



# Migration Regulations 1994

**Statutory Rules 1994 No. 268 as amended**

made under the

*Migration Act 1958*

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This compilation was prepared on 1 January 2011  
taking into account amendments up to SLI 2010 No. 297

**[Note: Regulation 2.12A ceased to be in force at the end of  
4 December 2010 — see subsection 91D (4) of the Act]**

This document has been split into seven volumes

**Volume 1** contains Parts 1–3 (Rr. 1.01–3.31),

Volume 2 contains Parts 4 and 5 (Rr. 4.01–5.44) and Schedule 1,

Volume 3 contains Schedule 2 (Subclasses 010–415),

Volume 4 contains Schedule 2 (Subclasses 416–801),

Volume 5 contains Schedule 2 (Subclasses 802–995),

Volume 6 contains Schedules 3–12, and

Volume 7 contains the Notes and Tables A and B

Each volume has its own Table of Contents

Prepared by the Office of Legislative Drafting and Publishing,  
Attorney-General's Department, Canberra

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## **Part 1                      Preliminary**

### **Division 1.1              Introductory**

#### **1.01              Name of Regulations** [see Note 1]

These Regulations are the *Migration Regulations 1994*.

#### **1.02              Commencement**

These Regulations commence on 1 September 1994.

### **Division 1.2              Interpretation**

*Note* This Division sets out definitions that apply to the Regulations as a whole. Elsewhere in the Regulations there may be definitions that have more limited application. A term defined in section 5 of the Act has the same meaning in the Regulations, in the absence of a contrary intention.

#### **1.03              Definitions**

In these Regulations, unless the contrary intention appears:

***academic year*** means a period that is specified by the Minister as an academic year in an instrument in writing for this definition.

***ACCESS test*** means the Australian Assessment of Communicative English Skills test.

***adoption*** has the meaning set out in regulation 1.04.

*Note* ***adopt*** and ***adopted*** have corresponding meanings: see *Acts Interpretation Act 1901*, section 18A.

***adoption compliance certificate*** means an adoption compliance certificate within the meaning of the *Family Law (Bilateral Arrangements — Intercountry Adoption) Regulations 1998* or the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*.

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***Adoption Convention*** means the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption signed at The Hague on 29 May 1993.

*Note* The text of the Adoption Convention is set out in Schedule 1 to the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*.

***Adoption Convention country*** means a country that is a Convention country under the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*.

***aged dependent relative***, in relation to a person who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen, means a relative who:

- (a) does not have a spouse or de facto partner; and
- (b) has been dependent on that person for a reasonable period, and remains so dependent; and
- (c) is old enough to be granted an age pension under the *Social Security Act 1991*.

***aged parent*** means a parent who is old enough to be granted an age pension under the *Social Security Act 1991*.

***agreed starting day***, for a registered course, means:

- (a) the day on which the course was scheduled to start; or
- (b) a later day agreed between the education provider and a student.

***aircraft safety inspector*** means a person who:

- (a) is employed by a foreign government to inspect the safety procedures of international air carriers or the safety of aircraft; and
- (b) travels to Australia on an aircraft in the course of that employment; and
- (c) will depart Australia on an aircraft in the course of that employment or as a passenger.

***airline crew member*** means:

- (a) a person who:
  - (i) is employed by an international air carrier as an aircrew member; and

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- (ii) travels to Australia in the course of his or her employment as a member of the crew of an aircraft; and
  - (iii) will depart Australia in the course of his or her employment as a member of the crew of, or a passenger on, an aircraft; or
- (b) an aircraft safety inspector.

***airline positioning crew member*** means a person who:

- (a) is employed by an international air carrier as an aircrew member; and
- (b) travels to Australia in the course of his or her employment as a passenger on an aircraft; and
- (c) will depart Australia as a member of the crew of an aircraft.

***ANZSCO*** means the Australian and New Zealand Standard Classification of Occupations:

- (a) published by the Australian Bureau of Statistics; and
- (b) as current on 1 July 2010.

*Note* At the time this definition commenced, the standard was available at <http://www.abs.gov.au>.

***APEC*** means Asia-Pacific Economic Co-operation.

***APEC economy*** means each of the following:

- (a) Australia;
- (b) Brunei Darussalam;
- (c) Canada;
- (d) Chile;
- (e) PRC;
- (f) Hong Kong;
- (g) Indonesia;
- (h) Japan;
- (i) the Republic of Korea;
- (j) Malaysia;
- (k) Mexico;
- (l) New Zealand;
- (m) Papua New Guinea;

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- (n) Peru;
- (o) the Republic of the Philippines;
- (p) the Russian Federation;
- (q) Singapore;
- (r) Taiwan;
- (s) Thailand;
- (t) the United States of America;
- (u) Vietnam.

***appropriate regional authority***, in relation to a State or Territory and applications for visas of a particular class, means a Department or authority of that State or Territory that is specified by Gazette Notice, for the purposes of these Regulations, in relation to the grant of visas of that class.

***approved appointment*** means a nominated position that is approved under subregulation 5.19 (1B).

***approved form*** means a form approved by the Minister under section 495 of the Act or regulation 1.18, and a reference to an approved form by number is a reference to the form so approved and numbered.

***Arts Minister*** means the Minister responsible for administering the *National Gallery Act 1975*.

***ASCO*** means the Australian Standard Classification of Occupations, Second Edition, published by the Australian Bureau of Statistics on 31 July 1997.

*Note* At the time this definition commenced, the standard was available at <http://www.abs.gov.au>.

***Asia-Pacific forces member*** means a person who:

- (a) is a member of the armed forces of Brunei, Fiji, Malaysia, Thailand or Tonga; and
- (b) is travelling to Australia, or is in Australia, in the course of his or her duty; and
- (c) holds military identity documents and movement orders issued from an official source of the relevant country.

***assessment level***, for a student visa, means the level of assessment (being level 1, 2, 3, 4, or 5) specified for a kind of eligible passport for the student visa under regulation 1.41.

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**assurance of support**, in relation to an application for the grant of a visa, means:

- (a) for an assurance of support accepted by the Minister before 1 July 2004 — an assurance of support under Division 2.7; and
- (b) in any other case — an assurance of support under Chapter 2C of the *Social Security Act 1991*.

**AUD**, in relation to an amount of money, means Australian dollars.

**AusAID** means the Australian Agency for International Development within Foreign Affairs.

**AusAID Minister** means the Minister responsible for administering AusAID.

**AusAID recipient** has the meaning given by subregulation 1.04A (2).

**AusAID student** has the meaning given by subregulation 1.04A (3).

**Australian child order** has the meaning given by subsection 70L (1) of the *Family Law Act 1975*.

*Note* Subsection 70L (1) of the *Family Law Act 1975* provides that an **Australian child order** means:

- (a) a Subdivision C parenting order; or
- (b) a State child order.

**Australian permanent resident** means:

- (a) in relation to an applicant for a Return (Residence) (Class BB) visa or a Resident Return (Temporary) (Class TP) visa — a non-citizen who is the holder of a permanent visa; or
- (b) in any other case (other than in the case of an applicant for registration as a migration agent under Part 3 of the Act) — a non-citizen who, being usually resident in Australia, is the holder of a permanent visa.

*Note* For paragraph 294 (1) (b) of the Act, regulation 6C of the *Migration Agents Regulations 1998* specifies the persons who are **Australian permanent residents** for the purposes of an applicant for registration as a migration agent under Part 3 of the Act.

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**Australian relative**, for an applicant, means a relative of the applicant who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen.

**Australian study requirement** has the meaning given by regulation 1.15F.

**authorised officer** means an officer authorised by the Secretary for the purposes of the provision in which it occurs.

**award course** means a course of education or training leading to:

- (a) the completion of a primary or secondary education program; or
- (b) a degree, diploma, trade certificate or other formal award.

**balance of family test** has the meaning set out in regulation 1.05.

**bilateral adoption arrangement** means an arrangement between Australia and another country that allows the adoption of a child from the other country to be recognised in Australia under the *Family Law (Bilateral Arrangements — Intercountry Adoption) Regulations 1998*.

**bogus document** has the same meaning as in section 97 of the Act.

*Note* The definition is:

**bogus document**, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

**business skills points test** means the test set out in Schedule 7.

**carer** has the meaning given by regulation 1.15AA.

**category A course**, in relation to the holder of a visa or entry permit granted before 1 September 1994, means a course of education or training that:

- (a) is offered by an institution or other body or person in Australia that is a registered provider, for the purposes of the *Education Services for Overseas Students Act 2000*, of

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that course in the State or Territory in which that person is undertaking, or proposes to undertake, it; and

- (b) is either:
- (i) a course of primary or secondary education; or
  - (ii) a post-secondary course (having as an entry requirement the successful completion of Year 12 studies or the equivalent) leading to the award of a degree, diploma (including an associate diploma and a graduate diploma) or graduate certificate or to an equivalent award.

**category A student** means a student who, immediately before 1 September 1994, held a Class 560 (student (category A)) entry permit granted under the Migration (1993) Regulations or a student (Category A) (code number 560) entry permit granted under the Migration (1989) Regulations.

**category B course**, in relation to the holder of a visa or entry permit granted before 1 September 1994, means a course of education or training that:

- (a) is offered by an institution or other body or person in Australia that is a registered provider, for the purposes of the *Education Services for Overseas Students Act 2000*, of that course in the State or Territory in which that person is undertaking, or proposes to undertake, it; and
- (b) is not a category A course.

**category B student** means a student who, immediately before 1 September 1994, held a Class 561 (student (category B)) entry permit granted under the Migration (1993) Regulations or a student (category B) (code number 561) entry permit under the Migration (1989) Regulations.

**certificate of enrolment**, means a paper copy, sent by an education provider to an applicant for a student visa, of an electronic confirmation of enrolment relating to the applicant.

**clearance officer** has the meaning given by section 165 of the Act.

*Note* the definition is:

**clearance officer** means an officer, or other person, authorised by the Minister to perform duties for the purposes of [Division 5 of Part 2 of the Act].

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***client number*** means a client identification number generated by Immigration's electronic system known as the Integrated Client Services Environment.

***close relative***, in relation to a person, means:

- (a) the spouse or de facto partner of the person; or
- (b) a child, parent, brother or sister of the person; or
- (c) a step-child, step-brother or step-sister of the person.

***Commissioner*** means a Commissioner appointed under section 203 of the Act.

***Commonwealth country*** means each of the following countries:

- (a) Antigua;
- (b) Bahamas;
- (c) Barbados;
- (d) Belize;
- (e) Canada;
- (f) Grenada;
- (g) Jamaica;
- (h) Mauritius;
- (j) New Zealand;
- (k) Papua New Guinea;
- (l) Saint Lucia;
- (m) Saint Vincent and the Grenadines;
- (n) Solomon Islands;
- (p) St Christopher and Nevis;
- (q) Tuvalu;
- (r) the United Kingdom of Great Britain and Northern Ireland.

***Commonwealth forces member*** means a person who:

- (a) is a member of the armed forces of a Commonwealth country; and
- (b) is travelling to Australia, or is in Australia, in the course of his or her duty; and
- (c) holds military identity documents and movement orders issued from an official source of the relevant country.



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**Commonwealth Medical Officer** means a medical practitioner employed or engaged by the Australian government.

**community services** includes the provision of an Australian social security benefit, allowance or pension.

**compelling need to work** has the meaning set out in regulation 1.08.

**competent authority**, in relation to an adoption (including a prospective adoption), means:

- (a) for Australia:
  - (i) in the case of an adoption to which the Adoption Convention applies — a State Central Authority within the meaning of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*; and
  - (ii) in the case of an adoption to which a bilateral adoption arrangement applies — a competent authority within the meaning of the *Family Law (Bilateral Arrangements — Intercountry Adoption) Regulations 1998*; and
  - (iii) in any other case — the child welfare authorities of an Australian State or Territory; and
- (b) for an Adoption Convention country — a Central Authority within the meaning of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*; and
- (c) for a prescribed overseas jurisdiction within the meaning of the *Family Law (Bilateral Arrangements — Intercountry Adoption) Regulations 1998* — a competent authority within the meaning of those regulations; and
- (d) for any other overseas country — a person, body or office in that overseas country responsible for approving the adoption of children.

**competent English** has the meaning given by regulation 1.15C.

**concessional competent English** has the meaning given by regulation 1.15E.

**condition** means a condition set out in a clause of Schedule 8, and a reference to a condition by number is a reference to the condition set out in the clause so numbered in that Schedule.

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**contact hours**, for a course for a period, means the total number of hours in the period for which students enrolled in the course are scheduled to attend classes for teaching purposes, course-related information sessions, supervised study sessions and examinations.

**contributory parent newborn child** means:

- (a) a child (other than an adopted child) of a parent, born at a time when that parent holds:
  - (i) a Subclass 173 (Contributory Parent (Temporary)) visa; or
  - (ii) a bridging visa if the last substantive visa held by that parent was a Subclass 173 (Contributory Parent (Temporary)) visa; or
- (b) a child (other than an adopted child) of a parent, born at a time when that parent holds:
  - (i) a Subclass 884 (Contributory Aged Parent (Temporary)) visa; or
  - (ii) a bridging visa if the last substantive visa held by that parent was a Subclass 884 (Contributory Aged Parent (Temporary)) visa.

**criminal detention** has the meaning set out in regulation 1.09.

**custody**, in relation to a child, means:

- (a) the right to have the daily care and control of the child; and
- (b) the right and responsibility to make decisions concerning the daily care and control of the child.

**Defence** means the Department of Defence.

**Defence Minister** means the Minister for Defence.

**Defence student** has the meaning given in regulation 1.04B.

**dependent** has the meaning given by regulation 1.05A.

**dependent child**, of a person, means the child or step-child of the person (other than a child who is engaged to be married or has a spouse or de facto partner), being a child who:

- (a) has not turned 18; or
- (b) has turned 18 and:
  - (i) is dependent on that person; or

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- (ii) is incapacitated for work due to the total or partial loss of the child's bodily or mental functions.

**designated APEC economy** means an APEC economy specified by Gazette Notice for the purposes of this definition.

**designated area** means an area specified by the Minister in an instrument in writing for item 6701 of Schedule 6 as a designated area.

*Note* An area may be specified to be a designated area for a provision of these Regulations in addition to item 6701 of Schedule 6.

**designated foreign dignitary** means a person to whom subregulation 3.06A (1) or (5) applies.

**designated language** means a language that is specified by Gazette Notice as a designated language.

**designated security** means an investment in a security specified under regulation 2.26C.

**domestic worker sponsor** means a person who:

- (a) is an approved sponsor; and
- (b) is approved as a sponsor in relation to the domestic worker sponsor class by the Minister under subsection 140E (1) of the Act.

**Education** means the Department of Education, Science and Training.

**Education Minister** means the Minister for Education, Science and Training.

**education provider**, for a registered course in a State or Territory, means each institution, body or person that is a registered provider of the course in that State or Territory, for the *Education Services for Overseas Students Act 2000*.

**electronic communication** has the same meaning as in the *Electronic Transactions Act 1999*.

**electronic confirmation of enrolment**, in relation to an applicant for a student visa, means confirmation that:

- (a) states that the applicant is enrolled in a registered course; and
- (b) is sent by an education provider, through a computer system under the control of the Education Minister, to:

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- (i) a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia; or
- (ii) an office of a visa application agency that is approved in writing by the Minister for the purpose of receiving applications for a student visa; or
- (iii) any office of Immigration in Australia.

**ELICOS** means an English Language Intensive Course for Overseas Students that is a registered course.

**eligible business** has the meaning given to it in subsection 134 (10) of the Act.

**eligible New Zealand citizen** means a New Zealand citizen who:

- (a) at the time of his or her last entry to Australia, would have satisfied public interest criteria 4001 to 4004 and 4007 to 4009; and
- (b) either:
  - (i) was in Australia on 26 February 2001 as the holder of a Subclass 444 (Special Category) visa that was in force on that date; or
  - (ii) was in Australia as the holder of a Subclass 444 visa for a period of, or periods that total, not less than 1 year in the period of 2 years immediately before 26 February 2001; or
  - (iii) has a certificate, issued under the *Social Security Act 1991*, that states that the citizen was, for the purposes of that Act, residing in Australia on a particular date.

**eligible passport** has the meaning given by regulation 1.40.

**eligible student visa** means a student visa other than:

- (a) a Subclass 560 (Student) visa granted to:
  - (i) the applicant as a person who satisfied the primary criteria for that visa (the **primary person**) in relation to undertaking:
    - (A) a registered English language course or an ELICOS; or

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- (B) a course of study:
  - (I) paid for wholly or in part by the Commonwealth, the government of a State or Territory, the government of a foreign country or a multilateral agency; and
  - (II) for which a condition of payment by that body for the course is that the student will leave Australia on the completion of the course; or
- (C) a full-time course of study or training under a scholarship scheme or training program:
  - (I) approved by the AusAID Minister or the Defence Minister; and
  - (II) for which it is a condition of that scheme or program that the student will leave Australia on the completion of the course; or
- (D) a non-award course; or
- (ii) the applicant as a member of the family unit of the primary person; or
- (b) a Subclass 562 (Iranian Postgraduate Student), 563 (Iranian Postgraduate Student Dependent), 572 (Vocational Education and Training Sector), 573 (Higher Education Sector) or 574 (Postgraduate Research Sector) visa granted to:
  - (i) the applicant as a person who satisfied the primary criteria for the visa in relation to undertaking a course mentioned in sub-subparagraph (a) (i) (B) or (C) (the **primary person**); or
  - (ii) the applicant as a member of the family unit of the primary person; or
- (c) a Subclass 570 (Independent ELICOS Sector) visa; or
- (d) a Subclass 571 (Schools Sector) visa; or
- (e) a Subclass 575 (Non-Award Sector) visa; or
- (f) a Subclass 576 (AusAID or Defence Sector) visa.

**Employment Minister** means the Minister for Employment and Workplace Relations.

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***entertainment sponsor*** means a person who:

- (a) is an approved sponsor; and
- (b) is approved as a sponsor in relation to the entertainment sponsor class by the Minister under subsection 140E (1) of the Act.

***entry permit*** has the meaning given by subsection 4 (1) of the Act as in force immediately before 1 September 1994, and includes an entry visa operating as an entry permit.

***entry visa*** has the meaning given by subsections 4 (1) and 17 (5) of the Act as in force immediately before 1 September 1994.

***ETA-eligible passport*** has the meaning given in regulation 1.11B.

***eVisitor eligible passport*** has the meaning given by regulation 1.11C.

***exchange sponsor*** means a person who:

- (a) is an approved sponsor; and
- (b) is approved as a sponsor in relation to the exchange sponsor class by the Minister under subsection 140E (1) of the Act.

***fiscal year***, in relation to a business or investment, means:

- (a) if there is applicable to the business or investment by law an accounting period of 12 months — that period; or
- (b) in any other case — a period of 12 months approved by the Minister in writing for that business or investment.

***Foreign Affairs*** means the Department of Foreign Affairs and Trade.

***foreign armed forces dependant*** means a person who:

- (a) is the spouse or de facto partner of, or a dependent relative of:
  - (i) an Asia-Pacific forces member; or
  - (ii) a Commonwealth forces member; or
  - (iii) a SOFA forces member; or
  - (iv) a SOFA forces civilian component member; and
- (b) holds a valid national passport and a certificate that he or she is the spouse or de facto partner, or a dependent

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relative, of a person referred to in subparagraph (a) (i), (ii), (iii) or (iv); and

- (c) is accompanying or joining a person of that kind.

*Note* Under section 10 of the *Australian Citizenship Act 1948*, a child born in Australia on or after 26 January 1949 but before 20 August 1986 acquired Australian citizenship by birth. A child born in Australia on or after 20 August 1986 acquired Australian citizenship by birth only if one or both of the parents was an Australian citizen or Australian permanent resident. For details see s. 10 of that Act.

***foreign government agency sponsor*** means a person who:

- (a) is an approved sponsor; and  
(b) is approved as a sponsor in relation to the foreign government agency sponsor class by the Minister under subsection 140E (1) of the Act.

***Foreign Minister*** means the Minister for Foreign Affairs.

***foreign naval forces member*** means a person who forms part of the complement of a ship of the regular armed forces of a foreign government and is on board the ship.

***formal course***, in relation to the holder of a visa or entry permit granted before 1 February 1991, means:

- (a) a course of study at a primary or secondary school approved, or within a class of schools approved, by the Education Minister in writing for the purposes of the definition of ***formal course*** in subregulation 2 (1) of the Migration (1989) Regulations; or  
(b) a course of study approved in writing by the Education Minister as a formal course for the purposes of that definition; or  
(c) a course of study at a technical and further education institution, or at a higher education institution, leading to a formal award such as a degree or diploma.

***Gazette Notice*** means:

- (a) a notice in the *Gazette* by the Minister that is authorised by the Act; or  
(b) a notice under regulation 1.17.

***General Skilled Migration visa*** means a Subclass 175, 176, 475, 476, 485, 487, 885, 886 or 887 visa, granted at any time.

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***guardian***, in relation to a child, means a person who:

- (a) has responsibility for the long-term welfare of the child; and
- (b) has, in relation to the child, all the powers, rights and duties that are vested by law or custom in the guardian of a child, other than:
  - (i) the right to have the daily care and control of the child; and
  - (ii) the right and responsibility to make decisions concerning the daily care and control of the child.

***guest of Government*** means:

- (a) an official guest of the Australian government; or
- (b) a member of the immediate family of the official guest of the Australian Government, who is accompanying the official guest.

***highest assessment level***, for an applicant for a student visa, means:

- (a) if the applicant proposes to undertake a single course of study that is a registered course — the assessment level for that course of study; and
- (b) if the applicant proposes to undertake 2 or more courses of study that are registered courses and that do not include an ELICOS — the assessment level for those courses which is the highest number from 1 to 5; and
- (c) if the applicant proposes to undertake 2 or more courses of study that are registered courses and that include an ELICOS — the assessment level for those courses which is the highest number from 1 to 5, not including the ELICOS course.

***home country***, in relation to a person, means:

- (a) the country of which the person is a citizen; or
- (b) if the person is not usually resident in that country, the country of which the person is usually a resident.

***Hong Kong*** means the Hong Kong Special Administrative Region of the People's Republic of China.

***IASS agreement*** means an agreement mentioned in regulation 1.16B.



***IELTS test*** means the International English Language Testing System test.

***Immigration*** means the Department of Immigration and Multicultural and Indigenous Affairs.

***Industry Minister*** means the Minister for Industry, Tourism and Resources.

***international air carrier*** has the meaning given by subsection 504 (6) of the Act.

***Internet application*** means an application for a visa made using a form mentioned in paragraph 1.18 (2) (b) that is sent to Immigration by electronic transmission using a facility made available at an Internet site mentioned in subparagraph 1.18 (2) (b) (ii), in a way authorised by that facility.

***in Australia*** means in the migration zone.

***labour agreement*** means a formal agreement entered into between:

- (a) the Minister, or the Employment Minister; and
- (b) a person or organisation in Australia;

under which an employer is authorised to recruit persons to be employed by that employer in Australia.

***labour market requirements*** has the meaning set out in regulation 1.10.

***long-term partner relationship***, in relation to an applicant for a visa, means a relationship between the applicant and another person, each as the spouse or de facto partner of the other, that has continued:

- (a) if there is a dependent child (other than a step-child) of both the applicant and the other person — for not less than 2 years; or
- (b) in any other case — for not less than 3 years.

***Macau*** means the Macau Special Administrative Region of the People's Republic of China.

***main business*** has the meaning set out in regulation 1.11.

***Medical Officer of the Commonwealth*** means a medical practitioner appointed by the Minister in writing under regulation 1.16AA to be a Medical Officer of the Commonwealth for the purposes of these Regulations.

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***member of the crew***, in relation to a non-military ship or superyacht:

- (a) means any of the following persons:
- (i) a person who is involved in the usual day to day routine maintenance or business of the ship or superyacht while it is at sea, including a supernumerary member of the crew;
  - (ii) for a ship described in subparagraph (a) (ii) of the definition of ***non-military ship*** — a person who is engaged in scientific research conducted on or from the ship;
- whether the person works as an employee, a contractor or in another capacity; but
- (b) does not include a person who only works on a ship or superyacht while it is in port or dry dock unless that person:
- (i) travelled with the ship or superyacht to reach the port or dry dock; or
  - (ii) travels with the ship or superyacht after completing the work in port or dry dock.

***member of the family unit*** has the meaning set out in regulation 1.12.

***member of the immediate family*** has the meaning given by regulation 1.12AA.

***member of the Royal Family*** means a member of the Queen's immediate family.

***member of the Royal party*** includes:

- (a) a member of the personal staff of the Queen who is accompanying Her Majesty in Australia; and
- (b) a member of the personal staff of a member of the Royal Family, being a staff member who is accompanying that member of the Royal Family in Australia; and
- (c) a media representative accompanying the official party of the Queen or of a member of the Royal Family in Australia; and
- (d) a person who is accompanying the Queen or a member of the Royal Family in Australia as a member of the official party of the Queen or the member of the Royal Family.

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***Migration (1959) Regulations*** means the Regulations comprising Statutory Rules 1959 No. 35 and those Regulations as amended from time to time.

***Migration (1989) Regulations*** means the Regulations comprising Statutory Rules 1989 No. 365 and those Regulations as amended from time to time.

***Migration (1993) Regulations*** means the Regulations comprising Statutory Rules 1992 No. 367 and those Regulations as amended from time to time.

*Note* The Migration (1993) Regulations are listed in full in Part 1 of the Schedule to the Migration Reform (Transitional Provisions) Regulations. They are repealed by regulation 42 of those Regulations but continue to apply to certain matters.

***migration occupation in demand*** has the meaning given by regulation 1.15H.

***nominator*** has the meaning given by regulation 1.13.

***non-award course*** means a course of education or training that is not an award course.

***non-formal course***, in relation to the holder of a visa or entry permit granted before 1 February 1991, means a course of study or training other than a formal course.

***non-formal course student***, in relation to a visa or entry permit granted before 1 February 1991, means a person granted entry to Australia to attend a full-time non-formal course of study.

***non-military ship***

- (a) means a ship that:
  - (i) is engaged in:
    - (A) commercial trade; or
    - (B) the carriage of passengers for reward; or
  - (ii) is owned and operated by a foreign government for the purposes of scientific research; or
  - (iii) has been accorded public vessel status by Foreign Affairs; but
- (b) does not include a ship that has been:
  - (i) imported in accordance with section 49A of the *Customs Act 1901*; or

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- (ii) entered for home consumption in accordance with section 71A of that Act.

***Occupational English Test*** means an Occupational English Test conducted by the National Language and Literacy Institute of Australia.

***Occupations Requiring English List*** means the list mentioned in regulation 1.19.

***occupational trainee*** means a person who is in Australia as the holder of a Subclass 442 (Occupational Trainee) visa.

***occupational trainee sponsor*** means a person who:

- (a) is an approved sponsor; and
- (b) is approved as a sponsor in relation to the occupational trainee sponsor class by the Minister under subsection 140E (1) of the Act.

***oral application***, in relation to a visa, means an application made in accordance with regulation 2.09.

***orphan relative*** has the meaning set out in regulation 1.14.

***outside Australia*** means outside the migration zone.

***overseas passenger*** means:

- (a) in relation to a vessel arriving at a port in Australia in the course of, or at the conclusion of, an overseas voyage — a passenger:
  - (i) who:
    - (A) was on board the vessel when it left a place outside Australia at the commencement of, or during the course of, the voyage; and
    - (B) whose journey in the vessel ends in Australia; or
  - (ii) who:
    - (A) was on board the vessel when it left a place outside Australia at the commencement of, or during the course of, the voyage; and
    - (B) intends to journey in the vessel to a place outside Australia; and
- (b) in relation to a vessel leaving a port in Australia and bound for or calling at a place outside Australia — a passenger on board the vessel who:

- (i) joined the vessel at a port in Australia; and
- (ii) intends to journey in the vessel to or beyond that place outside Australia.

*Note* Under the Act, **vessel** includes an aircraft, and **port** includes an airport.

**overseas voyage**, in relation to a vessel, means a voyage that commenced at, or during which the vessel called at, a place outside Australia.

**ownership interest** has the meaning given to it in subsection 134 (10) of the Act.

**parenting order** has the meaning given by subsection 64B (1) of the *Family Law Act 1975*.

**parent visa** means a visa of a class that is specified in Schedule 1 using the word ‘parent’ in the title of the visa.

**parole** means conditional release from prison before the completion of a sentence of imprisonment.

**passenger card** means a card of the kind referred to in section 506 of the Act.

**periodic detention** means a system of restriction of liberty by which periods at liberty alternate with periods in prison, and includes the systems of intermittent imprisonment known as day release and weekend release.

**permanent entry permit** means an entry permit that had effect without limitation as to time.

**permanent entry visa** means an entry visa that operated as, or was capable of operating as, a permanent entry permit.

**permanent humanitarian visa** means:

- (a) a Subclass 200, 201, 202, 203, 204, 209, 210, 211, 212, 213, 215, 216, 217 or 866 visa; or
- (aa) a Resolution of Status (Class CD) visa; or
- (b) a Group 1.3 or Group 1.5 (Permanent resident (refugee and humanitarian)) visa or entry permit within the meaning of the Migration (1993) Regulations; or
- (c) a humanitarian visa, or equivalent entry permit, within the meaning of the Migration (1989) Regulations; or

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- (d) a transitional (permanent) visa, within the meaning of the Migration Reform (Transitional Provisions) Regulations, being:
- (i) such a visa granted on the basis of an application for a visa, or entry permit, of a kind specified in paragraph (b) or (c); or
  - (ii) a visa or entry permit of a kind specified in paragraph (b) or (c) having effect under those Regulations as a transitional (permanent) visa.

***personal identifier*** has the meaning given by section 5A of the Act.

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

***points system*** means the system of assessment under Subdivision B of Division 3 of Part 2 of the Act.

***PRC*** means the People's Republic of China.

***prescribed form*** means a form set out in Schedule 10, and a reference to a prescribed form by number is a reference to the form so numbered in that Schedule.

***primary sponsored person*** has the meaning given by subregulation 2.57 (1).

***professional development sponsor*** means a person who:

- (a) is an approved sponsor; and
- (b) is approved as a sponsor in relation to the professional development sponsor class by the Minister under subsection 140E (1) of the Act.

***Note 1 Approved sponsor*** is defined in subsection 5 (1) of the Act. A person is no longer an approved sponsor in relation to a class of sponsor if the person's approval to be a sponsor has been cancelled under section 140M of the Act, or has otherwise ceased to have effect under section 140G of the Act.

***Note 2*** Different classes of sponsor, in relation to which a person may be approved as a sponsor, are prescribed under subsection 140E (2) of the Act. See regulation 2.58.

***proficient English*** has the meaning given by regulation 1.15D.

***prohibited non-citizen*** means a person who, on or before 18 December 1989, was a prohibited non-citizen within the meaning of the Act as in force at that time.

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***proliferation of weapons of mass destruction*** includes directly or indirectly assisting in the development, production, trafficking, acquisition or stockpiling of:

- (a) weapons that may be capable of causing mass destruction; or
- (b) missiles or other devices that may be capable of delivering such weapons.

***provider default***, in relation to a registered course, means the occurrence of 1 of the following events because a sanction has been imposed on the education provider under Division 1 or 2 of Part 6 of the *Education Services for Overseas Students Act 2000*:

- (a) the course does not start on the agreed starting day;
- (b) the course ceases to be provided at any time after it starts, but before it is completed;
- (c) the course not being provided in full to a student.

***provider default day***, in relation to a registered course for which provider default has occurred, means:

- (a) if the default occurred because of the event mentioned in paragraph (a) of the definition of ***provider default*** — the agreed starting day; or
- (b) if the default occurred because of the event mentioned in paragraph (b) or (c) of the definition of ***provider default*** — the day on which the course ceased to be provided.

***public interest criterion*** means a criterion set out in a clause of Part 1 of Schedule 4, and a reference to a public interest criterion by number is a reference to the criterion set out in the clause so numbered in that Part.

***qualifying business*** means an enterprise that:

- (a) is operated for the purpose of making profit through the provision of goods, services or goods and services (other than the provision of rental property) to the public; and
- (b) is not operated primarily or substantially for the purpose of speculative or passive investment.

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**registered course** means a course of education or training provided by an institution, body or person that is registered, under section 9 of the *Education Services for Overseas Students Act 2000*, to provide the course to overseas students.

*Note* A current list of registered courses appears in the Commonwealth Register of Institutions and Courses for Overseas Students kept under section 10 of the *Education Services for Overseas Students Act 2000*.

**relative**, in relation to a person, means:

- (a) in the case of an applicant for a Subclass 200 (Refugee) visa or a Protection (Class XA) visa:
  - (i) a close relative; or
  - (ii) a grandparent, grandchild, aunt, uncle, niece or nephew, or a step-grandparent, step-grandchild, step-aunt, step-uncle, step-niece or step-nephew; or
  - (iii) a first or second cousin; or
- (b) in any other case:
  - (i) a close relative; or
  - (ii) a grandparent, grandchild, aunt, uncle, niece or nephew, or a step-grandparent, step-grandchild, step-aunt, step-uncle, step-niece or step-nephew.

*Note* **Close relative** is defined in this regulation: see above.

**relevant assessing authority** means a person or body specified under regulation 2.26B.

**relevant course of study**, for a subclass of student visa, means a type of course for the subclass of student visa that the Minister has specified in a legislative instrument made under regulation 1.40A.

**religious institution** means a body:

- (a) the activities of which reflect that it is a body instituted for the promotion of a religious object; and
- (b) the beliefs and practices of the members of which constitute a religion due to those members:
  - (i) believing in a supernatural being, thing or principle; and
  - (ii) accepting the canons of conduct that give effect to that belief, but that do not offend against the ordinary laws; and



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- (c) that meets the requirements of section 50-50 of the *Income Tax Assessment Act 1997*; and
- (d) the income of which is exempt from income tax under section 50-1 of that Act.

***religious worker sponsor*** means a person who:

- (a) is an approved sponsor; and
- (b) is approved as a sponsor in relation to the religious worker sponsor class by the Minister under subsection 140E (1) of the Act.

***remaining relative*** has the meaning set out in regulation 1.15.

***review authority***:

- (a) means the Migration Review Tribunal; and
- (b) for Parts 010, 020, 030, 040, 041, 050 and 051 of Schedule 2 — includes the Refugee Review Tribunal.

***RHQ agreement*** means an agreement mentioned in regulation 1.16A and made before 1 November 2003.

***Schedule 3 criterion*** means a criterion set out in a clause of Schedule 3, and a reference to a Schedule 3 criterion by number is a reference to the criterion set out in the clause so numbered in that Schedule.

***school-age dependant***, in relation to a person, means a member of the family unit of the person who has turned 5, but has not turned 18.

***secondary exchange student*** means an overseas secondary school student participating in a secondary school student exchange program approved by:

- (a) the State or Territory education authority that administers the program; and
- (b) the Education Minister.

***secondary sponsored person*** has the meaning given by subregulation 2.57 (1).

***settled***, in relation to an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen, means lawfully resident in Australia for a reasonable period.

***skilled occupation*** has the meaning given by regulation 1.15I.

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***Sofa forces civilian component member*** means a person who:

- (a) is, for the purposes of a Status of Forces Agreement between Australia and France, Malaysia, New Zealand, Papua New Guinea, the Republic of the Philippines, Singapore, Turkey or the United States of America, a member of the civilian component of the armed forces of one of those countries; and
- (b) holds a national passport that is in force and a certificate that he or she is a member of the civilian component of the armed forces of the relevant country.

***Sofa forces member*** means a person who:

- (a) is, for the purposes of a Status of Forces Agreement between Australia and France, Malaysia, New Zealand, Papua New Guinea, the Republic of the Philippines, Singapore, Turkey or the United States of America, a member of the armed forces of one of those countries; and
- (b) holds military identity documents and movement orders issued from an official source of the relevant country.

***special program sponsor*** means a person who:

- (a) is an approved sponsor; and
- (b) is approved as a sponsor in relation to the special program sponsor class by the Minister under subsection 140E (1) of the Act.

***special return criterion*** means a criterion set out in a clause of Part 1 of Schedule 5, and a reference to a special return criterion by number is a reference to the criterion set out in the clause so numbered in that Schedule.

***sponsor*** has the meaning given by subregulation 1.20 (1).

***sponsorship*** means an undertaking of the kind referred to in regulation 1.20 to sponsor an applicant.

***sport sponsor*** means a person who:

- (a) is an approved sponsor; and
- (b) is approved as a sponsor in relation to the sport sponsor class by the Minister under subsection 140E (1) of the Act.

***standard business sponsor*** means a person who:

- (a) is an approved sponsor; and

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- (b) is approved as a sponsor in relation to the standard business sponsor class by the Minister under subsection 140E (1) of the Act.

*Note 1* **Approved sponsor** is defined in subsection 5 (1) of the Act. A person is no longer an approved sponsor in relation to a class of sponsor if the person's approval to be a sponsor has been cancelled under section 140M of the Act, or has otherwise ceased to have effect under section 140G of the Act.

*Note 2* Different classes of sponsor, in relation to which a person may be approved as a sponsor, are prescribed under subsection 140E (2) of the Act. See regulation 2.58.

*Note 3* A person who, immediately before 14 September 2009, was a standard business sponsor or an approved sponsor (other than an approved professional development sponsor), is taken to be approved as a sponsor in relation to the standard business sponsor class under section 140E of the Act. The terms specified in the person's approval, immediately before 14 September 2009, continue to apply. See item 45 of Schedule 1 to the *Migration Legislation Amendment (Worker Protection) Act 2008*.

**step-child**, in relation to a parent, means:

- (a) a person who is not the child of the parent but who is the child of the parent's current spouse or de facto partner; or
- (b) a person who is not the child of the parent but:
- (i) who is the child of the parent's former spouse or former de facto partner; and
  - (ii) who has not turned 18; and
  - (iii) in relation to whom the parent has:
    - (A) a parenting order in force under the *Family Law Act 1975* under which the parent is the person with whom a child is to live, or who is to be responsible for the child's long-term or day-to-day care, welfare and development; or
    - (B) guardianship or custody, whether jointly or otherwise, under a Commonwealth, State or Territory law or a law in force in a foreign country.

**student visa** means any of the following subclasses of visa:

- (a) a Subclass 570 (Independent ELICOS Sector) visa;
- (b) a Subclass 571 (Schools Sector) visa;
- (c) a Subclass 572 (Vocational Education and Training Sector) visa;

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- (d) a Subclass 573 (Higher Education Sector) visa;
- (e) a Subclass 574 (Postgraduate Research Sector) visa;
- (f) a Subclass 575 (Non-Award Sector) visa;
- (g) a Subclass 576 (AusAID or Defence Sector) visa.

***subsidised student*** means a student enrolled in a course of study in respect of which the student is subsidised under the Subsidised Overseas Student Program administered by Education.

***substituted Subclass 676 visa*** means a Subclass 676 (Tourist) visa that was granted following a decision by the Minister to substitute a more favourable decision under section 345, 351, 391, 417, 454 or 501J of the Act.

***superyacht*** means a sailing ship or motor vessel of a kind that is specified by the Minister under regulation 1.15G to be a superyacht.

***superyacht crew sponsor*** means a person who:

- (a) is an approved sponsor; and
- (b) is approved as a sponsor in relation to the superyacht crew sponsor class by the Minister under subsection 140E (1) of the Act.

***suspended education provider*** means an education provider for which a suspension certificate is in effect under Division 2 of Part 6 of the *Education Services for Overseas Students Act 2000*.

***temporary entry permit*** means an entry permit whose effect was subject to a limitation as to time.

***temporary work sponsor*** means any of the following:

- (a) an exchange sponsor;
- (b) a foreign government agency sponsor;
- (c) a special program sponsor;
- (d) a visiting academic sponsor;
- (e) an entertainment sponsor;
- (f) a sport sponsor;
- (g) a domestic worker sponsor;
- (h) a religious worker sponsor;
- (i) an occupational trainee sponsor;

- (j) a superyacht crew sponsor.

**the Act** means the *Migration Act 1958*.

**tourism** means participation in activities of a recreational nature including amateur sporting activities, informal study courses, relaxation, sightseeing and travel.

**trainee**, in the case of a visa or entry permit granted before 1 February 1991, means a person:

- (a) in respect of whom the Education Minister has approved participation in occupational training in Australia; and
- (b) who has been granted a visa or an entry permit to enable such participation.

**transit passenger** means a person who:

- (a) enters Australia by aircraft; and
- (b) holds a confirmed onward booking to leave Australia to travel to a third country on the same or another aircraft within 8 hours of the person's arrival in Australia; and
- (d) holds documentation necessary to enter the country of his or her destination.

**visiting academic sponsor** means a person who:

- (a) is an approved sponsor; and
- (b) is approved as a sponsor in relation to the visiting academic sponsor class by the Minister under subsection 140E (1) of the Act.

**vocational English** has the meaning given in regulation 1.15B.

**work** means an activity that, in Australia, normally attracts remuneration.

**working age** means:

- (a) in the case of a female, under 60 years of age; and
- (b) in the case of a male, under 65 years of age.

**working age parent** means a parent other than an aged parent.

*Note 1* **aged parent** is defined in this regulation.

*Note 2* **foreign country** is defined in paragraph 22 (1) (f) of the *Acts Interpretation Act 1901* as any country (whether or not an independent sovereign state) outside Australia and the external Territories.

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**1.04 Adoption**

- (1) A person (in this regulation called *the adoptee*) is taken to have been adopted by a person (in this regulation called *the adopter*) if, before the adoptee attained the age of 18 years, the adopter assumed a parental role in relation to the adoptee under:
  - (a) formal adoption arrangements made in accordance with, or recognised under, the law of a State or Territory of Australia relating to the adoption of children; or
  - (b) formal adoption arrangements made in accordance with the law of another country, being arrangements under which the persons who were recognised by law as the parents of the adoptee before those arrangements took effect ceased to be so recognised and the adopter became so recognised; or
  - (c) other arrangements entered into outside Australia that, under subregulation (2), are taken to be in the nature of adoption.
- (2) For the purposes of paragraph (1) (c), arrangements are taken to be in the nature of adoption if:
  - (a) the arrangements were made in accordance with the usual practice, or a recognised custom, in the culture or cultures of the adoptee and the adopter; and
  - (b) the child-parent relationship between the adoptee and the adopter is significantly closer than any such relationship between the adoptee and any other person or persons, having regard to the nature and duration of the arrangements; and
  - (c) the Minister is satisfied that:
    - (i) formal adoption of the kind referred to in paragraph (1) (b):
      - (A) was not available under the law of the place where the arrangements were made; or
      - (B) was not reasonably practicable in the circumstances; and
    - (ii) the arrangements have not been contrived to circumvent Australian migration requirements.

**1.04A AusAID recipients and AusAID students**

- (1) In this regulation:

**AIDAB** means the former Australian International Development Assistance Bureau.

**AusAID student visa** means:

- (a) a Subclass 560 (Student), Subclass 562 (Iranian Postgraduate Student) or Subclass 576 (AusAID or Defence Sector) visa granted to a person who, as an applicant:
  - (i) satisfied the primary criteria for the grant of the visa; and
  - (ii) was a student in a full-time course of study or training under a scholarship scheme or training program approved by the AusAID Minister; or
- (b) an equivalent former visa or entry permit; or
- (c) an equivalent transitional visa.

**cease**, in relation to a full-time course of study or training, includes to complete, to withdraw from, or to be excluded from, that course.

**equivalent former visa or entry permit** means a Group 2.2 (student) visa or entry permit, within the meaning of the Migration (1993) Regulations, granted to a person who, as an applicant:

- (a) satisfied the criteria for the grant of the visa or entry permit as a primary person; and
- (b) was a student in a full-time course of study or training under a scholarship scheme or training program approved by AIDAB or AusAID.

**equivalent transitional visa** means a transitional (temporary) visa within the meaning of the Migration Reform (Transitional Provisions) Regulations that:

- (a) is, or was, held by a person because the person held an equivalent former visa or entry permit; or
- (b) was granted to a person on the basis of a decision that the person satisfied the criteria for the grant of an equivalent former visa or entry permit.

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- (2) A person is an *AusAID recipient* if:
- (a) either:
    - (i) the person is the holder of an AusAID student visa and has ceased:
      - (A) the full-time course of study or training to which that visa relates; or
      - (B) another course approved by the AusAID Minister in substitution for that course; or
    - (ii) if the person is not the holder of an AusAID student visa — the person has in the past been the holder of an AusAID student visa and has ceased:
      - (A) the full-time course of study or training to which the last AusAID student visa held by the person related; or
      - (B) another course approved by the AusAID Minister in substitution for that course; and
  - (b) the person has not spent at least 2 years outside Australia since ceasing the course.
- (3) A person is an *AusAID student* if:
- (a) the person has been approved by the AusAID Minister to undertake a full-time course of study or training under a scholarship scheme or training program approved by the AusAID Minister; and
  - (b) the person is:
    - (i) the holder of an AusAID student visa granted in circumstances where the person intended to undertake the full-time course of study or training; or
    - (ii) an applicant for a student visa whose application shows an intention to undertake a full-time course of study or training; and
  - (c) in the case of a person mentioned in subparagraph (b) (i) — the person has not ceased:
    - (i) the full-time course of study or training to which the visa relates; or



- (ii) another course approved by the AusAID Minister in substitution for that course.

#### **1.04B Defence student**

A person is a *Defence student* if:

- (a) the person has been approved by the Defence Minister to undertake a full-time course of study or training under a scholarship scheme or training program approved by the Defence Minister; and
- (b) the person is:
  - (i) the holder of a Subclass 576 (AusAID or Defence Sector) visa granted in circumstances where the person intended to undertake the course of study or training; or
  - (ii) an applicant for a student visa whose application shows an intention to undertake the course of study or training; and
- (c) in the case of a person mentioned in subparagraph (b) (i) — the person has not ceased, completed, withdrawn from, or been excluded from:
  - (i) the course of study or training to which the visa relates; or
  - (ii) another course approved by the Defence Minister in substitution for that course.

#### **1.05 Balance of family test**

- (1) For the purposes of this regulation:
  - (a) a person is a child of another person (the *parent*) if the person is a child or step-child of:
    - (i) the parent; or
    - (ii) a spouse or de facto partner of the parent; or
    - (iii) a former spouse or former de facto partner of the parent, if the child was born or adopted:
      - (A) before the parent became the spouse or de facto partner of the former spouse or former de facto partner; or

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- (B) while the parent was the spouse or de facto partner of the former spouse or former de facto partner; and
  - (b) if the whereabouts of a child of the parent are unknown, the child is taken to be resident in the usual country of residence of the parent.
- (2) A parent satisfies the balance of family test if:
  - (a) each of the children of the parent is either:
    - (i) lawfully and permanently resident in Australia; or
    - (ii) a person who is:
      - (A) an eligible New Zealand citizen; and
      - (B) usually resident in Australia; or
  - (b) the number of children of the parent who are lawfully and permanently resident in Australia or are eligible New Zealand citizens usually resident in Australia is:
    - (i) greater than, or equal to, the total number of children of the parent who are resident overseas; or
    - (ii) greater than the greatest number of children of the parent who are resident in any single overseas country.
- (3) In applying the balance of family test, no account is to be taken of a child of the parent:
  - (a) if the child has been removed by court order, by adoption or by operation of law (other than in consequence of marriage) from the exclusive custody of the parent; or
  - (b) if the child is resident in a country where the child suffers persecution or abuse of human rights and it is not possible to reunite the child and the parent in another country; or
  - (c) if the child is resident in a refugee camp operated by:
    - (i) the United Nations High Commissioner for Refugees; or
    - (ii) the government of Hong Kong;and is registered by the Commissioner as a refugee; or
  - (d) if:
    - (i) the child is a step-child of the parent; and

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- (ii) the child had turned 18 at the time at which the parent became the spouse or de facto partner of the child's other parent;

and one or more of the following subparagraphs applies:

- (iii) the other parent is deceased; or
- (iv) the parent is not in a married relationship or de facto relationship with the other parent.

**1.05A Dependent**

- (1) Subject to subregulation (2), a person (the *first person*) is dependent on another person if:
  - (a) at the time when it is necessary to establish whether the first person is dependent on the other person:
    - (i) the first person is, and has been for a substantial period immediately before that time, wholly or substantially reliant on the other person for financial support to meet the first person's basic needs for food, clothing and shelter; and
    - (ii) the first person's reliance on the other person is greater than any reliance by the first person on any other person, or source of support, for financial support to meet the first person's basic needs for food, clothing and shelter; or
  - (b) the first person is wholly or substantially reliant on the other person for financial support because the first person is incapacitated for work due to the total or partial loss of the first person's bodily or mental functions.
- (2) A person (the *first person*) is dependent on another person for the purposes of an application for:
  - (d) a Protection (Class XA) visa; or
  - (e) a Refugee and Humanitarian (Migrant) (Class BA) visa; or
  - (ea) a Refugee and Humanitarian (Class XB) visa; or
  - (i) a Temporary Safe Haven (Class UJ) visa;if the first person is wholly or substantially reliant on the other person for financial, psychological or physical support.

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**1.06 References to classes of visas**

A class of visas may be referred to:

- (a) in the case of a class of visas referred to in Schedule 1 — by the code allotted to the class in the heading of the item in Schedule 1 that relates to that class of visas; or
- (b) in the case of a transitional visa, by the following codes:
  - (i) transitional (permanent): BF;
  - (ii) transitional (temporary): UA.

*Note* For example, Cultural/Social (Temporary) Class may be referred to as Class TE.

**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 set out in the Part of Schedule 2 that bears the number of the subclass.
- (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 set out in the Part of Schedule 2 that bears the number of the subclass.

**1.08 Compelling need to work**

For the purposes of these Regulations, a non-citizen has a compelling need to work if and only if:

- (a) he or she is in financial hardship; or
- (b) he or she:
  - (i) is nominated by an employer in respect of an approved appointment (within the meaning of regulation 5.19); and
  - (ii) appears to the Minister, on the basis of information contained in the application, to satisfy the criterion in clause 856.213 or 857.213 of Schedule 2; or

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- (c) he or she:
  - (i) is:
    - (A) an applicant for a Business (Temporary) (Class TB) visa; or
    - (C) an applicant for a Medical Practitioner (Temporary) (Class UE) visa; and
  - (ii) has been sponsored by an employer in relation to that application; and
  - (iii) appears, on the basis of that application, to satisfy the criteria for that visa; or
- (d) he or she:
  - (i) is an applicant for a Temporary Business Entry (Class UC) visa who seeks to satisfy the criteria for the grant of a Subclass 457 (Business (Long Stay)) visa; and
  - (ii) is identified in an approved nomination of an occupation made by:
    - (A) a standard business sponsor; or
    - (B) a former standard business sponsor; or
    - (C) a party to a labour agreement;who is specified in the application for that visa; and
  - (iii) appears to the Minister, on the basis of information contained in the application, to satisfy the criteria for the grant of that visa.

**1.09 Criminal detention**

For the purposes of these Regulations, a person is in criminal detention if he or she is:

- (a) serving a term of imprisonment (including periodic detention) following conviction for an offence; or
  - (b) in prison on remand;
- but not if he or she is:
- (c) subject to a community service order; or
  - (d) on parole after serving part of a term of imprisonment; or
  - (e) on bail awaiting trial.

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**1.09A De facto partner and de facto relationship**

- (1) For subsection 5CB (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5CB (2) (a), (b), (c) and (d) of the Act exist.

*Note 1* See regulation 2.03A for the prescribed criteria applicable to de facto partners.

*Note 2* The effect of subsection 5CB (1) of the Act is that a person is the de facto partner of another person (whether of the same sex or a different sex) if the person is in a de facto relationship with the other person.

Subsection 5CB (2) sets out conditions about whether a de facto relationship exists, and subsection 5CB (3) permits the regulations to make arrangements in relation to the determination of whether 1 or more of those conditions exist.

- (2) If the Minister is considering an application for:
- (a) a Partner (Migrant) (Class BC) visa; or
  - (b) a Partner (Provisional) (Class UF) visa; or
  - (c) a Partner (Residence) (Class BS) visa; or
  - (d) a Partner (Temporary) (Class UK) visa;
- the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
- (a) the financial aspects of the relationship, including:
    - (i) any joint ownership of real estate or other major assets; and
    - (ii) any joint liabilities; and
    - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
    - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
    - (v) the basis of any sharing of day-to-day household expenses; and
  - (b) the nature of the household, including:
    - (i) any joint responsibility for the care and support of children; and
    - (ii) the living arrangements of the persons; and

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- (iii) any sharing of the responsibility for housework; and
  - (c) the social aspects of the relationship, including:
    - (i) whether the persons represent themselves to other people as being in a de facto relationship with each other; and
    - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
    - (iii) any basis on which the persons plan and undertake joint social activities; and
  - (d) the nature of the persons' commitment to each other, including:
    - (i) the duration of the relationship; and
    - (ii) the length of time during which the persons have lived together; and
    - (iii) the degree of companionship and emotional support that the persons draw from each other; and
    - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).

**1.10 Labour market requirements**

An application for a visa meets labour market requirements if the Minister is satisfied that:

- (a) the application is in accordance with a labour agreement; or
- (b) in respect of the employment to which the application relates:
  - (i) no Australian citizen or Australian permanent resident is readily available who has suitable qualifications and experience; and
  - (ii) if appropriate — relevant employer and employee organisations have been consulted.

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**1.11 Main business**

- (1) For the purposes of these Regulations and subject to subregulation (2), a business is a main business in relation to an applicant for a visa if:
  - (a) the applicant has, or has had, an ownership interest in the business; and
  - (b) the applicant maintains, or has maintained, direct and continuous involvement in management of the business from day to day and in making decisions affecting the overall direction and performance of the business; and
  - (c) the value of the applicant's ownership interest, or the total value of the ownership interests of the applicant and the applicant's spouse or de facto partner, in the business is or was:
    - (i) if the business is operated by a publicly listed company — at least 10% of the total value of the business; or
    - (ii) if:
      - (A) the business is not operated by a publicly listed company; and
      - (B) the annual turnover of the business is at least AUD400 000;  
at least 30% of the total value of the business; or
    - (iii) if:
      - (A) the business is not operated by a publicly listed company; and
      - (B) the annual turnover of the business is less than AUD400 000;  
at least 51% of the total value of the business; and
  - (d) the business is a qualifying business.
- (2) If an applicant has, or has had, an ownership interest in more than 1 qualifying business that would, except for this subregulation, be a main business in relation to the applicant, the applicant must not nominate more than 2 of those qualifying businesses as main businesses.



**1.11A Ownership for the purposes of certain Parts of Schedule 2**

- (1) Subject to subregulation (4), for Parts 132, 160, 161, 162, 163, 164, 165, 845, 846, 890, 891, 892 and 893 of Schedule 2, ownership by an applicant, or the applicant's spouse or de facto partner, of an asset, an eligible investment or an ownership interest, includes beneficial ownership only if the beneficial ownership is evidenced in accordance with subregulation (2).
- (2) To evidence beneficial ownership of an asset, eligible investment or ownership interest, the applicant must show to the Minister:
  - (a) a trust instrument; or
  - (b) a contract; or
  - (c) any other document capable of being used to enforce the rights of the applicant, or the applicant's spouse or de facto partner, as the case requires, in relation to the asset, eligible investment or ownership interest;  
stamped or registered by an appropriate authority under the law of the jurisdiction where the asset, eligible investment or ownership interest is located.
- (3) A document shown under subregulation (2) does not evidence beneficial ownership, for subregulation (1), for any period earlier than the date of registration or stamping by the appropriate authority.
- (4) Beneficial ownership is not required to be evidenced in accordance with subregulation (2) if the person who has legal ownership of the asset, eligible investment or ownership interest in relation to which the applicant, or the applicant's spouse or de facto partner, has beneficial ownership:
  - (a) is a dependent child of the applicant; and
  - (b) made a combined application with the applicant; and
  - (c) has not reached the age at which, in the jurisdiction where the asset, eligible investment or ownership interest is located, he or she can claim the benefits of ownership of the asset, eligible investment or ownership interest.

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**1.11B *ETA-eligible passport***

- (1) A passport is an ETA-eligible passport in relation to an application for a visa if:
  - (a) it is a valid passport of a kind specified by Gazette Notice as an ETA-eligible passport; and
  - (b) the conditions (if any) specified by Gazette Notice for passports of that kind are satisfied in relation to that application.
- (2) A passport is an ETA-eligible passport in relation to a visa of a particular Subclass if:
  - (a) it is an ETA-eligible passport in accordance with subregulation (1); and
  - (b) it is specified by Gazette Notice to be an ETA-eligible passport for that Subclass.

**1.11C *eVisitor eligible passport***

A passport is an eVisitor eligible passport if:

- (a) it is a valid passport of a kind specified by the Minister in an instrument in writing for this paragraph to be an eVisitor eligible passport; and
- (b) the conditions (if any) specified in the instrument are satisfied.

**1.12 *Member of the family unit***

- (1) For the definition of *member of the family unit* in subsection 5 (1) of the Act, and subject to subregulations (2), (2A), (6) and (7), a person is a member of the family unit of another person (in this subregulation called *the family head*) if the person is:
  - (a) a spouse or de facto partner of the family head; or
  - (b) a dependent child of the family head or of a spouse or de facto partner of the family head; or
  - (c) a dependent child of a dependent child of the family head or of a spouse or de facto partner of the family head; or

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- (e) a relative of the family head or of a spouse or de facto partner of the family head who:
  - (i) does not have a spouse or de facto partner; and
  - (ii) is usually resident in the family head's household; and
  - (iii) is dependent on the family head.
- (2) A person is a member of the family unit of an applicant for a Student (Temporary) (Class TU) visa if the person is:
  - (a) a spouse or de facto partner of the applicant; or
  - (b) a dependent child of the applicant, or of that spouse or de facto partner, who is unmarried and has not turned 18.
- (2A) A person is a member of the family unit of a holder of a Student (Temporary) (Class TU) visa if the person is:
  - (a) a spouse or de facto partner of the holder; or
  - (b) a dependent child of the holder, or of that spouse or de facto partner, who is unmarried and has not turned 18.
- (3) In addition to subregulation (1), a person is a member of the family unit of an applicant for a Contributory Parent (Migrant) (Class CA) visa, being an applicant who was the holder of a Subclass 173 (Contributory Parent (Temporary)) visa at the time of application, if:
  - (a) the person was a member of the family unit of the applicant, in accordance with subregulation (1), at the time of application for the Contributory Parent (Temporary) (Class UT) visa; and
  - (b) the person was, in accordance with subregulation (1):
    - (i) a dependent child; or
    - (ii) dependent on the family head; and
  - (c) since the time of application for the Contributory Parent (Temporary) (Class UT) visa, the person has ceased to be:
    - (i) a dependent child; or
    - (ii) dependent on the family head.

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- (4) In addition to subregulation (1), a person is a member of the family unit of an applicant for a Contributory Aged Parent (Residence) (Class DG) visa, being an applicant who was the holder of a Subclass 884 (Contributory Aged Parent (Temporary)) visa at the time of application, if:
  - (a) the person was a member of the family unit of the applicant, in accordance with subregulation (1), at the time of application for the Contributory Aged Parent (Temporary) (Class UU) visa; and
  - (b) the person was, in accordance with subregulation (1):
    - (i) a dependent child; or
    - (ii) dependent on the family head; and
  - (c) since the time of application for the Contributory Aged Parent (Temporary) (Class UU) visa, the person has ceased to be:
    - (i) a dependent child; or
    - (ii) dependent on the family head.
- (5) In addition to subregulation (1), a person is a member of the family unit of an applicant for a Business Skills (Residence) (Class DF) visa if, at the time of application:
  - (a) the person holds a visa:
    - (i) of a subclass included in Business Skills (Provisional) (Class UR); and
    - (ii) 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 UR); and
  - (b) the person is included in the application for the Business Skills (Residence) (Class DF) visa.
- (6) In addition to subregulation (1), a person is a member of the family unit of an applicant for a Distinguished Talent (Migrant) (Class AL) visa who has not turned 18 at the time of application if:
  - (a) a parent of the applicant has made a combined application with the applicant for the Distinguished Talent (Migrant) (Class AL) visa; and

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- (b) the person is:
  - (i) that parent; or
  - (ii) a spouse or de facto partner of that parent; or
  - (iii) a dependent child of that parent; or
  - (iv) a dependent child of a spouse or de facto partner of that parent; or
  - (v) a dependent child of a dependent child of that parent; or
  - (vi) a dependent child of a dependent child of a spouse or de facto partner of that parent; or
  - (ix) a relative of that parent who:
    - (A) does not have a spouse or de facto partner; and
    - (B) is usually resident in that parent's household; and
    - (C) is dependent on that parent; or
  - (x) a relative of a spouse or de facto partner of that parent who:
    - (A) does not have a spouse or de facto partner; and
    - (B) is usually resident in that parent's household; and
    - (C) is dependent on that parent; and
- (c) no person is being treated as a member of the family unit of the applicant, in relation to the applicant's application for the Distinguished Talent (Migrant) (Class AL) visa, in accordance with subregulation (1); and
- (d) no other parent of the applicant is being treated as a member of the family unit of the applicant in accordance with this subregulation.

*Note* Paragraph 1.12 (6) (c) ensures that if one person, or a group of persons, is being treated as a member or members of the family unit of the applicant under subregulation 1.12 (1), another person or group of persons cannot be treated as a member or members of the family unit of an applicant under subregulation 1.12 (6) in relation to that same application.

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Paragraph 1.12 (6) (d) ensures that only one parent of the applicant, and the family unit of that one parent (which may include the other parent of the applicant), can be treated as members of the family unit of the applicant under subregulation 1.12 (6).

- (7) In addition to subregulation (1), a person is a member of the family unit of an applicant for a Distinguished Talent (Residence) (Class BX) visa who has not turned 18 at the time of application if:
- (a) a parent of the applicant has made a combined application with the applicant for the Distinguished Talent (Residence) (Class BX) visa; and
  - (b) the person is:
    - (i) that parent; or
    - (ii) a spouse or de facto partner of that parent; or
    - (iii) a dependent child of that parent; or
    - (iv) a dependent child of a spouse or de facto partner of that parent; or
    - (v) a dependent child of a dependent child of that parent; or
    - (vi) a dependent child of a dependent child of a spouse or de facto partner of that parent; or
    - (ix) a relative of that parent who:
      - (A) does not have a spouse or de facto partner; and
      - (B) is usually resident in that parent's household; and
      - (C) is dependent on that parent; or
    - (x) a relative of a spouse or de facto partner of that parent who:
      - (A) does not have a spouse or de facto partner; and
      - (B) is usually resident in that parent's household; and
      - (C) is dependent on that parent; and
  - (c) no person is being treated as a member of the family unit of the applicant, in relation to the applicant's application

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for the Distinguished Talent (Residence) (Class BX) visa, in accordance with subregulation (1); and

- (d) no other parent of the applicant is being treated as a member of the family unit of the applicant in accordance with this subregulation.

*Note* Paragraph 1.12 (7) (c) ensures that if one person, or a group of persons, is being treated as a member or members of the family unit of the applicant under subregulation 1.12 (1), another person or group of persons cannot be treated as a member or members of the family unit of an applicant under subregulation 1.12 (7) in relation to that same application.

Paragraph 1.12 (7) (d) ensures that only one parent of the applicant, and the family unit of that one parent (which may include the other parent of the applicant), can be treated as members of the family unit of the applicant under subregulation 1.12 (7).

