



Migration Amendment Regulation 2012 (No. 2)¹

Select Legislative Instrument 2012 No. 82

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Migration Act 1958*.

Dated 24 May 2012

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

CHRIS BOWEN
Minister for Immigration and Citizenship

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1 Name of regulation

This regulation is the *Migration Amendment Regulation 2012 (No. 2)*.

2 Commencement

This regulation commences as follows:

- (a) on 1 July 2012—sections 1 to 3 and Schedule 1;
- (b) on 1 July 2013—section 4 and Schedule 2.

**3 Amendment of *Migration Regulations 1994*—
Schedule 1**

Schedule 1 amends the *Migration Regulations 1994*.

**4 Amendment of *Migration Regulations 1994*—
Schedule 2**

Schedule 2 amends the *Migration Regulations 1994*.

Schedule 1 Amendments commencing on 1 July 2012

(section 3)

- [1] **Regulation 1.03, after definition of *bogus document***
insert
business innovation and investment points test means the test set out in Schedule 7A.
Note This test relates to Business Skills (Provisional) (Class EB) visas.
- [2] **Regulation 1.03, definition of *designated area*,
including the note**
substitute
designated area means an area specified as a designated area by the Minister in an instrument in writing for this definition.
- [3] **Regulation 1.03, definition of *designated security***
omit
- [4] **Regulation 1.03, definition of *General Skilled
Migration visa***
substitute
General Skilled Migration visa means a Subclass 175, 176, 189, 190, 475, 476, 485, 487, 489, 885, 886 or 887 visa, granted at any time.

[5] Regulation 1.07

substitute

1.07 References to subclasses of visas

- (1) A reference to a visa of a particular subclass (for example, ‘a visa of Subclass 414’) is a reference to a visa granted on satisfaction of the criteria for the grant of the visa, or the grant of the visa in a stream, set out in the Part of Schedule 2 that bears the number of the subclass.

Note The criteria for the grant of the visa may include criteria described as a ‘stream’: see subregulation 2.03 (1A).

- (2) A reference to an applicant for a visa of a particular subclass is a reference to an applicant who applies for a visa of a class that may, under Schedule 1, be granted on satisfaction of the criteria for the grant of the visa, or the grant of the visa in a stream, set out in the Part of Schedule 2 that bears the number of the subclass.

Note The criteria for the grant of the visa may include criteria described as a ‘stream’: see subregulation 2.03 (1A).

[6] Subregulation 1.11A (1)

omit

Parts 132, 160, 161, 162, 163, 164, 165, 845, 846, 890, 891, 892 and 893 of Schedule 2,

insert

Parts 132, 188, 888, 890, 891, 892 and 893 of Schedule 2,

[7] After subregulation 1.12 (5)*insert*

- (5A) In addition to subregulation (1), a person is a member of the family unit of an applicant for a Business Skills (Permanent) (Class EC) visa if, at the time of application, the person:
- (a) holds a visa of a subclass included in Business Skills (Provisional) (Class EB) that was granted on the basis that the person was a member of the family unit of a holder of a visa of a subclass included in Business Skills (Provisional) (Class EB); and
 - (b) is included in the application for the Business Skills (Permanent) (Class EC) visa.

[8] Subparagraph 1.12 (9) (d) (ii)*substitute*

- (ii) a Bridging A (Class WA) visa or Bridging B (Class WB) visa granted on the basis of a valid application for:
 - (A) a Skilled — Independent Regional (Provisional) (Class UX) visa; or
 - (B) a Skilled (Provisional) (Class VC) visa; or
 - (C) a Skilled — Regional Sponsored (Provisional) (Class SP) visa; or

[9] Subparagraph 1.12 (9) (d) (v)*omit*

visa; and

insert

visa; or

[10] After subparagraph 1.12 (9) (d) (v)*insert*

- (vi) a Skilled — Regional Sponsored (Provisional) (Class SP) visa; and

[11] After subregulation 1.12 (10)*insert*

- (11) In addition to subregulation (1), a person is a member of the family unit of an applicant for an Employer Nomination (Permanent) (Class EN) visa if, at the time of application, the person:
- (a) holds a Subclass 457 (Business (Long Stay)) visa granted on the basis that the person was a member of the family unit of the holder of a Subclass 457 (Business (Long Stay)) visa; and
 - (b) is included in the application for the Employer Nomination (Permanent) (Class EN) visa.
- (12) In addition to subregulation (1), a person is a member of the family unit of an applicant for a Regional Employer Nomination (Permanent) (Class RN) visa if, at the time of application, the person:
- (a) holds a Subclass 457 (Business (Long Stay)) visa granted on the basis that the person was a member of the family unit of the holder of a Subclass 457 (Business (Long Stay)) visa; and
 - (b) is included in the application for the Regional Employer Nomination (Permanent) (Class RN) visa.

[12] Regulations 1.15B to 1.15D*substitute***1.15B Vocational English**

- (1) A person has *vocational English* if:
- (a) the person undertook a language test, specified by the Minister in an instrument in writing for this paragraph; and
 - (b) the test was conducted in the 3 years immediately before the day on which the application was made; and
 - (c) the person achieved a score specified in the instrument.

-
- (2) A person has *vocational English* if the person holds a passport of a type specified by the Minister in an instrument in writing for this subregulation.

1.15C Competent English

- (1) A person has *competent English* if:
- (a) the person undertook a language test, specified by the Minister in an instrument in writing for this paragraph; and
 - (b) the test was conducted in the 3 years immediately before the day on which the application was made; and
 - (c) the person achieved a score specified in the instrument.
- (2) A person has *competent English* if the person holds a passport of a type specified by the Minister in an instrument in writing for this subregulation.

1.15D Proficient English

A person has *proficient English* if:

- (a) the person undertook a language test, specified by the Minister in an instrument in writing for this paragraph; and
- (b) the test was conducted in the 3 years immediately before the day on which the application was made; and
- (c) the person achieved a score specified in the instrument.

[13] Regulation 1.15EA

substitute

1.15EA Superior English

A person has *superior English* if:

- (a) the person undertook a language test, specified by the Minister in an instrument in writing for this paragraph; and
- (b) the test was conducted in the 3 years immediately before the day on which the application was made; and

- (c) the person achieved a score specified in the instrument.

[14] Subregulation 1.15F (2)

substitute

- (2) In this regulation:

completed, in relation to a degree, diploma or trade qualification, means having met the academic requirements for its award.

Note 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 subregulation (2), before the award is formally conferred.

degree has the meaning given in subregulation 2.26AC (6).

diploma has the meaning given in subregulation 2.26AC (6).

trade qualification has the meaning given in subregulation 2.26AC (6).

[15] Regulation 1.19, including the note

omit

[16] Paragraph 1.20 (2) (a)

after

if the application is for

insert

a Skilled — Regional Sponsored (Provisional) (Class SP) visa, or

[17] Subregulation 1.20 (3)

omit

(not mentioned in subregulation (3A))

insert

(other than a person who is a sponsor of an applicant for a visa mentioned in subregulation (3A), or a Skilled — Regional Sponsored (Provisional) (Class SP) visa)

[18] Subparagraph 1.41 (3) (a) (v)

substitute

(v) the number of holders of student visas who have applied for protection visas or for permanent visas other than:

- (A) a Business Skills — Business Talent (Permanent) (Class EA) visa; or
- (B) an Employer Nomination (Permanent) (Class EN) visa; or
- (C) a Regional Employer Nomination (Permanent) (Class RN) visa; or
- (D) a Skilled — Independent (Permanent) (Class SI) visa; or
- (E) a Skilled — Nominated (Permanent) (Class SN) visa; and

[19] After subregulation 2.03 (1)

insert

(1A) However, if one or more criteria are set out in a Subdivision of a Part of Schedule 2 as a ‘stream’:

- (a) the primary criteria mentioned in paragraph (1) (a) are taken to be:
 - (i) the primary criteria described as that stream; and
 - (ii) all primary criteria that are not described as a stream; and

- (b) the secondary criteria mentioned in paragraph (1) (b) are taken to be:
- (i) the secondary criteria described as that stream; and
 - (ii) all secondary criteria that are not described as a stream.

Example

Part 188 of Schedule 2 sets out the criteria for the grant of a Subclass 188 (Business Innovation and Investment (Provisional)) visa. The Part includes a Subdivision setting out common primary criteria and several Subdivisions setting out primary criteria that are described as streams, including a Business Innovation stream. The primary criteria mentioned in paragraph (1) (a) are taken to be the Business Innovation stream and all primary criteria that are not described as a stream.

- (1B) If one or more criteria are set out in a Subdivision of a Part of Schedule 2 as a ‘stream’, the visa to which the Part relates may be described as ‘[the Subclass of the visa] in the [name of the stream]’.

Example

A visa whose criteria are set out in Part 188 of Schedule 2, and include criteria in the Business Innovation stream, may be described as a Subclass 188 visa in the Business Innovation stream.

[20] After subparagraph 2.03A (3) (a) (ii)

insert

- (ia) a Business Skills (Provisional) (Class EB) visa; or

[21] After subregulation 2.05 (4)

insert

- (4AA) For subsection 41 (2A) of the Act, and subject to subregulation (4A), a further circumstance in which the Minister may waive condition 8503 in relation to a visa is that the holder of the visa has a genuine intention to apply for:
- (a) a General Skilled Migration visa; or
 - (b) a Subclass 132 (Business Talent) visa; or
 - (c) a Subclass 186 (Employer Nomination Scheme) visa; or

-
- (d) a Subclass 187 (Regional Sponsored Migration Scheme) visa; or
 - (e) a Subclass 188 (Business Innovation and Investment (Provisional)) visa.

[22] Paragraph 2.05 (5A) (b)

substitute

- (b) has a genuine intention to apply for:
 - (i) a General Skilled Migration visa; or
 - (ii) a Subclass 132 (Business Talent) visa; or
 - (iii) a Subclass 186 (Employer Nomination Scheme) visa; or
 - (iv) a Subclass 187 (Regional Sponsored Migration Scheme) visa; or
 - (v) a Subclass 188 (Business Innovation and Investment (Provisional)) visa.

[23] Regulation 2.07AG

substitute

2.07AG Applications for certain substantive visas by persons for whom condition 8503 or 8534 has been waived under subregulation 2.05 (4AA), (5) or (5A)

- (1) For section 46 of the Act, an application for a substantive visa by a person for whom condition 8503 has been waived under subregulation 2.05 (4AA) is a valid application only if the application is for:
 - (a) a General Skilled Migration visa; or
 - (b) a Subclass 132 (Business Talent) visa; or
 - (c) a Subclass 186 (Employer Nomination Scheme) visa; or
 - (d) a Subclass 187 (Regional Sponsored Migration Scheme) visa; or
 - (e) a Subclass 188 (Business Innovation and Investment (Provisional)) visa.

- (2) For section 46 of the Act, an application for a substantive visa by a person for whom condition 8534 has been waived under subregulation 2.05 (5) or (5A) is a valid application only if the application is for:
- (a) a General Skilled Migration visa; or
 - (b) a Subclass 132 (Business Talent) visa; or
 - (c) a Subclass 186 (Employer Nomination Scheme) visa; or
 - (d) a Subclass 187 (Regional Sponsored Migration Scheme) visa; or
 - (e) a Subclass 188 (Business Innovation and Investment (Provisional)) visa.

[24] Subregulation 2.08A (2A), except the note

substitute

- (2A) Subregulations (1) and (2) do not apply to an applicant for a Skilled (Residence) (Class VB) visa.

[25] After subparagraph 2.08B (1) (a) (viii)

insert

- (viii) a Business Skills (Provisional) (Class EB) visa; or

[26] Subparagraph 2.08B (1) (a) (xii)

substitute

- (xii) a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa; or
- (xiii) a Skilled — Regional Sponsored (Provisional) (Class SP) visa; and

[27] Regulations 2.08C to 2.08DA

omit

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- [28] **Paragraph 2.11 (1) (a)**
substitute
(a) an application for a visa by a non-citizen made outside Australia (a *first application*) has been made: and
- [29] **Subregulation 2.12 (4), including the note**
omit
- [30] **Paragraph 2.22 (2) (b)**
omit
application;
insert
application.
- [31] **Paragraphs 2.22 (2) (c) to (e)**
omit
- [32] **Regulations 2.26 and 2.26A**
omit
- [33] **Subregulation 2.26AA (9)**
substitute
(9) In Schedule 6B:
degree has the meaning given by subregulation 2.26AC (6).
diploma has the meaning given by subregulation 2.26AC (6).
employed has the meaning given by subregulation 2.26AC (6).
professional year means a course specified by the Minister in an instrument in writing for this definition.
trade qualification has the meaning given by subregulation 2.26AC (6).

[34] Subregulation 2.26AB (7)

substitute

(7) In Schedule 6C:

degree has the meaning given by subregulation 2.26AC (6).

diploma has the meaning given by subregulation 2.26AC (6).

employed has the meaning given by subregulation 2.26AC (6).

professional year means a course specified by the Minister in an instrument in writing for this definition.

trade qualification has the meaning given by subregulation 2.26AC (6).

[35] After regulation 2.26AB

insert

2.26AC Prescribed qualifications and number of points for Subclass 189, 190 and 489 visas

- (1) For subsection 93 (1) of the Act, this regulation applies to an application for:
 - (a) a Skilled — Independent (Permanent) (Class SI) visa; or
 - (b) a Skilled — Nominated (Permanent) (Class SN) visa; or
 - (c) a Skilled — Regional Sponsored (Provisional) (Class SP) visa.
- (2) Each qualification specified in an item of Schedule 6D is prescribed as a qualification in relation to the grant, to the applicant, of:
 - (a) a Subclass 189 (Skilled — Independent) visa; or
 - (b) a Subclass 190 (Skilled — Nominated) visa; or
 - (c) a Subclass 489 (Skilled — Regional (Provisional)) visa.
- (3) The number of points prescribed for a qualification specified an item in Schedule 6D is specified in the item.

(4) For Schedule 6D:

- (a) The Minister must not give the applicant a prescribed number of points for more than one prescribed qualification in each Part of the Schedule; and
- (b) if the applicant's circumstances satisfy more than one prescribed qualification in a Part of the Schedule, the Minister must give the applicant points for the qualification that has been satisfied that attracts the highest number of points.

Note Part 6D.5 of Schedule 6D (Aggregating points for employment experience qualifications) recalculates an applicant's points if the applicant has qualifications specified in Part 6D.3 of Schedule 6D (Overseas employment experience qualifications) and Part 6D.4 of Schedule 6D (Australian employment experience qualifications).

(5) For items 6D71 and 6D72 of Part 6D.7 of Schedule 6D, in determining whether an educational qualification is of a recognised standard, the Minister must have regard to:

- (a) whether, at the time of invitation to apply for the visa, the educational qualification had been recognised by the relevant assessing authority for the applicant's nominated skilled occupation as being suitable for the occupation; and
- (b) whether the educational qualification is recognised by a body specified by the Minister in an instrument in writing for this paragraph; and
- (c) the duration of the applicant's study towards the educational qualification; and
- (d) any other relevant matter.

(6) In Schedule 6D:

degree means a formal educational qualification, under the Australian Qualifications Framework, awarded by an Australian educational institution as a degree or a postgraduate diploma for which:

- (a) the entry level to the course leading to the qualification is:
 - (i) in the case of a bachelor's degree—satisfactory completion of year 12 in the Australian school system or of equivalent schooling; and

- (ii) in the case of a master's degree—satisfactory completion of a bachelor's degree awarded at an Australian tertiary educational institution or of an equivalent award; and
 - (iii) in the case of a doctoral degree—satisfactory completion of a bachelor's degree awarded with honours, or a master's degree, at an Australian tertiary educational institution or of an equivalent award; and
 - (iv) in the case of a postgraduate diploma—satisfactory completion of a bachelor's degree or diploma awarded at an Australian tertiary educational institution or of an equivalent award; and
- (b) in the case of a bachelor's degree, not less than 3 years of full-time study, or the equivalent period of part-time study, is required.

diploma means:

- (a) an associate diploma, or a diploma, within the meaning of the Register of Australian Tertiary Education (as current on 1 July 1999), that is awarded by a body authorised to award diplomas of those kinds; or
- (b) a diploma, or an advanced diploma, under the Australian Qualifications Framework, that is awarded by a body authorised to award diplomas of those kinds.

employed means engaged in an occupation for remuneration for at least 20 hours a week.

professional year means a course specified by the Minister in an instrument in writing for this definition.

trade qualification means:

- (a) an Australian trade qualification obtained as a result of the completion of:
 - (i) an indentured apprenticeship; or

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- (ii) a training contract;
that is required by State or Territory industrial training legislation or a relevant Federal, State or Territory industrial award and involves:
 - (iii) part-time formal training at a technical college or a college of technical and further education; and
 - (iv) employment within the meaning of:
 - (A) an industrial award under a law of the Commonwealth or of a State or Territory; or
 - (B) a law of a State or Territory dealing with commercial or industrial training; or
 - (b) a qualification, under the Australian Qualifications Framework, of at least the Certificate III level for a skilled occupation in Major Group IV in the ASCO; or
 - (c) a qualification, under the Australian Qualifications Framework, of at least the Certificate III level for a skilled occupation in Major Group 3 in ANZSCO.

[36] Regulations 2.26C to 2.27A

omit

[37] Regulations 2.29A to 2.29K

omit

[38] Paragraphs 2.50 (2) (d) and (e)

substitute

- (d) Business Skills (Provisional) (Class EB);
- (e) Business Skills (Provisional) (Class UR);
- (f) Business Skills (Permanent) (Class EC);
- (g) Business Skills (Residence) (Class BH).

[39] Regulation 2.50AA*substitute***2.50AA Cancellation of regional sponsored employment visas**

For section 137Q of the Act, each item in the table sets out:

- (a) a kind of visa that is a regional sponsored employment visa; and
- (b) the period within which a holder of a visa of that kind must commence the employment referred to in the employer nomination.

Item	Visa	Period
1	Subclass 119 (Regional Sponsored Migration Scheme) visa	6 months from the date the holder first entered Australia as the holder of the visa
2	Subclass 187 (Regional Sponsored Migration Scheme) visa	If the holder was in Australia on the date of grant of the visa, 6 months from the date of grant of the visa If the holder was not in Australia on the date of grant of the visa, 6 months from the date the holder first entered Australia as the holder of the visa
3	Subclass 857 (Regional Sponsored Migration Scheme) visa	6 months from the date of grant of the visa

[40] Paragraph 4.02 (4) (e)*substitute*

- (e) a decision under regulation 5.19 to refuse an application for approval of the nomination of a position;

[41] Regulation 5.19

substitute

5.19 Approval of nominated positions (employer nomination)

- (1) A person (a *nominator*) (including a partnership or unincorporated association) may apply to the Minister for approval of the nomination of a position in Australia.
- (2) The application must:
 - (a) be made in accordance with approved form 1395; and
 - (b) be accompanied by the fee mentioned in regulation 5.37.

