EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 159

Issued by the Minister for Immigration
and Multicultural Affairs

Subject - *Migration Act 1958*

Migration Amendment Regulations 2006 (No. 4)

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 Regulations is to amend the *Migration Regulations 1994* (the Principal Regulations) to make changes necessary to ensure the intended operation of immigration policy. The changes include changes to fees and charges, the general skilled migration program, diplomatic and domestic worker visas and the skilled – designated area-sponsored visa.

In particular, the Regulations would:

- provide for the annual indexation of certain fees and charges in line with general price movements, an increase of 2.7% for most fees and charges, and 5.3% in relation to visa application charges subject to the Contributory Parent Visa Composite Index;
- enable the holders of certain bridging visas A and B to make valid applications for a Graduate – Skilled, or an Overseas Student General Skilled Migration visa;
- enable certain applicants who have a visa cancellation set aside by the Migration Review Tribunal to apply for a Skilled – Independent Regional (SIR) or Overseas Student General Skilled Migration visa;
- make the Department of Education, Science and Training (DEST), or a body authorised by DEST, the relevant Australian authority for assessment of skills and qualifications in place of the National Office of Overseas Skills Recognition (NOOSR) which is a body within DEST;
- provide for fees for assessments of an applicant's skills and qualifications by a government agency to be specified by the Minister in an instrument in writing;
- clarify that for the purpose of allocating Migration Occupation in Demand List (MODL) points, the relevant MODL is the list in force at the time of application or the time of assessment, whichever is more favourable to the applicant;
- require that where an assessment that an applicant's skills are suitable for a nominated occupation is based on an Australian qualification, obtained while the applicant held a student visa, that qualification must have been awarded as a result of full time study of a

Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) registered course;

- remove irrelevant criteria, relating to permanent settlement intentions, from the criteria for a New Zealand Citizen Family Relationship (Temporary) visa;
- allow representatives of certain international organisations recommended by the Minister for Foreign Affairs to satisfy a criterion for grant of a Diplomatic (Temporary) visa;
- enable an applicant seeking to accompany a person who satisfies the primary criteria for a Diplomatic (Temporary) visa to satisfy new secondary criteria for that visa;
- require all applicants, including applicants seeking to accompany a person who satisfies the primary criteria for a *Domestic Worker (Temporary) – Diplomatic or Consular visa*, to satisfy the primary criteria to be eligible for that visa; and
- replace the existing Skilled – Designated Area-sponsored visa with a new two stage Skilled – Designated Area-sponsored visa process. Applicants for the new permanent Skilled – Designated Area-sponsored (Residence) visa will be required to hold the new temporary Skilled – Designated Area-sponsored (Provisional) visa and live and work in a designated area for a specified period of time to satisfy the criteria for the grant of permanent residence.

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:

- the Department of Education, Science and Training and the Department of Employment and Workplace Relations (Schedule 2);
- the Department of Foreign Affairs and Trade (Schedule 3); and
- the Department of Family and Community Services (Schedule 4).

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(1) of the Act, which provides that the regulations may prescribe classes of visas;
- subsection 31(3) of the Act which provides that the regulations may prescribe criteria for a visa or visas of a specified class;
- subsection 31(4) of the Act, which provides that the regulations may prescribe whether visas of a class or a class of visas are to travel to and enter Australia, or to remain in Australia or both;
- subsection 31(5) of the Act, which provides that the regulations specify that a visa is a visa of a particular class;
- 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 40(2) of the Act, which provides that without limiting subsection 40(1), the circumstances may be, or may include, that, when the person is granted the visa, the person:
  - is outside Australia; or
  - is in immigration clearance; or
  - has been refused immigration clearance and has not subsequently been immigration cleared; or
  - is in the migration zone and, on last entering Australia, was immigration cleared or bypassed immigration clearance and had not subsequently been immigration cleared;
    - 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(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;
- subsection 45B(1) of the Act which provides that the amount of the visa application charge is the amount, not exceeding the visa application charge limit, prescribed in relation to the application (the visa application charge limit is determined under the *Migration (Visa Application) Charge Act 1997*);

- subsection 45B(2) of the Act which provides that the amount of visa application charge prescribed in relation to an application may be nil;
    - subsection 45C(1) of the Act, which provides that the regulations may provide that visa application charge may be payable in instalments, specify how those instalments are to be calculated and specify when instalments are payable;
- 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(2) of the Act, which provides that the regulations may provide that an application for a visa is valid if:
    - it is an application for a visa of a class prescribed for the purposes of this subsection; and
    - under the regulations, the application is taken to have been validly made.
- 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;
- subsection 46(4) of the Act, which provides that the regulations may prescribe, without limiting subsection 46(3):
    - the circumstances that must exist for an application for a visa of a specified class to be a valid application; and
    - how an application for a visa of a specified class must be made; and
    - where an application for a visa of a specified class must be made; and
    - where an applicant must be when an application for a visa of a specified class is made;
- section 70 of the Act, which provides that subject to the regulations, if a non-citizen is granted a visa, an officer is to give the non-citizen evidence of the visa;
- subsection 71(1) of the Act, which provides that evidence of a visa is to be given in a way prescribed for giving the evidence;
- subsection 71(2) of the Act, which provides that the regulations may provide that the way in which evidence of a visa or a visa of a class is to be given is to depend on the circumstances in which it is given;
- subsection 93(1) of the Act which provides that the Minister shall make an assessment of an applicant's points score by giving the applicant the prescribed number of points for each prescribed qualification that is satisfied in relation to the applicant; and
- paragraph 504(1)(a) of the Act which provides that the regulations may provide for the charging and recovery of fees in respect of any matter under the Act or the regulations.

ATTACHMENT B

Details of the *Migration Amendment Regulations 2006 (No. 4)*

Regulation 1 – Name of Regulations

This regulation provides that these Regulations are the *Migration Amendment Regulations 2006 (No. 4)*.

Regulation 2 – Commencement

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

Regulation 3 – Amendment of *Migration Regulations 1994*

Subregulation 3(1) provides that Schedules 1 to 3 to these Regulations amend the *Migration Regulations 1994* (the Principal Regulations).

Subregulation 3(2) provides that Schedule 4 to these Regulations amends the Principal Regulations, as amended by the *Migration Amendment Regulations 2006 (No.2).*

Regulation 4 – Transitional

Subregulation 4(1) provides that the amendments made by Schedule 1 apply in relation to charges and fees payable under the Principal Regulations on or after 1 July 2006.

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

Subregulation 4(3) provides that the amendments made by Part 2 of Schedule 2 apply in relation to an application for a visa:

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

Subregulation 4(4) provides that the amendments made by Schedule 3 apply in relation to an application for a visa made on or after 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.

Schedule 1 – Amendments relating to fees

Item [1] – Schedule 1, subparagraph 1218A(2)(b)(ii)

This item substitutes subparagraph 1218A(2)(b)(ii) of Item 1218A (Skilled – Independent Regional (Provisional) (Class UX) in Schedule 1 to the Principal Regulations, with new subparagraph 1218A(2)(b)(ii).

The purpose of this amendment is to increase the second instalment of the Visa Application Charge (VAC) for a Class UX visa, payable by an applicant who has turned 18 and is assessed as not having functional English; and has not previously held a Class UX visa, from $2,630 to $2,765.

This amendment raises the amount of the second instalment of the VAC payable by the relevant applicants to the intended level, which includes allowance for indexation from 1 July 2006. By oversight, the current figure was not indexed on 1 July 2005.

Item [2] – Schedule 1, paragraph 1220B(2)(a)

This item substitutes paragraph 1220B(2)(a) of Item 1220B (Sponsored Training (Temporary) (Class UV)) in Schedule 1 to the Principal Regulations, with new paragraph 1220B(2)(a).

The purpose of this amendment is to increase the first instalment of the VAC payable by an applicant for a Class UV visa seeking to satisfy the criteria for the grant of a Subclass 470 (Professional Development) visa, from $170 to $185.

This amendment raises the amount of the first instalment of the VAC payable by the relevant applicants to the intended level, which includes allowance for indexation from 1 July 2006. Because of an oversight, the unintended effect of amendments made on 1 November 2005 resulted in the current figure being lower than intended.

Item [3] – Schedule 1, subparagraph 1220B(2A)(b)(iiii)

This item substitutes subparagraph 1220B(2A)(b)(iiii) of Item 1220B (Sponsored Training (Temporary) (Class UV)) in Schedule 1 to the Principal Regulations, with new subparagraph 1220B(2A)(b)(iii).

The purpose of this amendment is to increase the second instalment of the VAC payable by certain applicants for a Class UV visa seeking to satisfy the criteria for the grant of a Subclass 471 (Trade Skills Training) visa, from $3,300 to $3,390. This increase is the result of annual indexation. This item also corrects a typographical error in the numbering of the subparagraph.

Item [4] – Further amendments

This item amends Parts 1 and 5 of the Principal Regulations, and Schedule 1 to the Principal Regulations, to provide for the annual indexation of specified fees and charges. The indexation will result in an increase to many fees and charges of 2.7% in line with general price movements. The increase does not exceed the charge limit calculated according to the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities)

published by the Australian Statistician. Because the amounts calculated are rounded, some charges will not change.

The second instalment of the VAC payable by applicants for Contributory Parent (Migrant) (Class CA), Contributory Aged Parent (Residence) (Class DG), Contributory Parent (Temporary)(Class UT), and Contributory Aged Parent (Temporary) (Class UU) visas is indexed in accordance with the Contributory Parent Visa Composite Index, as calculated by the Australian Government Actuary. These charges are indexed by 5.3%.

All increases are rounded to a multiple of $5.00 according to the following methodology:

- if the amount of the charge calculated under this formula is not a multiple of $5.00, and if the amount exceeds the nearest lower multiple of $5.00 by $2.50 or more, the amount is rounded up to the nearest $5.00;

- in any other case, where the charge calculated under the formula is not a multiple of $5.00, the amount is rounded down to the nearest lower multiple of $5.00.

The amount of the increases in these items do not exceed the applicable charge limits set out in sections 5 and 6 of the *Migration (Visa Application) Charge Act 1997*.

