

Administering Department:

Please include this copy with documents

Federal Executive Council Secretariat in connection with the making of this legislation.

ExCo Secretariat:

Please complete this copy by inserting signatures, date of making and instrument no. and send to:

Legislative Services and Publication Unit

Office of Legislative Drafting

Attorney-General's Department



2004B00280



Migration Amendment Regulations 2004 (No. 6)¹

Statutory Rules 2004 No. 6²

269

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

Dated 19 AUG 2004 2004

PM Jeffery

Governor-General

By His Excellency's Command

AMANDA VANSTONE

Minister for Immigration and Multicultural and Indigenous
Affairs

1 Name of Regulations

These Regulations are the *Migration Amendment Regulations 2004 (No. 6)*.

2 Commencement

These Regulations commence on 27 August 2004.

3 Amendment of *Migration Regulations 1994*

Schedule 1 amends the *Migration Regulations 1994*.

4 Transitional

The amendments made by Schedule 1 apply to an application for a visa made on or after 27 August 2004.

Schedule 1 Amendments

(regulation 3)

[1] Regulation 1.03, after definition of *approved professional development sponsor*

insert

approved special student sponsor means a person or an organisation that has been approved as a special student sponsor under regulation 1.20UD.

[2] Regulation 1.03, after definition of *permanent humanitarian visa*

insert

person designated under regulation 2.07AO means a person mentioned in subregulation 2.07AO (2).

[3] After subregulation 1.20 (4)*insert*

- (5) This regulation does not apply to:
- (a) a Subclass 571 (Schools Sector) visa; or
 - (b) a Subclass 572 (Vocational Education and Training Sector) visa; or
 - (c) a Subclass 573 (Higher Education Sector) visa; or
 - (d) a Subclass 574 (Postgraduate Research Sector) visa;
- if the applicant for the visa is a person designated under regulation 2.07AO, or is applying on the basis of being a member of the family unit of a person designated under regulation 2.07AO.

[4] After Division 1.4C*insert***Division 1.4D Special student sponsorship****Subdivision 1.4D.1 Introductory****1.20UA Definitions for Division 1.4D**

In this Division:

organisation, for an applicant for approval as an approved special student sponsor, means a body that is lawfully established and actively operating in Australia (including an unincorporated body of persons); and

relevant student visa means either of the following visas:

- (a) a Subclass 571 (Schools Sector) visa, Subclass 572 (Vocational Education and Training Sector) visa, Subclass 573 (Higher Education Sector) visa or Subclass 574 (Postgraduate Research Sector) visa that is granted, or would be granted, to:
 - (i) a person designated under regulation 2.07AO; or
 - (ii) a member of the family unit of a person designated under regulation 2.07AO;

on the basis of the sponsorship of the person designated under regulation 2.07AO by an approved special student sponsor;

- (b) a Subclass 571 (Schools Sector) visa, Subclass 572 (Vocational Education and Training Sector) visa, Subclass 573 (Higher Education Sector) visa or Subclass 574 (Postgraduate Research Sector) visa that is granted, or would be granted, to:
- (i) a person designated under regulation 2.07AO who already holds a visa of that Subclass; or
 - (ii) a member of the family unit of a person designated under regulation 2.07AO who already holds a visa of that Subclass;

for the purpose only of permitting the change of a condition relating to the working rights of the person or member of the family unit, or of permitting the change of an education provider.

1.20UB Application of Division 3A of Part 2 of the Act

For section 140A of the Act, Division 3A of Part 2 of the Act applies to the following visas:

- (a) a Subclass 571 (Schools Sector) visa the applicant for which is:
- (i) a person designated under regulation 2.07AO; or
 - (ii) a member of the family unit of a person designated under regulation 2.07AO;
- (b) a Subclass 572 (Vocational Education and Training Sector) visa the applicant for which is:
- (i) a person designated under regulation 2.07AO; or
 - (ii) a member of the family unit of a person designated under regulation 2.07AO;
- (c) a Subclass 573 (Higher Education Sector) visa the applicant for which is:
- (i) a person designated under regulation 2.07AO; or
 - (ii) a member of the family unit of a person designated under regulation 2.07AO;

-
- (d) a Subclass 574 (Postgraduate Research Sector) visa the applicant for which is:
 - (i) a person designated under regulation 2.07AO; or
 - (ii) a member of the family unit of a person designated under regulation 2.07AO.

Subdivision 1.4D.2 Becoming an approved special student sponsor

1.20UC Process for making application to become an approved special student sponsor

- (1) For subsection 140F (1) of the Act, a person or organisation may apply to the Minister for approval as a sponsor of:
 - (a) a person designated under regulation 2.07AO who applies for a visa of any of the following subclasses:
 - (i) a Subclass 571 (Schools Sector) visa;
 - (ii) a Subclass 572 (Vocational Education and Training Sector) visa;
 - (iii) a Subclass 573 (Higher Education Sector) visa;
 - (iv) a Subclass 574 (Postgraduate Research Sector) visa; and
 - (b) each person (if any) who is:
 - (i) a member of the family unit of the person designated under regulation 2.07AO; and
 - (ii) an applicant for the relevant student visa on the basis of meeting the secondary criteria for the visa.
- (2) An application must be made in writing.

Note There is no approved form for the application, and no application fee.
- (3) An application must:
 - (a) state that it relates to the sponsorship of:
 - (i) the person designated under regulation 2.07AO; and
 - (ii) each person (if any) mentioned in paragraph (1) (b); and

- (b) include the undertakings mentioned in regulation 1.20UF in respect of:
 - (i) the person designated under regulation 2.07AO; and
 - (ii) each person (if any) mentioned in paragraph (1) (b); and
- (c) give any other information requested for the purposes of the making of the application.

Note Details of the information to which paragraph (c) relates will be provided to applicants by Immigration.

- (4) An application must be made by:
 - (a) posting the application (with the correct pre-paid postage) to the post office box address specified in a Gazette Notice for this paragraph; or
 - (b) having the application delivered by a courier service to the address specified in a Gazette Notice for this paragraph.

1.20UD Approving an application to become an approved special student sponsor

- (1) For section 140E of the Act, the criteria for approval of a person or an organisation as an approved special student sponsor are that the Minister is satisfied that:
 - (a) the applicant is:
 - (i) a natural person who is permanently resident in Australia; or
 - (ii) an organisation; and
 - (b) the applicant has given the undertakings mentioned in regulation 1.20UF; and
 - (c) the applicant is capable of complying with the undertakings mentioned in regulation 1.20UF; and
 - (d) if the applicant has previously been required to comply with the immigration laws of Australia — the applicant has a satisfactory record of compliance.

Note Undertakings made by an approved special student sponsor in relation to:

- (a) a person designated under regulation 2.07AO; or

(b) a member of the family unit of a person designated under regulation 2.07AO;

do not have effect until a relevant student visa is granted to the person or the member of the family unit (see subsection 140H (3) of the Act).

- (2) As soon as practicable after deciding an application for approval as an approved special student sponsor, the Minister must give the applicant:
- (a) a copy of the written approval, or the decision to refuse the application; and
 - (b) if the Minister refuses the application — a statement of the reasons for the decision.

Note Under section 140E of the Act, the Minister must approve a person as an approved special student sponsor if the criteria set out in regulation 1.20UD are satisfied.

1.20UE Terms of approval as special student sponsor

- (1) For subsection 140G (2) of the Act, an approval as an approved special student sponsor ceases to have effect on the earlier of:
- (a) the day on which the application by the person designated under regulation 2.07AO for a relevant student visa mentioned in paragraph 1.20UC (1) (a) (the *first visa*) is finally determined (within the meaning of subsection 5 (9) of the Act); and
 - (b) the end of the period of 12 months commencing on the day on which the approval is given.
- (2) However, the approval is taken to continue in force after that day to the extent only that it would permit the person designated under regulation 2.07AO to apply for the grant of a relevant student visa mentioned in paragraph 1.20UC (1) (a) of the same subclass as the first visa for the purpose only of permitting the change of a condition relating to the working rights of the person or member of the family unit, or of permitting the change of an education provider.

