EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 123

Issued by the Minister for Immigration
and Multicultural Affairs

Subject - *Migration Act 1958*

Migration Amendment Regulations 2006 (No. 2)

Subsection 504(1) of the *Migration Act 1958* (the Act) provides, in part, 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 the proposed Regulations is to amend the *Migration Regulations 1994* (the Principal Regulations) to make changes necessary to ensure the intended operation of immigration policy. These include changes to allow the grant of visas to the interdependent partners of certain applicants, amend provisions relating to particular visas, maintain special provisions relating to certain Vietnamese non-citizens, and increase the maximum numbers members of the Migration Review Tribunal and the Refugee Review Tribunal.

In particular, the Regulations:

- enable interdependent partners and dependent children of interdependent partners of applicants seeking to satisfy the primary criteria for a Business (Long Stay) visa to be eligible for grant of the visa as secondary applicants;
- require an application for a Distinguished Talent visa to be accompanied by a completed nomination by an Australian citizen or permanent resident or an Australian organisation;
- prescribe a nil Visa Application Charge for Sponsored Business Visitor (Short Stay) visa applications for applicants representing foreign governments and certain international organisations;
- enable Sponsored Business Visitor (Short Stay) visa holders to travel to and enter Australia on more than one occasion;
- provide that conditions preventing further stay on Sponsored Business Visitor (Short Stay) visas may be imposed as a matter of discretion rather than being mandatory;
- introduce a definition of “senior manager” for the purpose of grant of a State/Territory Sponsored Business Owner (Provisional) visa, to clarify eligibility requirements;
- introduce a provision whereby the usual annual turnover requirement need not be met by certain applicants for a permanent Sponsored Business Owner visa where an appropriate regional authority has determined that exceptional circumstances

exist for grant of a visa and the applicant resides and operates a business in a specified regional area or a low population growth metropolitan area;

- continue to prescribe the People's Republic of China (PRC) as a "safe third country" in respect of Vietnamese refugees settled in PRC since 1979 and who arrived in Australia unlawfully after 1 January 1996, with the effect that they cannot apply for a protection visa in Australia;
- increase the amounts of time holders of Working Holiday and Work and Holiday visas can work and study in Australia;
- enable applicants in Australia for further Working Holiday visas to apply for the grant of a Bridging E visa; and
- increase the maximum number of members that may be appointed to the Migration Review Tribunal, and the maximum number of Senior Members and other members that may be appointed to the Refugee Review Tribunal.

Details of the Regulations are set out in Attachment B.

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

The Regulations will be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on 1 July 2006. This commencement date is a consequence of various systems requirements necessary to allow the implementation of the Regulations.

Transitional provisions clarify which provisions apply to applicants whose applications are not finally determined at the time the Regulations commence.

The Office of Regulation Review in the Productivity Commission has been consulted and advises that the Regulations are not likely to have a direct effect, or substantial indirect effect, on business and are not likely to restrict competition.

The following external agencies and other bodies were consulted in relation to the Regulations:

Schedule 4: Relevant State and Territory government agencies were consulted, in particular the NSW Department of State and Regional Development, the Victorian Department for Victorian Communities, the Queensland Department of State Development, the West Australian Small Business Development Corporation, the South Australian Department of Premier and Cabinet, the Tasmanian Department of Economic Development, the Northern Territory Department of Business, Industry and Resource Development, and the Australian Capital Territory Chief Minister's Department.

Schedule 6: Stakeholders were consulted, in particular the relevant Commonwealth and State/Territory Ministers for Education, Tourism, Employment and Workplace Relations.

No other consultations were conducted in relation to the other Schedules to these Regulations, as the amendments were considered not to have relevant implications for any external agencies or other bodies.

ATTACHMENT A

Subsection 504(1) of the *Migration Act 1958* (the Act) provides, in part, 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. Subsection 5(1) of the Act provides, amongst other things, that "prescribed" means prescribed by the regulations.

In addition to subsection 504(1) of the Act the following provisions may apply:

- Subsection 31(3) of the Act, which provides that the regulations may prescribe criteria for a visa or visas of a specified class (which, without limiting the generality of this subsection, may be a class provided for by sections 32, 36, 37 or 37A but not sections 33, 34, 35 or 38 of the Act);
- Subsection 40(1) of the Act, which 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, which provides that the regulations may provide that visas, or visas of a specified class, are subject to specified conditions;
- Subsection 41(2) of the Act, which 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; or
  - a condition imposing restrictions about the work that may be done in Australia by the holder, which, without limiting the generality of this paragraph, may be restrictions on doing: any work; work other than specified work; or work of a specified kind;
- Subsection 41(3) of the Act, which provides that, in addition to any conditions specified under subsection 41(1), the Minister may specify that a visa is subject to such conditions as are permitted by the regulations for the purposes of this subsection;
- Subsection 45B(1) of the Act provides that the regulations prescribe the amount that is the amount of visa application charge, not exceeding the visa application charge limit;
- Subsection 45B(2) of the Act provides that the regulations may prescribe that the amount in relation to an application may be nil;
- Subsection 46(1)) of the Act, which provides that the regulations may provide the circumstances where an application for a visa is valid;
- Subsection 46(3) of the Act, which 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;

- Section 73 of the Act, which provides that the regulations may provide that the Minister may grant a bridging visa permitting the non-citizen to remain in, or travel to, enter and remain in Australia:
  - during a specified period; or
  - until a specified event happens;
- Subsection 91D(1) of the Act provides that the regulations may prescribe a country as a "safe third country" in relation to a non-citizen or in relation to a class of persons of which the non-citizen is a member, if the non-citizen has a prescribed connection with the country;
- Subsection 91D(2) of the Act provides that, without limiting paragraph 91D(1)(b), the regulations may provide that a person has a prescribed connection with a country if the person is or was present in the country at a particular time or at any time during a particular period, or the person has a right to enter and reside in the country (however that right arose or is expressed);
- Section 140A of the Act, which provides that the regulations may prescribe the kind of visas to which Division 3A – sponsorship applies;
- Section 140O of the Act prescribes the criteria for waiving a sponsorship bar;
- Paragraph 395(c) of the Act provides that the regulations may prescribe the maximum number of members (other than Senior Members or the Principal Member) that may be appointed to the Migration Review Tribunal; and
- Subsection 458(2) of the Act provides that the regulations may prescribe the maximum number of persons that can be appointed as Senior Members and other members of the Refugee Review Tribunal.