Schedule 2 - Amendments relating to general skilled migration

Part 1 Amendments applying in relation to an application for a visa made on or after 1 July 2006

Item [1] – Regulation 1.03, definition of *NOOSR*

This item omits the definition of *NOOSR* in regulation 1.03 in Division 1.2 of Part 1 of the Principal Regulations.

The purpose of this amendment is to remove the definition of *NOOSR*, consequential to amendments made by this Schedule which remove all uses of the term from the Principal Regulations. See items [2] and [4] below.

Item [2] – Subregulation 2.26(5), definition of *relevant Australian authority*, paragraph (a)

This item substitutes paragraph 2.26(5)(a) of the definition of *relevant Australian authority* in Division 2.6 of Part 2 of the Principal Regulations, with new paragraph 2.26(5)(a).

New paragraph 2.26(5)(a) provides that *relevant Australian authority* means Education or a body appointed in writing by Education to assess educational qualifications or work experience. *Education* is defined in regulation 1.03 as meaning the Department of Education, Science and Training (DEST). Paragraphs (b) and (c) remain unchanged.

The effect of this amendment is to replace the reference to *NOOSR* with a reference to *Education*. Due to organisational restructuring within DEST, NOOSR, a section within the department, is no longer conducting assessments. However, DEST still remains responsible for assessments of educational qualifications and work experience.

Item [3] – After subregulation 2.26A(5)

This item inserts new subregulation 2.26A(5AA) in Division 2.6 of Part 2 of the Principal Regulations.

New subregulation 2.26A(5AA) provides that in working out the number of points to be given to an applicant being assessed under Part 7 of Schedule 6A to the Principal Regulations, the Minister must have regard to the occupations that were specified as migration occupations in demand at the time the application was made, or the occupations that are specified as migration occupations in demand at the time the assessment mentioned in subsection 93(1) of the *Migration Act 1958* is made, whichever is more favourable to the applicant.

The purpose of this amendment is to clarify which Gazette Notice specifying occupations that are migration occupations in demand is relevant when deciding an applicant's points in relation to a nominated occupation for the purpose of the General Points test.

Item [4] – Subregulation 2.26B(1)

This item omits the reference to *NOOSR* in subregulation 2.26B(1) of Part 2 of Division 2.6 of the Principal Regulations and inserts a reference to *Education.*

The effect of this amendment is to provide that the Minister may, by notice in the Gazette, specify a person or body as the relevant assessing authority for a skilled occupation if the person or body is approved in writing by the Minister or DEST as the relevant assessing authority for the occupation. Subregulation 2.26B(2) is unchanged.

The purpose of this amendment is to remove the reference to *NOOSR* in the Principal Regulations and replace it with a reference to DEST. See the notes on item [2] of this Schedule, above, for further details of the background to this amendment.

Item [5] – Regulation 5.40

This item substitutes regulation 5.40 in Division 5.7 of Part 5 of the Principal Regulations, with new regulation 5.40 - "Fees for assessment of a person's work qualifications and experience etc".

New subregulation 5.40(1) provides that the fee payable to an Agency, within the meaning of the *Financial Management and Accountability Act 1997,* for an application for assessment, for the purposes of the *Migration Act 1958* (the Act), of a person's occupational qualifications or experience (or both), an application for assessment, for the purposes of the Act, of a person's educational qualifications, or an application for internal review of an assessment, is the fee specified by the Minister in an instrument in writing for this regulation.

New subregulation 5.40(2) provides, subject to subregulation (3), that if on an internal review of an assessment, a review authority decides in favour of the applicant, the fee paid for the internal review is to be refunded.

New subregulation 5.40(3) provides that a fee paid for an internal review is not to be refunded if the applicant provided evidence for the purposes of the review that was not provided for the purposes of the application for assessment.

The effect of this amendment is to provide that the relevant fees may be specified by the Minister in an instrument in writing, rather than the fees being prescribed directly in the Principal Regulations. This allows the fees to be changed more readily, if the need arises in the future. The amendment also sets out the circumstances in which an applicant is or is not entitled to a refund of the fee paid for an assessment following a review of the original assessment.

Item [6] – Schedule 1, subparagraphs 1128BA(3)(d)(i) and (ii)

This item amends subparagraphs 1128BA(3)(d)(i) and (ii) of Item 1128BA (Skilled – Australian-sponsored Overseas Student (Residence)(Class DE)) of Schedule 1 to the Principal Regulations, by omitting each mention of "Graduate – Skilled (Temporary)(Class UQ) visa" and inserting a reference to a "visa other than a visa mentioned in paragraph (e)".

The purpose of this amendment is to enable any person who holds a Bridging A visa or Bridging B visa granted on the basis of a valid application for any visa, other than an application for certain student visas listed in paragraph 1128BA(3)(e), to make a valid application for a Class DE visa.

Item [7] – Schedule 1, after paragraph 1128BA(3)(d)

This item inserts new paragraphs 1128BA(3)(da) and (db) in Item 1128BA (Skilled – Australian-sponsored Overseas Student (Residence)(Class DE)) of Schedule 1 to the Principal Regulations.

New paragraph 1128BA(3)(da) provides that an applicant is taken to have complied with paragraph (d) if the applicant is able to satisfy all the criteria specified in subparagraphs (i), (ii), (iii) and (iv). Subparagraph (i) provides that the applicant must not hold a substantive visa. Subparagraph (ii) provides that the last substantive visa held by the applicant must have been cancelled and the Migration Review Tribunal has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation. Subparagraph (iii) provides that the last substantive visa held by the applicant must have been a visa other than a visa of a kind mentioned in paragraph (e). Subparagraph (iv) provides that the applicant must have lodged the application within 28 days after the day when the applicant is taken, under sections 368C, 368D and 379C of the *Migration Act 1958*, to have been notified of the Tribunal's decision.

The purpose of this amendment is to provide an opportunity for applicants who have had their last substantive visa cancelled, and the Migration Review Tribunal has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation, to make a valid application for a Class DE visa provided the application is made within 28 days of being notified of the Tribunal's decision. However, this amendment does not apply to applicants whose last substantive visa was a visa of a kind mentioned in paragraph 1128BA(3)(e).

New paragraph 1128BA(3)(db) provides that if the last substantive visa, held by the applicant who is taken under paragraph (da) to have complied with paragraph (d), was not a Subclass 560, 562, 563, 572, 573 or 574 visa, the applicant must have been, at some time in the 6 months immediately before that visa was cancelled, the holder of a Subclass 560, 562, 563, 572, 573 or 574 visa that was not of a kind mentioned in paragraph (e).

The purpose of this amendment is to require that, to make a valid application for a Class DE visa, where an applicant is taken under new paragraph (da) to have complied with paragraph (d) but the last substantive visa held by the applicant was not a specified student visa, the applicant must, within the last 6 months, have held one of those student visas, but not a visa of a kind mentioned in paragraph (e).

Item [8] – Schedule 1, subparagraphs 1128CA(3)(e)(i) and (ii)

This item amends subparagraphs 1128CA(3)(e)(i) and (ii) of Item 1128CA (Skilled – Independent Overseas Student (Residence)(Class DD)) of Schedule 1 to the Principal Regulations, by omitting each mention of "Graduate – Skilled (Temporary) (Class UQ) visa" and inserting a reference to a "visa other than a visa mentioned in paragraph (f)".

The purpose of this amendment is to enable a person who holds a Bridging A visa or Bridging B visa granted on the basis of a valid application for any visa, other than an application for certain student visas listed in paragraph 1128CA(3)(f), to make a valid application for a Class DD visa.

Item [9] – Schedule 1, after paragraph 1128CA(3)(e)

This item inserts new paragraphs 1128CA(3)(ea) and (eb) in Item 1128CA (Skilled – Independent Overseas Student (Residence) (Class DD)) of Schedule 1 to the Principal Regulations.

New paragraph 1128CA(3)(ea) provides that an applicant is taken to have complied with paragraph (e) if the applicant is able to satisfy all the criteria specified in subparagraphs (i), (ii), (iii) and (iv). Subparagraph (i) provides that the applicant must not hold a substantive visa. Subparagraph (ii) provides that the last substantive visa held by the applicant must have been cancelled and the Migration Review Tribunal has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation. Subparagraph (iii) provides that the last substantive visa held by the applicant must have been a visa other than a visa of a kind mentioned in paragraph (f). Subparagraph (iv) provides that the applicant must have lodged the application within 28 days after the day when the applicant is taken, under sections 368C, 368D and 379C of the *Migration Act 1958*, to have been notified of the Tribunal's decision.

The purpose of this amendment is to provide an opportunity for applicants who have had their last substantive visa cancelled and the Migration Review Tribunal has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation, to make a valid application for a Class DD visa provided the application is made within 28 days of being notified of the Tribunal's decision. However, this amendment does not apply to applicants whose last substantive visa was a visa of a kind mentioned in paragraph 1128CA(3)(f).

New paragraph 1128CA(3)(eb) provides that if the last substantive visa held by an applicant who is taken under paragraph (ea) to have complied with paragraph (e), was not a Subclass 560, 562, 563, 572, 573 or 574 visa, the applicant must have been, at some time in the 6 months immediately before that visa was cancelled, the holder of a Subclass 560, 562, 563, 572, 573 or 574 visa that was not of a visa of a kind mentioned in paragraph (f).

The purpose of this amendment is to require that, to make a valid application for a Class DD visa, where an applicant is taken under new paragraph (eb) to have complied with paragraph (e) but the last substantive visa held by the applicant was not a specified student visa, the applicant must, within the last 6 months, have held one of those specified student visas but not a visa of a kind mentioned in paragraph (f).

Item [10] – Schedule 1, after paragraph 1212A(3)(c)

This item inserts new paragraph 1212A(3)(ca) in Item 1212A (Graduate – Skilled (Temporary) (Class UQ)) of Schedule 1 to the Principal Regulations.

New paragraph 1212A(3)(ca) provides that to make a valid application for a Class UQ visa the applicant may be the holder of a Bridging A (Class WA) visa granted because the applicant met the requirements of subclause 010.211(2) or (3) of Schedule 2 to the Principal Regulations on the basis of a valid application for a visa other than a visa mentioned in paragraph (d); or the holder of a Bridging B (Class WB) visa granted because the applicant met the requirements of subclause 020.212(2) or (3) of Schedule 2 on the basis of a valid application for a visa other than a visa mentioned in (d); or a person to whom paragraph (d) applies (ie, a person who holds any substantive visa, other than a visa of a kind mentioned in that paragraph).

