Whether or not the grant of the visa is considered to be of benefit to the bilateral relationship is to be initially decided by a decision-maker outside Australia with advice from the appropriate authorities. Once a decision regarding the relationship has been made in relation to a particular application, a further application by the same applicant may be made in Australia in accordance with paragraph 1222(3A)(c), if the person is seeking to be granted the second visa on the same basis as the first.

It is intended that the types of evidence required to demonstrate circumstances in which the grant of the visa would be likely to significantly benefit the relationship between the Australian government of and that of a foreign country will be detailed in supporting policy documents.

Where the nominating student has turned 18, there is no requirement that the nomination of the applicant is supported in writing by a parent or custodian. The applicant, unlike 580.222(2) and (3), is not required to be a relative of the nominating student. While an applicant seeking to satisfy the requirements of new subclause 580.222(4) will not be required to meet criteria relating to providing appropriate arrangements for the accommodation and support for the nominating student as well as their general welfare, the applicant will, if granted the visa, be subject to new condition 8537, which provides that the visa holder must provide appropriate accommodation and support as well as general welfare.

New clause 580.223 provides that the applicant meets the requirements of subclause 580.223(2), 580.223(3), and 580.223(4).

New subclause 580.223(2) provides that the applicant meets the requirements of this subclause if:

- the Minister is satisfied that:

- the applicant has a genuine intention to reside in Australia with the nominating student; and

- the nominating student has a genuine intention to reside in Australia with the applicant; and

- the nominating student does not intend to reside in Australia with either a holder of a Subclass 580 (Student Guardian) visa other than the applicant, or with a parent, or another person who has custody of the nominating student, other than the applicant; and

- the applicant has made appropriate arrangements, for the period of the applicant's proposed stay in Australia, for the accommodation, support and general welfare of each member of the applicant's family unit who has not turned 18 and does not hold a student visa; and

- unless the applicant satisfies new subclause 580.222(4), each member of the family unit of the applicant has turned 6.

This amendment seeks to ensure that the student guardian visa is not used for the purpose of family reunion. Another purpose is to ensure that the Student Guardian has made appropriate arrangements for any family member who is under 18 years who is not a student visa holder. It is not intended that a person who has a child or children aged under six years should be able to access the Student Guardian program, unless that person is seeking to meet the requirements of new subclause 580.222(4).

New subclause 580.223(3) provides that the applicant meets the requirements of this subclause if the applicant:

- satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013 and 4014 (relating to the applicant's health and character); and

- if the applicant seeks to stay in Australia for 12 months or more, satisfies public interest criterion 4010 (relating to the applicant's ability to independently established in the Australian community); and

- if the application was made outside Australia and the applicant has previously been in Australia, satisfies special return criteria 5001, 5002 and 5010 (relating to special return criteria).

New subclause 580.223(4) provides that the applicant meets the requirements of this subclause if the applicant gives to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.

New clause 580.224 provides that 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.

The purpose of the amendment is to ensure that the applicant has complied with the last Subclass 580 (Student Guardian) visa, or bridging visa, which the applicant held. Under new paragraph 1222(3)(g) in Schedule 1, for an application to be made in Australia, the last visa held by the applicant must have been a Subclass 580 (Student Guardian) visa, or a bridging visa.

New clause 580.225 provides that if the applicant is an AusAID student or an AusAID recipient, the applicant has the support of the AusAID Minister or the Defence Minister for the grant of the visa.

New subclause 580.226(1) provides that the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a Student Guardian:

- because the applicant gives to the Minister evidence relating to the applicant's financial capacity in accordance with new subclause 580.226(2), (3), (4) or (5); and

- having regard to the stated intention of the applicant to comply with any conditions subject to which the visa is granted and any other relevant matter.

New subclauses 580.226(2), (3) and (4) relate to an assessment of an applicant's financial capacity, according to the assessment level the relevant nominating student was subject to at the time their student visa was granted.

Assessment level 5

New subclause 580.226(2) provides that if the nominating student was, at the time his or her visa was granted, subject to assessment level 5, the evidence of the applicant's financial capacity is evidence that:

- the applicant has funds that are sufficient to meet living costs for the full period; and

- the applicant has funds that are sufficient to meet travel costs; and

- the funds have been held by the applicant in money deposits for at least the 5 years immediately before the date of the application; and

- the applicant's regular income before the date of the application was sufficient to accumulate the funds.

The terms `full period', `living costs', `money deposit' and `travel costs' are defined in new clause 580.111.

Assessment level 4

New subclause 580.226(3) provides that if the nominating student was, at the time his or her visa was granted, subject to assessment level 4, the evidence of the applicant's financial capacity is:

- evidence that the applicant has funds from an acceptable source that are sufficient to meet living costs for the first 36 months; and

- evidence that the applicant has funds from an acceptable source that are sufficient to meet travel costs; and

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

- a declaration by the applicant stating that he or she has access to funds from an acceptable source that are sufficient to meet living costs for the remainder of the full period.

The term `funds from an acceptable source' for this subclause is defined in new clause 580.112.