Temporary Residence Transition nomination

- (3) The Minister must, in writing, approve a nomination if:
 - (a) the application for approval:
 - (i) is made in accordance with subregulation (2); and
 - (ii) identifies a person who holds a Subclass 457 (Business (Long Stay)) visa granted on the basis that the person satisfied the criterion in subclause 457.223(4) of Schedule 2; and
 - (iii) identifies an occupation, in relation to the position, that:
 - (A) is listed in ANZSCO; and
 - (B) has the same 4-digit occupation unit group code as the occupation carried out by the holder of the Subclass 457 (Business (Long Stay)) visa; and
 - (b) the nominator:
 - (i) is, or was, the standard business sponsor who last identified the holder of the Subclass 457 (Business (Long Stay)) visa in a nomination made under section 140GB of the Act or under regulation 1.20G or 1.20GA as in force immediately before 14 September 2009; and
 - (ii) is actively and lawfully operating a business in Australia; and

- (c) either:
 - (i)
 - (A) the holder of the Subclass 457 (Business (Long Stay)) visa identified in subparagraph (a) (ii) has been employed in the position in respect of which the person holds a Subclass 457 (Business (Long Stay)) visa for a total period of at least 2 years (not including any period of unpaid leave) in the period of 3 years immediately before the nominator made the application; and
 - (B) the employment in the position has been full-time, and undertaken in Australia; or
 - (ii) all of the following apply:
 - (A) the person holds the Subclass 457 (Business (Long Stay)) visa on the basis that the person was identified in a nomination of an occupation mentioned in sub-subparagraph 2.72 (10) (d) (iii) (B) or sub-subparagraph 2.72 (10) (e) (iii) (B);
 - (B) the nominator nominated the occupation;
 - (C) the person has been employed, in the occupation in respect of which the person holds the Subclass 457 (Business (Long Stay)) visa, for a total period of at least 2 years in the period of 3 years immediately before the nominator made the application; and
- (d) for a person to whom subparagraph (c) (i) applies:
 - (i) the person will be employed on a full-time basis in the position for at least 2 years; and
 - (ii) the terms and conditions of the person's employment will not include an express exclusion of the possibility of extending the period of employment; and
- (e) the terms and conditions of employment applicable to the position will be no less favourable than the terms and conditions that:
 - (i) are provided; or

-
- (ii) would be provided;
 - to an Australian citizen or an Australian permanent resident for performing equivalent work in the same workplace at the same location; and
 - (f) the nominator has met the training requirements that the nominator was required to meet under:
 - (i) paragraph 2.59 (d) or (e); or
 - (ii) paragraph 1.20D (2) (c);
 for the purpose of approval as a standard business sponsor; and

Note Different training requirements apply depending on whether the application for approval as a standard business sponsor was made before 14 September 2009 or on or after that day.

- (g) either:
 - (i) there is no adverse information known to Immigration about the nominator or a person associated with the nominator; or
 - (ii) it is reasonable to disregard any adverse information known to Immigration about the nominator or a person associated with the nominator; and
- (h) the nominator has a satisfactory record of compliance with the laws of the Commonwealth, and of each State or Territory in which the applicant operates a business and employs employees in the business, relating to workplace relations.

Direct Entry nomination

- (4) The Minister must, in writing, approve a nomination if:
 - (a) the application for approval:
 - (i) is made in accordance with subregulation (2); and
 - (ii) identifies a need for the nominator to employ a paid employee to work in the position under the nominator's direct control; and
 - (b) the nominator:
 - (i) is actively and lawfully operating a business in Australia; and
 - (ii) directly operates the business; and

- (c) for a nominator whose business activities include activities relating to the hiring of labour to other unrelated businesses—the position is within the business activities of the nominator and not for hire to other unrelated businesses; and
- (d) both of the following apply:
 - (i) the employee will be employed on a full-time basis in the position for at least 2 years;
 - (ii) the terms and conditions of the employee's employment will not include an express exclusion of the possibility of extending the period of employment; and
- (e) the terms and conditions of employment applicable to the position will be no less favourable than the terms and conditions that:
 - (i) are provided; or
 - (ii) would be provided;to an Australian citizen or an Australian permanent resident for performing equivalent work in the same workplace at the same location; and
- (f) either:
 - (i) there is no adverse information known to Immigration about the nominator or a person associated with the nominator; or
 - (ii) it is reasonable to disregard any adverse information known to Immigration about the nominator or a person associated with the nominator; and
- (g) the nominator has a satisfactory record of compliance with the laws of the Commonwealth, and of each State or Territory in which the applicant operates a business and employs employees in the business, relating to workplace relations; and
- (h) either:
 - (i) both of the following apply:
 - (A) the tasks to be performed in the position will be performed in Australia and correspond to the tasks of an occupation specified by the

Minister in an instrument in writing for this sub-subparagraph;

(B) either:

(I) the nominator's business has operated for at least 12 months, and the nominator meets the requirements for the training of Australian citizens and Australian permanent residents that are specified by the Minister in an instrument in writing for this sub-sub-subparagraph; or

(II) the nominator's business has operated for less than 12 months, and the nominator has an auditable plan for meeting the requirements specified in the instrument mentioned in sub-sub-subparagraph (I); or

(ii) all of the following apply:

(A) the position is located in regional Australia;

(B) there is a genuine need for the nominator to employ a paid employee to work in the position under the nominator's direct control;

(C) the position cannot be filled by an Australian citizen or an Australian permanent resident who is living in the same local area as that place;

(D) the tasks to be performed in the position correspond to the tasks of an occupation at a skill level of ANZSCO skill level 1, 2 or 3;

(E) the business operated by the nominator is located at that place;

(F) a body that is:

(I) specified by the Minister in an instrument in writing for this sub-sub-subparagraph; and

(II) located in the same State or Territory as the location of the position;

has advised the Minister about the matters mentioned in paragraph (e) and sub-paragraphs (B) and (C).

- (5) The Minister must refuse a nomination if neither of subregulations (3) and (4) applies.
- (6) As soon as practicable after deciding a nomination, the Minister must give the nominator:
- (a) a copy of the written approval or refusal; and
 - (b) if the Minister refuses the nomination:
 - (i) a written statement of the reasons why the nomination was refused; and
 - (ii) a written statement that the decision is an MRT-reviewable decision.

Note Division 4.1 deals with review of decisions. Paragraph 4.02 (4) (e) provides that a decision under regulation 5.19 to reject an application is an **MRT-reviewable decision**. **MRT-reviewable decision** is defined in Division 2 of Part 5 of the Act.

- (7) In this regulation:
- adverse information** has the meaning given by subregulation 2.57 (3).
- associated entity** has the meaning given by section 50AAA of the *Corporations Act 2001*.
- associated with** has the meaning given by subregulation 2.57 (2).
- regional Australia** means a part of Australia specified by the Minister in an instrument in writing for this definition.

[42] Regulation 5.37

substitute

5.37 Employer nomination fee

- (1) This regulation sets out the fee for an application under subregulation 5.19 (1) for the Minister's approval of the nomination of a position.

Note Paragraph 5.19 (2) (b) requires the fee to accompany the application.

- (2) If the application seeks approval in accordance with subregulation 5.19 (3):
- (a) if the position is located in regional Australia, no fee is payable; and
 - (b) if the position is not located in regional Australia, the fee is \$540.
- (3) If the application seeks approval in accordance with subparagraph 5.19 (4) (h) (i), the fee is \$540.
- (4) If the application seeks approval in accordance with subparagraph 5.19 (4) (h) (ii), no fee is payable.

[43] After Division 5.8

insert

Division 5.9 Transitional arrangements**5.45 Operation of Schedule 13**

Schedule 13 makes transitional arrangements in relation to amendments of these Regulations.

[44] Schedule 1, item 1104AA*substitute***1104AA. Business Skills — Business Talent (Permanent)
(Class EA)**

(1) Form: 1396

(2) Visa application charge:

(a) First instalment (payable at the time the application is made): \$5 940

(b) Second instalment (payable before grant of visa):

Item	For ...	the charge is ...
1	an applicant who: <ul style="list-style-type: none"> (a) has turned 18 at the time of application; and (b) is assessed as not having functional English; and (c) satisfies the primary criteria for the grant of a Subclass 132 (Business Talent) visa 	\$8 520
2	an applicant who: <ul style="list-style-type: none"> (a) has turned 18 at the time of application; and (b) is assessed as not having functional English; and (c) satisfies the secondary criteria for the grant of a Subclass 132 (Business Talent) visa 	\$4 250
3	any other applicant	nil

(3) Other:

(a) An application must be made as an Internet application.

Note An Internet application is taken to have been made at the time, identified using Australian Eastern Standard Time or Australian Eastern Standard Time incorporating Daylight Saving Time in the Australian Capital Territory, that corresponds to the time at which the Internet application is made: see regulation 2.10C.

- (b) An applicant may be in or outside of Australia, but not in immigration clearance.
- (c) An applicant in Australia must hold:
- (i) a substantive visa; or
 - (ii) a Subclass 010 Bridging A visa; or
 - (iii) a Subclass 020 Bridging B visa; or
 - (iv) a Subclass 030 Bridging C visa.
- (d) An application by a person claiming to be a member of the family unit of a person who is an applicant for a Business Skills — Business Talent (Permanent) (Class EA) visa may be made at the same time as, and combined with, the application by that person.
- (4) An applicant seeking to satisfy the primary criteria for a Subclass 132 (Business Talent) visa in the Significant Business History stream must meet the requirements in the table.

Item	Requirements
------	--------------

- | | |
|---|---|
| 1 | The applicant must have been invited, in writing, by the Minister to apply for a Subclass 132 (Business Talent) visa in the Significant Business History stream |
| 2 | The applicant must apply for that visa within the period stated in the invitation |
| 3 | The applicant must be nominated by a State or Territory government agency |

Note The invitation to apply for the visa will identify the stream to which the invitation relates.

- (5) An applicant seeking to satisfy the primary criteria for a Subclass 132 (Business Talent) visa in the Venture Capital Entrepreneur stream must meet the requirements in the table.

Item	Requirements
------	--------------

- | | |
|---|---|
| 1 | The applicant must have been invited, in writing, by the Minister to apply for a Subclass 132 (Business Talent) visa in the Venture Capital Entrepreneur stream |
| 2 | The applicant must apply for that visa within the period stated in the invitation |

Item Requirements

- 3 The applicant must be nominated by a State or Territory government agency
-

Note The invitation to apply for the visa will identify the stream to which the invitation relates.

(6) Subclasses:

Subclass 132 (Business Talent)

[45] Schedule 1, before item 1104B

insert

1104BA. Business Skills (Permanent) (Class EC)

(1) Form: 1398

(2) Visa application charge:

(a) First instalment (payable at the time the application is made): \$1 960

(b) Second instalment (payable before grant of visa):

Item	For ...	the charge is ...
1	an applicant who: <ul style="list-style-type: none"> (a) has turned 18 at the time of application; and (b) is assessed as not having functional English; and (c) satisfies the secondary criteria for the grant of a Subclass 888 (Business Innovation and Investment (Permanent)) visa; and (d) has not paid a second instalment of the visa application charge in relation to an application for a Subclass 188 (Business Innovation and Investment (Provisional)) visa 	\$4 250
2	any other applicant	nil

(3) Other:

- (a) An application must be made as an Internet application.

Note An Internet application is taken to have been made at the time, identified using Australian Eastern Standard Time or Australian Eastern Standard Time incorporating Daylight Saving Time in the Australian Capital Territory, that corresponds to the time at which the Internet application is made: see regulation 2.10C.

- (b) An applicant may be in or outside of Australia, but not in immigration clearance.
- (c) The applicant must be nominated by a State or Territory government agency.
- (d) An application by a person claiming to be a member of the family unit of a person who is an applicant for a Business Skills (Permanent) (Class EC) visa may be made at the same time as, and combined with, the application by that person.

- (4) An applicant seeking to satisfy the primary criteria for the grant of a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Business Innovation stream must meet the requirements in at least one item in the table.

Item	Requirements
1	The applicant holds a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Business Innovation stream or the Extension stream
2	Both of the following apply: <ul style="list-style-type: none"> (a) the applicant holds a Subclass 188 (Business Innovation and Investment (Provisional)) visa granted on the basis that the applicant was the spouse or de facto partner of a person who held a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Business Innovation stream or the Extension stream; (b) either: <ul style="list-style-type: none"> (i) the applicant has ceased to be the spouse or de facto partner of that person; or (ii) that person has since died
3	The applicant holds a Subclass 444 (Special Category) visa

Item	Requirements
------	--------------

- | | |
|---|--|
| 4 | The applicant holds a Subclass 457 (Business (Long Stay)) visa granted on the basis that: <ol style="list-style-type: none"> (a) the applicant; or (b) the applicant's spouse or de facto partner (if any); or (c) the applicant's former spouse or de facto partner; satisfied the criteria in subclause 457.223 (7) or (7A) of Schedule 2 for the grant of the visa |
|---|--|

- (5) An applicant seeking to satisfy the primary criteria for the grant of a Subclass 888 (Business Innovation and Investment (Permanent)) visa in the Investor stream must meet the requirements in at least one item in the table.

Item	Requirements
------	--------------

- | | |
|---|--|
| 1 | The applicant holds a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Investor stream |
| 2 | Both of the following apply: <ol style="list-style-type: none"> (a) the applicant holds a Subclass 188 (Business Innovation and Investment (Provisional)) visa granted on the basis that the applicant was the spouse or de facto partner of a person who held a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Investor stream; (b) either: <ol style="list-style-type: none"> (i) the applicant has ceased to be the spouse or de facto partner of that person; or (ii) that person has since died |

- (6) Subclasses:

Subclass 888 (Business Innovation and Investment (Permanent))

[46] Schedule 1, before paragraph 1104A (3) (a)

insert

- (aa) Application by a person seeking to satisfy the primary criteria must be made before 1 July 2012.

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

substitute

- (d) Applicant seeking to satisfy the primary criteria for the grant of a Subclass 890 (Business Owner) visa must hold a visa of a subclass included in Business Skills (Provisional) (Class UR), granted on the basis that the applicant, or the spouse or de facto partner of the applicant (if any), or the former spouse or former de facto partner of the applicant, satisfied the primary criteria for the grant of the visa.

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

substitute

- (f) For an applicant seeking to satisfy the primary criteria for the grant of a Subclass 892 (State/Territory Sponsored Business Owner) visa, applicant must hold a visa of a subclass included in Business Skills (Provisional) (Class UR), granted on the basis that the applicant, or the spouse or de facto partner of the applicant (if any), or the former spouse or former de facto partner of the applicant, satisfied the primary criteria for the grant of the visa.

[49] Schedule 1, paragraph 1104B (3) (j)

omit

[50] Schedule 1, before paragraph 1114 (3) (a)

insert

- (aa) Application by a person seeking to satisfy the primary criteria must be made before 1 July 2012.

[51] Schedule 1, before paragraph 1114A (3) (a)

insert

- (aa) Application by a person seeking to satisfy the primary criteria must be made before 1 July 2012.

[52] Schedule 1, after item 1114A*insert***1114B. Employer Nomination (Permanent) (Class EN)**

(1) Form: 1408

(2) Visa application charge:

(a) First instalment (payable at the time the application is made): \$3 060

(b) Second instalment (payable before grant of visa):

Item	For ...	the charge is ...
1	an applicant:	\$8 520
	(a) who has turned 18 at the time of application; and	
	(b) who is assessed as not having functional English; and	
	(c) who satisfies the primary criteria for the grant of a Subclass 186 (Employer Nomination Scheme) visa; and	
	(d) to whom items 3 and 4 do not apply	
2	an applicant:	\$4 250
	(a) who has turned 18 at the time of application; and	
	(b) who is assessed as not having functional English; and	
	(c) who satisfies the secondary criteria for the grant of a Subclass 186 (Employer Nomination Scheme) visa; and	
	(d) to whom items 3 and 4 do not apply	
3	an applicant nominated as a Minister of Religion by a religious institution	nil
4	a member of the family unit of an applicant mentioned in item 3	nil
5	any other applicant	nil

(3) Other:

- (a) An application must be made as an Internet application.

Note An Internet application is taken to have been made at the time, identified using Australian Eastern Standard Time or Australian Eastern Standard Time incorporating Daylight Saving Time in the Australian Capital Territory, that corresponds to the time at which the Internet application is made: see regulation 2.10C.

- (b) An applicant may be in or outside of Australia, but not in immigration clearance.
- (c) An applicant in Australia must hold:
- (i) a substantive visa; or
 - (ii) a Subclass 010 (Bridging A) visa; or
 - (iii) a Subclass 020 (Bridging B) visa; or
 - (iv) a Subclass 030 (Bridging C) visa.
- (d) An applicant seeking to satisfy the primary criteria must declare in the application that the position to which the application relates is a position nominated:
- (i) under regulation 5.19; or
 - (ii) in accordance with a labour agreement that is in effect, by an employer that is a party to the labour agreement.
- (e) An application by a person claiming to be a member of the family unit of a person who is an applicant for an Employer Nomination (Permanent) (Class EN) visa may be made at the same time as, and combined with, the application by that person.

(4) Subclasses:

Subclass 186 (Employer Nomination Scheme)

**1114C. Regional Employer Nomination (Permanent)
(Class RN)**

- (1) Form: 1408
- (2) Visa application charge:
- (a) First instalment (payable at the time the application is made): \$3 060

(b) Second instalment (payable before grant of visa):

Item	For ...	the charge is ...
1	an applicant:	\$8 520
	(a) who has turned 18 at the time of application; and	
	(b) who is assessed as not having functional English; and	
	(c) who satisfies the primary criteria for the grant of a Subclass 187 (Regional Sponsored Migration Scheme) visa; and	
	(d) to whom items 3 and 4 do not apply	
2	an applicant:	\$4 250
	(a) who has turned 18 at the time of application; and	
	(b) who is assessed as not having functional English; and	
	(c) who satisfies the secondary criteria for the grant of a Subclass 187 (Regional Sponsored Migration Scheme) visa; and	
	(d) to whom items 3 and 4 do not apply	
3	an applicant nominated as a Minister of Religion by a religious institution	nil
4	a member of the family unit of an applicant mentioned in item 3	nil
5	any other applicant	nil

(3) Other:

(a) An application must be made as an Internet application.