- (8) In addition to subregulation (1), a person is a member of the family unit of:
  - (a) an applicant for an Employer Nomination (Residence) (Class BW) visa who seeks to satisfy the criteria for the grant of a Subclass 857 (Regional Sponsored Migration Scheme) visa; or
  - (b) an applicant for a Business Skills (Residence) (Class DF) visa who seeks to satisfy the criteria for the grant of a Subclass 892 (State/Territory Sponsored Business Owner) visa; or
  - (c) an applicant for a Skilled Independent (Migrant) (Class BN) visa who seeks to satisfy the criteria for the grant of a Subclass 137 (Skilled — State/Territory-nominated Independent) visa;

if, at time of application:

- (d) either:
  - (i) the person is the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa; or
  - (ii) the last substantive visa held by the person:
    - (A) since entering Australia; and
    - (B) within the period of 28 days before the application was made;was a Skilled — Independent Regional (Provisional) (Class UX) visa; and

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- (e) the Skilled — Independent Regional (Provisional) (Class UX) visa was granted on the basis that the person was a member of the family unit of the holder of a Skilled — Independent Regional (Provisional) (Class UX) visa, granted on the basis that the holder satisfied the primary criteria; and
  - (f) the person is included in the application for an Employer Nomination (Residence) (Class BW), Business Skills (Residence) (Class DF) or Skilled Independent (Migrant) (Class BN) visa.
- (9) In addition to subregulation (1), a person is a member of the family unit of:
- (a) an applicant for an Employer Nomination (Residence) (Class BW) visa who seeks to satisfy the primary criteria for the grant of a Subclass 857 (Regional Sponsored Migration Scheme) visa; or
  - (b) an applicant for a Skilled (Residence) (Class VB) visa who seeks to satisfy the primary criteria for the grant of a Subclass 887 (Skilled — Regional) visa; or
  - (c) an applicant for a Skilled (Provisional) (Class VC) visa who seeks to satisfy the primary criteria for the grant of a Subclass 487 (Skilled — Regional Sponsored) visa;
- if, at the time of application:
- (d) the person is the holder of:
    - (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 Skilled — Independent Regional (Provisional) (Class UX) visa or a Skilled (Provisional) (Class VC) 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; and



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- (e) the visa mentioned in paragraph (d) 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:
  - (i) a Skilled (Residence) (Class VB) visa; or
  - (ii) a Skilled (Provisional) (Class VC) visa; or
  - (iii) an Employer Nomination (Residence) (Class BW) visa.
- (10) In addition to subregulation (1), a person is a member of the family unit of the holder of a Subclass 457 (Business (Long Stay)) visa (the *first visa*) if:
  - (a) the first visa was granted on the basis that the holder satisfied the primary criteria for the grant of that visa; and
  - (b) the person holds a Subclass 457 visa, or the last substantive visa held by the person was a Subclass 457 visa, granted on the basis that he or she satisfied the requirements of paragraph (1) (b), (c) or (e); and
  - (c) if the person holds a Subclass 457 visa, or the last substantive visa held by the person was a Subclass 457 visa, granted on the basis that he or she was:
    - (i) a dependent child of the spouse or de facto partner of the holder of the first visa; or
    - (ii) a dependent child of a dependent child of the spouse or de facto partner of the holder of the first visa; or
    - (iii) a relative of the spouse or de facto partner of the holder of the first visa;the holder of the first visa is still the spouse or de facto partner of the person who was the spouse or de facto partner; and
  - (d) the person:
    - (i) has made a valid application for a Temporary Business Entry (Class UC) visa that is current; and
    - (ii) has not made a valid application for any other class of visa, other than an application that:
      - (A) has been finally determined (within the meaning of subsection 5 (9) of the Act); or
      - (B) has been withdrawn; and

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- (e) the person is under the age of 21; and
- (f) the person is not the spouse or de facto partner of another person.

**1.12AA Member of the immediate family**

- (1) For these Regulations, a person **A** is a member of the immediate family of another person **B** if:
  - (a) A is a spouse or de facto partner of B; or
  - (b) A is a dependent child of B; or
  - (c) A is a parent of B, and B is not 18 years or more.

**1.13 Meaning of *nominator***

- (1) The *nominator* of an applicant for a visa is a person who, on the relevant approved form, nominates another person as an applicant for a visa of a particular class.
- (2) However, a person who proposes another person for entry to Australia as an applicant for a permanent humanitarian visa is not the *nominator* of the other person.

**1.14 Orphan relative**

An applicant for a visa is an orphan relative of another person who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen if:

- (a) the applicant:
  - (i) has not turned 18; and
  - (ii) does not have a spouse or de facto partner; and
  - (iii) is a relative of that other person; and
- (b) the applicant cannot be cared for by either parent because each of them is either dead, permanently incapacitated or of unknown whereabouts; and
- (c) there is no compelling reason to believe that the grant of a visa would not be in the best interests of the applicant.

**1.14A Parent and child**

- (1) A reference in these Regulations to a parent includes a step-parent.
- (2) For subsection 5CA (2) of the Act, if a child has been adopted under formal adoption arrangements mentioned in paragraph 1.04 (1) (a) or (b) by a person or persons (the ***adoptive parent or parents***):
  - (a) the child is taken to be the child of the adoptive parent or parents; and
  - (b) the child is taken not to be the child of any other person (including a person who had been the child's parent or adoptive parent before the adoption).

*Note 1* A child cannot have more than 2 parents (other than step-parents) unless the child has been adopted under arrangements mentioned in paragraph 1.04 (1) (c).

*Note 2* ***Parent*** is defined in subsection 5 (1) of the Act, and ***child*** is defined in section 5CA of the Act.

**1.15 Remaining relative**

- (1) An applicant for a visa is a ***remaining relative*** of another person who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen if the applicant satisfies the Minister that:
  - (a) the other person is a parent, brother, sister, step-brother or step-sister of the applicant; and
  - (b) the other person is usually resident in Australia; and
  - (c) the applicant, and the applicant's spouse or de facto partner (if any), have no near relatives other than near relatives who are:
    - (i) usually resident in Australia; and
    - (ii) Australian citizens, Australian permanent residents or eligible New Zealand citizens; and
  - (d) if the applicant is a child who:
    - (i) has not turned 18; and

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- (ii) has been adopted by an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen (the ***adoptive parent***) while overseas:

at the time of making the application, the adoptive parent has been residing overseas for a period of at least 12 months.

- (2) In this regulation:

***near relative***, in relation to an applicant, means a person who is:

- (a) a parent, brother, sister, step-brother or step-sister of the applicant or of the applicant's spouse or de facto partner (if any); or
- (b) a child (including a step-child) of the applicant or of the applicant's spouse or de facto partner (if any), being a child who:
  - (i) has turned 18 and is not a dependent child of the applicant or the applicant's spouse or de facto partner (if any); or
  - (ii) has not turned 18 and is not wholly or substantially in the daily care and control of the applicant or the applicant's spouse or de facto partner (if any).

**1.15AA Carer**

- (1) An applicant for a visa is a ***carer*** of a person who is an Australian citizen usually resident in Australia, an Australian permanent resident or an eligible New Zealand citizen (***the resident***) if:
  - (a) the applicant is a relative of the resident; and
  - (b) according to a certificate that meets the requirements of subregulation (2):
    - (i) a person (being the resident or a member of the family unit of the resident) has a medical condition; and
    - (ii) the medical condition is causing physical, intellectual or sensory impairment of the ability of

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- that person to attend to the practical aspects of daily life; and
- (iii) the impairment has, under the Impairment Tables, the rating that is specified in the certificate; and
  - (iv) because of the medical condition, the person has, and will continue for at least 2 years to have, a need for direct assistance in attending to the practical aspects of daily life; and
- (ba) the person mentioned in subparagraph (b) (i) is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; and
- (c) the rating mentioned in subparagraph (b) (iii) is equal to, or exceeds, the impairment rating specified by Gazette Notice for this paragraph; and
- (d) if the person to whom the certificate relates is not the resident, the resident has a permanent or long-term need for assistance in providing the direct assistance mentioned in subparagraph (b) (iv); and
- (e) the assistance cannot reasonably be:
- (i) provided by any other relative of the resident, being a relative who is an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; or
  - (ii) obtained from welfare, hospital, nursing or community services in Australia; and
- (f) the applicant is willing and able to provide to the resident substantial and continuing assistance of the kind needed under subparagraph (b) (iv) or paragraph (d), as the case requires.
- (2) A certificate meets the requirements of this subregulation if:
- (a) it is a certificate:
    - (i) in relation to a medical assessment carried out on behalf of a health service provider specified by the Minister in an instrument in writing; and
    - (ii) signed by the medical adviser who carried it out; or

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- (b) it is a certificate issued by a health service provider specified by the Minister in an instrument in writing in relation to a review of an opinion in a certificate mentioned in paragraph (a), that was carried out by the health services provider in accordance with its procedures.
- (3) The Minister is to take the opinion in a certificate that meets the requirements of subregulation (2) on a matter mentioned in paragraph (1) (b) to be correct for the purposes of deciding whether an applicant satisfies a criterion that the applicant is a carer.
- (4) In this regulation:  
*Impairment Tables* means the Tables for the Assessment of Work-related Impairment for Disability Support Pension in Schedule 1B to the *Social Security Act 1991*.

**1.15A Spouse**

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
  - (a) a Partner (Migrant) (Class BC) visa; or
  - (b) a Partner (Provisional) (Class UF) visa; or
  - (c) a Partner (Residence) (Class BS) visa; or
  - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
  - (a) the financial aspects of the relationship, including:
    - (i) any joint ownership of real estate or other major assets; and
    - (ii) any joint liabilities; and
    - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and

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- (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
    - (v) the basis of any sharing of day-to-day household expenses; and
  - (b) the nature of the household, including:
    - (i) any joint responsibility for the care and support of children; and
    - (ii) the living arrangements of the persons; and
    - (iii) any sharing of the responsibility for housework; and
  - (c) the social aspects of the relationship, including:
    - (i) whether the persons represent themselves to other people as being married to each other; and
    - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
    - (iii) any basis on which the persons plan and undertake joint social activities; and
  - (d) the nature of the persons' commitment to each other, including:
    - (i) the duration of the relationship; and
    - (ii) the length of time during which the persons have lived together; and
    - (iii) the degree of companionship and emotional support that the persons draw from each other; and
    - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).

**1.15B Vocational English**

- (1) ***Vocational English***, for a person, has the meanings given in subregulations (2), (3), (4) and (5).

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- (2) If a person applied, before 1 July 1999, for a visa a criterion for the grant of which is that the person has vocational English, the person has ***vocational English*** if the person satisfies the Minister that the person is proficient in English to at least the standard required for the award of 15 points in the language skill factor of the general points test specified in Part 3 of Schedule 6.
- (3) If a person applies, on or after 1 July 1999, for a visa (other than a General Skilled Migration visa) a criterion for the grant of which is that the person has vocational English, the person has ***vocational English*** if the person satisfies the Minister that the person has achieved an IELTS test score of at least 5 for each of the 4 test components of speaking, reading, writing and listening in a test conducted:
  - (a) not more than 12 months before the day on which the application was lodged; or
  - (b) during the processing of the application.
- (4) If a person applies, on or after 1 July 1999, for a visa (other than a General Skilled Migration visa) a criterion for the grant of which is that the person has vocational English, the person has ***vocational English*** if:
  - (a) the person does not have an IELTS test score in a test conducted:
    - (i) not more than 12 months before the day on which the application was lodged; or
    - (ii) during the processing of the application; and
  - (b) the Minister:
    - (i) determines that it is not reasonably practicable, or not necessary, for the person to be tested using the IELTS test; and
    - (ii) is satisfied that the person is proficient in English to a standard that is not less than the standard required under subregulation (3).



### **1.15C Competent English**

If a person applies for a General Skilled Migration visa, the person has ***competent English*** if the person satisfies the Minister that the person:

- (a) has achieved, in a test conducted not more than 2 years before the day on which the application was lodged:
  - (i) an IELTS test score of at least 6 for each of the 4 test components of speaking, reading, writing and listening; or
  - (ii) a score:
    - (A) specified by the Minister in an instrument in writing for this sub-subparagraph; and
    - (B) in a language test specified by the Minister in the instrument; or
- (b) holds a passport of a type specified by the Minister in an instrument in writing for this paragraph.

### **1.15D Proficient English**

If a person applies for a General Skilled Migration visa, the person has ***proficient English*** if the person satisfies the Minister that the person has achieved, in a test conducted not more than 2 years before the day on which the application was lodged:

- (a) an IELTS test score of at least 7 for each of the 4 test components of speaking, reading, writing and listening; or
- (b) a score:
  - (i) specified by the Minister in an instrument in writing for this subparagraph; and
  - (ii) in a language test specified by the Minister in the instrument.

### **1.15E Concessional competent English**

If a person applies for a General Skilled Migration visa, the person has ***concessional competent English*** if the person satisfies the Minister that the person has achieved, in a test conducted not more than 2 years before the day on which the application was made:

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- (a) an IELTS test average band score of at least 6 for the 4 test components of speaking, reading, writing and listening; or
- (b) a score:
  - (i) specified by the Minister in an instrument in writing for this subparagraph; and
  - (ii) in a language test specified by the Minister in the instrument.

**1.15F Australian study requirement**

- (1) A person satisfies the *Australian study requirement* if the person satisfies the Minister that the person has completed 1 or more degrees, diplomas or trade qualifications for award by an Australian educational institution as a result of a course or courses:
  - (a) that are registered courses; and
  - (b) that were completed in a total of at least 16 calendar months; and
  - (c) that were completed as a result of a total of at least 2 academic years study; and
  - (d) for which all instruction was conducted in English; and
  - (e) that the applicant undertook while in Australia as the holder of a visa authorising the applicant to study.

*Note* *Academic year* is defined in regulation 1.03.

- (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 2.26A (6).

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

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

**1.15G Superyachts**

The Minister may, by instrument in writing, specify that:

- (a) a sailing ship of a particular kind is a superyacht for the purposes of these Regulations; or
- (b) a motor vessel of a particular kind is a superyacht for the purposes of these Regulations.

**1.15H Migration occupation in demand**

- (1) A *migration occupation in demand*, in relation to a person, means a skilled occupation of a kind that:
  - (a) is specified by the Minister in an instrument in writing to be a migration occupation in demand; and
  - (b) is applicable to the person in accordance with the specification.
- (2) The Minister may specify in the instrument that a skilled occupation is a migration occupation in demand for a class of persons.

**1.15I Skilled occupation**

- (1) A *skilled occupation*, in relation to a person, means an occupation of a kind that:
  - (a) is specified by the Minister in an instrument in writing to be a skilled occupation; and
  - (b) for which a number of points specified in the instrument are available; and
  - (c) is applicable to the person in accordance with the specification.
- (2) Without limiting subregulation (1), the Minister may specify in the instrument any matter in relation to an occupation, or to a class of persons to which the instrument relates, including:
  - (a) that an occupation is a skilled occupation for a class of persons;
  - (b) that an occupation is a skilled occupation for a person who is nominated by a State or Territory government agency.

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**Division 1.3 Administration**

**1.16 Delegation**

- (1) The Minister may, by writing signed by the Minister, delegate to an officer any of the Minister's powers under these Regulations, other than this power of delegation.
- (2) The Secretary may, by writing signed by the Secretary, delegate to an officer any of the Secretary's powers under these Regulations, other than this power of delegation.

**1.16AA Appointment of Medical Officer of the Commonwealth**

The Minister may, by writing signed by the Minister, appoint a medical practitioner to be a Medical Officer of the Commonwealth for the purposes of these Regulations.

**1.16A Regional headquarters agreements**

If an organisation that has its head office outside Australia wishes to establish a regional headquarters in Australia, the Minister and the Industry Minister may enter into an agreement with the organisation to provide for the entry to, and stay in, Australia of staff members of the organisation for the purposes of the regional headquarters.

**1.16B Invest Australia Supported Skills agreements**

If an organisation that has its head office outside Australia wishes to make a significant investment in Australia, the Minister and the Industry Minister may enter into an agreement with the organisation to provide for the entry to, and stay in, Australia of staff members of the organisation for the purposes of the investment.

**1.17 Specification of matters by Gazette Notice**

The Minister may, by notice published in the *Gazette*, specify matters required by individual provisions of these Regulations to be specified for the purposes of those provisions.

### **1.18 Approved forms**

- (1) The Minister may, in writing, approve forms for:
  - (a) use in making an application for a visa; or
  - (b) any other purpose authorised or required by these Regulations.
- (2) Each of the following is an approved form for use in making an application for a visa:
  - (a) a paper form;
  - (b) a set of questions in an interactive computer program that is:
    - (i) approved by the Minister for use in making an application for the visa; and
    - (ii) made available at an Internet site operated under the authority of the Minister;
  - (c) a set of questions in a form that:
    - (i) is stored in an electronic format; and
    - (ii) is approved by the Minister for use in making an application for the visa.

### **1.19 Occupations requiring English list**

The Minister may publish by notice in the *Gazette* a list of occupations requiring proficiency in English of at least the standard required for the award of 15 points under Part 3 of Schedule 6.

*Note* Part 3 of Schedule 6 deals with the award of points on the basis of an applicant's language skills.

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**Division 1.4 Sponsorship not applicable to  
Division 3A of Part 2 of the Act**

**1.20 Sponsorship undertakings**

- (1) The *sponsor* of an applicant for a visa is a person (except a person who proposes on the relevant approved form another person for entry to Australia as an applicant for a permanent humanitarian visa) who undertakes the obligations stated in subregulation (2) in relation to the applicant.
- (2) Subject to subregulation (4), the obligations of a sponsor in relation to an applicant for a visa are the following:
  - (a) if the application is for a permanent visa (other than a Partner (Migrant) (Class BC) or Partner (Residence) (Class BS) visa) — the sponsor undertakes to assist the applicant, to the extent necessary, financially and in relation to accommodation:
    - (i) if the applicant is in Australia — during the period of 2 years immediately following the grant of that visa; or
    - (ii) if the applicant is outside Australia — during the period of 2 years immediately following the applicant's first entry into Australia under that visa;  
including any period of participation by the applicant in the program known as the Adult Migrant English Program administered by Immigration that falls within that period;
  - (b) if the application is for a temporary visa (other than a Resolution of Status (Temporary) (Class UH), Partner (Provisional) (Class UF), Partner (Temporary) (Class UK) or Extended Eligibility (Temporary) (Class TK) visa) — the sponsor undertakes to accept responsibility for:
    - (i) all financial obligations to the Commonwealth incurred by the applicant arising out of the applicant's stay in Australia; and
    - (ii) compliance by the applicant with all relevant legislation and awards in relation to any employment entered into by the applicant in Australia; and

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- (iii) unless the Minister otherwise decides, compliance by the applicant with the conditions under which the applicant was allowed to enter Australia;
  - (c) if the application is a concurrent application for a Partner (Provisional) (Class UF) and a Partner (Migrant) (Class BC) visa or a Partner (Temporary) (Class UK) and a Partner (Residence) (Class BS) visa, the sponsor undertakes to assist the applicant, to the extent necessary, financially and in relation to accommodation:
    - (i) if the applicant is in Australia — during the period of 2 years immediately following the grant of the provisional or temporary visa; or
    - (ii) if the applicant is outside Australia — during the period of 2 years immediately following the applicant's first entry into Australia after the grant of the provisional or temporary visa;
  - (d) if the application is for a Resolution of Status (Temporary) (Class UH) visa made by an applicant who is outside Australia — the sponsor undertakes to assist the applicant, to the extent necessary, financially and in respect of accommodation, during the period of 2 years immediately following the applicant's entry into Australia as the holder of the visa;
  - (e) if the application is for an Extended Eligibility (Temporary) (Class TK) visa, the sponsor undertakes to assist the applicant, to the extent necessary, financially and in relation to accommodation:
    - (i) if the applicant is in Australia — for the 2 years immediately after the visa is granted; or
    - (ii) if the applicant is outside Australia — for the 2 years immediately after the applicant's first entry into Australia after the visa is granted.
- (3) A person (not mentioned in subregulation (3A)) who has been approved by the Minister as the sponsor of an applicant for a visa must enter into the sponsorship by completing the relevant approved form and give it to the Minister not later than a reasonable period after the Minister approves the person as a sponsor.

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- (3A) A person who is a sponsor of an applicant for:
- (a) a Skilled (Migrant) (Class VE) visa; or
  - (b) a Skilled (Residence) (Class VB) visa; or
  - (c) a Skilled (Provisional) (Class VF) visa; or
  - (d) a Skilled (Provisional) (Class VC) visa;
- must complete the relevant approved form and give it to the Minister prior to the Minister approving the person as a sponsor.
- (4) This regulation does not apply to a visa in the following classes or subclasses:
- (a) Business Skills (Migrant) (Class AD);
  - (b) Business Skills — Business Talent (Migrant) (Class EA);
  - (c) Business Skills — Established Business (Residence) (Class BH);
  - (d) Business Skills (Residence) (Class BH);
  - (e) Business Skills (Residence) (Class DF);
  - (ea) Cultural/Social (Temporary) (Class TE);
  - (eb) Domestic Worker (Temporary) (Class TG);
  - (ec) Educational (Temporary) (Class TH);
  - (f) Business Skills (Provisional) (Class UR);
  - (fa) Sponsored Training (Temporary) (Class UV);
  - (fb) Superyacht Crew (Temporary) (Class UW).
  - (g) Skilled — Independent Regional (Provisional) (Class UX);
  - (h) Subclass 457 (Business (Long Stay)).

**1.20AA Approval of sponsor — specified temporary visa applicants**

- (1) This regulation applies to a Subclass 422 (Medical Practitioner) visa.
- (2) The Minister may approve or refuse to approve a person or an organisation (including an unincorporated association) as a sponsor of:
- (a) an applicant for the visa; or



- (b) multiple applicants for the same subclass of visa.
- (3) In considering an application for approval of a proposed sponsor:
  - (a) the Minister must have regard to the capacity of the proposed sponsor to comply with the undertakings mentioned in paragraph 1.20 (2) (b); and
  - (b) the Minister may have regard to any other matter that the Minister considers relevant.
- (4) Nothing in this regulation limits or affects in any way the matters to which the Minister may have regard in considering an application for the approval of a proposed sponsor in relation to any other kind of visa application to which regulation 1.20 applies.

## **Division 1.4B      Limitation on certain sponsorships under Division 1.4**

### **1.20J      Limitation on approval of sponsorships — spouse, partner, prospective marriage and interdependency visas**

- (1AA) This regulation applies in relation to an application for:
  - (a) a Spouse (Provisional) (Class UF) visa; or
  - (b) a Partner (Provisional) (Class UF) visa; or
  - (c) a Prospective Marriage (Temporary) (Class TO) visa; or
  - (d) an Interdependency (Provisional) (Class UG) visa; or
  - (e) an Extended Eligibility (Temporary) (Class TK) visa; or
  - (f) a Partner (Temporary) (Class UK) visa.
- (1) Subject to subregulations (2) and (3), if a person applies for a visa mentioned in subregulation (1AA) as the spouse, de facto partner or prospective spouse of the sponsor, the Minister must not approve the sponsorship of the applicant unless the Minister is satisfied that:
  - (a) not more than 1 other person has been granted a relevant permission as:

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- (i) the spouse, de facto partner or prospective spouse of the sponsor on the basis of a sponsorship or nomination; or
    - (ii) a person who ceased a relationship of a kind mentioned in subparagraph (i) with the sponsor after the person, or another person mentioned in the prescribed criteria for the visa, had suffered family violence committed by the sponsor; and
  - (b) if another person has been granted a relevant permission in the circumstances referred to in paragraph (a) — not less than 5 years has passed since the date of making the application for that relevant permission; and
  - (c) if the sponsor was granted a relevant permission as the spouse, de facto partner or prospective spouse of another person on the basis of a sponsorship or nomination — not less than 5 years has passed since the date of making the application for that relevant permission.
- (1A) In subregulation (1):
- relevant permission*** means:
- (a) in relation to an application for a visa referred to in subregulation (1AA) made during the period from 1 November 1996 to 30 June 1997 (inclusive) — a visa; and
  - (b) in relation to an application for a visa referred to in subregulation (1AA) made on or after 1 July 1997 — permission (other than a visa or entry permit) granted under the Act to remain indefinitely in Australia, a visa or an entry permit.
- (2) Despite subregulation (1), the Minister may approve the sponsorship of an applicant for a visa if the Minister is satisfied that there are compelling circumstances affecting the sponsor.
- (3) Subject to subregulation (4), this regulation applies in relation to an application for a visa made on or after 1 November 1996.
- (4) This regulation does not apply in relation to an application by a person who:
- (a) was the holder of a Subclass 300 visa that was granted on the basis of an application for a Prospective Marriage

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- (Temporary) (Class TO) visa that was made before 1 November 1996; and
- (b) has applied for an Extended Eligibility (Temporary) (Class TK) visa; and
- (c) is seeking to remain permanently in Australia on the basis of the person's marriage to the person who was specified as the intended spouse in the application that resulted in the grant of that Prospective Marriage (Temporary) (Class TO) visa.

**1.20K Limitation on sponsorships — remaining relative visas**

- (1) The Minister must not grant a Subclass 115 (Remaining Relative) visa or a Subclass 835 (Remaining Relative) visa to an applicant if the applicant is sponsored for the visa by a person:
  - (a) who is an Australian relative for the applicant; and
  - (b) to whom the Minister has granted any of the following:
    - (i) a Subclass 104 visa;
    - (ii) a Subclass 115 (Remaining Relative) visa;
    - (iii) a Subclass 806 visa;
    - (iv) a Subclass 835 (Remaining Relative) visa.
- (2) The Minister must not grant a Subclass 115 (Remaining Relative) visa or a Subclass 835 (Remaining Relative) visa to an applicant if the applicant is sponsored for the visa by a person:
  - (a) who is an Australian relative for the applicant; and
  - (b) who has sponsored another applicant for any of the following:
    - (i) a Subclass 104 visa;
    - (ii) a Subclass 115 (Remaining Relative) visa;
    - (iii) a Subclass 806 visa;
    - (iv) a Subclass 835 (Remaining Relative) visa; and
  - (c) the Minister granted the visa to the other applicant.

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- (3) The Minister must not grant a Subclass 115 (Remaining Relative) visa or a Subclass 835 (Remaining Relative) visa to an applicant if:
  - (a) the applicant is sponsored for the visa by a person who is the spouse or de facto partner of an Australian relative for the applicant; and
  - (b) the Australian relative for the applicant is a person to whom the Minister has granted any of the following:
    - (i) a Subclass 104 visa;
    - (ii) a Subclass 115 (Remaining Relative) visa;
    - (iii) a Subclass 806 visa;
    - (iv) a Subclass 835 (Remaining Relative) visa.
- (4) The Minister must not grant a Subclass 115 (Remaining Relative) visa or a Subclass 835 (Remaining Relative) visa to an applicant if:
  - (a) the applicant is sponsored for the visa by a person who is the spouse or de facto partner of an Australian relative for the applicant; and
  - (b) the Australian relative for the applicant has sponsored another applicant for any of the following:
    - (i) a Subclass 104 visa;
    - (ii) a Subclass 115 (Remaining Relative) visa;
    - (iii) a Subclass 806 visa;
    - (iv) a Subclass 835 (Remaining Relative) visa; and
  - (c) the Minister granted the visa to the other applicant.
- (5) The Minister must not grant a Subclass 115 (Remaining Relative) visa or a Subclass 835 (Remaining Relative) visa to an applicant if:
  - (a) the applicant is sponsored for the visa by the spouse or de facto partner of an Australian relative for the applicant; and
  - (b) the spouse or de facto partner has sponsored another applicant who is a relative of the Australian relative for the applicant for any of the following:
    - (i) a Subclass 104 visa;
    - (ii) a Subclass 115 (Remaining Relative) visa;

- (iii) a Subclass 806 visa;
- (iv) a Subclass 835 (Remaining Relative) visa; and
- (c) the Minister granted the visa to the other applicant.

- (6) In this regulation:

**Subclass 104 visa** means a Subclass 104 (Preferential Family) visa that could have been granted by the Minister under these Regulations, as in force immediately before 1 November 1999.

**Subclass 806 visa** means a Subclass 806 (Family) visa that could have been granted by the Minister under these Regulations, as in force immediately before 1 November 1999.

**1.20KA Limitation on approval of sponsorship — partner (provisional or temporary) or prospective marriage (temporary) visas**

- (1) This regulation applies if:
  - (a) a person is granted a specified visa on or after 1 July 2009; and
  - (b) the person seeks approval to sponsor the relevant applicant on or after 1 July 2009; and
  - (c) the person was the spouse or de facto partner of the relevant applicant on or before the day the specified visa was granted to the person.
- (2) The Minister must not approve sponsorship by the person of the relevant applicant within 5 years after the day when the person was granted the specified visa.
- (3) Despite subregulation (2), the Minister may approve sponsorship by the person of the relevant applicant:
  - (a) if the relevant applicant had compelling reasons, other than reasons related to his or her financial circumstances, for not applying for a specified visa at the same time as the person applied for his or her specified visa; or
  - (b) if:
    - (i) the relevant applicant applied for a specified visa at the same time as the sponsor; and
    - (ii) the relevant applicant withdrew the application for the specified visa before it was granted; and

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- (iii) the relevant applicant had compelling reasons, other than reasons related to his or her financial circumstances, for withdrawing the application for the specified visa.

- (4) In this regulation:

***relevant applicant*** means the applicant for:

- (a) a Partner (Provisional) (Class UF) visa; or
- (b) a Partner (Temporary) (Class UK) visa; or
- (c) a Prospective Marriage (Temporary) (Class TO) visa.

***specified visa*** means:

- (a) a Subclass 143 (Contributory Parent) visa; or
- (b) a Subclass 864 (Contributory Aged Parent) visa.

**1.20KB Limitation on approval of sponsorship — child, partner and prospective marriage visas**

- (1) This regulation applies in relation to:

- (a) an application for any of the following visas:
  - (i) a Child (Migrant) (Class AH) visa;
  - (ii) a Child (Residence) (Class BT) visa;
  - (iii) an Extended Eligibility (Temporary) (Class TK) visa;
  - (iv) a Partner (Temporary) (Class UK) visa;
  - (v) a Prospective Marriage (Temporary) (Class TO) visa;
  - (vi) a Partner (Provisional) (Class UF) visa;if the primary applicant or secondary applicant is under 18 at the time of the application; and
- (b) an application for the approval of a sponsorship in relation to that application for a visa.

***Sponsor charged with registrable offence***

- (2) If the sponsor has been charged with a registrable offence, the Minister must refuse to approve the sponsorship of all of the applicants for the visa unless:

- (a) none of the applicants is under 18 at the time of the decision on the application for approval of the sponsorship; or
- (b) the charge has been withdrawn, dismissed or otherwise disposed of without the recording of a conviction.

*Sponsor convicted of registrable offence*

- (3) Subject to subregulations (4) and (5), if the sponsor has been convicted of a registrable offence, the Minister must refuse to approve the sponsorship of all of the applicants for the visa unless:
  - (a) none of the applicants is under 18 at the time of the decision on the application for approval of the sponsorship; or
  - (b) the conviction has been quashed or otherwise set aside.
- (4) Despite subregulation (3), the Minister may decide to approve the sponsorship if:
  - (a) the sponsor completed the sentence imposed for the registrable offence (including any period of release under recognisance, parole, or licence) more than 5 years before the date of the application for approval of the sponsorship; and
  - (b) the sponsor has not been charged with a registrable offence since the sponsor completed that sentence; and
  - (c) there are compelling circumstances affecting the sponsor or the applicant.
- (5) Despite subregulation (3), the Minister may decide to approve the sponsorship if:
  - (a) the sponsor completed the sentence imposed for the registrable offence (including any period of release under recognisance, parole, or licence) more than 5 years before the date of the application for approval of the sponsorship; and
  - (b) if the sponsor has been charged with a registrable offence since the sponsor completed that sentence — the charge has been withdrawn, dismissed or otherwise disposed of without the recording of a conviction; and

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- (c) there are compelling circumstances affecting the sponsor or the applicant.
- (6) Subregulations (7) to (10) do not apply in relation to an application for any of the following visas:
  - (a) a Partner (Temporary) (Class UK) visa;
  - (b) a Prospective Marriage (Temporary) (Class TO) visa;
  - (c) a Partner (Provisional) (Class UF) visa.

*Spouse or de facto partner charged with registrable offence*

- (7) If the spouse or de facto partner of the sponsor has been charged with a registrable offence, the Minister must refuse to approve the sponsorship of all of the applicants for the visa unless:
  - (a) none of the applicants is under 18 at the time of the decision on the application for approval of the sponsorship; or
  - (b) the charge has been withdrawn, dismissed or otherwise disposed of without the recording of a conviction.

*Spouse or de facto partner convicted of registrable offence*

- (8) Subject to subregulations (9) and (10), if the spouse or de facto partner of the sponsor has been convicted of a registrable offence, the Minister must refuse to approve the sponsorship of all of the applicants for the visa unless:
  - (a) none of the applicants is under 18 at the time of the decision on the application for approval of the sponsorship; or
  - (b) the conviction has been quashed or otherwise set aside.
- (9) Despite subregulation (8), the Minister may decide to approve the sponsorship if:
  - (a) the spouse or de facto partner completed the sentence imposed for the registrable offence (including any period of release under recognisance, parole, or licence) more



- than 5 years before the date of the application for approval of the sponsorship; and
- (b) the spouse or de facto partner has not been charged with a registrable offence since the sponsor completed that sentence; and
  - (c) there are compelling circumstances affecting the sponsor or the applicant.
- (10) Despite subregulation (8), the Minister may decide to approve the sponsorship if:
- (a) the spouse or de facto partner completed the sentence imposed for the registrable offence (including any period of release under recognisance, parole, or licence) more than 5 years before the date of the application for approval of the sponsorship; and
  - (b) if the spouse or de facto partner has been charged with a registrable offence since the spouse or de facto partner completed that sentence — the charge has been withdrawn, dismissed or otherwise disposed of without the recording of a conviction; and
  - (c) there are compelling circumstances affecting the sponsor or the applicant.

*Evidence of charge or conviction*

- (11) To determine whether a sponsor, or the spouse or de facto partner of a sponsor, has been charged with, or convicted of, a registrable offence, the Minister may request the sponsor, or the spouse or de facto partner of the sponsor, to provide a police check from:
- (a) a jurisdiction in Australia specified in the request; or
  - (b) a country, specified in the request, in which the sponsor or the spouse or de facto partner has lived for a period, or a total period, of at least 12 months.
- (12) In addition to other reasons set out in this regulation for refusing to approve a sponsorship, the Minister may refuse to approve the sponsorship of all applicants for a visa if:
- (a) the Minister has requested a police check for the sponsor or the sponsor's spouse or de facto partner; and

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- (b) the sponsor or the sponsor's spouse or de facto partner does not provide the police check within a reasonable time.

(13) In this regulation:

**primary applicant**, for a visa, means the applicant seeking to satisfy the primary criteria for the visa.

**registrable offence** means any of the following:

- (a) an offence that is a registrable offence within the meaning of any of the following Acts:
- (i) the *Child Protection (Offenders Registration) Act 2000* (NSW);
  - (ii) the **Sex Offenders Registration Act 2004** (Vic);
  - (iii) the *Child Sex Offenders Registration Act 2006* (SA);
  - (iv) the *Crimes (Child Sex Offenders) Act 2005* (ACT);
- (b) an offence that would be a registrable offence under paragraph (a) if it were committed in a jurisdiction mentioned in that paragraph;
- (c) an offence that is a reportable offence within the meaning of any of the following Acts:
- (i) the *Child Protection (Offender Reporting) Act 2004* (Qld);
  - (ii) the *Community Protection (Offender Reporting) Act 2004* (WA);
  - (iii) the *Community Protection (Offender Reporting) Act 2005* (Tas);
  - (iv) the *Child Protection (Offender Reporting and Registration) Act* (NT);
- (d) an offence that would be a reportable offence under paragraph (c) if it were committed in a jurisdiction mentioned in that paragraph.

**secondary applicant**, for a visa, means an applicant seeking to satisfy the secondary criteria for the visa in relation to the primary applicant.

**1.20L Limitation on approval of sponsorship — Subclass 679 (Sponsored Family Visitor) visas**

- (1) The Minister must not approve the sponsorship by a sponsor of an applicant for a Sponsored (Visitor) (Class UL) visa who appears to satisfy the criteria for the grant of a Subclass 679 (Sponsored Family Visitor) visa if:
  - (a) the sponsor has previously sponsored another applicant (the *previous applicant*) for:
    - (i) a Sponsored (Visitor) (Class UL) visa; or
    - (ii) a Short Stay Sponsored (Visitor) (Class UL) visa; and
  - (b) the previous applicant was granted a visa of that kind; and
  - (c) either:
    - (i) subject to subregulations (2) and (3), the visa is still in effect; or
    - (ii) subject to subregulation (4), if the visa has ceased to be in effect:
      - (A) the previous applicant did not comply with a condition of the visa; and
      - (B) a period of 5 years has not passed since the grant of the visa.
- (2) Despite subparagraph (1) (c) (i), the Minister may approve the sponsorship by the sponsor of the applicant if:
  - (a) the previous applicant is the holder of a Subclass 459 (Sponsored Business Visitor (Short Stay)) visa; and
  - (b) the Minister is satisfied that:
    - (i) the applicant is proposing to travel to Australia at the same time, and for the same business purposes, as the previous applicant; or
    - (ii) the applicant:
      - (A) is the spouse, or de facto partner or a dependent child, of the previous applicant; and
      - (B) is proposing to travel to Australia at the same time as the previous applicant.

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- (3) Despite subparagraph (1) (c) (i), the Minister may approve the sponsorship by the sponsor of the applicant if:
- (a) the previous applicant is the holder of:
    - (i) a Subclass 679 (Sponsored Family Visitor (Short Stay)) visa; or
    - (ii) a Subclass 679 (Sponsored Family Visitor) visa; and
  - (b) the Minister is satisfied that the applicant:
    - (i) is a member of the family unit of the previous applicant; and
    - (ii) is proposing to travel to Australia for the same purpose as the previous applicant.
- (4) Despite subparagraph (1) (c) (ii), the Minister may approve the sponsorship by the sponsor of the applicant if:
- (a) the previous applicant was the holder of:
    - (i) a Subclass 679 (Sponsored Family Visitor (Short Stay)) visa; or
    - (ii) a Subclass 679 (Sponsored Family Visitor) visa; and
  - (b) the Minister has, at any time, determined in writing that he or she is satisfied that:
    - (i) the previous applicant did not comply with condition 8531; and
    - (ii) the previous applicant exceeded the period of stay permitted by the visa due to circumstances:
      - (A) beyond the previous applicant's control; and
      - (B) that occurred after the previous applicant entered Australia as the holder of a visa mentioned in paragraph (a).

*Note* Condition 8531 provides that the holder of a visa is not permitted to remain in Australia after the end of the period of stay permitted by that visa.

**1.20LAA Limitation on sponsorships — parent, aged dependent relative, contributory parent, aged parent and contributory aged parent visas**

- (1) This regulation applies to the following visas:
- (a) a Subclass 103 (Parent) visa;

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- (b) a Subclass 114 (Aged Dependent Relative) visa;
  - (c) a Subclass 143 (Contributory Parent) visa;
  - (d) a Subclass 173 (Contributory Parent (Temporary)) visa;
  - (e) a Subclass 804 (Aged Parent) visa;
  - (f) a Subclass 838 (Aged Dependent Relative) visa;
  - (g) a Subclass 864 (Contributory Aged Parent) visa;
  - (h) a Subclass 884 (Contributory Aged Parent (Temporary)) visa.
- (2) The Minister must not approve a sponsorship for a subclass of visa to which this regulation applies if:
- (a) the Minister is satisfied that the sponsor of the applicant for the visa is:
    - (i) a holder or former holder of a Subclass 802 (Child) visa whose application for that visa was supported by a letter of support from a State or Territory government welfare authority; or
    - (ii) a cohabitating spouse or de facto partner of that holder or former holder; or
    - (iii) a guardian of that holder or former holder; or
    - (iv) a guardian of a person who is a cohabitating spouse or de facto partner of that holder or former holder; or
    - (v) a community organisation; and
  - (b) the Minister is satisfied that the applicant for the visa is or was a parent of a holder or former holder of a Subclass 802 (Child) visa whose application for that visa was supported by a letter of support from a State or Territory government welfare authority.
- (3) Despite subregulation (2), the Minister may approve a sponsorship for a subclass of visa mentioned in subregulation (1) if the Minister is satisfied that there are compelling circumstances affecting the sponsor or the applicant to justify the approval of the sponsorship of the applicant for the visa.

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(4) In this regulation:

***letter of support*** means a letter of support provided by a State or Territory government welfare authority that:

- (a) supports a child's application for permanent residency in Australia; and
- (b) sets out:
  - (i) the circumstances leading to the involvement of the State or Territory government welfare authority in the welfare of the child; and
  - (ii) the State or Territory government welfare authority's reasons for supporting the child's application for permanent residency in Australia; and
- (c) describes the nature of the State or Territory government welfare authority's continued involvement in the welfare of the child; and
- (d) shows the letterhead of the State or Territory government welfare authority; and
- (e) is signed by a manager or director employed by a State or Territory government welfare authority.

**Division 1.5 Special provisions relating to family violence**

**1.21 Interpretation**

(1) In this Division:

***competent person*** means:

- (a) in relation to family violence committed against an adult:
  - (i) a person registered as a medical practitioner under a law of a State or Territory providing for the registration of medical practitioners; or
  - (ii) a person registered as a psychologist under a law of a State or Territory providing for the registration of psychologists; or

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- (iii) a person who:
  - (A) is a registered nurse within the meaning of section 3 of the *Health Insurance Act 1973*; and
  - (B) is performing the duties of a registered nurse; or
- (iv) a person who:
  - (A) is a member of the Australian Association of Social Workers or is recognised by that Association as a person who is eligible to be a member of that Association; and
  - (B) is performing the duties of a social worker; or
- (v) a person who is a family consultant under the *Family Law Act 1975*; or
- (vi) a person holding a position of a kind described in subregulation (2); or
- (b) in relation to family violence committed against a child:
  - (i) a person referred to in paragraph (a); or
  - (ii) an officer of the child welfare or child protection authorities of a State or Territory.

***independent expert*** means a person who:

- (a) is suitably qualified to make independent assessments of non-judicially determined claims of family violence; and
- (b) is employed by, or contracted to provide services to, an organisation that is specified, in a Gazette Notice for this definition, for the purpose of making independent assessments of non-judicially determined claims of family violence.

***non-judicially determined claim of family violence*** has the meaning given by subregulations 1.23 (8) and (9).

***relevant family violence*** means conduct, whether actual or threatened, towards:

- (a) the alleged victim; or
- (b) a member of the family unit of the alleged victim; or

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- (c) a member of the family unit of the alleged perpetrator; or
- (d) the property of the alleged victim; or
- (e) the property of a member of the family unit of the alleged victim; or
- (f) the property of a member of the family unit of the alleged perpetrator;

that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety.

**statutory declaration** means a statutory declaration under the *Statutory Declarations Act 1959*.

**violence** includes a threat of violence.

- (2) The positions referred to in subparagraph (a) (vi) of the definition of **competent person** in subregulation (1) are:
  - (a) manager or coordinator of:
    - (i) a women's refuge; or
    - (ii) a crisis and counselling service that specialises in family violence; or
  - (b) a position with:
    - (i) decision-making responsibility for:
      - (A) a women's refuge; or
      - (B) a crisis and counselling service that specialises in family violence;that has a collective decision-making structure; and
    - (ii) responsibility for matters concerning family violence within the operations of that refuge or crisis and counselling service.

**1.22 References to person having suffered or committed family violence**

- (1) A reference in these Regulations to a person having suffered family violence is a reference to a person being taken, under regulation 1.23, to have suffered family violence.



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- (2) A reference in these Regulations to a person having committed family violence in relation to a person is a reference to a person being taken, under regulation 1.23, to have committed family violence in relation to that person.

**1.23 When is a person taken to have suffered or committed family violence?**

- (1) For these Regulations, this regulation explains when:
- (a) a person (the *alleged victim*) is taken to have suffered family violence; and
  - (b) another person (the *alleged perpetrator*) is taken to have committed family violence in relation to the alleged victim.

*Note* Schedule 2 sets out which visas may be granted on the basis of a person having suffered family violence. The criteria to be satisfied for the visa to be granted set out which persons may be taken to have suffered family violence, and how those persons are related to the spouse or de facto partner of the alleged perpetrator mentioned in this regulation.

*Circumstances in which family violence is suffered and committed — injunction under Family Law Act 1975*

- (2) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if, on the application of the alleged victim, a court has granted an injunction under paragraph 114 (1) (a), (b) or (c) of the *Family Law Act 1975* against the alleged perpetrator.
- (3) For subregulation (2), the violence, or part of the violence, that led to the granting of the injunction must have occurred while the married relationship between the alleged perpetrator and the spouse of the alleged perpetrator existed.

*Circumstances in which family violence is suffered and committed — court order*

- (4) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:

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- (a) a court has made an order under a law of a State or Territory against the alleged perpetrator for the protection of the alleged victim from violence; and
  - (b) unless the alleged victim had, before 1 January 1998, claimed to Immigration to have suffered domestic violence committed by the alleged perpetrator — that order was made after the court had given the alleged perpetrator an opportunity to be heard, or otherwise to make submissions to the court, in relation to the matter.
- (5) For subregulation (4), the violence, or part of the violence, that led to the granting of the order must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

*Circumstances in which family violence is suffered and committed — conviction*

- (6) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if a court has:
- (a) convicted the alleged perpetrator of an offence of violence against the alleged victim; or
  - (b) recorded a finding of guilt against the alleged perpetrator in respect of an offence of violence against the alleged victim.
- (7) For subregulation (6), the violence, or part of the violence, that led to the conviction or recording of a finding of guilt must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

*Circumstances in which family violence is suffered and committed — non-judicially determined claim of family violence*

- (8) For these Regulations, an application for a visa is taken to include a ***non-judicially determined claim of family violence*** if:

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- (a) the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence; and
  - (b) the alleged victim and the alleged perpetrator have made a joint undertaking to a court in relation to proceedings in which an allegation is before the court that the alleged perpetrator has committed an act of violence against the alleged victim.
- (9) For these Regulations, an application for a visa is taken to include a ***non-judicially determined claim of family violence*** if:
  - (a) the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence; and
  - (b) the alleged victim is:
    - (i) a spouse or de facto partner of the alleged perpetrator; or
    - (ii) a dependent child of:
      - (A) the alleged perpetrator; or
      - (B) the spouse or de facto partner of the alleged perpetrator; or
      - (C) both the alleged perpetrator and his or her spouse or de facto partner; or
    - (iii) a member of the family unit of a spouse or de facto partner of the alleged perpetrator (being a member of the family unit who has made a combined application for a visa with the spouse or de facto partner); and
  - (c) the alleged victim or another person on the alleged victim's behalf has presented evidence in accordance with regulation 1.24 that:
    - (i) the alleged victim has suffered relevant family violence; and
    - (ii) the alleged perpetrator committed that relevant family violence.

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- (10) If an application for a visa includes a non-judicially determined claim of family violence:
  - (a) the Minister must consider whether the alleged victim has suffered relevant family violence; and
  - (b) if the Minister is satisfied that the alleged victim has suffered the relevant family violence, the Minister must consider the application on that basis; and
  - (c) if the Minister is not satisfied that the alleged victim has suffered the relevant family violence:
    - (i) the Minister must seek the opinion of an independent expert about whether the alleged victim has suffered the relevant family violence; and
    - (ii) the Minister must take an independent expert's opinion on the matter to be correct for the purposes of deciding whether the alleged victim satisfies a prescribed criterion for a visa that requires the applicant for the visa, or another person mentioned in the criterion, to have suffered family violence.
- (11) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
  - (a) an application for a visa includes a non-judicially determined claim of family violence; and
  - (b) the Minister is satisfied under paragraph (10) (b) that the alleged victim has suffered relevant family violence.
- (12) For subregulation (11), the Minister must be satisfied that the relevant family violence, or part of the relevant family violence, occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.
- (13) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
  - (a) an application for a visa includes a non-judicially determined claim of family violence; and

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- (b) the Minister is required by subparagraph (10) (c) (ii) to take as correct an opinion of an independent expert that the alleged victim has suffered relevant family violence.
- (14) For subregulation (13), the violence, or part of the violence, that led to the independent expert having the opinion that the alleged victim has suffered relevant family violence must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

**1.24 Evidence**

- (1) The evidence referred to in paragraph 1.23 (9) (c) is:
  - (a) a statutory declaration under regulation 1.25 (which deals with statutory declarations by or on behalf of alleged victims) together with:
    - (i) a statutory declaration under regulation 1.26 (which deals with statutory declarations by competent persons); and
    - (ii) a copy of a record of an assault, allegedly committed by the alleged perpetrator, on:
      - (A) the alleged victim; or
      - (B) a member of the family unit of the alleged victim; or
      - (C) a member of the family unit of the alleged perpetrator;that is a record kept by a police service of a State or Territory (other than a statement by the alleged victim or by the person allegedly assaulted); or
  - (b) a statutory declaration under regulation 1.25, together with 2 statutory declarations under regulation 1.26.
- (2) A person must not submit, for the purposes of an application that relies on this Division, 2 statutory declarations by competent persons who both have a qualification specified in:
  - (a) the same subparagraph of paragraph (a) of the definition of **competent person**; or
  - (b) subparagraph (b) (ii) of that definition.

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**1.25 Statutory declaration by alleged victim etc**

- (1) A statutory declaration under this regulation must be made by the spouse or de facto partner of the alleged perpetrator.
- (2) A statutory declaration under this regulation that is made by a person mentioned in subregulation 1.25 (1) who alleges that he or she is the victim of relevant family violence (within the meaning of subregulation 1.21 (1)) must:
  - (a) set out the allegation; and
  - (b) name the person alleged to have committed the relevant family violence; and
  - (c) if the conduct of the person alleged to have committed the relevant family violence was not towards the alleged victim:
    - (i) name the person whom the conduct of the alleged perpetrator was towards; and
    - (ii) identify the relationship between the maker of the statutory declaration and the person whom the conduct was towards.
- (3) A statutory declaration under this regulation that is made by a person mentioned in subregulation 1.25 (1) who alleges that another person is the victim of relevant family violence (within the meaning of subregulation 1.21 (1)) must:
  - (a) name that other person; and
  - (b) set out the allegation; and
  - (c) identify the relationship of the maker of the statutory declaration to that other person; and
  - (d) name the person alleged to have committed the relevant family violence; and
  - (e) if the conduct of the person alleged to have committed the relevant family violence was not towards the alleged victim:
    - (i) name the person whom the conduct of the alleged perpetrator was towards; and
    - (ii) identify the relationship between the alleged victim and the person whom the conduct was towards; and

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- (iii) identify the relationship between the maker of the statutory declaration and the person whom the conduct was towards; and
- (f) set out the evidence on which the allegation is based.

**1.26 Statutory declaration by competent person**

A statutory declaration under this regulation:

- (a) must be made by a competent person; and
- (b) must set out the basis of the competent person's claim to be a competent person for the purposes of this Division; and
- (c) must state that, in the competent person's opinion, relevant family violence (within the meaning of subregulation 1.21 (1)) has been suffered by a person; and
- (d) must name the person who, in the opinion of the competent person, has suffered that relevant family violence; and
- (e) must name the person who, in the opinion of the competent person, committed that relevant family violence; and
- (f) if the conduct of the person alleged to have committed the relevant family violence was not towards the alleged victim:
  - (i) must name the person whom the conduct of the alleged perpetrator was towards; and
  - (ii) must identify the relationship between the alleged victim and the person whom the conduct was towards; and
- (g) must set out the evidence on which the competent person's opinion is based.

**1.27 Statutory declaration or statement not admissible in evidence**

A statutory declaration made under regulation 1.25 or 1.26, or an opinion of an independent expert mentioned in subparagraph 1.23 (10) (c) (i), is not admissible in evidence before a court or tribunal otherwise than in:

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- (a) an application for judicial review or merits review of a decision to refuse to grant a visa the application for which included the non-judicially determined claim of family violence to which the statutory declaration or opinion relates; or
- (b) a prosecution of the maker of the statutory declaration under section 11 of the *Statutory Declarations Act 1959*.

**Division 1.6      Immigration Minister's suspension  
certificate under *Education  
Services for Overseas Students  
Act 2000***

**1.30      Prescribed non-citizen**

For section 101 of the *Education Services for Overseas Students Act 2000*, a non-citizen who is an applicant for, or the holder of, a student visa is prescribed.

**Division 1.8      Special provisions for student  
visas**

**1.40      Definitions**

- (1) In this Division, a passport is an *eligible passport* if:
  - (a) it is a valid passport of a kind specified by Gazette Notice for the purposes of this subregulation; and
  - (b) the conditions (if any) specified by Gazette Notice for passports of that kind are satisfied.
- (2) In a provision mentioned in subregulation (4), if an applicant for a student visa proposes to undertake a course of study that is a registered course or an occupational trainee has undertaken a course of study that is a registered course, the course is the *principal course*.



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- (3) For subregulation (2), if:
- (a) an applicant for a student visa proposes to undertake two or more courses of study that are registered courses or an occupational trainee has undertaken two or more courses of study that are registered courses; and
  - (b) either:
    - (i) one of the courses of study (*course A*) is a prerequisite to another of the courses (*course B*); or
    - (ii) one of the courses of study (*course B*) may be taken only after the completion of another of the courses (*course A*);course B, not course A, is the *principal course*.
- (4) Subregulation (2) applies to any of the following provisions:
- (a) a provision of this Division;
  - (b) a provision of Part 442, 570, 571, 572, 573, 574 or 575 of Schedule 2;
  - (c) a provision of Schedule 5A.

**1.40A Courses to be specified by Minister**

The Minister must specify by an instrument in writing the types of courses for each subclass of student visa, except Subclass 576 (AusAID or Defence Sector).

**1.41 Assessment levels to be specified by Minister**

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

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- (2) In specifying an assessment level, the Minister must consider the risk posed by applicants who hold a kind of eligible passport in terms of:
  - (a) their being genuine students; and
  - (b) their engaging, while in Australia, in conduct (including omissions) not contemplated by the visa.
- (3) In considering the risk, the Minister must have regard to:
  - (a) 1 or more of the following statistics prepared by the Secretary in relation to the kind of eligible passport:
    - (i) the number of former holders of student visas who have become unlawful non-citizens;
    - (ii) the number of student visas that have been cancelled;
    - (iii) the number of applications for student visas that have been refused;
    - (iv) the number of fraudulent documents detected by Immigration in relation to applications for student visas;
    - (v) the number of holders of student visas who have applied for protection visas or for permanent visas other than Business Skills (Residence) (Class BH), Business Skills — Established Business (Residence) (Class BH), Business Skills (Residence) (Class DF), Business Skills — Business Talent (Migrant) (Class EA), Skilled — Independent Overseas Student (Class DD) and Skilled — Australian-sponsored Overseas Student (Class DE) visas; and
  - (b) any other matters that the Minister considers relevant.
- (4) The assessment level specified for a kind of eligible passport:
  - (a) must be a number from 1 to 5, with assessment level 1 specified for a passport, holders of which pose a very low risk and assessment level 5 specified for a passport, holders of which pose an extremely high risk; and
  - (b) is not required to be the same for each subclass of student visa.

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**1.42 Assessment level of applicant**

- (1) An applicant for a student visa who seeks to satisfy the primary criteria is subject to the highest assessment level at the time of application for the relevant course of study for the subclass of student visa.
- (2) Despite subregulation (1), an applicant is subject to assessment level 2 if:
  - (a) the application is made in Australia before 31 December 2006; and
  - (b) the application is made on form 157A or 157A (Internet); and
  - (c) the applicant:
    - (i) is the holder of a Subclass 560 visa as a person who satisfied the primary criteria in Subdivisions 560.21 and 560.22; or
    - (ii) is the holder of a Subclass 562 visa; or
    - (iii) both:
      - (A) is the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa (as a person who satisfied the primary criteria for the subclass) that is subject to condition 8105; and
      - (B) was, immediately before being granted the Subclass 570, 571, 572, 573, 574, 575 or 576 visa, the holder of a Subclass 560 or 562 visa that was subject to condition 8101; and
  - (d) apart from this subregulation, the applicant would be subject to assessment level 3, 4 or 5; and
  - (e) subregulation (3) or (4) applies to the applicant.
- (3) This subregulation applies to an applicant who:
  - (a) was assessed in relation to an application for a student visa to undertake a package of courses of study; and
  - (b) was granted the student visa; and
  - (c) needs a further student visa to commence 1 or more courses in the package.

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- (4) This subregulation applies to an applicant who:
  - (a) has completed at least 50% of the principal course for which the student visa held was granted; and
  - (b) needs a further student visa to complete that course.
- (5) Subregulation (6) applies to an applicant if:
  - (a) the application:
    - (i) is made on form 157A or 157A (Internet); and
    - (ii) is made in Australia on or before 31 March 2002; and
  - (b) the applicant:
    - (i) would, but for this subregulation, be subject to assessment level 3, 4 or 5; and
    - (ii) has, within the period beginning on 1 July 2001 and ending on 31 March 2002, successfully completed a course of study in Australia as the holder of a student visa.
- (6) Despite subregulation (1), an applicant to whom this subregulation applies is subject to assessment level 2 if:
  - (a) the applicant is the holder of:
    - (i) a Subclass 560 visa as a person who satisfied the primary criteria; or
    - (ii) a Subclass 562 visa; or
  - (b) the applicant:
    - (i) is, as a person who satisfied the primary criteria, the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa, the application for which was made on form 157P; and
    - (ii) was, immediately before being granted that visa, the holder of a Subclass 560 or 562 visa; or
  - (c) the applicant:
    - (i) is, as a person who satisfied the primary criteria, the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa; and
    - (ii) was, immediately before being granted that visa, the holder of a Subclass 560 or 562 visa; or

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- (d) the applicant:
    - (i) is, as a person who satisfied the primary criteria, the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa, the application for which was made on form 157P; and
    - (ii) was:
      - (A) immediately before being granted that visa, the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa; and
      - (B) immediately before being granted the visa mentioned in sub-subparagraph (A), the holder of a Subclass 560 or 562 visa; or
  - (e) the applicant:
    - (i) is, as a person who satisfied the primary criteria, the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa; and
    - (ii) was:
      - (A) immediately before being granted that visa, the holder of a Subclass 570, 571, 572, 573, 574, 575 or 576 visa, the application for which was made on form 157P; and
      - (B) immediately before being granted the visa mentioned in sub-subparagraph (A), the holder of a Subclass 560 or 562 visa.
- (7) Subregulations (1) to (6) do not apply to an applicant who is a person designated under regulation 2.07AO.

**1.43 Notification of assessment level**

- (1) If, at the time of decision, the applicant holds 2 or more eligible passports the Minister must:
  - (a) select the passport that is to be taken as the applicant's eligible passport for the purposes of the assessment level to which the applicant will be subject; and
  - (b) notify the applicant of the passport selected and the level of assessment of that passport.

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- (2) In selecting the passport, the Minister may have regard to the following:
  - (a) the foreign country of which the applicant is a citizen;
  - (b) the foreign country of which the applicant is usually a resident;
  - (c) any other relevant matter.

**1.44 Evidence required**

- (1) An applicant for a student visa who seeks to satisfy the primary criteria must give evidence in accordance with the requirements set out in Schedule 5A for the highest assessment level for the relevant course of study for the subclass of student visa.
- (2) For Parts 573 and 574 of Schedule 2, the Minister may specify by Gazette Notice a course of study that is not conducted in English as a course:
  - (a) in relation to which the applicant need not give evidence of his or her English language proficiency; and
  - (b) that is relevant to an application for:
    - (i) a Subclass 573 (Higher Education Sector) visa, in circumstances in which the applicant is enrolled in a masters degree by coursework; or
    - (ii) a Subclass 574 (Postgraduate Research Sector) visa.

## **Part 2 Visas**

### **Division 2.1 Classes, criteria, conditions etc**

#### **2.01 Classes of visas (Act, s 31)**

For the purposes of section 31 of the Act, the prescribed classes of visas are:

- (a) such classes (other than those created by the Act) as are set out in the respective items in Schedule 1; and
- (b) the following classes:
  - (i) transitional (permanent); and
  - (ii) transitional (temporary).

*Note* For the classes created by the Act, see ss. 32 to 38.

#### **2.02 Subclasses**

- (1) Schedule 2 is divided into Parts, each identified by the word “Subclass” followed by a 3-digit number (being the number of the subclass of visa to which the Part relates) and the title of the subclass.
- (2) For the purposes of this Part and Schedules 1 and 2, a Part of Schedule 2 is relevant to a particular class of visa if the Part of Schedule 2 is listed under the subitem “Subclasses” in the item in Schedule 1 that refers to that class of visa.

#### **2.03 Criteria applicable to classes of visas**

- (1) For the purposes of subsection 31 (3) of the Act (which deals with criteria for the grant of a visa) and subject to regulation 2.03A, the prescribed criteria for the grant to a person of a visa of a particular class are:
  - (a) the primary criteria set out in a relevant Part of Schedule 2; or
  - (b) if a relevant Part of Schedule 2 sets out secondary criteria, those secondary criteria.

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- (2) If a criterion in Schedule 2 refers to a criterion in Schedule 3, 4 or 5 by number, a criterion so referred to must be satisfied by an applicant as if it were set out at length in the first-mentioned criterion.
- (3) If a criterion in Schedule 2 specifies that a person is to be the holder of, or have held, a visa of a particular class or subclass, that criterion is taken to be satisfied:
  - (a) if:
    - (i) before 1 September 1994, the person held a visa or entry permit that was granted under the Migration (1993) Regulations, the Migration (1989) Regulations or the Act as in force before 19 December 1989; and
    - (ii) the criteria that were applicable to, or the grounds for the grant of, that visa or entry permit are the same in effect as the criteria applicable to the new visa; and
    - (iii) the visa or entry permit was continued in force as a transitional visa on 1 September 1994 by the Migration Reform (Transitional Provisions) Regulations; or
  - (b) if:
    - (i) before 1 September 1994, the person applied for a visa or entry permit under the Migration (1993) Regulations, the Migration (1989) Regulations or the Act as in force before 19 December 1989; and
    - (ii) the criteria that were applicable to, or the grounds for the grant of, that visa or entry permit are the same in effect as the criteria applicable to the new visa; and
    - (iii) either:
      - (A) in the case of an application made before 19 December 1989 — the Minister had not made a decision on the application; or
      - (B) in any other case — the application had not been finally determined;



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- (iv) on or after 1 September 1994 the person was granted a transitional visa under the Migration Reform (Transitional Provisions) Regulations on the basis that he or she had satisfied the criteria, or the grounds, applicable to the visa or entry permit referred to in subparagraph (i).

**2.03A Criteria applicable to de facto partners**

- (1) In addition to the criteria prescribed by regulation 2.03, if a person claims to be in a de facto relationship for the purposes of a visa application, the criteria in subregulations (2) and (3) are prescribed.
- (2) If a person mentioned in subregulation (1) applies for a visa:
  - (a) the applicant is at least 18; and
  - (b) the person with whom the applicant claims to be in a de facto relationship is at least 18.
- (3) Subject to subregulations (4) and (5), if:
  - (a) a person mentioned in subregulation (1) applies for:
    - (i) a permanent visa; or
    - (ii) a Business Skills (Provisional) (Class UR) visa; or
    - (iii) a Student (Temporary) (Class UT) visa; or
    - (iv) a Partner (Provisional) (Class UF) visa; or
    - (v) a Partner (Temporary) (Class UK) visa; or
    - (vi) a General Skilled Migration visa; and
  - (b) the applicant cannot establish compelling and compassionate circumstances for the grant of the visa;  
the Minister must be satisfied that the applicant has been in the de facto relationship for at least the period of 12 months ending immediately before the date of the application.
- (4) Subregulation (3) does not apply if the applicant applies on the basis of being:
  - (a) in a de facto relationship with a person who:
    - (i) is, or was, the holder of a permanent humanitarian visa; and

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- (ii) before the permanent humanitarian visa was granted, was in a de facto relationship with the applicant and informed Immigration of the existence of the relationship; or
  - (b) in a de facto relationship with a person who is an applicant for a permanent humanitarian visa.
- (5) Subregulation (3) does not apply if the de facto relationship is a relationship that is registered under a law of a State or Territory prescribed in the *Acts Interpretation (Registered Relationships) Regulations 2008* as a kind of relationship prescribed in those Regulations.

**2.04      Circumstances in which a visa may be granted (Act, s 40)**

- (1) For subsection 40 (1) of the Act, and subject to these Regulations:
  - (a) a visa other than a visa of a class mentioned in subregulation (2) or (4) may be granted to a person who has satisfied the criteria in a relevant Part of Schedule 2 only if the circumstances set out in that Part of Schedule 2 exist; and
  - (b) a visa of a class mentioned in subregulation (2) or (4) may be granted to a person who has satisfied the criteria in a relevant Part of Schedule 2 only if:
    - (i) the circumstances set out in that Part of Schedule 2 exist; and
    - (ii) the person has complied with any requirement of an officer to provide one or more personal identifiers in relation to the application for the visa.
- (2) For paragraph 40 (3) (a) and subsection 40 (5) of the Act, a circumstance is that a person is:
  - (a) an applicant for a Protection (Class XA) visa; or
  - (b) an applicant for a Temporary Safe Haven (Class UJ) visa who is in Australia at the time of application.