The purpose of this amendment is to enable a person, who holds a Bridging A visa or Bridging B visa granted on the basis of a valid application for any visa, other than an application for certain student visas listed in paragraph 1212A(3)(d), to make a valid application for a Class UQ visa.

Item [11] – Schedule 1, paragraph 1212A(3)(d)

This item amends paragraph 1212A(3)(d) of Item 1212A (Graduate – Skilled (Temporary) (Class UQ)) of Schedule 1 to the Principal Regulations by omitting the words “Applicant must be” and inserting the words “This paragraph applies to an applicant who is”. Subparagraphs 1212A(3)(d)(i) and (ii) remain unchanged. This is a technical amendment, consequential to the amendment made by item [10] above.

Item [12] – Schedule 1, subparagraph 1212A(3)(da)(iii)

This item amends subparagraph 1212A(3)(da)(iii) of Item 1212A (Graduate – Skilled (Temporary) (Class UQ)) of Schedule 1 to the Principal Regulations by omitting the words “, at the time of cancellation,”. This amendment is a technical amendment to remove superfluous words and to make this subparagraph consistent with provisions inserted by items [7], [9] and [13] of this Schedule.

Item [13] – Schedule 1, after paragraph 1218A(5)(a)

This item inserts new paragraphs 1218A(5)(ab) and (ac) in Item 1218A (Skilled – Independent Regional (Provisional) (Class UX)) of Schedule 1 to the Principal Regulations.

New paragraph 1218A(5)(ab) provides that an applicant is taken to have complied with paragraph (a) if the applicant is able to satisfy all the criteria specified in subparagraphs (i), (ii), (iii) and (iv). Subparagraph (i) provides that the applicant must not hold a substantive visa. Subparagraph (ii) provides that the last substantive visa held by the applicant must have been cancelled and the Migration Review Tribunal has made a decision to set aside and

substitute the cancellation decision or the Minister's decision not to revoke the cancellation. Subparagraph (iii) provides that the last substantive visa must have been a visa other than a visa of a kind mentioned in paragraph (b). Subparagraph (iv) provides that the applicant must have lodged the application within 28 days after the day when the applicant is taken, under sections 368C, 368D and 379C of the *Migration Act 1958*, to have been notified of the Tribunal's decision.

The purpose of this amendment is to provide an opportunity for applicants who have had their last substantive visa cancelled and the Migration Review Tribunal has made a decision to set aside and substitute the cancellation decision or the Minister's decision not to revoke the cancellation, to make a valid application for a Class UX visa within 28 days of being notified of the Tribunal's decision. However, this amendment does not apply to applicants whose last substantive visa was a visa of a kind mentioned in 1218A(5)(b).

New paragraph 1218A(5)(ac) provides that if the last substantive visa held by an applicant who is taken under new paragraph (ab) to have complied with paragraph (a), was not a Subclass 560, 562, 563, 572, 573 or 574 visa, the applicant must have been, at some time in the 6 months immediately before that visa was cancelled, the holder of a Subclass 560, 562, 563, 572, 573 or 574 visa that was not granted because of circumstances listed in paragraph 1218A(5)(b).

The purpose of this amendment is to require that, to make a valid application for a Class UX visa, where an applicant is taken under new paragraph (ac) to have complied with paragraph (a) but the last substantive visa held by the applicant was not a specified student visa, the applicant must, within the last 6 months, have held one of those specified student visas but not a visa of a kind mentioned in paragraph (b).

Item [14] – Schedule 2, clause 134.214

This item makes a technical amendment to clause 134.214 of Part 134 (Subclass 134 – Skill Matching) of Schedule 2 to the Principal Regulations. The purpose of this amendment is to restructure this clause into a subclause to enable a new subclause to be inserted (see item [15], below). The existing provisions are unchanged.

Item [15] – Schedule 2, clause 134.214

This item inserts new subclause 134.214(2) in Part 134 (Subclass 134 – Skill Matching) of Schedule 2 to the Principal Regulations.

New subclause 134.214(2) provides that if the skills assessment mentioned in subclause (1) is made on the basis of a qualification obtained in Australia while the applicant was the holder of a student visa, the qualification must have been obtained as a result of studying a full time registered course.

The purpose of this amendment is to ensure that where an applicant seeks to satisfy the primary criteria for the grant of a Subclass 134 visa on the basis of an Australian qualification obtained while the applicant was the holder of a student visa, the qualification must have been obtained as a result of studying a full time course that is registered on the Commonwealth Register of Institutions and Courses for Overseas Students. (Note: The term *registered course* is defined in regulation 1.03 of the Principal Regulations.)

Item [16] – Schedule 2, clause 137.213

This item makes a technical amendment to clause 137.213 of Part 137 (Subclass 137 – Skilled – State/Territory-nominated Independent) of Schedule 2 to the Principal Regulations. The purpose of this amendment is to restructure this clause into a subclause to enable a new subclause to be inserted (see item [17] below). The existing provisions are unchanged.

Item [17] – Schedule 2, clause 137.213

This item inserts new subclause 137.213(2) in Part 137 (Subclass 137 – Skill – State/Territory-nominated Independent) of Schedule 2 to the Principal Regulations.

New subclause 137.213(2) provides that if the skills assessment mentioned in subclause (1) is made on the basis of a qualification obtained in Australia while the applicant was the holder of a student visa, the qualification must have been obtained as a result of studying a full time registered course.

The effect of this amendment is similar to the amendment made to Part 134 by item [15] of this Schedule, above. For details, please see the notes on that item.

Part 2 Amendments applying in relation to an application for a visa made but not finally determined before 1 July 2006 or made on or after 1 July 2006

Item [18] – Schedule 2, clause 136.222

This item makes a technical amendment to clause 136.222 of Part 136 (Subclass 136 – Skilled - Independent) of Schedule 2 to the Principal Regulations. The purpose of this amendment is to restructure this clause into a subclause to enable a new subclause to be inserted (see item [19], below). The existing provisions are unchanged.

Item [19] – Schedule 2, clause 136.222

This item inserts new subclause 136.222(2) in Part 136 (Subclass 136 – Skilled - Independent) of Schedule 2 to the Principal Regulations.

New subclause 136.222(2) provides that if the skills assessment mentioned in subclause (1) is made on the basis of a qualification obtained in Australia while the applicant was the holder of a student visa, the qualification must have been obtained as a result of studying a full time registered course.

The purpose of this amendment is to ensure that where an applicant seeks to satisfy the primary criteria for the grant of a Subclass 136 visa on the basis of an Australian qualification obtained while the applicant was the holder of a student visa, the qualification must have been obtained as a result of studying a full time course that is registered on the Commonwealth Register of Institutions and Courses for Overseas Students. (Note: The term *registered course* is defined in regulation 1.03 of the Principal Regulations.)

Item [20] – Schedule 2, clause 138.224

This item makes a technical amendment to clause 138.224 of Part 138 (Subclass 138 – Skilled – Australian-sponsored) of Schedule 2 to the Principal Regulations. The purpose of this amendment is to restructure this clause into a subclause to enable a new subclause to be inserted (see item [21], below). The existing provisions are unchanged.

Item [21] – Schedule 2, clause 138.224

This item inserts new subclause 138.224(2) in Part 138 (Subclass 138 – Skilled – Australian-sponsored visa) of Schedule 2 to the Principal Regulations.

New subclause 138.224(2) provides that if the skills assessment mentioned in subclause (1) is made on the basis of a qualification obtained in Australia while the applicant was the holder of a student visa, the qualification must have been obtained as a result of studying a full time registered course.

The effect of this amendment is similar to the amendment made to Part 136 by item [19] of this Schedule, above. For details, please see the notes on that item.

Item [22] – Schedule 2, clause 139.225

This item makes a technical amendment to clause 139.225 of Part 139 (Subclass 139 – Skilled – Designated Area-sponsored) of Schedule 2 to the Principal Regulations. The purpose of this amendment is to restructure this clause into a subclause to enable a new subclause to be inserted (see item [23], below). The existing provisions are unchanged.

Item [23] – Schedule 2, clause 139.225

This item inserts new subclause 139.225(2) in Part 139 (Subclass 139 – Skilled – Designated Area-sponsored) of Schedule 2 to the Principal Regulations.

New subclause 139.225(2) provides that if the skills assessment mentioned in subclause (1) is made on the basis of a qualification obtained in Australia while the applicant was the holder of a student visa, the qualification must have been obtained as a result of studying a full time registered course.

The effect of this amendment is similar to the amendment made to Part 134 by item [19] of this Schedule, above. For details, please see the notes on that item.

Item [24] – Schedule 2, clause 461.223

This item amends clause 461.223 of Part 461 (Subclass 461 – New Zealand Citizen Family Relationship (Temporary)) of Schedule 2 to the Principal Regulations by omitting the reference to public interest criteria 4009 (PIC 4009).

The effect of this amendment is that an applicant for a Subclass 461 visa is not required to satisfy PIC 4009. PIC 4009 requires the applicant to intend to live permanently in Australia. This is inconsistent with the purpose of Subclass 461 which is a temporary visa, permitting the holder to travel to, enter and remain in Australia for a period of 5 years from the date of grant.

Item [25] – Schedule 2, clause 495.232

This item makes a technical amendment to clause 495.232 of Part 495 (Subclass 495 – Skilled – Independent Regional (Provisional)) of Schedule 2 to the Principal Regulations. The purpose of this amendment is to restructure this clause into a subclause to enable a new subclause to be inserted (see item [26], below). The existing provisions are unchanged.

Item [26] – Schedule 2, clause 495.232

This item inserts new subclause 495.232(2) in Part 495 (Subclass 495 - Skilled – Independent Regional (Provisional)) of Schedule 2 to the Principal Regulations.

New subclause 495.232(2) provides that if the skills assessment mentioned in subclause (1) is made on the basis of a qualification obtained in Australia while the applicant was the holder of a student visa, the qualification must have been obtained as a result of studying a full time registered course.

The effect of this amendment is similar to the amendment made to Part 134 by item [19] of this Schedule, above. For details, please see the notes on that item.