Note An Internet application is taken to have been made at the time, identified using Australian Eastern Standard Time or Australian Eastern Standard Time incorporating Daylight Saving Time in the Australian Capital Territory, that corresponds to the time at which the Internet application is made: see regulation 2.10C.

(b) An applicant may be in or outside of Australia, but not in immigration clearance.

-
- (c) An applicant in Australia must hold:
 - (i) a substantive visa; or
 - (ii) a Subclass 010 (Bridging A) visa; or
 - (iii) a Subclass 020 (Bridging B) visa; or
 - (iv) a Subclass 030 (Bridging C) visa.
 - (d) An applicant seeking to satisfy the primary criteria must declare in the application that the position to which the application relates is a position nominated:
 - (i) under regulation 5.19; or
 - (ii) in accordance with a labour agreement that is in effect, by an employer that is a party to the labour agreement.
 - (e) An application by a person claiming to be a member of the family unit of a person who is an applicant for a Regional Employer Nomination (Permanent) (Class RN) visa may be made at the same time as, and combined with, the application by that person.

(4) Subclasses:

Subclass 187 (Regional Sponsored Migration Scheme)

[53] Schedule 1, item 1120

omit

[54] Schedule 1, before paragraph 1121 (3) (a)

insert

- (aa) Application by a person seeking to satisfy the primary criteria must be made before 1 July 2012.

[55] Schedule 1, before paragraph 1121A (3) (a)

insert

- (aa) Application by a person seeking to satisfy the primary criteria must be made before 1 July 2012.

[56] Schedule 1, items 1128AA, 1128A, 1128B, 1128BA, 1128C, 1128CA, 1128D and 1134

omit

[57] Schedule 1, before paragraph 1135 (3) (a)

insert

- (aa) Application by a person seeking to satisfy the primary criteria for the grant of the visa must be made before 1 July 2012.

[58] Schedule 1, sub-subparagraph 1136 (2) (a) (i) (E)

substitute

- (E) a Skilled — Regional Sponsored (Provisional) (Class SP) visa; or
- (F) a Bridging A (Class WA) or Bridging B (Class WB) visa granted on the basis of a valid application for:
 - (I) a Skilled — Independent Regional (Class UX) visa; or
 - (II) a Skilled (Provisional) (Class VC) visa (other than a Subclass 485 (Skilled — Graduate) visa); or
 - (III) a Skilled — Regional Sponsored (Provisional) (Class SP) visa: \$325.

[59] Schedule 1, before paragraph 1136 (3) (a)

insert

- (aa) An application by a person seeking to satisfy the primary criteria for the grant of a Subclass 885 (Skilled — Independent) visa or a Subclass 886 (Skilled — Sponsored) visa must be made before 1 January 2013.

[60] Schedule 1, paragraph 1136 (3) (a)*omit*

Application must be made:

insert

An application made before 1 January 2013 must be made:

[61] Schedule 1, after paragraph 1136 (3) (a)*insert*

- (ab) An application made on or after 1 January 2013 must be made as an Internet application.

[62] Schedule 1, subparagraph 1136 (7) (a) (v)*substitute*

- (v) a Skilled — Regional Sponsored (Provisional) (Class SP) visa; or
- (vi) a Bridging A (Class WA) or Bridging B (Class WB) visa granted on the basis of a valid application for:
 - (A) a Skilled — Independent Regional (Provisional) (Class UX) visa; or
 - (B) a Skilled (Provisional) (Class VC) visa (other than a Subclass 485 (Skilled — Graduate) visa); or
 - (C) a Skilled — Regional Sponsored (Provisional) (Class SP) visa;

[63] Schedule 1, after subparagraph 1136 (7) (b) (iv)*insert*

- (v) a Skilled — Regional Sponsored (Provisional) (Class SP) visa;

[64] Schedule 1, after item 1136*insert***1137. Skilled — Independent (Permanent) (Class SI)**

(1) Form: 1393

(2) Visa application charge:

(a) First instalment (payable at the time application is made): \$3 060

(b) Second instalment (payable before grant of visa):

Item	For ...	the charge is ...
1	an applicant who: <ul style="list-style-type: none"> (a) has turned 18 at the time of application; and (b) is assessed as not having functional English 	\$4 250
2	any other applicant	nil

(3) Other:

(a) An application must be made as an Internet application.

Note An Internet application is taken to have been made at the time, identified using Australian Eastern Standard Time or Australian Eastern Standard Time incorporating Daylight Saving Time in the Australian Capital Territory, that corresponds to the time at which the Internet application is made: see regulation 2.10C.

(b) An applicant may be in or outside of Australia, but not in immigration clearance.

(c) An applicant in Australia must hold:

(i) a substantive visa; or

(ii) a Subclass 010 Bridging A visa; or

(iii) a Subclass 020 Bridging B visa; or

(iv) a Subclass 030 Bridging C visa.

(d) An application by a person claiming to be a member of the family unit of a person who is an applicant for a Skilled — Independent (Permanent) (Class SI) visa may be made at the same time as, and combined with, the application by that person.

- (4) An applicant seeking to satisfy the primary criteria must meet the requirements in the table.

Item	Requirements
1	The applicant must have been invited, in writing, by the Minister to apply for a Subclass 189 (Skilled — Independent) visa
2	The applicant must apply for that visa within the period stated in the invitation
3	The applicant must not have turned 50 at the time of invitation to apply for the visa
4	The applicant must nominate a skilled occupation: <ol style="list-style-type: none"> (a) that is specified by the Minister in an instrument in writing for this item as a skilled occupation at the time of invitation to apply for the visa; and (b) that is specified in the invitation as the skilled occupation which the applicant may nominate; and (c) for which the applicant declares in the application that the applicant's skills have been assessed as suitable by the relevant assessing authority

- (5) Subclasses:

Subclass 189 (Skilled — Independent)

1138. Skilled — Nominated (Permanent) (Class SN)

- (1) Form: 1393
- (2) Visa application charge:
- (a) First instalment (payable at the time application is made): \$3 060
 - (b) Second instalment (payable before grant of visa):

Item	For ...	the charge is ...
1	an applicant who: <ol style="list-style-type: none"> (a) has turned 18 at the time of application; and (b) is assessed as not having functional English 	\$4 250
2	any other applicant	nil

(3) Other:

- (a) An application must be made as an Internet application.

Note An Internet application is taken to have been made at the time, identified using Australian Eastern Standard Time or Australian Eastern Standard Time incorporating Daylight Saving Time in the Australian Capital Territory, that corresponds to the time at which the Internet application is made: see regulation 2.10C.

- (b) An applicant may be in or outside of Australia, but not in immigration clearance.

- (c) An applicant in Australia must hold:

- (i) a substantive visa; or
- (ii) a Subclass 010 Bridging A visa; or
- (iii) a Subclass 020 Bridging B visa; or
- (iv) a Subclass 030 Bridging C visa.

- (d) An application by a person claiming to be a member of the family unit of a person who is an applicant for a Skilled — Nominated (Permanent) (Class SN) visa may be made at the same time as, and combined with, the application by that person.

- (4) An applicant seeking to satisfy the primary criteria must meet the requirements in the table.

Item	Requirements
1	The applicant must have been invited, in writing, by the Minister to apply for a Subclass 190 (Skilled — Nominated) visa
2	The applicant must apply for that visa within the period stated in the invitation
3	The applicant must not have turned 50 at the time of invitation to apply for the visa
4	The applicant must nominate a skilled occupation: <ul style="list-style-type: none"> (a) that is specified by the Minister in an instrument in writing for this item as a skilled occupation at the time of invitation to apply for the visa; and (b) that is specified in the invitation as the skilled occupation which the applicant may nominate; and

Item	Requirements
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	(c) for which the applicant declares in the application that the applicant's skills have been assessed as suitable by the relevant assessing authority
--	--

5	The applicant must be nominated by a State or Territory government agency
---	---

(5) Subclasses:

Subclass 190 (Skilled — Nominated)

[65] Schedule 1, after item 1202A

insert

1202B. Business Skills (Provisional) (Class EB)

(1) Form: 1397

(2) Visa application charge:

(a) First instalment (payable at the time the application is made):

Item	For ...	the charge is ...
1	an applicant seeking to satisfy the primary criteria for the grant of a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Extension stream	\$500
2	any other applicant	\$4 065

(b) Second instalment (payable before grant of visa):

Item	For ...	the charge is ...
1	an applicant who: <ul style="list-style-type: none"> (a) has turned 18 at the time of application; and (b) is assessed as not having functional English; and 	\$8 520

Item	For ...	the charge is ...
	(c) satisfies the primary criteria for the grant of a Subclass 188 (Business Innovation and Investment (Provisional)) visa; and	
	(d) has not paid a second instalment of the visa application charge in relation to an application for a Subclass 188 (Business Innovation and Investment (Provisional)) visa	
2	an applicant who:	\$4 250
	(a) has turned 18 at the time of application; and	
	(b) is assessed as not having functional English; and	
	(c) satisfies the secondary criteria for the grant of a Subclass 188 (Business Innovation and Investment (Provisional)) visa; and	
	(d) has not paid a second instalment of the visa application charge in relation to an application for a Subclass 188 (Business Innovation and Investment (Provisional)) visa	
3	any other applicant	nil

(3) Other:

(a) An application must be made as an Internet application.

Note An Internet application is taken to have been made at the time, identified using Australian Eastern Standard Time or Australian Eastern Standard Time incorporating Daylight Saving Time in the Australian Capital Territory, that corresponds to the time at which the Internet application is made: see regulation 2.10C.

(b) An applicant may be in or outside of Australia, but not in immigration clearance.

(c) An applicant in Australia must hold:

- (i) a substantive visa; or
- (ii) a Subclass 010 Bridging A visa; or
- (iii) a Subclass 020 Bridging B visa; or
- (iv) a Subclass 030 Bridging C visa.

(d) An application by a person claiming to be a member of the family unit of a person who is an applicant for a Business Skills (Provisional) (Class EB) visa may be made at the same time as, and combined with, the application by that person.

- (4) An applicant seeking to satisfy the primary criteria for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Business Innovation stream must meet the requirements in the table.

Item	Requirements
1	The applicant must have been invited, in writing, by the Minister to apply for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Business Innovation stream
2	The applicant must apply for that visa within the period stated in the invitation
3	The applicant must be nominated by a State or Territory government agency

Note The invitation to apply for the visa will identify the stream to which the invitation relates.

- (5) An applicant seeking to satisfy the primary criteria for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Extension stream must meet the requirements in the table.

Item	Requirements
1	The applicant must hold a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Business Innovation stream
2	The applicant must have held the Subclass 188 (Business Innovation and Investment (Provisional)) visa for at least 3 years
3	The applicant must not have held more than one Subclass 188 (Business Innovation and Investment (Provisional)) visa
4	The applicant must be nominated by a State or Territory government agency

- (6) An applicant seeking to satisfy the primary criteria for a Subclass 188 visa in the Investor stream must meet the requirements in the table.

Item	Requirements
------	--------------

- | | |
|---|--|
| 1 | The applicant must have been invited, in writing, by the Minister to apply for a Subclass 188 (Business Innovation and Investment (Provisional)) visa in the Investor stream |
| 2 | The applicant must apply for that visa within the period stated in the invitation |
| 3 | The applicant must be nominated by a State or Territory government agency |

Note The invitation to apply for the visa will identify the stream to which the invitation relates.

- (7) Subclasses:

Subclass 188 (Business Innovation and Investment (Provisional))

[66] Schedule 1, before paragraph 1202A (3) (a)

insert

- (aa) Application by a person seeking to satisfy the primary criteria must be made before 1 July 2012.

[67] Schedule 1, item 1212A

omit

[68] Schedule 1, after sub-subparagraph 1214C (3) (g) (i) (C)

insert

- (D) a Skilled — Regional Sponsored (Provisional) (Class SP) visa; or

[69] Schedule 1, sub-subparagraph 1214C (3) (g) (ii) (C)*omit*

visa;

insert

visa; or

[70] Schedule 1, after sub-subparagraph 1214C (3) (g) (ii) (C)*insert*

(D) a Skilled — Regional Sponsored
(Provisional) (Class SP) visa;

[71] Schedule 1, items 1218A and 1226*omit***[72] Schedule 1, before paragraph 1228 (3) (a)***insert*

(aa) Application by a person seeking to satisfy the primary criteria for the grant of a Subclass 475 (Skilled — Regional Sponsored) visa must be made before 1 July 2012

[73] Schedule 1, before paragraph 1229 (3) (a)*insert*

(aaa) Application by a person seeking to satisfy the primary criteria for the grant of a Subclass 487 (Skilled — Regional Sponsored) visa must be made before 1 January 2013.

[74] Schedule 1, paragraph 1229 (3) (e)*omit*

subitem (4), (5), (6), (7), (8) or (9)

insert

subitem (4), (5), (6) or (7)

[75] Schedule 1, subitems 1229 (8) and (9)*omit***[76] Schedule 1, after item 1229***insert***1230. Skilled — Regional Sponsored (Provisional)
(Class SP)**

- (1) Form: 1393
- (2) Visa application charge:
- (a) First instalment (payable at the time application is made):

Item	For ...	the charge is ...
1	an applicant who holds:	\$280
	(a) a Skilled—Independent Regional (Provisional) (Class UX) visa; or	
	(b) a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa; or	
	(c) a Subclass 475 (Skilled — Regional Sponsored) visa; or	
	(d) a Subclass 487 (Skilled — Regional Sponsored) visa	
2	any other applicant	\$3 060

(b) Second instalment (payable before grant of visa):

Item	For ...	the charge is ...
1	an applicant who: <ul style="list-style-type: none"> (a) has turned 18 at the time of application; and (b) is assessed as not having functional English; and (c) has not paid a second instalment of the visa application charge in relation to an application for a visa mentioned in item 1 of the table in paragraph (a) 	\$4 250
2	any other applicant	nil

(3) Other:

(a) An application must be made as an Internet application.

Note An Internet application is taken to have been made at the time, identified using Australian Eastern Standard Time or Australian Eastern Standard Time incorporating Daylight Saving Time in the Australian Capital Territory, that corresponds to the time at which the Internet application is made: see regulation 2.10C.

(b) An applicant may be in or outside of Australia, but not in immigration clearance.

(c) An applicant in Australia must hold:

- (i) a substantive visa; or
- (ii) a Subclass 010 (Bridging A) visa; or
- (iii) a Subclass 020 (Bridging B) visa; or
- (iv) a Subclass 030 (Bridging C) visa.

(d) An application by a person claiming to be a member of the family unit of a person who is an applicant for a Skilled — Regional Sponsored (Provisional) (Class SP) visa may be made at the same time as, and combined with, an application by that person.

(4) An applicant seeking to satisfy the primary criteria for the grant of a Subclass 489 (Skilled — Regional (Provisional)) visa in the First Provisional Visa stream must meet the requirements in the table.

Item	Requirements
1	The applicant must have been invited, in writing, by the Minister to apply for a Subclass 489 (Skilled-Regional (Provisional)) visa in the First Provisional Visa stream
2	The applicant must apply for that visa within the period stated in the invitation
3	The applicant must not have turned 50 at the time of invitation to apply for the visa
4	The applicant must nominate a skilled occupation: <ul style="list-style-type: none">(a) that is specified by the Minister in an instrument in writing for this item as a skilled occupation at the time of invitation to apply for the visa; and(b) that is specified in the invitation as the skilled occupation which the applicant may nominate; and(c) for which the applicant declares in the application that the applicant's skills have been assessed as suitable by the relevant assessing authority
5	The applicant must: <ul style="list-style-type: none">(a) be nominated by a State or Territory government agency; or(b) declare in the application that the applicant is sponsored by a person who:<ul style="list-style-type: none">(i) has turned 18; and(ii) is an Australian citizen, Australian permanent resident or eligible New Zealand citizen
6	If the applicant declares in the application that the applicant is sponsored by a person mentioned in paragraph 5 (b), the applicant also declares in the application that: <ul style="list-style-type: none">(a) the sponsor is usually resident in a designated area of Australia; and(b) the sponsor is related to the applicant, or the applicant's spouse or de facto partner (if the applicant's spouse or de facto partner is an applicant for the grant of a Skilled — Regional Sponsored (Provisional) (Class SP) visa), as:<ul style="list-style-type: none">(i) a parent; or(ii) a child or step-child; or

Item	Requirements
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- | | |
|--|---|
| | <ul style="list-style-type: none"> (iii) a brother, sister, adoptive brother, adoptive sister, step-brother or step-sister; or (iv) an aunt, uncle, adoptive aunt, adoptive uncle, step-aunt or step-uncle; or (v) a nephew, niece, adoptive nephew, adoptive niece, step-nephew or step-niece; or (vi) a grandparent; or (vii) a first cousin; and <p>(c) each person who is an applicant, and claims to be a member of the family unit of the applicant, is sponsored by that person</p> |
|--|---|

Note **designated area** is defined in regulation 1.03

- (5) An applicant seeking to satisfy the primary criteria for the grant of a Subclass 489 (Skilled — Regional (Provisional)) visa in the Second Provisional Visa stream must meet the requirements in the table.

Item	Requirements
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- | | |
|---|--|
| 1 | <p>The applicant holds one of the following visas:</p> <ul style="list-style-type: none"> (a) a Skilled — Independent (Provisional) (Class UX) visa; (b) a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa; (c) a Subclass 475 (Skilled — Regional Sponsored) visa; (d) a Subclass 487 (Skilled — Regional Sponsored) visa. |
| 2 | <p>For at least 2 years immediately before the application is made, the applicant must have held one of those visas, granted on the basis of:</p> <ul style="list-style-type: none"> (a) satisfying the primary criteria for the grant of that visa; or (b) being the spouse or de facto partner of the person who satisfied the primary criteria for the grant of that visa |
| 3 | <p>The applicant must not have held more than one of a particular kind of those visas</p> |

- (6) Subclasses:

Subclass 489 (Skilled — Regional (Provisional))

[77] Schedule 1, subclause 1301 (1)*omit*

1365 (Internet) or 1383.

insert

1365 (Internet), 1383, 1393, 1396, 1397, 1398 or 1408.

[78] Schedule 1, subclause 1303 (1)*omit*

1276 (Internet) or 1383.

insert

1276 (Internet), 1383, 1393, 1396, 1397, 1398 or 1408.