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- (3) For subsection 40 (5) of the Act, the following types of personal identifier are prescribed for the circumstance mentioned in subregulation (2):
  - (a) a photograph or other image of the applicant's face and shoulders;
  - (b) the applicant's signature.
- (4) For paragraph 40 (3) (a) and subsection 40 (5) of the Act, a circumstance is that a person:
  - (a) is an applicant for a visa; and
  - (b) is not in Australia at the time of application.
- (5) For subsection 40 (5) of the Act, the following types of personal identifier are prescribed for the circumstance mentioned in subregulation (4):
  - (a) fingerprints of the applicant (including those taken using paper and ink or digital livescanning technologies);
  - (b) a photograph or other image of the applicant's face and shoulders.

**2.05 Conditions applicable to visas**

- (1) For the purposes of subsection 41 (1) of the Act (which deals with conditions that apply to a visa), the conditions to which a visa is subject are the conditions (if any) set out in, or referred to in, the Part of Schedule 2 that relates to visas of the subclass in which the visa is included.
- (2) For the purposes of subsection 41 (3) of the Act (which deals with conditions that may be imposed on a visa), the conditions that the Minister may impose on a visa are the conditions (if any) referred to as being conditions that may be imposed in the Part of Schedule 2 that relates to visas of the subclass in which the visa is included.
- (3) For the purposes of subsections 29 (2) and (3) of the Act (which deal with the period during which the holder of a visa may travel to, enter and remain in Australia), the limits on the period within which a person may:
  - (a) remain in Australia; or

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- (b) travel to, enter, and remain in Australia;  
as the case requires, under the authority of a visa of a particular subclass are specified in the relevant Part of Schedule 2.
- (4) For subsection 41 (2A) of the Act, the circumstances in which the Minister may waive a condition of a kind described in paragraph 41 (2) (a) of the Act are that:
  - (a) since the person was granted the visa that was subject to the condition, compelling and compassionate circumstances have developed:
    - (i) over which the person had no control; and
    - (ii) that resulted in a major change to the person's circumstances; and
  - (b) if the Minister has previously refused to waive the condition, the Minister is satisfied that the circumstances mentioned in paragraph (a) are substantially different from those considered previously; and
  - (c) if the person asks the Minister to waive the condition, the request is in writing.
- (4A) However, the Minister must not waive:
  - (a) in relation to a Subclass 020 Bridging B visa granted to a person who is an applicant for a Subclass 462 (Work and Holiday) visa — condition 8540; and
  - (b) in relation to a Subclass 462 (Work and Holiday) visa — conditions 8503 and 8540.
- (5) For subsection 41 (2A) of the Act, further circumstances in which the Minister may waive condition 8534 in relation to a visa are that the holder of the visa:
  - (a) has, after holding a student visa to which condition 8534 applies, been granted:
    - (i) a Subclass 497 (Graduate — Skilled) visa; or
    - (ii) a Subclass 010 (Bridging A) visa or a Subclass 020 (Bridging B) visa associated with the Subclass 497 (Graduate — Skilled) visa application; and
  - (b) has not, after holding a student visa to which condition 8534 applies, been granted a protection visa.

- (5A) For subsection 41 (2A) of the Act, further circumstances in which the Minister may waive condition 8534 in relation to a visa are that the holder of the visa:
- (a) has completed the course for which the visa was granted; and
  - (b) has a genuine intention to apply for a General Skilled Migration visa.
- (6) For subsection 41 (2A) of the Act, further circumstances in which the Minister may waive condition 8534 in relation to a visa are that the holder of the visa is a registered nurse, or satisfies the requirements for registration as a registered nurse, in Australia.

*Note* Regulation 2.07AH deals with applications for visas by persons for whom condition 8534 has been waived under subregulation 2.05 (6).

## **2.06 Non-citizens who do not require visas to travel to Australia**

For the purposes of subsection 42 (3) of the Act (which deals with the classes of person who may travel to Australia without a visa that is in effect), the following classes of non-citizens are prescribed:

- (a) New Zealand citizens who hold and produce New Zealand passports that are in force;
- (b) non-citizens who hold and produce passports that are in force and are endorsed with an authority to reside indefinitely on Norfolk Island.

### **2.06AAA Entry to Australia — Maritime Crew (Temporary) (Class ZM) visas**

- (1) For subsection 43 (1A) of the Act, a maritime crew visa that is in effect is permission for the holder to enter Australia on a non-military ship at a proclaimed port, other than at an excised offshore place.
- (2) For subsection 43 (1A) of the Act, a maritime crew visa that is in effect is permission for the holder to enter Australia if:
  - (a) the holder is on a non-military ship; and

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- (b) the ship enters Australia at an excised offshore place that is:
  - (i) a proclaimed port; or
  - (ii) a place for which permission has been given, in advance under section 58 of the *Customs Act 1901*, for the ship to be brought to that place; and
- (c) before the holder enters Australia, the operator of the ship has complied with the reporting requirements in sections 64, 64ACA and 64ACB of the *Customs Act 1901* in accordance with those sections and the *Customs Regulations 1926*.

*Note* The reporting requirements in sections 64, 64ACA and 64ACB of the *Customs Act 1901* provide, in general, that an operator of a ship that is due to arrive at a port must:

- (a) report the impending arrival of the ship; and
- (b) report to Customs on the passengers who will be on board the ship at the time of its arrival in port; and
- (c) report to Customs on the crew who will be on board the ship at the time of its arrival in port.

The *Customs Act* and the *Customs Regulations 1926* specify time limits within which the reporting is to be done.

- (3) For subsection 43 (1A) of the Act, a maritime crew visa that is in effect is permission for the holder to enter Australia in a way other than those described in subregulations (1) and (2) if:
  - (a) health or safety reasons require entry in that way; and
  - (b) the holder of the visa does not enter Australia at an excised offshore place.
- (4) For subsection 43 (1A) of the Act, a maritime crew visa that is in effect is permission for the holder to enter Australia in a way other than those described in subregulations (1), (2) and (3) if an authorised officer authorises the holder to enter Australia in that way.

**2.06AA Decision periods — decisions on protection visas**

For paragraph 65A (1) (d) of the Act, and for paragraph (b) of the definition of *decision period* in subsection 91Y (10) of the Act, the table sets out:

- (a) prescribed circumstances; and

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- (b) in the prescribed circumstances — the day on which the 90 day period, to which paragraph 65A (1) (d) or paragraph (b) of the definition relates, starts.

*Note* Under section 65A of the Act, the Minister must make a decision under section 65 of the Act, in relation to a protection visa, within a period of 90 days. In circumstances prescribed by the regulations, the period of 90 days starts on a day prescribed by the regulations.

Under paragraph (b) of the definition of *decision period* in subsection 91Y (10) of the Act, the Secretary must give a report to the Minister about decisions, in relation to protection visas, not made within a period of 90 days. In circumstances prescribed by the regulations, the period of 90 days starts on a day prescribed by the regulations.

Item	Prescribed circumstance	Day on which the 90 day period starts
1	Both:	If the Minister has specified a shorter period for paragraph 866.228 (b) of Schedule 2 — the first day after the end of the shorter period.
	(a) an applicant for a Protection (Class XA) visa is the holder of a Subclass 785 (Temporary Protection) visa at the time of decision on the application for the Protection (Class XA) visa; and	If the Minister has not specified a shorter period for paragraph 866.228 (b) of Schedule 2 — the first day after the day on which the applicant has held:
	(b) the applicant applied for the Protection (Class XA) visa during a continuous period of 30 months during which the applicant has held:	(a) the Subclass 785 (Temporary Protection) visa; or
	(i) a Subclass 785 (Temporary Protection) visa; or	(b) that visa and another Subclass 785 (Temporary Protection) visa;
	(ii) that visa and another Subclass 785 (Temporary Protection) visa.	for a continuous period of 30 months.

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Item	Prescribed circumstance	Day on which the 90 day period starts
2	Both: (a) an applicant for a Protection (Class XA) visa is the holder of a Subclass 451 (Secondary Movement Relocation (Temporary)) visa at the time of decision on the application for the Protection (Class XA) visa; and  (b) the applicant applied for the Protection (Class XA) visa during a continuous period of 54 months during which the applicant has held that Subclass 451 (Secondary Movement Relocation (Temporary)) visa.	<p>If the Minister has specified a shorter period for paragraph 866.228A (b) of Schedule 2 — the first day after the end of the shorter period.</p> <p>If the Minister has not specified a shorter period for paragraph 866.228A (b) of Schedule 2 — the first day after the day on which the applicant has held the Subclass 451 (Secondary Movement Relocation (Temporary)) visa for a continuous period of 54 months.</p>
3	Both: (a) an applicant for a Protection (Class XA) visa, or a member of the family unit of an applicant for a Protection (Class XA) visa, has been offered a temporary stay in Australia by the Australian Government for the purpose of an application for a Temporary (Humanitarian Concern) (Class UO) visa, as provided for by regulation 2.07AC; and	<p>If the Minister has specified a shorter period for paragraph 866.229 (b) of Schedule 2 — the first day after the end of the shorter period.</p> <p>If the Minister has not specified a shorter period for paragraph 866.229 (b) of Schedule 2 — the first day after the end of the period of 30 months starting on the date on which the offer was made.</p>



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Item	Prescribed circumstance	Day on which the 90 day period starts
	(b) the applicant applied for the Protection (Class XA) visa not later than 30 months after the date on which the offer was made.	

## Division 2.2 Applications

### 2.06A Definition

In this Division:

*a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia* means a diplomatic office, consular office (other than a consular office headed by an honorary consul) or migration office maintained by or on behalf of the Commonwealth outside Australia.

### 2.07 Application for visa — general

- (1) For the purposes of sections 45 and 46 of the Act (dealing with application for a visa), if an application is required for a particular class of visa, the following matters are set out in the relevant Part of Schedule 1:
  - (a) the approved form (if any) to be completed by an applicant;
  - (b) the visa application charge (if any) payable in relation to an application;
  - (c) other matters relating to the application.
- (3) An applicant must complete an approved form in accordance with any directions on it.
- (4) An application for a visa that is made using an approved form is not a valid application if the applicant does not set out his or her residential address:
  - (a) in the form; or
  - (b) in a separate document that accompanies the application.

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**2.07A    Certain applications not valid bridging visa applications**

An application for a substantive visa made on a form mentioned in subitem 1301 (1), 1303 (1) or 1305 (1) is not a valid application for a Bridging A (Class WA), Bridging C (Class WC) or Bridging E (Class WE) visa in either of the following circumstances:

- (a) the applicant was not in Australia when the application for the substantive visa was made;
- (b) the substantive visa is a visa of a kind that can only be granted if the applicant is outside Australia.

*Note* Other provisions relating to the making of applications for bridging visas are regulations 2.10A, 2.10B and 2.20A.

**2.07AA   Applications for certain visitor visas**

- (2) Despite anything in regulation 2.07, for sections 45 and 46 of the Act, an application for a Temporary Business Entry (Class UC) visa is taken to have been validly made if:
  - (a) the applicant is:
    - (i) the holder of a valid passport issued by a designated APEC economy; or
    - (ii) in the case of an applicant who is a permanent resident of Hong Kong — the holder of any valid passport; and
  - (b) the applicant:
    - (i) has applied to the Government of the designated APEC economy for an APEC Business Travel Card under arrangements in force between Australia and designated APEC economies; or
    - (ii) in the case of an applicant who is a permanent resident of Hong Kong — has applied to the Government of Hong Kong for an APEC Business Travel Card under arrangements in force between Australia and designated APEC economies; and

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- (c) that Government has sent to an office of Immigration that is approved in writing by the Minister as an office to which an application for a Temporary Business Entry (Class UC) visa may be made:
  - (i) that application, or a copy of that application, by written communication (including facsimile message); or
  - (ii) the information contained in that application by electronic transmission using a computer; or
  - (iii) that application, or a copy of that application, in any other manner approved in writing by the Minister.

(3) If:

- (a) an applicant for a Temporary Business Entry (Class UC) visa is described in paragraphs (2) (a) and (b); and
- (b) the Government of the designated APEC economy or the Government of Hong Kong has sent the material required under paragraph (2) (c) to an office of Immigration that is approved in writing by the Minister as an office to which an application for a Temporary Business Entry (Class UC) visa may be made;

the application for the visa is taken to have been made at that office of Immigration.

**2.07AB Applications for Electronic Travel Authority visas**

- (1) For the purposes of sections 45 and 46 of the Act, an application for an Electronic Travel Authority (Class UD) visa that is made in Australia (except in immigration clearance), or outside Australia, is taken to have been validly made if the applicant, when seeking the grant of the visa, whether:
  - (a) in person; or
  - (b) by telephone; or
  - (c) by written communication (including facsimile message or email); or
  - (d) by electronic transmission using a computer; or

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- (e) in any other manner approved in writing by the Minister; provides his or her passport details to:
  - (f) a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia; or
  - (g) an office of an agent mentioned in paragraph (3) (b).
- (2) For the purposes of sections 45 and 46 of the Act, an application for an Electronic Travel Authority (Class UD) visa that is made by the applicant, in person, while in immigration clearance, is taken to have been validly made if:
  - (a) the applicant presents to an officer an ETA-eligible passport;
  - (b) the passport is not endorsed with an authority to reside indefinitely on Norfolk Island; and
  - (c) after reasonable enquiries, the officer does not find that the applicant is the holder of a visa that is in effect; and
  - (d) the applicant asks an officer for an Electronic Travel Authority (Class UD) visa.
- (3) If a person makes an application for an Electronic Travel Authority (Class UD) to:
  - (a) a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia; or
  - (b) an office of an agent who is approved in writing by the Minister as an agent with whom an application for an Electronic Travel Authority (Class UD) visa may be made; by telephone, in writing (including by fax), by electronic transmission using a computer or in any other manner approved in writing by the Minister for this subregulation, the person is taken to have made the application at that office.
- (4) For sections 45 and 46 of the Act, and despite paragraph (1) (d), an application for an Electronic Travel Authority (Class UD) visa made by an eVisitor eligible passport holder is taken not to have been made validly if it is made by electronic transmission using a computer.

**2.07AC Applications for Temporary Safe Haven and Temporary (Humanitarian Concern) visas**

- (1) For subsection 46 (2) of the Act, each of the following classes of visa is a prescribed class of visa:
  - (a) the Temporary Safe Haven (Class UJ) visa class;
  - (b) the Temporary (Humanitarian Concern) (Class UO) visa class.
- (2) An application for a visa of a class mentioned in subregulation (1) is taken to have been validly made by a person (the *interviewee*) if:
  - (a) the interviewee indicates to an authorised officer that he or she accepts the Australian Government's offer of a temporary stay in Australia; and
  - (b) the authorised officer endorses, in writing, the interviewee's acceptance of the offer.
- (3) An application for a visa of a class mentioned in subregulation (1) is also taken to have been validly made by a person if an interviewee identifies the person as being a member of his or her family unit.

**2.07AE Applications for Designated Parent visas**

For section 45 and subsection 46 (1) of the Act, and in addition to regulation 2.07, an application for a Designated Parent (Migrant) (Class BY) or Designated Parent (Residence) (Class BZ) visa is validly made if the applicant:

- (a) is invited in writing by the Minister to apply for the visa; and
- (b) indicates in writing to Immigration that he or she accepts that invitation.

**2.07AF Certain applications for Student (Temporary) (Class TU) visas**

- (1) Despite anything in regulation 2.07, an application for a student visa that, under paragraph 1222 (1) (a), may be made on form 157E may be made on behalf of an applicant.

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- (2) An application that is made on form 157E is taken to have been made outside Australia.
- (3) An application made on form 157A, 157A (Internet), 157E or 157G by a person who seeks to satisfy the primary criteria (the *primary applicant*) must include:
  - (a) the name, date of birth and citizenship of each person who is a member of the family unit of the applicant at the time of the application; and
  - (b) the relationship between the person and the applicant.
- (4) If a person becomes a member of the family unit of the primary applicant after the time of application and before the time of decision, the primary applicant must inform the Minister, in writing, of:
  - (a) the name, date of birth and citizenship of the person and
  - (b) the relationship between the person and the primary applicant.
- (5) Subregulations (3) and (4) apply:
  - (a) whether or not the member of the family unit is an applicant for a Student (Temporary) (Class TU) visa; and
  - (b) if the member of the family unit is not an applicant for a Student (Temporary) (Class TU) visa — whether or not the member of the family unit intends to become an applicant for a Student (Temporary) (Class TU) visa.

*Note* *member of the family unit* of an applicant for a Student (Temporary) (Class TU) visa is defined in subregulation 1.12 (2).
- (6) An application made under paragraph 1222 (3) (aa) of Schedule 1 is taken to have been made outside Australia.

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

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 Class VB or Class VC visa.

**2.07AH Applications for certain substantive visas by persons for whom condition 8534 has been waived under subregulation 2.05 (6)**

For section 46 of the Act, if:

- (a) condition 8534 has been waived under subregulation 2.05 (6) in relation to a visa held by a person; and
- (b) the first application for a substantive visa that the person makes after the waiver of the condition is made in Australia;

the application is taken to have been validly made only if it is an application for a Subclass 457 (Business (Long Stay)) visa.

**2.07AI Applications for certain substantive visas by persons holding Subclass 173 or 884 visas**

- (1) For section 46 of the Act, an application for a substantive visa by a person in Australia who has, at any time since last entering Australia, held a Subclass 173 (Contributory Parent (Temporary)) visa is a valid application only if the application is for:
  - (a) a Contributory Parent (Migrant) (Class CA) visa; or
  - (b) a Medical Treatment (Visitor) (Class UB) visa; or
  - (c) a protection visa.
- (2) For section 46 of the Act, an application for a substantive visa by a person in Australia who has, at any time since last entering Australia, held a Subclass 884 (Contributory Aged Parent (Temporary)) visa is a valid application only if the application is for:
  - (a) a Contributory Aged Parent (Residence) (Class DG) visa; or
  - (b) a Medical Treatment (Visitor) (Class UB) visa; or
  - (c) a protection visa.

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**2.07AK Applications for Witness Protection (Trafficking)  
(Permanent) (Class DH) visas**

- (1) For subsection 46 (2) of the Act, a Witness Protection (Trafficking) (Permanent) (Class DH) visa is a prescribed class of visa.

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

- it is an application for a class of visa that is prescribed for that subsection; and
- under the regulations, the application is taken to have been validly made.

- (2) An application for a visa of a class mentioned in subregulation (1) is taken to have been validly made by a person only if the requirements of subregulation (3) or (4) are met.

- (3) The requirements of this subregulation are met for a person if:

- (a) the person is in Australia; and
- (c) the Attorney-General (or a person authorised by the Attorney-General) has issued a certificate in relation to the person to the effect that:
  - (i) the person made a contribution to, and cooperated closely with, the prosecution of a person who was alleged to have trafficked a person or who was alleged to have forced a person into exploitative conditions (whether or not the person was convicted); or
  - (ii) the person made a contribution to, and cooperated closely with, an investigation in relation to which the Director of Public Prosecutions has decided not to prosecute a person who was alleged to have trafficked a person or who was alleged to have forced a person into exploitative conditions; and
- (d) the Attorney-General's certificate is in force; and
- (e) the person is not the subject of a prosecution for an offence that is directly connected to the prosecution mentioned in the Attorney-General's certificate; and



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- (f) the Minister is satisfied that the person would be in danger if he or she returned to his or her home country; and
- (g) an offer of stay in Australia is made to the person by an authorised officer; and
- (h) the person indicates in writing that he or she accepts the offer, not later than:
  - (i) 28 days after the person is taken to have received the offer; or
  - (ii) a later date determined by an authorised officer.

*Note* See section 494C of the Act for when a person is taken to have received a document given by one of the methods specified in section 494B of the Act.

- (4) The requirements of this subregulation are met for a person (the **first person**) if:
  - (a) a person (the **second person**) is taken to have validly made an application for a visa of a class mentioned in subregulation (1) in accordance with subregulation (3); and
  - (b) the second person identifies the first person as being a member of the immediate family of the second person in the second person's written acceptance under paragraph (3) (h).
- (5) For subregulation (4), the first person may be in or outside Australia.

**2.07AL Applications for certain visas by contributory parent newborn children**

- (1) For section 46 of the Act, an application by a contributory parent newborn child for a Subclass 173 (Contributory Parent (Temporary)) visa is a valid application only if the parent holds or held:
  - (a) a Subclass 173 (Contributory Parent (Temporary)) visa; or
  - (b) a bridging visa, and the last substantive visa held by that parent was a Subclass 173 (Contributory Parent (Temporary)) visa.

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- (2) For section 46 of the Act, an application by a contributory parent newborn child for a Subclass 884 (Contributory Aged Parent (Temporary)) visa is a valid application only if the parent holds or held:
- (a) a Subclass 884 (Contributory Aged Parent (Temporary)) visa; or
  - (b) a bridging visa, and the last substantive visa held by that parent was a Subclass 884 (Contributory Aged Parent (Temporary)) visa.

**2.07AM Applications for Refugee and Humanitarian (Class XB) visas**

An application made under paragraph 1402 (3) (a) of Schedule 1 is taken to have been made outside Australia.

**2.07AO Applications for certain substantive visas by specified persons**

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

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

- (2) The person is a person:
- (a) who, on the day on which this regulation commences, is in Australia and holds, or has held:
    - (i) a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa; or
    - (ii) a Subclass 451 (Secondary Movement Relocation (Temporary)) visa; or
    - (iii) a Subclass 785 (Temporary Protection) visa; and
  - (b) whose visa mentioned in paragraph (a) has not been cancelled; and
  - (c) who has not left Australia between first holding the visa mentioned in paragraph (a) and the time of first applying for a visa mentioned in subregulation (3); and

- (d) to whom the Minister has not refused to grant a Protection (Class XA) visa on the grounds set out in section 501 of the Act; and
  - (e) who, at the time of first making an application for a visa of a kind mentioned in subregulation (3), holds:
    - (i) a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa; or
    - (ii) a Subclass 451 (Secondary Movement Relocation (Temporary)) visa; or
    - (iii) a Subclass 785 (Temporary Protection) visa; or
    - (iv) a Return Pending (Temporary) (Class VA) visa; and
  - (f) who:
    - (i) has not been refused a visa; and
    - (ii) has not had a visa cancelled;on grounds relying on 1 or more of Articles 1F, 32 or 33 (2) of the Refugees Convention.
- (3) The visas are:
- (a) a Subclass 415 (Foreign Government Agency) visa; and
  - (b) a Subclass 418 (Educational) visa; and
  - (c) a Subclass 419 (Visiting Academic) visa; and
  - (d) a Subclass 420 (Entertainment) visa; and
  - (e) a Subclass 421 (Sport) visa; and
  - (f) a Subclass 422 (Medical Practitioner) visa; and
  - (g) a Subclass 423 (Media and Film Staff) visa; and
  - (i) a Subclass 427 (Domestic Worker (Temporary) — Executive) visa; and
  - (j) a Subclass 428 (Religious Worker) visa; and
  - (k) a Subclass 442 (Occupational Trainee) visa; and
  - (l) a Subclass 445 (Dependent Child) visa; and
  - (m) a Subclass 457 (Business (Long Stay)) visa; and
  - (n) a Subclass 571 (Schools Sector) visa; and
  - (o) a Subclass 572 (Vocational Education and Training Sector) visa; and

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- (p) a Subclass 573 (Higher Education Sector) visa; and
- (q) a Subclass 574 (Postgraduate Research Sector) visa; and
- (r) a Subclass 580 (Student Guardian) visa; and
- (ra) a Subclass 676 (Tourist) visa; and
- (s) a Subclass 685 (Medical Treatment (Long Stay)) visa; and
- (t) a Subclass 686 (Tourist (Long Stay)) visa; and
- (u) a Subclass 801 (Partner) visa; and
- (v) a Subclass 802 (Child) visa; and
- (w) a Subclass 804 (Aged Parent) visa; and
- (y) a Subclass 820 (Partner) visa; and
- (za) a Subclass 837 (Orphan Relative) visa; and
- (zb) a Subclass 838 (Aged Dependant Relative) visa; and
- (zc) a Subclass 855 (Labour Agreement) visa; and
- (zd) a Subclass 856 (Employer Nomination Scheme) visa; and
- (ze) a Subclass 857 (Regional Sponsored Migration Scheme) visa; and
- (zf) a Subclass 858 (Distinguished Talent) visa; and
- (zg) a Subclass 864 (Contributory Aged Parent) visa; and
- (zh) a Subclass 884 (Contributory Aged Parent (Temporary)) visa; and
- (zi) a Subclass 890 (Business Owner) visa; and
- (zj) a Subclass 892 (State/Territory Sponsored Business Owner) visa.

**2.07AP Applications for Maritime Crew (Temporary) (Class ZM) visas**

Despite anything in regulation 2.07, an application for a Maritime Crew (Temporary) (Class ZM) visa may be made on behalf of an applicant.

*Example*

For convenience, an application for a Maritime Crew (Temporary) (Class ZM) visa could be completed and lodged by a third party such as a shipping agent or a manning agent, on behalf of a member of crew of a non-military ship or the spouse, de facto partner or dependent child of a member of the crew.

## **2.07AQ Applications for Resolution of Status (Class CD) visas**

- (1) For subsection 46 (2) of the Act, a Resolution of Status (Class CD) visa is a prescribed class of visa.
- (2) An application for a Resolution of Status (Class CD) visa is taken to have been validly made by a person only if the requirements of subregulation (3) or item 1127AA of Schedule 1 have been met.
- (3) The requirements of this subregulation are met for a person if the criteria set out in at least 1 of the items of the table are satisfied.

<b>Item</b>	<b>Criterion 1</b>	<b>Criterion 2</b>	<b>Criterion 3</b>	<b>Criterion 4</b>
1	The person makes a valid application for a Protection (Class XA) visa	<p>The person holds:</p> <p>(a) a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa; or</p> <p>(b) a Subclass 451 (Secondary Movement Relocation (Temporary)) visa; or</p> <p>(c) a Subclass 695 (Return Pending) visa; or</p> <p>(d) a Subclass 785 (Temporary Protection) visa</p>	Nil	Nil

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Item	Criterion 1	Criterion 2	Criterion 3	Criterion 4
2	The person makes a valid application for a Protection (Class XA) visa	The person held, but no longer holds, a visa of a kind mentioned in criterion 2 of item 1, and the visa was not cancelled	The person: <ul style="list-style-type: none"> <li>(a) has not left Australia; or</li> <li>(b) while holding a visa that permits re-entry to Australia, has left and re-entered Australia</li> </ul>	The person does not hold a permanent visa
3	The person holds: <ul style="list-style-type: none"> <li>(a) a Temporary Safe Haven (Class UJ) visa; or</li> <li>(b) a Temporary (Humanitarian Concern) (Class UO) visa</li> </ul>	An offer of a permanent stay in Australia is made to the person by the Australian Government	The person indicates to an authorised officer that he or she accepts the offer of a permanent stay in Australia	The authorised officer endorses, in writing, the person's acceptance of the offer
4	The person is a member of the family unit of a person who is taken to have made a valid application as a result of satisfying the criteria in item 3	An offer of a permanent stay in Australia is made to the person by the Australian Government	The person indicates to an authorised officer that he or she accepts the offer of a permanent stay in Australia	The authorised officer endorses, in writing, the person's acceptance of the offer

(4) If:

- (a) the application for the Resolution of Status (Class CD) visa is taken to have been validly made because the criteria in item 1 or 2 of the table in subregulation (3) have been satisfied; and

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- (b) the application for the Protection (Class XA) visa mentioned in the item was made before 9 August 2008; the application is taken to have been made on 9 August 2008.
- (5) If:
  - (a) the application for the Resolution of Status (Class CD) visa is taken to have been validly made because the criteria in item 1 or 2 of the table in subregulation (3) have been satisfied; and
  - (b) the application for the Protection (Class XA) visa mentioned in the item is made on or after 9 August 2008; the application is taken to have been made when the application for the Protection (Class XA) visa is made.
- (6) If the application for the Resolution of Status (Class CD) visa is taken to have been validly made because the criteria in item 3 or 4 of the table in subregulation (3) have been satisfied, the application is taken to have been made when the authorised officer endorses the person's acceptance of the offer as described in the item.
- (7) Subregulation (2) applies whether or not the applicant holds, or held, a Subclass 447 (Secondary Movement Offshore Entry (Temporary)) visa, a Subclass 451 (Secondary Movement Relocation (Temporary)) visa, a Subclass 695 (Return Pending) visa or a Subclass 785 (Temporary Protection) visa that is, or was, subject to a condition mentioned in paragraph 41 (2) (a) of the Act relating to the making of applications for other visas.

**2.07AR Applications for Superyacht Crew (Temporary) (Class UW) visas**

Despite anything in regulation 2.07, an application for a Superyacht Crew (Temporary) (Class UW) visa may be made on behalf of an applicant.

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**2.08      Application by newborn child**

- (1) If:
  - (a) a non-citizen applies for a visa; and
  - (b) after the application is made, but before it is decided, a child, other than a contributory parent newborn child, is born to the non-citizen;then:
  - (c) the child is taken to have applied for a visa of the same class at the time he or she was born; and
  - (d) the child's application is taken to be combined with the non-citizen's application.
- (2) Despite any provision in Schedule 2, a child referred to in subregulation (1):
  - (a) must satisfy the criteria to be satisfied at the time of decision; and
  - (b) at the time of decision must satisfy a criterion (if any) applicable at the time of application that an applicant must be sponsored, nominated or proposed.

*Note* Regulations 2.07AL and 2.08AA apply in relation to an application by a contributory parent newborn child.

**2.08AA   Application by contributory parent newborn child**

- (1) Despite any provision in Schedule 2, a contributory parent newborn child who applies for a Contributory Parent (Temporary) (Class UT) visa or a Contributory Aged Parent (Temporary) (Class UU) visa:
  - (a) does not have to satisfy the secondary criteria in Schedule 2 that would, but for this subregulation, need to be satisfied at the time of application; and
  - (b) must satisfy the applicable secondary criteria to be satisfied at the time of decision.
- (2) Despite any provision in Schedule 1, a contributory parent newborn child:
  - (a) who is the holder of a Subclass 173 (Contributory Parent (Temporary)) visa or a Subclass 884 (Contributory Aged Parent (Temporary)) visa; and



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- (b) whose parent has applied for a Contributory Parent (Migrant) (Class CA) visa or a Contributory Aged Parent (Residence) (Class DG) visa, and either:
  - (i) that application has not been finally determined; or
  - (ii) the parent has been granted the permanent visa;is taken to have made a combined application for the permanent visa, mentioned in paragraph (b), with the parent.
- (3) For subregulation (2), the contributory parent newborn child is taken to have made the application:
  - (a) if the child was in Australia when the temporary visa was granted — on the grant of the temporary visa to the child; or
  - (b) if the child was outside Australia when the temporary visa was granted — immediately after the child is immigration cleared.

**2.08AB Application for visa — prescribed circumstances**

For paragraph 46 (2A) (a) of the Act, the circumstance is that the application is for a visa that is not:

- (a) a bridging visa; or
- (b) a Witness Protection (Trafficking) (Permanent) (Class DH) visa.

*Note* Section 46 of the Act sets out the conditions for a valid visa application. Subsection 46 (2A) provides that a visa application is invalid in prescribed circumstances, if the other conditions mentioned in that subsection also apply.

**2.08AC Application for visa — personal identifiers**

- (1) For paragraph 46 (2AC) (a) of the Act, fingerprints of a person (including those taken using paper and ink or digital livescanning technologies) are prescribed.
- (2) For paragraph 46 (2AC) (b) of the Act, a personal identifier must not be required if:
  - (a) the personal identifier is:

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- (i) fingerprints of the applicant (including those taken using paper and ink or digital liveness technologies); or
    - (ii) a photograph or other image of the applicant's face and shoulders; and
  - (b) the circumstance is that:
    - (i) the application is for a bridging visa or a Witness Protection (Trafficking) (Permanent) (Class DH) visa; and
    - (ii) the applicant is outside Australia at the time of application.
- (3) For subsection 46 (2C) of the Act:
  - (a) a circumstance is that the application is for a visa other than a bridging visa or a Witness Protection (Trafficking) (Permanent) (Class DH) visa; and
  - (b) a personal identifier is:
    - (i) a photograph or other image of the applicant's face and shoulders; or
    - (ii) the applicant's signature.
- (4) For subsection 46 (2C) of the Act:
  - (a) a circumstance is that:
    - (i) the application:
      - (A) is not an application for a bridging visa that is made by an applicant who is outside Australia at the time of the application; and
      - (B) is not an application for a Witness Protection (Trafficking) (Permanent) (Class DH) visa that is made by an applicant who is outside Australia at the time of application; and
    - (ii) the personal identifier mentioned in paragraph (b) is to be provided at a place specified by the Minister in an instrument in writing for this subparagraph; and
  - (b) a personal identifier is:
    - (i) fingerprints of a person (including those taken using paper and ink or digital liveness technologies); or

- (ii) a photograph or other image of the applicant's face and shoulders.

*Note* Section 46 of the Act sets out the conditions for a valid visa application. Subsection 46 (2C) provides that, in prescribed circumstances, prescribed types of personal identifiers may be provided by an applicant otherwise than by way of an identification test carried out by an authorised officer (in accordance with subsection 46 (2B)), if the applicant complies with any requirements that are prescribed relating to the provision of the personal identifier.

## **2.08A Addition of certain applicants to certain applications for permanent visas**

- (1) If:
  - (a) a person (in this regulation called *the original applicant*) applies for a permanent visa of a class for which Schedule 1 permits combined applications; and
  - (b) after the application is made, but before it is decided, the Minister receives, in writing and in accordance with Division 2.3, a request from the original applicant to have:
    - (i) the spouse or de facto partner; or
    - (ii) a dependent child;of the original applicant (the *additional applicant*) added to the original applicant's application; and
  - (c) the request includes a statement that the original applicant claims that the additional applicant is:
    - (i) the spouse or de facto partner; or
    - (ii) a dependent child;as the case requires, of the original applicant; and
  - (d) at the time when the Minister receives the request, the additional applicant satisfies the provisions of Schedule 1 that relate to the whereabouts of an applicant at the time of application and apply to a visa of the same class;then:
  - (e) the additional applicant is taken to have applied for a visa of the same class; and

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- (f) the application of the additional applicant:
  - (i) is taken to have been made at the time when the Minister receives the request; and
  - (ii) is taken to be combined with the application of the original applicant; and
  - (iii) is taken to have been made at the same place as, and on the same form as, the application of the original applicant.
- (2) Despite any provision in Schedule 2, the additional applicant:
  - (a) must be, at the time when the application is taken to be made under subparagraph (1) (f) (i), a person who satisfies the applicable secondary criteria to be satisfied at the time of application; and
  - (b) must satisfy the applicable secondary criteria to be satisfied at the time of decision.
- (2A) Subregulations (1) and (2) do not apply to an applicant for:
  - (b) a Skilled — Independent Overseas Student (Residence) (Class DD) visa; or
  - (c) a Skilled — Australian-sponsored Overseas Student (Residence) (Class DE) visa; or
  - (f) a Skilled (Residence) (Class VB) visa.

*Note* Regulations 2.07AL and 2.08AA apply in relation to an application by a contributory parent newborn child.

**2.08B    Addition of certain dependent children to certain applications for temporary visas**

- (1) If:
  - (a) a person (*the original applicant*) applies for:
    - (i) an Extended Eligibility (Temporary) (Class TK) visa; or
    - (ii) an Interdependency (Provisional) (Class UG) visa; or
    - (iii) a Prospective Marriage (Temporary) (Class TO) visa; or
    - (iv) a Resolution of Status (Temporary) (Class UH) visa; or

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- (v) a Spouse (Provisional) (Class UF) visa; or
  - (vi) a Partner (Provisional) (Class UF) visa; or
  - (vii) a Partner (Temporary) (Class UK) visa; or
  - (viii) a Business Skills (Provisional) (Class UR) visa; or
  - (ix) a Skilled — Independent Regional (Provisional) (Class UX) visa; or
  - (x) a Skilled (Provisional) (Class VC) visa; or
  - (xi) a Skilled (Provisional) (Class VF) visa; or
  - (xii) a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa; and
  - (b) the Minister receives, in writing and in accordance with Division 2.3, a request from the original applicant to have a dependent child of the original applicant added to the original applicant's application; and
  - (ba) the request is received:
    - (i) for a request in relation to an application other than an application for a Resolution of Status (Temporary) (Class UH) visa — after the application is made but before it is decided; or
    - (ii) for a request in relation to an application for a Resolution of Status (Temporary) (Class UH) visa:
      - (A) after the application is made but before it is decided; or
      - (B) after a decision to grant the visa is made; and
  - (c) the request includes a statement that the original applicant claims that the dependent child is the dependent child of the original applicant; and
  - (d) at the time when the Minister receives the request, the dependent child satisfies the provisions of Schedule 1 that relate to the whereabouts of an applicant at the time of application and apply to a visa of the same class; and
  - (da) where the visa applied for by the original applicant is a Resolution of Status (Temporary) (Class UH) visa, the Minister is satisfied that compelling and compassionate circumstances exist for the dependent child to be added to the applicant's application;
- then:

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- (e) the dependent child is taken to have applied for a visa of the same class; and
- (f) the application of the dependent child:
  - (i) is taken to have been made at the time when the Minister receives the request; and
  - (ii) is taken to be combined with the application of the original applicant; and
  - (iii) is taken to have been made at the same place as, and on the same form as, the application of the original applicant.
- (2) Despite any provision in Schedule 2, the dependent child:
  - (a) must be, at the time when the application is taken to be made under subparagraph (1) (f) (i), a person who satisfies the applicable secondary criteria to be satisfied at the time of application; and
  - (b) must satisfy the applicable secondary criteria to be satisfied at the time of decision.

**2.08BA Certain holders of Subclass 450 visas taken to have applied for Resolution of Status (Residence) (Class BL) visas**

Despite any provision in Schedule 1, a person who is the holder of a Subclass 450 (Resolution of Status — Family Member (Temporary)) visa is taken to have made a valid application for a Resolution of Status (Residence) (Class BL) visa immediately after the person is immigration cleared in relation to the person's first entry into Australia as the holder of a Subclass 450 visa.

**2.08C Certain applicants taken to have applied also for Employer Nomination (Migrant) (Class AN) visas and Labour Agreement (Migrant) (Class AU) visas**

- (1) This regulation applies to a person (the *applicant*):
  - (a) who has applied for:
    - (i) an Independent (Migrant) (Class AT) visa; or

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- (ii) a Skilled — Independent (Migrant) (Class BN) visa; or
    - (iii) a Skilled — Australian-sponsored (Migrant) (Class BQ) visa; or
    - (iv) a Skill Matching (Migrant) (Class BR) visa; and
  - (b) for whom the requirements mentioned in subregulation (2) are met.
- (2) The requirements are that:
- (a) the applicant was less than 45 years old at the time of the application for the Class AT, BN, BQ or BR visa; and
  - (b) a decision to grant, or refuse to grant, to the applicant a Subclass 126 (Independent), Subclass 134 (Skill Matching), Subclass 136 (Skilled — Independent) or Subclass 138 (Skilled — Australian-sponsored) visa has not been made; and
  - (c) for an applicant for a Class AT or BN visa — the applicant:
    - (i) has been assessed in relation to a Subclass 126 (Independent) or Subclass 136 (Skilled — Independent) visa under Subdivision B of Division 3 of Part 2 of the Act; and
    - (ii) was given an assessed score that was at least the applicable pool mark at the time the score was assessed; and
  - (d) the applicant:
    - (i) for a Class AT visa:
      - (A) has functional English; and
      - (B) has a diploma (within the meaning of subregulation 2.26 (5)) or higher qualification; and
    - (ii) for a Class BN visa:
      - (A) has vocational English; and
      - (B) has a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification; and

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- (iii) for a Class BQ visa:
    - (A) has vocational English; and
    - (B) has a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification; and
  - (iv) for a Class BR visa:
    - (A) has functional English; and
    - (B) has a diploma (within the meaning of subregulation 2.26A (6)) or higher qualification.
- (3) Subregulation (4) applies to an applicant who has been nominated by an employer for an appointment in the business of the employer, if the appointment is an approved appointment in accordance with subregulation 5.19 (2) or (4).
- (4) The applicant is taken also to have applied for an Employer Nomination (Migrant) (Class AN) visa on the day when Immigration receives the employer nomination.
- (5) If subregulation (4) applies to an applicant for a Class AT, BN, BQ or BR visa:
  - (a) the applicant's application for an Employer Nomination (Migrant) (Class AN) visa is taken to have been made outside Australia; and
  - (b) any other person included in the applicant's application for a Class AT, BN, BQ or BR visa is taken also to be included in the applicant's application for an Employer Nomination (Migrant) (Class AN) visa.
- (6) Subregulation (7) applies to an applicant who seeks to enter Australia in accordance with a labour agreement, an RHQ agreement or an IASS agreement, if Immigration has received evidence of the applicant's appointment by an employer authorised under the labour agreement, RHQ agreement or IASS agreement to recruit persons.
- (7) The applicant is taken also to have applied for a Labour Agreement (Migrant) (Class AU) visa on the day when Immigration receives the evidence mentioned in subregulation (6).



- (8) If subregulation (7) applies to an applicant for a Class AT, BN, BQ or BR visa:
- (a) the applicant's application for an Labour Agreement (Migrant) (Class AU) visa is taken to have been made outside Australia; and
  - (b) any other person included in the applicant's application for a Class AT, BN, BQ or BR visa is taken also to be included in the applicant's application for an Labour Agreement (Migrant) (Class AU) visa.

**2.08CA Certain applicants for Skilled — New Zealand Citizen (Residence) (Class DB) visas taken to have applied also for Employer Nomination (Residence) (Class BW) visas**

- (1) An applicant for a Skilled — New Zealand Citizen (Residence) (Class DB) visa, who has been nominated by an employer in respect of an appointment in the business of that employer but is not sponsored by a person, is taken also to have applied for an Employer Nomination (Residence) (Class BW) visa on the day when Immigration receives the employer nomination, if each of the following requirements is satisfied as at that date:
- (a) the applicant was less than 45 years of age at the time of the application for the Class DB visa;
  - (b) a decision to grant, or refuse to grant, to the applicant a Subclass 861 (Skilled — Onshore Independent New Zealand Citizen) visa has not been made;
  - (c) the applicant:
    - (i) has been assessed in relation to a Subclass 861 visa under Subdivision B of Division 3 of Part 2 of the Act; and
    - (ii) was given an assessed score that is more than or equal to the applicable pool mark at the time when the score was assessed;
  - (d) the appointment for which the applicant has been nominated is an approved appointment for regulation 5.19 on the basis that the nomination meets the requirements of subregulation (4) of that regulation;

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- (e) the applicant:
  - (i) has vocational English; and
  - (ii) has a diploma (within the meaning of subregulation 2.26A (6)) or a higher qualification.
- (2) If subregulation (1) applies to an applicant for a Class DB visa, any other person included in the applicant's application is taken also to be included in the applicant's application for an Employer Nomination (Residence) (Class BW) visa.

**2.08CB Certain applicants taken to have applied also for Employer Nomination (Residence) (Class BW) visas**

- (1) This regulation applies to a person (the *applicant*) who:
  - (a) either:
    - (i) has applied for a Skilled — Independent Overseas Student (Residence) (Class DD) visa; or
    - (ii) both:
      - (A) has applied for a Skilled — Australian-sponsored Overseas Student (Residence) (Class DE) visa; and
      - (B) seeks to satisfy the primary criteria for the grant of a Subclass 881 (Skilled — Australian-sponsored Overseas Student) visa; and
  - (b) has been nominated by an employer in respect of an appointment in the business of that employer that is an approved appointment for regulation 5.19 on the basis that the nomination meets the requirements of subregulation 5.19 (4).
- (2) An applicant is taken also to have applied for an Employer Nomination (Residence) (Class BW) visa on the day on which the appointment mentioned in paragraph (1) (b) is approved, if each of the following requirements is satisfied as at that day:
  - (a) the applicant was less than 45 at the time of the application for the Class DD or Class DE visa;

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- (b) a decision to grant, or refuse to grant, to the applicant a Subclass 880 (Skilled — Independent Overseas Student) visa or a Subclass 881 (Skilled — Australian-sponsored Overseas Student) visa has not been made;
- (c) the applicant:
  - (i) has vocational English; and
  - (ii) has a diploma (within the meaning of subregulation 2.26A (6)) or a higher qualification.
- (3) If subregulation (2) applies to an applicant for a Class DD or Class DE visa, any other person included in the applicant's application is taken also to be included in the applicant's application for an Employer Nomination (Residence) (Class BW) visa.

**2.08CC Certain applicants taken to have applied also for Labour Agreement (Residence) (Class BV) visas**

- (1) This regulation applies to a person (the *applicant*) who:
  - (a) either:
    - (i) has applied for a Skilled — Independent Overseas Student (Residence) (Class DD) visa; or
    - (ii) both:
      - (A) has applied for a Skilled — Australian-sponsored Overseas Student (Residence) (Class DE) visa; and
      - (B) seeks to satisfy the primary criteria for the grant of a Subclass 881 (Skilled — Australian-sponsored Overseas Student) visa; and
  - (b) seeks to enter Australia in accordance with a labour agreement, an RHQ agreement or an IASS agreement.
- (2) An applicant to whom this regulation applies is taken also to have applied for a Labour Agreement (Residence) (Class BV) visa on the day on which Immigration receives evidence of the applicant's appointment by an employer authorised under the labour agreement, RHQ agreement or IASS agreement to recruit persons, if each of the following requirements is satisfied as at that date:

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- (a) the applicant was less than 45 at the time of the application for the Class DD or Class DE visa;
- (b) a decision to grant, or refuse to grant, to the applicant a Subclass 880 (Skilled — Independent Overseas Student) visa or a Subclass 881 (Skilled — Australian-sponsored Overseas Student) visa has not been made;
- (c) the applicant:
  - (i) has vocational English; and
  - (ii) has a diploma (within the meaning of subregulation 2.26A (6)) or a higher qualification.
- (3) If subregulation (2) applies to an applicant for a Class DD or Class DE visa, any other person included in the applicant's application is taken also to be included in the applicant's application for a Labour Agreement (Residence) (Class BV) visa.

**2.08D    Certain applicants for Independent (Migrant) (Class AT) or Skilled – Australian-linked (Migrant) (Class AJ) visas may make further application**

- (1) This regulation applies to a person if:
  - (a) the person applied for an Independent (Migrant) (Class AT) visa or a Skilled – Australian-linked (Migrant) (Class AJ) visa; and
  - (b) on or after 1 July 1999, the Minister made an assessment under subsection 93 (1) of the Act in relation to that application; and
  - (c) the Minister has refused to grant the visa, or the application was taken to be put into a pool under paragraph 94 (3) (b) of the Act; and
  - (d) the Minister is satisfied, from information available to the Minister, that, if the person had applied for:
    - (i) a Skilled — Independent (Migrant) (Class BN) visa; or
    - (ii) a Skilled — Australian-sponsored (Migrant) (Class BQ) visa; or

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- (iii) a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa;

it is likely that the visa would have been granted.

- (2) The Minister may invite the person to make an application (a *further application*) for:
  - (a) a Skilled — Independent (Migrant) (Class BN) visa; or
  - (b) a Skilled — Australian-sponsored (Migrant) (Class BQ) visa; or
  - (c) a Skilled — Designated Area-sponsored (Provisional) (Class UZ) visa.

*Note* If the Minister gives a person a document by a method specified in section 494B of the Act, the person is taken to have received the document at the time specified in section 494C of the Act in respect of the method.

- (3) If the person is invited to make a further application, and wishes to make the application, the application must be made not later than 12 months after the day on which the invitation is received.

**2.08DA Certain applicants for Skilled — Independent (Migrant) (Class BN) visas may make further application**

- (1) This regulation applies to a person if:
  - (a) the person applied for a Skilled — Independent (Migrant) (Class BN) visa; and
  - (b) the Minister made an assessment under subsection 93 (1) of the Act for that application; and
  - (c) the person was given an assessed score that is more than or equal to the applicable pool mark at the time when the score was assessed; and
  - (d) the Minister is satisfied that, on the basis of information available to the Minister, if the person had applied for a Skilled — Independent Regional (Provisional) (Class UX) visa, it is likely that the visa would have been granted.

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- (2) The Minister may, in writing, invite the person to make an application (a *further application*) for a Skilled — Independent Regional (Provisional) (Class UX) visa.

*Note* If the Minister gives a person a document by a method specified in section 494B of the Act, the person is taken to have received the document at the time specified in section 494C of the Act for the method.

- (3) If the person is invited to make a further application, and wishes to make the application in response to the invitation, the application must be made not later than 6 months after the day when the invitation is received.

*Note* If the person does not make an application, in response to the invitation, within the 6 months, the person may still make an application for the visa. However, making an application within the 6 months has an effect on the amount of the visa application charge payable by the person.

**2.08E      Certain applicants taken to have applied for Partner (Migrant) (Class BC) visas and Partner (Provisional) (Class UF) visas**

- (1) For subsection 46 (2) of the Act, the Partner (Migrant) (Class BC) visa and the Partner (Provisional) (Class UF) visa are prescribed classes of visa.
- (2) If:
- (a) a person (the *applicant*) applies for a Prospective Marriage (Temporary) (Class TO) visa; and
  - (b) after the application is made, but before it is decided, the applicant marries the person who was specified as the applicant's prospective spouse in the application for that visa; and
  - (c) the marriage is recognised as valid for the purposes of the Act;
- then:
- (d) the applicant is taken also to have applied for a Partner (Migrant) (Class BC) visa and a Partner (Provisional) (Class UF) visa on the day Immigration receives notice of the marriage; and
  - (e) the applications are taken to be validly made.

- (2A) Subregulation (2B) applies if:
- (a) a person (the **applicant**) applies for a Prospective Marriage (Temporary) (Class TO) visa (the **visa application**); and
  - (b) the Minister refuses to grant the visa; and
  - (c) the applicant or the sponsor of the applicant makes an application for review of the Minister's decision to the Migration Review Tribunal (the **review application**); and
  - (d) the review application is made in accordance with the Act; and
  - (e) in the period after the Minister's decision is made and before the review application is finally determined, the applicant marries the person who was specified, in the application for the visa, as the applicant's prospective spouse; and
  - (f) the applicant notifies the Migration Review Tribunal of the marriage; and
  - (g) the marriage is recognised as valid for the purposes of the Act.
- (2B) For paragraph 349 (2) (c) of the Act, the Migration Review Tribunal must remit the visa application to the Minister for reconsideration, with the direction that the application be taken also to be an application:
- (a) for:
    - (i) a Partner (Migrant) (Class BC) visa; and
    - (ii) for a Partner (Provisional) (Class UF) visa; and
  - (b) that is made on the day that the visa application is remitted to the Minister.
- (3) The amount paid by the applicant as the first instalment of the visa application charge for the Prospective Marriage (Temporary) (Class TO) visa application is taken to be payment of the first instalment of the visa application charge for the Partner (Migrant) (Class BC) visa application.

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**2.08G    Certain persons taken to have applied for Partner (Migrant) (Class BC) visas**

- (1) This regulation applies if:
  - (a) a person held, before 9 December 2002:
    - (i) a Subclass 309 (Spouse (Provisional)) visa; or
    - (ii) a Subclass 310 (Interdependency (Provisional)) visa; which the Minister decided, under section 345, 351, 391, 417, 454 or 501J of the Act, to grant to the person; and
  - (b) the person lodged form 47SP in Australia, after the Minister's decision mentioned in paragraph (a) and before 9 December 2002; and
  - (c) the first instalment of the visa application charge in relation to the lodgment of the form was paid before 9 December 2002.
- (2) On and after 9 December 2002, the lodgment of the form is taken to be a valid application by the person for a Partner (Migrant) (Class BC) visa.
- (3) This regulation applies in addition to regulation 2.08E.

**2.09    Oral applications for visas**

- (1) Subject to subregulation (2), if an item in Schedule 1 authorises oral application for a class of visa by a person in a specified class of persons, a person in that class may apply for a visa of that class by telephone to, or attendance at, an office of Immigration in Australia specified by Gazette Notice as an office at which an oral application may be made, but only at a time, or during a period, specified by Gazette Notice as a time at which, or period during which, an oral application may be made at that office.
- (2) An oral application for a Return (Residence) (Class BB) visa may be made:
  - (a) at an office of Immigration in Australia (whether specified by Gazette Notice for the purposes of subregulation (1) or not); and
  - (b) only by attendance at that office.



**2.10 Where application must be made**

- (1) For section 46 of the Act, an application for a visa (not being an Internet application) must be made in accordance with this regulation.
- (2) If an application for a visa is made outside Australia, the application must be made:
  - (a) in accordance with any requirements in:
    - (i) this Division; or
    - (ii) the item in Schedule 1 that relates to the visa; about where to make the application; or
  - (b) if there are no requirements of that kind — at a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth outside Australia.

*Note 1* Schedule 1 explains whether applications for particular visas may be made in Australia, outside Australia, or in or outside Australia.

*Note 2* A provision in this Division or in Schedule 1 may also state that an application is taken to have been made at a particular place if specified requirements are met.

- (2A) If an application for a visa is made in Australia, the application must be made:
  - (a) in accordance with any requirements in:
    - (i) this Division; or
    - (ii) the item in Schedule 1 that relates to the visa; about where to make the application; or
  - (b) if there are no requirements of that kind — at an office of Immigration in Australia.

*Note 1* Schedule 1 explains whether applications for particular visas may be made in Australia, outside Australia, or in or outside Australia.

*Note 2* A provision in this Division or in Schedule 1 may also state that an application is taken to have been made at a particular place if specified requirements are met.

- (3) An unlawful non-citizen who is located by an officer of Immigration may apply for a bridging visa directly to that officer.

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- (4) For Division 2.2 (not including regulation 2.09) and Schedule 1, an office occupied by an officer of Immigration at an airport or a detention centre is an office of Immigration.

*Note* Requirements about where the applicant must be when making an Internet application are in Schedule 1.

**2.10AA Where application must be made for certain gazetted visas**

- (1) This regulation applies to:
- (a) a person who is:
    - (i) outside Australia; and
    - (ii) a citizen of, or residing in, a foreign country specified by Gazette Notice for the purposes of this subparagraph; and
    - (iii) in that foreign country; and
  - (b) an application (other than an Internet application) made by the person for a visa that is specified by Gazette Notice for the purposes of this paragraph.
- (2) The application must be made by:
- (a) posting the application (with the correct pre-paid postage) to a post office box address specified for the visa by Gazette Notice for the purposes of this paragraph; or
  - (b) having the application delivered by a courier service to an address specified for the visa by Gazette Notice for the purposes of this paragraph.
- (3) The application is taken to have been made outside Australia.

**2.10A Notice of lodgment of application — person in immigration detention (Bridging E (Class WE) visa)**

- (1) This regulation applies in the case of an application for a Bridging E (Class WE) visa that is made by a person who is in immigration detention (the *applicant*).

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- (2) The person lodging the application (whether or not the person is the applicant) must give written notice of the application to an officer of Immigration appointed by the Secretary to be a detention review officer in the State or Territory in which the applicant is detained.

**2.10B Notice of lodgment of application — person in immigration detention (Bridging F (Class WF) visa)**

- (1) This regulation applies in the case of an application for a Bridging F (Class WF) visa that is made by a person who is in immigration detention (*the applicant*).
- (2) The person lodging the application (whether or not the person is the applicant) must give written notice of the application to an officer of Immigration appointed by the Secretary to be an authorised officer for this regulation.

**2.10C Time of making Internet application**

For these Regulations, an Internet application is taken to have been made:

- (a) if Australian Eastern Standard Time is in effect in Australia — at the time, identified using Australian Eastern Standard Time, that corresponds to the time at which the Internet application is made; or
- (b) if Australian Eastern Standard Time incorporating Daylight Saving Time in the Australian Capital Territory is in effect in Australia — at the time, identified using 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.

**2.11 Special provisions for certain visa applications that are refused**

- (1) If:
  - (a) any of the following applications for a visa (a *first application*) has been made:

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- (i) an application for a visa by a non-citizen made outside Australia;
  - (ii) an application for any of the following visas made by a non-citizen in Australia:
    - (A) a Skilled — Independent Overseas Student (Residence) (Class DD) visa;
    - (B) a Skilled — Australian-sponsored Overseas Student (Residence) (Class DE) visa;
    - (C) a Skilled — Independent Regional (Provisional) (Class UX) visa;
    - (D) a Skilled — Independent (Migrant) (Class BN) visa;
    - (E) a Skill Matching (Migrant) (Class BR) visa;
    - (F) a Skilled — Australian-sponsored (Migrant) (Class BQ) visa;
    - (G) a Skilled — New Zealand Citizen (Residence) (Class DB) visa; and
  - (b) the first application has been refused; and
  - (c) it appears to the Minister, on the basis of the information available to the Minister, that, if the non-citizen had applied for a visa of a different class, the visa would be likely to have been granted;
- the Minister may invite the non-citizen to make an application (a **further application**) for a visa of the different class.
- (2) An invitation made under subregulation (1) is to be an invitation:
    - (a) if subparagraph (a) (i) applies, and the first application was for a permanent visa — to make an application for a permanent visa; or
    - (b) if subparagraph (a) (i) applies, and the first application was for a temporary visa — to make an application for a temporary visa; or
    - (c) if subparagraph (a) (ii) applies — to make an application for a visa of a class mentioned in that subparagraph.

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(2A) However:

- (a) if the first application was for a Prospective Marriage (Temporary) (Class TO) visa, the Minister may invite the applicant to make a further application for both:
  - (i) a Spouse (Provisional) (Class UF) visa or a Partner (Provisional) (Class UF) visa; and
  - (ii) a Spouse (Migrant) (Class BC) visa or a Partner (Migrant) (Class BC) visa; and
- (b) if the first application was for both:
  - (i) a Spouse (Provisional) (Class UF) visa or a Partner (Provisional) (Class UF) visa; and
  - (ii) a Spouse (Migrant) (Class BC) visa or a Partner (Migrant) (Class BC) visa;the Minister may invite the applicant to make a further application for a Prospective Marriage (Temporary) (Class TO) visa; and
- (c) if the first application was for a Return (Residence) (Class BB) visa, the Minister may invite the applicant to make a further application for a Resident Return (Temporary) (Class TP) visa.

- (3) A review authority is not to invite a further application under subregulation (1).
- (4) The non-citizen must make the further application within 28 days (or, if the Minister in the circumstances of the case so decides, 70 days) after the day on which the non-citizen is notified of the invitation to make that application.
- (5) The actual amount that is payable by the applicant by way of the visa application charge in relation to the further application is the amount (if any) by which liability for the visa application charge in relation to the further application exceeds the actual amount of the visa application charge paid on the first application.
- (6) If the first instalment of the visa application charge payable in relation to the further application is less than the actual amount paid in relation to the first application, no refund is payable in respect of the difference.

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**2.12      Certain non-citizens whose applications refused in Australia (Act, s 48)**

- (1) For section 48 of the Act the following classes of visas are prescribed:
- (a) Partner (Temporary) (Class UK);
  - (b) Partner (Residence) (Class BS);
  - (c) Protection (Class XA);
  - (ca) subject to subregulation (3), Medical Treatment (Visitor) (Class UB);
  - (e) Territorial Asylum (Residence) (Class BE);
  - (f) Border (Temporary) (Class TA);
  - (g) Special Category (Temporary) (Class TY);
  - (h) Bridging A (Class WA);
  - (j) Bridging B (Class WB);
  - (k) Bridging C (Class WC);
  - (l) Bridging D (Class WD);
  - (m) Bridging E (Class WE);
  - (ma) Bridging F (Class WF);
  - (mb) Bridging R (Class WR);
  - (n) Resolution of Status (Temporary) (Class UH);
  - (o) Resolution of Status (Class CD);
  - (p) Child (Residence) (Class BT).
- Note* Section 48 of the Act limits further applications by a person whose visa has been cancelled, or whose application for a visa has been refused.
- (3) Paragraph (1) (ca) applies to a person if and only if he or she meets the requirements of subclause 685.212 (6) or (7) of Schedule 2.
- (4) For section 48 of the Act the following classes of visas are prescribed if, and only if, the person has received an invitation under regulation 2.11 to apply for a visa of that class:
- (a) a Skilled — Independent Overseas Student (Residence) (Class DD) visa;
  - (b) a Skilled — Australian-sponsored Overseas Student (Residence) (Class DE) visa;

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- (c) a Skilled — Independent Regional (Provisional) (Class UX) visa;
- (d) a Skilled — Independent (Migrant) (Class BN) visa;
- (e) a Skill Matching (Migrant) (Class BR) visa;
- (f) a Skilled — Australian-sponsored (Migrant) (Class BQ) visa;
- (g) a Skilled — New Zealand Citizen (Residence) (Class DB) visa.

*Note* Section 48 of the Act limits further applications by a person whose visa has been cancelled, or whose application for a visa has been refused.

**2.12AA Refusal or cancellation of visa — prohibition on applying for other visa (Act, s 501E)**

For paragraph 501E (2) (b) of the Act, a Bridging R (Class WR) visa is specified.

**2.12A Safe third country and prescribed connection (Act, s 91D)**

- (1) For paragraph 91D (1) (a) of the Act, PRC is a safe third country in relation to a person who entered Australia without lawful authority on or after 1 January 1996 and, as covered by the agreement between Australia and PRC, meets any of the following criteria:
  - (a) is a Vietnamese refugee settled in PRC;
  - (b) has been a Vietnamese refugee settled in PRC;
  - (c) is a close relative of a person mentioned in paragraph (a) or (b);
  - (d) is dependent on a person mentioned in paragraph (a) or (b).
- (2) For paragraph 91D (1) (b) of the Act, a person mentioned in subregulation (1) has a prescribed connection with PRC if, at any time before the person entered Australia:
  - (a) the person resided in PRC; or
  - (b) a parent of the person resided in PRC.

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(3) In this regulation:

- (a) *agreement between Australia and PRC* means the agreement constituted by the Memorandum of Understanding, the English text of which is set out in Schedule 11, together with the exchange of letters between representatives of Australia and PRC dated 18 September 2008 and 7 October 2008, the text of which is set out in Schedule 12; and
- (b) the use of the word *Vietnamese* is a reference to nationality or country of origin, and is not an ethnic description.

*Note 1* **PRC** is defined in regulation 1.03.

*Note 2* This regulation ceases to be in force at the end of 4 December 2010 — see subsection 91D (4) of the Act.

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

**2.12BB Application of Division 2.2AA**

This Division applies to:

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



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

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

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

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

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

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

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

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- (c) a Subclass 785 (Temporary Protection) visa;
- (d) a Subclass 695 (Return Pending) visa.

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

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

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

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

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- (qa) a Subclass 676 (Tourist) visa;
  - (r) a Subclass 686 (Tourist (Long Stay)) visa;
  - (s) a Subclass 804 (Aged Parent) visa;
  - (t) a Subclass 837 (Orphan Relative) visa;
  - (u) a Subclass 838 (Aged Dependant Relative) visa;
  - (v) a Subclass 855 (Labour Agreement) visa;
  - (w) a Subclass 856 (Employer Nomination Scheme) visa;
  - (x) a Subclass 857 (Regional Sponsored Migration Scheme) visa;
  - (y) a Subclass 858 (Distinguished Talent) visa;
  - (z) a Subclass 864 (Contributory Aged Parent) visa;
  - (za) a Subclass 884 (Contributory Aged Parent (Temporary)) visa.
- (2) Despite anything in Schedule 2 or 4 relating to whether an applicant for a visa is required to satisfy public interest criterion 4005 or 4006A:
- (a) a person mentioned in paragraph 2.12BB (a), (b) or (c) must satisfy public interest criterion 4007, instead of public interest criterion 4005, in relation to an application for a visa mentioned in subregulation (1); and
  - (b) a person mentioned in paragraph 2.12BB (a), (b) or (c) must satisfy public interest criterion 4007, instead of public interest criterion 4006A, in relation to an application for a visa mentioned in subregulation (1).
- (3) Despite anything in Schedule 2 or 4 relating to whether a person who is the subject of a criterion in Schedule 2 that applies to all members of the family unit of a person designated under regulation 2.07AO, whether or not those members are applicants for a visa, is required to satisfy public interest criterion 4005 or 4006A:
- (a) the person who is the subject of the criterion must satisfy public interest criterion 4007, instead of public interest criterion 4005, in relation to the application for that visa; and

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- (b) the person who is the subject of the criterion must satisfy public interest criterion 4007, instead of public interest criterion 4006A, in relation to the application for that visa.