ATTACHMENT B

Details of the proposed *Migration Amendment Regulations 2006 (No. 2)*

Regulation 1 – Name of Regulations

This regulation provides that these Regulations are the *Migration Amendment Regulations 2006 (No. 2)*.

Regulation 2 – Commencement

This regulation provides that these Regulations commence on 1 July 2006.

Regulation 3 – Amendment of *Migration Regulations 1994*

This regulation provides that Schedules 1 to 7 to these Regulations amend the *Migration Regulations 1994* (the Principal Regulations).

Regulation 4 – Transitional

Subregulation 4(1) provides that the amendments made by items [6] to [15] of Schedule 1 apply in relation to an application for a visa made on or after 1 July 2006.

The *Note* explains that there are no transitional arrangements for the amendments made by items [1] to [5] of Schedule 1.

Subregulation 4(2) provides that the amendments made by Schedule 2 apply in relation to an application for a visa made on or after 1 July 2006.

Subregulation 4(3) provides that the amendment made by item [1] of Schedule 3 applies in relation to a visa application made on or after 1 July 2006.

Subregulation 4(4) provides that the amendments made by items [2] and [3] of Schedule 3 apply in relation to a visa application:

- made on or after 1 July 2006; or
- made, but not finally determined (within the meaning of subsection 5(9) of the *Migration Act 1958*), before 1 July 2006.

Subregulation 4(5) provides that the amendments made by Schedule 4 apply in relation to an application for a visa made on or after 1 July 2006.

Subregulation 4(6) provides that the amendments made by Schedule 6 apply in relation to an application for a visa made on or after 1 July 2006.

The *Note* explains that there are no transitional arrangements for the amendments made by Schedules 5 and 7.

Schedule 1 – Amendments relating to interdependent partners

Item [1] - Regulation 1.03, after definition of *Industry Minister*

This item inserts a new definition, *interdependent partner*, into regulation 1.03 in Part 1 of Division 1.2 of the Principal Regulations.

The new definition provides that an interdependent partner means a non-citizen who is in an interdependent relationship. Interdependent relationship has the meaning given by regulation 1.09A.

Item [2] –Regulation 1.20B, definition of *sponsored person*, subparagraph (a)(ii)

This item substitutes subparagraph (a)(ii) of the definition of *sponsored person* in regulation 1.20B in Part 1 of Division 1.4A of the Principal Regulations with new subparagraph (a)(ii).

New subparagraph (a)(ii) provides that a sponsored person means, in relation to an applicant for approval as a standard business sponsor, a person who is a member of the family unit, or the interdependent partner or a dependent child of the interdependent partner, of a person who is described in subparagraph (a)(i). Subparagraph (a)(i) remains unchanged.

The effect of this amendment is to include the interdependent partner and dependent children of the interdependent partner, in addition to members of the family unit, of certain applicants seeking to satisfy the primary criteria for grant of a Subclass 457 (Business (Long Stay)) visa, as persons who may be sponsored under the Temporary Business entry sponsorship and nomination provisions.

Item [3] –Regulation 1.20B, definition of *sponsored person*, subparagraph (b)(ii)

This item substitutes subparagraph (b)(ii) of the definition of *sponsored person* in regulation 1.20B in Part 1 of Division 1.4A to the Principal Regulations with new subparagraph (b)(ii).

New subparagraph (b)(ii) provides that a sponsored person means, in relation to a standard business sponsor, a person who is a member of the family unit, or the interdependent partner or a dependent child of the interdependent partner, of a person who is described in subparagraph (b)(i). Subparagraph (b)(i) remains unchanged.

The effect of this amendment is to include the interdependent partner and dependent children of the interdependent partner, in addition to members of the family unit, of certain applicants seeking to satisfy the primary criteria for grant of a Subclass 457 (Business (Long Stay)) visa, as persons who may be sponsored under the Temporary Business entry sponsorship and nomination provisions.

Item [4] –Paragraph 1.20BA(c)

This item substitutes paragraph 1.20BA(c) in Part 1 of Division 1.4A to the Principal Regulations with new paragraph 1.20BA(c).

New paragraph 1.20BA(c) provides that for section 140A of the *Migration Act 1958*, Division 3A of Part 2 of the *Migration Act 1958* applies to a Subclass 457 (Business (Long Stay)) visa granted to a person who is a member of the family unit, or the interdependent partner or a dependent child of the interdependent partner, of a person who has been granted a Subclass 457 (Business (Long Stay)) visa on the basis that the requirements of subclause 457.223(4) or (5) of Schedule 2 were met.

The effect of this amendment is to include the interdependent partner and dependent children of the interdependent partner, in addition to members of the family unit, of certain applicants seeking to satisfy the primary criteria for grant of a Subclass 457 (Business (Long Stay)) visa, as persons who may be sponsored under the Temporary Business entry sponsorship and nomination provisions.

Item [5] – Paragraph 1.20HC(1)(c)

This item substitutes paragraph 1.20HC(1)(c) in Part 1 of Division 1.4A to the Principal Regulations with new paragraph 1.20HC(1)(c).

New paragraph 1.20HC(1)(c) prescribes for subsection 140O(1) of the *Migration Act 1958*, a Subclass 457 (Business (Long Stay)) visa granted to the person who is a member of the family unit, or the interdependent partner or a interdependent child of the interdependent partner, of a person who has been granted a Subclass 457 (Business (Long Stay)) visa on the basis that the requirements of subclause 457.223(4) or (5) of Schedule 2 were met.