Item [27] – Schedule 2, clause 861.222

This item makes a technical amendment to clause 861.222 of Part 861 (Subclass 861 – Skilled – Onshore Independent New Zealand Citizen) of Schedule 2 to the Principal Regulations. The purpose of this amendment is to restructure this clause into a subclause to enable a new subclause to be inserted (see item [28], below). The existing provisions are unchanged.

Item [28] – Schedule 2, clause 861.222

This item inserts new subclause 861.222(2) in Part 861 (Subclass 861 – Skilled – Onshore Independent New Zealand Citizen) of Schedule 2 to the Principal Regulations.

New subclause 861.222(2) provides that if the skills assessment mentioned in subclause (1) is made on the basis of a qualification obtained in Australia while the applicant was the holder of a student visa, the qualification must have been obtained as a result of studying a full time registered course.

The effect of this amendment is similar to the amendment made to Part 134 by item [19] of this Schedule, above. For details, please see the notes on that item.

Item [29] – Schedule 2, clause 862.224

This item makes a technical amendment to clause 862.224 of Part 862 (Subclass 862 – Skilled – Onshore Australian-sponsored New Zealand Citizen) of Schedule 2 to the Principal Regulations. The purpose of this amendment is to restructure this clause into a subclause to enable a new subclause to be inserted (see item [30], below). The existing provisions are unchanged.

Item [30] – Schedule 2, clause 862.224

This item inserts new subclause 862.224(2) in Part 862 (Subclass 862 – Skilled – Onshore Australian-sponsored New Zealand Citizen) of Schedule 2 to the Principal Regulations.

New subclause 862.224(2) provides that if the skills assessment mentioned in subclause (1) is made on the basis of a qualification obtained in Australia while the applicant was the holder of a student visa, the qualification must have been obtained as a result of studying a full time registered course.

The effect of this amendment is similar to the amendment made to Part 134 by item [19] of this Schedule, above. For details, please see the notes on that item.

Item [31] – Schedule 2, clause 863.225

This item makes a technical amendment to clause 863.225 of Part 863 (Subclass 863 – Skilled – Onshore Designated Area-sponsored New Zealand Citizen) of Schedule 2 to the Principal Regulations. The purpose of this amendment is to restructure this clause into a subclause to enable a new subclause to be inserted (see item [32], below). The existing provisions are unchanged.

Item [32] – Schedule 2, clause 863.225

This item inserts new subclause 863.225(2) in Part 863 (Subclass 863 – Skilled – Onshore Designated Area-sponsored New Zealand Citizen) of Schedule 2 to the Principal Regulations.

New subclause 863.225(2) provides that if the skills assessment mentioned in subclause (1) is made on the basis of a qualification obtained in Australia while the applicant was the holder of a student visa, the qualification must have been obtained as a result of studying a full time registered course.

The effect of this amendment is similar to the amendment made to Part 134 by item [19] of this Schedule, above. For details, please see the notes on that item.

Item [33] – Schedule 2, clause 880.230

This item makes a technical amendment to clause 880.230 of Part 880 (Subclass 880 – Skilled – Independent Overseas Student) of Schedule 2 to the Principal Regulations. The purpose of this amendment is to restructure this clause into a subclause to enable a new subclause to be inserted (see item [34], below). The existing provisions are unchanged.

Item [34] – Schedule 2, clause 880.230

This item inserts new subclause 880.230(2) in Part 880 (Subclass 880 – Skilled – Independent Overseas Student) of Schedule 2 to the Principal Regulations.

New subclause 880.230(2) provides that if the skills assessment mentioned in subclause (1) is made on the basis of a qualification obtained in Australia while the applicant was the holder of a student visa, the qualification must have been obtained as a result of studying a full time registered course.

The effect of this amendment is similar to the amendment made to Part 134 by item [19] of this Schedule, above. For details, please see the notes on that item.

Item [35] – Schedule 2, clause 881.232

This item makes a technical amendment to clause 881.232 of Part 881 (Subclass 881 – Skilled – Australian-sponsored Overseas Student) of Schedule 2 to the Principal Regulations. The purpose of this amendment is to restructure this clause into a subclause to enable a new subclause to be inserted (see item [36], below). The existing provisions are unchanged.

Item [36] – Schedule 2, clause 881.232

This item inserts new subclause 881.232(2) in Part 881 (Subclass 881 – Skilled – Australian-sponsored Overseas Student) of Schedule 2 to the Principal Regulations.

New subclause 881.232(2) provides that if the skills assessment mentioned in subclause (1) is made on the basis of a qualification obtained in Australia while the applicant was the holder of a student visa, the qualification must have been obtained as a result of studying a full time registered course.

The effect of this amendment is similar to the amendment made to Part 134 by item [19] of this Schedule, above. For details, please see the notes on that item.

Item [37] – Schedule 2, clause 882.233

This item makes a technical amendment to clause 882.233 of Part 882 (Subclass 882 – Skilled – Designated Area-sponsored Overseas Student) of Schedule 2 to the Principal Regulations. The purpose of this amendment is to restructure this clause into a subclause to enable a new subclause to be inserted (see item [38], below). The existing provisions are unchanged.

Item [38] – Schedule 2, clause 882.233

This item inserts new subclause 882.233(2) in Part 882 (Subclass 882 – Skilled – Designated Area-sponsored Overseas Student) of Schedule 2 to the Principal Regulations.

New subclause 882.233(2) provides that if the skills assessment mentioned in subclause (1) is made on the basis of a qualification obtained in Australia while the applicant was the holder of a student visa, the qualification must have been obtained as a result of studying a full time registered course.

The effect of this amendment is similar to the amendment made to Part 134 by item [19] of this Schedule, above. For details, please see the notes on that item.

Item [39] – Schedule 6A, Part 8, item 6A81, paragraph (b)

This item amends paragraph (b) of item 6A81 of Part 8 (Bonus points qualification) of Schedule 6A (General points test – qualifications and points) to the Principal Regulations, by omitting the word ‘substantive’.

The effect of this amendment is to enable the award of bonus points under item 6A81 to applicants to whom it applies (that is, applicants for Class BQ (Skilled – Australian-sponsored (Migrant)), Class DB (New Zealand Citizen (Residence)), Class DD (Skilled – Independent Overseas Student (Residence)), and Class DE (Skilled – Australian-sponsored Overseas Student (Residence)) visas) on the basis of relevant employment in Australia as the holder of any visa, substantive or bridging, authorising the applicant to work in Australia. This amendment changes the current position under which bonus points are available only on the basis of employment while holding a substantive visa.

Item [40] – Schedule 6A, Part 8, item 6A82, paragraph (b)

This item amends paragraph (b) of item 6A82 of Part 8 (Bonus points qualification) of Schedule 6A (General points test – qualifications and points) to the Principal Regulations by omitting the word 'substantive'.

The effect of this amendment in respect of applicants to whom item 6A82 applies (that is, applicants for Class BN (Skilled – Independent (Migrant)) and Class UX (Skilled – Independent Regional (Provisional)) visas) is the same as the effect of the amendment to item 6A81 made by item [39] of this Schedule, above, in respect of the relevant applicants to whom item 6A81 applies. For details, please see the notes on item [39], above.

Item [41] – Schedule 6A, Part 9, item 6A91, paragraph (d)

This item amends paragraph (d) of item 6A91 of Part 9 (Sponsorship qualification – general) of Schedule 6A (General points test – qualifications and points) to the Principal Regulations, by omitting the word "applicant" and substituting the words "applicant; or".

The purpose of this technical amendment is to allow the addition of a subsequent new paragraph (e) by item [42] of this Schedule, below. The existing provisions are unchanged.

Item [42] – Schedule 6A, Part 9, item 6A91, after paragraph (d)

This item inserts new paragraph (e) in item 6A91 of Part 9 (Sponsorship qualification – general) of Schedule 6A (General points test – qualifications and points) to the Principal Regulations.

New paragraph 6A91(e) provides that relevant applicants who are sponsored by his or her niece or nephew, adoptive niece or nephew or step niece or nephew (in addition to any of the relatives mentioned in current paragraphs (a), (b), (c) or (d)), are entitled to the award of 15 points under this Part of the General Points Test.

Schedule 3 – Amendments relating to diplomatic visas

Item [1] – Schedule 1, paragraph 1206(3)(d)

This item omits paragraph 1206(3)(d) of item 1206 (Diplomatic (Temporary) (Class TF)) of Schedule 1 to the Principal Regulations.

The purpose of this amendment is to remove provision for members of the family unit to make a combined application for a Subclass 995 (Diplomatic (Temporary)) visa. This provision is irrelevant to an application for a visa of this subclass.

Item [2] – Schedule 1, paragraph 1207(3)(c)

This item substitutes paragraph 1207(3)(c) of item 1207 (Domestic Worker (Temporary) (Class TG)) of Schedule 1 to the Principal Regulations, with new paragraph 1207(3)(c).

New paragraph 1207(3)(c) provides that an application by a person claiming to be a member of the family unit of a person seeking to satisfy the criteria for a Subclass 427 (Domestic Worker (Temporary) – Executive) visa may be made at the same time and place as, and combined with, an application by any other member of the family unit seeking to satisfy either the primary or secondary criteria for a Subclass 427 (Domestic Worker (Temporary) – Executive) visa.

This amendment is consequential to the amendment to remove secondary criteria from the Subclass 426 (Domestic Worker (Temporary) – Diplomatic or Consular) visa made by item [6] of this Schedule. The amendment removes provision for combined applications for a Subclass 426 visa to be made by persons claiming to be a member of the family unit of an applicant seeking to satisfy the primary criteria. Members of the family unit will only be able to make a combined application when applying for a Subclass 427 (Domestic Worker (Temporary) – Executive) visa, in respect of which secondary criteria continues to be prescribed.

Item [3] – Schedule 2, Division 426.2, note

This item substitutes the note in Division 426.2 of Part 426 of Schedule 2 to the Principal Regulations with a new note. The new note advises that all applicants must satisfy the primary criteria.

The purpose of this amendment is to make it clear that all applicants for a Subclass 426 (Domestic Worker (Temporary) – Diplomatic or Consular) visa must satisfy the primary criteria. This amendment is consequential to the amendment made by item [6] of this Schedule to remove secondary criteria from the Subclass 426 visa.