Assessment level 3

New subclause 580.226(4) provides that if the nominating student was, at the time his or her visa was granted, subject to assessment level 3, the evidence of the applicant's financial capacity is:

- evidence that the applicant has funds from an acceptable source that are sufficient to meet living costs for the first 24 months; and

- evidence that the applicant has funds from an acceptable source that are sufficient to meet travel costs; and

- a declaration by the applicant stating that he or she has access to funds from an acceptable source that are sufficient to meet living costs for the remainder of the full period; and

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

The term `funds from an acceptable source' for this subclause is defined in new clause 580.113.

Assessment level 1 or 2

New subclause 580.226(5) provides that if the nominating a student was, at the time his or her visa was granted, subject to assessment level 1 or 2, the evidence for the applicant's financial capacity is:

- evidence that the applicant has funds from an acceptable source that are sufficient to meet living costs for the first 12 months; and

- evidence that the applicant has funds from an acceptable source that are sufficient to meet travel costs; and

- a declaration by the applicant stating that he or she has access to funds from an acceptable source that are sufficient to meet living costs for the remainder of the full period.

To meet the requirement of this subclause, the Minister must also be satisfied that the regular income of any individual (including the applicant) providing funds to the applicant was sufficient to accumulate the level of funding being provided by that individual.

The term `funds from an acceptable source' for this subclause is defined in new clause 580.114.

Division 580.3 - Secondary Criteria

There are no secondary criteria for this visa subclass. Each applicant for a Subclass 580 (Student Guardian) visa must satisfy the primary criteria set out in new subdivision 580.2.

Division 580.4 - Circumstances applicable to grant

This division establishes where the applicant must be at the time of grant of a Subclass 580 (Student Guardian) visa.

New clause 580.411 provides that if the application is made outside Australia, the applicant must be outside Australia at the time of grant.

New clause 580.412 provides that if the application is made in Australia, the applicant must be in Australia at the time of grant.

Division 580.5 - When visa is in effect

This division provides for when a Subclass 580 (Student Guardian) visa is in effect.

New clause 580.511 provides that the visa is a temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister. It is intended that the validity of the Subclass 580 (Student Guardian) visa will generally be linked to the intended period of study in Australia of the student who nominated the Student Guardian and the nominating student's age.

Division 580.6 - Conditions

This division stipulates the conditions which are to be attached to the visa.

New clause 580.611 provides that conditions 8101, 8201, 8501, 8516, 8534 (as amended by these regulations), as well as new conditions 8537 and 8538 (introduced by these regulations) are to be attached to the visa. New conditions 8537 and 8538 are described below. In addition to these new conditions, the holder of a Subclass 580 (Student Guardian) visa, while they are in Australia:

- must not work;
- must not study or undergo training for more than three months;
- must maintain adequate health insurance arrangements;
- continue to be a person who would satisfy the criteria for a Subclass 580 (Student Guardian) visa; and
- is not entitled to be granted another substantive visa, other than a protection visa, a student visa or a Subclass 497 (Graduate - Skilled) visa, or another Subclass 580 (Student Guardian) visa.

Division 580.7 - Way of Giving Evidence

This division provides for the way of giving evidence of a Subclass 580 (Student Guardian) visa.

New clause 580.711 provides that the way of giving evidence of the visa is through a visa label affixed to a valid passport.

Item [10] - Schedule 8, item 8532

This item substitutes an amended condition 8532 to provide that if the visa holder has not turned 18 and is not an AusAID student or a Defence student:

• the holder must stay in Australia with a person who is either a parent of the holder or a person who has custody of the holder; or a relative of the holder who:

- is nominated by a parent of the holder or a person who has custody of the holder; and

- has turned 21; and

- is of good character; or

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

The amendment is consequential to the introduction of the Subclass 580 (Student Guardian) visa, by these regulations, and its purpose is to strengthen the requirement that a Student Guardian and a nominating student stay together in Australia for the duration of the student's intended period of study.

Item [11] - Schedule 8, paragraph 8534(c)

This item amends paragraph 8534(c) of the Migration regulations by inserting a reference to a Subclass 580 (Student Guardian) visa.

The effect of the amendment is that, while the holder of a Subclass 580 (Student Guardian) visa is in Australia, the holder cannot be granted another substantive visa, other than a protection visa, a student visa, a Subclass 497 (Graduate - Skilled) visa or another Subclass 580 (Student Guardian) visa.

Item [12] - Schedule 8, after item 8536

This item inserts new conditions 8537 and 8538, which are to be attached to a Subclass 580 (Student Guardian) visa.

New condition 8537 provides that:

• while the nominating student (within the meaning of Part 580 of Schedule 2) in relation to the Subclass 580 (Student Guardian) visa holder is in Australia, the holder must reside in Australia; and

• while the holder is in Australia, the holder must:

- stay with the nominating student (within the meaning of Part 580 of Schedule 2) in relation to the holder; and

- provide appropriate accommodation and support for the nominating student; and

- provide for the general welfare of the nominating student.

The purpose of the amendment is to reinforce a fundamental policy underpinning of the new Student Guardian visa regime; that is, while a nominating student is studying in Australia, they live with and are cared for by their Student Guardian.

New condition 8538 provides that if the holder of a Subclass 580 (Student Guardian) visa leaves Australia without the nominating student (within the meaning of Part 580 of Schedule 2) in relation to the holder, the holder must first give to the Minister evidence that:

- there are compelling or compassionate reasons for doing so; and

- the holder has made alternative arrangements for the accommodation, support and general welfare of the nominating student until the holder's return to Australia; and

- if the nominating student has not turned 18, the alternative arrangements are approved by the education provider for the course to which the nominating student's visa relates.