[79] Schedule 2, subclause 010.611 (3B)*substitute*

(3B) In the case of a visa granted to a person who meets the requirements of subclause 010.211 (2) or (3) on the basis of a valid application for:

- (a) a Business Skills — Business Talent (Permanent) (Class EA) visa; or
- (b) a Business Skills (Provisional) (Class EB) visa; or
- (c) a Business Skills (Permanent) (Class EC) visa; or
- (d) an Employer Nomination (Permanent) (Class EN) visa; or
- (e) a Regional Employer Nomination (Permanent) (Class RN) visa; or
- (f) a Skilled — Independent (Permanent) (Class SI) visa; or
- (g) a Skilled — Nominated (Permanent) (Class SN) visa; or
- (h) a Skilled — Regional Sponsored (Provisional) (Class SP) visa; or
- (i) a Skilled (Residence) (Class VB) visa in relation to which the applicant met the requirements for subitem 1136 (4), (5) or (6) of Schedule 1;

nil.

[80] Schedule 2, subclause 020.611 (4)*substitute*

(4) In the case of a visa granted to a non-citizen who meets the requirements of subclause 020.212 (2) or (3) on the basis of a valid application for:

- (a) a Business Skills — Business Talent (Permanent) (Class EA) visa; or
- (b) a Business Skills (Provisional) (Class EB) visa; or
- (c) a Business Skills (Permanent) (Class EC) visa; or
- (d) an Employer Nomination (Permanent) (Class EN) visa; or
- (e) a Regional Employer Nomination (Permanent) (Class RN) visa; or
- (f) a Skilled — Independent (Permanent) (Class SI) visa; or
- (g) a Skilled — Nominated (Permanent) (Class SN) visa; or
- (h) a Skilled — Regional Sponsored (Provisional) (Class SP) visa; or
- (i) a Skilled (Residence) (Class VB) visa in relation to which the applicant met the requirements for subitem 1136 (4), (5) or (6) of Schedule 1;

nil.

[81] Schedule 2, clause 030.613*substitute*

030.613 In the case of a visa granted to a person on the basis of a valid application for:

- (a) a Business Skills — Business Talent (Permanent) (Class EA) visa; or
- (b) a Business Skills (Provisional) (Class EB) visa; or
- (c) a Business Skills (Permanent) (Class EC) visa; or
- (d) an Employer Nomination (Permanent) (Class EN) visa; or
- (e) a Regional Employer Nomination (Permanent) (Class RN) visa; or
- (f) a Skilled — Independent (Permanent) (Class SI) visa; or

- (g) a Skilled — Nominated (Permanent) (Class SN) visa; or
- (h) a Skilled — Regional Sponsored (Provisional) (Class SP) visa;

nil.

030.614 In any other case, condition 8101.

[82] Schedule 2, Parts 105, 106 and 126

omit

[83] Schedule 2, Part 132

substitute

Subclass 132 Business Talent

132.1 Interpretation

Note 1 For *AUD*, *eligible business*, *fiscal year*, *ownership interest* and *qualifying business*: see regulation 1.03.

Note 2 *main business* is defined in regulation 1.11.

Note 3 For *beneficial ownership* of an asset or ownership interest: see regulation 1.11A.

Note 4 There are no interpretation provisions specific to this Part.

132.2 Primary criteria

Note The primary criteria for the grant of a Subclass 132 visa include criteria set out in streams.

If an applicant applies for a Subclass 132 visa in the Significant Business History stream, the criteria in Subdivisions 132.21 and 132.22 are the primary criteria for the grant of the visa.

If an applicant applies for a Subclass 132 visa in the Venture Capital Entrepreneur stream, the criteria in Subdivisions 132.21 and 132.23 are the primary criteria.

The primary criteria must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

All criteria must be satisfied at the time a decision is made on the application.

132.21 Common criteria

Note These criteria are for all applicants seeking to satisfy the primary criteria for a Subclass 132 visa.

- 132.211 The applicant, and the applicant's spouse or de facto partner, do not have a history of involvement in business activities that are of a nature that is not generally acceptable in Australia.
- 132.212 The nominating State or Territory government agency has not withdrawn the nomination.
- 132.213 (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010 and 4020.
- (2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.
- (3) Each member of the family unit of the applicant who is an applicant for a Subclass 132 visa satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010 and 4020.
- (4) Each member of the family unit of the applicant who:
- (a) is an applicant for a Subclass 132 visa; and
 - (b) had turned 18 at the time of application;
- satisfies public interest criterion 4019.
- (5) Each member of the family unit of the primary applicant who:
- (a) is an applicant for a Subclass 132 visa; and
 - (b) has not turned 18;
- satisfies public interest criteria 4015 and 4016.
- (6) Each member of the family unit of the applicant who is not an applicant for a Subclass 132 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and

- (b) satisfies public interest criterion 4005 unless it would be unreasonable to require the member to undergo assessment in relation to the criterion.
- 132.214 (1) The applicant satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is an applicant for a Subclass 132 visa satisfies special return criteria 5001, 5002 and 5010.
- 132.215 Either:
- (a) the applicant holds a valid passport that:
- (i) was issued to the applicant by an official source; and
- (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to hold a passport.
- 132.22 Criteria for Significant Business History stream**
- Note* These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 132 visa in the Significant Business History stream.
- 132.221 The applicant was invited, in writing, by the Minister to apply for the visa.
- 132.222 The applicant:
- (a) had not turned 55 at the time of invitation to apply for the visa; or
- (b) is proposing to establish or participate in a business that the nominating State or Territory government agency has determined is of exceptional economic benefit to the State or Territory in which the agency is located.
- 132.223 The applicant has overall had a successful business career.
- 132.224 For at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa:
- (a) the net value of the assets of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together, in a qualifying business or qualifying businesses in which

the applicant had an ownership interest was at least AUD400 000; and

- (b) if a qualifying business mentioned in paragraph (a) was operated by a publicly listed company, the shareholding of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together, was at least 10% of the total issued capital of the company.

132.225 For at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa, the applicant's main business, or the applicant's main businesses together, had an annual turnover of at least AUD3 000 000.

132.226 The business and personal assets of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together:

- (a) have a net value of at least AUD1 500 000; and
- (b) are lawfully acquired; and
- (c) are available for transfer to Australia within 2 years after the grant of a Subclass 132 visa.

132.227 (1) The applicant genuinely has a realistic commitment to:

- (a) establish a qualifying business in Australia; or
- (b) participate in an existing qualifying business in Australia.

(2) The applicant genuinely has a realistic commitment to:

- (a) maintain a substantial ownership interest in the qualifying business mentioned in subclause (1); and
- (b) maintain a direct and continuous involvement in the management of the qualifying business from day to day, and in the making of decisions that affect the overall direction and performance of the qualifying business, in a manner that benefits the Australian economy.

132.23 Criteria for Venture Capital Entrepreneur stream

Note These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 132 visa in the Venture Capital Entrepreneur stream.

- 132.231 The applicant was invited, in writing, by the Minister to apply for the visa.
- 132.232 (1) The applicant has entered into a legally enforceable agreement with an Australian company to receive venture capital funding for:
- (a) the early-phase start-up of a business; or
 - (b) the commercialisation of a product; or
 - (c) the development of a business; or
 - (d) the expansion of a business.
- (2) The amount to be provided under the agreement is at least AUD1 000 000.
- (3) The Australian company:
- (a) is a member of an industry association or similar body specified by the Minister in an instrument in writing for this paragraph; and
 - (b) holds a category of membership of the industry association or similar body specified by the Minister in an instrument in writing for this paragraph.
- 132.233 The nominating State or Territory government agency is satisfied that the net value of the business and personal assets of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together, is sufficient to allow them to settle in Australia.
- 132.234 (1) The applicant genuinely has a realistic commitment to:
- (a) establish an eligible business in Australia; or
 - (b) participate in an existing eligible business in Australia.
- (2) The applicant genuinely has a realistic commitment to:
- (a) maintain a substantial ownership interest in the eligible business mentioned in subclause (1); and
 - (b) maintain a direct and continuous involvement in the management of the eligible business from day to day, and in the making of decisions that affect the overall direction and performance of the eligible business, in a manner that benefits the Australian economy.

132.3 Secondary criteria

Note These criteria are for applicants who are members of the family unit of a person who satisfies the primary criteria. All criteria must be satisfied at the time a decision is made on the application.

132.31 Criteria

132.311 The applicant:

- (a) is a member of the family unit of a person who holds a Subclass 132 visa granted on the basis of satisfying the primary criteria for the grant of the visa; and
- (b) made a combined application with that person.

132.312 (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010 and 4020.

(2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.

(3) If the applicant has not turned 18, the applicant satisfies public interest criteria 4017 and 4018.

132.313 The applicant satisfies special return criteria 5001, 5002 and 5010.

132.314 Either:

- (a) the applicant holds a valid passport that:
 - (i) was issued to the applicant by an official source; and
 - (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to hold a passport.

132.4 Circumstances applicable to grant

132.411 The applicant:

- (a) may be in or outside Australia when the visa is granted; and
- (b) must not be in immigration clearance.

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

132.5 When visa is in effect

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

132.6 Conditions

132.611 If the applicant is outside Australia when the visa is granted:

- (a) first entry must be made before the date specified by the Minister; and
- (b) if the applicant satisfies the secondary criteria for the grant of the visa, condition 8515 may be imposed.

[84] Schedule 2, Parts 134, 135, 136, 137, 138 and 139

omit

[85] Schedule 2, after Part 176

insert

Subclass 186 Employer Nomination Scheme

186.1 Interpretation

186.111 In this Part:

application for approval means an application under regulation 5.19 for approval of the nomination of a position.

occupation means the occupation that would be carried out by a person who is employed in a position.

Note 1 For ***labour agreement***: see regulation 1.03.

Note 2 Regulation 1.03 provides that ***competent English*** has the meaning set out in regulation 1.15C.

Note 3 Regulation 1.03 provides that ***vocational English*** has the meaning set out in regulation 1.15B.

186.2 Primary criteria

Note The primary criteria for the grant of a Subclass 186 visa include criteria set out in streams.

If an applicant applies for a Subclass 186 visa in the Temporary Residence Transition stream, the criteria in Subdivisions 186.21 and 186.22 are the primary criteria for the grant of the visa.

If an applicant applies for a Subclass 186 visa in the Direct Entry stream, the criteria in Subdivisions 186.21 and 186.23 are the primary criteria.

If an applicant applies for a Subclass 186 visa in the Agreement stream, the criteria in Subdivisions 186.21 and 186.24 are the primary criteria.

The primary criteria must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

All criteria must be satisfied at the time a decision is made on the application.

186.21 Common criteria

Note These criteria are for all applicants seeking to satisfy the primary criteria for a Subclass 186 visa.

- 186.211 If it is mandatory, in the State or Territory in which the position to which the application relates is located, that a person:
- (a) hold a licence of a particular kind; or
 - (b) hold registration of a particular kind; or
 - (c) be a member (or a member of a particular kind) of a particular professional body;
- to perform tasks of the kind to be performed in the occupation to which a position relates, the applicant is, or is eligible to become, the holder of the licence, the holder of the registration, or a member of the body, at the time of application.
- 186.212 The position to which the application relates will provide to the applicant the employment referred to in the application for approval.
- 186.213 (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4010 and 4020.

(2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.

(3) Each member of the family unit of the applicant who is an applicant for a Subclass 186 visa satisfies public interest criteria 4001, 4002, 4003, 4004, 4010 and 4020.

(4) Each member of the family unit of the applicant who:

- (a) is an applicant for a Subclass 186 visa; and
- (b) had turned 18 at the time of application;

satisfies public interest criterion 4019.

(5) Each member of the family unit of the applicant who:

- (a) is an applicant for a Subclass 186 visa; and
- (b) has not turned 18;

satisfies public interest criteria 4015 and 4016.

(6) Each member of the family unit of the applicant who is not an applicant for a Subclass 186 visa satisfies public interest criteria 4001, 4002, 4003 and 4004.

186.214 (1) The applicant satisfies special return criteria 5001, 5002 and 5010.

(2) Each member of the family unit of the applicant who is an applicant for a Subclass 186 visa satisfies special return criteria 5001, 5002 and 5010.

186.215 Either:

- (a) the applicant holds a valid passport that:
 - (i) was issued to the applicant by an official source; and
 - (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to hold a passport.

186.22 Criteria for Temporary Residence Transition stream

Note These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 186 visa in the Temporary Residence Transition stream.

-
- 186.221 At the time of application, the applicant:
- (a) had not turned 50; or
 - (b) was a person in a class of persons specified by the Minister in an instrument in writing for this paragraph.
- 186.222 At the time of application, the applicant:
- (a) had vocational English; or
 - (b) was a person in a class of persons specified by the Minister in an instrument in writing for this paragraph.
- 186.223
- (1) The position to which the application relates is the position:
 - (a) nominated in an application for approval that seeks to meet the requirements of subregulation 5.19 (3); and
 - (b) in relation to which the applicant is identified as the holder of a Subclass 457 (Business (Long Stay)) visa; and
 - (c) in relation to which the declaration mentioned in paragraph 1114B (3) (d) of Schedule 1 was made in the application for the grant of the visa.
 - (2) The Minister has approved the nomination.
 - (3) The nomination has not subsequently been withdrawn.
 - (4) The position is still available to the applicant.
 - (5) The application for the visa is made no more than 6 months after the Minister approved the nomination.
- 186.224
- (1) The applicant satisfies public interest criterion 4007.
 - (2) Each member of the family unit of the applicant who is an applicant for a Subclass 186 visa satisfies public interest criterion 4007.
 - (3) Each member of the family unit of the applicant who is not an applicant for a Subclass 186 visa satisfies public interest criterion 4007 unless it would be unreasonable to require the member to undergo assessment in relation to the criterion.

186.23 Criteria for Direct Entry stream

Note These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 186 visa in the Direct Entry stream.

186.231 At the time of application, the applicant:

- (a) had not turned 50; or
- (b) was a person in a class of persons specified by the Minister in an instrument in writing for this paragraph.

186.232 At the time of application, the applicant:

- (a) had competent English; or
- (b) was a person in a class of persons specified by the Minister in an instrument in writing for this paragraph.

186.233 (1) The position to which the application relates is the position:

- (a) nominated in an application for approval that seeks to meet the requirements of:
 - (i) subparagraph 5.19 (4) (h) (i); or
 - (ii) subregulation 5.19 (2) as in force before 1 July 2012; and
- (b) in relation to which the declaration mentioned in paragraph 1114B (3) (d) of Schedule 1 was made in the application for the grant of the visa.

(2) The person who will employ the applicant is the person who was the nominator in the application for approval.

(3) The Minister has approved the nomination.

(4) The nomination has not subsequently been withdrawn.

(5) The position is still available to the applicant.

(6) The application for the visa is made not more than 6 months after the Minister approved the nomination.

186.234 (1) At the time of application, subclause (2) or (3) applies.

(2) Both of the following apply:

- (a) an assessing authority specified by the Minister in an instrument in writing for this subclause, as the assessing

authority for the occupation, has assessed the applicant's skills as suitable for the occupation;

(b) the applicant has been employed in the occupation for at least 3 years.

(3) The applicant is a person in a class of persons specified by the Minister in an instrument in writing for this subclause.

186.235 (1) The applicant satisfies public interest criterion 4005.

(2) Each member of the family unit of the applicant who is an applicant for a Subclass 186 visa satisfies public interest criterion 4005.

(3) Each member of the family unit of the applicant who is not an applicant for a Subclass 186 visa satisfies public interest criterion 4005 unless the Minister is satisfied that it would be unreasonable to require the member to undergo assessment in relation to the criterion.

186.24 Criteria for Agreement stream

Note These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 186 visa in the Agreement stream.

186.241 Either:

(a) the applicant had not turned 50 at the time of application; or

(b) the Minister has agreed, in a labour agreement:

(i) that is in effect; and

(ii) to which the employer is a party; and

(iii) under which the position to which the application relates is nominated; and

that persons who have turned 50 may be employed.

186.242 (1) The position to which the application relates is the position:

(a) nominated by an employer in accordance with a labour agreement that is in effect and to which the employer is a party; and

(b) identified in the application for the grant of the visa.

(2) The requirements of the labour agreement have been met in relation to the application.

(3) The Minister has approved the nomination.

(4) The nomination has not subsequently been withdrawn.

(5) The position is still available to the applicant.

(6) The terms and conditions of employment applicable to the position will be no less favourable than the terms and conditions that:

(a) are provided; or

(b) would be provided;

to an Australian citizen or an Australian permanent resident for performing equivalent work in the workplace to which the application relates at the same location.

186.243 The applicant has qualifications, experience and other attributes that are suitable for the position.

186.244 (1) The applicant satisfies public interest criterion 4005.

(2) Each member of the family unit of the applicant who is an applicant for a Subclass 186 visa satisfies public interest criterion 4005.

(3) Each member of the family unit of the applicant who is not an applicant for a Subclass 186 visa satisfies public interest criterion 4005 unless it would be unreasonable to require the member to undergo assessment in relation to the criterion.

186.3 Secondary criteria

Note These criteria are for applicants who are members of the family unit of a person who satisfies the primary criteria. All criteria must be satisfied at the time a decision is made on the application.

186.31 Criteria

186.311 The applicant:

(a) is a member of the family unit of a person (the *primary applicant*) who holds a Subclass 186 visa granted on the

-
- basis of satisfying the primary criteria for the grant of the visa; and
- (b) made a combined application with the primary applicant.
- 186.312 Any nomination approved in respect of the primary applicant, and mentioned in paragraph 1114B (3) (d) of Schedule 1, includes the applicant.
- 186.313 (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4010 and 4020.
- (2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.
- (3) If the applicant has not turned 18, the applicant satisfies public interest criteria 4017 and 4018.
- (4) If the primary applicant holds a Subclass 186 visa in the Temporary Residence Transition stream, the applicant satisfies public interest criterion 4007.
- (5) If subclause (4) does not apply, the applicant satisfies public interest criterion 4005.
- 186.314 The applicant satisfies special return criteria 5001, 5002 and 5010.
- 186.315 Either:
- (a) the applicant holds a valid passport that:
- (i) was issued to the member by an official source; and
- (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to hold a passport.

186.4 Circumstances applicable to grant

- 186.411 The applicant:
- (a) may be in or outside Australia when the visa is granted; and

- (b) must not be in immigration clearance.

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

186.5 When visa is in effect

- 186.511 Permanent visa permitting the holder to travel to, enter and remain in Australia for 5 years from the date of grant.

186.6 Conditions

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

Subclass 187 Regional Sponsored Migration Scheme

187.1 Interpretation

- 187.111 In this Part:

application for approval means an application under regulation 5.19 for approval of the nomination of a position.

occupation means the occupation that would be carried out by a person who is employed in a position.

regional Australia has the meaning given by subregulation 5.19 (7).

Note 1 For *ANZSCO* and *labour agreement*: see regulation 1.03.