Item [4] – Schedule 2, subparagraph 426.222(b)(i)

This item substitutes subparagraph 426.222(b)(i) in Part 426 of Schedule 2 to the Principal Regulations, with new subparagraph 426.222(b)(i).

New subparagraph 426.222(b)(i) requires the Minister to be satisfied that the applicant seeks to enter Australia to undertake full-time domestic duties in the household of a holder of a Subclass 995 (Diplomatic (Temporary)) visa.

The effect of this amendment is to allow applicants for a Subclass 426 (Domestic Worker (Temporary) – Diplomatic or Consular) visa to provide full-time domestic duties to a wider range of employers. The amendment changes the previous provision which only allows applicants to undertake full-time domestic duties for diplomatic or consular representatives

of another country. This amendment is consequential to the amendment made by item [11] of this Schedule, below, which extends eligibility for the grant of a Subclass 995 visa to representatives of certain international organisations, as well as diplomatic or consular representatives of another country.

Item [5] – Schedule 2, subparagraph 426.227(b)(i)

This item substitutes subparagraph 426.227(b)(i) in Part 426 of Schedule 2 to the Principal Regulations, with new subparagraph 426.227(b)(i).

New subparagraph 426.227(b)(i) requires the Minister to be satisfied that the applicant seeks to remain in Australia to undertake full-time domestic duties in the household of a holder of a Subclass 995 (Diplomatic (Temporary)) visa.

The effect of this amendment is the same as the effect of the amendment made by item [4] of this Schedule, above. Please see the notes on that item for details.

Item [6] – Schedule 2, Division 426.3

This item substitutes Division 426.3 of Part 426 of Schedule 2 to the Principal Regulations, with new Division 426.3.

New Division 426.3 provides that there are no secondary criteria that may be satisfied for grant of a Subclass 426 (Domestic Worker (Temporary) – Diplomatic or Consular) visa.

The effect of this amendment is to remove, from the Subclass 426 (Domestic Worker (Temporary) – Diplomatic or Consular) visa, the secondary criteria. All applicants for a Subclass 426 visa will now be required to satisfy the primary criteria.

Item [7] – Schedule 2, Clause 426.611

This item substitutes clause 426.611 in Part 426 of Schedule 2 to the Principal Regulations, with new clause 426.611.

New clause 426.611 imposes conditions 8110 and 8516, as set out in Schedule 8 to the Principal Regulations, on the grant of a Subclass 426 (Domestic Worker (Temporary) – Diplomatic or Consular) visa. This amendment removes the requirement that condition 8107 be imposed on a Subclass 426 visa granted to applicants who satisfy the primary criteria.

The effect of this amendment is that conditions 8110 (which requires that the visa holder must work only in the household of the employer in respect of whom the visa was granted and must not, without written permission, remain in Australia after the permanent departure of that employer) and 8516 (which requires the visa holder to continue to satisfy the criteria for grant of the visa) will be imposed on all Subclass 426 visas granted from 1 July 2006. Condition 8107 (which required that the visa holder must not cease to be employed by the employer in respect of whom the visa was granted, and must not engage in a position inconsistent with that employment) will no longer be imposed on a Subclass 426 visa. The requirements in condition 8107 have been incorporated into the amendments made to clause 8110 of Schedule 8 by item [15] of this Schedule, below.

Item [8] – Schedule 2, Clause 426.612

This item omits the reference to '8516' from clause 426.612 in Part 426 of Schedule 2 to the Principal Regulations.

Clause 426.612 now provides that any 1 or more of conditions 8106, 8301, 8303, 8501, 8502, 8503, 8522, 8525 and 8526 may be imposed on the grant of a Subclass 426 (Domestic Worker (Temporary) – Diplomatic or Consular) visa.

This amendment is consequential to the amendment made by item [7] of this Schedule, the effect of which is to impose condition 8516 automatically on all grants of a Subclass 426 visa.

Item [9] – Schedule 2, Division 995.1, including the note

This item substitutes Division 995.1, including the note, of Part 995 of Schedule 2 to the Principal Regulations, with new Division 995.1.

New Division 995.1 has one clause 995.111, which provides that for the purposes of Part 995 the term *international representative* means a representative of an international organisation. This amendment is consequential to the introduction of this term into Part 995 as a result of the amendment made by item [11] of this Schedule, below.

Item [10] – Schedule 2, Division 995.2, note

This item substitutes the note in Division 995.2 of Part 995 of Schedule 2 to the Principal Regulations, with a new note.

The new note advises that the primary criteria must be satisfied by at least one person. Other accompanying applicants for a Subclass 995 visa need satisfy only the secondary criteria.

The new note clarifies that only one applicant need satisfy the primary criteria and other applicants need only satisfy the secondary criteria. This amendment is consequential to the amendments made by item [12] of this Schedule, below, which insert secondary criteria for the grant of a Subclass 995 (Diplomatic (Temporary)) visa.

Item [11] – Schedule 2, clause 995.221

This item substitutes clause 995.221 in Part 995 of Schedule 2 to the Principal Regulations, with new clause 995.221.

New clause 995.221 provides that, to be granted a Subclass 995 (Diplomatic (Temporary)) visa, the Minister for Foreign Affairs must recommend in writing to the Minister that the visa be granted to the applicant on the basis of the applicant being a diplomatic or consular representative, or an international representative.

The amendment retains the current requirement that the Minister for Foreign Affairs must recommend in writing to the Minister for Immigration and Multicultural Affairs that the visa be granted to the applicant, but inserts an additional provision that the recommendation may

be made on the basis of the applicant being an international representative (as defined in new clause 995.111, inserted by item [9] of this Schedule, above) as well as the current provision for a recommendation to be made on the basis that the applicant is a diplomatic or consular representative (as defined in section 5 of the *Migration Act 1958*).

The effect of this amendment is to extend eligibility for a Subclass 995 (Diplomatic (Temporary)) visa to representatives of certain international organisations. The amendment also has the effect of distinguishing between recommendations made by the Minister for Foreign Affairs in respect of applicants seeking to satisfy the primary criteria, and recommendations in respect of applicants seeking to satisfy the secondary criteria under new Division 995.3, inserted by item [12] of this Schedule (see below). Applicants seeking to satisfy the secondary criteria must be recommended by the Minister for Foreign Affairs under new clause 995.321.

Item [12] – Schedule 2, Division 995.3

This item substitutes Division 995.3 of Part 995 of Schedule 2 to the Principal Regulations, with a new Division 995.3. The effect of new Division 995.3 is to insert Secondary Criteria for the grant of a Subclass 995 (Diplomatic (Temporary)) visa. Previously, all applicants were required to satisfy the primary criteria.

New subdivision 995.31 provides that there are no secondary criteria to be satisfied by an applicant for a Subclass 995 (Diplomatic (Temporary)) visa at the time of application.

New subdivision 995.32 sets out the secondary criteria to be satisfied by an applicant at the time of decision.

New clause 995.321 requires that the Minister for Foreign Affairs must have recommended in writing to the Minister for Immigration and Multicultural Affairs that the visa be granted to the applicant to accompany a person (the *primary applicant*) who seeks to satisfy the primary criteria.

New clause 995.322 requires that the primary applicant (the person who sought to satisfy the primary criteria) must have satisfied the relevant criteria for the grant of a Subclass 995 (Diplomatic (Temporary)) visa.

New clause 995.323 requires that the Minister for Immigration and Multicultural Affairs must be satisfied that the applicant is the holder of a valid passport that was issued to the applicant by an official source and in the form issued by the official source, or that it would be unreasonable to require the applicant to be the holder of a passport.

Item [13] – Paragraph 995.511(b)

This item substitutes paragraph 995.511(b) in Part 995 of Schedule 2 to the Principal Regulations, with new paragraph 995.511(b).

New paragraph 995.511(b) provides that the Subclass 995 (Diplomatic (Temporary)) visa is a temporary visa permitting the holder to remain in Australia:

- if the visa was issued on the basis of the holder satisfying the primary criteria for the grant of the visa – for the duration of the holder's status as a diplomatic or

consular representative in Australia of a country other than Australia, or as an international representative; or

- if the visa was issued on the basis of the holder satisfying the secondary criteria for the grant of the visa – for the duration of the status of the person who satisfied the primary criteria as a diplomatic or consular representative in Australia of a country other than Australia, or as an international representative; or
- in any case – until an earlier date specified by the Minister.

The effect of this amendment is that, unless the Minister for Immigration and Multicultural Affairs specifies an earlier date, holders of a Subclass 995 (Diplomatic (Temporary)) visa who satisfy the primary criteria are permitted to remain in Australia for the duration of the holder's status as a diplomatic or consular representative, or international representative. A Subclass 995 visa granted to an applicant who satisfies the secondary criteria on the basis of accompanying a diplomatic, consular or international representative who satisfies the primary criteria, is permitted to remain, unless the Minister specifies an earlier date, for the duration of the status of the person who satisfies the primary criteria as a diplomatic, consular or international representative, as held when the Subclass 995 visa was granted.

Item [14] – Schedule 2, Division 995.6

This item substitutes Division 995.6 of Part 995 of Schedule 2 to the Principal Regulations with a new Division 995.6.

New Division 995.6 specifies the conditions that apply to a Subclass 995 (Diplomatic (Temporary)) visa.

New clause 995.611 provides that, if the applicant satisfies the primary criteria, condition 8516 is imposed automatically, by operation of law.

New clause 995.612 provides that, if the applicant satisfies the secondary criteria, conditions 8502 and 8516 are imposed automatically, by operation of law.

The purpose of these amendments is to specify that condition 8516 (which requires the holder to continue to satisfy the primary or secondary criteria, as the case requires, for the grant of the visa) is to be applied to both primary and secondary applicants granted the Subclass 995 (Diplomatic (Temporary)) visa. Condition 8502 (which requires that the holder must not enter Australia before the entry of the person who satisfied the primary criteria) is imposed on Subclass 995 visas granted to applicants satisfying the secondary criteria.

Item [15] – Schedule 8, clause 8110

This item substitutes clause 8110 in Schedule 8 to the Principal Regulations with a new clause 8110.