New condition is intended to act in conjunction with new condition 8537 to reinforce the fundamental policy underpinning of the new Student Guardian visa regime outlined above.

Both a Subclass 580 (Student Guardian) visa and a student visa have a travel component, meaning that the holder can travel in and out of Australia during the period of validity of the visa. The purpose of this amendment is to ensure that the nominating student is not left in Australia without their Student Guardian unless there are compelling or compassionate reasons for this occurring, and unless adequate arrangements for their accommodation, support and general welfare are in place.

Schedule 4 - Amendment relating to passenger reporting on international cruise ships

Item [1] - After regulation 3.13A

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

New subregulation 3.13B(1) prescribes `international passenger cruise ship' as a kind of ship that is required by Division 12B of the Act to provide certain information on its passengers before arrival in Australia. The specific information that is required to be reported is to be set out in an instrument as required by section 245J of the Act.

New subregulation 3.13B(2) defines an `international passenger cruise ship' as a ship that has sleeping facilities for at least 100 persons (excluding crew members) and is being used to provide an `international passenger sea transportation service'.

The definition of `international passenger sea transportation service' ensures that the requirements to report on passengers under Division 12B of the Act apply to ships due to arrive in Australia that provide a transportation service to the general public in return for a fee payable by persons using the service.

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

Schedule 5 - Amendments relating to Work and Holiday visas

Item [1] - After subregulation 2.05(4)

This item inserts new subregulation 2.05(4A) in Part 2 of the Migration Regulations, which provides that the Minister must not waive the no further stay conditions which are attached to subclass 462 (Work and Holiday) visas or to Bridging B visas granted to applicants for those visas.

The purpose of this amendment is to strengthen the requirement that holders of Subclass 462 (Work and Holiday) visas must leave Australia at the end of their stay.

Item [2] - Schedule 1, paragraph 1224A(3)(b)

This item substitutes paragraph 1224A(3)(b) and inserts new paragraph 1224A(3)(c) into Schedule 1 to the Migration Regulations.

Paragraph 1224A(3)(b) provides that at the time of application a first-time applicant for a Subclass 462 (Work and Holiday) visa must be outside Australia, must have not previously entered Australia as the holder of a visa of this subclass, and must provide evidence that the application has the support of the applicant's foreign government for the grant of the visa.

Paragraph 1224A(3)(c) provides that at the time of application a second or third time applicant for a Subclass 462 (Work and Holiday) visa must be in Australia, currently hold a Subclass 462 (Work and Holiday) visa and have the support of the applicant's current employer and the applicant's foreign government.

The purpose of these amendments is to allow holders of Subclass 462 (Work and Holiday) visas to apply for a second and third visa and to set out the criteria for the making of valid applications.

Item [3] - Schedule 1, subitem 1301(1)

This item includes Form 1208 in Item 1301(1) of Schedule 1 to the Migration Regulations as a form which constitutes and application for a Bridging A visa so that an onshore application for a Subclass 462 (Work and Holiday) visa is also an application for a Bridging A visa. The purpose of this amendment is to ensure that applicants do not become illegal if their substantive visa ceases during the processing of their application.

Item [4] - Schedule 2, paragraph 020.611(1)(b)

This item inserts a reference to new subclause (2A) in paragraph 020.611(1)(b) of Schedule 2 to the Migration Regulations.

This amendment is consequential to the insertion of new subclause (2A) in clause 020.611.

Item [5] - Schedule 2, after subclause 020.611(2)

This item inserts new subclause 020.611(2A) into clause 020.611 of Schedule 2 to the Migration Regulations. Subclause 020.611(2A) allows a no further stay condition to be attached to a Bridging B visa if the holder is an applicant for a Subclass 462 (Work and Holiday) visa.

The purpose of attaching the no further stay condition to the Bridging B visa is to prevent holders of Subclass 462 (Work and Holiday) visas circumventing the effect of the no further stay condition on the Subclass 462 visa by travelling offshore on a Bridging B visa.

Item [6] - Schedule 2, clause 462.211

This item amends clause 462.211 of Schedule 2 to the Migration Regulations. The amendment removes the requirement that applicants for Subclass 462 (Work and Holiday) visas must have no dependent children. The purpose of this item is to increase the number of potential applicants. The age requirement remains.

Item [7] - Schedule 2, clause 462.214

This item omits clause 462.214 from Schedule 2 to the Migration Regulations. Clause 462.214 provides that the applicant must not have previously entered Australia as the holder of a visa of this class or subclass. Following the amendments made to Schedule 1 to the Migration Regulations by these regulations, this requirement is now part of Schedule 1 for first time applicants.

Item [8] - Schedule 2, paragraph 462.221(a)

This item amends paragraph 462.221(a) of Schedule 2 to the Migration Regulations. The amendment removes the requirement that applicants for Subclass 462 (Work and Holiday) visas must continue to have no dependent children at the time of decision.

This amendment is consequential to the removal of this requirement at the time of application.

Item [9] - Schedule 2, clause 462.222

This item substitutes clause 462.222 in Schedule 2 to the Migration Regulations. New clause 462.222 provides that special return criteria 5001 and 5002 must be satisfied by first time applicants for Subclass 462 (Work and Holiday) visas but do not apply to Subclass 462 holders applying in Australia for a further Subclass 462 visa.