1.20UF Sponsorship undertakings

For subsection 140H (1) of the Act, the undertakings that an applicant for approval as an approved special student sponsor must make are, in respect of the period during which the person

holds the relevant student visa or visas (or would hold the relevant student visa or visas if granted):

- (a) to pay all course fees for each course in relation to which the relevant student visa would be granted; and
- (b) to ensure that the standard of living (including the accommodation) of:
 - (i) the person mentioned in paragraph 1.20UC (1) (a); and
 - (ii) each person (if any) mentioned in paragraph 1.20UC (1) (b);

while the person mentioned in subparagraph (i) or (ii) holds the relevant student visa (if the visa is granted) is consistent with a reasonable standard of living in Australia; and

- (c) to pay all reasonable education costs for each person (if any) mentioned in paragraph 1.20UC (1) (b); and
- (d) to make adequate arrangements in Australia for health insurance during the period of the intended stay in Australia of:
 - (i) the person designated under regulation 2.07AO; and
 - (ii) each person (if any) mentioned in paragraph 1.20UC (1) (b); and
- (e) to pay all medical or hospital expenses for:
 - (i) the person designated under regulation 2.07AO; and
 - (ii) each person (if any) mentioned in paragraph 1.20UC (1) (b);

(other than expenses that are met in accordance with health insurance arrangements); and

- (f) to give the Secretary accurate information, as soon as practicable, about:
 - (i) any material change in the approved special student sponsor's circumstances; or
 - (ii) any matter that may affect the approved special student sponsor's ability to carry out the undertakings mentioned in this regulation; or

- (iii) any material change in the circumstances of:
- (A) the person designated under regulation 2.07AO; and
 - (B) each person (if any) mentioned in paragraph 1.20UC (1) (b).

1.20UG Consequences if approved special student sponsor or visa holder changes status — enforceability of undertaking

For subsection 140Q (1) of the Act, an undertaking arising out of the sponsorship of the holder of a relevant student visa remains enforceable against the approved special student sponsor concerned until the time set out in the following table.

Item	The undertaking set out in	Remains enforceable until
1	Paragraph 1.20UF (a)	The time when the full amount of the course fees has been paid
2	Paragraph 1.20UF (b)	The time when the full amount necessary to ensure a reasonable standard of living in Australia has been paid
3	Paragraph 1.20UF (c)	The time when the full amount of the education costs has been paid
4	Paragraph 1.20UF (d)	The holder ceases to hold the last of the relevant student visas
5	Paragraph 1.20UF (e)	The time when the full amount of the hospital and medical expenses has been paid
6	Subparagraph 1.20UF (f) (i) or (ii)	The holder ceases to hold the last of the relevant student visas
7	Subparagraph 1.20UF (f) (iii)	The earlier of: <ul style="list-style-type: none"> (a) the time when the holder is granted a visa other than a relevant student visa; and (b) the time when the holder departs Australia

Note Undertakings made by an approved special student sponsor in relation to:

- (a) a person designated under regulation 2.07AO; or

(b) a member of the family unit of a person designated under regulation 2.07AO;

do not have effect until a relevant student visa is granted to the person or the member of the family unit (see subsection 140H (3) of the Act).

Subdivision 1.4D.3 General

1.20UH Disclosure of personal information

For section 140V of the Act:

- (a) personal information that may be disclosed to an approved special student sponsor (a *sponsor*) or a former approved special student sponsor (a *former sponsor*) about the holder or former holder of a relevant student visa (the *person*) is:
- (i) details of any breaches of visa conditions by the person; and
 - (ii) details of any hospital or medical expenses for the person that the sponsor or former sponsor is required to pay; and
 - (iii) details of any health insurance arrangements made in relation to the person by the sponsor or former sponsor; and
 - (iv) details of any course of study in which the person was enrolled, including the fees for the course; and
 - (v) if the person held the visa on the basis of meeting the secondary criteria for the visa — details of the person's enrolment at a school (if any); and
 - (vi) details of any costs incurred by the Commonwealth in relation to the person; and
 - (vii) details of any non-compliance with the immigration laws of Australia by the person; and
 - (viii) if the person's standard of living, while the person was the holder of a relevant student visa was not consistent with a reasonable standard of living in Australia — that information; and
 - (ix) details of any material change in the person's circumstances; and

-
- (x) details of any matter that affected the person's ability to comply with the conditions to which the person's visa was subject; and
 - (b) the circumstances in which the Minister may disclose the personal information are that the disclosure is necessary to allow the sponsor or former sponsor to meet a liability relating to the sponsorship of the holder or former holder of the relevant student visa; and
 - (c) the circumstance in which the sponsor or former sponsor may use or disclose the information is the circumstance set out in paragraph (b).

[5] Subregulation 1.41 (1)

substitute

- (1) The Minister must specify by Gazette Notice an assessment level for a kind of eligible passport, in relation to each subclass of student visa, to which an applicant for a student visa who seeks to satisfy the primary criteria will be subject, other than an applicant who:
 - (a) is a person designated under regulation 2.07AO; and
 - (b) applies for:
 - (i) a Subclass 571 (Schools Sector) visa; or
 - (ii) a Subclass 572 (Vocational Education and Training Sector) visa; or
 - (iii) a Subclass 573 (Higher Education Sector) visa; or
 - (iv) a Subclass 574 (Postgraduate Research Sector) visa.

[6] After subregulation 1.42 (6)

insert

- (7) Subregulations (1) to (6) do not apply to an applicant who is a person designated under regulation 2.07AO.

[7] After regulation 2.07AM*insert***2.07AN Applications for Return Pending (Temporary) (Class VA) visas**

- (1) For subsection 46 (2) of the Act, a Return Pending (Temporary) (Class VA) visa is prescribed.

Note Section 46 of the Act sets out the circumstances in which an application for a visa is valid. Under subsection 46 (2) of the Act, an application for a visa is valid if:

- (a) it is an application for a class of visa that is prescribed for that subsection; and
- (b) under the regulations, the application is taken to have been validly made.
- (2) For subsection 46 (2) of the Act, and despite anything in regulation 2.07 or any other regulation (other than regulation 2.08), an application for a Return Pending (Temporary) (Class VA) visa is taken to have been validly made by a person only if:
- (a) the person holds, or has held at any time:
- (i) a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa; or
 - (ii) a Subclass 451 (Secondary Movement Relocation (Temporary)) visa; or
 - (iii) a Subclass 785 (Temporary Protection) visa; and
- (b) if the person holds a visa — the only substantive visa that the person holds is a visa mentioned in paragraph (a); and
- (c) the visa mentioned in paragraph (a) has not been cancelled; and
- (d) the person has not left Australia:
- (i) since first holding a visa mentioned in subparagraph (2) (a) (iii); or
 - (ii) since first entering Australia as the holder of a visa mentioned in subparagraphs (2) (a) (i) or (ii); and
- (e) the person does not have a substantial criminal record (within the meaning of subsection 501 (7) of the Act); and

-
- (f) since being granted the visa mentioned in paragraph (a), the person has applied for a Protection (Class XA) visa; and
 - (g) the Minister has refused to grant the Protection (Class XA) visa on grounds other than the grounds set out in section 501 of the Act; and
 - (h) the person is in Australia on the day on which the Minister refuses to grant the Protection (Class XA) visa; and
 - (i) the person:
 - (i) has not been refused a visa; and
 - (ii) has not had a visa cancelled;on grounds relying on 1 or more of Articles 1F, 32 or 33 (2) of the Refugees Convention.
- (3) Subregulation (2) applies whether or not the visa mentioned in paragraph (2) (a) is, or was, subject to a condition mentioned in paragraph 41 (2) (a) of the Act relating to the making of applications for other visas.
- (4) The application for the Return Pending (Temporary) (Class VA) visa is taken to have been made on the later of:
- (a) the day on which this regulation commences; and
 - (b) the day on which the Minister refuses to grant the Protection (Class XA) visa mentioned in paragraph (2) (f).