The effect of new clause 8110 is to prescribe a new condition 8110, which requires that the holder must not:

- engage in work in Australia except in the household of the employer in relation to whom the visa was granted;

- work in a position or occupation inconsistent with the position or occupation in relation to which the visa was granted;
- engage in work for another person or on the holder's own account while undertaking the employment in relation to which the visa was granted;
- without the permission in writing of the Foreign Minister cease to be employed by the employer in relation to which the visa was granted; and
- without the permission in writing of the Foreign Minister remain in Australia after the permanent departure of that employer.

New condition 8110 incorporates the conditions prescribed in existing clauses 8107 and 8110 of Schedule 8. The new condition places restrictions on the type of work that the holder of a visa on which this condition is imposed may undertake, but also provides that the visa holder may, with the written permission of the Minister for Foreign Affairs, remain in Australia after the permanent departure of their employer and cease employment with that employer.

Schedule 4 – Amendments relating to Skilled – Designated Area-sponsored visas

Item [1] – Paragraph 2.08D(1)(d)

This item substitutes paragraph 2.08D(1)(d) in Part 2 of the Principal Regulations, with new paragraph 2.08D(1)(d).

New paragraph 2.08D(1)(d) provides that regulation 2.08D applies to a person if the Minister is satisfied, from the information available to the Minister, that, if the person had applied for a Skilled – Independent (Migrant) (Class BN) visa, or a Skilled – Australian-sponsored (Migrant) (Class BQ) visa, or a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa, it is likely that the application would have been granted.

The effect of new paragraph 2.08D(1)(d) is to extend the operation of regulation 2.08D to persons who on the information available appear to be eligible for the grant of a new Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa (inserted by item [7] of this Schedule, below). The amended paragraph 2.08D(1)(d) retains the existing reference in clause 2.08D(1)(d) to the Skilled – Independent (Migrant) (Class BN) visa and Skilled – Australian-sponsored (Migrant) (Class BQ) visa.

Item [2] – Subregulation 2.08D(2), excluding the note

This item substitutes subregulation 2.08D(2) in Part 2 of the Principal Regulations, excluding the note, with a new subregulation 2.08D(2).

New subregulation 2.08D(2) provides that the Minister may invite a person, to whom regulation 2.08D applies, to make an application (a further application) for a Skilled – Independent (Migrant) (Class BN) visa, a Skilled – Australian-sponsored (Migrant) (Class BQ) visa, or a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa.

The purpose of new subregulation 2.08D(2) is to enable the Minister to invite a person under regulation 2.08D to make an application for a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa. The amended paragraph 2.08D(2) retains the Minister's discretion to invite a person, under regulation 2.08D, to make an application for a Skilled –

Independent (Migrant) (Class BN) visa or a Skilled – Australian-sponsored (Migrant) (Class BQ) visa.

Item [3] – Subparagraph 2.27B(1)(c)(vi)

This item omits the words "visa; and" and inserts the words "visa; or" in subparagraph 2.27B(1)(c)(vi) in Part 2 of the Principal Regulations.

This is a technical amendment and is consequential to the amendment made by item [4] of this Schedule, below, to insert a reference to the new Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa in regulation 2.27B.

Item [4] – After subparagraph 2.27B(1)(c)(vi)

This item inserts a new subparagraph 2.27B(1)(c)(vii) in Part 2 to the Principal Regulations after subparagraph 2.27B(1)(c)(vi).

New subparagraph 2.27B(1)(c)(vii) inserts a reference to the new Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa in regulation 2.27B.

The purpose of this amendment is to list the Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa (inserted by item [7] of this Schedule) as a visa to which the Minister may request an applicant, who has qualifications and experience in a skilled occupation that has not been assessed by the relevant assessing authority, to have his or her skills assessed for another skilled occupation.

Item [5] – Schedule 1, after paragraph 1128B(3)(d)

This item inserts a new paragraph 1128B(3)(e) in Item 1128B (Skilled – Australian-sponsored (Migrant)(Class BQ)) of Part 1 of Schedule 1 to the Principal Regulations

New paragraph 1128B(3)(e) provides that an application by a person seeking to satisfy the criteria for a Subclass 139 (Skilled – Designated Area-sponsored) visa must be made before 1 July 2006.

The effect of this amendment is to prevent, from 1 July 2006, a valid application being made for a Subclass 139 (Skilled – Designated Area-sponsored) visa. This amendment is consequential to the amendments made by items [6] and [7] of this Schedule, below, to insert the new Skilled – Designated Area-sponsored (Provisional) (Class UZ) and Skilled – Designated Area-sponsored (Residence) (Class CC) visas. These new visa classes replace Subclass 139 from 1 July 2006 with a two-stage (provisional and permanent) visa process.

Item [6] – Schedule 1, after item 1133

This item inserts a new item 1134 (Skilled – Designated Area-sponsored (Residence)(Class CC) in Part 1 of Schedule 1 to the Principal Regulations.

The purpose of new item 1134 is to prescribe the requirements for making a valid application for a Skilled – Designated Area-sponsored (Residence) (Class CC) visa. These requirements are prescribed by the following provisions:

- Subitem 1134(1) prescribes the form 47ST as the application form for a Skilled – Designated Area-sponsored (Residence) (Class CC) visa.

- Paragraph 1134(2)(a) provides that the first instalment of the visa application charge (VAC) payable by an applicant at the time of application is $185.

- Paragraph 1134(2)(b) provides that the second instalment of the VAC payable by an applicant is:
  - $2765 in the case of an applicant who was 18 or more at the time of application, is assessed as not having functional English, has held a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa, and has not paid a second instalment for the application for that visa.
  - $2765 in the case of an application who was 18 or more at the time of application and is assessed as not having functional English and has not previously held a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa.
  - In any other case, the second instalment of VAC payable is nil.

- Paragraph 1134(3)(a) provides that the applicant may be in or outside Australia, but not in immigration clearance when making the application.

- Paragraph 1134(3)(b) provides that the application must be made by either posting the application (with the correct pre-paid postage) to the post office box address specified by the Minister in a Gazette Notice or by having the application delivered by a courier service to the address specified by the Minister in a Gazette Notice.

- Paragraph 1134(3)(c) provides that the applicant seeking to satisfy the primary criteria must be the holder of a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa and must have held a visa of that class for at least 2 years.

- Paragraph 1134(3)(d) provides that an application by a person claiming to be a member of the family unit of a person who is an applicant for a Skilled – Designated Area-sponsored (Residence) (Class CC) visa may be made at the same time and place as, and combined with, the application by that person.

- Paragraph 1134(3)(e) provides that the application must be accompanied by evidence that each applicant who is at least 16 years of age has applied for an Australian Federal Police check in relation to the applicant during the 12 months immediately before the day when the application is made.

- Paragraph 1134(3)(f) provides that the application must be accompanied by a sponsorship form 40 completed by the person who is the sponsor of the applicant.

New subitem 1134(4) prescribes the new Subclass 883 (Skilled – Designated Area-sponsored (Residence)) visa (inserted in Schedule 2 to the Principal Regulations by item [14] of this Schedule) as the only visa subclass in new visa Class CC.

Item [7] – Schedule 1, after item 1225

This item inserts a new item 1226 (Skilled – Designated Area-sponsored (Provisional) (Class UZ)) in Part 2 of Schedule 1 to the Principal Regulations.

The purpose of new item 1226 is to prescribe the requirements for making a valid application for a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa. These requirements are prescribed in the following provisions:

- Subitem 1226(1) prescribes the form 47ST as the prescribed application form for a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa.

- Paragraph 1226(2)(a) provides that the first instalment of the visa application charge (VAC) payable by an applicant at time of application is:
  - Nil for an applicant who is taken under regulation 2.08D to have applied for a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa.
  - $185 for an applicant who is the holder of a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa.
  - In any other case, the first instalment of VAC payable is $1990.

- Paragraph 1226(2)(b) provides that the second instalment of the VAC payable by an applicant is:
  - $2765 in the case of an applicant who was 18 or more at the time of application and is assessed as not having functional English and has held a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa and has not paid a second instalment for the application for the visa.
  - $2765 in the case of an application who was 18 or more at the time of application and is assessed as not having functional English and has not previously held a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa.
  - In any other case, the second instalment of VAC payable is nil.

- The note advises that regulation 2.11 makes special provision for the visa application charge payable if the Minister has invited the applicant to apply for this visa.

- Paragraph 1226(3)(a) provides that the applicant may be in or outside Australia but not in immigration clearance when making the application.

- Paragraph 1226(3)(b) provides that the application must be made by either posting the application (with the correct pre-paid postage) to the post office box address specified by the Minister in a Gazette Notice or by having the application delivered by a courier service to the address specified by the Minister in a Gazette Notice.

- Paragraph 1226(3)(c) provides that the applicant must not have previously held more than one Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa.

- Paragraph 1226(3)(d) provides that the applicant seeking to satisfy the primary criteria who is not the holder of a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa must be under 45 years of age.

- Paragraph 1226(3)(e) provides that the application by a person claiming to be a member of the family unit of a person who is an applicant for a Skilled – Designated Area-

sponsored (Provisional) (Class UZ) visa may be made at the same time and place as, and combined with, the application by that person.

- Paragraph 1226(3)(f) provides that an application by a person who is not the holder of a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa must be accompanied by evidence that a relevant assessing authority has assessed the skills of the applicant as suitable for his or her nominated skilled occupation.

- Paragraph 1226(3)(g) provides that the application must be accompanied by a sponsorship form 40 completed by the person who is the sponsor of the applicant.

New subitem 1226(4) prescribes the new Subclass 496 (Skilled – Designated Area-sponsored (Provisional)) visa (inserted in Schedule 2 to the Principal Regulations by item [9] of this Schedule, below) as the only subclass in new visa Class UZ.

Item [8] – Schedule 2, clause 139.211

This item substitutes clause 139.211 in Part 139 (Subclass 139 – Skilled – Designated Area-sponsored) of Schedule 2 to the Principal Regulations, with new clauses 139.211 and 139.211A.

New clause 139.211 requires that an application must have been made before 1 July 2006. The effect of this amendment is to close eligibility for the Subclass 139 visa to new applicants from 1 July 2006. These applicants should now apply initially for the new Skilled – Designated Area-sponsored (Provisional) (Class UZ) inserted by item [7] of this Schedule, above.