Item [10] - Schedule 2, clause 462.411

This item substitutes clause 462.411 and inserts new clause 462.412 in Schedule 2 to the Migration Regulations. New clause 462.411 provides that applicants for Subclass 462 (Work and Holiday) visa who are outside Australia at the time of application, must be outside Australia at the time of grant. New clause 462.412 provides that applicants who were in Australia at the time of application must be in Australia but not in immigration clearance at the time of grant. The amendment reflects the changes made by these regulations, which allow holders of Subclass 462 visas to apply onshore for two further Subclass 462 visas.

Item [11] - Schedule 2, clause 462.511

This item amends clause 462.511 in Schedule 2 to the Migration Regulations. The purpose of the amendment is to specify when the visa is in effect for first-time applicants for Subclass 462 (Work and Holiday) visas (those who are outside Australia at the time of application).

Item [12] - Schedule 2, after clause 462.511

This item inserts new clause 462.512 in Schedule 2 to the Migration Regulations. The purpose of the amendment is to specify when the visa is in effect for second and third-time applicants for Subclass 462 (Work and Holiday) visas (those who are inside Australia at the time of application).

Item [13] - Schedule 2, clause 462.611

This item amends clause 462.611 of Schedule 2 to the Migration Regulations to remove the mandatory application of the no further stay condition 8503 on all Subclass 462 (Work and Holiday) visas. The purpose of this amendment is to allow the application of a newly created condition 8540 on those Subclass 462 (Work and Holiday) visas which are granted to an applicant for the first or second time. The new condition 8540 allows the applicant to apply for either a protection visa or further Subclass 462 (Work and Holiday) visa, whereas the condition 8503 prevents valid applications for any substantive visa other than a protection visa.

Item [14] - Schedule 2, after clause 462.612

This item inserts new clauses 462.613 and 462.614 in Schedule 2 to the Migration Regulations. Clause 462.613 provides that for first and second time holders of Subclass 462 (Work and Holiday) visas, condition 8540 will apply. Clause 462.614 provides that where the Subclass 462 (Work and Holiday) visa is the third held by the applicant, condition 8503 will apply. Condition 8503 provides that the holder will not, after entering Australia, be entitled to be granted a substantive visa other than a protection visa while the holder remains in Australia. These changes reflect the intention that holders of Subclass 462 visas can extend their stay by obtaining up to two more Subclass 462 visas, but after the third Subclass 462 visa cannot make any further onshore application other than for a protection visas.

Item [15] - Schedule 8, after item 8538

This item inserts new condition 8540 in Schedule 8 to the Migration Regulations. New condition 8540 provides that the holder will not, after entering Australia, be entitled to be granted a substantive visa other than a protection visa or a subclass 462 (Work and Holiday) visa while the holder remains in Australia.

This new condition has been inserted to allow holders of subclass 462 (Work and Holiday) visas to make further onshore applications for subclass 462 (Work and Holiday) visas where they have not previously held more than 2 visas of this subclass.

Schedule 6 - Amendment relating to Contributory Parent (Temporary) (Class UT) visas

Item [1] - Schedule 1, after paragraph 1221(3)(b)

This item inserts paragraph 1221(3)(c) in Schedule 1 to the Migration Regulations. New paragraph 1221(3)(c) inserts an additional requirement for making a valid application for a Contributory Parent (Temporary)(Class UT) visa where the applicant has previously made a valid application for another parent visa.

In these circumstances, new paragraph 1221(3)(c) require that, either:

- a decision to grant or to refuse to grant that other parent visa has been made; or

- the application for that parent visa has been withdrawn.

"Parent visa" is defined in regulation 1.03 to mean a visa of a class that is specified in Schedule 1 using the word "parent" in the title of the visa.

In effect, this amendment means that an applicant can only validly make one parent visa application at a time. This is a requirement for all other parent visas. This is a technical amendment to ensure the policy intention is also carried out with regards to applications for a Contributory Parent (Temporary)(Class UT) visa.

Schedule 7 - Amendments relating to Subclass 410 (Retirement) visas

Item [1] - Schedule 2, sub-subparagraph 410.221(9)(a)(i)(A)

This item substitutes sub-subparagraph 410.221(9)(a)(i)(A) in Schedule 2 to the Migration Regulations with new sub-subparagraph 410.221(9)(a)(i)(A).

Subclause 410.221(9) of Schedule 2 outlines the financial thresholds that must be satisfied by an applicant at the time of decision, who does not hold or has never held a Subclass 410 (Retirement) visa or an equivalent visa.

New sub-subparagraph 410.221(9)(a)(i)(A) increases the combined resources of the applicant and the applicant's spouse (if any) available for transfer to Australia to a minimum threshold $870 000 to allow for the impact of inflation and the major increase in housing prices in Australia.

Item [2] - Schedule 2, sub-subparagraph 410.221(9)(a)(i)(B)

This item amends sub-subparagraph 410.221(9)(a)(i)(B) of Schedule 2 to the Migration Regulations by omitting the reference to $600 000 and replacing it with a reference to $800 000.

New sub-subparagraph 410.221(9)(a)(i)(B) increases the combined resources of the applicant and the applicant's spouse (if any) available for transfer to Australia to a minimum threshold $800 000 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.