2.07AO Applications for certain substantive visas by specified persons

- (1) For subsection 46 (2) of the Act, an application by a person mentioned in subregulation (2) for a visa of a kind mentioned in subregulation (3) is a valid application.

Note Further provisions about applications and criteria for the visas are set out in Division 2.2AA.

- (2) The person is a person:
- (a) who, on the day on which this regulation commences, is in Australia and holds, or has held:
 - (i) a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa; or

-
- (ii) a Subclass 451 (Secondary Movement Relocation (Temporary)) visa; or
 - (iii) a Subclass 785 (Temporary Protection) visa; and
 - (b) whose visa mentioned in paragraph (a) has not been cancelled; and
 - (c) who has not left Australia between first holding the visa mentioned in paragraph (a) and the time of first applying for a visa mentioned in subregulation (3); and
 - (d) to whom the Minister has not refused to grant a Protection (Class XA) visa on the grounds set out in section 501 of the Act; and
 - (e) who, at the time of first making an application for a visa of a kind mentioned in subregulation (3), holds:
 - (i) a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa; or
 - (ii) a Subclass 451 (Secondary Movement Relocation (Temporary)) visa; or
 - (iii) a Subclass 785 (Temporary Protection) visa; or
 - (iv) a Return Pending (Temporary) (Class VA) visa; and
 - (f) who:
 - (i) has not been refused a visa; and
 - (ii) has not had a visa cancelled;on grounds relying on 1 or more of Articles 1F, 32 or 33 (2) of the Refugees Convention.
- (3) The visas are:
- (a) a Subclass 415 (Foreign Government Agency) visa; and
 - (b) a Subclass 418 (Educational) visa; and
 - (c) a Subclass 419 (Visiting Academic) visa; and
 - (d) a Subclass 420 (Entertainment) visa; and
 - (e) a Subclass 421 (Sport) visa; and
 - (f) a Subclass 422 (Medical Practitioner) visa; and
 - (g) a Subclass 423 (Media and Film Staff) visa; and
 - (h) a Subclass 424 (Public Lecturer) visa; and
 - (i) a Subclass 427 (Domestic Worker (Temporary) — Executive) visa; and

-
- (j) a Subclass 428 (Religious Worker) visa; and
 - (k) a Subclass 442 (Occupational Trainee) visa; and
 - (l) a Subclass 445 (Dependent Child) visa; and
 - (m) a Subclass 457 (Business (Long Stay)) visa; and
 - (n) a Subclass 571 (Schools Sector) visa; and
 - (o) a Subclass 572 (Vocational Education and Training Sector) visa; and
 - (p) a Subclass 573 (Higher Education Sector) visa; and
 - (q) a Subclass 574 (Postgraduate Research Sector) visa; and
 - (r) a Subclass 580 (Student Guardian) visa; and
 - (s) a Subclass 685 (Medical Treatment (Long Stay)) visa; and
 - (t) a Subclass 686 (Tourist (Long Stay)) visa; and
 - (u) a Subclass 801 (Spouse) visa; and
 - (v) a Subclass 802 (Child) visa; and
 - (w) a Subclass 804 (Aged Parent) visa; and
 - (x) a Subclass 814 (Interdependency) visa; and
 - (y) a Subclass 820 (Spouse) visa; and
 - (z) a Subclass 826 (Interdependency) visa; and
 - (za) a Subclass 837 (Orphan Relative) visa; and
 - (zb) a Subclass 838 (Aged Dependant Relative) visa; and
 - (zc) a Subclass 855 (Labour Agreement) visa; and
 - (zd) a Subclass 856 (Employer Nomination Scheme) visa; and
 - (ze) a Subclass 857 (Regional Sponsored Migration Scheme) visa; and
 - (zf) a Subclass 858 (Distinguished Talent) visa; and
 - (zg) a Subclass 864 (Contributory Aged Parent) visa; and
 - (zh) a Subclass 884 (Contributory Aged Parent (Temporary)) visa; and
 - (zi) a Subclass 890 (Business Owner) visa; and
 - (zj) a Subclass 892 (State/Territory Sponsored Business Owner) visa.

[8] Paragraph 2.12 (1) (p)

omit

(Class BT).

insert

(Class BT);

[9] After paragraph 2.12 (1) (p)

insert

(q) Return Pending (Temporary) (Class VA).

[10] After Division 2.2

insert

Division 2.2AA Special provisions relating to persons designated under regulation 2.07AO

2.12BB Application of Division 2.2AA

This Division applies to:

- (a) an application made by a person designated under regulation 2.07AO for a visa of any of the subclasses mentioned in subregulation 2.07AO (3); or
- (b) an application made by a member of the family unit of a person designated under regulation 2.07AO, who applies in Australia for a visa of the same subclass as the visa applied for by the person designated under regulation 2.07AO on the basis of satisfying the secondary criteria for the grant of that visa; or
- (c) an application made by a member of the family unit of a person designated under regulation 2.07AO, who applies outside Australia for a visa of the same subclass as the visa applied for by the person designated under regulation 2.07AO on the basis of satisfying the secondary criteria for the grant of that visa; or

-
- (d) a person:
- (i) who is not an applicant for a visa; and
 - (ii) who is a member of the family unit of a person designated under regulation 2.07AO; and
 - (iii) who is the subject of a criterion in Schedule 2 that applies to all members of the family unit of the person designated under regulation 2.07AO, whether or not those members are applicants for a visa.

2.12BC Place to which application for visa by person mentioned in paragraph 2.12BB (a), (b) or (c) is to be sent

Despite anything in regulation 2.10, or paragraphs 1113 (3) (aa), 1205 (3) (c) and 1211 (3) (ab) of Schedule 1, relating to the place at which an application for the visa is to be made, an application by a person mentioned in paragraph 2.12BB (a), (b) or (c) for a visa mentioned in subregulation 2.07AO (3) must be made by:

- (a) posting the application (with the correct pre-paid postage) to the post office box address specified in a Gazette Notice for this paragraph; or
- (b) having the application delivered by a courier service to the address specified in a Gazette Notice for this paragraph.

2.12BD Visas that may be held by person mentioned in paragraph 2.12BB (a) at time of application

Despite anything in Schedule 2 relating to the visas that an applicant for a visa mentioned in subregulation 2.07AO (3) is required to hold at the time of application, a person mentioned in paragraph 2.12BB (a) may meet the requirement by holding any of the following visas at the time of application for a visa mentioned in subregulation 2.07AO (3):

- (a) a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa;
- (b) a Subclass 451 (Secondary Movement Relocation (Temporary)) visa;
- (c) a Subclass 785 (Temporary Protection) visa;

-
- (d) a Subclass 695 (Return Pending) visa.

2.12BE Application of public interest criterion 4004 to person mentioned in regulation 2.12BB

Despite anything in Schedule 2 or 4 relating to whether a person is required to satisfy public interest criterion 4004, a person mentioned in regulation 2.12BB is not required to satisfy that criterion in relation to an application for a visa mentioned in subregulation 2.07AO (3).