**Division 2.2A            Visa application charge**

**2.12C    Amount of visa application charge (Act, section 45B)**

The visa application charge (if any) in relation to an application for a visa of a class to which an item of Schedule 1 relates is the sum of:

- (a) the amount (if any) specified in subitem (2) of that item as the first instalment (which is payable when the application is made); and
- (b) the amount (if any) specified in that subitem as the second instalment (which is payable before the grant of the visa).

*Note* See regulation 5.36 in relation to the countries and currencies in which payment of an instalment of the visa application charge may be made.

**2.12D    Prescribed period for payment of unpaid amount of visa application charge (Act, subsection 64 (2))**

For the purposes of paragraphs 64 (2) (a) and (c) of the Act, the following periods are prescribed as the periods within which an applicant must pay the second instalment of the visa application charge:

- (a) if the notice given by the Minister under subsection 64 (2) is sent from a place in Australia to an address in Australia — the period beginning on the day on which the applicant is taken to have received notice and ending at the end of the 28th day after that day;
- (b) if the notice given by the Minister under subsection 64 (2) is sent from:
  - (i) a place outside Australia to an address in Australia;  
or
  - (ii) a place in Australia to an address outside Australia;  
or

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(iii) a place outside Australia to an address outside Australia;

the period beginning on the day on which the applicant is taken to have received notice and ending at the end of the 70th day after that day.

*Note* If the Minister gives a person a document by a method specified in section 494B of the Act, the person is taken to have received the document at the time specified in section 494C of the Act in respect of the method.

**2.12E Payment of first instalment of visa application charge not required for certain combined applications**

In spite of any other provision of these Regulations, an applicant is not liable to pay the first instalment of the visa application charge in relation to an application for a visa if:

- (a) the application is combined with another application in a way permitted by the relevant item in Schedule 1, or by regulation 2.08, 2.08A or 2.08B; and
- (b) the first instalment (if any) of the visa application charge in relation to that other application has been paid.

**2.12F Refund of first instalment of visa application charge**

- (1) The Minister must refund the amount paid by way of the first instalment of the visa application charge in relation to an application for a visa if:
  - (a) either of the following circumstances exists:
    - (i) a circumstance mentioned in subregulation (2);
    - (ii) a circumstance specified by the Minister in an instrument in writing for this subparagraph; and
  - (b) the Minister:
    - (i) receives a written request for a refund from a person mentioned in subregulation (2A); or
    - (ii) considers it is reasonable in the circumstances to refund the amount to a person mentioned in subregulation (2A) without receiving a written request for a refund.

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- (2) For subparagraph (1) (a) (i), the circumstances are as follows:
- (a) the application is unnecessary at the time that it is made;
  - (b) the application is made because of a mistake made by Immigration;
  - (c) the applicant dies before a decision is made on the application;
  - (d) the application is an application made in Australia for a Tourist (Class TR) visa or a Medical Treatment (Visitor) (Class UB) visa by an applicant who:
    - (i) satisfies the Minister that the applicant meets the requirements of subclause 675.221 (4), 676.221 (3) or 685.221 (6) of Schedule 2; and
    - (ii) is granted the further visa referred to in that subclause;
  - (e) the application is an application for a Subclass 471 (Trade Skills Training) visa that was made, but not finally determined (within the meaning of subsection 5 (9) of the Act), before the date of commencement of this paragraph;
  - (f) the applicant's application for a class of visa mentioned in subregulation (2B) was refused because there was not an approved nomination that identified the applicant;
  - (g) in relation to an application for a class of visa mentioned in subregulation (2B), the applicant's application was refused because the applicant:
    - (i) was not required to be identified in an approved nomination; and
    - (ii) did not have an approved sponsor.
- (2A) For subparagraph (1) (b) (i), the written request must be from:
- (a) the person who paid the amount (the *payer*); or
  - (b) if the payer has died, or the payer has a serious physical or mental incapacity, the payer's legal personal representative; or
  - (c) if the payer is a bankrupt within the meaning of the *Bankruptcy Act 1966*, the trustee of the estate of the payer.

*Note* See regulation 2.12K in relation to who is the person who pays an amount by way of an instalment of visa application charge.

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- (2B) For paragraphs (2) (f) and (g), the classes or subclasses of visa are as follows:
- (a) 1205 Cultural/Social (Temporary) (Class TE);
  - (b) 1208 Educational (Temporary) (Class TH);
  - (c) 1214AA Medical Practitioner (Temporary) (Class UE);
  - (d) 1223A Temporary Business Entry (Class UC);
  - (e) 1227A Superyacht Crew (Temporary) (Class UW);
  - (f) Subclass 427 Domestic Worker (Temporary) – Executive.
- (3) The Minister may refund the amount paid by way of the first instalment of the visa application charge in relation to an application for a visa if:
- (a) the application was made because of a mistake by the applicant; and
  - (b) the applicant withdraws the application in writing; and
  - (c) after the withdrawal, the Minister receives a written request for a refund from:
    - (i) the person who paid the amount (the *payer*); or
    - (ii) if the payer has died, or the payer has a serious physical or mental incapacity, the payer's legal personal representative; or
    - (iii) if the payer is a bankrupt within the meaning of the *Bankruptcy Act 1966*, the trustee of the estate of the payer.
- (3A) The Minister may refund the amount paid by way of the first instalment of the visa application charge in relation to an application for a visa if:
- (a) the application is for a Temporary Business Entry (Class UC) visa; and
  - (b) the applicant withdraws the application because the criterion in paragraph 457.223 (4) (aa) of Schedule 2 cannot be satisfied; and
  - (c) the applicant withdraws the application in writing; and
  - (d) after the withdrawal, the Minister receives a written request for a refund from:
    - (i) the person who paid the amount (the *payer*); or

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- (ii) if the payer has died, or the payer has a serious physical or mental incapacity, the payer's legal personal representative; or
    - (iii) if the payer is a bankrupt within the meaning of the *Bankruptcy Act 1966*, the trustee of the estate of the payer.
  - (4) The Minister must not make a refund on the basis that the applicant has died unless the request for the refund is accompanied by satisfactory evidence of the applicant's death.
  - (5) The Minister must not make a refund to the legal personal representative of a payer who has died unless the request for the refund is accompanied by satisfactory evidence of the payer's death.
  - (6) A refund under this regulation must be:
    - (a) paid to the person who made the request for the refund; or
    - (b) if the refund is to be paid under subparagraph (1) (b) (ii) — paid to a person mentioned in subregulation (2A); or
    - (c) provided to a person mentioned in paragraph (a) or (b) for payment to the applicant's deceased estate.
  - (7) If:
    - (a) in the opinion of the Minister, there is no doubt about the identity of the payer; and
    - (b) the Minister pays the amount of the refund to:
      - (i) the payer; or
      - (ii) a person mentioned in paragraph (2A) (b) or (c); or
      - (iii) a person mentioned in subparagraph (3) (c) (ii) or (iii); or
      - (iv) a person mentioned in subparagraph (3A) (d) (ii) or (iii);
- a receipt that is given by the person to whom the refund is paid is, for all purposes, a valid discharge of any liability of the Commonwealth in relation to the payment of the amount of the refund.



- (8) A refund under this regulation may be paid:
- (a) in Australian currency; or
  - (b) if the amount of the instalment in respect of which the refund is being paid was paid in another currency, in that other currency.

**2.12G When payment of second instalment of visa application charge not required**

- (1) In spite of any other provision of these Regulations, an applicant is not liable to pay the second instalment of the visa application charge in relation to an application for a visa if:
- (a) the applicant withdraws the application before the second instalment is paid; or
  - (b) the application, having been finally determined within the meaning of subsection 5 (9) of the Act, is refused.
- (2) For the purpose of this regulation, an application is taken not to have been finally determined if, for any reason, a court remits the application to the Minister to be decided.

**2.12H Refund of second instalment of visa application charge**

- (1) The Minister must refund the amount paid by way of the second instalment of the visa application charge in relation to an application for a visa if:
- (a) any of the circumstances mentioned in subregulation (2) exists; and
  - (b) the Minister receives a written request for a refund from:
    - (i) the person who paid the amount (the *payer*); or
    - (ii) if the payer has died, or the payer has a serious physical or mental incapacity, the payer's legal personal representative; or
    - (iii) if the payer is a bankrupt within the meaning of the *Bankruptcy Act 1966*, the trustee of the estate of the payer.

*Note* See regulation 2.12K in relation to who is the person who pays an amount by way of an instalment of visa application charge.

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- (2) For paragraph (1) (a), the circumstances are as follows:
- (a) the applicant withdraws the application in writing before the application is decided;
  - (b) the applicant dies before first entering Australia as the holder of the visa;
  - (c) the application has been finally determined within the meaning of subsection 5 (9) of the Act and the visa is not granted;
  - (d) the visa is granted, and later cancelled, before the applicant first enters Australia as the holder of the visa;
  - (e) the visa is granted, and otherwise ceases, before the applicant first enters Australia as the holder of the visa;
  - (f) the amount was paid under a provision of Schedule 1 specified in an instrument in writing made by the Minister for this paragraph and:
    - (i) the applicant died before commencing a course of English language tuition to which the applicant was entitled under section 4C of the *Immigration (Education) Act 1971*; or
    - (ii) the visa was granted, and later cancelled, before the applicant commenced a course of English language tuition to which the applicant was entitled under section 4C of the *Immigration (Education) Act 1971*; or
    - (iii) the visa was granted, and ceased to have effect, before the applicant commenced a course of English language tuition to which the applicant was entitled under section 4C of the *Immigration (Education) Act 1971*; or
    - (iv) the obligation of the Commonwealth to the applicant under section 4C of the *Immigration (Education) Act 1971* has ceased, by operation of paragraph 4D (1) (a) of that Act, without the applicant receiving any English language tuition in an approved English course provided under that Act.

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- (2A) Subparagraph (2) (f) (iii) does not apply if, before the visa ceases to have effect, the Commonwealth's obligation under section 4C of the *Immigration (Education) Act 1971*, in relation to the applicant, has ceased by operation of paragraph 4D (1) (b) or (c) or subsection 4D (2) of that Act.
- (3) For this regulation, an application is taken not to have been finally determined if, for any reason, a court remits the application to the Minister to be decided.
- (4) If the request for a refund is made on the basis that:
- (a) the applicant died before first entering Australia as the holder of the visa; or
  - (b) the applicant died before commencing a course of English language tuition to which the applicant was entitled under section 4C of the *Immigration (Education) Act 1971*;
- the request must be accompanied by satisfactory evidence of the applicant's death.
- (5) If the request for the refund is made by the legal personal representative of a payer who has died, the request must be accompanied by satisfactory evidence of the payer's death.
- (7) If:
- (a) in the opinion of the Minister, there is no doubt about the identity of the payer; and
  - (b) the Minister pays the amount of the refund to the payer or to a person mentioned in subparagraph (1) (b) (ii) or (iii);
- a receipt that is given by the person to whom the refund is paid is, for all purposes, a valid discharge of any liability of the Commonwealth in relation to the payment of the amount of the refund.
- (8) A refund under this regulation may be paid:
- (a) in Australian currency; or
  - (b) if the amount of the instalment in respect of which the refund is being paid was paid in another currency, in that other currency.

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**2.12J    Refund of first and second instalments of visa application charge for Resolution of Status (Temporary) (Class UH) visas**

- (1) Without limiting regulation 2.12F or 2.12H, the Minister must refund the amount paid by way of the first and second instalments of the visa application charge in relation to an application for a Resolution of Status (Temporary) (Class UH) visa if:
  - (a) the applicant is the holder of a permanent visa other than a Resolution of Status (Residence) (Class BL) visa; and
  - (b) at the time of the grant of the permanent visa, the person was the holder of a Subclass 450 (Resolution of Status — Family Member (Temporary)) visa, or a Subclass 850 (Resolution of Status (Temporary)) visa, that was granted on the basis of an application made after the application for that permanent visa; and
  - (c) the Minister receives a written request for a refund from:
    - (i) the person who paid the amount (the *payer*); or
    - (ii) if the payer has died, or the payer has a serious physical or mental incapacity, the payer's legal personal representative; or
    - (iii) if the payer is a bankrupt within the meaning of the *Bankruptcy Act 1966*, the trustee of the estate of the payer.
- Note* See regulation 2.12K in relation to who is the person who pays an amount by way of an instalment of visa application charge.
- (2) If the request for the refund is made by the legal personal representative of a payer who has died, the request must be accompanied by satisfactory evidence of the payer's death.
- (3) A refund under this regulation must be paid to the person who made the request for the refund.
- (4) If:
  - (a) in the opinion of the Minister, there is no doubt about the identity of the payer; and

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- (b) the Minister pays the amount of the refund to the payer or to a person mentioned in subparagraph (1) (c) (ii) or (iii); a receipt that is given by the person to whom the refund is paid is, for all purposes, a valid discharge of any liability of the Commonwealth in relation to the payment of the amount of the refund.
- (5) A refund under this regulation of the amount of the second instalment of the visa application charge may be paid:
  - (a) in Australian currency; or
  - (b) if the amount of the instalment was paid in another currency, in that other currency.

**2.12JA Payment of visa application charge for Internet application**

- (1) The visa application charge in relation to an Internet application must be paid by:
  - (a) credit card, in accordance with the instructions given to the applicant as part of making the Internet application; or
  - (b) funds transfer, in accordance with the instructions given to the applicant as part of making the Internet application.
- (2) If the visa application charge is paid in accordance with paragraph (1) (a), the charge is taken not to have been received until the payment has been confirmed by the issuer of the credit card.
- (3) If the visa application charge is paid in accordance with paragraph (1) (b), the charge is taken not to have been received until the payment is electronically matched to the applicant's Internet application form.

**2.12K Who is the person who pays an instalment of visa application charge**

For regulations 2.12F, 2.12H and 2.12J, the person who pays an amount by way of an instalment of visa application charge in relation to an application for a visa is:

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- (a) if the payment is made by an agent (whether or not a registered agent within the meaning of Part 3 of the Act) on behalf of the applicant — the applicant; and
- (b) in any other case:
  - (i) if the payment is made by cheque — the drawer of the cheque; and
  - (ii) if the payment is made by a credit or debit card — the person named on the card; and
  - (iii) if the payment is made in cash — the person presenting the cash; and
  - (iv) if the payment is made by bank cheque, bank draft, money order, or other similar instrument:
    - (A) the person presenting the instrument; or
    - (B) if that person is not the person named on the instrument as the purchaser of the instrument (the *purchaser*), the purchaser.

**2.12L      Legal personal representative**

For regulations 2.12F, 2.12H and 2.12J, a person is taken to be the legal personal representative of a payer if:

- (a) the person provides satisfactory evidence to the Minister that the person is the legal personal representative of the payer; and
- (b) the Minister is satisfied, on the basis of the evidence provided by the person, that the person is the legal personal representative of the payer.

**Division 2.3                      Communication between applicant and Minister**

**2.13      Communication with Minister**

- (1) For the purposes of section 52 of the Act (which deals with the way in which an applicant or interested person must communicate with the Minister), an applicant or interested person must communicate with the Minister about a visa application in the way provided by this regulation.

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- (2) Except as provided by subregulation (3), the communication must be in writing.
- (3) The communication may be oral if it is:
  - (a) a communication about an application for a bridging visa; or
  - (b) an enquiry about the stage reached in the consideration of a visa application; or
  - (c) an oral application; or
  - (d) a communication about an application for an Electronic Travel Authority (Class UD) visa.
- (4) A written communication must include:
  - (a) the applicant's full name, as set out in the application; and
  - (b) the applicant's date of birth; and
  - (c) one of the following:
    - (i) the applicant's client number;
    - (ii) the Immigration file number;
    - (iii) the number of the receipt issued by Immigration when the visa application was made; and
  - (d) if the application was made outside Australia, the name of the office at which the application was given to the Minister.
- (5) Subject to subregulation (6), a document accompanying a written communication must be:
  - (a) the original; or
  - (b) a copy of the original certified in writing to be a true copy by:
    - (i) a Justice of the Peace; or
    - (ii) a Commissioner for Declarations; or
    - (iii) a person before whom a statutory declaration may be made under the *Statutory Declarations Act 1959*; or
    - (iv) a registered migration agent whose registration is not:
      - (A) suspended; or
      - (B) subject to a caution; or

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- (v) if the copy is certified in a place outside Australia:
  - (A) a registered migration agent mentioned in subparagraph (iv); or
  - (B) a person who is the equivalent of a Justice of the Peace or Commissioner for Declarations in that place.

*Note* Section 303 of the Act provides that the Migration Agents Registration Authority may suspend the registration of a registered migration agent or caution him or her. If a registered migration agent is subject to a suspension of his or her registration, or a caution, particulars of the suspension or caution are shown on the Register of Migration Agents: subsection 287 (2) of the Act. These particulars must be removed once the suspension or caution is no longer in effect: subsection 287 (5) of the Act.

- (6) If an applicant (other than an applicant for a Visitor (Class TV) visa) or interested person is required or permitted to produce a document in connection with the visa application, the document and the written communication that accompanies it may be in the form of an electronic communication only if:
  - (a) the document is in a class of documents specified by Gazette Notice as documents that may be sent by electronic communication; or
  - (b) the Minister has permitted the applicant or interested person to send the document by electronic communication.
- (7) For subregulation (6), if the Minister requires an applicant or interested person to give the Minister the original of a document that has already been given by electronic communication:
  - (a) the giving of the original, otherwise than by electronic communication, is a prescribed way of communication; and
  - (b) subregulation (5) applies to the original of the document.
- (8) An applicant for a Visitor (Class TV) visa must communicate with the Minister about the application:
  - (a) by electronic communication; or
  - (b) in another form permitted by the Minister.

*Note* This regulation is subject to sections 56 and 58 of the Act, which provide that the Minister may specify the way in which additional information or comments about an application may be given by an applicant. If the Minister specifies a way in which further information or



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comments must be given for the purposes of either of those sections, the information or comments must be given in that way. Regulation 2.13 then does not apply.

**2.14 Where written communication must be sent**

For the purposes of section 52 of the Act (which deals with the way in which an applicant or interested person must communicate with the Minister), a written communication to the Minister about an application must be sent to or left at:

- (a) the office at which the application was given to the Minister; or
- (b) if the Minister has notified the applicant in writing of another office in substitution for that office — that other office.

**2.15 Response to invitation to give information or comments — prescribed periods**

- (1) For the purposes of subsection 58 (2) of the Act (which deals with invitations to make comments or give further information), and subject to subregulation (2), the prescribed period for giving additional information or comments in response to an invitation is:
  - (a) in the case of an application for a substantive visa that was made by an applicant who is in immigration detention — 3 working days after the applicant is notified of the invitation; or
  - (b) in the case of an application made by a person who is in Australia, other than a person referred to in paragraph (a):
    - (i) if the invitation is given at an interview — 7 days after the interview; or
    - (ii) if the invitation is given otherwise than at an interview:
      - (A) in the case of an application for a Tourist (Class TR) visa or a Medical Treatment (Visitor) (Class UB) visa — 7 days after the applicant is notified of the invitation; or
      - (C) in any other case — 28 days after the applicant is notified of the invitation; or

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- (c) in the case of an application made by an applicant (other than an applicant for a Visitor (Class TV) visa) who is not in Australia:
    - (i) 28 days after the applicant is notified of the invitation; or
    - (ii) if the Minister so decides in the circumstances of the case — 70 days after the applicant is notified of the invitation; or
  - (d) in the case of an application made by an applicant for a Visitor (Class TV) visa:
    - (i) 7 days after the applicant is notified of the invitation; or
    - (ii) if the Minister so decides in the circumstances of the case — 70 days after the applicant is notified of the invitation.
- (2) Subregulation (1) does not apply to a request for information or comments to be obtained from a third party regarding the following matters:
  - (a) the applicant's health;
  - (b) the satisfaction by the applicant of public interest criteria;
  - (c) the satisfaction of criteria relating to the applicant's capacity to communicate in English;
  - (d) assessment of the applicant's skills or qualifications.
- (3) For the purposes of paragraph 58 (3) (b) of the Act (which deals with the time in which an interview is to take place), the prescribed period is:
  - (a) in the case of an application for a substantive visa that was made by an applicant who is in immigration detention — 3 working days after the applicant is notified of the invitation; or
  - (b) in the case of an application made by an applicant who is in Australia, other than a person referred to in paragraph (a):
    - (i) in the case of an application for a Tourist (Class TR) visa or a Medical Treatment (Visitor) (Class UB) visa — 7 days after the applicant is notified of the invitation; or

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- (iii) in any other case — 28 days after the applicant is notified of the invitation; or
- (c) in the case of an application made by an applicant who is not in Australia:
  - (i) 28 days; or
  - (ii) if the Minister so decides in the circumstances of the case — 70 days;after the applicant is notified of the invitation.
- (4) For the purposes of subsection 58 (4) or (5) of the Act (dealing with extending the period to respond to an invitation or attend for interview), the prescribed further period is:
  - (a) if the applicant is in immigration detention — 2 working days; or
  - (b) if the applicant is in Australia but is not in immigration detention — 7 days; or
  - (c) if the applicant is not in Australia:
    - (i) 7 days; or
    - (ii) if the Minister so decides in the circumstances of the case — 28 days;after the applicant is notified of the invitation.

*Note* If the Minister gives a person a document by a method specified in section 494B of the Act, the person is taken to have received the document at the time specified in section 494C of the Act in respect of the method.

**2.16 Notification of decision on visa application**

- (1) For subsections 66 (1) and 501G (3) of the Act (which deal with giving notice of decisions), this regulation sets out the way of notifying a person of a decision to grant or refuse to grant a visa.

*Grant of visa*

- (2) The Minister must notify the applicant of the grant of the visa in one of the following ways:
  - (a) if the visa is a bridging visa granted at the same time as a substantive visa — by:

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- (i) notifying the applicant of the grant of the substantive visa; or
  - (ii) giving the applicant evidence of the substantive visa;
- (aa) if the visa:
  - (i) is a special category visa; and
  - (ii) has been granted using an authorised system in accordance with an arrangement made under subsection 495A (1) of the Act — by a general notice in immigration clearance.
- (b) in any other case — by:
  - (i) telling the applicant orally that the visa has been granted; or
  - (ii) notifying the applicant by one of the methods specified in section 494B of the Act; or
  - (iii) giving the applicant evidence of the visa.

*Note* If the Minister gives a person a document by a method specified in section 494B of the Act, the person is taken to have received the document at the time specified in section 494C of the Act in respect of the method.

***Refusal to grant visa***

- (3) The Minister must notify an applicant of a decision to refuse to grant a visa by one of the methods specified in section 494B of the Act.

*Note* If the Minister gives a person a document by a method specified in section 494B of the Act, the person is taken to have received the document at the time specified in section 494C of the Act in respect of the method.

**Division 2.4                      Evidence of visas**

**2.17                      Ways of giving evidence of a visa**

- (1) For the purposes of subsection 71 (1) of the Act (which deals with giving evidence of the grant of a visa), evidence of a visa that has been granted to a non-citizen may be given:
  - (a) in the way (if any) specified in the relevant Part of Schedule 2 for a visa of that subclass; or

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- (b) if the relevant Part of Schedule 2 does not specify a way of giving evidence — by:
  - (i) a label that is affixed to the non-citizen's passport by an officer; or
  - (ii) an imprint that is stamped in the non-citizen's passport by an officer; or
  - (iii) a document that is given to the non-citizen by an officer.
- (2) Evidence of the grant of a substantive visa (other than a transitional visa) that is given by means of a visa label must include:
  - (a) a statement of the period for which the visa is in effect; and
  - (b) a statement of the class and the subclass to which the visa belongs; and
  - (c) if the visa allows the holder to travel to and enter Australia — a statement of that fact.
- (3) In a statement for the purposes of paragraph (2) (b):
  - (a) the class to which a visa belongs may be identified by the 2-letter code specified in the heading of the relevant item of Schedule 1; and
  - (b) the subclass to which a visa belongs may be identified by the 3-digit code of the relevant Part of Schedule 2.
- (4) Every document of the kind referred to in subparagraph (1) (b) (iii) must be uniquely identified (for example, by a distinctive number).
- (5) If the Minister has given to a non-citizen to whom a visa has been granted a written statement of the conditions (if any) to which the grant of the visa is subject, it is not necessary for the evidence of the visa to set out those conditions.
- (6) If:
  - (a) evidence of the grant of a visa (other than a transitional visa or a visa of a class referred to in regulation 2.18) to a non-citizen has been given to the non-citizen; and

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- (b) either:
  - (i) the evidence, or the passport or document in which it was given, has been damaged, defaced, lost, stolen or destroyed, or otherwise cannot, for good reason, be presented for travel purposes; or
  - (ii) the passport or document has expired, or has been cancelled, or is no longer applicable to that person;replacement evidence may be given to the non-citizen in any way mentioned in the Part of Schedule 2 that relates to visas of the same subclass as the visa that was granted.
- (7) In the case of a substantive visa, the replacement evidence must include:
  - (a) a statement of the period for which the visa is in effect; and
  - (b) a statement of the class and the subclass to which the visa belongs; and
  - (c) if the visa allows the holder to travel to and enter Australia, a statement of that fact.

**2.18 Re-enticing of resident return visas**

- (1) If:
  - (a) evidence of a resident return visa has been given in a passport; and
  - (b) either:
    - (i) the evidence, or the passport, has been damaged, defaced, lost, stolen or destroyed, or otherwise cannot, for good reason, be presented for travel purposes; or
    - (ii) the passport has expired, or has been cancelled, or is no longer applicable to that person;the person to whom the visa was granted may apply to the Minister for evidence of the visa to be given to the person in a passport of that person.
- (2) If the application is an Internet application:
  - (a) the application must be in accordance with approved form 1085E; and

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- (b) the applicant must be in Australia at the time of making the application; and
  - (c) the fee payable on an application is \$60.
- (2A) If the application is not an Internet application, and the applicant is in Australia at the time of making the application:
- (a) the application must:
    - (i) be in accordance with approved form 1085; or
    - (ii) be made orally, by attending an office of Immigration in Australia and presenting a valid passport; or
    - (iii) be made in writing:
      - (A) delivered to an office of Immigration in Australia; and
      - (B) accompanied by presentation of a valid passport; and
  - (b) the fee payable on an application is \$60.
- (3) If the application is not an Internet application, and the applicant is not in Australia at the time of making the application:
- (a) the application must be in accordance with approved form 1085; and
  - (b) the fee payable on application is \$100.
- (4) In this regulation, **resident return visa** means:
- (a) a Return (Residence) (Class BB) visa; or
  - (b) a Resident Return (Temporary) (Class TP) visa; or
  - (c) a Group 1.4 (resident return (permanent entry) or Class 159 (resident return (F)) visa granted under the Migration (1993) Regulations that is continued in force under the Migration Reform (Transitional Provisions) Regulations as a transitional (temporary) or transitional (permanent) visa, as the case requires; or
  - (d) a visa of one of the following classes granted under the Migration (1989) Regulations:
    - (i) return visa, class A (code number 154);
    - (ii) return visa, class B (code number 155);
    - (iii) return visa, class C (code number 156);

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- (iv) return visa, class D (code number 157);
  - (v) return visa, class E (code number 158);
  - (vi) return visa, class F (code number 159);
- that is continued in force under the Migration Reform (Transitional Provisions) Regulations as a transitional (temporary) or transitional (permanent) visa, as the case requires; or
- (e) a transitional (permanent) visa that is taken to have been granted under regulation 9 of the Migration Reform (Transitional Provisions) Regulations; or
  - (f) a Subclass 156 (One Year Return) visa.

**2.19      Evidence of visa need not be given in certain cases**

No evidence of the grant of a visa need be given:

- (a) if the relevant Part of Schedule 2 so provides; or
- (b) if the relevant Part of Schedule 2 requires the evidence to be placed in a passport, and the holder of the visa:
  - (i) does not produce a passport to an officer; or
  - (ii) produces to an officer a document that the Minister has directed, under subsection 71 (3) of the Act, is not to be taken to be a passport for the purposes of the clause of Schedule 2 under which evidence is to be given of the visa;until the holder produces a passport to an officer; or
- (c) if the visa:
  - (i) is not a Return (Residence) (Class BB) visa; and
  - (ii) is granted on the basis of an oral application.

*Note* Under subsection 71 (3) of the Act, the Minister may declare that a specified document is not to be taken to be a passport for the purposes of a provision of the Regulations that provides that evidence of a visa may be given by endorsing a valid passport or other valid travel document.



## **Division 2.5      Bridging visas**

### **2.20      Eligible non-citizen (Act, s 72)**

- (1) For the purposes of the definition of eligible *non-citizen* in section 72 of the Act (which deals with persons eligible to be granted a bridging visa), the classes of persons described in subregulations (2) to (12) and (14) and (15) are prescribed.
- (2) This subregulation applies to a non-citizen who, before 1 September 1994:
  - (a) was in custody under Division 4B of Part 2 of the Act as in force immediately before 1 September 1994; and
  - (b) was released from custody on expiry of a period referred to in subsection 54Q (1) or (2) of that Act (which deals with the release of designated persons from custody); and
  - (c) has not departed Australia since being released from custody; and
  - (d) has not subsequently been granted a visa or entry permit.
- (3) This subregulation applies to a non-citizen:
  - (a) who is, or has been, in immigration detention under Division 6 of Part 2 of the Act (which deals with the immigration detention of designated persons); and
  - (b) in respect of whom the period mentioned in subsection 182 (1) or (2) of the Act expires on or after 1 September 1994;  
from the day 2 working days before the expiry of the period mentioned in whichever of those subsections applies to the non-citizen.
- (4) This subregulation applies to a non-citizen:
  - (a) who is:
    - (i) in immigration detention under Division 6 of Part 2 of the Act; and
    - (ii) the spouse or de facto partner of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen, if the Minister is satisfied that the relationship is genuine and continuing; and

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- (iii) nominated by the Australian citizen, Australian permanent resident or eligible New Zealand citizen referred to in subparagraph (ii); or
  - (b) who is a member of the family unit of a person referred to in paragraph (a).
- (5) This subregulation applies to a non-citizen:
  - (a) who is in immigration detention under Division 6 of Part 2 of the Act; and
  - (b) who has not turned 18; and
  - (c) in respect of whom a child welfare authority of a State or Territory has certified that release from detention is in the best interests of the non-citizen; and
  - (d) in respect of whom the Minister is satisfied that:
    - (i) arrangements have been made between the non-citizen and an Australian citizen, Australian permanent resident or eligible New Zealand citizen for the care and welfare of the non-citizen; and
    - (ii) those arrangements are in the best interests of the non-citizen; and
    - (iii) the grant of a visa to the non-citizen would not prejudice the rights and interests of any person who has, or may reasonably be expected to have, custody or guardianship of, or access to, the non-citizen.
- (6) This subregulation applies to a non-citizen who:
  - (a) either:
    - (i) bypassed immigration clearance on or after 1 September 1994 and has not subsequently been granted a substantive visa; or
    - (ii) entered Australia without authority before 1 September 1994 and has not subsequently been granted a substantive visa or entry permit; and
  - (d) has not come to the notice of Immigration as an illegal entrant or an unlawful non-citizen within 45 days of entering Australia.

- (6A) This subregulation applies to a non-citizen who:
- (a) last held a student visa that was cancelled under section 137J of the Act; and
  - (b) has been refused immigration clearance.
- (7) This subregulation applies to a non-citizen:
- (a) who, on or after 1 September 1994:
    - (i) was refused immigration clearance; or
    - (ii) bypassed immigration clearance and came to the notice of Immigration as an unlawful non-citizen within 45 days of entering Australia; and
  - (b) if:
    - (i) on or after 1 September 1994:
      - (A) the non-citizen made a Protection (Class AZ) visa application that is not finally determined; or
      - (B) the non-citizen applied for judicial review of a decision to refuse a Protection (Class AZ) visa; or
      - (C) the Minister has applied for judicial review of a decision in relation to the non-citizen's Protection (Class AZ) visa application; or
    - (ii) on or after 20 October 1999:
      - (A) the non-citizen made a Protection (Class XA) visa application that is not finally determined; or
      - (B) the non-citizen applied for judicial review of a decision to refuse a Protection (Class XA) visa; or
      - (C) the Minister has applied for judicial review of a decision in relation to the non-citizen's Protection (Class XA) visa application; and
  - (c) who has not turned 18; and
  - (d) in respect of whom a child welfare authority of a State or Territory has certified that release from detention is in the best interests of the non-citizen; and
  - (e) in respect of whom the Minister is satisfied that:

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- (i) arrangements have been made between the non-citizen and an Australian citizen, Australian permanent resident or eligible New Zealand citizen for the care and welfare of the non-citizen; and
  - (ii) those arrangements are in the best interests of the non-citizen; and
  - (iii) the grant of a visa to the non-citizen would not prejudice the rights and interests of any person who has, or may reasonably be expected to have, custody or guardianship of, or access to, the non-citizen.
- (8) This subregulation applies to a non-citizen:
  - (a) who, on or after 1 September 1994:
    - (i) was refused immigration clearance; or
    - (ii) bypassed immigration clearance and came to the notice of Immigration as an unlawful non-citizen within 45 days of entering Australia; and
  - (b) if:
    - (i) on or after 1 September 1994:
      - (A) the non-citizen made a Protection (Class AZ) visa application that is not finally determined; or
      - (B) the non-citizen applied for judicial review of a decision to refuse a Protection (Class AZ) visa; or
      - (C) the Minister has applied for judicial review of a decision in relation to the non-citizen's Protection (Class AZ) visa application; or
    - (ii) on or after 20 October 1999:
      - (A) the non-citizen made a Protection (Class XA) visa application that is not finally determined; or
      - (B) the non-citizen applied for judicial review of a decision to refuse a Protection (Class XA) visa; or
      - (C) the Minister has applied for judicial review of a decision in relation to the non-citizen's Protection (Class XA) visa application; and

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- (c) who has turned 75; and
  - (d) in respect of whom the Minister is satisfied that adequate arrangements have been made for his or her support in the community.
- (9) This subregulation applies to a non-citizen:
- (a) who, on or after 1 September 1994:
    - (i) was refused immigration clearance; or
    - (ii) bypassed immigration clearance and came to the notice of Immigration as an unlawful non-citizen within 45 days of entering Australia; and
  - (b) if:
    - (i) on or after 1 September 1994:
      - (A) the non-citizen made a Protection (Class AZ) visa application that is not finally determined; or
      - (B) the non-citizen applied for judicial review of a decision to refuse a Protection (Class AZ) visa; or
      - (C) the Minister has applied for judicial review of a decision in relation to the non-citizen's Protection (Class AZ) visa application; or
    - (ii) on or after 20 October 1999:
      - (A) the non-citizen made a Protection (Class XA) visa application that is not finally determined; or
      - (B) the non-citizen applied for judicial review of a decision to refuse a Protection (Class XA) visa; or
      - (C) the Minister has applied for judicial review of a decision in relation to the non-citizen's Protection (Class XA) visa application; and
  - (c) who has a special need (based on health or previous experience of torture or trauma) in respect of which a medical specialist appointed by Immigration has certified that the non-citizen cannot properly be cared for in a detention environment; and

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- (d) in respect of whom the Minister is satisfied that adequate arrangements have been made for his or her support in the community.

(10) This subregulation applies to a non-citizen:

- (a) who, on or after 1 September 1994:
  - (i) was refused immigration clearance; or
  - (ii) bypassed immigration clearance and came to the notice of Immigration as an unlawful non-citizen within 45 days of entering Australia; and
- (b) if:
  - (i) on or after 1 September 1994:
    - (A) the non-citizen made a Protection (Class AZ) visa application that is not finally determined; or
    - (B) the non-citizen applied for judicial review of a decision to refuse a Protection (Class AZ) visa; or
    - (C) the Minister has applied for judicial review of a decision in relation to the non-citizen's Protection (Class AZ) visa application; or
  - (ii) on or after 20 October 1999:
    - (A) the non-citizen made a Protection (Class XA) visa application that is not finally determined; or
    - (B) the non-citizen applied for judicial review of a decision to refuse a Protection (Class XA) visa; or
    - (C) the Minister has applied for judicial review of a decision in relation to the non-citizen's substantive visa application; and
- (c) who is the spouse or de facto partner of an Australian citizen, Australian permanent resident or eligible New Zealand citizen; and
- (d) in relation to whom the Minister is satisfied that the non-citizen's relationship with that Australian citizen, Australian permanent resident or eligible New Zealand citizen is genuine and continuing; and

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- (e) who is nominated by that Australian citizen, Australian permanent resident or eligible New Zealand citizen.
- (11) This subregulation applies to a non-citizen who is a member of the family unit of a non-citizen to whom subregulation (10) applies.
- (12) This subregulation applies to a non-citizen if:
  - (a) the non-citizen is in immigration detention; and
  - (b) the Minister is satisfied that the non-citizen's removal from Australia is not reasonably practicable at that time; and
  - (c) the Minister is satisfied that the non-citizen will do everything possible to facilitate the non-citizen's removal from Australia; and
  - (e) any visa applications made by the non-citizen, other than an application made following the exercise of the Minister's power under section 48B of the Act, have been finally determined.
- (13) For paragraph (12) (b), a non-citizen's removal from Australia is not to be taken to be not reasonably practicable only because the non-citizen is a party to proceedings in a court or tribunal related to an issue in connection with a visa.
- (14) This subregulation applies to:
  - (a) a non-citizen:
    - (i) who is outside Australia; and
    - (ii) in relation to whom an officer of:
      - (A) the Australian Federal Police; or
      - (B) a police force of a State or Territory; or
      - (C) the office of the Director of Public Prosecutions of the Commonwealth, a State or a Territory; or
      - (D) a body of the Commonwealth, a State or a Territory that has functions similar to those of an office of a Director of Public Prosecutions;has told Immigration in writing that:

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- (E) the non-citizen has been identified as a suspected victim of human trafficking; and
  - (F) suitable arrangements have been made for the care, safety and welfare of the non-citizen in Australia for the proposed period of the bridging visa; and
- (b) a non-citizen (a *family member*):
  - (i) who is outside Australia; and
  - (ii) who is a member of the immediate family of a non-citizen mentioned in paragraph (a); and
  - (iii) in relation to whom the Minister has been told in writing, by an officer of the authority that told Immigration for the purposes of paragraph (a), that suitable arrangements have been made for the care, safety and welfare of the family member in Australia for the proposed period of the bridging visa.
- (15) This subregulation applies to:
  - (a) a non-citizen:
    - (i) who is in Australia; and
    - (ii) is the subject of a valid criminal justice stay certificate under Division 4 of Part 2 of the Act; and
    - (iii) whom the Minister is satisfied needs to travel outside Australia for compelling and compassionate reasons; and
    - (iv) in relation to whom an officer of:
      - (A) the Australian Federal Police; or
      - (B) a police force of a State or Territory; or
      - (C) the office of the Director of Public Prosecutions of the Commonwealth, a State or a Territory; or
      - (D) a body of the Commonwealth, a State or a Territory that has functions similar to those of an office of a Director of Public Prosecutions;has told Immigration in writing that suitable arrangements have been made for the care, safety



and welfare of the non-citizen in Australia for the proposed period of the bridging visa; and

- (b) a non-citizen (a *family member*):
  - (i) who is a member of the immediate family of a non-citizen mentioned in paragraph (a); and
  - (ii) in relation to whom the Minister has been told in writing, by an officer of the authority that told Immigration for the purposes of subparagraph (a) (iv), that suitable arrangements have been made for the care, safety and welfare of the family member in Australia for the proposed period of the bridging visa.

#### **2.20A Applications for Bridging R (Class WR) visas**

- (1) For subsection 46 (2) of the Act, a Bridging R (Class WR) visa is a prescribed class of visa.
- (2) An application for a Bridging R (Class WR) visa is taken to have been validly made by a person if:
  - (a) the person has been given an invitation in writing by the Minister, by one of the methods specified in section 494B of the Act, to apply for the visa; and
  - (b) the person indicates in writing to Immigration, not later than 7 days after the person is taken to have received that invitation, that he or she accepts the invitation.

*Note* See section 494C of the Act for when a person is taken to have received a document given by one of the methods specified in section 494B of the Act.

#### **2.20B Applications for Bridging F (Class WF) visas**

- (1) For subsection 46 (2) of the Act, a Bridging F (Class WF) visa is a prescribed class of visa.
- (2) Despite regulation 2.07 and Schedule 1, and as an alternative to item 1306 of Schedule 1, an application for a Bridging F (Class WF) visa is taken to have been validly made by a non-citizen to whom subregulation 2.20 (14) applies, or a non-citizen to whom subregulation 2.20 (15) applies regardless of whether the non-citizen has been immigration cleared, if:

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- (a) the non-citizen has been given an invitation in writing by the Minister, by one of the methods specified in section 494B of the Act, to apply for the visa; and
- (b) the non-citizen indicates in writing to Immigration, not later than 7 days after the non-citizen is taken to have received that invitation, that he or she accepts the invitation.

*Note* See section 494C of the Act for when a person is taken to have received a document given by one of the methods specified in section 494B of the Act.

**2.21      Most beneficial bridging visas (Act, s 68 (4) (b) (ii))**

- (1) For the purposes of subparagraph 68 (4) (b) (ii) of the Act (which deals with the order in which bridging visas are reactivated), if a non-citizen holds more than 1 bridging visa, the bridging visa that is the most beneficial is to be determined as set out in this regulation.
- (2) The order of classes from most beneficial to least beneficial is:
  - (a) Bridging B (Class WB) visa;
  - (b) Bridging A (Class WA) visa;
  - (c) Bridging C (Class WC) visa;
  - (d) Bridging D (Class WD) visa;
  - (da) Bridging R (Class WR) visa;
  - (e) Bridging E (Class WE) visa;
  - (f) Bridging F (Class WF) visa.
- (3) A bridging visa of Class WA, WB or WC that confers an unlimited right to work is taken to be more beneficial than another bridging visa of the same class that confers a limited right to work, and a bridging visa of one of those classes that confers a limited right to work is taken to be more beneficial than one of the same class that confers no right to work.
- (4) A bridging visa of Class WA, WB or WC is taken to be more beneficial than another bridging visa of the same class that is subject to the same work conditions if the first-mentioned visa was granted before the second-mentioned visa.

- (5) If a non-citizen holds 2 or more Bridging E visas, the one that is granted later or latest is taken to be the more or most beneficial.

**2.21A Grant of Bridging A (Class WA) visas without application**

- (1) This regulation applies to a person:
- (a) who is in Australia, but not in immigration clearance; and
  - (b) whose application for a Spouse (Migrant) (Class BC) visa, a Partner (Migrant) (Class BC) visa or an Interdependency (Migrant) (Class BI) visa was withdrawn, or refused (except under section 501, 501A or 501B of the Act), when the person was in Australia; and
  - (c) who was, immediately before that withdrawal or refusal, the holder of a Subclass 309 (Spouse (Provisional)) visa, a Subclass 309 (Partner (Provisional)) visa or a Subclass 310 (Interdependency (Provisional)) visa; and
  - (d) who has not already been granted a visa under this regulation in relation to the withdrawal or refusal.
- (2) This regulation also applies to a person:
- (a) who is in Australia, but not in immigration clearance; and
  - (b) whose application for an Aged Parent (Residence) (Class BP) visa was withdrawn:
    - (i) while the person was in Australia; and
    - (ii) at the same time as the person applied for a Contributory Aged Parent (Residence) (Class DG) visa or a Contributory Aged Parent (Temporary) (Class UU) visa; and
  - (c) who was, immediately before that withdrawal, the holder of a Subclass 010 (Bridging A) visa or a Subclass 020 (Bridging B) visa that was granted in association with the application for an Aged Parent (Residence) (Class BP) visa mentioned in paragraph (b); and
  - (d) who does not hold a substantive visa; and
  - (e) who has not already been granted a Subclass 010 (Bridging A) visa under this regulation in relation to:

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- (i) the withdrawal of the application for an Aged Parent (Residence) (Class BP) visa mentioned in paragraph (b); and
  - (ii) the application for a Contributory Aged Parent (Residence) (Class DG) visa or a Contributory Aged Parent (Temporary) (Class UU) visa mentioned in paragraph (b).
- (3) This regulation also applies to a person:
  - (a) who is in Australia, but not in immigration clearance; and
  - (b) whose application for a Contributory Aged Parent (Residence) (Class DG) visa or a Contributory Aged Parent (Temporary) (Class UU) visa was withdrawn:
    - (i) while the person was in Australia; and
    - (ii) at the same time as the person applied for an Aged Parent (Residence) (Class BP) visa; and
  - (c) who was, immediately before that withdrawal, the holder of a Subclass 010 (Bridging A) visa or a Subclass 020 (Bridging B) visa that was granted in association with the application for a Contributory Aged Parent (Residence) (Class DG) visa or a Contributory Aged Parent (Temporary) (Class UU) visa mentioned in paragraph (b); and
  - (d) who does not hold a substantive visa; and
  - (e) who has not already been granted a Subclass 010 (Bridging A) visa under this regulation in relation to:
    - (i) the withdrawal of the application for a Contributory Aged Parent (Residence) (Class DG) visa or a Contributory Aged Parent (Temporary) (Class UU) visa mentioned in paragraph (b); and
    - (ii) the application for an Aged Parent (Residence) (Class BP) visa mentioned in paragraph (b).
- (4) Despite Schedule 1, the Minister must grant a Bridging A (Class WA) visa in relation to the person mentioned in subregulation (1), (2) or (3).

**2.21B Grant of Bridging A (Class WA), Bridging C (Class WC) and Bridging E (Class WE) visas without application**

- (1) This regulation applies if a non-citizen who is in Australia, but not in immigration clearance, has made:
  - (a) a valid application for a visa on form 157P, form 601, form 601E or form 1182; or
  - (b) a valid oral application for a Tourist (Class TR) visa; or
  - (c) a valid application under regulation 2.07AK;  
and the application has not been finally determined.
- (2) Despite anything in Schedule 1, the Minister may grant the non-citizen a Bridging A (Class WA) visa, a Bridging C (Class WC) visa or a Bridging E (Class WE) visa if the Minister is satisfied that:
  - (a) at the time of decision, the non-citizen meets:
    - (i) the criteria to be satisfied by an applicant for the visa at the time of application; and
    - (ii) the criteria to be satisfied by an applicant for the visa at the time of decision; and
  - (b) the circumstances applicable to the grant exist in relation to the non-citizen.

**2.22 Invalid application for substantive visa**

- (1) Subject to subregulation (2), a non-citizen is taken to have applied for a Bridging D (Class WD) visa if:
  - (a) the non-citizen is in Australia but is not in immigration or criminal detention; and
  - (b) he or she applies for a substantive visa of a class that may be granted in Australia; and
  - (c) the application:
    - (i) is given to the Minister in a way other than by personal attendance at an office of Immigration; and
    - (ii) is invalid as an application for a substantive visa of that class; and

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- (d) the invalidity of the application is not by reason of its purporting to have been made contrary to section 48 or 48A of the Act (whether or not the Minister has made a determination under subsection 48B (1) of the Act in relation to the application or action has been taken by any person to seek the making of such a determination).
- (2) A reference in subregulation (1) to an application does not include the following:
  - (a) an oral application, or an oral communication that purports to be an oral application;
  - (b) an Internet application, or an electronic communication that purports to be an Internet application;
  - (c) an application for a Graduate — Skilled (Temporary) (Class UQ) visa;
  - (d) an application for a Skilled — Independent Overseas Student (Residence) (Class DD) visa;
  - (e) an application for a Skilled — Australian-sponsored Overseas Student (Class DE) visa.

**2.23 Further application for bridging visa (Act, s 74)**

For the purposes of subsection 74 (2) of the Act (which deals with a further application for a bridging visa), the prescribed circumstances are that the Minister is satisfied that, although the non-citizen has not made a further application for a Bridging E (Class WE) visa after being refused a visa of that class, the non-citizen now satisfies the criteria for the grant of a visa of that class.

**2.24 Eligible non-citizen in immigration detention (Act, s 75)**

- (1) For paragraph 75 (1) (a) of the Act (which deals with the class of bridging visa that may be granted to a non-citizen in immigration detention), the prescribed classes of bridging visa are:
  - (a) Bridging E (Class WE) visa; and
  - (b) Bridging F (Class WF) visa.

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- (2) For the purposes of paragraph 75 (1) (b) of the Act (which deals with the time in which the Minister must make a decision on a bridging visa application), the prescribed period is:
- (a) in the case of an application by:
    - (i) a non-citizen who has been immigration cleared; or
    - (ii) a non-citizen who is an eligible non-citizen referred to in subregulation 2.20 (6);2 working days; or
  - (b) in any other case — 28 days.

*Note* The prescribed conditions for the purposes of section 75 are set out in:

- (a) clause 050.612 in Schedule 2 (for a Bridging E (Class WE) visa); and
- (b) clause 060.611 in Schedule 2 (for a Bridging F (Class WF) visa).

**2.25 Grant of Bridging E (Class WE) visas without application**

- (1) This regulation applies to:
- (a) a non-citizen who is in criminal detention; or
  - (b) a non-citizen who:
    - (i) is unwilling or unable to make a valid application for a Bridging E (Class WE) visa; and
    - (ii) is not barred from making a valid application for a Bridging E (Class WE) visa by a provision in the Act or these Regulations, other than in item 1305 of Schedule 1.
- (2) Despite anything in Schedule 1, the Minister may grant the non-citizen a Bridging E (Class WE) visa if the Minister is satisfied that, at the time of decision:
- (a) the non-citizen satisfies:
    - (i) the criteria set out in clauses 050.211, 050.212, 050.223, 050.224 and 050.411 of Schedule 2; and
    - (ii) the interview criterion; or
  - (b) the non-citizen satisfies the criteria set out in clauses 051.211, 051.212, 051.213, 051.221 and 051.411 of Schedule 2.

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- (3) The non-citizen satisfies the *interview criterion* if an officer who is authorised by the Secretary for the purposes of subclause 050.222 (1) of Schedule 2 has either:
- (a) interviewed the non-citizen; or
  - (b) decided that it is not necessary to interview the non-citizen.

**Division 2.5A            Special provisions relating to  
certain health criteria**

**2.25A    Referral to Medical Officers of the Commonwealth**

- (1) In determining whether an applicant satisfies the criteria for the grant of a visa, the Minister must seek the opinion of a Medical Officer of the Commonwealth on whether a person (whether the applicant or another person) meets the requirements of paragraph 4005 (a), 4005 (b), 4005 (c), 4006A (1) (a), 4006A (1) (b), 4006A (1) (c), 4007 (1) (a), 4007 (1) (b) or 4007 (1) (c) of Schedule 4 unless:
- (a) the application is for a temporary visa and there is no information known to Immigration (either through the application or otherwise) to the effect that the person may not meet any of those requirements; or
  - (b) the application is for a permanent visa that is made from a country (whether Australia or a foreign country) specified by Gazette Notice for the purposes of this paragraph and there is no information known to Immigration (either through the application or otherwise) to the effect that the person may not meet any of those requirements.
- Note* **foreign country** is defined in paragraph 22 (1) (f) of the *Acts Interpretation Act 1901* as any country (whether or not an independent sovereign state) outside Australia and the external Territories.
- (2) In determining whether an applicant satisfies the criteria for the grant of a Medical Treatment (Visitor) (Class UB) visa, the Minister must seek the opinion of a Medical Officer of the Commonwealth on whether the applicant meets the requirements of:
- (a) subparagraphs 675.221 (2) (f) (i) and 675.221 (2) (g) (i), (ii) and (iii) of Schedule 2; or



- (b) subparagraphs 685.221 (2) (f) (i) and 685.221 (2) (g) (i), (ii) and (iii) of Schedule 2;

if there is information known to Immigration (either through the application or otherwise) to the effect that the applicant may not meet any of those requirements or be able to satisfy the Minister as to those matters.

- (3) The Minister is to take the opinion of the Medical Officer of the Commonwealth on a matter referred to in subregulation (1) or (2) to be correct for the purposes of deciding whether a person meets a requirement or satisfies a criterion.

## **Division 2.6                      Prescribed qualifications — application of points system**

### **2.26            Prescribed qualifications and number of points — Independent (Migrant) (Class AT) and Skilled – Australian-linked (Migrant) (Class AJ) visas**

- (1A) This regulation applies to an applicant for an Independent (Migrant) (Class AT) or a Skilled – Australian-linked (Migrant) (Class AJ) visa.
- (1) For the purposes of subsection 93 (1) of the Act (which deals with determination of an applicant's points score):
- (a) each qualification specified in column 2 of an item in Part 1, 2, 3, 4, 5, 6, or 7 of Schedule 6 is prescribed as a qualification in relation to the grant, to the applicant, of a Subclass 105 (Skilled – Australian Linked) visa; and
  - (b) each qualification specified in column 2 of an item in Part 1, 2, or 3 of Schedule 6 is prescribed as a qualification in relation to the grant, to the applicant, of a Subclass 126 (Independent), or Subclass 135 (State/Territory-Nominated Independent), visa.
- (2) In relation to a prescribed qualification specified in column 2 of an item in Schedule 6, the number of points specified in column 3 of that item is prescribed.

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- (3) For the purposes of subsection 93 (1) of the Act (which deals with determination of an applicant's points score), the Minister:
- (a) is not to give the applicant a prescribed number of points for more than one prescribed qualification in each Part of Schedule 6; and
  - (b) is to give the applicant only the number of points applicable to the prescribed qualification that meets the applicant's circumstances and for which the prescribed number of points is the highest for any such prescribed qualification; and
  - (c) is to deduct 25 points from the total number of points otherwise obtained by the applicant if the usual occupation of the applicant is that of medical practitioner (including specialist medical practitioner); and
  - (d) in relation to the determination of the points score of the applicant for a Subclass 105 (Skilled – Australian Linked) or Subclass 126 (Independent) visa, must add 5 points to the total number of points otherwise obtained by the applicant if the applicant holds an award (being an Australian degree, higher degree, diploma or trade certificate) obtained after a period of at least 1 year of full-time study in Australia for that award.
- (4) If:
- (a) the applicant cannot provide the evidence that is required by an item in Part 3 of Schedule 6; or
  - (b) the Minister determines that it is not reasonably practicable, or not necessary, for the applicant to sit for an ACCESS test or an IELTS test;
- the Minister may determine that the applicant has a level of English proficiency equivalent to that mentioned in an item in that Part.
- (5) In Part 1 of Schedule 6:
- associate diploma*** means:
- (a) a formal educational qualification awarded by an Australian educational institution as an associate diploma for which:

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- (i) the entry level to the course leading to the qualification is satisfactory completion of year 12 in the Australian school system or of equivalent schooling; and
  - (ii) 2 years of full-time study, or the equivalent period of part-time study, is required; or
- (b) a formal educational qualification that is of an equivalent standard awarded by an educational institution outside Australia.

***certificate or advanced certificate*** means:

- (a) a formal educational qualification awarded by an Australian educational institution as a certificate or advanced certificate for which:
  - (i) in the case of a qualification that is an advanced certificate — the entry level to the course leading to the qualification is completion of year 10 in the Australian school system or of equivalent schooling; and
  - (ii) in any case — for which 1 year of full-time study, or the equivalent period of part-time study, is required; or
- (b) a formal educational qualification that is of an equivalent standard awarded by an educational institution outside Australia.

***degree*** means:

- (a) a formal educational qualification awarded by an Australian educational institution as a degree or a postgraduate diploma for which:
  - (i) the entry level to the course leading to the qualification is:
    - (A) in the case of a bachelor's degree — satisfactory completion of year 12 in the Australian school system or of equivalent schooling; and
    - (B) in the case of a master's degree — satisfactory completion of a bachelor's degree awarded at an Australian tertiary

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educational institution or of an equivalent award; and

- (C) 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
- (D) 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
- (ii) 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; or
- (b) a formal educational qualification that is of an equivalent standard awarded by an educational institution outside Australia.

***diploma*** means:

- (a) a formal educational qualification awarded by an Australian educational institution as a diploma for which:
  - (i) the entry level to the course leading to the qualification is satisfactory completion of year 12 in the Australian school system or of equivalent schooling; and
  - (ii) 3 years of full-time study, or the equivalent period of part-time study, is required; or
- (b) a formal educational qualification that is of an equivalent standard awarded by an educational institution outside Australia.

***professional-equivalent occupation*** means an occupation specified by an instrument in writing for this definition as a professional-equivalent occupation.

***priority occupation*** means an occupation specified by an instrument in writing for this definition as a priority occupation.

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***relevant Australian authority*** means:

- (a) Education, or a body appointed in writing by Education to assess educational qualifications or work experience; or
- (b) the Department of Employment and Workplace Relations; or
- (c) if the circumstances of a case preclude an authority referred to in paragraph (a) or (b) from making an assessment, the Minister.

***technical-equivalent occupation*** means an occupation specified by an instrument in writing for this definition as a technical-equivalent occupation.

***trade certificate*** means:

- (a) an Australian trade qualification obtained as a result of the completion of:
  - (i) an indentured apprenticeship; or
  - (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 obtained outside Australia that is of an equivalent standard.

***usual occupation*** means an occupation that the applicant has engaged in for gain or reward for a continuous period of at least 6 months during the period of 2 years immediately preceding the relevant application for a visa.

(6) In Part 4 of Schedule 6:

- (a) a reference to adoption is a reference to an adoption occurring before the person adopted turned 18; and

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- (b) a reference to a step-relationship is a reference to a step-relationship in which the applicant and the relevant step-relative of the applicant have been members of the same family unit for a reasonable period.

**2.26A      Prescribed qualifications and number of points for skilled permanent visas and Skilled — Independent Regional (Provisional) (Class UX) visa**

- (1) This regulation applies to an applicant for any of the following visas:
  - (a) a Skilled — Australian-sponsored (Migrant) (Class BQ) visa;
  - (b) a Skilled — Independent (Migrant) (Class BN) visa;
  - (c) a Skilled — New Zealand Citizen (Residence) (Class DB) visa;
  - (d) a Skilled — Independent Overseas Student (Residence) (Class DD) visa;
  - (e) a Skilled — Australian-sponsored Overseas Student (Residence) (Class DE) visa;
  - (f) a Skilled — Independent Regional (Provisional) (Class UX) visa.
- (2) For subsection 93 (1) of the Act (which deals with determination of an applicant's points score):
  - (a) each qualification specified in column 2 of an item in Part 1, 2, 3, 4, 5, 6, 7, 8 or 10 of Schedule 6A is prescribed as a qualification in relation to the grant, to the applicant, of:
    - (i) a Subclass 136 (Skilled — Independent) visa; or
    - (ii) a Subclass 137 (Skilled — State/Territory-nominated Independent) visa; or
    - (iii) a Subclass 861 (Skilled — Onshore Independent New Zealand Citizen) visa; or
    - (iv) a Subclass 880 (Skilled — Independent Overseas Student) visa; and
  - (b) each qualification specified in column 2 of an item in Part 1, 2, 3, 4, 5, 6, 7, 8, 9 or 10 of Schedule 6A is prescribed as a qualification in relation to the grant, to the applicant, of:

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- (i) a Subclass 138 (Skilled — Australian-sponsored) visa; or
    - (ii) a Subclass 862 (Skilled — Onshore Australian-sponsored New Zealand Citizen) visa; or
    - (iii) a Subclass 881 (Skilled — Australian-sponsored Overseas Student) visa; and
  - (c) each qualification specified in column 2 of an item in Part 1, 2, 3, 4, 5, 6, 7, 8, 9A or 10 of Schedule 6A is prescribed as a qualification in relation to the grant, to the applicant, of a Subclass 495 (Skilled — Independent Regional (Provisional)) visa.
- (3) The number of points prescribed for a qualification specified in column 2 in an item in Schedule 6A is specified in column 3 in the item.
- (4) For subsection 93 (1) of the Act, the Minister:
- (a) must not give the applicant a prescribed number of points for more than 1 prescribed qualification in each Part of Schedule 6A; and
  - (b) must give the applicant only the number of points applicable to the prescribed qualification that meets the applicant's circumstances and for which the prescribed number of points is the highest for any such prescribed qualification; and
  - (c) must not give the applicant a prescribed number of points for item 6A12 or 6A13 in Part 1 of Schedule 6A unless:
    - (i) in the case of item 6A12 — the applicant is assessed by the relevant assessing authority as holding a degree that is equivalent to a degree of an Australian tertiary educational institution; and
    - (ii) in the case of item 6A13 — the applicant is assessed by the relevant assessing authority as holding a diploma or advanced diploma that is equivalent to a diploma or advanced diploma of an Australian educational institution.
- (5) The Minister may determine that the applicant is proficient in English to a level equivalent to that mentioned in an item in Part 3 of Schedule 6A, if the Minister determines that it is not

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reasonably practicable, or not necessary, for the applicant to be tested using the IELTS test.

(5AA) In working out the number of points to be given to an applicant for Part 7 of Schedule 6A, the Minister must have regard to whichever of the following are more favourable to the applicant:

- (a) the occupations that were specified as migration occupations in demand at the time the application was made;
- (b) the occupations that are specified as migration occupations in demand at the time the assessment mentioned in subsection 93 (1) of the Act is made.

(5A) For Part 8 of Schedule 6A, if:

- (a) an application for a visa was made, but not finally determined (within the meaning of subsection 5 (9) of the Act), before 1 November 2005; and
- (b) the Minister made an assessment under subsection 93 (1) of the Act in relation to the application before 1 November 2005;

the prescribed number of points for the purposes of that assessment is taken to be the sum of the number of points included in the assessment and the number of points (if any) to which the applicant would have been entitled, under item 6A82 of Part 8 of Schedule 6A, if that item had been in force at the time of the assessment.

*Note* Item 6A82 of Part 8 of Schedule 6A commenced on 1 November 2005.

(6) In Part 6 of Schedule 6A:

***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



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- (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 when this definition commences), 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.

***trade qualification*** means:

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

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- (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 the ANZSCO.
- (7) In Parts 4, 5 and 8 of Schedule 6A:  
*employed* means engaged in an occupation for remuneration for at least 20 hours weekly.
- (7A) In Parts 5, 6 and 10 of Schedule 6A:  
*course of study* means a full-time registered course of study.  
*Note* *registered course* is defined in regulation 1.03.
- (8) In Part 9 of Schedule 6A:
  - (a) a reference to adoption is a reference to an adoption occurring before the adopted person turned 18; and
  - (b) a reference to a step-relationship is a reference to a step-relationship in which the applicant, or the applicant's spouse or de facto partner, and the relevant step-relative of the applicant, or of the applicant's spouse or de facto partner, have been members of the same family unit for a reasonable period.

**2.26AA Prescribed qualifications and number of points for General Skilled Migration visas**

- (1) This regulation applies to an applicant for a General Skilled Migration visa.
- (2) Subject to subregulations (2A) and (2B), for subsection 93 (1) of the Act (which deals with determination of an applicant's points score) each qualification in column 2 of an item in Parts 6B.1 to 6B.12 of Schedule 6B is prescribed as a qualification in relation to the grant, to the applicant, of any of the following visas:
  - (a) a Subclass 175 (Skilled — Independent) visa;

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- (b) a Subclass 176 (Skilled — Sponsored) visa;
  - (c) a Subclass 475 (Skilled — Regional Sponsored) visa;
  - (d) a Subclass 487 (Skilled — Regional Sponsored) visa;
  - (e) a Subclass 885 (Skilled — Independent) visa;
  - (f) a Subclass 886 (Skilled — Sponsored) visa.
- (2A) For subregulation (2), if, apart from this subregulation, 1 or more qualifications in:
- (a) column 2 of Part 6B.11 of Schedule 6B; and
  - (b) column 2 of Part 6B.12 of Schedule 6B;
- would apply in determining an applicant's points score, then only 1 of those items may apply in determining the points score in relation to any application for a visa.
- (2B) In applying an item under subregulation (2A), the item that provides the greater or greatest points score is to be used.
- (3) The number of points prescribed for a qualification specified in column 2 of an item of Schedule 6B is specified in column 3 of the item.
- (4) For subsection 93 (1) of the Act, the Minister:
- (a) must not give the applicant a prescribed number of points for more than 1 prescribed qualification in each Part of Schedule 6B; and
  - (b) must give the applicant (if the applicant's circumstances satisfy more than 1 prescribed qualification) the prescribed number of points that is the highest for any such prescribed qualification; and
  - (c) must not give the applicant a prescribed number of points for item 6B12 or 6B13 in Part 6B.1 of Schedule 6B unless:
    - (i) in the case of item 6B12 — the applicant is assessed by the relevant assessing authority as holding a degree that is equivalent to a degree of an Australian tertiary educational institution; and
    - (ii) in the case of item 6B13 — the applicant is assessed by the relevant assessing authority as holding a diploma or advanced diploma that is equivalent to a diploma or advanced diploma of an Australian educational institution.