The effect of this amendment is to include the interdependent partner and dependent children of the interdependent partner, in addition to members of the family unit, of certain applicants for Subclass 457 (Business (Long Stay)) visas, as applicants in respect to whom a sponsorship bar may be waived by the Minister.

Item [6] – Schedule 1, sub-subparagraph 1223A(2)(a)(vi)(B)

This item substitutes sub-subparagraph 1223A(2)(a)(vi)(B) of Item 1223A (Temporary Business Entry (Class UC)) of Schedule 1 to the Principal Regulations with new sub-subparagraph 1223A(2)(a)(vi)(B).

New sub-subparagraph 1223A(2)(a)(vi)(B) prescribes a nil Visa Application Charge (VAC) in the case of an applicant who is applying for a visa that will permit the applicant to remain in Australia for more than 3 months, and who is a member of the family unit, or an interdependent partner or the dependent child of an interdependent partner, of an applicant for a Subclass 457 (Business (Long Stay)) mentioned in subparagraph (v).

The effect of this amendment is to include interdependent partners and dependent children of interdependent partners, in addition to members of the family unit, as secondary applicants for whom a VAC of nil is prescribed, where the primary applicant appears to be a person to whom certain diplomatic privileges and immunities would be accorded under the relevant legislation, and who is expected to be recommended by the Minister for Foreign Affairs for the grant of the visa.

Item [7] – Schedule 1, subparagraph 1223A(3)(ae)(ii)

This item amends subparagraph 1223A(3)(ae)(ii) of Item 1223A (Temporary Business Entry (Class UC)) of Schedule 1 to the Principal Regulations, by omitting the word "spouse" and substituting "spouse or interdependent partner".

The effect of this amendment is to allow applicants who are the interdependent partners of certain holders of a Subclass 457 (Business (Long Stay)) visa who have been conducting business in Australia in certain circumstances to make an application in Australia, but not in immigration clearance. This provision was previously restricted to the spouse of a holder of a Subclass 457 visa.

Item [8] – Schedule 1, paragraph 1223A(3)(c)

This item substitutes paragraph 1223A(3)(c) of Item 1223A (Temporary Business Entry (Class UC)) of Schedule 1 to the Principal Regulations with new paragraph 1223A(3)(c).

New paragraph 1223A(3)(c) provides that if the applicant seeks a visa that will permit the applicant to remain in Australia (whether or not also a visa to travel to and enter Australia) for a period or periods of more than 3 months and the applicant claims to be a member of the family unit, or the interdependent partner, or a dependent child of an interdependent partner, of a person who seeks to satisfy the primary criteria (referred to as the "primary applicant"), the application may be made at the same time and place, and combined with, an application by the primary applicant or any other applicant who claims to be a member of the family unit, the interdependent partner or a dependent child of the interdependent partner of the primary applicant.

The effect of this amendment is to enable the interdependent partner or dependent child of the interdependent partner, as well as members of the family unit, of a primary applicant to make an application for a Subclass 457 visa combined with the application of the primary applicant or that of any other applicant who claims to be the member of the family unit, the interdependent partner or a dependent child of the interdependent partner of the primary applicant.

Item [9] - Schedule 1, subparagraph 1223A(3)(ca)(ii)

This item substitutes subparagraph 1223A(3)(ca)(ii) of Item 1223A (Temporary Business Entry (Class UC)) of Schedule 1 to the Principal Regulations with new subparagraph 1223A(3)(ca)(ii).

New subparagraph 1223A(3)(ca)(ii) provides that an application 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, or the interdependent partner, or a dependent child of an interdependent partner, of an applicant who seeks to satisfy, or has satisfied, the primary criteria on the basis of meeting the requirements of subclause 457.223(2), (3), (4) or (10) of Schedule 2, must be made in Australia but not immigration clearance, or as an Internet application.

The effect of this amendment is that applications by the interdependent partner or dependent child of an interdependent partner, as well as applications by members of the family unit, of certain primary applicants for a Subclass 457 (Business (Long Stay) may be made in Australia (but not in immigration clearance) or by Internet.

Item [10] – Schedule 2, Division 457.2, Note

This item substitutes the *Note* to Division 457.2 in Part 457 (Subclass 457 (Business (Long Stay)) of Schedule 2 to the Principal Regulations, with a new *Note*.

The new *Note* provides that the primary criteria must be satisfied by at least one applicant. Other applicants who are members of the family unit, or the interdependent partner or dependent child of the interdependent partner, of the applicant who satisfies the primary criteria need satisfy only the secondary criteria.

The purpose of this amendment is to make it clear that the interdependent partner or dependent child of the interdependent partner, as well as a member of the family unit, of the primary applicant need only satisfy the secondary criteria.

Item [11] – Schedule 2, after clause 457.227

This item inserts new clause 457.227A in Part 457 (Subclass 457 (Business (Long Stay)) of Schedule 2 to the Principal Regulations.

New clause 457.227A requires that where the interdependent partner, or a dependent child of the interdependent partner, of an applicant who seeks to satisfy the requirements of subclause 457.223(7A), is also an applicant for a Subclass 457 (Business (Long Stay)) visa, he or she must satisfy public interest criteria 4001, 4002, 4003, 4004, 4005, 4010, 4013, 4014, and if he or she has previously been in Australia, special return criteria 5001 and 5002.

This amendment is consequential upon the introduction by this Schedule of provisions that enable the interdependent partner, or dependent child of the interdependent partner, of a primary applicant for a Subclass 457 (Business (Long Stay)) visa who seeks to satisfy the requirements of subclause 457.223(7A) (relating to certain applicants who have been conducting businesses in Australia), to satisfy the secondary criteria.

The effect of this amendment is that the primary criteria cannot be satisfied unless the interdependent partner and any dependent children of the interdependent partner included in the application by the relevant primary applicant are able to satisfy the specified public interest criteria and special return criteria. This provision mirrors the current requirements in relation to a member of the family unit of a primary applicant seeking to satisfy the same requirements.