The purpose of the amendment is to allow for the impact of inflation and the major increase in housing prices in Australia. New sub-subparagraph 410.221(9)(a)(i)(B) applies to an applicant who does not hold or has never held a Subclass 410 (Retirement) visa or an equivalent visa.

Item [3] - Schedule 2, subparagraph 410.221(9)(a)(ii)

This item amends subparagraph 410.221(9)(a)(ii) of Schedule 2 to the Migration Regulations by omitting the reference to $200 000 and replacing it with a reference to $350 000.

New subparagraph 410.221(9)(a)(ii) increases the combined resources threshold of an applicant and the applicant's spouse (if any) available for transfer to Australia to a minimum threshold $350 000, if the applicant and the applicant's spouse (if any) have pension rights, or capital for investment, or both pension rights and capital for investment sufficient to provide an annual income of at least $52 000.

The purpose of the amendment is to allow for the impact of inflation and the major increase in housing prices in Australia. New subparagraph 410.221(9)(a)(ii) applies to an applicant who does not hold or has never held a Subclass 410 (Retirement) visa or an equivalent visa.

Item [4] - Schedule 2, subparagraph 410.221(9)(a)(ii)

This item amends subparagraph 410.221(9)(a)(ii) of Schedule 2 to the Migration Regulations by omitting the reference to $45 000 and replacing it with a reference to $52 000.

New subparagraph 410.221(9)(a)(ii) increases the annual income of the applicant and the applicant's spouse (if any) to a minimum threshold of $52 000 from pension rights, capital for investment, or both pension rights and capital for investment.

The purpose of the amendment is to allow for the impact of inflation and the major increase in housing prices in Australia. New subparagraph 410.221(9)(a)(ii) applies to an applicant who does not hold or has never held a Subclass 410 (Retirement) visa or an equivalent visa.

Item [5] - Schedule 2, subparagraph 410.221(9)(a)(iii)

This item amends subparagraph 410.221(9)(a)(iii) of Schedule 2 to the Migration Regulations by omitting the reference to $180 000 and replacing it with a reference to $315 000.

New subparagraph 410.221(9)(a)(iii) increases the combined resources threshold of an applicant and the applicant's spouse (if any) available for transfer to Australia to a minimum threshold $315 000 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; and

- the applicant's spouse (if any) has pension rights, or capital for investment or both pension rights and capital for investment, sufficient to provide an annual income of at least $50 000.

The purpose of this amendment is to allow for the impact of inflation and the major increase in housing prices in Australia. New subparagraph 410.221(9)(a)(iii) applies to an applicant who does not hold or has never held a Subclass 410 (Retirement) visa or an equivalent visa.

Item [6] - Schedule 2, subparagraph 410.221(9)(a)(iii)

This item amends subparagraph 410.221(9)(a)(iii) of Schedule 2 to the Migration Regulations by omitting the reference to $42 000 and replacing it with a reference to $50 000.

New subparagraph 410.221(9)(a)(iii) increases the annual income of the applicant and the applicant's spouse (if any) to a minimum threshold of $50 000 from pension rights, capital for investment, or both pension rights and capital for investment 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; and

- the combined resources of the applicant and the applicant's spouse (if any) available for transfer to Australia are at least $315 000.

The purpose of the amendment is to allow for the impact of inflation and the major increase in housing prices in Australia. New subparagraph 410.221(9)(a)(iii) applies to an applicant who does not hold or has never held a Subclass 410 (Retirement) visa or an equivalent visa.

Schedule 8 - Amendments relating to Witness Protection visas

Item [1] - Regulation 1.12AA

This item makes a technical amendment to regulation 1.12AA of Part 1 of the Migration Regulations which is consequential to the insertion of new subregulation 1.12AA(2) by these regulations.

Item [2] - Regulation 1.12AA

This item inserts new subregulation 1.12AA(2) in regulation 1.12AA of Part 1 of the Migration Regulations.

New subregulation 1.12AA(2) provides that where a person is included in an application for a Witness Protection (Trafficking) (Permanent) (Class DH) visa and, at the time of application, the person holds a Witness Protection (Trafficking) (Temporary) (Class UM) visa that was granted on the basis that he or she was a member of the immediate family of the same applicant (who held a Witness Protection (Trafficking) (Temporary) (Class UM) visa), then the person is considered to continue to meet the definition of member of the immediate family in relation to the same applicant.

The purpose of this amendment is to ensure that a person who previously met the definition of member of the immediate family for the purposes of the grant of the temporary witness protection visa, but has ceased to meet the definition as contained in new subregulation 1.12AA(1), continues to meet the definition of member of the immediate family under new subregulation 1.12AA(2). The most common circumstance expected is that of a person who was a dependent child for the purpose of the temporary visa application but has ceased to meet the definition of a dependent child at the time of application for the permanent visa. The applicant who includes the person in the application for the Witness Protection (Trafficking) (Permanent) (Class DH) visa must be the same holder of the Witness Protection (Trafficking) (Temporary) (Class UM) for which the person satisfied the secondary criteria of the temporary visa.

Item [3] - After regulation 2.07AI

This item inserts new regulations 2.07AJ and 2.07AK in Part 2 of the Migration Regulations. New regulation 2.07AJ provides the requirements that need to be met for a valid visa application to be made for a new Witness Protection (Trafficking) (Temporary) (Class UM) visa. New regulation 2.07AK provides the requirements that need to be met for a valid visa application to be made for a new Witness Protection (Trafficking) (Permanent) (Class DH) visa.