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- (5) In working out the number of points to be given to an applicant for Part 6B.7 of Schedule 6B, the Minister must have regard to whichever of the following is more favourable to the applicant:
- (a) the occupations that were specified as migration occupations in demand at the time the application was made;
  - (b) the occupations that are specified as migration occupations in demand at the time the assessment mentioned in subsection 93(1) of the Act is made.
- (6) In Schedule 6B:
- degree* has the meaning given by subregulation 2.26A (6).
- employed* has the meaning given by subregulation 2.26A (7).
- professional year* means a course specified by the Minister in an instrument in writing for this definition.

**2.26B Relevant assessing authorities**

- (1) Subject to subregulation (1A), the Minister may, by an instrument in writing for this subregulation, specify a person or body as the relevant assessing authority for:
- (a) a skilled occupation; and
  - (b) one or more countries;
- for the purposes of an application for a skills assessment made by a resident of one of those countries.
- (1A) The Minister must not make an instrument under subregulation (1) unless the person or body has been approved in writing as the relevant assessing authority for the occupation by:
- (a) the Education Minister; or
  - (b) the Employment Minister.
- (2) The standards against which the skills of a person are assessed by a relevant assessing authority for a skilled occupation must be the standards set by the relevant assessing authority for the skilled occupation.

**2.26C Designated securities**

- (1) The Minister may, by an instrument in writing for this subregulation, specify a security issued by an Australian State or Territory government authority as a security in which an investment is a designated security for the purposes of Part 8 of Schedule 6A.
- (2) The Minister must not specify a security unless:
  - (a) an investment in the security matures in not less than 1 year from its date of issue; and
  - (b) repayment of principal is guaranteed by the issuing authority; and
  - (c) an investment in the security cannot be transferred or redeemed before maturity except by operation of law or under other conditions acceptable to the Minister; and
  - (d) investment in the security is open to the general public at commercially competitive rates of return; and
  - (e) the Minister is satisfied that the Commonwealth will not be exposed to any liability as a result of an investment in the security by a person.

**2.27 Combination of scores — points system: applicants for Skilled – Australian-linked (Migrant) (Class AJ) visas**

If:

- (a) an applicant to whom regulation 2.26 applies (in this regulation called *the applicant*) does not receive the pass mark or pool mark (as the case requires) under that regulation; and
- (b) the spouse or de facto partner of the applicant is an applicant for a visa of the same class;  
the applicant is taken to have received the pass mark or pool mark (as the case requires) if the sum of:
- (c) the points which the spouse or de facto partner could receive under Parts 1, 2 and 3 of Schedule 6; and

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- (d) the points which the applicant receives under Parts 4, 5, 6 and 7 of Schedule 6;  
is equal to, or exceeds the pass mark or pool mark (as the case requires).

**2.27A      Combination of scores — points system: applicants for skilled permanent visas**

- (1) This regulation applies if:
  - (a) an applicant for a Skilled — Australian-sponsored (Class BQ) or Skilled — Australian-sponsored Overseas Student (Residence) (Class DE) visa, or an applicant for a Skilled — New Zealand Citizen (Residence) (Class DB) visa who has been sponsored, (the *primary applicant*) does not receive the pass or pool mark under regulation 2.26A; and
  - (b) the spouse or de facto partner of the primary applicant is also an applicant for a visa of that class; and
  - (c) the applicant's visa application was made before 1 October 2006.
- (2) The primary applicant is taken to have received the pass or pool mark if the sum of the following points equals or exceeds the pass or pool mark:
  - (a) the points that the spouse or de facto partner could receive under Parts 1, 2, 3, 4, 5, 6, 7, 8 and 10 of Schedule 6A;
  - (b) the points that the primary applicant receives under Part 9 of Schedule 6A.

*Note* Pool marks and pass marks are set from time to time by the Minister by notice in the *Gazette* (Act, s 96).

**2.27C      Skilled occupation in Australia**

In determining whether an applicant satisfies a criterion that the applicant has been employed in a skilled occupation for a certain period, a period of employment in Australia must not be counted unless the applicant:

- (a) held:
  - (i) a substantive visa; or

- (ii) a Subclass 010 Bridging A visa; or
- (iii) a Subclass 020 Bridging B visa;  
authorising him or her to work during that period; and
- (b) complied with the conditions of that visa.

#### **2.27D Study in Australia**

In determining whether an applicant satisfies a criterion for the grant of a General Skilled Migration visa that the applicant has studied in Australia for a certain period, a period of study cannot be counted unless the applicant:

- (a) held:
  - (i) a substantive visa; or
  - (ii) a Subclass 010 (Bridging A) visa; or
  - (iii) a Subclass 020 (Bridging B) visa;  
authorising him or her to study during that period; and
- (b) complied with the conditions of that visa.

#### **2.28 Notice of putting application aside**

- (1) If the Minister puts an application aside under paragraph 94 (3) (a) of the Act, he or she must notify the applicant in writing that he or she has done so.
- (2) A notification under subregulation (1) must set out:
  - (a) the decision of the Minister; and
  - (b) the reason for the decision; and
  - (c) that the decision can be reviewed; and
  - (d) the time in which an application for review may be made;  
and
  - (e) who can apply for the review; and
  - (f) where the application for review can be made.

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**2.29A      Application of Skilled — Australian-sponsored Overseas Student (Residence) (Class DE) visa from 1 July 2003**

Paragraphs 1128BA (3) (i) and (j) in Schedule 1, as in force immediately before 1 July 2003, continue to apply in relation to a person:

- (a) who was undertaking full-time study in Australia on or before 31 March 2003; and
  - (b) who applies for:
    - (i) a Graduate — Skilled (Temporary) (Class UQ) visa; or
    - (ii) a Skilled — Australian-sponsored Overseas Student (Residence) (Class DE) visa;
- on or after 1 July 2003 and before 1 April 2004.

*Note* Item 1128BA was amended with effect from 1 July 2003. The two versions of item 1128BA, before and after 1 July 2003, have substantially different effects, and the purpose of this regulation is to ensure that certain persons are not disadvantaged by the effect of the new version.

**2.29B      Application of Skilled — Independent Overseas Student (Residence) (Class DD) visa from 1 July 2003**

Paragraphs 1128CA (3) (j) and (l) in Schedule 1, as in force immediately before 1 July 2003, continue to apply in relation to a person:

- (a) who was undertaking full-time study in Australia on or before 31 March 2003; and
  - (b) who applies for:
    - (i) a Graduate — Skilled (Temporary) (Class UQ) visa; or
    - (ii) a Skilled — Independent Overseas Student (Residence) (Class DD) visa;
- on or after 1 July 2003 and before 1 April 2004.

*Note* Item 1128CA was amended with effect from 1 July 2003. The two versions of item 1128CA, before and after 1 July 2003, have substantially different effects, and the purpose of this regulation is to ensure that certain persons are not disadvantaged by the effect of the new version.



**2.29C Application of Graduate — Skilled (Temporary) (Class UQ) visa from 1 July 2003**

Paragraph 1212A (3) (h) in Schedule 1, as in force immediately before 1 July 2003, continues to apply in relation to a person:

- (a) who was undertaking full-time study in Australia on or before 31 March 2003; and
- (b) who applies for a Graduate — Skilled (Temporary) (Class UQ) visa on or after 1 July 2003 and before 1 April 2004.

*Note* Item 1212A was amended with effect from 1 July 2003. The two versions of item 1212A, before and after 1 July 2003, have substantially different effects, and the purpose of this regulation is to ensure that certain persons are not disadvantaged by the effect of the new version.

**2.29D Application of Subclass 134 (Skill Matching) visa from 1 July 2003**

Subclauses 134.215 (2) and 134.222A (2) in Schedule 2, as in force immediately before 1 July 2003, continue to apply in relation to a person:

- (a) who was undertaking full-time study in Australia on or before 31 March 2003; and
- (b) who applies for a Skill Matching (Migrant) (Class BR) visa on or after 1 July 2003 and before 1 April 2004.

*Note* Part 134 in Schedule 2 was amended with effect from 1 July 2003. The two versions of the Part, before and after 1 July 2003, have substantially different effects, and the purpose of this regulation is to ensure that certain persons are not disadvantaged by the effect of the new version.

**2.29E Application of Subclass 136 (Skilled — Independent) visa from 1 July 2003**

Subclauses 136.213 (2) and 136.223A (2) in Schedule 2, as in force immediately before 1 July 2003, continue to apply in relation to a person:

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

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- (b) who applies for a Skilled — Independent (Migrant) (Class BN) visa on or after 1 July 2003 and before 1 April 2004.

*Note* Part 136 in Schedule 2 was amended with effect from 1 July 2003. The two versions of the Part, before and after 1 July 2003, have substantially different effects, and the purpose of this regulation is to ensure that certain persons are not disadvantaged by the effect of the new version.

**2.29F      Application of Subclass 137 (Skilled — State/Territory-nominated Independent) visa from 1 July 2003**

Subclauses 137.214 (2) and 137.221A (2) in Schedule 2, as in force immediately before 1 July 2003, continue to apply in relation to a person:

- (a) who was undertaking full-time study in Australia on or before 31 March 2003; and
- (b) who applies for a Skilled — Independent (Migrant) (Class BN) visa on or after 1 July 2003 and before 1 April 2004.

*Note* Part 137 in Schedule 2 was amended with effect from 1 July 2003. The two versions of the Part, before and after 1 July 2003, have substantially different effects, and the purpose of this regulation is to ensure that certain persons are not disadvantaged by the effect of the new version.

**2.29G      Application of Subclass 138 (Skilled — Australian-sponsored) visa from 1 July 2003**

Subclauses 138.216 (2) and 138.225A (2) in Schedule 2, as in force immediately before 1 July 2003, continue to apply in relation to a person:

- (a) who was undertaking full-time study in Australia on or before 31 March 2003; and
- (b) who applies for a Skilled — Australian-sponsored (Migrant) (Class BQ) visa on or after 1 July 2003 and before 1 April 2004.

*Note* Part 138 in Schedule 2 was amended with effect from 1 July 2003. The two versions of the Part, before and after 1 July 2003, have substantially different effects, and the purpose of this regulation is to ensure that certain persons are not disadvantaged by the effect of the new version.

**2.29H Application of Subclass 139 (Skilled — Designated Area-sponsored) visa from 1 July 2003**

Subclauses 139.217 (2) and 139.225A (2) in Schedule 2, as in force immediately before 1 July 2003, continue to apply in relation to a person:

- (a) who was undertaking full-time study in Australia on or before 31 March 2003; and
- (b) who applies for a Skilled — Australian-sponsored (Migrant) (Class BQ) visa on or after 1 July 2003 and before 1 April 2004.

*Note* Part 139 in Schedule 2 was amended with effect from 1 July 2003. The two versions of the Part, before and after 1 July 2003, have substantially different effects, and the purpose of this regulation is to ensure that certain persons are not disadvantaged by the effect of the new version.

**2.29I Application of Subclass 861 (Skilled — Onshore Independent New Zealand Citizen) visa from 1 July 2003**

Subclause 861.213 (2) in Schedule 2, as in force immediately before 1 July 2003, continues to apply in relation to a person:

- (a) who was undertaking full-time study in Australia on or before 31 March 2003; and
- (b) who applies for a Skilled — New Zealand Citizen (Residence) (Class DB) visa on or after 1 July 2003 and before 1 April 2004.

*Note* Part 861 in Schedule 2 was amended with effect from 1 July 2003. The two versions of the Part, before and after 1 July 2003, have substantially different effects, and the purpose of this regulation is to ensure that certain persons are not disadvantaged by the effect of the new version.

**2.29J Application of Subclass 862 (Skilled — Onshore Australian-sponsored New Zealand Citizen) visa from 1 July 2003**

Subclause 862.216 (2) in Schedule 2, as in force immediately before 1 July 2003, continues to apply in relation to a person:

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

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- (b) who applies for a Skilled — New Zealand Citizen (Residence) (Class DB) visa on or after 1 July 2003 and before 1 April 2004.

*Note* Part 862 in Schedule 2 was amended with effect from 1 July 2003. The two versions of the Part, before and after 1 July 2003, have substantially different effects, and the purpose of this regulation is to ensure that certain persons are not disadvantaged by the effect of the new version.

**2.29K      Application of Subclass 863 (Skilled — Onshore Designated Area-sponsored New Zealand Citizen) visa from 1 July 2003**

Subclause 863.217 (2) in Schedule 2, as in force immediately before 1 July 2003, continues to apply in relation to a person:

- (a) who was undertaking full-time study in Australia on or before 31 March 2003; and
- (b) who applies for a Skilled — New Zealand Citizen (Residence) (Class DB) visa on or after 1 July 2003 and before 1 April 2004.

*Note* Part 863 in Schedule 2 was amended with effect from 1 July 2003. The two versions of the Part, before and after 1 July 2003, have substantially different effects, and the purpose of this regulation is to ensure that certain persons are not disadvantaged by the effect of the new version.

**Division 2.7                      Assurances of support**

**Subdivision 2.7.1      Assurances of support given in relation to applications lodged before 20 December 1991**

**2.30              Interpretation**

In this Subdivision:

*assurance of support* means:

- (a) an assurance of support given under the Migration (1989) Regulations, the Migration (1993) Regulations or these Regulations in relation to an application lodged before 20 December 1991; or

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- (b) a maintenance guarantee that:
  - (i) was given on or before 18 December 1989 under regulations that were in force under the Act or under any of the Acts repealed by the Act; and
  - (ii) is expressed, or otherwise purports, to have effect after 19 December 1991.

**2.31 Form of certain assurances of support**

An assurance of support given under this Subdivision must be in the form approved by the Minister.

**2.32 Duration of assurances of support**

An assurance of support that:

- (a) was given under the Migration (1989) Regulations before 20 December 1991 and, at the end of 19 December 1991, had been in force for less than 2 years; or
  - (b) was given under Division 1 of Part 6 of the Migration (1989) Regulations on or after 20 December 1991; or
  - (c) was given under Division 1 of Part 5 of the Migration (1993) Regulations; or
  - (d) is given under this Subdivision;  
ceases to have effect at the end of 2 years after:
    - (e) the day when the applicant enters Australia; or
    - (f) the grant of the relevant visa; or
    - (g) if he or she is granted an entry permit before 1 September 1994, the grant of that entry permit;
- whichever happens latest.

**2.33 Effect of assurance of support**

If, while an assurance of support has effect after 19 December 1991 in respect of a person, that person has received support in the form of:

- (a) a job search allowance payable under Part 2.11 of the *Social Security Act 1991*; or
- (b) a newstart allowance payable under Part 2.12 of that Act;  
or

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- (c) a special benefit payable under Part 2.15 of that Act; or
- (d) a widow allowance under Part 2.8A of that Act; or
- (e) a PP (partnered) under Part 2.10 of that Act; or
- (f) a mature age allowance under Part 2.12A or 2.12B of that Act; or
- (g) a partner allowance under Part 2.15A of that Act; or
- (h) a parenting allowance under Part 2.18 of that Act; or
- (i) a youth training allowance under Part 8 of the *Student and Youth Assistance Act 1973*; or
- (j) a youth allowance under Part 2.11 of the *Social Security Act 1991*; or
- (k) an austudy payment under Part 2.11A of that Act; or
- (l) a crisis payment under Part 2.23A of the *Social Security Act 1991*;

an amount equal to the value of the support provided (less any amount paid in respect of the support by or on behalf of that person to the Commonwealth) is a debt due and payable to the Commonwealth by the person who gave the assurance, and may be recovered by action in a Court of competent jurisdiction.

**2.34      Earlier liabilities not affected**

Nothing in this Subdivision affects any liability incurred under, or in respect of, an assurance of support before 20 December 1991.

**Subdivision 2.7.2      Assurances of support given in relation to applications lodged after 19 December 1991 and accepted by the Minister before 1 July 2004**

**2.35      Interpretation**

In this Subdivision:

***assurance of support*** means an assurance of support that is given in relation to an application lodged after 19 December 1991 and accepted by the Minister before 1 July 2004.

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***required assurance*** means an assurance of support that is an unconditional requirement prescribed in Schedule 2 for the grant of a visa.

***relevant visa***, in relation to an assurance of support, means:

- (a) the visa for the grant of which the giving of the assurance of support was required; or
- (b) the entry permit or entry visa for the grant of which under the Migration (1989) Regulations or the Migration (1993) Regulations the giving of the assurance of support was required; or
- (c) the entry permit the grant of which on entry under the Migration (1989) Regulations or the Migration (1993) Regulations was a consequence of the grant of a travel-only visa for the grant of which the giving of the assurance of support was required.

**2.36 Form and duration of assurance of support**

- (1) An assurance of support:
  - (a) must be on the approved form; and
  - (b) if the application to which the assurance relates is an application for a Contributory Parent (Migrant) (Class CA) or Contributory Aged Parent (Residence) (Class DG) visa — has effect for 10 years from the later of:
    - (i) the day when the person enters Australia; or
    - (ii) the day when the person is granted the relevant visa; and
  - (c) in any other case — has effect for 2 years from the later of:
    - (i) the day when the person enters Australia; or
    - (ii) the day when the person is granted the relevant visa.
- (2) A required assurance is taken not to have been given unless the bond (if any) required by regulation 2.39 in relation to it has been lodged.

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**2.37      Persons in respect of whom assurance of support may be given**

- (1) Subject to subregulation (2), a person must not give assurances of support having effect at the same time in respect of more than 2 persons.
- (2) A person does not count for the purposes of subregulation (1) if that person:
  - (a) has not turned 18; and
  - (b) is included in an assurance of support given in respect of another person.

**2.38      Liability of person giving assurance of support**

- (1) If a person receives support in the form of:
  - (a) a job search allowance payable under Part 2.11 of the *Social Security Act 1991*; or
  - (b) a newstart allowance payable under Part 2.12 of that Act; or
  - (c) a special benefit payable under Part 2.15 of that Act; or
  - (d) a widow allowance under Part 2.8A of that Act; or
  - (e) a partner allowance under Part 2.15A of that Act; or
  - (f) a parenting allowance under Part 2.18 of that Act; or
  - (g) a youth training allowance under Part 8 of the *Student and Youth Assistance Act 1973*; or
  - (h) a PP (partnered) under Part 2.10 of the *Social Security Act 1991*; or
  - (i) a mature age allowance under Part 2.12A or 2.12B of that Act; or
  - (j) a youth allowance under Part 2.11 of that Act; or
  - (k) an austudy payment under Part 2.11A of that Act; or
  - (l) a crisis payment under Part 2.23A of the *Social Security Act 1991*;

and an assurance of support has effect in respect of the person when he or she receives the support, the person who gave the assurance is liable, subject to this regulation, to pay to the Commonwealth the amount of the support.



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- (2) A person is not liable to pay an amount that would otherwise be payable under subregulation (1) in respect of a required assurance until the Commonwealth has taken all reasonable steps to enforce the bond lodged in respect of the assurance.
- (3) An amount payable under subregulation (1) is reduced by:
  - (a) any amount obtained by the Commonwealth under the bond that has not been applied to reduce a person's liability to the Commonwealth; and
  - (b) any amount paid to the Commonwealth in respect of the support.

**2.39 Bond (required assurances)**

- (1) A person who gives a required assurance in respect of an applicant for a visa who has turned 18 must lodge with the Minister a bond in accordance with this regulation.
- (2) The bond must be lodged before a decision is made on the application to which the required assurance relates.
- (3) The bond must be in a form approved by the Minister that secures the payment to the Commonwealth, on demand, of any amount (up to the amount of the bond) due to the Commonwealth under regulation 2.38 in respect of:
  - (a) the applicant; and
  - (b) if the assurance has effect also in relation to a person who has not turned 18, that person.
- (4) The amount of a bond is:
  - (a) unless paragraph (b) or (c) applies — \$3 500; or
  - (b) unless paragraph (c) applies, if the application to which the assurance relates depends on another person holding or being granted a visa of the same class as that sought in the application — \$1 500; or
  - (c) if the application to which the assurance relates is an application for a Contributory Parent (Migrant) (Class CA) or Contributory Aged Parent (Residence) (Class DG) visa:
    - (i) for an applicant seeking to satisfy the primary criteria for grant of the visa — \$10 000; or

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- (ii) for an applicant seeking to satisfy the secondary criteria for grant of the visa — \$4 000.

## **Division 2.8                      Special purpose visas**

### **2.40              Persons having a prescribed status — special purpose visas (Act, s 33 (2) (a))**

*Persons who hold prescribed status*

- (1) For the purposes of paragraph 33 (2) (a) of the Act (which deals with persons who are taken to have been granted special purpose visas), and subject to this regulation, each non-citizen who is included in one of the following classes of person has a prescribed status:
  - (a) members of the Royal Family;
  - (b) members of the Royal party;
  - (c) guests of Government;
  - (d) SOFA forces members;
  - (e) SOFA forces civilian component members;
  - (f) Asia-Pacific forces members;
  - (g) Commonwealth forces members;
  - (h) foreign armed forces dependants;
  - (j) foreign naval forces members;
  - (l) airline positioning crew members;
  - (m) airline crew members;
  - (n) transit passengers who belong to a class of persons specified in a Gazette Notice for the purposes of this paragraph;
  - (p) persons visiting Macquarie Island;
  - (q) children born in Australia:
    - (i) of a mother who at the time of the birth holds a special purpose visa, if only the mother is in Australia at that time; or
    - (ii) to parents both of whom, at the time of the birth, hold special purpose visas, if at that time both parents are in Australia;

- (t) Indonesian traditional fishermen visiting the Territory of Ashmore and Cartier Islands.

*Note* the terms used in paragraphs (1)(a) to (n) are defined in regulation 1.03.

***Armed forces members***

- (2) A person included in a class of persons specified in paragraph (1)(d), (e), (f), (g) or (j) has a prescribed status only while he or she is not absent without leave.

***Armed forces dependants***

- (3) A person included in a class of persons specified in paragraph (1)(h) has a prescribed status only while the person of whom he or she is a spouse or de facto partner, or on whom he or she is dependent, is not absent without leave.

***Persons must not work in Australia***

- (4) A person included in a class of persons specified in paragraph (1)(d), (e), (f), (g), (j), (l) or (m) has a prescribed status only while he or she does not perform work in Australia (other than work of a kind that he or she normally performs during the course of his or her duties as a person of a kind referred to in the relevant paragraph).

***Foreign naval forces members***

- (5) A person included in a class of persons specified in paragraph (1)(j) has a prescribed status if and only if the vessel on which he or she enters the migration zone has the prior approval of the Australian government to do so.

***Airline positioning crew members***

- (9) A person included in a class of persons specified in paragraph (1)(l) has a prescribed status for the period of 5 working days beginning when he or she disembarks from the aircraft on which he or she travelled to Australia if and only if he or she:
- (a) holds a passport that is in force; and

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- (b) carries a letter from his or her employer certifying aircrew status and setting out the purpose of the person's travel to Australia and the arrangements for the person to leave Australia.

*Airline crew members*

- (10) A person included in a class of persons mentioned in paragraph (1) (m) has a prescribed status for 30 days, beginning when he or she disembarks from the aircraft on which he or she travelled to Australia, if and only if he or she:
  - (a) holds a passport that is in force; and
  - (b) holds:
    - (i) a valid airline identity card issued by his or her employer; or
    - (ii) for a person who is an aircraft safety inspector:
      - (A) a valid government identity document showing that he or she is employed by a foreign government; or
      - (B) an ICAO Safety Inspector Certificate; and
  - (c) is included in a list of members of the crew of the aircraft provided to Immigration by or for the international air carrier that operates the aircraft.

*Transit passengers*

- (11) A person included in a class of persons specified in paragraph (1) (n) has a prescribed status only while he or she remains in the airport transit lounge.

*Macquarie Island visitors*

- (12) A person included in a class of persons specified in paragraph (1) (p) has a prescribed status:
  - (a) only while he or she remains on Macquarie Island; and
  - (b) only if the Secretary of the Department of the Environment and Land Management of the State of Tasmania has granted written permission in advance for the person to visit that Island.

*Children born in Australia*

- (13) A person included in a class of persons specified in paragraph (1) (q) has a prescribed status:
- (a) in the case of a child referred to in subparagraph (1) (q) (i) — until the child's mother ceases to have a prescribed status; or
  - (b) in the case of a child referred to in subparagraph (1) (q) (ii) — until whichever of the child's parents last ceases to have a prescribed status ceases to have that status.

*Indonesian traditional fishermen*

- (16) A person included in the class of persons specified in paragraph (1) (t) has a prescribed status only if the person:
- (a) is a traditional fisherman within the meaning of the Memorandum of Understanding made at Jakarta on 7 November 1974 between Australia and the Republic of Indonesia regarding the operations of Indonesian fishermen in areas of the Australian Exclusive Fishing Zone and Continental Shelf; and
  - (b) when visiting the Territory of Ashmore and Cartier Islands, is engaged in an activity described in the Memorandum of Understanding, as varied by the 1989 Practical Guidelines for Implementation contained in the Annex to the Agreed Minutes of Meeting between officials of Australia and Indonesia on fisheries of 29 April 1989.

*Note* The Memorandum, as varied by the Guidelines, has the general effect of accommodating a traditional fisherman engaged in taking fish or marine sedentary organisms by a method that has been a traditional method over decades of time, who is:

- (a) actually taking fish or marine sedentary organisms; or
- (b) sheltering within the territorial sea of the Territory; or
- (c) on shore at the island known as West Islet, for the purpose only of getting fresh water.

Expressly excluded is fishing using a motorised, or motor-assisted, vessel or method.

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**Division 2.9                      Cancellation or refusal to grant visas**

**Subdivision 2.9.1                      Cancellation under Subdivision C of Division 3 of Part 2 of the Act**

*Note* The obligations of a visa holder under Subdivision C of Division 3 of Part 2 of the Act are: to supply correct information on his or her application form (s 101), including answers on passenger cards (s 102); not to give bogus documents (s 103); to notify changes in circumstances (s 104); and, if incorrect information is given, to correct it (s 105). The obligation is not affected by other sources of information being available (s 106). If the Minister gives a visa holder a notice under s 107 (1) stating that there may have been non-compliance and asking the visa holder for a response, the answers must be correct (s 107 (2)).

**2.41                      Whether to cancel visa — incorrect information or bogus document (Act, s 109 (1) (c))**

For the purposes of paragraph 109 (1) (c) of the Act, the following circumstances are prescribed:

- (a) the correct information;
- (b) the content of the genuine document (if any);
- (c) the likely effect on a decision to grant a visa or immigration clear the visa holder of the correct information or the genuine document;
- (d) the circumstances in which the non-compliance occurred;
- (e) the present circumstances of the visa holder;
- (f) the subsequent behaviour of the visa holder concerning his or her obligations under Subdivision C of Division 3 of Part 2 of the Act;
- (g) any other instances of non-compliance by the visa holder known to the Minister;
- (h) the time that has elapsed since the non-compliance;
- (j) any breaches of the law since the non-compliance and the seriousness of those breaches;
- (k) any contribution made by the holder to the community.

*Note* Under s. 109 of the Act, the Minister may cancel a visa if there was non-compliance by the holder of a kind set out in Subdivision C of Division 3 of Part 2 of the Act. The Minister is to have regard to the prescribed circumstances in considering whether to cancel the visa.

**2.42 Notice of decision to cancel visa under s 109**

- (1) If the Minister cancels a visa under section 109 of the Act, the Minister must notify the former holder of the visa in writing that the visa has been cancelled.
- (2) A notification under subregulation (1) must set out the ground for the cancellation.

*Note 1* Regulation 2.55 applies to the giving of a document relating to:

- the proposed cancellation of a visa under the Act; or
- the cancellation of a visa under the Act; or
- the revocation of the cancellation of a visa under the Act.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

**Subdivision 2.9.2 Cancellation generally**

**2.43 Grounds for cancellation of visa (Act, s 116)**

- (1) For the purposes of paragraph 116 (1) (g) of the Act (which deals with circumstances in which the Minister may cancel a visa), the grounds prescribed are:
  - (a) that the Foreign Minister has personally determined that:
    - (i) in the case of a visa other than a relevant visa — the holder of the visa is a person whose presence in Australia:
      - (A) is, or would be, contrary to Australia's foreign policy interests; or
      - (B) may be directly or indirectly associated with the proliferation of weapons of mass destruction; or
    - (ii) in the case of a relevant visa — the holder of the visa is a person whose presence in Australia may be directly or indirectly associated with the proliferation of weapons of mass destruction;

*Note* A **relevant visa** is explained in subregulation (3).

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- (b) that the holder of the visa has been assessed by the Australian Security Intelligence Organisation to be directly or indirectly a risk to security, within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*;
- (d) in the case of a visa granted before 1 September 1994 that:
  - (i) was continued in force on and after 1 September 1994 as a Transitional (Temporary) visa under the Migration Reform (Transitional Provisions) Regulations; and
  - (ii) allowed multiple entries to Australia;that, at some time before 1 September 1994, the holder exceeded the period of stay in Australia permitted by the visa;
- (e) in the case of:
  - (i) the holder of an Electronic Travel Authority (Class UD) visa who is under the age of 18 years; or
  - (ii) the holder of a Long Stay (Visitor) (Class TN) visa, that was applied for using form 601E, who is under the age of 18 years; or
  - (iii) the holder of a Tourist (Class TR) visa, that was applied for using form 601E, who is under the age of 18 years; or
  - (iv) the holder of a Visitor (Class TV) visa who is under the age of 18 years;that either:
  - (v) both of the following apply:
    - (A) the law of the visa holder's home country did not permit the removal of the visa holder;
    - (B) at least 1 of the persons who could lawfully determine where the additional applicant is to live did not consent to the grant of the visa;or
  - (vi) the grant of the visa was inconsistent with any Australian child order in force in relation to the visa holder;



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- (f) in the case of:
  - (i) the holder of an Electronic Travel Authority (Class UD) visa who is under the age of 18 years and is not accompanied by his or her parent or guardian; or
  - (ii) the holder of a Long Stay (Visitor) (Class TN) visa, that was applied for using a form 601E, who:
    - (A) is under the age of 18 years; and
    - (B) is not accompanied by his or her parent or guardian; or
  - (iii) the holder of a Tourist (Class TR) visa, that was applied for using a form 601E, who:
    - (A) is under the age of 18 years; and
    - (B) is not accompanied by his or her parent or guardian; or
  - (iv) the holder of a Visitor (Class TV) visa who is under the age of 18 years and is not accompanied by his or her parent or guardian;

that the holder of that visa does not have adequate funds, or adequate arrangements have not been made, for the holder's maintenance, support and general welfare during the holder's proposed visit in Australia;
- (g) in the case of a temporary visa held by a person other than a visa holder mentioned in paragraph (h) — that the visa holder asks the Minister, in writing, to cancel the visa;
- (h) in the case of a temporary visa held by a person who is under the age of 18 years and is not a spouse, a former spouse or engaged to be married — that:
  - (i) a person who is at least 18 years of age, and who can lawfully determine where the visa holder is to live, asks the Minister, in writing, to cancel the visa; and
  - (ii) the Minister is satisfied that there is no compelling reason to believe that the cancellation of the visa would not be in the best interests of the visa holder;
- (i) in the case of the holder of:
  - (i) a Subclass 456 (Business (Short Stay)) visa; or
  - (ia) a Subclass 459 (Sponsored Business Visitor (Short Stay)) visa; or

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- (ii) a Subclass 956 (Electronic Travel Authority (Business Entrant — Long Validity)) visa; or
- (iii) a Subclass 977 (Electronic Travel Authority (Business Entrant — Short Validity)) visa —  
that, despite the grant of the visa, the Minister is satisfied that the visa holder did not have, at the time of the grant of the visa, or has ceased to have, an intention only to stay in, or visit, Australia temporarily for business purposes;
- (ia) in the case of a holder of:
  - (i) a Subclass 411 (Exchange) visa; or
  - (ii) a Subclass 415 (Foreign Government Agency) visa; or
  - (iii) a Subclass 416 (Special Program) visa; or
  - (iv) a Subclass 419 (Visiting Academic) visa; or
  - (v) a Subclass 420 (Entertainment) visa; or
  - (vi) a Subclass 421 (Sport) visa; or
  - (vii) a Subclass 423 (Media and Film Staff) visa; or
  - (viii) a Subclass 427 (Domestic Worker (Temporary) — Executive) visa; or
  - (ix) a Subclass 428 (Religious Worker) visa; or
  - (x) a Subclass 442 (Occupational Trainee) visa; or
  - (xi) a Subclass 488 (Superyacht Crew) visa;that the grounds in subregulation (1A) are met; or
- (j) in the case of the holder of:
  - (i) a Subclass 676 (Tourist) visa; or
  - (ii) a Subclass 676 (Tourist (Short Stay)) visa; or
  - (iii) a Subclass 679 (Sponsored Family Visitor) visa; or
  - (iv) a Subclass 686 (Tourist (Long Stay)) visa;that, despite the grant of the visa, the Minister is satisfied that the visa holder did not have, at the time of the grant of the visa, or has ceased to have, an intention only to visit, or remain in, Australia as a visitor temporarily for the purpose of visiting an Australian citizen, or Australian permanent resident, who is a parent, spouse, de facto partner, child, brother or sister of the visa holder or for another purpose, other than a purpose related to business or medical treatment;

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- (k) in the case of the holder of a Subclass 976 (Electronic Travel Authority (Visitor)) visa — that, despite the grant of the visa, the Minister is satisfied that the visa holder did not have, at the time of the grant of the visa, or has ceased to have, an intention only to visit Australia temporarily for tourism purposes;
- (ka) in the case of a holder of a Subclass 651 (eVisitor) visa — that, despite the grant of the visa, the Minister is satisfied that the visa holder did not have, at the time of the grant of the visa, or has ceased to have, an intention only to stay in, or visit, Australia temporarily for the tourism or business purposes for which the visa was granted;
- (kb) in the case of the holder of Subclass 457 (Business (Long Stay)) visa that was granted on the basis that the applicant met the requirements of subregulation 457.223 (4) — that, despite the grant of the visa, the Minister is satisfied that:
  - (i) the holder did not have a genuine intention to perform the occupation mentioned in paragraph 457.223 (4) (d) at the time of grant of the visa; or
  - (ii) the holder has ceased to have a genuine intention to perform that occupation; or
  - (iii) the position associated with the nominated occupation is not genuine;
- (l) in the case of the holder of a Subclass 457 (Business (Long Stay)) visa who is a primary sponsored person in relation to a person who is, or was, a standard business sponsor or party to a labour agreement (the *sponsor*) — that:
  - (i) the sponsor has not complied, or is not complying, with the undertaking given by the business sponsor in accordance with approved form 1067, 1196 or 1196 (Internet); or
  - (ii) the sponsor has given false or misleading information to Immigration or the Migration Review Tribunal; or
  - (iii) the sponsor has failed to satisfy a sponsorship obligation; or
  - (iv) the sponsor has been cancelled or barred under section 140M of the Act; or

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- (v) the labour agreement has been terminated, has been suspended or has ceased;
- (la) in the case of the holder of a Subclass 457 (Business (Long Stay)) visa who was granted the visa on the basis of a nomination of an activity under regulation 1.20GA as in force immediately before 14 September 2009 — that the holder is living or working within an area specified by the Minister in an instrument in writing for this paragraph;
- (lc) in the case of a holder of:
  - (i) a Subclass 411 (Exchange) visa; or
  - (ii) a Subclass 415 (Foreign Government Agency) visa; or
  - (iii) a Subclass 416 (Special Program) visa; or
  - (iv) a Subclass 419 (Visiting Academic) visa; or
  - (v) a Subclass 420 (Entertainment) visa; or
  - (vi) a Subclass 421 (Sport) visa; or
  - (vii) a Subclass 423 (Media and Film Staff) visa; or
  - (viii) a Subclass 427 (Domestic Worker (Temporary) — Executive) visa; or
  - (ix) a Subclass 428 (Religious Worker) visa; or
  - (x) a Subclass 442 (Occupational Trainee) visa; or
  - (xi) a Subclass 488 (Superyacht Crew) visa;who is a primary sponsored person in relation to a person who is or was an approved sponsor — that 1 of the grounds specified in subregulation (1B) is met;
- (ld) in the case of a holder of:
  - (i) a Subclass 411 (Exchange) visa; or
  - (ii) a Subclass 419 (Visiting Academic) visa; or
  - (iii) a Subclass 420 (Entertainment) visa; or
  - (iv) a Subclass 421 (Sport) visa; or
  - (v) a Subclass 423 (Media and Film Staff) visa; or
  - (vi) a Subclass 427 (Domestic Worker (Temporary) — Executive) visa; or
  - (vii) a Subclass 428 (Religious Worker) visa; or
  - (viii) a Subclass 442 (Occupational Trainee) visa; or

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- (ix) a Subclass 457 (Business (Long Stay)) visa;  
who is a secondary sponsored person in relation to a person who is or was an approved sponsor — that the person who is or was an approved sponsor of the primary sponsored person to whom the secondary sponsored person is related has not listed the secondary sponsored person in the latest nomination in which the primary sponsored person is identified;
- (le) in the case of a holder of:
  - (i) a Subclass 427 (Domestic Worker (Temporary) — Executive) visa; or
  - (ii) a Subclass 428 (Religious Worker) visa; or
  - (iii) a Subclass 457 (Business (Long Stay)) visa;  
who is a primary sponsored person or a secondary sponsored person in relation to a person who is or was an approved sponsor — that the person who is or was an approved sponsor has paid the return travel costs of the holder in accordance with the sponsorship obligation mentioned in regulation 2.80 or 2.80A;
- (m) that the Minister reasonably suspects that the holder of the visa has committed an offence under section 232A, 233, 233A, 234 or 236 of the Act;
- (n) that:
  - (i) a certificate is in force under paragraph 271 (1) (l) of the Act, stating that a computer program was not functioning correctly; and
  - (ii) both of the following apply:
    - (A) the visa was granted at the time, or during the period, that is specified in the certificate;
    - (B) the grant of the visa is an outcome from the operation of that program, under an arrangement made under subsection 495A (1) of the Act, that is specified in the certificate;
- (o) that the Minister reasonably suspects that the visa has been obtained as a result of the fraudulent conduct of any person.

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- (1A) For paragraph (1) (ia), the grounds are that, despite the grant of the visa, the Minister is satisfied that the visa holder did not have at the time of grant of the visa, or has ceased to have, a genuine intention to stay temporarily in Australia to carry out the work or activity in relation to which:
- (a) the visa holder's visa was granted; or
  - (b) if the visa holder is identified in a nomination after the visa is granted — the visa holder was identified in a nomination.
- (1B) For paragraph (1) (lc), the grounds are the following:
- (a) the approval of the person as a sponsor has been cancelled, or the approved sponsor has been barred, under section 140M of the Act;
  - (b) if the approved sponsor is a party to a work agreement — the work agreement has been terminated or has ceased;
  - (c) if the primary sponsored person is required to be identified in a nomination — the criteria for approval of the latest nomination in which the primary sponsored person is identified are no longer met;
  - (d) the person who is or was an approved sponsor has failed to satisfy a sponsorship obligation.
- (1C) For subsection 116 (1A) of the Act, the Minister may have regard to the matter mentioned in subregulation (1D) in determining whether he or she is satisfied as mentioned in paragraph 116 (1) (fa) of the Act.
- (1D) For subregulation (1C), the matter is that participation in a course of study by the holder of a student visa has been deferred or temporarily suspended by the provider of the course of study:
- (a) because of the conduct of the holder; or
  - (b) because of the circumstances of the holder, other than compassionate or compelling circumstances; or
  - (c) because of compassionate or compelling circumstances of the holder, if the Minister is satisfied that the circumstances have ceased to exist; or

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- (d) on the basis of evidence or a document given to the provider about the holder's circumstances, if the Minister is satisfied that the evidence or document is fraudulent or misrepresents the holder's circumstances.
- (2) For subsection 116 (3) of the Act, the circumstances in which the Minister must cancel a visa are:
  - (a) in the case of a visa other than a relevant visa — each of the circumstances comprising the grounds set out in:
    - (i) sub-subparagraphs (1) (a) (i) (A) and (B); and
    - (ii) paragraph (1) (b); and
  - (aa) in the case of a relevant visa — the circumstance comprising the grounds set out in subparagraph (1) (a) (ii); and
  - (b) in the case of a Student (Temporary) (Class TU) visa:
    - (i) that the Minister is satisfied that the visa holder has not complied with condition 8104 or 8105 (if the condition applies to the visa); or
    - (ii) that the Minister is satisfied that:
      - (A) the visa holder has not complied with condition 8202; and
      - (B) the non-compliance was not due to exceptional circumstances beyond the visa holder's control.
- (3) In this regulation:
  - relevant visa** means a visa of any of the following subclasses:
    - (aa) Subclass 050;
    - (a) Subclass 200;
    - (b) Subclass 201;
    - (c) Subclass 202;
    - (d) Subclass 203;
    - (e) Subclass 204;
    - (f) Subclass 447;
    - (g) Subclass 449;
    - (h) Subclass 451;
    - (i) Subclass 785;

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- (j) Subclass 786;
- (k) Subclass 866.

**2.44      Invitation to comment — response**

- (1) For the purposes of subsection 121 (2) of the Act (which deals with the time in which a holder must give comments, other than at interview), the periods set out in subregulation (2) are prescribed.
- (2) The periods referred to in subregulation (1) begin when the visa holder is notified under subsection 119 (2), or receives an invitation under subsection 120 (2), as the case requires, and are:
  - (a) if the visa holder is in Australia — 5 working days; or
  - (b) if the visa holder is outside Australia:
    - (i) where the cancellation of his or her visa is being considered in Australia — 28 days; or
    - (ii) where the cancellation of his or her visa is being considered at a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth in the country in which the visa holder is present — 5 working days; or
    - (iii) where the cancellation of his or her visa is being considered at a diplomatic, consular or migration office maintained by or on behalf of the Commonwealth in another country than the country in which the visa holder is present — 28 days.
- (3) For the purposes of subsection 121 (4) of the Act (which deals with extension of time to give comments), 5 working days is prescribed.

*Note 1* Regulation 2.55 applies to the giving of a document relating to:

- the proposed cancellation of a visa under the Act; or
- the cancellation of a visa under the Act; or
- the revocation of the cancellation of a visa under the Act.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.



**2.45 Notification of decision (Act, s 127)**

For the purposes of section 127 of the Act (which deals with notification of decisions to cancel a visa), the way of notifying the visa holder of a decision is in writing.

*Note 1* Regulation 2.55 applies to the giving of a document relating to:

- the proposed cancellation of a visa under the Act; or
- the cancellation of a visa under the Act; or
- the revocation of the cancellation of a visa under the Act.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

**2.46 Time to respond to notice of cancellation (Act, s 129 (1) (c))**

For the purposes of paragraph 129 (1) (c) of the Act (which deals with response to cancellation of a visa), the following periods are prescribed:

- (a) if the former holder of the visa is outside Australia when he or she is given a notice of the cancellation — 28 days;
- (b) if he or she is in Australia when he or she is given notice of the cancellation:
  - (i) if he or she wishes the cancellation to be reconsidered while he or she is in Australia — 5 minutes; or
  - (ii) if he or she wishes the cancellation to be reconsidered while he or she is outside Australia, and he or she departs Australia as soon as possible after being given a notice of the cancellation — 28 days;

beginning when the former holder of the visa is given a notice of the cancellation.

**2.47 Notice of cancellation (Act, s 129)**

For the purposes of subsection 129 (2) of the Act (which deals with giving notice of cancellation of a visa), the way of giving the former holder of the visa a notice of the cancellation is in writing.

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*Note 1* Regulation 2.55 applies to the giving of a document relating to:

- the proposed cancellation of a visa under the Act; or
- the cancellation of a visa under the Act; or
- the revocation of the cancellation of a visa under the Act.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

**2.48      Revocation of cancellation (Act, s 131 (2))**

For the purposes of subsection 131 (2) of the Act (which deals with the circumstances in which cancellation of a visa must not be revoked), the circumstance is that the visa was cancelled on a ground prescribed under subsection 116 (3).

*Note* The grounds prescribed under subsection 116 (3) are grounds on which a visa **must** be cancelled. For those grounds, see subregulation 2.39 (2).

**2.49      Notice of decision whether to revoke cancellation (Act, s 132)**

For the purposes of section 132 of the Act (which deals with notification of a decision about cancellation of a visa), the way of notifying the visa holder of a decision is in writing.

*Note 1* Regulation 2.55 applies to the giving of a document relating to:

- the proposed cancellation of a visa under the Act; or
- the cancellation of a visa under the Act; or
- the revocation of the cancellation of a visa under the Act.

*Note 2* A document given to a person in immigration detention is given in the manner specified in regulation 5.02.

**2.50      Cancellation of business visas**

(1) In this regulation:

*old business skills entry permit* means:

- (a) an entry permit granted under the Migration (1993) Regulations (including an entry visa of any of those classes that operated as an entry permit) of any of the following classes:
  - (i) Class 127 (business skills);
  - (ii) Class 128 (business skills (senior executive));

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- (iii) Class 129 (State/Territory sponsored business skills);
- (iv) Class 130 (State/Territory sponsored business skills (senior executive));
- (b) an entry permit granted under the Migration (1989) Regulations of any of the following classes:
  - (i) business (general) (code number 123);
  - (ii) business (joint venture) (code number 122);
  - (iii) business skills (code number 127);
  - (iv) business skills (senior executive) (code number 128).

***old business skills visa*** means:

- (a) a visa granted under the Migration (1993) Regulations of any of the following classes:
  - (i) Class 127 (business skills);
  - (ii) Class 128 (business skills (senior executive));
  - (iii) Class 129 (State/Territory sponsored business skills);
  - (iv) Class 130 (State/Territory sponsored business skills (senior executive));
- (b) a visa granted under the Migration (1989) Regulations of any of the following classes:
  - (i) business (general) (code number 123);
  - (ii) business (joint venture) (code number 122);
  - (iii) business skills (code number 127);
  - (iv) business skills (senior executive) (code number 128).

- (2) For paragraph (a) of the definition of ***business visa*** in subsection 134 (10) of the Act, the following classes of visas are prescribed:

- (a) Business Skills (Migrant) (Class AD);
- (b) Business Skills — Business Talent (Migrant) (Class EA);
- (c) Business Skills — Established Business (Residence) (Class BH);

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- (d) Business Skills (Residence) (Class BH);
  - (e) Business Skills (Provisional) (Class UR).
- (3) For the purposes of paragraph (b) of the definition of **business visa** in subsection 134 (10) of the Act, the prescribed kinds of visas, and the prescribed provisions of the Migration Reform (Transitional Provisions) Regulations that apply to each of those kinds of visas, are the kinds of visas and the provisions of those Regulations set out in the following paragraphs:
- (a) a transitional (permanent) visa (being a visa to which regulation 4 of those Regulations applies) that a person is taken to hold because he or she held an old business skills entry permit;
  - (b) a transitional (permanent) visa (being a visa to which regulation 6 of those Regulations applies) that a person is taken to hold because he or she held an old business skills visa;
  - (c) a transitional (permanent) visa (being a visa to which regulation 7 of those Regulations applies) that a person is taken to hold because he or she held a permanent return visa granted on the basis of holding an old business skills visa;
  - (d) a transitional (permanent) visa (being a visa to which regulation 22 of those Regulations applies) that a person is granted because:
    - (i) the person:
      - (A) applied for an old business skills visa; or
      - (B) applied for a permanent return visa on the basis of holding an old business skills visa; and
    - (ii) the application was not decided before 1 September 1994.
- (4) For the definition of **return visa** in subsection 134 (10) of the Act:
- return visa** means:
- (a) a Return (Residence) (Class BB) visa; or
  - (b) a Resident Return (Temporary) (Class TP) visa.

**2.50AA Cancellation of regional sponsored employment visas**

- (1) For paragraph (b) of the definition of *regional sponsored employment visa* in subsection 137Q (3) of the Act, the kinds of visas are:
  - (a) a Subclass 119 (Regional Sponsored Migration Scheme) visa; and
  - (b) a Subclass 857 (Regional Sponsored Migration Scheme) visa.
- (2) For paragraph 137Q (1) (a) of the Act, the period is:
  - (a) for a Subclass 119 (Regional Sponsored Migration Scheme) visa — 6 months from the date on which the holder of the visa first entered Australia as the holder of the visa; and
  - (b) for a Subclass 857 (Regional Sponsored Migration Scheme) visa — 6 months from the date of grant of the visa.

*Note* This is the period within which the holder of a regional sponsored employment visa must commence the employment referred to in the employer nomination.

**Subdivision 2.9.2A Automatic cancellation of student visas**

**2.50A Meaning of office of Immigration**

For paragraph 137J (2) (b) of the Act, *office of Immigration* means a regional or area office of Immigration.

**Subdivision 2.9.3 Refusal or cancellation on character grounds**

**2.51 Notification by Administrative Appeals Tribunal (Act, s 500)**

- (1) For subsection 500 (6E) of the Act, the Minister is notified in accordance with subregulation (2).

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- (2) The notice must be:
- (a) in the form set out in subregulation (3); and
  - (b) accompanied by a copy of the application made to the Administrative Appeals Tribunal; and
  - (c) either:
    - (i) personally delivered to the office of the Secretary in Canberra; or
    - (ii) sent by facsimile transmission to the Secretary at the number, or one of the numbers, last notified to the Administrative Appeals Tribunal for that purpose; and
  - (d) received by the Secretary within 7 working days after the application is made to the Administrative Appeals Tribunal.
- (3) The form of the notice is:
- ‘To the Minister for Immigration and Multicultural Affairs:
- Notice is given that an application for review of a decision under section 501 of the *Migration Act 1958*, a copy of which is attached to this notice, was made to the Administrative Appeals Tribunal on [*insert date*].
- Signed: [*insert signature of signatory*]
- Date: [*insert date on which notice is signed*]’.

**2.52      Revocation of decisions by Minister (Act, s 501C)**

- (1) This regulation applies to representations made to the Minister under paragraph 501C (3) (b) of the Act.
- (2) The representations must be made within 7 days after the person is given the notice under subparagraph 501C (3) (a) (i) of the Act.
- (3) The representations must be in writing, and:
  - (a) in English; or
  - (b) if the representations are in a language other than English — accompanied by an accurate English translation.

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- (4) The representations must include the following information:
  - (a) the full name of the person to whom the representations relate;
  - (b) the date of birth of that person;
  - (c) one of the following:
    - (i) the applicant's client number;
    - (ii) the Immigration file number;
    - (iii) the number of the receipt issued by Immigration when the visa application was made;
  - (d) if the visa application was made outside Australia — the name of the Australian mission or Immigration office at which the visa application was given to the Minister;
  - (e) a statement of the reasons on which the person relies to support the representations.
- (5) A document accompanying the representations must be:
  - (a) the original document; or
  - (b) a copy of the original document that is certified in writing to be a true copy by:
    - (i) a Justice of the Peace; or
    - (ii) a Commissioner for Declarations; or
    - (iii) a person before whom a statutory declaration may be made under the *Statutory Declarations Act 1959*; or
    - (iv) if the copy is certified in a place outside Australia:
      - (A) a person who is the equivalent of a Justice of the Peace or a Commissioner for Declarations in that place; or
      - (B) a Notary Public.
- (6) If a document accompanying the representations is in a language other than English, the document must be accompanied by an accurate English translation.
- (7) For section 501C of the Act (see subsection (10)), a person is not entitled to make representations about revocation of an original decision if:
  - (a) the person is not a detainee; and
  - (b) the person is a non-citizen in Australia; and

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- (c) either:
  - (i) the person has been refused a visa under section 501 or 501A of the Act; or
  - (ii) the last visa held by the person has been cancelled under either of those sections.

**2.53      Submission of information or material (Act, s 501D)**

- (1) For section 501D of the Act, information or material must be:
  - (a) in writing; and
  - (b) received by the Minister or Immigration within 14 days after the person is invited by the Minister or Immigration to submit information or material.
- (2) A document containing the information or material must be:
  - (a) the original document; or
  - (b) a copy of the original document that is certified in writing to be a true copy by:
    - (i) a Justice of the Peace; or
    - (ii) a Commissioner for Declarations; or
    - (iii) a person before whom a statutory declaration may be made under the *Statutory Declarations Act 1959*; or
    - (iv) if the copy is certified in a place outside Australia:
      - (A) a person who is the equivalent of a Justice of the Peace or a Commissioner for Declarations in that place; or
      - (B) a Notary Public.
- (3) The document must contain, or be accompanied by, the following written information:
  - (a) the full name of the person who is the subject of the decision to which the information or material contained in the document relates;
  - (b) the date of birth of that person;
  - (c) one of the following:
    - (i) the applicant's client number;
    - (ii) the Immigration file number;



- (iii) the number of the receipt issued by Immigration when the visa application was made;
  - (d) if the visa application was made outside Australia — the name of the Australian mission or Immigration office at which the visa application was given to the Minister.
- (4) If the document is submitted in a language other than English, it must be accompanied by an accurate English translation.

## **Division 2.10 Documents relating to cancellation of visas**

### **2.54 Definitions for Division 2.10**

In this Division:

*carer of the minor* means an individual:

- (a) who is at least 18 years of age; and
- (b) who the Minister reasonably believes:
  - (i) has day-to-day care and responsibility for the minor; or
  - (ii) works in or for an organisation that has day-to-day care and responsibility for the minor and whose duties, whether alone or jointly with another person, involve care and responsibility for the minor.

*document* includes:

- (a) a letter; and
- (b) an invitation, notice, notification, statement or summons, if it is in writing.

### **2.55 Giving of documents relating to proposed cancellation, cancellation or revocation of cancellation**

- (1) This regulation applies to:
  - (a) the giving of a document to a holder or former holder of a visa relating to the proposed cancellation or the cancellation of a visa under the Act; and

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- (b) the giving of a document under subsection 501G (3) of the Act relating to a decision to cancel a visa under subsection 501 (1) or (2) or 501A (2) or section 501B or 501F of the Act; and
- (c) the giving of a document to a holder or former holder of a visa relating to the revocation of the cancellation of a visa under the Act.

(2) However, this regulation does not apply in relation to:

- (a) a notice to which section 137J of the Act relates; or
- (b) a person who is in immigration detention.

*Note* See regulation 5.02.

(3) Subject to subregulation (3A), for a document mentioned in paragraph (1) (a) or (c), the Minister must give the document in one of the following ways:

- (a) by handing it to the person personally;
- (b) by handing it to another person who:
  - (i) is at the person's last residential or business address known to the Minister; and
  - (ii) appears to live there (in the case of a residential address) or work there (in the case of a business address); and
  - (iii) appears to be at least 16 years of age;
- (c) by dating it, and then dispatching it:
  - (i) within 3 working days (in the place of dispatch) of the date of the document; and
  - (ii) by prepaid post or by other prepaid means;to the person's last residential address, business address or post box address known to the Minister;
- (d) by transmitting the document by:
  - (i) fax; or
  - (ii) e-mail; or
  - (iii) other electronic means;to the last fax number, e-mail address or other electronic address known to the Minister.

*Note* Subregulation (3A) deals with giving documents mentioned in paragraphs (1) (a) and (c) to minors.

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- (3A) If the person is a minor, the Minister must give a document mentioned in paragraph (1) (a) or (c) in 1 of the following ways:
- (a) by handing it to the minor personally;
  - (b) by handing it to another person who:
    - (i) is at the last residential or business address for the minor that is known to the Minister; and
    - (ii) appears to live there (in the case of a residential address) or work there (in the case of a business address); and
    - (iii) appears to be at least 16 years of age;
  - (c) by dating and then dispatching the document:
    - (i) within 3 working days (in the place of dispatch) of the date of the document; and
    - (ii) by prepaid post or by other prepaid means; to the minor's last residential address, business address or post box address known to the Minister;
  - (d) by transmitting the document by:
    - (i) fax; or
    - (ii) e-mail; or
    - (iii) other electronic means; to the minor's last fax number, e-mail address or other electronic address known to the Minister;
  - (e) by dating and then dispatching the document:
    - (i) within 3 working days (in the place of dispatch) of the date of the document; and
    - (ii) by prepaid post or by other prepaid means; to a carer of the minor at the last residential address, business address or post box address for the carer of the minor that is known to the Minister;
  - (f) by transmitting the document by:
    - (i) fax; or
    - (ii) e-mail; or

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(iii) other electronic means;  
to a carer of the minor at the last fax number, e-mail address or other electronic address for the carer of the minor that is known to the Minister.

- (4) Subject to subregulation (4A), for a document mentioned in paragraph (1) (b):
- (a) if the person has held the visa for less than 1 year when the document is to be given, the Minister must give the document in one of the ways mentioned in subregulation (3); and
  - (b) if the person has held the visa for at least 1 year when the document is to be given:
    - (i) Immigration must try to find the person; and
    - (ii) the Minister must give the document in one of the ways mentioned in subregulation (3).

*Note* Subregulation (4A) deals with giving documents mentioned in paragraph (1) (b) to minors.

- (4A) If the person is a minor:
- (a) the Minister must give a document mentioned in paragraph (1) (b) in 1 of the ways mentioned in subregulation (3A); and
  - (b) if the minor has held the visa for at least 1 year when the document is to be given, Immigration must try to find the minor.
- (4B) If the Minister gives a document to a carer of the minor in accordance with this regulation, the Minister is taken to have given the document to the minor.
- (4C) Nothing in subregulation (4B) prevents the Minister giving the minor a copy of the document.
- (5) If the Minister gives a document to a person by handing it to the person, the person is taken to have received the document when it is handed to the person.
- (6) If the Minister gives a document to a person by handing it to another person at a residential or business address, the person is taken to have received the document when it is handed to the other person.

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- (7) If the Minister gives a document to a person by dispatching it by prepaid post or by other prepaid means, the person is taken to have received the document:
  - (a) if the document was dispatched from a place in Australia to an address in Australia — 7 working days (in the place of that address) after the date of the document; or
  - (b) in any other case — 21 days after the date of the document.
- (8) If the Minister gives a document to a person by transmitting it by fax, e-mail or other electronic means, the person is taken to have received the document at the end of the day on which the document is transmitted.
- (9) If:
  - (a) the Minister purports to give a document to a person by a method specified in this regulation but makes an error in doing so; and
  - (b) the person nonetheless receives the document or a copy of the document;the Minister is taken to have given the document to the person and the person is taken to have received the document:
  - (c) at the time specified by this regulation for that method; or
  - (d) if the person can show that he or she received the document at a later time — at that later time.

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## **Part 2A                      Sponsorship applicable to Division 3A of Part 2 of the Act**

### **Division 2.11              Introductory**

#### **2.56              Application**

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

- (a) the Subclass 411 (Exchange) visa;
- (b) the Subclass 415 (Foreign Government Agency) visa;
- (c) the Subclass 416 (Special Program) visa;
- (d) the Subclass 419 (Visiting Academic) visa;
- (e) the Subclass 420 (Entertainment) visa;
- (f) the Subclass 421 (Sport) visa;
- (g) the Subclass 423 (Media and Film Staff) visa;
- (h) the Subclass 427 (Domestic Worker (Temporary) — Executive) visa;
- (i) the Subclass 428 (Religious Worker) visa;
- (j) the Subclass 442 (Occupational Trainee) visa;
- (k) the Subclass 457 (Business (Long Stay)) visa;
- (l) the Subclass 470 (Professional Development) visa;
- (m) the Subclass 488 (Superyacht Crew) visa.

#### **2.57              Interpretation**

- (1) In this Part:

***associated entity*** has the same meaning as in section 50AAA of the *Corporations Act 2001*.

***Australian organisation*** means a body corporate, a partnership or an unincorporated association (other than an individual or a sole trader) that is lawfully established in Australia.

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***base rate of pay*** means the rate of pay payable to an employee for his or her ordinary hours of work, but not including any of the following:

- (a) incentive-based payments and bonuses;
- (b) loadings;
- (c) monetary allowances;
- (d) overtime or penalty rates;
- (e) any other separately identifiable amounts.

*Note* This definition is based on the definition of ***base rate of pay*** in section 16 of the *Fair Work Act 2009*.

***competent authority*** means a Department or regulatory authority that administers or enforces a law that is alleged to have been contravened.

***foreign government agency*** includes the following:

- (a) an organisation:
  - (i) that is conducted under the official auspices of a foreign national government; and
  - (ii) that is operating in Australia;  
including foreign tourist and media bureaus, trade offices and other foreign government entities;
- (b) a foreign diplomatic or consular mission in Australia;
- (c) an organisation conducted under the official auspices of an international organisation recognised by Australia.

***government agency*** means an agency of the Commonwealth or of a State or Territory.

***information and communication technology activity*** means any of the following occupations mentioned in the ASCO:

- (a) 1224-11 Information Technology Manager – Computer Services Manager;
- (b) 2231-11 Systems Manager;
- (c) 2231-13 Systems Designer;
- (d) 2231-15 Software Designer;
- (e) 2231-17 Applications and Analyst Programmer;
- (f) 2231-19 Systems Programmer;
- (g) 2231-21 Computer Systems Auditor;

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- (h) 2231-79 Computing Professionals (not elsewhere classified).

***officer:***

- (a) for a corporation — has the same meaning as in section 9 of the *Corporations Act 2001*; and
- (b) for an entity that is neither an individual nor a corporation — has the same meaning as in section 9 of the *Corporations Act 2001*.

***overseas employer***, in relation to a person who applies, or proposes to apply, for a Sponsored Training (Temporary) (Class UV) visa, means:

- (a) a body corporate or an unincorporated association (other than an individual or sole trader) that:
- (i) conducts activities under the auspices of the government of a foreign country or a province, territory or state of a foreign country; and
  - (ii) has agreed to the professional development sponsor, or the proposed professional development sponsor, lodging a visa application on behalf of the person; or
- (b) a multilateral agency that:
- (i) is operating; and
  - (ii) has operated for a continuous period of 12 months before the date of the application; and
  - (iii) has agreed to the professional development sponsor, or the proposed professional development sponsor, lodging a visa application on behalf of the person; or
- (c) a registered business that:
- (i) is conducted by a body corporate or unincorporated association (other than an individual or sole trader) outside Australia; and
  - (ii) is actively and lawfully operating outside Australia; and
  - (iii) has actively and lawfully operated outside Australia for a continuous period of 12 months before the date of application; and
  - (iv) employs the person.



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***participant costs***, for a primary sponsored person in a professional development program conducted by a professional development sponsor, means the costs of:

- (a) the primary sponsored person's travel and entry to Australia; and
- (b) the primary sponsored person's tuition for the professional development program; and
- (c) the primary sponsored person's accommodation in Australia; and
- (d) the primary sponsored person's living expenses in Australia; and
- (e) the primary sponsored person's health insurance in Australia; and
- (f) the primary sponsored person's return travel from Australia.

***primary sponsored person***:

- (a) in relation to a person who is or was approved as a sponsor in a class of sponsor (the ***approved sponsor***) under subsection 140E (1) of the Act — means:
  - (i) a person:
    - (A) who holds a visa prescribed for the purpose of section 140A of the Act; and
    - (B) who:
      - (I) was last identified in an approved nomination by the approved sponsor; or
      - (II) satisfied the primary criteria for the grant of the visa on the basis of the approved sponsor having agreed, in writing, to be the approved sponsor in relation to the person; or
  - (ii) a person:
    - (A) who is in the migration zone; and
    - (B) who does not hold a substantive visa; and
    - (C) whose last substantive visa was a visa prescribed for section 140A of the Act; and

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- (D) who:
  - (I) was last identified in an approved nomination by the approved sponsor; or
  - (II) satisfied the primary criteria for the grant of the visa on the basis of the approved sponsor having agreed, in writing, to be the approved sponsor in relation to the person; or
- (b) in relation to a party to a work agreement (other than a Minister) or a former party to a work agreement (other than a Minister) — means:
  - (i) a person:
    - (A) who holds a Subclass 421 (Sport) visa, a Subclass 428 (Religious Worker) visa or a Subclass 457 (Business (Long Stay)) visa; and
    - (B) who was last identified in an approved nomination by the party to a work agreement or the former party to a work agreement; or
  - (ii) a person:
    - (A) who is in the migration zone; and
    - (B) who does not hold a substantive visa; and
    - (C) whose last substantive visa was a Subclass 421 (Sport) visa, a Subclass 428 (Religious Worker) visa or a Subclass 457 (Business (Long Stay)) visa; and
    - (D) who was last identified in an approved nomination by the party to a work agreement or the former party to a work agreement.