Item [12] – Schedule 2, Clause 457.321

This item substitutes clause 457.321 of Part 457 (Subclass 457 (Business (Long Stay)) of Schedule 2 to the Principal Regulations with new clause 457.321.

New clause 457.321 requires that at the time of decision on an application by an applicant who is a member of the family unit, or the interdependent partner or a dependent child of the interdependent partner, of a primary applicant for a Subclass 457 visa, the primary applicant must have satisfied the primary criteria and be the holder of a Subclass 457 visa.

The effect of this amendment is to enable the interdependent partner or dependent child of an interdependent partner of a primary applicant to satisfy the secondary criteria for grant of a Subclass 457 (Business (Long Stay)) visa, provided the primary applicant has satisfied the primary criteria. This provision mirrors the existing provision relating to members of the family unit of the primary applicant.

Item [13] – Schedule 2, clause 457.324A

This item substitutes clause 457.324A of Part 457 (Subclass 457 (Business (Long Stay)) of Schedule 2 to the Principal Regulations with new clause 457.324A.

New clause 457.324A requires that where the applicant is a member of the family unit, or the interdependent partner, or a dependent child of the interdependent partner of an applicant who satisfied the criterion in clause 457.223 on the basis of being sponsored by an approved sponsor within the meaning of section 140D of the *Migration Act 1958*, the member of the family unit, or the interdependent partner or dependent child of the interdependent partner, must be included in that sponsorship.

The effect of this amendment is that the interdependent partner or the dependent child of the interdependent partner of the primary applicant may satisfy certain criteria for grant of a Subclass 457 (Business (Long Stay)) visa on the basis of being included in the sponsorship on the basis of which the primary applicant satisfied the primary criteria. This mirrors the current provisions relating to members of the family unit.

Item [14] – Schedule 2, paragraph 457.325 (aa)

This item substitutes paragraph 457.325(aa) of Part 457 (Subclass 457 (Business (Long Stay)) of Schedule 2 to the Principal Regulations with new paragraph 457.325(aa).

New paragraph 457.325(aa) requires that an applicant who is a member of the family unit, or the interdependent partner or a dependent child of the interdependent partner of an applicant who satisfies the requirements of subclause 457.223(7A) (relating to certain applicants who have been conducting businesses in Australia) must satisfy public interest criteria 4005.

The effect of this amendment is that an applicant for a Subclass 457 visa who is the interdependent partner, or the dependent child of the interdependent partner, of a relevant primary applicant must satisfy public interest criterion 4005 which relates to health requirements. This mirrors the current requirements for secondary applicants who are members of the family unit.

Item [15] – Schedule 2, paragraph 457.325(b)

This item substitutes paragraph 457.325(b) of Part 457 (Subclass 457 (Business (Long Stay)) of Schedule 2 to the Principal Regulations with new paragraph 457.325(b).

Paragraph 457.325(b) provides that except where a secondary applicant is a member of the family unit, or the interdependent partner, or a dependent child of the interdependent partner, of a primary applicant who meets the requirements of subclause 457.223(9) (relating to primary applicants who are accorded certain privileges and immunities), the applicant must satisfy public interest criterion 4006A relating to certain health criteria.

The effect of this amendment is that an applicant for a Subclass 457 visa who is the interdependent partner, or the dependent child of the interdependent partner, of a relevant primary applicant, other than a primary applicant who is accorded certain privileges and immunities, must satisfy public interest criterion 4006A. This mirrors the current requirements for secondary applicants who are members of the family unit.

Schedule 2 – Amendments relating to Distinguished Talent visas

Item [1] – Schedule 1, after paragraph 1112(3)(b)

This item inserts new paragraphs 1112(3)(c) and (d) in Item 1112 (Distinguished Talent (Migrant) (Class AL)) in Schedule 1 to the Principal Regulations.

New paragraph 1112(3)(c) requires that if an applicant for a Distinguished Talent (Migrant) (Class AL)) visa is seeking to meet the requirements of subclause 124.211(2) in Part 124 of Schedule 2 to the Principal Regulations, the application must be accompanied by a completed approved form 1000. Subclause 124.211(2) provides that the applicant has an internationally recognised record of exceptional and outstanding achievement in a profession, a sport, the arts or academia and research and is still prominent in the area and would be an asset to the Australian community.

Approved form 1000 (Nomination for Distinguished Talent) must be completed by an Australian citizen, an Australian permanent resident, an eligible New Zealand citizen, or an Australian organisation having national reputation relevant to the area of the applicant's achievement, and must testify to the applicant's record of achievement. An application that is not accompanied by a completed nomination, which is required to satisfy the criteria for grant of a Subclass 124 (Distinguished Talent) visa, will not be valid.

New paragraph 1112(3)(d) requires that if an applicant for a Distinguished Talent (Migrant) (Class AL) visa is seeking to meet the requirements of subclause 124.211(4) in Part 124 of Schedule 2 to the Principal Regulations, the Minister must have received advice from the Minister responsible for an intelligence or security agency within the meaning of the *Australian Security Intelligence Organisation Act 1979*, or the Director-General of Security, that the applicant has provided specialised assistance to the Australian Government in matters of security.

The effect of new paragraph 1112(3)(d) is that a person seeking to satisfy subclause 124.211(4) will not be able to make a valid application unless the Minister has received the relevant advice.

Item [2] – Schedule 1, after paragraph 1113(3)(c)

This item inserts new paragraphs 1113(3)(d) and (e) in Item 1113 (Distinguished Talent (Residence) (Class BX)) in Schedule 1 to the Principal Regulations.

New paragraph 1113(3)(d) requires that if an applicant for a Distinguished Talent (Residence) (Class BX)) visa is seeking to meet the requirements of subclause 858.212(2), in Part 858 of Schedule 2 to the Principal Regulations, the application must be accompanied by a completed approved form 1000. Subclause 858.212(2) provides that the applicant has an internationally recognised record of exceptional and outstanding achievement in a profession, a sport, the arts or academia and research and is still prominent in the area and would be an asset to the Australian community.