2.12BF Application of public interest criterion 4007 to person mentioned in regulation 2.12BB

- (1) Subregulation (2) applies if a person mentioned in paragraph 2.12BB (a), (b) or (c) applies for a visa of any of the following subclasses:
- (a) a Subclass 415 (Foreign Government Agency) visa;
 - (b) a Subclass 418 (Educational) visa;
 - (c) a Subclass 419 (Visiting Academic) visa;
 - (d) a Subclass 420 (Entertainment) visa;
 - (e) a Subclass 421 (Sport) visa;
 - (f) a Subclass 422 (Medical Practitioner) visa;
 - (g) a Subclass 423 (Media and Film Staff) visa;
 - (h) a Subclass 424 (Public Lecturer) visa;
 - (i) a Subclass 427 (Domestic Worker (Temporary) — Executive) visa;
 - (j) a Subclass 428 (Religious Worker) visa;
 - (k) a Subclass 442 (Occupational Trainee) visa;
 - (l) a Subclass 457 (Business (Long Stay)) visa;
 - (m) a Subclass 571 (Schools Sector) visa;
 - (n) a Subclass 572 (Vocational Education and Training Sector) visa;
 - (o) a Subclass 573 (Higher Education Sector) visa;
 - (p) a Subclass 574 (Postgraduate Research Sector) visa;
 - (q) a Subclass 580 (Student Guardian) visa;
 - (r) a Subclass 686 (Tourist (Long Stay)) visa;

-
- (s) a Subclass 804 (Aged Parent) visa;
 - (t) a Subclass 837 (Orphan Relative) visa;
 - (u) a Subclass 838 (Aged Dependant Relative) visa;
 - (v) a Subclass 855 (Labour Agreement) visa;
 - (w) a Subclass 856 (Employer Nomination Scheme) visa;
 - (x) a Subclass 857 (Regional Sponsored Migration Scheme) visa;
 - (y) a Subclass 858 (Distinguished Talent) visa;
 - (z) a Subclass 864 (Contributory Aged Parent) visa;
 - (za) a Subclass 884 (Contributory Aged Parent (Temporary)) visa.
- (2) Despite anything in Schedule 2 or 4 relating to whether an applicant for a visa is required to satisfy public interest criterion 4005 or 4006A:
- (a) a person mentioned in paragraph 2.12BB (a), (b) or (c) must satisfy public interest criterion 4007, instead of public interest criterion 4005, in relation to an application for a visa mentioned in subregulation (1); and
 - (b) a person mentioned in paragraph 2.12BB (a), (b) or (c) must satisfy public interest criterion 4007, instead of public interest criterion 4006A, in relation to an application for a visa mentioned in subregulation (1).
- (3) Despite anything in Schedule 2 or 4 relating to whether a person who is the subject of a criterion in Schedule 2 that applies to all members of the family unit of a person designated under regulation 2.07AO, whether or not those members are applicants for a visa, is required to satisfy public interest criterion 4005 or 4006A:
- (a) the person who is the subject of the criterion must satisfy public interest criterion 4007, instead of public interest criterion 4005, in relation to the application for that visa; and
 - (b) the person who is the subject of the criterion must satisfy public interest criterion 4007, instead of public interest criterion 4006A, in relation to the application for that visa.

[11] Paragraph 5.19 (4) (b)

substitute

(b) either:

(i) the appointment:

(A) will provide the employee with full-time employment; and

(B) will be for at least 2 years; or

(ii) if the employer nomination relates to a person designated under regulation 2.07AO — the appointment:

(A) will provide the employee with seasonal employment that will continue; and

(B) is in accordance with the employment the employee has undertaken over the previous 12 months; and

[12] Schedule 1, Part 1, after heading

insert

Note Arrangements that affect certain visas mentioned in this Part can be found in regulation 2.12BC.

[13] Schedule 1, paragraph 1104B (3) (d)

substitute

(d) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 890 (Business Owner) visa must hold:

(i) if the applicant is not a person designated under regulation 2.07AO — a visa of a subclass included in Business Skills (Provisional) (Class UR), granted on the basis that the applicant, or the spouse or former spouse of the applicant, satisfied the primary criteria for the grant of the visa; or

(ii) if the applicant is a person designated under regulation 2.07AO:

(A) a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa; or

- (B) a Subclass 451 (Secondary Movement Relocation (Temporary)) visa; or
- (C) a Subclass 785 (Temporary Protection) visa; or
- (D) a Subclass 695 (Return Pending) visa.

[14] Schedule 1, paragraph 1104B (3) (f)

substitute

- (f) For an applicant seeking to satisfy the primary criteria for the grant of a Subclass 892 (State/Territory Sponsored Business Owner) visa:
 - (i) if the applicant is not a person designated under regulation 2.07AO:
 - (A) applicant must hold a visa of a subclass included in Business Skills (Provisional) (Class UR), granted on the basis that the applicant, or the spouse or former spouse of the applicant, satisfied the primary criteria for the grant of the visa; or
 - (B) applicant must hold a Subclass 457 (Business (Long Stay)) visa, granted on the basis that the applicant, or the spouse or former spouse of the applicant, satisfied the criteria in subclause 457.223 (7) or (7A) for the grant of the visa; or
 - (C) applicant:
 - (I) must hold a Skilled — Independent Regional (Provisional) (Class UX) visa; or
 - (II) must have held a Skilled — Independent Regional (Provisional) (Class UX) visa at any time in the 28 days immediately before making the application; and
 - (ii) if the applicant is a person designated under regulation 2.07AO, applicant must hold:
 - (A) a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa; or

- (B) a Subclass 451 (Secondary Movement Relocation (Temporary)) visa; or
- (C) a Subclass 785 (Temporary Protection) visa; or
- (D) a Subclass 695 (Return Pending) visa.

[15] Schedule 1, after paragraph 1113 (3) (aa)

insert

Note Regulation 2.12BC sets out special arrangements for the making of applications by persons designated under regulation 2.07AO. The arrangements in paragraph 1113 (3) (aa) do not apply to those persons.

[16] Schedule 1, Part 2, after heading

insert

Note Arrangements that affect certain visas mentioned in this Part can be found in regulation 2.12BC.

[17] Schedule 1, after paragraph 1205 (3) (c)

insert

Note Regulation 2.12BC sets out special arrangements for the making of applications by persons designated under regulation 2.07AO. The arrangements in paragraph 1205 (3) (c) do not apply to those persons.

[18] Schedule 1, after paragraph 1211 (3) (ab)

insert

Note Regulation 2.12BC sets out special arrangements for the making of applications by persons designated under regulation 2.07AO. The arrangements in paragraph 1211 (3) (ab) do not apply to those persons.

[19] Schedule 1, after item 1217

insert

1217AA. Return Pending (Temporary) (Class VA)

- (1) Form: Nil.
- (2) Visa application charge: Nil.
- (3) Subclasses:
 - 695 (Return Pending)

Note See regulation 2.07AN for how an application for a Return Pending (Temporary) (Class VA) visa is taken to have been validly made.