Note 2 Regulation 1.03 provides that *competent English* has the meaning set out in regulation 1.15C.

Note 3 Regulation 1.03 provides that *vocational English* has the meaning set out in regulation 1.15B.

187.2 Primary criteria

Note The primary criteria for the grant of a Subclass 187 visa include criteria set out in streams..

If an applicant applies for a Subclass 187 visa in the Temporary Residence Transition stream, the criteria in Subdivisions 187.21 and 187.22 are the primary criteria for the grant of the visa.

If an applicant applies for a Subclass 187 visa in the Direct Entry stream, the criteria in Subdivisions 187.21 and 187.23 are the primary criteria.

If an applicant applies for a Subclass 187 visa in the Agreement stream, the criteria in Subdivisions 187.21 and 187.24 are the primary criteria.

The primary criteria must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

All criteria must be satisfied at the time a decision is made on the application.

187.21 Common criteria

Note These criteria are for all applicants seeking to satisfy the primary criteria for a Subclass 187 visa.

- 187.211 If it is mandatory, in the State or Territory in which the position to which the application relates is located, that a person:
- (a) hold a licence of a particular kind; or
 - (b) hold registration of a particular kind; or
 - (c) be a member (or a member of a particular kind) of a particular professional body;
- to perform tasks of the kind to be performed in the occupation to which a position relates, the applicant is, or is eligible to become, the holder of the licence, the holder of the registration, or a member of the body, at the time of application.
- 187.212 The position to which the application relates will provide to the applicant the employment referred to in the application for approval.
- 187.213 (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4010 and 4020.

(2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.

(3) Each member of the family unit of the applicant who is an applicant for a Subclass 187 visa satisfies public interest criteria 4001, 4002, 4003, 4004, 4010 and 4020.

(4) Each member of the family unit of the applicant who:

- (a) is an applicant for a Subclass 187 visa; and
- (b) had turned 18 at the time of application;

satisfies public interest criterion 4019.

(5) Each member of the family unit of the applicant who:

- (a) is an applicant for a Subclass 187 visa; and
- (b) has not turned 18;

satisfies public interest criteria 4015 and 4016.

(6) Each member of the family unit of the applicant who is not an applicant for a Subclass 187 visa satisfies public interest criteria 4001, 4002, 4003 and 4004.

187.214 (1) The applicant satisfies special return criteria 5001, 5002 and 5010.

(2) Each member of the family unit of the applicant who is an applicant for a Subclass 187 visa satisfies special return criteria 5001, 5002 and 5010.

187.215 Either:

(a) the applicant holds a valid passport that:

(i) was issued to the applicant by an official source; and

(ii) is in the form issued by the official source; or

(b) it would be unreasonable to require the applicant to hold a passport.

187.22 Criteria for Temporary Residence Transition stream

Note These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 187 visa in the Temporary Residence Transition stream.

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- 187.221 At the time of application, the applicant:
- (a) had not turned 50; or
 - (b) was a person in a class of persons specified by the Minister in an instrument in writing for this paragraph.
- 187.222 At the time of application, the applicant:
- (a) had vocational English; or
 - (b) was a person in a class of persons specified by the Minister in an instrument in writing for this paragraph.
- 187.223
- (1) The position to which the application relates is the position:
 - (a) nominated in an application for approval that seeks to meet the requirements of subregulation 5.19 (3); and
 - (b) in relation to which the applicant is identified as the holder of a Subclass 457 (Business (Long Stay)) visa; and
 - (c) in relation to which the declaration mentioned in paragraph 1114C (3) (d) of Schedule 1 was made in the application for the grant of the visa.
 - (2) The Minister has approved the nomination.
 - (3) The nomination has not subsequently been withdrawn.
 - (4) The position to which the application relates is located in regional Australia.
 - (5) The position is still available to the applicant.
 - (6) The application for the visa is made no more than 6 months after the Minister approved the nomination.
- 187.224
- (1) The applicant satisfies public interest criterion 4007.
 - (2) Each member of the family unit of the applicant who is an applicant for a Subclass 187 visa satisfies public interest criterion 4007.
 - (3) Each member of the family unit of the applicant who is not an applicant for a Subclass 187 visa satisfies public interest criterion 4007 unless it would be unreasonable to require the member to undergo assessment in relation to the criterion.

187.23 Criteria for Direct Entry stream

Note These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 187 visa in the Direct Entry stream.

187.231 At the time of application, the applicant:

- (a) had not turned 50; or
- (b) was a person in a class of persons specified by the Minister in an instrument in writing for this paragraph.

187.232 At the time of application, the applicant:

- (a) had competent English; or
- (b) was a person in a class of persons specified by the Minister in an instrument in writing for this paragraph.

187.233 (1) The position to which the application relates is the position:

- (a) nominated in an application for approval that seeks to meet the requirements of:
 - (i) subparagraph 5.19 (4) (h) (ii); or
 - (ii) subregulation 5.19 (4) as in force before 1 July 2012; and
- (b) in relation to which the declaration mentioned in paragraph 1114C (3) (d) of Schedule 1 was made in the application for the grant of the visa.

(2) The person who will employ the applicant is the person who was the nominator in the application for approval.

(3) The Minister has approved the nomination.

(4) The nomination has not subsequently been withdrawn.

(5) The position is still available to the applicant.

(6) The application for the visa is made no more than 6 months after the Minister approved the nomination.

187.234 At the time of application:

- (a) the applicant was a person in a class of persons specified by the Minister in an instrument in writing for this paragraph; or

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- (b) if:
- (i) the applicant's occupation is specified by the Minister in an instrument in writing for this subparagraph; and
 - (ii) the applicant did not obtain the necessary qualification in Australia;
- the applicant's skills had been assessed as suitable for the occupation by an assessing authority specified by the Minister in the instrument for subparagraph (i) as the assessing authority for the occupation; or
- (c) if neither paragraph (a) nor (b) applies, the applicant had the qualifications listed in ANZSCO as being necessary to perform the tasks of the occupation.

- 187.235 (1) The applicant satisfies public interest criterion 4005.
- (2) Each member of the family unit of the applicant who is an applicant for a Subclass 187 visa satisfies public interest criterion 4005.
- (3) Each member of the family unit of the applicant who is not an applicant for a Subclass 187 visa satisfies public interest criterion 4005 unless it would be unreasonable to require the member to undergo assessment in relation to the criterion.

187.24 Criteria for Agreement stream

Note These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 187 visa in the Agreement stream.

- 187.241 Either:
- (a) the applicant had not turned 50 at the time of application; or
 - (b) the Minister has agreed, in a labour agreement:
 - (i) that is in effect; and
 - (ii) to which the employer is a party; and
 - (iii) under which the position to which the application relates is nominated;
 that persons who have turned 50 may be employed.

- 187.242 (1) The position to which the application relates is the position:
- (a) nominated by an employer in accordance with a labour agreement that is in effect and to which the employer is a party; and
 - (b) identified in the application for the grant of the visa.
- (2) The requirements of the labour agreement have been met in relation to the application.
- (3) The Minister has approved the nomination.
- (4) The nomination has not subsequently been withdrawn.
- (5) The position is still available to the applicant.
- (6) The Minister is satisfied that the terms and conditions of employment applicable to the position will be no less favourable than the terms and conditions that:
- (a) are provided; or
 - (b) would be provided;
- to an Australian citizen or an Australian permanent resident for performing equivalent work in the workplace to which the application relates at the same location.
- 187.243 The applicant has qualifications, experience and other attributes that are suitable for the position.
- 187.244 (1) The applicant satisfies public interest criterion 4005.
- (2) Each member of the family unit of the applicant who is an applicant for a Subclass 187 visa satisfies public interest criterion 4005.
- (3) Each member of the family unit of the applicant who is not an applicant for a Subclass 187 visa satisfies public interest criterion 4005 unless the Minister is satisfied that it would be unreasonable to require the member to undergo assessment in relation to the criterion.

187.3 Secondary criteria

Note These criteria are for applicants who are members of the family unit of a person who satisfies the primary criteria. All criteria must be satisfied at the time a decision is made on the application.

187.31 Criteria

187.311 The applicant:

- (a) is a member of the family unit of a person (the *primary applicant*) who holds a Subclass 187 visa granted on the basis of satisfying the primary criteria for the grant of the visa; and
- (b) made a combined application with the primary applicant.

187.312 Any nomination approved in respect of the primary applicant, and mentioned in paragraph 1114C (3) (d) of Schedule 1, includes the applicant.

187.313 (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4010 and 4020.

(2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.

(3) If the applicant has not turned 18, the applicant satisfies public interest criteria 4017 and 4018.

(4) If the primary applicant holds a Subclass 187 visa in the Temporary Residence Transition stream, the applicant satisfies public interest criterion 4007.

(5) If subclause (4) does not apply, the applicant satisfies public interest criterion 4005.

187.314 The applicant satisfies special return criteria 5001, 5002 and 5010.

187.315 Either:

- (a) the applicant holds a valid passport that:
 - (i) was issued to the member by an official source; and
 - (ii) is in the form issued by the official source; or

- (b) it would be unreasonable to require the applicant to hold a passport.

187.4 Circumstances applicable to grant

187.411 The applicant:

- (a) may be in or outside Australia when the visa is granted; and
(b) must not be in immigration clearance.

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

187.5 When visa is in effect

187.511 Permanent visa permitting the holder to travel to, enter and remain in Australia for 5 years from the date of grant.

187.6 Conditions

187.611 If the applicant is outside Australia when the visa is granted:

- (a) first entry must be made before the date specified by the Minister; and
(b) if the applicant satisfies the secondary criteria for the grant of the visa, condition 8515 may be imposed.

Part 188 Business Innovation and Investment (Provisional)

188.1 Interpretation

188.111 In this Part:

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

188.112 In this Part, each of the following is an *eligible investment* if a person owns it for the purpose of producing a return in the form of income or capital gain, and not for personal use:

- (a) an ownership interest in a business;

- (b) cash on deposit;
- (c) stocks or bonds;
- (d) real estate;
- (e) gold or silver bullion.

188.113 In this Part, a loan to a business is an *eligible investment* if a person makes it for the purpose of producing a return in the form of income or capital gain.

Note 1 For *AUD, business innovation and investment points test, fiscal year, ownership interest* and *qualifying business*: see regulation 1.03.

Note 2 Regulation 1.03 also provides that *member of the family unit* has the meaning set out in regulation 1.12.

Note 3 *main business* is defined in regulation 1.11.

Note 4 For the beneficial ownership of an asset, eligible investment or ownership interest: see regulation 1.11A.

188.2 Primary criteria

Note The primary criteria for the grant of a Subclass 188 visa include criteria set out in streams.

If an applicant applies for a Subclass 188 visa in the Business Innovation stream, the criteria in Subdivisions 188.21 and 188.22 are the primary criteria for the grant of the visa.

If an applicant applies for a Subclass 188 visa in the Extension stream, the criteria in Subdivisions 188.21 and 188.23 are the primary criteria.

If an applicant applies for a Subclass 188 visa in the Investor stream, the criteria in Subdivisions 188.21 and 188.24 are the primary criteria.

The primary criteria must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

All criteria must be satisfied at the time a decision is made on the application.

188.21 Common criteria

Note These criteria are for all applicants seeking to satisfy the primary criteria for a Subclass 188 visa.

188.211 The applicant, and the applicant's spouse or de facto partner, do not have a history of involvement in business or

investment activities that are of a nature that is not generally acceptable in Australia.

- 188.212 The nominating State or Territory government agency has not withdrawn the nomination.
- 188.213 (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4010 and 4020.
- (2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.
- (3) Each member of the family unit of the applicant who is an applicant for a Subclass 188 visa satisfies public interest criteria 4001, 4002, 4003, 4004, 4010 and 4020.
- (4) Each member of the family unit of the applicant who:
- (a) is an applicant for a Subclass 188 visa; and
 - (b) had turned 18 at the time of application;
- satisfies public interest criterion 4019.
- (5) Each member of the family unit of the applicant who:
- (a) is an applicant for a Subclass 188 visa; and
 - (b) has not turned 18;
- satisfies public interest criteria 4015 and 4016.
- (6) Each member of the family unit of the applicant who is not an applicant for a Subclass 188 visa satisfies public interest criteria 4001, 4002, 4003 and 4004.
- 188.214 (1) The applicant satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is an applicant for a Subclass 188 visa satisfies special return criteria 5001, 5002 and 5010.
- 188.215 Either:
- (a) the applicant holds a valid passport that:
 - (i) was issued to the applicant by an official source; and
 - (ii) is in the form issued by the official source; or

- (b) it would be unreasonable to require the applicant to hold a passport.

188.22 Criteria for Business Innovation stream

Note These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 188 visa in the Business Innovation stream.

- 188.221 (1) The applicant was invited, in writing, by the Minister to apply for the visa.
- (2) The applicant:
- (a) had not turned 55 at the time of the invitation to apply for the visa; or
- (b) is proposing to establish or participate in business or investment activity that the nominating State or Territory government agency has determined is of exceptional economic benefit to the State or Territory in which the agency is located.
- 188.222 (1) The applicant's score on the business innovation and investment points test is not less than the number of points specified by the Minister in an instrument in writing for this subclause.
- (2) For subclause (1):
- (a) an applicant's score on the business innovation and investment points test is the sum of the applicant's scores under Parts 2, 3, 4, 5, 7, 8, 9 and 10 of Schedule 7A; and
- (b) the Minister must not give the applicant the prescribed number of points for more than one prescribed qualification in Parts 2, 3, 4, 5, 7, 8 and 10 of Schedule 7A; and
- (c) if the applicant's circumstances satisfy more than one prescribed qualification in Parts 2, 3, 4, 5, 7, 8 and 10 of Schedule 7A, the Minister must give the applicant points for the qualification that has been satisfied that attracts the highest number of points.
- 188.223 The applicant demonstrates that there is a need for the applicant to be resident in Australia to establish or conduct the proposed business activity.

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- 188.224 The applicant has overall had a successful business career.
- 188.225 (1) For at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa, the applicant had an ownership interest in one or more established main businesses that had an annual turnover of at least AUD500 000 in each of those years.
- (2) If the applicant was engaged in one or more businesses providing professional, technical or trade services for at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa, the applicant was directly engaged in the provision of the services, as distinct from the general direction of the operation of the business, for no more than half the time spent by the applicant from day to day in the conduct of the business.
- 188.226 The business and personal assets of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together, that can be applied to the establishment or conduct of a business in Australia have a net value of at least AUD800 000.
- 188.227 The nominating State or Territory government agency is satisfied that the net value of the business and personal assets of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together, other than the business and personal assets mentioned in clause 188.226, is sufficient to allow the applicant and the spouse or de facto partner to settle in Australia.
- 188.228 The business and personal assets of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together:
- (a) are lawfully acquired; and
- (b) are available for transfer to Australia within 2 years after the grant of a Subclass 188 visa.
- 188.229 (1) The applicant genuinely has a realistic commitment to:
- (a) establish a qualifying business in Australia; or
- (b) participate in an existing qualifying business in Australia.

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- (2) The applicant genuinely has a realistic commitment to:
 - (a) maintain a substantial ownership interest in the qualifying business mentioned in subclause (1); and
 - (b) maintain a direct and continuous involvement in the management of the qualifying business from day to day, and in the making of decisions that affect the overall direction and performance of the qualifying business, in a manner that benefits the Australian economy.

188.229A (1) The applicant satisfies public interest criterion 4005.

(2) Each member of the family unit of the applicant who is an applicant for a Subclass 188 visa satisfies public interest criterion 4005.

(3) Each member of the family unit of the applicant who is not an applicant for a Subclass 188 visa satisfies public interest criterion 4005 unless it would be unreasonable to require the member to undergo assessment in relation to the criterion.

188.23 Criteria for Extension stream

Note These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 188 visa in the Extension stream.

188.231 The applicant demonstrates that there is a need for the applicant to be resident in Australia to operate the main business.

188.232 (1) For at least the 2 years immediately before the application was made, the applicant had an ownership interest in one or more main businesses that were actively operating in Australia.

(2) The applicant continues to have the ownership interest mentioned in subclause (1).

188.233 The applicant genuinely has a realistic commitment to:

- (a) maintain the ownership interest mentioned in subclause 188.232 (1); and
- (b) maintain a direct and continuous involvement in the management of the main business from day to day, and in the making of decisions that affect the overall

direction and performance of the main business, in a manner that benefits the Australian economy.

- 188.234 (1) The applicant satisfies public interest criterion 4007.
- (2) Each member of the family unit of the applicant who is an applicant for a Subclass 188 visa satisfies public interest criterion 4007.
- (3) Each member of the family unit of the applicant who is not an applicant for a Subclass 188 visa satisfies public interest criterion 4007 unless it would be unreasonable to require the member to undergo assessment in relation to the criterion.

188.24 Criteria for Investor stream

Note These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 188 visa in the Investor stream.

- 188.241 (1) The applicant was invited, in writing, by the Minister to apply for the visa.
- (2) The applicant:
- (a) had not turned 55 at the time of the invitation to apply for the visa; or
- (b) is proposing to establish or participate in business or investment activity that the nominating State or Territory government agency has determined is of exceptional economic benefit to the State or Territory in which the agency is located.
- 188.242 (1) The applicant's score on the business innovation and investment points test is not less than the number of points specified by the Minister in an instrument in writing for this subclause.
- (2) For subclause (1):
- (a) an applicant's score on the business innovation and investment points test is the sum of the applicant's scores under Parts 2, 3, 4, 6, 7, 8, 9 and 10 of Schedule 7A; and
- (b) the Minister must not give the applicant the prescribed number of points for more than one prescribed

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- qualification in Parts 2, 3, 4, 6, 7, 8 and 10 of Schedule 7A; and
- (c) if the applicant's circumstances satisfy more than one prescribed qualification in Parts 2, 3, 4, 6, 7, 8 and 10 of Schedule 7A, the Minister must give the applicant points for the qualification that has been satisfied that attracts the highest number of points.
- 188.243 (1) The applicant has overall had a successful record of eligible investment activity or qualifying business activity.
- (2) The applicant has had a total of at least 3 years experience of direct involvement in managing one or more qualifying businesses or eligible investments.
- (3) The applicant has demonstrated a high level of management skill in relation to the eligible investment or qualifying business activity.
- 188.244 For at least one of the 5 fiscal years immediately before the time of invitation to apply for the visa:
- (a) both of the following apply:
- (i) the applicant maintained direct involvement in managing a qualifying business;
- (ii) the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together, had an ownership interest of at least 10% of the total value of the business; or
- (b) both of the following apply:
- (i) the applicant maintained direct involvement in managing eligible investments of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together;
- (ii) the total net value of the eligible investments was at least AUD1 500 000.
- 188.245 For the 2 fiscal years immediately before the time of invitation to apply for the visa, the business and personal assets of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together, had a net value of at least AUD2 250 000.