Approved form 1000 (Nomination for Distinguished Talent) must be completed by an Australian citizen, an Australian permanent resident, an eligible New Zealand citizen, or an Australian organisation having national reputation relevant to the area of the applicant's achievement, and must testify to the applicant's record of achievement. An application that is not accompanied by a completed nomination, which is required to satisfy the criteria for grant of a Subclass 858 (Distinguished Talent) visa, will not be valid.

New paragraph 1113(3)(e) requires that if an application for a Distinguished Talent (Residence) (Class BX)) visa is seeking to meet the requirements of subclause 858.212(4) in Part 858 of Schedule 2 to the Principal Regulations, the Minister must have received advice from the Minister responsible for an intelligence or security agency within the meaning of the *Australian Security Intelligence Organisation Act 1979*, or the Director-General of Security, that the applicant has provided specialised assistance to the Australian Government in matters of security.

The effect of new paragraph 1113(3)(e) is that a person seeking to satisfy subclause 858.212(4) will not be able to make a valid application unless the Minister has received the relevant advice.

Item [3] – Schedule 2, paragraph 124.211(2)(e)

This item substitutes paragraph 124.211(2)(e) in Subclass 124 (Distinguished Talent) of Part 2 of the Principal Regulations, with new paragraph 124.211(2)(e). This item also inserts a new *Note* after paragraph 124.211(2)(e).

New paragraph 124.211(2)(e) requires, that in order to satisfy the criteria at the time of application, an applicant for a Subclass 124 visa must produce a completed approved form 1000. The new *Note* clarifies that an approved form 1000 requires the applicant's record of achievement (as mentioned in paragraph 124.211(2)(a)) to be testified to by an Australian citizen, an Australian permanent resident, an eligible

New Zealand citizen, or an Australian organisation, having a national reputation in relation to the relevant area of achievement.

The effect of this amendment is to require the applicant to produce, at the time of application, a completed form 1000 testifying to the applicant's achievement and standing in the relevant area, from an Australian citizen, an Australian permanent resident, an eligible New Zealand citizen, or an Australian organisation, having a national reputation in relation to the area. This amendment provides consistency with the requirements of new paragraph 1112(3)(c), inserted in Schedule 1 of the Principal Regulations by item [1] of this Schedule, above.

Item [4] – Schedule 2, paragraph 858.212(2)(e)

This item substitutes paragraph 858.212(2)(e) in Subclass 858 (Distinguished Talent) of Schedule 2 to the Principal Regulations, with new paragraph 858.212(2)(e). This item also inserts a new *Note* after paragraph 858.212(2)(e).

New paragraph 858.212(2)(e) requires, that in order to satisfy the criteria at the time of application, an applicant for a Subclass 858 visa must produce a completed approved form 1000. The new *Note* clarifies that an approved form 1000 requires the applicant's record of achievement (as mentioned in paragraph 858.212(2)(a)) to be testified to by an Australian citizen, an Australian permanent resident, an eligible New Zealand citizen, or an Australian organisation, having a national reputation in relation to the relevant area of achievement.

The effect of this amendment is to require the applicant, at the time of application, to produce a completed form 1000 testifying to the applicant's achievement and standing in the relevant area from an Australian citizen, an Australian permanent resident, an eligible New Zealand citizen, or an Australian organisation, having a national reputation in relation to the area. This amendment provides consistency with the requirements of new paragraph 1113(3)(d), inserted in Schedule 1 of the Principal Regulations by item [2] of this Schedule, above

Schedule 3 – Amendments relating to Sponsored Business Visitor (Short Stay) (Subclass 459) visas

Item [1] – Schedule 1, subitem 1217A(2)

This item substitutes subitem 1217A(2) in Item 1217A (Sponsored (Visitor) (Class UL)) of Schedule 1 to the Principal Regulations with new subitem 1217A(2). The new subitem 1217A(2) has two paragraphs.

New subparagraph 1217A(2)(a)(i) provides that the first instalment of the Visa Application Charge (VAC) payable on application for a Sponsored (Visitor) Class UL visa is, subject to subparagraphs (ii), (iii) and (iv), $70.

New subparagraph 1217A(2)(a)(ii) provides that the first instalment of the VAC is nil for an applicant who is seeking to satisfy the criteria for the grant of a Subclass 459 (Sponsored Business Visitor (Short Stay)) visa, and who appears to the Minister, on the basis of the application, to be a person to whom privileges and immunities are,

or are expected to be accorded under the *International Organisations (Privileges and Immunities) Act 1963* or the *Overseas Missions (Privileges and Immunities Act) 1995*, and is expected to be recommended by the Minister for Foreign Affairs for the grant of the visa.

New subparagraph 1217A(2)(a)(iii) provides that the first instalment of the VAC is nil for an applicant seeking to satisfy the criteria for the grant of a Subclass 459 visa, in the course of acting as a representative for a foreign government.

New subparagraph 1217A(2)(a)(iv) provides that the instalment of the VAC is nil for an applicant who is the spouse or dependent child of an applicant mentioned in subparagraph 1217A(2)(a)(ii) or (iii).

New paragraph 1217A(2)(b) continues the provision of the previous paragraph 1217A(2)(b) that there is no second instalment of the VAC payable by any applicant.

The effect of this amendment is to exempt from payment of the first instalment of the VAC those applicants who are entitled to diplomatic privileges and immunity or who act as representatives of a foreign government, and the spouses and dependent children of such applicants.

Item [2] – Schedule 2, Division 459.5

This item substitutes Division 459.5 in Part 459 (Subclass 459 (Sponsored Business Visitor (Short Stay)) of Schedule 2 to the Principal Regulations with new Division 459.5.

New Division 459.5 has one new clause 459.511, which provides that a Subclass 459 ((Sponsored Business Visitor (Short Stay)) visa is a temporary visa allowing the holder to travel to and enter Australia on one or more occasions until a date specified by the Minister, and to remain in Australia for a period, not longer than 3 months after the date of each entry, specified by the Minister for the purpose.