[20] Schedule 1, paragraphs 1222 (3) (g) and (h)

omit

[21] Schedule 1, subclause 1222 (3A)

omit

[22] Schedule 2, paragraph 418.230 (a)

substitute

- (a) the applicant was, at the time of application:
 - (i) the holder of a visa of one of the following classes:
 - (A) Border (Temporary) (Class TA);
 - (B) Business (Temporary) (Class TB);
 - (C) Cultural/Social (Temporary) (Class TE);
 - (D) Educational (Temporary) (Class TH);
 - (E) Expatriate (Temporary) (Class TJ);
 - (F) Family Relationship (Temporary) (Class TL);
 - (G) Interdependency (Temporary) (Class TM);
 - (H) Medical Practitioner (Temporary) (Class UE);
 - (I) Retirement (Temporary) (Class TQ);
 - (J) Supported Dependant (Temporary) (Class TW); or

-
- (ii) the holder of a visa of one of the following subclasses:
 - (A) Subclass 303 (Emergency (Temporary Visa Applicant));
 - (B) Subclass 457 (Business (Long Stay)); or
 - (iii) the holder of a Confirmatory (Temporary) (Class TD) visa granted on the grounds that the applicant satisfied the criteria for a visa specified in subparagraph (i) or (ii); or
 - (iv) the holder of a Subclass 497 (Graduate — Skilled) visa; or
 - (v) a person designated under regulation 2.07AO, and the holder of:
 - (A) a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa; or
 - (B) a Subclass 451 (Secondary Movement Relocation (Temporary)) visa; or
 - (C) a Subclass 785 (Temporary Protection) visa; or
 - (D) a Subclass 695 (Return Pending) visa; and

[23] Schedule 2, subclause 571.223 (2)

substitute

- (2) An applicant meets the requirements of this subclause if:
 - (a) for an applicant who is not a person designated under regulation 2.07AO:
 - (i) the applicant gives to the Minister evidence, in accordance with the requirements mentioned in Schedule 5A for Subclass 571 and the assessment level to which the applicant is subject, in relation to:
 - (A) the applicant's English language proficiency for the purposes of each course of study that the applicant proposes to undertake; and

-
- (B) the financial capacity of the applicant to undertake each of those courses of study without contravening any condition of the visa relating to work; and
 - (C) other requirements under Schedule 5A; and
 - (ii) the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
 - (A) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
 - (B) any other relevant matter; or
 - (b) for an applicant who is a person designated under regulation 2.07AO — the Minister is satisfied that:
 - (i) the applicant has the financial capacity to undertake the course, without contravening any condition of the visa relating to work, because the applicant:
 - (A) has access to sufficient funds of the person's own or provided by a relative; or
 - (B) is sponsored by an approved special student sponsor under Division 1.4D of these Regulations, with a sponsorship that is in force; and
 - (ii) the applicant's proficiency in English is appropriate to the proposed course of study; and
 - (iii) the applicant is a genuine applicant for entry and stay as a student, having regard to:
 - (A) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
 - (B) any other relevant matter.

[24] Schedule 2, clause 571.230*substitute*

571.230 The applicant holds a passport of a kind specified in a Gazette Notice made under regulation 1.40, unless the applicant is a person designated under regulation 2.07AO.

[25] Schedule 2, subclause 571.312 (2)*substitute*

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

(a) the holder of a visa of one of the following classes:

- (i) Border (Temporary) (Class TA);
- (ii) Business (Temporary) (Class TB);
- (iii) Cultural/Social (Temporary) (Class TE);
- (iv) Educational (Temporary) (Class TH);
- (v) Electronic Travel Authority (Class UD);
- (vi) Expatriate (Temporary) (Class TJ);
- (vii) Family Relationship (Temporary) (Class TL);
- (viii) Interdependency (Temporary) (Class TM);
- (ix) Long Stay (Visitor) (Class TN);
- (x) Medical Practitioner (Temporary) (Class UE);
- (xi) Retirement (Temporary) (Class TQ);
- (xii) Short Stay (Visitor) (Class TR);
- (xiii) Student (Temporary) (Class TU);
- (xiv) Supported Dependant (Temporary) (Class TW);
- (xv) Temporary Business Entry (Class UC);
- (xvi) Working Holiday (Temporary) (Class TZ); or

(b) the holder of a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; or

(c) the holder of a special purpose visa; or

-
- (d) the holder of a visa of one of the following subclasses:
 - (i) Subclass 303 (Emergency (Temporary Visa Applicant));
 - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive); or
 - (e) a person designated under regulation 2.07AO.

[26] Schedule 2, clause 571.711

substitute

- 571.711 No evidence need be given if:
- (a) the visa is granted on the basis of an application that was made on form 157E; or
 - (b) the visa is granted to a person designated under regulation 2.07AO.

[27] Schedule 2, subclause 572.223 (2)

substitute

- (2) An applicant meets the requirements of this subclause if:
 - (a) for an applicant who is not a person designated under regulation 2.07AO:
 - (i) the applicant gives to the Minister evidence, in accordance with the requirements mentioned in Schedule 5A for Subclass 572 and the assessment level to which the applicant is subject, in relation to:
 - (A) the applicant's English language proficiency for the purposes of each course of study that the applicant proposes to undertake; and
 - (B) the financial capacity of the applicant to undertake each of those courses of study without contravening any condition of the visa relating to work; and
 - (C) other requirements under Schedule 5A; and

- (ii) the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
 - (A) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
 - (B) any other relevant matter; or
- (b) for an applicant who is a person designated under regulation 2.07AO — the Minister is satisfied that:
 - (i) the applicant has the financial capacity to undertake the course, without contravening any condition of the visa relating to work, because the applicant:
 - (A) has access to sufficient funds of the person's own or provided by a relative; or
 - (B) is sponsored by an approved special student sponsor under Division 1.4D of these Regulations, with a sponsorship that is in force; and
 - (ii) the applicant's proficiency in English is appropriate to the proposed course of study; and
 - (iii) the applicant is a genuine applicant for entry and stay as a student, having regard to:
 - (A) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
 - (B) any other relevant matter.

[28] Schedule 2, clause 572.230

substitute

572.230 The applicant holds a passport of a kind specified in a Gazette Notice made under regulation 1.40, unless the applicant is a person designated under regulation 2.07AO.

[29] Schedule 2, subclause 572.312 (2)

substitute

- (2) An applicant meets the requirements of this subclause if the applicant is:
- (a) the holder of a visa of one of the following classes:
 - (i) Border (Temporary) (Class TA);
 - (ii) Business (Temporary) (Class TB);
 - (iii) Cultural/Social (Temporary) (Class TE);
 - (iv) Educational (Temporary) (Class TH);
 - (v) Electronic Travel Authority (Class UD);
 - (vi) Expatriate (Temporary) (Class TJ);
 - (vii) Family Relationship (Temporary) (Class TL);
 - (viii) Interdependency (Temporary) (Class TM);
 - (ix) Long Stay (Visitor) (Class TN);
 - (x) Medical Practitioner (Temporary) (Class UE);
 - (xi) Retirement (Temporary) (Class TQ);
 - (xii) Short Stay (Visitor) (Class TR);
 - (xiii) Student (Temporary) (Class TU);
 - (xiv) Supported Dependant (Temporary) (Class TW);
 - (xv) Temporary Business Entry (Class UC);
 - (xvi) Working Holiday (Temporary) (Class TZ); or
 - (b) the holder of a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; or
 - (c) the holder of a special purpose visa; or
 - (d) the holder of a visa of one of the following subclasses:
 - (i) Subclass 303 (Emergency (Temporary Visa Applicant));
 - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive); or
 - (iii) Subclass 497 (Graduate Skilled) visa; or
 - (e) a person designated under regulation 2.07AO.

[30] Schedule 2, clause 572.711

substitute

572.711 No evidence need be given if:

- (a) the visa is granted on the basis of an application that was made on form 157E; or
- (b) the visa is granted to a person designated under regulation 2.07AO.