New clause 139.211A provides that the applicant must have one of the following relationships to a person (the sponsor) who has turned 18 and is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen:

- a parent;
- a child or adoptive child, or a step-child, who is not a dependent child of the sponsor;
- a brother or sister, an adoptive brother or sister or a step-brother or step-sister;
- an aunt or uncle, an adoptive aunt or uncle or a step-aunt or step-uncle;
- a nephew or niece, an adoptive nephew or niece or a step-nephew or step-niece;
- a grandchild or first cousin.

New clause 139.211A retains the provisions previously contained in clause 139.211, but is re-numbered as a consequence to the insertion of new clause 139.211, above.

Item [9] – Schedule 2, after Part 495

This item inserts new Part 496 (Skilled – Designated Area-sponsored (Provisional)) in Schedule 2 to the Principal Regulations.

New Part 496 sets out the criteria and other requirements that an applicant for a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa must satisfy to be eligible for the grant of a Subclass 496 (Skilled – Designated Area-sponsored (Provisional)) visa.

Details of the criteria and other requirements are as follows:

Division 496.1 Interpretation

New clause 496.111 defines the following terms for the purposes of new Part 496:

- *completed* means, in relation to a degree, diploma or trade qualification, having met the academic requirements for the award. A note advises the reader that the academic requirements for the award of a degree, diploma or trade qualification do not include the formal conferral of the degree, diploma or trade qualification. Therefore a person can complete a degree, diploma or trade qualification, for this clause, before the award is formally conferred.
- *Course of study* has the same meaning given in subregulation 2.26A(7A).
- *Designated area* means an area specified by Gazette Notice under item 6701 in Schedule 6 as a designated area.
- *Degree, diploma* and *trade qualification* have the same meanings given in subregulation 2.26A(6).
- *Employed* has the meaning given in subregulation 2.26A(7).
- *Trade qualification* has the meaning given in subregulation 2.26A(6).

Notes advise the reader that the terms *registered course, relevant assessing authority* and *skilled occupation* are defined in regulation 1.03 and that the term *vocational English* is defined in regulation 1.15B of the Principal Regulations.

Division 496.2 Primary Criteria

New Division 496.2 sets out the primary criteria that must be satisfied by an applicant for the grant of a Subclass 496 (Skilled – Designated Area-sponsored (Provisional)) visa. The primary criteria must be satisfied by at least one member of a family unit. Other members of the family unit need only satisfy the secondary criteria.

Subdivision 496.21 – Criteria to be satisfied at time of application

New Subdivision 496.21 sets out the primary criteria to be satisfied at the time of application.

New clause 496.211 provides that an applicant who is the holder of a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa or the last substantive visa that the applicant held since last entering Australia was a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa, is only required to satisfy clause 496.212.

New clause 496.212 provides that the applicant must be sponsored by a person who is 18 or more, is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen and the applicant or applicant's spouse has one of the following relationships with the sponsor:

- a parent;
- a child or adoptive child, or a step-child, who is not a dependent child of the sponsor;
- a brother or sister, an adoptive brother or sister or a step-brother or step-sister;
- an aunt or uncle, an adoptive aunt or uncle or a step-aunt or step-uncle;
- a nephew or niece, an adoptive nephew or niece or a step-nephew or step-niece;
- a grandchild or first cousin.

New clause 496.213 provides that the sponsor must be resident in a designated area, and must have been resident in that designated area or one or more designated areas for the 12 month period (except for short absences for the purposes of business or recreation) immediately before the Department of Immigration and Multicultural Affairs receives the relevant sponsorship.

New clause 496.214 provides that the applicant must have nominated a skilled occupation in his or her application.

New clause 496.215(1) provides that, subject to new subclause 496.215(2), an applicant must have been employed in a skilled occupation for a period of time as specified in paragraphs 496.215(1)(a) and (b), depending on the number of points specified by Gazette Notice for the skilled occupation nominated by the applicant.

New clause 496.215(2) provides that new subclause 496.215(1) does not apply to certain applicants who have, in the 6 months immediately before the day when the application is made, completed a degree, diploma or trade qualification, subject to other requirements.

New clause 496.216 provides that in determining whether the applicant satisfies a criterion that he or she has been employed in a skilled occupation for a certain period of time in Australia, a period must not be counted unless the applicant held a visa permitting him or her to work during that period and the applicant complied with the conditions to which that visa was subject.

Subdivision 496.22 – Criteria to be satisfied at time of decision

New subdivision 496.22 sets out the primary criteria to be satisfied at the time of decision.

New clause 496.221 provides that an applicant who holds a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa, or whose last substantive visa held since last entering Australia was a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa, is only required to satisfy clause 496.222 and clauses 496.227 to 496.234.

New clause 496.222 provides that the sponsorship, provided with the application, must have been approved by the Minister and must still be in force.

New clause 496.223 provides that at the time of decision the sponsor must still reside in a designated area.

New clause 496.224 provides that if regulation 2.27B applies, the applicant must provide the assessment of his or her skills mentioned in subregulation 2.27B(4). Regulation 2.27B in Part 2 of the Principal Regulations, as amended by items [3] and [4] of this Schedule, enables the Minister to invite the applicant, who has qualifications and experience in a skilled occupation that have not been assessed by the relevant assessing authority, to have his or her skills assessed for another skilled occupation. The newly assessed skilled occupation can be used for the purpose of the nominated skilled occupation.

New subclause 496.225(1) provides that the relevant assessing authority has assessed the applicant’s skills for the nominated skilled occupation as suitable for that occupation.

New subclause 496.225(2) provides that if the assessment in new subclause 496.225(1) was made on the basis of a qualification obtained in Australia while the applicant held a student visa, the qualification must have been obtained as a result of full time study of a registered course. The purpose of this amendment is to require applicants who are assessed on the basis of qualifications obtained in Australia to have obtained those qualifications as a result of full time study of a course registered on the Commonwealth Register of Institutions and Courses for Overseas Students.

New clause 496.226 provides that the applicant must have vocational English, but a specified lesser proficiency in English is acceptable if particular English language training is available in the State/Territory where the sponsor lives and the Minister is satisfied that the applicant has paid a fee for such training.

New clause 496.227 provides that no evidence must have become available since the time of application that the information given or used as part of the skills assessment mentioned in paragraph 1226(3)(f) of Schedule 1 to the Principal Regulations (inserted by item [7] of this Schedule, above) is false or misleading.

New clause 496.228 specifies the public interest criteria (PIC) that an applicant seeking to satisfy the primary criteria must satisfy.

New clause 496.229 specifies the special return criteria that the applicant seeking to satisfy the primary criteria must satisfy if the applicant has previously been in Australia.

New clause 496.230 provides that if the applicant held a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa at time of application the applicant must have complied with the conditions of that visa.

New subclause 496.231(a) specifies the public interest criteria that each member of the family unit of the applicant, who is also an applicant for a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa, must satisfy.

New subclause 496.231(b) specifies the special return criteria that each member of the family unit of the applicant, who is also an applicant for a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa, must satisfy if he or she has previously been in Australia.

New clause 496.232 specifies the public interest criteria that each member of the family unit of the applicant, who is not an applicant for the Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa, must satisfy. PIC 4005 (relating to health) is required to be satisfied unless the Minister considers that it would be unreasonable to require the person to undergo assessment in relation to that criterion.

New clause 496.233 specifies the public interest criteria that must be satisfied in relation to a person who is a member of the family unit of the applicant who has not turned 18 and who has made a combined application with the applicant.

New clause 496.234 provides that the Minister must be satisfied that the applicant holds a valid passport issued by an official source unless it would be unreasonable to require the applicant to be the holder of a passport.

Division 496.3 – Secondary criteria

New Division 496.3 specifies the secondary criteria that must be satisfied by applicants seeking the grant of a new Subclass 496 (Skilled – Designated Area-sponsored (Provisional)) visa on the basis of being members of the family unit of a person who satisfies the primary criteria (contained in Division 496.2, above).

Subdivision 496.31 – Criteria to be satisfied at time of application

New Subdivision 496.31 sets out the secondary criteria to be satisfied at the time of application.

New clause 496.311 provides that the applicant, at the time of application, must be either a member of the family unit of a person who satisfies the primary criteria in Subdivision 496.21 and has made a combined application with that person or is a member of the family unit of a holder of a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa.

New clause 496.312 provides that the sponsorship given for the person who satisfies the primary criteria includes sponsorship of the applicant who seeks to satisfy the secondary criteria.

Subdivision 496.32 – Criteria to be satisfied at time of decision

New subdivision 496.32 sets out the secondary criteria to be satisfied at the time of decision.

New clause 496.321 provides that the applicant must, at the time of decision, continue to be a member of the family unit of a person who satisfies the primary criteria and is the holder of a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa.

New clause 496.322 provides that the sponsorship given in new clause 496.312, inserted by this item of this Schedule, must have been approved by the Minister and must still be in force.

New clause 496.323 provides that if the applicant held a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa at the time of application, the applicant must have complied with the conditions of that visa.

New clause 496.324 specifies the public interest criteria that an applicant must satisfy.

New clause 496.325 specifies the special return criteria that an applicant must satisfy, if he or she has previously been in Australia.

New clause 496.326 specifies the public interest criteria that must be satisfied by an applicant who is under 18.

New clause 496.327 provides that the Minister must be satisfied that the applicant holds a valid passport unless it would be unreasonable to require the applicant to be the holder of a passport.

Division 496.4 – Circumstances applicable to grant

New clause 496.411 provides that an applicant who, at the time of application, is not the holder of a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa, must be outside Australia when the visa is granted.

New clause 496.412 provides that an applicant who, at the time of application, is the holder of a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa may be in or outside Australia but not in immigration clearance when the visa is granted.

A note advises that the second instalment of the visa application charge (if any) must be paid before the visa can be granted.

Division 496.5 – When visa is in effect

New clause 496.511 provides that the new Subclass 496 (Skilled – Designated Area-sponsored (Provisional)) visa is a temporary visa permitting the holder to travel to, enter and remain in Australia until a date specified by the Minister.

Division 496.6 – Conditions

New clause 496.611 provides that if the applicant is outside Australia at the time of grant, first entry must be made before a date specified by the Minister for the purpose.

New clause 496.612 provides that conditions 8502 and 8514 may be imposed on a visa granted to a person who satisfies the secondary criteria.