***professional development agreement*** means an agreement that meets the requirements mentioned in subregulation 2.60 (2).

***professional development program*** means a program that meets the requirements mentioned in subregulation 2.60 (3).

***related body corporate*** has the same meaning as in section 50 of the *Corporations Act 2001*.

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***secondary sponsored person:***

- (a) in relation to a person who is or was approved as a sponsor in a class of sponsor (the ***approved sponsor***) under subsection 140E (1) of the Act — means:
  - (i) a person:
    - (A) who holds a visa prescribed for the purposes of section 140A of the Act; and
    - (B) who was granted the visa on the basis of having satisfied the secondary criteria for the grant of the visa; and
    - (C) either:
      - (I) who was last identified in an approved nomination by the approved sponsor; or
      - (II) in relation to whom the approved sponsor was the last person to have agreed, in writing, to the person being a secondary sponsored person in relation to the approved sponsor; or
  - (ii) a person:
    - (A) who holds a visa prescribed for the purposes of section 140A of the Act; and
    - (B) who is taken, under section 78 of the Act, to have been granted the visa at the time of the person's birth; and
    - (C) who is a member of the family unit of:
      - (I) a primary sponsored person who was last identified in an approved nomination by the approved sponsor; or
      - (II) a primary sponsored person whom the approved sponsor has agreed in writing to be the approved sponsor of; or

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- (iii) a person:
  - (A) who is in the migration zone; and
  - (B) who does not hold a substantive visa; and
  - (C) whose last substantive visa was a visa prescribed for the purposes of section 140A of the Act; and
  - (D) who is taken, under section 78 of the Act, to have been granted the visa at the time of the person's birth; and
  - (E) who is a member of the family unit of:
    - (I) a primary sponsored person who was last identified in an approved nomination by the approved sponsor; or
    - (II) a primary sponsored person whom the approved sponsor has agreed in writing to be the approved sponsor of; or
- (iv) a person:
  - (A) who is in the migration zone; and
  - (B) who does not hold a substantive visa; and
  - (C) whose last substantive visa was a visa prescribed for the purposes of section 140A of the Act; and
  - (D) who was granted the visa on the basis of satisfying the secondary criteria for the grant of the visa; and
  - (E) either:
    - (I) who was last identified in an approved nomination by the approved sponsor; or
    - (II) in relation to whom the approved sponsor was the last person to have agreed in writing to the person being a secondary sponsored person in relation to the approved sponsor; or

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- (b) in relation to a party to a work agreement (other than a Minister) or a former party to a work agreement (other than a Minister) — means:
- (i) a person:
    - (A) who holds a Subclass 421 (Sport) visa, a Subclass 428 (Religious Worker) visa or a Subclass 457 (Business (Long Stay)) visa; and
    - (B) who was granted the visa on the basis of having satisfied the secondary criteria for the grant of the visa; and
    - (C) either:
      - (I) who was last identified in an approved nomination by the party to a work agreement or the former party to a work agreement; or
      - (II) in relation to whom the party to a work agreement or the former party to a work agreement was the last person to have agreed, in writing, to the person being a secondary sponsored person in relation to the party to a work agreement or the former party to a work agreement; or
  - (ii) a person:
    - (A) who holds a Subclass 421 (Sport) visa, a Subclass 428 (Religious Worker) visa or a Subclass 457 (Business (Long Stay)) visa; and
    - (B) who is taken, under section 78 of the Act, to have been granted the visa at the time of the person's birth; and
    - (C) who is a member of the family unit of a primary sponsored person who was last identified in an approved nomination by the party to a work agreement or the former party to a work agreement; or

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- (iii) a person:
  - (A) who is in the migration zone; and
  - (B) who does not hold a substantive visa; and
  - (C) whose last substantive visa was a Subclass 421 (Sport) visa, a Subclass 428 (Religious Worker) visa or a Subclass 457 (Business (Long Stay)) visa; and
  - (D) who was granted the visa on the basis of satisfying the secondary criteria for the grant of the visa; and
  - (E) either:
    - (I) who was last identified in an approved nomination by the party to a work agreement or the former party to a work agreement; or
    - (II) in relation to whom the party to a work agreement or the former party to a work agreement was the last person to have agreed, in writing, to the person being a secondary sponsored person in relation to the party to a work agreement or the former party to a work agreement; or
- (iv) a person:
  - (A) who is in the migration zone; and
  - (B) who does not hold a substantive visa; and
  - (C) whose last substantive visa was a Subclass 421 (Sport) visa, a Subclass 428 (Religious Worker) visa or a Subclass 457 (Business (Long Stay)) visa; and
  - (D) who is taken, under section 78 of the Act, to have been granted the visa at the time of the person's birth; and
  - (E) who is a member of the family unit of a primary sponsored person who was last identified in an approved nomination by the party to a work agreement or the former party to a work agreement.

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**sporting organisation** means an Australian organisation that administers or promotes sport or sporting events.

*Note* **Approved sponsor** is defined in subsection 5 (1) of the Act.

(2) In this Part:

- (a) a person (the **associated person**) is **associated with** a person that is a corporation if the associated person is an officer of the corporation, a related body corporate or an associated entity; and
- (b) a person (the **associated person**) is **associated with** a person that is a partnership if the associated person is a partner of the partnership; and
- (c) a person (the **associated person**) is **associated with** a person that is an unincorporated association if the associated person is a member of the association's committee of management; and
- (d) a person (the **associated person**) is **associated with** a person that is an entity not mentioned in paragraphs (a), (b) and (c) if the associated person is an officer of the entity.

(3) In this Part, **adverse information** means any adverse information relevant to a person's suitability as an approved sponsor, and includes information that:

- (a) the person, or a person associated with the person:
  - (i) has been found guilty by a court of an offence under a Commonwealth, State or Territory law; or
  - (ii) has, to the satisfaction of a competent authority, acted in contravention of a Commonwealth, State or Territory law; or
  - (iii) has been the subject of administrative action (including being issued with a warning), by a competent authority, for a possible contravention of a Commonwealth, State or Territory law; or
  - (iv) is under investigation, subject to disciplinary action or subject to legal proceedings in relation to an alleged contravention of a Commonwealth, State or Territory law; or

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- (v) has become insolvent within the meaning of subsections 5 (2) and (3) of the *Bankruptcy Act 1966* and section 95A of the *Corporations Act 2001*; and
  - (b) the law mentioned in subparagraphs (a) (i) to (iv) relates to one or more of the following matters:
    - (i) discrimination;
    - (ii) immigration;
    - (iii) industrial relations;
    - (iv) occupational health and safety;
    - (v) people smuggling and related offences;
    - (vi) slavery, sexual servitude and deceptive recruiting;
    - (vii) taxation;
    - (viii) terrorism;
    - (ix) trafficking in persons and debt bondage; and
  - (c) the conviction, finding of non-compliance, administrative action, investigation, legal proceedings or insolvency occurred within the previous 3 years.
- (3A) In this Part, a set of terms and conditions of employment for a person (the *first set*) is *less favourable* than another set of terms and conditions of employment for a person if:
- (a) the earnings provided for in the first set are less than the earnings provided for in the other set; and
  - (b) there is no substantial contrary evidence that the first set is not less favourable than the other set.
- (4) In this Part, the entry of a person to Australia is taken to confer a *net employment benefit* on Australia if:
- (a) the person seeks to enter or remain in Australia to carry out an activity individually or in association with a group; and
  - (b) the Minister is satisfied that the carrying out of the activity would lead to greater employment of Australian citizens or Australian permanent residents (or both) than if a person normally resident in Australia undertook the activity.



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- (5) In this Part, a person will perform a *volunteer role* if:
- (a) the person will not receive remuneration for performing the duties of the position, other than the following:
    - (i) reimbursement for reasonable expenses incurred by the person in performing the duties;
    - (ii) prize money; and
  - (b) the duties would not otherwise be carried out by an Australian citizen or an Australian permanent resident in return for wages.

**2.57A Meaning of *earnings***

- (1) In this Part, a person's *earnings* include:
- (a) the person's wages; and
  - (b) amounts applied or dealt with in any way on the person's behalf or as the person directs; and
  - (c) the agreed money value of non-monetary benefits.
- (2) However, an employee's *earnings* do not include the following:
- (a) payments the amount of which cannot be determined in advance;
  - (b) reimbursements;
  - (c) contributions to a superannuation fund to the extent that they are contributions to which subregulation (4) applies.
- Note* Some examples of payments covered by paragraph (a) are commissions, incentive-based payments and bonuses, and overtime (unless the overtime is guaranteed).
- (3) *Non-monetary benefits* are benefits other than an entitlement to a payment of money:
- (a) to which the employee is entitled in return for the performance of work; and
  - (b) for which a reasonable money value has been agreed by the employee and the employer.

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- (4) This subregulation applies to contributions that the employer makes to a superannuation fund to the extent that 1 or more of the following applies:
- (a) the employer would have been liable to pay a superannuation guarantee charge under the *Superannuation Guarantee Charge Act 1992* in relation to the person if the amounts had not been so contributed;
  - (b) the employer is required to contribute to the fund for the employee's benefit in relation to a defined benefit interest (within the meaning of section 292-175 of the *Income Tax Assessment Act 1997*) of the employee;
  - (c) the employer is required to contribute to the fund for the employee's benefit under a law of the Commonwealth, or of a State or a Territory.

*Note* This definition is based on the definition of *earnings* in section 332 of the *Fair Work Act 2009*.

## **Division 2.12 Classes of sponsor**

### **2.58 Classes of sponsor**

For subsection 140E (2) of the Act, the following are classes of sponsor in relation to which a person may be approved as a sponsor:

- (a) a standard business sponsor;
- (b) a professional development sponsor.
- (c) an exchange sponsor;
- (d) a foreign government agency sponsor;
- (e) a special program sponsor;
- (f) a visiting academic sponsor;
- (g) an entertainment sponsor;
- (h) a sport sponsor;
- (i) a domestic worker sponsor;
- (j) a religious worker sponsor;
- (k) an occupational trainee sponsor;

- (l) a superyacht crew sponsor.

*Note* The definition of **approved sponsor** in subsection 5 (1) of the Act provides that an approved sponsor includes a person (other than a Minister) who is a party to a work agreement. A party to a work agreement is not required to apply for approval as a sponsor, and is not required to be approved as a sponsor in relation to a class of sponsor.

## **Division 2.13      Criteria for approval of sponsor**

*Note* A party to a work agreement is not required to apply for approval as a sponsor, and is not required to be approved as a sponsor in relation to a class of sponsor.

### **2.59      Criteria for approval as a standard business sponsor**

For subsection 140E (1) of the Act, the criterion that must be satisfied for the Minister to approve an application by a person (the **applicant**) for approval as a standard business sponsor is that the Minister is satisfied that:

- (a) the applicant has applied for approval as a standard business sponsor in accordance with the process set out in regulation 2.61; and
- (b) the applicant:
  - (i) is not a standard business sponsor; or
  - (ii) is a standard business sponsor because of the application of subitem 45 (2) of Part 2 of Schedule 1 to the *Migration Legislation Amendment (Worker Protection) Act 2008*; and
- (c) the applicant is lawfully operating a business (whether in or outside Australia); and
- (d) if the applicant is lawfully operating a business in Australia, and has traded in Australia for 12 months or more — the applicant meets the benchmarks for the training of Australian citizens and Australian permanent residents specified in an instrument in writing made for this paragraph; and
- (e) if the applicant is lawfully operating a business in Australia, and has traded in Australia for less than 12 months — the applicant has an auditable plan to meet the benchmarks specified in the instrument made for paragraph (d); and

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- (f) if the applicant is lawfully operating a business in Australia — the applicant has attested, in writing, that the applicant has a strong record of, or a demonstrated commitment to:
  - (i) employing local labour; and
  - (ii) non-discriminatory employment practices; and
- (g) either:
  - (i) there is no adverse information known to Immigration about the applicant or a person associated with the applicant; or
  - (ii) it is reasonable to disregard any adverse information known to Immigration about the applicant or a person associated with the applicant; and
- (h) if the applicant is lawfully operating a business outside Australia and does not lawfully operate a business in Australia — the applicant is seeking to be approved as a standard business sponsor in relation to a holder of, or an applicant or a proposed applicant (the **visa applicant**) for, a Subclass 457 (Business (Long Stay)) visa, and the applicant intends for the visa holder or visa applicant to:
  - (i) establish, or assist in establishing, on behalf of the applicant, a business operation in Australia with overseas connections; or
  - (ii) fulfil, or assist in fulfilling, a contractual obligation of the applicant.

*Note for subparagraph (b) (ii)* A person approved as a standard business sponsor before 14 September 2009 can make a new application to become a standard business sponsor on or after 14 September 2009. A person approved as a standard business sponsor on or after 14 September 2009, and who has not ceased to be a standard business sponsor, can apply under section 140GA of the Act for a variation of the terms of approval as a sponsor to extend the duration of the sponsorship approval — see regulation 2.68.

*Note for paragraph (g)* The meanings of **associated with** and **adverse information** are explained in subregulations 2.57 (2) and (3).

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**2.60 Criteria for approval as a professional development sponsor**

- (1) For subsection 140E (1) of the Act, the criterion that must be satisfied for the Minister to approve an application by a person for approval as a professional development sponsor is that the Minister is satisfied that:
- (a) the applicant is an Australian organisation or a government agency; and
  - (b) the applicant:
    - (i) is a party to a professional development agreement that meets the requirements mentioned in subregulation (2); and
    - (ii) the agreement is in force at the time of the Minister's consideration of the application; and
  - (c) the applicant is offering to conduct a professional development program that satisfies the requirements mentioned in subregulation (3); and
  - (d) the applicant has demonstrated an overall capacity to conduct a professional development program involving primary sponsored persons; and
  - (e) the applicant:
    - (i) has the capacity to meet its financial commitments; and
    - (ii) has paid any security requested by an authorised officer under section 269 of the Act; and
  - (f) each of the parties to the professional development agreement has the capacity to meet its financial commitments; and
  - (g) if an overseas employer that is a party to a professional development agreement with the applicant has previously been required to comply with the immigration laws of Australia — the overseas employer has a satisfactory record of compliance; and
  - (h) either:
    - (i) there is no adverse information known to Immigration about the applicant or a person associated with the applicant; or

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- (ii) it is reasonable to disregard any adverse information known to Immigration about the applicant or a person associated with the applicant.

*Note for paragraph (h)* The meanings of **associated with** and **adverse information** are explained in subregulations 2.57 (2) and (3).

- (2) A professional development agreement must meet the following requirements:
  - (a) the parties to the agreement must include:
    - (i) a person (the **applicant**) intending to apply for approval as a professional development sponsor who is:
      - (A) an Australian organisation that has operated in Australia continuously for a period of 12 months immediately prior to the making of the agreement; or
      - (B) an Australian organisation that has been approved by the Minister for the purpose of this sub-subparagraph; or
      - (C) a government agency; and
    - (ii) an overseas employer of a person intended to be a primary sponsored person;
  - (b) the applicant under subparagraph (a) (i) must be an Australian organisation or a government agency;
  - (c) the agreement must specify the person or persons responsible for paying the participant costs of a primary sponsored person;
  - (d) the agreement must not require a primary sponsored person to pay the costs of the tuition of a professional development program;
  - (e) the agreement must specify:
    - (i) particulars of the professional development program to be provided by the professional development sponsor; and
    - (ii) particulars of any other matter to be provided by the professional development sponsor; and
    - (iii) the roles of each of the parties to the agreement; and
    - (iv) the duration of the agreement; and

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- (v) particulars of the conflict resolution arrangements under the agreement, including arrangements for the mediation of disputes; and
    - (vi) particulars of any arrangements for the subcontracting of the delivery of any part of the professional development program; and
    - (vii) particulars of the arrangements for insurance relating to the professional development sponsor; and
    - (viii) particulars of the arrangements for the recovery of costs if the professional development sponsor, or any other provider of the professional development program, ceases operations for any reason; and
    - (ix) a description of the characteristics of the person or persons the overseas employer proposes to select as proposed primary sponsored persons, and how the proposed primary sponsored persons will be selected;
  - (f) if it is intended that a primary sponsored person will pay some of their participation costs — the agreement must contain:
    - (i) a statement that the proposed primary sponsored person will be expected to meet the costs specified in the agreement; and
    - (ii) a declaration from the overseas employer that only an employee that the employer is satisfied is able to meet the costs specified in the agreement will be selected as a primary sponsored person;
  - (g) the agreement must be signed and dated by an authorised representative of each party to the agreement.
- (3) A professional development program must meet the following requirements:
- (a) the program must be relevant to, and consistent with, the development of the skills of the managers or professionals, or both, that it is proposed will participate in the program;

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- (b) the program must provide skills and expertise relevant to, and consistent with, the business and business background of a proposed primary sponsored person's overseas employer;
- (c) the duration of the program must not exceed:
  - (i) 18 months; or
  - (ii) if the Secretary is satisfied that exceptional circumstances exist that warrant an extension of the period of the program — a longer period approved by the Secretary;
- (d) the primary form of the program must be the provision of face-to-face teaching in a classroom or similar environment;
- (e) the primary content of the program must not be a practical component;
- (f) any practical component of the program:
  - (i) must not exceed 7 hours in any day and 35 hours in any week; and
  - (ii) must not adversely affect the Australian labour market; and
  - (iii) must require or involve the payment of remuneration to a proposed primary sponsored person only by the proposed primary sponsored person's overseas employer.

**2.60A Criterion for approval as a temporary work sponsor**

For subsection 140E (1) of the Act, the criterion that must be satisfied for the Minister to approve an application by a person (the *applicant*) for approval as a temporary work sponsor is that the Minister is satisfied that:

- (a) the applicant has applied for approval as a temporary work sponsor in accordance with the process set out in regulation 2.61; and
- (b) the applicant is not already a sponsor of the class for which the applicant is applying; and



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- (c) either:
  - (i) there is no adverse information known to Immigration about the applicant or a person associated with the applicant; or
  - (ii) it is reasonable to disregard any adverse information known to Immigration about the applicant or a person associated with the applicant; and
- (d) the applicant has the capacity to comply with the sponsorship obligations applicable to a person who is or was a sponsor of the class for which the applicant has applied.

**2.60B Criterion for approval as an exchange sponsor**

For subsection 140E (1) of the Act, and in addition to the criterion set out in regulation 2.60A, the criterion that must be satisfied for the Minister to approve an application by a person for approval as an exchange sponsor is that the person is:

- (a) an Australian organisation that is lawfully operating in Australia; or
- (b) a government agency.

**2.60C Criterion for approval as a foreign government agency sponsor**

For subsection 140E (1) of the Act, and in addition to the criterion set out in regulation 2.60A, the criterion that must be satisfied for the Minister to approve an application by a person for approval as a foreign government agency sponsor is that the person is a foreign government agency.

**2.60D Criterion for approval as a special program sponsor**

For subsection 140E (1) of the Act, and in addition to the criterion set out in regulation 2.60A, the criterion that must be satisfied for the Minister to approve an application by a person (the *applicant*) for approval as a special program sponsor is that:

- (a) either:

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- (i) if the applicant is proposing to conduct a youth exchange program that has been approved by the Secretary — the applicant is an Australian organisation or a government agency; or
  - (ii) in any other case — the applicant is a community-based, non-profit Australian organisation, or a government agency; and
- (b) if the applicant is an Australian organisation — the applicant is lawfully operating in Australia; and
- (c) either:
  - (i) the applicant is a party to a special program agreement with the Secretary; or
  - (ii) the special program the applicant is proposing to conduct is either:
    - (A) the School to School Interchange Program; or
    - (B) the School Language Assistants Program; and
- (d) the applicant is proposing to conduct a special program that meets the following requirements:
  - (i) the program is a youth exchange program, or has the object of cultural enrichment or community benefits;
  - (ii) the program has been approved in writing by the Secretary, either:
    - (A) for the purposes of this sub-subparagraph; or
    - (B) for the purposes of paragraph 416.222 (b) or (c) of Schedule 2 as in force immediately before the commencement of this regulation.

**2.60E Criterion for approval as a visiting academic sponsor**

For subsection 140E (1) of the Act, and in addition to the criterion set out in regulation 2.60A, the criterion that must be satisfied for the Minister to approve an application by a person for approval as a visiting academic sponsor is that the person:

- (a) is an Australian tertiary institution or an Australian research institution; and
- (b) is lawfully established in Australia; and

- (c) is lawfully operating in Australia.

**2.60F Criterion for approval as an entertainment sponsor**

For subsection 140E (1) of the Act, and in addition to the criterion set out in regulation 2.60A, the criterion that must be satisfied for the Minister to approve an application by a person for approval as an entertainment sponsor is that the person is:

- (a) an Australian organisation that is lawfully operating in Australia; or
- (b) a government agency; or
- (c) either:
  - (i) an Australian citizen; or
  - (ii) an Australian permanent resident; or
  - (iii) an eligible New Zealand citizen;  
who is usually resident in Australia.

**2.60G Criterion for approval as a sport sponsor**

For subsection 140E (1) of the Act, and in addition to the criterion set out in regulation 2.60A, the criterion that must be satisfied for the Minister to approve an application by a person for approval as a sport sponsor is that the person is a sporting organisation that is lawfully operating in Australia.

**2.60H Criterion for approval as a domestic worker sponsor**

- (1) For subsection 140E (1) of the Act, and in addition to the criterion set out in regulation 2.60A, the criterion that must be satisfied for the Minister to approve an application by a person for approval as a domestic worker sponsor is that the person is an eligible Subclass 457 visa holder.
- (2) For subregulation (1), a person is an *eligible Subclass 457 visa holder* if the person:
  - (a) holds a Subclass 457 (Business (Long Stay)) visa; and
  - (b) was granted the Subclass 457 (Business (Long Stay)) visa on the basis of meeting the requirements of subclause 457.223 (2), (4), (7A), (9) or (10) of Schedule 2; and

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- (c) has been appointed to, or holds the position of:
  - (i) national managing director; or
  - (ii) deputy national managing director; or
  - (iii) state manager;of an Australian office of a foreign organisation.

**2.60I      Criterion for approval as a religious worker sponsor**

For subsection 140E (1) of the Act, and in addition to the criterion set out in regulation 2.60A, the criterion that must be satisfied for the Minister to approve an application by a person for approval as a religious worker sponsor is that the person is a religious institution that is lawfully operating in Australia.

**2.60J      Criterion for approval as an occupational trainee sponsor**

For subsection 140E (1) of the Act, and in addition to the criterion set out in regulation 2.60A, the criterion that must be satisfied for the Minister to approve an application by a person for approval as an occupational trainee sponsor is that the person is:

- (a) an Australian organisation that is lawfully operating in Australia; or
- (b) a government agency.

**2.60K      Criterion for approval as a superyacht crew sponsor**

For subsection 140E (1) of the Act, and in addition to the criterion set out in regulation 2.60A, the criterion that must be satisfied for the Minister to approve an application by a person for approval as a superyacht crew sponsor is that the person is the captain or owner of a superyacht.

## **Division 2.14      Application for approval as a sponsor**

### **2.61      Application for approval as a sponsor**

- (1) For subsection 140F (1) of the Act, a person may apply to the Minister for approval as a sponsor in relation to a class of sponsor in accordance with the process set out in this Division.

*Note* A party to a work agreement is not required to apply for approval as a sponsor, and is not required to apply for approval as a sponsor in relation to a class of sponsor.

- (2) Subject to subregulation (3), a person mentioned in an item of the table must:
- (a) make the application in accordance with the approved form mentioned in the item; and
  - (b) pay the application fee (if any) mentioned in the item.

<b>Item</b>	<b>If the person makes an application for approval as ...</b>	<b>the approved form is ...</b>	<b>and the application fee is ...</b>
1	(a) a standard business sponsor; and (b) operates a business in Australia	1196S; or 1196 (Internet)	\$350
2	(a) a standard business sponsor; and (b) does not operate a business in Australia	1196S	\$350
3	(a) a professional development sponsor; and (b) is a Commonwealth agency	1226	nil
4	(a) a professional development sponsor; and (b) is not a Commonwealth agency	1226	\$1 395
5	a temporary work sponsor (other than a superyacht crew sponsor)	1377	\$350

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Item	If the person makes an application for approval as ...	the approved form is ...	and the application fee is ...
6	a superyacht crew sponsor	1366	nil

- (3) If:
- (a) a person mentioned in the table in subregulation (2) (the **applicant**) paid a sponsorship fee under regulation 5.38 in relation to an application for approval as a sponsor before 14 September 2009; and
  - (b) the applicant was approved as a sponsor in relation to the application before 14 September 2009 but no earlier than 1 July 2009; and
  - (c) no visa application was lodged in relation to sponsorship by the applicant before 14 September 2009;
- the application fee for the first application for approval as a sponsor made by the applicant on or after 14 September 2009 is nil.
- (4) If a person is applying to be approved as a temporary work sponsor (other than a superyacht crew sponsor), the person must make the application:
- (a) by posting the application (with the correct pre-paid postage):
    - (i) to the address specified by the Minister in an instrument in writing for this subparagraph; or
    - (ii) if no legislative instrument has been made for subparagraph (i) — to an office of Immigration in Australia; or
  - (b) by delivering the application by courier service, or otherwise by hand, to the address specified by the Minister in an instrument in writing for this paragraph; or
  - (c) by faxing the application to the fax number specified by the Minister in an instrument in writing for this paragraph.
- (5) For subregulation (4), the Minister may specify different addresses and fax numbers for applications for different classes in relation to which a person may be approved as a sponsor.

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- (6) If a person is applying to be approved as a superyacht crew sponsor, the person must make the application:
- (a) by posting the application (with the correct pre-paid postage):
    - (i) to the address specified by the Minister in an instrument in writing for this subparagraph; or
    - (ii) if no legislative instrument has been made for subparagraph (i) — to an office of Immigration in Australia; or
  - (b) by delivering the application by courier service to the address specified by the Minister in an instrument in writing for this paragraph; or
  - (c) by faxing the application to the fax number specified by the Minister in an instrument in writing for this paragraph.

**2.62 Notice of decision**

- (1) The Minister must notify an applicant for approval as a sponsor, in writing, of a decision under subsection 140E (1) of the Act:
- (a) within a reasonable period after making the decision; and
  - (b) by attaching a written copy of the approval or refusal; and
  - (c) if the decision is a refusal — by attaching a statement of reasons for the refusal.
- (2) If the application was made using approved form 1196 (Internet), the Minister may provide the notification to the applicant in an electronic form.

**Division 2.15 Terms of approval of sponsorship**

**2.63 Standard business sponsor or temporary work sponsor**

- (1) For subsection 140G (2) of the Act, a kind of term of an approval as a standard business sponsor or temporary work sponsor is the duration of the approval.

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- (2) The duration of the approval may be specified:
  - (a) as a period of time; or
  - (b) as ending on a particular date; or
  - (c) as ending on the occurrence of a particular event.

**2.64 Professional development sponsor**

- (1) For subsection 140G (3) of the Act, the terms of approval as a professional development sponsor are prescribed in this regulation.
- (2) An approval as a professional development sponsor has effect only in relation to:
  - (a) the professional development program specified in the application for approval, as varied from time to time by agreement between the professional development sponsor and the Secretary; and
  - (b) the professional development agreement or agreements specified in the application for approval; and
  - (c) the overseas employer or employers specified in the application for approval.
- (3) An approval as a professional development sponsor ceases on the earlier of:
  - (a) 3 years after the day on which the approval is granted; and
  - (b) the day on which the professional development agreement specified in the application for approval ends.

**2.64A Special program sponsor**

- (1) For subsection 140G (3) of the Act, the terms of approval as a special program sponsor are prescribed in this regulation.
- (2) An approval as a special program sponsor has effect only in relation to:
  - (a) the special program specified in the application for approval, as varied from time to time by agreement between the special program sponsor and the Secretary; and



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- (b) the special program agreement or agreements specified in the application for approval, as varied from time to time by agreement between the special program sponsor and the Secretary; and
- (c) the employer or employers specified in the application for approval.

## **Division 2.16      Variation of terms of approval of sponsorship**

### **2.65      Application**

This Division applies to a person who is a standard business sponsor or a temporary work sponsor.

### **2.66      Process to apply for variation of terms of approval — standard business sponsor**

- (1) For subsection 140GA (1) of the Act, a person may apply to the Minister for a variation of a term of an approval as a standard business sponsor in accordance with the process set out in this regulation.
- (2) The person must make the application in accordance with approved form 1196S or approved form 1196 (Internet).
- (3) However, if the person does not operate a business in Australia, the person must make the application in accordance with approved form 1196S.
- (4) The application must be accompanied by a fee of \$350.

### **2.66A      Process to apply for variation of terms of approval — temporary work sponsor**

- (1) For subsection 140GA (1) of the Act, a person may apply to the Minister for a variation of a term of an approval as a temporary work sponsor (other than a superyacht crew sponsor) by making an application in accordance with approved form 1377.

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- (2) The application mentioned in subregulation (1) must:
- (a) be accompanied by a fee of \$350; and
  - (b) be made:
    - (i) by posting the application (with the correct pre-paid postage):
      - (A) to the address specified by the Minister in an instrument in writing for this sub-subparagraph; or
      - (B) if no legislative instrument has been made for sub-subparagraph (A) — to an office of Immigration in Australia; or
    - (ii) by delivering the application by courier service, or otherwise by hand, to the address specified by the Minister in an instrument in writing for this subparagraph; or
    - (iii) by faxing the application to the fax number specified by the Minister in an instrument in writing for this subparagraph.
- (3) For paragraph (2) (b), the Minister may specify different addresses and fax numbers for applications for different classes in relation to which a person may be approved as a sponsor.
- (4) For subsection 140GA (1) of the Act, a person may apply to the Minister for a variation of a term of an approval as a superyacht crew sponsor by making an application in accordance with approved form 1366.
- (5) The application fee for an application mentioned in subregulation (4) is nil.
- (6) An application mentioned in subregulation (4) must be made:
- (a) by posting the application (with the correct pre-paid postage):
    - (i) to the address specified by the Minister in an instrument in writing for this subparagraph; or
    - (ii) if no legislative instrument has been made for subparagraph (i) — to an office of Immigration in Australia; or

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- (b) by delivering the application by courier service to the address specified by the Minister in an instrument in writing for this paragraph; or
- (c) by faxing the application to the fax number specified by the Minister in an instrument in writing for this paragraph.

**2.67 Terms of approval that may be varied**

For paragraph 140GA (2) (a) of the Act, a term of approval as a standard business sponsor or a temporary work sponsor that may be varied is the duration of the approval.

**2.68 Criteria for variation of terms of approval — standard business sponsor**

For paragraph 140GA (2) (b) of the Act, the criterion that must be satisfied for the Minister to approve an application for a variation of a term of approval as a standard business sponsor is that the Minister is satisfied that:

- (a) the applicant has applied for the variation in accordance with the process set out in regulation 2.66; and
- (b) the applicant is a standard business sponsor; and
- (c) the approval the applicant is seeking to vary was granted on or after 14 September 2009; and
- (d) the applicant is lawfully operating a business (whether in or outside Australia); and
- (e) if the applicant is lawfully operating a business in Australia, and has traded in Australia for 12 months or more — the applicant meets the benchmarks for the training of Australian citizens and Australian permanent residents specified in an instrument in writing made for this paragraph; and
- (f) if the applicant is lawfully operating a business in Australia, and has traded in Australia for less than 12 months — the applicant has an auditable plan to meet the benchmarks specified in the instrument in writing made for paragraph (e); and

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- (g) if the applicant is lawfully operating a business in Australia — the applicant has attested in writing that the applicant has a strong record of, or a demonstrated commitment to:
  - (i) employing local labour; and
  - (ii) non-discriminatory employment practices; and
- (h) either:
  - (i) there is no adverse information known to Immigration about the applicant or a person associated with the applicant; or
  - (ii) it is reasonable to disregard any adverse information known to Immigration about the applicant or a person associated with the applicant; and
- (i) if the applicant is lawfully operating a business outside Australia and does not lawfully operate a business in Australia — the applicant is seeking to vary the terms of approval as a standard business sponsor in relation to a holder of, or an applicant or a proposed applicant (the **visa applicant**) for, a Subclass 457 (Business (Long Stay)) visa, and the applicant intends for the visa holder or visa applicant to:
  - (i) establish, or assist in establishing, on behalf of the applicant, a business operation in Australia with overseas connections; or
  - (ii) fulfil, or assist in fulfilling, a contractual obligation of the applicant.

*Note for paragraph (h)* The meanings of **adverse information** and **associated with** are explained in subregulations 2.57 (2) and (3).

**2.68A Criteria for variation of terms of approval — temporary work sponsor**

For paragraph 140GA (2) (b) of the Act, for the Minister to approve an application by a person (the **applicant**) for a variation of a term of approval as a temporary work sponsor, the criteria that must be satisfied are:

- (a) that the applicant satisfies the criteria for approval as a temporary work sponsor set out in paragraphs 2.60A (c) and (d); and

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- (b) that the applicant satisfies the criteria for approval (set out in Division 2.13) that applies to the class of sponsor in relation to which the application for the variation of a term of approval applies; and
- (c) that the applicant has applied for the variation in accordance with the process set out in regulation 2.66A; and
- (d) that:
  - (i) the applicant is applying to vary the terms of approval of a class of sponsor; and
  - (ii) the applicant is in that class.

**2.69 Notice of decision**

- (1) The Minister must notify an applicant for a variation of a term of an approval, in writing, of a decision under subsection 140GA (2) of the Act:
  - (a) within a reasonable period after making the decision; and
  - (b) by attaching a written copy of the decision to vary or not to vary the term of the approval; and
  - (c) if the decision is not to vary the term of the approval — by attaching a statement of reasons for the decision.
- (2) If the application was made using approved form 1196 (Internet), the Minister may provide the notification to the applicant in an electronic form.

**Division 2.17 Nominations**

**2.70 Application**

This Division applies to a person who is:

- (a) a standard business sponsor; or
- (b) a party to a work agreement (other than a Minister); or
- (c) a temporary work sponsor (other than a foreign government agency sponsor, a special program sponsor or a superyacht crew sponsor).

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**2.72 Criteria for approval of nomination — Subclass 457 (Business (Long Stay)) visa**

- (1) This regulation applies to a person who is:
  - (a) a standard business sponsor; or
  - (b) a party to a work agreement (other than a Minister);who, under paragraph 140GB (1) (b) of the Act, has nominated an occupation in relation to a holder of, or an applicant or a proposed applicant for, a Subclass 457 (Business (Long Stay)) visa.
- (2) For subsection 140GB (2) of the Act, the criteria that must be satisfied for the Minister to approve a nomination by a person are set out in subregulations (3) to (12).
- (3) The Minister is satisfied that the person has made the nomination in accordance with the process set out in regulation 2.73.
- (4) The Minister is satisfied that the person is:
  - (a) a standard business sponsor; or
  - (b) a party to a work agreement (other than a Minister).
- (5) The Minister is satisfied that the person has identified in the nomination the visa holder, or the applicant or proposed applicant for the visa, who will work in the nominated occupation.
- (6) If the person identifies a holder of a Subclass 457 (Business (Long Stay)) visa (the **visa holder**) for subregulation (5), the Minister is satisfied that the person:
  - (a) has listed on the nomination each other holder of a visa of that kind who was granted the visa on the basis of having the necessary relationship with the visa holder as mentioned in clause 457.321 of Schedule 2; and
  - (b) if the Minister requires the visa holder to demonstrate that he or she has the skills necessary to perform the occupation — the visa holder demonstrates that he or she has those skills in the manner specified by the Minister.

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- (7) For paragraph (6) (a), the Minister may disregard the fact that 1 or more persons required to be listed on the nomination are not listed, if the Minister is satisfied it is reasonable in the circumstances to do so.
- (7A) In addition to subregulation (6):
- (a) if:
- (i) the person identifies a holder of a Subclass 457 (Business (Long Stay)) visa (the *visa holder*) for subregulation (5); and
  - (ii) the Subclass 457 (Business (Long Stay)) visa was granted after the Minister had waived the requirements of paragraph 4006A (1) (c) of Schedule 4 on the basis of a written undertaking made by the current sponsor of the visa holder (as set out in subclause 4006A (2) of that Schedule);
- the Minister is satisfied that the person has provided, in writing, an undertaking that is equivalent to the undertaking made by the current sponsor of the visa holder; and
- (b) if:
- (i) the person identifies a holder of a Subclass 457 (Business (Long Stay)) visa (the *visa holder*) for subregulation (5); and
  - (ii) the person has listed on the nomination a person described in paragraph (6) (a); and
  - (iii) the Subclass 457 (Business (Long Stay)) visa was granted to the person described in paragraph (6) (a) after the Minister had waived the requirements of paragraph 4006A (1) (c) of Schedule 4 on the basis of a written undertaking made by the current sponsor of the visa holder (as set out in subclause 4006A (2) of that Schedule);
- the Minister is satisfied that the person has provided, in writing, an undertaking that is equivalent to the undertaking made by the current sponsor of the visa holder.

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- (8) If the nomination was made before 1 July 2010 — the Minister is satisfied that the person has provided the following information as part of the nomination:
- (a) if there is a 6-digit ASCO code for the nominated occupation — the 6-digit ASCO code;
  - (b) if there is no 6-digit ASCO code for the occupation, and the person is a standard business sponsor — the name of the occupation as it appears in the instrument in writing made for the purposes of paragraph (10) (a);
  - (c) if there is no 6-digit ASCO code for the occupation and the person is a party to a work agreement — the name of the occupation as it appears in the work agreement;
  - (d) the location or locations at which the nominated occupation is to be carried out.
- (8A) If the nomination is made on or after 1 July 2010 — the Minister is satisfied that the person has provided the following information as part of the nomination:
- (a) if there is a 6-digit ANZSCO code for the nominated occupation — the name of the occupation and the corresponding 6-digit ANZSCO code;
  - (b) if:
    - (i) there is no 6-digit ANZSCO code for the nominated occupation; and
    - (ii) the person is a standard business sponsor;the name of the occupation and the corresponding 6-digit code as they are specified in the instrument in writing made for paragraph (10) (aa);
  - (c) if:
    - (i) there is no 6-digit ANZSCO code for the nominated occupation; and
    - (ii) the person is a party to a work agreement;the name of the occupation and the corresponding 6-digit code (if any) as they are specified in the work agreement;
  - (d) the location or locations at which the nominated occupation is to be carried out.



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(9) The Minister is satisfied that either:

- (a) there is no adverse information known to Immigration about the person or a person associated with the person; or
- (b) it is reasonable to disregard any adverse information known to Immigration about the person or a person associated with the person.

*Note* The meanings of **adverse information** and **associated with** are explained in subregulations 2.57 (2) and (3).

(10) If the person is a standard business sponsor — the Minister is satisfied that:

- (a) if the nomination was made before 1 July 2010 — the nominated occupation corresponds to an occupation specified by the Minister in an instrument in writing for this paragraph; and
- (aa) if the nomination is made on or after 1 July 2010 — the nominated occupation and its corresponding 6-digit code correspond to an occupation and its corresponding 6-digit code specified by the Minister in an instrument in writing for this paragraph; and
- (b) if required by the instrument mentioned in paragraph (a) or (aa) — the nomination of an occupation mentioned in the instrument is supported, in writing to the Minister, by an organisation specified by the Minister in an instrument in writing for this paragraph; and
- (c) the terms and conditions of employment of the person identified in the nomination 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 person's workplace at the same location; and
- (cc) the base rate of pay, under the terms and conditions of employment mentioned in paragraph (c), that:
  - (i) are provided; or

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- (ii) would be provided;  
to an Australian citizen or an Australian permanent resident, will be greater than the temporary skilled migration income threshold specified by the Minister in an instrument in writing for this paragraph; and
- (d) if the nomination was made before 1 July 2010 — the person has certified as part of the nomination, in writing, that:
  - (i) the tasks of the position include a significant majority of the tasks of:
    - (A) the nominated occupation listed in the ASCO; or
    - (B) the nominated occupation specified in an instrument in writing for paragraph (a); and
  - (ii) if the person is lawfully operating a business outside Australia but does not lawfully operate a business in Australia:
    - (A) the nominated occupation is a position in the business of the standard business sponsor; or
    - (B) the nominated occupation is an occupation specified by the Minister in an instrument in writing for this sub-subparagraph; and
  - (iii) if the person lawfully operates a business in Australia:
    - (A) the nominated occupation is a position with a business, or an associated entity, of the person; or
    - (B) the nominated occupation is an occupation specified by the Minister in an instrument in writing for this sub-subparagraph; and
  - (iv) the qualifications and experience of the visa holder, or the applicant or proposed applicant for the visa, identified in relation to the nominated occupation are commensurate with the qualifications and experience specified:
    - (A) for the occupation in the ASCO; or
    - (B) if there is no ASCO code for the nominated occupation — for the occupation in the

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instrument in writing made for the purpose of paragraph (a); and

- (e) if the nomination is made on or after 1 July 2010 — the person has certified as part of the nomination, in writing, that:
  - (i) the tasks of the position include a significant majority of the tasks of:
    - (A) the nominated occupation listed in the ANZSCO; or
    - (B) the nominated occupation specified in an instrument in writing for paragraph (aa); and
  - (ii) if the person is lawfully operating a business outside Australia but does not lawfully operate a business in Australia:
    - (A) the nominated occupation is a position in the business of the standard business sponsor; or
    - (B) the nominated occupation is an occupation specified by the Minister in an instrument in writing for this sub-subparagraph; and
  - (iii) if the person lawfully operates a business in Australia:
    - (A) the nominated occupation is a position with a business, or an associated entity, of the person; or
    - (B) the nominated occupation is an occupation specified by the Minister in an instrument in writing for this sub-subparagraph; and
  - (iv) the qualifications and experience of the visa holder, or the applicant or proposed applicant for the visa, identified in relation to the nominated occupation are commensurate with the qualifications and experience specified:
    - (A) for the occupation in the ANZSCO; or
    - (B) if there is no ANZSCO code for the nominated occupation — for the occupation in the instrument in writing made for paragraph (aa).

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- (10AA) For paragraphs (10) (c) and (cc), if no Australian citizen or Australian permanent resident performs equivalent work in the person's workplace at the same location, the person must determine, using the method specified by the Minister in an instrument in writing for this subregulation:
- (a) the terms and conditions of employment; and
  - (b) the base rate of pay, under the terms and conditions of employment;
- that would be provided to an Australian citizen or an Australian permanent resident to perform equivalent work in the person's workplace at the same location.
- (10AB) Paragraphs (10) (c) and (cc) do not apply if the annual earnings of the person identified in the nomination are equal to or greater than the amount specified by the Minister in an instrument in writing for this subregulation.
- (10A) The Minister may disregard the criterion in paragraph (10) (cc) for the purpose of subregulation (2) if:
- (a) the base rate of pay will not be greater than the temporary skilled migration income threshold specified for that paragraph; and
  - (b) the annual earnings are equal to or greater than the temporary skilled migration income threshold; and
  - (c) the Minister considers it reasonable to do so.
- (11) If the person is a party to a work agreement (other than a Minister) — the Minister is satisfied that:
- (a) the nominated occupation is specified in the work agreement as an occupation that the person may nominate; and
  - (b) if the nomination was made before 1 July 2010 — the person has certified as part of the nomination, in writing, that:
    - (i) the tasks of the position include a significant majority of the tasks of:
      - (A) if the nomination is made using an ASCO code — the nominated occupation listed in the ASCO; or

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- (B) if the nomination is not made using an ASCO code — the nominated occupation specified in the work agreement; and
    - (ii) the qualifications and experience of the visa holder, or the applicant or proposed applicant for the visa, identified in relation to the nominated occupation are commensurate with the qualifications and experience specified for the occupation in the work agreement; and
  - (c) if the nomination is made on or after 1 July 2010 — the person has certified as part of the nomination, in writing, that:
    - (i) the tasks of the position include a significant majority of the tasks of:
      - (A) if the nomination is made using an ANZSCO code — the nominated occupation listed in the ANZSCO; or
      - (B) if the nomination is not made using an ANZSCO code — the nominated occupation specified in the work agreement; and
    - (ii) the qualifications and experience of the visa holder, or the applicant or proposed applicant for the visa, identified in relation to the nominated occupation are commensurate with the qualifications and experience specified for the occupation in the work agreement.
- (12) If the person is a party to a work agreement and the work agreement specifies requirements that must be met by the party to the work agreement — the Minister is satisfied that the requirements of the work agreement have been met.

**2.72A Criteria for approval of nomination — various visas**

- (1) This regulation applies to a person:
  - (a) who is an approved sponsor; and

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- (b) who, under paragraph 140GB (1) (b) of the Act, has nominated an occupation, a program or an activity in relation to a holder of, or an applicant or a proposed applicant for, one of the following visas:
  - (i) a Subclass 411 (Exchange) visa;
  - (ii) a Subclass 419 (Visiting Academic) visa;
  - (iii) a Subclass 420 (Entertainment) visa;
  - (iv) a Subclass 421 (Sport) visa;
  - (v) a Subclass 423 (Media and Film Staff) visa;
  - (vi) a Subclass 427 (Domestic Worker (Temporary) — Executive) visa;
  - (vii) a Subclass 428 (Religious Worker) visa;
  - (viii) a Subclass 442 (Occupational Trainee) visa.
- (2) For subsection 140GB (2) of the Act, the criteria that must be satisfied for the Minister to approve a nomination by the person are set out in subregulations (3) to (9).
- (3) The Minister is satisfied that the person has made the nomination in accordance with the process set out:
  - (a) in the case of a nomination of an occupation or activity in relation to a holder of, or an applicant or a proposed applicant for, a Subclass 420 (Entertainment) visa or a Subclass 423 (Media and Film Staff) visa — in regulation 2.73B; or
  - (b) in the case of a nomination of an occupation or activity in relation to a holder of, or an applicant or a proposed applicant for, a Subclass 421 (Sport) visa — in regulation 2.73C; or
  - (c) in the case of a nomination of an occupation, a program or an activity in relation to a holder of, or an applicant or a proposed applicant for, a visa mentioned in subparagraph (1) (i), (ii), (vi), (vii) or (viii) — in regulation 2.73A.
- (4) The Minister is satisfied that the person has identified in the nomination the visa holder, or an applicant or a proposed applicant for a visa, (the *identified visa holder or applicant*) who will work or participate in the nominated occupation, program or activity.

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- (5) If the person identifies a visa holder for subregulation (4), the Minister is satisfied that the person has listed on the nomination each secondary sponsored person who holds the same visa as the visa holder on the basis of the secondary sponsored person's relationship to the visa holder.
- (6) However, the Minister may disregard the fact that 1 or more secondary sponsored persons are not listed on the nomination if the Minister is satisfied that it is reasonable in the circumstances to do so.
- (7) The Minister is satisfied that the person has provided the following:
  - (a) information that identifies the employer or employers in relation to the nominated occupation, program or activity, including:
    - (i) the location and contact details of each employer; and
    - (ii) if the person and the employer are not the same person — the relationship between the person and the employer;
  - (b) information that identifies the location or locations where the nominated occupation, program or activity will be carried out;
  - (c) information that identifies each member of the family unit of the identified visa holder or applicant who holds, or proposes to apply for, the same visa as the identified visa holder or applicant on the basis of satisfying the secondary criteria.
- (8) For paragraph (7) (a), in the case of a nominated occupation, program or activity that is a volunteer role, **employer** includes the person or organisation responsible for the tasks to be carried out as part of the nominated occupation, program or activity.

*Note* **volunteer role** is defined in subregulation 2.57 (5).
- (9) The Minister is satisfied that:
  - (a) there is no adverse information known to Immigration about the person or a person associated with the person; or

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- (b) if any adverse information is known to Immigration about the person or a person associated with the person — it is reasonable to disregard the information.

**2.72B Criteria for approval of nomination — Subclass 411 (Exchange) visa**

- (1) This regulation applies to a person:
  - (a) who is an exchange sponsor; and
  - (b) who, under paragraph 140GB (1) (b) of the Act, has nominated an occupation, a program or an activity in relation to a holder of, or an applicant or a proposed applicant for, a Subclass 411 (Exchange) visa (the *identified visa holder or applicant*).
- (2) For subsection 140GB (2) of the Act, and in addition to the criteria set out in regulation 2.72A, the criteria that must be satisfied for the Minister to approve a nomination by the exchange sponsor are set out in subregulations (3) to (6).
- (3) The Minister is satisfied that the person making the nomination is an exchange sponsor.
- (4) The Minister is satisfied that there is a written agreement in place between the exchange sponsor and a reciprocating foreign organisation that:
  - (a) provides for the identified visa holder or applicant to work for the exchange sponsor in the nominated occupation, program or activity in Australia for a specified period; and
  - (b) provides a named person, who is an Australian citizen or an Australian permanent resident, with the opportunity to obtain experience with the reciprocating foreign organisation for a specified period.
- (5) The Minister is satisfied that the exchange, as set out in subregulation (4), will be of benefit to both the identified visa holder or applicant, and to the Australian citizen or Australian permanent resident.
- (6) The Minister is satisfied that the nominated position is a skilled position.



**2.72C Criteria for approval of nomination — Subclass 419 (Visiting Academic) visa**

- (1) This regulation applies to a person:
  - (a) who is a visiting academic sponsor; and
  - (b) who, under paragraph 140GB (1) (b) of the Act, has nominated an occupation, a program or an activity in relation to a holder of, or an applicant or a proposed applicant for, a Subclass 419 (Visiting Academic) visa (the *identified visa holder or applicant*).
- (2) For subsection 140GB (2) of the Act, and in addition to the criteria set out in regulation 2.72A, the criteria that must be satisfied for the Minister to approve a nomination by the visiting academic sponsor are set out in subregulations (3) to (6).
- (3) The Minister is satisfied that the person making the nomination is a visiting academic sponsor.
- (4) The Minister is satisfied that the identified visa holder or applicant will observe or participate in an Australian research project:
  - (a) at the sponsoring Australian tertiary or research institution; and
  - (b) in collaboration with other academics employed by the sponsoring Australian tertiary or research institution.
- (5) The Minister is satisfied that:
  - (a) the identified visa holder or applicant is employed, or was formerly employed, as an academic at a tertiary education institution or research institution; and
  - (b) the identified visa holder or applicant has a significant record of achievement in his or her field.
- (6) The Minister is satisfied that the identified visa holder or applicant will not receive from the visiting academic sponsor a salary, scholarship or allowance (other than an allowance for living expenses in Australia and travel costs).

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**2.72D Criteria for approval of nomination — Subclass 420 (Entertainment) visa**

- (1) This regulation applies to a person:
  - (a) who is an entertainment sponsor; and
  - (b) who, under paragraph 140GB (1) (b) of the Act, has nominated an occupation, a program or an activity in relation to a holder of, or an applicant or a proposed applicant for, a Subclass 420 (Entertainment) visa (the *identified visa holder or applicant*).
- (2) For subsection 140GB (2) of the Act, and in addition to the criteria set out in regulation 2.72A, the criteria that must be satisfied for the Minister to approve a nomination by the entertainment sponsor are the criteria set out in:
  - (a) subregulation (3); and
  - (b) 1 of subregulations (4) to (9).
- (3) The Minister is satisfied that the person making the nomination is an entertainment sponsor.

*Performing in film or television production subsidised by government*

- (4) The Minister is satisfied that:
  - (a) the identified visa holder or applicant will be:
    - (i) performing as an entertainer under a performing contract for 1 or more specific engagements (other than non-profit engagements) in Australia; and
    - (ii) performing in a film or television production that is subsidised, in whole or in part, by a government in Australia; and
    - (iii) performing:
      - (A) in a leading role, major supporting role or cameo role; or
      - (B) to satisfy ethnic or other special requirements; and

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- (b) the nomination is supported by a certificate given by the Arts Minister, or a person authorised by the Arts Minister, confirming that the relevant Australian content criteria have been met; and
- (c) the entertainment sponsor holds any necessary licences in respect of the work to which the nomination relates; and
- (d) the entertainment sponsor has consulted with relevant Australian unions in relation to the employment or engagement of the identified visa holder or applicant in Australia.

*Performing in film or television production not subsidised by government*

- (5) The Minister is satisfied that:
  - (a) the identified visa holder or applicant will be:
    - (i) performing as an entertainer under a performing contract for 1 or more specific engagements (other than non-profit engagements) in Australia; and
    - (ii) performing in a film or television production that is not subsidised in any way by a government in Australia; and
    - (iii) performing:
      - (A) in a leading role, major supporting role or cameo role; or
      - (B) to satisfy ethnic or other special requirements; and
  - (b) the nomination is supported by a certificate given by the Arts Minister, or a person authorised by the Arts Minister, confirming that:
    - (i) citizens or residents of Australia have been afforded a reasonable opportunity to participate in all levels of the production; and
    - (ii) the foreign investment, or the private investment guaranteed against the foreign returns by a distributor, in the production is greater than the amount to be expended on entertainers sponsored for entry; and

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- (c) the entertainment sponsor holds any necessary licences in respect of the work to which the nomination relates; and
- (d) the entertainment sponsor has consulted with relevant Australian unions in relation to the employment or engagement of the identified visa holder or applicant in Australia.

*Performing in productions not related to film or television*

- (6) The Minister is satisfied that:
  - (a) the identified visa holder or applicant will be performing as an entertainer under a performing contract that:
    - (i) is not related to a film or television production; and
    - (ii) is for 1 or more specific engagements (other than non-profit engagements) in Australia; and
  - (b) the nominated activity will bring a net employment benefit to the Australian entertainment industry; and
  - (c) the entertainment sponsor holds any necessary licences in respect of the work to which the nomination relates; and
  - (d) the entertainment sponsor has consulted with relevant Australian unions in relation to the employment or engagement of the identified visa holder or applicant in Australia; and
  - (e) the entertainment sponsor has provided an itinerary specifying the dates and venues for all performances.

*Production roles other than as a performer*

- (7) The Minister is satisfied that:
  - (a) the identified visa holder or applicant will be directing, producing or taking another part (otherwise than as a performer) in a theatre, film, television or radio production, or a concert or recording to be performed or shown in Australia; and
  - (b) the nominated activity will bring a net employment benefit to the Australian entertainment industry; and
  - (c) the entertainment sponsor holds any necessary licences in respect of the work to which the nomination relates; and

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- (d) the entertainment sponsor has consulted with relevant Australian unions in relation to the employment or engagement of the identified visa holder or applicant in Australia; and
- (e) the entertainment sponsor has provided an itinerary specifying the dates and venues for the production, concert or recording.

*Support staff*

- (8) The Minister is satisfied that:
  - (a) the identified visa holder or applicant will be supporting an entertainer or a group of entertainers (whether by assisting a performance or by personal services) in relation to a performing contract for 1 or more specific engagements in Australia; and
  - (b) the nominated activity will bring a net employment benefit to the Australian entertainment industry; and
  - (c) the entertainment sponsor holds any necessary licences in respect of the work to which the nomination relates; and
  - (d) the entertainment sponsor has consulted with relevant Australian unions in relation to the employment or engagement of the identified visa holder or applicant in Australia; and
  - (e) the entertainment sponsor has provided an itinerary specifying the dates and venues for all performances.

*Non-profit engagements*

- (9) The Minister is satisfied that:
  - (a) the identified visa holder or applicant will be performing as an entertainer in 1 or more specific engagements that are for non-profit purposes; and
  - (b) the entertainment sponsor has provided an itinerary specifying the dates and venues for all performances.

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**2.72E Criteria for approval of nomination — Subclass 421 (Sport) visa**

- (1) This regulation applies to a person:
  - (a) who is:
    - (i) a sport sponsor; or
    - (ii) a party to a work agreement (other than a Minister); and
  - (b) who, under paragraph 140GB (1) (b) of the Act, has nominated an occupation, a program or an activity in relation to a holder of, or an applicant or a proposed applicant for, a Subclass 421 (Sport) visa (the *identified visa holder or applicant*).
- (2) For subsection 140GB (2) of the Act, and in addition to the criteria set out in regulation 2.72A, the criteria that must be satisfied for the Minister to approve a nomination by the sport sponsor are:
  - (a) that the Minister is satisfied that the person making the nomination is a sport sponsor; and
  - (b) the criteria set out in 1 of subregulations (4) to (7).
- (3) For subsection 140GB (2) of the Act, and in addition to the criteria set out in regulation 2.72A, the criteria that must be satisfied for the Minister to approve a nomination by the party to a work agreement is that the Minister is satisfied that:
  - (a) the person making the nomination is a party to a work agreement (other than a Minister) of a kind mentioned in subregulation 2.76 (3); and
  - (b) the nomination satisfies the requirements of the work agreement.

*Competitors in sporting events*

- (4) The Minister is satisfied that:
  - (a) the identified visa holder or applicant:
    - (i) is entered individually or as a member of a team to compete in a sporting event, or sporting events, in Australia, and is not entered as a Taiwanese national

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- claiming to represent Taiwan, China or the Republic of China; or
- (ii) has been, or will be, appointed or employed, under a contractual agreement, to assist a participant or team of a kind mentioned in subparagraph (i); or
  - (iii) has been, or will be, appointed or employed, under a contractual agreement, to assist a sportsperson:
    - (A) who is an Australian citizen or an Australian permanent resident; and
    - (B) who is known internationally; and
    - (C) who has a record of participation in international events;
- in 1 or more specified sporting events; and
- (b) the identified visa holder or applicant is not a player, a coach or an instructor in relation to an Australian sporting team or sporting organisation.

*Contracted players, coaches and instructors*

- (5) The Minister is satisfied that:
  - (a) the sport sponsor and the identified visa holder or applicant have entered into a formal arrangement that provides for the identified visa holder or applicant to be a player, a coach or an instructor in relation to an Australian sporting team or sporting organisation; and
  - (b) the formal arrangement specifies the period during which the identified visa holder or applicant will be a player, a coach or an instructor in relation to the Australian team or organisation; and
  - (c) the arrangement will be of benefit to the sport in Australia; and
  - (d) the identified visa holder or applicant has an established reputation in the field of sport; and
  - (e) the sport sponsor has provided a letter of endorsement from the relevant Australian national sporting body, certifying that:

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- (i) the identified visa holder or applicant has the ability to play, coach or instruct at the Australian national level; and
- (ii) the participation of the identified visa holder or applicant in the sport in Australia would benefit the sport in Australia by raising the standard of competition.

*Sports trainees*

- (6) The Minister is satisfied that:
  - (a) the sport sponsor and the identified visa holder or applicant have entered into a formal arrangement that provides for the identified visa holder or applicant to participate in a sports training program; and
  - (b) the arrangement specifies the period during which the identified visa holder or applicant will participate in the sports training program; and
  - (c) the training program provides a structured framework with clear outcomes that will add to or enhance the skill level of the identified visa holder or applicant in the relevant sport; and
  - (d) the arrangement will be of benefit to the sport in Australia; and
  - (e) the sport sponsor has provided a letter of endorsement from the relevant Australian national sporting body, certifying that the identified visa holder or applicant is currently competing in, coaching or instructing the sport at the national level in the home country of the identified visa holder or applicant.

*Judges and adjudicators*

- (7) The Minister is satisfied that:
  - (a) the identified visa holder or applicant will act as a judge or adjudicator at 1 or more sporting events or sporting competitions in Australia; and
  - (b) the identified visa holder or applicant has the appropriate experience and skills to perform that role.



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- (8) In this regulation, *relevant Australian national sporting body* means the national sporting body responsible for administering that sport in Australia.

**2.72F Criteria for approval of nomination — Subclass 423 (Media and Film Staff) visa**

- (1) This regulation applies to a person:
- (a) who is an entertainment sponsor; and
  - (b) who, under paragraph 140GB (1) (b) of the Act, has nominated an occupation, a program or an activity in relation to a holder of, or an applicant or a proposed applicant for, a Subclass 423 (Media and Film Staff) visa (the *identified visa holder or applicant*).
- (2) For subsection 140GB (2) of the Act, and in addition to the criteria set out in regulation 2.72A, the criteria that must be satisfied for the Minister to approve a nomination by the entertainment sponsor are the criteria set out in:
- (a) subregulation (3); and
  - (b) 1 of subregulations (4), (5) and (6).
- (3) The Minister is satisfied that the person making the nomination is an entertainment sponsor.

*Journalist, correspondent or reporter of foreign news organisation that is not represented in Australia*

- (4) The Minister is satisfied that:
- (a) the identified visa holder or applicant will represent a foreign news organisation as a journalist, correspondent or reporter; and
  - (b) the foreign news organisation is not represented in Australia; and
  - (c) representation of the foreign news organisation would not be contrary to the interests of Australia.

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*Journalist, correspondent or reporter of foreign news organisation that is represented in Australia*

- (5) The Minister is satisfied that:
- (a) the identified visa holder or applicant will represent a foreign news organisation as a journalist, correspondent or reporter; and
  - (b) the foreign news organisation is represented in Australia; and
  - (c) there is no suitable person in Australia who is capable of doing, and available to do, the nominated occupation; and
  - (d) the nominated occupation would not be contrary to the interests of Australia.

*Documentary program or commercial*

- (6) The Minister is satisfied that:
- (a) the identified visa holder or applicant will make a documentary program or commercial that is exclusively for overseas use; and
  - (b) there is no suitable person in Australia who is capable of doing, and available to do, the nominated occupation; and
  - (c) the nominated occupation would not be contrary to the interests of Australia.

**2.72G Criteria for approval of nomination — Subclass 427 (Domestic Worker (Temporary) — Executive) visa**

- (1) This regulation applies to a person:
- (a) who is a domestic worker sponsor; and
  - (b) who, under paragraph 140GB (1) (b) of the Act, has nominated an occupation in relation to a holder of, or an applicant or a proposed applicant for, a Subclass 427 (Domestic Worker (Temporary) — Executive) visa (the *identified visa holder or applicant*).
- (2) For subsection 140GB (2) of the Act, and in addition to the criteria set out in regulation 2.72A, the criteria that must be satisfied for the Minister to approve a nomination by the

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domestic worker sponsor are set out in subregulations (3) to (7).

- (3) The Minister is satisfied that the person making the nomination is a domestic worker sponsor.
- (4) The Minister is satisfied that the identified visa holder or applicant will be employed to undertake full-time domestic duties in the private household of the domestic worker sponsor.
- (5) The Minister is satisfied that the number of domestic workers sponsored by the domestic worker sponsor will not at any time exceed 3 (including the identified visa holder or applicant).
- (6) The Minister is satisfied that the identified visa holder or applicant:
  - (a) has turned 18; and
  - (b) has experience working as a domestic worker.
- (7) The domestic worker sponsor provides evidence that:
  - (a) the domestic worker sponsor has been unable to find a suitable person in Australia for the nominated occupation; or
  - (b) there are compelling reasons for employing the identified visa holder or applicant.

**2.72H Criteria for approval of nomination — Subclass 428 (Religious Worker) visa**

- (1) This regulation applies to a person:
  - (a) who is:
    - (i) a religious worker sponsor; or
    - (ii) a party to a work agreement (other than a Minister); and
  - (b) who, under paragraph 140GB (1) (b) of the Act, has nominated an occupation, a program or an activity in relation to a holder of, or an applicant or a proposed applicant for, a Subclass 428 (Religious Worker) visa (the *identified visa holder or applicant*).

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- (2) For subsection 140GB (2) of the Act, and in addition to the criteria set out in regulation 2.72A, the criteria that must be satisfied for the Minister to approve a nomination by the religious worker sponsor or the party to a work agreement are set out in subregulations (3) to (5).
- (3) The Minister is satisfied that the person making the nomination is a religious worker sponsor or a party to a work agreement (other than a Minister) of a kind mentioned in subregulation 2.76 (4).
- (4) If the person making the nomination is a religious worker sponsor, the Minister is satisfied that:
  - (a) the identified visa holder or applicant will be engaged on a full-time basis to work or participate in an activity in Australia that:
    - (i) is predominately non-profit in nature; and
    - (ii) directly serves the religious objectives of the religious institution that is the religious worker sponsor; and
  - (b) the identified visa holder or applicant has appropriate qualifications and experience to work or participate in the nominated position.
- (5) If the person making the nomination is a party to a work agreement (other than a Minister), the Minister is satisfied that the nomination satisfies the requirements of the work agreement.