The purpose of the amendment made by this item is to require the Department to initiate the application process by making offers of either temporary or permanent stay to a person. Such offers will be made in coordination with the Attorney-General following the prosecution or investigation of an allegation of trafficking or exploitation made against another person. A similar procedure is used for Temporary Safe Haven (Class UJ) and Temporary (Humanitarian Concern) (Class UO) visa applications (see regulation 2.07AC of Part 2 of the Migration Regulations and item 1223B of Schedule 1 to the Migration Regulations). The only way that an applicant can make a valid application for the either the temporary or permanent Witness Protection visa is by meeting the requirements contained in new regulations 2.07AJ and 2.07AK.

Regulation 2.07AJ

New subregulation 2.07AJ(1) provides that a Witness Protection (Trafficking) (Temporary) (Class UM) is a class of visa prescribed under subsection 46(2) of the Act.

Pursuant to new subregulation 2.07AJ(2), a valid application for a new Witness Protection (Trafficking) (Temporary) (Class UM) visa is taken to be made under new regulation 2.07AJ only if a person meets the requirements of either new subregulation 2.07AJ(3) or (4).

The requirements in new subregulation 2.07AJ(3) apply to the person who has provided assistance and cooperation to an investigation or prosecution in Australia of someone involved in trafficking or exploiting a person. The requirements in new subregulation 2.07AJ(4) apply to a member of the immediate family of that person who is in Australia at the time of application.

A valid application is made under new subregulation 2.07AJ(4) by a member of the immediate family of a person who is taken to have validly made an application for a new Witness Protection (Trafficking) (Temporary) (Class UM) visa under new subregulation 2.07AJ(3) by being identified

in the written acceptance by that person as being as such. The member of the immediate family must be in Australia for the application to be valid.

Regulation 2.07AK

A valid application for a new Witness Protection (Trafficking) (Temporary) (Class UM) visa is taken to be made under new regulation 2.07AK only if a person meets the requirements of either new subregulation 2.07AK(3) or (4).

Pursuant to new subregulation 2.07AK(2), the requirements in new subregulation 2.07AK(3) apply to the person who has provided assistance and cooperation to an investigation or prosecution in Australia of someone involved in trafficking or exploiting a person. The requirements in new subregulation 2.07AK(4) apply to a member of the immediate family of that person who is in Australia at the time of application.

A valid application is made under new subregulation 2.07AK(4) by a member of the immediate family of a person who is taken to have validly made an application for a new Witness Protection (Trafficking) (Permanent) (Class DH) visa under new subregulation 2.07AK(3) by being identified in the written acceptance by that person as being as such. The member of the immediate family must be in Australia for the application to be valid.

Item [4] - Schedule 1, after item 1131

This item inserts new item 1133 in Schedule 1 to the Migration Regulations.

New regulation 2.07AK contains the requirements that must be met for a valid visa application to be taken to have been made for a Witness Protection (Trafficking) (Permanent) (Class DH) visa. New item 1133 is limited to providing that no form is required, no visa application charge applies, and that the sole subclass within Class DH is Subclass 852 (Witness Protection (Trafficking) (Permanent)).

Item [5] - Schedule 1, after item 1224

This item inserts new item 1224AA in Schedule 1 to the Migration Regulations.

New regulation 2.07AJ contains the requirements that must be met for a valid visa application to be taken to have been made for a Witness Protection (Trafficking) (Temporary) (Class UM) visa. New item 1224AA is limited to providing that no form is required, no visa application charge applies, and that the sole subclass within Class DH is Subclass 787 (Witness Protection (Trafficking) (Temporary)).

Item [6] - Schedule 2, after Part 786

This item inserts new Subclass 787 (Witness Protection (Trafficking) (Temporary)) in Schedule 2 to the Migration Regulations and specifies the criteria to be satisfied for the grant of a Subclass 787 visa.

Division 787.1 - Interpretation

A note is included in new Division 787.1 which provides that the definition of the phrase "member of the immediate family" has the meaning set out in regulation 1.12AA.

Division 787.2 - Primary Criteria

New Division 787.2 specifies the primary criteria that must be satisfied for the grant of a new Subclass 787 visa.

Subdivision 787.21 - Criteria to be satisfied at the time of application

New clause 787.211 requires that at the time of application, the applicant is taken to have made a valid application for a Witness Protection (Trafficking) (Temporary) (Class UM) visa under new subregulation 2.07AJ(2), having met the requirements in subregulation 2.07AJ(3).

The purpose of new clause 787.211 is to ensure that only persons who meet the requirements in new subregulation 2.07AJ(3) are able to satisfy the primary criteria. All other applicants are required to satisfy the secondary criteria.

Subdivision 787.22 - Criteria to be satisfied at the time of decision

New clause 787.221 requires an applicant to satisfy the specified public interest criteria. Public interest criterion 4001 relates to the applicant's character, public interest criterion 4002 relates to national security, public interest criterion 4003 relates to Australia's relations with foreign countries and an applicant's association with the proliferation of weapons of mass destruction, and public interest criterion 4007 relates to health requirements that an applicant must meet.