[31] Schedule 2, subclause 573.223 (2)

substitute

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

- (a) for an applicant who is not a person designated under regulation 2.07AO:
 - (i) the applicant gives to the Minister evidence, in accordance with the requirements mentioned in Schedule 5A for Subclass 573 and the assessment level to which the applicant is subject, in relation to:
 - (A) the applicant's English language proficiency for the purposes of each course of study that the applicant proposes to undertake; and
 - (B) the financial capacity of the applicant to undertake each of those courses of study without contravening any condition of the visa relating to work; and
 - (C) other requirements under Schedule 5A; and
 - (ii) the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
 - (A) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
 - (B) any other relevant matter; or

-
- (b) for an applicant who is a person designated under regulation 2.07AO — the Minister is satisfied that:
- (i) the applicant has the financial capacity to undertake the course, without contravening any condition of the visa relating to work, because the applicant:
 - (A) has access to sufficient funds of the person's own or provided by a relative; or
 - (B) is sponsored by an approved special student sponsor under Division 1.4D of these Regulations, with a sponsorship that is in force; and
 - (ii) the applicant's proficiency in English is appropriate to the proposed course of study; and
 - (iii) the applicant is a genuine applicant for entry and stay as a student, having regard to:
 - (A) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
 - (B) any other relevant matter.

[32] Schedule 2, clause 573.230

substitute

573.230 The applicant holds a passport of a kind specified in a Gazette Notice made under regulation 1.40, unless the applicant is a person designated under regulation 2.07AO.

[33] Schedule 2, subclause 573.312 (2)

substitute

- (2) An applicant meets the requirements of this subclause if the applicant is:
- (a) the holder of a visa of one of the following classes:
 - (i) Border (Temporary) (Class TA);
 - (ii) Business (Temporary) (Class TB);
 - (iii) Cultural/Social (Temporary) (Class TE);

-
- (iv) Educational (Temporary) (Class TH);
 - (v) Electronic Travel Authority (Class UD);
 - (vi) Expatriate (Temporary) (Class TJ);
 - (vii) Family Relationship (Temporary) (Class TL);
 - (viii) Interdependency (Temporary) (Class TM);
 - (ix) Long Stay (Visitor) (Class TN);
 - (x) Medical Practitioner (Temporary) (Class UE);
 - (xi) Retirement (Temporary) (Class TQ);
 - (xii) Short Stay (Visitor) (Class TR);
 - (xiii) Student (Temporary) (Class TU);
 - (xiv) Supported Dependant (Temporary) (Class TW);
 - (xv) Temporary Business Entry (Class UC);
 - (xvi) Working Holiday (Temporary) (Class TZ); or
 - (b) the holder of a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; or
 - (c) the holder of a special purpose visa; or
 - (d) the holder of a visa of one of the following subclasses:
 - (i) Subclass 303 (Emergency (Temporary Visa Applicant));
 - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive); or
 - (iii) Subclass 497 (Graduate Skilled) visa; or
 - (e) a person designated under regulation 2.07AO.

[34] Schedule 2, clause 573.711

substitute

- 573.711 No evidence need be given if:
- (a) the visa is granted on the basis of an application that was made on form 157E; or
 - (b) the visa is granted to a person designated under regulation 2.07AO.

[35] Schedule 2, subclause 574.223 (2)*substitute*

- (2) An applicant meets the requirements of this subclause if:
- (a) for an applicant who is not a person designated under regulation 2.07AO:
- (i) the applicant gives to the Minister evidence, in accordance with the requirements mentioned in Schedule 5A for Subclass 574 and the assessment level to which the applicant is subject, in relation to:
 - (A) the applicant's English language proficiency for the purposes of each course of study that the applicant proposes to undertake; and
 - (B) the financial capacity of the applicant to undertake each of those courses of study without contravening any condition of the visa relating to work; and
 - (C) other requirements under Schedule 5A; and
 - (ii) the Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student, having regard to:
 - (A) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
 - (B) any other relevant matter; or
- (b) for an applicant who is a person designated under regulation 2.07AO — the Minister is satisfied that:
- (i) the applicant has the financial capacity to undertake the course, without contravening any condition of the visa relating to work, because the applicant:
 - (A) has access to sufficient funds of the person's own or provided by a relative; or
 - (B) is sponsored by an approved special student sponsor under Division 1.4D of these Regulations, with a sponsorship that is in force; and

-
- (ii) the applicant's proficiency in English is appropriate to the proposed course of study; and
 - (iii) the applicant is a genuine applicant for entry and stay as a student, having regard to:
 - (A) the stated intention of the applicant to comply with any conditions subject to which the visa is granted; and
 - (B) any other relevant matter.

[36] Schedule 2, clause 574.230

substitute

574.230 The applicant holds a passport of a kind specified in a Gazette Notice made under regulation 1.40, unless the applicant is a person designated under regulation 2.07AO.

[37] Schedule 2, subclause 574.312 (2)

substitute

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

- (a) the holder of a visa of one of the following classes:
 - (i) Border (Temporary) (Class TA);
 - (ii) Business (Temporary) (Class TB);
 - (iii) Cultural/Social (Temporary) (Class TE);
 - (iv) Educational (Temporary) (Class TH);
 - (v) Electronic Travel Authority (Class UD);
 - (vi) Expatriate (Temporary) (Class TJ);
 - (vii) Family Relationship (Temporary) (Class TL);
 - (viii) Interdependency (Temporary) (Class TM);
 - (ix) Long Stay (Visitor) (Class TN);
 - (x) Medical Practitioner (Temporary) (Class UE);
 - (xi) Retirement (Temporary) (Class TQ);
 - (xii) Short Stay (Visitor) (Class TR);
 - (xiii) Student (Temporary) (Class TU);
 - (xiv) Supported Dependant (Temporary) (Class TW);

-
- (xv) Temporary Business Entry (Class UC);
 - (xvi) Working Holiday (Temporary) (Class TZ); or
 - (b) the holder of a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; or
 - (c) the holder of a special purpose visa; or
 - (d) the holder of a visa of one of the following subclasses:
 - (i) Subclass 303 (Emergency (Temporary Visa Applicant));
 - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive); or
 - (iii) Subclass 497 (Graduate Skilled) visa; or
 - (e) a person designated under regulation 2.07AO.

[38] Schedule 2, clause 574.711

substitute

574.711 No evidence need be given if:

- (a) the visa is granted on the basis of an application that was made on form 157E; or
- (b) the visa is granted to a person designated under regulation 2.07AO.

[39] Schedule 2, clause 580.111 , after definition of *acceptable individual*

insert

family applicant, for an applicant, means a member of the applicant's family unit who is a visa applicant seeking to satisfy secondary criteria in relation to the applicant.

[40] Schedule 2, clause 580.111 , definition of *living costs*

substitute

living costs, for an applicant for a visa, means an amount worked out as follows:

- (a) for the applicant — \$12 000 per year (the *basic rate*); and
- (b) if the applicant has a dependent child who is a family applicant — 20% of the basic rate; and
- (c) if the applicant has any further dependent children who are family applicants — 15% of the basic rate for each such child.

[41] Schedule 2, clause 580.111, definition of *travel costs*

substitute

travel costs, for an applicant, means the sum of costs for each of the applicant and any family applicant:

- (a) if the applicant or family applicant is not in Australia when the application is made — of travelling to Australia; and
- (b) of returning to the applicant's home country at the end of his or her stay.

[42] Schedule 2, Subdivision 580.21

substitute

580.21 Criteria to be satisfied at time of application

580.211 (1) If the application is made in Australia, the applicant meets the requirements of subclause (2) or (3).