**2.72I Criteria for approval of nomination — Subclass 442 (Occupational Trainee) visa**

- (1) This regulation applies to a person:
  - (a) who is an occupational trainee sponsor; and
  - (b) who, under paragraph 140GB (1) (b) of the Act, has nominated an occupation, a program or an activity in relation to a holder of, or an applicant or a proposed applicant for, a Subclass 442 (Occupational Trainee) visa (the *identified visa holder or applicant*).

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- (2) For subsection 140GB (2) of the Act, and in addition to the criteria set out in regulation 2.72A, the criteria that must be satisfied for the Minister to approve a nomination by the occupational trainee sponsor are the criteria set out in:
  - (a) subregulation (3); and
  - (b) 1 of subregulations (4), (5) and (6).
- (3) The Minister is satisfied that the person making the nomination is an occupational trainee sponsor.

*Occupational training required for registration*

- (4) The Minister is satisfied that:
  - (a) the nominated occupational training is necessary for the identified visa holder or applicant to obtain registration, membership or licensing in Australia or in the home country of the identified visa holder or applicant in relation to the occupation of the identified visa holder or applicant; and
  - (b) the registration, membership or licensing is required in order for the identified visa holder or applicant to be employed in the occupation of the identified visa holder or applicant in Australia or in the home country of the identified visa holder or applicant; and
  - (c) the duration of the occupational training is necessary for the identified visa holder or applicant to obtain registration, membership or licensing in Australia or in the home country of the identified visa holder or applicant in relation to the occupation of the identified visa holder or applicant, taking into account the prior experience of the identified visa holder or applicant; and
  - (ca) the occupational training is workplace based; and
  - (d) the identified visa holder or applicant has appropriate qualifications, experience and English language skills to undertake the occupational training.

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*Occupational training to enhance skills*

- (5) The Minister is satisfied that:
- (a) the nominated occupational training is:
    - (i) a structured workplace training program; and
    - (ii) specifically tailored to the training needs of the identified visa holder or applicant; and
    - (iii) of a duration that meets the specific training needs of the identified visa holder or applicant; and
  - (b) if the nomination was made before 1 July 2010 — the nominated occupational training is in relation to an occupation specified by the Minister in an instrument in writing for this paragraph; and
  - (ba) if the nomination is made on or after 1 July 2010 — the nominated occupational training is in relation to an occupation specified, with its corresponding 6-digit code, by the Minister in an instrument in writing for this paragraph; and
  - (c) the identified visa holder or applicant has the equivalent of at least 12 months full-time experience in the occupation to which the nominated occupational training relates in the 24 months immediately preceding the time of nomination; and
  - (d) the identified visa holder or applicant has appropriate English language skills to undertake the nominated occupational training.

*Occupational training for capacity building overseas*

- (6) The Minister is satisfied that:
- (a) the nominated occupational training is not available in the home country of the identified visa holder or applicant; and
  - (b) 1 of the following requirements is met:
    - (i) the nominated occupational training is supported by a government agency or the government of a foreign country that is the home country of the identified visa holder or applicant;

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- (ii) the identified visa holder or applicant is required to complete a period of no more than 6 months of practical experience, research or observation to obtain a qualification from a foreign educational institution; or
- (iii) the identified visa holder or applicant:
  - (A) is a student of a foreign educational institution; or
  - (B) has graduated from a foreign educational institution during the 12 months preceding the time of nomination;and the nominated occupational training is to undertake research in Australia that is closely related to the course in which the student is or was enrolled at the foreign educational institution; and
- (c) the nominated occupational training is a structured workplace-based training program specifically tailored to the identified visa holder or applicant; and
- (d) the nominated occupational training will give the identified visa holder or applicant additional or enhanced skills in the occupation to which the nominated occupational training relates; and
- (e) the identified visa holder or applicant intends to return to his or her home country after successfully completing the nominated occupational training; and
- (f) the identified visa holder or applicant has appropriate English language skills to undertake the nominated occupational training.

**2.73 Process for nomination — Subclass 457 (Business (Long Stay)) visa**

- (1A) Subregulations (1) to (6) apply to a person:
  - (a) who is nominating an occupation under paragraph 140GB (1) (b) of the Act; and
  - (b) who identifies in the nomination a holder of, or an applicant or a proposed applicant for, a Subclass 457 (Business (Long Stay)) visa as the person who will work in the occupation.

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- (1) For subsection 140GB (3) of the Act, the person may nominate a proposed occupation in accordance with the process set out in this regulation.
- (2) The person must make the nomination in accordance with approved form 1196N or approved form 1196 (Internet).
- (3) However, if the person does not operate a business in Australia, the person must make the application in accordance with approved form 1196N.
- (4) If the nomination was made before 1 July 2010 — the person must provide, as part of the nomination:
  - (a) the information mentioned in subregulations 2.72 (5) and (8); and
  - (b) if the person is a standard business sponsor — the certification mentioned in paragraph 2.72 (10) (d); and
  - (c) if the person is a party to a work agreement (other than a Minister) — the certification mentioned in paragraph 2.72 (11) (b).
- (4A) If the nomination is made on or after 1 July 2010 — the person must provide, as part of the nomination:
  - (a) the information mentioned in subregulations 2.72 (5) and (8A); and
  - (b) if the person is a standard business sponsor — the certification mentioned in paragraph 2.72 (10) (e); and
  - (c) if the person is a party to a work agreement (other than a Minister) — the certification mentioned in paragraph 2.72 (11) (c).
- (5) The application must be accompanied by a fee of \$70.
- (6) The Minister may refund the fee if:
  - (a) both of the following apply:
    - (i) the tasks of the nominated occupation no longer correspond to the tasks of:
      - (A) if the nomination was made before 1 July 2010 — an occupation specified in the instrument in writing made for paragraph 2.72 (10) (a); or



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- (B) if the nomination is made on or after 1 July 2010 — an occupation specified in the instrument in writing made for paragraph 2.72 (10) (aa);
- (ii) the person withdraws the nomination for that reason before a decision is made under section 140GB of the Act; or
- (b) both of the following apply:
  - (i) the nomination is approved under section 140GB of the Act;
  - (ii) after the Minister has approved the nomination, but before a visa is granted in relation to the approval, the tasks of the nominated occupation no longer correspond to the tasks of:
    - (A) if the nomination was made before 1 July 2010 — an occupation specified in the instrument in writing made for paragraph 2.72 (10) (a); or
    - (B) if the nomination is made on or after 1 July 2010 — an occupation specified in the instrument in writing made for paragraph 2.72 (10) (aa); or
- (c) if the person is a party to a work agreement — both of the following apply:
  - (i) the person withdraws the nomination before a decision is made under section 140GB of the Act;
  - (ii) the reason for withdrawing the nomination is because:
    - (A) the person has listed an occupation in the nomination that is not specified in the work agreement as an occupation that the person may nominate; or
    - (B) the number of nominations made by the person and approved by the Minister under section 140GB is equal to or more than the number of approved nominations permitted under the work agreement for the year; or

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- (d) both of the following apply:
  - (i) on or after 1 July 2010, the person nominates an occupation using an ASCO code;
  - (ii) the person withdraws the nomination for that reason before a decision is made under section 140GB of the Act.

*Refund of nomination fee — nominations approved before 14 September 2009*

- (7) Subregulation (8) applies to a person who:
  - (a) nominated an activity under subregulation 1.20G or 1.20GA (as in force immediately before 14 September 2009); and
  - (b) did not identify in the nomination a holder of, or an applicant or a proposed applicant for, a Subclass 457 (Business (Long Stay)) visa as the person who would undertake the activity; and
  - (c) received approval for the nomination under regulation 1.20H (as in force immediately before 14 September 2009).
- (8) The Minister may refund the nomination fee paid by the person for the approved nomination if the person makes a written request for the refund before the approval for the nomination ceases to have effect under subregulation 1.20H (5) (as in force immediately before 14 September 2009).

**2.73A Process for nomination — various visas**

- (1) This regulation applies to a person:
  - (a) who is nominating an occupation, a program or an activity under paragraph 140GB (1) (b) of the Act; and
  - (b) who identifies in the nomination, as the person who will work or participate in the occupation, program or activity, a holder of, or an applicant or a proposed applicant for, 1 of the following visas:
    - (i) a Subclass 411 (Exchange) visa;
    - (ii) a Subclass 419 (Visiting Academic) visa;

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- (iii) a Subclass 427 (Domestic Worker (Temporary) — Executive) visa;
  - (iv) a Subclass 428 (Religious Worker) visa;
  - (v) a Subclass 442 (Occupational Trainee) visa.
- (2) For subsection 140GB (3) of the Act, the person may nominate the occupation, program or activity in accordance with the process set out in this regulation.
- (3) The person must make the nomination in accordance with approved form 1378.
- (4) The nomination must be accompanied by a fee of:
  - (a) if the person is seeking to make more than 20 nominations together — \$2 850; or
  - (b) in any other case — \$145.
- (5) The nomination must be made:
  - (a) by posting the nomination (with the correct pre-paid postage):
    - (i) to the address specified by the Minister in an instrument in writing for this subparagraph; or
    - (ii) if no legislative instrument has been made for subparagraph (i) — to an office of Immigration in Australia; or
  - (b) by delivering the nomination by courier service, or otherwise by hand, to the address specified by the Minister in an instrument in writing for this paragraph; or
  - (c) by faxing the nomination to the fax number specified by the Minister in an instrument in writing for this paragraph.
- (6) For subregulation (5), the Minister may specify different addresses and fax numbers for nominations identifying holders of, or applicants or proposed applicants for, different kinds of visa.

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**2.73B Process for nomination — Subclass 420  
(Entertainment) visa and Subclass 423 (Media and  
Film Staff) visa**

- (1) This regulation applies to a person:
  - (a) who is nominating an occupation, a program or an activity under paragraph 140GB (1) (b) of the Act; and
  - (b) who identifies in the nomination a holder of, or an applicant or a proposed applicant for, a Subclass 420 (Entertainment) visa or a Subclass 423 (Media and Film Staff) visa as the person who will work or participate in the occupation, program or activity.
- (2) For subsection 140GB (3) of the Act, the person may nominate an occupation, a program or an activity in accordance with the process set out in this regulation.
- (3) The person must make the nomination in accordance with approved form 1379.
- (4) Subject to subregulation (5), the nomination must be accompanied by a fee of:
  - (a) if the person is seeking to make more than 20 nominations together — \$2 850; or
  - (b) in any other case — \$145.
- (5) In the case of a nomination:
  - (a) that, on the basis of the information contained in the nomination, appears to the Minister to meet the requirements of subregulation 2.72D (9); or
  - (b) that is:
    - (i) made by an entertainment sponsor who is funded wholly or in part by the Commonwealth; and
    - (ii) approved by the Secretary for this subparagraph;the fee is nil.
- (6) The nomination must be made:
  - (a) by posting the nomination (with the correct pre-paid postage):
    - (i) to the address specified by the Minister in an instrument in writing for this subparagraph; or

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- (ii) if no legislative instrument has been made for subparagraph (i) — to an office of Immigration in Australia; or
  - (b) by delivering the nomination by courier service, or otherwise by hand, to the address specified by the Minister in an instrument in writing for this paragraph; or
  - (c) by faxing the nomination to the fax number specified by the Minister in an instrument in writing for this paragraph.
- (7) For subregulation (6), the Minister may specify different addresses and fax numbers for nominations identifying holders of, or applicants or proposed applicants for, different kinds of visa.

**2.73C Process for nomination — Subclass 421 (Sport) visa**

- (1) This regulation applies to a person:
  - (a) who is nominating an occupation, a program or an activity under paragraph 140GB (1) (b) of the Act; and
  - (b) who identifies in the nomination a holder of, or an applicant or a proposed applicant for, a Subclass 421 (Sport) visa (the *visa holder or applicant*) as the person who will work or participate in the occupation, program or activity.
- (2) For subsection 140GB (3) of the Act, the person may nominate an occupation, a program or an activity in accordance with the process set out in this regulation.
- (3) The person must make the nomination in accordance with approved form 1378.
- (4) Subject to subregulation (5), the nomination must be accompanied by a fee of:
  - (a) if the person is seeking to make more than 20 nominations together — \$2 850; or
  - (b) in any other case — \$145.
- (5) In the case of a nomination that identifies:
  - (a) a visa holder or applicant who is entered as an amateur participant in a sporting event; or

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- (b) a visa holder or applicant who has been, or will be, appointed or employed to assist:
  - (i) an amateur participant in a sporting event; or
  - (ii) an amateur team that is participating in a sporting event;

the fee is nil.

- (6) The nomination must be made:

- (a) by posting the nomination (with the correct pre-paid postage):
  - (i) to the address specified by the Minister in an instrument in writing for this subparagraph; or
  - (ii) if no legislative instrument has been made for subparagraph (i) — to an office of Immigration in Australia; or
- (b) by delivering the nomination by courier service, or otherwise by hand, to the address specified by the Minister in an instrument in writing for this paragraph; or
- (c) by faxing the nomination to the fax number specified by the Minister in an instrument in writing for this paragraph.

**2.74 Notice of decision**

- (1) The Minister must notify an applicant for approval of a nomination, in writing, of a decision under subsection 140GB (2) of the Act:
  - (a) within a reasonable period after making the decision; and
  - (b) by attaching a written copy of the approval or refusal; and
  - (c) if the decision is a refusal — by attaching a statement of reasons for the refusal.
- (2) If the application was made using approved form 1196 (Internet), the Minister may provide the notification to the applicant in an electronic form.

**2.75 Period of approval of nomination — Subclass 457 (Business (Long Stay)) visa**

- (1) This regulation applies to a nomination of an occupation in which a holder of, or an applicant or a proposed applicant for, a

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Subclass 457 (Business (Long Stay)) visa is identified as the person who will work in the occupation.

- (2) An approval of a nomination ceases on the earliest of:
- (a) the day on which Immigration receives notification, in writing, of the withdrawal of the nomination by the approved sponsor; and
  - (b) 12 months after the day on which the nomination is approved; and
  - (c) the day on which the applicant, or the proposed applicant, for the nominated occupation, is granted a Subclass 457 (Business (Long Stay)) visa; and
  - (d) if the approval of the nomination is given to a standard business sponsor — 3 months after the day on which the person's approval as a standard business sponsor ceases; and
  - (e) if the approval of the nomination is given to a standard business sponsor, and the person's approval as a standard business sponsor is cancelled under subsection 140M (1) of the Act — the day on which the person's approval as a standard business sponsor is cancelled; and
  - (f) if the approval of the nomination is given to a party to a work agreement (other than a Minister) — the day on which the work agreement ceases.

**2.75A Period of approval of nomination — other visas**

- (1) This regulation applies to a nomination of an occupation, a program or an activity in which the person identified as the person who will work or participate in the nominated occupation, program or activity is a holder of, or an applicant or a proposed applicant for, 1 of the following visas:
- (a) a Subclass 411 (Exchange) visa;
  - (b) a Subclass 419 (Visiting Academic) visa;
  - (c) a Subclass 420 (Entertainment) visa;
  - (d) a Subclass 421 (Sport) visa;
  - (e) a Subclass 423 (Media and Film Staff) visa;
  - (f) a Subclass 427 (Domestic Worker (Temporary) — Executive) visa;

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- (g) a Subclass 428 (Religious Worker) visa;
  - (h) a Subclass 442 (Occupational Trainee) visa.
- (2) An approval of a nomination ceases on the earliest of:
- (a) the day on which Immigration receives notification, in writing, of the withdrawal of the nomination by the approved sponsor; and
  - (b) 12 months after the day on which the nomination is approved; and
  - (c) if the approval of the nomination is given to an approved sponsor who is not a party to a work agreement (other than a Minister) — 3 months after the day on which the person's approval as a sponsor ceases; and
  - (d) if:
    - (i) the approval of the nomination is given to an approved sponsor who is not a party to a work agreement (other than a Minister); and
    - (ii) the person's approval as a sponsor is cancelled under subsection 140M (1) of the Act;the day on which the person's approval as a sponsor is cancelled; and
  - (e) if the approval of the nomination is given to a party to a work agreement (other than a Minister) — the day on which the work agreement ceases; and
  - (f) the day on which the applicant, or the proposed applicant, who is identified in relation to the nominated occupation, program or activity, is granted a visa on the basis of that nomination.

**Division 2.18 Work agreements**

**2.76 Requirements**

- (1) For section 140GC of the Act, and for the definition of *work agreement* in subsection 5 (1) of the Act, a work agreement must meet the requirements prescribed in subregulation (2), (3) or (4).



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- (2) A work agreement:
  - (a) must be between:
    - (i) the Commonwealth, as represented by the Minister, or by the Minister and 1 or more other Ministers; and
    - (ii) a person, an unincorporated association or a partnership in Australia; and
  - (b) must be a labour agreement that authorises the recruitment, employment, or engagement of services of a person who is intended to be employed or engaged as a holder of a Subclass 457 (Business (Long Stay)) visa; and
  - (c) must be in effect; and
  - (d) must not be an IASS agreement.
- (3) A work agreement:
  - (a) must be between:
    - (i) the Commonwealth, as represented by the Minister, or by the Minister and 1 or more other Ministers; and
    - (ii) a sporting organisation; and
  - (b) must authorise the recruitment of a person who it is proposed will take part in the sporting activities of the sporting organisation as a holder of a Subclass 421 (Sport) visa, whether as an employee or otherwise; and
  - (c) must be in effect; and
  - (d) must not be an IASS agreement.
- (4) A work agreement:
  - (a) must be between the Secretary and a religious institution in Australia; and
  - (b) must authorise the recruitment of a person who it is proposed will take part in the religious activities of the religious institution as a holder of a Subclass 428 (Religious Worker) visa, whether as an employee or otherwise; and
  - (c) must be in effect.

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## **Division 2.19              Sponsorship obligations**

### **2.77              Preliminary**

For subsection 140H (1) of the Act, each of the obligations mentioned in this Division is a sponsorship obligation that a person to whom the obligation applies must satisfy.

### **2.78              Obligation to cooperate with inspectors**

- (1) This regulation applies to a person who is or was an approved sponsor.
- (2) The person must cooperate with an inspector if:
  - (a) the inspector is appointed under section 140V of the Act; and
  - (b) the inspector is exercising powers under Subdivision F of Division 3A of Part 2 of the Act.
- (3) Without limiting subregulation (2), the person is taken not to have cooperated with an inspector if:
  - (a) the person hinders or obstructs an inspector while the inspector is exercising powers under Subdivision F of Division 3A of Part 2 of the Act; or
  - (b) the person conceals, or attempts to conceal, from an inspector the location of a person, document or thing while the inspector is exercising powers under Subdivision F of Division 3A of Part 2 of the Act; or
  - (c) the person prevents, or attempts to prevent, another person from assisting an inspector while the inspector is exercising powers under Subdivision F of Division 3A of Part 2 of the Act; or
  - (d) the person assaults an inspector or a person assisting the inspector while the inspector is exercising powers under Subdivision F of Division 3A of Part 2 of the Act; or
  - (e) the person intimidates or threatens, or attempts to intimidate or threaten, an inspector or a person assisting the inspector while the inspector is exercising powers under Subdivision F of Division 3A of Part 2 of the Act.

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- (4) If the person is or was approved as a sponsor in a class of sponsor under subsection 140E (1) of the Act, the obligation mentioned in subregulation (2):
  - (a) starts to apply on the day on which the person is approved as a sponsor in a class under subsection 140E (1) of the Act; and
  - (b) ends 5 years after the day on which the person ceases or ceased to be a sponsor.
- (5) If the person is or was a party to a work agreement, the obligation mentioned in subregulation (2):
  - (a) starts to apply on the day on which the work agreement commences; and
  - (b) ends 5 years after the day on which the work agreement ceases or ceased.

**2.79 Obligation to ensure equivalent terms and conditions of employment**

- (1) Subject to subregulation (1A):
  - (a) this regulation applies to a person who is or was a standard business sponsor of a primary sponsored person if:
    - (i) the primary sponsored person holds a Subclass 457 (Business (Long Stay)) visa; or
    - (ii) the last substantive visa held by the primary sponsored person was a Subclass 457 (Business (Long Stay)) visa; and
  - (b) this regulation applies to a person who is or was a party to a work agreement (other than a Minister), and who is or was an approved sponsor of a primary sponsored person, if:
    - (i) the primary sponsored person holds a Subclass 457 (Business (Long Stay)) visa; or
    - (ii) the last substantive visa held by the primary sponsored person was a Subclass 457 (Business (Long Stay)) visa.

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- (1A) This regulation does not apply to a standard business sponsor of a primary sponsored person if:
- (a) either:
    - (i) the primary sponsored person holds a Subclass 457 (Business (Long Stay)) visa; or
    - (ii) the last substantive visa held by the primary sponsored person was a Subclass 457 (Business (Long Stay)) visa; and
  - (b) the annual earnings of the primary sponsored person are equal to or greater than the amount specified by the Minister in an instrument in writing for this paragraph.
- (2) Subject to subregulation (2A), the person must ensure that the terms and conditions of employment provided to the primary sponsored person are no less favourable than the terms and conditions of employment that the person provides, or would provide, to an Australian citizen or an Australian permanent resident to perform equivalent work in the person's workplace at the same location.
- (2A) For subregulations (2) and (3), if:
- (a) the person is mentioned in paragraph (1) (a); and
  - (b) the nomination by the person of an activity, in relation to which the primary sponsored person was granted a Subclass 457 (Business (Long Stay)) visa, was approved under regulation 1.20H (as in force immediately before 14 September 2009);
- then:
- (c) from 14 September 2009 until immediately before 1 January 2010:
    - (i) subregulations (2) and (3) do not apply; and
    - (ii) the person must ensure that the primary sponsored person's salary is not less than the minimum salary level worked out and paid in the way specified by the Minister in an instrument in writing for this paragraph; and
  - (d) on and after 1 January 2010, subregulations (2) and (3) apply.

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(3) Subject to subregulation (2A), the person must ensure that:

(a) if:

- (i) the person is mentioned in paragraph (1) (a); and
- (ii) the nomination by the person of an occupation in which the primary sponsored person is identified was approved under section 140GB of the Act on or after 14 September 2009;

the terms and conditions of employment provided to the primary sponsored person are no less favourable than the terms and conditions of employment that the Minister was satisfied, under paragraph 2.72 (10) (c), were no less favourable than the terms and conditions of employment that are provided, or would be provided, to an Australian citizen or an Australian permanent resident; or

(b) if:

- (i) the person is mentioned in paragraph (1) (a); and
- (ii) the nomination by the person of an activity under regulation 1.20GA (as in force immediately before 14 September 2009), in relation to which the primary sponsored person was granted a Subclass 457 (Business (Long Stay)) visa, was approved under regulation 1.20H (as in force immediately before 14 September 2009); and
- (iii) the activity mentioned in subparagraph (ii) is an activity other than an information and communication technology activity; and
- (iv) paragraph (d) does not apply.

the primary sponsored person's base rate of pay is not less than \$40 705; or

(ba) if:

- (i) the person is mentioned in paragraph (1) (a); and
- (ii) the nomination by the person of an activity under regulation 1.20GA (as in force immediately before 14 September 2009), in relation to which the primary sponsored person was granted a Subclass 457 (Business (Long Stay)) visa, was approved under regulation 1.20H (as in force immediately before 14 September 2009); and

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- (iii) the activity mentioned in subparagraph (ii) is an information and communication technology activity; and
  - (iv) paragraph (d) does not apply;  
the primary sponsored person's base rate of pay is not less than \$55 725.
- (c) if:
- (i) the person is mentioned in paragraph (1) (a); and
  - (ii) the nomination by the person of an activity under regulation 1.20G (as in force immediately before 14 September 2009), in relation to which the primary sponsored person was granted a Subclass 457 (Business (Long Stay)) visa, was approved under regulation 1.20H (as in force immediately before 14 September 2009); and
  - (iii) the activity mentioned in subparagraph (ii) is an activity other than an information and communication technology activity; and
  - (iv) paragraph (d) does not apply.  
the primary sponsored person's base rate of pay is not less than \$45 220; or
- (ca) if:
- (i) the person is mentioned in paragraph (1) (a); and
  - (ii) the nomination by the person of an activity under regulation 1.20G (as in force immediately before 14 September 2009), in relation to which the primary sponsored person was granted a Subclass 457 (Business (Long Stay)) visa, was approved under regulation 1.20H (as in force immediately before 14 September 2009); and
  - (iii) the activity mentioned in subparagraph (ii) is an information and communication technology activity; and
  - (iv) paragraph (d) does not apply;  
the primary sponsored person's base rate of pay is not less than \$61 920.
- (d) if:
- (i) the person is mentioned in paragraph (1) (a); and

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- (ii) the nomination by the person of an activity, in relation to which the primary sponsored person was granted a Subclass 457 (Business (Long Stay)) visa, was approved under regulation 1.20H (as in force immediately before 14 September 2009); and
    - (iii) the primary sponsored person was granted a Subclass 457 (Business (Long Stay)) visa on the basis that subclause 457.223 (6) of Schedule 2 applied to the primary sponsored person;
  - the primary sponsored person's base rate of pay is not less than \$81 040; or
  - (e) if the person is mentioned in paragraph (1) (b), the terms and conditions of employment provided to the primary sponsored person are no less favourable than the terms and conditions of employment set out in the work agreement.
- (3A) For the purposes of the terms and conditions set out in a work agreement, the Minister may specify that a minimum salary level is to be worked out in the way specified in an instrument in writing for this subregulation.
- Note* The terms and conditions of a work agreement may refer to a minimum salary level specified in an instrument in writing.
- (4) The obligations mentioned in subregulations (2) and (3):
- (a) start to apply on:
    - (i) the day on which the Minister approves a nomination by the person in which the primary sponsored person is identified; or
    - (ii) if the primary sponsored person was not identified in an approved nomination — the day on which the primary sponsored person is granted a Subclass 457 (Business (Long Stay)) visa on the basis of the person agreeing in writing to being the approved sponsor of the primary sponsored person; or
    - (iii) if the primary sponsored person does not hold a Subclass 457 (Business (Long Stay)) visa on the day the Minister approves the nomination — the day on which the primary sponsored person is granted the visa on the basis of being identified in an approved nomination by the person; and

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- (b) end on the earlier of:
  - (i) the day on which the primary sponsored person is granted a further substantive visa that:
    - (A) is not a Subclass 457 (Business (Long Stay)) visa; and
    - (B) is in effect; and
  - (ii) the day on which the primary sponsored person ceases employment with the person.

**2.80 Obligation to pay travel costs to enable sponsored persons to leave Australia**

- (1) This regulation applies to a person who is or was:
  - (a) a special program sponsor of a primary sponsored person or a secondary sponsored person (the *sponsored person*), if:
    - (i) the sponsored person holds a Subclass 416 (Special Program) visa; or
    - (ii) the last substantive visa held by the sponsored person was a Subclass 416 (Special Program) visa; or
  - (b) a religious worker sponsor of a primary sponsored person or a secondary sponsored person (the *sponsored person*), if:
    - (i) the sponsored person holds a Subclass 428 (Religious Worker) visa; or
    - (ii) the last substantive visa held by the sponsored person was a Subclass 428 (Religious Worker) visa; or
  - (c) a party to a work agreement (other than a Minister), and who is or was an approved sponsor of a primary sponsored person or secondary sponsored person (the *sponsored person*), if
    - (i) the sponsored person holds a Subclass 428 (Religious Worker) visa or a Subclass 457 (Business (Long Stay)) visa; or



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- (ii) the last substantive visa held by the sponsored person was a Subclass 428 (Religious Worker) visa or a Subclass 457 (Business (Long Stay)) visa; or
  - (d) a standard business sponsor of a primary sponsored person or a secondary sponsored person (the *sponsored person*), if:
    - (i) the sponsored person holds a Subclass 457 (Business (Long Stay)) visa; or
    - (ii) the last substantive visa held by the sponsored person was a Subclass 457 (Business (Long Stay)) visa.
- (2) The person must pay the travel costs of the primary sponsored person or the secondary sponsored person:
  - (a) if the costs have been requested in writing by:
    - (i) the Minister on behalf of the primary sponsored person or the secondary sponsored person; or
    - (ii) the primary sponsored person; or
    - (iii) the primary sponsored person on behalf of the secondary sponsored person; or
    - (iv) the secondary sponsored person; or
    - (v) the secondary sponsored person on behalf of the primary sponsored person; and
  - (b) that have not already been paid in accordance with this regulation; and
  - (c) that are reasonable and necessary.
- (3) The request to pay travel costs must:
  - (a) specify the person or persons whose travel will be funded by the costs; and
  - (b) specify the country that the person, whose travel will be funded, holds a passport for and will travel to; and
  - (c) if the person is a multiple passport holder — specify the country that the person holds a passport for and wants to travel to; and
  - (d) be made while the person whose travel will be funded is the holder of the Subclass 416 (Special Program) visa, the Subclass 428 (Religious Worker) visa or the Subclass 457 (Business (Long Stay)) visa.

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- (4) Without limiting paragraph (2) (c), a person is taken to have paid reasonable and necessary costs if:
  - (a) the costs include the cost of travel from the primary sponsored person's usual place of residence in Australia to the place of departure from Australia; and
  - (b) the costs include the cost of travel from Australia to the country the person specifies in accordance with subregulation (3); and
  - (c) the costs are paid within 30 days of receiving the request for costs; and
  - (d) the costs are for economy class air travel or the equivalent of economy class air travel.
- (5) The obligation mentioned in subregulation (2):
  - (a) starts to apply:
    - (i) if the primary sponsored person or secondary sponsored person holds a Subclass 416 (Special Program) visa — on the day on which the primary sponsored person or secondary sponsored person is granted the visa; or
    - (ii) if the primary sponsored person or secondary sponsored person holds a Subclass 428 (Religious Worker) visa or a Subclass 457 (Business (Long Stay)) visa:
      - (A) on the day on which the Minister approves a nomination by the person that identifies the primary sponsored person; or
      - (B) if the primary sponsored person does not hold the visa on the day the Minister approves the nomination — on the day on which the primary sponsored person is granted the visa on the basis of being identified in an approved nomination by the person; and
  - (b) for a primary sponsored person — ends on the earliest of:
    - (i) the day on which the Minister approves a nomination under section 140GB of the Act by another approved sponsor in which the primary sponsored person is identified; and

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- (ii) the day on which the primary sponsored person is granted a further substantive visa that:
    - (A) is a visa of a different subclass to the last substantive visa held by the primary sponsored person; and
    - (B) is in effect; and
  - (iii) the first day on which each of the following has occurred:
    - (A) the primary sponsored person has left Australia;
    - (B) the Subclass 416 (Special Program) visa, the Subclass 428 (Religious Worker) visa or the Subclass 457 (Business (Long Stay)) visa has ceased to be in effect;
    - (C) if:
      - (I) the primary sponsored person held a Subclass 020 (Bridging B) visa when the primary sponsored person left Australia; and
      - (II) the last substantive visa held by the primary sponsored person was a Subclass 416 (Special Program) visa, a Subclass 428 (Religious Worker) visa or a Subclass 457 (Business (Long Stay)) visa;the bridging visa has ceased to be in effect; and
- (c) for a secondary sponsored person — ends on the earliest of:
  - (i) the day on which the Minister approves a nomination by another approved sponsor in which the primary sponsored person is identified; and
  - (ii) the day on which the secondary sponsored person is granted a further substantive visa that:
    - (A) is a visa of a different subclass to the last substantive visa held by the secondary sponsored person; and

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- (B) is in effect; and
  - (iii) the first day on which each of the following has occurred:
    - (A) the secondary sponsored person has left Australia;
    - (B) the Subclass 416 (Special Program) visa, the Subclass 428 (Religious Worker) visa or the Subclass 457 (Business (Long Stay)) visa has ceased to be in effect;
    - (C) if:
      - (I) the secondary sponsored person held a Subclass 020 (Bridging B) visa when the secondary sponsored person left Australia; and
      - (II) the last substantive visa held by the secondary sponsored person was a Subclass 416 (Special Program) visa, a Subclass 428 (Religious Worker) visa or a Subclass 457 (Business (Long Stay)) visa;
- the bridging visa has ceased to be in effect.

**2.80A Obligation to pay travel costs — domestic worker sponsor**

- (1) This regulation applies to a person who is or was a domestic worker sponsor of a primary sponsored person or a secondary sponsored person (the *sponsored person*), if:
  - (a) the sponsored person holds a Subclass 427 (Domestic Worker (Temporary) — Executive) visa; or
  - (b) the last substantive visa held by the sponsored person was a Subclass 427 (Domestic Worker (Temporary) — Executive) visa.
- (2) The person must pay the travel costs of the sponsored person:
  - (a) that will enable the sponsored person to travel to Australia, and leave Australia; and
  - (b) that have not already been paid in accordance with this regulation; and

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- (c) that are reasonable and necessary.
- (3) Without limiting paragraph (2) (c), a person is taken to have paid reasonable and necessary costs if:
  - (a) the costs include the cost of travel:
    - (i) to Australia; and
    - (ii) from the place of arrival in Australia to the sponsored person's usual place of residence in Australia; and
  - (b) the costs include the cost of travel from the sponsored person's usual place of residence in Australia to the place of departure from Australia; and
  - (c) the costs include the cost of travel from Australia to the country from which the sponsored person came to Australia; and
  - (d) the costs are for economy class air travel or the equivalent of economy class air travel.
- (4) The obligation mentioned in subregulation (2):
  - (a) starts to apply on:
    - (i) the day on which the Minister approves a nomination by the person in which the primary sponsored person is identified; or
    - (ii) if the primary sponsored person does not hold a Subclass 427 (Domestic Worker (Temporary) — Executive) visa on the day the Minister approves the nomination — the day on which the primary sponsored person is granted the visa on the basis of being identified in an approved nomination by the person; and
  - (b) for a primary sponsored person — ends on the earliest of:
    - (i) the day on which the Minister approves a nomination under section 140GB of the Act by another approved sponsor in which the primary sponsored person is identified; and

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- (ii) the day on which the primary sponsored person is granted a further substantive visa that:
    - (A) is a visa of a different subclass to the last substantive visa held by the primary sponsored person; and
    - (B) is in effect; and
  - (iii) the first day on which each of the following has occurred:
    - (A) the primary sponsored person has left Australia;
    - (B) the Subclass 427 (Domestic Worker (Temporary) — Executive) visa has ceased to be in effect;
    - (C) if:
      - (I) the primary sponsored person held a Subclass 020 (Bridging B) visa when the primary sponsored person left Australia; and
      - (II) the last substantive visa held by the primary sponsored person was a Subclass 427 (Domestic Worker (Temporary) — Executive) visa;  
the bridging visa has ceased to be in effect;  
and
- (c) for a secondary sponsored person — ends on the earliest of:
  - (i) the day on which the Minister approves a nomination under section 140GB of the Act by another approved sponsor in which the primary sponsored person is identified; and
  - (ii) the day on which the secondary sponsored person is granted a further substantive visa that:
    - (A) is a visa of a different subclass to the last substantive visa held by the secondary sponsored person; and
    - (B) is in effect; and

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- (iii) the first day on which each of the following has occurred:
  - (A) the secondary sponsored person has left Australia;
  - (B) the Subclass 427 (Domestic Worker (Temporary) — Executive) visa has ceased to be in effect;
  - (C) if:
    - (I) the secondary sponsored person held a Subclass 020 (Bridging B) visa when the secondary sponsored person left Australia; and
    - (II) the last substantive visa held by the secondary sponsored person was a Subclass 427 (Domestic Worker (Temporary) — Executive) visa;the bridging visa has ceased to be in effect.

**2.81 Obligation to pay costs incurred by the Commonwealth to locate and remove unlawful non-citizen**

- (1) This regulation applies to a person who is or was an approved sponsor.
- (2) The person must pay costs incurred by the Commonwealth:
  - (a) if the costs were incurred by the Commonwealth in taking either or both of the following actions in relation to the primary sponsored person or secondary sponsored person:
    - (i) locating, as an unlawful non-citizen, the primary sponsored person or the secondary sponsored person;
    - (ii) removing, as an unlawful non-citizen, the primary sponsored person or the secondary sponsored person from Australia; and
  - (b) if the Minister has requested the payment of the costs by written notice in the manner specified in subregulation (5); and

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- (c) if the costs were incurred by the Commonwealth within the period mentioned in subregulation (6).
- (3) However, if the person has already paid the costs of return travel in accordance with the sponsorship obligation mentioned in regulation 2.80 (the *return costs*), the person is liable to pay to the Commonwealth only the difference between:
  - (a) the lesser of:
    - (i) the actual costs incurred by the Commonwealth in taking 1 or more of the actions mentioned in paragraph (2) (a); or
    - (ii) the costs up to the limit prescribed under paragraph 140J (1) (a) of the Act, as prescribed in subregulation (4); and
  - (b) the return costs that have already been paid by the person.
- (4) For paragraph 140J (1) (a) of the Act, the limit in relation to the obligation at subregulation (2) is \$10 000.
- (5) For paragraph (2) (b), the notice from the Minister requesting the payment of costs must:
  - (a) be given using a method mentioned in section 494B of the Act; and
  - (b) specify a date for compliance not earlier than 7 days after the date a person will be taken, by section 494C of the Act, to have received the notice.
- (6) For paragraph 2 (c):
  - (a) in relation to a primary sponsored person — the period within which the Commonwealth must incur the costs:
    - (i) starts on the day on which the primary sponsored person becomes an unlawful non-citizen; and
    - (ii) ends at the moment when the primary sponsored person leaves Australia; and
  - (b) in relation to a secondary sponsored person — the period within which the Commonwealth must incur the costs:
    - (i) starts on the day on which the secondary sponsored person becomes an unlawful non-citizen; and
    - (ii) ends at the moment when the secondary sponsored person leaves Australia.



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- (7) The obligation mentioned in subregulation (2):
- (a) in relation to a primary sponsored person:
    - (i) starts to apply on the day on which the primary sponsored person becomes an unlawful non-citizen; and
    - (ii) ends 5 years after the time at which the primary sponsored person leaves Australia; and
  - (b) in relation to a secondary sponsored person:
    - (i) starts to apply on the day on which the secondary sponsored person becomes an unlawful non-citizen; and
    - (ii) ends 5 years after the time at which the secondary sponsored person leaves Australia.
- (8) In this regulation:
- costs**, in relation to the removal of a former primary sponsored person or a former secondary sponsored person from Australia, has the same meaning as in paragraph (b) of the definition of costs in section 207 of the Act.

**2.82 Obligation to keep records**

- (1) This regulation applies to a person who is or was an approved sponsor.
- (2) The person must keep records:
  - (a) of a kind:
    - (i) if the person is a standard business sponsor — specified in subregulation (3); or
    - (ii) if the person is a party to a work agreement — specified in subregulations (3) and (3A); or
    - (iii) if the person is a temporary work sponsor or a professional development sponsor — specified in paragraphs (3) (a) and (b); and
  - (aa) of a kind specified by the Minister in an instrument in writing (if any) made for this subparagraph; and
  - (b) in a reproducible format; and

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- (c) either:
    - (i) in the manner specified by the Minister in an instrument in writing (if any) made for this subparagraph; or
    - (ii) if the record is a record mentioned in subparagraph (3) (a) (iii) or (3) (e) (i) or (ii) — in a manner that is capable of being verified by an independent person; and
  - (d) for the period specified in subregulation (4), (5) or (6).
- (3) For paragraph (2) (a), the records are:
- (a) if the obligation mentioned in regulation 2.80 applies to the person:
    - (i) a record of the written request by the primary sponsored person or secondary sponsored person for the payment of return travel costs; and
    - (ii) a record of when the written request for the payment of return travel costs was received by the person; and
    - (iii) a record of how the person complied with the request to pay return travel costs, including:
      - (A) the costs paid; and
      - (B) who the costs were paid for; and
      - (C) the date of the payment of the costs; and
  - (b) if the obligation mentioned in regulation 2.84 applies to the person:
    - (i) a record of a notification to Immigration of an event specified in regulation 2.84 for the person; and
    - (ii) a record of the particulars of the notification of the event, including:
      - (A) the date on which the person notified Immigration of the event; and
      - (B) the method by which the notification was provided; and
      - (C) where the notification was provided; and
  - (c) if:
    - (i) the primary sponsored person holds a Subclass 457 (Business (Long Stay)) visa; or

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- (ii) the last substantive visa held by the primary sponsored person was a Subclass 457 (Business (Long Stay)) visa;  
a record of the tasks performed by the primary sponsored person in relation to work undertaken in relation to the nominated occupation or activity; and
  - (d) a record of the location or locations at which the tasks mentioned in paragraph (c) were performed; and
  - (e) if the obligation mentioned in regulation 2.79 applies to the person:
    - (i) a record of the money paid to the primary sponsored person; and
    - (ii) a record of the money applied or dealt with in any way on the primary sponsored person's behalf or as the primary sponsored person directed; and
    - (iii) a record of the non-monetary benefits provided to the primary sponsored person, including the agreed value and the time at which, or the period over which, those benefits were provided; and
    - (iv) if there is an equivalent worker or workers in the person's workplace — a record of the terms and conditions that apply, or did apply, to an equivalent worker or workers, including the period over which the terms and conditions applied.
- (3A) For subparagraph (2) (a) (ii), the records are the records specified in the work agreement as records that must be kept.
- (4) If the person is or was approved as a sponsor in a class of sponsor under subsection 140E (1) of the Act, the obligation mentioned in subregulation (2):
- (a) starts to apply on the day on which the person is approved as a sponsor in a class of sponsor under subsection 140E (1) of the Act; and
  - (b) ends 2 years after the first day on which each of the following occurs concurrently:
    - (i) the person ceases to be an approved sponsor;
    - (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.

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- (5) If the person is or was a party to a work agreement, the obligation mentioned in subregulation (2):
  - (a) starts to apply on the day on which the work agreement commences; and
  - (b) ends 2 years after the first day on which each of the following occurs concurrently:
    - (i) the person ceases to be a party to a work agreement;
    - (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.
- (6) However, the obligation mentioned in subregulation (2) does not require a person to keep a record for a period of more than 5 years.

**2.83 Obligation to provide records and information to the Minister**

- (1) This regulation applies to a person who is or was an approved sponsor.
- (2) The person must provide records or information to the Minister:
  - (a) if the Minister has requested the provision of the records or information by written notice in the manner specified in subregulation (3); and
  - (b) if the records requested by the Minister:
    - (i) are records the person is required to keep under a law of the Commonwealth or a State or Territory that applies to the person; or
    - (ii) are records the person is required to keep under regulation 2.82; and
  - (c) if the records or information relates to:
    - (i) the administration of Division 3A of Part 2 of the Act and the Regulations made under that Division; or
    - (ii) if the person is a party to a work agreement — the administration of the work agreement; and

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- (d) in the manner, and within the timeframe, requested by the Minister in the notice mentioned in subregulation (3).

*Note* Subregulation 2.82 does not apply to a professional development sponsor.

- (3) A notice from the Minister requesting the provision of records or information must:
  - (a) be given using a method mentioned in section 494B of the Act; and
  - (b) specify a date for compliance not earlier than 7 days after the date on which a person will be taken, by section 494C of the Act, to have received the document.
- (4) If the person is or was approved as a sponsor in a class of sponsor under subsection 140E (1) of the Act, the obligation mentioned in subregulation (2):
  - (a) starts to apply on the day on which the person is approved as a sponsor under section 140E of the Act; and
  - (b) ends 2 years after the first day on which each of the following occurs concurrently:
    - (i) the person ceases to be an approved sponsor; and
    - (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.
- (5) If the person is or was a party to a work agreement, the obligation mentioned in subregulation (2):
  - (a) starts to apply on the day on which the work agreement commences; and
  - (b) ends 2 years after the first day on which each of the following occurs concurrently:
    - (i) the person ceases to be a party to a work agreement;
    - (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.

**2.84 Obligation to provide information to Immigration when certain events occur**

- (1) This regulation applies to a person who is or was an approved sponsor.

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- (2) The person must:
  - (a) provide details of an event to Immigration when an event mentioned in this regulation, and specified for the person, occurs; and
  - (b) provide the details of the event by registered post or electronic mail:
    - (i) to an address specified by the Minister in an instrument in writing made for the purpose of this subparagraph; and
    - (ii) within the period specified in subregulation (6).
- (3) If the person is or was a standard business sponsor or a party to a work agreement, the person must notify Immigration about each of the following events:
  - (a) the cessation, or expected cessation, of a primary sponsored person's employment with the person;
  - (aa) a change to the work duties carried out by a primary sponsored person;
  - (b) a change to the information provided to Immigration in the person's application for approval as a sponsor in relation to:
    - (i) the training requirement mentioned in paragraphs 2.59 (d) and (e); and
    - (ii) the person's address and contact details;
  - (ba) if the person is or was a party to a work agreement — a change to:
    - (i) the training information provided in the work agreement; or
    - (ii) the person's address and contact details provided in the work agreement;
  - (c) a change to the information provided to Immigration in the person's application for a variation of a term of approval in relation to the training requirement mentioned in paragraphs 2.68 (e) and (f);
  - (d) the legal entity of the person ceases to exist;
  - (e) if the legal entity of the person is a company — a new director is appointed;

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- (f) if the legal entity of the person is a partnership — a new partner joins the partnership;
- (g) if the legal entity of the person is an unincorporated association — a new member is appointed to the managing committee of the association;
- (h) the person has paid the return travel costs of a primary sponsored person or secondary sponsored person in accordance with the obligation mentioned in regulation 2.80;
- (i) the person has become insolvent within the meaning of subsections 5 (2) and (3) of the *Bankruptcy Act 1966* and section 95A of the *Corporations Act 2001*;
- (j) if the person is a natural person — any of the following:
  - (i) the person enters into a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*;
  - (ii) the person enters into a debt agreement under Part IX of the *Bankruptcy Act 1966*;
  - (iii) a sequestration order is made against the estate of the person under Part IV of the *Bankruptcy Act 1966*;
  - (iv) the person becomes a bankrupt by virtue of the presentation of a debtor's petition under Part IV of the *Bankruptcy Act 1966*;
  - (v) the person presents a declaration of intention to present a debtor's petition under Part IV of the *Bankruptcy Act 1966*;
  - (vi) a composition or scheme of arrangement is presented in relation to the person in accordance with Division 6 of Part IV of the *Bankruptcy Act 1966*;
- (k) if the person is a company — any of the following:
  - (i) an administrator is appointed for the company under Part 5.3A of the *Corporations Act 2001*;
  - (ii) the company resolves by special resolution to be wound up voluntarily under subsection 491 (1) of the *Corporations Act 2001*;

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- (iii) a court has ordered that the company be wound up in insolvency under Part 5.4, or on other grounds under Part 5.4A, of the *Corporations Act 2001*;
    - (iv) a court has appointed an official liquidator to be the provisional liquidator of the company under Part 5.4B of the *Corporations Act 2001*;
    - (v) a court has approved a compromise or arrangement proposed by the company under Part 5.1 of the *Corporations Act 2001*;
    - (vi) the property of the company becomes subject to a receiver or other controller under Part 5.2 of the *Corporations Act 2001*;
    - (vii) procedures are initiated for the deregistration of the company under Part 5A.1 of the *Corporations Act 2001*;
  - (l) if the person is a partner of a partnership, or a member of a managing committee for an unincorporated association — any of the events of the kind mentioned in paragraphs (j) and (k).
- (4) If the person is or was a professional development sponsor of a primary sponsored person, the person must inform Immigration about each of the following events:
- (a) a change to the information provided to Immigration in the person's application for approval as a sponsor in relation to:
    - (i) the person's address and contact details; and
    - (ii) the person's capacity to deliver the approved professional development program; and
    - (iii) the capacity of a sub-contractor involved in the delivery of the approved professional development program to deliver the program or any part of the program;
  - (b) the legal entity of the person ceases to exist;
  - (c) if the legal entity of the person is a company — a new director is appointed;
  - (d) if the legal entity of the person is a partnership — a new partner joins the partnership;



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- (e) if the legal entity of the person is an unincorporated association — a new member is appointed to the managing committee of the association;
- (f) the person has become insolvent within the meaning of subsections 5 (2) and (3) of the *Bankruptcy Act 1966* and section 95A of the *Corporations Act 2001*;
- (h) if the person is a company — any of the following:
  - (i) an administrator is appointed for the company under Part 5.3A of the *Corporations Act 2001*;
  - (ii) the company resolves by special resolution to be wound up voluntarily under subsection 491 (1) of the *Corporations Act 2001*;
  - (iii) a court has ordered that the company be wound up in insolvency under Part 5.4, or on other grounds under Part 5.4A, of the *Corporations Act 2001*;
  - (iv) a court has appointed an official liquidator to be the provisional liquidator of the company under Part 5.4B of the *Corporations Act 2001*;
  - (v) a court has approved a compromise or arrangement proposed by the company under Part 5.1 of the *Corporations Act 2001*;
  - (vi) the property of the company becomes subject to a receiver or other controller under Part 5.2 of the *Corporations Act 2001*;
  - (vii) procedures are initiated for the deregistration of the company under Part 5A.1 of the *Corporations Act 2001*;
- (i) if the person is a partner of a partnership, or a member of a managing committee for an unincorporated association — any of the events of the kind mentioned in paragraph (h);
- (j) the primary sponsored person is unable to participate in the professional development program;
- (k) the primary sponsored person has ceased participation in the professional development program prior to the ending of the professional development program;
- (l) the primary sponsored person has failed to attend the professional development program, and this absence was not authorised by the professional development sponsor.

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- (4A) If the person is or was an exchange sponsor, the person must inform Immigration about each of the following events:
  - (a) a primary sponsored person ceases work, in the position for which the primary sponsored person was identified in the nomination, earlier than the cessation date specified in the exchange agreement mentioned in subregulation 2.72B (4);
  - (b) a change to the information, in relation to the person's address and contact details, provided to Immigration in the person's application for approval as an exchange sponsor.
- (4B) If the person is or was a foreign government agency sponsor, the person must inform Immigration about each of the following events;
  - (a) the cessation, or expected cessation, of a primary sponsored person's employment;
  - (b) a change to the information, in relation to the person's address and contact details, provided to Immigration in the person's application for approval as a foreign government agency sponsor.
- (4C) If the person is or was a special program sponsor, the person must inform Immigration about each of the following events:
  - (a) a primary sponsored person is unable to meet the requirements of the special program;
  - (b) a primary sponsored person is unable to participate in a special program;
  - (c) a primary sponsored person ceases participation in a special program prior to the ending of the special program;
  - (d) a primary sponsored person fails to attend a special program.
- (4D) If the person is or was a visiting academic sponsor, the person must inform Immigration about each of the following events:
  - (a) a primary sponsored person fails to participate in the nominated activity for which the primary sponsored person was identified;
  - (b) a change to the information, in relation to the person's address and contact details, provided to Immigration in the

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person's application for approval as a visiting academic sponsor.

- (4E) If the person is or was an entertainment sponsor, the person must inform Immigration about each of the following events:
- (a) a primary sponsored person fails to participate in the nominated activity for which the primary sponsored person was identified;
  - (b) if a primary sponsored person was identified in a nomination to perform in a film or television production — the cessation of the primary sponsored person's participation in the nominated activity for which the primary sponsored person was identified;
  - (c) a primary sponsored person (other than a person mentioned in paragraph (b)) ceases participation, in the nominated activity for which the primary sponsored person was identified, prior to the cessation date specified in the itinerary provided to the Minister in accordance with the nomination criteria;
  - (d) the entertainment sponsor ceases to hold a licence that the entertainment sponsor was required to hold for the nomination to be approved;
  - (e) a change to the information, in relation to the person's address and contact details, provided to Immigration in the person's application for approval as an entertainment sponsor;
  - (f) if the entertainment sponsor is an Australian organisation — the legal entity of the sponsor ceases to exist.
- (4F) If the person is or was a sport sponsor, the person must inform Immigration about each of the following events:
- (a) a primary sponsored person fails to participate in the nominated activity for which the primary sponsored person was identified;
  - (b) a change to the information, in relation to the person's address and contact details, provided to Immigration in the person's application for approval as a sport sponsor;

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- (c) if a primary sponsored person was identified in a nomination to:
    - (i) be a player, a coach or an instructor; or
    - (ii) participate in a sports training program;on the basis that a formal arrangement has been entered into between the primary sponsored person and the sport sponsor — a change in the formal arrangement between the primary sponsored person and the sport sponsor;
  - (d) if a primary sponsored person was identified in a nomination to:
    - (i) be a player, a coach or an instructor; or
    - (ii) participate in a sports training program;on the basis that a formal arrangement has been entered into between the primary sponsored person and the sport sponsor — the primary sponsored person ceases participation in the nominated activity prior to the cessation date specified in the formal arrangement.
- (4G) If the person is or was a domestic worker sponsor, the person must inform Immigration about each of the following events:
- (a) the cessation, or expected cessation, of a primary sponsored person's employment with the person;
  - (b) a change to the information, in relation to the person's address and contact details, provided to Immigration in the person's application for approval as a domestic worker sponsor.
- (4H) If the person is or was a religious worker sponsor, the person must inform Immigration about each of the following events:
- (a) a primary sponsored person ceases participation in the nominated activity for which the primary sponsored person was identified;
  - (b) a primary sponsored person fails to participate in the nominated activity for which the primary sponsored person was identified;
  - (c) a change to the information, in relation to the person's address and contact details, provided to Immigration in the person's application for approval as a religious worker sponsor;

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- (d) the person has paid the return travel costs of a primary sponsored person or secondary sponsored person in accordance with the obligation mentioned in regulation 2.80.
- (4I) If the person is or was an occupational trainee sponsor, the person must inform Immigration about each of the following events;
  - (a) a primary sponsored person ceases participation in the nominated occupational training for which the primary sponsored person was identified;
  - (b) a primary sponsored person fails to participate in the nominated occupational training for which the primary sponsored person was identified;
  - (c) a change to the information, in relation to the person's address and contact details, provided to Immigration in the person's application for approval as an occupational trainee sponsor.
- (4J) If the person is or was a superyacht crew sponsor, the person must inform Immigration about each of the following events:
  - (a) the cessation, or expected cessation, of a primary sponsored person's employment with the person;
  - (b) a change to the information, in relation to the person's address and contact details, provided to Immigration in the person's application for approval as a superyacht crew sponsor.
- (5) For paragraphs (3) (a), (4B) (a), (4G) (a) and (4J) (a):
  - (a) the person may notify Immigration of the final date of employment of the primary sponsored person before that date; and
  - (b) if the primary sponsored person does not cease employment with the person, or ceases employment on a different date — the person must notify Immigration of the continued employment or the new date of cessation.
- (6) The notification of an event mentioned in an item of the table must be made within the timeframe mentioned in the item.

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Item	For an event mentioned in ...	the notification must be made ...
1	paragraph (3) (a), (4B) (a), (4G) (a) or (4J) (a)	within 10 working days of the primary sponsored person ceasing employment
2	paragraphs (3) (aa) to (l)	within 10 working days of the change or event occurring
3	subregulation (4)	within 10 working days of the change or event occurring
3A	subregulations (4A) to (4J), other than the paragraphs mentioned in item 1	within 10 working days of the change or event occurring
4	subregulation (5)	the earlier of: <ul style="list-style-type: none"> <li>(a) within 10 working days of the cessation date notified under paragraph (3) (a), (4B) (a), (4G) (a) or (4J) (a); and</li> <li>(b) within 10 working days of the actual cessation date</li> </ul>

(7) If the person is or was approved as a sponsor in a class of sponsor under subsection 140E (1) of the Act, the obligation mentioned in subregulation (2):

- (a) starts to apply on the day on which the person is approved as a sponsor under section 140E of the Act; and
- (b) ends after the first day on which each of the following occurs concurrently:
  - (i) the person ceases to be an approved sponsor; and
  - (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.

(8) If the person is or was a party to a work agreement, the obligation mentioned in subregulation (2):

- (a) starts to apply on the day on which the work agreement commences; and
- (b) ends after the first day on which each of the following occurs concurrently:
  - (i) the person ceases to be a party to a work agreement; and

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- (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.

**2.85 Obligation to secure an offer of a reasonable standard of accommodation**

- (1) This regulation applies to a person who is or was:
  - (a) a professional development sponsor in relation to a primary sponsored person, if:
    - (i) the primary sponsored person holds a Subclass 470 (Professional Development) visa; or
    - (ii) the last substantive visa held by the primary sponsored person was a Subclass 470 (Professional Development) visa; or
  - (b) a special program sponsor in relation to a primary sponsored person or a secondary sponsored person, if:
    - (i) either:
      - (A) the primary sponsored person or secondary sponsored person holds a Subclass 416 (Special Program) visa; or
      - (B) the last substantive visa held by the primary sponsored person or secondary sponsored person was a Subclass 416 (Special Program) visa; and
    - (ii) the position in the activity in relation to which the primary sponsored person or secondary sponsored person was granted the Subclass 416 (Special Program) visa is a volunteer role; or
  - (c) an entertainment sponsor in relation to a primary sponsored person or a secondary sponsored person, if:
    - (i) either:
      - (A) the primary sponsored person or secondary sponsored person holds a Subclass 420 (Entertainment) visa; or
      - (B) the last substantive visa held by the primary sponsored person or secondary sponsored person was a Subclass 420 (Entertainment) visa; and

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- (ii) the primary sponsored person or secondary sponsored person was identified in a nomination of an occupation, a program or an activity that is a volunteer role; or
- (d) a sport sponsor, or a party to a work agreement (other than a Minister) who is or was an approved sponsor, in relation to a primary sponsored person or a secondary sponsored person, if:
  - (i) either:
    - (A) the primary sponsored person or secondary sponsored person holds a Subclass 421 (Sport) visa; or
    - (B) the last substantive visa held by the primary sponsored person or secondary sponsored person was a Subclass 421 (Sport) visa; and
  - (ii) the primary sponsored person or secondary sponsored person was identified in a nomination of an occupation, a program or an activity that is a volunteer role; or
- (e) a religious worker sponsor, or a party to a work agreement (other than a Minister) who is or was an approved sponsor, in relation to a primary sponsored person or a secondary sponsored person, if:
  - (i) either:
    - (A) the primary sponsored person or secondary sponsored person holds a Subclass 428 (Religious Worker) visa; or
    - (B) the last substantive visa held by the primary sponsored person or secondary sponsored person was a Subclass 428 (Religious Worker) visa; and
  - (ii) the primary sponsored person or secondary sponsored person was identified in a nomination of an occupation, a program or an activity that is a volunteer role; or



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- (f) an occupational trainee sponsor in relation to a primary sponsored person or a secondary sponsored person, if:
  - (i) either:
    - (A) the primary sponsored person or secondary sponsored person holds a Subclass 442 (Occupational Trainee) visa; or
    - (B) the last substantive visa held by the primary sponsored person or secondary sponsored person was a Subclass 442 (Occupational Trainee) visa; and
  - (ii) the primary sponsored person or secondary sponsored person was identified in a nomination of an occupation, a program or an activity that is a volunteer role.
- (2) The person must secure 1 or more offers of accommodation for the primary sponsored person or secondary sponsored person that:
  - (a) will provide for a reasonable standard of accommodation; and
  - (b) will ensure that the primary sponsored person or secondary sponsored person has accommodation while the primary sponsored person or secondary sponsored person is in Australia.

*Example*

If accommodation that has been secured becomes unavailable, the approved sponsor must secure another offer of accommodation for the primary sponsored person or secondary sponsored person.

- (3) For subregulation (2) (a), accommodation is of a reasonable standard if the accommodation:
  - (a) meets all relevant State or Territory and local government regulations regarding fire, health and safety; and
  - (b) offers 24-hour access; and
  - (c) provides meals or a self-catering kitchen; and
  - (d) is clean and well-maintained; and
  - (e) has a lounge area; and

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- (f) has adequate laundry facilities or a laundry service; and
  - (g) provides power for lighting, cooking and refrigeration; and
  - (h) has an adequate ratio of guests to bathroom facilities; and
  - (i) has uncrowded sleeping areas; and
  - (j) provides appropriate gender segregated areas and bathroom facilities; and
  - (k) allows adequate privacy and secure storage for personal items.
- (4) The obligation mentioned in subregulation (2):
- (a) starts to apply:
    - (i) if the primary sponsored person or secondary sponsored person holds a Subclass 416 (Special Program) visa or a Subclass 470 (Professional Development) visa — on the day on which the primary sponsored person or secondary sponsored person is granted the visa; or
    - (ii) if the primary sponsored person or secondary sponsored person holds a Subclass 420 (Entertainment) visa, a Subclass 421 (Sport) visa, a Subclass 428 (Religious Worker) visa or a Subclass 442 (Occupational Trainee) visa:
      - (A) on the day on which the Minister approves a nomination by the person that identifies the primary sponsored person; or
      - (B) if the primary sponsored person does not hold the visa on the day the Minister approves the nomination — on the day on which the primary sponsored person is granted the visa on the basis of being identified in an approved nomination by the person; and
  - (b) for a primary sponsored person — ends on the earliest of:
    - (i) the day on which the Minister approves a nomination under section 140GB of the Act by another approved sponsor in which the primary sponsored person is identified; and

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- (ii) the day on which the primary sponsored person is granted a further substantive visa that:
  - (A) is a visa of a different subclass to the last substantive visa held by the primary sponsored person; and
  - (B) is in effect; and
- (iii) the first day on which each of the following has occurred:
  - (A) the primary sponsored person has left Australia;
  - (B) the visa mentioned in subregulation (1) has ceased to be in effect;
  - (C) if:
    - (I) the primary sponsored person held a Subclass 020 (Bridging B) visa when the primary sponsored person left Australia; and
    - (II) the last substantive visa held by the primary sponsored person was a visa mentioned in subregulation (1);the bridging visa has ceased to be in effect; and
- (c) for a secondary sponsored person — ends on the earliest of:
  - (i) the day on which the Minister approves a nomination under section 140GB of the Act by another approved sponsor in which the primary sponsored person is identified; and
  - (ii) the day on which the secondary sponsored person is granted a further substantive visa that:
    - (A) is a visa of a different subclass to the last substantive visa held by the secondary sponsored person; and
    - (B) is in effect; and
  - (iii) the first day on which each of the following has occurred:
    - (A) the secondary sponsored person has left Australia;

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- (B) the visa mentioned in subregulation (1) has ceased to be in effect;
- (C) if:
  - (I) the secondary sponsored person held a Subclass 020 (Bridging B) visa when the secondary sponsored person left Australia; and
  - (II) the last substantive visa held by the secondary sponsored person was a visa mentioned in subregulation (1);the bridging visa has ceased to be in effect.