- 188.246 (1) The applicant has made a designated investment of at least AUD1 500 000 in the State or Territory in which the nominating State or Territory government agency is located, and has made the investment:
- (a) in the name of the applicant; or
 - (b) in the names of the applicant and his or her spouse or de facto partner.
- (2) The funds used to make the designated investment mentioned in subclause (1) were:
- (a) unencumbered; and
 - (b) accumulated from either or both of:
 - (i) one or more qualifying businesses conducted by the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together; and
 - (ii) eligible investment activities of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together.
- 188.247 The business and personal assets of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together:
- (a) are lawfully acquired; and
 - (b) are available for transfer to Australia within 2 years after the grant of a Subclass 188 visa.
- 188.248 (1) The applicant genuinely has a realistic commitment to continue to maintain business or investment activity in Australia after the designated investment made by the applicant, or by the applicant and his or her spouse or de facto partner, matures.
- (2) The applicant has a genuine intention to reside for at least 2 years in the State or Territory in which he or she made the designated investment application.
- 188.249 (1) The applicant satisfies public interest criterion 4005.

(2) Each member of the family unit of the applicant who is an applicant for a Subclass 188 visa satisfies public interest criterion 4005.

(3) Each member of the family unit of the applicant who is not an applicant for a Subclass 188 visa satisfies public interest criterion 4005 unless it would be unreasonable to require the member to undergo assessment in relation to the criterion.

188.3 Secondary criteria

Note These criteria are for applicants who are members of the family unit of a person who satisfies the primary criteria. All criteria must be satisfied at the time a decision is made on the application.

188.31 Criteria

188.311 The applicant is a member of the family unit of a person who holds a Subclass 188 visa granted on the basis of satisfying the primary criteria for the grant of the visa (the *primary applicant*).

188.312 (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4010 and 4020.

(2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.

(3) If the applicant has not turned 18, the applicant satisfies public interest criteria 4017 and 4018.

(4) If the primary applicant holds a Subclass 188 visa in the Business Innovation stream or the Investor stream, the applicant satisfies public interest criterion 4005.

(5) If the primary applicant holds a Subclass 188 visa in the Extension stream, the applicant satisfies public interest criterion 4007.

188.313 The applicant satisfies special return criteria 5001, 5002 and 5010.

188.314 Either:

- (a) the applicant holds a valid passport that:
 - (i) was issued to the member by an official source; and
 - (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to hold a passport.

188.4 Circumstances applicable to grant

188.411 The applicant:

- (a) may be in or outside Australia when the visa is granted; and
- (b) must not be in immigration clearance.

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

188.5 When visa is in effect

188.511 If the applicant satisfied the primary criteria for the grant of a Subclass 188 visa in the Business Innovation stream or the Investor stream, temporary visa permitting the holder to travel to, enter and remain in Australia for 4 years from the date of grant.

188.512 If the applicant satisfied the primary criteria for the grant of a Subclass 188 visa in the Extension stream, temporary visa permitting the holder to travel to, enter and remain in Australia for 6 years after the date of the grant of the provisional visa the applicant held at the time of application.

188.513 If the applicant satisfied the secondary criteria for the grant of a Subclass 188 visa, temporary visa permitting the holder to travel to, enter and remain in Australia until the day specified for the applicant who satisfied the primary criteria.

188.6 Conditions

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

Subclass 189 Skilled — Independent

189.1 Interpretation

Note 1 For *registered course*, *relevant assessing authority* and *skilled occupation*: see regulation 1.03.

Note 2 Regulation 1.03 also provides that *competent English* has the meaning set out in regulation 1.15C.

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

189.2 Primary criteria

Note The primary criteria for the grant of a Subclass 189 visa must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

All criteria must be satisfied at the time a decision is made on the application.

189.21 Criteria

189.211 The applicant was invited, in writing, by the Minister to apply for the visa.

189.212 (1) At the time of invitation to apply for the visa, the relevant assessing authority had assessed the applicant's skills as suitable for the applicant's nominated skilled occupation.

(2) If the assessment was made on the basis of a qualification obtained in Australia while the applicant held a student visa, the qualification was obtained as a result of studying a registered course.

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- 189.213 At the time of invitation to apply for the visa, the applicant had competent English.
- 189.214 (1) The applicant's score, when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act, is not less than the score stated in the invitation to apply for the visa.
- (2) The applicant's score, when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act, is not less than the qualifying score for that Subdivision.
- Note* Subdivision B of Division 3 of Part 2 of the Act provides for the application of a points system under which applicants for relevant visas are given an assessed score based on a prescribed number of points for particular attributes, assessed against the relevant pool mark and pass mark: see sections 92 to 96 of the Act.
- The prescribed points and the manner of their allocation are provided for in Division 2.6 and Schedule 6D of these Regulations. Pool marks and pass marks are set from time to time by the Minister by instrument: see section 96 of the Act.
- 189.215 (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010 and 4020.
- (2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.
- (3) Each member of the family unit of the applicant who is an applicant for a Subclass 189 visa satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010 and 4020.
- (4) Each member of the family unit of the applicant who:
- (a) is an applicant for a Subclass 189 visa; and
 - (b) had turned 18 at the time of application;
- satisfies public interest criterion 4019.
- (5) Each member of the family unit of the applicant who:
- (a) is an applicant for a Subclass 189 visa; and
 - (b) has not turned 18;
- satisfies public interest criteria 4015 and 4016.

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- (6) Each member of the family unit of the applicant who is not an applicant for a Subclass 189 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
 - (b) satisfies public interest criterion 4005 unless it would be unreasonable to require the member to undergo assessment in relation to the criterion.
- 189.216 (1) The applicant satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is an applicant for a Subclass 189 visa satisfies special return criteria 5001, 5002 and 5010.
- 189.217 Either:
- (a) the applicant holds a valid passport that:
 - (i) was issued to the applicant by an official source; and
 - (ii) is in the form issued by the official source; or
 - (b) it would be unreasonable to require the applicant to hold a passport.

189.3 Secondary criteria

Note These criteria are for applicants who are members of the family unit of a person who satisfies the primary criteria. All criteria must be satisfied at the time a decision is made on the application.

189.31 Criteria

- 189.311 The applicant:
- (a) is a member of the family unit of a person who holds a Subclass 189 visa granted on the basis of satisfying the primary criteria for the grant of the visa; and
 - (b) made a combined application with that person.
- 189.312 (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010 and 4020.
- (2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.

(3) If the applicant has not turned 18, the applicant satisfies public interest criteria 4017 and 4018.

189.313 The applicant satisfies special return criteria 5001, 5002 and 5010.

189.314 Either:

- (a) the applicant holds a valid passport that:
 - (i) was issued to the applicant by an official source; and
 - (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to hold a passport.

189.4 Circumstances applicable to grant

189.411 The applicant:

- (a) may be in or outside Australia when the visa is granted; and
- (b) must not be in immigration clearance.

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

189.5 When visa is in effect

189.511 Permanent visa permitting the holder to travel to, enter and remain in Australia for 5 years from the date of grant.

189.6 Conditions

189.611 If the applicant is outside Australia when the visa is granted:

- (a) first entry must be made before the date specified by the Minister; and
- (b) if the applicant satisfies the secondary criteria for the grant of the visa, condition 8515 may be imposed.

Subclass 190 Skilled — Nominated

190.1 Interpretation

Note 1 For *registered course*, *relevant assessing authority* and *skilled occupation*: see regulation 1.03.

Note 2 Regulation 1.03 also provides that *competent English* has the meaning set out in regulation 1.15C.

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

190.2 Primary criteria

Note The primary criteria for the grant of a Subclass 190 visa must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

All criteria must be satisfied at the time a decision is made on the application.

190.21 Criteria

190.211 The applicant was invited, in writing, by the Minister to apply for the visa.

190.212 (1) At the time of invitation to apply for the visa, the relevant assessing authority had assessed the applicant's skills as suitable for the applicant's nominated skilled occupation.

(2) If the assessment was made on the basis of a qualification obtained in Australia while the applicant held a student visa, the qualification was obtained as a result of studying a registered course.

190.213 At the time of invitation to apply for the visa, the applicant had competent English.

190.214 (1) The applicant's score, when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act, is not less than the score stated in the invitation to apply for the visa.

(2) The applicant's score, when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act, is not less than the qualifying score for that Subdivision.

Note Subdivision B of Division 3 of Part 2 of the Act provides for the application of a points system under which applicants for relevant visas are given an assessed score based on a prescribed number of points for particular attributes, assessed against the relevant pool mark and pass mark: see sections 92 to 96 of the Act.

The prescribed points and the manner of their allocation are provided for in Division 2.6 and Schedule 6D of these Regulations. Pool marks and pass marks are set from time to time by the Minister by instrument: see section 96 of the Act.

190.215 The nominating State or Territory government agency has not withdrawn the nomination.

190.216 (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010 and 4020.

(2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.

(3) Each member of the family unit of the applicant who is an applicant for a Subclass 190 visa satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010 and 4020.

(4) Each member of the family unit of the applicant who:

- (a) is an applicant for a Subclass 190 visa; and
- (b) had turned 18 at the time of application;

satisfies public interest criterion 4019.

(5) Each member of the family unit of the applicant who:

- (a) is an applicant for a Subclass 190 visa; and
- (b) has not turned 18;

satisfies public interest criteria 4015 and 4016.

(6) Each member of the family unit of the applicant who is not an applicant for a Subclass 190 visa:

- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and

-
- (b) satisfies public interest criterion 4005, unless it would be unreasonable to require the person to undergo assessment in relation to that criterion.
- 190.217 (1) The applicant satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is an applicant for a Subclass 190 visa satisfies special return criteria 5001, 5002 and 5010.
- 190.218 Either:
- (a) the applicant holds a valid passport that:
- (i) was issued to the applicant by an official source; and
- (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to hold a passport.

190.3 Secondary criteria

Note These criteria are for applicants who are members of the family unit of a person who satisfies the primary criteria. All criteria must be satisfied at the time a decision is made on the application.

190.31 Criteria

- 190.311 The applicant:
- (a) is a member of the family unit of a person who holds a Subclass 190 visa granted on the basis of satisfying the primary criteria for the grant of the visa; and
- (b) made a combined application with that person.
- 190.312 (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4005, 4010 and 4020.
- (2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.
- (3) If the applicant has not turned 18, the applicant satisfies public interest criteria 4017 and 4018.
- 190.313 The applicant satisfies special return criteria 5001, 5002 and 5010.

190.314 Either:

- (a) the applicant holds a valid passport that:
 - (i) was issued to the applicant by an official source; and
 - (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to hold a passport.

190.4 Circumstances applicable to grant

190.411 The applicant:

- (a) may be in or outside Australia when the visa is granted; and
- (b) must not be in immigration clearance.

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

190.5 When visa is in effect

190.511 Permanent visa permitting the holder to travel to, enter and remain in Australia for 5 years from the date of grant.

190.6 Conditions

190.611 If the applicant is outside Australia when the visa is granted:

- (a) first entry must be made before the date specified by the Minister; and
- (b) if the applicant satisfies the secondary criteria for the grant of the visa, condition 8515 may be imposed.

[86] Schedule 2, subclauses 405.227 (2), 405.227 (3), 405.228 (2) and 405.228 (3)

after

for item 6A1001 of Schedule 6A

insert

or item 6D101 of Schedule 6D

[87] Schedule 2, clause 476.111, definition of *degree*

omit

[88] Schedule 2, clause 485.111

substitute

485.111 In this Part:

degree has the same meaning as in subregulation 2.26AC (6).

diploma has the same meaning as in subregulation 2.26AC (6).

trade qualification has the same meaning as in subregulation 2.26AC (6).

Note 1 Regulation 1.03 provides that ***Australian study requirement*** has the meaning set out in regulation 1.15F.

Note 2 Regulation 1.03 provides that ***competent English*** has the meaning set out in regulation 1.15C.

Note 3 For ***registered course***, ***relevant assessing authority*** and ***skilled occupation***: see regulation 1.03.

[89] Schedule 2, clause 487.111

substitute

487.111 In this Part:

degree has the same meaning as in subregulation 2.26AC (6).

diploma has the same meaning as in subregulation 2.26AC (6).

trade qualification has the same meaning as in subregulation 2.26AC (6).

Note 1 Regulation 1.03 provides that ***Australian study requirement*** has the meaning set out in regulation 1.15F.

Note 2 For ***competent English***: see regulation 1.15C.

Note 3 For ***designated area***, ***relevant assessing authority*** and ***skilled occupation***: see regulation 1.03.

[90] Schedule 2, Subdivision 487.31*substitute***487.31 Criteria to be satisfied at time of application**

487.311 The applicant is a member of the family unit of a person who satisfies the primary criteria in Subdivision 487.21, and made a combined application with that person.

[91] Schedule 2, after Part 488*insert***Subclass 489 Skilled — Regional
(Provisional)****489.1 Interpretation**

Note 1 For *designated area*, *registered course*, *relevant assessing authority* and *skilled occupation*: see regulation 1.03.

Note 2 Regulation 1.03 also provides that *competent English* has the meaning set out in regulation 1.15C.

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

489.2 Primary criteria

Note The primary criteria for the grant of a Subclass 489 visa include criteria set out in streams.

If an applicant applies for a Subclass 489 visa in the First Provisional Visa stream, the criteria in Subdivisions 489.21 and 489.22 are the primary criteria for the grant of the visa.

If an applicant applies for a Subclass 489 visa in the Second Provisional Visa stream, the criteria in Subdivisions 489.21 and 489.23 are the primary criteria.

The primary criteria must be satisfied by at least one member of a family unit, unless a member of the family unit holds one of the following visas on the basis of satisfying the primary criteria:

- a Skilled — Independent Regional (Class UX) visa;

- a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa;
- a Subclass 475 (Skilled — Regional Sponsored) visa;
- a Subclass 487 (Skilled— Regional Sponsored) visa.

The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

All criteria must be satisfied at the time a decision is made on the application.

489.21 Common criteria

Note These criteria are for all applicants seeking to satisfy the primary criteria for a Subclass 489 visa.

- 489.211 (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4010 and 4020.
- (2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.
- (3) Each member of the family unit of the applicant who is an applicant for a Subclass 489 visa satisfies public interest criteria 4001, 4002, 4003, 4004, 4010 and 4020.
- (4) Each member of the family unit of the primary applicant who:
- (a) is an applicant for a Subclass 489 visa; and
 - (b) had turned 18 at the time of application;
- satisfies public interest criterion 4019.
- (5) Each member of the family unit of the primary applicant who:
- (a) is an applicant for a Subclass 489 visa; and
 - (b) has not turned 18;
- satisfies public interest criteria 4015 and 4016.
- (6) Each member of the family unit of the primary applicant who is not an applicant for a Subclass 489 visa satisfies public interest criteria 4001, 4002, 4003 and 4004.
- 489.212 (1) The applicant satisfies special return criteria 5001, 5002 and 5010.

(2) Each member of the family unit of the applicant who is an applicant for a Subclass 489 visa satisfies special return criteria 5001, 5002 and 5010.

489.213 Either:

- (a) the applicant holds a valid passport that:
 - (i) was issued to the applicant by an official source; and
 - (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to hold a passport.

489.22 Criteria for First Provisional Visa stream

Note These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 489 visa in the First Provisional Visa stream.

489.221 The applicant was invited, in writing, by the Minister to apply for the visa.

489.222 (1) At the time of invitation to apply for the visa, the relevant assessing authority had assessed the applicant's skills as suitable for the applicant's nominated skilled occupation.

(2) If the assessment was made on the basis of a qualification obtained in Australia while the applicant held a student visa, the qualification was obtained as a result of studying a registered course.

489.223 At the time of invitation to apply for the visa, the applicant had competent English.

489.224 (1) The applicant's score, when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act, is not less than the score stated in the invitation to apply for the visa.

(2) The applicant's score, when assessed in relation to the visa under Subdivision B of Division 3 of Part 2 of the Act, is not less than the qualifying score for that Subdivision.

Note Subdivision B of Division 3 of Part 2 of the Act provides for the application of a points system under which applicants for relevant visas are given an assessed score based on a prescribed number of points for

particular attributes, assessed against the relevant pool mark and pass mark: see sections 92 to 96 of the Act.

The prescribed points and the manner of their allocation are provided for in Division 2.6 and Schedule 6D of these Regulations. Pool marks and pass marks are set from time to time by the Minister by instrument: see section 96 of the Act.

- 489.225 (1) The requirements in subclause (2) or (3) are met.
- (2) The nominating State or Territory government agency has not withdrawn the nomination.
- (3) The Minister has accepted the sponsorship of the applicant by a person in the following circumstances:
- (a) the person has turned 18; and
- (b) the person is an Australian citizen, Australian permanent resident or eligible New Zealand citizen;
- (c) the person is usually resident in a designated area of Australia;
- (d) the person is related to the applicant, or the applicant's spouse or de facto partner (if the applicant's spouse or de facto partner is an applicant for a Subclass 489 visa), as:
- (i) a parent; or
- (ii) a child or step-child; or
- (iii) a brother, sister, adoptive brother, adoptive sister, step-brother or step-sister; or
- (iv) an aunt, uncle, adoptive aunt, adoptive uncle, step-aunt or step-uncle;
- (v) a nephew, niece, adoptive nephew, adoptive niece, step-nephew or step-niece; or
- (vi) a grandparent; or
- (vii) a first cousin;
- (e) each member of the family unit of the applicant who is an applicant for a Subclass 489 visa is sponsored by that person.
- 489.226 (1) The applicant satisfies public interest criterion 4005.

(2) Each member of the family unit of the applicant who is an applicant for a Subclass 489 visa satisfies public interest criterion 4005.

(3) Each member of the family unit of the applicant who is not an applicant for a Subclass 489 visa satisfies public interest criterion 4005 unless it would be unreasonable to require the member to undergo assessment in relation to the criterion.

489.23 Criteria for Second Provisional Visa stream

Note These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 489 visa in the Second Provisional Visa stream.

489.231 (1) If the applicant has previously held one of the following visas:

- (a) a Skilled — Independent Regional (Provisional) (Class UX) visa;
- (b) a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa;
- (c) a Subclass 475 (Skilled — Regional Sponsored) visa;
- (d) a Subclass 487 (Skilled — Regional Sponsored) visa;

the applicant has substantially complied with the conditions to which the visa was subject.