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

- (a) the holder of a visa of one of the following classes:
 - (i) Border (Temporary) (Class TA);
 - (ii) Business (Temporary) (Class TB);
 - (iii) Cultural/Social (Temporary) (Class TE);
 - (iv) Educational (Temporary) (Class TH);

-
- (v) Electronic Travel Authority (Class UD);
 - (vi) Expatriate (Temporary) (Class TJ);
 - (vii) Family Relationship (Temporary) (Class TL);
 - (viii) Interdependency (Temporary) (Class TM);
 - (ix) Long Stay (Visitor) (Class TN);
 - (x) Medical Practitioner (Temporary) (Class UE);
 - (xi) Retirement (Temporary) (Class TQ);
 - (xii) Short Stay (Visitor) (Class TR);
 - (xiii) Student (Temporary) (Class TU);
 - (xiv) Supported Dependant (Temporary) (Class TW);
 - (xv) Temporary Business Entry (Class UC);
 - (xvi) Working Holiday (Temporary) (Class TZ); or
 - (b) the holder of a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; or
 - (c) the holder of a special purpose visa; or
 - (d) the holder of a visa of one of the following subclasses:
 - (i) Subclass 303 (Emergency (Temporary Visa Applicant));
 - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive); or
 - (iii) Subclass 497 (Graduate Skilled) visa; or
 - (e) a person designated under regulation 2.07AO.
 - (3) An applicant meets the requirements of this subclause if:
 - (a) the applicant is not the holder of a substantive visa; and
 - (b) the last substantive visa held by the applicant was:
 - (i) a Subclass 580 (Student Guardian) visa; or
 - (ii) a special purpose visa; or
 - (iii) a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; or
 - (iv) a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; and

- (c) the application is made within 28 days (or within such period specified by Gazette Notice) after that last substantive visa ceased to be in effect; and
- (d) the applicant satisfies Schedule 3 criterion 3005.

[43] Schedule 2, clause 580.221

omit

[44] Schedule 2, paragraph 580.223 (2) (d)

substitute

- (d) unless:
 - (i) the applicant satisfies subclause 580.222 (4); or
 - (ii) the Minister has, under subclause (2A), waived the requirement in this paragraph;each member of the family unit of the applicant has turned 6; and

[45] Schedule 2, after subclause 580.223 (2)

insert

- (2A) The Minister may waive the requirement under subclause (2) (d) if:
- (a) either:
 - (i) the applicant is a person designated under regulation 2.07AO; or
 - (ii) each child under 6 would be subject to assessment level 1 or 2 if the child were an applicant for a Subclass 571 (Schools Sector) visa; and
 - (b) the Minister is satisfied that there are compelling and compassionate reasons to do so.

[46] Schedule 2, paragraph 580.226 (1) (a)*substitute*

- (a) because:
- (i) for an applicant who is not a person designated under regulation 2.07AO — the applicant gives to the Minister evidence relating to the applicant's financial capacity in accordance with subclause (2), (3), (4) or (5); or
 - (ii) for an applicant who is a person designated under regulation 2.07AO, or a family applicant in relation to a person designated under regulation 2.07AO — the Minister is satisfied that the applicant has access to sufficient funds to meet:
 - (A) the costs and expenses required to support the applicant during the proposed stay in Australia; and
 - (B) the costs and expenses required to support each member of the family unit of the applicant; and

[47] Schedule 2, after clause 580.226*insert*

580.227 If:

- (a) the application was made in Australia; and
- (b) the student who nominated the applicant is subject to assessment level 2, 3, 4 or 5 in respect of the student visa held by that student; and
- (c) at the time of application, the applicant met the requirements of clause 580.211:
 - (i) as the holder of a visa of one of the following classes:
 - (A) Border (Temporary) (Class TA);
 - (B) Business (Temporary) (Class TB);
 - (C) Cultural/Social (Temporary) (Class TE);
 - (D) Educational (Temporary) (Class TH);
 - (E) Electronic Travel Authority (Class UD);

- (F) Expatriate (Temporary) (Class TJ);
- (G) Family Relationship (Temporary) (Class TL);
- (H) Interdependency (Temporary) (Class TM);
- (I) Long Stay (Visitor) (Class TN);
- (J) Medical Practitioner (Temporary) (Class UE);
- (K) Retirement (Temporary) (Class TQ);
- (L) Short Stay (Visitor) (Class TR);
- (M) Supported Dependant (Temporary) (Class TW);
- (N) Temporary Business Entry (Class UC);
- (O) Working Holiday (Temporary) (Class TZ); or
- (ii) as the holder of a special purpose visa; or
- (iii) as the holder of a visa of one of the following subclasses:
 - (A) Subclass 303 (Emergency (Temporary Visa Applicant));
 - (B) Subclass 427 (Domestic Worker (Temporary) — Executive); or
 - (C) Subclass 497 (Graduate Skilled) visa; or
- (iv) as a person:
 - (A) who was not the holder of a substantive visa; and
 - (B) who, immediately before ceasing to hold a substantive visa, was the holder of a visa mentioned in subparagraph (i), (ii) or (iii);

the applicant establishes exceptional reasons for the grant of a Subclass 580 visa.

- 580.228 If the application was made in Australia and, at the time of application, the applicant was in Australia as the spouse or dependent relative of a diplomatic or consular representative of a country other than Australia:
- (a) that representative has completed, or is about to complete, an official posting in Australia; and
 - (b) the Foreign Minister recommends the grant of the visa.

- 580.229 If:
- (a) the application was made in Australia; and
 - (b) either:
 - (i) the applicant is the holder of a student visa that is subject to condition 8535; or
 - (ii) the last substantive visa held by the applicant was a student visa that was subject to condition 8535; and
 - (c) the applicant is, or was, provided financial support by the Commonwealth or the government of a foreign country in relation to the student visa;
- the applicant gives to the Minister evidence, in writing, that the Commonwealth or the government of the foreign country, as the case requires, does not oppose the applicant remaining in Australia as a student guardian.

[48] Division 580.3

substitute

580.3 Secondary criteria

580.31 Criteria to be satisfied at time of application

- 580.311 (1) If the application is made in Australia, the applicant meets the requirements of subclause (2) or (3).
- (2) An applicant meets the requirements of this subclause if the applicant is:
- (a) the holder of a visa of one of the following classes:
 - (i) Border (Temporary) (Class TA);
 - (ii) Business (Temporary) (Class TB);
 - (iii) Cultural/Social (Temporary) (Class TE);
 - (iv) Educational (Temporary) (Class TH);
 - (v) Electronic Travel Authority (Class UD);
 - (vi) Expatriate (Temporary) (Class TJ);
 - (vii) Family Relationship (Temporary) (Class TL);

-
- (viii) Interdependency (Temporary) (Class TM);
 - (ix) Long Stay (Visitor) (Class TN);
 - (x) Medical Practitioner (Temporary) (Class UE);
 - (xi) Retirement (Temporary) (Class TQ);
 - (xii) Short Stay (Visitor) (Class TR);
 - (xiii) Student (Temporary) (Class TU);
 - (xiv) Supported Dependant (Temporary) (Class TW);
 - (xv) Temporary Business Entry (Class UC);
 - (xvi) Working Holiday (Temporary) (Class TZ); or
- (b) the holder of a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; or
 - (c) the holder of a special purpose visa; or
 - (d) the holder of a visa of one of the following subclasses:
 - (i) Subclass 303 (Emergency (Temporary Visa Applicant));
 - (ii) Subclass 427 (Domestic Worker (Temporary) — Executive); or
 - (iii) Subclass 497 (Graduate Skilled) visa; or
 - (e) a person designated under regulation 2.07AO.
- (3) An applicant meets the requirements of this subclass if:
- (a) the applicant is not the holder of a substantive visa; and
 - (b) the last substantive visa held by the applicant was:
 - (i) a Subclass 580 (Student Guardian) visa; or
 - (ii) a special purpose visa; or
 - (iii) a Subclass 303 (Emergency (Temporary Visa Applicant)) visa; or
 - (iv) a Diplomatic (Temporary) (Class TF) visa granted to the holder as the spouse, or a dependent relative, of a diplomatic or consular representative of a foreign country; and
 - (c) the application is made within 28 days (or within such period specified by Gazette Notice) after that last substantive visa ceased to be in effect; and

(d) the applicant satisfies Schedule 3 criterion 3005.