The effect of this amendment is to change the current provision which allows visa holders to travel to and enter Australia on one occasion only.

The purpose of this amendment is to align the conditions of the Subclass 459 more closely to the non-sponsored business visitor visa Subclass 456.

Item [3] – Schedule 2, Division 459.6

This item substitutes Division 459.6 in Part 459 (Subclass 459 (Sponsored Business Visitor (Short Stay)) of Schedule 2 to the Principal Regulations with new Division 459.6.

New Division 459.6 has six new clauses 459.611, 459.612, 459.613, 459.613A, 459.614 and 459.615, which prescribe the conditions which are imposed, and which may be imposed, on Subclass 459 (Sponsored Visitor (Short Stay)) visas granted to applicants who satisfy the criteria for grant of the visa.

The conditions are the same as the conditions prescribed under the existing Division 459.6, except that conditions 8503 and 5531 are made discretionary conditions that may be imposed on visas granted to all applicants, instead of, as under the existing regulations, being mandatorily imposed by law.

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 remaining in Australia.

Condition 8531 provides that the holder must not remain in Australia after the end of the period of stay permitted by the visa.

The effect of this amendment is to provide flexibility not to apply conditions 8503 and 8531 to Subclass 459 visas where it is appropriate not to do so in particular cases. A visa without these conditions imposed will enable the holder to be granted another substantive visa while in Australia and to stay beyond the end of the visa period if they are granted a second visa, where this is appropriate.

Schedule 4 – Amendments relating to sponsored business owners

Item [1] – Schedule 2, Division 163.1, including the notes

This item substitutes Division 163.1 in Part 163 (Subclass 163 (State/Territory Sponsored Business Owner (Provisional)) of Schedule 2 to the Principal Regulations with new Division 163.1.

New Division 163.1 contains one new clause 163.111, which provides a definition of the term ***senior manager***. This definition is specific to Part 163.

Senior manager is defined to mean a person who has appropriate formal qualifications obtained as a result of at least three years full time study (or the part time equivalent), or at least five years appropriate experience. The person must have been employed for at least three additional years in the kind of work for which they were trained or experienced, with a sound and continuous employment record for three years out of the last five years immediately before applying, in a position, or positions, in a qualifying business or businesses, which required the person to make decisions about how the whole or a substantial part of the activities of the business were to be managed, take responsibility for the day to day running of the business or a part of the business, and, if appropriate to the structure of the relevant business, have management responsibilities over other functional managers. If the person's occupation requires registration or licensing under Australian law, the person must be registered or licensed as required.

The purpose of the new definition is to adjust and more fully reflect the requirements to be satisfied by a person applying for the grant of a Subclass 163 (State/Territory Sponsored Business Owner (Provisional)) visa on the grounds of being a senior manager. These requirements are incorporated in the criteria in clause 163.212 by

the amendment made by item [2] of this Schedule. For further details, see the notes on that item below.

Note 1 and *Note 2* at the end of Division 163.1, relating to terms used in Part 163 that are defined elsewhere, are re-inserted unchanged. The previous *Note 3* is omitted as it is no longer relevant following insertion of new clause 163.111.

Item [2] – Schedule 2, paragraph 163.212(b)

This item substitutes paragraph 163.212(b) in Part 163 (Subclass 163 (State/Territory Sponsored Business Owner (Provisional)) of Schedule 2 to the Principal Regulations, with new paragraph 163.212(b).

New paragraph 163.212(b) provides that an applicant for a Subclass 163 (Sponsored Business Owner (Provisional)) may satisfy a primary criterion by being a "senior manager", as an alternative to the requirement in existing paragraph 163.212(a) relating to having an ownership interest in a specified business or businesses, which is unchanged.

The requirements to be met by a "senior manager" are now contained in the new definition of the term, inserted in Division 163.1 by item [1] of this Schedule. The new definition clarifies the requirements to be met by a "senior manager". In particular, the definition clarifies what formal qualifications or experience are required, and what is required for a 'sound and continuous employment record in a senior management role'. The meaning of these requirements was unclear in the previous paragraph 163.212(b). The new definition also requires the applicant's record in high level management to have been obtained in at least three years of the five years immediately preceding the application. This changes the previous requirement that the record must have been over at least four years immediately preceding the application.

Item [3] – Schedule 2, clause 892.213

This item substitutes clause 892.213 in Part 892 (Subclass 892 (State/Territory Sponsored Business Owner) of Schedule 2 to the Principal Regulations, with new clause 892.213.

New clause 892.213 provides that an applicant must meet the requirements of subclause 892.213(2) or (3). Subclause 892.213(2) continues the requirement of the previous clause 892.213, that in the last 12 months immediately before the application is made, the applicant's main business in Australia, or main businesses in Australia together, had an annual turnover of at least AUD200, 000.

New subclause 892.213(3) inserts an additional criterion, that can be satisfied as an alternative to subclause 892.213(2) if the applicant meets at least two of the requirements in existing paragraphs 892.212(a), (b) or (c), relating to the number of employees and value of the applicant's business and the value of the applicant's assets, whether the applicant resides in and operates a business in an area specified by the Minister in an instrument in writing for this provision, and the appropriate regional authority has determined that there are exceptional circumstances.

The effect of this amendment is to provide for appropriate regional authorities to make a determination that exceptional circumstances for grant of a visa exist in the case of particular applicants. This will permit applicants to whom a determination relates to satisfy the criterion, although unable to meet the business turnover criterion, provided they reside in and operate a business in a specified area. It is the policy intention that the areas to be specified for this purpose will be regional areas or metropolitan areas having a low rate of population growth.

Schedule 5 – Amendments relating to safe third countries

Item [1] – Regulation 2.12A, including the notes

This item substitutes regulation 2.12A in Part 2 of the Principal Regulations with new regulation 2.12A.

The purpose of this amendment is to re-make regulation 2.12A on and from 1 July 2006, because in accordance with subsection 91D(4) of the *Migration Act 1958* the current regulation 2.12A ceases to be in force on 30 June 2006. Regulation 2.12A is re-made in essentially the same form as the current regulation 2.12A.