New clause 496.613 provides that condition 8515 may be imposed.

New clause 496.614 provides that conditions 8549 must be imposed.

Note: All condition numbers refer to the relevant clauses in Schedule 8 to the Principal Regulations.

Division 496.7 – Way of giving evidence

New clause 496.711 provides that no evidence of the grant of a Subclass 496 (Skilled – Designated Area-sponsored (Provisional)) visa need to given.

New clause 496.712 provides that if evidence is given, it is to be given by way of a visa label affixed to a valid passport.

<u>Item [10] – Schedule 2, paragraph 773.213(2)(zs)</u>

This item omits “(Class DG).” and inserts “(Class DG);” in paragraph 773.213(2)(zs) in Part 773 (Subclass 733 – Border) of Schedule 2 to the Principal Regulations.

This is a technical amendment and is consequential to the amendment made by item [11] of this Schedule, below, which inserts a reference to the new Skilled – Designated Area-sponsored (Residence) (Class CC) visa in subclause 773.213(2).

Item [11] – Schedule 2, after paragraph 773.213(2)(zs)

This item inserts a new paragraph 773.213(2)(zt) in Part 773 (Subclass 773 – Border) of Schedule 2 to the Principal Regulations.

New paragraph 773.213(2)(zt) inserts a reference to the new Skilled – Designated Area-sponsored (Residence) (Class CC) visa (inserted in Schedule 1 to the Principal Regulations by item [6] of this Schedule, above) in subclause 773.213(2). The effect of this amendment is that the dependent child of a holder of a new Skilled – Designated Area-sponsored (Residence) (Class CC) visa will be able to satisfy a criterion for the grant of a Subclass 773 (Border) visa.

Item [12] – Schedule 2, paragraph 773.213(3)(n)

This item omits "(Class UU)." and inserts "(Class UU);" in paragraph 773.213(3)(n) in Part 773 Schedule 2 to the Principal Regulations.

This is a technical amendment and is consequential to the amendment made by item [13] of this Schedule, below, which inserts a reference to the new Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa in subclause 773.213(3).

Item [13] – Schedule 2, after paragraph 773.213(3)(n)

This item inserts new paragraphs 773.213(3)(o) and 773.213(3)(p) in Part 773 (Subclass 773 – Border) of Schedule 2 to the Principal Regulations.

New paragraph 773.213(3)(o) inserts a reference to the new Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa (inserted in Schedule 1 to the Principal Regulations by item [7] of this Schedule, above), and new paragraph 773.213(3)(p) inserts a reference to the new Skilled – Independent Regional (Provisional) (Class UX) visa, in subclause 773.213(3). The effect of these amendments is that an applicant who held, immediately before last departing Australia, one of these visas will be able to satisfy a criterion for the grant of a Subclass 773 (Border) visa.

Item [14] – Schedule 2, after Part 882

This item inserts new Part 883 (Subclass 883 – Skilled – Designated Area-sponsored (Residence)) in Schedule 2 to the Principal Regulations.

New Part 883 sets out the criteria and other requirements that an applicant must satisfy to be eligible for the grant of a Subclass 883 (Skilled – Designated Area-sponsored (Residence)) visa.

Details of the criteria and other requirements are as follows:

Division 883.1 – Interpretation

New clause 883.111 provides that in Part 883 the term *designated area* means an area specified by Gazette Notice under item 6701 in Schedule 6. A note advises the reader that vocational English is defined under regulation 1.15B in Part 1 of the Principal Regulations.

Division 883.2 – Primary criteria

New Division 883.2 sets out the criteria that must be satisfied by an applicant for the grant of a Subclass 883 (Skilled – Designated Area-sponsored (Residence)) visa. The primary criteria must be satisfied by at least one member of the family unit. Other members of the family until need only satisfy the secondary criteria.

Subdivision 883.21 – Criteria to be satisfied at time of application

New Subdivision 883.21 sets out the primary criteria to be satisfied at the time of application.

New clause 883.211 provides that the applicant must be sponsored by a person who is 18 or more, is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen and the applicant or applicant's spouse has one of the following relationships with the sponsor:

- a parent;
- a child or adoptive child, or a step-child, who is not a dependent child of the sponsor;
- a brother or sister, an adoptive brother or sister or a step-brother or step-sister;
- an aunt or uncle, an adoptive aunt or uncle or a step-aunt or step-uncle;
- a nephew or niece, an adoptive nephew or niece or a step-nephew or step-niece;
- a grandchild or first cousin.

New clause 883.212 provides that the applicant must have lived in a designated area for a total of at least 2 years while the holder of a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa or while the applicant held a Bridging A (Class WA) visa or a Bridging B (Class WB) visa granted because the applicant made a valid application for a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa.

New clause 883.213 provides that the applicant must have undertaken a total of at least 12 months full time work in a designated area while the holder of a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa, or while the applicant held a Bridging A (Class WA) visa or a Bridging B (Class WB) visa granted because the applicant made a valid application for a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa.

Subdivision 883.22 - Criteria to be satisfied at time of decision

New subdivision 883.22 sets out the primary criteria that must be satisfied at the time of decision.

New clause 883.221 requires that the sponsorship given with the applicant's application must have been approved by the Minister and must still be in force.

New clause 883.222 provides that the applicant must have vocational English.

New clause 883.223 provides that no evidence must have become available since the time of application that the information given or used as part of the assessment for eligibility of the applicant for a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa is false or misleading.

New clause 883.224 provides that if the Minister has requested an assurance of support in relation to the applicant, an assurance of support must have been accepted by the Secretary of the Department of Family and Community Services.

New clause 883.225 specifies the public interest criteria that an applicant must satisfy.

New clause 883.226 specifies the special return criteria that the applicant must satisfy if he or she has previously been in Australia.

New clause 883.227 provides that the applicant and all of the applicants included in the application must have complied with the conditions of any Skilled – Designated Area-sponsored (Provisional) (Class UZ) visas held.

New clause 883.228 specifies the public interest criteria and special return criteria that each member of the family unit of the applicant who is also an applicant for a Subclass 883 (Skilled – Designated Area-sponsored (Residence)) visa must satisfy.

New clause 883.229 specifies the public interest criteria and special return criteria (if the applicant has previously been in Australia) that each member of the family unit of an applicant, who is not an applicant for a Subclass 883 (Skilled – Designated Area-sponsored (Residence)) visa, must satisfy.

New clause 883.230 specifies the public interest criteria that must be satisfied in relation to a person who is a member of the family unit of the applicant, who has not turned 18 and who has made a combined application with the applicant.

New clause 883.231 provides that the Minister must be satisfied that the applicant holds a valid passport unless it would be unreasonable to require the applicant to be the holder of a passport.

Division 883.3 – Secondary Criteria

New Division 883.3 sets out the criteria that must be satisfied by an applicant for the grant of a Subclass 883 (Skilled – Designated Area-sponsored (Residence)) visa. The secondary criteria must be satisfied by applicants who are members of the family unit of a person who satisfies the primary criteria.

Subdivision 883.31 – Criteria to be satisfied at time of application

New Subdivision 883.31 sets out the secondary criteria to be satisfied at the time of application.

New clause 883.311 provides that the applicant must be the member of the family unit of a person who satisfies the primary criteria in new Subdivision 883.21.

New clause 883.312 provides that the sponsorship given for the person who satisfied the primary criteria in new Subdivision 883.21 must include sponsorship of the applicant who seeks to satisfy the secondary criteria.

Subdivision 883.32 - Criteria to be satisfied at time of decision

New subdivision 883.32 sets out the secondary criteria to be satisfied at the time of decision.

New clause 883.321 provides that the applicant, at the time of decision, must continue to be a member of the family unit of a person who has satisfied the primary criteria and is the holder of a Subclass 883 (Skilled – Designated Area-sponsored (Residence)) visa.

New clause 883.322 provides that the sponsorship of the applicant must have been approved by the Minister and must still be in force.

New clause 883.323 provides that if the Minister has requested an assurance of support in relation to the person who satisfies the primary criteria, the assurance of support must also include the applicant and must have been accepted by the Department of Family and Community Services; or an assurance of support in relation to the secondary applicant has been accepted by the Department of Family and Community Services.

New clause 883.324 specifies the public interest criteria and the special return criteria (if the applicant has previously been in Australia) that the applicant must satisfy.

New clause 883.325 specifies the additional public interest criteria that must be satisfied in relation to an applicant who has not turned 18.

New clause 883.326 provides that the Minister must be satisfied that the applicant holds a valid passport unless it would be unreasonable to require the applicant to be the holder of a passport.

Division 883.4 – Circumstances applicable to grant

New clause 883.411 provides that the applicant may be in or outside Australia but not in immigration clearance when the visa is granted.

A note advises that the second instalment of the visa application charge (if any) must be paid before the visa can be granted.

Division 883.5 – When visa is in effect

New clause 883.511 provides that the new Subclass 883 (Skilled – Designated Area-sponsored (Residence)) visa is a permanent visa permitting the holder to travel to, enter and remain in Australia for a period of 5 years from the date of grant.

Division 883.6 - Conditions

Division 883.6 provides that there are no visa conditions that are imposed, or may be imposed, on the new Subclass 883 (Skilled – Designated Area-sponsored (Residence)) visa.

Division 883.7 – Way of giving evidence

New clause 883.711 provides that no evidence of the grant of a Subclass 883 (Skilled – Designated-area (Residence)) visa need be given.

New clause 883.712 provides that if evidence is given, it is to be given by way of a visa label affixed to a valid passport.

Item [15] – Schedule 8, after clause 8548

This item inserts new clause 8549 in Schedule 8 (Visa Conditions) to the Principal Regulations.

New clause 8549 prescribes as a condition that may be imposed on certain visas, that while the holder of the visa is in Australia, the holder must live, study and work only in a designated area in the State or Territory in which the holder's sponsor lived when the holder was first granted a Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa.

New condition 8549 must be imposed on the new Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa (see clause 496.614 in new Part 496, inserted in Schedule 2 to the Principal Regulations by item [9] of this Schedule, above) and requires the holder to remain in the designated area in the State or Territory in which their sponsor resided when the holder was first granted the Skilled – Designated Area-sponsored (Provisional) (Class UZ) visa.