(2) Each member of the family unit of the applicant who is an applicant for a Subclass 489 visa, and who has previously held a visa mentioned in subclause (1), has substantially complied with the conditions to which the visa mentioned in subclause (1) was subject.

489.232 (1) The applicant satisfies public interest criterion 4007.

(2) Each person who is a member of the family unit of the applicant, and is an applicant for a Subclass 489 visa, satisfies public interest criterion 4007.

(3) Each member of the family unit of the applicant who is not an applicant for a Subclass 489 visa satisfies public interest criterion 4007 unless it would be unreasonable to require the member to undergo assessment in relation to the criterion.

489.3 Secondary criteria

Note These criteria are for applicants who are members of the family unit of a person who:

- (a) satisfies the primary criteria; or
- (b) holds one of the following visas on the basis of satisfying the primary criteria:
 - a Skilled — Independent Regional (Provisional) (Class UX) visa;
 - a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa;
 - a Subclass 475 (Skilled — Regional Sponsored) visa;
 - a Subclass 487 (Skilled — Regional Sponsored) visa.

All criteria must be satisfied at the time a decision is made on the application.

489.31 Criteria

489.311 The applicant is a member of the family unit of a person (the *primary applicant*) who holds any of the following visas granted on the basis of satisfying the primary criteria:

- (a) a Skilled — Independent Regional (Provisional) (Class UX) visa;
- (b) a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa;
- (c) a Subclass 475 (Skilled — Regional Sponsored) visa;
- (d) a Subclass 487 (Skilled — Regional Sponsored) visa;
- (e) a Subclass 489 (Skilled — Regional (Provisional)) visa.

489.312 If the applicant previously held:

- (a) a Skilled — Independent Regional (Provisional) (Class UX) visa; or
- (b) a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa; or
- (c) a Subclass 475 (Skilled — Regional Sponsored) visa; or
- (d) a Subclass 487 (Skilled — Regional Sponsored) visa;

the applicant has substantially complied with the conditions of that visa.

- 489.313 (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4010 and 4020.
- (2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.
- (3) If the applicant has not turned 18, the applicant satisfies public interest criteria 4017 and 4018.
- (4) If the primary applicant holds a Subclass 489 visa in the Second Provisional Visa stream, the applicant satisfies public interest criterion 4007.
- (5) If subclause (4) does not apply, the applicant satisfies public interest criterion 4005.
- 489.314 The applicant satisfies special return criteria 5001, 5002 and 5010.
- 489.315 Either:
- (a) the applicant holds a valid passport that:
- (i) was issued to the applicant by an official source; and
- (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to hold a passport.

489.4 Circumstances applicable to grant

- 489.411 The applicant:
- (a) may be in or outside Australia when the visa is granted; and
- (b) must not be in immigration clearance.

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

489.5 When visa is in effect

- 489.511 If the applicant satisfied the primary criteria for the grant of a Subclass 489 visa in the First Provisional Visa stream, temporary visa permitting the holder to travel to, enter and remain in Australia for 4 years from the date of grant.

-
- 489.512 If the applicant satisfied the primary criteria for the grant of a Subclass 489 visa in the Second Provisional Visa stream, temporary visa permitting the holder to travel to, enter and remain in Australia for 4 years after the date of grant of the provisional visa the applicant held at the time of application.
- 489.513 If the applicant is a member of the family unit of a person who holds a Subclass 489 visa in the First Provisional Visa stream or the Second Provisional Visa stream, temporary visa permitting the holder to travel to, enter and remain in Australia until the day specified for the applicant who satisfied the primary criteria.
- 489.514 If the applicant is a member of the family unit of a person who holds:
- (a) a Skilled — Independent Regional (Provisional) (Class UX) visa; or
 - (b) a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa; or
 - (c) a Subclass 475 (Skilled — Regional Sponsored) visa; or
 - (d) a Subclass 487 (Skilled — Regional Sponsored) visa;
- temporary visa permitting the holder to travel to, enter and remain in Australia until the day specified for the applicant who satisfied the primary criteria for the grant of the visa mentioned in paragraph (a), (b), (c) or (d).

489.6 Conditions

- 489.611 If the applicant who satisfied the primary criteria for the grant of the visa was nominated by a State or Territory government agency, condition 8539 must be imposed.
- 489.612 If the applicant who satisfied the primary criteria for the grant of the visa was sponsored by a person, condition 8549 must be imposed.
- 489.613 (1) If condition 8539 was imposed on the visa held at the time of application by the applicant who satisfied the primary criteria for the grant of the visa in the Second Provisional Visa stream, condition 8539 must be imposed.

- (2) If:
- (a) an applicant is granted a Subclass 489 visa on the basis of satisfying the secondary criteria; and
 - (b) the applicant who satisfied the primary criteria also holds another General Skilled Migration visa on which condition 8539 has been imposed;
- condition 8539 must be imposed.
- 489.614 (1) If condition 8549 was imposed on the visa held at the time of application by the applicant who satisfied the primary criteria for the grant of the visa in the Second Provisional Visa stream, condition 8549 must be imposed.
- (2) If:
- (a) an applicant is granted a Subclass 489 visa on the basis of satisfying the secondary criteria; and
 - (b) the applicant who satisfied the primary criteria also holds another General Skilled Migration visa on which condition 8549 has been imposed;
- condition 8549 must be imposed.
- 489.615 If the applicant is outside Australia when the visa is granted:
- (a) first entry must be made before a date specified by the Minister; and
 - (b) if the applicant satisfies the secondary criteria for the grant of the visa, condition 8515 may be imposed.

[92] Schedule 2, Parts 495, 496 and 497

omit

[93] Schedule 2, after paragraph 773.213 (2) (h)

insert

- (ha) Employer Nomination (Permanent) (Class EN);
- (hb) Regional Employer Nomination (Permanent) (Class RN);

[94] Schedule 2, after paragraph 773.213 (2) (lc)

insert

(ld) Business Skills (Permanent) (Class EC);

[95] Schedule 2, paragraph 773.213 (2) (zv)

substitute

(zv) Skilled (Migrant) (Class VE);

(zw) Skilled — Independent (Permanent) (Class SI);

(zx) Skilled — Nominated (Permanent) (Class SN).

[96] Schedule 2, after paragraph 773.213 (3) (aa)

insert

(ab) Business Skills (Provisional) (Class EB);

[97] Schedule 2, paragraph 773.213 (3) (r)

substitute

(r) Skilled (Provisional) (Class VF);

(s) Skilled — Regional Sponsored (Provisional) (Class SP).

[98] Schedule 2, after subparagraph 820.212 (a) (iii)

insert

(iv) a Skilled — Regional Sponsored (Provisional) (Class SP) visa; or

[99] Schedule 2, subparagraph 820.212 (b) (iii)

substitute

(iii) a Subclass 487 (Skilled — Regional Sponsored) visa; or

(iv) a Skilled — Regional Sponsored (Provisional) (Class SP) visa;

[100] Schedule 2, after subparagraph 820.313 (a) (iii)*insert*

- (iv) a Skilled — Regional Sponsored (Provisional) (Class SP) visa; or

[101] Schedule 2, subparagraph 820.313 (b) (iii)*substitute*

- (iii) a Subclass 487 (Skilled — Regional Sponsored) visa; or
- (iv) a Skilled — Regional Sponsored (Provisional) (Class SP) visa;

[102] Schedule 2, Parts 861, 862, 863, 880, 881, 882 and 883*omit***[103] Schedule 2, clause 885.111***substitute*

885.111 In this Part:

degree has the same meaning as in subregulation 2.26AC (6).

diploma has the same meaning as in subregulation 2.26AC (6).

trade qualification has the same meaning as in subregulation 2.26AC (6).

Note 1 For ***Australian study requirement***: see regulation 1.15F.

Note 2 For ***competent English***: see regulation 1.15C.

Note 3 For ***registered course***, ***relevant assessing authority*** and ***skilled occupation***: see regulation 1.03.

[104] Schedule 2, clause 886.111*substitute*

886.111 In this Part:

degree has the same meaning as in subregulation 2.26AC (6).

diploma has the same meaning as in subregulation 2.26AC (6).

trade qualification has the same meaning as in subregulation 2.26AC (6).

Note 1 For *Australian study requirement*: see regulation 1.15F.

Note 2 For *competent English*: see regulation 1.15C.

Note 3 For *registered course*, *relevant assessing authority* and *skilled occupation*: see regulation 1.03.

[105] Schedule 2, subparagraph 887.111 (2) (e) (iii)

after

were satisfied;

insert

or

[106] Schedule 2, after paragraph 887.111 (2) (e)

insert

(f) a Skilled — Regional Sponsored (Provisional) (Class SP) visa that is subject to condition 8549;

[107] Schedule 2, subclause 887.111 (2)

after

under item 6701 of Schedule 6

insert

or was a designated area

[108] Schedule 2, subparagraph 887.111 (3) (e) (iii)

after

31 December 2010;

insert

or

[109] Schedule 2, after paragraph 887.111 (3) (e)*insert*

- (f) a Skilled — Regional Sponsored (Provisional) (Class SP) visa that is subject to condition 8539;

[110] Schedule 2, subclause 887.111 (3)*after*

for item 6A1001 of Schedule 6A

insert

or item 6D101 of Schedule 6D

[111] Schedule 2, subparagraph 887.212 (e)*substitute*

- (e) a Skilled — Regional Sponsored (Provisional) (Class SP) visa;
- (f) a Bridging A (Class WA) visa, or a Bridging B (Class WB) visa, that was granted on the basis of a valid application for:
 - (i) a Skilled — Independent Regional (Provisional) (Class UX) visa; or
 - (ii) a Skilled (Provisional) (Class VC) visa; or
 - (iii) a Skilled — Regional Sponsored (Provisional) (Class SP) visa.

[112] Schedule 2, paragraph 887.221 (1) (d)*substitute*

- (d) a Subclass 487 (Skilled — Regional Sponsored) visa; or
- (e) a Skilled — Regional Sponsored (Provisional) (Class SP) visa;

[113] Schedule 2, paragraph 887.221 (2) (d)*substitute*

- (d) a Subclass 487 (Skilled — Regional Sponsored) visa; or

- (e) a Skilled — Regional Sponsored (Provisional) (Class SP) visa;

[114] Schedule 2, paragraph 887.226 (b)

omit

4005

insert

4007

[115] Schedule 2, after Part 887

insert

Subclass 888 Business Innovation and Investment (Permanent)

888.1 Interpretation

888.111 In this Part:

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

Note 1 For *AUD*, *fiscal year*, *ownership interest* and *qualifying business*: see regulation 1.03.

Note 2 Regulation 1.03 also provides that *member of the family unit* has the meaning set out in regulation 1.12.

Note 3 *main business* is defined in regulation 1.11.

Note 4 For the beneficial ownership of an asset, eligible investment or ownership interest: see regulation 1.11A.

888.2 Primary criteria

Note The primary criteria for the grant of a Subclass 888 visa include criteria set out in streams.

If an applicant applies for a Subclass 888 visa in the Business Innovation stream, the criteria in Subdivisions 888.21 and 888.22 are the primary criteria for the grant of the visa.

If an applicant applies for a Subclass 888 visa in the Investor stream, the criteria in Subdivisions 888.21 and 888.23 are the primary criteria for the grant of the visa.

The primary criteria must be satisfied by at least one member of a family unit. The other members of the family unit who are applicants for a visa of this subclass need satisfy only the secondary criteria.

All criteria must be satisfied at the time a decision is made on the application.

888.21 Common criteria

Note These criteria are for all applicants seeking to satisfy the primary criteria for a Subclass 888 visa.

- 888.211 The applicant, and the applicant's spouse or de facto partner, do not have a history of involvement in business or investment activities that are of a nature that is not generally acceptable in Australia.
- 888.212 The nominating State or Territory government agency has not withdrawn the nomination.
- 888.213 The applicant genuinely has a realistic commitment to maintain business or investment activities in Australia.
- 888.214 The applicant, and the applicant's spouse or de facto partner, have a satisfactory record of compliance with the laws of the Commonwealth, and of each State or Territory in which the applicant operates a business and employs employees in the business, relating to the applicant's business.
- Note* Those laws include laws relating to taxation, superannuation and workplace relations.
- 888.215 (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4010 and 4020.
- (2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.
- (3) Each member of the family unit of the applicant who is an applicant for a Subclass 888 visa satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4010 and 4020.
- (4) Each member of the family unit of the applicant who:
- (a) is an applicant for a Subclass 888 visa; and

-
- (b) had turned 18 at the time of application;
satisfies public interest criterion 4019.
- (5) Each member of the family unit of the applicant who:
- (a) is an applicant for a Subclass 888 visa; and
- (b) has not turned 18;
satisfies public interest criteria 4015 and 4016.
- (6) Each member of the family unit of the applicant who is not an applicant for a Subclass 888 visa:
- (a) satisfies public interest criteria 4001, 4002, 4003 and 4004; and
- (b) satisfies public interest criterion 4007 unless it would be unreasonable to require the member to undergo assessment in relation to the criterion.
- 888.216 (1) The applicant satisfies special return criteria 5001, 5002 and 5010.
- (2) Each member of the family unit of the applicant who is an applicant for a Subclass 888 visa satisfies special return criteria 5001, 5002 and 5010.
- 888.217 Either:
- (a) the applicant holds a valid passport that:
- (i) was issued to the applicant by an official source; and
- (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to hold a passport.

888.22 Criteria for Business Innovation stream

Note These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 888 visa in the Business Innovation stream.

- 888.221 The applicant has been in Australia, as the holder of one or more visas mentioned in the table in subitem 1104BA (4) of Schedule 1, for a total period of at least one year in the 2 years immediately before the application was made.

-
- 888.222 (1) The applicant (the *current applicant*):
- (a) had an ownership interest in at least one actively operating main business in Australia during the 2 years immediately before the application was made; and
 - (b) continues to have the ownership interest in the actively operating main business.
- (2) If the current applicant acquired the ownership interest from another person who was an applicant for, or held, a Business Skills (Permanent) (Class EC) visa at the time of the acquisition, the current applicant must have held the ownership interest with that person as a joint interest for at least one year before the current applicant's application was made.
- 888.223 An Australian Business Number has been obtained for each business mentioned in subclause 888.222 (1).
- 888.224 Each Business Activity Statement required by the Commissioner of Taxation during the 2 years immediately before the application was made has been submitted to the Commissioner and has been included in the application.
- 888.225 (1) If the nominating State or Territory government agency has not determined that there are exceptional circumstances:
- (a) the requirements in at least 2 of subclauses (2) to (4) are met; and
 - (b) the requirement in subclause (5) is met.
- (2) The assets owned by the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together, in the main business or main businesses in Australia:
- (a) had a net value of at least AUD200 000 throughout the period of 12 months immediately before the application was made; and
 - (b) continue to have a net value of at least AUD200 000; and
 - (c) were lawfully acquired.

(3) In the period of 12 months immediately before the application was made:

- (a) the main business in Australia, or main businesses in Australia, of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together provided employment in Australia to 2 or more employees for a total number of hours that was at least the total number of hours that would have been worked by 2 full-time employees; and
- (b) each employee whose employment is used to work out that total number of hours:
 - (i) was not the applicant or a member of the family unit of the applicant during that period; and
 - (ii) was an Australian citizen, an Australian permanent resident or the holder of a valid New Zealand passport during that period.

(4) The business and personal assets of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together:

- (a) had a net value of at least AUD600 000 in the period of 12 months ending immediately before the application was made; and
- (b) continue to have a net value of at least AUD600 000; and
- (c) were lawfully acquired.

(5) The main business in Australia, or main businesses in Australia, of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together, had an annual turnover of at least AUD300 000 in the 12 months immediately before the application was made.

888.226 If the nominating State or Territory government agency has determined that there are exceptional circumstances:

- (a) the requirements set out in at least 2 of subclauses 888.225 (2) to (4) have been met; and

- (b) the applicant:
 - (i) resides in an area specified by the Minister in an instrument in writing for this subparagraph; and
 - (ii) operates the applicant's main business or businesses in Australia in the area.

888.23 Criteria for Investor stream

Note These criteria are only for applicants seeking to satisfy the primary criteria for a Subclass 888 visa in the Investor stream.

- 888.231 The applicant has been in Australia, as the holder of a visa mentioned in the table in subitem 1104BA (5) of Schedule 1, for a total period of at least 2 years in the 4 years immediately before the application was made.
- 888.232 The designated investment made by the applicant for the purpose of satisfying a criterion for the grant of a Subclass 188 (Business Innovation and Investment (Provisional)) visa has been held continuously in the name of the applicant, or in the names of the applicant and his or her spouse or de facto partner together, for at least 4 years.

888.3 Secondary criteria

Note These criteria are for applicants who are members of the family unit of a person who satisfies the primary criteria. All criteria must be satisfied at the time a decision is made on the application.

888.31 Criteria

- 888.311 The applicant:
 - (a) is a member of the family unit of a person who holds a Subclass 888 visa granted on the basis of satisfying the primary criteria for the grant of the visa; and
 - (b) made a combined application with that person.
- 888.312 (1) The applicant satisfies public interest criteria 4001, 4002, 4003, 4004, 4007, 4010 and 4020.

(2) If the applicant had turned 18 at the time of application, the applicant satisfies public interest criterion 4019.

(3) If the applicant has not turned 18, the applicant satisfies public interest criteria 4017 and 4018.

888.313 The applicant satisfies special return criteria 5001, 5002 and 5010.

888.314 Either:

- (a) the applicant holds a valid passport that:
 - (i) was issued to the applicant by an official source; and
 - (ii) is in the form issued by the official source; or
- (b) it would be unreasonable to require the applicant to hold a passport.

888.4 Circumstances applicable to grant

888.411 The applicant:

- (a) may be in or outside Australia when the visa is granted; and
- (b) must not be in immigration clearance.

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

888.5 When visa is in effect

888.511 Permanent visa permitting the holder to travel to, enter and remain in Australia for 5 years from the date of grant.

888.6 Conditions

888.611 If the applicant is outside Australia when the visa is granted:

- (a) first entry must be made before the date specified by the Minister; and
- (b) if the applicant satisfies the secondary criteria for the grant of the visa, condition 8515 may be imposed.