New subregulation 2.12A(1) prescribes, for paragraph 91D(1)(a) of the *Migration Act 1958*, the People's Republic of China (PRC) as a safe third country in relation to certain Vietnamese refugees settled in PRC, and their close relatives or dependents, who are covered by the agreement between Australia and PRC (see the notes on new subregulation 2.12A(3), below, for further details concerning the agreement), and who entered Australia without lawful authority on or after 1 January 1996.

New subregulation 2.12A(2) provides that, for paragraph 91D(1)(b) of the *Migration Act 1958*, a person mentioned in new subregulation 2.12A(1) has a prescribed

connection with PRC if the person, or a parent of the person, resided in the PRC at any time before the person entered Australia.

New paragraph 2.12A(3)(a) provides that the term "agreement between Australia and PRC" means the agreement constituted by the Memorandum of Understanding (MOU) set out in Schedule 11 to the Principal Regulations, together with the exchange of letters between representatives of Australia and PRC dated 17 March 2006 and 20 March 2006, the text of which is set out in Schedule 12 to the Principal Regulations. The MOU was signed by PRC and Australia on 25 January 1995. The MOU covers Vietnamese refugees who were settled in PRC since 1979 and provided with effective protection and assistance by the PRC government. The effect of the letters of 17 March 2006 and 20 March 2006 is to confirm that the MOU continues in force. The text of these letters is inserted in Schedule 12 to the Principal Regulations by item [2] of this Schedule, below.

New paragraph 2.12A(3)(b) provides that the use of the word *Vietnamese* in this context is a reference to nationality or country of origin, and is not an ethnic description.

The notes to new regulation 2.12A mirror and update the notes to the current regulation 2.12A. *Note 1* explains that the term PRC is defined in regulation 1.03. *Note 2* explains that this new regulation 2,12A ceases to be in force at the end of 30 June 2008, by operation of subsection 91D(4) of the *Migration Act 1958*.

The effect of continuing regulation 2.12A in force is that non-citizens covered by the regulation and having the prescribed connection with PRC are prevented by operation of section 91E of the *Migration Act 1958* from making a valid application for a protection visa in Australia.

Item [2] – Schedule 12

This item substitutes the entirety of Schedule 12 to the Principal Regulations with new Schedule 12.

New Schedule 12 contains the text of the letters exchanged between representatives of Australia and the People's Republic of China (PRC) continuing the Memorandum of Understanding between Australia and PRC in relation to Vietnamese refugees the subject of that Memorandum of Understanding. Part 1 of new Schedule 12 contains the letter dated 17 March 2006 from the representative of Australia to the representative of PRC. Part 2 of new Schedule 12 contains the letter dated 20 March 2006 from the representative of PRC to the representative of Australia. These letters replace the previous letters dated 15 April 2004 and 16 April 2004, respectively.

Schedule 6 – Amendments relating to Working Holiday (Subclass 417) and Work and Holiday (Subclass 462) visas

Item [1] – Schedule 1, subitem 1305(1)

This item amends subitem 1305(1) of Schedule 1 to the Principal Regulations by inserting references to forms 1150 and 1150E (Internet).

The effect of this amendment is to allow applicants in Australia who make a valid application for a further subclass 417 (Working Holiday) visa on forms 1150 and 1150E to also apply for the grant of a Bridging E (Class WE) visa.

Item [2] – Schedule 2, sub-subparagraph 010.211(4)(a)(i)(B)

This item amends sub-subparagraph 010.211(4)(a)(i)(B) of Schedule 2 to the Principal Regulations by inserting a reference to new condition 8547. New condition 8547 is inserted in Schedule 8 to the Principal Regulations by item [15] of this Schedule, below.

The effect of sub-subparagraph 010.211(4)(a)(i)(B) as amended is to provide that an applicant for a Bridging A visa is able to satisfy a criterion for grant of that visa if at the time of application the applicant holds a Bridging A visa subject to specified conditions (including new condition 8547) and meets certain other requirements.

Item [3] – Schedule 2, subclause 010.611(4)

This item amends subclause 010.611(4) of Schedule 2 to the Principal Regulations by inserting a reference to new condition 8547. New condition 8547 is inserted in Schedule 8 to the Principal Regulations by item [15] of this Schedule, below.

The effect of subclause 010.611(4), as amended, is to provide that new condition 8547 is imposed on a Bridging A visa granted to a person who satisfies the primary criteria, a substantive visa held by the applicant was subject to condition 8547 or if the last Bridging A or Bridging B visa held by the applicant was subject to condition 8547.

Item [4] – Schedule 2, subclause 020.611(3)

This item amends subclause 020.611(3) of Schedule 2 to the Principal Regulations by inserting a reference to new condition 8547. New condition 8547 is inserted in Schedule 8 to the Principal Regulations by item [15] of this Schedule, below.

The effect of subclause 020.611(3), as amended, is to provide that condition 8547 is imposed on a Bridging B visa granted to a person who satisfies the primary criteria, if condition 8547 applied to the bridging visa held by the applicant at the time of application.

Item [5] – Schedule 2, clause 050.611

This item amends clause 050.611 of Schedule 2 to the Principal Regulations by inserting a reference to new condition 8548. New condition 8548 is inserted in Schedule 8 to the Principal Regulations by item [15] of this Schedule, below.

The effect of clause 050.611, as amended, is to provide that condition 8548 is imposed on a Bridging General visa granted to a person, if condition 8548 applied to

a substantive visa held by the applicant or applied to the last Bridging E visa held by the applicant.

Item [6] – Schedule 2, clause 050.611A

This item amends clause 050.611A of Schedule 2 to the Principal Regulations by inserting a reference to new condition 8548. New condition 8548 is inserted in Schedule 8 to the Principal Regulations by item [15] of this Schedule, below.