580.32 Criteria to be satisfied at time of decision

- 580.321 The applicant meets the requirements of clauses 580.322, 580.323, 580.324, 580.325, 580.326 and 580.327.
- 580.322 The applicant has not turned 6.
- 580.323 The applicant is a member of the family unit of a person:
- (a) in relation to whom the Minister has, under subclause (2A), waived the requirement in paragraph 580.223 (2) (d); and
 - (b) who has otherwise satisfied the primary criteria in Subdivision 580.22.
- 580.324 The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4013, 4014, 4017 and 4018.
- 580.325 If the application is in respect of a proposed stay in Australia of more than 12 months, the applicant also satisfies public interest criterion 4010.
- 580.326 If:
- (a) the application is made outside Australia; and
 - (b) the applicant has previously been in Australia;
- the applicant satisfies special return criteria 5001 and 5002.
- 580.327 The applicant produces to the Minister evidence of adequate arrangements in Australia for health insurance during the period of the applicant's intended stay in Australia.

[49] Clause 580.611

substitute

- 580.611 In the case of a visa granted to an applicant satisfying the primary criteria — conditions 8101, 8201, 8501, 8516, 8534, 8537 and 8538.
- 580.612 In the case of a visa granted to an applicant satisfying the secondary criteria — conditions 8101, 8501, 8502 and 8516.

[50] Schedule 2, after Part 686*insert***Subclass 695 Return Pending****695.1 Interpretation***Note* No interpretation provisions specific to this Part.**695.2 Primary Criteria***Note* All applicants must satisfy the primary criteria.**695.21 Criteria to be satisfied at time of application**

695.211 [No criteria to be satisfied at time of application]

695.22 Criteria to be satisfied at time of decision

695.221 The applicant does not hold a substantive visa other than:

- (a) a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa; or
- (b) a Subclass 451 (Secondary Movement Relocation (Temporary)) visa; or
- (c) a Subclass 785 (Temporary Protection) visa.

695.222 The applicant satisfies public interest criteria 4001, 4002 and 4003.

695.223 If the applicant has previously been in Australia, the applicant satisfies special return criterion 5001.

695.224 The Minister is satisfied that the applicant has not, at any time, obtained

- (a) a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa; or
- (b) a Subclass 451 (Secondary Movement Relocation (Temporary)) visa; or
- (c) a Subclass 785 (Temporary Protection) visa; or

- (d) a Return Pending (Temporary) (Class VA) visa;
through the concealment or misrepresentation of facts
material to the decision to grant the visa.

695.3 Secondary Criteria: Nil

Note All applicants must satisfy the primary criteria.

695.4 Circumstances applicable to grant

- 695.411 The applicant must be in Australia when the visa is granted.

695.5 When visa is in effect

- 695.511 Temporary visa permitting the holder to remain in, but not re-enter, Australia for 18 months from:

- (a) if:
- (i) the holder's application for a Protection (Class XA) visa has been finally determined within the meaning of subsection 5 (9) of the Act) before the commencement of this paragraph; and
 - (ii) the Minister has refused to grant the Protection (Class XA) visa;
- the date of grant of the Return Pending (Class VA) visa;
and
- (b) if:
- (i) the holder's application for a Protection (Class XA) visa has been finally determined within the meaning of subsection 5 (9) of the Act) on or after the commencement of this paragraph; and
 - (ii) the Minister has refused to grant the Protection (Class XA) visa;
- the later of the date on which the holder's application for a Protection (Class XA) visa is finally determined and the date of grant of the Return Pending (Class VA) visa.

Note If the Minister refuses to grant a Protection (Class XA) visa to an applicant who holds, or held, a Subclass 451 (Secondary Movement Relocation (Temporary)) visa, a Subclass 447 (Secondary Movement

Offshore Entry (Temporary)) visa or a Subclass 785 (Temporary Protection) visa after the commencement of Part 695, the applicant for that visa will be taken to have applied for a Return Pending (Class VA) visa: see regulation 2.07AN.

695.6 Conditions

- 695.611 The holder cannot be granted a substantive visa other than a protection visa.
- 695.612 The holder must notify Immigration of any change in the holder's residential address within 14 days after the change.

695.7 Way of giving evidence

- 695.711 No evidence need be given unless the visa holder asks for it.
- 695.712 If evidence is given, to be given by a visa label affixed to a Convention travel document or passport.

[51] Schedule 2, after Division 785.3 (including the note)

insert

Note If the Minister refuses to grant a Protection (Class XA) visa to an applicant who holds, or held, a Subclass 451 (Secondary Movement Relocation (Temporary)) visa, a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa or a Subclass 785 (Temporary Protection) visa after the commencement of Part 695, the applicant for that visa will be taken to have applied for a Return Pending (Class VA) visa: see regulation 2.07AN.

[52] Schedule 2, after Division 866.3 (including the note)

insert

Note If the Minister refuses to grant a Protection (Class XA) visa to an applicant who holds, or held, a Subclass 451 (Secondary Movement Relocation (Temporary)) visa, a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa or a Subclass 785 (Temporary Protection) visa after the commencement of Part 695, the applicant for that visa will be taken to have applied for a Return Pending (Class VA) visa: see regulation 2.07AN.

[53] Schedule 5, paragraph 8535 (c)*omit*

or 576.227

insert

, 576.227 or 580.229

Notes

1. These Regulations amend Statutory Rules 1994 No. 268, as amended by 1994 Nos. 280, 322, 376 and 452; 1995 Nos. 3, 38, 117, 134, 268, 302 and 411; 1996 Nos. 12, 75 (regulations 7 and 8 were disallowed by the Senate on 11 September 1996), 76, 108, 121, 135, 198, 211 (regulations 4, 10, 11, 13.3, 14-37, 47-49, 51, 53-55, 74, 77.16, 77.19, 78, 85, 119 and 114 were disallowed by the Senate on 7 November 1996) and 276; 1997 Nos. 17, 64, 91, 92, 109, 137, 184, 185, 216, 263, 279, 288, 301 and 354; 1998 Nos. 36, 37, 104 (regulation 15 was disallowed by the Senate on 2 July 1998), 139, 210, 214, 284, 285 (disallowed by the Senate on 31 March 1999), 304, 305, 306 and 322; 1999 Nos. 8, 58, 64, 68 (as amended by 1999 Nos. 81 and 132), 76 (as amended by 1999 Nos. 81 and 132), 81 (as amended by 1999 No. 132), 82, 132, 155, 198, 220 (as amended by 1999 Nos. 259 and 321), 243, 259 (as amended by 2000 No. 259 and 2002 No. 213), 260 (as amended by 1999 No. 321), 321 and 325; 2000 Nos. 52, 62, 108, 192, 259 (as amended by 2000 No. 284) (item [4108] of Schedule 4 was disallowed by the Senate on 1 November 2000), 284 and 335; 2001 Nos. 27, 47, 86, 142, 162, 206, 239, 246, 283, 284, 285 and 291; Act No. 128, 2001; Statutory Rules 2001 No. 344; 2002 Nos. 10, 86, 121, 129 (disallowed by the Senate on 19 June 2002), 213, 230, 299, 323, 347, 348 and 354; Act No. 5, 2003; Statutory Rules 2003 Nos. 57, 94, 106, 122, 154, 224 (disallowed by the Senate on 9 October 2003), 239, 283 (disallowed by the Senate on 24 November 2003), 296 (as amended by 2003 No. 363), 362 and 363; 2004 Nos. 21, 93, 131, 191, 192 and 223.

2. Notified in the *Commonwealth of Australia Gazette* on / 2004.

25 August