New clause 787.222 provides that the requirements contained in new paragraphs 2.07AJ(3)(d), (e) and (f) must continue to be met in relation to the applicant. New paragraphs 2.07AJ(3)(d), (e) and (f) require respectively that the certificate issued by the Attorney-General is still in force, the applicant is not the subject of a prosecution of an offence that is directly connected to the prosecution mentioned in the Attorney-General's certificate, and the Minister is satisfied that the applicant would be in danger if he or she returned to his or her home country.

In order for an applicant to satisfy new clause 787.223, each member of the immediate family of the applicant, who is an applicant for a Subclass 787 visa, must satisfy public interest criteria 4001, 4002, 4003 and 4007.

Division 787.3 - Secondary Criteria

New division 787.3 specifies the secondary criteria that must be satisfied for the grant of a new Subclass 787 visa.

Subdivision 787.31 - Criteria to be satisfied at the time of application

New clause 787.311 requires that the applicant is a member of the immediate family of a person who is taken to have made a valid application, under new subregulation 2.07AJ(2), having met the requirements in new subregulation 2.07AJ(3).

New clause 787.312 requires that the Minister has not decided to grant or refuse the grant of a visa to the primary applicant, that is, the person mentioned in paragraph 787.311.

Subdivision 787.32 - Criteria to be satisfied at the time of decision

New clause 787.321 requires an applicant to satisfy public interest criteria 4001, 4002, 4003 and 4007.

New clause 787.322 requires an applicant to continue to be a member of the immediate family of a person (mentioned in new clause 787.311) who is taken to have made a valid application under new subregulation 2.07AJ(2) after having met the requirements in new subregulation 2.07AJ(3).

New clause 787.323 provides that the person mentioned in new clause 787.311 is required to have been granted a Subclass 787 (Witness Protection (Trafficking) (Temporary)) visa.

New clause 787.324 provides that where an applicant has not turned 18, public interest criteria 4017 and 4018 must be satisfied. Public interest criterion 4017 requires the Minister to be satisfied that:

- the law of the applicant's home country permits the removal of the applicant; or

- each person who can lawfully determine where the applicant is to live consents to the grant of the visa; or

- the grant of the visa would be consistent with any Australian child order in force in relation to the applicant.

Public interest criterion 4018 requires the Minister to be satisfied that there is no compelling reason that the grant of the visa would not be in the applicant's best interests.

Division 787.4 - Circumstances applicable to grant

New clause 787.411 requires that the applicant must be in Australia when the visa is granted.

Division 787.5 - When visa is in effect

New clause 787.511 provides that the visa is a temporary visa which permits the holder to travel to, enter and remain in Australia until a date specified by the Minister.

Division 787.6 - Conditions

New clause 787.611 lists the mandatory conditions to which a Subclass 787 (Witness Protection (Trafficking) (Temporary)) visa granted to an applicant will be subject. Condition 8401 provides that a visa holder to report at the times and place specified by the Minister. Condition 8506 provides that a visa holder must notify Immigration of a change of address at least two working days in advance.

Division 787.7 - Way of giving evidence

New clause 787.711 provides that a Subclass 787 visa must be evidenced by a visa label affixed to a valid passport.

Item [7] - Schedule 2, after Part 851

This item inserts new Subclass 852 (Witness Protection (Trafficking) (Permanent)) in Schedule 2 to the Regulations and specifies the criteria to be satisfied for the grant of a Subclass 852 visa.

Division 852.1 - Interpretation

A note is included in new Division 852.1 which provides that the definition of the phrase "member of the immediate family" has the meaning set out in regulation 1.12AA. Regulation

1.12AA is amended by these regulations to provide an expanded definition of member of the immediate family for the purposes of Part 851.

Division 852.2 - Primary Criteria

New Division 852.2 specifies the primary criteria that must be satisfied for the grant of a new Subclass 852 visa.

Subdivision 852.21 - Criteria to be satisfied at the time of application

New clause 852.211 requires that at the time of application, the applicant is taken to have made a valid application for a Witness Protection (Trafficking) (Permanent) (Class DH) visa under new subregulation 2.07AK(2), having met the requirements in subregulation 2.07AK(3).

The purpose of new clause 852.211 is to ensure that only persons who meet the requirements in new subregulation 2.07AK(3) are able to satisfy the primary criteria. All other applicants are required to satisfy the secondary criteria.

Subdivision 852.22 - Criteria to be satisfied at the time of decision

New clause 852.221 requires an applicant to have held a Witness Protection (Trafficking) (Temporary) (Class UM) visa for at least 2 years.

New clause 852.222 requires an applicant to satisfy the specified public interest criteria. Public interest criterion 4001 relates to the applicant's character, public interest criterion 4002 relates to national security, public interest criterion 4003 relates to Australia's relations with foreign countries and an applicant's association with the proliferation of weapons of mass destruction, and public interest criterion 4007 relates to health requirements that must be met.

New clause 852.223 provides that the requirements contained in new paragraphs 2.07AK(3)(d), (e) and (f) must continue to be met in relation to the applicant. New paragraphs 2.07AK(3)(d), (e) and (f) require respectively that the certificate issued by the Attorney-General is still in force, the applicant is not the subject of a prosecution of an offence that is directly connected to the prosecution mentioned in the Attorney-General's certificate, and the Minister is satisfied that the applicant would be in danger if he or she returned to his or her home country.