[116] Schedules 6 and 6A

omit

[117] Schedule 6B, item 6B91, column 2, paragraphs (b) and (c)

omit

for item 6A1001 of Schedule 6A

insert

for item 6D101 of Schedule 6D

[118] Schedule 6C, item 6C101, column 2, paragraphs (b) and (c)

omit

of item 6A1001 of Schedule 6A

insert

for item 6D101 of Schedule 6D

[119] After Schedule 6C

insert

Schedule 6D General points test for General Skilled Migration visas mentioned in subregulation 2.26AC (1)

(regulation 2.26AC)

Part 6D.1 Age qualifications

Item	At the time of invitation to apply for the visa, the applicant's age was ...	Number of points
6D11	not less than 18 and under 25	25
6D12	not less than 25 and under 33	30
6D13	not less than 33 and under 40	25
6D14	not less than 40 and under 45	15

Part 6D.2 English language qualifications

Item	At the time of invitation to apply for the visa, the applicant had ...	Number of points
6D21	superior English	20
6D22	proficient English	10

Part 6D.3 Overseas employment experience qualifications

Item	At the time of invitation to apply for the visa, the applicant ...	Number of points
6D31	had been employed outside Australia in: (a) the applicant's nominated skilled occupation; or (b) a closely related skilled occupation; for a period totalling at least 36 months in the 10 years immediately before that time	5
6D32	had been employed outside Australia in: (a) the applicant's nominated skilled occupation; or (b) a closely related skilled occupation; for a period totalling at least 60 months in the 10 years immediately before that time	10
6D33	had been employed outside Australia in: (a) the applicant's nominated skilled occupation; or (b) a closely related skilled occupation; for a period totalling at least 96 months in the 10 years immediately before that time	15

Part 6D.4 Australian employment experience qualifications

Item	At the time of invitation to apply for the visa, the applicant ...	Number of points
6D41	had been employed in Australia in: (a) the applicant's nominated skilled occupation; or (b) a closely related skilled occupation; for a period totalling at least 12 months in the 10 years immediately before that time	5

Item	At the time of invitation to apply for the visa, the applicant ...	Number of points
6D42	had been employed in Australia in: (a) the applicant's nominated skilled occupation; or (b) a closely related skilled occupation; for a period totalling at least 36 months in the 10 years immediately before that time	10
6D43	had been employed in Australia in: (a) the applicant's nominated skilled occupation; or (b) a closely related skilled occupation; for a period totalling at least 60 months in the 10 years immediately before that time	15
6D44	had been employed in Australia in: (a) the applicant's nominated skilled occupation; or (b) a closely related skilled occupation; for a period totalling at least 96 months in the 10 years immediately before that time	20

Part 6D.5 Aggregating points for employment experience qualifications

- 6D51 (1) If an applicant has a qualification mentioned in Part 6D.3 and a qualification mentioned in Part 6D.4, and the combined number of points that would be awarded under those Parts for the qualifications is more than 20 points:
- (a) the Minister must give the applicant 20 points under this Part for the qualifications; and
 - (b) no points are given under Part 6D.3 or 6D.4.
- (2) The prescribed number of points for the combination of qualifications is 20.

Part 6D.6 Australian professional year qualifications

Item	At the time of invitation to apply for the visa, the applicant had completed ...	Number of points
6D61	a professional year in Australia in: <ul style="list-style-type: none"> (a) the applicant's nominated skilled occupation; or (b) a closely related skilled occupation; for a period totalling at least 12 months in the 48 months immediately before that time	5

Part 6D.7 Educational qualifications

Item	At the time of invitation to apply for the visa, the applicant had ...	Number of points
6D71	met the requirements for: <ul style="list-style-type: none"> (a) the award of a doctorate by an Australian educational institution; or (b) the award of a doctorate, by another educational institution, that is of a recognised standard 	20
6D72	met the requirements for: <ul style="list-style-type: none"> (a) the award of at least a bachelor degree by an Australian educational institution; or (b) the award of at least a bachelor qualification by another educational institution, that is of a recognised standard 	15
6D73	met the requirements for the award of a diploma by an Australian educational institution	10
6D74	met the requirements for the award of a trade qualification by an Australian educational institution	10
6D75	attained a qualification or award recognised by the relevant assessing authority for the applicant's nominated skilled occupation as being suitable for the occupation	10

Part 6D.8 Australian study qualifications

Item	At the time of invitation to apply for the visa ...	Number of points
6D81	the applicant met the Australian study requirement	5

Part 6D.9 Credentialed community language qualifications

Item	At the time of invitation to apply for the visa, the applicant had ...	Number of points
6D91	a qualification in a particular language: <ol style="list-style-type: none"> (a) awarded or accredited by a body specified by the Minister in an instrument in writing for this item; and (b) at a standard for the language specified in the instrument 	5

Part 6D.10 Study in regional Australia or a low-population growth metropolitan area qualifications

Item	At the time of invitation to apply for the visa ...	Number of points
6D101	each of the following applied: <ol style="list-style-type: none"> (a) the applicant met the Australian study requirement; (b) the location of the campus or campuses at which that study was undertaken is specified by the Minister in an instrument in writing for this item; (c) while the applicant undertook the course of study the applicant lived in a part of Australia the postcode of which is specified by the Minister in an instrument in writing for this item; (d) none of the study undertaken constituted distance education 	5

Part 6D.11 Partner skill qualifications

Item	Qualification	Number of points
6D111	<p>The spouse or de facto partner of the applicant (the <i>primary applicant</i>):</p> <ul style="list-style-type: none"> (a) is an applicant for the same subclass of visa as the primary applicant; and (b) is not an Australian permanent resident or an Australian citizen; and (c) was under 50 at the time the invitation to apply for the visa was issued to the primary applicant; and (d) at the time of invitation to apply for the visa, nominated a skilled occupation, being an occupation specified by the Minister under paragraph 1.15I (1) (a) at that time; and (e) at the time of invitation to apply for the visa, had been assessed by the relevant assessing authority for the nominated skilled occupation as having suitable skills for the occupation; and (f) at the time of invitation to apply for the visa, had competent English 	5

Part 6D.12 State or Territory nomination qualifications

Item	Qualification	Number of points
6D121	The applicant has been invited to apply for a Subclass 190 (Skilled — Nominated) visa, and the nominating State or Territory government agency has not withdrawn the nomination	5

Part 6D.13 Designated area sponsorship qualifications

Item	Qualification	Number of points
6D131	<p>The applicant has been invited to apply for a Subclass 489 (Skilled — Regional) (Provisional) visa, and:</p> <p>(a) the nominating State or Territory government agency has not withdrawn the nomination; or</p> <p>(b) if the applicant is sponsored by a family member, the Minister has accepted the sponsorship</p>	10

[120] After Schedule 7

insert

Schedule 7A Business innovation and investment points test—attributes and points (Business Skills (Provisional) (Class EB) visas)

(regulation 1.03)

Part 7A.1 Definitions

In this Schedule:

degree has the meaning given by subregulation 2.26AC (6).

diploma has the meaning given by subregulation 2.26AC (6).

trade qualification has the meaning given by subregulation 2.26AC (6).

Part 7A.2 Age qualifications

Item	At the time of invitation to apply for the visa, the applicant was ...	Number of points
7A21	not less than 18 and under 25	20
7A22	not less than 25 and under 33	30
7A23	not less than 33 and under 40	25
7A24	not less than 40 and under 45	20
7A25	not less than 45 and under 55	15

Part 7A.3 English language qualifications

Item	At the time of invitation to apply for the visa, the applicant had ...	Number of points
7A31	vocational English	5
7A32	proficient English	10

Note Points are accumulated under item 7A31 or 7A32, not both.

Part 7A.4 Educational qualifications

Item	At the time of invitation to apply for the visa, the applicant had ...	Number of points
7A41	met the requirements for: <ul style="list-style-type: none"> (a) the award of a trade qualification, diploma or bachelor degree by an Australian educational institution; or (b) the award of a bachelor qualification by an educational institution that is of a recognised standard 	5
7A42	met the requirements for: <ul style="list-style-type: none"> (a) the award of a bachelor degree in business, science or technology by an Australian educational institution; or (b) the award of a bachelor qualification in business, science or technology by an educational institution that is of a recognised standard 	10

Note Points are accumulated under item 7A41 or 7A42, not both.

Part 7A.5 Business experience qualifications— Business Innovation stream only

Item	The applicant has held one or more main businesses for ...	Number of points
7A51	not less than 4 years in the 5 years immediately before the time of invitation to apply for the visa	10
7A52	not less than 7 years in the 8 years immediately before the time of invitation to apply for the visa	15

Note Points are accumulated under item 7A51 or 7A52, not both.

Part 7A.6 Investor experience qualifications— Investor stream only

Item	The applicant ...	Number of points
7A61	held eligible investments which had a value of not less than AUD100 000 for not less than 4 years immediately before the time of invitation to apply for the visa	10
7A62	held eligible investments which had a value of not less than AUD100 000 for not less than 7 years immediately before the time of invitation to apply for the visa	15

Note Points are accumulated under item 7A61 or 7A62, not both.

Part 7A.7 Financial asset qualifications

Item	The net value of the business and personal assets of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together, was ...	Number of points
7A71	not less than AUD800 000 in each of the 2 fiscal years immediately before the time of invitation to apply for the visa	5
7A72	not less than AUD1 300 000 in each of the 2 fiscal years immediately before the time of invitation to apply for the visa	15
7A73	not less than AUD1 800 000 in each of the 2 fiscal years immediately before the time of invitation to apply for the visa	25

Item	The net value of the business and personal assets of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together, was ...	Number of points
7A74	not less than AUD2 250 000 in each of the 2 fiscal years immediately before the time of invitation to apply for the visa	35

Note Points are accumulated under one item in Part 7A.7, not more than one.

Part 7A.8 Business turnover qualifications

Item	The applicant had an ownership interest in one or more main businesses that had an annual turnover of ...	Number of points
7A81	not less than AUD500 000 in at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa	5
7A82	not less than AUD1 000 000 in at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa	15
7A83	not less than AUD1 500 000 in at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa	25
7A84	not less than AUD2 000 000 in at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa	35

Note Points are accumulated under one item in Part 7A.8, not more than one.

Part 7A.9 Business innovation qualifications

Item	At the time of invitation to apply for the visa ...	Number of points
7A91	the applicant, or a main business of the applicant, had either or both of the following: <ul style="list-style-type: none"> (a) one or more patents that: <ul style="list-style-type: none"> (i) were registered not less than 1 year before that time; and (ii) were used in the day to day activities of the main business; 	15

Item	At the time of invitation to apply for the visa ...	Number of points
	<ul style="list-style-type: none"> (b) one or more registered designs that: <ul style="list-style-type: none"> (i) were registered not less than 1 year before that time; and (ii) were used in the day to day activities of the main business 	
7A92	<p>the applicant, or a main business of the applicant, had one or more registered trade marks that:</p> <ul style="list-style-type: none"> (a) were registered not less than 1 year before that time; and (b) were used in the day to day activities of the main business 	10
7A93	<p>each of the following applied:</p> <ul style="list-style-type: none"> (a) at least one main business in which the applicant held an ownership interest operated in accordance with a formal joint venture agreement entered into with another business or businesses; (b) the joint venture agreement had been entered into not less than 1 year before the time of invitation to apply for the visa; (c) the applicant utilised his or her skills in actively participating at a senior level in the day to day management of the business 	5
7A94	<p>at least one main business held by the applicant derived not less than 50% of its annual turnover from export trade in at least 2 of the 4 fiscal years immediately before that time</p>	15
7A95	<p>the applicant had an ownership interest in at least one main business that:</p> <ul style="list-style-type: none"> (a) was established not more than 5 years before that time; and (b) had an average annualised growth in turnover that was greater than 20% per annum over 3 continuous fiscal years; and 	10
124	<i>Migration Amendment Regulation 2012 (No. 2)</i>	2012, 82

Item	At the time of invitation to apply for the visa ...	Number of points
	(c) in at least one of the 3 fiscal years mentioned in paragraph (b) employed 10 or more employees for a total number of hours that was at least the total number of hours that would have been worked by 10 full-time employees	
7A96	the applicant, or at least one main business in which the applicant held an ownership interest: <ul style="list-style-type: none"> (a) had received a grant that: <ul style="list-style-type: none"> (i) was awarded for the purposes of early phase start up of a business, product commercialisation, business development or business expansion; and (ii) was at least AUD10 000; and (iii) was awarded by a government body in the applicant's home country; and (iv) had been received not more than 4 years immediately before that time; or (b) had received venture capital funding of at least AUD100 000 not more than 4 years before the time of the invitation for the purposes of early phase start up of a business, product commercialisation, business development or business expansion 	10

Note Points may be accumulated under more than one item in Part 7A.9, but points may not be accumulated more than once for each item in the Part.

Part 7A.10 Special endorsement qualifications

Item	At the time of the invitation to apply for the visa ...	Number of points
7A101	the nominating State or Territory government agency had determined that the business proposed by the applicant was of unique and important benefit to the State or Territory where the nominating government agency is located	10

[121] Schedule 8, item 8539

after

for item 6A1001 of Schedule 6A

insert

or item 6D101 of Schedule 6D

[122] Schedule 8, item 8549

omit

an area specified by the Minister in an instrument in writing
for item 6701 of Schedule 6

insert

a designated area

[123] Schedule 8, after item 8549

insert

Note **designated area** is defined in regulation 1.03

[124] After Schedule 12

insert

Schedule 13 Transitional arrangements

(regulation 5.45)

Part 1 Amendments made by Migration Amendment Regulation 2012 (No. 2)

101 Operation of Schedule 1

- (1) The amendments of these Regulations made by Schedule 1 to the *Migration Amendment Regulation 2012 (No. 2)* apply in relation to:
- (a) an application for a visa made on or after 1 July 2012; and

(b) an application for approval of a nomination made on or after 1 July 2012

- (2) However, the repeal of a provision of these Regulations by Schedule 1 to that regulation does not apply in relation to an application for a visa that is taken to have been made by a person before, on or after 1 July 2012 in accordance with regulation 2.08, 2.08A or 2.08B of these Regulations.
- (3) Despite subregulations 5.19 (1) to (7), an application to the Minister for approval of a nominated position as an approved appointment made before 1 July 2012 is to be dealt with in accordance with these Regulations as in force immediately before that day.

Note Regulation 5.19 was amended on 1 July 2012, including changes to terminology and concepts that had been used in that regulation before that day.

Schedule 2 Amendments commencing on 1 July 2013

(section 4)

[1] Regulation 1.03, definition of *business skills points test*

omit

[2] Regulation 1.03, definition of *concessional competent English, designated language and migration occupation in demand*

omit

[3] Regulation 1.03, definition of *RHQ agreement*

omit

[4] Subregulations 1.12 (8) and (9)

substitute

(8) In addition to subregulation (1), a person is a member of the family unit of an applicant for a Skilled (Residence) (Class VB) visa who seeks to satisfy the primary criteria for the grant of the visa if, at the time of application:

(a) the person holds:

(i) a Skilled — Independent Regional (Provisional) (Class UX) visa; or

(ii) a Bridging A (Class WA) visa or Bridging B (Class WB) visa granted on the basis of a valid application for:

(A) a Skilled — Independent Regional (Provisional) (Class UX) visa; or

(B) a Skilled (Provisional) (Class VC) visa; or

-
- (C) a Skilled — Regional Sponsored (Provisional) (Class SP) visa; or
- (iii) a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa; or
- (iv) a Subclass 475 (Skilled — Regional Sponsored) visa; or
- (v) a Subclass 487 (Skilled — Regional Sponsored) visa; or
- (vi) a Skilled — Regional Sponsored (Provisional) (Class SP) visa; and
- (b) the visa mentioned in paragraph (a) was granted on the basis that the person was a member of the family unit of the visa holder who satisfied the primary criteria and the person is included in the application for a Skilled (Residence) (Class VB) visa.

[5] Regulations 1.15E and 1.15H

omit

[6] Regulation 1.16A

omit

[7] Regulations 2.26AA and 2.26AB

omit

[8] Schedule 1, items 1104A, 1114, 1114A, 1121, 1121A and 1135

omit

[9] Schedule 1, subitem 1136 (1)

substitute

- (1) Form: 1276 (Internet).

[10] Schedule 1, paragraphs 1136 (3) (a) and (ab)*substitute*

(a) An application must be made as an Internet application.

Note An Internet application is taken to have been made at the time, identified using Australian Eastern Standard Time or Australian Eastern Standard Time incorporating Daylight Saving Time in the Australian Capital Territory, that corresponds to the time at which the Internet application is made: see regulation 2.10C.

[11] Schedule 1, paragraphs 1136 (3) (ba), (bb), (ca) and (d)*omit***[12] Schedule 1, subitems 1136 (3A), (3B), (4), (5) and (6)***omit***[13] Schedule 1, subitem 1136 (8)***substitute*

(8) Subclass:

Subclass 887 (Skilled — Regional)

[14] Schedule 1, subitem 1228 (2)*substitute*

(2) Visa application charge:

(a) First instalment (payable at the time application is made): \$325

(b) Second instalment (payable before grant of visa): nil.

[15] Schedule 1, paragraph 1228 (3) (aa)*omit*

[16] Schedule 1, paragraph 1228 (3) (b)

omit

[17] Schedule 1, subitems 1228 (3A) and (3B)

omit

[18] Schedule 1, subitem 1228 (4)

substitute

(4) Subclasses:

Subclass 476 (Skilled — Recognised Graduate)

[19] Schedule 1, paragraph 1229 (2) (a)

substitute

(a) First instalment (payable at the time application is made): \$325

[20] Schedule 1, paragraph 1229 (2) (b)

substitute

(b) Second instalment (payable before grant of visa): nil

[21] Schedule 1, paragraphs 1229 (3) (aa), (ab) and (da)

omit

[22] Schedule 1, subitems 1229 (3A), (3B), (5), (6) and (7)

omit

[23] Schedule 1, subitem 1229 (10)

substitute

(10) Subclasses:

Subclass 485 (Skilled — Graduate)

[24] Schedule 2, subparagraph 010.611 (3B) (i)

substitute

(i) a Skilled (Residence) (Class VB) visa;

[25] Schedule 2, subparagraph 020.611 (4) (i)

substitute

(i) a Skilled (Residence) (Class VB) visa;

[26] Schedule 2, Parts 119, 120, 121, 175, 176, 475, 487, 845, 846, 855, 856, 857, 885 and 886

omit

[27] Schedules 6B and 6C

omit

[28] Schedule 7

omit

[29] Schedule 13, after item 101

insert

102 Operation of Schedule 2

- (1) The amendments of these Regulations made by Schedule 2 to the *Migration Amendment Regulation 2012 (No. 2)* apply in relation to an application for a visa made on or after 1 July 2013.
- (2) However, the repeal of a provision of these Regulations by Schedule 2 to that regulation does not apply in relation to an application for a visa that is taken to have been made by a person before, on or after 1 July 2013 in accordance with regulation 2.08, 2.08A or 2.08B of these Regulations.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.