The effect of clause 050.611A, as amended, is to provide that condition 8548 may be imposed on a Bridging General visa granted to a person who formerly held a Bridging General visa and who was interviewed by an authorised officer before the visa was granted.

Item [7] – Schedule 2, paragraph 050.611B(b)

This item amends paragraph 050.611B(b) of Schedule 2 to the Principal Regulations by inserting a reference to new condition 8548. New condition 8548 is inserted in Schedule 8 to the Principal Regulations by item [15] of this Schedule, below.

The effect of paragraph 050.611B(b), a amended, is to provide that condition 8548 may be imposed on a Bridging General visa granted to an unlawful non-citizen to whom subclause 050.222(3) applies.

Item [8] – Schedule 2, clause 050.612

This item amends clause 050.612 of Schedule 2 to the Principal Regulations by inserting a reference to new condition 8548. New condition 8548 is inserted in Schedule 8 to the Principal Regulations by item [15] of this Schedule, below.

The effect of clause 050.612, as amended, is to provide that condition 8548 is imposed on a Bridging General visa granted by operation of section 75 of the *Migration Act 1958*. Section 75 provides that, if an eligible non-citizen who is in immigration detention makes an application for a bridging visa of a prescribed class and the Minister fails to make a decision within the prescribed period to grant or refuse to grant the bridging visa, the non-citizen is taken to have been granted a bridging visa of the prescribed class on prescribed conditions (if any) at the end of that period.

Item [9] – Schedule 2, subclause 050.612A(3)

This item amends subclause 050.612A(3) of Schedule 2 to the Principal Regulations by inserting a reference to new condition 8548. New condition 8548 is inserted in Schedule 8 to the Principal Regulations by item [15] of this Schedule, below.

The effect of subclause 050.612A(3), as amended, is to provide that condition 8548 may be imposed on a Bridging General visa granted to a person who satisfies certain specified criteria at the time of application.

Item [10] – Schedule 2, clause 050.613

This item amends clause 050.613 of Schedule 2 to the Principal Regulations by inserting a reference to new condition 8548. New condition 8548 is inserted in Schedule 8 to the Principal Regulations by item [15] of this Schedule, below.

The effect of clause 050.613, as amended, is to provide that condition 8548 may be imposed on a Bridging General visa granted to a person who meets the requirements of subclause 050.212(6A) or (8).

Item [11] – Schedule 2, subclause 050.613A(2)

This item amends subclause 050.613A(2) of Schedule 2 to the Principal Regulations by inserting a reference to new condition 8548. New condition 8548 is inserted in Schedule 8 to the Principal Regulations by item [15] of this Schedule, below.

The effect of subclause 050.613A(2), as amended, is to provide that condition 8548 may be imposed on a Bridging General visa granted to certain applicants for a Protection visa.

Item [12] – Schedule 2, clause 050.614

This item amends clause 050.614 of Schedule 2 to the Principal Regulations by inserting a reference to new condition 8548. New condition 8548 is inserted in Schedule 8 to the Principal Regulations by item [15] of this Schedule, below.

The effect of clause 050.614, as amended, is to provide that condition 8548 may be imposed on a Bridging General visa granted to an applicant who is not covered by any other clause in Division 050.6.

Item [13] – Schedule 2, clause 417.611

This item amends clause 417.611 of Schedule 2 to the Principal Regulations by omitting references to conditions 8108 and 8201 and inserting references to new conditions 8547 and 8548. New conditions 8547 and 8548 are inserted in Schedule 8 to the Principal Regulations by item [15] of this Schedule, below.

The effect of clause 417.611, as amended, is to provide that conditions 8547 and 8548 (and not conditions 8108 and 8201) are imposed on a subclass 417 (Working Holiday) visa granted to an applicant who satisfies the criteria.

Item [14] – Schedule 2, clause 462.611

This item amends clause 462.611 of Schedule 2 to the Principal Regulations by omitting references to conditions 8108 and 8201 and inserting references to new conditions 8547 and 8548. New conditions 8547 and 8548 are inserted in Schedule 8 to the Principal Regulations by item [15] of this Schedule, below.

The effect of clause 462.611, as amended, is to provide that conditions 8547 and 8548 (and not conditions 8108 and 8201) are imposed on a subclass 462 (Work and Holiday) visa granted to an applicant who satisfies the criteria.

Item [15] – Schedule 8, after clause 8546

This item inserts two new conditions in Schedule 8 (Visa Conditions) to the Principal Regulations.

New condition 8547 requires that the holder of the visa must not be employed by any one employer for more than 6 months, without the prior written permission of the Secretary.

New condition 8548 requires that the holder of the visa must not engage in any studies or training in Australia for more than 4 months.

These two new conditions are imposed on subclass 417 (Working Holiday) and subclass 462 (Work and Holiday) visas granted to applicants who satisfies the primary criteria by items [13] and [14] of this Schedule, above. The effect of these conditions is to increase the time holders of Subclass 417 and 462 visas may be employed by one employer in Australia, and to increase the time that holders of these visas may engage in studies or training in Australia.

Schedule 7 – Amendments relating to the prescribed numbers of MRT and RRT members

Item [1] – Subregulation 4.22(2)

This item amends subregulation 4.22(2) of the Principal Regulations to replace the number “90” with the number “110”.

The effect of this amendment is that the prescribed maximum number of members (other than the Principal or Senior Members) that may be appointed to the Migration Review Tribunal in accordance with paragraph 395(c) of the *Migration Act 1958* is increased from 90 to 110.

The purpose of this amendment is to allow additional members to be appointed to the Migration Review Tribunal to cope with increased workloads.

Item [2] – Subregulation 4.29

This item amends regulation 4.29 of the Principal Regulations to replace the number “100” with the number “120”.

The effect of this amendment is that the prescribed maximum number of Senior Members and Members that may be appointed to the Refuge Review Tribunal in accordance with subsection 458(2) of the *Migration Act 1958* is increased from 100 to 120.

The purpose of this amendment is to allow additional members to be appointed to the Refugee Review Tribunal to cope with increased workloads.