In order for an applicant to satisfy new clause 852.224, each member of the immediate family of the applicant, who is an applicant for a Subclass 852 visa, must satisfy public interest criteria 4001, 4002, 4003 and 4007.

Division 852.3 - Secondary Criteria

New division 852.3 specifies the secondary criteria that must be satisfied for the grant of a new Subclass 852 visa.

Subdivision 852.31 - Criteria to be satisfied at the time of application

New clause 852.311 requires that the applicant is a member of the immediate family of a person who is taken to have made a valid application, under new subregulation 2.07AK(2), having met the requirements in new subregulation 2.07AK(3).

New clause 852.312 requires that the Minister has not decided to grant or refuse the grant of a visa to the primary applicant, that is, the person mentioned in paragraph 852.311.

Subdivision 852.32 - Criteria to be satisfied at the time of decision

New clause 852.321 requires an applicant to satisfy public interest criteria 4001, 4002, 4003 and 4007.

New clause 852.322 requires an applicant to continue to be a member of the immediate family of a person (mentioned in new clause 852.311) who is taken to have made a valid application under new subregulation 2.07AK(2) after having met the requirements in new subregulation 2.07AK(3).

New clause 852.323 provides that the person mentioned in new clause 852.311 is required to have been granted a Subclass 852 (Witness Protection (Trafficking) (Permanent)) visa.

New clause 852.324 provides that where the secondary applicant has not turned 18, public interest criteria 4017 and 4018 must be satisfied. Public interest criterion 4017 requires the Minister to be satisfied that:

- the law of the applicant's home country permits the removal of the applicant; or

- each person who can lawfully determine where the applicant is to live consents to the grant of the visa; or

- the grant of the visa would be consistent with any Australian child order in force in relation to the applicant.

Public interest criterion 4018 requires the Minister to be satisfied that there is no compelling reason that the grant of the visa would not be in the secondary applicant's best interests.

Division 852.4 - Circumstances applicable to grant

New clause 852.411 requires that the applicant must be in Australia when the visa is granted.

Division 852.5 - When visa is in effect

New clause 852.511 provides that the visa is a permanent visa which permits the holder to travel to and enter Australia for a period of 5 years from the date of grant.

Division 852.6 - Conditions

New Division 852.6 provides that a Subclass 852 (Witness Protection (Trafficking) (Permanent)) visa is not subject to any conditions.

Division 852.7 - Way of giving evidence

New clause 852.711 provides that a Subclass 852 visa must be evidenced by a visa label affixed to a valid passport.

Schedule 9 - Amendments relating to the definition of *course of study*

Item [1] - Schedule 2, clause 571.111, after definition of *course fees*

Item [2] - Schedule 2, clause 572.111, after definition of *course fees*

Item [3] - Schedule 2, clause 573.111, after definition of *course fees*

Item [4] - Schedule 2, clause 574.111, after definition of *course fees*

Item [5] - Schedule 2, clause 575.111, after definition of *course fees*

Item [6] - Schedule 2, clause 576.111, after definition of *course fees*

These items insert a definition of *course of study* into Parts 571, 572, 573, 574, 575 and 576 of Schedule 2 to the Migration Regulations.

These are technical amendments made as a result of the unintended omission of the definition of *course of study* from these Parts by the *Migration Amendment Regulations 2003 (No. 9)* which commenced on 1 December 2003. The notes that appeared beneath the definitions, and were part of the omission, are also re-inserted.

Schedule 10 - Amendments of *Migration Amendment Regulations 2003 (No.9)*

Item [1] - Schedule 1, item [276], amendment of clause 571.111, definition of *course of study*, paragraph (a)

Item [2] - Schedule 2, item [276], amendment of clause 571.111, note 1

These items make technical amendments to omit the amendments to clause 571.111 made by item [276] of the *Migration Amendment Regulations 2003 (No. 9)* which commenced on 1 December 2003.

Item [276] amended the definition of *course of study* in paragraph 571.111(a) and the note beneath it to change the references from "exchange student" to "secondary exchange student". The meaning of exchange student was not altered in any way, only the title was altered to better reflect the type of students covered.

However, item [26] of the *Migration Amendment Regulations 2003 (No. 9)* also amended clause 571.111 and unintentionally omitted the definition of *course of study* from the provision, making the amendments made by item [276] redundant. These regulations therefore make technical amendments to omit the amendments made by item [276] of the *Migration Amendment Regulations 2003 (No. 9).*

The intent of the amendments made by item [276] is given effect by Schedule 9 to these regulations which re-inserts the definition of *course of study* into clause 571.111 and includes references to secondary exchange student.

Item [3] - Schedule 1, item [277], amendment of paragraph 5A304(2)(a)

This item makes a technical amendment to omit the amendment to paragraph 5A304(2)(a) made by item [277] of the *Migration Amendment Regulations 2003 (No.9)* which commenced on 1 December 2003.

Item [277] amends paragraph 5A304(2)(a) to change the reference from "exchange student" to "secondary exchange student". The meaning of exchange student was not altered in any way, only the title was altered to better reflect the type of students covered.

However, item [146] of the *Migration Amendment Regulations 2003 (No. 9)* also amended paragraph 5A304(2)(a) and included the change from "exchange student" to "secondary exchange student". The amendment made by item [277] is therefore already achieved by item [146]. Item [277] is therefore omitted by these regulations.