**2.86 Obligation to ensure primary sponsored person works or participates in nominated occupation, program or activity**

- (1) This regulation applies to a person who is or was:
  - (a) a standard business sponsor in relation to, or a party to a work agreement (other than a Minister) who is or was an approved sponsor in relation to, a primary sponsored person, if:
    - (i) the primary sponsored person holds a Subclass 457 (Business (Long Stay)) visa; or
    - (ii) the last substantive visa held by the primary sponsored person was a Subclass 457 (Business (Long Stay)) visa; or
  - (b) an exchange sponsor in relation to a primary sponsored person, if:
    - (i) the primary sponsored person holds a Subclass 411 (Exchange) visa; or
    - (ii) the last substantive visa held by the primary sponsored person was a Subclass 411 (Exchange) visa; or
  - (c) a visiting academic sponsor in relation to a primary sponsored person, if:
    - (i) the primary sponsored person holds a Subclass 419 (Visiting Academic) visa; or

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- (ii) the last substantive visa held by the primary sponsored person was a Subclass 419 (Visiting Academic) visa; or
- (d) an entertainment sponsor in relation to a primary sponsored person, if:
  - (i) the primary sponsored person holds a Subclass 420 (Entertainment) visa or a Subclass 423 (Media and Film Staff) visa; or
  - (ii) the last substantive visa held by the primary sponsored person was a Subclass 420 (Entertainment) visa or a Subclass 423 (Media and Film Staff) visa; or
- (e) a sport sponsor in relation to, or a party to a work agreement (other than a Minister) who is or was an approved sponsor in relation to, a primary sponsored person, if:
  - (i) the primary sponsored person holds a Subclass 421 (Sport) visa; or
  - (ii) the last substantive visa held by the primary sponsored person was a Subclass 421 (Sport) visa; or
- (f) a domestic worker sponsor in relation to a primary sponsored person, if:
  - (i) the primary sponsored person holds a Subclass 427 (Domestic Worker (Temporary) — Executive) visa; or
  - (ii) the last substantive visa held by the primary sponsored person was a Subclass 427 (Domestic Worker (Temporary) — Executive) visa; or
- (g) a religious worker sponsor in relation to, or a party to a work agreement (other than a Minister) who is or was an approved sponsor in relation to, a primary sponsored person, if:
  - (i) the primary sponsored person holds a Subclass 428 (Religious Worker) visa; or
  - (ii) the last substantive visa held by the primary sponsored person was a Subclass 428 (Religious Worker) visa; or

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- (h) an occupational trainee sponsor in relation to a primary sponsored person or a secondary sponsored person, if:
  - (i) the primary sponsored person or secondary sponsored person holds a Subclass 442 (Occupational Trainee) visa; or
  - (ii) the last substantive visa held by the primary sponsored person or secondary sponsored person was a Subclass 442 (Occupational Trainee) visa.
- (2) If the primary sponsored person holds a Subclass 457 (Business (Long Stay)) visa, or the last substantive visa held by the primary sponsored person was a Subclass 457 (Business (Long Stay)) visa, the person must ensure that the primary sponsored person:
  - (a) does not work in an occupation unless both of the following apply:
    - (i) the occupation was nominated by the person for the primary sponsored person under subsection 140GB (1) of the Act;
    - (ii) the nomination was approved by the Minister under subsection 140GB (2) of the Act; or
  - (b) is not employed in an activity unless both of the following apply:
    - (i) the activity was nominated by the person for the primary sponsored person under regulation 1.20G or 1.20GA (as in force immediately before 14 September 2009);
    - (ii) the nomination was approved by the Minister under regulation 1.20H (as in force immediately before 14 September 2009); or
  - (c) is not employed in an activity unless both of the following apply:
    - (i) the activity was nominated by the person for the primary sponsored person under regulation 1.20G or 1.20GA as in force immediately before 14 September 2009;
    - (ii) the nomination was approved by the Minister under subsection 140GB (2) of the Act.

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- (2A) Subject to subregulation (2B), if:
- (a) the primary sponsored person holds a Subclass 457 (Business (Long Stay)) visa; or
  - (b) the last substantive visa held by the primary sponsored person was a Subclass 457 (Business (Long Stay)) visa;
- the person must ensure that:
- (c) if the person is or was a standard business sponsor who lawfully operates a business in Australia — the primary sponsored person is engaged only as:
    - (i) an employee of the person; or
    - (ii) an employee of an associated entity of the person; or
  - (d) if the person is or was a standard business sponsor who does not lawfully operate a business in Australia — the primary sponsored person is engaged only as an employee of the person; or
  - (e) if the person is or was a party to a work agreement — the primary sponsored person is engaged only as an employee of the person.
- (2B) For subregulation (2A), if the Minister specifies an occupation in an instrument in writing for this subregulation, a primary sponsored person may be engaged in that occupation as an independent contractor by:
- (a) the person; or
  - (b) an associated entity of the person.
- (2C) If the primary sponsored person holds a visa mentioned in paragraphs (1) (b) to (h), the person must ensure that the primary sponsored person works or participates in the nominated occupation, program or activity in relation to which the primary sponsored person was identified.
- (3) The obligations mentioned in subregulations (2), (2A) and (2C):
- (a) start to apply:
    - (i) on the day on which the Minister approves a nomination by the person that identifies the primary sponsored person; or

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- (ii) if the primary sponsored person does not hold a visa mentioned in subregulation (1) on the day the Minister approves the nomination — on the day on which the primary sponsored person is granted the visa on the basis of being identified in an approved nomination by the person; or
  - (iii) if the primary sponsored person was not identified in an approved nomination — the day on which the primary sponsored person is granted a Subclass 457 (Business (Long Stay)) visa on the basis of the person agreeing in writing to being the approved sponsor in relation to the primary sponsored person; and
- (b) end on the earliest of:
  - (i) the day on which the Minister approves a nomination under section 140GB of the Act by another approved sponsor in which the primary sponsored person is identified; and
  - (ii) the day on which the primary sponsored person is granted a further substantive visa that:
    - (A) is a visa of a different subclass to the last substantive visa held by the primary sponsored person; and
    - (B) is in effect; and
  - (iii) the first day on which each of the following has occurred:
    - (A) the primary sponsored person has left Australia;
    - (B) the visa granted to the primary sponsored person on the basis of being identified in an approved nomination by the person has ceased to be in effect;
    - (C) if:
      - (I) the primary sponsored person held a Subclass 020 (Bridging B) visa when the primary sponsored person left Australia; and



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- (II) the last substantive visa held by the primary sponsored person was the visa granted to the primary sponsored person on the basis of being identified in an approved nomination by the person;

the bridging visa has ceased to be in effect.

**2.87 Obligation not to recover certain costs from a primary sponsored person or secondary sponsored person**

- (1) This regulation applies to a person who is or was an approved sponsor (other than a professional development sponsor) of a primary sponsored person or a secondary sponsored person.
- (2) The person must not recover, or seek to recover, from the primary sponsored person or secondary sponsored person, all or part of the following costs:
  - (a) the costs that relate specifically to the recruitment of the primary sponsored person, including migration agent costs;
  - (b) the costs, including migration agent costs, associated with:
    - (i) becoming an approved sponsor; or
    - (ii) being an approved sponsor; or
    - (iii) being a former approved sponsor.
- (2A) In addition to subregulation (2), if:
  - (a) the person is or was:
    - (i) a domestic worker sponsor in relation to a primary sponsored person or a secondary sponsored person (the *sponsored person*); or
    - (ii) a religious worker sponsor in relation to a sponsored person; or
    - (iii) a party to a work agreement who is or was an approved sponsor in relation to a sponsored person; and

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(b) either:

- (i) the sponsored person holds a Subclass 427 (Domestic Worker (Temporary) — Executive) visa or a Subclass 428 (Religious Worker) visa; or
- (ii) the last substantive visa held by the sponsored person was a Subclass 427 (Domestic Worker (Temporary) — Executive) visa or a Subclass 428 (Religious Worker) visa;

the person must not recover or seek to recover from the sponsored person any expenditure by the person in relation to financial support of the sponsored person in Australia.

(3) If the person is or was approved as a sponsor in a class of sponsor under subsection 140E (1) of the Act, the obligations mentioned in subregulations (2) and (2A):

- (a) start to apply on the day on which the person is approved as a sponsor; and
- (b) end on the day on which each of the following has occurred:
  - (i) the person ceases to be an approved sponsor;
  - (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.

(4) If the person is or was a party to a work agreement, the obligations mentioned in subregulations (2) and (2A):

- (a) start to apply on the day on which the work agreement commences; and
- (b) end on the day on which each of the following has occurred:
  - (i) the person ceases to be a party to a work agreement;
  - (ii) there is no primary sponsored person or secondary sponsored person in relation to the person.

**2.87A Obligation to make same or equivalent position available to Australian exchange participants**

- (1) This regulation applies to a person who is or was an exchange sponsor.

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- (2) Immediately after the completion of the exchange mentioned in subregulation 2.72B (4), the person must make available to the Australian citizen or Australian permanent resident named in the exchange agreement under that subregulation (the *Australian participant*) the same position as, or a position equivalent to, the position held by the Australian participant in Australia at the time the exchange agreement was entered into.
- (3) The obligation mentioned in subregulation (2):
  - (a) starts to apply on the day on which the Minister approved the nomination made by the exchange sponsor in relation to the exchange; and
  - (b) ends 30 days after completion of the exchange.

**Division 2.20      Circumstances in which sponsor  
may be barred or sponsor's  
approval may be cancelled**

**2.88      Preliminary**

For subparagraphs 140L (1) (a) (i) and (ii) of the Act, each of the circumstances mentioned in this Division is a circumstance in which the Minister may take one or more of the actions mentioned in section 140M of the Act.

*Note* The Minister cannot take action against a party to a work agreement under section 140M of the Act. The terms of the work agreement will provide for whether the agreement can be cancelled or whether the person can be barred from doing certain things under the agreement.

**2.89      Failure to satisfy sponsorship obligation**

- (1) This regulation applies to a person who is or was:
  - (a) a standard business sponsor in relation to a primary sponsored person or a secondary sponsored person; or
  - (b) a professional development sponsor in relation to a primary sponsored person; or
  - (c) a temporary work sponsor in relation to a primary sponsored person or a secondary sponsored person.

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- (2) For subparagraph 140L (1) (a) (i) of the Act, the circumstance is that the Minister is satisfied that the person has failed to satisfy a sponsorship obligation mentioned in Division 2.19.
- (3) For paragraph 140L (1) (b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstance mentioned in subregulation (2) are:
  - (a) the past and present conduct of the person in relation to Immigration; and
  - (b) the number of occasions on which the person has failed to satisfy the sponsorship obligation; and
  - (c) the nature and severity of the circumstances relating to the failure to satisfy the sponsorship obligation, including the period of time over which the failure has occurred; and
  - (d) the period of time over which the person has been an approved sponsor; and
  - (e) whether, and the extent to which, the failure to satisfy the sponsorship obligation has had a direct or indirect impact on another person; and
  - (f) whether, and the extent to which, the failure to satisfy the sponsorship obligation was intentional, reckless or inadvertent; and
  - (g) whether, and the extent to which, the person has cooperated with Immigration, including whether the person informed Immigration of the failure; and
  - (h) the steps (if any) the person has taken to rectify the failure to satisfy the sponsorship obligation, including whether the steps were taken at the request of Immigration or otherwise; and
  - (i) the processes (if any) the person has implemented to ensure future compliance with the sponsorship obligation; and
  - (j) the number of other sponsorship obligations that the person has failed to satisfy, and the number of occasions on which the person has failed to satisfy other sponsorship obligations; and
  - (k) any other relevant factors.

**Regulation 2.91**

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**2.90 Provision of false or misleading information**

- (1) This regulation applies to a person who is or was:
  - (a) a standard business sponsor; or
  - (b) a professional development sponsor; or
  - (c) a temporary work sponsor.
- (2) For subparagraph 140L (1) (a) (ii) of the Act, an additional circumstance is that the Minister is satisfied that the person has provided false or misleading information to Immigration or the Migration Review Tribunal.
- (3) For paragraph 140L (1) (b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstance mentioned in subregulation (2) are:
  - (a) the purpose for which the information was provided; and
  - (b) the past and present conduct of the person in relation to Immigration; and
  - (c) the nature of the information; and
  - (d) whether, and the extent to which, the provision of false or misleading information has had a direct or indirect impact on another person; and
  - (e) whether the information was provided in good faith; and
  - (f) whether the person notified Immigration immediately upon discovering that the information was false or misleading; and
  - (g) any other relevant factors.

**2.91 Application or variation criteria no longer met**

- (1) This regulation applies to a person who is or was:
  - (a) a standard business sponsor; or
  - (b) a professional development sponsor; or
  - (c) a temporary work sponsor.
- (2) For subparagraph 140L (1) (a) (ii) of the Act, an additional circumstance is that the Minister is satisfied that:

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- (a) the person no longer satisfies the criteria prescribed under section 140E of the Act at the time the person was approved as a sponsor; or
  - (b) if the terms of the approval of the person as a standard business sponsor or temporary work sponsor have been varied — the person no longer satisfies the criteria prescribed under section 140GA of the Act at the time of the approval of the variation.
- (3) For paragraph 140L (1) (b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstance mentioned in subregulation (2) are:
- (a) the nature of the applicable sponsorship criteria that the person no longer meets; and
  - (b) whether, and the extent to which, the failure to continue to satisfy the criteria for approval as a sponsor, or to continue to satisfy the criteria for approval of a variation, has had a direct or indirect impact on another person; and
  - (c) the reason why the person no longer satisfies the applicable sponsorship criteria, including whether the failure to satisfy the criteria is within the person's control; and
  - (d) the steps (if any) the person has taken to ensure that the person will satisfy the applicable criteria in the future; and
  - (e) any other relevant factors.

**2.92 Contravention of law**

- (1) This regulation applies to a person who is or was:
- (a) a standard business sponsor in relation to a primary sponsored person; or
  - (b) a professional development sponsor; or
  - (c) a temporary work sponsor in relation to a primary sponsored person.

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*Standard business sponsors, professional development  
sponsors and temporary work sponsors*

- (2) For subparagraph 140L (1) (a) (ii) of the Act, an additional circumstance for a person who is or was a standard business sponsor, a professional development sponsor or a temporary work sponsor is that the Minister is satisfied that the person has been found by a court or a competent authority to have contravened a Commonwealth, State or Territory law.
- (3) For paragraph 140L (1) (b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstances mentioned in subregulation (2) are:
  - (a) the past and present conduct of the person; and
  - (b) the nature of the law that the person has contravened; and
  - (c) the gravity of the unlawful activity; and
  - (d) any other relevant factors.

*Standard business sponsors and temporary work  
sponsors*

- (4) For subparagraph 140L (1) (a) (ii) of the Act, an additional circumstance for a standard business sponsor or a temporary work sponsor is that the Minister is satisfied that each of the following applies:
  - (a) the primary sponsored person has been found by a court or a competent authority to have contravened a Commonwealth, State or Territory law;
  - (b) the law was a law relating to the licensing, registration or membership of the primary sponsored person in relation to the primary sponsored person's approved occupation;
  - (c) the primary sponsored person was required to comply with the law in order to work in the occupation nominated by the standard business sponsor or temporary work sponsor and approved by the Minister.

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- (5) For paragraph 140L (1) (b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstances mentioned in subregulation (4) are:
- (a) whether the person took reasonable steps to prevent the primary sponsored person from contravening a law relating to a licensing, registration or membership requirement of the primary sponsored person's approved occupation; and
  - (b) whether any other primary sponsored person, while in the employ of the person, has been found by a court or a competent authority to have contravened a law relating to a licensing, registration or membership requirement; and
  - (c) the processes (if any) the person has implemented to ensure future compliance with the licensing, registration or membership requirements of a primary sponsored person's approved occupation; and
  - (d) any other relevant factors.

**2.93 Unapproved change to professional development program or special program**

- (1) This regulation applies to a person who is or was:
- (a) a professional development sponsor; or
  - (b) a special program sponsor.
- (2) For subparagraph 140L (1) (a) (ii) of the Act, an additional circumstance is that the Minister is satisfied that the person made a change to:
- (a) if the person is or was a professional development sponsor — the professional development program; or
  - (b) if the person is or was a special program sponsor — the special program;
- without the approval in writing of the Secretary.
- (3) For paragraph 140L (1) (b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstance mentioned in subregulation (2) are:
- (a) the severity of the conduct; and



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- (b) the past conduct of the person in relation to Immigration;  
and
- (c) the impact, if any, that the taking of the action may have  
on the Australian community; and
- (d) the extent to which the barring of the person as a sponsor  
will be an adequate means of dealing with the matter,  
having regard to:
  - (i) the seriousness of the inability, or of the failure, to  
comply; and
  - (ii) the past conduct of the person; and
- (e) any other relevant factors.

**2.94 Failure to pay additional security**

- (1) This regulation applies to a person who is or was a professional  
development sponsor.
- (2) For subparagraph 140L (1) (a) (ii) of the Act, an additional  
circumstance is that the Minister is satisfied that the person has  
failed to pay an additional security requested by an authorised  
officer under section 269 of the Act.
- (3) For subregulation (2), a person has failed to pay an additional  
security if the person has failed to pay the security:
  - (a) within 28 days of the day on which the person was  
requested to pay the security; or
  - (b) within a longer period as allowed by an authorised officer  
in the request.
- (4) For paragraph 140L (1) (b) of the Act, the criteria that the  
Minister must take into account in determining what action  
(if any) to take under section 140M of the Act in relation to the  
circumstance mentioned in subregulation (2) are:
  - (a) the severity of the conduct; and
  - (b) the past conduct of the person in relation to Immigration;  
and
  - (c) the impact, if any, that the taking of the action may have  
on the Australian community; and

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- (d) the extent to which the barring of the person as a sponsor will be an adequate means of dealing with the matter, having regard to:
  - (i) the seriousness of the inability, or of the failure, to comply; and
  - (ii) the past conduct of the person; and
- (e) any other relevant factors.

**2.94A Failure to comply with certain terms of special program agreement**

- (1) This regulation applies to a person who is or was a special program sponsor.
- (2) For subparagraph 140L (1) (a) (ii) of the Act, an additional circumstance is that the Minister is satisfied that the person has not complied with a term or condition of the special program agreement in relation to which the special program sponsor was approved.
- (3) For paragraph 140L (1) (b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstance mentioned in subregulation (2) are:
  - (a) the past and current conduct of the person in relation to Immigration; and
  - (b) the extent to which the person has not complied with the special program agreement; and
  - (c) the number of occasions on which the person has failed to comply with the special program agreement; and
  - (d) any other relevant factors.

**2.94B Failure to pay medical and hospital expenses**

- (1) This regulation applies to a person who is or was a standard business sponsor in relation to a primary sponsored person or a secondary sponsored person (the *sponsored person*) whose Subclass 457 (Business (Long Stay)) visa was granted before 14 September 2009.

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- (2) For subparagraph 140L (1) (a) (ii) of the Act, an additional circumstance is that the Minister is satisfied that the person has not paid a medical or hospital expense incurred by the sponsored person arising from treatment in a public hospital.
- (3) The medical or hospital expense:
  - (a) must be incurred by the sponsored person on or after 14 September 2009; and
  - (b) must be incurred while the sponsored person is a primary sponsored person or secondary sponsored person in relation to the person; and
  - (c) must not have been paid under an insurance policy or a reciprocal health agreement between Australia and another country.
- (4) For paragraph 140L (1) (b) of the Act, the criteria that the Minister must take into account in determining what action (if any) to take under section 140M of the Act in relation to the circumstance mentioned in subregulation (2) are:
  - (a) the past and present conduct of the person in relation to Immigration; and
  - (b) the number of occasions on which the person has not paid medical or hospital expenses incurred by a sponsored person arising from treatment in a public hospital; and
  - (c) the amount of the medical or hospital expenses that the person has not paid; and
  - (d) the circumstances in which the medical or hospital expenses were incurred; and
  - (e) any other matter the Minister considers relevant.

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**Division 2.21 Process to bar sponsor or cancel sponsor's approval**

**2.95 Preliminary**

- (1) This Division applies to a person who is or was an approved sponsor (other than a party to a work agreement).

*Note* The Minister cannot take action against a party to a work agreement under section 140M of the Act. The terms of the work agreement will provide for whether the agreement can be cancelled or whether the person can be barred from doing certain things under the agreement.

- (2) If the Minister is taking action against a person under section 140M of the Act, the Minister must do so in accordance with the process set out in this Division.

**2.96 Notice of intention to take action**

- (1) If the Minister is considering taking action under section 140M of the Act in relation to the person, the Minister must give a written notice to the person.
- (2) The notice must:
- (a) specify details of the circumstances prescribed under section 140L of the Act in relation to which action is being considered; and
  - (b) specify details of the actions that the Minister may take; and
  - (c) specify the address for providing a response to the Minister; and
  - (d) be given using a method mentioned in section 494B of the Act; and
  - (e) specify a date for a response not earlier than 7 days after the date a person is taken to have received the notice by section 494C of the Act.

**2.97 Decision**

The Minister must consider a response before making a decision if the person:

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- (a) provides a response to the Minister before the date mentioned in paragraph 2.96 (2) (e); or
- (b) provides a response:
  - (i) after the date mentioned in paragraph 2.96 (2) (e); and
  - (ii) before the Minister has made the decision.

**2.98 Notice of decision**

- (1) If the Minister decides to take action under section 140M of the Act, the Minister must notify the person, in writing, of the following matters:
  - (a) the decision taken by the Minister, including the effect of the decision;
  - (b) the grounds for making the decision;
  - (c) if the person has a right to have the decision reviewed under Part 5 of the Act — state:
    - (i) that the decision can be reviewed; and
    - (ii) the time in which the application for review may be made; and
    - (iii) who can apply for the review; and
    - (iv) where the application for review may be made;
  - (d) if an action is to bar the person:
    - (i) details of how the person can apply for a waiver of the bar; and
    - (ii) the address to which a request for a waiver, if made, must be sent.
- (2) If a notice is issued under regulation 2.96, and the Minister decides to take no action under section 140M of the Act, the Minister must notify the person, in writing, of the decision to take no action.

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**Division 2.22 Waiving a bar on sponsor's approval**

**2.99 Application**

This Division applies to a person who is or was an approved sponsor other than a party to a work agreement.

**2.100 Circumstances in which a bar may be waived**

For subsection 140O (2) of the Act, a circumstance in which the Minister may waive a bar is that the Minister has received a request from the person to waive the bar.

**2.101 Criteria for waiving a bar**

For subsection 140O (3) of the Act, the criteria to be taken into account by the Minister in determining whether to waive a bar are:

- (a) whether the person has made the request to waive the bar in accordance with the process set out in regulation 2.102; and
- (b) if the Minister has not previously refused to waive the bar:
  - (i) whether the interests of Australia would be significantly affected if the bar were not waived; and
  - (ii) whether a substantial trade opportunity would be lost if the bar were not waived; and
  - (iii) whether there would be a significant detriment to the Australian community if the bar were not waived; and
  - (iv) whether the person's inability to sponsor a proposed primary sponsored person would significantly damage Australia's relations with the government of another country; and
  - (v) whether significant new evidence or information has come to light which was not available at the time the decision to place the bar was made; and

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- (c) if the Minister has previously refused to waive the bar, whether the circumstances relevant to the making of the earlier decision have changed substantially.

**2.102 Process to waive a bar**

- (1) For section 140P of the Act, the Minister may waive a bar placed on the person under section 140M of the Act in accordance with the process set out in this regulation.
- (2) A request from the person to the Minister to waive the bar must:
  - (a) be in writing; and
  - (b) be sent to the address specified in the notice from the Minister mentioned in regulation 2.98.

**Division 2.22A Inspectors**

**2.102A Period of appointment**

For subsection 140V (2) of the Act, the period specified in an instrument of appointment issued under subsection 140V (1) of the Act must not exceed 4 years.

**2.102B Identity cards**

- (1) For paragraph 140W (2) (a) of the Act, an identity card:
  - (a) must be:
    - (i) in accordance with prescribed Form 4; or
    - (ii) the form approved by the Fair Work Ombudsman under subsection 702 (3) of the *Fair Work Act 2009*; and
  - (b) may include additional information that is not set out in the form mentioned in paragraph (a).

**2.102C Purposes for which powers of inspectors may be exercised**

For paragraph 140X (b) of the Act, the purposes for which an inspector may exercise his or her powers are:

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- (a) determining whether a term or a condition of a work agreement is being, or has been, complied with; and
- (b) determining whether a circumstance prescribed under section 140L of the Act exists or has existed; and
- (c) investigating a circumstance, if a circumstance exists or has existed, in order to assist the Minister in determining what (if any) action to take under section 140M of the Act.

*Note 1* These purposes are additional to the purpose of determining whether a sponsorship obligation is being, or has been, complied with — see paragraph 140X (a) of the Act.

*Note 2* Section 140L of the Act allows the regulations to prescribe circumstances in which a sponsor may be barred or a sponsor's approval may be cancelled. These circumstances are prescribed in Division 2.20.

*Note 3* Section 140M of the Act enables the Minister to cancel the approval of a sponsor or to bar a sponsor if regulations are prescribed under section 140L of the Act.

## **Division 2.23      Disclosure of personal information**

### **2.103      Disclosure of personal information by Minister**

- (1) For subsection 140ZH (1) of the Act, the kinds of information about a visa holder or a former visa holder that may be disclosed by the Minister to a person mentioned in column 3 of items 1 and 2 of the table in subsection 140ZH (1), and to an agency mentioned in subregulation (3), are:
  - (a) information relating to a failure to comply with a visa condition; and
  - (b) information about the immigration status of the visa holder or former visa holder; and
  - (c) information about the terms and conditions of employment of the visa holder or former visa holder; and
  - (d) information about costs incurred by the Commonwealth in relation to the visa holder or former visa holder; and
  - (e) information about an allegation made by the visa holder or former visa holder (or presumed to be made by the visa holder or former visa holder) that:
    - (i) an approved sponsor or a former approved sponsor has failed to satisfy a sponsorship obligation; or



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- (ii) a circumstance prescribed under section 140L of the Act may exist; and
  - (f) information about a debt, relating to the visa holder or former visa holder, owed by an approved sponsor or former approved sponsor.
- (2) For subsection 140ZH (1) of the Act, the kinds of information about an approved sponsor, or former approved sponsor, of a visa holder or a former visa holder that may be disclosed by the Minister to a person mentioned in column 3 for items 3 and 4 of the table in subsection 140ZH (1), and to an agency mentioned in subregulation (3), are:
  - (a) information relating to a failure, or a possible failure, to satisfy a sponsorship obligation prescribed under subsection 140H (1) of the Act; and
  - (b) information that a circumstance prescribed under section 140L of the Act may exist; and
  - (c) information about a warning given in relation to the possible existence of a circumstance prescribed under section 140L of the Act; and
  - (d) information about an action taken under section 140M of the Act; and
  - (e) information about a pecuniary penalty imposed for a contravention of section 140Q of the Act; and
  - (f) information about a warning given in relation to a possible contravention of section 140Q of the Act; and
  - (g) information about an infringement notice issued under section 140R of the Act; and
  - (h) information about the outcome of monitoring by an inspector exercising powers under Subdivision F of Division 3A of Part 2 of the Act; and
  - (i) information provided to the Minister in accordance with regulation 2.83; and
  - (j) information provided to Immigration in accordance with regulation 2.84; and

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- (k) information relevant to the performance of a function by a Commonwealth, State or Territory agency relating to the regulation of 1 or more of the matters mentioned in subregulation (3).

*Note* Regulation 2.83 prescribes a sponsorship obligation to provide records and information to the Minister. Regulation 2.84 prescribes a sponsorship obligation to provide information to Immigration when certain events occur.

- (3) For subsection 140ZH (1) of the Act, an agency that the Minister may disclose information to is a Commonwealth, State or Territory agency responsible for the regulation of 1 or more of the following matters:
  - (a) education;
  - (b) fair trading;
  - (c) health;
  - (d) industrial relations;
  - (e) law enforcement;
  - (f) public safety;
  - (g) registration and licensing in relation to an occupation;
  - (h) taxation;
  - (i) trade practices;
  - (j) workplace safety;
  - (k) workplace training.

**2.104 Circumstances in which the Minister may disclose personal information**

- (1) For subsection 140ZH (2) of the Act, this regulation sets out the circumstances in which the Minister may disclose personal information to which subsection 140ZH (1) of the Act applies.
- (2) Each of the following are circumstances in which the Minister may disclose personal information to a visa holder or a former visa holder:
  - (a) the disclosure of the information may assist Immigration in determining:

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- (i) whether an approved sponsor or a former approved sponsor has failed to satisfy a sponsorship obligation; or
    - (ii) whether a circumstance prescribed under section 140L of the Act exists in relation to an approved sponsor or a former approved sponsor of the visa holder or the former visa holder;
  - (b) the disclosure of the information may assist the visa holder or former visa holder to recover a debt under section 140S of the Act;
  - (c) the disclosure of the information will notify the visa holder or the former visa holder that their approved sponsor or former approved sponsor has been sanctioned:
    - (i) for a failure to satisfy a sponsorship obligation prescribed under section 140H of the Act; or
    - (ii) due to the existence of a circumstance prescribed under section 140L of the Act;
  - (d) the disclosure of the information will notify the visa holder or the former visa holder of the outcome of an allegation made by the visa holder or the former visa holder in relation to an approved sponsor or a former approved sponsor.
- (3) Each of the following are circumstances in which the Minister may disclose personal information to an approved sponsor or a former approved sponsor:
- (a) the disclosure of the information may assist the approved sponsor or former approved sponsor:
    - (i) to respond to a claim that a sponsorship obligation has not been satisfied; or
    - (ii) to respond to a claim that a circumstance prescribed under section 140L of the Act exists; or
    - (iii) to satisfy a sponsorship obligation; or
    - (iv) to meet a liability to a visa holder or a former visa holder;
  - (b) the disclosure of the information will notify the approved sponsor or former approved sponsor that he or she is no longer the approved sponsor of a visa holder or a former visa holder;

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- (c) the disclosure of the information will notify the approved sponsor or former approved sponsor of the cancellation of a visa held by a person who is or was a primary sponsored person or a secondary sponsored person.
- (4) Each of the following are circumstances in which the Minister may disclose personal information to an agency of the Commonwealth or a State or Territory:
  - (a) the disclosure of the information may assist the agency to perform a regulatory function in relation to the matters mentioned at subregulation 2.103 (3);
  - (b) the disclosure of the information may assist Immigration in determining:
    - (i) whether an approved sponsor or a former approved sponsor has satisfied a sponsorship obligation; or
    - (ii) whether a circumstance prescribed under section 140L of the Act exists.

**2.105 Circumstances in which a recipient may use or disclose personal information**

For subsection 140ZH (3) of the Act, the circumstance in which a recipient of personal information may use or disclose information to which subsection 140ZH (1) of the Act applies is that the information is to be used or disclosed by the recipient in the same circumstances in which it was disclosed to the recipient.

**2.106 Disclosure of personal information to Minister**

For subsection 140ZI (1) of the Act, the kind of personal information that the Minister may request an approved sponsor or a former approved sponsor of a visa holder or a former visa holder to disclose to the Minister is the contact details of the visa holder or the former visa holder.

*Examples*

- 1 a postal address
- 2 a residential address
- 3 a telephone number
- 4 a personal website
- 5 an email address.

## **Part 3                      Immigration clearance and collection of information**

### **Division 3.1              Information to be given by arriving persons**

#### **3.01        Provision of information (general requirement)**

- (1) In this regulation:  
*officer* includes a clearance officer.
- (2) This regulation applies to:
  - (a) a person who is an overseas passenger:
    - (i) arriving on board a vessel at a port in Australia in the course of, or at the conclusion of, an overseas flight or an overseas voyage; or
    - (ii) leaving Australia on board a vessel bound for or calling at a place outside Australia; and
  - (b) a person on board an aircraft arriving at, or departing from, an airport in Australia, being an aircraft operated by an international air carrier;other than:
  - (c) a person included in a class of persons set out in an item in Part 1 of Schedule 9, being an item in which the word “no” appears in column 4; and
  - (d) a person who, under regulation 3.06, is not required to complete a passenger card; and
  - (e) a person who enters Australia:
    - (i) on a non-military ship; and
    - (ii) as a member of the crew of that non-military ship, or as the spouse, de facto partner or dependent child of a member of the crew of that non-military ship.

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- (3) A person to whom this regulation applies must:
  - (a) complete a passenger card:
    - (i) in relation to the person and to any other person that person is in charge of on the relevant flight or voyage; and
    - (ii) in accordance with directions set out on the passenger card; and
  - (b) provide the completed passenger card to an officer.
- (4) An officer may require a person to whom this regulation applies to provide to the officer information about that person in respect of any of the following matters:
  - (a) name;
  - (b) date of birth and country of birth;
  - (c) citizenship;
  - (d) sex, and marital or relationship status;
  - (e) usual occupation;
  - (f) passport number;
  - (g) if the person is not:
    - (i) an Australian citizen; or
    - (ii) a person who is eligible for the grant of a Special Category visa or a Permanent Resident of Norfolk Island visa; or
    - (iii) a person who will on entry be taken to hold a special purpose visa;
  - the number of the Australian visa held by the person;
  - (h) flight number of aircraft or name of ship in relation to the relevant flight or voyage;
  - (i) country in which the person boarded, or intends to disembark from, the aircraft or ship;
  - (j) if the person is entering Australia — the intended address of the person in Australia.

**3.02 Passenger card**

- (1) A passenger card must include the following questions, or substantially similar questions:

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- (a) “Do you currently suffer from tuberculosis?”;
  - (b) “Do you have any criminal conviction/s?”.
- (2) The questions set out in subregulation (1):
- (a) may be printed on the passenger card in any order; and
  - (b) may be numbered in any way.
- (3) A passenger card may include instructions for completing it, including instructions that questions are to be answered by ticks or other symbols.

**3.03 Evidence of identity and visa for persons entering Australia (Act s 166)**

- (1) For paragraph 166 (1) (b) of the Act, the information required to be provided to a clearance authority is that set out in regulation 3.02.

*Note* Under section 166, a person who enters Australia (other than a person referred to in sections 168 and 169 — broadly, persons who have left Australia only for short periods without going to a foreign country, persons in prescribed classes (see below) and allowed inhabitants of the Protected Zone) must present evidence of their identity and provide certain information, and must do so in a prescribed way.

- (1A) For paragraph 166 (1) (c) of the Act, the circumstance is that the person is in immigration clearance.
- (1B) For subsection 166 (8) of the Act:
- (a) the circumstance is that an automated identification processing system is available for the immigration clearance of non-citizens who:
    - (i) are airline crew members or airline positioning crew members; and
    - (ii) have been registered for the system; and
  - (b) a personal identifier is one of the following types:
    - (i) a photograph or other image of the non-citizen’s face and shoulders;
    - (ii) the non-citizen’s signature;

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- (iii) any other personal identifier contained in the non-citizen's passport or other travel document.

*Note* subsection 166 (8) provides that, in prescribed circumstances, prescribed types of personal identifiers may be provided by an applicant otherwise than by way of an identification test carried out by an authorised officer (in accordance with subsection 166 (7)), if the applicant complies with any requirements that are prescribed relating to the provision of the personal identifier.

- (2) For subsection 166 (3) of the Act, an Australian citizen who is required to comply with section 166 of the Act must provide a completed passenger card to a clearance officer.
- (3) For subsection 166 (3) of the Act, a non-citizen who is required to comply with section 166 of the Act must:
  - (a) if the non-citizen is taken to hold a special purpose visa:
    - (i) provide a completed passenger card to a clearance officer where required by Part 1 of Schedule 9; and
    - (ii) present to a clearance authority:
      - (A) if the non-citizen is a person who is registered for an automated identification processing system — evidence of his or her identity using the system; or
      - (B) evidence of the person's identity, as specified in Part 1 of Schedule 9; and
  - (b) if the non-citizen is eligible to hold a special category visa:
    - (i) present a New Zealand passport that is in force to a clearance authority; and
    - (ii) provide a completed passenger card to a clearance officer; and
  - (c) if the non-citizen has the right of permanent residence on Norfolk Island:
    - (i) present a passport that is:
      - (A) in force; and
      - (B) endorsed with an authority to reside indefinitely on Norfolk Island;to a clearance officer; and
    - (ii) provide a completed passenger card to a clearance officer; and



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- (d) if the non-citizen holds an Electronic Travel Authority (Class UD) visa:
  - (i) present evidence of the person's identity, as specified in Part 1 of Schedule 9, to a clearance authority; and
  - (ii) provide a completed passenger card to a clearance officer; and
- (e) if the non-citizen is a person mentioned in paragraph 1223A (1) (c) of Schedule 1 who holds a Temporary Business Entry (Class UC) visa:
  - (i) present evidence of the person's identity, as specified in Part 1 of Schedule 9, to a clearance authority; and
  - (ii) provide a completed passenger card to a clearance officer; and
- (f) if the non-citizen holds a Subclass 417 (Working Holiday) or Subclass 676 (Tourist) visa granted on the basis of an Internet application:
  - (i) present evidence of the person's identity, as specified in Part 1 of Schedule 9, to a clearance authority; and
  - (ii) provide a completed passenger card to a clearance officer; and
- (g) if the non-citizen holds a Visitor (Class TV) visa:
  - (i) present evidence of the person's identity, as specified in Part 1 of Schedule 9, to a clearance authority; and
  - (ii) provide a completed passenger card to a clearance officer.

*Note* **Internet application** is defined in regulation 1.03.

- (4) For subsection 166 (3) of the Act, a non-citizen who is required to comply with section 166 of the Act, other than a non-citizen mentioned in subregulation (3), must:
  - (a) present his or her passport to a clearance authority; and
  - (b) if his or her visa is evidenced by a label and a clearance officer asks for the label to be shown — present the label to a clearance officer; and

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- (c) provide a completed passenger card to a clearance officer.

**3.03AA Evidence of identity and providing information —  
non-military ships (Act s 166)**

- (1) This regulation applies to a person who is the holder of a Maritime Crew (Temporary) (Class ZM) visa.
- (2) For paragraph 166 (1) (b) of the Act, the information is as much of the information in the table as is required by a clearance officer:

Item	Information
<i>If the person arrives in Australia on a non-military ship</i>	
101	a document that identifies the person as being a member of the crew of the non-military ship on which the person arrived (for example, a contract of employment, a crew list, a supernumerary crew list or a seafarer identity card)
102	a document which indicates that the person is a spouse or de facto partner of a member of the crew of a non-military ship (for example, a marriage certificate)
103	a document which indicates that the person is a dependent child of a member of the crew (for example a birth certificate or adoption certificate)
104	a statement from the master, owner, agent, charterer or operator of a non-military ship that the person is: (a) a member of the crew of the non-military ship; or (b) the spouse or de facto partner of a member of the crew of the non-military ship; or (c) the spouse or de facto partner of a person who is under an offer to become a member of the crew of the non-military ship; or (d) a dependent child of a member of the crew of the non-military ship; or (e) a dependent child of a person who is under an offer to become a member of the crew of the non-military ship

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Item	Information
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105	any information mentioned in subregulation 3.01 (4)
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*If the person arrives in Australia by air*

201	a document which indicates the person is under an offer to become a member of the crew of a non-military ship (a <b><i>prospective member of the crew</i></b> )
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202	a document which indicates that the person is the spouse or de facto partner of:
-----	--

(a) a member of the crew of a non-military ship; or

(b) a prospective member of the crew

(for example, a marriage certificate)

203	a document which indicates that the person is a dependent child of:
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(a) a member of the crew of a non-military ship; or

(b) a prospective member of the crew

(for example, a birth certificate or adoption certificate)

204	a statement from the master, owner, agent, charterer or operator of a non-military ship that the person is:
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(a) a prospective member of the crew; or

(b) the spouse or de facto partner of a member of the crew of the non-military ship; or

(c) the spouse or de facto partner of a person who is a prospective member of the crew of the non-military ship; or

(d) a dependent child of a member of the crew of the non-military ship; or

(e) a dependent child of a prospective member of the crew of the non-military ship

205	any information mentioned in subregulation 3.01 (4)
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(3) For subsection 166 (3) of the Act, if the person enters Australia as:

(a) a member of the crew on a non-military ship; or

(b) the spouse or de facto partner of a member of the crew on a non-military ship; or

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- (c) a dependent child of a member of the crew of a non-military ship;

the requirements relating to passenger cards in subregulations 3.03 (3) and (4) do not apply in relation to the person.

**3.03A Evidence of identity and visa for persons entering Australia — personal identifiers**

For paragraph 166 (5) (d) of the Act, the following types of personal identifiers are prescribed:

- (a) fingerprints or handprints of the person (including those taken using paper and ink or digital livescanning technologies);
- (b) an iris scan.

*Note* Under paragraph 166 (1) (c) of the Act, if a person who is a non-citizen enters Australia in prescribed circumstances, the person must comply with any requirement, made by a clearance authority before the occurrence of an event mentioned in subparagraph 172 (1) (a) (iii) or (b) (iii) or paragraph 172 (1) (c) of the Act, to provide one or more personal identifiers, referred to in subsection 166 (5) of the Act, to a clearance officer.

**3.04 Place and time for giving evidence (Act, s 167)**

For the purposes of subsection 167 (2) of the Act (which deals with the time and place at which a person who enters Australia must comply with section 166):

- (a) the place at which a person who is required to comply with section 166 must do so is:
  - (i) a regional or area office of Immigration; or
  - (ii) at any place where there is a clearance officer, including a port; and
- (b) the period within which the person must do so is 2 working days after he or she enters Australia.

**3.05 Allowed inhabitants of the Protected Zone (Act, s 168 (2))**

For the purposes of subsection 168 (2) of the Act (which deals with compliance with section 166 by allowed inhabitants of the Protected Zone):

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- (a) the place at which an allowed inhabitant of the Protected Zone who is required to comply with section 166 must do so is:
  - (i) a regional or area office of Immigration; or
  - (ii) at any place where there is a clearance officer, including a port; and
- (b) the period within which the inhabitant must do so is 5 working days after he or she goes to a part of the migration zone outside the protected area.

**3.06 Persons not required to comply with s 166 of the Act (Act, s 168 (3))**

For the purposes of subsection 168 (3) of the Act (which deals with the classes of person not required to give information under section 166), each class of person set out in Part 2 of Schedule 9 is prescribed.

**3.06A Designated foreign dignitaries**

- (1) For item 10 of Part 2 of Schedule 9 (which deals with persons not required to comply with section 166 of the Act), a person is a *designated foreign dignitary* if:
  - (a) the Minister specifies the person in an instrument in writing for this paragraph; or
  - (b) the person is included in a class of persons specified by the Minister in an instrument in writing for this paragraph.
- (2) The Minister must specify a person or a class in accordance with arrangements approved in writing by the Minister.
- (3) If the person is specified in an instrument for paragraph (1) (a), the period in which the person is a designated foreign dignitary:
  - (a) starts when the Minister specifies the person; and
  - (b) ends at the time, or in the way, mentioned in the instrument.

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- (4) If the person is included in a class of persons specified in an instrument for paragraph (1) (b), the period in which the person is a designated foreign dignitary:
- (a) starts when the person becomes a member of the class; and
  - (b) ends at the time, or in the way, mentioned in the instrument.
- (5) For item 10 of Part 2 of Schedule 9, a person is a *designated foreign dignitary* if the person is an accompanying member of the immediate family of a person who is a designated foreign dignitary in accordance with subregulation (1).

*Note* Regulation 1.12AA explains when a person is a member of the immediate family of another person.

- (6) An instrument made under paragraph (1) (a) or (b) is not a legislative instrument.

*Note* The effect of section 168 of the Act, regulation 3.06 and Part 2 of Schedule 9 to these Regulations is that a designated foreign dignitary is not required to comply with the requirements of section 166 of the Act relating to the giving of information.

**3.07 Persons taken not to leave Australia (Act, s 80 (c))**

For the purposes of paragraph 80 (c) of the Act, the prescribed period is 30 days.

**3.08 Offence — failure to complete a passenger card**

- (1) A person who is required by these Regulations to complete a passenger card must not fail to do so.

Penalty: 10 penalty units.

- (2) Strict liability applies to subregulation (1).

**3.09 Evidence of identity — domestic travel on overseas vessels**

- (1) In this regulation:

*boarding pass* means a document that permits a person to board an aircraft, given to the person by the operator of the aircraft.

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*officer* includes a clearance officer.

*overseas vessel* has the meaning given by section 165 of the Act.

*Note* *Vessel* includes an aircraft: see s 5 (1) of the Act.

- (2) Subregulation (2A) applies in relation to a person who travels, or appears to intend to travel, on an overseas vessel from a port in Australia to another port in Australia without calling at a port outside Australia.
- (2A) The person may be required by an officer at either port or both ports in Australia to provide evidence of his or her identity to the officer by producing a document of a kind mentioned in subregulation (3) that:
  - (a) bears a photograph and the full name of the person; and
  - (b) is in force.
- (3) For subregulation (2A), the kinds of document are the following:
  - (a) a passport issued to the person that is in the form in which it was issued;
  - (b) a licence to drive a motor vehicle issued under a law of the Commonwealth, or a State or Territory;
  - (c) a document issued by the Commonwealth, or a State or Territory, or by a Commonwealth, State or Territory authority, that identifies the person;
  - (d) if the vessel is an aircraft — an aviation security identity card issued by:
    - (i) the operator of the aircraft; or
    - (ii) the operator of an airport in Australia.
- (4) If a person to whom this regulation applies is boarding or disembarking from an overseas vessel that is an aircraft, an officer may require the person to show the officer the person's boarding pass.
- (5) An officer may require a person who is travelling with a person:
  - (a) who is under 18; and

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- (b) in respect of whom a document cannot be produced to the officer as required;

to write on the boarding pass issued to the first-mentioned person the full name of the second-mentioned person.

**3.10 Use of information**

- (1) With the written consent of the Minister, use may be made of information collected under this Part in respect of persons, being information that:
  - (a) is collected from passenger cards or passports, or contained in notified data bases (or both), by an officer of any Department or authority of the Commonwealth, or of a State or Territory; and
  - (b) is concerned with any of the following matters, namely law enforcement, national security, national intelligence, education, health, community services, social welfare, employment, labour, taxation, statistics, quarantine, customs, excise.
- (2) The consent of the Minister for the use of information concerned with a matter specified in subregulation (1) may be given in respect of a particular occasion or any number of occasions.
- (3) If:
  - (a) the Commonwealth has entered into an agreement with another country in relation to the provision of information concerning international movements of air traffic and persons on international flights; and
  - (b) the Minister is satisfied that the provision to that country of the information specified in subregulation (4) would facilitate the handling of aircraft or of persons travelling to destinations outside Australia;the Minister may cause that information to be provided to the immigration authorities of that country.



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- (3A) If:
- (a) the Commonwealth has entered into an agreement with an international air carrier in relation to the provision of information concerning persons on international flights; and
  - (b) the Minister is satisfied that the provision to that international air carrier of the information specified in subregulation (4) would facilitate the handling of persons travelling to destinations outside Australia;
- the Minister may cause that information to be provided to that international air carrier.
- (4) For paragraph (3) (b), in relation to a person travelling to (or to and beyond) the country mentioned in that paragraph, and for paragraph (3A) (b), in relation to a person travelling with the international air carrier mentioned in that paragraph, the following information is specified:
- (a) name;
  - (b) date of birth;
  - (c) citizenship;
  - (ca) sex;
  - (cb) class and subclass of visa;
  - (cc) when the visa ceases to be in effect;
  - (d) passport number;
  - (e) date of departure from Australia;
  - (f) flight number;
  - (g) place of intended disembarkation;
  - (h) ultimate destination.
- Note* Under the Act, a *visa* is an Australian visa issued in accordance with the Act.
- (5) If the Commonwealth enters into an agreement of a kind referred to in paragraph (3) (a) or (3A) (a):
- (a) the Minister must, as soon as is practicable, cause notice of the fact to be published in the *Gazette*; and
  - (b) information must not be made available under the agreement earlier than the day after the day on which the notice is published.

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**3.10A Access to movement records**

- (1) For subparagraph 488 (2) (a) (vii) of the Act, Commonwealth, State or Territory legislation specified by the Minister in an instrument in writing for this subregulation is prescribed.

*Note* Under subsection 488 (1) of the Act, a person must not read, examine, reproduce, use or disclose any part of the movement records. However, subparagraph 488 (2) (a) (vii) of the Act permits the Minister to authorise an officer to perform 1 or more of those actions for the purposes of prescribed Commonwealth, State or Territory legislation.

- (2) For paragraph 488 (2) (g) of the Act:
- (a) an agency of the Commonwealth, a State or a Territory specified by the Minister in an instrument in writing for this paragraph is prescribed; and
  - (b) an employee of a prescribed agency who is specified by the Minister in an instrument in writing for this paragraph is prescribed; and
  - (c) a purpose specified by the Minister in an instrument in writing for this paragraph is prescribed.

*Note* Under subsection 488 (1) of the Act, a person must not read, examine, reproduce, use or disclose any part of the movement records. However, paragraph 488 (2) (g) of the Act permits the Minister to authorise a prescribed employee of a prescribed agency of the Commonwealth, or of a State or Territory, to perform 1 or more of those actions for a prescribed purpose.

**3.11 Production of deportee or removee**

- (1) If a person has been placed on board a vessel for the purpose of:
- (a) deportation from Australia under an order made by the Minister under the Act; or
  - (b) removal from Australia;
- an officer may require the master to produce the deportee or removee to the officer at any time before the vessel's departure from its last port of call in Australia.
- (2) The master must not fail to comply with a requirement under subregulation (1).

Penalty: 10 penalty units.

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- (3) Subregulation (2) does not apply if the master has a reasonable excuse.

*Note* A defendant bears an evidential burden in relation to the matter in subregulation (3) (see subsection 13.3 (3) of the *Criminal Code*).

**3.12 Offences by master of vessel**

The master of a vessel must not:

- (a) refuse or neglect to afford all reasonable facilities to an officer for the performance of the officer's duties; or
- (b) deliver to an officer, under these Regulations, a list or statement that is incorrect in a material particular.

Penalty: 10 penalty units.

**Division 3.2 Information about passengers and crew on overseas vessels**

**3.13 Interpretation**

In this Division:

*civilian vessel* means a vessel other than a vessel of the regular armed forces of a Government recognised by Australia.

*master* includes owner, charterer, and agent in Australia.

*Note* *Vessel* includes an aircraft: see the Act, s 5 (1).

**3.13A Information about passengers and crew to be given before arrival of international passenger aircraft**

- (1) For subsection 245I (1) of the Act, an international passenger aircraft is a kind of aircraft to which Division 12B of the Act applies.

*Note* The operator of an aircraft to which Division 12B applies that is due to arrive at an airport in Australia from a place outside Australia must, before the arrival of the aircraft, give the Department a report that includes particular information about passengers and crew aboard the aircraft (see section 245L of the Act).

- (2) In this regulation:

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***international passenger aircraft*** means an aircraft that is being used to provide a regular international passenger air service or an international passenger charter air service.

***international passenger charter air service*** means a service of providing air transportation of persons from a place outside Australia to an airport in Australia that:

- (a) is provided:
  - (i) by an airline operator that provides a regular international passenger air service; and
  - (ii) in return for a fee payable by persons using the service; and
- (b) is not conducted in accordance with an international airline licence granted under regulation 15 of the *Air Navigation Regulations 1947*.

***regular international passenger air service*** means a service of providing air transportation of persons from a place outside Australia to an airport in Australia that:

- (a) is provided in return for a fee payable by persons using the service; and
- (b) is conducted in accordance with:
  - (i) an international airline licence granted under regulation 15 of the *Air Navigation Regulations 1947*; and
  - (ii) fixed schedules from fixed airports outside Australia over specific routes to fixed airports in Australia; and
- (c) is available to the general public on a regular basis.

**3.13B Information about passengers and crew to be given before arrival of international passenger cruise ship**

- (1) For subsection 245I (1) of the Act, an international passenger cruise ship is a kind of ship to which Division 12B of the Act applies.

*Note* The operator of a ship to which Division 12B applies that is due to arrive at a port in Australia from a place outside Australia must, before the arrival of the ship, give the Department a report that includes particular information about passengers and crew aboard the ship (see section 245L of the Act).

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(2) In this regulation:

*international passenger cruise ship* means a ship that:

- (a) has sleeping facilities for at least 100 persons (other than crew members); and
- (b) is being used to provide an international passenger sea transportation service.

*international passenger sea transportation service* means a service of providing sea transportation of persons from a place outside Australia to a port in Australia that:

- (a) is provided in return for a fee payable by persons using the service; and
- (b) is available to the general public.

**3.13C Information about passengers and crew to be given before arrival of international cargo ship**

(1) For subsection 245I (1) of the Act, an international cargo ship is a kind of ship to which Division 12B of the Act applies.

*Note* The operator of a ship to which Division 12B applies that is due to arrive at a port in Australia from a place outside Australia must, before the arrival of the ship, give the Department a report that includes particular information about passengers and crew aboard the ship (see section 245L of the Act).

(2) In this regulation:

*international cargo ship*:

- (a) means a civilian vessel that:
  - (i) has a gross tonnage of at least 500 tons; and
  - (ii) either:
    - (A) is used wholly or principally to provide sea transportation of cargo; or
    - (B) is used to provide services to ships or shipping; and
- (b) does not include any of the following:
  - (i) an international passenger cruise ship within the meaning of subregulation 3.13B (2);
  - (ii) a fishing vessel;
  - (iii) a fishing support vessel;

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- (iv) a pleasure craft.

**3.13D Obligation to report on passengers and crew of ships — reporting periods for journey from last port outside Australia**

*Journey begun before 15 February 2009*

- (1) For subsection 245L (5A) of the Act, if a ship:
- (a) begins a journey from the last port outside Australia before 15 February 2009; and
  - (b) arrives at a port in Australia on or after that date;
- section 245L of the Act, as in force immediately before 15 February 2009, applies in relation to the ship.

*Note* The *Migration Act 1958* has been amended by provisions of the *Migration Legislation Amendment Act (No. 1) 2008* which commenced on 15 February 2009. Subsection 245L (5) of the *Migration Act 1958* has been replaced and a new subsection 245L (5A) has been added.

Subsection 245L (5A) permits regulations to be made to prescribe matters of a transitional nature (including prescribing any saving or application provisions) arising out of the making of regulations for the purposes of the new subsection (5).

The effect of subregulation (1) is that the deadline for giving a report on the passengers or crew on the ship is to be worked out in accordance with section 245L of the Act as in force immediately before 15 February 2009, and not in accordance with subregulations (2) and (3).

*Journey begun on or after 15 February 2009*

- (2) For paragraph 245L (5) (a) of the Act, if:
- (a) a ship begins a journey from the last port outside Australia on or after 15 February 2009; and
  - (b) the likely duration of the ship's journey to a port in Australia is at least 96 hours;
- the prescribed period is 96 hours.

*Note* The *Migration Act 1958* has been amended by provisions of the *Migration Legislation Amendment Act (No. 1) 2008* which commenced on 15 February 2009. Subsection 245L (5) of the *Migration Act 1958* has been replaced and a new subsection 245L (5A) has been added.

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- (3) For paragraph 245L (5) (b) of the Act, if:
- (a) a ship begins a journey from the last port outside Australia on or after 15 February 2009; and
  - (b) the likely duration of the ship's journey to a port in Australia is mentioned in an item of the following table; the period mentioned in the item is specified.

Item	Likely duration of ship's journey	Specified period
1	72 hours or more but less than 96 hours	72 hours
2	48 hours or more but less than 72 hours	48 hours
3	24 hours or more but less than 48 hours	24 hours
4	Less than 24 hours	12 hours

*Note* The *Migration Act 1958* has been amended by provisions of the *Migration Legislation Amendment Act (No. 1) 2008* which commenced on 15 February 2009. Subsection 245L (5) of the *Migration Act 1958* has been replaced and a new subsection 245L (5A) has been added.

**3.14 Information about overseas passengers to be given on arrival of inbound civilian vessel**

- (1) If:
- (a) a civilian vessel arrives at a port in Australia (in this regulation called *the relevant port*); and
  - (b) the vessel carries overseas passengers;
- the master must, on the request of an officer, give the officer, to the best of the master's knowledge and belief, the particulars set out in subregulation (2), (3) or (4), as the case requires.

Penalty: 10 penalty units.

- (2) If the last port entered by the vessel before its arrival at the relevant port was outside Australia, the particulars are:
- (a) each passenger's full name; and
  - (b) each passenger's date of birth; and
  - (c) the country of issue and number of each passenger's passport; and
  - (d) the citizenship of each passenger; and

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- (e) the intended address in Australia (if any) of each passenger; and
  - (f) the place in Australia (if any) at which each passenger's journey in the vessel ends.
- (3) If there are overseas passengers on the vessel whose journey is to end at the relevant port, the particulars in respect of each of those passengers are:
  - (a) his or her full name; and
  - (b) his or her date of birth; and
  - (c) the country of issue and number of his or her passport; and
  - (d) his or her citizenship; and
  - (e) his or her intended address in Australia.
- (4) If:
  - (a) there are passengers on the vessel who:
    - (i) were on board the vessel when it left a place outside Australia; and
    - (ii) intend to travel in the vessel beyond Australia; and
  - (b) the master has not previously been asked by an officer to give particulars of those passengers;  
the particulars of each of those passengers are:
    - (c) his or her full name; and
    - (d) his or her date of birth; and
    - (e) the country of issue and number of his or her passport; and
    - (f) his or her citizenship.
- (5) The master must, if asked to do so by an officer, give the officer a specified number (not exceeding 6) of copies of a document containing particulars given under this regulation.

Penalty: 10 penalty units.

**3.15 Medical certificate**

- (1) If a list is given to an officer under subregulation 3.14 (2), the medical officer of the vessel must also give the officer a certificate signed by him or her that certifies that, in his or her opinion:



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- (a) no passenger on the vessel; or
  - (b) no passenger on the vessel other than a passenger named in the certificate;  
is suffering from:
  - (c) tuberculosis; or
  - (d) a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community; or
  - (e) a disease or condition that, during the person's proposed period of stay in Australia, would be likely to:
    - (i) result in a significant cost to the Australian community in the areas of health care or community services; or
    - (ii) prejudice the access of an Australian citizen or permanent resident to health care or community services.
- (2) If a passenger is named in the certificate as suffering from a disease or condition referred to in paragraph (1) (c), (d) or (e), the certificate must also set out the disease or condition from which the passenger is suffering.
- (3) If a vessel has no medical officer, the certificate must be signed and given by the master to the best of his or her knowledge and belief.
- (4) If an officer has required the master of a vessel to provide copies of a document under subregulation 3.14 (5), the medical officer or master must provide the same number of copies of the certificate.

Penalty: 10 penalty units.

**3.16 Information about overseas passengers — outbound civilian vessel**

- (1) If:
- (a) a civilian vessel leaves a port in Australia on an overseas voyage or an overseas flight; and

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(b) the vessel carries overseas passengers:

(i) who were on board the vessel when it left a place outside Australia, and who intend to travel in the vessel beyond Australia; or

(ii) who joined the vessel at that port;

the master of the vessel must give an officer a list setting out, to the best of the master's knowledge and belief, the following particulars of each of those passengers:

(c) his or her full name;

(d) his or her date of birth;

(e) the country of issue and number of his or her passport;

(f) his or her citizenship;

(g) the place where his or her journey in the vessel ends.

(2) The master must, if asked to do so by an officer, give the officer a specified number (not exceeding 6) of copies of a document containing particulars given under this regulation.

Penalty: 10 penalty units.

**3.17 Information about crew**

(1) The master of a civilian vessel that enters Australia must, at any port of call in Australia, if so requested by an officer:

(a) give the officer a list showing the number of members of the crew and showing, in respect of each member of the crew:

(i) his or her full name; and

(ii) his or her date of birth; and

(iii) his or her citizenship; and

(iv) the country of issue and number of his or her passport; and

(b) if the vessel is a ship, produce to the officer the ship's articles.

(2) The master of a civilian vessel that is a ship must, at the first port of call in Australia of the ship, give an officer a list signed by the master showing the name and citizenship of every person on board other than:

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- (a) a passenger; or
- (b) a member of the crew whose name appears on the ship's articles as a member of the crew for discharge at a port outside Australia.

Penalty: 10 penalty units.

## **Division 3.3 Examination, search and detention**

### **3.19 Periods within which evidence to be shown to officer**

For subsections 188 (2) and (3) of the Act, the periods are:

- (a) if the requirement is oral — 5 minutes; or
- (b) if the requirement is in writing — 48 hours.

### **3.19A Circumstances in which an officer must require personal identifiers**

For subsection 188 (4) of the Act, the circumstances are that the officer knows or reasonably suspects that the person is a non-citizen and:

- (a) the officer knows or reasonably suspects that the person has refused or failed to comply with a requirement to provide evidence under subsection 188 (1) of the Act within:
  - (i) the period mentioned in regulation 3.19; or
  - (ii) any further period allowed under subsection 188 (2) of the Act; or
- (b) during the period or further period the person advises the officer that the person refuses to, or is unable to, comply with a requirement under subsection 188 (1) of the Act; or
- (c) during the period or further period the person has provided evidence in order to comply with a requirement under subsection 188 (1) of the Act, and the officer is not reasonably satisfied that the evidence is:
  - (i) authentic; or
  - (ii) reliable.

**Regulation 3.20**

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**3.20 Information to be provided — authorised officers carrying out identification tests**

- (1) For paragraph 258B (1) (b) of the Act, the matters are:
- (a) the reason why a personal identifier is required to be provided; and
  - (b) how a personal identifier may be collected; and
  - (c) how any personal identifier that is collected may be used; and
  - (d) the circumstances in which a personal identifier may be disclosed to a third party; and
  - (e) notification that a personal identifier may be produced in evidence in a court or tribunal in relation to the non-citizen who provided the personal identifier; and
  - (f) notification that the *Privacy Act 1988* applies to a personal identifier, and that the non-citizen has a right to make a complaint to the Australian Information Commissioner about the handling of personal information; and
  - (g) notification that the *Freedom of Information Act 1982* gives a person access to certain information and documents in the possession of the Government of the Commonwealth and of its agencies, and that the non-citizen has a right under that Act to seek access to that information or those documents under that Act, and to seek amendment of records containing personal information that is incomplete, incorrect, out of date or misleading; and
  - (h) if the non-citizen is a minor or incapable person — information concerning how a personal identifier is to be obtained from a minor or incapable person.

*Note* Subsections 261AL (4) and 261AM (3) require a parent, guardian or independent person to be informed, before giving consent for a minor or an incapable person to provide a personal identifier, of the matters of which a minor or incapable person must be informed under section 258B.

- (2) For subsection 258B (3) of the Act, if a form is to be given to a non-citizen, it must be given to the non-citizen at a time that gives the non-citizen enough time to read and understand the form before the identification test is conducted.

**Regulation 3.21**

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**3.21 Information to be provided — authorised officers not carrying out identification tests**

- (1) For subsection 258C (1) of the Act, the matters are:
  - (a) the reason why a personal identifier is required to be provided; and
  - (b) how a personal identifier may be collected; and
  - (c) how any personal identifier that is collected may be used; and
  - (d) the circumstances in which a personal identifier may be disclosed to a third party; and
  - (e) notification that a personal identifier may be produced in evidence in a court or tribunal in relation to the non-citizen who provided the personal identifier; and
  - (f) notification that the *Privacy Act 1988* applies to a personal identifier, and that the non-citizen has a right to make a complaint to the Australian Information Commissioner about the handling of personal information; and
  - (g) notification that the *Freedom of Information Act 1982* gives a person access to certain information and documents in the possession of the Government of the Commonwealth and of its agencies, and that the non-citizen has a right under that Act to seek access to that information or those documents under that Act, and to seek amendment of records containing personal information that is incomplete, incorrect, out of date or misleading; and
  - (h) information concerning how a personal identifier is to be obtained from a minor or incapable person.
- (2) For subsection 258C (1) of the Act, the manner of informing a non-citizen is in writing.

**Regulation 3.30**

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**Division 3.4 Identification of immigration detainees**

**3.30 Immigration detainees must provide personal identifiers**

- (1) For subsection 261AA (1) of the Act, a circumstance is that the non-citizen is in the company of, and restrained by:
  - (a) an officer; or
  - (b) in the case of a particular non-citizen — another person directed by the Secretary to accompany and restrain the non-citizen.
- (2) For subsection 261AA (1) of the Act, a circumstance is that each of the following applies:
  - (a) immediately before being detained in immigration detention, the non-citizen was detained under:
    - (i) the *Environment Protection and Biodiversity Conservation Act 1999*;
    - (ii) the *Fisheries Management Act 1991*;
    - (iii) the *Torres Strait Fisheries Act 1984*;
  - (b) the non-citizen has provided a personal identifier or personal identifiers in accordance with the relevant Act in subparagraph (a) (i), (ii) or (iii).
- (3) Subregulation (2) applies to the provision of a personal identifier only if:
  - (a) an authorised officer is satisfied that the personal identifier that has been provided is usable for a particular purpose set out in subsection 5A (3) of the Act; and
  - (b) the authorised officer is satisfied about the integrity of the personal identifier; and
  - (c) the authorised officer is satisfied that no further personal identifiers need to be collected from the non-citizen to satisfy the purpose.

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**Regulation 3.31**

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- (4) For paragraph 261AA (1A) (e) of the Act, an iris scan is prescribed.

*Note* Under subsection 261AA (1) of the Act, a non-citizen who is in immigration detention must (other than in the prescribed circumstances) provide to an authorised officer one or more personal identifiers. Personal identifiers are mentioned in subsection 261AA (1A) of the Act, and include any prescribed personal identifiers.

**3.31 Authorised officers must require and carry out identification tests**

For paragraph 261AB (1) (a) of the Act, the types of personal identifiers are as follows:

- (a) fingerprints or handprints of the non-citizen (including those taken using paper and ink or digital livescanning technologies);
- (b) a measurement of the non-citizen's height and weight;
- (c) a photograph or other image of the non-citizen's face and shoulders;
- (d) the non-citizen's signature.